

DISSERTATION ON

**Child Abuse in South Asia: Legal Discussion on Abuses Towards
Children on the Context of India, Pakistan and Bangladesh**

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Submitted To:

Sk. Md. Habibullah

Senior Lecturer,

Department of Law,

East West University

Submitted By:

Tahasin Salsabil Labiba

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Declaration

I, Tahasin Salsabil Labiba, ID# 2019-1-66-16, hereby declare that this research paper titled “Child Abuse in South Asia: Legal Discussion on Abuses Towards Children on the context of India, PakistanAnd Bangladesh” is original work of mine and has never been submitted to anywhere. This research aims to finish my Undergraduate degree as a course. A list of references has been inserted.

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Signature of the Student

Date:

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Abstract

Child Abuse is a common phenomenon in Subcontinent society. Both male and female are being equally abused sexually and physically. Though children are no exception on the subject of abuse. The main focus of the research is to find out the relevant laws and cases which have established proper justice and prevention through laws under Bangladesh, India and Pakistan. The research will show the relevant legal aspects, which have been used to prevent child abuse under International and Bangladesh, Pakistan and India perspectives. Here also will focus on the laws of The Penal Code of Bangladesh, India & Pakistan and the international convention, United Nation Convention on the Rights of the Child (UNCRC). The research will suggest some recommendations that will be really preventive to the issues regarding Child Abuse.

Chapter One: Introduction

1.1. Introduction:

Child abuse is a daily incident in every society all over the world. It exhibits adverse consequences in both the short and long term. Child abuse encompasses various forms of mistreatment, neglect, sexual abuse, and verbal mistreatment, which inflict harmful consequences on a child's mental health, physical well-being, and psychological state. The aim of the paper was to identify the reasons behind child abuse and what are the legal advantages to prevent child abuse. In South Asia this abuse is a regular incident. This paper will contain five chapters. Firstly, it will discuss about the definition, history of child abuse and the reasons behind child abuse. Secondly, it will show the international legal privileges to avert child abuse and then what are the legal advantages under India and Pakistan state laws. Thirdly, it will narrate the Bangladeshi legal advantages against child abuse. The Scope of the research is to determine the prevention of child abuse under the legal provisions of India, Pakistan and Bangladesh. Before going to the concluding part, the research will be established with legal provisions of the three countries and the cases of these countries. Through this it will be shown that the appropriate prevention of child abuse is forming or not. And at last the whole discussion will be summed up with findings, recommendations and conclusions.

1.2. Objective of the Research:

The main intention of the research paper to discuss that the legal provisions are appropriate or not to prevent child abuse in India, Pakistan and Bangladesh. The whole paper will discuss about the exploitation on child and the victimization of child abuse and it's legal punishments or legal advantages to prevent the abuse under the Children Acts and other laws of India, Pakistan and Bangladesh. A comparative discussion will be shown. Beside this, some prevention will also be discussed under the United Nations Convention on the Rights of the Child. This Convention has recommended prevention and ensures justice for the children to have proper protection under law.

1.3. Scope and Limitation of the Research:

The research has been condensed on the prevention of the child abuse under India, Pakistan and Bangladeshi laws. Basically, child abuse is called child endangerment or child maltreatment which can be physical, sexual, psychological maltreatment or negligence from parent or caregiver during the care of a child or children. These kinds of actions are harmful to the child's physical and mental health and also the violation of the state laws which has created obstacles to the children's right and protection. Beside other laws here some international laws have been discussed which are really reliable to prevent child abuse under United Nations Convention on the Rights of the Child both international and India, Pakistan and Bangladesh's perspective. The Scope of the research is to determine the prevention of child abuse under the legal provisions of India, Pakistan and Bangladesh and whether legal provisions are adequate for preventing the child abuse or not or there is any enactment needed regarding this abuse under India, Pakistan and Bangladeshi laws. Therefore, the limitation of the paper is that the paper has some inferiority to find out the judicial precedents and other feasible journal articles about the exact prevention of child abuse under the context of India, Pakistan and Bangladesh.

1.4. Research Question:

1. Do the legal provisions ensure appropriate protection to the children from abuse in India, Pakistan & Bangladesh ?
2. What will be the measures to counteract the abuse of children?

1.5. Research Methodology:

The main theme of the research is Child Abuse, which has created a obstruction in fair justice system and protection to the children. The qualitative research has been ensued in national and international journals, articles, websites and blogs to clarify what kind of exploitation has been done to the children and its prevention.

1.5. Literature Review:

A number of papers and articles have been analyzed in this discussion. Some of the studies will be discussed about the child abuse in Bangladesh's perspective. The child abuse scale (CAS) in Bangladeshi context, the main facts of the exploitation against a child are- emotional neglect, abusive behavior, and physical neglect.¹ 132 children have been abused per day according to Bangla CAS.² In recent years, there has been an alarming rise in child killings and abuse in Bangladesh, with a significant impact on impoverished children.³ In India, Before reaching the age of 18, more than 90% of children in India undergo some form of abuse.⁴ 52% percent cases from

¹ Himi, S.A., Akter, D. & Zaman, FTZ.B. "Child Abuse Scale: Factor Structure and Psychometric Properties Evaluation in Bangladeshi Context". *Psychol Stud* 66, 220–229 (2021). <<https://doi.org/10.1007/s12646-021-00600-3>> accessed on 18 March, 2023.

² Ibid

³ Islam, Mohammad Saiful, *Child Abuse and the Recent Trends in Bangladesh: A Critical Analysis from Islamic and Bangladeshi Laws* (Dec 15, 2015). *IOSR Journal Of Humanities And Social Science (IOSR-JHSS)*, Volume 20, Issue 12, Ver. V (Dec. 2015) PP 58-66, Available at SSRN: <<https://ssrn.com/abstract=3168426>> accessed on 18 March, 2023.

