

Child Abuse Prevention in International Law:

A Comparative Study with Islamic Law

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قال النَّبِيُّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ

" لَيْسَ مِنَّا مَنْ لَمْ يَرْحَمْ صَغِيرَنَا ، وَيُوقِّرَ كَبِيرَنَا "

(He, who does not have mercy for our young ones and respect for our old ones, is not from among us).

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DEDICATION

TO

My Parents

There are who brought me up with precious guidance and instructions.
I am nothing but a result of their prayers.

My Wife

For making the life peaceful; for her support and co-operation all the time

My Children

For making my life meaningful and a pleasure

ABBREVIATION

ACRWC	African Charter on the Rights and Welfare of the Child
AFPPD	Asian Forum of Parliamentarians on Population and Development
AusAID	Australian Aid
CDHRI	Cairo Declaration on Human Rights in Islam
CFI	Charter of Family in Islam (al-Mīthāq)
CMRA	The Child Marriage Restraint Act 2013
CRCI	Covenant on the Rights of the Child in Islam
CSEC	Commercial Sexual Exploitation of Children
DMMA	Dissolution of Muslim Marriages Act
DRCCI	Declaration on the Rights and Care of the Child in Islam
ECOSOC	Economic and Social Council
ECPT	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes
EU	European Union

GAATW	Global Alliance against Traffic in Women
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPD	International Conference on Population and Development
ICRW	International Center for Research on Women
ILO 138 (C 138)	Convention Concerning Minimum Age for Admission to Employment (138)
ILO 182 (C 182)	Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182)
IPHRC	Independent Permanent Human Rights Commission
IRIN	Integrated Regional Information Networks
NCCWD	National Commission for Child Welfare and Development
NCHR	National Commission for Human Rights
NGO	Non Government Organization
NPA	National Plan of Action for Children (Bangladesh)

NSPCC	National Society for the Prevention of Cruelty to Children
PATA	Pacific Asia Travel Association
PPC	Pakistan Penal Code 1860
SAARC	South Asian Association for Regional Cooperation
SAIEVAC	South Asia Initiative for Ending Violence against Children
SECTT	Sexual Exploitation of Children in Travel and Tourism
UDHR	Universal Declaration of Human Rights 1948
UIDHR	Universal Islamic Declaration on Human Rights
UN	United Nations
UNFPA	United Nations Fund for Population Activities
UNICEF	United Nations Children's Fund
UNWTO	United Nations World Tourism Organization
WHO	World Health Organization

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ABSTRACT

Child abuse is a very threatening phenomenon which is practiced in the entire world without any exception. The present study compares rules and mechanisms of International Law and Islamic Law for the noble purpose of prevention of the child abuse. Pakistani Law is also a part of the thesis to compare it with International and Islamic Laws. Actually, the child is very easy to be abused and the abusers take full advantage of this situation. The thesis deals with these issues and divided into five chapters.

The first chapter is an introductory. It includes the necessary aspects for the research in the hand. Examples in this regard are the status of child and the issue of his legal capacity, kinds of child abuse and its effects on the child's life and the society.

The second chapter devoted for International Law. After the historical evolution of the international instruments on child rights, the chapter evaluates the International Law mechanism to prevent child abuse. For this purpose three conventions have been selected. After that, it analyzes different abuses separately in the lights of International Law and its methods.

The third chapter expounds the Islamic Law, its rules and mechanisms to prevent the child from abuse. Subsequent to historical growth of Islamic instruments on the subject, it appraises the mechanisms of Islamic Law and the international Islamic instruments at present. It follows to examine many abuses independently taking into account the Islamic Law.

The fourth chapter ponders the Pakistani Law and its mechanisms in prevention of child abuse. It evaluates the provisions of important Pakistani Laws that protect the children, several abuse practices in Pakistan and the methods to stop them. Moreover, it talks on some governmental departments and private organizations that do effort and attempt to protect the children.

The fifth chapter is a comparison among aforesaid three legal systems. It determines general differences and the specific difference on the kinds of abuses separately. Lastly, the thesis ends with important conclusions and recommendations.

At the end, the research is; no doubt, a human endeavor. I tried my level best to accomplish the task in a better way. However, the mistakes and oversight are highly possible being a human work. What I can say is that

what is accurate and veracious in this human work is from the blessing of Allāh Exalt and what is inaccurate and erroneous is from me and the Satan.

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INTRODUCTION

Introduction, Importance and Significance of the Research

All the human beings have respect and dignity. Children are emergent human beings who are weak and vulnerable. They have the right to be brought up free from abuse but being innocent, they may not be aware of their rights; the way to protect themselves or how to deal with a situation injurious to them. It is the reason that they are being abused very easily. The child abuse became a world problem because children face abusive treatment every moment everywhere, and Pakistan is no exception. Truly speaking, child is an independent person, and is not property of anyone. He has right to grow freely without any kind of fear, only then, he become useful citizen, otherwise burden on the society.

The World Health Organization defined *Child abuse or maltreatment* in the following way:

‘all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child’s health, survival, development or dignity in the context of a relationship of responsibility, trust or power.’¹

¹ www.unicef.org/tdad/cpmanual3stage1.pdf. Last accessed on 18-04-2017. This is as defined by the Report of the Consultation on Child Abuse Prevention WHO - 1999. p. 15.

The Department of Justice, Canada, considers the child abuse as:

“the violence, mistreatment or neglect that a child or adolescent may experience while in the care of someone they either trust or depend on, such as a parent, sibling, other relative, caregiver or guardian”.²

The reason of this abuse may be an insider like parents or any family member in a state of anger, frustration or otherwise. Most of the times they do not intend to hurt their children but abuse is defined by the effect on the child, not the motivation of the parents, family member or the caregiver. It may also take place by an outsider in various forms.

Child abuse may be in any form, may be emotional, physical or sexual one. Depriving a child from proper nutrition is also a kind of child abuse. Abuses also include, but not limited to, the humiliating punishments; situations of domestic violence; commercial exploitation including child labor; gang violence and sexual mistreatment.

Child abuse according to the *Canadian Incidence Study of Reported Child Abuse and Neglect* (2003) has been divided into five kinds; sexual abuse, physical abuse, neglect, exposure to domestic violence and emotional abuse. The sexual abuse occurs when a child is engaged in a sexual activity. It may

² www.crcvc.ca/docs/child_abuse.pdf. Last accessed on 13-04-2017.

be of any kind, not necessarily being the penetration. In the physical abuse, a person may enforce a child to engage in a work which may be harmful to the child or he may be harmed. Neglect is a situation in which child's overall development such as physical development and the emotional one has been endangered due to caregivers' failure to take proper care of them. In the domestic violence, it is a case whereby the pictures of violence between persons who have dear interaction is exposed to the children. This causes them as they themselves have been abused. As far the emotional abuse, it is a kind of abuse that shows its effects on the child over time. It results in behavioral, emotional and mental problems in the child so abused.³

The child abuse whatever its form was, causes emotional scars, feeling of worthlessness, loneliness and many other bad effects which a writer may not be able to give them words. In return, this causes them to be a paralyzed citizen of their state. Instead of being a sign of the progress and development for their family, society and the country, they become burden if treated abusively.

³ Ibid.

This increasing child abuse may have many reasons. These reasons may include negligence of parents and lack of awareness among the children and the society, but the foremost reason in the opinion of the writer is lack of proper law and its enforcement and lack of better mechanism than it is applied by the world in this regard.

Looking towards international legislation, we see that UDHR declared “motherhood and childhood are entitled to special care and assistance.”⁴ Later on, the “Declaration of the Rights of the Child” also recognized that the child “needs special safeguards and care including appropriate legal protection.”⁵ The existing “Convention on the Rights of the Child” was adopted in 1989 by the General Assembly. It is an existing international document on child rights, largely ratified and considered to be an international treaty. The states parties are bound to and they submit reports describing child rights situation every year to the concerned monitoring authority i.e. Committee on the Rights of the Child, for proper compliance and for new policies. Other important regional conventions are also available like African Charter on the Rights and Welfare of the Child, “SAARC Convention on Preventing and Combating Trafficking in

⁴UDHR 1948. Art. 25(2).

⁵ Declaration of the Rights of the Child, adopted by the General assembly in 1959. Preamble.

Women and Children for Prostitution, SAARC Convention on the Regional Arrangements for the Promotion of Child Welfare in South Asia.”⁶

Muslim’s efforts are also available to identify human rights and child rights based on Islamic teachings. The Organization of Islamic Conference (OIC) adopted “Cairo Declaration on Human Rights in Islam” in 1990.⁷ In 2005 OIC adopted the “Covenant on the Rights of the Child in Islam”.⁸

If we see Pakistan, it is also state party to CRC 1989. So, its legislation and mechanism are also somehow affected by the International Law.

We see The Constitution of Islamic Republic of Pakistan 1973 provides “no child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment.”⁹ In a Constitutional Petition in the Supreme Court of Pakistan, in the case titled *Fiaqat Hussain vs. Federation Of Pakistan*¹⁰ through Secretary, Planning and Development Division, Islamabad, it was held that the state in terms of Art. 37(a) of the

⁶ http://saarc-sec.org/digital_library. Last accessed on 12-05-2016.

⁷ This Declaration was adopted in August, 1990 by 19th Islamic Conference of foreign ministers held in Cairo, Egypt in resolution No. 49/19-P.

⁸ This covenant was adopted in June, 2005 by 32nd Islamic Conference of foreign ministers held in Ṣan‘ā’, Republic of Yemen.

⁹ The Constitution of Islamic Republic of Pakistan 1973, Art.11(3).

¹⁰ *Fiaqat Hussain vs. Federation Of Pakistan*. (2012 PLD 224).

Constitution shall form such policies on the basis of which State shall promote, with special care, the educational and economic interest of backward classes or areas. It was also held that under Art. 29 read with Art. 25(A) of The Constitution the Fundamental Rights were required to be enforced by the State. Especially, article 25(A) of the Constitution; made it mandatory upon the State to provide the education to the Child of the age of 5 to 16 years.¹¹

There are many other laws as well; direct and indirect that deal with child abuse issues. Instances are *the Employment of Children Act 1991*; *the Child Marriage Restraint Act 1929*; a bill to amend this law is also introduced in the National Assembly of Pakistan on August 11, 2009; *the Child Marriage Restraint (Punjab Amendment) Ordinance 1971*; *the Juvenile Justice System Ordinance 2000*; *the Punjab Destitute and Neglected Children Act 2004*. Another example is *Pakistan Penal Code* which includes sections concerning crimes against minors like 364-A which deals case of kidnapping a person under the age of fourteen. A bill titled *Protection of Children Act, 2009* is proposed to be introduced in the National Assembly. Moreover, a good achievement is that *National Commission of Human Rights Act 2012* is

¹¹ Ibid.

passed on May 30, 2012 by the Parliament. But, Will these legislations be able to prevent child abuse?

In spite of raised voices by the human rights activists internationally; the efforts of non government organizations and international agencies topped by the United Nations and its Convention on the Rights of the Child 1989, its recognition by the states parties and the reports submitted by each and every country time and again describing the situation of child rights, and in spite of the legislation; direct and indirect, available on child abuse, an important question arises, why the child abuse increasing rather to finish? Is it not the failure of the International Law and its adopted mechanism to prevent it?

According to UNICEF press release, more than 50 per cent of the children in the world are suffering extreme deprivation due to poverty and war.¹² An example of child abuse which may be stated here is the *Zarī* Factories of Mumbai; the India's commercial capital, where children from 6-14 years of age work up to 20 hours a day without weekly holiday. The *Zarī* factory is a 3m X 3m room where the children have to work, eat, wash and sleep in their room which has a small washroom in a corner. At the same time they

¹² Linda C. McClain, *Child, Family, State, and Gender Equality in Religious Stances and Human Rights Instruments: A Preliminary Comparison*, 2009, available at www.ssrn.com/abstract=1684052. Last Accessed on 15-06-2016.

are provided food only twice.¹³ A strange number of children each year are distressed by the emotional, sexual and physical abusers or by the caregivers who ignore the children under them which makes abuse of the children as common.

It is very horrible form of abuse against children in United States of America. It is reported that, almost 20,000 children have been killed by their family members over the last 10 years in the USA.¹⁴ According to National Children's Alliance, USA, almost 700,000 children are abused annually. In the year 2015, it is estimated to be 683,000 abused children.¹⁵ Moreover, according to Department of Justice in Federal Bureau of Investigation, USA, it is 57 percent of child prostitutes who were sexually abused. Likewise, 13 years is the general age of entry by a child prostitute whereby his life expectancy after that is almost 7 years.¹⁶ It is a different area when these children came as prostitutes i.e. by threatening or when they were used as juveniles in different crime.

¹³ <http://www.wsws.org/articles/2006/jun2006/indi-j08.shtml>. Last Accessed on 14-04-2016.

¹⁴ Petit, Michael, *Why child abuse is so acute in the US*, BBC News, October 17, 2011. See <http://www.bbc.com/news/magazine-15193530>. Last accessed on 13-04-2013.

¹⁵ <http://www.nationalchildrensalliance.org/media-room/media-kit/national-statistics-child-abuse>. Last accessed on 15-05-2017.

¹⁶

<https://courts.michigan.gov/Administration/SCAO/Resources/Documents/Publications/CWS/AWOLP/FBI-Presentation.pdf>. Last accessed on 22-07-2017.

About the child labour, International Labour Organization globally says in 2016 that 152 million were engaged as child labour where 73 million of those are in hazardous work.¹⁷

Furthermore, almost 80 million children under the 14 years old are workers in Sub-Saharan Africa. Obviously, this is the uppermost child labour rate in the world.¹⁸

In Pakistan, the rate of sexual and physical child abuse and its cases are in rapid increase. This is for both boys and girls. The incidents of violence against and abuse of children are so widespread that any child may become a victim of abuse of any kind, anywhere and anytime. It is reported by *Sahil*, Pakistan, about cases of the major categories of crime. These cases are: abduction 1455, sodomy 453, rape 502, gang sodomy 268, gang rape 271 and attempt to child sexual abuse 362. Here, the girls are more sexually abused like the previous year because it has been reported that 2410 girls and 1729 boys were victims of sexual abuse. In a serious crime where murder of the victim happened after abuse, the report shows that 100 victims were murdered in sexual exploitation cases only. As far the

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https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575499.pdf. Last accessed on 22-07-2017.

¹⁸https://en.wikipedia.org/wiki/African_Charter_on_the_Rights_and_Welfare_of_the_Child. Last accessed 16-02-2017.

abused child age groups among the boys and girls are concerned, utmost vulnerable is from the age 11 to 15 and second vulnerable is from the age 6 to 10. Moreover, in 2810 cases, the 6759 abusers were involved.¹⁹

The increase in kidnapping and killing of the young children; both male and female alarming the society's situation. An example is the case of *Shazia Masih*, a maid who was declared as dead at Jinnah Hospital Lahore in January 2010. The reasons was reported as the abuse by her employer namely Chaudary Naeem, former president of the Lahore Bar Association. On November 22, 2010, the accused was acquitted by Additional sessions judge Lahore, Ameer Muhammad Khan. Although the first medical report about body of the girl had confirmed that it had marks of injury caused by a sharp-edged weapon whereby her skull was damaged, right arm and ribs were fractured and her nails had been plucked out. But the other report suggested something else!²⁰ Another example is the issue of *Malalah Yousafzai* who was attacked in Swat on Tuesday, October 9, 2012.²¹ She was presented with the first National Peace Award by the Pakistani government in December 2011.

¹⁹ <http://sahil.org/cruel-numbers/>. Last accessed on 16-07-2017.

²⁰ <http://dawn.com/2010/11/23/prosecutor-has-right-to-seek-penalty-to-his-liking-pml-n/>. Last accessed on 25-11-2010.

²¹ "Dawn", the news paper of Wednesday, October 10, 2012, front page.

Yet, there are other forms of child abuse exist in Pakistan like *Vani*²² and many others about which the proper legislation is lacking.

As far criminal liability of the child is concerned, it was good that the Supreme Court, in a case titled *Sultan v. The State*,²³ granted leave to appeal to the accused to consider the contention that the accused is entitled to lesser punishment because he was of age 13 years at the time of incident.²⁴ Talking about Islamic Law, a question arises, is the accused child entitles to be punished at all?

All these are just examples of the mechanism applied by the international community to prevent child abuse. But, the observing eye sees that this problem is in increase. This demands analysis of the present law whatsoever is.

This reveals that the topic in hand is rich area for research. It leads to and demands for analyzing the existing laws, regulations and mechanisms, applied by the international community to prevent child abuse of each kind. If the reason is lack of the laws and the rules concerning child abuse,

²² Vani is a customary practice of child marriage in some regions of Pakistan. It depends on blood feuds between different tribes in the locality whereby a young girl is forcibly forced to marry a member of different tribe for the purpose to resolve the feuds. But this customary practice may be avoided if tribe of the girl consents to give blood money.

²³ *Sultan v. The State*. (2003 SCMR 494).

²⁴ Ibid.

then what new legislations and mechanism should be adopted? Then, being Muslims, we believe that Islam provides us solution of everything and non-abiding the *Shari'ah* causes retardation of the Muslims. If this is the case, then what about the available legislation, is it in conformity with the Islamic Law? If not, how to make it in conformity with it. On the other hand, if there are deficiencies, those must be filled on the basis of Shari'ah; Islamic Law, because the history is a proof that a society that Implements the true Islamic Law, reaps its fruits in shape of prevention of crimes, and blessing of peace and stability.

Actually, Shari'ah has five objectives namely to preserve the religion i.e. Islam, to preserve the person i.e. the human being, to preserve the intellect, progeny and property. Any act in contradiction to these objectives is considered contrary to Islamic Law. Importantly, prevention of child abuse belongs to all these objectives. Abuse is contrary to religion because it does not allow the abuse at all; contrary to person because it may result to abnormality or death of the child; contrary to intellect because it may damage the intellectual power being passing through terrible situations; contrary to progeny because the abuse injure and harm the offspring in any form whatsoever; contrary to property because it may cause unfair earning through exploitation...etc. These are just some examples. However, child

rights and prevention of abuse are mainly related to preservation of person and progeny.

The Constitution of Islamic Republic of Pakistan 1973, being Constitution of an Islamic state, tells that no law can be made repugnant to the teachings of Islam.²⁵ Believing Islam as a complete code of life, Muslims' success is only to follow Islam. Then the Non-effectiveness of the existing law or mechanism may have its reason not being in conformity with Islamic Law concerning child abuse prevention.

Keeping in view all the above facts, this research analyzes International Law and Islamic Law on the issue of child abuse prevention by comparing the both. It also expounds the Pakistani Law in this regard. Moreover, the present research helps the legislature, local governments, law enforcing agencies, the judiciary and overall the legal mind to understand the issue of child abuse; flaws and deficiencies in the existing laws and mechanism in this concern. This research also proposes that how to fill the gaps in the existing law and to make it in accordance with injunctions of Islam. The current study is beneficial for establishing best found policies, resulting legislation and ultimately their enforcement.

²⁵ The Constitution of Islamic Republic of Pakistan 1973, Art. 227.

Thesis Statement

Abuse of children and violation of their fundamental rights transpired into habitual practice in a horrible form all over the world. Unfortunately, this continues in the presence of International Law and its mechanism to save the children. Inversely, other side is that Islamic Law has the capability to solve all the human lives' troubles. It can better assist, facilitate and improve the international mechanism making the world healthy for children.

The following questions are emerging from this statement:

- 1) What are the international documents that prevent child abuse?
- 2) Whether the mechanism provided by the International Law to prevent child abuse is effective?
- 3) How *Shari'ah* provides protection to the child from abuse?
- 4) How much effective is the ratification of International documents for the enactment of laws in Pakistan regarding child abuse?
- 5) Whether Pakistani laws for the prevention of child abuse meet the globally recognized standards?
- 6) Whether rules and mechanisms of International Law are compatible with Islamic Law in prevention of child abuse?

- 7) What are the gaps in International Law and Pakistani Law that can be filled by Islamic Law?

Hypothesis

The research determines the following hypothesis:

- 1) The Law and mechanism adopted by the international society to prevent child abuse is appropriate / unsuitable.
- 2) The International Law and its mechanism with regard to the issue of child abuse are certain / ambiguous.
- 3) Ratification of the international documents has influence / no influence on the enactment of laws in Pakistan on the issue of child abuse prevention.
- 4) Pakistani Laws that prevents child abuse meet / do not meet the standards of International Law on child rights.
- 5) Pakistani Law on prevention of child abuse is / is not compatible with the Islamic Law.
- 6) International Law is compatible / not compatible with Islamic Law in prevention of child abuse.

Objectives of the Research

This research work aims to the following objectives:

- 1) To clarify whether current International document and treaties are enough to prevent child abuse.
- 2) To see the effectiveness of the mechanism adopted by the international community to prevent the child abuse.
- 3) To compare International Law with Islamic Law on the issue of prevention of child abuse.
- 4) To ascertain the compatibility of International Law with Islamic Law.
- 5) To see the compatibility of Pakistani Law with International Law.
- 6) To find the compatibility of Pakistani Law with Islamic Law.
- 7) To identify the flaws in the currently applied Laws, documents and mechanisms regarding prevention of child abuse and to offer suitable amendments based on the *Shari'ah* (Islamic Law).

Literature Review

There is enough data available which are used as helping material for the thesis. The follows is some of the literature in this concern:

There are books and articles which talk about general human rights like the book: “*The International Law of Human Rights*” by Paul Sieghart. It is a book in human rights which speak on them as general. Certain data tells about the Islamic perspectives on Human Rights like “*Ḥuqūq al-Insān fī al-Islam*” by Dr. Ameer Abdul Aziz. Other important book is “*Islam and Human Rights in Practice: Perspectives across the Ummah*”, edited by Shahram Akbarzadeh & Benjamin MacQueen. In this book various issues concerning human rights in different regions of the Muslim world are discussed. Another significant book is “*Ḥuqūq al-Insān bain al-Sharī‘ah al-Islamiyyah wa al-Fikr al-Qānūnī al-gharbī*” written by Dr. Muhammad Faḥī ‘Uthmān.

There is literature which specifically treats the subject of child rights from both conventional and Islamic perspectives. Talking about international perspective, the book “*doing better for children*”, published by Organization for Economic Co-Operation and Development²⁶ is a good example where children stages of life are discussed in detail.

Clarifying the Islamic perspective are, for instance, book in Urdu language “*Ḥuqūq-e-Aulād (Aulād Kay Ḥuqūq aur Terbiat ka Sunnat Tariqah)*” by Aalam Faqri, and “*Ḥuqūq al-Awlad fī Al-Sharī‘ah wa al-Qānūn*” by Badran

²⁶OECD is a forum of governments of 30 democracies, whereby they work together to address the economic, social and environmental challenges of globalization. It’s headquarter situated in France.

Abul ‘Ainayn talks about child rights from Islamic perspective. There is an important classical *fiqh* book but discuss only the child rights in different chapters of the Islamic Law. It is “*Aḥkām al-Ṣiḡbār*” written by Muhammad Astrūshnī.

All these child rights books whether conventional or Islamic, contain general and social rights of children leaving the legal point behind.

There are books; articles and reports which discuss the issue of child abuse whether talk on specific abuse or general abuses, or the effects of the exploitation; which treat the social perspective not the legal one. These are such as, the book “*Physical Punishment in Childhood: the Rights of the Child*” by Bernadette J. Saunders and Chris Goddard. It was published by John Wiley & Sons, 2009. It talks about impacts of physical Punishment on the child in his childhood.

Examples of articles are “*Protection of Children from Exploitation, Abuse and Violence through Legal Reform: The Child Protection Bill, Pakistan*” by Riffat Sardar; “*Child Soldiers, Slavery and the Trafficking of Children*” by Susan W. Tiefenbrun; “*Protecting Children from Exposure to Domestic Violence: The Use and Abuse of Child Maltreatment Statutes*” by Lois A. Weithorn. It specifies the talk on domestic violence. “*Supporting Maltreated Children:*

Countering the Effects of Neglect and Abuse” by Bruce D. Perry. It mentions the negative effects on the abused children life.

“*Child Maltreatment 2014*” is a report about US on children victims of different kinds of exploitations. The report has been prepared by US department of health and human services and Children’s Bureau.

A document “*Children in Islam: their Care, Upbringing and Protection*”, was prepared jointly by UNICEF and Al-Azhar University.

There is very important book written on the issue of children rights and their protection i.e. “*Rights of the Child in Islam: Theory, Mechanism, Practices and Convention on the Rights of the Child*” by Muhammad Munir, where the author contents different issue of children rights and their protection.

Data have been written on children rights on regions basis. Like, “*Children’s Rights in Africa: An appraisal of the African Committee of Experts on the Rights and Welfare*” which describes picture of children rights in Africa only. It was LLM thesis by Ruth Esemeye, University of Pretoria. Other example is “*Child rights’ convention and its implementation*” by Ravinder Rena. It specifically talks on the situation of children in Africa

and India by saying that in these two areas, the children vulnerable towards their social, political and economic life. Likewise, “*Commercial Sexual Exploitation of Children*” this is a report prepared by Save the Children about the transport industry of Pakistan.

Very importantly, so many books are much available on *Fiqh* where all chapters of Islamic Law have been written by the Muslim Jurists which contain children rights scattered in several chapters. These are comprehensive in their nature include different aspects of children rights and protection of children from abuses.

Only some examples may be quoted here, like, “*al-Hidāyah*” by Al-Margīnānī; “*al-Mudawwanah*” by Imām Mālik bin Anas; “*al-Umm*” by Imām al-Shāfi‘ī, and “*al-Mughnī*” by Ibn Qudāmah. These contain Islamic law as a whole which includes different aspects of children rights and protection of children from abuses in different parts of them. For example, the parts of kitāb al-nikāh, kitāb al-jināyāt, kitāb al-wilāyah, kitāb al-warāthah. In the modern era example of fiqh book which is comprehensive and brief at the same time is “*Maṣū‘at al-Fiqh al-Islamī Al-Mu‘āṣir*” by ‘Abdul Ḥaleem ‘Awais.

Further to this, there are many of the International Instruments, Islamic Laws and Pakistani legislations. All these are huge in number. Some of them may be quoted here. *UDHR 1948*; the *UNCRC 1989* along with its three Optional Protocols; ILO 138; ILO 182; *CRCI 2005*; *CDHRI 1990*; *ACRWC 1990* and two conventions by SAARC.

As far Pakistani Laws are concerned, we have many laws, acts which may be subjected to analysis. They deal specifically with a form of child abuse. These are like *Employment of Children Act 1991*; *the Child Marriage Restraint Act 1929*; *the Punjab Destitute and Neglected Children Act 2004*; *the Juvenile Justice System Ordinance 2000*. There are many other laws that indirectly deal with the issues of children rights and abuses. These are like *Pakistan Penal Code 1860*; *Criminal Procedure Code 1898*; *Qanun-e-Shahadat Ordinance 1984*. Some sections of these acts have concern with the issue of child rights or the issue of child abuses.

The Research Contribution

The literature available is in different dimensions. It is either, general and social rights of the children or discusses one of the dimensions only. Likewise, it discusses the conventional, Islamic or Pakistani issues. Some of

them discuss the law perspective. If it talks about the children abuse, mostly its consideration is only on specific form of child abuse.

The present study, however, is different from all available literature. This research attempts to fill the gaps in the form of providing a comparison between the International Law and Islamic Law with slight touch to the Pakistani Law on the issue of child abuse. Moreover, it tries to determine whether International Law and Pakistani Law is compatible with Islamic Law. Further, the modest study identifies the loophole in the current scenario's laws and their mechanisms and seeks to find proper solutions in shape of better amendments to prevent the children from their abuse.

Research Methodology

A diversity of the comparative and qualitative research methods from classical Islamic Law and contemporary legal methods are used to complete various component of this research. Textual methodology is used to understand Islamic Law that is based on texts of Qur'ān, Sunnah, which are necessary while writing teaching of Islam at start of the topics, then the classical manuals of Islamic law. The jurisprudential opinions of Muslims Jurists based on methods of *Uṣūl al-Fiqh* (Islamic jurisprudence) are also important. Their explanation, elaboration and derivation of rulings from

the Islamic texts have been done using the methods of the textual research as well. Additionally, the rational methodology is also applied to elaborate where it deemed necessary. Moreover, there are many issue based on *maṣlaḥah* (interest) especially where Islamic classical law is silent, so, along with classical sources of Islamic Law, the modern sources and Islamic international documents have also been used for implementation of the Islamic Law in modern time. This is necessary because in International Law, the researcher applied international documents. Historical facts have also been applied to find the reforms of Islamic Law on the issue of prevention of child abuse. Besides that, the pure legal methods will be used to examine, explain and analyze the legal concepts in a logical way. Social sciences methods such as descriptive, comparative, analytical research methods have also been used to study the contemporary reformative thoughts in Pakistan. Keeping in view the topic of the research, both primary and secondary sources are consulted. As far as its International Law and its mechanism to protect children are concerned, they have been compared and analyzed in the light of Islamic Law and its mechanism. However, the domestic laws and mechanisms of different countries on the issue of prevention of child abuse have been referred to in case of need or as examples only, without subjecting them to analysis, except Pakistani Law

which is analyzed as possible in the chapter four. It has been compared and analyzed with International and Islamic Law. While writing the Islamic Law, proper texts of the Holy Qur'ān and Traditions of the Holy Prophet Muhammad (SAW) are quoted with references along with their translation in English. Moreover, to translate verses of Holy Qur'ān, translation by Abdullah Yusuf Ali has been adopted. As for the traditions of the Holy Prophet (SAW), they have been translated either by the writer after consulting different translations and dictionaries or by the proper quoted references. Furthermore, the proper transliteration has also been utilized for the Arabic terms used by the Islamic Law.

Theoretical Framework

Child is facing so many difficulties and suffering problems throughout his childhood. He is not only deprived of his basic rights rather he is abused in one way or another. The unpleasant condition does not cease to a specific area rather compass all over the world and the abuse becomes more horrible when the caregivers or relatives are the abusers. However, the reasons of child abuse may differ from region to region or person to person. It may be the socio-cultural condition of a place. Likewise, economic interest or financial gain may be a reason. Directly or indirectly, the media is also

responsible for abuse of the child. As for the forms of abuse, it may differ from community to community, for example, the children may suffer mostly in the form of child labour in an area and may others suffer mostly in form of sexual abuse in another area. The theoretical framework of the present study is to find out the gaps in International and Pakistan Laws and their mechanisms in prevention of child abuse to fill them by the Islamic Law, so that, the world may be save for the weak soul of children.

The formation of United Nations after the Second World War is regarded a turning point whereby the philosophy and view of the western world towards the human rights and children rights especially, has begin to change. A main document adopted by the UN on human rights was the Universal Declaration of Human Rights 1948 which is considered a landmark and became base for subsequent human rights instruments. Although, the first charter adopted on child rights was in 1924 by the League of Nations, it was revised later in 1948 by United Nations. After that, the UN assembly adopted its own declaration of the Rights of the Child in 1959 which is base for the Convention on the Rights of Childs 1989; the ongoing significant convention on Child rights. This convention leads all the international ongoing policies for the children rights and prevention of his abuse.

As for Islam, it has been completed in each aspect of life almost fourteen centuries before. This means that it has its own special edition of human rights and child rights; it may agree with International Law and may disagree. The fact is that Islam ponders on children rights from the pre-marriage stage of his parents and birth of the child; whether male or female, is considered good news. As a result, practice of the people of ignorance to kill their children has been condemned by Islam. After the birth of the child, it is a compulsory responsibility of the parents to rear their children and vice versa obligation on the children to respect their older; obviously according to their developing discriminating power. The classical books of Islamic Law have already contents the details of Children Rights; however, due to requirement of the time, Muslim states and organizations made their efforts and arranged them in form of International Law. So, charters and conventions have been introduced and passed by them. Cairo Declaration on Human Rights in Islam 1990 is one of them which points out the human rights under Islamic Law. Another is Declaration on the Rights and Care of the Child in Islam 1994 which is considered the first instrument on child rights by Muslim states. Likewise, Covenant on the Rights of the Child in Islam 2005 which is like CRC in its formation, however, it is based on Islam. *Mithāq al-Ṭifl fī al-Islam* 2003 which was made part of *Mithāq al-*

Usrah fi al-Islam in 2007 is also a significant instrument regarding children rights.

The thesis also talks about Law of Pakistan which has become party to United Nations Convention on the Rights of the Child 1989 after one year of the Convention adoption. At the same time, it is also a Muslim state. So, according to its Constitution, it cannot act contrary to Islamic teachings. It means that it keeps itself within the two systems side by side. Talking about the children rights in Pakistan, its Constitution has the basic provision that make the child exploitation prohibited. Those provisions help to further introduction of the laws or the provisions within the laws. Important examples of the laws are, Pakistan Penal Code; The Guardian and Wards Act; The Juvenile Justice System Ordinance; The Child Marriage Restraint Act; The Punjab Destitute and Neglected Children Act...etc. The Private sector is also working for the welfare of children.

Structure of the Thesis

The main body of the thesis composed of five chapter apart from introduction, conclusion and recommendation.

The introduction determines the background, perspective and framework of the thesis. It consists of the objectives behind the research; likewise, it anticipates results of the issues created by the research. Research Methodology is also a component of the introduction. At the end, the introduction firms the structure of the thesis and its theoretical framework.

First chapter discusses the important topics towards the research. It focuses on the status of child, the issue of legal capacity, child rights as part of human rights. These areas were discussed from viewpoints of International Law as well as the Islamic Law. Moreover, the chapter also talks about forms of abuse, its several practices and finally, the severe effects of abuse on the child and the society.

Second chapter explores the International Law on protection of children. It starts with historical evolution of the children rights. This historical evolution contents the introduction to international documents on children rights. Then, the chapter focuses on CRC, ACRWC and struggle at the level of SAARC for further details of their mechanisms in this regard. Further, it studies the areas of child abuse separately.

Third chapter highlights teachings of Islam on the rights of children. It tells the international documents on rights of child adopted by the Muslim states

or associations. Then, it moves towards their mechanisms and struggle to prevent abuse of children. Lastly, it examines the forms of child abuse in separate form.

Fourth chapter expounds Pakistani Law on child abuse prevention. It identifies the Laws or legal provisions that concern the children rights and prevention of their abuse. Each kind of abuse is discussed in an independent way under the legal provisions of Pakistani Law. Further, it highlights the efforts and struggles that the government and the private sectors have been playing to protect the children from abuse.

Fifth Chapter is a comparison among the three legal systems; International Law, Islamic Law and Pakistani Law. It elaborates the differences in their mechanisms to deal with and take action against the issues of child abuse.

In the last, the conclusion sums up the thesis and provides humble recommendations for the betterment of the children who are future of the societies.

CHAPTER

ONE

Chapter One

Prevention of Child Abuse: An Introduction

This is a preliminary chapter for the study in hand. It introduces the required necessary aspects in International, Islamic and Pakistani Laws. Among others, the chapter argues on the issue of child status and its legal capacity under the laws, likewise, on forms of child abuse and their consequences on the child's life and the society.

1.1 Understanding the Term Child

The word child²⁷ denotes to young human beings who is not yet an adult. This young human being may be a baby or infant. Likewise, it is equally possible to be a male or female; son or daughter. The dictionaries also considered offspring and the descendent as child. Moreover, a childish person; who behaves like a child, is also referred to as child.²⁸ An infant is a

²⁷ Plural is Children.

²⁸ See following dictionaries: Webster's Encyclopedic Unabridged Dictionary; Webster's Universal Dictionary & Thesaurus; Oxford Advanced Learner's Dictionary, s.v "child".

baby in its early stage of life under two years of age.²⁹ Sometimes it is extended to seven years of age or even called to unborn child.³⁰

The term corresponds *tifl*³¹ in Arabic which means a baby whether he is male or female. A step forward, *tifl* refers to small of everything in Arabic language.³² An infant in Arabic language is translated as *raḍī'* i.e. under two years.

By this, we conclude that the meaning of child is almost same beside the difference of words in both the languages.

As for the term childhood is considered, it refers to the period of a person when he is a child. Definitely, this is dependent on the difference of opinions and the laws on the duration i.e. starting and ending limits of childhood. This difference will be examined in the lines below; the other parts of this thesis.

²⁹ Oxford Advanced Learner's Dictionary, s.v "infant".

³⁰ Oxford English Dictionary (soft copy version), s.v "infant".

³¹ Plural is *Aṭfāl*. The term *tifl* may also be considered as singular and plural both. See *Al-Ṣiḥaḥ Tāj al-Lughah wa Ṣiḥaḥ al-Arabiyyah*, s.v. "طفل".1020341

³² See *Mukhtār Al-Ṣiḥāḥ*, s.v. "طف ل". *Lisān Al-'Arab*, s.v. "طفل".

1.1.1 Terminological meaning of child in different laws

1.1.1.1 Child in International Law

The talk about terminological meaning of child basically depends on the period of childhood. Resultantly, whosoever is passing that period of childhood is considered as child. The CRC³³ which is the most ratified convention within the international community defined child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.³⁴

The monitoring body for the Convention i.e. the Committee on the Rights of the Child, has pushed the States to review the majority age if it is set below eighteen and to raise the level of safety for all children under eighteen. After analysis, we see that this definition shows the contention in the local laws of state parties regarding beginning and ending limit; the period of childhood in the local laws of the countries.

On the one hand, the definition did not mention the starting point because the childhood according to some philosophies begins from the moment of conception and according to others it starts from the moment of one's

³³ Convention on the Rights of the Child 1989. [hereinafter referred to as CRC].

³⁴ CRC, Article 1.

birth. Prior to CRC, the “Declaration of Rights of the child 1959”³⁵ suggested the beginning of childhood period from the moment of conception. It is evident from its preamble which says: “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”.³⁶ Also, it declared that a child is “entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care.”³⁷ These sentences, among others, restrict the validity of abortion because it makes a child entitled to legal protection and care at both pre-natal and post-natal stages. However, it seems that drafters of CRC intentionally ignored these words from inclusion in the CRC. Preamble and an article of CRC contained general words without specifying the pre-birth stage. It says that the “United Nations has proclaimed that childhood is entitled to special care”³⁸ and says that “every child has the inherent right to life.”³⁹

³⁵ It was adopted in United Nations General Assembly Resolution 1386, session 14 on November 20, 1959.

³⁶ Declaration of Rights of the Child 1959, Preamble, Para 3 (hereinafter referred to as DRC].

³⁷ Ibid. Principle 4.

³⁸ CRC, Preamble, para 4.

³⁹ Ibid. Article 6 (1).

Likewise, the definition did not mention the end of childhood because it is also not unanimous in the laws of states parties. On analyzing, we see laws even differ within one country as well depending on different situations and aspects. For example, age of Legal Capacity in Scotland is sixteen years. Accordingly, at the age of sixteen childhood ends and the child attains adulthood and becomes able to do transactions.⁴⁰ But, even under the age of sixteen he is allowed to enter into a contract commonly entered into by person of his age.⁴¹ Although, marriage is also a contract but it is considered valid even under the age of sixteen.⁴² The Act does not affect the criminal responsibility of a child.⁴³ Moreover; which is very important, this Act also does not affect any right of a person i.e. child, under the age of sixteen.⁴⁴

1.1.1.2 Child in Pakistani Law

Situation of Pakistani Law is same whereby different ages are fixed for various matters. For instance, the age of majority is eighteen, with the

⁴⁰ Age of Legal Capacity Act 1991, Section 1(1), Scotland.

⁴¹ Ibid. section 2 (1), clause (a). It is important to state that Islamic Law also validates the transactions of a child from the age of seven to the puberty. See the legal capacity in Islamic Law.

⁴² Ibid. section 1 (3), clause (g).

⁴³ Ibid. section 1 (3), clause (c). Islamic Law does not make a child criminally responsible. It begins to makes a person criminally responsible after his attaining the puberty. See the legal capacity in Islamic Law.

⁴⁴ Ibid. section 1 (3), clause (e). this is closer to the concept of capacity for acquisition in Islamic Law. See the legal capacity in Islamic Law.

exception that if a guardian has been appointed for person or property of a ward, then the age of majority would be twenty one.⁴⁵ Resultantly, any contract entered into by a child is void.⁴⁶

Juvenile Justice System Ordinance 2000 also defined child as “a person who at the time of commission of an offence has not attained the age of eighteen years.”⁴⁷ Looking towards PPC, it states that a child under the age of ten is free from any criminal liability. A child from ten to fourteen is also not liable with the condition of his immaturity to understand the nature of his act.⁴⁸

For the purpose of marriage, the age fixed originally at eighteen for male and sixteen for female. Recently, a bill was introduced in National Assembly of Pakistan to make the eighteen years for both.⁴⁹ Subsequently, we see Punjab Marriage Restraint (Amendment) Bill 2015 defines child as “a person who, if a male, is under eighteen years of age, and if female, is under

⁴⁵ The Majority Act 1875. Section 3.

⁴⁶ The Contract Act 1872. Section 11.

⁴⁷ Juvenile Justice System Ordinance 2000. Section 2 (b).

⁴⁸ Pakistan Penal Code 1860. Section 82-83, as amended by the Criminal Law (Second Amendment) Act, 2016, passed by March 22, 2016, section 2 and 3. [hereinafter referred to as PPC].

⁴⁹ Child Marriage Restraint (amendment) Bill 2014. Section 2 (a). this bill was Introduced in Tuesday, March 3, 2014. See http://www.na.gov.pk/uploads/documents/1397730973_450.pdf. Last Accessed on 30-07-2017.

sixteen years of age.”⁵⁰ In Sindh province Child Marriage Restraint Act 2013 has defined child as “a person male or female who is under eighteen years of age.”⁵¹

The Constitution of Islamic Republic of Pakistan 1973 prohibits engaging a child in any kind of employment before the age of fourteen.⁵² Accordingly, Employment of Children Act 1991 defined child as “a person who has not completed his fourteenth year of age.”⁵³

1.1.1.3 Child in Islamic Law

The term child means in Islamic law a person from the moment of birth till the time he attains puberty.⁵⁴ All of this period is called childhood. According to the knowledge of the researcher, there exists no difference of opinion in the definition of child in the Islamic Law. As for pre-birth stage, it is called *janīn* who is treated in special and different rules from the rules

⁵⁰ Punjab Marriage Restraint (Amendment) Bill 2015. Section 3 (2-a). this is Bill No. 15 of 2015 was introduced and passed in session No. 12-sitting on March 6, 2015 as government bill.

See www.pap.gov.pk/index.php/bills/details/en/20/142.

⁵¹ The Sindh Child Marriages Restraint Act, 2013. See <http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.XV%20of%202014.pdf>. (hereinafter referred to as CMRA)

⁵² The Constitution of Islamic Republic of Pakistan 1973. Article 11 (3).

⁵³ Employment of Children Act 1991, section 2 (iii).

⁵⁴ Ibn ‘ābidīn, Muhammad Amīn, *Radd Al-Muḥtār ‘alā Al-Durr Al-Mukhtār*, vol. 3 (Bayrūt: Dār al-Fikr, 1992), p. 612 [hereinafter referred to as *Radd Al-Muḥtār*].

of childhood in Islamic Law. The lines below discuss end of childhood; the puberty and its signs.

1.1.1.3.1 Signs of puberty

Puberty is attained in male and female on appearance of certain signs. A foremost sign of puberty in boy is the ejaculation.⁵⁵ It's being sign of puberty is evident from the verse of Holy Qur'an that says:

(وَإِذَا بَلَغَ الْأَطْفَالُ مِنْكُمُ الْحُلُمَ فَلْيَسْتَأْذِنُوا كَمَا
أَسْتَأْذِنَ الَّذِينَ مِنْ قَبْلِهِمْ⁵⁶....)

“but when the Children among you come of age, let them (also) ask for permission, As do those senior to them (in age...”⁵⁷

This verse is an argument that puberty is attained by ejaculation. At this stage, generally speaking, the legal capacity starts. The Muslim jurists have reached to consensus on this sign of puberty.

⁵⁵ The act of ejaculating: the moment when sperm comes out of a man's penis. (Oxford: Oxford Advanced Learner's Dictionary, 2003).

⁵⁶ Al-Qur'an 24/59.

⁵⁷ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 21-06-2016.

Also, a Hadīth of the Holy Prophet (SAW) said:

"رفع القلم عن ثلاثة، عن النائم حتى يستيقظ وعن الصبي حتى يحتلم وعن المجنون حتى يعقل"⁵⁸.

(No responsibility, charge devolves upon three persons, the one who is sleeping till he wakes up, the child till he wets dream, and the mad (insane) till he becomes of sound mind).

Second sign of puberty is menstruation with regard to women. It is because

Hadīth of the Holy Prophet (SAW) said:

" لا يَقْبَلُ اللهُ صَلَاةَ حَائِضٍ إِلَّا بِخِمَارٍ " ⁵⁹

“Allah does not accept the prayer of a woman who has reached puberty unless she wears a veil.”⁶⁰

Actually, this is a proof that a woman is considered under obligation to perform duties. Obviously, it is known that child is not under any obligation. Further it has been a consensus that menstruation is a sign for puberty of a female.⁶¹

⁵⁸ Al-Bayhaqī, Abū Bakr, *Al-Sunan Al-Kubrā*, Kitāb al-Ṣalāh, Bāb Man Tajibu ‘Laihi al-Ṣalāh, vol. 3 (Bayrūt: dār Al-Kutub Al-‘ilmiyyah , 2003), 118, Ḥadīth No. 5089. [hereinafter referred to as *Al-Sunan Al-Kubrā*].

⁵⁹ Abū Dāwūd, *Sunan*, Kitāb al-Ṣalāh, Bāb al-Mar’ah Tuṣalli Bighairi Khimār, vol. 1 (Bayrūt: al-Maktaba al-‘ṣriyyah), 173, Ḥadīth No. 641. [hereinafter referred to as *Sunan Abī Dāwūd*].

⁶⁰ <https://sunnah.com/abudawud/2>. Last accessed on 21-05-2016.

⁶¹ ‘Abd al-‘līm, Usāmah, *al-Bulūgh wa Atharubū fi al-Fiqh al-Islamī*, (Makkah: University of Umm al-Qurā, N.D), 21.

Another sign of puberty is the pregnancy because it is itself a proof of precedence of puberty because pregnancy cannot take place without prior puberty and ejaculation.⁶²

There are other signs of puberty as well, but the consensus has not been developed on them. It is like germination of pubes.

In case if sign of puberty does not appear, the puberty will be decided by the age. The majority of Muslim Jurists, the puberty is considered at the age of fifteen for male and female both.⁶³

On the other hand, Imām Abū Ḥanīfah is of the view that male at the age of eighteen and female at the age seventeen are considered pubert.⁶⁴ The reason of early puberty of female is that the female are faster than male in growth and development.⁶⁵ The two famous pupils of Imām Abū Ḥanīfah

⁶² Ibid. 19.

⁶³ Al-Qazwīnī, *Al-Muḥarrar* (Bayrūt: dār Al-Kutub Al-‘ilmiyyah, 2005), 181. [hereinafter referred to as *Al-Muḥarrar*]; Al-Bahūtī, *Kashshāf Al-Qinā‘ ‘an Matn Al-Iqnā‘*, vol. 3 (Bayrūt: ‘ālam Al-Kutub, 1997), 147. [hereinafter referred to as *Kashshāf Al-Qinā‘*]; Al-Khurshī, *Al-Khurshī ‘lā Mukhtaṣar Sayyidi Khalīl*, vol. 5 (Bayrūt: Dār Al-Fikr), 290. [hereinafter referred to as *Al-Khurshī*].

⁶⁴ Al-Mirghinānī, Burhānuddīn, *Al-Hidāyah*, vol 3 (Egypt: Dār Al-Salām, 2000), 1351. [hereinafter referred to as *Al-Hidāyah*].

⁶⁵ Ibid. vol. 3, p. 1351.

namely Imām Abū Yūsuf and Imām Muhammad have the opinion same as the majority of Muslim Jurists.⁶⁶

However, the state can adopt a policy in this regard On the basis of *maṣlahah* (interest of the ‘ummah; the nation).⁶⁷ Overall, the thesis does not deal with this difference. It is because the topic of this research is legislation on child rights and abuses whatever the period of childhood was.

1.2 Concept of Rights

1.2.1 Rights as a Legal Term

Importantly, the law is concerned with the rights and duties.⁶⁸ When we talk about “right”, two meanings come to our mind. First is the right, just, true, and correct⁶⁹ which is opposite to the word “wrong”. Second meaning is the rights held to be justifiable for a person.⁷⁰ Right of a person is defined as his entitlement.⁷¹ This means that a person; the right holder, is entitled to have or to receive his right, definitely, within the limits of law. In presence

⁶⁶ Ibid.

⁶⁷ Munir, Muhammad Dr. *Rights of the Child in Islam* (Islamabad: Iqbal International Institute for Research and Dialogue, IIUI, 2017), 130. [hereinafter referred to as Munir, *Rights of the Child in Islam*].

⁶⁸ Fitzgerald, P.J, *Salmond on Jurisprudence* (Lahore: Manzoor Law Book House, 2010), 298.

⁶⁹ *Oxford English Reference Dictionary*. s.v. “right”.

⁷⁰ Ibid. s.v. “rights of man”.

⁷¹ *Oxford Eng-Arab Dictionary of Current Usage*, s.v. “right”.

of a right, holder of a right has the privilege to demand it from others who are responsible.

The right generally determined by the laws, traditions, customs and the ethical codes of the society. In the past, the women, children and slaves mostly excluded or at least were at bottom in terms of right holders.⁷²

Normally speaking, understanding of concept of rights is the base leading to formation of the particular government, legal systems and what action is proper and which are not.

There may be many kinds of rights but importantly they may be divided into three kinds; natural, moral and legal. Natural right is an interest recognized by the rules of natural justice i.e. by what is proper, truthful and fair. Moral right is the interest recognized by the ethical code of a community. Legal right on the other hand is the interest recognized by the law and is created under a law or under a contract⁷³.

⁷² Robert L. Maddex, *International Encyclopedia of Human Rights, Freedoms, Abuses and Remedies* (Washington: CQ Press, 2000), 299. [hereinafter referred to as *International Encyclopedia of Human Rights*]. The rule mention about women, children and slaves is about the western lives and system. It is not about the Islamic system.

⁷³ Avtar Singh, *Introduction to Jurisprudence* (Nagpūr-India: Wadhwa & Company, 2006), 223.

Oxford Advanced Learner's Dictionary is also strengthened the same view of kinds of the right. It defines "right" as "moral or legal claim to have or get something or to behave in a particular way".⁷⁴

Jan Garrett has the view that legal right get the force through a proper legislation but moral rights get their validity through sources other than the legal rights. More he said is that the contractual rights have their concern only with the contracting parties which mean that base for contractual rights is the promise among them⁷⁵. There are contractual rights as well which get their force under terms of a contract voluntarily decided by the parties. Further is that the rights may be a positive or a negative. The former is to do some act by the government or the individual, getting its right and the later one requires the government or the individual to refrain from doing some e.g. all have freedom of religion and the no one can restrain anyone from choosing nay belief he wants. However, there are certain restrictions on rights of the people whereby the Law save them. For example, the peaceful assembly is right of the people but when this

⁷⁴ *Oxford*, s.v. "right".

⁷⁵ Jan Garrett, *The Concept of Rights*, see www.people.wku.edu/jan.garrett/ethics/rights.htm. Last Accessed on 28/01/2010.

assembly causes harass other citizens.⁷⁶ A quote says: “My right to swing my fist ends where your nose begins”.⁷⁷

1.2.1.1 Kinds of Legal Rights

Once decided that legal right is based upon some legislation, we see it many kinds. Some of the important are as follows.

First is *Perfect and imperfect right*. The former is when there is remedy available for aggrieved party in case of breach of the rights. However when there is no legal remedy available, then, it is called an imperfect right.

Another kind of legal rights is *rights in rem and rights in personam*. Former is the right against the world at large. The later is the right against a particular person or persons. Thus, right of a person not to be deprived of his property is *right in rem* but right of an owner in rents from tenant is *right in personam*.

⁷⁶ *International Encyclopedia of Human Rights*, 300.

⁷⁷ Quoted by Oliver Wendell Holmes, Jr. (March 8, 1841 – March 6, 1935). He was an American jurist and served as an Associate Justice in the Supreme Court of the United States from the year December 4, 1902 to January 12, 1932 http://www.azquotes.com/author/6846-Oliver_Wendell_Holmes_Jr. Accessed on 20-05-2017; and <http://www.biography.com/people/oliver-wendell-holmes-jr-9342405>. Accessed on 20-05-25017.

The third kind is *rights in re propria* and *right in re aliena*. Former are those rights which are free from all encumbrances and claims of third party. Later are those rights where any claim of third party is available, such as the case of lease and mortgage.⁷⁸

1.2.1.2 Theories of Right

1. Will Theory: It considered the right holder as a small sovereign which enables the right holder to have power and freedom over duties that other owe to him. Likewise, he gets the capacity to waive or forgive the other persons duty. As a result, he has a right to restrict the public at large from entering to his garden, and also has right to waive this duty of public at large. In fact, this authority of enforcing and waiving the right is serving the justification of this right.⁷⁹
2. Interest Theory: According to this theory, the right is considered so if it is to increase the interest of the right holder. As a result, it exists just to serve the interest of the right holder. The owner is considered

⁷⁸ Nyazee, Imran Ahsan Khan, *Jurisprudence* (Rawalpindi: Federal law House, 2010), 239.

⁷⁹ Ibid. p. 225.

owner because the ownership increases the interest i.e. makes him better off.⁸⁰

1.2.1.3 Analysis of the Theories of Right

Will theory emphasizes on the enjoyment of opportunity for the right holder because if you have a right, it means you have choice to enjoy it and it says the right holder as small scale sovereign. But there is an issue which censured the will theory. It failed to explain the rights which cannot be waived e.g. right of a person not to be slaved. Likewise, we see a very significant deficiency i.e. it is impossible for the incapables like infants, children, animals and insane, to have rights according to will theory.

On the other hand, interest theory is always talks on furtherance of interest of the right holder because this is the purpose of having the right. It accepts both of these kinds of rights i.e. rights which cannot be waived and rights of incapables. But interest theory finds it difficult to explain rights of the office holder e.g. it is legal right of the judge to sentence a convict but this right is not an interest of judge.

⁸⁰ Ibid. p. 226.

Importantly, we see that interest theory does not specify the interest which should be present for validity of the right for the right holder. Also, it is considered to be a selfish theory as it works to increase interest of the right holder keeping behind to worry other as well.

Overall, both of the discussed theories give their perspectives of rights which are helpful for understanding and protection of the rights.⁸¹

1.2.1.4 Capacity of Children

Some people are of the view that children are human being lacking the capacity of adults. So, they should be in the control and direction of their parents or guardians as the case may be. By this, their proper care and protection is possible. Other view is that this kind of control or protection may result to their abuse; it may be of any kind. Moreover, children face abuse everywhere in the world but the way may be different. For example, in the western countries children face domestic violence, in the form of the sexual abuse or pornography. However, they face abuse in the form of

⁸¹ www.snappinwrappin.files.wordpress.com/2011/03/will-theory-interest-theory-coursework-pdf-doc.pdf. Last Accessed on 01-09-2015.

ignoring or disregard to their rights or as child labor, overlooking their education.⁸²

Talking about the western world, the children for centuries did not enjoy their rights; they were considered as property which can be disposed off on the desire of someone; mostly their parents. They were devoid of the rights the adults were having like rights to profession and right to domicile. However, the reformers in the late eighteen centuries and the early nineteen centuries began campaign for the protection of the children and prevention of their exploitation whatever its form was, through different laws. Especially, the advocates of children rights in Unites States of America and the Europe since late 1880s became demanding to give at least some of the rights of civil and criminal nature.⁸³

⁸² Osifunke Ekundayo, "Does the African Charter on the Rights and Welfare of the Child (ACRWC) only Underlines and Repeats the Convention on the Rights of the Child (CRC)'s Provisions?: Examining the Similarities and the Differences between the ACRWC and the CRC", *International Journal of Humanities and Social Science* vol. 5, no. 7(1) (July 2015): 143 [hereinafter referred to as "Differences between the ACRWC and the CRC"].

