



UNIVERSITÀ DEGLI STUDI DI NAPOLI FEDERICO II - DIPARTIMENTO DI

GIURISPRUDENZA

Doctoral Course in

“Human Right: History, Theory and Practice”

Thesis Title

“Child’s Right to Education Within the Domestic Legal System of Pakistan
Against Its International Human Rights Obligation, Gaps, And Challenges; The
Potential of European Union Mandate of External Relations Actions for
Addressing the Challenges”

Department of Law

Session 2021-2024

Cycle 37th

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CHILD’S RIGHT TO EDUCATION WITHIN THE DOMESTIC LEGAL SYSTEM OF PAKISTAN AGAINST ITS INTERNATIONAL HUMAN RIGHTS OBLIGATION, GAPS, AND CHALLENGES; THE POTENTIAL OF EUROPEAN UNION MANDATE OF EXTERNAL RELATIONS ACTIONS FOR ADDRESSING THE CHALLENGES

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List of abbreviations

AG	Attorney General
CCT	Common Customs Tariff
CCP	Common Commercial Policy
CRPD	Convention on the Rights of Persons with Disabilities
CERD	Convention for the Ending of Racial Discrimination
CAT	Convention against Torture and Other Cruel
CTVE	Convention on Technical and Vocational Education
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CJ	Chief Justice
CNIC	Computerized National Identity Card
CFSP	Common Foreign and Security Policy
DTP	Degrading Treatment or Punishment
CTEO	Chief Trade Enforcement Officer
EU	European Union
EEC	European Economic Community
EEAS	European External Action Services
FATF	Financial Action Task Force
FSC	Federal Shariat Court
GSP	Generalized System of Preferences
GDP	Gross domestic product
HRC	Human Rights Committee
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ISESCO	Islamic Educational, Scientific, and Cultural Organization
ICJ	International Court of Justice
ICERD	The International Convention on the Elimination of Racial Discrimination
ILC	International Law Commission
IMF	International Monetary Fund
ILO	International Labour Organization
ICT	Information and Communication Technology
MDG	Millennium Development Goals
MIP	Multi-annual Indicative Program

MFLO	Muslim Family Law Ordinance
NEP	National Educational Policy
NGO	Non-Governmental Organizations
NA	National Assembly
OP	Optional Protocol
PPC	Pakistan Penal Code
SC	Supreme Court
SEP	Single Entry Point
TEU	Treaty on the European Union
TIC	Treaty Implementation Cells
TFEU	Treaty on the Functioning of the European Union
UDHR	Universal Declaration of Human Rights
UNSG	United Nation Secretary General
UNCRC	United Nation Convention on the Rights of Child
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations International Children's Emergency Fund
UPR	Universal Periodic Reports
UNGA	United Nation General Assembly
UNSC	United Nation Security Council
VCLT	Vienna Convention on the Law of Treaties
WTO	World Trade Organization
WHO	World Health Organization

Thesis Abstract:

Being party to numerous international human rights treaty regimes, Pakistan is under an obligation to ensure the right to education to all its population, particularly to vulnerable groups of Pakistani society including women and children. However, the domestic laws, policies, and practices of Pakistan relating to the right to education of children are hardly in line with those international human rights commitments of Pakistan. Especially the children from minority segments of Pakistan society are severely neglected with their right to education.

This is due to the lack of effective enforcement mechanisms on the part of international human rights compliance monitoring and enforcement mechanisms. Which at one hand though encourage ratifying the international human rights treaty regimes and allow the state to introduce reservations to those ratified treaties at the face of existing incompatibilities between the international human rights system and domestic laws of the ratifying state, and on the other hand do not commend effective human right enforcement mechanism that could ensure the right to education to every child in Pakistan.

European Union is a formidable economic powerhouse and a desired trading venue for third countries and the European Union is world's single largest market the access to which requires compliance with a single set of trading rules. For developing and least-developed countries the EU provides either free or low tariff access to the products to enter into the EU market within the Generalized System of Preferences otherwise known as GSP. In return the beneficiary state is required to ratify the several international legal treaty regimes.

Basing on the challenges to the realization of the child right to education in Pakistan from the perspective of international human rights standards, this thesis work in the first chapter will analyse the international human rights standards on the child right to education applicable to Pakistan. Secondly, it will look into the domestic legal system of Pakistan relating to the child right to education. Subsequently, it will highlight the gap between the international human rights obligations of Pakistan and its existing domestic laws, policies, and practices. Thirdly, in search for effective enforcement venues and tools this work will look into the Common Commercial Policy's Generalized System of Preferences otherwise known as GSP and its potential for encouraging Pakistan to bring its domestic laws policies and practices in compliance with those binding international human rights standards on child right to education. Finally, this work provides legal suggestions as to how the EU Pakistan free-trade relations and work for human rights can further effectively be used to achieve the objective for bridging the

gap between the international human rights standards and the treatment of this subject in domestic laws, policies and practices of Pakistan.