⁴ "Protecting our children: A look at current Indian laws on child abuse", *The Times of India*, 12 February, 2023, <<https://timesofindia.indiatimes.com/readersblog/personal-blog-of-suhaib-rafi-mir/protecting-our-children-a-look-at-current-indian-laws-on-child-abuse->

urban area and 48% cases from rural area were reported in Pakistan regarding child abuse.⁵ Child abuse, exploitation, child labor, and buying or selling of children for the purpose of prostitutions are prohibited under the Bangladeshi, India and Pakistani laws. The authors want to state their point that is to forbid abuse of children; their exploitation is excluded and child labor is prohibited under the laws of the subcontinent. But they did not focus on specific exploitation of children and relevant case laws in Bangladesh, India and Pakistan. That is why the paper wants to represent those issues through the legal provisions and cases of the three countries.

[50378/#:~:text=Child%20abuse%20is%20a%20pervasive,one%20that%20demands%20our%20attention.>](#) accessed on 16 May, 2023.

⁵ “Over 2,000 child abuse cases registered in Pakistan during past six months: Report”, ANI News, 13 September, 2022, <<https://www.aninews.in/news/world/asia/over-2000-child-abuse-cases-registered-in-pakistan-during->>, accessed on 16 May, 2023.

Chapter Two: Definition & Reasons of Child Abuse

2.1. Introduction:

Since knowing the exercise of the provisions on Child Abuse in International and India, Pakistan and Bangladesh context, at first we have the knowledge what is child abuse and its background. The chapter will discuss about the definition, types of child abuse and the reasons behind it.

2.2. Definition of Child Abuse:

2.2.1. Legal Definition of Child Abuse: Child abuse occurs when a child is subjected to severe physical harm, placed at a substantial risk of significant physical injury, or subjected to sexual exploitation by their caregiver or any other person legally responsible for their well-being. In India, under The Juvenile Justice (Care and Protection of Children) Act, 2015, child abuse is defined as the mistreatment of a child through physical, sexual, emotional, or economic means. This encompasses neglect, abandonment, exploitation, and any other detrimental treatment inflicted upon the child.⁶ Child abuse happens in all cultural, ethnic, and income groups. The Federal Child Abuse Prevention and Treatment Act as amended by the CAPTA Reauthorization Act of 2010, defines child abuse and neglect as, at minimum that any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation or, an act or failure to act which presents an imminent risk of serious harm.⁷ Different forms of abuse can be categorized as physical neglect, emotional neglect, moral neglect, and social neglect.⁸

⁶ Prerona Sil, *Child Abuse Laws in India: Fortifying the Formative Years*, 21 December, 2022, <<https://www.lexology.com/library/detail.aspx?g=81085a3e-dd44-4dc4-ab5e-94dbe3d1fdab#:~:text=The%20Juvenile%20Justice%20>> accessed on 15 May, 2023.

⁷ What is child abuse or neglect? What is the definition of child abuse and neglect? US Department of Health and Human Services, <<https://www.hhs.gov/answers/programs-for-families-and-children/what-is-child-abuse/index.html#:~:text=Child%20Abuse%20and%20Neglect%20Definition&text=%22Any%20recent%20act%20or%20failure.imminent%20risk%20of%20serious%20harm.%22>> accessed on 15 May, 2023.

⁸ Ibid

2.1.2. General Definition of Child Abuse: Child abuse encompasses both physical and mental harm inflicted upon a child, resulting from acts of neglect or deliberate actions. Typically perpetrated by individuals known to the child, such as parents, family members, caregivers, or close family friends.⁹ Child abuse, also known as child endangerment or child maltreatment, refers to the physical, sexual, psychological mistreatment, or neglect of a child or children by their parents or caregivers. It encompasses any form of harm inflicted upon a child that cannot be easily justified, often evidenced by non-accidental wounds or a pattern of injuries.¹⁰ All forms of child abuse encompass instances where power is abused or trust is violated.¹¹ Child maltreatment has the potential to impact a child's physical, psychological, emotional, behavioral, and social growth throughout their journey into adulthood.¹²

⁹ Child Abuse, Cleveland Clinic, < <https://my.clevelandclinic.org/health/articles/4018-child-abuse> > accessed on 3 April, 2023.

¹⁰ Defining Child Abuse: What is it? Childahelp, <<https://www.childhelp.org/educator-resources/defining-child-abuse/>> accessed on 4 April, 2023.

¹¹ Definitions of Child Abuse and Neglect, Candian Red Cross, <<https://www.childhelp.org/educator-resources/defining-child-abuse/>> accessed on 4 April, 2023.

¹² Child Abuse, Healthdirect, < <https://www.healthdirect.gov.au/child-abuse> > accessed on 4 April, 2023.

2.3. Reasons Behind Child Abuse:

India:

Reasons Behind Child Abuse on the context of India as follows:

- Poverty and scarcity of resources can indeed contribute to various challenges, including child abuse and family dynamics. When families are poverty-stricken and struggle to provide for all their members, it can create immense pressure and strain. Large families, with limited resources, face difficulties in meeting the needs and requirements of every individual. In such circumstances, some families may resort to negative coping mechanisms, which can include child trafficking or sending children to urban areas in search of employment opportunities. These actions are often driven by desperation and the belief that it may alleviate the financial burdens on the family.¹³
- Domestic violence can have severe effects on children who witness or experience it. It is indeed distressing when children become victims of abuse and mistreatment in such situations, as they often suffer physically, emotionally, and psychologically. Anger, frustration, and depression can contribute to the escalation of domestic violence, and unfortunately, children may bear the brunt of this violence, even though they are not at fault. It is crucial to address domestic violence comprehensively, ensuring the safety and well-being of all family members, including children.¹⁴
- Unemployment can lead to frustration and, in some cases, can impact family dynamics. It's important for individuals facing these challenges to seek support and explore available resources to improve their employment prospects. Regarding children's needs, open

¹³ *Forms, Causes And Effects Of Child Physical Abuse In India*. (2021, September 22). Edubirdie. <<https://edubirdie.com/examples/forms-causes-and-effects-of-child-physical-abuse-in-india/>> accessed on 15 May, 2023.