⁸³ Charistine Alice Corcos, "The Child in International Law: A Pathfinder and Selected Bibliography", *Case Western Reserve Journal of International Law* vol. 23, issue 2, (1991): 171, <http://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1641&context=jil>. Accessed on 13-04-2016. [hereinafter referred to as "A Pathfinder and Selected Bibliography"].

1.2.2 Rights in Islam

The word “right” correspond the word *ḥaq* in Arabic and Urdu both. It can be understood as something necessary and established for a person.⁸⁴

1.2.2.1 General concept of right

Right in Islam has a broader concept. It extends to all the things in the universe including human being; animal; plants and even lifeless thing.

Arguments of this concept may be derived from the follow Aḥādīth:

"عذبت امرأة في هرة سجنتها حتى ماتت فدخلت فيها النار لا هي أطعمتها ولا سقتها إذ حبستها ولا هي تركتها تأكل من خشاش الأرض" ⁸⁵

“A lady was punished because of a cat which she had imprisoned till it died. She entered the (Hell) Fire because of it, for she neither gave it food nor water as she had imprisoned it, nor set it free to eat from the vermin of the earth.”⁸⁶

"بيننا رجل يمشي فاشتد عليه العطش فنزل بئرا فشرب منها ثم خرج فإذا هو بكلب يلهث يأكل الثرى من العطش فقال لقد بلغ هذا مثل الذي بلغ بي فمألاً خفه ثم أمسكه بفيه ثم رقي فسقى الكلب فشكر الله له فغفر له . قالوا يا رسول الله وإن لنا في البهائم أجرا؟ قال (في كل كبد رطبة أجر)"⁸⁷

⁸⁴ *Al-Munjid Arab-Urdu*, s.v. "الحق".

⁸⁵ Al-Bukhārī, Muhammad Bin Ismāʿil, *Ṣaḥīḥ al-Bukhārī*, Kitāb Aḥādīth al-Anbiʿā, Bāb Ḥadīth al-Ghār, vol. 4 (Dār Ṭauq al-Najah, 1422H), 176, Ḥadīth No. 3482. [hereinafter referred to as *Ṣaḥīḥ al-Bukhārī*].

⁸⁶ <https://sunnah.com/bukhari/60>. Last accessed on 23-04-2015.

⁸⁷ Ibid. Kitāb al-Musāqāh, Bāb Faḍl Suqyil al-Māʿ, vol.3, p.111, Ḥadīth No. 2363.

“While a man was walking he felt thirsty and went down a well and drank water from it. On coming out of it, he saw a dog panting and eating mud because of excessive thirst. The man said, 'This (dog) is suffering from the same problem as that of mine. So he (went down the well), filled his shoe with water, caught hold of it with his teeth and climbed up and watered the dog. Allah thanked him for his (good) deed and forgave him.' The people asked, "O Allah's Messenger (ﷺ)! Is there a reward for us in serving (the) animals?" He replied, "Yes, there is a reward for serving any animate.”⁸⁸

" ما من مسلم يغرس غرسا أو يزرع زرعاً فيأكل منه طير أو إنسان أو بهيمة إلا كان له به صدقة " ⁸⁹

(There is none amongst the Muslims who plants a tree or sows seeds, and then a bird, or a person or an animal eats from it, but is regarded as a charitable gift for him).⁹⁰

There are many other aḥādīth as proof of the subject. So, the scope of right is very vast. The important is that it is not left to person's prerogative or wish; instead, it is incorporated in the framework of the Islamic legal system. So, a right is right if recognized by Allāh Almighty.⁹¹

⁸⁸ <https://sunnah.com/bukhari/42>. Last accessed on 24-04-2016.

⁸⁹ Ibid. Kitāb al-Muzār'ah, Bāb Faḍl al-Za' wa al- Ghars Idhā Akala Minhu, vol.3, p.103, Ḥadīth No. 2320.

⁹⁰ <https://sunnah.com/bukhari/41>. Last accessed on 24-04-2016.

⁹¹ *Al-Mawsū'ah Al-Fiqhiyyah*, s.v. "حق", vol. 18 (Kuwait: Ministry of Awqāf and Islamic Affairs, 1990), 11-12. [hereinafter referred to as *Al-Mawsū'ah Al-Fiqhiyyah*].

Another point of difference between the Islamic Law and other legal systems is that Islamic Law provides rules of preference in fulfillment of rights in case of any clash or conflict among them. For example, in case of a person under obligation to maintain his father and a relative but he is in a position that he cannot maintain both; he can maintain only one, he should maintain his father first. This order is understandable by the following verse of Holy Qur'an:

يَسْأَلُونَكَ مَاذَا يُنْفِقُونَ ^ط قُلْ مَا أَنْفَقْتُمْ مِنْ خَيْرٍ
 فَلِلْوَالِدَيْنِ وَالْأَقْرَبِينَ وَالْيَتَامَىٰ وَالْمَسْكِينِ وَابْنِ السَّبِيلِ ^ق
 وَمَا تَفَعَّلُوا مِنْ خَيْرٍ فَإِنَّ اللَّهَ بِهِ عَلِيمٌ ⁹²

“They ask Thee what They should spend (in charity). say: whatever ye spend that is good, is for parents and kindred and orphans and those In Want and for wayfarers. and whatever ye do that is good, -(Allāh) knoweth it well.”⁹³

1.2.2.2 Legal concept of right

As far legal discussion is concerned, the term *haq* in Islamic Law shows the meaning of something fixed, constant and firm. We don't find a specific

⁹² Al-Qur'an 2 / 215.

⁹³ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 25-02-2016.

definition of *ḥaq* by the classical Muslim Jurists.⁹⁴ A renowned scholar Mustafa al-Zarqā defined it as:

"الحق هو اختصاص يقرر به الشرع سلطة أو تكليفا".⁹⁵

(Right is specific authority of power or responsibility given by Islamic Law).

This authority may be a financial in nature e.g. right/power of creditor to have his money back, and it can be a personal in nature e.g. right of guardian to act as guardian on his ward.

What is important is that this authority should be established by Islamic law; it should be legal because the authority is no authority unless it has source through Shari'ah.

This authority may appear in shape in shape of a power or in shape of a responsibility. The power is like a power /authority of agent to act upon his agency excluding others and right of an owner to gain profits out of the ownership.

However, the responsibility is also relates to some person like responsibility of an employee to accomplish his work.⁹⁶

⁹⁴ Al-Khafif, al-Shaykh Alī, *al-ḥaq wa al-Dhimma* (Cairo: Dār al-Fikr al-'arabī, 2010), 56.

⁹⁵ Al-Zarqā', Muṣṭafā Aḥmad, *al-Madkhal ilā Nazariyyah al-Iltizam al-āmmah fi al-fiqh al-Islamī*, (Damascus: Dār al-Qalam, 1999), 19.

1.2.2.3 Kinds of ḥaq (Right)

Rights of a person are special interest of a person.⁹⁷ The researcher means by kinds here keeping in view the owner of right. The right can be a right of Allāh Almighty, e.g. worships which are meant for closer to Allāh or which are for the benefit of whole community. Like prevention from crimes and implementation of ḥudūd. Rights of Allāh Almighty cannot be subject of any kinds of remission by anyone. For example, the worships are fixed and the punishment of theft which is cutting of hand cannot be pardoned even by the owner of stolen property. Also, the punishments in rights of Allāh can overlap by each other e.g. only one punishment is considered as enough in the case of two incidences of theft by the same thief. However, it is only the ruler who can implement the punishment on him.⁹⁸

Second is the right of persons. This is like usage and enjoyment of public utilities and right of seller in shape of consideration of the sold property. This right can be waived even altogether by the owner (by the person who owns a right). Unlike right of Allāh, right of person can be inherited; the punishments cannot overlap each other. So, the punishments are repeated

⁹⁶ Ibid. p.21.

⁹⁷ Al-Taftāzānī, Sa'd al-Dīn, *Sharḥ al-talwīḥ alā al-Tawḍīḥ*, vol. 2 (Egypt: Maktabah Ṣabīḥ), 300. [hereinafter referred to as *Sharḥ al-talwīḥ alā al-Tawḍīḥ*].

⁹⁸ Al-Zuḥailī, Wahbah, *Al-Fiqh al-Islāmī wa Adillatuhu*, vol. 9 (Dār al-Fikr, N.D), 22-24. [hereinafter referred to as *Al-Fiqh al-Islāmī wa Adillatuhu*].

for each violation of the same right by same person. But, implementation of the punishment or otherwise is entrusted to the owner of the right or his guardian only. Generally, right of child belongs to the same kind of rights.⁹⁹

The third is common right of Allāh Almighty and a person. This is a right which has common features from right of Allāh and from right of person. In this kind of right, rules of Right of Allāh Almighty will be applied if it is predominant. Otherwise rules of right of person will be in application if it is predominant. The former is like protection of *'aql* (intellect). It is a common right where right of Allāh Almighty is predominant because although sense belongs to a specific person but its protection is necessary for the whole society. As a result, if someone attacks intellect (mentality) of a person, he is liable for punishment within the boundary of right of Allāh Almighty. Example of the latter, however is, the retribution in case of murder. This is a common right with predominance of right of person because although the retribution is need of a society as whole, but it specifically ends the anger of the custodians. So, rules of right of person will be in application.¹⁰⁰

⁹⁹ Ibid.

¹⁰⁰ Ibid.

1.2.3 Legal Capacity in Islamic Law

Legal capacity is very close to the concept of right in Islamic law because the right exists if there is legal capacity. Otherwise, the right cannot be thought of without legal capacity because this capacity consists of two capacities namely: capacity for acquisition and capacity for execution. These details will follow.

Legal capacity in Islamic law is referred to as *ahliyyah*.¹⁰¹ Literally it means absolute ability.¹⁰² When we talk about *ahliyyah*, two meanings come to our mind. One shows ability of a person to do a certain act or to complete the task. Second shows the legal capacity to do an act. In other words, whether the law permits, legalizes and accepts an act from a specific person.¹⁰³ Our concern is the latter meaning. Technically it has been divided by the Muslim Jurists into two kinds:

¹⁰¹ *Farooq's Law Dictionary, Eng-Arabic*. S.v. "legal capacity".

¹⁰² Nyazee, Imran Ahsan Khan, *Islamic Jurisprudence* (Rawalpindi: Federal Law House, 2013), 126.

¹⁰³ Nyazee, Imran Ahsan Khan, *Theories of Islamic Law*, (Rawalpindi: Federal Law House, 2007), 95. [hereinafter referred to as *Theories of Islamic Law*].

1.2.3.1 Ahliyyah al-Wujūb (Capacity of Acquisition)

This capacity concerns with capacity to acquire rights and duties. Base of this kind of capacity is *insāniyyah* being a human or natural person.¹⁰⁴ So, it starts from one's life (from the moment of conception and continues till the ends of his life).

However, in the period of embryo his capacity of acquisition remains incomplete because his life is not complete. He gets the rights without duties because he is on the one hand an independent personality and on the other hand he is dependent on his mother. It is for this reason, he owns rights without duties.¹⁰⁵ The rights he gets are the lineage, inheritance, *waṣiyyah*, and *waqf*.¹⁰⁶

From the moments of birth, he gets rights as well as duties because he is now a complete person.¹⁰⁷ This continues till his death.

After that, a dead person is also assigned deficient capacity in relation to complete his actions and contracts which he has concluded before his death

¹⁰⁴ Al-Sarakhsī, *Muhammad, Uṣūl al-Sarakhsī*, vol. 2 (Bayrūt: Dār Al-Ma'rifah, N.D), 333.

¹⁰⁵ Al-Zarqā', Muṣṭafā Aḥmad, *al-Makhal al-Fiqhī al-'ām* (Damascus: Dār al-Qalam, 2004), 791.

¹⁰⁶ Ibid. p. 792.

¹⁰⁷ Ibid. p. 796.

e.g. his debts, bequest and likewise the expenses of his funeral which are to be taken from his wealth.¹⁰⁸

1.2.3.2 Ahliyyah al-Adā' (Capacity of execution)

This capacity is related to the execution of the acts by a person in an accepted way by the Islamic law (Sharī'ah).¹⁰⁹ So, a person attains the level of intellectual power by which he discriminates and becomes able to understand the matters. On attaining this capacity, a person gets ability by law to issue words, deeds and exercises the rights and duties. He becomes liable for his own statements and action.

1.2.3.2.1 Division of Ahliyyah al-Adā'

Basically, capacity of execution relates to three issues called *khiṭābāt*. This word means the communication of the Lawgiver to the mankind (the subject). These are:

1) *khiṭāb al-‘ibādāt*:

It is the communication of the Lawgiver to the mankind to perform acts of worships. A person who understands this kind of

¹⁰⁸ *Theories of Islamic Law*, p. 98.

¹⁰⁹ *Sharḥ al-taḥwīḥ alā al-Tawḍīḥ*, p. 321.

communication is duty bound to worship and he will be liable in case of violation of this duty according to the rules of Islamic law.

2) khiṭāb al-jināyāt:

It is the communication of the Lawgiver to the mankind not to do crimes. A person who understands this kind of communication is duty bound to refrain from offences. He will be liable and subject to punishment in case of violation of this law.

3) khiṭāb al-mu‘āmlāt:

It is the communication of the Lawgiver to the mankind regarding contracts and transactions. A person who understands this kind of communication is liable for his statements, acts, contracts and transaction.¹¹⁰

1.2.3.2.2 Stages of Ahliyyah al-Adā’

Stated earlier that base for capacity of execution is the intellectual power to understand the matters. No doubt that the intellectual power is not

¹¹⁰ Ḥassān, Ḥusain Ḥāmid, *al-Madkhal li Dirāsah al-Fiqh al-Islamī* (Cairo: Shamah al-Ṭuwaijī, N.D), 328; See also, Mansoori, M.Tahir, *Islamic law of contracts and business transactions*, (Islamabad: Shariah Academy, International Islamic University, 2004), 47-48.

available in the duration of conception and in the period starting from the birth till the age of seven.¹¹¹

A child from age seven to puberty is considered to have deficient capacity of execution because he gets some level of discriminating power. He understands the communication and replies in better way.¹¹² It is deficient because khiṭāb al-‘ibādāt and khiṭāb al-jināyāt are not active. So there is no obligation for worship and he is not fully punishable in case of commission of any offence. But as far as khiṭāb al-mu‘āmlāt is concerned, his transactions are of three types:

- a) Purely beneficial transactions: these are valid.
- b) Purely harmful transaction e.g. giving of loan or gift. These are void transactions.

¹¹¹ Determination of seven years of age for discriminating power in Islamic Law is not irrational, because the child starts to considerate the matters at this age of seven in reality. Even the Romans considered children were considered having no criminal liability. But in the nineteenth century, children under the age seven were assumed incapable of crime and from seven years they were considered responsible for their deeds. See, <http://law.jrank.org/pages/12069/Juvenile-Justice-Changing-social-attitudes-toward-children.html>. Accessed on 14-03-2016; www.wikipedia.org/wiki/child. Accessed on 14-03-2016.

¹¹² Al-Dasūqī, Muhammad, *Ḥāshiyah al-Dasūqī alā al-Sharḥ al-Kabīr*, vol. 2 (Dār al-Fikr, N.D), 3.

- c) Transactions vacillating between benefit and harm e.g. sale and partnership. These need permission of the guardian.¹¹³

From puberty, the pubescent gets capacity for khiṭāb al-‘ibādāt and khiṭāb al-jināyāt. so, he is under obligation to perform acts of worships. Likewise, he is subject to full punishment in case if he commits any offence.

As far khiṭāb al-mu‘āmlāt is concerned, it is a matter of fact, depending on his understanding the transaction and matters. If he understands the meaning of transaction; benefit and loss, he will get the capacity or transaction khiṭāb al-mu‘āmlāt. By this, he is said to have attained the rüşd (maturity). Otherwise, he will remain as ṣabī mumayyiz (child from age seven to puberty) whose transaction are divided into three types as discussed earlier.

1.3 International Law vs. Human Rights

1.3.1 International Law

International law considers the rules that govern the relation among different nations. These include several treaties, instruments and

¹¹³ Ibn ‘ābidīn, Muhammad Amīn, *Radd Al-Muḥtār ‘lā Al-Durr Al-Mukhtār*, vol. 6 (Bayrūt: Dār al-Fikr, 1992), 177; *Al-Fiqh al-Islāmī wa Adillatuhu*, vol. 9, p. 119-120.

conventions on which the states parties¹¹⁴ agreed. They are required to respect rights of other nations according to those instruments.¹¹⁵

Most of the instruments in International Law relate to the Human Rights. They are designed to protect human rights at all levels; international, regional and domestic. The role of International Human Rights Law for human rights protection started mainly from the beginning of the last half of the twentieth century. While ratifying the treaties, states parties guarantee to respect the ratified treaty and ensure that their domestic law is compatible to it.¹¹⁶

As for Human Rights, they are branch of international law that is designated to promote the human rights like people domestic, social and political rights.¹¹⁷

¹¹⁴ States parties are the states that have agreed to a specific treaty. Their agreement to the treaty makes them legally bound to the treaty. See <http://hirealawyer.findlaw.com/choosing-the-right-lawyer/international-law.html>. Accessed on 20-01-2016.

¹¹⁵ These instruments are based on the principles of *jus gentium* i.e. Law of Nations. See, *International Encyclopedia of Human Rights*, p. 201.

¹¹⁶ Ibid. p. 201-202.

¹¹⁷ <http://www.ohchr.org/documents/publications/training9chapter1en.pdf>. Accessed on 07-07-2017.

1.3.1.2 Difference between National and International Law

Firstly there is no international legislature for creation of laws among the nations unlike the national law which needs the specific legislature for establishment of law in the form of parliament, Congress ...etc. The basic source of International Law is considerably the customs and works of scholars and legal advisors. Secondly, the International Law has no enforcement agency like police. Thirdly, talking about judiciary, the international tribunals such as ICJ¹¹⁸ have limited authority and jurisdiction as it is subject to the consent of the states parties.

These treaties concern many issues but the emphasis in this research is a specific branch of human rights i.e. child rights only.

United Nations Charter has its importance in the modern history of international law. It mentions that peoples of United Nations determined “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.”¹¹⁹ On the same basis, Universal Declaration of Human Rights 1948 has emphasized on the “universal respect for and observance of

¹¹⁸ International Court of Justice.

¹¹⁹ UN Charter, Preamble, Para 2.

human rights and fundamental freedoms.”¹²⁰ Moreover, it declares that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.¹²¹

1.3.1.3 International human rights law and humanitarian law

The relationship of International human rights law and humanitarian law is debatable within the society of scholars. A fragment of scholars consider international humanitarian law as subset of international human rights law. Other scholars consider them very much different.

After analysis, we reach to a conclusion that both of them deal with the human rights. International human right law deals with human rights in all situations while humanitarian law considers the specific human rights in armed conflict situations. This is clear by First Geneva Convention 1864¹²²

¹²⁰ UDHR, Preamble, Para 6.

¹²¹ Ibid. Article 1.

¹²² It was based on the recommendation by the Geneva International Conference which was held in 1863.

which only discusses the rights of person in armed conflict, wounded persons, and situation of emergency ...etc.¹²³

1.3.1.4 Difficulties in the concept of human rights

Difference of opinion among the western scholars on human rights makes human rights' and their existence a difficult concept. For instance, MacIntyre has argued that there is no existence of human rights.¹²⁴

Moreover, UDHR states that "All human beings are born free and equal in dignity and rights"¹²⁵ and also states that "Everyone has the right to freedom of thought, conscience and religion."¹²⁶ The problem here is, how we define right of freedom of religion according to a religion which does not accept that all are equal. So the problem arises here how to compose human right because implementation of one human right may require violation of another right. So, the human rights provided in the UDHR are somehow contrary to each other.¹²⁷

¹²³ *International Encyclopedia of Human Rights*, p. 152.

¹²⁴ MacIntyre, Alasdair, *after Virtue* (Indiana: University of Notre Dame Press, 1981). Quoted in Freeman, Michael, *Human Rights* (United Kingdom: Polity Press, 2014), 5-7 [hereinafter referred to as freeman, *Human Rights*].

¹²⁵ UDHR. Art. 1.

¹²⁶ Ibid. Art.18.

¹²⁷ Freeman, *Human Rights*, p. 5-7.

1.3.2 Human Rights in Islam

Islam respects human rights and looks towards them with valuable eyes. This fact is clear because creator of all the universe, including the human being; the provider of all the grace and blessing, started Himself to give human being the rights and clarifies that all the world is for and subject to the humankind. He made human beings His vicegerents. Following two verses are quoted as example of the fact. Allāh Almighty says:

وإِذْ قَالَ رَبُّكَ لِلْمَلٰئِكَةِ إِنِّي جَاعِلٌ فِي الْأَرْضِ خَلِيفَةً... ﴿٣٠﴾¹²⁸

“Behold, Thy Lord said to the angels: "I will create a vicegerent on earth.”¹²⁹

وَسَخَّرَ لَكُم مَّا فِي السَّمٰوٰتِ وَمَا فِي الْأَرْضِ جَمِيعًا مِّنْهُ

إِنَّ فِي ذٰلِكَ لَآيٰتٍ لِّقَوْمٍ يَّتَفَكَّرُوْنَ ﴿١٣٠﴾¹³⁰

“And He has subjected to you, As from him, all that is In the heavens and on earth: Behold, In that are Signs indeed for those who reflect.”¹³¹

¹²⁸ Al-Qur’ān 2 / 30.

¹²⁹ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 19-07-2015.

¹³⁰ Al-Qur’ān 45 / 13.

¹³¹ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 19-07-2015.

Human rights in Islam guarantee basic human dignity, equality among human, respect and inherent freedoms.¹³² Many of the verses of the Holy Qur'ān and aḥādīth of the Holy Prophet (SAW) stand as evident of this fact. Following are the examples:

"وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ
 وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ
 خَلَقْنَا تَفْضِيلًا"¹³³

“We have honored the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favours, above a great part of Our creation.”¹³⁴

"يَتَأْتِيهَا النَّاسُ إِنَّا خَلَقْنَاهُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاهُمْ
 شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا^ج إِنَّ أَكْرَمَكُمْ عِنْدَ اللَّهِ أَتَقْوَاهُ
 إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ"¹³⁵

“O mankind! we created you from a single (pair) of a male and a female, and made you into nations and Tribes, that ye may know Each other (Not that ye may despise (each other). Verily the Most honoured of you In the sight of Allāh is (He who is) the Most

¹³² See, UIDHR Art. 3, CDHRI Art. 1.

¹³³ Al-Qur'ān 17 / 70.

¹³⁴ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 22-07-2015.

¹³⁵ Al-Qur'ān 49/13.

righteous of you. and Allāh has full knowledge and is well acquainted (with all things).”¹³⁶

Justice is a central theme of Islam. The justice refers to place things in a rightful place. Accordingly, Islam provides the bases and foundations that guarantee rights and responsibilities of every person. One thing is very important; all the humans are not equal in their rights or obligation. So, all these are decided within the rules of justice. The Holy Qur’ān and aḥādīth of the Prophet (SAW) instigate on it:

(إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُمْ بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا)¹³⁷

“Allah doth command you to render back your Trusts to those to whom They are due; and when ye judge between man and man, that ye judge with justice: Verily How excellent is the teaching which He giveth you! for Allah is He who heareth and seeth all things.”¹³⁸

يَتَأْتِيهَا الَّذِينَ ءَامَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا

¹³⁶ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 23-07-2015.

¹³⁷ Al-Qur’ān 4/58.

¹³⁸ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 16-07-2015.

عَدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ

بِمَا تَعْمَلُونَ ﴿١٣٩﴾

“O ye who believe! stand out firmly for Allah, As witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. be just: that is next to piety: and fear Allah. for Allah is well-acquainted with all that ye do.”¹⁴⁰

﴿ إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَنِ وَإِيتَايَ ذِي

الْقُرْبَىٰ وَيَنْهَىٰ عَنِ الْفَحْشَاءِ وَالْمُنْكَرِ وَالْبَغْيِ ع

يَعْظُمُ لِعَلَّكُمْ تَذَكَّرُونَ ﴿١٤١﴾

“Allah commands justice, the doing of good, and Liberality kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He you, that ye may receive admonition.”¹⁴²

" ... إِنَّمَا أَهْلَكَ الَّذِينَ قَبْلَكُمْ، أَنَّهُمْ كَانُوا إِذَا سَرَقَ فِيهِمْ

الشَّرِيفُ تَرَكَوهُ، وَإِذَا سَرَقَ فِيهِمُ الضَّعِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ،

وَإِنَّمَا اللَّهُ لَوْ أَنَّ فَاطِمَةَ بِنْتَ مُحَمَّدٍ سَرَقَتْ لَقَطَعْتُ يَدَهَا¹⁴³

“... What destroyed the nations preceding you, was that if a noble amongst them stole, they would forgive him, and if a poor person amongst them stole, they would inflict Allah's

¹³⁹ Al-Qur'ān 5/8.

¹⁴⁰ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 18-07-2015.

¹⁴¹ Al-Qur'ān 16/90.

¹⁴² [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 12-07-2015.

¹⁴³ *Ṣaḥīḥ al-Bukhārī*, Kitāb Aḥādīth al-Anbi'ā, Bāb Ḥadīth al-Ghār, vol. 4, p. 175, Ḥadīth No. 3475.

Legal punishment on him. By Allah, if Fatima, the daughter of Muhammad stole, I would cut off her hand.”¹⁴⁴

As an example, right of orphan, property and education...etc is clear from the following texts:

"وَلَا تَقْرَبُوا مَالَ الْيَتِيمِ إِلَّا بِالَّتِي هِيَ أَحْسَنُ حَتَّىٰ يَبْلُغَ
أَشُدَّهُ^ط وَأَوْفُوا^ط الْكَيْلَ وَالْمِيزَانَ بِالْقِسْطِ^ط لَا تُكَلِّفُوا
نَفْسًا إِلَّا وُسْعَهَا^ط وَإِذَا قُلْتُمْ فَاعْدِلُوا وَلَوْ كَانَ ذَا
قُرْبَىٰ^ط وَبِعَهْدِ اللَّهِ أَوْفُوا^ط ذَٰلِكُمْ وَصَلِّتُمْ بِهِ^ط لَعَلَّكُمْ
تَذَكَّرُونَ^ط"¹⁴⁵

“And come not nigh to the orphan's property, except to improve it, until He attain the age of full strength; give measure and weight with (full) justice;- no burden do we place on any soul, but that which it can bear;- whenever ye speak, speak justly, Even if a near relative is concerned; and fulfil the Covenant of Allāh. Thus doth He command you, that ye may remember.”¹⁴⁶

¹⁴⁴ <https://sunnah.com/bukhari/60>. Last accessed on 28-03-2016.

¹⁴⁵ Al-Qur'ān 6/152.

¹⁴⁶ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 06-02-2016.

" طَلَبُ الْعِلْمِ فَرِيضَةٌ عَلَى كُلِّ مُسْلِمٍ ... " ¹⁴⁷

(Seeking knowledge is obligatory on every Muslim...).

We see here that most of these rights are not just rights but orders of Allāh Almighty because they have formulated in imperative form in Arabic. It is important to note that the rights given by the documents, declarations and treaties to human kinds in modern time, most of them have been given with a slight different before or than fourteen century.

Then these rights in Islam are the gift from Allāh which means that they cannot be subject to waiver, suspension or violation.

Moreover, these rights regarded the nature of human beings and characterized as comprehensive, provided to all without discrimination in their nature. They cover all the aspects unlike modern international human rights law. As instance a ḥadīth may be quoted here:

"أَعْطُوا الْأَجِيرَ أَجْرَهُ، قَبْلَ أَنْ يَجْفَ عَرَقُهُ" ¹⁴⁸

(Give the employee his wage before his sweat dries.)

¹⁴⁷ Ibn Mājah, *Sunan Ibn Mājah*, Bāb Faḍl al-‘Ulamā’ wa al-Ḥath ‘alā Ṭalab al-‘Ilm, vol. 1 (Dār Iḥyā’ al-Kutub al-‘arabiyyah, N.D), 81. Ḥadīth No. 224. [hereinafter referred Ibn Mājah].

¹⁴⁸ Ibid. Kitāb al-Ruhūn, Bāb Ajr al-Ujarā’, vol. 2, p. 817. Ḥadīth No. 2443.

In this ḥadīth, it is not the right to get wages only but the time for the payment is also mentioned and decided.

In fact, human rights are part of the objections of sharī'ah which are five as identified by the Muslim jurists. They are namely preservation of religion; person; intellect; progeny and property. For example as, right to education is related to preservation of intellect and so on.

Furthermore, fulfillment of rights is considered in Islam as a mean for success in this world as well as in the hereafter.

1.3.3 Child rights in Islam

Islam looks towards children as they are gift from Allāh Almighty. They are source for inner satisfaction. Coming verse of Holy Qur'ān makes this obvious:

وَاللَّهُ جَعَلَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا وَجَعَلَ لَكُمْ مِنْ
أَزْوَاجِكُمْ بَنِينَ وَحَفَدَةً وَرَزَقَكُمْ مِنَ الطَّيِّبَاتِ^c
أَفِيَالٍ بَطِيلٍ يُؤْمِنُونَ وَبِعَمَتٍ اللَّهُ هُمْ يَكْفُرُونَ¹⁴⁹

“and Allāh has made for you mates (and companions) of your nature, and made for

¹⁴⁹ Al-Qur'ān 16/72.

you, out of them, sons and daughters and grandchildren, and for you sustenance of the best: will They then believe In vain things, and be for Allāh.s favours?.”¹⁵⁰

Islam treats children with special way keeping in view their nature and need. In a beautiful and comprehensive ḥadīth, the Prophet of Islam (SAW) has said:

" لَيْسَ مِنَّا مَنْ لَمْ يَرْحَمْ صَغِيرَنَا ، وَيُوقِّرْ كَبِيرَنَا " ¹⁵¹

“He is not one of us who does not have mercy on our young and does not respect our elders.”¹⁵²

This ḥadīth indicates to the attitude of Islam towards children. Also, it speaks out the way the relationship should be among the younger and the older; the relationship of kindness and respect.

Moreover, Islam condemned the people who kill their child due to their fear of poverty. This condemnation was to the extent that prohibition of their act was mentioned in a verse of Holy Qur’ān together with the prohibition of shirk.¹⁵³

¹⁵⁰ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 25-01-2016.

¹⁵¹ Al-Tirmidhī, Muhammad Bin ‘īsā, *Sunan Al-Tirmidhī*, Abwāb al-Bir wa al-Ṣilah, Bāb Ma Jā’a fī Raḥmah al-Ṣibyān, vol. 4 (Egypt: Sharikah Maktabah wa Maṭba’ah Muṣṭafā al-Bābī al-Ḥalabī, 1975), 321, Ḥadīth No. 1919. [hereinafter referred to as Al-Tirmidhī].

¹⁵² <https://sunnah.com/tirmidhi/27>. Last accessed on 31-12-2015.

¹⁵³ Polytheism.

﴿ قُلْ تَعَالَوْا أَتْلُ مَا حَرَّمَ رَبُّكُمْ عَلَيْكُمْ ۗ أَلَّا تُشْرِكُوا بِهِ شَيْئًا ۗ وَبِالْوَالِدَيْنِ إِحْسَانًا ۗ وَلَا تَقْتُلُوا أَوْلَادَكُمْ مِمَّنْ إِمْلَقَ ۗ نَحْنُ نَرْزُقُكُمْ وَإِيَّاهُمْ... ﴾

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“Say: "Come, I will rehearse what Allāh hath (really) prohibited you from": join not anything As equal with him; be good to your parents; kill not your Children on a plea of want;- we provide sustenance for you and for them...”¹⁵⁵

There is another important matter which has been ignored by the other systems. It is the responsibility of upbringing which is placed mainly on the parents by the religion and Allāh Almighty will ask the parents about fulfillment of this responsibility. A ḥadīth says:

"إن الله سائل كل راع عما استرعاه أحفظ أم ضيع حتى يسأل الرجل عن أهل بيته"¹⁵⁶

(Indeed, Allāh will question every custodian about his subjects; whether he kept them safe or wasted? To the extent that He will question a man about his family).

¹⁵⁴ Al-Qur’ān 6 / 151.

¹⁵⁵ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 19-10-2015.

¹⁵⁶ ‘Alā’uddīn Al-Fārisī, *Al-Ihsān fī Taqrīb Ṣaḥīḥ Ibn Ḥibbān*, Kitāb al-Siyar, Bāb al-Ikḥbār bi Su’āl Allāh Kullu Man Ra’iyyah ‘An Ra’iyyatihi, vol. 10 (Bayrūt: Mu’asasah al-Risālah, 1988), 345, Ḥadīth No. 4493. [hereinafter referred to as *Al-Ihsān fī Taqrīb Ṣaḥīḥ Ibn Ḥibbān*].

By this, parents feel their obligation and aspire to up bring their child in a comprehensive way according to their abilities and definitely in accordance with the teachings of Islam.

1.3.3.1 Status of female child in Islam

In the pre-Islamic era, girls were considered a source of blame and disgrace in some societies. People used to feel ashamed when a girl takes birth in their home. Girls were disliked and could not get the natural love of their parents. Holy Qur'an draws a picture of such people in the following verse:

وَإِذَا بُشِّرَ أَحَدُهُم بِالْأُنثَىٰ ظَلَّ وَجْهُهُ مُسْوَدًّا وَهُوَ
 كَظِيمٌ ﴿٥٨﴾ يَتَوَارَىٰ مِنَ الْقَوْمِ مِنْ سُوءِ مَا بُشِّرَ بِهِ
 أَيُمْسِكُهُ عَلَىٰ هُونٍ أَمْ يَدُسُّهُ فِي التُّرَابِ ۗ أَلَا
 سَاءَ مَا يَحْكُمُونَ ﴿٥٩﴾¹⁵⁷

“When news is brought to one of them, of (the birth of) a female (child), His face darkens, and He is filled with inward grief! With Shame does He hide Himself from His people, because of the bad news He has had! shall He retain it on (sufferance and) contempt, or bury it In the dust? Ah! what an evil (choice) They decide on?.”¹⁵⁸

¹⁵⁷ Al-Qur'an 16 / 58, 59.

¹⁵⁸ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 02-01-2016.

Sometimes, the reason behind this practice of the people in the pre-Islamic era was the fear of poverty. It is because a son can help in earning the livelihood and can proved to be an honor for the parents but the daughter cannot help; instead, the father would be under obligation to maintain her. Often, this was the reason behind their practice of female infanticide.

﴿ قُلْ تَعَالَوْا أَتْلُ مَا حَرَّمَ رَبِّيَ عَلَيْهِمْ عَلَيْهِمُ الْآلَاءُ
 تُشْرِكُوا بِهِ شَيْئًا ۚ وَبِالْوَالِدَيْنِ إِحْسَانًا ۚ وَلَا تَقْتُلُوا
 أَوْلَادَكُمْ مِمَّنْ إِمْلَقِ نَحْنُ نَرْزُقُكُمْ وَإِيَّاهُمْ... ﴾

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“Say: "Come, I will rehearse what Allāh hath (really) prohibited you from": join not anything As equal with him; be good to your parents; kill not your Children on a plea of want;- we provide sustenance for you and for them...”¹⁶⁰

Islam provided respect, dignity and improved status and importance of the female child. To encourage humanity to give girls their due respect and dignity, the Prophet of Islam, Muhammad (SAW) has said a ḥādīth whereby he has given a glad tidings to the one who properly brought up his girls and said that they will be very close at the day of judgment.

¹⁵⁹ Al-Qur’ān 6 / 151.

¹⁶⁰ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). ast accessed on 19-10-2015.

" من عال جاريتين حتى تبلغا ، جاء يوم القيامة أنا وهو ، وضم أصابعه " ¹⁶¹

"He, who brought up two girls properly till they grew up, he and I would come (together) (very closely) on the Day of Resurrection, and he interlaced his fingers (for explaining the point of nearness between him and that person."¹⁶²

1.4 Abuse and its Forms

1.4.1 Synonyms of abuse

Abuse means the use of something in a wrong or harmful way; unfair, cruel and violent treatment. Sometimes abuse means rude and offensive remarks as well.¹⁶³ Abuse is Wrong use of a right or power¹⁶⁴ or to invoke a right in an unfair way to get something illegally or for illegal purpose.¹⁶⁵ Sometimes it refers to a bad custom too.¹⁶⁶ There are certain words considered similar to the word abuse. These are for example:

¹⁶¹ Muslim Bin Al-Ḥajjāj, *al-Musnad al-Ṣaḥīḥ*, Kitāb al-Bir wa al-Ṣīlah wa al-Ādāb, Bāb Faḍl al-Iḥsān Ilā al-Banāt, vol.4 (Bayrūt: Dār Iḥyā' al-Turāth al-'Arabī, N.D) 2027, Ḥadīth No. 2631. [hereinafter referred to as *al-Musnad al-Ṣaḥīḥ*].

¹⁶² <https://sunnah.com/muslim/45>. Last accessed on 12-02-2016.

¹⁶³ *Oxford Advanced Learner's Dictionary*, s.v. "abuse".

¹⁶⁴ *Al-Maurid, Eng - Arabic*, s.v. "abuse".

¹⁶⁵ *Faruqi's Law Dictionary Eng - Arabic*, s.v. "abuse".

¹⁶⁶ *Ferozsons Eng-Eng & Urdu Dictionary*, s.v. "abuse".

Firstly, exploitation is to use for own purpose.¹⁶⁷ It may be unfair use of somebody or something.¹⁶⁸ It denotes to “a situation in which somebody treats somebody else in an unfair way especially in order to make money from their work.”¹⁶⁹

Secondly, torture is also considered similar to abuse. It means to give extreme pain¹⁷⁰ or extreme punishment¹⁷¹ especially to give somebody severe pain including physical and mental hurt to confess something or to give information.¹⁷²

Thirdly, Violence is the behavior especially the physical force intended to hurt or to kill somebody. It may also be an emotional behavior and force on someone. A domestic violence occurs between the family members.¹⁷³ Violence is to harm someone forcefully.¹⁷⁴

However, with a slight difference, all above mentioned kinds should be prevented. The prevention has been defined as “the act or practice of

¹⁶⁷ Ibid. s.v. “exploitation”.

¹⁶⁸ *Faruqi's Law Dictionary Eng - Arabic*, s.v. “exploitation”.

¹⁶⁹ *Oxford Advanced Learner's Dictionary*, s.v. “exploitation”.

¹⁷⁰ *Ferozsons Eng-Eng & Urdu Dictionary*, s.v. “torture”.

¹⁷¹ *Faruqi's Law Dictionary Eng - Arabic*, s.v. “torture”; Al-Maurid, English - Arabic, “torture”.

¹⁷² *Oxford Advanced Learner's Dictionary*, s.v. “torture”. See also David Robertson, *A Dictionary of Human Rights*, s.v. “torture”.

¹⁷³ *Oxford Advanced Learner's Dictionary*, s.v. “violence”.

¹⁷⁴ *Ferozsons Eng-Eng & Urdu Dictionary*, s.v. “abuse”.

stopping something bad from happening, the act of preventing something”.¹⁷⁵

1.4.2 Forms of abuse

We find from the definitions of the terms above that abuse is a general term covering all the situations that violate rights of the child. Definition of child abuse provided by the NSPCC supports the same view. While explaining the term child abuse, it states that “child abuse is any action by another person –adult or child- that causes significant harm to a child. It can be physical, sexual or emotional.”¹⁷⁶ It also states that neglect and physical abuse are alike in damaging a child and a child often experiences many types of abuse any time.¹⁷⁷

The root causes of abuse can be set as four namely the child, the family, the community and the society.¹⁷⁸

¹⁷⁵ *Merriam Webster*, s.v. “Prevention”.

¹⁷⁶ <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect>. Last Accessed on 13-02-2016.

¹⁷⁷ *Ibid*.

¹⁷⁸ Caliber Associates with the Children’s Bureau’s Office on Child Abuse and Neglect, *Emerging Practices in the Prevention of Child Abuse and Neglect* (USA: Department of Health and Human Services), 4, https://www.childwelfare.gov/pubPDFs/emerging_practices_report.pdf.

By this, we can summarize that an abuse is opposite of a right. A right when not performed well in a legal way, it becomes an abuse. As for forms of abuse are concerned, they depend on the right violated. The prevalent; famous and major forms of child abuse include the following:¹⁷⁹

1.4.2.1 Physical (torture)

It is to cause physical harm or failure to protect child from harm. This may include by many kinds like shaking, hitting, throwing, scalding, burning, poisoning, suffocating or drowning. This Physical harm may also be caused by a parent, care taker or stranger.¹⁸⁰

1.4.2.2 Sexual

Sexual abuse consists of encouraging a child or forcing him to involve in sort of sexual activities. This include physical contact including both penetrative or non-penetrative sexual acts such as kissing or intercourse and also include non-contact activities such as, watching sexual activities,

¹⁷⁹ See, *Child Protection Fact Sheet, the Definitions and Signs of Child Abuse*, (UK: National Society for the Prevention of Cruelty to Children, 2009), 1-2; Selvakumar, M.D. Allen, *Global Perspective of Child Abuse* (India: Aavishkar Publishers, Distributors: 2014), 1; UK Government's Guidelines: *Working Together to Safeguard Children*, 2006, p. 157-158.

¹⁸⁰ Ibid. Para 9.6, p. 157.

production of pornographic material or to encourage a child to act in sexually improper ways.¹⁸¹

1.4.2.3 Emotional

“Emotional abuse is the persistent emotional maltreatment of a child such as to cause severe and persistent adverse effects on the child’s emotional development.”¹⁸² This may involve inappropriate expectations imposed on children beyond the child’s age or developmental capability as well as limitation of exploration and learning or preventing him to participate in normal social interaction. Likewise, serious harrasing a child which cause him feel frightened or exploiting him in any manner. To make him see or hear ill-treatment of another is also considered emotional abuse. In addition, “conveying to children that they are worthless or valued only insofar as they meet the needs of another person”¹⁸³ is emotional abuse too.

¹⁸¹ Ibid. Para 9.7, p. 157.

¹⁸²

<https://www.ncl.ac.uk/studentambassadors/assets/documents/NSPCCDefinitionsandsignsofchildabuse.pdf>. Last accessed on 16-04-2017.

¹⁸³ UK Government’s Guidelines: *Working Together to Safeguard Children*, 2006, para 9.8, p. 157.

1.4.2.4 Neglect

Neglect is the continual stoppage to meet psychological needs or physical needs of the child. This may result into severe damage to development and health of a child. Neglect involves failure to fulfill basic needs i.e. adequate food, clothing, shelter and access to appropriate medical care or treatment and involves failure to supervise the emotional needs of the child or protect him from physical or emotional danger.¹⁸⁴

1.4.3 Some regional practices of child abuse

1.4.3.1 Exploitation and trafficking

The Protocol to Prevent, Suppress and Punish Trafficking in Persons 2000 defines trafficking in its article 3 (a) as:

“The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation

¹⁸⁴ Ibid. Para 9.10, p. 157-158.

of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”¹⁸⁵

1.4.3.2 Vani

Vani is a kind of child marriage. It is a tradition found in some parts of Pakistan in which minor girls forcibly given into marriage as part of punishment for a crime committed by her male relative.¹⁸⁶ This punishment is announced by committee of tribal elders called as *jirga* or *panchait*. This practice is called *sawāra* in some other parts of Pakistan.

1.4.3.3 Devadasi

It is a practice prevailing in south India wherein a girl dedicated to worship and service of a deity or a temple for the rest of her life.¹⁸⁷ In other words, this traditional religious practice is to pledge young girls into life-long

¹⁸⁵

<https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>. Last accessed on 23-05-2016.

¹⁸⁶ Momina Khan, *Vani: Pain of child marriage in our society*, News Pakistan (October 26, 2011), <http://www.newspakistan.pk/2011/10/26/vani-pain-of-child-marriage-in-our-society/>. Last Accessed on 15-02-2016.

¹⁸⁷ <https://en.wikipedia.org/wiki/Devadasi>. Last Accessed on 16-02-2016.

sexual exploitation which has an adverse effect on children and enhances the possibilities of abuse and neglect.¹⁸⁸

These are only some practices whereby children are abused increasingly day by day. In this modern world, the abusers invent ever new methods to abuse the vulnerable universe of children.

1.4.4 Effects of Child Abuse¹⁸⁹

Consequences and effects of child abuse depend on certain factors. For example, it depends on the age of the child at the time when abuse was occurred and the type of abuse that has happened namely: sexual, physical, emotional and so on. It depends also on the severity and duration of continuity of the abuse. Likewise, the relationship between child and the abuser plays an important role in deciding nature of the consequence of the abuse.

¹⁸⁸ Chopra, Geeta, *Child Rights in India, Challenges and Social Action* (India: Springer, 2015), 166 and 193.

¹⁸⁹ See, Brian Corby, *Child Abuse towards a Knowledge Base* (New York: Open University Press, 2000), 157-177, <https://www.cdc.gov/violenceprevention/childmaltreatment/consequences.html>. Accessed on 05-07-2017. <https://www.frcmo.org/resources/resources-for-professionals/effects-of-child-abuse/>. Accessed on 08-07-2017; <http://bethesda-house.ca/about-abuse/the-effects-of-relationship-abuse-on-children/>. Accessed on 08-07-2017; <https://www.nap.edu/read/2117/chapter/8>. Accessed on 08-07-2017.

1.4.4.1 Physical consequences

Physical effects are such as bones break, bruises or even death in case of severe abuse. It is important that the physical effects may be temporary in nature but the suffering they result may be more painful, rather continues with the life. The most severe physical abuse is the abuse caused head trauma, either it results in death of the child or results in injuries such as bleeding in eye or brain...etc. These injuries are sometimes immediately noticeable and sometimes not. In all cases, it may cause severe and long time bad effects in development, language power, academic abilities and mental health.

1.4.4.2 Psychological consequences

Especially the emotional abuse has very close link with psychological bad effects such as fear, low self esteem, depression, difficulties in relationship with others. In some cases, these consequences continue long life, obviously, depending upon the severity of the abuse. Socially, when these grow up, may show disorders such as inappropriate modeling of adult behavior and aggression.

1.4.4.3 Behavioral consequences

Studies show that more than 50 percent of youth reported for ill-treatment and they are at threat towards an emotional or behavior problem. These problems are for example, delinquency, truancy, grade repetition and substance abuse.

Moreover, child abuse has bad effects on the society. These negative effects may appear in shape of fatalities or in form of a person unable to use his/her natural capabilities to serve the society, instead, he/she become Burdon on the society. According to a study by "Prevent Child Abuse America", child abuse and neglect prevention strategies can save tax payers 104 billion dollars each year.¹⁹⁰

This chapter has asserted that Islam means to surrender to Allāh Al-Mighty. So, no principle and no rule can be made by the human beings at their own. We see here that Islam has been completed by Allāh Exalt before more than fourteen centuries ago. On the other side, child rights are a revolutionary idea in term of International Law. Moreover, duration of the childhood is unsettled area of the law between International and Islamic to some extent. It has also discussed different kinds of the abuses and their long life harmful

¹⁹⁰ www.preventchildabuse.org/about-us-our-mission-a-vision. Accessed on 17-02-2016.

effects on the child and on the society as a whole. The next chapter is deputed to converse the International Law and its role in the prevention of the child abuse.

CHAPTER

TWO

Chapter Two

Prevention of Child Abuse: International Law Scenario

The previous chapter has discussed the basic matters required for the remaining part of this research. This chapter evaluates the International Law regarding prevention of child abuses. Definitely, it has its mainstream role worldwide struggling in this area at the present time. So, it contends on the historical evolution of international instruments which have their concern on the children protection, then, it argues on mechanisms and implementations of the some of the important instruments towards prevention of the child abuse.

2.1 International Law on Child Rights: A Historical Evolution

2.1.1 An Incident before Creation of Documents on Child Rights

Practice of child abuse is very old as the human history but the first ever child abuse case reported in 1873¹⁹¹ whereby a child was ill-treated. Name of

¹⁹¹ It was reported by a humanitarian and church worker Atta Wheeler.

the child was Mary Ellen McCormack aged about six years. She was beaten by her foster mother. Atta Wheeler, a church worker approached Henry Bergh, the founder of “American Society for the Prevention of Cruelty to Animals” for consultation to establish a society for protection of children like the society for animals. After the efforts, a society for the “Prevention of Cruelty to Children” was formed in December 15, 1874. This society was incorporated as “New York Society for the Prevention of Cruelty to Children” on April 27, 1875.¹⁹²

In Britain, The first child cruelty case was brought by the “Royal Society for the Prevention of Cruelty to Animals” (RSPCA). The court charge list described the affected child as "a small animal". Actually, there was no law in Britain to shield children from ill-treatment. After that “London Society for the Prevention of Cruelty to Children” was founded by Benjamin Waugh in 1884. After five years of efforts by the society, the Parliament passed first ever UK Law to protect children from abuse and neglect in 1889. The society was renamed as “National Society for the Prevention of

¹⁹² <http://www.americanhumane.org/about-us/who-we-are/history/story-of-mary-ellen.html>; See also https://en.wikipedia.org/wiki/New_York_Society_for_the_Prevention_of_Cruelty_to_Children. Accessed on 09-03-2016. New York Society for the Prevention of Cruelty to Children runs different programs nowadays. The important programs include trauma recovery for both children abused and the child welfare officers, professional training programs, identifying and reporting the abuse...etc.

Cruelty to Children” in 1889 due to its being nationwide. In 1895, it was granted Royal Charter.¹⁹³

2.1.2 General Documents on Human Rights¹⁹⁴

In this century, the formation of the United Nation is considered a milestone in our history. Its charter states that all have right to:

“due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses.”¹⁹⁵

In Paris on December 10, 1948, a “Universal Declaration of Human Rights”¹⁹⁶ was adopted¹⁹⁷ by the United Nations General assembly by the vote of forty eight in favor, none opposed with eight abstentions.

¹⁹³

http://www.bushywood.com/bunny_boilers/NSPCC_national_society_for_prevention_of_cruelty_to_children.htm; <http://www.liverpoolpicturebook.com/2012/04/liverpool-and-nsfcc.html>. All Accessed on 09-03-2016.

¹⁹⁴ Magna Carta 1215 (the Great Law) is considered by the western jurisprudence as the first law on the rights; a charter for the individual and political liberty. It is established by the King John of England on June 15, 1215. It consists of Preamble and 63 clauses. See, *International Encyclopedia of Human Rights*, p. 231; also <http://www.constitution.org/eng/magnacar.htm>. Accessed on 18-05-2017.

¹⁹⁵ UN Charter, Article 73 (a).

¹⁹⁶ It was taken up at the first session of the UN General Assembly in 1946 and was adopted by UN General Assembly in resolution 217 A (III), December 10, 1948, Paris. It consists of preamble and 30 articles elaborated in its subsequent human rights instruments, international treaties and national laws. It is a first document of human rights for all mankind expressed by the global nations in this era. See

The UDHR is not a binding international human rights law. It is considered customary international law by many legal scholars. However, it has been become and remained as commanding human rights position.¹⁹⁸ It has granted the foundation of following international human rights instruments. So, ultimately it is considered as authoritative international law on human rights.¹⁹⁹

The preamble of UDHR says:

“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world...”²⁰⁰

It proclaimed that the UDHR serves “as a common standard of achievement for all peoples and all nations ...”²⁰¹ It includes also historical words when it says: “All human beings are born free and equal in dignity

<http://www.un.org/en/sections/universal-declaration/history-document/>. Accessed on 06-03-2016.

¹⁹⁷ At present, December 10 is observed as internationally Human Rights Day.

¹⁹⁸ UDHR, International Covenant on Civil and Political Rights 1966, (along with its two Optional Protocols on Complaint System by an individual 1966 and on abolition of Death Penalty 1989), and the International Covenant on Economic, Social and Cultural Rights 1966, are considered collectively as International Bill of Rights. See, *International Encyclopedia of Human Rights*, p. 189.

¹⁹⁹ Ibid. p. 352; see also, <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>. Accessed on 20-01-2016.

²⁰⁰ <http://www.un.org/en/universal-declaration-human-rights/>. Last accessed on 12-09-2014. This is first para of the Preamble. It seem here that the western world recognizes human rights in 1948, but in Islam, the second *Khalifah* 'Umar (RAA) told a historical world: "استعبدتم الناس وقد ولدتهم أمهاتهم أحرارا" , see, Al-'umrī, 'abd al-'azīz, *al-Wilāyah 'la al-Buldān fī 'aṣr al-Khulafā al-Rāshidīn* (Riyadh: Dār Ishbīliyah, 2001), p 110.

²⁰¹ Seventh para of the preamble.

and rights ...”²⁰² Moreover, one of the proclamations of this Declaration is that “motherhood and childhood are entitled to special care and assistance.”²⁰³ Furthermore, it includes a general rule that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”²⁰⁴

The American Convention on Human Rights 1969²⁰⁵ recognizes many rights for the children. For example, it recognizes very important right that the “parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.”²⁰⁶ Another article suggests that the freedom of expression shall be subject by law to censorship for the purpose of regulation and keeping morality of childhood intact.²⁰⁷ In case of dissolution of spouse, the decision about their children must be “made for the necessary protection of any children solely on the basis of their own best interests.”²⁰⁸

²⁰² UDHR, Article 1.

²⁰³ UDHR. Article 25(2).

²⁰⁴ UDHR. Article 5. See also, “Differences between the ACRWC and the CRC”, p. 152.

²⁰⁵ Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica on November 22, 1969 and came into force on July 18, 1978. See <http://www.cidh.org/Basicos/English/Basic3.American%20Convention.htm>. Accessed on 17-05-2017.

²⁰⁶ Article 12(4).

²⁰⁷ Article 13(4).

²⁰⁸ Article 17(4).

Necessary measures shall be taken for protection of the children by their family, society and the state.²⁰⁹

Geneva Conventions of 1949²¹⁰ was adopted on August 12, 1949 by International Committee of the Red Cross. The Convention entered into force on October 21, 1950. It has also pointed out and talked about measures for special welfare of mother with infants and the children especially under fifteen of age in situations of wars and conflicts. It provides that children in those situations shall be under maximum level of care e.g. their education, health, parentage should be secured.²¹¹

Optional Protocol-I to the Geneva Conventions 1949 restricts the states to use of children under the age of fifteen in direct part of international armed

²⁰⁹ Article 19. However, the present reality in the western countries, especially, it is very difficult to protection of children by the family, because the parents do the work for the whole day and leave their children to others.

²¹⁰ The first Geneva Convention about humanitarian law established in 1864, then 1906, 1929. In an effort to avoid the crimes of wars like Second World War, four new conventions were adopted on August 12, 1949 and entered into force on October 21, 1950. The first one of them is for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. The second is for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. The third is relative to the Treatment of Prisoners of War. The fourth is relative to the Protection of Civilian Persons in Time of War.

See International Committee of Red Cross, The Geneva Conventions August 12, 1949; also see, *International Encyclopedia of Human Rights*, p. 152. https://en.wikipedia.org/wiki/Geneva_Conventions. Accessed on 20-05-2017.