¹⁴ Ibid

communication and finding a balance between fulfilling their reasonable requests and managing expectations.¹⁵

Pakistan:

Reasons Behind Child Abuse on the context of Pakistan as follows:

- It is true that children can be influenced by their environment, including the behavior they witness from their parents. It has indeed shown a correlation between witnessing abuse in childhood and a higher likelihood of exhibiting abusive behavior later in life. However, it is important to note that not all children who witness abuse become abusive parents themselves. Many factors, such as individual personality, support systems, and intervention, can also play a role in shaping a person's behavior. While it is unfortunate that some children in Pakistan may be exposed to violence and aggression, it is crucial to address the root causes and work towards creating safer and more nurturing environments for children.¹⁶
- Social stressors, such as unemployment, poverty, family loss, or having a disabled family member, can contribute to increased incidents of child abuse. These stressors can create an environment of emotional and financial strain, which may lead to higher levels of frustration, tension, and ultimately, abusive behavior. The use of alcohol by a parent, particularly the father as you mentioned, can exacerbate these issues. Alcohol abuse can lead to emotional, psychological, and mental imbalances in children, as it impairs judgment, emotional regulation, and the ability to provide a safe and nurturing environment. It's important to address these underlying factors and provide support to families experiencing social stress to help prevent child abuse. This can involve providing

¹⁵ Ibid

¹⁶ “*Understanding Child Abuse*”, The Pakistan Today, 29 July 2021, <<https://www.pakistantoday.com.pk/2021/07/29/understanding-child-abuse/>> accessed on 15 May, 2023.

access to mental health services, parenting education, social support networks, and substance abuse treatment when needed.¹⁷

- The children who born as a result of rape or forced sexual intercourse may face unique challenges and mistreatment. Their situation can vary depending on cultural, societal, and individual factors. While it is true that some parents may struggle to accept these children wholeheartedly.¹⁸

Bangladesh:

Reasons Behind Child Abuse on the context of Bangladesh as follows:

- There are several significant factors that contribute to child abuse and exploitation. Poverty is indeed a major issue, but it intersects with various other factors such as unemployment, lack of education, awareness, economic disparities, social stigma, gender discrimination, and inadequate implementation of legal instruments. These complex and interrelated issues create an environment that increases the risk of child abuse and exploitation.¹⁹
- It is a big challenge regarding violence against children and the implementation of protective laws in Bangladesh. Access to justice is crucial in ensuring the safety and well-being of all children, regardless of their socioeconomic background.²⁰
- In certain circumstances, when parents are unable to provide basic necessities for their children, they may feel compelled to involve them in income earning activities at a very young age. This situation can expose children to various violent situations, which is deeply

¹⁷ Ibid

¹⁸ Ibid

¹⁹ “A Study on Child Abuse & Exploitation in Bangladesh,” Published by Bangladesh Shishu Adhikar Forum (BSAF), <<http://bsafchild.net/pdf/Study%20on%20CAEiB.pdf>> accessed on 15 May, 2023.

²⁰ Ibid

concerning. Additionally, poverty and social inequality can also increase the risk of children facing sexual exploitation. It is crucial for societies and governments to address these issues and work towards providing support and opportunities for vulnerable children to ensure their well-being and safety.²¹

- It is true that children may not have the same level of power or agency as adults, which can make it challenging for them to protest or advocate for their rights independently. Adults sometimes overlook the unique perspectives and needs of children, viewing them primarily as dependents. However, it is crucial for society to recognize and respect the potential and rights of children, ensuring their well-being and actively listening to their voices. Efforts are being made to promote child participation and empower children to express their opinions on matters that affect them..²²

²¹ Ibid

²² Ibid

Chapter Three: International Legal Aspects on Preventing Child Abuse

3.1. Introduction:

After having the knowledge about Child Abuse, now in this chapter going to discuss about the international legal aspects on preventing child abuse. Are these international provisions are enough to ensure the justice and prevention from child abuse or not?

3.2. What are the International legal aspects to protect children from abuse?

3.2.1. UN treaties and Relevant Laws: Child abuse is a problem threatening the health and welfare of children internationally.²³ Rights of children were recognized in International law in 1924.²⁴ The UN General Assembly took up the Convention on the Rights of Child in December 1989.²⁵ According to this convention, it is stated that state parties must implement appropriate measures to safeguard children from any type of abuse and exploitation.²⁶ Children should be protected from sexual abuse. Children are sexually abused by legal guardians, their parents and other people who have the care of a child. Judicial involvement should be necessary to protect children from abuse.²⁷

The convention mandates that it is the government's responsibility to ensure the protection and support of children who lack a family. According to article 19, States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from

²³ Dr. Seema Dahiya, *International Framework For The Protection Of Child Abuse: An Analysis*, Volume 9, Issue 10 October 2021, < <https://ijcrt.org/papers/IJCRT2110004.pdf> > accessed on 25 April, 2023.

²⁴ Ibid

²⁵ Ibid

²⁶ Ibid

²⁷ Ibid

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 parents, legal guardians or any other person who has the care of the child.²⁸ As mentioned by the article 32 of the United Nation Convention on the Rights of the Child, States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.²⁹ In the article 34, the government is responsible for safeguarding children against sexual exploitation and abuse. This includes taking measures to prevent instances where children are coerced into engaging in sexual activities in exchange for money, as well as the production of explicit images or films involving children.³⁰ As stated by the article 36 of the convention, States Parties are obligated to safeguard children from any other types of exploitation that may harm any aspect of their well-being.³¹ From this Convention article 39, States Parties are required to implement suitable actions to support the physical and psychological healing as well as the social reintegration of a child who is a victim of neglect, exploitation, abuse, torture, cruel treatment, or armed conflicts. This process should occur in a nurturing environment that promotes the child's well-being, self-esteem, and dignity.³²

²⁸ United Nation Convention on the Rights of the child, Article 19

²⁹ United Nation Convention on the Rights of the child, Article 32

³⁰ United Nation Convention on the Rights of the child, Article 34

³¹ United Nation Convention on the Rights of the child, Article 36

³² United Nation Convention on the Rights of the child, Article 39

Chapter Four: Legal Preventions and Cases Regarding Child Abuse on the Context of India & Pakistan

4.1. Introduction:

In the previous chapter, it has been discussed about International Legal Provisions on preventing child abuse. Through this chapter there shall be discussion about the legal aspects of India and Pakistan and whether those legal provisions are really establishing adequate justice about child protection or not?

4.2. Child Abuse in India:

Child abuse is a diffusive and significant problem in India.³³ In fact, according to recent statistics, over 90% of Indian children experience some form of abuse before they reach the age of 18. This is a grave statistic.³⁴ India has a completely comprehensive policy and legal framework addressing rights and protection for children, providing opportunities to ensure that all children have equal access to quality protection services.³⁵ The core child protection legislation for children is enshrined in four main laws: The Juvenile Justice (Care and Protection) Act (2000, amended in 2015); The Children Act (1960); The Protection of Children from Sexual Offences Act (2012); The Penal Code of India (1860).³⁶

³³ Shuaib Rafi Mir, *Protecting our children: A look at current Indian laws on child abuse*, Times of India, 12 February 2023, <<https://timesofindia.indiatimes.com/readersblog/personal-blog-of-suhaib-rafi-mir/protecting-our-children-a-look-at-current-indian-laws-on-child-abuse-50378/#:~:text=Child%20abuse%20is%20a%20pervasive,one%20that%20demands%20our%20attention>> accessed on 4 May, 2023.

³⁴ Ibid

³⁵ Child Protection, UNICEF India, <<https://www.unicef.org/india/what-we-do/child-protection>> accessed on 8 May, 2023.

³⁶ Ibid

4.2.1. Legal Provisions of India for Protecting Children from Abuse: Indian law ensures the protection of children from all kinds of violence, neglect, and exploitation.³⁷ The Child Welfare Act of India has organized the specific provisions for the care and protection of children. Including minimum age requirements for placement, procedures for investigating allegations of child abuse and neglect, and a host of other provisions designed to ensure that children are adequately protected.³⁸ Over and above, states have enacted their own statutes with similar protections.³⁹

The Children Act, 1960 is to provide the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children in the Union territories. As per Section 41(1) of this legislation, any individual who is responsible for or has authority over a child and engages in actions such as assaulting, abandoning, exposing, or intentionally neglecting the child, or causes or arranges for the child to be subjected to such treatment, which is likely to cause unnecessary mental and physical suffering, shall be subject to punishment. The punishment may include imprisonment for a duration of up to six months, a fine, or both.⁴⁰ According to Section 44 of this act, individuals who seemingly arrange for a child to work and keep the child's earnings for personal use will be subject to a fine of up to one thousand rupees.⁴¹

The Juvenile Justice (Care and Protection) Act (2000, amended in 2015) has also ensured the protection for the children who are abused under the territory of India. In section 75 of the mentioned Act deals with offenses related to child abuse and neglect. It states that individuals who have custody or control over a child and engage in activities such as assaulting, abandoning, abusing, exposing, or neglecting the child in a manner likely to cause unnecessary mental or physical suffering can be punished. The punishment may include imprisonment for up to three years, a fine of one lakh rupees, or both. Furthermore, if such offenses are committed by a person employed by or managing an organization responsible for the care and protection of the child, the punishment can be more severe. In such cases, the person may face rigorous imprisonment for up

³⁷ How Do Indians Law Protect Children, Vakil Search, <<https://vakilsearch.com/blog/indian-laws-protect-children/>> accessed on 10 May, 2023.

³⁸ Ibid

³⁹ Ibid

⁴⁰ The Children Act, 1960, Section 41(1)

⁴¹ The Children Act, 1960, Section 44

to five years and a fine of up to five lakhs rupees. These provisions aim to ensure the safety and well-being of children and hold those responsible for their care accountable for any harm caused.⁴² Moreover, If a child is physically disabled, experiences mental illness, or becomes mentally incapable of carrying out everyday tasks or is at risk of endangering their life or limbs, that individual will be subject to a minimum of three years and a maximum of ten years of rigorous imprisonment. Additionally, they will be liable to pay a fine of five lakh rupees.⁴³ According to section 76(1), individuals who engage or exploit children for begging, or compel children to beg, can be sentenced to a maximum of five years in prison and fined up to one lakh rupees. However, if someone amputates or maims a child for the purpose of begging, they can face rigorous imprisonment ranging from seven to ten years, along with a fine of five lakh rupees.⁴⁴ Furthermore, it is stipulated that under no circumstances shall the aforementioned child be regarded as a child in conflict with the law. Consequently, the child must be separated from their guardian or custodian and presented before the Committee for suitable rehabilitation measures.⁴⁵ According to Section 79 of the act, individuals who are found to be visibly employing a child and subjecting them to forced labor, withholding their earnings, or utilizing their earnings for personal benefit, can face a penalty of up to five years of rigorous imprisonment, in addition to a fine of one lakh rupees. This provision is designed to combat child labor and safeguard the rights of children.⁴⁶

The Protection of Children from Sexual Offences Act (2012), in Section 4(1) and (2) of the mentioned act state that whoever commits penetrative sexual assault shall face severe punishment. The punishment includes imprisonment for a minimum of ten years, which may extend to imprisonment for life. Additionally, the offender will be liable to pay a fine. If the assault is committed on a child below the age of sixteen, the punishment is even more severe. In such cases, the offender will face imprisonment for a minimum of twenty years, which may extend to imprisonment for life, meaning imprisonment for the remainder of their natural life. They will also be liable to pay a fine.⁴⁷ As stated by the Section 6(1) specifies the punishment for aggravated penetrative sexual assault, stating that the offender shall be subject to rigorous imprisonment for a

⁴² Ibid

⁴³ Ibid

⁴⁴ The Juvenile Justice (Care and Protection) Act (2000, amended in 2015),Section 76(1)

⁴⁵ Ibid

⁴⁶ The Juvenile Justice (Care and Protection) Act (2000, amended in 2015),Section 79