²¹¹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War. August 12, 1949. See articles, 24, 38, 50, 132, Geneva Convention on Treatment of Prisoners of War, Annex-I (I-B-7).

conflict.²¹² Also, requires the states to give priority to elders among the children among fifteen to eighteen years of age while recruiting.²¹³ Likewise, Optional Protocol-II to the Geneva Conventions 1949 prohibits the states to use the children under the age of fifteen in any manner in non-international conflicts.²¹⁴

A more significant words for the protection of children has been provided by International Covenant on Economic, Social and Cultural Rights,²¹⁵ which stated :

“Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.”²¹⁶

²¹² Optional Protocol-I to the Geneva Conventions 1949, Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977. Article 77.

²¹³ Ibid.

²¹⁴ Optional Protocol-II to the Geneva Conventions 1949, Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977. Article 4.

²¹⁵ International Covenant on Economic, Social and Cultural Rights , was adopted and opened for signature, ratification and accession by UN General Assembly in resolution 2200A (XXI), December 16, 1966. Its entry into force was on January 3. 1976.

²¹⁶ International Covenant on Economic, Social and Cultural Rights. Article 10 (3).

International Covenant on Civil and Political Rights²¹⁷ also takes part in protecting the child. In this regard it provides “religious and moral education of their children in conformity with their own convictions.”²¹⁸ It makes it necessary on the family, society and state to take proper measures to protect the children.²¹⁹

Keeping in view the trafficking of persons for the purpose of prostitution, General Assembly of the United Nations approved Convention of the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others.²²⁰ Although this is a general convention but recognizing the vulnerability of the children; male and female, they are

²¹⁷ International Covenant on Civil and Political Rights, Adopted by UN General Assembly on 16-12-1966, and entered into force on 23-03-1976. Civil rights are simply attached to the people as they are people e.g. freedom of action and right to pursue the plan of the life. Political right occurs when a person lives in an organized state or locality e.g. right to vote or participate in politics which affect the policies of the government. See, Mark Tushnet, *Civil Rights and Social Rights: The Future of the Reconstruction Amendments*, Loy. L.A. L. Rev 25 (1992): 1207. Available at <http://digitalcommons.lmu.edu/llr/vol25/iss4/6>. Accessed on 17-05-2017.

²¹⁸ International Covenant on Civil and Political Rights. Article 18.

²¹⁹ Ibid. Article 24.

²²⁰ Approved by UN General Assembly in resolution No. 317 (IV) on December 2, 1949 and entered into force on July 25, 1951. See, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TrafficInPersons.aspx>. Accessed on 21-05-2017. There were international agreement to address the issue prepared in 1904, 1910, 1921 and 1933. The Leagues of Nations in 1937, prepared a draft agreement collective of all the four agreement aforementioned but at the event of outbreak of the World War II it was delayed. Then after the establishment of the United Nations, on the requested of Economic and Social Council (ECOSOC) a draft was prepared in 1948 and adopted as a “Convention of the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others” in 1949. It was actually a unified convention containing all the rules of four previous international agreements. See *International Encyclopedia of Human Rights*, p. 61.

specifically mentioned while talking about the measures necessary for protection of the human beings.²²¹

Convention on the Elimination of all Forms of Discrimination against Women²²² (CEDAW) talks basically about the equality of rights between men and women. With relation to children, it tells about equal rights of spouse with regard to maternity education for upbringing and well being of the child.²²³ Further, while providing equal rights to the spouses to work, it emphasizes to establish child care facilities.²²⁴ Moreover, it highlights that a specific minimum age for betrothal and marriage has to be fixed under which the marriage shall have no legal effect.²²⁵

Recognizing the wars and the hatred among the society and states on the basis of beliefs which also result into foreign interference in states,²²⁶ the UN General Assembly Has adopted the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief.²²⁷ According to the Declaration, the family is free for education

²²¹ Article 17 and 20.

²²² It was adopted by UN General Assembly in resolution 34/180 on December 18, 1979 and entered into force on September 3, 1981.

²²³ Article 5(b).

²²⁴ Article 11(2)(c).

²²⁵ Article 16(2).

²²⁶ Preamble, paragraph 3.

²²⁷ UN General Assembly, A/RES/36/55, Passed on November 25, 1981.

according to his concise. Also, they can educate their children their religion, morals and way of life according to it.²²⁸

2.1.3 Documents on child rights and abuse

Eglantyne Jebb,²²⁹ the founder of Save the Children International Union drafted “World Child Welfare Charter” in February 23, 1923, at Geneva. On September 26, 1924, it was endorsed and adopted by the then League of Nations General assembly with the name of “Declaration of the Rights of the Child 1924” or “Declaration of Geneva” as known later on.²³⁰ Along with emphasize on provision of best to the children beyond any kind of discrimination, this Declaration specifically stress on the protection of them against every form of exploitation. The Declaration contented:

1. “The child must be given the means requisite for its normal development, both materially and spiritually.

²²⁸ Article 5(1) & (2).

²²⁹ She was born in 1876 in Ellesmere, Shropshire - England. Her family had a strong social Conscience. The proof is that her mother Eglantyne Louisa Jebb was founder of Home Arts and Industrial Association. Likewise, her sister, Louisa would help found the Women’s Land Army in World War-I. Eglantyne Jebb studied history at Lady Margaret Hall, Oxford. At start she was primary school teacher but soon she was convinced that it was not her profession. Then she became a member in Charity Organization Society. Also, she published a book “Cambridge, a study in social questions” in 1906. In the year 1920, she founded International Save the Children International Union (SCIU) in Geneva. See <http://www.creatingmycambridge.com/history-stories/eglantyne-jebb/>. Accessed on 28-09-2016.

²³⁰ *International Encyclopedia of Human Rights*, p. 43; also see, www1.umn.edu/humanrts/instreet/childrights.html. Last Accessed on 28-09-2016.

2. The child that is hungry must be fed, the child that is sick must be nursed, the child that is backward must be helped, the delinquent child must be reclaimed, and the orphan and the waif must be sheltered and succored.
3. The child must be the first to receive relief in times of distress.
4. The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation.
5. The child must be brought up in the consciousness that its talents must be devoted to the service of its fellow men.”²³¹

Regardless of its being five sections only, it is considered base for all subsequent international documents on the child rights.

After the Second World War and establishment of United Nations in 1945, Save the Children International Union was merged into International Union of Child Welfare in 1946.²³² This group did efforts for adoption and international recognition of Declaration of Geneva 1924 by the United Nations. In 1948, a revised text of Declaration of Geneva was accepted by adding two sections to the original document of five sections. These newly added sections were:

²³¹ www1.umn.edu/humanrts/instreet/childrights.html. Last Accessed on 28-09-2016.

²³²

https://www.revolvy.com/main/index.php?s=International%20Save%20the%20Children%20Union&item_type=topic. Last Accessed on 08/05/2009.

- “The child must be protected beyond and above all considerations of race, nationality and creed.

(This principle of non-discrimination, originally mentioned in the preamble, had received prime importance after the beastly slaughtering of children on racist grounds during the Second World War).

- The child must be cared with due respect for the family as an entity.”²³³

The United Nations General Assembly in 1959 adopted Declaration of the Rights of the Child²³⁴. At this time it was its own declaration with ten principles. Although it was not binding instrument²³⁵ but it stated the following admirable words:

“...the child by reason of his physical and mental immaturity, needs special safeguards

²³³ Philip E. Veerman, *The Rights of the Child and the Changing Image of Childhood*. (Martinus Nij Hoff Publishers, 1992), 161, quoted at, http://books.google.com.pk/books?id=2zvayKFKkgoC&pg=PA161&lpq=PA161&dq=with+due+respect+for+the+family+as+an+entity&source=bl&ots=4_z2_6ojWj&sig=gtGueIBfp7Uf5bQA414EllW6dQ&hl=en&ei=3IIFSvSALdirtgeI_tmMBw&sa=X&oi=book_result&ct=result&resnum=6#PPA160,M1. Accessed on 28-09-2016. See also, https://en.wikipedia.org/wiki/Declaration_of_the_Rights_of_the_Child#cite_ref-3. Last Accessed on 15-03-2017.

²³⁴ It was adopted in United Nations General Assembly Resolution 1386, session 14 on November 20, 1959.

²³⁵ Susan, W. Tiefenbrun, “Child Soldiers, Slavery and the Trafficking of the Children”, *California, Legal Studies Research Paper* No. 1020341 (October 2007): p. 26, <http://ssrn.com/abstract=1020341>. [hereinafter referred to as “Child Soldiers, Slavery and the Trafficking of the Children”].

and care, including appropriate legal protection, before as well as after his birth”.²³⁶

The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.²³⁷

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.”²³⁸

Moreover, it also prohibits the employment of child under the proper minimum age or any occupation that prejudice to his health, education or his development.²³⁹ Further, it is very important to change the following words, ‘the must be given’ in Declaration of Geneva 1924 to the words, ‘the child shall enjoy all the rights’.²⁴⁰ This is a proof that in the treatment of children from being a persuasion to its entitlement of rights.²⁴¹ This declaration open the way for the upcoming Convention. Rather, the Declaration of 1959 is considered the foundation of CRC and ACRWC.

²³⁶ Declaration of the Rights of the Child 1959, Preamble. Islamic law also provides that unborn child has rights - subject to his birth alive – but he has no corresponding obligation. For detail see (4.3) first chapter.

²³⁷ Declaration of the Rights of the Child 1959. Principle, 09.

²³⁸ Ibid. Principle, 02.

²³⁹ Ibid. Principle 09.

²⁴⁰ Declaration of the Rights of the Child, principle 1.

²⁴¹ Differences between the ACRWC and the CRC”, p. 146.

All this background helped in adoption of the existing United Nations Convention on the Rights of the Child in 1989, hereinafter referred to as CRC.²⁴² The convention has three protocols. One of them is on involvement of children in armed conflict. The second is on sale of children, child prostitution and child pornography. These two were adopted on May 25, 2000 and came into force on February 12, 2002 and January 18, 2002 respectively.²⁴³ The third protocol is on communication procedure which was adopted on December 19, 2011 and came into force on April 14, 2014.²⁴⁴

In the same month when CRC came effective, a United Nations World Summit for Children which set plan or goals to be reached by the year 2000. The Summit adopted World Declaration and Plan of Action on the Survival, Protection and Development of Children.²⁴⁵ These goals were

²⁴² Convention on the Rights of the Child was adopted by the UN General Assembly on November 20, 1989 and entered into force on September 2, 1990.

²⁴³ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx>; <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>. Accessed on 13-03-2016.

²⁴⁴ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPICCRC.aspx>. Accessed on 12-08-2016.

²⁴⁵ <http://www.un.org/geninfo/bp/child.html>. Accessed on 07-07-2017.

focusing on e.g. education, health, provision of water and decrease in the infant mortality.²⁴⁶

Declaration on the Protection of Women and Children in Emergency and Armed Conflict²⁴⁷ was preceded by Geneva Conventions²⁴⁸ which provided the General Principles regarding international humanitarian law for the purpose to secure civilians during armed conflicts.²⁴⁹ This Declaration highlights the protection that should be given to the women and children especially due to their vulnerability.²⁵⁰ It demands to ensure that they should be provided the food, shelter and medical care and rights. The use of chemical and bacteriological weapons in wars shall be heavily condemned because it ruins the civil society as a whole especially the defenseless women and children; they should also be separated from ravage of wars. They must not be treated with degrading and violence.²⁵¹

²⁴⁶ It was held in UN Headquarters, New York, on September 29-30, 1990. It was held on the proposal of Canadian Prime Minister Brian Mulroney in 1989. See, <https://www.unicef.org/wsc/>. Accessed on 22-05-2017; <http://www.un.org/geninfo/bp/child.html>. Accessed on 22-05-2017.

²⁴⁷ It was adopted by UN General Assembly in resolution No. 3318 on December 14, 1974. It was adopted after the recommendation of Economic and Social Council in its resolution No. 1861 on May 16, 1974.

²⁴⁸ Especially, the Geneva Conventions of 1925 and 1949.

²⁴⁹ It is strange that UN issues declarations and conventions but apparently has not any power to act unbiased to stop the international interventions and wars. In some areas it does its roles and other areas it does not.

²⁵⁰ Paragraph 1.

²⁵¹ Paragraph 2 and 4.

Organization of African Unity has already adopted a declaration named as “Declaration on the Rights and Welfare of the African Child” in 1979.²⁵² Nearly a year after adoption of CRC, African Charter on the Rights and Welfare of the Child (ACRWC) was adopted in 1990, by the then Organization of African Unity, now it is African Union. The Charter came into force on November 29, 1999.²⁵³

In Africa, problem of utilizing children in armed conflicts was astonished most of states in Africa. This was especially recognized in Maputo Declaration on the Use of Children as Soldiers, held in Maputo, Mozambique, from 19-22 April 1999.²⁵⁴

Recalling the UDHR and the Declaration on the Right of the Child 1959, a further declaration has been adopted by the UN General Assembly i.e. Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children with Special Reference to Foster Placement and

²⁵² It was adopted in Monrovia, Liberia by OAU at the sixteenth ordinary session on July 17-19, 1979. (AHG/ST.4 Rev.1)

²⁵³ It was adopted on July 1, 1990 in Addis Ababa, Athiopia, and entered into force on November 29, 1999. See, *International Encyclopedia of Human Rights*, p. 5; <https://www.au.int/web/en/treaties/african-charter-rights-and-welfare-child>. Accessed on 20-05-2017; <http://www.who.int/hhr/African%20Child%20Charter.pdf>. Last Accessed on 16-02-2017.

²⁵⁴ See https://www.essex.ac.uk/armedcon/story_id/MAPUTO%20AFRICAN%20CONFERENCE%20ON%20THE%20USE%20OF%20CHILDREN%20AS%20SOLDIERS.pdf. Last accessed on 18-05-2017.

Adoption Nationally and Internationally,²⁵⁵ which calls for establishment of policy and useful supervision and especially protection of children in case of nationally and internationally adoption. Moreover, in case of internationally adoption, safe measure should be taken by the states to prevent them from abduction and like evils.

Convention Concerning Minimum Age for Admission to Employment (138)²⁵⁶ declares that state parties to this convention shall pursue to prepare national policy to end the child labour and to set minimum age for admission in the work.²⁵⁷ Further, it says that the prohibited child labour does not include the work for the purpose of training e.g. in vocational centers or in schools.²⁵⁸

Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (No. 182)²⁵⁹ is especially concerning the elimination of child labour and tells that this elimination is matter of urgency.²⁶⁰ In harmony with the convention, types of child labour

²⁵⁵ Adopted on December 3, 1986. A/RES/41/85.

²⁵⁶ It has been adopted in 58th Session of International Labour Conference, Geneva, on June 26, 1973 and entered into force on June 19, 1976.

²⁵⁷ Article 1.

²⁵⁸ Article 6.

²⁵⁹ It has been Adopted in 87th session of International Labor Organization, Geneva, on June 17, 1999 and entered into force on November 19, 2000.

²⁶⁰ ILO 182, Article 1.

include sale & trafficking, slavery, compulsory labour, use of children for the purpose of prostitution or pornography. Generally, any work hazardous to children health, safety or morals is considered worst form of child labour.²⁶¹

In 2000, Protocol to Prevent, Suppress and Punish Trafficking in Person, especially Women and Children²⁶² was adopted by UN General Assembly. It talks about the meaning of trafficking as it includes recruitment, transportation, transfer, harboring or receipt of person especially children for any purpose such as sexual exploitation, forced labor, services or for any kind of exploitation.²⁶³ Likewise, it talks about the mechanism how to control these kinds of crimes.

In the summit of South Asia Association of Regional Cooperation (SAARC) in Kathmandu, on January 05, 2002, two conventions have been passed on the child issues. One is SAARC Convention on the Regional Arrangements for the Promotion of Child Welfare in South Asia. The

²⁶¹ ILO 182, Article 3.

²⁶² Protocol to Prevent, Suppress and Punish Trafficking in Person, especially Women and Children, is supplementing the United Nations Convention Against Transnational Organized Crime. It was adopted and opened for signature and ratification by the General Assembly resolution No. 55/25, on November 15, 2000 and entered into force on December 25, 2003.

²⁶³ Article 3.

second is SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution.²⁶⁴

In May 10, 2002 another resolution named as “A World Fit for Children” was adopted by the General Assembly of the United Nations. It also contains rights of children and reaffirms the commitment to make the world fit for children.²⁶⁵ Moreover, it describes also the mechanisms for rights of the children and their protection from abuse.

Besides, there are unaccountable regional legislations in many countries and a long list of non government organization working for children across the world.

On the recommendation of the seventh UN Congress which was held on the Prevention of Crime and the Treatment of Offenders,²⁶⁶ the General Assembly adopted the Standard Minimum Rules for the Administration of the Juvenile Justice, on the same day.²⁶⁷ Then, on the Eighth UN

²⁶⁴ The South Asian Report, on the Child-Friendliness of Government, 2013, p. 13. Available at <http://www.civilsocietyasia.org/uploads/resources/66/attachment/The%20South%20Asia%20Report.pdf>. Accessed on 09-03-2017 [hereinafter referred to as The South Asian Report 2013]; See also, <http://www.saarc-sec.org/userfiles/conv-children.pdf>; <http://www.saarc-sec.org/userfiles/conv-traffiking.pdf>. Accessed on 10-03-2017.

²⁶⁵ A/RES/S-27/2.

²⁶⁶ A/RES/40/32, held on November 29, 1985.

²⁶⁷Resolution No. 40/33, held on November 29, 1985. It was called “Beijing Rules”.

Congress,²⁶⁸ the General Assembly adopted two Documents on the same subject i.e. the Juvenile Justice on the same day. One was Guidelines for the Prevention of Juvenile Delinquency.²⁶⁹ It persuades the governments at first to keep young people away from imprisonment. The second was Rules for the Protection of Juvenile Deprived of Their Liberty.²⁷⁰ It provided standards reference for encouragement, direction and management for professional engaged in the juvenile justice.

Vienna Declaration and Programme of Action was adopted by the World Conference on Human Rights.²⁷¹ The UN had prepared agenda for the Conference to evaluate its effects and financial resources to uphold the matter of human rights.²⁷² It was an analysis of human rights machinery and mechanism for the protection of human rights. It declares that girl-child is entitled to inalienable universal human rights.²⁷³ It highlighted the role of UN agencies like UN Children's Funds and non government organization in implementation of human rights and set a goal to achieve universal

²⁶⁸ A/RES/45/121, held on the December 14, 1990.

²⁶⁹ A/RES/45/112, held on the December 14, 1990. It was called "Riyadh Guidelines".

²⁷⁰ A/RES/45/113, held on the December 14, 1990.

²⁷¹ Held in Vienna (Capital of Austria) on June 25, 1993. Then endorsed by the General Assembly in December 1993.

²⁷² This Conference was attended by almost seven thousands people containing 171 national governments, non governmental institutions and the UN agencies.

²⁷³ Paragraphs, I-(18) & (21), II-49.

ratification of CRC by 1995.²⁷⁴ Further, it emphasized that each state should use its all resources to end the violations and the cooperation should also be needed to end all kinds of child abuse.²⁷⁵

2.2 Mechanism and implementation of the Documents to Prevent Child Abuse

2.2.1 The United Nations

The United Nations was established by a treaty in 1945,²⁷⁶ therefore it is an International Organization. Its establishment was for the purpose of keeping peace and promotion of the human rights among all the world's nations.²⁷⁷ Presently, almost 189 countries are members of the United Nations. The major divisions of the United Nations are the General Assembly, Security Council, Economic and Social Council, Trusteeship Council, International Court of Justice and the Secretariat.²⁷⁸

²⁷⁴ Till date almost 196 states ratified CRC. USA has just signed but not ratified it. See, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en. Accessed on 30-05-2017.

²⁷⁵ See Paragraphs 45-53.

²⁷⁶ It is successor of League of Nations. It was established in 1920 and dissolved in 1946.

²⁷⁷ It was after the unfortunate incidence of World War II.

²⁷⁸ <http://www.un.org/en/sections/about-un/main-organs/>. Accessed on 05-07-2017. See also, *International Encyclopedia of Human Rights*, p. 348.

Present human right regime is centered on the United Nations. The United Nations began with the most important international document i.e. Universal Declaration of Human Rights (UDHR) in 1948. All the afterwards international declarations and conventions are in fact explanations of UDHR.²⁷⁹

The authority under obligation to implement the rules provided in UDHR and subsequent international documents is the United Nations Human Rights Council preceded by Commission on the Human Right. Actually, Vienna Declaration and Programme of Action were adopted by The United Nations General Assembly in 1993. This declaration established the United Nations High Commissioner for Human Rights. Later on, in 2006, the Commission was replaced with the United Nations Human Rights Council for the enforcement of international human rights law.²⁸⁰ Many of the human rights agencies and NGOs take part in the children rights matter. Two of them are mentioned in the following.

²⁷⁹ Ibid. p. 347.

²⁸⁰ Donnelly, Jack, *Universal Human Rights in Theory and Practice* (USA: Cornell University Press, 2013), 162. [hereinafter referred to as *Universal Human Rights in Theory and Practice*].

2.2.1.1 United Nations Children's Fund (UNICEF)

UNICEF was established by the UN General Assembly in 1946. It was created solely for the welfare of the children. Its headquarter is situated in New York City. It works within UN system for children's rights and help them to get their basic needs and opportunity for their better life. Especially, it works for the developing countries in term of safe water, sanitation, health care and basic education. Also, it provides help for children in event of emergency situations, advocates different matters concerning children and work also for fund raising. As far as their offices are concerned, they have eight regional offices²⁸¹ and 125 country offices. Primarily, it considers its job to work to implement the CRC 1989. Moreover, it emphasizes on the equal rights of the girls and the women in their social, economical and political rights and prevents the child labour. Additionally, the organs and the human rights agencies also help each other

²⁸¹ The regional areas are: Central and Eastern Europe and the Commonwealth of Independent States, Middle East and North Africa, East Asia and the Pacific, South Asia, Eastern and Southern Africa, UNICEF's National Committee countries, Latin America and Caribbean and West and Central Africa.

in this regard, like ECOSOC and WHO. Furthermore is that UNICEF also, deal with the NGO's in this regard.²⁸²

2.2.1.2 Human Rights Watch

The Human Rights Watch²⁸³ is a non-government Organization, an American based group for the human rights. It works for monitoring and reporting and put their share to end the abuses human beings face. Its headquarters is placed in New York City and works worldwide. However, they provide help ending the abuses though out the N. Africa, Africa, Asia, Central Asia, Americas, Middle East and Europe. It seems that its more focus is on the armed conflict; children assault, their exploitation, the attack children face in their schools and many people so they can easily grow for well being in future.²⁸⁴

²⁸² See <https://www.unicef.org>. Accessed on 05-07-2017. <https://www.unicef.org/specialsession/ngo/partners.htm>. Accessed on 05-07-2017. Also, *International Encyclopedia of Human Rights*, p. 349.

²⁸³ It was founded in 1978 with the name Helsinki Watch. After the increasing change in the 1980s in terms of Asia Watch and Africa Watch and so on, it was changed into "The Watch Committees", then adopted the inclusive name as "Human Rights Watch" in 1988.

²⁸⁴ <https://www.hrw.org/topic/childrens-rights>. Accessed on 05-07-2017; <https://www.hrw.org/regions>. Accessed on 05-07-2017. https://en.wikipedia.org/wiki/Human_Rights_Watch. Accessed on 05-07-2017; *International Encyclopedia of Human Rights*, p. 172.

2.2.2 Convention on the Rights of the Child 1989

The Start of CRC²⁸⁵ is very important because it makes clear that its origin is the Charter of the United Nations. It says:

“Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”²⁸⁶

CRC 1989 is an international convention concerns with children rights. It explains the rights provided in other international documents in a comprehensive manner, likewise, it sets out the social, cultural, civil, health, political and economic rights of the children. Moreover, it is internationally binding document. According to Udombana, it is a shift in world’s thinking about child and its fundamental rights.²⁸⁷ It is considered as a big leap

²⁸⁵ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>. Last accessed on 03-04-2015.

²⁸⁶ CRC, preamble (para 1).

²⁸⁷ Nsongurua J. Udombana, *War is Not Child’s Play! International Law and the Prohibition of Children’s Involvement in Armed Conflicts*, vol. 20 (USA: Temple International and Comparative Law Journal, 2006), p. 79. Quoted in “Child Soldiers, Slavery and the Trafficking of the Children”, p. 27.

because it recognized the children as subject of rights rather object to be protected.²⁸⁸

The year 1979 was celebrated as International Year of the Child. Taking into account the verse situation of children in the world, the government of Poland prepared and submitted a draft convention in this concern. A working group was set up under the umbrella of United Nations Commission on Human Rights and was formed of government delegates, representatives of United Nations bodies²⁸⁹ and a number of NGOs. The first draft by Poland was reviewed and amended. The final draft of the Convention on the Rights of the Child was unanimously adopted and opened for signature by the United Nations General Assembly in Resolution 25 session 44 on November 20, 1989.²⁹⁰ After its ratification by twenty countries; the required number, it came into force on September 2, 1990. Unprecedentedly, 196 countries are partly to the Convention including every member of the United Nations but surprisingly, United

²⁸⁸ The South Asian Report 2013, p. 8.

²⁸⁹ The relevant human rights bodies are e.g. Human Rights Committee; Committee on the Elimination of Racial Discrimination; Committee on Economic, Social and Culture Rights; Committee on the Elimination of Discrimination against Women; Committee Against Torture; Committee on the Rights of the Child. See, *The Rights of the Child, Fact Sheet No. 10 (Rev. 1)*, (World Campaign for Human Rights, United Nations), p. 7, [hereinafter referred to as *Fact Sheet No. 10*]

²⁹⁰ Nyazee, Imran Ahsan, *Islamic Law and the CRC* (Islamabad: International Islamic University, 2003), 73-74, [hereinafter referred to as *Islamic Law and the CRC*].

States, in the era of Clinton's administration, has signed it in February, 1995 but not ratified²⁹¹ the convention. Actually the convention has not been submitted to senate of United States for ratification by any one of its Presidents.²⁹² It is surprising because United States department in the Bush administration was active in the process of drafting of the Convention to the extent that several articles of the Conventions were inserted based on American Law. Moreover, there was no objection by the United States ambassador in discussion on the Convention in the General Assembly, rather, United Nations World Summit for Children 1990 has been attended

²⁹¹ Signature of a treaty means that the state preliminary endorsement the document but the intention to examine it domestically. It makes the state under no legal obligation except to refrain from engaging in any act not in conformity with the treaty. After the requirement if the state wants to become legally bound by the terms of the treaty, it submits the instrument of ratification to the United Nations Secretary General. Another way to become legally bound by a treaty is through accession. In accession, the state follows its domestic approval procedure and decides to submit instrument of accession to the United Nations Secretary General, thus, becoming party to the international human rights treaty. See, www.unicef.org/crc/files/Definitions.pdf. Accessed on 16-10-2016.

²⁹² https://en.wikipedia.org/wiki/Convention_on_the_Rights_of_the_Child. Accessed on 04-09-2016. the Clinton and the subsequent presidents of United States could not submit it to senate for ratification due to strong opposition on the basis that CRC conflicts with the local laws of United States regarding privacy and family. At the time of presidential election campaign 2008, Barack Obama has described United States failure to ratify the CRC as "embarrassing" and promised to review the issue but he did not. See Luisa Blanchfield, *The Convention on the Rights of the Child*, Congressional Research Service, Report for Congress (April 1, 2013); and https://en.wikipedia.org/wiki/U.S._ratification_of_the_Convention_on_the_Rights_of_the_Child. Accessed on 04-09-2016.

by the then President Bush. Actually, the conservatives of United States opposed the ratification of the Convention.²⁹³

2.2.2.1 Four General principles of CRC²⁹⁴

1. All rights recognized for all children without discrimination.²⁹⁵
2. The primary consideration is the best interest of the child.²⁹⁶
3. All the children have rights to survival and development.²⁹⁷
4. Due respect shall be given to children views according to their majority. They should be heard in all matters affecting them.²⁹⁸

2.2.2.2 Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (Protocol on Armed Conflict)

It is an instrument which especially addresses the matter of children soldiers; compulsory and voluntary recruitments and more than all their direct part in hostilities and conflict. This protocol on the Armed Conflict

²⁹³ *Islamic Law and the CRC*, p. 81-82.

²⁹⁴ <http://capacity4dev.ec.europa.eu/sites/default/learning/Child-rights/2.7.html>. Accessed on 06-10-2016; *Child Rights Governance, Analysis Tool*, Save the Children (2012), p. 11, [hereinafter referred to as *Child Rights Governance 2012*].

²⁹⁵ CRC. Art. 2.

²⁹⁶ CRC. Art. 3.

²⁹⁷ CRC. Art. 6.

²⁹⁸ CRC. Art. 12.

has risen the minimum age for children who forcibly or voluntarily take part in the direct hostilities from fifteen (as set by the CRC) to eighteen years.²⁹⁹

It is permitted by the Protocol on the Armed Conflict for the states that wants voluntarily recruitment of children into their armed forces subject to certain conditions. Firstly, it should be voluntary in reality. Secondly, it should be with the consent of their legal guardians. Thirdly, the child should be informed of the services they have to render in the service. Fourthly, to confirm child's age from reliable sources.³⁰⁰

2.2.2.3 Optional Protocol to the CRC on the Sale of Children, Prostitution, and Pornography (Protocol on Sale of Children)

It defines the sale of children as “any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.”³⁰¹ This sale is a comprehensive term to include

²⁹⁹ Art. 1 and 4(1) of the Protocol on the Armed Conflict. See also, Michael J. Dennis, *Newly Adopted Protocols to the Convention on the Rights of the Child*, (American Journal of International Law, 2000), p. 789 quoted in “Child Soldiers, Slavery and the Trafficking of the Children”, p. 30.

³⁰⁰ Art. 2-3

³⁰¹ Art. 2(a).

a sale for any purpose e.g. the abduction and use as soldiers.³⁰² It also defines the prostitution as “use of a child in sexual activities for remuneration or any other form of consideration.”³⁰³ Further, pornography has been defined as “any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.”³⁰⁴ The Protocol on Sale of Children tries to punish this crime within cooperative mechanism and make this sale of children as extraditable crime.³⁰⁵

2.2.2.4 Optional Protocol to the CRC on Communication Procedure

This protocol is basically a complaint mechanism which provides a way that a child, a group of them or their representatives can lodge a complaint against violation of their rights³⁰⁶ to the Committee on the Rights of the Child; especially, where the remedy is not available for them in their own country in the matters of two earlier protocols; child’s sale, its prostitution

³⁰² “Child Soldiers, Slavery and the Trafficking of the Children”, p. 34.

³⁰³ Art. 2(b).

³⁰⁴ Art. 2(c).

“Child Soldiers, Slavery and the Trafficking of the Children”, p. 34.

³⁰⁶ Preamble, Para 6.

and pornography and their use in armed conflict.³⁰⁷ There was a need of this Protocol because the complaint mechanism is not included in the original text of CRC. In the case of any complaint the Committee will have the right to investigate the case even involving the concerned state party.³⁰⁸

2.2.2.5 Child Protection

Provisions of CRC indicate the obligation on the states parties to protect the children from all that is prejudice to the welfare of children.³⁰⁹ The children shall have the right to be protected from all kinds of violence, abuse, exploitation, neglect or maltreatment by the parent, guardian or someone outsider.³¹⁰ In this regards, the states parties are under obligation to “take all appropriate legislative, administrative, social and educational measures to protect the child”³¹¹ and implement all rights of children provided by CRC.³¹² These measures include necessary support, social

³⁰⁷ Art. 11.

³⁰⁸ https://www.unicef.org/crc/index_protocols.html. Accessed on 01-07-2017.
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14503>.
Accessed on 01-07-2017.
https://www.childrensrights.ie/sites/default/files/information_sheets/files/BriefingNoteCRC3rdOptProtocol170914.pdf. Accessed on 01-07-2017.

³⁰⁹ CRC. Art. 36.

³¹⁰ CRC. Art. 19 (1).

³¹¹ CRC. Art. 19 (1).

³¹² CRC. Art. 4.

programs and other preventive measures such as reporting, investigation, judicial involvement and treatment.³¹³

However, the responsibility depends on capacity, resources and international cooperation of the states parties.³¹⁴ Moreover, children victim of the negligence, exploitation, abuse, torture...etc. should be rehabilitated in an environment of respect, health, and dignity of the child.³¹⁵

2.2.2.6 Implementation of CRC

In order to satisfy the implementation of the principles, rights and protection of children mentioned in CRC, a committee called Committee on the Rights of the Child has been established.³¹⁶

For the effective implementation of rights and protection and the cooperation in this regard, CRC invites the specialized agencies³¹⁷ of the field and non government organization within their scope and mandate to

³¹³ CRC Art. 19 (2).

³¹⁴ CRC Art. 4.

³¹⁵ CRC Art. 39.

³¹⁶ CRC Art. 43 (1).

³¹⁷ Like International Labor Organization (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO), United Nations Children's Fund (UNICEF).

take part in submission of their report on the issue. They are involved in consideration of the reports to advise the best implementation the CRC.³¹⁸

According to Save the Children, it is necessary for the implementation of child rights that all the reservations of the states parties have been removed and the principles of CRC are enforced through their national courts. Likewise, it is also necessary that systematic legislations, policies, action plans and agendas for the children should be based on CRC.³¹⁹ Specifically, if decentralization of power was made by a state in this regard, the responsibility of compliance still remains with the state. Further, the state should also ensure that this devolution does not result into discrimination and mismanagement of the resources.³²⁰

For the purpose, it is recommended that states parties review their legislations to make them in conformity of the CRC and other international treaties.³²¹

It is also equally important to insure that states departments concerned and non states actors; organization themselves respect the principles and rights provided by the CRC.³²²

³¹⁸ CRC. Art. 45(a).

³¹⁹ *Child Rights Governance* 2012, p. 9.

³²⁰ *Ibid.* p. 13.

³²¹ *Ibid.* p. 9 - 10.

2.2.2.7 Committee on the Rights of the Child

Committee on the Right of the Child is United Nations body. Its responsibility is to ensure fulfillment of the children rights and their protection by all the states parties. In the year 1991, representatives of the states parties gathered for first election for the monitoring body, for this purpose, 40 were the candidates for 10 seats, according to article CRC.³²³ Ultimately, six women and four men were elected.³²⁴ The committee composed of ten independent members elected by the state parties from among their nationals who are expert in the field of child rights. The election of the committee is held every second year election by secret ballot from among the nominations given by the states parties.³²⁵

The Costa Rica proposed the amendment in article 43(2) of the CRC on December 12, 1995, about members of the Committee. It was registered and came into force on November 18, 2002. Resultantly, member of the Committee had increase from ten to eighteen.³²⁶

³²² Ibid. p. 18; CRC. Art. 3 (3).

³²³ CRC. Art. 43(2).

³²⁴ The members elected from Burkina Faso, Barbados, Brazil, Peru, Egypt, former Soviet Union, Portugal, Philippines, Sweden and Zimbabwe. See, *Fact Sheet No. 10*, p. 8.

³²⁵ CRC. Art. 43(3).

³²⁶ https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11-a&chapter=4&lang=en;

All the states parties are obliged to submit the regular reports to the committee on the way that child rights are implemented in their respective countries. The report should come to the committee by the state party after two year of Convention's ratification and thereafter, every five years.³²⁷ States parties should also make reports of progress available and known by the public.³²⁸ Then, the committee examines the reports and recommends what is necessary to the states party through its concluding observation. In this regard, Office of United Nations High Commission for Human Rights (OHCHR) along with the concerned NGOs and government organize workshops occasionally to follow up the recommendation and the concluding remarks of the Committee.

According to the guidelines adopted by the Committee to the states parties in 1991; the first session, the repots shall indicate the factors and difficulties in the way of implementation of the Convention. It shall also include the priorities and goals for the future regarding child rights. Moreover, the

https://treaties.un.org/doc/source/docs/CRC_SP_1995_L.1_Rev.1-E.pdf. Accessed on 28-06-2017.

³²⁷ CRC. Art. 44 (1).

³²⁸ CRC. Art. 44 (6).

report shall be presented along with the statistical data, problem oriented and critical.³²⁹

In addition to state reports, the Committee, before its session, meets and gets information from the other treaty bodies and special rapporteur;³³⁰ a mechanism adopted the Commission on the Human Rights.

The United Nations Commission on Human Rights was substituted which United Nations Human Rights Council on March 15, 2006 by a resolution No. 60/251. The council consisting of 47 member states was elected by secret ballot in the General Assembly for a period of three years based on geographical distribution.³³¹ The Council on Human Rights is seems to be more systematic than the Commission was. For example, record of every state discussed publically every four years. Likewise, it puts no sanction other than the publicity. Moreover, independent experts, not being state representatives, are engaged in the focusing and investigating the human rights situations. Being impartial, this proves to be a good step by the Council. The Council also convenes special session for special issues like

³²⁹ CRC. Art. 44. See also, *Fact Sheet No. 10*, p. 8.

³³⁰ For example, special rapporteur on torture; on arbitrary executions, on the sale of children and on child prostitutions and pornography. See, *Fact Sheet No. 10*, p. 9.

³³¹ <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx>. Accessed on 12-10-2016; *Universal Human Rights in Theory and Practice*, p. 162.

international food prices...etc.³³² An important aspect of the Convention is that it allows the NGOs to submitted alternative report to the Committee about the ground reality of the rights implement or violated in a specific locality.³³³

A working group of the Committee meets with all the representatives of the states almost three to four months before the meeting of the Committee. This is to examine the reports submitted by the states parties and to prepare list of issue or the agenda for the coming Committee session. This helps the state party to prepare any updated information required, if any. Likewise, it prepares the state concerned for the discussion which may take place in the session.

The Committee normally holds three sessions in a year at Geneva approximately for four weeks each. The week is reserved for preparing the agenda for the next session. These are in January, May or June and September. At each session, the Committee examines about ten reports in. All the reports are discussed with the delegations from the states parties concerned. In the concluding remarks of the session, the adherence by the

³³² Ibid. p. 163-164.

³³³ CRC, article 22(2).

states parties of the child rights in the Convention is stated along with the recommendations.

Importantly, a day of general discussion³³⁴ is organized by the Committee whereby the NGOs, the experts and children submit their report to inform about the realities of child rights, so that the governments are provided with more concrete suggestions.³³⁵

2.2.2.8 Necessary Measures for implementation of the Convention

For proper implementation of the child rights, a systematic concrete measures should be taken with the attention towards the necessary reforms needed from time to time and regular scrutiny of the progress of the progress done by the states parties. The reason is that the states parties have to undertake many measures like administrative and legislative, using their available sources along with international cooperation for child rights.

It is extreme need for this purpose to monitor the implementation of the Convention at both national and local levels, national and local assemblies.

³³⁴ It is organized once a year specifically in session of September. <https://www.crin.org/en/guides/un-international-system/committee-rights-child>. Accessed on 06-10-2016.

³³⁵ Ibid.

Services of ombudsman office may also be helpful in this regard. Definitely, it is very important to get reliable information concerning child issues, so, performance of the statistical office of the state must be improved so that it contribute for the implementation of the Convention.

Other kinds of mechanisms necessary are the training of the all personnel engaged in this field; all who work with children and making awareness of the convention to the public at large.³³⁶ Moreover, the resources must be allocated by the states parties according to the priorities i.e. from poor to rich especially for the implementation of the Convention. Furthermore, the developing countries must report for the need of international cooperation and the donor countries are encouraged to review their method of cooperation.³³⁷

For the purpose of appropriate implementation, effective coordination among the concerned ministries, departments and the all the concerned authorities must be engaged in child rights issues.³³⁸

³³⁶ CRC. Art. No. 42.

³³⁷ *Fact Sheet No. 10*, p. 11-13.

³³⁸ *The South Asian Report 2013*, p. 43.

2.2.2.9 Hurdles and obstacles in the implementation of CRC

In presence of customary and religious laws in a country, to what extent CRC, customary and religious laws are compatible with each other? It makes a big problem for the states that have ratified the CRC. It is a big challenge to make them compatible with each other.³³⁹ Children, their parents and the society are mostly unaware of the rights of the children.³⁴⁰

Failure of the coordination among the government agencies at all levels and the private sector which has concern with the child right is a big obstacle in front of the implementation of the CRC.³⁴¹ Moreover, the coordination should include civil society and media as well.³⁴²

One of the problems is that many countries report to the Committee on the Rights of the Child after the duration within which the states parties have to submit its report to the Committee.³⁴³

³³⁹ *Child Rights Governance* 2012, p. 10.

³⁴⁰ *Ibid.* p. 11.

³⁴¹ *Ibid.* p. 15.

³⁴² *Ibid.* p. 19.

³⁴³ *The South Asian Report* 2013, p. 43.

2.2.3 South Asian Association for Regional Cooperation (SAARC)

At the level of South Asian Association for Regional Cooperation³⁴⁴ (SAARC), the topic of child rights has been identified as the area of cooperation. Two conventions have been made by the SAARC so far in this concern. One is SAARC Convention on the Regional Arrangements for the Promotion of Child Welfare in South Asia.³⁴⁵ The Second is SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution.³⁴⁶

For the purpose of treaties, legal reforms, policies and mechanism in respect of co-ordination in SAARC region are remarkable. The most successful countries are Pakistan, India, Bangladesh, Sri Lanka and Nepal, in the form of establishing human rights institution for the children rights.³⁴⁷

In 2001, Committee on the Rights of the Child recommended for a global study on violence against children in 2001. Acting upon the

³⁴⁴ It comprise of eight countries namely: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. <http://www.saarc-sec.org/>. Accessed on 10-04-2017.

³⁴⁵ Kathmandu, on January 05, 2002. And inforced on November 15, 2005.

³⁴⁶ Ibid.

³⁴⁷ The South Asian Report 2013, p. 15.

recommendation, South Asia Coordinating Group on Action against Violence against Women and Children (SACG) organized regional consultation for SAARC countries in 2005 at Islamabad, Pakistan. Their consultation ended up with the formation of “South Asia Forum for Ending Violence Against Children (SAF)” and accordingly, the mechanism was initiated with the aim of ending all kinds of violence against children. In the 3rd Ministerial Meeting, June 2010, SAF decided in the collaboration with SACG with the guidance from SAARC to establish a new institutional framework structure which named as “South Asia Initiative for Ending Violence against Children” (SAIEVAC). It works at both regional and national levels taking proper measures to end all kinds of violence against the children; boys and girls, and the women as well.³⁴⁸

2.2.3.1 The Work Plan for 2010-2015

SAIEVAC has prepared a work plan for the period of 2010-2015. Some objectives were set in the work plan and it was agreed by the SAIEVAC members³⁴⁹ that all the progress will be reported to SAIEVAC secretariat

³⁴⁸ <http://www.saievac.org/about-saievac/history/>. Accessed on 06-04-2017.

³⁴⁹ The members are Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka (SAARC Countries).

and board on annual basis. These objectives which have to be achieved by 2015 are:³⁵⁰

➤ **Regional Cooperation:**

It comprises the regional exchange of experience and facilitates each other. This should include the technical meeting, share of necessary practices, publication of the reports and preparing the recommendations to the SAARC.

➤ **National Strategy:**

Starting a comprehensive strategy of national basis to focus on the planning and do complete time bound targets. In this regard, role of each ministry should be defined and provide enough resources to complete the agenda to end the violence against children.

➤ **Legislative Measures:**

Making necessary legislation with enforcement in all areas and forms of violence against children like, with family, community, work place, corporal punishments and conflict situations, customary degrading practices, force marriage and honor killing...etc.

³⁵⁰ SAIEVAC, *Workplan 2010-2015*. P. 3-8. http://srsg.violenceagainstchildren.org/sites/default/files/political_declarations/SAIEVA_C5YEAR0WORKPLAN2010.pdf. Accessed on 06-04-2017. [hereinafter referred to as SAIEVAC, *Workplan 2010-2015*]

Obviously, this will be in the light of CRC with addition to other international or regional agreements.

➤ **Prevention:**

This is to identify causes and risk factors which cause violence against children. The member states should allocate reasonable resources for prevention of violence and its risk. Likewise, they should address inequalities based on gender, nation language, religion or any other base as the inequality plays as a role in violence against children. Moreover, states are under obligation to address the poverty in the form of initiatives for better economy systems and establishing non-violent values in their respective societies.

➤ **Data Collection:**

This is to implement a system of research on national level and its dissemination. This research will give due regard to disaggregate, among others, the sex, language, race, religion and social origin. For the effective action, the adequate resources be used. The systematic research comprises child birth's and death's, children working or leaving institutions and other child issues. Importantly, it should include the persons convicted for abuse of child.

➤ **Professional Training and Learning:**

The states should have built capacities of all professionals that have relations with issues of children. For example, teachers, social workers, police officers, judges, health sector professional and child care institutions. Moreover, short training on prevention of child abuse, must also be given to other segment of the society e.g. politicians and decision makers for awareness. These training programs shall occur continuously.

➤ **Child Care Standards:**

States should develop community-based care and standards and regulations for all care givers of children including the child institutions. These standards should comprise of reasonable facilitation, services and education for proper care and maintainable management done with monitoring. This monitoring management be done annually for institutions taking feedback from the children who live in the child care institutions.

➤ **Reporting:**

Everyone in the society especially the professionals who work with the children issues, on suspicion of any act of violence or abuse against children must report to the concerned legal department

where the investigation will be safe, complete and confidential. There should be an easy access towards report by the child or his representatives of any act of abuse. For this purpose, the system should provide a toll free number as child helpline and ensure the confidentiality.³⁵¹

➤ **Referral Mechanism:**

The states have to define a proper process for referring the case of the child victim of abuse for interagency cooperation.³⁵² This process should encourage the victim child and his parents or guardian to tell their experiences about the abuse and due weight age be given to their views.

➤ **Recovery, Rehabilitation and Social Reintegration:**

The states will have to prepare measures to rehabilitate the child victims, their families and witnesses of violence thereof for the purpose their help, integration and their dignity in the society.

➤ **Justice System:**

The judicial system of the state should be as powerful and accelerate to protect the best interest of the child and to prevent every act of

³⁵¹ Reporting the issue in the media is opposing the rule of confidentiality.

³⁵² The agencies mean here all those who are engaged with the issues of the child, e.g. education, health, police and prosecution branch.

abuse against him along with free legal aid. There should be social workers support children in the perspective of the judicial enquiries. Moreover, the minimum age for holding a child criminally responsible³⁵³ set as 12 years.

➤ **Education and Awareness Raising:**

States should be able to arrange public awareness programs on children rights issues and their protection through and every method possible. They also be able to address the specific problems like corporal punishments, sexual abuse, their trafficking ...etc. with their consequences in short and long terms in the society.

➤ **Child and Civil Society Participation:**

The state should encourage and support all those who participate child, adult or civil society who help the government for end of the violence against the children in the form of providing recommendations and monitor and assist in the decision making process in this regard. There should also be national forum for children's participation and other for civil society participation along with the recognition of the activists in child prevention of child abuse in shape of and giving awards; prizes, to them.

³⁵³ Perhaps, the word used here as responsibility instead of liability because the child if done a criminal activity, he is not given a full punishment as adult.

In the matter of sexual abuse of children in the travel and tourism have been recognized as violence against children in the SAIEVAC Regional Work plan 2010-2015, in the following words:

“..... Additionally, commercial sexual exploitation of children continues to be one of the most pervasive violations of children’s rights in South Asia and includes child abuse through child prostitution, sex tourism, child pornography, Internet pornography and trafficking....”³⁵⁴

So, this Work plan recognized “Sex Tourism” as a kind of violence against children. This is something not even explicitly mentioned by documents and national legislation.³⁵⁵

Moreover, sexual abuse of the children is the most unreported issue in the South Asian region. It is mostly done by someone familiar to the child, for example, the teacher, school or community.³⁵⁶

South Asia is very active for the prevention of child abuse. There are laws and mechanisms to combat commercial sexual exploitation of children but

³⁵⁴ SAIEVAC, *Workplan 2010-2015*, p. 16.

³⁵⁵ Ministry of Foreign Affairs of the Netherlands, DEFENCE for CHILDREN and ECPAT International, *Global Study on Sexual Exploitation of Children in Travel and Tourism*, Regional Report (South Asia), 2016. P. 43. http://www.ecpat.org/wp-content/uploads/2016/10/SECTT_Region-SOUTH-ASIA.pdf. Accessed on 30-03-2017. [hereinafter referred to as SECTT South Asia report 2016].

³⁵⁶ SAIEVAC, *Workplan 2010-2015*, p. 16.

this does not have been explained whether there is attention towards children sexual abuse in the tourism sector or not. So, this sector is rarely emphasized. Even when the word “sex tourism” has been used, it is not clearly elaborated.³⁵⁷ For example, India’s five years plan (2010 -2016) suggests and proposed the process of establishing a unified policy for responsible tourism for the protection of women and children from exploitation in North-eastern States.³⁵⁸ The Ministry of Tourism, India, in collaboration with UNODC, (Pacific Asia Travel Association (PATA) and Save the Children, India, has prepared a code of conduct for safe and honorable tourism.³⁵⁹ Some of its objectives are as under:

“1. Encourage tourism activities to be undertaken with respect for basic rights like dignity, safety and freedom from exploitation of both tourists and local residents i.e. people and communities who may be impacted by tourism in some way.

2. Aid the prevention of prostitution, sex tourism and forms of sexual exploitations like assaults and molestations in tourism to

³⁵⁷ SECTT South Asia report 2016, p. 45.

³⁵⁸ Ministry of Women and Child Development Government of India, *Five Year Strategic Plan (2011-2016)* http://wcd.nic.in/sites/default/files/MWCD_Strategic_Plan_10-02-2011.pdf. Accessed 08-04-2017.

³⁵⁹ Government of India, UNODC, PATA and Save the Children India, *Code of Conduct for Safe and Honourable Tourism* (India: 2010). Adopted on July 1, 2010.

safeguard the safety of persons, in particular women and children.”³⁶⁰

Nevertheless, there are much lack in the mechanism, information, coordination and overall implementation in the region of South Asia including India.³⁶¹

2.2.3.2 Mechanism after Ratification of CRC

After ratification of CRC, the states parties should make their domestic legislation in accordance with the provision and requirements of the CRC.

Talking about South Asian countries we see that their domestic legislations concerning children rights issues are being amended or new laws are being enacted to make them child friendly.³⁶² Even then, the Committee on the Rights of the Child expressed its concern that the new laws have not always being successful if we look towards the general principle of CRC.³⁶³ Those general principles of CRC are non-discrimination against children, their

³⁶⁰ http://www.unodc.org/documents/southasia/News/conduct_final.pdf. Accessed on 09-04-2017.

³⁶¹ SECTT South Asia report 2016, p. 45, 47.

³⁶² See example of Laws from Pakistan in Ch. 4.

³⁶³ The South Asian Report 2013, p. 43.

best interest, their right to life, survival and development and right to be heard.³⁶⁴

Seeing the past twenty years, it has been noted that many legislations have been enacted in this region such as laws of juvenile and protection but it is also important that many laws not comprehensive; they focus on a specific aspect of life, for example, aspect of free education may be found in almost all constitutions. However, the countries of this region are in the process of the comprehensive legislations reflecting the convention. For instance, Afghanistan has enacted law concerning Juvenile Code in 2005; Education Law in 2008...etc. some laws of Afghanistan provide free education till secondary level and prohibits the forced labour of children. On the other hand, the Committee considers that mixing of more than one source of law e.g. customary, codified and Shari'ah, had negative impact on the children's right as suggested by CRC. According to the report, reform in India has been wide ranging which include Juvenile Justice Act 2000; Prohibition of Child Marriage 2009. Likewise, an act on Protection of Children from Sexual Offences 2012 and further, children employment prohibition under 14 of age and on children education. As for Pakistan, the progress will be

³⁶⁴ These are in the articles No. 2, 3, 6, and 12 of the Convention on the Rights of the Child.

See, <https://www.crin.org/en/home/rights/themes/general-principles>. Accessed on 17-03-2017

discussed in the fourth chapter of this thesis. However, these legislation are only the first step, it must be accompanied with the effective measures to ensure remedies in any case of violation of the child rights. So, most of times human rights institutions may provide legal aid to the child if he becomes victim of any type of violation to his right.³⁶⁵

In most of the South Asian countries, specific ministries or department have been established at the government level which have also a duty for coordination except in Afghanistan and Maldives where we see no such coordination. However, practical approach is that even there is mechanism for the coordination but it is not seen efficient due to many reason like where all the departments are subject to some ministries which is, obviously, work in a slow process.³⁶⁶ But the main reason may be that the Convention is very broad which contains social, cultural, economic and political rights which causes many practical and particular coordination problems within the departments and ministries of the same country who tackle those kinds of rights. According to the findings, many countries in the region on the recommendation of the Committee on the Rights of the Child, have set up specific coordination unit; board, commission or council,

³⁶⁵ The South Asian Report 2013, p. 44, 55-56.

³⁶⁶ Ibid. p. 44.

for the implementation of the CRC. Regardless of the strong power for the coordination, practically, it proved to be a challenging situation to coordinate among different departments who work on child's issues. In Bangladesh, for example, national Council for Women and Child Development is the main policy maker concerning children rights. It is chaired by the Prime Minister himself. But the problem is that the civil society is not represented in the meetings.³⁶⁷

In Bhutan, the primary responsibility for the coordination and implementation of the CRC has been assigned to National Commission for Women and Child, established in 2011 by its government order. This Commission is not placed under any ministry of the state. It is very important, that 11 members, representative of the ministry, civil society, academia, media and businessmen are included in the Commission. Moreover, it is authorized to coordinate all the children protection mechanism and the strategies among all levels included the ministries concerned and the police. Even though, the funds are provided to the Commission for five years but it remains in need of further agencies to work properly. In the past, it was not effective due to lack of knowledge and limited participation but it is noted recently that the members taking

³⁶⁷ Ibid. p. 74-75.

interest in children rights issues and their protection. According to the Report, Bhutan is the most successful country in coordination and mechanism to protect and prevent child abuse.³⁶⁸

Some countries of South Asian have been engaged to raise awareness in this regard through media and other methods like some states included it in the curriculum of their syllable by their own. However, the periodic reports under CRC and its protocols have received poor attention.³⁶⁹

Almost all the countries of South Asian region tried to establish to establish government or private institutions or permitted non government organization to work on child rights and their protection issues. Mostly, these institutions are in the form of departments or in the form of commission with authorities to investigate children abuse cases on reaching of a complaint or their own.³⁷⁰ Actually, the human rights institutions of independent nature increased very fast since the year 1990. They have mandate to monitor state's obligation and actions concerning human rights protection. The findings show that most of human rights institutions in South Asian region have not an independent section or division on children rights; rather, they are treated as within the general human rights issues

³⁶⁸ Ibid. p. 76.

³⁶⁹ Ibid. p. 45.

³⁷⁰ Ibid. p. 45.

except in few countries such as India where national children's commission is totally independent from human rights commission. They have the mandate to investigate the abuse suffered by the children on the basis of some complaint or even by their own initiative. They are also authorized to sue in the court of law on children behalf.³⁷¹ For instance, Sri Lanka has established Human Rights Commission of Sri Lanka under the Human Rights Commission Act 1996. The problem is same as discussed earlier that a specific division on children rights has not established yet.

It is very important that any disrespect or offence against the authority of the Commission is considered as contempt of a court and will be punishable through the Supreme Court. On the recommendation of the Committee on the Rights of the Child, Sri Lanka accepted to make its Human Rights Commission independent and in line with the provisions of the Paris Principles.³⁷² In the same way, the Commission can also act as plaintiff in the civil courts only on behalf of a child.³⁷³

³⁷¹ Ibid. p. 95-96.