⁴⁷ The Protection of Children from Sexual Offences Act (2012), Section 4 (1) & (2)

minimum term of twenty years. The maximum punishment can be life imprisonment, meaning imprisonment for the remainder of the natural life of the person. Additionally, the offender may also be liable to pay a fine, or in some cases, the punishment can include the death penalty. It's important to note that laws may vary by jurisdiction, so it's advisable to consult the specific legislation in your region for accurate information.⁴⁸ Section 8 states that the person who commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.⁴⁹ According to section 10, the provision states that anyone who commits aggravated sexual assault may face imprisonment for a period ranging from five to seven years. Additionally, they may be liable to pay a fine. It's important to note that specific legal provisions can vary based on jurisdiction, so it's always a good idea to consult the relevant laws and regulations in your specific area.⁵⁰ As mentioned by the Section 12 stipulates that individuals who engage in sexual harassment against a child can face imprisonment for up to three years and may be required to pay a fine as well.⁵¹

The Penal Code of India, 1860, under section 376 of the code, anyone who commits rape, except in cases provided for by sub-section (2), can be punished with imprisonment. The term of imprisonment can vary from a minimum of seven years to life imprisonment or a term of up to ten years. Additionally, the individual may also be liable to pay a fine.⁵² According to the section 376 AB states that if someone rapes a girl under the age of twelve, they will be subjected to rigorous imprisonment for a minimum of twenty years, and possibly for their entire life. Additionally, they may be fined or sentenced to death.⁵³ As stated by the section 363 of this code, individuals who abduct someone either from India or from lawful guardianship will face imprisonment for a maximum of seven years and may also be fined.⁵⁴

⁴⁸ The Protection of Children from Sexual Offences Act (2012), Section 6(1)

⁴⁹ The Protection of Children from Sexual Offences Act (2012), Section 8

⁵⁰ The Protection of Children from Sexual Offences Act (2012), Section 10

⁵¹ The Protection of Children from Sexual Offences Act (2012), Section 12

⁵² The Penal Code of India, 1860, Section 376

⁵³ The Penal Code of India, 1860, Section 376 AB

⁵⁴ The Penal Code of India, 1860, Section 363

4.2.2. Cases Regarding Child Abuse in India: The case *Ghanashyam Misra v. The State*, the young girl involved in the incident is ten years old, while the perpetrator is a 39-year-old adult. Exploiting his authority, he manipulated her into entering the school room and committed a heinous act. The consequences of this act could potentially devastate the girl's future. In addition to increasing the sentence to seven years, the court also mandated that the accused provide compensation to both the father and the child.⁵⁵

In the case of *Imratlal v. The State of Madhya Pradesh*, The Madhya Pradesh the High Court, in this case, declared that if the victim's testimony is credible, the accused can be convicted solely based on her evidence. The court also emphasized that it is not essential for the accused in a rape case to ejaculate inside the vagina for the offense to be proven. The requirement for corroboration is considered a matter of prudence rather than a legal rule. Furthermore, the judgement emphasized that when rape is committed against young girls, the punishment of imprisonment should be severe.⁵⁶

According to the case *State Of Andhra Pradesh vs Gangula Satya Murthy*, a sixteen-year-old girl was sexually assaulted and strangled to death. The accused was found guilty and given a life sentence along with seven years of rigorous imprisonment by the Sessions Court. However, after an appeal, a Division Bench of the Andhra Pradesh High Court acquitted the accused, citing minor inconsistencies and discrepancies.⁵⁷

Jarnail Singh v. State of Haryana, Jarnail Singh, the appellant, faced allegations of kidnapping and raping Savitri Devi's daughter while she was asleep. In this case, the Supreme Court of India noted that the procedure used to ascertain the age of a child involved in a legal conflict, as per the Juvenile Justice (Care and Protection of Children) Rules, 2007, can also be applied to cases falling under the POCSO Act, 2012. By applying this rule, the Court found Jarnail Singh guilty and convicted him.⁵⁸

⁵⁵ *Ghanashyam Misra v. The State*, AIR 1957 Ori 78.

⁵⁶ *Imratlal v. The State of Madhya Pradesh*, 1996 (0) MPLJ 662

⁵⁷ *State Of Andhra Pradesh v. Gangula Satya Murthy*, 1997 1 SCC 272

⁵⁸ *Jarnail Singh v. State of Haryana*, 2013 (VII) AD (SC) 313

4.3. Child Abuse in Pakistan:

Approximately 3.3 million children in Pakistan find themselves caught in the cycle of child labor, sacrificing their childhood, well-being, and access to education. This unfortunate circumstance consigns them to a future marked by poverty and deprivation.⁵⁹ The Child Protection program is pragmatically supporting the Government of Pakistan to strengthen the right of the child to protection from all forms of violence and exploitation, by addressing gaps in the enabling environment as a priority, including the fundamental absence of a child protection case management and referral mechanism in the country.⁶⁰ Child exploitation, particularly in terms of economic exploitation, emphasizes the severe exploitation of children, encompassing the most egregious forms such as conducting surveys on child labor.⁶¹ The bottom child protection legal advantage in Pakistan is the Employment of Children Act, 1991 and the Penal Code of Pakistan, 1860.

4.3.1. Legal Provisions of Pakistan for Protecting Children from Abuse: Pakistan basically dissolve the issue of child labour in their country. According to the surveys of child labour through SIMPOC methodology 3.3 millions children are involve in child labour. To rectify the issue of child labour they enacted an act for reducing the child labour called *the Employment of Children Act, 1991*. As mentioned by the According to section 3 of this act, it is prohibited to employ or allow any child to work in occupations listed in Part I of the Schedule or in workshops where any of the processes mentioned in Part II of that Schedule are conducted.⁶² Section 14 states that anyone who hires or allows a child to work in violation of the guidelines mentioned in Section 3 can be penalized with imprisonment for up to one year, a fine of up to twenty thousand rupees, or both. Additionally, if someone is found guilty of such an offense under Section 3 and repeats it later, they can be sentenced to imprisonment for a period ranging from six months to two years.⁶³

⁵⁹ Child Protection, UNICEF Pakistan, <<https://www.unicef.org/pakistan/child-protection-0#:~:text=About%203.3%20million%20of%20Pakistani,before%20eighteen%20years%20of%20age.>> accessed on 13 May, 2023.

⁶⁰ Ibid

⁶¹ Ibid

⁶² The Employment of Children Act, 1991, Section 3.

⁶³ The Employment of Children Act, 1991, Section 14.

In *Penal Code of Pakistan, 1860*, According to Section 375, if someone commits rape, they can face either death penalty or imprisonment for a period ranging from ten to twenty-five years. Additionally, they may also be fined. In cases where rape is committed by two or more individuals with a shared intention, each person involved will be subjected to either the death penalty or life imprisonment. This law is also eligible for child rape.⁶⁴

4.3.2. Cases Regarding Child Abuse in Pakistan: In *Zainab Ansari's* case, Zainab, a 6-year-old child, was tragically raped and murdered by Imran Ali, leading to his arrest once her body was discovered in a garbage dump. Imran Ali faced the consequences of his actions and was executed in Lahore's Kot Lakhpat prison. Following his conviction for raping and murdering Zainab, Imran Ali was found guilty of committing similar crimes against six additional girls.⁶⁵

Kainat Soomro's case, at the age of 13, Kainat was abducted and subjected to a four-day ordeal of kidnapping and gang rape. As a result of her courageous outcry, her brother lost his life, the village elders imposed a death sentence, and the rapists, who are yet to be apprehended after four years, continue to pose threats.⁶⁶

Mustafa's 15-year-old son disappeared from a poultry farm in the Raukhanwala area while working. The boy's relatives expressed their discontent with the police and urged them to incorporate charges of sexual abuse in the case against the suspects, emphasizing the importance of delivering justice.⁶⁷

⁶⁴ The Penal Code of Pakistan, 1860, section 375

⁶⁵ "Pakistan Zainab murder: Imran Ali hanged for six-year-old's death", BBC News, 17 October 2018, <<https://www.bbc.com/news/world-asia-45885686>> accessed on 13 May, 2023.

⁶⁶ Crilly, Rob (26 December 2010). "Pakistan's rape victim who dared to fight back". *The Telegraph*, 26 December 2010, <<https://www.telegraph.co.uk/news/worldnews/asia/pakistan/8224111/Pakistans-rape-victim-who-dared-to-fight-back.html>> accessed on 13 May, 2023.

⁶⁷ "Murder' of teenage boy sparks protest". *The Express Tribune*. 7 February 2021. <<http://tribune.com.pk/story/2283064/murder-of-teenage-boy-sparks-protest>> accessed on 13 May, 2023.

Chapter Five: Child Abuse in Bangladesh Perspective

5.1. Introduction:

From the preceding chapter, it has been discussed about the child abuse and legal aspects with cases in India and Pakistan context. Now in this chapter there have been discussed about child abuse in Bangladesh. The legal prevention of child abuse under Bangladeshi laws.

5.2. Child Abuse in Bangladesh:

In Bangladesh, a vast number of children endure violence, abuse, and exploitation, frequently at the hands of those who should safeguard them. Shockingly, nine out of ten children have experienced physical punishment or psychological aggression from their caregivers, including parents and teachers.⁶⁸ Approximately 7% of children ranging from 5 to 17 years old are engaged in various types of child labor, and there is still the distressing reality of employing very young children in unsafe working environments.⁶⁹ For children's protection from abuse in Bangladesh, it has enacted laws like- The Children Act, 2013; Nari-O-Shishu Nirjatan Daman Ain, 2000; The Penal Code, 1860.

5.2.1. Legal Prevention Regarding Child Abuse in Bangladesh: According to *the Children Act, 2013* it was mentioned in the section 70 states that if a person assaults, ill-treats, neglects, or forsakes a child under their custody, charge, or care, or leaves the child unprotected, uses the child for personal service, or exposes the child indecently, resulting in unnecessary suffering, loss of eyesight or hearing, injury to any limb or organ, or mental derangement, they shall be considered to have committed an offense under this Act. The punishment for such an offense can include

⁶⁸ Ibid

⁶⁹ Ibid

imprisonment for up to five years, a fine of up to Taka 1 lac, or both.⁷⁰ Section 71 of the mentioned act states that if any person employs or causes a child to beg, or if someone responsible for the child encourages their employment for begging or gives them away for begging, it will be considered an offense under the Act. The punishment for such an offense may include imprisonment for up to five years, a fine of up to Taka 1 lac, or both. It is important to discourage child begging and protect the welfare of children.⁷¹ As stated by the section 78(1) of the Act states that if an individual with the responsibility for a child leads them towards seduction, engages them in prostitution, or encourages such activities, or if they facilitate sexual intercourse with someone other than the child's spouse, they will be considered to have committed an offense under this Act. As a consequence, the person could be subject to imprisonment for a duration of up to five years, or a fine of up to one lakh Taka, or both.⁷² Based on the information you provided, Section 80(1) and (2) of the mentioned act, If a person who is entrusted with the custody, care, or duty of rearing a child by the Children's Court or any other person secures a child ostensibly to employ them as a servant or in a factory or other establishments, as per the Labor Act, 2006, but actually exploits the child for their own benefit, detains them, or enjoys their earnings, it is considered an offense under the Act. The person involved can be punished with imprisonment for up to two years, a fine of up to Taka 50,000, or both. If a person who is entrusted with the custody, care, or duty of rearing a child by the Children's Court or any other person secures a child ostensibly to employ them as a servant or in a factory or other establishments, as per the Labor Act, 2006, but actually leads the child to seduction or exposes them to the risk of engaging in prostitution or immoral activities, it is considered an offense under the Act. The person involved can be punished with imprisonment for up to five years, a fine of up to Taka 1 lac, or both. These provisions aim to protect children from exploitation and ensure their well-being and safety.⁷³

Nari-O-Shishu Nirjatan Daman Ain, 2000, in In Section 10, engaging in illegal sexual contact with a woman or child by touching their sexual or other body parts using one's own body or any object is considered sexual oppression. This act is punishable by imprisonment for a duration