³⁷² Those Principles have been defined in the First International Workshop on National Institutions for the Promotion and Protection of Human Rights which was held in Paris on October 7-9, 1991. Subsequently, they were adopted by the United Nations Human Rights Commission, in the Resolution No. 1992/54 of 1992. Later on, these principles were adopted by the UN General Assembly in its Resolution No. 48/134 of 1993. The Paris Principles takes about functions of national institutions for the proper protection of human rights. See https://en.wikipedia.org/wiki/Paris_Principles. Accessed on 20-03-2017. The text of Paris Principles is available on

The Convention on the Rights of the Child³⁷⁴ requires from the states' parties to engage all the civil society including the children in protecting rights of children and prevent their abuse. Although, the main responsibility in this regard devolves on the state concerned.³⁷⁵ It is significant to note here that non state actors³⁷⁶ had very important role in drafting of the Convention on the Rights of the Child. The report shows that almost in all the countries, the non government organizations can legally register. Moreover, there is more than one union from the civil society which engages for the children rights and their protection. Additionally, there is informal cooperation among the society that takes care of children. Almost all the countries of the region take non state actors while developing policies and plans concerning child rights. They encourage them to hold child focused programs. Most of the countries in the region look towards work of the non government organizations very positively and invite them while developing the policies and laws concerning child

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>. Accessed on 20-03-2017.

³⁷³ The South Asian Report 2013, p. 101.

³⁷⁴ CRC. Art 45.

³⁷⁵ Committee on the Rights of the Child (2003), General Comment 5 (2003): General Measures of Implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), CRC/GC/2003/5. Available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CR C%2FGC%2F2003%2F5&Lang=en. Accessed on 20-03-2017.

³⁷⁶ Non state actors include here means the civil society, human rights groups and organizations, family, academia and professional association.

issues. So, there are many non state organizations working in the region of South Asia after fulfilling of legal requirements for their registration in each country. However, sometimes they monitor their activities so that they should not violate the child rights themselves and watch their activities especially transfer of foreign funds to the country especially for the purpose of promoting illegal activities and terrorism which endanger the security of the state, in the so called name of child rights. They also monitor due to political scenario and domestic interests.³⁷⁷

2.2.3.3 Non State Actors and the CRC

Committee on the Rights of the Child considers non state organizations as partner with them.³⁷⁸ Civil society, non state organization and non state actors are confusing terms which are used normally interchangeably. Firstly, the civil society may be defined as citizen of a state are voluntarily and collective gathered in order to promote a common purpose. It can also provide many services include campaign to establish child friendly laws for protecting from harmful practices against children. Secondly, if any group of civil society is constituted legally, it becomes non government organization. Thirdly, the non state actors consist of individuals, faith

³⁷⁷ The South Asian Report 2013, p. 155-161.

³⁷⁸ CRC. Art 45, General Comment No. 5 of CRC (2003); CRC/GC/2003/5.

groups, media, groups and organizations that are not working for the government and private business groups but they may also have more interests behind their activities.³⁷⁹

However, they³⁸⁰ have many important roles in the representation of the children rights and providing services in this interest. This role is unable to be denied. They follow up the cases of their rights violation and their abuse. This is in addition to their services such as capacity builders, monitoring, pushing the authorities to implement the CRC and reporting the developments to the Committee on the Rights of the Child. All this is possible with the help of media, electronic communication and the presence of the younger who are well educated with hopes of end the violence. In all the cases, they can work easily with the government which has trust with its people but it becomes very challenging situation where the government is weak or corrupt. According to the report, the children's involvement should be the priority and work of non state actors should be complement and they should not capture the primary responsibility of the state with regard to rights of the children and their protection.

³⁷⁹ The South Asian Report 2013, p. 159.

³⁸⁰ The word "they" here include civil society, non government organizations and non state actor.

As far financial support of these organizations is concerned, they receive it from their government, the community and from external donors' e.g. external governments, United Nations, development banks and international organization. Mostly, the external donors have their agenda fulfilled.³⁸¹ The Paris Declaration, 2005 and then Fourth High Level Forum on Aid Effectiveness, 2011 are very important for the donors and the recipient countries for correct their strategies and behavior for the purpose of reduction of the property, develop their institutions and tackle corruption.³⁸²

ECPT International with other NGOs and civil society played an important role to bring the issue of SECTT in account of the SAARC countries. ECPAT International, Scandinavian tour operators and UNWTO prepared a Code of Conduct for this purpose with the collaboration of the stakeholders to combat SECTT. The travel agents, tour

³⁸¹ The South Asian Report 2013, p. 160-161.

³⁸² See for Paris Declaration, <http://www.oecd.org/dac/effectiveness/parisdeclarationandaccraagendaforaction.htm>. See for Fourth High Level on Aid Effectiveness, <http://www.oecd.org/dac/effectiveness/fourthhighlevelforumonaideffectiveness.htm>. Both Accessed on 21-03-2017.

operators, hotels or airlines, etc. which endorses the Code, commit to follow and implement the measures³⁸³ which are as follow:

1. “To establish a corporate ethical policy against commercial sexual exploitation of children.
2. To train the personnel in the country of origin and travel destinations.
3. To introduce clauses in contracts with suppliers, stating a common repudiation of sexual exploitation of children.
4. To provide information to travellers through catalogues, brochures, in-flight films, ticket-slips, websites, etc.
5. To provide information to local "key persons" at destinations.
6. To report annually.”³⁸⁴

So, the Code works as establishing the ethical policies, train the personnel, create awareness among the stakeholders, ultimately to make the travel and tourism industry responsible and to end the SECTT.

2.2.3.4 End of Violence from Lives of Children

Two important incidents highlighted the matter of violence against the children. One is United Nations Study of Violence against Children,

³⁸³ It was initiated in 1998 and developed in 2000. Primarily, the fund was given by European Commission.

³⁸⁴ https://www.unicef.org/lac/code_of_conduct.pdf. Accessed on 10-04-2017.

2006.³⁸⁵ It highlighted a valuable data on violence happens against the children; the vulnerable creature, and raised the awareness in this regard. Second is the General Comment No. 13 on the article No. 19 of CRC, 2011.³⁸⁶ Article 19 of CRC talks about protection of child against all kinds of violence but this general comment emphasized on the importance of a rights-based approach³⁸⁷ for the purpose of protection of the children.³⁸⁸

In the area of South Asia, almost all the kinds of abuses come across children like Child discrimination on different basis like races, child labour and trafficking, child marriages, severe punishments, sexual abuse and exploitation.³⁸⁹ However, these kinds of violence increase, decrease or some kinds are available and some not, depends on different societies. The need comes again to establishing legally enforceable laws, need for proper plan in this regard and developing measures for the implementation.³⁹⁰

³⁸⁵ Full report is available at [https://www.unicef.org/lac/full_tex\(3\).pdf](https://www.unicef.org/lac/full_tex(3).pdf). Accessed on 22-03-2017.

³⁸⁶ Committee on the Right of the Child, General comment No. 13 (2011): The right of the child to freedom from all forms of violence, published on April 18, 2011. CRC/C/GC/13. Full text is available at http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf. Accessed on 22-03-2017.

³⁸⁷ Rights-based approach means promoting the human dignity and considering the children rights-based individual.

³⁸⁸ The South Asian Report 2013, p. 227.

³⁸⁹ Ibid. p. 227.

³⁹⁰ Ibid. p. 227.

Sometimes, it is argued by the parents and the governments that the child labour is due to the poverty and the difficult financial condition that have been living by the families. So, it is unfortunate that the parents and the governments throw the children in early age into the labour exploitation. The answer to their argument is that, work towards formal education enhances the ability to work in future with the honor. This is the way to end children's economic exploitation and it is the long term goal of the CRC.³⁹¹

According to SAIEVAC almost 44 million around 13% of the children in South Asia are engaged in child labour where they work for long time a day with little pay or nothing. So, SAIEVAC required the member states by 2015,

to recognize the right of the child to be protected against all kinds of works that is harmful to health of child or interfere with child's education in any form. The states should have to ratify ILO 182. It is very important that SAIEVAC allow the states to establish programs for child to combine work with the education.³⁹²

³⁹¹ Ibid. p. 229.

³⁹² SAIEVAC, *Workplan 2010-2015*. p. 11, 17.

However, Afghanistan has set out the minimum age for work as 15 and for harmful work as 18 while the real percentage of child labour is 13. It ratified ILO No. 138 and 182. Bangladesh, however, not yet ratified ILO No. 138. In the National Child Eradication Policy 2010 domestic child workers were outside the scope of the child labour laws. However, the Government has established a unit of child labour within the Ministry of Labour and Employment to supervise and coordinate child labour programs.³⁹³ India has the highest in the aspect of working children. According to non government organization reports, almost 60 million children are working in India at present. Further to this, it did not yet ratify the ILO No. 138 and 182. On the other hand, the Constitution of India³⁹⁴ has prohibited child employment under the age of 14 in any factory or hazardous work.³⁹⁵

As for child marriage, its rate in south Asian Region is higher than any other region. The rate of child marriage is almost half of the child marriage in the world. In Bangladesh only, it is 66 per cent. However, there is slow progress towards increase in the age marriage in the scenario of South Asia

³⁹³ The South Asian Report 2013, p. 238

³⁹⁴ Article 24.

³⁹⁵ Report of Global March Against the Child Labour, see <http://www.globalmarch.org/content/delay-ratification-ilo-conventions-138-and-182-government-india-tarnishing-nation%E2%80%99s-image>. Accessed on 30-03-2017; The South Asian Report 2013, p. 238.

region.³⁹⁶ Most successful country in this regard seems to be Maldives where the family law established the minimum age for the marriage as 18, and presently the child married before the age 15 decreased from 16% to 4%.³⁹⁷

Boys and girls, both are affected negatively when marrying at an early age, but the girl affected more negatively. Firstly, it may lead to early pregnancy. Secondly, her babies' health may be at risk at the time of birth or later on. Thirdly, she becomes weak in case of any domestic violence. Fourthly, if a girl child is married, it simply means end of her education which is reasoned towards end of her career and vocational chances. Fifthly, child marriage may result into child trafficking if a girl is sold to a trafficker in the name of marriage.³⁹⁸

The main factors reasoned to child marriage are the ignorance from the side of law and its enforcing agencies, lack of child birth registration or proper

³⁹⁶ Ibid. p. 229.

³⁹⁷ AFPPD, AusAID, ICRW and UNFPA, *Child Marriage in Southern Asia: Policy Options for Action*, p.14. see, <https://www.icrw.org/wp-content/uploads/2016/10/CHILDMARRIAGE-F-13.pdf>. Accessed on 30-03-2017.

³⁹⁸ UNFPA, *The Power of 1.8 Billion, Adolescents, Youth and the Transformation of the Future* (New York: UNFPA, 2014), http://www.unfpa.org/sites/default/files/pub-pdf/EN-SWOP14-Report_FINAL-web.pdf. Quoted in, SECTT South Asia Report 2016; The South Asian Report 2013, p. 229-230.

registration of the marriage and lack of prosecution in the case of child marriage especially in India, Bangladesh and Nepal.³⁹⁹

By 2015, the South Asian states were required⁴⁰⁰ to ban forced and early marriages, likewise, they should registered the marriage freely and compulsory and define an age for sexual consent.⁴⁰¹ Moreover, they should be able to make the legal age for marriage as for both; boys and girls at 18. Moreover, early marriage in the region reached to reach 46 per cent before the age of 18.⁴⁰²

As for corporal punishments in the region, the countries committed to end corporal punishment in the region by 2015.⁴⁰³

For example, talking about Nepal, a study done in the year 2008 of 71 child centers in Nepal identified the common punishments which are utilized in Nepal were hitting children, locking them in toilet, forcing them to clean floor, isolating them humiliating them in front of others.⁴⁰⁴ Very important

³⁹⁹ Ibid. p. 229-230.

⁴⁰⁰ SAIEVAC, *Workplan 2010-2015*. p. 9.

⁴⁰¹ The language of the work plan shows that sexual consent and marriage are different. If this is correct then this is, actually, opening the door towards the adultery which is prohibited in Islamic Law.

⁴⁰² It is according to article 4 (3-d) of the Convention on Regional Arrangement for the promotion of Child Welfare in South Asia.

⁴⁰³ The South Asian Report 2013, p. 229.

⁴⁰⁴ UNICEF & Terre des Hommes, *Adopting the Rights of the Child, a Study on Inter Country Adoption and its Influence on Child Protection in Nepal* (2008), p. 12. See,

issue is the Children's Act 1992 of Nepal which defines the child as below the age of 16 and prohibited all kinds of cruel treatments but it exclude the child beating through his parents, family or teacher for making the child well being. It reads as follow:

“Prohibition on torture or cruel treatment:
No Child shall be subjected to torture or cruel treatment.

Provided that, the act of scolding and minor beating to Child by father, mother, member of the family, guardian or teacher for the interests of the Child himself/herself shall not be deemed to be violation of this Section”.⁴⁰⁵

The Supreme Court of Nepal in 2005 has declared this article as unconstitutional but it is not confirmed by the law reform.⁴⁰⁶

Another example is Sri Lanka where 177 per cent were surveyed and found that 76.3 per cent had used corporal punishment in the last month. Third of

<https://resourcecentre.savethechildren.net/sites/default/files/documents/1661.pdf>.
Accessed on 30-03-2017.

⁴⁰⁵ Children's Act 1992. Article 7. See for reference, http://www.youthpolicy.org/library/wp-content/uploads/library/1992_Childrens_Act_Eng.pdf. Accessed on 29-03-2017.

⁴⁰⁶ The case titled Mr. Devendra Ale vs. Office of Prime Minister and Cabinet. Decided on January 6, 2005. See, <http://www.endcorporalpunishment.org/progress/country-reports/nepal.html>. Accessed on 30-03-2017.

this number of these parents were fully favorable to the corporal punishment.⁴⁰⁷

According to SAIEVAC the member states have to take all necessary measures to end all prohibited corporal punishment by doing at least the law reform and establish positive discipline techniques for home, school and work places...etc.⁴⁰⁸

As for sexual exploitation in the region, acting upon the article 34 of CRC, the countries are trying to combat it through their laws but still there are challenges in the form of discrepancies in the legislations and practices.⁴⁰⁹

They all have also ratified the Optional Protocol on Sale of Children, Child Prostitution and Child Pornography. According to SAIEVAC work plan the states have to implement code of conduct for telecommunication services providers especially the internet providers. They should also work

⁴⁰⁷ Institute of Participatory Interaction in Development, Child Protection in Crisis and Save the Children, *A Study on Parental Disciplinary Practices and an Awareness Program to Reduce Corporal Punishment and Other Forms of Negative Parental Practices*, (2012), p. 27. See <http://www.cpcnetwork.org/wp-content/uploads/2014/04/Report-on-Corporal-Punishment.pdf>. Accessed on 28-03-2017.

⁴⁰⁸ SAIEVAC, *Workplan 2010-2015*. p. 10.

⁴⁰⁹ The South Asian Report 2013, p. 231.

towards end of sexual abuse of children and to protect them from exploitation in the dance bars and the brothels.⁴¹⁰

Afghanistan, for example, informal evidences⁴¹¹ shows that the sexual abuse and exploitation of boys is more than the girls. Men of different ethnic groups and in different tribes in all around the county use boys for their gratification, this is common and has taken as a cultural mores in different parts of the country.⁴¹² These reports show also that Taliban in their time discouraged these tribal practices to use boys for dancing or for sexual abuse or sodomy to make boys as their mistresses.⁴¹³

Another example is Bangladesh where more than 20,000 children are born and live in “red areas”⁴¹⁴ where they grow up in brothel environment and live in social stigma conditions. Their career is limited because they are unable to build it outside the sex industry. While children are engaged in

⁴¹⁰ SAIEVAC, *Workplan 2010-2015*. p. 10.

⁴¹¹ It is because the armed conflicts discouraged the trend of research. So, these evidences have been from NGOs working with children in Afghanistan and from journalistic reports.

⁴¹² Save the Children Sweden-Denmark (Slugget, C.), 2003, ‘Mapping of psychosocial support for girls and boys affected by child sexual abuse in four countries in South and Central Asia’. Qouted in UNICEF, Innocenti Research Centre, *Sexual Abuse and Exploitation of Boys in South Asia: A Review of Research Findings, Legislation, Policy and Programme Responses* (April 2010), p. 31-32. See, https://www.unicef-irc.org/publications/pdf/iwp_2010_02.pdf. Accessed on 31-03-2017. [hereinafter referred to as *Exploitation of Boys in South Asia 2010*]

⁴¹³ Ibid. p. 31-32.

⁴¹⁴ Red areas are the places where business of prostitution, brothels, sex shops and clubs are located. See https://en.wikipedia.org/wiki/Red-light_district. Accessed on 02-04-2017.

the sexual activities, their children are also exploited. Their little boys are made for house work to earn lively hood for their mothers and customers. Boys who live in streets or who are engaged in child labour are also exploited in the form of sexual abuse and prostitution. The reports said that most of them, when interviewed, have lost their parents or engaged in intervals for their need to livelihood; for their financial problems. Their need for prostitution is in increase throughout Bangladesh with the expansion of the demand for the commercial sex by the males who want sex with males.⁴¹⁵ There are laws in Bangladesh that deal with the issue of child abuse and their prostitution. For instance, Penal Code of 1860, Children Act 1974 and Suppression of Violence against Women and Children 2000, (amended in 2003) though these laws do not defines child prostitution in accordance with the Optional Protocol to CRC⁴¹⁶ rather the boys are left without the proper legal protection from being vulnerable towards the exploitation.⁴¹⁷

⁴¹⁵ ECPAT, *Global Monitoring, Status of Action against Commercial Sexual Exploitation of Children, Bangladesh (2nd edition)*, (2011), p. 10-11. See, http://resources.ecpat.net/EI/Pdf/A4A_II/A4A_V2_SA_BANGLADESH.pdf. Accessed on 02-04-2017. [hereinafter referred to as CSEC Bangladesh 2011].

⁴¹⁶ Option protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

⁴¹⁷ The South Asian Report 2013, p. 247.

There are another problem annexed to sexual exploitation of the children, that is, sexual abuse of children in the field of travel and tourism. The Convention on the Preventing and Combating Trafficking in Women and Children for Prostitution in 2002⁴¹⁸ adopted by the SAARC defines the Prostitution as:

“the sexual exploitation or abuse of persons for commercial purposes”.⁴¹⁹

Likewise, it defines trafficking in the following words:

“the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking”.⁴²⁰

These articles talk about the general sexual abuse or trafficking of children and women but did not specifically touch the issue of sexual activities which largely affect the children in the travel and tourism industries.

Child trafficking in Bangladesh is also horrible. They are trafficked internally and externally; across the borders. Their trafficking is mostly

⁴¹⁸ <http://www.catwinternational.org/Home/Article/90-saarc-convention-on-preventing-and-combating-trafficking-in-women-and-children-for-prostitution>. Last accessed on 21-06-2015.

⁴¹⁹ The Convention on the Preventing and Combating Trafficking in Women and Children for Prostitution. Art. 1(2).

⁴²⁰ Ibid. Art. 1(3).

happened by many means e.g. most of the child victims are handed over by the parents, their husbands, relatives or neighbors as bondage in the situation like slavery or sold against some money due to financial problems. Sometimes they are induced through the promise of marriage or jobs. Other means is their abduction where the abductors sold the children in brothels or for the purpose of forced marriage. Then they are controlled by the procurer by the coercion, confinement and violence...etc. afterwards the victim children are used for the labour, begging, prostitution; the commercial sexual abuse. According to UNICEF report, almost 400 women and children are trafficked each month from Bangladesh. Approximately 300,000 children and women between the ages 12 to 30 are trafficked to India in the last 10 years to India alone. Likewise 200,000 children and women trafficked to Pakistan.⁴²¹

Although Bangladesh has National Plan of Action against Sexual Abuse and Exploitation of Children including Trafficking 2002, and National Anti-Trafficking Strategic Plan of Action, 2006, for monitoring this crime in Bangladesh, these plans have been only partially implemented and the

⁴²¹ See, Interview of Prof. Hossain, a member of Judicial Service Commission in Bangladesh by the Staff from the United Nations Office on Drugs and Crime (UNODC) Regional Office for South Asia, on June 9, 2009, <http://www.unodc.org/unodc/en/frontpage/2009/June/human-trafficking-in-bangladesh.html>, Accessed on 03-04-2017. Also see, CSEC Bangladesh 2011, p. 11-12.

trafficking of children is still a big phenomena. The Third National Plan of Action for Children (NPA) was prepared for 2005-2010. Here children were also included for discussing the issues. Subsequently, its course of action was embodied in the national policy planning processes; this was a good and important point in this Plan. It tried to identify the root causes for that make the children vulnerable towards their abuse, discrimination, violence, exploitation, trafficking and sexual abuse. NPA also contains the objects of it. It calls for developing policies and implements them, prepare legal framework, mechanism to prevent every kind of abuse against children, making the duty bearers aware of this problem, developing programs to facilitate, integrate and rehabilitate the children victims of any abuse. Duties of implementation of NPA handed over to the Ministry of Women and Children Affairs initially. In February 2009, the government constituted the National Council for Women and Child Development for the purpose of monitoring the NPA. Implementing the NPA, different ministries have undertaken different tasks, e.g. child labour issue was undertaken by the Ministry of Labour. However, it is noted that all these attempts very slowly get the implementation and the government are not involving the civil society in the prevention of child abuse. The Committee on the Rights of the Child has also shown its concern that NPA's administrations and the

guidelines are not sufficient for its implementation. Secondly, NPA has no assessment and evaluation process. Thirdly, the very important is that NPA does not protect the boys adequately; its priority is protection of girls only without the mention of boys. Moreover, there are problems in coordination among the government institutions to combat child abuse e.g. the duplication of the tasks among them. The Committee of CRC also clearly shows that the issue of trafficking and the sexual abuse still are not sufficiently focused.⁴²²

In case of Trafficking, the states parties should implement all provision of SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution.⁴²³

Several NGOs and civil society played an important role to bring the issue of SECTT in account of the SAARC countries. Talking about the international effort, ECPAT Sweden has prepared the Code of Conduct but

⁴²² Government of Bangladesh, Ministry of Women and Children Affairs, National Plan of Action For Children, 2005-2010; CSEC Bangladesh (2011), p. 11-12; Committee On The Rights Of The Child, fifty-first session, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention Concluding Observations: Bangladesh*, June 12, 2009, CRC/C/BGD/CO/4. See <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-BGD-CO-4.pdf>. Accessed on 04-04-2017; *Exploitation of Boys in South Asia 2010*.

⁴²³ The South Asia Initiative to End Violence Against Children (SAIEVAC), *Workplan 2010-2015*. P. 9. http://srsg.violenceagainstchildren.org/sites/default/files/political_declarations/SAIEVA_C5YEAR0WORKPLAN2010.pdf. Accessed on 06-04-2017.

it has no prevalence in South Asian countries. At the national level, the Code of Conduct developed by India in 2010 which is not binding, though, its works as guidelines for the tourism industry to prevent children abuse in the form of SECTT. As a result, after signing the Code several hotels in Agra, India have blocked the pornographic websites.⁴²⁴ However, Work Plan of SAIEVAC 2010-2015 emphasizes to prepare codes of conduct in the travel and tourism industry and include them in their national policy. It says:

“4.3 By 2015, all States have taken the necessary steps to end sexual abuse and exploitation against children by adopting comprehensive legislation, ratifying all relevant international and regional instruments and enforcing a Code of Conduct for telecommunications services (i.e. internet providers, mobile phone companies, internet cafes) and travel and tour outlets to prevent sexual abuse and exploitation.....

4.3 (7) of travel and tourism industry in each country that have adopted and enforce a Code of Conduct.”⁴²⁵

⁴²⁴ SECTT South Asia report 2016, p. 56.

⁴²⁵ SAIEVAC *Workplan 2010-2015*. p. 10.

2.2.3.5 Hurdles and Challenges in the Implementation of Children Rights

The South Asia countries have ratified CRC, its Optional protocol⁴²⁶ and SAARC own Conventions; Convention on Regional Arrangement for the Promotion of Child Welfare in South Asia, and, Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. It means that SAARC countries are under obligation to ensure that their legal framework and mechanism is according to international and regional documents. As a base, their constitutions talk about the protection of the child rights and to prevent them from the all kinds of abuse and exploitations.

In this regard, SAIEVAC says the following words:

“By 2015, all States have taken the necessary steps to end sexual abuse and exploitation against children by adopting comprehensive legislation, ratifying all relevant international and regional instruments and enforcing a Code of Conduct for telecommunications services (i.e. internet providers, mobile phone companies, internet cafes) and travel and tour

⁴²⁶ Optional Protocol to the Convention on the Sale of children, Child prostitution and Child Pornography.

outlets to prevent sexual abuse and exploitation”.⁴²⁷

Accordingly, some important steps have been taken seriously but there are a lot to be done because there legislation yet not comprehensive covering all the kinds of abuse to children or not within the line of international documents. For instance, no country of the region has the national extraterritorial jurisdiction. By this, the capacity of the states cannot address cases of transnational child trafficking or the offender in case of child sexual abuse.⁴²⁸

Another example in the sexual activities is that no country has the national legislation concerning specifically the issue of sexual exploitation of children in travel and tourism industry, it may be due to inefficient explanation of sexual exploitation definition. Likewise, when legislation talks about sexual exploitation of children, occasionally it focuses on the girls only leaving boys behind or considers them as offenders rather than the victims. All these circumstances and weaknesses make the mechanism and enforcement of laws very poor.⁴²⁹

⁴²⁷ SAIEVAC, *Sexual Abuse and Exploitation*, <http://www.saievac.org/sexual-abuse-and-exploitation/>. Accessed on 10-04-2017.

⁴²⁸ SECTT South Asia report 2016, p. 49.

⁴²⁹ Ibid.

Although, there are policies and co-ordination mechanism, the challenge for the purpose of proper implementation is going through weak coordination authority that is in the departments and concerned ministries. Likewise, it suffers from lack of allocation in budget and otherwise in the improper utilization of the allocated funds. Moreover, it has been less attention for suitable data collection. It is also very important that there are gaps in law and practice; we see many children do not get reasonable protection services. It means that all the children are not enjoying the protection rights in a reasonable manner, and the way forward towards end their violation. There are also other practical challenges in the way of violence control system. For instance, lack of experienced social workers especially who deal with the children such as teacher, police, judges and the teachers.⁴³⁰

2.2.4 African Charter on the Rights and Welfare of the Child (ACRWC)

Talking about South Asian Countries, the governments in this area have done a lot for the children in the form of legal reforms, introducing the proper policies for the implement of the Convention on the Rights of the Child. Yet the problem remains that these countries may not be able to

⁴³⁰ The South Asian Report 2013, p. 15 and 227.

ensure good conditions like good education and health situation. Overall, Sri Lanka got the high score in child friendliness; however, Pakistan and Afghanistan have also made important progress.⁴³¹

Till 2016 ACRWC has been ratified by 47 states of African Union out of 54. The remaining 7 states have signed but not ratified. These 7 states are Sahrawi Arab Democratic Republic, Somalia, Central African Republic, Sao Tome and Principe, Democratic Republic of Congo, Tunisia, South Sudan. As far Morocco it is non African Union country.⁴³²

The purpose of ACRWC is same like the CRC i.e. to protect the children from all kind of abuses directed towards children that include labor, commercial and sexual exploitation, discrimination towards education and health, their sale and trafficking, begging and so on. Like CRC it also constituted an African Committee of Experts on the Rights and Welfare of the Child to interpret and administer the programs of the Charter.⁴³³

There were some reasons to establish ACRWC instead of presence of the CRC in the world. These reasons include the under-representation of Africa

⁴³¹ The South Asian Report 2013, p. 12.

⁴³²

https://en.wikipedia.org/wiki/African_Charter_on_the_Rights_and_Welfare_of_the_Child. Last Accessed on 16-02-2017.

⁴³³ Ibid.

while drafting the CRC. Second reason is initiated and drafted by western countries, so, CRC is a western phenomenon⁴³⁴ which does not content with some issues peculiar with the regions of Africa, especially, the socioeconomic conditions in the continent.⁴³⁵ Same view is shown by Bennett, who said CRC is the western rights ideology.⁴³⁶ Viljoen, when he talked about the reasons of adopting regional charter after CRC, he said CRC side-lining of African from process of its drafting and keeping out the Africa-specific issue from CRC.⁴³⁷ Nowadays, states parties of the African Charter celebrate 16 June as 'Day of African Child'.⁴³⁸

For example, some points of differences between CRC and ACRWC are quoted here. One of them is the right of education. CRC instigates the states parties to provide free and compulsory education to all children.⁴³⁹

On the other hand ACRWC while instigating free and compulsory

⁴³⁴ Muyilla, J.W. (2006) African Values and Problems of Rights of the Child: A Search for Explanations, Danish Institute of Human Rights. Quoted in, "Differences between the ACRWC and the CRC", p. 147.

⁴³⁵ See <http://www.who.int/hhr/African%20Child%20Charter.pdf>. p.1. Last Accessed on 16-02-2017.

⁴³⁶ Bennett T.W.,(1999) Human rights and African customary law under the South African Constitution ,Juta Publishing Company, p.98. Quoted in, Thoko Kaime, *The African Charter on the rights and welfare of the Child: A Socio-Legal Perspective* (Pretoria University Law Press: 2009), p. 2.

⁴³⁷ Viljoen, F. "Why South Africa Should Ratify the ACRWC", *South Africa Law Journal* 16 (1991): 660 at 661. Quoted in, "Differences between the ACRWC and the CRC", p. 147.

⁴³⁸ See <http://www.who.int/hhr/African%20Child%20Charter.pdf>. p.4. Last Accessed on 16-02-2017.

⁴³⁹ CRC. Art. 28-29.

education for all the children emphasizes on female child especially when they become pregnant.⁴⁴⁰ It is because culture of Africa does not give importance of education to female child particularly if she is pregnant one, in this situation it does not allow her to complete the education. Likewise, CRC, it prohibits all kinds of abuse to children whether in the custody of the parents or not.⁴⁴¹ On the contrary to this, children discipline by adult is a traditional dictate. Keeping in view the African practice, ACRWC allows domestic discipline i.e. by their parents or in schools, with the condition that it must be with humanity and not prejudice with the human dignity.⁴⁴²

2.2.4.1 Responsibility of the Child

ACRWC contained which CRC failed to contain.⁴⁴³ Article 31 of the ACRWC says:

“Every child shall have responsibilities towards his family and society, the State and other legally recognized communities and the international community. The child, subject to his age and ability, and such limitations as may be contained in the present Charter, shall have the duty;

⁴⁴⁰ ACRWC. Art. 11(3-e) and (6).

⁴⁴¹ CRC. Art. 19, 36, 37.

⁴⁴² ACRWC. Art. 11 (5) and 20 (1-c).

⁴⁴³ It may be due to difference of the society.

- (a) to work for the cohesion of the family, to respect his parents, superiors and elders at all times and to assist them in case of need;
- (b) to serve his national community by placing his physical and intellectual abilities at its service;
- (c) to preserve and strengthen social and national solidarity;
- (d) to preserve and strengthen African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and to contribute to the moral well-being of society;
- (e) to preserve and strengthen the independence and the integrity of his country;
- (f) to contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African Unity.⁴⁴⁴

So, along with all rights of the children, they should be responsible for their families, community, society and the African Unity. The language is much clear that these responsibilities start at the time they were child.

2.2.4.2 Mechanism by ACRWC

A first committee experts has been established in July 2001. The candidates of the Committee are nominated by the states parties. Thereafter, they are

⁴⁴⁴ <https://au.int/en/documents-45>. Last accessed on 17-06-2015.

elected by the Assembly of Heads of State and Government of the African Union. The members must be elected from nationals of the states parties; having moral standing and competence towards welfare of the issues regarding to the issue of rights and welfare of children. The members are elected for five years, but they can be re-elected again. According to committee's rule, it meets two times a year, mostly in May and November in Ethiopia. The states parties have to submit initial report after 2 years and thereafter, after 3 year on realizing of the rights of children mention in the charter.⁴⁴⁵

2.2.4.3 Purpose of the Committee of experts

A Committee has been established to look after the Charter.⁴⁴⁶ The task of the Committee is to promote rights of the children, monitor its implementation and further, to explain the provisions of the Charter. The Committee also examines the reports submitted by the states parties and provides suggestions to the concerned states party or general recommendation or general comments to all in to fill any shortcoming in

⁴⁴⁵ *International Encyclopedia of Human Rights*, p. 6. See also, https://en.wikipedia.org/wiki/African_Charter_on_the_Rights_and_Welfare_of_the_Child. 16-02-2017.

⁴⁴⁶ ACRWC. Art. 32.

fulfilling the requirements of the Charter.⁴⁴⁷ However, the rules of procedure not yet set or not been employed till now.⁴⁴⁸ However, they are empowered to examine state reports and implementation. Moreover, they are also empowered to investigate any procedure or any issue covered by ACRWC.

2.2.4.4 Practical Challenges to the Committee of experts

There are many obstacles against the works of the Committee. Such of them is that it does not become fully functional; cannot carry own activities, may be due to lack of sources. Secondly, report submitting states parties follow their own formats which make it different for the Committee to achieve proper results and it cannot follow up the defaulting state. Thirdly and most important one is that the member states are unresponsive towards the ACRWC; they are unwilling to recommended persons for the Committee Experts. Moreover, the elected members resign within their membership period.⁴⁴⁹ Importantly, Graca Machel has said about the government or the humanitarian organization: “our promises to children

⁴⁴⁷ ACRWC. Art. 42-45.

⁴⁴⁸ See, <http://www.who.int/hhr/African%20Child%20Charter.pdf>. p.3. Last Accessed on 16-02-2017.

⁴⁴⁹

https://en.wikipedia.org/wiki/African_Charter_on_the_Rights_and_Welfare_of_the_Child. Last accessed on 16-02-2017.

throughout the world remain unfulfilled”.⁴⁵⁰ She also encouraged the co-operation is must between ACRWC and CRC in this regard especially in the armed conflict issues.⁴⁵¹

2.2.4.5 Process of Reporting

According to the charter, initial reports must be submitted within two years of the ratification by a state party, then every five years. The states’ parties must include in their reports the entire situation about children in their respective countries. Moreover, the report also consists of all the legal and administrative issues in their countries.

The process of reviewing the reports started first in May 2008 when four countries submitted their reports. These were Mauritius, Egypt, Rwanda and Nigeria.

For the purpose of reporting, reports from the states’ parties as well as reports from the civil organizations are accepted but report of state party should first. After the acceptance of these collectively as report of a state party, it passes through a process, as following:

⁴⁵⁰ Graça Machel, *The Impact of Armed Conflict on Children*, a paper presented in International Conference on War Affected Children (Canada: 2000), p. 4.

⁴⁵¹Ibid. p. 39.

- Elaboration: the Committee of Experts sees that the report is according the guidelines and include the required information about children.
- Consideration: here examine takes place whether the report of a state party is inconsistent with the practical situation. Also, it finds if there any gap between the both reports; state report and the civil organization report.
- Follow up process: in case any discrepancy between the both reports; state and civil society are invited to explain for the Committee satisfaction.
- Finally, after all the previous points, the report is submitted to the African Union. Here, the Committee review the reports pre-seasonal working group, identify the issue with the state and civil society may be invited if needed. After all this, the findings are submitted to the relevant state party but only with the high government officials.

Any problems concerning with the ACRWC with be identify to a state party in the shape of ‘concluding observation’ which may consists of stapes that should be taken for implementation of the African Charter. Thereafter, the state party has to submit

periodical report after three years. For the purpose of follow-up, the country visits may happen. Likewise, all the recommendation may be sent for summit for heads of states' parties.

2.2.4.6 Communicating Child rights violation to the Committee of Experts

In case of violation of children rights, any individual or any kind of association,⁴⁵² can communicate it to the African Union. The condition is that the state party where the violation has been occurring should be signatory of the ACRWC. Moreover, it is allowed when the submitted person has communicated to his local authorities but not satisfied with their provided solution. Then a group is assigned to see whether it is acceptable or not. After the investigation from the communicated person,⁴⁵³ the victim and the concerned government, the case is being decided.⁴⁵⁴

⁴⁵² If the communication is by an individual and it is by association or NGOs...etc. it should be recognized by the African Union or any international body.

⁴⁵³ In a closed session debate.

⁴⁵⁴

https://en.wikipedia.org/wiki/African_Charter_on_the_Rights_and_Welfare_of_the_Child. 16-02-2017.

2.2.4.7 Comparison between CRC and ACRWC

So, CRC and ACRWC are apparently duplication. But ACRWC may be called as more clear especially in Africa practices. For instance, it mentioned drop out pregnant child from the school. Also, CRC does not allow participation of a child below the age of 15 in armed conflict whereas ACRWC does not allow it till he is called as child. But the two instruments both may participate in promotion and protection in upcoming policies.⁴⁵⁵

2.3 Mechanism in Specific Matters and Areas

2.3.1 Domestic Violence

Domestic violence can be by the Parents of the family.⁴⁵⁶ It is important that this phenomenon is not a new one but last since the human family exists. Moreover, it does not relate to any ethnical, religious and educational groups keeping in view the modern practice of the human being. Many

⁴⁵⁵ "Differences between the ACRWC and the CRC", p. 156.

See https://en.wikipedia.org/wiki/African_Charter_on_the_Rights_and_Welfare_of_the_Child also, d. Last Accessed on 16-02-2017.

⁴⁵⁶ In an extended family system.

families, parents and guardians are committing the beating, physical force or different kinds of abuse with their children.⁴⁵⁷

According to released figures by UNICEF almost 20,000 of the children in America in the past decade were killed in their homes by the family. Moreover, the US has the worst records on abuse against the children because the 204 annual deaths per 100,000 children compared to 1.4 for France, 1 in Japan, and 0.9 in the United Kingdom.⁴⁵⁸

However, article 19 of UNCRC makes the parents and guardian liable to the Law:

“1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for

⁴⁵⁷ The Encyclopedia, Americana, International Edition, vol. 6 (Glolier Incorporated, 1984), 450. [hereinafter referred to as The Encyclopedia, Americana]; *International Encyclopedia of Human Rights*, p. 114.

⁴⁵⁸ <https://www.seeker.com/us-worst-in-child-abuse-1765477691.html>. Accessed on 10-05-2017. The Report was updated on October 24, 2011.

those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”⁴⁵⁹

2.3.2 Protection against physical abuse / Corporal Punishments / Capital Punishment

It has been reported that two out of three children were physically abused. Same percentage of school going children was victim of the corporal punishment.⁴⁶⁰ Unbelievably, NGO run schools also reported high percentage of corporal punishment.⁴⁶¹

CRC is very clear in prohibition of child physical abuse and all kinds of violence. Accordingly, the states parties should:

“take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of

⁴⁵⁹ CRC. Art. 19.

⁴⁶⁰ Ministry of Women and Child Development, Government of India, PRAYAS, Save the Children and UNICEF, *Study on Child Abuse: India, 2007*, p. vi. [hereinafter referred to as *Study on Child Abuse: India, 2007*].

⁴⁶¹ Ibid. p. 53. This is unbelievable worst fact because NGOs and other concerned institutions are under obligation to respect the rights of children; even then, some NGOs running schools corporally punish them!

parent(s), legal guardian(s) or any other person who has the care of the child.”⁴⁶²

The Committee on the Rights of the Child issued a general Comment in which it has defines the physical or corporal punishment as:

“The Committee defines “corporal” or “physical” punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child”.⁴⁶³

⁴⁶² CRC. Article 19.

⁴⁶³ Committee on the Rights of the Child, General Comment No. 8 on *The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment* (arts. 19; 28, para. 2; and 37, *inter alia*), para: 11, 42nd session, Geneva, June 2, 2006. Re issued for technical reason on March 2, 2007. CRC/C/GC/8. See <http://www.refworld.org/docid/460bc7772.html>. Accessed on 26-03-2007.

According to US Department of Health & Human Services U.S, with ACF and Children's Bureau, United States has the worst record in the matter of child rights and their protection among the industrial states because it loose an average of four to seven children every day due the reason of abuse and neglect. Especially in 2014, states agencies estimated 702,000 victims of child maltreatment.⁴⁶⁴

As far the capital punishment is concerned, the International Covenant on Civil and Political Rights, 1966⁴⁶⁵ is clearly states that the capital punishment shall not be imposed on child⁴⁶⁶ and should not be carried out on pregnant women.⁴⁶⁷

2.3.3 Protection of children deprived of their family

Such children need special care and protection because increased chances of their abuse. It is the reason that CRC instigates for special protection and proper upbringing for them including kafalah and adoption. In their upbringing due regard be paid to their ethnic, religion, culture and

⁴⁶⁴ Department of Health & Human Services U.S,with ACF and Children's Bureau, *Child Maltreatment 2014*, see <https://www.acf.hhs.gov/sites/default/files/cb/cm2014.pdf>. Accessed on 10-05-2017. Also see <https://www.childhelp.org/child-abuse-statistics/>. Accessed on 10-05-2017.

⁴⁶⁵ Art. 6(5).

⁴⁶⁶ Under the age of eighteen.

⁴⁶⁷ *International Encyclopedia of Human Rights*, p. 37.

language. National laws of the states parties should ensure the measures in this regard.⁴⁶⁸

In case of adoption, it is the responsibility of the states parties “to ensure that, in inter-country adoption, the placement does not result in improper financial gain⁴⁶⁹ Moreover, this should be carried out by competent authority and through inter-country cooperation together with agreements among them.⁴⁷⁰

2.3.4 Protection in armed conflict

According to CRC, the states parties shall ensure that child under fifteen are not recruited in their Armed forces and they are refrained from hostiles. Moreover, they should ensure the protection to children who are affected by armed conflicts. In this regard, the states parties are bound to respect the international humanitarian law applicable to them.⁴⁷¹

In this regard, the important international humanitarian law is Geneva Conventions of August 12, 1949 relate to the International Humanitarian Law. According to its Protocol I, a child under the age of 15 should not

⁴⁶⁸ CRC. Art. 20.

⁴⁶⁹ CRC. Art. 21 (d).

⁴⁷⁰ CRC. Art. 21 (e).

⁴⁷¹ CRC. Art. 38.

take a direct part in the hostilities. In recruiting among the children from 15 to 18 years of age, the states shall give preference to the oldest.⁴⁷²

Optional Protocol to the CRC on the Involvement of Children in Armed Conflict, however, amended and raised the age and said the states should ensure that their armed forces do not consist of a person under the age of eighteen.⁴⁷³ It tells the states parties to take proper measures that their armed forces under the 18 shall not take direct part in the conflicts. Additionally, they should make sure that no child is recruited compulsory before 18 years of age.⁴⁷⁴ However, they can be permitted to be recruited on just voluntary basis subject to safeguards.⁴⁷⁵

As for Geneva Convention is concerned, it considers the international armed conflict but we see there are many countries affected by civil wars within their territories. However, article 3 of the Fourth Geneva Conventions⁴⁷⁶ is general, tells the principles for non-international conflicts. Importantly, the humanitarian law makes a difference between civilian

⁴⁷² Protocol Additional (Protocol I) to the Geneva Convention of August 12, 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. The view of CRC 1989 is also same, see article 38 (3).

⁴⁷³ See Preamble, Para 8; and Article 1 of the Protocol. See also, "Child Soldiers, Slavery and the Trafficking of the Children", p. 21.

⁴⁷⁴ Protocol to CRC on the Involvement of Children in Armed Conflict, Art. 1, 2.

⁴⁷⁵ Ibid. Art. 3. The Safeguards are like the consent of the child, his parents and guardians. Moreover, he should be informed about the services he is going to join...etc.

⁴⁷⁶ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Geneva, August 12, 1949, by International Committee of Red Cross.

population or objectives and combatants and military objectives. Only the later can be targeted.⁴⁷⁷ Mr. Susan argues that article 3⁴⁷⁸ protects who take no active part in hostilities which means that the children used as soldier are not protected in conflicts.⁴⁷⁹ On the other hand, according to Protocol I, a child under the age of 15 if caught by the other party, even then he shall be given special protection and his quarter shall be separate from the adult quarters. Moreover, the child under the age of 18 shall not be given death penalty.⁴⁸⁰

Child soldiers is also considered a form of child trafficking because it directory interfere with the basic rights of the child like their right to education even sometimes it requires their abduction and soldiering in the shape of exploitive labour using the method of their sale and slavery. Moreover, the child soldiers sometimes tortured and punished the one who attempt to escape. Child soldiering is considered one of the worst forms of child labour by the Worst Form of Child Labor Convention No. 182.⁴⁸¹

⁴⁷⁷ Protocol Additional (Protocol I) to the Geneva Convention of August 12, 1949 relating to the Protection of Victims of International Armed Conflicts (Protocol I), JUNE 8, 1977.

⁴⁷⁸ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva Convention IV), August 12, 1949.

⁴⁷⁹ "Child Soldiers, Slavery and the Trafficking of the Children", p. 36.

⁴⁸⁰ Protocol Additional (Protocol I) to the Geneva Convention of August 12, 1949 relating to the Protection of Victims of International Armed Conflicts, JUNE 8, 1977. Article 77.

⁴⁸¹See, "Child Soldiers, Slavery and the Trafficking of the Children", p. 3.

The tragedy is that soldier children are trained to be dangerous and killing machines and to become fearless. In this way impeccability of those children is killed out. The child soldiering practice makes the children involved to participate in extreme violence against the innocent people. For example, the resistance army in Uganda by force consists of the children into its squad and force them to bite to death their friends, lick their brains, drink their blood and eat their boiled flesh.⁴⁸² At times, children are recruited as soldiers for military purposes like to use small and light weapons to shoot steady streams of bullets and to use them in the front lines than the older and the commanders.⁴⁸³

There are certain countries still recruiting children as soldiers. For example, Sierra Leone, from the last seventeen years of civil war it has been reported that almost one million children were displaced. Likewise, 25 thousand children were abducted and made members of armed groups forcibly.⁴⁸⁴

There are social reasons as well, as result of war, a family or the children

⁴⁸² *Justice Versus Reconciliation: Hunting Uganda's Child-Killers*, ECONOMISTS, May 7, 2005, p. 41. Quoted in, "Child Soldiers, Slavery and the Trafficking of the Children", p. 10.

⁴⁸³ Payam Akhavan, *The Lord's Resistance Army Case: Uganda's Submission of First State Referral to the International Criminal Court*, 99 AM.J. INT'L. L. 403, 407(2005), quoted in, "Child Soldiers, Slavery and the Trafficking of the Children", p. 17.

⁴⁸⁴ *Ibid.* p. 5.

may feel to join a group to get security or stability and sense of power.⁴⁸⁵

Another reason in child soldiering is that this is a very cheap, controllable physical very vulnerable and can be threaten very easily.⁴⁸⁶

There is another problem i.e. treatment of child soldiers as criminals. In armed conflict, they often arrested with the allegation of war criminals and dealt with the adults. For instance, Uganda Army executed five boys between fourteen to seventeen years of age on the suspicion of their being rebels.⁴⁸⁷ Another example is Rwanda, according to report of International Committee of the Red Cross; almost 570 children under the age of fourteen were arrested on the charges of genocide and remain in the prison.⁴⁸⁸

In 2004, 22 countries used children in armed conflicts and hostilities. In 2013 United Nations lunched a program to end employing children as soldiers by 2016. At present countries that employ children as soldiers decreased to remain only 12. According to United Nations estimation 6,000

⁴⁸⁵ Ibid. p. 13.

⁴⁸⁶ Ibid. p. 18.

⁴⁸⁷ Sandrine Valentine, *Trafficking of Child Soldiers: Expanding the United Nations Convention on the Rights of the Child and Its Optional Protocol on the Involvement of Children in Armed Conflict*, 9 NEW

ENGL. J. INT'L & COMP. L. 109 (2003), quoted in, "Child Soldiers, Slavery and the Trafficking of the Children", p. 20.

⁴⁸⁸ Judith Matloff, "Rwanda's Bind: Trying Children for Genocide", *CHRISTIAN SCIENCE MONITOR*, (January 28, 1997), quoted in, "Child Soldiers, Slavery and the Trafficking of the Children", p. 20.

children are involved in the conflicts. The main reason for this is the poverty because it is the only economic way for the families there.⁴⁸⁹

2.3.5 Protection of refugee children

According to CRC, a child who is considered to be a refugee should “receive appropriate protection and humanitarian assistance.”⁴⁹⁰ It is responsibility of the state, the government and non government organizations to find him parents and other family members. Otherwise, he should be treated as a child deprived of his family and accordingly deserves all rights applicable to the children deprived of their families.⁴⁹¹

2.3.6 Protection against drugs

In conformity with CRC, it is responsibility of states parties to “take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international

⁴⁸⁹ Meghan Werft, *7 countries using child soldiers* (Global Citizen, February 12, 2016). See, <https://www.globalcitizen.org/en/content/7-countries-that-still-use-child-soldiers/>. Accessed on 04-11-2016.

⁴⁹⁰ CRC. Art. 22 (1).

⁴⁹¹ CRC. Art. 22.

treaties.”⁴⁹² Likewise, it is also their responsibility to prevent them in the production of these kinds of drugs and their trafficking.⁴⁹³

2.3.7 Abduction and Trafficking⁴⁹⁴

CRC requires the states parties to “take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.”⁴⁹⁵ Trafficking defines was varied in the history in term of human rights or criminal activities ...etc.⁴⁹⁶ but The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children provides much needed or working definition, it is as follows:

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of

⁴⁹² CRC. Art 33.

⁴⁹³ Ibid.

⁴⁹⁴ Trafficking is the most serious violation of human rights that bring a huge profit for the exploiters which happened by deception, fraud or force. It has to be differentiated from smuggling of the migrants which means the facilitation of illegal entry of a person into a state of which that person is not a national or resident, in order to gain financial or other benefit. Article 3(a) of Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime. See <https://www.unodc.org/westandcentralafrica/en/newrosenwebsite/TIPSOM/Human-trafficking-and-smuggling-of-migrants.html>. Accessed on 16-04-2017.

⁴⁹⁵ CRC. Art. 35.

⁴⁹⁶ *Trafficking in Children for Sexual Purposes, an Analytical Review*, http://www.childtrafficking.org/pdf/user/ecpat_trafficking_in_children_for_sexual_purposes_analytical_review.pdf. Accessed on 15-04-2017. [hereinafter referred to as *Trafficking in Children for Sexual Purposes*].

coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.⁴⁹⁷

So, a child is trafficked when he has been moved from a place to another; in between his country or outside, using force or otherwise for the ultimate purpose of his exploitation. Likewise, all those who have participated in the trafficking of a child are liable for their crime subject they know the ultimate result of their act i.e. the exploitation of child.⁴⁹⁸ Moreover, it is not necessary that the child is moved voluntarily or by force. But the difference will be clear after it has been moved, whether there is any restriction of the child movement, violence or he is force. It is a clear sign that the trafficking has been occurred.⁴⁹⁹

⁴⁹⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. Art. 3(a).

⁴⁹⁸ http://www.unicef.org/southafrica/SAF_pressrelease_notetrafficking.pdf. Accessed on 25-10-2016.

⁴⁹⁹ www.unicef.org/southafrica/SAF_pressrelease_notetrafficking.pdf. Accessed on 03-03-2017.

CRC devolves the responsibility on the state to do strong action against the illegal transfer of the children from his place. In this regard state parties shall take necessary measures at national and international levels. The cooperation among the states parties may be in terms of bilateral and multilateral agreements for combating trafficking of children due to any purpose.⁵⁰⁰

Broadly, there are two kinds of frameworks that have to be taken combating the trafficking of persons including the children and women. First relates to the crime prevention framework and the second relates to the human rights framework. In the former, the law should come into action. Its enforcement agencies; police and other institutions should be given more powers to investigate surveillance and strict border control and when necessary start clean up operations against the traffickers. Moreover, the bilateral and multilateral agreements and cooperation should also be established. In the later, the human rights standards adopted by the international treaties should be taken into account and how their violations can be handled under the mechanism of United Nations.⁵⁰¹ So, one of them is more related to end causes of trafficking like poverty, lack of education,

⁵⁰⁰ CRC. Art. 11, 35.

⁵⁰¹ *Trafficking in Children for Sexual Purposes*, p.10-11.

discrimination and anti trafficking strategies, while other is more related to the action of law when some signs of trafficking come into existence. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children explain both of the frameworks explicitly in the article 9:

“Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:

(a) To prevent and combat trafficking in persons; and

(b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women

and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.⁵⁰²

As far as the causes of the trafficking, it is two folds; on the parts of victim child and on the part of abuser or trafficker. On the part of the child victim of trafficking is basically its vulnerability due to poor relation of the child with the parents and other family members; their being unable to return their home; having no education or health services; they are not able to speak the language or do not know the environment; scarcity of job opportunities or lack of sustainable livelihood and the family pressure in this regard, likewise, the armed conflict or natural or constructed disaster faced by a society. On the part of the traffickers; abuser, the main reason appears to maximize of the profit by using the vulnerable segment of the society i.e. the children and the women. The reason is that act with least risk and they are controllable and exploitable while the exploiters receive

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<https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>. Last accessed on 19-05-2015.

more profit of them whether the trafficking is for any purpose; productive or sexual services including in the travel and tourism industry.⁵⁰³ There is another dangerous reason or problem on the part of the traffickers and on the parts of the children, at sometimes that is the morality problem especially in the aspect of the sex or prostitution. It has been recognized in a study on trafficking commissioned by the UN Special Rapporteur on Violence against Women, completed in 1997.⁵⁰⁴

Among the famous methods for the trafficking are different. In some regions, children are given by their community or relatives to someone acting as supplier of children to else who exploit them in several forms. In other regions, this process is taken by the recruiting into the employment agencies mostly through the advertisement in newspapers. Third, some children are abducted by the exploiters who make advantage of them in any form they want.⁵⁰⁵

⁵⁰³ http://www.unicef.org/southafrica/SAF_pressrelease_notetrafficking.pdf. Accessed on 25-10-2016; *Trafficking in Children for Sexual Purposes*, p. 5, 13.

⁵⁰⁴ Marianne Wijers and Lin Lap-Chew, *Trafficking in Women, Forced Labour and Slavery Like Practices in Marriage, Domestic Work and Prostitution* (Utrecht: STV and GAATW, 1997), quoted in, *Trafficking in Children for Sexual Purposes*, p. 15.

⁵⁰⁵ *Ibid.* p. 6.

It seems to a consensus on the trafficking of children that it is a clear violation of human rights and human's respect.⁵⁰⁶

According to a report 2005⁵⁰⁷, children were missing in India are numbered 44,476 and three to five hundred thousand female children are used in organized prostitution and commercial sex.⁵⁰⁸

According to US Department of Health and Human Services, children are trafficked into United States of America from different origins like Africa, Asia, Eastern Europe, central and South America. The victims of trafficking are used for private and commercial prostitution in hotel or club. They are also used for online commercial sexual exploitation. Moreover, traffickers prey them due to their vulnerability for domestic and international labor in shape of begging and illegal drug trade among others.⁵⁰⁹

Surprising, this is happening in United States of America regardless of The Victims of Trafficking and Violence Protection Act⁵¹⁰ which prohibit the trafficking especially for the purpose of illegal sex and labour, and regardless

⁵⁰⁶ Ibid. p. 17.

⁵⁰⁷ Sen, S & Nair P. M. (2005): *Trafficking in Women and Children in India*; Orient Longman Pvt. Ltd., New Delhi, quoted in, *Study on Child Abuse: India*, 2007, p. 6.

⁵⁰⁸ Ibid.

⁵⁰⁹ See the fact sheet on, www.acf.hhs.gov/sites/default/files/orr/fact_sheet_child_victims_of_human_trafficking.pdf. Accessed on 05-04-2016.

⁵¹⁰ An Act of 2000.

of the children protection agencies such as The National Center for Missing & Exploited Children (NCMEC) and National Human Trafficking Resource Center (NHTRC).

2.3.8 Protection against Child Labour / Economic Exploitation

Overall the forced labour always found in all the regimes. In the twentieth century, involuntary labour got increase during the World War II for the purpose of making roads and for the military services. Even today, in many areas of the world, women and the children are vulnerable to economic exploitation and forced labour. Industrial child labour began with the domestic industrial system. In this system, the entrepreneur was bringing the raw material to the homes of the workers to product something from the raw material. This system was very important in England and in the North America from 16th to 18th century. Still this works in many parts of the world. However, the struggle is been made for restriction on this kind of exploitation.⁵¹¹

⁵¹¹ The Encyclopedia, Americana, p. 460; *International Encyclopedia of Human Rights*, p. 145.

The European Commission celebrated world day against child labour.⁵¹² EU Commissioner for External Relations and Neighborhood Policy; Benita Ferrero-Waldner told that the education is the response towards the evil of child labour. He said:

“I am pleased that this year the day is dedicated to raise awareness of the importance of education in fighting child labour. I am convinced that improving access of all children to education is the right response to this evil. Fight against child labour is for me a core commitment in our human rights agenda and I will continue to raise it in my political dialogue with other countries”.⁵¹³

CRC actively condemn economic exploitation. It is any work that is hazardous to education, health or is harmful to child proper overall development. The states parties take all possible measure to combat it including legislative measures and subject to other international instruments. The states parties are under obligation to set minimum age for employment, its hours and penalties in case of violation.⁵¹⁴

⁵¹² Brussels, June 12, 2008. ILO launched the World day Against Child Labour firstly in 2002. Since then it is observed on June 12 annually. See, http://europa.eu/rapid/press-release_IP-08-926_en.htm?locale=en. Accessed on 22-04-2017.

⁵¹³ http://europa.eu/rapid/press-release_IP-08-926_en.htm?locale=en. Accessed on 22-04-2017.

⁵¹⁴ CRC. Art. 32.

Labour exploitation actually includes any work that exploit the child e.g. to morals, health and education of the child with the condition that he is below the minimum age set out by the ILO 138 i.e. 18 years.⁵¹⁵ However, any member state whose conditions of education and health are not developed yet may set age for employment initially at 14 years after the consultation with the Internationals Labor Organization.⁵¹⁶

According to ILO 182, every state ratified it shall take effective measures against the worst forms of child labour.⁵¹⁷ All forms of slavery,⁵¹⁸ sale, trafficking, recruitment in armed conflict, compulsory labour, use of child in prostitution, transfer of drugs or any work that harm his safety, health or morals of the children are included in the worst forms of child labour.

This is as said by (C 182):

⁵¹⁵ (C 138), Art. 3 (1).

⁵¹⁶ Ibid. Art. 2(4).

⁵¹⁷ (C 182), Art. 1.

⁵¹⁸ In the past history of life, the practice of slavery was in practice and generally accepted by law of people. It was in the form of owning a person as property; the slaves were to do what his or her owner wants to. Importantly, in the past they were not disposable; unless Manumit as provided by Islamic Law. In modern time, there are practices similar to the slavery and considered unanimously illegal. It is not in the form of ownership, instead, it is use of a person; man, woman or a child, exploitation or using force on them for any purpose to earn profits. Moreover, it can be disposed of. <http://bjmolzahn-curric371.weebly.com/old-vs-new-slavery.html>. Accessed on 20-05-2017; http://www.alternet.org/story/142171/there_are_more_slaves_today_than_at_any_time_in_human_history. Accessed on 20-05-2017.

“For the purposes of this Convention, the term the worst forms of child labour comprises:

(a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”⁵¹⁹

Additionally, if the migration of a child is not for labour exploitation, it will not be considered as child trafficking, even if the end result of the migration is labour exploitation. Although, if national law provides, migration related child labour may be considered as the worst form of child

⁵¹⁹

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182 . Last accessed on 12-07-2015. (C 182), Art. 3.

labour.⁵²⁰ As a result, this issue will be decided according to the national laws and after discussion with the organization or the employer concerned.⁵²¹

A report about Kenya says that several children have left their homes and sought jobs to feed themselves. Others have been forced to engage in crimes to earn a living.⁵²² It has been also reported that world's highest number of working children is in India.⁵²³

A related practice of with the child labour is the bonded child labour. The Slavery Convention 1926⁵²⁴ defines slavery as:

“For the purpose of the present Convention, the following definitions are agreed upon: (1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised. (2) The slave trade includes all acts involved in the capture, acquisition or disposal of a person with intent to reduce him to slavery; all acts involved in the acquisition of a slave with a view to selling or exchanging him; all acts of

⁵²⁰ According to ILO Convention (182), article 3(d), which includes any work harming the health, safety of moral as worst form of child labour.

⁵²¹ https://www.unicef.org/southafrica/SAF_pressrelease_notetrafficking.pdf. Accessed on 24-10-2016.

⁵²² <https://www.crin.org/en/library/news-archive/kenya-food-crisis-takes-toll-children>. Accessed on 31-03-2016.

⁵²³ *Study on Child Abuse: India, 2007*, p. 7.

⁵²⁴ Signed at Geneva on September 25, 1926 by the league of nations and enforced on March 9, 1927. See, <http://www.ohchr.org/Documents/ProfessionalInterest/slavery.pdf>. Accessed on 12-04-2017.

disposal by sale or exchange of a slave acquired with a view to being sold or exchanged, and, in general, every act of trade or transport in slaves.”⁵²⁵

The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery⁵²⁶ specifies the bonded labour due to debt or due to something else shall be abolished. Similarly, any institution or practice whereby a child is given by his parents or the guardians to be exploited or given for labour purpose shall be abolished as well.⁵²⁷

2.3.9 Protection against sexual exploitation

States parties are bound in accordance with CRC to cooperate and take measure nationally and internally to prevent children from their sexual abuse. These measures include prevention from inducement or their coercion to engage in an unlawful sex activity; to exploitive prostitution and their use in pornographic performances.⁵²⁸ In the general Comment to

⁵²⁵ Slavery Convention, Art. 1.

⁵²⁶ Adopted by a Conference convened by Economic and Social Council, in resolution 608 of April 30, 1956. Signed on September 7, 1956 at Geneva and entered into force on April 30, 1957. It has been built on Slavery Convention 1926. See, <http://www.ohchr.org/Documents/ProfessionalInterest/slaverytrade.pdf>, and, <http://www.refworld.org/docid/58c156dc4.html>. Both accessed on 25-04-2017.

⁵²⁷ Art. 1.

⁵²⁸ CRC. Art. 34.

explain article 19 (1) issued by the Committee on the Rights of the Child, it defines sexual abuse and exploitation as follow:

“Sexual abuse and exploitation includes: (a) The inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity; (b) The use of children in commercial sexual exploitation; and (c) The use of children in audio or visual images of child sexual abuse; (d) Child prostitution, sexual slavery, sexual exploitation in travel and tourism, trafficking (within and between countries) and sale of children for sexual purposes and forced marriage. Many children experience sexual victimization which is not accompanied by physical force or restraint but which is nonetheless psychologically intrusive, exploitive and traumatic.”⁵²⁹

According to a report, in Kenya some girls dropped out the school to engage in prostitution.⁵³⁰

The term Commercial Sexual Exploitation of Children was firstly highlighted in the World Congress against Commercial Sexual Exploitation of Children.⁵³¹ It defines the CSEC as:

⁵²⁹ <http://www.refworld.org/docid/4e6da4922.html>. Accessed on 28-03-2017. UN Committee on the Rights of the Child, *General comment No. 13 (2011): The right of the child to freedom from all forms of violence*, 18 April 2011, CRC/C/GC/13.

⁵³⁰ <https://www.crin.org/en/library/news-archive/kenya-food-crisis-takes-toll-children>. Accessed on 31-03-2016.

⁵³¹ It was held in Stockholm Capital of Sweden on August 31, 1996.

“The commercial sexual exploitation of children is a fundamental violation of children’s rights. It comprises sexual abuse by the adult and remuneration in cash or kind to the child or a third person or persons. The child is treated as a sexual object and as a commercial object. The commercial sexual exploitation of children constitutes a form of coercion and violence against children, and amounts to forced labour and a contemporary form of slavery”.⁵³²

So, a child in CSEC is a commercial object and remuneration received by him or by any other person. And it takes many shapes like, sexual abuse, forced labour, child labour or slavery at some time.

We may make a difference between commercial sexual exploitation and sexual exploitation in travel and tourism. The later is part of the former. Moreover, the later links the abuse in the travel and tourism to the red areas or in the travel industry such as the bus, train, services stations, truck stations and road side restaurants or hotels. The sexual abuse is also linked with trafficking of the children, when they are trafficked domestically, within the country or cross borders through the force or otherwise.⁵³³ Likewise the entertainment industry also sometimes encourages the

⁵³² *Trafficking in Children for Sexual Purposes.*

⁵³³ SECTT South Asia report 2016, p. 16-17.

children especially the girls to enter the sexual industry increasingly more specifically those girls who want to keep their job intact.⁵³⁴

Importantly, the travel and tours at present time are highly increased. Talking about South Asian context, the tourism has seen much increase. As compared to 12 million tourists in 2010 to South Asia, it welcomed 17.1 million international tourists in 2014 and 18.3 million in 2015. There are set of reason e.g. increase of facilities, rising of income and easy arrangements of travel. Though, the countries of South Asia experience diverse percentage of tourists' entries. For instance, according to report of 2014, India experienced 11% tourists and Sri Lanka has received 20% of total tourists in tourists in South Asian Region.⁵³⁵

Internet and communication advancement has its role in increasing sexual activities⁵³⁶ especially after the induction of 3G and the 4G or otherwise the high speed cyber clubs. The explicators use it in the facilitation for online child abuse and its images and likewise the pornography. Moreover,

⁵³⁴ Das, "Nepal's Sex Industry Boom Lures Young Jobseekers", quoted in, SECTT South Asia report 2016, p. 16-17.

⁵³⁵ World Tourism Organization (UNWTO), *Tourism Highlights 2015*. P. 4,7; UNWTO, *Tourism Highlights 2016*, p.4. See, <http://www.e-unwto.org/doi/pdf/10.18111/9789284416899> and <http://www.e-unwto.org/doi/pdf/10.18111/9789284418145>. Both accessed on 06-04-2017.

⁵³⁶ The internet has two sides. The positive side has the unlimited benefits like the role of information, welfare services and awareness to the public. The negative side has unlimited damage in the form its use for illegal activities including its use for the purpose of online sexual abuse.

negative usage of internet may come as intermediary to facilitate the abuser and commercial sex customers. A survey done by Andhra Pradesh State AIDS Control Society (APSACS) showed that some people even forgive the holier places. The APSACS interviewed 9 male children from the age six to eighteen at Tirupati Temple,⁵³⁷ who identified that though it is place of pilgrimage for Hindu, there are some other people who come at these heights with the aim commercial sexual exploitation of children. These exploiters often come every year and contact the same child using phone or by email...etc. without an intermediary.⁵³⁸ So, we see that advancement of the communication sometimes play as a negative role for the sexual or generally speaking, all kinds of abuse of children. Sometimes, the children sexual abuse may not be commercial. It is when, the financial gain; whether in cash or in kind, is not involved. It may be by a relative to the exploited child.⁵³⁹

⁵³⁷ Tirupati is a city in Indian state of Andhra Pradesh. It is regarded one of the holiest Hindu pilgrimage sites because of Tirumala Venkateswara. The Temple situated in the hill town of Tirumala in Tirupati at the height of 853 m. see, https://en.wikipedia.org/wiki/Venkateswara_Temple,_Tirumala. Accessed on 06-04-2017.

⁵³⁸ Equations and ECPAT International, *Unholy Nexus, Male Child Sexual Exploitation in Pilgrim Tourism Sites in India: Andhra Pradesh, Kerala and Orissa*, (2008), p. xiv-xv. See http://www.equitabletourism.org/stage/files/fileDocuments316_uid10.pdf. Accessed on 06-04-2017.

⁵³⁹ *Trafficking in Children for Sexual Purposes*.

2.3.10 Child Marriage

The CEDAW tells that betrothal and marriage have no legal effect if happened before the minimum age fixed. The country should fix the minimum age for marriage and take proper measure for registration of the marriage.⁵⁴⁰ Moreover, in the International Conference on Population and Development (ICPD),⁵⁴¹ Program of Action has been adopted. In this program the states have agreed on measures to eliminate child marriage.⁵⁴²

Sometime the child marriage is also used for the purpose of Commercial Sexual Exploitation of Children. According to a report of 2012, the highest of child marriage; almost half of the world's child marriage prevailed in South Asia region.⁵⁴³

⁵⁴⁰ CEDAW. Atr. 16 (2).

⁵⁴¹ The Conference was held in Cairo, Egypt on September 5-13, 1994.

⁵⁴² In the Action No. 5.5 and Action No. 6.11. See http://www.unfpa.org/sites/default/files/pub-pdf/programme_of_action_Web%20ENGLISH.pdf. Accessed on 25-03-2017.

⁵⁴³ UNFPA, The State of World Population *The Power of 1.8 Billion. Adolescents, Youth and the Transformation of the Future* (New York: UNFPA, 2014), quoted in, SECTT South Asia report 2016, p. 16-17.

2.3.11 Protection and Special treatment in case of crimes and punishments

CRC of the view that states parties shall make special laws to deal with children accused of crimes and to set the minimum age for capacity of crimes; the age under which a person is considered not to have capacity to violate the penal law. It is appropriate to place and decide these kinds of situations outside the judicial proceedings. Likewise, CRC makes it necessary to ensure that such children are dealt with in a manner appropriate to their well being and their circumstances. These manners include guidance, education and vocational training programs.⁵⁴⁴ Moreover, children should not be compelled to give testimony.⁵⁴⁵

In all cases the detention should be according to the Law and for short period of time.

It is responsibility of the states parties to confirm that the child is not subjected to cruel treatment. No capital punishment or imprisonment for life can be imposed on a person under eighteen. During imprisonment, the children should be separate from adults along with their right to maintain

⁵⁴⁴ CRC. Art. 40.

⁵⁴⁵ CRC. Art. 40 (2-iv).

the contact with their family. Moreover, the children should have access to all assistance for the decision on their cases.⁵⁴⁶

A report defines that that 14% of men and 36% in prisons of United States actually were abused in their childhood.⁵⁴⁷

2.3.12 Education

Right to education has been defined by the Convention on the Rights of the Child in 1989 and by the ICESCR but they are considerably different from each other on the issue of secondary and higher education.⁵⁴⁸

Swaziland's High Court has ordered the government to provide free education to primary school children as the constitution demands. The judge⁵⁴⁹ has said:

⁵⁴⁶ CRC. Art. 37.

⁵⁴⁷ See, <https://www.childhelp.org/child-abuse-statistics/>. Accessed on 10-05-2017. Also see, U.S. Department of Justice Office of Justice Programs, Bureau of Justice Statistics, *Selected Findings* 1999, <https://www.bjs.gov/content/pub/pdf/parip.pdf>. Accessed on 10-05-2017.

⁵⁴⁸ UN Doc. E/CN.4/2004/WG.23/CRP.4, para. 1 (c). The special rapporteur went on to explain: The explicit wording of the ICESCR regarding secondary and higher education has been affected by the advent of trade in education services and the corresponding change in practice of states [whereby] post-compulsory education may entail the payment of tuition and other charges. This practice is contrary to the explicit word-ing of the ICESCR, which anticipated that the right to education would be realized progressively, ensuring all-encompassing free and compulsory education as soon as possible, and broadening post-compulsory education as circumstances permit. See, Michael J. Dennis and David P. Stewart, *Justiciability of Economic, Social, and Cultural Rights: Should There Be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing, and Health?*, *The American Journal of International Law*, Vol. 98, No. 3 (Jul. 2004), p. 462-515.

"I make a declaration that every Swazi child of whatever grade attending primary school is entitled to education free of charge, at no cost and no requirement of any contribution of any such child regarding tuition, supply of textbooks and all inputs that ensure access to education".⁵⁵⁰

2.3.13 Health

CRC is very clear that the state has to establish required institutions for protection of the child e.g. for his health,⁵⁵¹ where he can enjoy highest standard of health. In this regard, state has to diminish the child mortality. It has also to provide the nutritious foods, clean drinking water, primary health care and pure environment. Likewise, ensure pre-natal and post-natal health care of the mother. A very important point suggested by the CRC is to abolish the bad traditional health service. Moreover, preventive health care and guidance to the parents and the children shall also be provided. In this regard, the international co-operation shall also be established among the states parties.⁵⁵²

An example may be quoted here which is not states organization. Karola and Juergen went to the area of Ladakh in Jammu and Kashmir. They

⁵⁴⁹ Name of the High Court Judge was Mabel Agyemang.

⁵⁵⁰ <http://www.refworld.org/docid/49cb32fb12.html>. Accessed on 05-06-2017. It was published by IRIN on 25 March 2009.

⁵⁵¹ CRC. Art. 3(3).

⁵⁵² CRC. Art. 24.

found there a child with brain damage. They apprehend furthermore that there are many untreated children in like situation in the area around. They started a non-profit organization in 2003 by the name of 'Ladakh Help'. They send physiotherapists and occupational therapists from Germany and other areas of the world. In 2008 residents of area, in association with 'Ladakh Help', founded an NGO with the name 'Rewa Society Ladakh Disabled Children Group' in 2007. The children who need more time and special treatment come to 'Rewa Society'. The REWA is registered since February 2011.⁵⁵³

2.3.14 Child Allowance

Many countries have introduced many schemes to help the families with children as demanded by the CRC.⁵⁵⁴ These schemes are known with different other names e.g. child benefit; family allowance...etc. These programs help in better nourishment of children and minimize the burden on the parents. In addition to CRC, some countries began these kinds of

⁵⁵³ <http://newstrackindia.com/newsdetails/81684>; <http://www.ladakh-hilfe.de/english/>. Both Accessed on 03-03-2017.

⁵⁵⁴ CRC, Articles like 17, 19, 26.

schemes to solve the problem of their dwindling population after the World War I to encourage the families for increase the birth rate.⁵⁵⁵

In Ireland, the child benefit is payable to payable to the parents of children's till the age of 16 or to the age of 18 in certain situations. It is €140⁵⁵⁶ per child monthly. In case of twins, the parents get one and a half times monthly rate per child. For the triplets or multiple births the benefits is paid double the normal monthly rate for each child.⁵⁵⁷

Another example is Sweden, it suffered decrease in its population after the World War I, so it began the family allowance to be given to families with more children. This worked as encouragement by the government to increase its population. In this regard, Alva and Gunnar Myrdal; a couple,⁵⁵⁸ have played a significant role. In their book namely "Kris i befolkningsfrågan" translated to (Crisis in the Population Development) published in 1934. They printed very negative picture of Sweden saying that it is filled with mostly of elder people. After the publication of this book,

⁵⁵⁵ See for example, http://www.slate.com/articles/news_and_politics/explainer/2007/09/how_to_make_more_babies.html. Last accessed on 30-07-2017.

⁵⁵⁶ It was €135 up to January 2016.

⁵⁵⁷ It is paid by Department of Social Protection, Ireland. See, http://www.welfare.ie/en/Pages/273_Child-Benefit.aspx. Accessed on 15-05-2017.

⁵⁵⁸ Both of them are Nobel Prize Holder, in Peace, 1982 and in economics, 1974, respectively. See <https://www.jstor.org/stable/pdf/20020093.pdf>; and <https://www.britannica.com/biography/Gunnar-Myrdal>. Both Accessed on 15-05-2017.

child allowance started in 1937 for the poor mothers.⁵⁵⁹ Recently, guardian of children till the age of 16 is awarded SEK 50⁵⁶⁰ as child allowance per month.⁵⁶¹

In Finland, child benefit scheme was started in 1920s only for state workers with children. Following other Nordic countries, Finland stated it universally through the law in 1948. The child benefit scheme is running by KELA.⁵⁶² The amount of €100.40 is given per month. Gradually, it increases with increase of the children till it reaches to the amount of €182.73 per month if the children become more than four.⁵⁶³ This benefit is paid to the child's parents or the person responsible for care of the child till he reaches 17 years of age. Although, the benefit can be given directly to the child aged 15 to 17 in some situations.⁵⁶⁴

In the United Kingdom, a law has been passed called "Family Allowances Act 1945" whereby the family allowance started first time in 1946 with the rate of £0.25 per child weekly. Gradually, the rate varied and increased.

⁵⁵⁹ <http://www.perfar.eu/policy/family-children/sweden>. Accessed on 15-05-2017.

⁵⁶⁰ It is name of Swedish currency; Krona.

⁵⁶¹ Faktblad: FK 4058_Fa Engelska English, *Child allowance [Barnbidrag] and large family supplement*. See, Nordic social insurance portal at <http://www.nordsoc.org/Sweden/Family-benefits/>. Accessed on 15-05-2017.

⁵⁶² Translated into English as National Finnish Social Insurance Institution.

⁵⁶³ The rate is as per 01-03-2011.

⁵⁶⁴ <http://www.kela.fi/web/en/child-benefit>. Accessed on 15-05-2017. http://www.kela.fi/documents/10180/1978560/2015_Home_family.pdf/86f57786-9efc-4341-9dc9-37cd95b2b2d3. Accessed on 15-05-2017.

Today, the rates of child benefit allowance are twofold. For the eldest or the only child it is £20.70 weekly and for the additional children it is £13.70 weekly.⁵⁶⁵ The system of child benefit is administered by Her Majesty's Revenue and Customs (HMRC).⁵⁶⁶

2.3.15 Summary

Article 19 of CRC is a general article for children rights protection; end of all kind of violence and abuse. Article 34 and 35 especially discuss the sexual abuse and exploitation of children. There is an important protocol of CRC in this regard i.e. Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, which include also that even adoption should be in accordance with the national and international laws as the case may be. The torture, inhuman degrading and punishments are dealt in the article 37 of CRC. Article 32 of CRC and International Labour Organization Convention No. 182 and 138 are about the economic exploitation and child labour. Likewise, sets the minimum age for the employment. Moreover, article 39 of CRC talks about rehabilitation of the children affected by any kind of abuse.

⁵⁶⁵ The rate is as per April 2015.

⁵⁶⁶ <https://www.gov.uk/child-benefit-rates>. Accessed on 14-05-2017.
<https://www.gov.uk/government/organisations/hm-revenue-customs/about>. Accessed on 14-05-2017.

These violence, abuses and neglects are serious child rights violations and takes place in several parts of the world with the differences of areas and situations e.g. at schools, houses, works and conflicts but all these cases are not reported due to many reasons, for instances, fear of shame or due to improper reporting mechanisms.⁵⁶⁷

2.4 Optional complaint procedure in Human rights treaties and the Punishment to Culprits

The child abuse may be prevented in two ways. One form of them is the preventive measures before the abuse and the other is complaint procedures that allow the child victim to get there remedy.

The basic international law i.e. CRC and other regional and domestic laws are full of the preventive measures. For instance, the education, awareness to children or their parents/guardians, the social campaigns to prevent the abuses, concerned national and international cooperation in this regard, legislation of laws to prevent economic exploitation, fixation of the age for the economic participation and for armed conflict...etc. And so is the case of punishments of the culprits.

⁵⁶⁷ The South Asian Report 2013, p. 232-233.

2.4.1 Complaint Procedures

Here the researcher would write an example of the international convention, regional convention and the domestic legislation.

Talking about the International Law, it is important to firstly see the Third Protocol to the CRC on Communication Procedure; how a child or his representatives may complaints against the abuse he is caught in any form.

2.4.2 Kinds of complaints⁵⁶⁸

Individual Communication

The child or any party on his behalf can complain against the violation of child's right to the Committee, subject that the concerned state party has already ratified the CRC and its Optional Protocol on communication procedure.⁵⁶⁹

⁵⁶⁸ <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>. Accessed on 08-07-2017. <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#contact>. Accessed on 07-07-2017. The complaint be forwarded to the UN Office at Geneva, Switzerland, through mail, or through ax in case of urgency, or through e-mail.

⁵⁶⁹ The Protocol. Art. 5.

Inter-State Communication

CRC allows the state parties to complain another which is also a party to the CRC, against any violation done to the child rights, provided that the states party has declared that it recognize competence of the Committee to receive application in this regard.⁵⁷⁰

Inquiry Procedure

The state party while signature, ratification or accession may not accept the inquiry procedure. However, it may also recognize the competence of the Committee for the inquiries. In the latter case, the Committee on receiving reliable information on systematic violation in the country may inquire the matter. It is important that this inquiry must be done confidentially, the inquiry team request the state concerned to cooperate in this regard and may also visit the state. The inquiry may comment and recommends the state about its findings.⁵⁷¹

The regional conventions on Children Rights are also signifying the complaint procedure. For Example, European Court of Human Rights was

⁵⁷⁰ The Protocol. Art. 12.

⁵⁷¹ The Protocol. Art. 13.

established under European Convention for the Protection of Human Rights and Fundamental Freedoms 1950.⁵⁷² The court started its work in 1959. In the beginning, the jurisdiction of the Court was to entertain the cases of human rights violation. However, today the Court entertained any complaint received by an NGO or any individual from the states parties.⁵⁷³ The kinds of the complaint are somehow same as Protocol to the CRC on Communication Procedure.⁵⁷⁴

Likewise, European Convention on the Exercise of Children's Rights 1996⁵⁷⁵ provides judicial rights to the child through which a child may exercise its rights, especially, in the family matters before the judicial authorities. According to the Convention, a child has right to apply to be assisted by a suitable person. Similarly, the judicial authority shall decide the case in his best interest, in this regard; the judicial authority may meet the child or his parents or his responsible person to get their views, if needed.⁵⁷⁶

⁵⁷² Art. 12.

⁵⁷³ *International Encyclopedia of Human Rights*, p. 131.

⁵⁷⁴ See, Art. 33 & 34.

⁵⁷⁵ It has been passed on January 25, 1996 and came into force on July 1, 2000. Referred to as (ETS No. 160).

⁵⁷⁶ European Convention on the Exercise of Children's Rights 1996, Art. 5-6. Also see, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/160?desktop=true>. Accessed on 07-07-2017.

If we talk about individual countries, it is important to say that many of the individual countries have provided their complaint procedure and have established human rights departments in this concerned.

The examples are: “National Commission for Protection of Human Rights”, in New Delhi, India.

2.4.3 Punishment of the Culprits

The international and regional conventions did not provide the punishment to the culprits rather they direct that the national laws of the states parties shall take all appropriate legislative and administrative measures in this regard. The reason is that different nations cannot take equal laws with regard to prevent of child abuse; rather, the way is different according to their national differences.⁵⁷⁷

The present chapter has argued that the parents who could not spend enough moments with their children because of their busy life and leave their child with child care centers are responsible for abuse of their child in the child care center. The chapter has also affirmed that the erroneous approach of some people who make the state main responsible for the

⁵⁷⁷ CRC. Arts. 3, 4, 19, 32, 33. ACRWC. Arts. 1, 15, 16. ILO 182. Arts. 1, 7.

protection of the child is threatening the children, in fact, the family and society should play their role before the action of the state. Likewise, awful condition of state economy, poverty of the family and dividing the society into the different classes; wealthy and the poor, are the main roots of all kinds of abuse against children because it derives the child towards pessimistic activities like hazardous work, sexual work to receive a sum, it may also lead towards trafficking and smuggling and so on. As far as the provisions of the International Law are concerned, it has denoted that some rights need to be explained more and defined their limits to be accepted by whole. Actually, the existing rights provided by International Law norms are apparently affected by the western thought which may not be accepted by other areas of the world. To follow the theme of the thesis, the next chapter talks on the protection of the child in Islamic Law.

CHAPTER

THREE

Chapter Three

Prevention of Child Abuse: Islamic Law

Perspective of children rights and prevention of their abuse in International Law has been denoted in the previous chapter. Here, the chapter argues on the same topic in Islamic Law because it is a complete established divine Law, so, comprehending its stand on child rights and prevention of abuse against them is need of the time. After discussion on the relationship between parents and their children, it converses the Islamic international documents. Then, it ponders on the mechanism and its enforcement to prevent the child abuse in Islamic Law.

3.1 Islamic Law on Child Rights

3.1.1 Status of Children in Islam

Islam has provided child a special kind of attention because it is the plant of the societies. If better than the society is better and like is vise versus. The well known issue is that if the birth of a child is from a valid marriage, the parents wish to have their offspring and subsequently, after birth, they will save rights of their children and protect them. On the other hand, if it is by

way of adultery, the parents leave him/her immediately after birth to be abused by anyone. So, it may become a reason for violation of children rights.

After the marriage, in case of the conception, the embryo has given rights by Islam.⁵⁷⁸ The abortion without the extreme medical reason is not allowed.⁵⁷⁹ Moreover, it is allowed for the pregnant mother not to fast in the month of Ramaḍān, then, fast after the period of pregnancy.⁵⁸⁰ This is nothing but for the rights of the child.

In this section, the research will be quoting some evidences from Holy Qur'ān and *Sunnah*. Islam considers the children and the offspring as procreation or extension of the humanity.

" تَزَوَّجُوا الْوُدُودَ الْوُلُودَ، فَإِنِّي مُكَاثِّرٌ بِكُمْ الْأَنْبِيَاءَ يَوْمَ الْقِيَامَةِ "

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(Marry a more affectionate and fertile. I will be pride of your (large number) before the Prophets on the Day of Judgment).

⁵⁷⁸ See chapter one under the head "Legal Capacity in Islamic Law".

⁵⁷⁹ CRCL. Art. 6(1).

⁵⁸⁰ *Al-Hidāyah*, vol. 1, p. 320-321; Ismā'īl, Dr. 'Alī Muhammad, *Ṣuwar min Ḥuqūq al-Ṭifl fi al-Islam* (Egypt: Dār alKalimah, 2000), p. 39.

⁵⁸¹ *al-Sunan al-Kubrā*, Kitāb al-Nikāḥ, Bāb Istiḥbāb al-Tazawwuj bi al-Wadūd al-walūd, vol. 7, p. 131. Ḥadīth, 13476.

Then, the offspring is considered as a gift from Allāh Al-Mighty. He reminded us as his generosity in this regard.⁵⁸² Holy Qur'an says:

(وَاللَّهُ جَعَلَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا وَجَعَلَ لَكُمْ مِنْ أَزْوَاجِكُمْ بَنِينَ وَحَفَدَةً وَرَزَقَكُمْ مِنَ الطَّيِّبَاتِ
 أَفَبِالْبَاطِلِ يُؤْمِنُونَ وَبِنِعْمَتِ اللَّهِ هُمْ يَكْفُرُونَ⁵⁸³)

“And Allāh has made for you mates (and companions) of your nature, and made for you, out of them, sons and daughters and grandchildren, and for you sustenance of the best: will They then believe In vain things, and be for Allāh.s favours?.”⁵⁸⁴

A Ḥadīth says, when the Prophet Ibrāhīm (SAW) prayed Allāh to be graced with children. He graced him with Ismā'il (SAW) and Iṣḥāq (SAW), then the Prophet Ibrāhīm (SAW) express gratitude to Allāh Al-Mighty in these words:

(الْحَمْدُ لِلَّهِ الَّذِي وَهَبَ لِي عَلَى الْكِبَرِ إِسْمَاعِيلَ
 وَإِسْحَاقَ إِنَّ رَبِّي لَسَمِيعُ الدُّعَاءِ⁵⁸⁵)

⁵⁸² As a general rule, human beings love the offspring. However, there are certain people who pay no value to have them, this is an exception.

⁵⁸³ Al-Qur'an 16/72.

⁵⁸⁴ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 20-02-2015.

⁵⁸⁵ Al-Qur'an 14/39.

“Praise be to Allāh, who hath granted unto me
In old age Isma'il and Isaac: for truly My Lord
is He, the Hearer of prayer.”⁵⁸⁶

It is not to have offspring only, but it is most important to rear them with the best teachings. This makes the children a source of satisfaction for the parents. So, Allāh Almighty teaches the parents how to pray to Him in this regard, Qur'an says:

(وَالَّذِينَ يَقُولُونَ رَبَّنَا هَبْ لَنَا مِنْ أَزْوَاجِنَا وَذُرِّيَّاتِنَا
قُرَّةَ أَعْيُنٍ وَاجْعَلْنَا لِلْمُتَّقِينَ إِمَامًا ۖ)

⁵⁸⁷



“And those who pray, "Our Lord! grant unto us wives and offspring who will be the comfort of Our eyes, and give us (the grace) to lead the righteous.”⁵⁸⁸

Moreover, it is very important to rear and educate the children and grow them with best manners. This must be at the first years of the life while being child. This was considered as the best gift a father gives his children. The Prophet (SAW) was very considerate of children, He said:

⁵⁸⁶ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 15-02-2015.

⁵⁸⁷ Al-Qur'an 25/74.

⁵⁸⁸ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 15-02-2015.

"مَا نَحَلَ وَالِدٌ وَلَدًا مِنْ نَحْلٍ أَفْضَلَ مِنْ أَدَبٍ حَسَنٍ."⁵⁸⁹

"There is no gift that a father gives his son more virtuous than good manners."⁵⁹⁰

The CRCI states that the main responsibility to bring up the children devolves on the parents or the guardians as the case may be. But the important is that it mentioned the objectives of their bringing up along with. They are as follows in the article 11 (2):

"2. The upbringing of the child shall aim at the following objectives:

i. To develop the personality, religious and moral value, and sense of citizenship and Islamic and human solidarity of the child and to instill in him/her a spirit of understanding, dialogue, tolerance, and friendship among peoples.

ii. To encourage the child to acquire skills and capabilities to face new situations and overcome negative customs, and to grow up grounded in scientific and objective reasoning."⁵⁹¹

These words are very significant, it is not grow up only but the religious, moral along with tolerance and dialogue are inseparable. Likewise,

⁵⁸⁹ Al-Tirmidhī, *Abwāb al-Birri wa al-Ṣilah, Bāb mā Ja'a fi Adab al-Walad*, vol. 4, p. 338, Ḥadīth No. 1952.

⁵⁹⁰ <https://sunnah.com/tirmidhi/27>. Last accessed on 27-05-2015.

⁵⁹¹ <https://www.refworld.org/docid/44eaf0e4a.html>. Last accessed on 24-05-2015.

overcoming the negative customs in the society i.e. against the Islamic teachings is to be a part of the upbringing.

In the period of ignorance, people used to kill their own children.⁵⁹² There were basically two reasons for this practice of them. One is to achieve the pleasure of their so-called statues and goddess. This was due to their wrong religious belief. Second reason was the poverty in which they lived. Resultantly, apparently the thought that maintenance of their children was very difficult.⁵⁹³

Allāh Al-Mighty condemns their practice. Along with sending Prophets (SAW) to them makes it clear that the provision of the sustenance is His job. He Says:

وَكَذَلِكَ زَيْنَ لِكَثِيرٍ مِّنَ الْمُشْرِكِينَ
قَتَلُوا أَوْلَادَهُمْ شُرَكَاءَهُمْ لِيُرُدُّوهُمْ وَلِيَلْبِسُوا عَلَيْهِمْ
دِينَهُمْ وَلَوْ شَاءَ اللَّهُ مَا فَعَلُوهُ فَذَرَهُمْ وَمَا يَفْتَرُونَ

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“Even so, In the eyes of Most of the Pagans,
their "partners" made alluring the slaughter of

⁵⁹² Mostly due to poverty.

⁵⁹³ Nu'mānī, Shiblī, *Sīrat al-Nabī*, vol. 6 (Lahore: Nāshirān Qur'ān Ltd. 1975), p. 228-230. [hereinafter referred to as *Sīrat al-Nabī*].

⁵⁹⁴ Al-Qur'ān 6/137.

their children, In order to lead them to their own destruction, and cause confusion In their religion. if Allāh had willed, They would not have done so: but leave alone them and their inventions.”⁵⁹⁵

(قَدْ خَسِرَ الَّذِينَ قَتَلُوا أَوْلَادَهُمْ سَفَهًا بِغَيْرِ عِلْمٍ
596) (...

“Lost are those who slay their children ...”⁵⁹⁷

(وَلَا تَقْتُلُوا أَوْلَادَكُمْ خَشْيَةَ إِمْلَاقٍ نَحْنُ نَرْزُقُهُمْ وَإِيَّاكُمْ
598 إِنَّ قَتْلَهُمْ كَانَ خِطْئًا كَبِيرًا

“Kill not your Children for fear of want: we shall provide sustenance for them As well As for you. Verily the killing of them is a great sin.”⁵⁹⁹

In another ways, the Holy Qur’an while prohibiting the *shirk*, mentioned the practice of those who murder their children due to poverty. It says:

⁵⁹⁵ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 16-02-2015.

⁵⁹⁶ Al-Qur’ān 6/140.

⁵⁹⁷ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 16-02-2015.

⁵⁹⁸ Al-Qur’ān 17/31.

⁵⁹⁹ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 16-02-2015.

﴿ قُلْ تَعَالَوْا أَتْلُ مَا حَرَّمَ رَبِّيَ عَلَيْكُمْ أَلَّا تُشْرِكُوا
 بِهِ شَيْئًا ۖ وَبِالْوَالِدَيْنِ إِحْسَانًا ۖ وَلَا تَقْتُلُوا أَوْلَادَكُمْ
 مِمَّا مَلَاقِي نَحْنُ نَرْزُقُكُمْ وَإِيَّاهُمْ ۖ ... ﴾⁶⁰⁰

“Say: "Come, I will rehearse what Allāh hath (really) prohibited you from": join not anything As equal with him; be good to your parents; kill not your Children on a plea of want;- we provide sustenance for you and for them;”⁶⁰¹

The Charter of Child in Islam also points out towards this reality that the child have the right to come into life by valid marriage. He has right to be brought up in a best manner in all aspect like ethics, religious, knowledge and spiritual life. Similarly, the parents should select the best spouse; this is before their marriage. It is very important that according to the general rule, Islam did not allow harming or injuring the embryo.⁶⁰²

3.1.2 Status of Girl Child

Same practice was found especially for the female child in another form. The girl child faced very difficult situation especially in the era of

⁶⁰⁰ Al-Qurʿān 6/151.

⁶⁰¹ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 17-02-2015.

⁶⁰² CFI. Art. 91- 95.

ignorance.⁶⁰³ In that period, a practice known as *wa'd al-banat*⁶⁰⁴ was common among the people. Those people felt ashamed when they were got the news about born of girl child. Strangely, their mothers were also co-participant with their husband in this crime. So, Islam raised the status of girl child, condemned and prohibited their practice. This prohibition is considered as landmark towards the children rights by Islam. Definitely, it shows how it respects the human rights; especially, the child rights.⁶⁰⁵ Holy Qur'an says:

وَإِذَا بُشِّرَ أَحَدُهُم بِالْأُنثَىٰ ظَلَّ وَجْهُهُ مُسْوَدًّا وَهُوَ كَظِيمٌ ﴿٥٨﴾ يَتَوَارَىٰ مِنَ الْقَوْمِ مِنْ سُوءِ مَا بُشِّرَ بِهِ ۚ أَيُمْسِكُهُ عَلَىٰ هُونٍ ۗ أَمْ يَدُسُّهُ فِي التُّرَابِ ۗ أَلَا سَاءَ مَا يَحْكُمُونَ ﴿٥٩﴾

“When news is brought to one of them, of (the birth of) a female (child), His face darkens, and He is filled with inward grief!. With Shame does He hide Himself from His people, because of the bad news He has had! shall He retain it on (sufferance and) contempt, or bury

⁶⁰³ The pre-Islamic era.

⁶⁰⁴ It means placing the new born girl child into grave in order to kill her.

⁶⁰⁵ Rajabi, Masoud, *The Rights of the Child in the Islamic Context: The Challenges of the Local and the Global*, International Journal of Children's Rights 17 (2009): 478. [hereinafter referred to as *The Rights of the Child in the Islamic Context*].

⁶⁰⁶ Al-Qur'an 16/58-59.

it In the dust? Ah! what an evil (choice) They decide on?.”⁶⁰⁷

In another place, He says:

608 ﴿وَإِذَا الْمَوْءُدَةُ سُئِلَتْ بِأَيِّ ذَنْبٍ قُتِلَتْ﴾

“When the female (infant), buried alive, is questioned - for what crime she was killed.”⁶⁰⁹

Even now a day, like feelings for the girl child exists in many areas of the alleged modern countries. Islam on the other hand, increased their value and status in a very beautiful manner. The ḥadīth says:

"مَنْ عَالَ جَارِيَتَيْنِ حَتَّى تَبْلُغَا، جَاءَ يَوْمَ الْقِيَامَةِ أَنَا وَهُوَ، وَصَمَّ
أَصَابِعَهُ." ⁶¹⁰

“He, who brought up two girls properly till they grew up, he and I would come (together) (very closely) on the Day of Resurrection, and he interlaced his fingers (for explaining the point of nearness between him and that person.”⁶¹¹

⁶⁰⁷ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 18-02-2015.

⁶⁰⁸ Al-Qur’ān 81/8-9.

⁶⁰⁹ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 18-02-2015.

⁶¹⁰ *al-Musnad al-Ṣaḥīḥ*, Kitāb al-Birri wa al-Ṣilah wa al-Ādāb, Bāb Faḍl al-Iḥsān ilā al-Banāt, vol. 4, p. 2027. Ḥadīth No. 2631.

⁶¹¹ <https://sunnah.com/muslim/45>. Last accessed on 23-07-2015.

3.1.3 Children as Evaluation for the Parents


Actually, Islam considers children as trust or reliability given by Allāh Al-Mighty to the parents. And, He will ask the parents about this fidelity. It is responsibility of the parents to discipline their children in accordance with Islam. The parents by doing this will be proud in this world and the hereafter. In this regard Allāh says:

(إِنَّمَا أَمْوَالُكُمْ وَأَوْلَادُكُمْ فِتْنَةٌ وَاللَّهُ عِنْدَهُ أَجْرٌ عَظِيمٌ)

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“Your riches and your children may be but a trial: but in the Presence of Allah, is the highest, Reward.”⁶¹³

And says:

(يَتَأْتِيهَا الَّذِينَ ءَامَنُوا قُوًا أَنفُسُكُمْ وَأَهْلِيكُمْ نَارًا ... 

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“O ye who believe! save yourselves and your families from a Fire ...”⁶¹⁵

⁶¹² Al-Qur’ān 64/15.

⁶¹³ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 16-02-2015.

⁶¹⁴ Al-Qur’ān 66/6.

⁶¹⁵ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 16-02-2015.

The ḥadīth says:

"إن الله سائل كل راع عما استرعاه أحفظ أم ضيع حتى يسأل الرجل عن أهل بيته".⁶¹⁶

(Indeed, Allāh will question every custodian about his subjects; whether he kept them safe or wasted? To the extent that He will question a man about his family).

So, the one who gift their children good manners and best teachings and rear them according to Islam; fulfill his duties as custodian and responsible, they succeed this trial. Allāh bless him a reward that is mentioned in ḥadīth:

"إِذَا مَاتَ الْإِنْسَانُ انْقَطَعَ عَنْهُ عَمَلُهُ إِلَّا مِنْ ثَلَاثَةٍ: مِنْ صَدَقَةٍ جَارِيَةٍ، أَوْ عِلْمٍ يُنْتَفَعُ بِهِ، أَوْ وَلَدٍ صَالِحٍ يَدْعُو لَهُ".⁶¹⁷

(When a person dies, his acts come to an end except from three, ongoing charity, or benefiting knowledge, or a pious son, who prays for him).

3.1.4 Responsibility of offspring

Islam also makes the children responsible to treat their parents with love and affection. The children are not allowed to even raise their voice in front of their parents. Significantly, Allāh talked about this issue when He talked

⁶¹⁶ *Al-Ihsān Bitaqrīb Shīḥ Ibn Hibbān*, Kitāb al-Siyar, Bāb fi al-Khilāfah wa al-Imārah, vol. 10, p. 344, Ḥadīth No. 4492.

⁶¹⁷ Al-Nasā'ī, *Al-Sunan Al-Kubrā*, Kitāb al-Waṣayā, Faḍl al-Ṣadaqah 'an al-Mayyit, vol. 6 (Bayrūt: Mu'ssasah al-Risālah, 2001), p. 162, Ḥadīth No. 6445. Hereinafter referred to as Al-Nasā'ī, *Al-Sunan Al-Kubrā*].

about the prohibition of *shirk*. This show how important is the best behavior with the parents.

﴿ وَقَضَىٰ رَبُّكَ أَلَّا تَعْبُدُوا إِلَّا إِيَّاهُ وَبِالْوَالِدَيْنِ إِحْسَانًا ۗ
إِذَا يَبُلُغْنَ عِنْدَكَ الْأَكْبَرُ أَحَدُهُمَا أَوْ كِلَاهُمَا فَلَا
تَقُلْ لَهُمَا أُفٍّ وَلَا تَنْهَرَهُمَا وَقُلْ لَهُمَا قَوْلًا كَرِيمًا
﴿١٢﴾ وَأَخْفِضْ لَهُمَا جَنَاحَ الذُّلِّ مِنَ الرَّحْمَةِ وَقُلْ رَبِّ
أَرْحَمُهُمَا كَمَا رَبَّيَانِي صَغِيرًا ۝٦١٨﴾

“Thy Lord hath decreed that ye worship none but him, and that ye be kind to parents. whether one or both of them attain old age In Thy life, say not to them a word of contempt, nor repel them, but address them In terms of honour. And, out of kindness, lower to them the wing of humility, and say: "My Lord! bestow on them Thy Mercy Even As They cherished me In childhood.”⁶¹⁹

Moreover, Islam has paid more emphasis on good behavior towards the mothers. Ḥadīth says:

“الْجَنَّةُ تَحْتَ أَقْدَامِ الْأُمَّهَاتِ”⁶²⁰.

(The Paradise is under the feet of mothers).

⁶¹⁸ Al-Qur’ān 17/23-24.

⁶¹⁹ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 17-02-2015.

⁶²⁰ Al-Qaḍā’ī, Muhammad bin Salāmah, *Musnad al-Shihāb*, al-Jannah Taḥta Aqdām al-Ummahāt, vol. 1 (Bayrūt: Mu’assalah al-Risālah, 1986), p.102, Ḥadīth No. 119.

CDHRI declares that the child is under the obligation to give responsibility towards the parent and other relatives.⁶²¹

3.2 Islamic International Documents

3.2.1 General Documents

Islamic Council of Europe adopted a document called: “Universal Islamic Declaration on Human Rights”, on September 19, 1981.⁶²² Later on, it was presented to UNESCO in 1992.⁶²³ The Declaration makes it clear that all the human rights have divine origin. Thus, cannot be based on secular basis and norms. The whole Preamble of the declaration is very important. For Example:

In Foreword it says:

“Islam gave to mankind an ideal code of human rights fourteen centuries ago. These rights aim at conferring honour and dignity on mankind and eliminating exploitation, oppression and injustice.

⁶²¹ CDHRI, Art. 7(c).

⁶²² http://hrlibrary.umn.edu/instate/islamic_declaration_HR.html; https://en.wikipedia.org/wiki/Universal_Islamic_Declaration_of_Human_Rights. Both accessed on 21-05-2018.

⁶²³ Olayemi, Abdul Azeez Maruf; Alabi, Abdul Majeed Hamzah & Buang, Ahmad Hidayah, *Islamic Human Rights Law: A Critical Evaluation of UIDHR & CDHRI In Context Of UDHR*, Journal of Islam, Law and Judiciary, vol. 1, issue 3 (2015): 32; <http://oxfordindex.oup.com/view/10.1093/oi/authority.20110803114737119>. Accessed on 15-07-2017.

Human rights in Islam are firmly rooted in the belief that God, and God alone, is the Law Giver and the Source of all human rights. Due to their Divine origin, no ruler, government, assembly or authority can curtail or violate in any way the human rights conferred by God, nor can they be surrendered.”⁶²⁴

In Preamble it says:

“a) in God, the Beneficent and Merciful, the Creator, the Sustainer, the Sovereign, the sole Guide of mankind and the Source of all Law;

b) in the Vicegerency (Khilafah) of man who has been created to fulfill the Will of God on earth;”⁶²⁵

The Fourteenth Islamic Conference of foreign ministers, held in Dhaka, Bangladesh⁶²⁶ on December 6-11, 1983 adopted the instrument named “Dhaka Declaration on Human Rights in Islam”. Further, it was decided that the text of the instrument will be issued in fourth summit in Casablanca, Morocco.⁶²⁷ On the 4th session of the Islamic Summit Commit, Casablanca, Morocco, held on January 16-19, 1984, the decision was to approve the Preamble and paragraph (a) & (b) of Article-I of the

⁶²⁴ UIDHR. Forward, para 1 & 2.

⁶²⁵ Ibid. Preamble (a) & (b).

⁶²⁶ This conference held by the then Organization of Islam Conference. Nowadays, it is Organization of Islamic Cooperation. The change of name was on June 28, 2011. See, https://simple.wikipedia.org/wiki/Organisation_of_Islamic_Cooperation. Accessed on 13-07-2017.

⁶²⁷ See, <http://ww1.oic-oci.org/english/conf/fm/14/14%20icfm-final-en.htm>. Accessed on 13-06-2017.

Declaration. Moreover, it was decided to delay the decision of endorsement on the Declaration until the study thereof is completed.⁶²⁸

In 19th Islamic conference of Foreign Ministers of the OIC, held in Cairo, Egypt on July 31 to August 5 of the years 1990, a declaration namely “Cairo Declaration on Human Rights in Islam” was adopted.⁶²⁹ It consists of the base of the human rights while saying:

(a) Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to God the Most-High.⁶³⁰

The CDHRI also emphasized not to use force or kill the non belligerents such as old men, women and children, especially in case of armed conflicts.⁶³¹

Further, it pointed out towards obligation of the children to the parents and the kin along side with their rights. As mentioned earlier that rights go side by side. It says:

(c) Both parents are entitled to certain rights from their children, and relatives are entitled

⁶²⁸ See, <http://ww1.oic-oci.org/english/conf/is/4/4th-is-sum.htm>. Accessed on 11-07-2017.

⁶²⁹ <http://ww1.oic-oci.org/english/conf/fm/19/19%20icfm-final-en.htm>. Accessed on 14-07-2017.

⁶³⁰ CDHRI. Art. 11(a).

⁶³¹ Ibid. Art. 3.

to rights from their kin, in accordance with the tenets of the Shari'ah.⁶³²

3.2.2 Child Rights Documents

The 7th Islamic Summit of OIC, held in Casablanca, Morocco on December 13-15, 1994 adopted the instrument namely “Declaration on the Rights and Care of the Child in Islam”.⁶³³ It is considered the first instrument on child rights by the Islamic States.

Significantly, this Declaration calls all the member states to ratify CRC 1989. Though, some religious based points have been added so as to be in conformity with Islamic Law. Such examples are the right to chose religions, the article of the Declaration says that Islam is the Seal of Religions, that’s why, Muslims have right to ensure that their children have care for Islamic life. This means, they have right to keep their children away from an attempt to force them to give up Islam.⁶³⁴

Then at the 32nd OIC’s Conference of the foreign ministers, held in Sana’ā’, Yemen on June 28-30, 2005 the “Covenant on the Rights of the Child in

⁶³² Ibid. Art. 7(c).

⁶³³ See, <http://ww1.oic-oci.org/english/conf/is/7/7th-is-summit.htm#CASABLANCA%20DECLARATION>. Accessed on 15-07-2017. <http://www.assembly.coe.int/Committee/JUR/ajdoc282016.pdf>. Accessed on 15-07-2017.

⁶³⁴ DRCCI, Art. 8; See, *The Rights of the Child in the Islamic Context*, p. 484-485.

Islam” was adopted.⁶³⁵ It is like CRC, applicable for the member states in Islamic Countries. It provides the rules according to Islamic injunction.

Rabat Declaration on Child Issues in the Member States of the Organization of the Islamic Conference was adopted by the First Islamic Ministerial Conference on the Child at the closing of its proceedings by OIC on November 8, 2005.⁶³⁶

It is considered that the tone of this Declaration is unlike the previous declarations because it became more realistic. Moreover, while touching the Islamic Values about rights of children on the one hand, it also shows its concern towards the threats that jeopardize their lives.⁶³⁷

The Declaration call the states parties to take all necessary measures to end the exploitation and abuse like sexual, domestic violence, torture and so on from lives of the children.⁶³⁸

Further, it suggests ending all discrimination against girl in form of traditional and customary practices.⁶³⁹

⁶³⁵ <http://www.refworld.org/docid/44eaf0e4a.html>. Accessed on 15-07-2017.

⁶³⁶ <http://www.refworld.org/docid/44eb01b84.html>. Accessed on 25-07-2017.

⁶³⁷ *The Rights of the Child in the Islamic Context*, p. 486-487.

⁶³⁸ RDCI. Art. 9.

⁶³⁹ RDCI. Art. 10.

Furthermore, it emphasizes to take all appropriate measures in terms of legislatives and administrative to end that crime against girls and women in the name of honour.⁶⁴⁰

“International Islamic Committee for Woman and Child”⁶⁴¹ is an organization affiliated with the “International Islamic Council for Da’wa and Relief”.⁶⁴² Firstly, it adopted “Mīthāq Al-Ṭifl fī Al-Islam”⁶⁴³ in 2003. Secondly, it adopted “Mīthāq Al-Ussrah fī Al-Islam”⁶⁴⁴ in Cairo, September, 2007. After that, the “Mīthāq Al-Ṭifl fī Al-Islam” was made part of “Mīthāq Al-Ussrah fī Al-Islam” in its fourth chapter.

⁶⁴⁰ RDCI. Art. 12.

⁶⁴¹ In 2003, the Committee got the membership of United Nations Economic and Social Councils. So, the Committee can participate in the economic and social kinds of its meetings. See, <http://iicwc.org/lagna/iicwc/iicwc.php?id=476>. Accessed on 17-07-2017.

⁶⁴² The Council is headed by the Head of University of al-Azhar al-Sharif. Almost, 85 International Islamic Organization are members of this Council. See, <http://iicwc.org/lagna/iicwc/iicwc.php?id=476>. Accessed on 17-07-2017. <http://iicdr.org/iicdr.sharepoint.com/Pages/AffiliatedOrganizations.html>. Accessed on 17-07-2017.

⁶⁴³ Charter of Child in Islam

⁶⁴⁴ Charter of Family in Islam (CFI).

3.3 Mechanism and Implementation of Islamic Documents on Prevention of Child abuse

3.3.1 OIC mechanism

OIC consists of fifty seven states and considered collective voice of the Muslim societies; works for betterment of Muslims all over the World for the International peace. The OIC has its delegators to the United Nations and the European Union. For the purpose of mechanism on the perspective of Human Rights, the following commission was established.

3.3.2 IPHRC

The Independent Permanent Human Rights Commission (IPHRC)⁶⁴⁵ was establishment by OIC. It is advisory body working in the field of human rights established by the OIC. The statute of the IPHRC was adopted in 38th Session of Conference of Foreign Ministers held on June 28-30, 2011 in Astana, Kazakhstan. Then, it started its work. As for its composition is concerned, it comprises of 18 members elected on the principle of equitable geographical representatives, from Asia, Africa and Arab keeping in mind

⁶⁴⁵ It is Independent because it is free from any kind of extraneous influence. Commissioners are barred from receiving instructions from any State.

the gender balance. The members are selected by the government of the member states for the term of 3 years.⁶⁴⁶

In the past three years, it deliberated on many of the human rights issues like child rights issue. IPHRC frequently work with other regional and international bodies and mechanism to corroborate with them. Moreover, it arranges different workshops/seminars for the betterment of the human family. Furthermore, it welcomes the suggestion which may contribute positively to the work of the Commission.⁶⁴⁷

3.3.3 Covenant on the Rights of the Child in Islam

This Covenant is legally binding instrument. It is open for the ratification and will come into force after 20 OIC member states ratifies it.⁶⁴⁸

3.3.3.1 Committee and the Meetings

The Covenant established a committee called Islamic Committee on the Rights of Child. The Committee composes of representatives from all the states parties of the Covenant. After its enforcement, the Committee meets

⁶⁴⁶ <http://www.oic-iphrc.org/en/home/>. Accessed on 15-07-2017. <http://www.oic-iphrc.org/en/about/>. Accessed on 15-07-2017.