⁷⁰ The Children Act, 2013, Section 70

⁷¹ The Children Act, 2013, Section 71

⁷² The Children Act, 2013, Section 78(1)

⁷³ The Children Act, 2013, Section 80 (1) & (2)

between three to ten years, with rigorous imprisonment, along with the imposition of a fine.⁷⁴ Under Section 9, for various offenses related to rape involving women or children, If an individual commits rape and the victim dies subsequently, they will be subject to either death penalty or life imprisonment along with a fine. Similarly, if multiple perpetrators are involved in the rape of a woman or child resulting in death or injury, each member of the group will face death penalty or life imprisonment along with a fine. Moreover, attempting to cause death or harm to a woman or child after rape is punishable by death or life imprisonment and a fine. Attempted rape of a woman or child is punishable by imprisonment, ranging from five to ten years of rigorous imprisonment, as well as a fine. In cases where a woman is raped while in police custody, all individuals responsible for her safety will be held accountable for their failure to protect her, with penalties including imprisonment ranging from five to ten years of rigorous imprisonment, as well as a fine, unless proven otherwise.⁷⁵

Under *the Penal Code of Bangladesh, 1860*, According to Section 317, if a parent or caregiver abandons a child under the age of twelve, it is considered a criminal act. Those who break this law may face punishment of up to seven years in prison, a fine, or both.⁷⁶ As per Section 366A stipulates that anyone who, through any means, persuades a girl below the age of eighteen to engage in consensual sexual intercourse with another person, will face a maximum prison sentence of ten years, along with potential fines.⁷⁷ Section 375 addresses the topic of rape, stipulating that any individual who intentionally seduces another person, whether with or without their consent, below the age of 14 (Fourteen) years will be deemed as committing rape. Section 376 outlines the corresponding penalties for such offenses.⁷⁸ Section 376 states that whoever commits rape can be punished with imprisonment for life or with imprisonment for a term of up to ten years, along with a fine. However, there is an exception if the woman raped is the offender's own wife and is not under twelve years of age. In that case, the punishment can be imprisonment for a term of up to two years, or a fine, or both. ⁷⁹ According to section 364 of the code deals with the offense of kidnapping or abduction with the intention of causing harm to the kidnapped person, specifically

⁷⁴ Nari-O-Shishu Nirjatan Daman Ain, 2000, Section 10

⁷⁵ Nari-O-Shishu Nirjatan Daman Ain, 2000, Section 9

⁷⁶ The Penal Code of Bangladesh, 1860, Section 317

⁷⁷ The Penal Code of Bangladesh, 1860, Section 366A

⁷⁸ The Penal Code of Bangladesh, 1860, Section 375

⁷⁹ The Penal Code of Bangladesh, 1860, Section 376

murder or putting them in danger of being murdered. According to this section, the punishment for such an offense is imprisonment for life or rigorous imprisonment for a term of up to ten years, along with the possibility of a fine. It is important to note that legal provisions may vary across jurisdictions, so it's advisable to consult the specific legal code applicable to your region for accurate information.

5.3. Bangladeshi Cases on Child Abuse:

In 1999, Shukur Ali faced charges of raping and murdering a 7-year-old girl who lived nearby. Ali was found guilty under Section 6(2) of the Nari-o-Shishu Nirjatan (Bishesh bidhan) Ain 1995 ("the 1995 Ain"). According to this law, anyone convicted of causing death during or after committing rape must be sentenced to death. Consequently, Ali was given the death penalty. It was acknowledged that Ali's state-appointed defense lawyer during the initial trial provided inadequate representation. However, the conviction and death sentence were upheld upon appeal. Before Ali's trial and conviction, the 1995 Ain was replaced by the Nari-o-Shishu Nirjatan Daman Ain, 2000. The new law granted the court the discretion to impose either the death penalty or life imprisonment for such offenses. Nonetheless, it also specified that any offense committed under the 1995 Ain should be tried and convicted as if that legislation were still in effect.⁸⁰

A five year old child named *Ayat* went missing on 15 November, 2022 while going to a religious seminary nearby. She was kidnapped and brutally killed by her neighbor Abir Mia. The child was murdered after being kidnapped from the religious seminary.⁸¹

In *Rakib Hawladar's case*, a 12 year old boy Rakib has been murdered by his garage owner for pumping air into his body. He begged his owner to stop but they did not listen to him. In this case the witness recalled how the victim pleaded mercy from his tormentors. They tortured the boy for quitting the job from their garage. According to the medical reports his lungs burst due to pumping

⁸⁰ Bangladesh Legal Aid and Services Trust (BLAST) and another v. Bangladesh, Writ Petition No. 8283 of 2005

⁸¹ Tasneem Tayeb "Ayat and beyond: where are our children's right", The Daily Star, 26 November, 2022, <<https://www.thedailystar.net/opinion/views/closer-look/news/ayat-and-beyond-where-are-our-childrens-rights-3179836>> accessed on 15 May, 2023.

of abnormal amounts of air in his body. The court observed that the crime was so severe that such crimes had not happened in the past 100 years in the subcontinent. The High Court commuted the death sentences to life sentences of two accused of this case.⁸²

Rajon, a 13-year-old boy lost his life after being fatally assaulted for stealing a rickshaw van. The perpetrators tied him to a pole and subjected him to relentless torture, resulting in his death. Following the incident, the Sylhet court handed down death sentences to four individuals, including the main suspect, Kamrul Islam. The High Court has now begun reviewing the appeal filed by the convicts, and it has also upheld the previous death sentence.⁸³

⁸² “Supreme Court upholds life terms of two”, The New Age, 22 February, 2021, <<https://www.newagebd.net/article/130852/onelink.to/article/35972>> accessed on 15 May, 2023.

⁸³ “High Court verdict on Sylhet child Rajon murder today”, The Dhaka Tribune, Published on 11 April, 2017, <<https://archive.dhakatribune.com/bangladesh/court/2017/04/11/high-court-verdict-sylhet-child-rajon-murder-toda>> accessed on 15 May, 2023.