⁶⁴⁷ Ibid.

⁶⁴⁸ Anver M. Emon, Mark S. Ellis, Benjamin Glahn, Eds, *Islamic Law and International Human Rights Law* (UK: Oxford University Press, 2012), p. 48.

every two years in the headquarters of the OIC to see the situation of implementation of the Covenant.⁶⁴⁹ Moreover, two-third of member states constitutes the Quorum.⁶⁵⁰ The problem is that the implementation and the enforcement mechanism are not fully explained.⁶⁵¹ However, it states that the states parties shall respect the rights provided by the Covenant and they should enforce them “in accordance with their domestic regulations.”⁶⁵² Moreover, the customs and traditions contradicting shari’ah shall be ended.⁶⁵³

3.3.4 The Cairo Declaration on Human Rights in Islam

3.3.4.1 Criticism

Many liberal and the International Community’s criticized this Declaration due to different reasons.

One of them is that the Declaration is not alternative to the UDHR, in fact, it is complementary to it. Secondly, it fails to discuss the ethnic minorities.

However, it is not legally binding instrument.

⁶⁴⁹ Jeddah, Kingdom of Saudi Arabia.

⁶⁵⁰ The Covenant, Art. 24

⁶⁵¹ Abiad, Nisrine and Mansoor, Farkhanda Zia, *Criminal Law and the Rights of the Child in Muslim State: A Comparative Analytical Perspective* (London: British Institute of International and Comparative Law, 2010), p.49.

⁶⁵² Art. 4(1).

⁶⁵³ Art. 4(3).

3.3.5 “Mīthāq Al-Ṭifl fī Al-Islam”

3.3.5.1 Reasons for introducing the Charter

One of the reasons for the introducing the Charter was that the international instruments shows only western perspective of children rights leaving behind other perspectives like religions and customs of other areas of the world. After that, they pressure the Muslims to ratify and without reservations which is not allowed by the Muslim’s religion. This is the reason that’s why children abuse cannot be prevented all over the world; Islamic and Non-Islam world, even in the convention introducing countries. Due to all reasons mentioned aforesaid, it was the need to establish this charter which can work as a reference for Muslims to use it for their law with regard to protection of Children Rights.⁶⁵⁴

3.3.5.2 Introduction to the Charter

This Mīthāq provides the basic rules derived from the Islamic rules and principles and Jurisprudence governing the issues of children, so that, the law making authorities can take help from it. However, the minor details are left for the individual countries to legislate according to their situation.

⁶⁵⁴ <https://www.lahaonline.com/articles/view.11825/2-2-الميثاق-الطفل-في-الاسلام-2017-07-18>. Accessed on 18-07-2017.

Moreover, this Mīthāq regarding rights of children did not ignore their obligation according to their growth and age till they reach the full responsibility age. So, this provides the balance between the rights and the obligation.

⁶⁵⁵ "لَيْسَ مِنَّا مَنْ لَمْ يَرْحَمْ صَغِيرَنَا وَيُوقِّرْ كَبِيرَنَا".

“He is not one of us who does not have mercy on our young and does not respect our elders.”⁶⁵⁶

While preparing the Charter, it was kept in mind to correspond the related International document in the content and order.⁶⁵⁷ Many of the well known Islamic Jurists participated in the preparation of the Charter. For instance, Yūsuf al-Qarāḍawī, Aḥmad al-'Assāl, 'Iṣām al-Bashīr and 'Abd al-Majīd al-Zandānī...etc. importantly, the Charter was approved by the Jāmi'ah al-Azhar (University of Azhar).⁶⁵⁸

It has been declared that this Charter and OIC's Cairo Declaration are like one unit for the purpose of children right, there is no flaw between both.

⁶⁵⁵ Al-Tirmidhī, *Abwāb al-Birr wa al-Ṣīlah, Bāb ma Jā'a fi Raḥmah al-Ṣibyān*, vol. 4, p. 321. Ḥadīth No. 1919.

⁶⁵⁶ <https://sunnah.com/tirmidhi/27>. Last accessed on 15-03-2015.

⁶⁵⁷ <https://archive.islamonline.net/?p=9231>. Accessed on 14-06-2017.

⁶⁵⁸ <http://www.iicwc.org/lagna/catig/methak/en/>. Accessed on 07-08-2017.

Likewise, there is no flaw among this Charter and all international instruments subject to their conformity with Islamic Law.⁶⁵⁹

Moreover, all the institutions of the state, the parents, guardians, the relatives should respect rights of the children. Similarly, all the legislative, executive and the judiciary should take care of the children with the rule of best interest of the child should be the master with respect to the dignity of the parents and the guardians.⁶⁶⁰

The Charter provides basic principles governing the rules concerning the children. As for the procedures for implementation, it has been left to the countries to decide according to their conditions. Further, the Charter kept in mind the method of international instruments, so that the comparison will be easy. Moreover, it has been tried by the Charter to include all rights of the child along with their obligations, either those are legal rights and obligations which have to be legally enforced or those which have been socially enforced by the valid tradition in a society according to Islamic Law.⁶⁶¹

⁶⁵⁹ Art. 120. This means that all valid rules should be acted upon.

⁶⁶⁰ Art. 121-122.

⁶⁶¹ See, <https://archive.islamonline.net/?p=9231>. Accessed on 18-07-2017.

3.3.6 General Mechanism

There are two basic general mechanisms to stop the children abuse. The first method is the judicial mechanism and the second is extra judicial mechanism.

3.3.6.1 Judicial Mechanism

Islam has well established judicial mechanism where system of punishments was in advance in case of any violation of the justice. For example, in the era of Khalīfah Rāshid 'Umar bin Al-Khaṭṭāb (RAA), a judge was appointed for each city. He was appointed by the central government. The basic eligibility criteria of the judge was, among others, his being mature, sound mind, good character, good in hearing and sight, being an Islamic Juristic and ability to get opinion from the experts. Further, he was paid a good salary so that he can feel free to decide the cases with justice without feeling inferiority or need to others. Moreover, he was not allowed to part time work. In that era, there was a dispute between the the Khalīfah 'Umar (RAA) and Ubaiy Bin Ka'b (RAA), both went to the judge of Madīnah, Zaid bin Thābit (RAA). He Welcomed the Khalīfah, along with saying that he did something wrong; injustice. So, the ruler was also subject to the Law

and the public were free to ask him when they feel injustice. In that era, there were no infrastructure for the judiciary; the mosque was the centre for the judicial matters in order to receiving justice becomes easy for everyone. Moreover, the Judiciary became separated from the executive.⁶⁶²

As far as the punishments, there is *qisās*⁶⁶³ in case of injuries and killings. Secondly, there are *ḥudūd*⁶⁶⁴ for specific crimes. Thirdly, *ta'zīrāt* whose punishments are subject to will of the judge; he can decide the case and punishment according to the nature of the crime. Same mechanism would be applied to the child abuse cases.

3.3.6.2 Extra Judicial Mechanism

One of the outstanding characteristics of the nation (*ummah*) of the Prophet Muhammad (SAW), is the enjoining the right and restricting from bad. This feature works for the better of the nation's life. Allāh Al-Mighty says in the Holy Qur'ān mentioning this particular feature of the *ummah*:

⁶⁶² Tamannā, bashīr Aḥmad, *Tārīkh-e-Islam* (Lahore: New Book Palace, N.D.), p. 128-129; Ḥamūdah, Muntaṣir, *Ḥimāyah Ḥuqūq al-Ṭīfl fī al-Qānūn al-Duwalī al-'Ām wa al-Islamī* (Iskandriah: Dār al-Jāmi'ah al-Jdīdah, 2007), p. 289-291. [hereinafter referred to as *Ḥimāyah Ḥuqūq al-Ṭīfl fī al-Qānūn al-Duwalī al-'Ām wa al-Islamī*].

⁶⁶³ It is retribution. Doing to the offender what he was done with victim.

⁶⁶⁴ The punishments of ḥudūd crimes are fixed by Shari'ah.

(كُنْتُمْ خَيْرَ أُمَّةٍ أُخْرِجَتْ لِلنَّاسِ تَأْمُرُونَ بِالْمَعْرُوفِ
وَتَنْهَوْنَ عَنِ الْمُنْكَرِ وَتُؤْمِنُونَ بِاللَّهِ ... ⁶⁶⁵ ﷻ)

“Ye are the best of peoples, evolved for mankind, enjoining what is right, forbidding what is wrong, and believing In Allāh. if only the people of the Book had Faith, it were best for them: among them are some who have Faith, but Most of them are perverted transgressors.”⁶⁶⁶

The Prophet (SAW) has described this characteristic of his *ummah*:

"مَنْ رَأَى مِنْكُمْ مُنْكَرًا فَلْيُغَيِّرْهُ بِيَدِهِ، فَإِنْ لَمْ يَسْتَطِعْ فَبِلِسَانِهِ، فَإِنْ لَمْ
يَسْتَطِعْ فَبِقَلْبِهِ، وَذَلِكَ أَضْعَفُ الْإِيمَانِ." ⁶⁶⁷

“Whoever amongst you sees an evil, he must change it with his hand; if he is unable to do so, then with his tongue; and if he is unable to do so, then with his heart; and that is the weakest form of Faith.”⁶⁶⁸

Enjoining or ordering for the good and restricting from the bad works as the safeguard and security for the *ummah* of Islam. This work is for the whole the Muslim society; all the Muslims are bound to do it according to their capacities because the words of the ḥadīth are general. Importantly,

⁶⁶⁵ Al-Qur’ān 3/110.

⁶⁶⁶ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 19-02-2015.

⁶⁶⁷ Ibn Aḥmad, Aḥmad, *Musnad al-Imām Aḥmad bin Ḥanbal*, Musnad Abī Sa’īd al-Khudrī (RAA), vol. 18 (Mu’asasah al-Risālah, 2001), p. 42, Ḥadīth. No. 11460. [hereinafter referred to as *Musnad al-Imām Aḥmad bin Ḥanbal*].

⁶⁶⁸ <https://sunnah.com/riyadussaliheen/1/184>. Accessed on 15-07-2017.

this is applicable to every aspect of the life including in the field of protection of child right and prevention of their abuse.⁶⁶⁹

Second is the concept of the individual responsibility. Islam used to teach its people the religious teachings and make them understand the ultimate results of their deeds. In this world, definitely, they; the abusers, will face the punishments of their abuse. As for the hereafter, they will face the penalty or the reward for what they have done in this world. By all this, when Muslims conscience thinks the results, he will certainly stop to abuse of the children and from all illegalities.⁶⁷⁰

3.4 Mechanism in Specific Matters

3.4.1 Domestic Violence

The evil may occur by the society, or the teachers or even the parents many times. This is practice of the people. However, Islam provides a general principle governs all this issue when the Prophet (SAW) said:

⁶⁶⁹ *Himāyah Ḥuqūq al-Tifl fī al-Qānūn al-Duwalī al-ʿĀm wa al-Islamī*, p. 294-296.

⁶⁷⁰ *Ibid.*, p. 297-298.

671 "أَيُّسَ مِنَّا مَنْ لَمْ يَرْحَمْ صَغِيرَنَا وَيُوقِرْ كَبِيرَنَا".

“He is not one of us who does not have mercy on our young and does not respect our elders.”⁶⁷²

In general, this prohibits the violence. Then, there is no advantage of using violence against them rather it makes him afraid from parents, teachers, education, losing the will power and ending with making them habitual offender.⁶⁷³

However, a reasonable disciplinary action can be taken that is not harmful to them.⁶⁷⁴ One point is very important that guardian is responsible to the Law in case of any harmful act.⁶⁷⁵

Importantly, the parents can rear their children however they wish but if they punish their child or neglect him, the child most probably will punish and neglect its parents when they become old.⁶⁷⁶

⁶⁷¹ Al-Tirmidhī, *Abwāb al-Birr wa al-Ṣilah, Bāb ma Jā'a fi Raḥmah al-Ṣibyān*, vol. 4, p. 321. Ḥadīth No. 1919.

⁶⁷² <https://sunnah.com/tirmidhi/27>. Last accessed on 15-03-2015.

⁶⁷³ Munir, Muhammad Dr. *Rights of the Child: an Islamic Perspective on Preventing Violence, Abuse and Exploitation of Children and Pakistani Law*, Hamdard Islamicus, vol. XXXVIII, No. 4 (October-December 2015): p. 36. [hereinafter referred to as *Rights of the Child: an Islamic Perspective on Preventing Violence, Abuse and Exploitation of Children and Pakistani Law*].

⁶⁷⁴ CFI. Art. 116.

⁶⁷⁵ *Al-Fiqh al-Islāmī wa Adillatuhu*, vol. 9, p. 148.

Two issues are very important to be avoided. One is that parents should not anger or curse⁶⁷⁷ their children; instead, they should pray to Allāh for their becoming better. Second is that the parents should not spoil their children, instead, they should teach them good manners and ethics to be a good man of the society; focus on his growth in educational and reasonable co-curricular activities. For a child, a balance between the both is necessary; otherwise, many problems will be created for children in their future life.

In this regard, the Prophet (SAW) has said:

"ثَلَاثُ دَعَوَاتٍ لَا تُرَدُّ، دَعْوَةُ الْوَالِدِ، وَدَعْوَةُ الصَّائِمِ، وَدَعْوَةُ الْمُسَافِرِ".⁶⁷⁸

(Three Du'ās (Prayers) are not rejected: Prayer of father, prayer of Fastened and prayer of the Traveler).

Imām Ghazālī reported that a man came to 'Abdullah bin al-Mubārak and complained the disobedience of his son to him. He said that if he cursed him. He said: Yes. 'Abdullah bin al-Mubārak told him: "you yourself spoiled him".⁶⁷⁹

⁶⁷⁶ Ibn al-Qiyyim, *Tuhfah al-Mawdūd bi al-Aḥkām al-Mawlūd*, quoted in, *Rights of the Child: an Islamic Perspective on Preventing Violence, Abuse and Exploitation of Children and Pakistani Law*, p. 37.

⁶⁷⁷ Prayer for expulsion from the mercy of God.

⁶⁷⁸ *al-Sunan al-Kubrā*, Kitāb Ṣalāh al-Istisqā', Bāb al-Ṣiyām Lil-Istisqā', vol. 3, p. 481. Ḥadīth. 6392.

⁶⁷⁹ Al-Ghazālī, Abū Ḥāmid, *Iḥyā' 'Ulūm al-Dīn*, vol. 2 (Bairūt: Dār al-Ma'rifah, N.D.), p. 217.

The topic of domestic violence and abuse has been touched by the Charter. Accordingly, the violence or abuse by the parents or a person having responsibility of the child, whether the abuse was mentally, physically, bodily or the neglect, prevention of all such kinds of abuse is right of the child. However, the discipline and the correction of the children are excluded from the rule of child abuse subject to the condition that this discipline should be correct in terms of the educational and the legal methods. In this regard, the state should assist the parent for the purpose of discipline such naughty children.⁶⁸⁰

The important is that there are other ways to discipline the children in which there is no violence on the child. These are like advising him, denial of play time for him or temporary isolation.⁶⁸¹ This discipline should be within the boundary of safety.⁶⁸² Moreover, the punishment may result into counter results. For example, child will hate his parents and he may feel inferiority among others. Further, he may stop to use his talents and used

⁶⁸⁰ Art. 116.

⁶⁸¹ Munir, Muhammad Dr. *Rights of the Child in Islam* (Islamabad: Iqbal International Institute for Research and Dialogue, IIUI, 2017), p. 120. [hereinafter referred to as *Rights of the Child in Islam*].

⁶⁸² Al-Sarkhasī, Shams Al-Dīn, *Al-Mabsūt*, vol. 5 (Bayrūt: Dār Al-Ma‘rifah, 1986), p. 223. (hereinafter referred to as *Al-Mabsūt*); *Al-Fiqh al-Islāmī wa Adillatuhu*, vol. 6, p. 198.

to get punishment which results into his being habitual and no benefit latter one.⁶⁸³

3.4.2 Protection against physical abuse

There are five general necessities (objectives) of Shari'ah. They are preservation of the religion; preservation of the person (human being); preservation of the progeny; preservation of the property and preservation of the intellect.⁶⁸⁴ Issue of abuse and the physical abuse of the children; especially, related to all these objectives of Shari'ah. Firstly, it is against the preservation of religion because Islam does not allow anyone to abuse them in its clear rulings. Secondly, it is against the preservation of the person because the abuse may result into many problem and deficiencies in the person of the children. Definitely, this is not allowed by Islam. Thirdly, it is also against the preservation of progeny because the abuse harms it. The rule is that everything damaging the progeny and offspring prohibited. Fourthly, it is against the preservation of the property because the abuse is reason for the increasing financial liability of a person accused of abuse whether it is father or someone else. Fifthly, it is against the preservation of the intellect because it affects the children negatively in the terms of their

⁶⁸³ Ibid. p. 122.

⁶⁸⁴ Al-Shāṭibī, Ibrāhīm bin Mūsā, *Al-Muwāfaqāt*, vol. 2 (Dār Ibn 'Affān, 1997), p. 20.

health, neglect, feeling inferiority resultantly deficient in their studies and useful citizen. A general maxim of Islam Law says:

"الأصل في المنافع الحل وفي المضار التحريم"⁶⁸⁵

(The original rule for the beneficial issues is permissibility and for the harmful issues is prohibition).

CDHRI emphasizes on to safeguard the fetus and its mother.⁶⁸⁶

3.4.3 Protection of children deprived of their family

A child may lose his family due to armed conflict, accident or death of his family member. He can be deprived from his family in case of divorce or when the parents give him to other family against some consideration due to poverty they experience. Another reason is unhappiness, assault, physical, neglect and miserable life in the family or when the father or the

⁶⁸⁵ Ya'qūb 'Abd Al-Wahhāb, *Qā'idat Al-Yaqīn Lā Yazūl Bi Al-Shak*, (Al-Riyāḍ: Maktabat Al-Rushd, 2000), 139-160.

⁶⁸⁶ CDHRI. Art. 7(a).

responsible of the family is addict person. in all the cases Islamic Law provides general rules for their welfare and care.⁶⁸⁷

One of those children is an orphan (*Yatīm*). He is in Islamic Law a child whose father has been died (*yatīm*). Islam encouraged the society to provided increased care towards those children. There is high possibility that those children could be abused in one way or the other. *Yatīm* is a child called before its puberty, after that, he is no more called as *yatīm*.⁶⁸⁸ It is reported by 'Alī (RAA) that the Prophet (SAW) has said:

"لَا يُتِمُّ بَعْدَ اِخْتِلَامٍ..."⁶⁸⁹

"There is no orphan hood after puberty..."⁶⁹⁰

Furthermore, Allāh al-Mighty highly threaten the people who grab and take possession of property of the *yatīm* invalidly. He says in the Holy Qur'ān:

⁶⁸⁷ Al-Azhar University in Cooperation of UNICEF, *Children in Islam: their Care, Upbringing and Protection* (Cairo: Al-Azhar University, 2005), p. 73-74. [hereinafter referred to as

⁶⁸⁸ Al-'Uthaimīn Muhammad bin Ṣāliḥ, *Sharḥ Riyāḍ al-Ṣāliḥīn Min Klām Saiyyed al-Mursalīn*, vol. 2 (Bairūt: Dār al-Kutub al-'Ilmiyyah, 2003), p. 142.

⁶⁸⁹ *Sunan Abī Dāwūd*, Kitāb al-Waṣāyā, Bāb mā Jā'a Matā Yanqati' al-Yutm, vol. 3, p. 115. Ḥadīth No. 2873.

⁶⁹⁰ <https://sunnah.com/abudawud/18>. Last accessed on 24-07-2015.

وَلَا تَقْرَبُوا مَالَ الْيَتِيمِ إِلَّا بِالَّتِي هِيَ أَحْسَنُ حَتَّىٰ يَبْلُغَ
أَشُدَّهُ (...).⁶⁹¹

“And come not nigh to the orphan's property, except to improve it, until He attain the age of full strength.”⁶⁹²

إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا
يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا ۖ وَسَيَصْلَوْنَ سَعِيرًا ﴿٦٩٣﴾
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“Those who unjustly eat up the property of orphans, eat up a Fire into their own bodies: They will soon be enduring a Blazing Fire!”⁶⁹⁴

"اجْتَنِبُوا السَّبْعَ الْمُوبِقَاتِ، قَالُوا: يَا رَسُولَ اللَّهِ وَمَا هُنَّ؟ قَالَ: الشِّرْكُ
بِاللَّهِ، وَالسِّحْرُ، وَقَتْلُ النَّفْسِ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ، وَأَكْلُ الرِّبَا،
وَأَكْلُ مَالِ الْيَتِيمِ، وَالتَّوَلَّى يَوْمَ الرَّحْفِ، وَقَدْفُ الْمُحْصَنَاتِ الْمُؤْمِنَاتِ
الْعَافِيَاتِ".⁶⁹⁵

“Avoid the seven great destructive sins." The people enquire, "O Allah's Messenger (ﷺ)! What are they? "He said, "To join others in worship along with Allah, to practice sorcery,

⁶⁹¹ Al-Qur'ān 6/152.

⁶⁹² [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 18-03-2015.

⁶⁹³ Al-Qur'ān 4/10.

⁶⁹⁴ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 20-06-2015.

⁶⁹⁵ *Al-Bukhārī*, Kitāb al-Waṣāyā, (باب قول الله تعالى: (إن الذين يأكلون أموال اليتامى ...), vol. 4, p. 10. Hadīth No. 2766.

to kill the life which Allah has forbidden except for a just cause, (according to Islamic law), to eat up Riba (usury), to eat up an orphan's wealth, to give back to the enemy and fleeing from the battlefield at the time of fighting, and to accuse, chaste women, who never even think of anything touching chastity and are good believers.”⁶⁹⁶

Islam encouraged taking their sponsorship called in Islamic Law as *Kafalah*⁶⁹⁷ to fulfill their needs to live a normal life. Ḥadīth says in this regard:

"كَافِلُ الْيَتِيمِ لَهُ أَوْ لِغَيْرِهِ أَنَا وَهُوَ كَهَاتَيْنِ فِي الْجَنَّةِ « وَأَشَارَ مَالِكٌ
بِالسَّبَّابَةِ وَالْوَسْطَى " ⁶⁹⁸

“He who takes care of an orphan, whether he is his relative or a stranger, will be in Jannah with me like these two”. The narrator, Malik bin Anas raised his forefinger and middle finger for illustration.”⁶⁹⁹

⁶⁹⁶ <https://sunnah.com/bukhari/55>. Last accessed on 16-03-2015.

⁶⁹⁷ This is otherwise than adoption. *Kafalah* is to sponsor for his livelihood, his needs such as education and health. Adoption is to take parental rights of someone by which all rights and obligation transfers from the original parents to the adopting parents which is not allowed in Islam.

⁶⁹⁸ *al-Musnad al-Ṣaḥīḥ*, Kitāb al-Zuhd wa al-Raqā’iq, Bāb al-Iḥsān Ilā al-Armilah, vol. 4, p. 2287. Ḥadīth No. 42 (2983).

⁶⁹⁹ <https://www.sunnah.com/riyadussaliheen/1/263>. Accessed on 28-06-2017.

DRCCI mentions that every child has the rights for family affection; from the natural family or from the caring/sponsoring family in case he is deprived of his own family due to any reason.⁷⁰⁰

However, the adoption is not allowed by Islamic Law because it disturbs all the family system of Islam, for example, the rules provided for breast feeding, custody, guardianship, maintenance and inheritance. Allāh Al-Mighty says in Qur’ān:

(مَا جَعَلَ اللَّهُ لِرَجُلٍ مِّن قَلْبَيْنِ فِي جَوْفِهِ ۚ وَمَا جَعَلَ أَزْوَاجَكُمُ اللَّاتِي تُظَاهِرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ ۚ وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ۚ ذَٰلِكُمْ قَوْلُكُمْ بِأَفْوَاهِكُمْ ۗ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ ﴿٥١﴾ أَدْعُوهُمْ لِأَبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ ۚ فَإِن لَّمْ تَعْلَمُوا ءَابَاءَهُمْ فَاِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ ۚ وَلَيْسَ عَلَيْكُمْ جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ ۚ وَلَٰكِن مَّا تَعَمَّدَتْ قُلُوبُكُمْ ۚ وَكَانَ اللَّهُ غَفُورًا رَّحِيمًا ﴿٥٢﴾)

“Allāh has not made for any man two hearts In His (one) body: nor has He made your wives whom ye divorce by Zihar your mothers: nor has He made your adopted sons your sons. such is (only) your (manner of)

⁷⁰⁰ DRCCI. Principle 6.

⁷⁰¹ Al-Qur’ān 33/4-5.

speech by your mouths. but Allāh tells (you) the truth, and He shows the (right) way. Call them by (the names of) their fathers: that is juster In the sight of Allāh. but if ye know not their father's (names, call them) your brothers In Faith, or your maulas. but there is no blame on you if ye make a mistake therein: (what counts is) the intention of your hearts: and Allāh is Oft-Returning, Most Merciful.”⁷⁰²

As for the refugee a child, the CRCI significantly tells that the children who are in the status of refugee should also enjoy the same rights like other children according to this Covenant.⁷⁰³

3.4.4 Protection in armed conflict

The rule established about that the minimum age for the participation in the armed conflict.⁷⁰⁴ However, in the Islamic Law we find a ḥadīth from which we can abstract that the minimum age for participation in the armed conflict is fifteen years. The ḥadīth is:

"عن ابن عمَرَ رَضِيَ اللهُ عَنْهُمَا: «أَنَّ رَسُولَ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ عَرَضَهُ يَوْمَ أُحُدٍ، وَهُوَ ابْنُ أَرْبَعِ عَشْرَةَ سَنَةً، فَلَمْ يُجْزِئْنِي ثُمَّ عَرَضَنِي يَوْمَ الخَنْدَقِ، وَأَنَا ابْنُ خَمْسِ عَشْرَةَ سَنَةً، فَأَجَازَنِي.»⁷⁰⁵

⁷⁰² [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 17-04-2015.

⁷⁰³ Art. 21.

⁷⁰⁴ See, CRC and its Protocol on the armed conflict, in Chapter Two of this thesis.

⁷⁰⁵ *Al-Bukhārī*, Kitāb al-Shahādāt, Bāb Bulūgh al-Ṣibyān wa Shahādaturhum, vol. 3, p. 177. Ḥadīth No. 2664.

Reported by Ibn 'Umarah that: "Allah's Messenger (ﷺ) called me to present myself in front of him on the eve of the battle of Uhud, while I was fourteen years of age at that time, and he did not allow me to take part in that battle, but he called me in front of him on the eve of the battle of the Trench when I was fifteen years old, and he allowed me (to join the battle)."⁷⁰⁶

It is an established rule to preserve the civilians, especially the children, women and the old in an armed conflict.

(وَقَاتِلُوا فِي سَبِيلِ اللَّهِ الَّذِينَ يُقْتَلُونَكُمْ وَلَا تَعْتَدُوا
 إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ)⁷⁰⁷

"Fight In the cause of Allāh those who Fight you, but do not transgress limits; for Allāh loveth not transgressors."⁷⁰⁸

"... أَنَّ امْرَأَةً وَجَدَتْ فِي بَعْضِ مَعَارِي النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ
 مَعْتُولَةً، فَأَنْكَرَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَتْلَ النِّسَاءِ
 وَالصَّبَّيَّانِ."⁷⁰⁹

(During some of the Ghazawat of the Prophet (ﷺ) a woman was found killed. Allah's

⁷⁰⁶ <https://sunnah.com/bukhari/52>. Last accessed on 25-08-2015.

⁷⁰⁷ Al-Qur'ān 2/190.

⁷⁰⁸ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 19-05-2015.

⁷⁰⁹ *Al-Bukhārī*, Kitāb al-Jihād wa al-Siyar, Bāb Qatl al-Šibyān fi Ḥarb, vol. 4, p. 61. Ḥadīth No. 3014.

Messenger (ﷺ) disapproved the killing of women and children).⁷¹⁰

It is reported that when Abū Bakr (RAA) sent the army to Syria and *Sham*, he made Yazīd bin Abī Sufyān as commander of the army and advised him ten matters. Among those are: “Don’t kill a woman or a child or an old man. Don’t cut a fruitful tree or the established area. Don’t slaughter sheep or camel except for food. Don’t burn the date trees...”).⁷¹¹ This was the teachings and practice of Islam and Muslims.

The CDHRI safeguards the old aged, women and the children and all who are non-belligerents from killing. Its article 3 says:

“(a) In the event of the use of force and in case of armed conflict, it is not permissible to kill non-belligerents such as old man, women and children. The wounded and the sick shall have the right to medical treatment; and prisoners of war shall have the right to be fed, sheltered and clothed. It is prohibited to mutilate dead bodies. It is a duty to exchange prisoners of war and to arrange visits or reunions of the families separated by the circumstances of war.

(b) It is prohibited to fell trees, to damage crops or livestock, and to destroy the enemy's civilian buildings and installations by shelling, blasting or any other means.”⁷¹²

⁷¹⁰ <https://sunnah.com/bukhari/56>. Last accessed on 19-05-2015.

⁷¹¹ Al-Siyūṭī, Jalāl al-Dīn, *Tārīkh al-Khulafā'* (Maktabah Nazzār al-Bāz, 2004), p. 81.

⁷¹² <http://hrlibrary.umn.edu/instree/cairodeclaration.html>. Last accessed on 21-03-2016.

CRCI also, emphasizes to end abuse of children by engaging them in armed conflict.⁷¹³ As well, the Charter states that the children should not take direct part in the armed conflict before the age fixed for this purpose. Moreover, in such conditions, the children should be saved as there is no fault on their part. They should not be killed or injured, and the livelihood should be available for them.⁷¹⁴

3.4.5 Protection against drugs

The base of the drugs is the wine which has been made illegal (*ḥarām*) in Islam. Allāh al-Mighty says:

يٰۤاَيُّهَا الَّذِيْنَ ءَامَنُوْا اِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْاَنْصَابُ
 وَالْاَزْلَامُ رِجْسٌ مِّنْ عَمَلِ الشَّيْطٰنِ فَاجْتَنِبُوْهُ لَعَلَّكُمْ
 تُفْلِحُوْنَ ﴿٧١٥﴾

“O ye who believe! Intoxicants and gambling, (dedication of) stones, and (divination by) arrows, are an abomination,- of Satan's handwork: eschew such (abomination), that ye may prosper.”⁷¹⁶

⁷¹³ Article 17(5).

⁷¹⁴ Article 119.

⁷¹⁵ Al-Qur’ān 5/90.

⁷¹⁶ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 02-06-2015.

Then the Prophet (SAW) has said:

⁷¹⁷ "كُلُّ مُسْكِرٍ خَمْرٌ، وَكُلُّ مُسْكِرٍ حَرَامٌ".

(Every intoxicant is wine and every intoxicant is prohibited).

CRCI states that the state is under obligation to protect the children from the drugs and intoxicants and to end the abuse in this regard.⁷¹⁸ Likewise, the Charter tells the children have the right to be protected against all kinds of drugs which include the smoking.⁷¹⁹

3.4.6 Abduction and Trafficking

CRCI protects the children too, from all kinds of inhumane and abuse surroundings. Likewise, from kidnapping, smuggling and the trafficking of the children because all these are onset for the subsequent abuse of all kinds.⁷²⁰ The children have the right to be protected from the kidnapping, abduction and their sale.⁷²¹

⁷¹⁷ *Musnad al-Imām Aḥmad bin Ḥanbal*, Musnad ‘Abdullāh bin ‘Umar (RAA), vol. 8, p. 468. Ḥadīth. No. 4863.

⁷¹⁸ Art. 17(1).

⁷¹⁹ Art. 117(2).

⁷²⁰ Art. 17(2).

⁷²¹ CFI. Art. 117(3).

3.4.7 Protection against Child Labour and Economic Exploitation

Sometimes the children are used by the family members in their profession or to someone else to learn specific work or job. They may be paid or unpaid but does not affect their education or health or other human right. This nature of work is not considered as economic exploitation or the child labour. Although, the dangerous jobs like the construction work or any work where there is use of fire are child labours as per its definition. Moreover to what has been discussed earlier; child labour converts into economic exploitation where the child is used for the benefit of abusers forcefully or is used for the other illegal activities, for example, the smuggling, trafficking of illegal substances or sexual activities within or cross borders.⁷²²

Exploitation of children not only violates their right of education, it restricts them from fun in their playing age. Moreover, child labour and exploitation may lead towards unlimited exploitation in term of sexual or any other exploitation because the exploiters deal in commercial activities, so, being vulnerable they may engage children in any kind of work. The

⁷²² *Children in Islam: their Care, Upbringing and Protection*, p. 66.

exploitation occurs most of time in shape of unequal payment for the children.

These people don't remember that Allāh did not make a person responsible beyond his capacities. Allāh Al-Mighty says:

723(لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا ...)

“On no soul doth Allāh place a burden greater than it can bear...”⁷²⁴

UIDHR, on its part says in this regard:

“d) Every child has the right to be maintained and properly brought up by its parents, it being forbidden that children are made to work at an early age or that any burden is put on them which would arrest or harm their natural development.”⁷²⁵

Actually, this is also a topic whereby the legislation can be made on the base of *maṣlahah*; interest. The reason is that child labour contains harm to the child, especially, when it is without the permission of the guardian, but the same rule cannot be applied everywhere because the customs and the

⁷²³ Al-Qurʾān 2/286.

⁷²⁴ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 12-05-2015.

⁷²⁵ UIDHR. Art. 19(d).

conditions of the people have effect. However, in case of harm, the ḥadīth of the Prophet Muhammad (SAW) says:

"لا ضرر و لا ضرار"⁷²⁶

(Do not harm and do not retaliate by harm).

CRCI by its side stresses on protection of the children against and risky work on the expense of their education and health. Moreover, it paid due attention towards the need of the legislative measures by state parties to have proper laws specifying the least age for the work, work conditions and hours. These laws should also place punishment for those who contravene the law in this regard.⁷²⁷

The Charter again emphasis that it is right of the child to prevent the abuse in the form of economic exploitation or in other words the child labour, especially that labour which endanger his compulsory education or health or is danger for his growth. For this regard, the minimum age for the work and its hours should be decided.⁷²⁸

⁷²⁶ *Al-Sunan Al-Kubrā*, Kitāb al-Ṣulḥ, Bāb lā Ḍarara wa lā Ḍirār, vol. 6, p. 115, Ḥadīth No. 11385. This ḥadīth is also served as maxim of Islamic Law.

⁷²⁷ Art. 18.

⁷²⁸ Art. 118.

3.4.8 Protection against sexual exploitation

Sexual exploitation is the most dangerous exploitation to the children whether male or female. The reason is that it has the most effects of person of the victim child such as trauma and physical abilities and faculties. Resultantly, it make them habitual offender and addicted persons.

The Prophet (SAW) has said:

"مَنْ يَضْمَنُ لِي مَا بَيْنَ لِحْيَيْهِ وَمَا بَيْنَ رِجْلَيْهِ أَضْمَنَ لَهُ الْجَنَّةَ."⁷²⁹

“Whoever can guarantee (the chastity of) what is between his two jaw-bones and what is between his two legs (i.e. his tongue and his private parts), I guarantee Paradise for him.”⁷³⁰

It is duty of Muslim parents to up bring their children to out of sexual invoking environment so they can grow better citizens.

As for the homosexuality is concerned, is it strictly prohibited condemned to the extent that people of Lūt (SAW) was given the most severe punishment. Allāh says in the Holy Qur’ān:

⁷²⁹ Al-Bukhārī, Kitāb al-Riqāq, Bāb Ḥifz al-Lisān, vol. 8, p. 100. Ḥadīth No. 6474.

⁷³⁰ <https://sunnah.com/bukhari/81>. Last accessed on 16-04-2015.

(وَلَوْطًا إِذْ قَالَ لِقَوْمِهِ أَتَأْتُونَ الْفَاحِشَةَ مَا سَبَقَكُمْ بِهَا
 مِنْ أَحَدٍ مِّنَ الْعَالَمِينَ ﴿٧٣١﴾ إِنَّكُمْ لَتَأْتُونَ الرِّجَالَ
 شَهْوَةً مِّنْ دُونِ النِّسَاءِ ۚ بَلْ أَنْتُمْ قَوْمٌ مُّسْرِفُونَ

731 ﴿٧٣١﴾

“We also (sent) Lut: He said to His people:
 "Do ye Commit lewdness such As no people
 In creation (ever) committed before you? For
 ye practise your lusts on men In preference to
 women: ye are indeed a people transgressing
 beyond bounds.”⁷³²

(فَلَمَّا جَاءَ أَمْرُنَا جَعَلْنَا عَلَيَّهَا سَافِلَهَا وَأَمْطَرْنَا عَلَيْهَا
 حِجَارَةً مِّنْ سِجِّيلٍ مَّنضُودٍ ﴿٧٣٢﴾ مُّسَوَّمَةً عِنْدَ رَبِّكَ
 وَمَا هِيَ مِنَ الظَّالِمِينَ بَبَعِيدٍ ﴿٧٣٣﴾

“When Our Decree issued, we turned (the
 cities) upside down, and rained down on them
 brimstones hard As baked clay, spread, layer
 on layer,- Marked As from Thy Lord: nor are
 They ever far from those who do wrong!”⁷³⁴

⁷³¹ Al-Qur’ān 7/80-81.

⁷³² [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 17-05-2015.

⁷³³ Al-Qur’ān 11/82-83.

⁷³⁴ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 17-05-2015.

Moreover, the Prophet (SAW) has said:

"لَعَنَ اللَّهُ مَنْ عَمِلَ عَمَلِ قَوْمِ لُوطٍ، لَعَنَ اللَّهُ مَنْ عَمِلَ عَمَلِ قَوْمِ لُوطٍ، لَعَنَ اللَّهُ مَنْ عَمِلَ عَمَلِ قَوْمِ لُوطٍ."⁷³⁵

(Allāh has cursed the one who practice what has been practiced by people of Lūt. Allāh has cursed the one who practice what has been practiced by people of Lūt. Allāh has cursed the one who practice what has been practiced by people of Lūt).

Then, Majority of the Muslim Jurists has opinion that such people should be executed because the Prophet (SAW) has said:

"مَنْ وَحَدَّثُوهُ يَعْمَلُ عَمَلِ قَوْمِ لُوطٍ، فَاقْتُلُوا الْفَاعِلَ، وَالْمَفْعُولَ بِهِ."⁷³⁶

“If you find anyone doing as Lot's people did, kill the one who does it, and the one to whom it is done.”⁷³⁷

Only some Muslim Jurists like Abū Ḥanīfah, has the opinion that he should be punished as *ta'zīr* (decided by the judge) because there is no fixed punished decided by sharī'ah for this awful and ugly act.⁷³⁸ Obviously, this *ta'zīr* can reach to the execution.

⁷³⁵ Al-Nasā'ī, *Al-Sunan Al-Kubrā*, Kitāb al-Rajm, Man 'Amila 'Amala Qaum Lūt, vol. 6, p. 485. Ḥadīth No. 7297.

⁷³⁶ *Sunan Abī Dāwūd*, Kitāb al-Ḥudūd, Bāb fi Man 'Amila 'Amala Qaum Lūt, vol. 4, p. 158. Ḥadīth No. 4462.

⁷³⁷ <https://sunnah.com/abudawud/40>. Last accessed on 22-08-2015.

⁷³⁸ *Al-Fiqh al-Islāmī wa Adillatuh*, vol. 5, p. 809-810.

One of the preventive measures Islam encourages and orders is separation in beds of the children to put a stop on sexual contact among them. The tradition of the Holy Prophet (SAW) says:

"مُرُوا أَوْلَادَكُمْ بِالصَّلَاةِ وَهُمْ أَبْنَاءُ سَبْعِ سِنِينَ، وَاصْرَبُواهُمْ عَلَيْهَا،
وَهُمْ أَبْنَاءُ عَشْرِ وَفَرَّقُوا بَيْنَهُمْ فِي الْمَضَاجِعِ".⁷³⁹

(Command your children to pray at their age of seven and beat them if they don't pray at their age of ten, and separate among them in their beds).

CRCI also points out towards the danger of the sexual abuse and forces to protect the children especially from the abuse in the form of sexual abuse.⁷⁴⁰

The Charter makes it clear that the child is entitled to be protected from all form of abuse, especially the sexual abuse, or any action threatening his dignity.⁷⁴¹

3.4.9 Child Marriage

Briefly, Islamic Law divides the guardianship into two kinds. First is the guardianship for the person of the child or the insane and the second is the

⁷³⁹ *Sunan* Abī Dāwūd, Kitāb al-Ṣalāh, Bāb Matā Yu'mar al-Ghulām bi al-Ṣalāh, vol. 1, p. 133. Ḥadīth No. 495.

⁷⁴⁰ Art. 17(3).

⁷⁴¹ Art. 117(1).

guardianship for property of the child or the insane. The guardians may be the father or someone else.

In Islamic Law, the guardian has authority to decide for his ward; child or the insane, anything subject to its being beneficial to the child, is considered valid. Likewise, if a guardian gives the child; male or the female, into marriage, the contract of marriage will be considered valid.

However, there are certain conditions which have been put by Islamic Law for the child marriage. According to *mālikīyyah* and *ḥanābilah*, only the father, *waṣī*⁷⁴² or the ruler⁷⁴³ have been allowed to give his child into marriage. Likewise, *Shāfi'īyyah* have the view that only the father and the grandfather are allowed for this purpose. *Aḥnāf* on the other hand, it is allowed for the father, grandfather and all those who are guardians from the male side of the child; *ʿaṣabāt*. Moreover, the jurists agree that this should be allowed on the basis of interest of the child. This interest should be clear on many issues; the jurists differ on these issues. However, they agree mainly on *Kuḥḥ*⁷⁴⁴ and *Mahr al-mithl*.⁷⁴⁵ Furthermore, the spouses have *khayār al-Bulūgh*; right of puberty, if the guardian who did this contract is not the

⁷⁴² It is Guardian or the trustee; a father's appoint person for the welfare of the ward.

⁷⁴³ The ruler includes any person appointed by the ruler such as the governor or the judge.

⁷⁴⁴ Spouses should be similar.

⁷⁴⁵ The dowry amount should not be less than the dower paid normally to her female relatives.

father or the grandfather.⁷⁴⁶ This right allows the spouses to end the contract of marriage⁷⁴⁷ on achieving the puberty if they do not agree on the contract of marriage.⁷⁴⁸

Following is a ḥadīth which works as a proof that the contract of the marriage is valid in the childhood period but the consummation will be after attaining puberty:

عن عائشة رضي الله عنها قالت: "تَزَوَّجَنِي النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَنَا بِنْتُ سِتِّ سِنِينَ، وَبَنَى بِي وَأَنَا بِنْتُ تِسْعِ سِنِينَ".⁷⁴⁹

“Allah's Apostle (ﷺ) married me when I was six years old, and I was admitted to his house when I was nine years old.”⁷⁵⁰

UIDHR in article 19 (h-i) says:

i) No person may be married against his or her will, or lose or suffer diminution of legal personality on account of marriage.⁷⁵¹

⁷⁴⁶ This is also subject to difference of opinion. See, *Al-Hidāyah*, vol. 2, p. 480-4482; *Al-Fiqh al-Islāmī wa Adillatuhu*, vol. 7, p. 184-185.

⁷⁴⁷ By way of divorce, *khul'* or by *faskh* simply using right of puberty. The Pakistani Law also recognized option of puberty in Dissolution of Muslim Marriage Act 1939, section 2(vii), see, *Muhammad Riaz v. Robina Bibi* (2000 MLD1886 Lahore High Court).

⁷⁴⁸ See, Ibn al-Jazzī Abū al-Qāsim, *al-Qawānīn al-Fiqhiyyah*, p. 133; Ibn Qudāmah, *al-Mughnī*, vol. 7 (Maktabah al-Qāhirah, 1968), p. 41; Al-Kāsānī, Abū Bakr, *Bdā'i' al-Ṣanā'i' fi tartīb al-Sharā'i'*, vol. 2 (Dār al-Kutub al-'ilmiyyah, 1986), p. 244-246; Al-Sharbīnī al-Shāfi'i, Shams al-Dīn, *Mughnī al-Muhtāj*, vol. 4 (Dār al-Kutub al-'ilmiyyah, 1994), p. 246-247.

⁷⁴⁹ *al-Musnad al-Ṣaḥīḥ*, Kitāb al-Nikāḥ, Bāb Tazwīj al-Abb al-Bikr al-Ṣaghīrah, vol. 2, p. 1039, Ḥadīth No. 70 (1422). Some Muslim Scholars have criticized on the narrator of the ḥadīth i.e. Hishām, after he went to Irāq from Madīnah, See, *Rights of the Child in Islam*, p. 143-147.

⁷⁵⁰ <https://sunnah.com/muslim/16>. Accessed on 30-07-2017.

Talking about the opinions of the Muslim Jurists, majority of them have the view that if the guardian is other than the father and grandfather, he cannot give the ward into marriage. Significantly, according to some Muslim Jurists like Imām Shāfi'ī and his pupils, it is recommended even for the father and the guardian not to give their ward into marriage before puberty, especially the girl.⁷⁵² Furthermore, majority of the Muslim Jurists like Abū Ḥanīfah, Mālik and Shāfi'ī (RA), of the view that sexual intercourse depends on the capability of the girl because it is different from girl to girl. So, ḥadīth of 'Ā'ishah (RAA) does not make it necessary to do sexual intercourse at the age of nine.⁷⁵³

It is remarkable that a study of al-Azhar university in cooperation with UNICEF, it have been mentioned that Islam has nothing to do with child marriage. We see that Holy Qur'ān has referred for the marriage with the word "maturity". As for child marriage, is a customary practice that may be practiced in any society.⁷⁵⁴

⁷⁵¹ <http://www.alhewar.com/ISLAMDECL.html>. Last accessed on 26-09-2015.

⁷⁵² It is because the ward before the puberty may not be able to know and decide the matter.

⁷⁵³ Al-Nuwawī, Abū Zakariyyah, *al-Minhāj, Sharḥ Ṣḥīḥ Muslim bin Ḥajjāj*, Kitāb al-Nikāḥ, Bāb Jawāz Tazwīj al-Abb al-Bikr al-Ṣaghīrah, vol. 9 (Bayrūt: Dār Iḥyā' al-Turāth al-'arabī, 1392 H), p. 206., Ḥadīth No. 69 (1422).

⁷⁵⁴ *Children in Islam: their Care, Upbringing and Protection*, p. 62.

3.4.10 Protection and Special treatment in case of crimes and punishments

"رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الصَّبِيِّ حَتَّى يَخْتَلِمَ، وَعَنِ الْمَجْنُونِ حَتَّى يَعْقِلَ".⁷⁵⁵

(No Responsibility on three people: the sleepy till he wakes up; the child till he wets dream (gets puberty) and the insane till he becomes of sound mind).

Although, the signs of puberty and the year when a child becomes pubert subject to difference of opinion,⁷⁵⁶ this ḥadīth provides a general rules with regard to responsibility and liability. The deliberate action of a child is considered as mistake. So, if a child kills someone, this will be considered as mistakenly killing and the punishment of retribution (*qisās*) would not be applied, however, the blood money (*diyyah*) will be applied on the male relatives (*‘āqilah*).⁷⁵⁷

In this regard, a child accused of accusation a chaste woman was presented to ‘Umar bin al-khaṭṭāb (RAA). He ordered to see if he was reached the puberty or not and it was not. Then, he did not implement the punishment

⁷⁵⁵ *Al-Sunan al-Kubrā*, Kitāb al-Ṣalāh, Bāb man Tajibu ‘Alaihi al-Ṣalāh, vol. 3, p. 318. Ḥadīth No. 5089.

⁷⁵⁶ It is discussed in Chapter No. 1 of this thesis under the head “signs of puberty”.

⁷⁵⁷ *Aḥkām al-Ṣiḡhār*, p. 328.

of the crime.⁷⁵⁸ In another case, a boy was accused of theft. He was presented to 'Uthmān bin 'Affān (RAA). On seeing that the boy was not reached the puberty, he did not implement of the punishment on him.⁷⁵⁹

The Charter is of the view that the indiscriminate child has no criminal responsibility but it is allowed to manage some arrangements to discipline him according to the law. However, if the child is discriminating person till the age of puberty, he may be given reduced punishment or by disciplinary action. Though, in all decisions in this regard, child's dignity, freedom, rights and legal guarantee shall be respected. Moreover, his best interest shall remain intact.⁷⁶⁰

3.4.11 Education

It is enough to state importance of education in Islam that the first verse of the Holy Qur'ān began with the word that mean to read. Qur'ān says:

⁷⁶¹ (أَقْرَأْ بِاسْمِ رَبِّكَ الَّذِي خَلَقَ)

⁷⁵⁸ Ibn al-Qiyyim, Tufah al-Mawdūd bi al-Aḥkām al-Mawlūd, qouted in, *Rights of the Child: an Islamic Perspective on Preventing Violence, Abuse and Exploitation of Children and Pakistani Law*, p. 43.

⁷⁵⁹ Ibid.

⁷⁶⁰ Art. 111.


⁷⁶¹ Al-Qur'ān 96/1.

“Proclaim! (or read!) In the name of Thy Lord
and Cherisher, who created.”⁷⁶²

"طَلَبُ الْعِلْمِ فَرِيضَةٌ عَلَى كُلِّ مُسْلِمٍ".⁷⁶³

(Seeking the knowledge is obligatory on every
Muslim).

As a result, education has been made compulsory in Islam for all the Muslims including the children whether that is religious education or the technical and other educations. The following are two arguments in this regard. Allāh Al-Mighty says in the Holy Qur’ān:

(إِنَّ فِي خَلْقِ السَّمَوَاتِ وَالْأَرْضِ وَاخْتِلَافِ اللَّيْلِ وَالنَّهَارِ لَآيَاتٍ لِّأُولِي الْأَلْبَابِ)  ⁷⁶⁴

“Behold! In the creation of the heavens and the earth, and the alternation of night and day, there are indeed Signs for men of understanding.”⁷⁶⁵

And the Prophet (SAW) has said:

"عَلِّمُوا الصَّبِيَّ الصَّلَاةَ ابْنَ سَنَةٍ، وَاضْرِبُوهُ عَلَيْهَا ابْنَ عَشْرِ".⁷⁶⁶

⁷⁶² [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 16-06-2015.

⁷⁶³ Al-Bayhaqī, *Shu'ab al-Imān*, Shuḥ al-Mar'u bi Dīnihī vol. 3 (al-Riyādh: Maktabah al-Rushd, 2003), p. 195, Ḥadīth No. 1545.

⁷⁶⁴ Al-Qur’ān 3/190.

⁷⁶⁵ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 17-08-2015.

⁷⁶⁶ *Al-Sunan al-Kubrā*, Kitāb al-Ṣalāh, Bāb mā ‘Alā Ābā’i wa al-Ummahāti min Ta’lim al-Ṣibyān ‘Amr al-Ṭahārati wa al-Ṣalāh, vol. 3, p. 119. Ḥadīth No. 5091.

(Teach the prayer to the minor at the age of seven, and hit him – for not praying – at the age of ten).

Moreover, Muslim Jurists have discussed the issue of educating the children according to their age gradually. For example, Imām Ibn Ḥazm says in his book namely “*Marātib al-‘Ulūm*” that till five years of age, the child should be taught the writing and composing of the words and so on. Not only said this but he also told that the ruler should obligate the people for education and make arrangements like appointment of the teacher in this regard.⁷⁶⁷

In the aspect of education, it is very important that element school were created in the era of ‘Umar bin al-Khaṭṭāb and the treasury of the Islamic state was responsible for the teachers and for the students in term of remuneration. Moreover, many of such schools were established for the poor, orphans and like people by the charitable persons.⁷⁶⁸

As for the University education or the degree awarding institution is concerned, as per UNESCO and Guinness World Records, is the university established in the Mosque of al-Qarawiyyin⁷⁶⁹ in 859.⁷⁷⁰ Then, a university

⁷⁶⁷ ‘Uwais, ‘Abdul Ḥalīm, *Mausū‘ah al-Fiqh al-Islamī*, vol. 3 (Egypt: Dār al-Wafā’, 2005), p. 15-16. [hereinafter referred to as *Mausū‘ah al-Fiqh al-Islamī*].

⁷⁶⁸

<http://www.haythammanna.net/Human%20Rights%20en/Child%20Rights%20in%20Arab%20Islamic%20Culture.htm>. Accessed on 15-05-2017.

⁷⁶⁹ Jāmi‘ah al-Qarawiyyīn. It is located in Morocco.

in an actual sense founded in 1065 with the establishment of Nizamiyah University of Baghdad and Neshapur.⁷⁷¹ In Nizamiyah University of Neshapur, Imām al-Ḥaramain was the principle of the university and Imām al-Ghazālī was his student. Later on, in July 1091, Abū Ḥāmid al-Ghazālī⁷⁷² was appointed as Professor by the Niẓām al-Mulk. It has been expressed as the largest university of the medieval world;⁷⁷³ the Islamic golden age. In this University mostly taught all courses of Arts and Sciences. Another goodness of Islamic education was free of cost for all; rich and poor, who needed the education. Thus, provide equal opportunity for education. Importantly, it is still implemented in many Muslim's world university.⁷⁷⁴

Moreover, the *madrasah* system of education⁷⁷⁵ available in the Muslim World is also praiseworthy because it also provide religious education along with general courses free of costs without demanding from the treasury any support; just based on charities. Further, it does not need the infrastructure because they are established in the mosques.

⁷⁷⁰ See, https://en.wikipedia.org/wiki/University_of_Al_Quaraouiyine. Accessed on 25-07-2017.

⁷⁷¹ Both were established by Niẓām al-Mulk a-Tūsi; a Prime Minister of Malik Shāh Seljūqī.

⁷⁷² At his age of 33.

⁷⁷³ See, https://en.wikipedia.org/wiki/Al-Nizamiyya_of_Baghdad. Accessed on 17-03-2017.

⁷⁷⁴ Afridi, Maulānā M. Rāzī Khān and Navaid, M. Ilyās, vol. 1 (India: Anmol Publications Pvt. Ld, 2006), p. 318-321.

⁷⁷⁵ Mainly it is system of religious education including the other basic and necessary courses. They are based in mosques.

CDHRI stress on the child's right to education. Further, it enables the parents to choose the field of education keeping in view the best interest of the child with ethical values.⁷⁷⁶ Importantly, it describes what should be the purpose of the education should be. It specifies as under:⁷⁷⁷

(a) The question for knowledge is an obligation and the provision of education is a duty for society and the State. The State shall ensure the availability of ways and means to acquire education and shall guarantee educational diversity in the interest of society so as to enable man to be acquainted with the religion of Islam and the facts of the Universe for the benefit of mankind.

(b) Every human being has the right to receive both religious and worldly education from the various institutions of, education and guidance, including the family, the school, the university, the media, etc., and in such an integrated and balanced manner as to develop his personality, strengthen his faith in God and promote his respect for and defense of both rights and obligations.