Chapter Six: Findings, Recommendation & Conclusion

6.1. Introduction:

This chapter will discuss the difficulties that have been found in the processing legal application on child abuse and its prevention, which has affected the proceedings and natural justice to the prevent child abuse in an adequate way. Though we know this is not easy to recover the lackings in the prevention of child abuse. It is really a long process and needs huge initial steps from the governments of the subcontinent. So, There are some recommendations given to this chapter on how the difficulties will be resolved by taking initiative steps. In the end, the conclusion will elicit the entire phenomenon of the researcher in a short with preventive measures.

6.2. Findings:

1. In Bangladesh the children have been protected under the provisions of the Children act, 2013, there is no proper execution and enforcement of this provision properly. Most of the time for being poor and not able to afford the cost in time the judgments go wrong against the child victim for not giving proper evidence and witnesses so that the judges failed to give exact charges. The victim and its family endures a lot.
2. There are adequate protection under laws of India. They enacted the special laws for children, those are- The Juvenile Justice (Care and Protection) Act (2000, amended in 2015); The Children Act (1960); The Protection of Children from Sexual Offences Act (2012); The Penal Code of India (1860). But there is a huge lack in the protection of children from abuse. In India, still 90% of children are facing physical and mental abuses.⁸⁴

⁸⁴ “Protecting our children: A look at current Indian laws on child abuse”, The Times of India, 12 February, 2023, <[32](https://timesofindia.indiatimes.com/readersblog/personal-blog-of-suhaib-rafi-mir/protecting-our-children-a-look-at-current-indian-laws-on-child-abuse-50378/#:~:text=Child%20abuse%20is%20a%20pervasive,one%20that%20demands%20our%20attention.> accessed on 17 May, 2023.</p></div><div data-bbox=)

Where Pakistan does not have the proper legal provisions for children protection except the Employment of Children Act, 1991 and the Penal Code of Pakistan, 1860. Pakistan needs more legal provisions and initial steps to prevent the abuse. Pakistan ranked 3rd in the whole world regarding child abuse.⁸⁵

3. The United Nation Convention on the Rights of the Child provides reasonable restrictions to prevent child abuse to the state's provisions because through this kind of abusive incidents to the child can be harmful on the children. The harmful behavior and acts to the children make the proceedings of the justice detrimental to the child's future development, which creates a huge impact on the natural justice for the children to their unstrained life.
4. In the matter of Child Abuse and for its prevention, Bangladesh follows the Children Act, 2013, Nari-O-Shishu Nirjatan Daman Ain, 2000 and the Penal Code of Bangladesh, 1860. It ensures the right that the Child victim shall be tried under these acts but still Children encounter significant levels of physical and psychological violence within their households, institutions, and various public settings. The nature and the extent of violence against children irrespective of age, sex and class has been increasing day by day.
5. Despite the combined efforts of both governmental and non-governmental organizations, our children remain unsafe overall. Article 19 of the UN Convention on the Rights of the Child, States Parties are required to implement suitable laws, administrative measures, social initiatives, and educational actions to safeguard children from any kind of physical or psychological violence, harm, neglect, mistreatment, exploitation, including sexual abuse, when they are under the care of parents, legal guardians, or any other responsible individual liable for the protection of the children. In According to Article 19 of the UN

⁸⁵ "Pakistan ranks 3rd in online child abuse: NGO report", The ANI News, 19 April 2023, <<https://www.aninews.in/news/world/asia/pakistan-ranks-3rd-in-online-child-abuse-ngo-report20230419151744/>> accessed on 18 May, 2023.

Convention on the Rights of the Child, States Parties are required to implement suitable laws, administrative measures, social initiatives, and educational actions to safeguard children from any kind of physical or psychological violence, harm, neglect, mistreatment, exploitation, including sexual abuse, when they are under the care of parents, legal guardians, or any other responsible individual. But within these years children have been killed by physical torture and sexual harassment. Hence, still the governments of the states are unable to ensure the adequate protection to the children.

6. Above all of these, street children do not get proper shelter, food, medicine, and other basic needs. They are always neglected and abused. Sometimes these children are being used for criminal activities which lead them towards risk and hazardous situations.

6.3. Recommendation:

1. Governments of India, Pakistan and Bangladesh should establish a National framework and appoint a National Officer to provide a response to the implementation of Child Safety and to develop and lead the proposed National Framework for Child Safety.
2. Some institutions from India, Pakistan and Bangladesh which are really working for child safety and prevention of abuse on children should act with the best interests of the child as a primary consideration. The institutions should organize campaigns to spread the information about the children's behavior and what they can do in their different ages so that it can be preventive for adult's anger issues and punishing language because this kind of act can hurt children emotionally which can lead to mental and physical abuse sometimes.

3. Pakistan does have laws for child protection but those are not adequate to prevent other exploitation or abuses on children. They need more laws to be enacted to prevent other exploitation and abuses. The country needs to enact more act regarding sexual abuse, exploitation, trafficking and also for juvenile justice.
4. The importance of increasing public awareness about child abuse cannot be overstated, and it is crucial for both national and social media platforms to become more proactive in addressing this issue. Given the political party's extensive network throughout the country, they should utilize their influence to actively combat and prevent child abuse.
5. Parents need to be educated about the repercussions of child abuse, and the implementation of a toll-free hotline system would enable swift reporting of child abuse cases to law enforcement agencies.
6. Social organizations should spearhead social movements and awareness campaigns against child abuse. The issue of children's rights ought to be integrated into national affairs.

6.4. Conclusion:

From the above discussion, In India, Pakistan & Bangladesh, child abuse is predominantly caused by the inadequate implementation of laws and the presence of flaws in rules and regulations. Close relatives and caregivers are often responsible for abusing children, and there has been an alarming increase in child killing and abduction. Unfortunately, female children are especially vulnerable to sexual violence, physical abuse, and other forms of harm. Simply relying on legal measures is insufficient to eliminate this atrocious practice; social protest is necessary. It is imperative for politicians to actively contribute towards eradicating this inhuman behavior from our society.

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