CRCI also obligates the state parties to make the primary education of children compulsory and free on equal basis. As for the free secondary education, it recommends for the progressive basis within ten year. It says:

“2. States Parties to the present Covenant shall provide:

⁷⁷⁶ CDHRI. Art. 7(b).

⁷⁷⁷ CDHRI. Art. 9.

- i. Compulsory, free primary education for all children on an equal footing.
- ii. Free and compulsory secondary education on a progressive basis so that, within ten years, it is made available to all children.⁷⁷⁸

The Charter also recommends for compulsory and free education for all. In case of need, the material help or the scholarship can be help. This should compose of religious, ethics and education which enable them to develop them for the responsibility of life. The education shall consist of the syllabus which can make the children personality and grow their intellectual power.⁷⁷⁹

3.4.12 Health

Islam give much importance towards the health overall, especially the children. If we see the rules of Islamic Law, we see that ablution⁷⁸⁰ five times a day is a simple example for health of all. Because it makes the body clean which is helpful for the health. Then the Prophet (SAW) said:

⁷⁷⁸ <https://www.refworld.org/docid/44eaf0e4a.html>. Art. 12 (i & ii).

⁷⁷⁹ Art. 114.

⁷⁸⁰ For the prayers.

"إِذَا سَمِعْتُمْ بِالطَّاعُونَ وَأَنْتُمْ بِأَرْضٍ فَلَا تَخْرُجُوا فِرَارًا مِنْهُ، وَإِذَا سَمِعْتُمْ بِهِ بِأَرْضٍ
فَلَا تَدْخُلُوهَا".⁷⁸¹

(If you hear about a plague in your land, do not leave it for escaping it. And if you hear about a plague in any other land, do not enter it).

For children, the rule for the medical care and the suckling and maintenance obligation on the father is not but for the health of the children.

DRCCI tells that Islam give every child, the right to health. The methods it advices us in this regard, among other, is the breast feeding, provide information to the mothers how to save health of their children, prevention of the bad diet, easement of the Islamic law rules for the mothers having babies.⁷⁸²

CRCI states that the health care is necessary for all children since the start of pregnancy and then, in the period of his childhood. He has full right to get health information for himself and for his mother to raise awareness for proper care. It states as follow:

⁷⁸¹ Ibn Shaibah, Abū Bakr, *Musnad Ibn Abī Shaibah*, Mā Rawāhu Usāmah bin Zaid (RAA), vol. 1 (Al-Riyāḍ: Dār al-Waṭan, 1997), p.115, Ḥadīth No. 147.

⁷⁸² DRCCI. Principle 6.

The child is entitled to physical and psychological care.⁷⁸³ This shall be realized through:

1. Providing care for the mother since the onset of pregnancy⁷⁸⁴ and during natural nursing either by the mother or someone else if the mother is unable to suckle the baby.

.....

7. Providing preventive medical care, diseases and malnutrition control, as well as providing the necessary health care for him/her and for his/her mother.

8. The right of the child from the state and society to extend medical information and services for mothers in order to raise awareness and help them improve the health of their children.⁷⁸⁵

Further, it also mentions that any social or cultural practice that is harmful on the child's health or his growth must be ended.⁷⁸⁶

The charter also points out to the rights of health. He should be facilitated to use the health institutions, prevention and rehabilitation centers.⁷⁸⁷

⁷⁸³ As the psychological abuse is one of the kinds of abuse.

⁷⁸⁴ As in Islam, the rights of the children start from the pregnancy. See the legal capacity in chapter one.

⁷⁸⁵ <https://www.refworld.org/docid/44eaf0e4a.html>. Art. 15 (1, 7 & 8).

⁷⁸⁶ Ibid. Art. 20 (2).

⁷⁸⁷ Ibid. Art. 99.

3.4.13 Basic Needs

The primary obligation of providing basic needs⁷⁸⁸ is devoted to the father. After that, if the father is unable to fulfill the needs of the children or has been died, the obligation converts to the relatives; primarily the legal heirs. Thereafter, the obligation of the society/state comes forward.⁷⁸⁹

Allāh says:

(.. وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ ..)⁷⁹⁰

“...But he shall bear the cost of their food and clothing on equitable terms...”⁷⁹¹

The prophet (SAW) has said:

"...أَبْدَأُ بِنَفْسِكَ فَتَصَدَّقْ عَلَيْهَا، فَإِنْ فَضَلَ شَيْءٌ فَلِأَهْلِكَ، فَإِنْ فَضَلَ عَنْ أَهْلِكَ شَيْءٌ فَلِذِي قَرَابَتِكَ، فَإِنْ فَضَلَ عَنْ ذِي قَرَابَتِكَ شَيْءٌ فَهَكَذَا وَهَكَذَا). يُعْمَلُ: فَبَيْنَ يَدَيْكَ وَعَنْ يَمِينِكَ وَعَنْ شِمَالِكَ."⁷⁹²

“...Start with yourself and if there is anything left, give it to our family. If there is anything

⁷⁸⁸ food, clothing, shelter and the health.

⁷⁸⁹ *Mausū'ah al-Fiqh al-Islamī*, vol. 3, p. 13-15.

⁷⁹⁰ Al-Qur'ān 2/233.

⁷⁹¹ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 14-06-2015.

⁷⁹² *al-Musnad al-Ṣaḥīḥ*, Kitāb al-Zakāh, Bāb al-Ibtidā' fī al-Nafaqati bī al-Nafs, vol. 2, p. 692. Ḥadīth No. 41 (997).

left after your family (has been taken care of), then give it to your relatives. If there is anything left after your relatives (have been taken care of), then (give it) to such and such, saying: 'In front of you and to your right and to your left.'⁷⁹³

Likewise, He Said:

"أَفْضَلُ دِينَارٍ يُنْفَعُهُ الرَّجُلُ، دِينَارٌ يُنْفَعُهُ عَلَى عِيَالِهِ، وَدِينَارٌ يُنْفَعُهُ الرَّجُلُ عَلَى دَابَّتِهِ فِي سَبِيلِ اللَّهِ، وَدِينَارٌ يُنْفَعُهُ عَلَى أَصْحَابِهِ فِي سَبِيلِ اللَّهِ."⁷⁹⁴

“The most virtuous of the Dinar is the Dinar spent by a man on his dependants, and the Dinar spent by a man on his beast in the Cause of Allāh, and the Dinar spent by a man on his companions in the Cause of Allāh.”⁷⁹⁵

However, if the child has the property and is a wealthy person, then his needs could be fulfilled from his own property because the reason behind the father’s obligation in this connection is due to incapability of the child to earn the livelihood.⁷⁹⁶ Similarly, the child is also responsible for to maintain his parents in case of need.

⁷⁹³ <https://www.sunnah.com/urn/1077240>. Accessed on 10-06-2017.

⁷⁹⁴ *al-Musnad al-Ṣaḥīḥ*, Kitāb al-Zakāh, Bāb Faḍl al-Nafaqati ‘Alā ‘Ayāl, vol. 2, p. 691. Ḥadīth No. 38 (994).

⁷⁹⁵ <https://sunnah.com/urn/672690>. Accessed on 15-06-2017.

⁷⁹⁶ *Al-Hidāyah*, vol. 2, p. 653-655; *Al-Mabsūt*, vol. 5, p. 223.

As for the amount of the maintenance, it depends on the difficult or the easiness of the father in term of wealth and ability.⁷⁹⁷ Allāh says:

(لِيُنْفِقَ ذُو سَعَةٍ مِّن سَعَتِهِ ۗ وَمَن قُدِرَ عَلَيْهِ رِزْقُهُ
فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَاءً آتَاهَا
سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا ۗ)⁷⁹⁸

“Let the man of means spend according to His means: and the man whose resources are restricted, let Him spend according to what Allāh has given Him. Allāh puts no burden on any person beyond what He has given Him. after a difficulty, Allāh will soon grant relief.”⁷⁹⁹

Then, the Prophet (SAW) said:

... فَإِنَّ السُّلْطَانَ وَوَيْ مِنْ لَا وِليَّ لَهُ.⁸⁰⁰

(And sultan; the ruler, is guardian for the one who has no guardian).

The UIDHR mentions some important points in this regard, these are:

Firstly, the father’s obligation for the maintenance:⁸⁰¹

⁷⁹⁷ *Al-Fiqh al-Islāmī wa Adillatuh*, vol. 7, p. 778-781.

⁷⁹⁸ Al-Qur’ān 65/7.

⁷⁹⁹ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 20-05-2015.

⁸⁰⁰ Ibn Abī Shaibah, *al-Maṣānif*, Kitāb al-Radd ‘Alā Abī Ḥanīfah, Mas’alah al-Nikāh bi Ghairi Walī, vol. 7 (Al-Riyād: Maktabah al-Rushd, 1409H), p. 284, Ḥadīth No. 36117.

⁸⁰¹ UIDHR. Art. 19(c).

c) Every husband is obligated to maintain his wife and children according to his means.

Secondly, the obligation of the community:⁸⁰²

e) If parents are for some reason unable to discharge their obligations towards a child it becomes the responsibility of the community to fulfill these obligations at public expense.

It identifies that care and protection should present among the family members at all levels of the life including the childhood and old age. Here, it talks about the responsibility and material support from the children.⁸⁰³

CDHRI identifies child's right to receive his rights from his parents, society and the state in term of nutrition, education, moral care ...etc. So, the rights are consists of material and the moral. It says:

(a) As of the moment of birth, every child has rights due from the parents, society and the state to be accorded proper nursing, education and material, hygienic and moral care. Both the fetus and the mother must be protected and accorded special care.

(b) Parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take into consideration the interest and future

⁸⁰² UIDHR. Art. 19(e). There is a contradiction between Islamic Law as specified in the classified books and UIDHR because role of community starts after the role of relatives of the child.

⁸⁰³ UIDHR. Art. 19(f).

of the children in accordance with ethical values and the principles of the Shari'ah.

(c) Both parents are entitled to certain rights from their children, and relatives are entitled to rights from their kin, in accordance with the tenets of the Shari'ah.⁸⁰⁴

Definitely, this entire obligation depends on the capabilities and the sources of the parents, societies and the state. It states as follow:

(b) Everyone shall have the right to medical and social care, and to all public amenities provided by society and the State within the limits of their available resources.

(c) The State shall ensure the right of the individual to a decent living which will enable him to meet all his requirements and those of his dependents, including food, clothing, housing, education, medical care and all other basic needs.⁸⁰⁵

The charter indicated to the child's right to maintenance. According to the Charter, he should have reasonable life standard for his body, moral, religious and social growth. His maintenance obligation is on the father, then on his relatives who can maintain him. However, this right of the maintenance on the obligated persons ends once the male child gets capable of work and gets the opportunity in this regard. As for the female child, this

⁸⁰⁴ <https://www.refworld.org/docid/3ae6b3822c.html>. Last accessed on 22-06-2015. CDHRI. Art. 7(a), (b), (c).

⁸⁰⁵ Ibid. CDHRI. Art. 17 (b & c).

obligation to maintain her continues till she gets married and moved towards her husband home or she begins to earn for herself. Importantly, the societal institutions and the state must help the person maintaining the children.⁸⁰⁶

3.4.14 Child Allowance by State

In early Islamic Caliphate offered a grant or allowance for the children especially in the periods of prosperous. This allowance acted as insurance for every child. The highest shape of this allowance was a salary given to every Muslim infant born in the land of Islamic Caliphate when he became younger.⁸⁰⁷

3.4.15 Equality among Children

Islam considers inequality among the children by the parents, a kind of abuse and the injustice. The parents should treat their children emotionally and the financial matters. On the one hand, it leads towards to hate among the children and among the child and his parent. On the other hand, it develops the feeling of inferiority.

⁸⁰⁶ Art. 107.

⁸⁰⁷

<http://www.haythammanna.net/Human%20Rights%20en/Child%20Rights%20in%20Arab%20Islamic%20Culture.htm>. Accessed on 15-05-2017.

"عَنِ النَّعْمَانِ بْنِ بَشِيرٍ، أَنَّهُ قَالَ: إِنَّ أَبَاهُ أَتَى بِهِ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ، فَقَالَ: إِنِّي نَحَلْتُ ابْنِي هَذَا عُلَامًا كَانَ لِي، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: (أَكَلَّ وَلَدِكَ نَحْلَتَهُ مِثْلَ هَذَا؟) فَقَالَ: لَا، فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: (فَارْجِعْهُ).⁸⁰⁸

وفي رواية: قَالَ: (اتَّقُوا اللَّهَ، وَاعْدِلُوا فِي أَوْلَادِكُمْ)، فَرَجَعَ أَبِي، فَرَدَّ تِلْكَ الصَّدَقَةَ.⁸⁰⁹

وفي رواية: (أَكُلُّهُمْ وَهَبْتَ لَهُ مِثْلَ هَذَا؟) قَالَ: لَا، قَالَ: (فَلَا تُشْهِدُنِي إِذَا، فَإِنِّي لَا أَشْهَدُ عَلَى جَوْرٍ).⁸¹⁰

“Nu'man b. Bashir reported that his father brought him to Allah's Messenger (ﷺ) and said: I have donated this slave of mine to my son. Allah's Messenger (ﷺ) said: Have you donated to every one of your sons (a slave) like this? He said: No. Thereupon Allah's Messenger (may peace be upon him) said: Then take him back.”⁸¹¹

In another version of the Hadīth: “Fear Allah, and observe equity in case of your children. My father returned and got back the gift.”⁸¹²

The Prophe said in another Hadīth: “Have you given gifts to all of them like this? He said: No. Thereupon he (the Holy Prophet)

⁸⁰⁸ *al-Musnad al-Ṣaḥīḥ*, Kitāb al-Hibāt, Bāb Krāhatu Tafḍīl Ba'dīl al-Awlad fi al-Hibah, vol. 3, p. 1241. Ḥadīth No. 9 (1623).

⁸⁰⁹ Ibid. Kitāb al-Hibāt, Bāb Krāhatu Tafḍīl Ba'dīl al-Awlad fi al-Hibah, vol. 3, p. 1242. Ḥadīth No. 13 (1623).

⁸¹⁰ Ibid. Kitāb al-Hibāt, Bāb Krāhatu Tafḍīl Ba'dīl al-Awlad fi al-Hibah, vol. 3, p. 1243. Ḥadīth No. 14 (1623).

⁸¹¹ <https://sunnah.com/muslim/24>. Last accessed on 12-03-2015.

⁸¹² Ibid.

said: Then call me not as witness, for I cannot be witness to an injustice.”⁸¹³

We may abstract this principle from the Covenant on the Rights of the Children in Islam, which says:

Equality

States Parties shall guarantee equality of all children as required by law to enjoy their rights and freedoms stipulated in this Covenant regardless of sex, birth, race, religion, language, political affiliation, or any other consideration affecting the right of the child, the family, or his/her representative under the law or Shari'a.⁸¹⁴

Further, it also mentions that any discrimination among the children on the basis of sex or any other ground should be ended unless it is recommended by the Islamic Law.⁸¹⁵

3.4.16 Inheritance

In other religions like Jews, Christians Roman and Hindus ... etc, practice was prevailing that the oldest son inherits the whole legacy or he had the more right for it⁸¹⁶ or the daughter had no right of the legacy. Islam condemned this practice and decided the whole process of inheritance

⁸¹³ Ibid.

⁸¹⁴ <https://www.refworld.org/docid/44eaf0e4a.html>. Last accessed on 25-04-2015. Art. 5.

⁸¹⁵ Art. 20(2).

⁸¹⁶ *Sīrat al-Nabī*, vol. 6, p. 244.

distribution. Here, the female are also given their proportions in the inheritance as rights. Definitely, inheritance includes male and female consisting children as well. Qur'an says:

(يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَّيْنَ
 فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِنْ كَانَتْ
 وَاحِدَةً فَلَهَا النِّصْفُ...⁸¹⁷)

“Allāh (thus) directs you As regards your Children's (Inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, Her share is a half...”⁸¹⁸

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ
 نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ
 كَثُرَ نَصِيبًا مَّفْرُوضًا⁸¹⁹)

“From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large,-a determinate share.”⁸²⁰

⁸¹⁷ Al-Qur'an 4/11.

⁸¹⁸ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 15-04-2015.

⁸¹⁹ Al-Qur'an 4/7.

⁸²⁰ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 15-04-2015.

As discussed earlier,⁸²¹ the right to inheritance begins when the child is an embryo subject to its birth alive because the child during the period of pregnancy entitled to rights without duties.

DRCCI declares that Islam has given property rights and ownership to the child either through gift, will or inheritance. Importantly, all this is along with the clear obligation to protection of his property, firstly, through guardian and secondly, through the whole society.⁸²²

The Charter specifies the children's right for the inheritance. He has the right even in the period of conception (pregnancy) subject to his birth alive.⁸²³

The chapter has argued that the children have responsibilities; according to their age and capabilities, along with their rights. This develops the children to handle the responsibilities in future. It has also evaluated that the Muslim society at times does practice something contrary to Islamic teaching, so, the practices should not be connected with what Islam says. As for the abuse, it has denoted that Islam does not allow any kind of abuses and

⁸²¹ See "Lgal Capacity" in Chapter one in this thesis.

⁸²² DRCCI. principle 7.

⁸²³ Art. 108-109. It is because the legal capacity of acquisition begins incompletely in the period of pregnancy in Islamic Law and completes from the birth. See the legal capacity in first chapter.

exploitation. Islamic rules are very clear in this aspect. The chapter has also examined that the teaching of Islam regarding children rights and prevention of abuse, as defined in the Holy Qur'ān and the aḥādīth, have been comprised in the Islamic documents nowadays to make it like the way of international documents to make it easy in the present context. These are very important documents, the people can benefit from them. The forthcoming chapter is deputed for the evaluation of Pakistani Law and its mechanism to prevent child abuse.

CHAPTER

FOUR

Chapter Four

Child Abuse Prevention in Pakistan: Law and Mechanism

The previous two chapters deliberated on the efforts of International Law and Islamic Law in an attempt to prevent the abuse against children. This chapter evaluates the situation of Pakistan because it is a Muslim state and part of international community as well. It ponders on the important laws established in Pakistan for the protection of children. Then, it examines the mechanisms and their enforcement in preventing child abuse in the country. Moreover, it probes also on the struggle of NGOs and the society in this significant matter.

4.1 Important Laws on Children in Pakistan

4.1.1 The Constitution of Islamic Republic of Pakistan 1973

The Constitution of Islamic Republic of Pakistan 1973 provides general guiding principles to make the further legislations accordingly. There are many Article deals directly or indirectly about the children. Followings are some examples:

Firstly, The Constitution states that “all citizens are equal before law and entitled to equal protection of law”.⁸²⁴ It gives right to education for every child from the age five to sixteen.⁸²⁵ Further, slavery, trafficking and the employment of children under fourteen were prohibited⁸²⁶ and exploitation was made illegal.⁸²⁷ Furthermore, The Constitution protects the family institution⁸²⁸ and authorized the state to enact special provision for the children.⁸²⁹

The 18th amendment of The Constitution of Islamic Republic of Pakistan 1973 is very important. Before the amendment, many legislative measures were initiated, for example, Charter of Child Rights Bill 2009 and Prohibition of Corporal Punishment Bill 2010 but all the legislative measures were sent pending even after the approval from the Ministry of Law, Justice and Human Rights. Although, the provinces were empowered in cases of child welfare and protection, the state should also play its role.⁸³⁰

The Committee on the Rights of the Child stated that:

⁸²⁴ Art. 25(1).

⁸²⁵ Art. 25A.

⁸²⁶ Art. 11(3).

⁸²⁷ Art. 3.

⁸²⁸ Art. 35.

⁸²⁹ Art. 25(3).

⁸³⁰ Children’s Complaint Office, Ombudsman and UNICEF, *The State of Children in Pakistan*, July 2015, p. 35-36. [hereinafter referred to as *The State of Children in Pakistan*].

“When a state ratifies the CRC, it takes on obligations under international law to implement it”.⁸³¹

Further, it stated:

“the committee has found it necessary to emphasise to many states that decentralisation of power, through devolution and delegation of government, does not in any way reduce the direct responsibility of the state party’s government to fulfil its obligations to all children within its jurisdiction, regardless of the state structure”.⁸³²

4.1.2 Pakistan Penal Code 1860

It is one of the basic laws of Pakistan dealing with the crimes and their punishment. It provides different sections saving rights and protecting children. For example, the immunity has been provided to the children, definitely; to certain age. Section 82 of PPC says:

Act of child under seven years of age

Nothing is an offence which is done by a child under ten year of age.⁸³³

⁸³¹ <https://www.refworld.org/docid/4538834f11.html>. Last accessed on 12-06-2016. Para 1 of General Comment (GC) No. 5, *General Measures of the Implementation of the CRC, 2003*.

⁸³² Ibid. Para 40 of the (GC) No. 5.

⁸³³ <https://www.pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apk%3D-sg-jjjjjjjjjjjj>. Last accessed on 12-03-2016.

Section 83 of PPC says:

Act of a child above seven and under twelve of immature understanding

Nothing is an offence which is done by a child above ten years of age and under fourteen, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.⁸³⁴

Moreover, it includes many rules regarding children and punishments to those who do any crime against the children such as forced marriage, child pornography, trafficking...etc.⁸³⁵

4.1.3 The Guardians and Wards Act 1890

Whole of this law relates to the guardianship of the person and the property of a ward. It makes it clear that while appointing the guardian, the court considers welfare of the child according to ward's sex, age and religion of the ward. Moreover, the guardian cannot be declared against ward's will if he can give his opinion. As far the guardian of person is considered, he is under obligation to see and fulfill ward's support matters like education, health and protection. Further is that the guardian is not guardian forever;

⁸³⁴ Ibid.

⁸³⁵ Detail of those rules of Pakistan Penal Code is forthcoming.

he can be removed in case of not performing his duties in reasonable manner. Following sections of the Act are very important in this regard:

Section 17 of the act says:

“Matters to be considered by the Court in appointing guardian

(1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

(4) Omitted.

(5) The Court shall not appoint or declare any person to be a guardian against this will.”⁸³⁶

⁸³⁶ <https://www.pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-cJc%3D-sg-jjjjjjjjjjjj>. Last accessed on 02-06-2016.

Section 24 of the act says:

Duties of guardian of the person

A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.⁸³⁷

Section 39 of the act says:

“Removal of guardian

The court may on the application of any person interested, or of its own motion, remove a guardian appointed or declared by the Court, or a guardian appointed by will or other instrument, for any of the following causes, namely :- (a) for abuse of his trust;

(b) for continued failure to perform the duties of his trust ;

(c) for incapacity to perform the duties of his trust;

(d) for ill-treatment, or neglect to take proper care of his ward;”⁸³⁸

4.1.4 The Juvenile Justice System Ordinance 2000

This law discusses the rules for the children accused of a matter prohibited within the laws for the time being enforced in Pakistan. According to

⁸³⁷ Ibid.

⁸³⁸ Ibid.

section 5 of the ordinance, children should not accompany the adult accused.⁸³⁹ Moreover, children are dealt with keeping in view their welfare. The Ordinance says that in normal cases, the children should not remain imprisoned for more than one year. The section 10 (7) says:

“Arrest and Bail....

- (7) Notwithstanding anything contained in the Code and except where a juvenile court is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf or in exercise of any right or privilege under any law for the time being in force, a child who, for commission of an offence, has been detained, shall be released on bail,
- (a) if, being accused of an offence punishable with death has been detained for such an offence for a continuous period exceeding one year and whose trial for such an offence has not concluded;
 - (b) if, being accused of any offence punishable for imprisonment for life has been detained for such an offence for a continuous period exceeding six months and whose trial for such offence has not concluded; or

⁸³⁹ <https://www.pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaZZQ%3D%3D-sg-jjjjjjjjjjjj>. Last accessed on 13-03-2016.

- (c) who, being accused of any offence not punishable with death, or imprisonment for life, has been detained for such an offence for a continuous period exceeding four months and whose trial for such an offence has not concluded:

Provided that where a child of the age of fifteen years or above is arrested, the Court may refuse to grant bail if there are reasonable grounds to believe that such child is involved in an offence which in its opinion is serious, heinous, gruesome, brutal, sensational in character or shocking to public morality or he is a previous convict of an offence punishable with death or imprisonment for life.⁸⁴⁰

4.1.5 The Punjab Destitute and Neglected Children Act 2004, as amended in 2007.

It is a law established in the Province of Punjab. Its purpose was to save the destitute and neglected children, their custody, care, rehabilitation for their protection. The destitute and neglected children have been defined in section 3 (K) as:

“Destitute and neglected child means a child who:

⁸⁴⁰ Ibid.

- (i) is found begging; or
- (ii) is found without having any home or settled place of abode and without any ostensible means of subsistence; or
- (iii) has a parent or guardian who is unfit or incapacitated to exercise control over the child; or
- (iv) lives in brothel or with a prostitute or frequently visits any place being used for the purpose of prostitution or is found to associate with any prostitute or any other person who leads an immoral or depraved life; or
- (v) is being or is likely to be abused or exploited for immoral or illegal purpose or unconscionable gain; or
- (vi) is beyond the parental control; or
- (vii) has lost his parents or one of the parents and has no adequate source of income; or
- (viii) is victim of an offence punishable under this Act or any other law for the time being in force and his parent or guardian is convicted or accused for the commission of such offence;⁸⁴¹

4.1.6 Federal and Provincial Laws

There are more laws dealing specifically with different aspects of children life. Some of these are stated below:

⁸⁴¹

https://punjabcode.punjab.gov.pk/en/show_article/3IQxqIc5al2GpVI5e~SQIH54NiPtssba3ynR2NlJJWCgWL79k4DxTHpj.JEtDL497TsXc1.LjXGBaGHkb.roSQ--. Last accessed on 14-03-2016.

4.1.6.1 Federal Laws

- Female Infanticide Prevention Act, 1870
- Guardians and Ward Act, 1890
- Reformatory Schools Act, 1897
- Child Marriage Restraint Act, 1929
- Children (Pledging of Labour) Act, 1933
- The West Pakistan Control of Orphanages Act, 1958
- The WP Vaccination Ordinance, 1958
- Juvenile Smoking Ordinance, 1959
- West Pakistan Primary Education Ordinance 1962
- Workers Children Education Ordinance, 1972
- Punjab Private Educational Institutions (Promotion and Regulation), 1984
- The Employment of Children Act, 1991
- Juvenile Justice System Ordinance, 2000
- Protection of Breastfeeding and Child Nutrition Ordinance, 2002.⁸⁴²

⁸⁴² *The State of Children in Pakistan*, p. 35.

4.1.6.2 Provincial Law

- Bonded Labour Abolition Act 1992,
- Human Trafficking Ordinance 2002, which are applicable to both adults and children.
- The Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011 outlines punishments for social practices like *Vani*, *Swara* or *Budla-i-Sulh*, wherein women are traded to settle personal, family or tribal disputes.⁸⁴³

4.1.7 National Plan of Action

Pakistan has developed Second National Plan of Action 2006 for children wellbeing. It talks about the measures which should be taken for the education, health, and prevention of the children from the activities affecting them such as neglect exploitation and sexual abuse. Though, this plan of action has somehow failed due to the failure of the coordination among the federal and provincial ministries, even, they are not aware what the policy is.⁸⁴⁴

⁸⁴³ Ibid.

⁸⁴⁴ Ibid. p. 33.

4.2 Mechanism in Different Areas

4.2.1 Protection against Physical abuse

As mentioned earlier, the physical abuse causes many inflicts the children in several aspects of life. The Pakistan Penal Code 1860 says in its section 328A:

Cruelty to a child

Whoever willfully assaults, illtreats, neglects, abandons or does an act of omission or commission, that results in or has, potential to harm or injure the child by causing physical or psychological injury to him shall be punished with imprisonment of either description for a term which shall not be less than one year and may extend upto three years, or with fine which shall not be less than twenty five thousand rupees and may extend upto fifty thousand rupees, or with both.⁸⁴⁵

4.2.2 Protection against Corporal punishment

In a society like Pakistan, corporal punishment is considered as disciplinary action and it is generally practiced in homes, schools and in child labour works. It may be result of its permission in the tradition of the society. However, the government prohibited with different notifications and

⁸⁴⁵ <https://www.pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apk%3D-sg-jjjjjjjjjjjj>. Last accessed on 11-02-2016.

directives but enforcement of these directives is unfortunately very poor, moreover, it has no monitoring arrangement.⁸⁴⁶

The good is that the government and the NGOs are playing their roles in this regard. A workshop was held at Provincial Institute for Teacher Education organized by the Society for the Protection of the Right of the Child in Peshawar, in the workshop, the resource person stressed to change the behavior from using the corporal punishment at school to the method of problem solving. It was also pointed out that the corporal punishment leads towards increase in dropout rate from the schools.⁸⁴⁷

Further, the training of the police is being done by the National Commission for Child Welfare and Development (NCCWD) supported by local and international agencies, the UNICEF and Save the Children, about the rights of the children contained in the CRC and about the Juvenile Justice System Ordinance 2000. To support protection of the children from the torture and degrading treatment, Supreme Court and High Courts of

⁸⁴⁶ *The State of Children in Pakistan*, p. 50.

⁸⁴⁷ The News (Sunday), Pakistan, (September 1, 2013).

Pakistan take suo motu actions of any torture of children case when it come to their knowledge.⁸⁴⁸

4.2.3 Protection of Children deprived of his family

A good thing is that a great number of children in Pakistan live with their parents and family environment.⁸⁴⁹ Moreover, it is also good that mostly, if a child becomes orphan, his relatives take care and rear him although that is not always like his own parents. A number of children live in the care institutions whereby the residence is provided to them. Likewise, the institutions take care of their education, health and other necessary needs.⁸⁵⁰ Some of these institutions are running by the government and others are private.⁸⁵¹

As an example, The Punjab Child Protection and Welfare Bureau has established care institutions for the children not living within their families due to any reason. These institutions provide to the children residence, food, health, education and constellation in case of neglect. These children remain in the institution till their join up with their families is possible. Till

⁸⁴⁸ Pakistan's *Consolidated Third and Forth Periodic Reports* to the Committee on the Rights of the Child, 2008. Para 193-194. [hereinafter referred to as *Third and Forth Periodic Reports* to the Committee on the Rights of the Child].

⁸⁴⁹ From 83% to 84% according to Pakistan Demographic and Health Survey 2012-2013.

⁸⁵⁰ *The State of Children in Pakistan*, p. 51.

⁸⁵¹ Details of some institutions are mentioned in the subsequent sections.

the year 2015, there were six institutions all over Punjab under the Bureau in Lahore, Rawalpindi, Gujranwala, Sialkot, Faisalabad and Multan consisting of 3213 children.⁸⁵²

According to the Pakistani Report to the CRC, a lot of children displaced and deprived of their families after the earth quake 2005 in Pakistan. By the local helping hands and especially with the help of ICRC many children were united with their families or extended families due to well built family bonds in Pakistan. Other children were passed to different child care institutions e.g. the SOS Village. Likewise, Pakistan highly tries for children to remain with their families, secondly with their extended families. As for the institution care, it is only the alternative resort.⁸⁵³

The problem is, however, clear when a person responsible for the child abandon him whether the parents, guardian or someone else. In this regard, section 328 of Pakistan Penal Code 1860 provides punishment to those people:

**Exposure and abandonment of child under
twelve years by parent or person having care
of it**

⁸⁵² https://cpwb.punjab.gov.pk/child_protection_institutes. Accessed on 13-07-2017.

⁸⁵³ *Third and Forth Periodic Reports* to the Committee on the Rights of the Child, para 222-227.

Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.⁸⁵⁴

4.2.4 Protection in Armed conflict

In Pakistan, the age for recruitment in the armed forces is 18 years under the Pakistan National Services Ordinance 1970. However, it is possible to recruit at the age of 16 for training purpose. As for the hostilities, a person above the age of 18 only can take part. The Government of Pakistan also, tries its maximum efforts to prevent abuse of children in the form of their recruitment by the non state actor.⁸⁵⁵

In contrast, the children affected of armed conflict, Pakistan has point out in its National Plan of Action 2006 to protect the affected children within the International human rights and humanitarian law.⁸⁵⁶

⁸⁵⁴ <https://www.pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apk%3D-sg-jjjjjjjjjjjj>. Last accessed on 12-04-2016.

⁸⁵⁵ *Third and Forth Periodic Reports* to the Committee on the Rights of the Child, para 532-533.

⁸⁵⁶ *Ibid.* Para 534.

4.2.5 Protection of Refugee children

Although, Pakistan has not signed the Refugee Convention of 1951,⁸⁵⁷ however, it has hosted a big population of Afghanistan as refugees. This has been recognized by the international community and UNHCR as well. The trainings are being done on refugee law and human rights to the police, judiciary, parliamentarians and the law enforcement agencies. UNHCR also participate in the awareness of the officers, academicians about refugee law and their rights. Pakistan has assured that to protect all the unaccompanied children who look for the safe physical and legal help in any manner that is necessary. Other problems of children like violence and sexual abuse...etc are being handled.⁸⁵⁸

4.2.6 Protection against Drugs

The cigarettes packets mentions the warning read as: “Smoking is injurious for health and selling cigarettes to children under 18 is strictly prohibited”. This is a kind of wakefulness raise among the society. The government of Pakistan, the Ministry of Narcotics Control, UNICEF, United Nations

⁸⁵⁷ <http://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>. Accessed on 25-08-2017.

⁸⁵⁸ *Third and Forth Periodic Reports* to the Committee on the Rights of the Child, para 496-501.

Office on Drugs and Crime (UNODC) and local NGOs are running different programs for prevention of children from the drugs through their awareness in this regard. Some of them are engaged in their treatment and rehabilitation in their centers and taking care after treatment. For example, UNICEF in collaboration of local NGOs has centers in all provinces of Pakistan for high risk children for the removing of the substances and the built in skills.⁸⁵⁹

4.2.7 Protection against Child trafficking

The Constitution of Islamic Republic of Pakistan 1973 provides a general rule in this regard. It says that slavery and the trafficking are prohibited.⁸⁶⁰

The international or cross border trafficking has been reduced to a big extent in Pakistan. However, cross border trafficking in the border areas of Balochistan and northern tribal belt are still in dangers in regard to trafficking. Among the reasons of the internal trafficking are forced labour, sexual abuse and begging. Likewise, the number of street children is increasing day by day. Mostly, children from rural areas are traveling towards the urban areas for work. This makes them vulnerable to violence

⁸⁵⁹ Ibid. Para 621-624.

⁸⁶⁰ Art. 11(3).

and abuse. Importantly, this may also be due to internal trafficking. Although, the internal trafficking and increasing number of street children there is no clear administrative measures and strategy to combat it and if there is, even then, their implementation remains a challenge.⁸⁶¹

Section 366-B of Pakistan Penal Code 1860 talking about the trafficking of a girl from outside with intention to illicit sexual inter course in this way:

Importation of girl from foreign country

Whoever imports into Pakistan from any country outside Pakistan any girl under the age of twenty one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.⁸⁶²

Further to that, section 369-A describes the punishment of the trafficking of the Humans:

Trafficking of human beings

Whoever involves himself in human trafficking shall be punished with imprisonment for a term which shall not be less than five years and may extend upto seven years, or with fine which shall not be less than five hundred thousand rupees and may extend

⁸⁶¹ *The State of Children in Pakistan*, p. 54-55.

⁸⁶² <https://www.pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apk%3D-sg-jjjjjjjjjjjj>. Last accessed on 13-01-2016.

upto seven hundred thousand rupees, or with both.⁸⁶³

In 2002, the Government of Pakistan has promulgate the “Prevention and Control of Human Trafficking Ordinance, 2002” which provides punishments to all those who plans and executes the human trafficking or obtains and employs or purchases, sells and transports or conceals the documents related to human trafficking. It says in its section 3:

“Punishment for human trafficking

The human trafficking shall be punishable as under:

- (i) Whoever knowingly plans or executes any such plan for human trafficking into or out of Pakistan for the purpose of attaining any benefit, or for the purpose of exploitative entertainment, slavery or forced labour or adoption in or out of Pakistan shall be punishable with imprisonment which may extend to seven years and shall also be liable to fine:

Provided that in case of an accused who, in addition to committing an offence as aforesaid has also been guilty of kidnapping or abducting or any attempt thereto in connection with such offence, the imprisonment may extend to ten years with fine.

⁸⁶³ Ibid.

Provided further that whoever plans to commit an offence under this clause but has not as yet executed the same shall be punishable with a term of imprisonment, which may extend to five years and shall also be liable to fine.

- (ii) Whoever knowingly provides, obtains or employs the labour or services of a person by coercion, scheme, plan or method intended to make such person believe that in the event of non-performance of such labour or service, he or any other person may suffer from serious harm or physical restraint or legal proceedings, shall be punishable with imprisonment which may extend to seven years and shall also be liable to fine:

Provided that if the commission of the offences under this clause involves kidnapping or abduction or any attempt thereto, the term of imprisonment may extend to ten years with fine:

Provided further that payment of any remuneration in lieu of services or labour of the victim shall not be treated as mitigating circumstance while awarding the punishment.

- (iii) Whoever knowingly purchases, sells, harbours, transports, provides, detains or obtains a child or a woman through coercion, kidnapping or abduction, or by giving or receiving any benefit for trafficking him or her into or out of Pakistan or with intention thereof, for the purpose of exploitative entertainment by any person and has

received or expects to receive some benefit in lieu thereof shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine:

Provided that if the commission of the offence under this clause involves kidnapping or abduction or any attempt thereto of the victim, the term of imprisonment may extend to fourteen years with fine:

Provided further that plea, if any, taken by the biological parents of the child shall not prejudice the commission of offence under this clause.

(iv) Whoever knowingly takes, confiscates, possesses, conceals, removes or destroys any document related to human trafficking in furtherance of any offence committed under this Ordinance or to prevent or restrict or attempt to prevent or restrict, without lawful authority, a person's liberty to move or travel shall be punishable with imprisonment which may extend to seven years and shall also be liable to fine.⁸⁶⁴

Likewise, rules were provided in 2004 to the law enforcing agencies how to deal with the danger of trafficking. The law provided punishment to the offenders to the imprisonment to 14 years along with protection to the prey; victim, with his rehabilitation. Further is that FIA has established

⁸⁶⁴ <https://www.pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Fta5w%3D-sg-jjjjjjjjjjjj>. Last accessed on 30-12-2015.

Anti Trafficking Units to deal the matters of trafficking with effective manner.

Now, the Ministry of Interior is working very efficiently for security to stop the trafficking, especially, the border security has been trained about this concern.⁸⁶⁵

4.2.8 Protection against Child Labour

It is important that according to The Constitution of Islamic Republic of Pakistan 1973, a child hazardous labour has been forbidden under the year fourteen.⁸⁶⁶ It is also recognized by the Employment of Children Act 1991.⁸⁶⁷ The Act provides the rules for the working children. Among these rules are that the child should not work from 7.00 pm to 8.00 am,⁸⁶⁸ he should not be allowed to work as over time,⁸⁶⁹ moreover, he should be given one day weekly holiday.⁸⁷⁰ Likewise, the punishment was also declared for those who contravenes with the rules mentioned in the Act.⁸⁷¹

⁸⁶⁵ *Third and Forth Periodic Reports* to the Committee on the Rights of the Child, para 682.

⁸⁶⁶ Art. 11(3).

⁸⁶⁷ Section 2(iii).

⁸⁶⁸ Section 7(4).

⁸⁶⁹ Section 7(5).

⁸⁷⁰ Section 8.

⁸⁷¹ Section 14.

It is justified by the children who are engaged in labour, that it is necessary to get a livelihood for themselves, and obviously for their families. In the eyes of experts, this is a wrong view because the employers get benefits out of the vulnerable; they are easier to control than the adults and decrease the cost of the production which in return enhances their benefit. Further, the working children work for long hour without any complain and in bad conditions. The employers also get another benefit because most probably, they don't recompense children against the cases of disability of injury. Most of the works children do in Pakistan are carpet weaving, repairing of the cars, embroidery works, surgical and sports goods. Overall, the work of children, definitely, pull of their rights of joy in the childhood, moreover, such people cannot live healthy and educated life, at least, in the period of childhood.⁸⁷²

Unfortunately, child labour is embedded in Pakistani society formally or informally. This make it difficult; rather impossible, to do the survey for the purpose of its elimination. However, the last survey in this regard has done by the Federal Bureau of Statistics with collaboration of International

⁸⁷² Hussain, Abrar, *The Curse of Child Labour*, The Express Tribune (July 29, 2013).

Labor Organization. The survey says that 3.36 million children from five to fourteen years of age were engaged in the child labour.⁸⁷³

The National Plan of Action 2000 prepared a plan to eliminate the child labour till 2010. The procedures for this purpose were decided as to provide the primary education or its alternatively skill training. Further, to arrange team of inspectors to make sure that no child is working in any workplace.⁸⁷⁴

Many of the measures have been initiated in Pakistan to eliminate child labour and its causes. Institutions of Pakistan and NGOs and different international organization coordinate in this regard.

For instance, Child Protection & Welfare Bureau under the government of Punjab aims to overall child's protection e.g. physical and social protections. It is important that the Bureau successfully brought the trafficked children for their involvement in camel care in the Middle East countries back. Moreover, after their rehabilitation it has reunited them with their families.⁸⁷⁵

⁸⁷³ *The State of Children in Pakistan*, p. 54.

⁸⁷⁴ *Ibid.* P. 33.

⁸⁷⁵ *Urbanization and Child Rights in Pakistan*, p. 18. For more detail, see, https://cpwb.punjab.gov.pk/child_protection_institutes. Accessed on 10-07-2017.

Further, the Sindh Government's Social Welfare Department and Labour and Human Resources Department of Government of Sindh is responsible for promotion of the industrialization and investment in the Sindh vis-a-vis implementation of labour laws. The Department has inspector to visit different places to see if there is any working children and estimate the abuse. Further, it helps the abused children through official lawyers free of cost at children work place in coordination with different NGOs. It is also authorized to evaluate the laws and recommend any change of the laws in this regard.⁸⁷⁶

Pakistan Bait-ul-Mal runs School for Rehabilitation of Child Labour. Children within the ages 5 to 14 who are more vulnerable to child labour are saved from this abuse and provided with education and other necessary needs, moreover, allowance is provided to parents of the enrolled children. This service was established in 1995 now these centers have reached to 158 all over the country.⁸⁷⁷

⁸⁷⁶ Ibid. p. 18. For more detail, see, <http://www.sindh.gov.pk/default.htm>. Accessed on 13-07-2017; http://sindh.gov.pk/dpt/Labour_HRM/index.htm. Accessed on 13-07-2017.

⁸⁷⁷ <http://www.pbm.gov.pk/ncrcl.html>. Accessed on 25-08-2017.

4.2.9 Protection against Sexual Abuse

The sexual abuse mostly happened in the secrecy and affects both male and female children. Most of the time it takes place exploiting the trust relations. As for the commercial sexual abuse, mostly it occurs in the red areas and brothels, massage centers or through people who work as intermediary between children and the client. Children in specific conditions are mostly become prey to be sexually abused like street child or refugees.⁸⁷⁸

Like all over the world, sexual industry is spreading out in South Asia and Pakistan. This is a dangerous phenomenon in all over the world; affects the children very badly as discussed earlier and letting the future of the society into darkness.

As for Pakistan, in July 2015, Pakistani media has reported a scandal of sex abuse and exploitation case, whereby many children of the village Hussain Khan Wala of the Distract Kasur, Punjab were sexually abused. Strangely, the responsible agencies in the country failed to take notice of this large scale exploitation which amounts the connivance and criminal negligence on their part. Considering the media reports, National Commission for

⁸⁷⁸ *The State of Children in Pakistan*, p. 52.

Human Rights took a suo-moto action⁸⁷⁹ and strongly condemned the unpleasant incident and constituted a committee of the Commission to find fact of the incident and further to investigate it. On the submission of the fact finding report, the then Prime Minister Nawāz Sharīf took notice and directed the responsible institutions to act upon the recommendations provided by the Commission.⁸⁸⁰

Among the recommendations of the commission were to amend some of the laws, review the compliance with CRC, federal and provincial governments to promote and support the awareness programs among the public and review the police laws. Moreover, the role of religious scholars is very important towards the positive and religious headed to the morality and ethics.⁸⁸¹

The children are facing high sexual abuse in traffic industry of Pakistan. The child; male and female, around the high ways are sexually abused by the truckers. According to the truckers, their schedule is very tight, that's way they have a little time for rest and many times they cannot go to their families for a long period. As the result, according to them, they take rest in

⁸⁷⁹ Under NCHR Act 2012, section 9 (a).

⁸⁸⁰ <http://nchr.org.pk/enStoriesDetail.aspx?id=2>. Accessed on 20-08-2017.

⁸⁸¹ Attā Ul Muṣṭafā and Arshad Mehmūd, *The Kasur Incident of Child Abuse: A Fact Finding Report, Analyzing State of Child Protection in Pakistan*, p. 9-10. See https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2961326.

hotels on the road sides with having sex to become out of the frustration and the distress.⁸⁸²

It is also reported that boys are more in danger to become prey of sexual exploitation in the traffic industry in the South Asia because they cannot become pregnant.⁸⁸³

The Sahil; an NGO, has gathered information about the cases of the sexual abuse of the children in Pakistan. According to Sahil in 2016, the cases were reported as under: abduction 1455, rape 502, sodomy 453, gang rape 271, gang sodomy 268 and 362 cases of attempt of children sexual abuse. Number of the reported abduction cases in 2016 is more than the previous year by the average of 19%.⁸⁸⁴ Further, female children sexually abused more than the male children. Taking about the abusers in 2810 cases, almost 6759 abusers were involved. 78% cases of sexual abuse were registered formally with police whereas 32 were unregistered cases.⁸⁸⁵

According to Sahil, child under the age of 18, six of the children; per day, are victim of sexual abuse in Pakistan. It may be result of considering of this

⁸⁸² SECTT South Asia report 2016, p. 21.

⁸⁸³ Frederic, *Sexual Abuse and Exploitation of Boys in South Asia*, p. 7, quoted in, SECTT South Asia report 2016, p. 21.

⁸⁸⁴ The increase in registration of the cases may be due to the awareness of the public towards children rights and their protection.

⁸⁸⁵ <http://sahil.org/cruel-numbers/>. Accessed on 21-08-2017.

act as shameful, so they restrict themselves to talk about to their guardians frightened from the exposure of the secret. As a result, those children remain with bad memories and deep distress and physical injury long life.⁸⁸⁶ However, at present the previous practice is decreasing due to struggle of the government and private sector; children rights institutions.

The Constitution of Islamic Republic of Pakistan 1973⁸⁸⁷ prohibits the exploitation in general.⁸⁸⁸ Section 292A of Pakistan Penal Code 1860 declares it as punishable crime to seduce a child to involve him to sexual activities or any kind like computer images. It states:

“Exposure to Seduction

Whoever seduces a child by any means whatsoever with an intent to involve him in any sexual activity or exposes him to obscene and sexually explicit material, document, a film, video or a computer generated image or attempts to do the aforementioned act, shall be punished with imprisonment of either description for a term which shall not be less than one year and may extend upto seven years or with fine which shall not be less than one hundred thousand rupees and may extend

⁸⁸⁶ <http://sahil.org/five-year-analysis/>. Accessed on 21-08-2017.

⁸⁸⁷ <https://www.pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Fvbpw%3D-sg-jjjjjjjjjjjj>. Last accessed on 01-02-2015.

⁸⁸⁸ Art. 3.

upto five hundred thousand rupees, or with both.”⁸⁸⁹

Likewise, the pornography in any manner like print or computer generated images or their preparation, distribution and store are also considered crimes by Pakistan Penal Code 1860 in its section 292B:

“Child pornography

(1) whoever takes, permits to be taken, with or without the consent of the child or with or without the consent of his parents or guardian, any photograph, film, video, picture or representation, portrait, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, of obscene or sexually explicit conduct, where.

(a) the production of such visual depiction involves the use of a minor boy or girl engaging in obscene or sexually explicit conduct;

(b) such visual depiction is a digital image, computer image, or computer generated image that is, or is indistinguishable from, that of a minor engaging in obscene or sexually explicit conduct; or

(c) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in obscene or sexually explicit conduct; is

⁸⁸⁹ <https://www.pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apk%3D-sg-jjjjjjjjjjjj>. Last accessed on 21-02-2016.

said to have committed an offence of child pornography.

(2) The preparation, possession or distribution of any data store on a computer disk or any other modern gadget, shall also be an offence under this section.⁸⁹⁰

Section 292C says:

“Punishment for child pornography

Whoever commits an offence of child pornography shall be punished with imprisonment of either description for a term which shall not be less than two years and may extend up to seven years, or with fine which shall not be less than two hundred thousand rupees, and may extend up to seven hundred thousand rupees, or with both.⁸⁹¹

Moreover, section 366A provides punishment for those criminals who induce a female child to go from her place for the purpose of illicit sexual inter course:

“Procuration of minor girl

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit inter course with another person shall be punishable with imprisonment which may

⁸⁹⁰ Ibid.

⁸⁹¹ Ibid.

extend to ten years and shall also be liable to fine.”⁸⁹²

4.2.10 Protection against Child marriage

The Child Marriage Restraint Act 1929 specified the age for marriage for boy as eighteen and for girl as sixteen.⁸⁹³ Although the age has been fixed by the law but any solemnized marriage before these ages is not declared void by the courts of Pakistan. Another provision provided by the Dissolution of Muslim Marriage Act 1939 that if a girl has given by her father or guardian before she reached sixteen years of age, she has the right to repudiate the marriage to the age of eighteen provided that the consummation has not taken place.⁸⁹⁴

Lahore High Court decided in a case that a girl below sixteen, if attained puberty otherwise and consented to marriage by her free will, there performance of the conjugal rights cannot be termed as unlawful sexual intercourse. Therefore, section 375 (rape) of Pakistan Penal Code cannot be

⁸⁹² Ibid.

⁸⁹³ Child Marriage Restraint Act 1929, section 2(a). There was a bill introduced in the National Assembly namely Child Marriage Restraint (Amendment) Bill, 2014 to amend the section 2(a) about child definition for the purpose of the marriage to make it as eighteen years for both male and female.

⁸⁹⁴ Dissolution of Muslim Marriage Act 1939, 2(vii).

attracted.⁸⁹⁵ Even the Act itself is silent about the validity of marriage before these ages. It is only the punishment awarded to the parents/guardian and to those who conducts or directs child marriage.⁸⁹⁶

According to Sahil, 176 child marriages cases were reported in the year 2016.⁸⁹⁷ Further, the province of Sindh has the high percentage of child marriage among all other provinces. However, in the recent years, according to media reports show the positive role of police to stop the underage marriages, definitely when are informed by any mean,⁸⁹⁸ especially in cases when the female child is been married with an old man, or the case of vanī.

4.2.10.1 Forced Child Marriage

Vanī is an old traditional practice in some area of Pakistan whereby minor girls or the women in certain cases are forced to marry men of the opponent (enemy) party⁸⁹⁹ in order to resolve the honor disputes or blood

⁸⁹⁵ *Allāh Nawaz v. Station House Officer* (2013 PLD 243 Lahore High Court), see also, *Shabbir Hussain Alias Papu v. Station house Officer* (2006 PCr.LJ 1260 Lahore High Court); *Muhammad Riaz v. Robina Bibi* (2000 MLD1886 Lahore High Court); PLJ 2008 v.3 Magazine Section, p. 565. Actually, this is based on Islamic Law because it is only the puberty that is the requirement for the lawful and consummation of marriage.

⁸⁹⁶ Section 5-6.

⁸⁹⁷ <http://sahil.org/cruel-numbers/>. Accessed on 21-08-2017.

⁸⁹⁸ *The State of Children in Pakistan*, p. 53-54.

⁸⁹⁹ Where the girl has no mistake but her brother might done or not something wrong.

feud matters as extra judiciary by the jirgah.⁹⁰⁰ In such a case, police of Oghi⁹⁰¹ had arrested 10 members of the jirgah on making two girls vanī and marrying them forcibly for the settlement in a case relate to the honor.⁹⁰²

At present the Pakistan Penal Code 1860 was amendment to include prohibition of the wanni, or swara providing the punishment. Likewise, it declared forced marriage as punishable crime. Accordingly, the traditional kinds of child marriage have decreased. The section 310A reads as follow:

Punishment for giving a female in marriage or otherwise in badla-e-sulh, wanni or swara

Whoever gives a female in marriage or otherwise compels her to enter into marriage, as *badlaesulh*, wanni, or swara or any other custom or practice under any name, in consideration of settling a civil dispute or a criminal liability, shall be punished with imprisonment of either description for a term which may extend to seven years but shall not be less than three years and shall also be liable to fine of five hundred thousand rupees.⁹⁰³

⁹⁰⁰ A dispute resolution committee in a specific area consists of the senior men of the society.

⁹⁰¹ It is a city of District Mansehra in the province of Khyber Pakhtōnkhwa, Pakistan.

⁹⁰² A report by DAWN Newspaper on (March 28, 2017). See, <https://www.dawn.com/news/1323201>. Accessed on 20-08-2017

⁹⁰³ <https://www.pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apk%3D-sg-jjjjjjjjjjjj>. Last accessed on 16-02-2016.

Section 498B says:

“Prohibition of forced marriage

..... Provided that in case of a female child as defined in the child as defined in the Child Marriage Restraint Act, 1929 (XIX of 1929), or a non Muslim woman, the accused shall be punished with imprisonment of either description for a term which may extend to ten years but shall not be less than five years and shall also be liable to fine which may extend to one million rupees.”⁹⁰⁴

Moreover, the Council of Islamic Ideology also has recommended to stop the traditional practice of marriage with Qur’ān.

4.2.11 The Juvenile Justice

Juvenile Justice System Ordinance 2000 has been working in Pakistan whereby the children has right to get legal assistance for their case at the expense of the state.⁹⁰⁵ It is good that the number of the juveniles in Pakistan has decreased. In 2003, the number of juveniles were 3586, comparing to the end on 2014 it remain 1399, out of them 1292 were going under trial and only 107 were convicted and accordingly passing the

⁹⁰⁴ Ibid.

⁹⁰⁵ Juvenile Justice System Ordinance 2000, section 3.

punishments.⁹⁰⁶ Still, there is need for more rehabilitative services to the juveniles.

The civil society has its concern⁹⁰⁷ on the provisions of the act of terrorism in the Protection of Pakistan Act 2014 whereby any person; including children, can be detained for the period of ninety days as preventive detention. Its section 6 (1) states:

“The Government may by an order in writing authorize the detention of a person for a period specified in the order shall not exceed ninety days if the Government has reasonable grounds to believe that such person is acting in a manner prejudicial to the integrity, security, defense of Pakistan...”⁹⁰⁸

Although, the Juvenile Justice System Ordinance 2000 prohibited the preventive detention of children under the age of 15, the problem is that Protection of Pakistan Act 2014 overrides all the other laws. Section 24 says:

“Overriding Effect

- (1) Subject to such conditions as the Government may specify by the

⁹⁰⁶ SPARC, *The State of Pakistan's Children 2013* (2014), quoted in, *The State of Children in Pakistan*, p. 54-55.

⁹⁰⁷ Ibid. p. 56.

⁹⁰⁸ <https://www.pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2FqZ5s%3D-sg-jjjjjjjjjjjj>. Last accessed on 14-03-2016.

notification in the Official Gazette, the provisions of this Act shall have effect notwithstanding anything contained in any law for the time being in force.

- (2) In case there is any conflict between the provision of this Act and any other law for the time being in force the provisions of this Act shall prevail to the extent of inconsistency.”⁹⁰⁹

However, the Juvenile Justice System Bill 2015 proposed that the child should not be arrested as preventive detention. It says:

(No child shall be arrested under any of the laws dealing with preventive detention or under the provisions of Chapter VIII of the Code).⁹¹⁰

However, there are some difficulties in the aspect of Juvenile Justice. These are in form of finance, courts, training and awareness in this regard. Pakistan’s consolidated Third and Fourth Periodic Report 2008 to the Committee on the Rights of the Child, says:

Challenges and Difficulties in the area of Juvenile Justice

- Financial allocation to fulfill the requirements of the JJSO i.e. funds for legal assistance, establishment of sufficient number of borstal institutions and establishment of a proper juvenile justice system in Federally Administered Areas;

⁹⁰⁹ Ibid.

⁹¹⁰ Section 11(2).

- Establishment of the Exclusive Juvenile Courts as the existing Courts are already overburdened;
- Proper training for Judicial Officials, Police, Probation and Prison Official on JJSO and CRC;
- Awareness campaign about the JJSO.⁹¹¹

Pakistan Penal Code 1860 provides in section 306 an exemption to children in case of qatl-e-‘amd whereby they are not liable to *qisas*:

***Qatl-i-‘amd* not liable to qisas**

Qatl-i-‘amd shall not be liable to *qisas* in the following cases, namely:

- (a) when an offender is a minor or insane.⁹¹²

4.2.12 The Education

The Constitution of Islamic Republic of Pakistan 1973 gives right to education for all the children from the age five to sixteen.⁹¹³

National Education Policy 2009 introduced the childhood education,⁹¹⁴ availability and accessibility of the vocational and technical education at the level of tahsils and to make increase in enrolment of higher education to

⁹¹¹ Para 570

⁹¹² <https://www.pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apk%3D-sg-jjjjjjjjjjjj> . last accessed on 23-09-2015.

⁹¹³ Art. 25A.

⁹¹⁴ Pre-grade classes.

10% by 2015 and to 15% by 2020. In this regard, the emphasis has been given, among others, on Standing Committee on the Textbooks, National Authority for Standard of Education and the Higher Education Commission.⁹¹⁵

In the 18th constitutional amendment, the education was made of the provincial responsibility, resultantly; the Federal Ministry of Education was dissolved in July 2011. This amendment authorized the provinces to decide the education policies and the curriculum. So, it has been admitted that education is basic right of all the children.⁹¹⁶

The National Plan of Action to Acceleration Framework 2013-2016 focused on bringing maximum children in the schools through provision increase number of schools and through making the community aware of the benefit of the education. Moreover, it should be tried to provide quality education which include training of the teachers. Furthermore, through provision of special incentives to the poor children like, free text books and uniforms...etc.⁹¹⁷

⁹¹⁵ *The State of Children in Pakistan*, p. 34.

⁹¹⁶ As the article 25A of The Constitution of Islamic Republic of Pakistan 1973 made the provision of the compulsory education within the responsibilities of the state for children of age 5 to 16.

⁹¹⁷ *The State of Children in Pakistan*, p. 43.

According to survey of Pakistan Social and Living Standards Management in 2012-2013, the overall literacy rate from the age of 10 is almost 60 per cent; among them 71 % male and 48% female. The lower literacy rate exists in Baluchistan and the higher is in Punjab.⁹¹⁸

Here we see that the federal and provincial governments have provided the primary and secondary education to the needed children but this needs more measured in this regard.

4.2.13 The Survival and Health

The health services in Pakistan consist of public and private sector. For the public health care, the district has been given the authority to develop their strategies according to needs of the people within the locality. As for the private sector, it comprises of private accredited hospitals and clinics. Homeopaths and ḥakīm treatments vis-a-vis the normal medical treatment are also a part of the health care in Pakistan.⁹¹⁹

According to the National Institute of Population Studies, a comparison between the result of the year 2006-2007 and the year 2012-2013 shows better situation in the result of 2013, though, the improved result is very

⁹¹⁸ Ibid. p. 39.

⁹¹⁹ Ibid. p. 45.

mush low. For example, infant mortality rate in 2007 was 78 and in 2013 it is 74. Likewise, child mortality rate in 2007 was 18 and in 2013 it was 17.⁹²⁰

However, the Lady Health Workers Program which was established in 1994 is working as useful for health of the maternal and child care. It acts as community-based program which gives health information and health services to the door steps of the families. Currently, almost 90,000 lady health workers are serving in this program. Here, the need to regularize this program to give best improved national health indicators.⁹²¹

The Primary and Secondary Healthcare Department (Punjab) is providing free immunization for Children against some diseases as a preventive measure. The vaccination is also provided to pregnant mother as is necessary for her and her child.⁹²² Overall, Pakistan has several health care programs working under the government, for example, Expanded Programme on Immunisation, National T.B. Control Programme and Malaria Control Programme.⁹²³

⁹²⁰ *Urbanization and Child Rights in Pakistan*, p. 10; see also, <http://www.nips.org.pk/survey.php>. accessed on 12-07-2017.

⁹²¹ Ibid. p. 17; see also, https://en.wikipedia.org/wiki/Healthcare_in_Pakistan. Accessed on 15-07-2017.

⁹²² <http://www.pshealth.punjab.gov.pk/VerticalProgramImmunization.aspx>. Accessed on 20-08-2017.

⁹²³ *The State of Children in Pakistan*, p. 45.

Pakistan is one of the four countries in the world where the disease of Polio unfortunately remains present till now. In the year 2008, almost 117 cases were deducted. Throughout the country, the volunteers visit door by door to vaccinate the child to the age of 5 years in an attempt to make Pakistan pure from this disease. This program runs with the coordination of UNICEF and WHO.⁹²⁴

As for nutrition, the situation is very poor. According to survey of the year 2012-2013 it is very critical. The result is shown, for example, in the form of underweight children under the age of 5 years in the society.⁹²⁵

4.3 Pakistani Offices and NGOs Concerning Children Rights

4.3.1 National Commission for Human Rights Pakistan

The Commission was formed under the National Commission for Human Rights Act 2012. It is to work in the line of the Paris Principles 1991 which talk about proper safeguard of human rights and functions of national

⁹²⁴ https://www.unicef.org/infobycountry/pakistan_50479.html?p=printme. Accessed on 20-08-2017.

⁹²⁵ *The State of Children in Pakistan*, p. 46.

institutions in this regard.⁹²⁶ Definitely, child right is one branch of the human rights. For example, the Commission took action on Kasur scandal of children sexual abuse.⁹²⁷

4.3.2 National Commission for Child Welfare and Development (NCCWD)

The Commission was established on December 16, 1979 by the then Ministry of Social Welfare under a resolution, it has been effective from the January 1, 1980. Through many amendments it is now working as an organization under the Ministry of Human Rights, Pakistan after the approval of the then Prime Minister with effect from December 2, 2011.

The commission consists of the national experts. The Commission works to monitor and to make it easy implementation of CRC to create child friendly society.⁹²⁸ After that, its job is to submit the periodical reports to the Committee of the Rights of the Child under CRC and to else where it needed. Among other jobs of the Commission is to assess the impact of the ongoing national policy about child rights in Pakistan. Accordingly, for the reasonable amendments of nation policy if needed or recommend proper

⁹²⁶ See, General Documents on Human Rights in the Chapter Two.

⁹²⁷ <http://nchr.org.pk/#>. Accessed on 20-08-2017.

⁹²⁸ Pakistan ratified the CRC on December 12, 1990.

legislation for the child rights and to prevent any kind of abuse such as violence; domestic or otherwise, trafficking, use those in drugs or the child labour. It has also the mandate among the ministries and the provincial government. For its work, it engages several NGOs and the children in the process of consultation.⁹²⁹

4.3.3 Pakistan Bait-ul-Māl

It is an autonomous body and a government institution. The role it is playing in the alleviation of the poverty is very important. Bait-ul-Māl helps the orphans, providing the food and shelter for the poorest people and also plays its role education and the vocational training of the poor children.

4.3.4 Human Rights Cell

The Supreme Court of Pakistan has the Human Right Cell which directly works under the supervision of the Honorable Chief Justice of Pakistan. In case of any violation of a human right in the society, the Supreme Court can take a *suo motu* action on it. By this, the victim can get urgent relief

⁹²⁹ http://202.83.164.138/ministries/mohr/mohr.php?mc_id=9. Accessed on 13-08-2018. Also see, The South Asian Report 2013, p. 15, 42.

instead of the customary long period for getting the relief. The Supreme Court of Pakistan has taken notice of human rights like kidnapping, inhuman treat, rape and other complaint came to the Human Right Cell.

4.3.5 Children Protection and Welfare Bureau

The Bureau was established under the Punjab Destitute and Neglected Children Act Of 2004. According to the Act a bureau called Children Protection and Welfare Bureau shall be established at once⁹³⁰ like the Act itself. As far is establishment is concerned, the Government may establish reasonable courts in a local area and appoint presiding officer but with the consultation of the Lahore High Court.⁹³¹

The Bureau is working under the Government of Punjab, Pakistan. Basically, it has some important units in its offices in different districts in Punjab. Following paragraphs explain these units.⁹³²

One of those units is Children Protection Institutes which helps the children who are not living in family environment and neglected due to any reason. The Bureau provides them residence, food, education and required

⁹³⁰ Section 5.

⁹³¹ Section 22.

⁹³² <https://cpwb.punjab.gov.pk>. Accessed on 16-07-2017.

consoling. The children remain in the institutes till they reunite with their own family. According to the Bureau, the residence is very healthy and hygiene environment in which the children learn from their teachers the health rules along with balance in the diet. In the Child Protection Institutes, the children receive medical facilities. Initial health check up is administered when there are rescued then get the health facility whenever needed. Moreover, the bureau takes care of the physical ability and according to the suggestion, vaccination is provided to them. Furthermore, Psychological Counseling is also provided to the children because they have previously live with traumatic situations due to deprivation of their families or facing abuse like sexual abuse or commercial exploitation or in form of begging. Psychological Counseling mends their behavior and builds their trust.⁹³³ Significantly, it has established in its office the Training and Vocational Center with the coordination of other institutions where the destitute children are trained with different courses such as cooking, tailoring and the mobile repairing courses. In addition to what has mentioned, the Bureau provides service of hygienic nursery facility for the infants, presently for girls at Lahore where the healthy food is provided for

⁹³³ https://cpwb.punjab.gov.pk/functional_unit. Accessed on 16-07-2017.

the infants. The bureau includes also the play ground that helps the children to improve their physical capability.⁹³⁴

Likewise, it has facility for children outside the custody of Bureau, who waste their time in the streets to. It is to reduce the time they spent in the streets; definitely, it reduces the negative effects and the harm of street life. After their registration, the Bureau offers them basic education, consoling and other services.⁹³⁵

Another unit is in shape of Child Protection Schools. The children who reside in Children Protection Institutes are enrolled in Child Protection Schools where the children learn the religious teaching; e.g. Qā'idah and nāzrah,⁹³⁶ way of prayers and understanding of Qur'ān, besides the normal school educational system. According to the Bureau, in the financial year 2014-2015, almost 3213 of the destitute children were admitted in the several districts branches of the Bureau. The school consists of a creative library and many programs and extracurricular activities like debate competition and art competition from time to time.⁹³⁷

⁹³⁴ <https://cpwb.punjab.gov.pk/facilities>. Accessed on 16-07-2017.

⁹³⁵ https://cpwb.punjab.gov.pk/open_reception_centers. Accessed on 16-07-2017.

⁹³⁶ To learn reading of Qur'ān.

⁹³⁷ https://cpwb.punjab.gov.pk/functional_unit. Accessed on 16-07-2017.

Thirdly, an important unit is Child Protection Courts which main issue was to reunification of such child with their families. Further to that, to arrange the legal custody and trial of the suits that has been registered under the Punjab Destitute and Neglected Children Act.⁹³⁸

Overall, it provides numbers of the services to the Children. One is rescue of the children who are not in the care of their parents, from different places who are in the state of abuse and exploit, in commercial activities or sold or trafficked for any the other abuse. The Bureau places these children in its Social Section. Another, service it provides is the legal help of the children. The Law officers help the children in prosecution of the cases, especially under the Punjab Destitute and Neglect Act 2004. The Bureau lodged FIRs against different people who were engaged in acts prejudice the children like cases of cruelty to children, giving intoxicant drugs to children or cases of unauthorized custody. Then, an important activity of the Bureau is to trace family of the children under its custody. Definitely, it is not an easy job. Those The Child Protection Officers and its team Endeavour to trace children family, even they check the country's borders. They take help from different NGOs, counselors of several areas, dissemination of the information about child or its family in the media and through its own

⁹³⁸ Ibid.

website. Further service of the Bureau is the rehabilitation of the children whether they are in the institutes of the Bureau or in any other place like in their home or in jail. This is in form of provision of the basic needs or the form of financial support to the families to rehabilitate their children; if they are not able to fulfill their child needs, moreover, help the children in the jail and help them restore their lives when they are free.⁹³⁹

The Bureau is arranging different Conference, seminars on different topics such as child labour, training programs and district orientation at the level of districts for the capacity building.⁹⁴⁰

Moreover, a system has been developed for the monitoring and the evaluation of the project going on. The Research Section of the Bureau carries out the researches, case studies and surveys to set and achieve the required results with the welfare of children, especially, to prevent them from abuse. For this purpose, performance of the staff and all sections of the Bureau are analyzed on monthly basis. Especially, conduct studies on the destitute and neglect children. in this regard, the contact among different district office is kept well built.⁹⁴¹

⁹³⁹ <https://cpwb.punjab.gov.pk/services>. Accessed on 16-07-2017.

⁹⁴⁰ https://cpwb.punjab.gov.pk/capacity_building. Accessed on 14-06-2017.

⁹⁴¹ https://cpwb.punjab.gov.pk/research_monitoring. Accessed on 14-07-2017.

4.3.6 Sweet Homes

In 2009, a child from Swat was handed over to Bait-ul-Mal, Pakistan when there was no government facility for such children. Zammurd Khan was Managing Director of the Pakistan Bait-ul-Mal at that time.⁹⁴² Instead of sending him to an orphanage, he decided to build a better facility to those kinds of needed children. Sweet Homes started from a single child. In 2012, Sweet Homes set up a centre for the female orphan children. Now, it has 36 centers all over Pakistan; all provinces, Gilgit Baltistan and Azad Jammu and Kashmir. Approximately, the centers have 3500 boys and 100 girls at present.

The Sweet Homes provide the children the boarding facility, with education, health, social protection, sports and other recreational facilities.⁹⁴³

Shining Soul is a project of Sweet Homes in collaboration with Siddeeq Public School for the education of the children in the custody of the Homes. So, that they receive their place in the society. For their education, for the H-9/4 center of Islamabad, teachers are hired from renowned

⁹⁴² Now he is Patron in Chief of Sweet Homes.

⁹⁴³ <http://www.sweethomes.com.pk>. Accessed on 20-08-2017; <http://www.sweethomes.com.pk/sweet-homes/>. Accessed on 20-08-2017.

educational institutions like Siddeeq Public School. In other centers, children get the education from renowned educational institutions such as educators...etc.⁹⁴⁴

4.3.7 Child Rights Movement

This movement is a civil society organization established, as it says: “to create an enabling environment for children through collective advocacy on child rights issues.” It deals with abuse and exploitative conditions child face. The Movement aims that the society actively participates mutually in a single forum. So, it established for the purpose to promote the children rights jointly in a forum by the civil society.⁹⁴⁵ The Movement presently consists of 250 associations, however, it welcomes any individuals wish or interest for the prevention of child rights abuse can also join the Movement. Likewise, any lawyer, doctor, media person...etc. can also join to serve the children rights.⁹⁴⁶

⁹⁴⁴ <http://www.sweethomes.com.pk/education/>. Accessed on 20-08-2017.

⁹⁴⁵ <http://crm.com.pk>. Accessed on 20-08-2017.

⁹⁴⁶ <http://crm.com.pk/our-members/>. Accessed on 20-08-2017.

4.3.8 SOS Children's Village Pakistan

Talking overall, SOS Childre'n Village is working in 134 countries worldwide under the organization and umbrella of the SOS -Kinderdorf International based in Innsbruck,⁹⁴⁷ Australia. Furthermore, the Village has facility of education, health care services, capacity building and emergency response services.⁹⁴⁸

Talking about Pakistan, according to the Village authorities, it is managed by the modern approaches of the welfare and protection of the children. By losing the natural parents; the requirement natural environment for the affection and the looking after by the parents, the Village provide them the loving care, value, education and facilities and job training so they live a normal live. The Village organized as to serve every deserving child. For this purpose, it admits⁹⁴⁹ either the complete orphans or those children whose mothers have remarried or suffering from terminal illness and cannot provide for her child or who is abandoned.⁹⁵⁰

⁹⁴⁷ This city is capital of Austria's western state of Tyrol.

⁹⁴⁸ <http://www.sos.org.pk/Person/Affiliation/>. Accessed on 20-08-2017.

⁹⁴⁹ Age of admission is new-born to the age 10.

⁹⁵⁰ <http://www.sos.org.pk/Person/Objectives/>. Accessed on 20-08-2017.

The Village in Pakistan is an independent body for construction of projects and maintenance of the children, all this run through donations from well-doer people of the society which is possible through maintaining cost of a child or children. The generous people also provide funds for new projects. The federal or the provincial also help for the Village e.g. to donate a land.⁹⁵¹

As far life in the Village is concerned, according to the Village, religious is integral part of routine of children life in the Village. Many programs are carried out in the Village e.g. the sport, girl guide, vocational training programs. After the matriculation, career consoling is also providing to the children. The merit is regarded for the higher education otherwise they are headed to technical education. The Village takes the responsibility of the boys till they become able to become self-supported. However, the responsibility of the girls is taken till their marriage.⁹⁵²

⁹⁵¹ <http://www.sos.org.pk/Person/SponsorChild/>. Accessed on 20-08-2017.

⁹⁵² <http://www.sos.org.pk/Person/LivingatSOS/>. Accessed on 20-08-2017. This practice of SOS Children's Village about support of the children is similar to maintenance responsibility on the father to maintain his boy child till his maturity i.e. able to earn himself and responsibility to maintain his girl child till she is married.

4.3.9 SAHIL

Sahil states its mission in the following words: “To develop a protective environment for children free from all forms of violence especially child sexual abuse”.⁹⁵³

Sahil is working since 1996. It works on child protection, especially, in their protection from child sexual abuse. Its offices are in the Islamabad; the head office, Abbotabad, Jaffarabad, Lahore and Sukkar.⁹⁵⁴

As far as its methods are concerned, Sahil trains the trainers first of all. Then, through its different programs, it trains who deal with the children such as the parents, teachers, lady health workers, community, lawyers and police in cases of the sexual abuse, about social and economical and empowerment issues, counseling, health, parenting skills, gender based violence and protection of the child, especially from the sexual abuse. It tries to make the community aware the danger of the subject. Also, it tried to rehabilitate the juvenile in different districts jails in the country from

⁹⁵³ <http://sahil.org>. Accessed on 21-08-2017.

⁹⁵⁴ Ibid.

December 2013 to March 2014 through the provision of several games, fans, sweaters...etc. to the children.⁹⁵⁵

4.3.10 SUCH

SUCH started its work in 1994 on the issue of human rights abuses with special attention to the survivors of torture. It has special consultative relation with ECOSOC.⁹⁵⁶ The job of SUCH is to work with the vulnerable groups of human beings like displaced persons, refugees, women and children, especially, in the area of violence and torture. According to SUCH, it has different programs to serve human rights. Further, it has concern with rehabilitation of the victims of different abuse of human rights like child sexual abuse and torture in the form of empowerment of such children or the people as a whole and in the form of their financial assistance.⁹⁵⁷

In its project namely *Madāwa*, it helps the vulnerable group of children who suffers with the traumatic conditions. *Madāwa* of SUCH tries to rehabilitates them. *Madāwa* of Such has started Child Protection &

⁹⁵⁵ <http://sahil.org/teacher-training-program/>; <http://sahil.org/juvenile-rehabilitation/>; <http://sahil.org/what-we-do/>. Accessed on 21-08-2017.

⁹⁵⁶ Economic and Social Council, (United Nations).

⁹⁵⁷ <http://sach.org.pk/page.php?post==QTqVUP>. Accessed on 15-08-2017.

Monitoring Center in specific areas like general bus stand area of Pirwadai, Rawalpindi and Peshawar, whereby many children may be found to earn livelihood for themselves. Some of them are refugees, deprived from their families, runaways or orphans. Those children are most vulnerable for different kinds of abuses, for example, physical abuse, drug induction, sexual abuse and problems of their education and health.⁹⁵⁸

4.4 Complaint Centers

4.4.1 Wafaqi Muhtasib

Wafaqi Muhtasib⁹⁵⁹ is authorized to receive complaints regarding the child rights and their protection. They also receive the complaints through its secretariat in the capitals of the four provinces; Quetta, Karachi, Lahore and Peshawar. The Federal Ombudsman office tries to disseminate information about the Children Complaints Offices through its own media, meeting media persons and through its websites and facebook Page, so that, the

⁹⁵⁸ <http://sach.org.pk/page.php?post= =gTn1TP>. Accessed on 15-08-2017.

⁹⁵⁹ The Federal Ombudsman.

complaint system will be easy for child's protection.⁹⁶⁰ In this regard, wafaqi Muhtasib works with the UNICEF and the Save the Children, Sweden.⁹⁶¹

The ombudsman office functions as investigating the complaints and making the recommendations at the end as may be necessary. More than the examining complaint, it has done aware-raising programs with concerned ministries to speed up the compliance of children rights with CRC. Moreover, it conducted workshops on the child rights.⁹⁶²

4.4.2 National Commission for Human Rights Pakistan

This Commission has an online complaint system on its website. In the complaint cell the details of the informer, details of the incident and details of the victims should be mentioned.⁹⁶³

4.4.3 Child Protection and Welfare Bureau (Punjab)

According to the Bureau, its help line call used for getting information about child rights and is also used for prompt protection and assistance. In

⁹⁶⁰ <http://www.mohtasib.gov.pk/frmDetails.aspx?opt=misclinks&id=58>. Accessed on 13-08-2018.

⁹⁶¹ SECTT South Asia report 2016, p. 48; See also, <https://tribune.com.pk/story/76078/wafaqi-mohtasib-unicef-set-up-child-complaints-centre/>. Accessed on 13-08-2017.

⁹⁶² The South Asian Report 2013, p. 100.

⁹⁶³ <http://nchr.org.pk/enComplaints.aspx?id=48>. Accessed on 20-08-2017.

the financial year 2014-2015 almost 1565 call were received as information calls and 566 calls for assistance. On the basis of these calls, 811 children were rescued.⁹⁶⁴

For the public awareness, Mass Awareness Section of the Bureau different method, like going door to door campaign where it feels need, use of paper and electronic media to make the people beware and be care of the dangers on abuse of children which is happening in the society and to provide the helpline in case of need. Another method is the arrangement of community meeting on child rights. What is important is the different persons and NGOs and Companies joined hands with the Bureau in this righteous campaign.⁹⁶⁵

4.4.4 Human Rights Commission of Pakistan

This Commission is independent non-government organization established in 1987. It's headquarter is in Lahore, however, the branches are working in all provincial capitals; Karachi, Peshawar and Quetta. Task force is also work in different areas in Punjab e.g. Sukkar, Multan, Gilgit, Turbat...etc. the Commission emphasis on implementation on the rights contained in

⁹⁶⁴ <https://cpwb.punjab.gov.pk/helpline>. Accessed on 14-06-2017.

⁹⁶⁵ https://cpwb.punjab.gov.pk/mass_awareness. Accessed on 14-06-2017.

UDHR and cooperate in this regard with the other local and international groups. Among its task is to mobilize public opinion towards human rights and to stop and prevent violation of the human rights. It has also a complaint cell to inform any violation of human rights but not specifically the child rights.⁹⁶⁶

4.4.5 SAHIL

Free legal aid and counseling are provided in the offices of the Sahil for the prey of the child sexual abuse. As for the legal aid if the form of referral lawyers, they are also available all over the country. Sahil Protection Networks are also work in the village areas with linkage with the local administration.⁹⁶⁷

The chapter has argued that division of the Pakistani society into different classes may also facilitate the abuse and exploitation of children. It has contended that the laws and policies are somehow available in Pakistan, though, they are not enough for the present dangers to the children and the authorities should be accelerated in this regard. Instead, more laws and new policies along with effective coordination among the responsible authorities

⁹⁶⁶ <http://hrcp-web.org/hrcpweb/about-hrcp/mission-vision/>. Accessed on 20-08-2017.

⁹⁶⁷ <http://sahil.org>. Accessed on 21-08-2017.

are need of the time to protect the children from all the exploitation they face. However, the chapter has praised that Pakistan is on the way forward to the noble purpose along with implying international instrument side by side taking care not to contradict Islamic Law. But this praise does not mean that there is no deficiency in the system. The upcoming chapter will compare the International, Islamic and Pakistani Laws with their mechanism on the subject of the thesis to get the proper results.

CHAPTER

FIVE

Chapter Five

A Comparison among International, Islamic and Pakistan Laws

The previous chapters evaluated the rules and mechanisms of International, Islamic and Pakistani Law in concern of child protection. The present chapter manifests the comparison among them to perceive outcome of the thesis. The chapter compares and examines each kinds of abuse separately.

5.1 Responsibility of the guardian

International Law makes the parents and the guardian liable to the law in case of any abuse if the abuse occurred in the care of the guardian.⁹⁶⁸ Same is the case of Islamic Law.⁹⁶⁹

5.2 Adoption

International Law allows Adoption.⁹⁷⁰ In fact, adoption may be a reason for abuse of the child. For example, it may lead to trafficking of the children within or outside the countries; it may also lead to sale of the child.

⁹⁶⁸ CRC. Art. 19.

⁹⁶⁹ *Al-Fiqh al-Islāmī wa Adillatuhu*, vol. 9, p. 148.

⁹⁷⁰ For example, see, CRC, articles 20 & 21.

Likewise it may result into child sexual abuse or prostitution, economic exploitation ...etc.

Islamic Law does not allow it and made it expressly prohibited. So, Islam prohibited the basis of the wrong. Qur'an says:

أَدْعُوهُمْ لِأَبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ ۚ فَإِنْ لَمْ تَعْلَمُوا
ءَابَاءَهُمْ فَاِحْوَانُكُمْ فِي الدِّينِ وَمَوْلَاكُمْ ۗ ... ﴿٩٧١﴾

“Call them by (the names of) their fathers: that is juster In the sight of Allāh. but if ye know not their father's (names, call them) your brothers In Faith, or your maulas...”⁹⁷²

Actually, it is opposite to the preservation of the progeny; one of the objectives of the Shari'ah, because it disturbs the whole family law of Islam like marriage, breast feeding, custody rules, maintenance obligation, inheritance...etc. One may argue here, how Islamic Law treats the poor child or a child deprived of the family? Actually, in this case, Islamic Law appreciates Kafalah.⁹⁷³ The reason being there is no disturbance of Family Law, rather, it is helping the one who is in need and make the relation strong among the Muslims.

⁹⁷¹ A-Qur'an 33/5.

⁹⁷² [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 21-05-2015.

⁹⁷³ See, Protection of children deprived of their family, in chapter three for detail.

Pakistani Law acts as Islamic Law. National Commission for Child Welfare and Development (NCCWD), Pakistan, has confirmed again that for the purpose of children's long term care, best interest of the children will be under consideration within the rules of Shari'ah.⁹⁷⁴

5.3 Concept of Child Labour and Economic Exploitation

International Law does not allow child labour which is hazardous to child's education and health, thereafter, harmful to overall development of the children. Further, instigation has been provided to set the age and working hours for the working persons and to take necessary measures to combat child labour and economic exploitation.⁹⁷⁵ Emphases have been made to the state parties to end the child labour. Likewise, the minimum age for the labour was set as 14.⁹⁷⁶

Same is the case with regard to Islamic Law. It also does not allow it. However, the difference is that international Islamic instruments of the

⁹⁷⁴ *Third and Forth Periodic Reports* to the Committee on the Rights of the Child, para 237.

⁹⁷⁵ CRC, Art. 32.

⁹⁷⁶ ILO 182, Art. 1; ILO 138, Art. 2(5).

view that the minimum age for work and the working conditions be decided by domestic regulations.⁹⁷⁷

Pakistan Law also has regard to this issue. The Employment of Children Act 1991 has been passed to decide issues with regard to child labour and penalties in case of its violation. In Pakistan, the minimum age for work has been set as 14 years.⁹⁷⁸

5.4 Drugs

International Law, Islamic Law and Pakistani Law unanimously agree on prohibition of the illegal use of drugs.⁹⁷⁹ In Pakistan, the Control of Narcotic Substances Act 1997 decided the matters and punishments in this regard.

5.5 Capital Punishment

CRC in its article 37 specifies that capital punishment and for life punishment cannot be awarded to child under 18. In Islamic Law, the child is immune to the level of Puberty.

⁹⁷⁷ CRCI. Art. 18; CFI. Art. 118.

⁹⁷⁸ The Constitution of Pakistan, Art. 11(3); Employment of Children Act 1991, Section 2(iii).

⁹⁷⁹ CRC. Art. 33; CRCI. Art. 17(1); CFI. Art. 117(2).

5.6 Consideration to the basic needs for the poor children

All agree on the obligation to fulfill the basic needs of the poor children. But, even when the mechanism is there, the problem may arise in implementation of this obligation on the ground as indicated by the Annie and Solange⁹⁸⁰ if the poorest is ignored by the authorities.

Another problem is that according to International Law, primary responsibility in this regard is on the parents then everything on the state⁹⁸¹ which seems unfair to states. However, Islamic Law, generally talking, puts the responsibility on the father, after that on the relatives then the state at the end.⁹⁸²

5.7 Effect of the Marriage Contract

The CEDAW Says: “The betrothal and the marriage of a child shall have no legal effect”.⁹⁸³ So, international law does not recognize the marriage before

⁹⁸⁰ Annie Leatt and Solange Rosa, *Securing the Means to Live: Children’s Financial Security in South Africa*. A paper delivered at the Fourth World Congress on Family Law and Children’s Rights, Cape Town, 20-23 March 2005, www.ci.org.za/depts/ci/enews/june2005/SecuringM2L.pdf. Accessed on 05-04-2016.

⁹⁸¹ *Fact Sheet No. 10*.

⁹⁸² CRCI. Art. 11; CFI. Art. 107.

⁹⁸³ CEDAW. Art. 16(2).

the age 18. Though, the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages⁹⁸⁴ specifies its purpose to eliminate the marriage and betrothal of young girls before the puberty but it is not clear what does the puberty means here.⁹⁸⁵ Moreover, it says that the states parties shall set their minimum age for the marriage.⁹⁸⁶

In Islamic Law, if a marriage has been solemnized, its effect cannot be denied because Islam makes the marriage as stabilized act,⁹⁸⁷ that's why it does not make contract of marriage void when concluded. As for the child marriage, it is unreasonable to say that it is child abuse or otherwise, because situations of the people are different; a child may have ability while other is unable for the marriage. Likewise, interest of the child according to his guardian opinion, may demand its marriage in a specific society or community while situation of the other child may be different. So, child marriage may be abuse in some situation and may protect him from abuse otherwise. Islamic law did not prohibit it because there is no need for its prohibition. However, it is preferred to avoid the marriage of a child.⁹⁸⁸

⁹⁸⁴ Opened for signature and ratification by General Assembly resolution 1763 A (XVII) of November 7, 1962, and entered into force on December 9, 1964.

⁹⁸⁵ The Preamble.

⁹⁸⁶ Art. 2.

⁹⁸⁷ CFI. Art. 24.

⁹⁸⁸ Rabat Declaration on Child's Issues, Declaration No. 10.

Secondly, the conditions which have been put by the Islamic Law on child marriage are the best safeguards.⁹⁸⁹

Pakistani Law mostly follows Islamic Law. The Child Marriage Restraint Act 1929 recognizes the marriage done once even if it is made before the minimum age specified by the law i.e. sixteen years for female and eighteen years for male. This is also corroborated by the case of Lahore High Court in which it was held that the marriage before 16 years of age if both the male and female cannot be termed as unlawful.⁹⁹⁰ Although, it provides punishment to those who do or assist the child marriage under the age, as the case may be.⁹⁹¹ According to the researcher, it is a good initiative keeping in view the need of the time. However, the provision of DMMA 1939 that if a girl has been given in marriage before sixteen years of age and consummation has not been done, she has rights to repudiate the marriage contract may be contradicting Islamic Law if the girl has been given to marriage after she attained the puberty and before completion of the sixteen years.

⁹⁸⁹ See Chapter Three for detail in the topic of Child Marriage.

⁹⁹⁰ *Allāh Nawaz v. Station House Officer* (2013 PLD 243 Lahore High Court). See other cases as referred in the fourth chapter and the heading “Protection against Child Marriage”.

⁹⁹¹ Child Marriage Restraint Act 1929, Section 2(a).

5.8 Sale and Trafficking

All the Laws seem to have same position regarding sale and trafficking in general, and child and women in special. All discuss to take all legislative and other measures and cooperation among the states to stop the sale and trafficking.⁹⁹²

Although, all the systems are against the sale and trafficking, there is a basic difference and philosophy among Islamic and others. It is in form of the purpose of traffickers in national and international trafficking. The traffickers work to maximize their profit which is the sole purpose of the capitalist economy. In Islam, the economy is free but with the purpose of welfare of the society. It is not with the sole purpose of maximization of profit.⁹⁹³ So, Islamic Law prohibited the base of this problem.

5.9 Sexual Exploitation

International Law prohibits the inducement and coercion in this regard. On the other hand, Islamic Law prohibits it whether it is inducement or volunteer. Pakistani Law follows the Islamic Law.

⁹⁹² CRC. Art. 35; CRCI. Art. 17(1); Protocol to Prevent, Suppress And Punish Trafficking in Persons, Especially Women and Children, like articles 2(c) and 10.

⁹⁹³ Ahmad, Mushtaq, *Business Ethics in Islam* (Islamabad: Islamic Research Institute Press, 1995).

The trafficking is a moral problem, especially, if it is for sex or prostitution, even then the western media shows what provokes immorality. On the other hand, Islam prohibited all the things that result into immorality e.g. it is prohibited to see a man or a woman as the case may be, outside the (*Mahārim*) prohibited degree. In fact, this is one of the measures to preserve the progeny; an objective of *Shari'ah*.

5.10 Protection of the Civilians and Children Especially

CRC art 38, says that the states parties have to protect the civilians and take care of the children affected by the armed conflict. There is contradiction on the ground reality because firstly it is not fully prohibited, but they attack, then say take care of children affected by the conflict!

Islamic Law, it is prohibited to touch the civilian and the children. The ḥadīth and the history proved.⁹⁹⁴

5.11 Dissemination of Sexual Abuse

Article 8(2) of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse 2007 says that the “measures shall be taken to prohibit the dissemination of the material

⁹⁹⁴ See the chapter two of this thesis.

advertising the offences of sexual abuse”. The contradiction is the ground reality where the media disseminate this abuse.

Islamic Law has also prohibited such kind of the dissemination. This may be understandable from the saying of the Prophet (SAW) has said:

عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ " مَنْ نَفَسَ عَنْ مُسْلِمٍ كُرْبَةً
مِنْ كُرْبِ الدُّنْيَا نَفَسَ اللَّهُ عَنْهُ كُرْبَةً مِنْ كُرْبِ يَوْمِ الْقِيَامَةِ - وَمَنْ
يَسَّرَ عَلَى مُعْسِرٍ يَسَّرَ اللَّهُ عَلَيْهِ فِي الدُّنْيَا وَالْآخِرَةِ وَمَنْ سَتَرَ عَلَى
مُسْلِمٍ سَتَرَ اللَّهُ عَلَيْهِ فِي الدُّنْيَا وَالْآخِرَةِ وَاللَّهُ فِي عَوْنِ الْعَبْدِ مَا كَانَ
الْعَبْدُ فِي عَوْنِ أَخِيهِ " .⁹⁹⁵

“If anyone removes his brother’s anxiety of this world, Allah will remove for him one of the anxieties of the Day of resurrection; if anyone makes easy for an impoverished man, Allah will make easy for him in this world and on the day of resurrection; if anyone conceals a Muslim’s secrets, Allah will conceal his secrets in this world and on the Day of resurrection; Allah will remain in the aid of a servant so long as the servant remains in the aid of his brother.”⁹⁹⁶

According to the Mīthāq, the child has right to be protected from all forms of exploitation, sexual abuse or any unlawful violation of his or her

⁹⁹⁵ *Sunan Abī Dāwūd*, Kitāb al-Adab, Bāb fi al-Ma‘unah Lil-Muslim, vol. 4, p. 287, Ḥadīth No. 4946.

⁹⁹⁶ <https://sunnah.com/abudawud/43>. Accessed on 20-04-2018.

honor.⁹⁹⁷ Moreover, the CRCI in article 17 (1) says that the state parties shall take necessary measures to protect the child from:

1. Illegal use of drugs, intoxicants and harmful substances, or participation in their production, promotion, or trafficking.⁹⁹⁸

5.12 Purpose of the Education

We are passing through 21 century; unfortunately, many children of the world cannot read and write. Many of them do not go to school. It is only the education that makes the parents and the children feel their rights and raise opportunity to their dignity. It is only the education by which the children feels his rights and prevent any harm or exploitation from themselves like violence, sexual exploitation.

The education is highly encouraged by International Law,⁹⁹⁹ Islamic¹⁰⁰⁰ and Pakistani Laws.¹⁰⁰¹ They all emphasize on the measures for provision of the education.

⁹⁹⁷ CFI. Art. 117(1);

⁹⁹⁸ <https://www.refworld.org/docid/44eaf0e4a.html>. Last accessed on 25-03-2015.

⁹⁹⁹ CRC. Art. 28, 29, 40.

¹⁰⁰⁰ CDHRI. Art. 7, 9, 17.

¹⁰⁰¹ The Constitution of Islamic Republic of Pakistan 1973, Article 25A; The National Plan of Action to Acceleration Framework 2013-2016.

However, the difference between International Law and Islamic Law is about the purpose of the education. According to the western thinking, the basic purpose of education is the self.¹⁰⁰² On the other hand, in Islam, a Muslim is required to get the education for the end purpose of benefit of the humankind.¹⁰⁰³ Moreover, the Islamic Conventions also instigates to make the education free for all.¹⁰⁰⁴

Further, it is also necessary to make it according to the rules of Shari'ah.¹⁰⁰⁵ Then, it is enough that the firstly established Islamic Universities provided education on scholarship basis to all.¹⁰⁰⁶

5.13 Discrimination

The present International Law is mostly affected by western phenomenon¹⁰⁰⁷ because it shows only western and secular perspectives of child rights and their protection. In other words we can say that the western thinkers and the legal experts dominate present human rights norms. Due to this issue, many rules can be made for the protection of

¹⁰⁰² CRC. Art. 29.

¹⁰⁰³ CDHRI. Art. 9.

¹⁰⁰⁴ CFI. Art. 114.

¹⁰⁰⁵ CRCI. Art. 12.

¹⁰⁰⁶ M. Razi Khan Afridi and M. Ilyas Navaid, *Encyclopedia of Quranic Studies*, vol. 16 (New Delhi: Anmol Publications, 2006), 318-319.

¹⁰⁰⁷ "Differences between the ACRWC and the CRC".

child right which cannot be applicable in other part of the world. The reason being, it leaves behind the traditions of the world. Most important is that it overlooks the religions of the world;¹⁰⁰⁸ especially, the Islamic religion. It means that imposing the unified provisions regarding children rights all over the world in present situations seems very difficult. One may argue that International Law leaves a free will at many rules when it says, for example, "...subject to the national law". The answer is that there are many rules which do not provide enough liberty e.g. in the instance of freedom of thought, expression and religion.

It is also noticed that, due to political reasons, it appears that all the states are not dealt equivalently.¹⁰⁰⁹ It means that the international law reflects discrimination among the states; which is against the norm recognized by it. Unwittingly or wittingly international law; under the umbrella of United Nations, looking like it is considering only some children in the world.¹⁰¹⁰ We see that children in developing countries, especially, in the Islamic world, appeared facing danger and violation to their rights due to armed conflicts and due to different situations; mostly the reason being the

¹⁰⁰⁸ See, The South Asian Report 2013, p. 55.

¹⁰⁰⁹ *Universal Human Rights in Theory and Practice*, p. 162.

¹⁰¹⁰ Kamilia Helmy, translated by Ashraf Al-Karaksi, *Parental Rights vs. UN Rights "Africa & Elsewhere Fit for Children?"* See www.Islamonline.net/servlet/Satellite?c=Article_C&pagename=Zone-English-Family%2FFYELayout &cid=1225697998403. Last Accessed on 11/05/2010.

developed countries. No reasonable safeguards are provided to them because the developed countries do not experience such problem.¹⁰¹¹ A person may also be compelled to think that the International Law, particularly the CRC establishing powers has their own political and social intentions when he sees that they do not come forward to protect the children rights when themselves are the reason for the children abuses in other countries, examples of Kashmir, Palestine, Lebanon, Syria, Burma and Afghanistan are in face.

The Islamic Law, however, reflects the more universal nature and provides comprehensive rules which can be applied universally. By the rules of *Abliyyat Al-Wujūb* and *Abliyyat Al-Adā'i*, Islam begins to give children their rights from the era of conception. The principles of right to life, taking care of the child and his mother, guardianship, rearing the children and the restriction of harming others to all children discriminately are not but the proofs that it is able to cover all the children without discrimination. Moreover, it does also accord the situation of different societies.

¹⁰¹¹ For instance, the children of Kashmir, Burma, Palestine ...etc

5.14 Anti Parent Factor

Basically, the non Muslims philosophers generally present two views regarding relationship between children and parents. One is that child lack legal capacity from the adults being under control of parents. Secondly, at some times, parents do decisions adverse to the benefit of the child. Oppositely, some view that parents feel the love and affection towards their children, more than anyone else, and they can decide what is better or not.¹⁰¹²

There is another state of tension between rights of children and rights of parents or the state in some cases, because the children can enjoy and claim the rights recognized for them under the international human rights instruments.¹⁰¹³ Problematically, some of those rights apparently infringe the rights of the parents when children demand those rights against their parents. Some examples of anti parent articles in CRC are, article 14 which give absolute freedom of thought; article 15 which talks about freedom of association and article 16 which is about right of privacy of the children. all these and many more rights plays a picture of anti parent because the

¹⁰¹² Wald, Michael, "Child Rights: A Framework for Analysis", University of California, Davis Journal, Vol. 12, (1979): 256, quoted in, "Differences between the ACRWC and the CRC", p. 143.

¹⁰¹³ Cohen, *Introductory Note: United Nations: Convention on the Rights of the Child*, 28 I.L.M 1448 (1989), quoted in, "A Pathfinder and Selected Bibliography", p. 172.

children at this stage, the child is not available to chose best thought, the best association and use the best privacy rights. Rather, it makes him a dangerous member of the society without proper guidelines by the parents.

Actually, the problem is in the methods these rights were originated. There high explanation is necessary. Without it, the society will begin to fall. Likewise, a child may also the exploitation his own abuse by itself like sexual abuse, trafficking or some other act. Importantly, these principle may suit some of the societies in the world like western society but do not suit other societies of the world.

The revised text of the Declaration of the Rights of the Child of 1948 contained the admirable words that a child must be cared with due respect for the family as an entity.¹⁰¹⁴ But later on, CRC knowingly or otherwise ignored this important principle; which is not understandable. This is the reason that people of United States did not ratify the CRC by simple saying that it is anti parents and threatens the vital role of the parents. To critique,

¹⁰¹⁴ See the history in chapter two of this thesis.

they base their opinion on UDHR¹⁰¹⁵ which says that the family is the natural and fundamental group of the social and must be cared of.¹⁰¹⁶

However, Islamic Law also provides all these rights with full explaining principles, whereby these rights are working but limitedly according to the teachings prescribed by the *sharī‘ah*.

Actually, heart of the society is the family. The child feels protection within his family and believes the sense of belonging. Here, he learns the lifelong relationships; he understands the values and the sense of responsibilities. So, the family is the foundation.

5.15 Gaps in International Law

The International Law, especially, the major instrument i.e. CRC includes some articles which are in need to be explained more. It means that it does not have a practical approach or it is not clear how to deal with the children. For example, at the one hand the family is the basic unit of the society and its environment is necessary for the upbringing of the child.¹⁰¹⁷

At the same time CRC gives the children right to access the mass media for

¹⁰¹⁵ UDHR. Art. 16(3).

¹⁰¹⁶ Fineman, Martha and Worthington, Karen, ed. *What is Right for Children? the Competing Paradigm of Religion and Human Rights* (New York: Routledge, Taylor and Francis Group, 2011), p. 21-22.

¹⁰¹⁷ See for example, UDHR. Art. 16(3); CRC. Preamble, para 5.

information.¹⁰¹⁸ It means that the drafting committee does not pay exact regard that the child, most probably, get bad instead the good if he has full access to the mass media. Importantly, it has medically proved that mass media, especially, the use of internet makes the children away from their family environment.

Secondly, CRC means that children views must be accepted to their capabilities. However, the problem arises if the whole matter is decided completely just on the basic of a child view. One of the problem is that he is a child and telling something at his own; without the supervision and assistance of his guardian. The second problem here is that his view may be wrong, which leads toward bad. Reason

Thirdly, the freedom of thought and freedom of religion principles in CRC¹⁰¹⁹ are not understandable. How a child can change its religion or talks freely according to his wish while being child; he has no correct dissertating power. Likewise, the rights of the expression and right to act freely need to explain its boundaries in International Law due to their being doubtful concepts.

¹⁰¹⁸ CRC. Art. 17.

¹⁰¹⁹ CRC. Art. 14.

Actually, it seems that the International Law has failed to limit the rights it consists. Resultantly, people use it according to their own explanation that makes difference among the nations. For example, articles 3 and 19 of UDHR which explains right to life and right to expression in general term.

However, in Islamic Law, it is clear that both rights have been provided by Islamic Law with the condition that they should not confront the teachings of Islam as prescribed in the Holy Qur'ān and aḥādīth of the Prophet Muhammad (SAW), otherwise they are prohibited.¹⁰²⁰ There is no need to explain these issues from human beings.¹⁰²¹ As for Pakistan, it is a Muslim state and many of its customs are based on Islamic teaching. According to custom of the society, this is responsibility of the parents to give regard toward this issue.¹⁰²²

5.16 Rights vs. Duties

Co-existence of rights and duties work together is a universal reality; both of them cannot work without the other. Analyzing the CRC, we find only the rights of children without apparent or nominal responsibilities they

¹⁰²⁰ See, CRCI. Art. 6, 9.

¹⁰²¹ See for example, CDHRI . Art. 2, 22.

¹⁰²² However, there are certain customs contrary to the teaching of Islam.

have. However, it is very good step ACRWC has taken that mentioned the responsibilities of the children.¹⁰²³

Islamic law, however, under the head and concept of *ahliyyah al-wujūb*, discusses the rules of the rights and duties of the child.¹⁰²⁴ It prescribes other kinds of obligations as well, like respect to the parents. The Holy Qur'an repeatedly orders to do good to the parents. Allāh Almighty says:

﴿ وَقَضَىٰ رَبُّكَ أَلَّا تَعْبُدُوا إِلَّا إِيَّاهُ وَبِالْوَالِدَيْنِ إِحْسَانًا
إِذَا بَلَغَ الْكِبَرَ أَحَدُهُمَا أَوْ كِلَاهُمَا فَلَا
تَقُلْ لَهُمَا أُفٍّ وَلَا تَنْهَرَهُمَا وَقُلْ لَهُمَا قَوْلًا كَرِيمًا
﴿١٣﴾ وَأَخْفِضْ لَهُمَا جَنَاحَ الذُّلِّ مِنَ الرَّحْمَةِ
﴿١٤﴾ وَقُلْ رَبِّ ارْحَمْهُمَا كَمَا رَبَّيْتَنِي صَغِيرًا ۝﴾¹⁰²⁵

“Thy Lord hath decreed that ye worship none but him, and that ye be kind to parents. whether one or both of them attain old age In Thy life, say not to them a word of contempt, nor repel them, but address them In terms of honour. And, out of kindness, lower to them the wing of humility, and say: "My Lord! bestow on

¹⁰²³ ACRWC. Art. 31.

¹⁰²⁴ For detail, see chapter 1 and 3 of this thesis.

¹⁰²⁵ Al-Qur'an 17 / 23-24.

them Thy Mercy Even As They cherished
me In childhood.”¹⁰²⁶

The ḥadīth of the Prophet (SAW) says in this regard: “He, who does not have mercy for our young ones and respect for our old ones, is not from among us”.¹⁰²⁷

By this, Islam maintained its quality of being a moderate religion where remains no possibility of exceeding the proper bounds or to go far away in either sides.

5.17 Reward and Penalty

In the worldly laws, people keep in mind that once they were not caught after they committed a crime, they will not be punishment thereof. The reason behind this law is that this world only, shows the final result.

At the other side, the believers of the divine law always believe that if they avoid the punishment here, they will not avoid it in the hereafter. This Conscience make them avoid to commit or violate any of the law. This concept of reward and the punishment in this world and the hereafter, obviously, missed from the International Law.

¹⁰²⁶ [http://www.ciciowa.org/PDF/The_Holy_Quran\(YusufAliTranslation\).pdf](http://www.ciciowa.org/PDF/The_Holy_Quran(YusufAliTranslation).pdf). Last accessed on 21-06-2015.

¹⁰²⁷ Al-Tirmidhī, Kitāb al-Birr wa Ṣilah, Bāb mā Jā'a fī Raḥmah al-Ṣibyān, vol. 4, p. 321. Ḥadīth No. 1919.

5.18 Procedure

According to Jack Donnelly, the Committee on the rights of the Child still has not become an important international actor with regard to children rights except for certain issues like children soldiers and their sexual abuse.¹⁰²⁸

No doubt that CRC is an important initiative for protection of due rights of the children. But as other man-made laws, rules and regulations, some deficiencies may have been remained untreated. Our duty is to point out to such deficiencies so that the gap may be filled.

It is apparent that most of the International Law on children rights and prevention of their abuse is not contradicting Islamic Law. However, some of the provisions are against it which affects some of the procedures between them. For example, right to education is common right. But it is more effective in Islamic Law which was clear while talking about the history of Islamic state. As for the differences mentioned in the chapter five, we see that in the reception classes, boys and girls are engaged in some contradicting matters such as negative cartoons which affect the child personality and morality.

¹⁰²⁸ *Universal Human Rights in Theory and Practice*, p. 187.

The chapter has examined the systems and has arrived that schemes of Islamic Law and International Law on the prevention of child abuse mostly agree but there are some differences as well. The reason is dissimilarities among their norms and principles. Therefore, Islamic Law does not accept a rule in ignorance of its own principles. Following sections contributes important conclusion and recommendation as suggested by the humble research.

CONCLUSION

CONCLUSIONS

The thesis reached to the following conclusions:

Child abuse is a universal problem. However, its nature differs from region to region due to difference of cultures and environments. If we come to the Islamic Law and the International Law regarding the issue of prevention of child abuse, we find that both of them apparently agreed on many rights of the children and prevention of their abuse. However, after discussing their Law and mechanism as discussed in chapter five of this thesis, the researcher found that there are some partial differences in reality. The foremost reason for these dissimilarities is difference of philosophies and viewpoints. The primary source of Islamic Law is Qur'ān and Sunnah, contrarily; the source of International Law is a specific assembly or an organization like United Nations. We can easily presume that difference of the mechanisms is mostly based on difference of the substantive law which makes the International Law consists of some flaws which work as obstacle towards prevention of the abuse against children. Especially, differences of family systems, legal rights and obligations and civilizations heavily affect the nature of children rights and prevention of their abuse. That's why international Law on the issue in hand may be fit for some areas of the world excluding other areas.

Examples of these shortcomings are that it includes some doubtful concepts and articles that need to be explained more and have implications within several states contexts. These are like right to access the mass media, freedom of thought and religion. If we see some states of the world, sexual activities with the consent for the adults, licensing the brothels or allowing homosexuality...etc. definitely, affect the children negatively because the children do what their adults do. This is an example that makes the international mechanism imperfect. Moreover, reader of the International Law also finds that responsibility of the children still not discussed except rarely. Overall saying, the current measures and attempts to prevent the children from their abuse are not enough to protect them.

Talking about Islamic Law, the analysis of each topic in the thesis established that child abuse is oppose to its objectives i.e. preservation of the religion (Islam), person, progeny, intellect and property. In this regard, Islam does not address the state only; rather it addresses also all the persons including adults and children according to their capacities, because state itself cannot do anything unless everyone realizes his own responsibility. As a result, we see that children are dealt according to justice; one of the basic principles of Islam, and they are supervised by their guardians who are liable to the law and judiciary. Moreover, the historical rules applied by the

Islamic State on the rights of children and prevention of their abuse were beneficial as discussed in the research. So, the research could not find any gap in Islamic Law regarding prevention of abuse against children. Here, it is required to realize that customary practices in different Muslim communities may contradict Islamic Law on the topic in hand. So, differentiating between practices of Muslim communities and pure Islamic Law is utmost necessary.

As for Pakistan, it is good to have laws on the child right, especially after the ratification of the international documents but more laws are need of the time. Moreover, enforcement of the available laws and mechanisms is very poor. However, the presence of the organizations which work for the betterment of child rights and prevention of child abuse or work for the purpose of their rehabilitation in Pakistan is highly encouraged. Moreover, Pakistan should consider the Islamic Law while making and enforcing any law. Finally, three methods are obligatory for prevention of the child abuse; one is the preventive measures including the legislation to avoid the abuse, second is provision of uncomplicated complaint procedures after the incidence of abuse happens and third is to punish the culprits.

RECOMMENDATION

RECOMMENDATIONS

The thesis contributes with the following recommendation:

States' have the fundamental and significant character in prevention of child abuse. It is a known fact that most of the countries face bad situation of their economy. Even then, the states' have to provide the society the best policies such as financial help to needy children, obviously, according to available resources of state time to time. Training of such children with different tasks and skills is also necessary for children to be constant in future. These programs help the country as well in breaking the poverty circle.

Moreover, educating and conscious rising programs with regard to topic in hand may benefit the society as a whole. Here, the people must be guided not to abuse children and not let others to abuse them.

Furthermore, teachers, scholars and media of the society are urged not to forget their influential role in spreading the ethics and morality among the people. This will protect the children.

Besides all this, the critical is that the parents must live with their children with good behavior and to bring them up at their own. In fact, letting them

with the mercy of others enhances the possibility of their abuse of all kinds. Otherwise, counseling of the parents becomes significant.

Specifically talking about Muslim states, they have to keep in view and implement the Islamic Law and its mechanism on the topic in hand. Here, Islamic Law may be based on *maṣlaḥah* and objectives namely, preservation of religion (Islam), person, progeny, intellect and property, especially, where the classical law is silent because many issues are new where the *maṣlaḥah* and objectives taken from the teaching of *Shariah* may work. Moreover, Islamic International Documents are also useful in this regard. Same should be the case while ratifying the international instruments.

After knowing the flaws of the mechanism of International Law as proved by the study, there is an extra role of the Muslim states. They are encouraged to participate in the international forums on child rights and introduce mechanism of Islam for child protection. This is very significant to make the world fit for children. Role of OIC may help in this regard because it has its own CRCI.

Moreover, the non Muslim international states are encouraged to seek help from Islamic Law mechanism to protect the children, as the study discussed;

which is also available in existing Islamic international instruments regarding child rights and prevention of their abuse.

States are under obligation to fill flaws and gaps in their necessary legislation on the topic in hand. In this process, it is notable that complaints procedures be clear for everyone. This will help the children and the one who knows the abuse event to complain at the spot. Finally, the Law must decide harsh punishments for the culprits of child abuse.

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