CHAPTER I

INTERNATIONAL HUMAN RIGHTS STANDARDS ON THE RIGHT TO EDUCATION

Introduction to Chapter I:

The process of transmitting the ideas beliefs knowledge, culture and other values within a society is called education. The transmission of knowledge and intellectual development with main intention of individual in specific and society in general. Alongside being instrumental for the individual and society's development, education is an extension right for the realization of broad range of other human rights, as education is claimed to be a tool that “*epitomizes the indivisibility and interdependence of all human rights*”.¹

The right to education is an empowering tool for the realization of a broad range of human rights. As an empowerment right to education is the primary vehicle by which economically and socially marginalized adults and children can lift themselves out of poverty and obtain the means to participate fully in their communities. Education has a vital role in empowering humans, promoting human rights and democracy, safeguarding children from exploitative and hazardous labour and sexual exploitation, protecting the environment, and controlling population growth.²

Moreover, the right to education according to the Universal Declaration of Human Rights 1948,³ is a basic human right, because all states agreed to a code of human rights that would be binding on them, specifically, the Declaration states that education is necessary for human dignity to fully develop. It defines the starting point for any analysis surrounding children's rights and best interests from a perspective that enhances their present and future prospects.⁴ Subsequently, the right to education has been dealt with the binding international human rights

¹ Lanse Mankler & Shawna Sweeney “*Human Rights Quarterly*” Vol. 33 P.351-396, Published by The Johns Hopkins University Press (2011), online access <https://www.corteidh.or.cr/tablas/r26427.pdf>

² Poonam Lamba, “*Right to Education – A Path to Social Development*” P.152-160, conference paper July 06, 2020 at Maharishi Markandeshwar University, India, online accessed; https://www.researchgate.net/publication/342715934_RIGHT_TO_EDUCATION_-_A_PATH_TO_SOCIAL_DEVELOPMENT

³ The United Nation General Assembly adopted the Universal Declaration of Human Rights in 1948, which enshrines the rights and freedoms of all men and women. In Paris, France, the General Assembly adopted Resolution 217 during its third session on December 10, 1948, drafted by a UN committee chaired by Eleanor Roosevelt.

⁴ Silvia Angeletti, “*I Minori Tra Diritto E Religione*” Liberta Religiosa, best interests, educazione, P-187, Published by Societa Editrice Il Mulino, 2022.

treaty regimes of International Covenant on Economic Social and Cultural Rights (ICESCR)⁵ under article 13, and 14 which ensure the right to education without discrimination, and article 5 clause E, sub-clause V, of International Convention on the Elimination all Forms of Racial Discrimination (ICERD)⁶, article 24 of CRPD,⁷ the Convention on the Rights of Person with Disabilities (2008)⁸, and article 28 of the Convention on the Rights of Child (CRC).⁹

Pakistan is a state party to above all the international human rights legal regimes on the right to education to everyone, therefore Pakistan in under an international obligation to ensure the right to education to everyone within its jurisdiction including children.¹⁰ This chapter of the thesis will analyse the international human rights standards on the right to education binding on Pakistan. The first place with an analyse of the international human rights standards on the right to education and subsequently analysed with crosscutting obligation of the state party to indiscriminately realize this right to everyone, including children especially those from minority segments of Pakistan, such as children from Hindu, Christian, and Ahmadi social groups of Pakistan.¹¹

⁵ The UN General Assembly Resolution 2200A (XXI) on 16 December 1966 adopted the International Covenant on Economic, Social and Cultural Rights (ICESCR), which came into force on 3 January 1976.

⁶ ICERD is a United Nations convention that prohibits racial discrimination, it is the third generation of human rights instruments, the Convention aims to eradicate discrimination based on race and promote understanding among races. Accessed online <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-convention-elimination-all-forms-racial>

⁷ Kanter, Arlene S. & Damiani, Michelle & Ferri, Beth, “*The Right to Inclusive Education Under International Law: Following Italy's Lead*” Journal of International Special Needs Education, 2014. Available at SSRN: <https://ssrn.com/abstract=2545346>

⁸ The UN Human Rights treaty on persons with disabilities intended to protect disability rights and dignity. In March 2007, the General Assembly opened it for signature, and it was adopted by the General Assembly on 13 December 2006. After the 20th party ratified it, it became effective on 3 May 2008. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>

⁹ A resolution adopted by the UN General Assembly on 20 November 1989 opened the convention up for signature, and it entered into force on 2 September 1990 after being ratified by the required number of nations. On 3 July 2023, it will be ratified by 196 countries, including all United Nations members except the United States.

¹⁰ Usman Asghar, “*A Review on `Right to Education` and Related Laws in Pakistan: Elucidate the Status of Elementary Education System in our Country*”. Voyage Journal of Educational Studies, Vol-3, January 2023.

¹¹ Deborah Scolart, “*Religious discrimination in Pakistan*” Università di Roma Tor Vergata, ISSN, 1970-5301, online accessed; <https://www.rivistadirittoereligioni.com/wp-content/uploads/2023/03/Quaderno-monografico-n.-2-Supplemento-al-n.-1-2020-Dir.-Rel.-.pdf>

Section I:

1. The Right to Education in International Legal Framework

The right to education is recognized as a fundamental human right by various international legal instruments. The right to education is essential for the exercise of all human rights, as well as for the development of individuals and societies. In this section, I examine the scope, legal frameworks, and challenges associated with the right to education under international laws.

1.1 Universal Declaration of Human Rights (UDHR), 1948

Throughout history, education has been recognized as a fundamental right, a fundamental foundation for education was laid in the Universal Declaration of Human Rights in 1948, which declared in Article 26 that education is a right that everyone should have access of education.¹² Education has been recognized as a universal right since this document, emphasizing the importance of its contribution to the full development of a person's personality and the strengthening of the respect for human rights and freedoms. Among the demands of the declaration are accessible, equitable, and humane education systems equipped to promote human rights and worldwide citizenship. To ensure that everyone, everywhere has access to education, governments, educational institutions, and civil society must continuously commit to and collaborate to implement these principles, on the basis of this declaration, subsequent international treaties and conventions have elaborated on the right to education and clarified state obligations in ensuring its fulfilment.¹³

1.2 International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1966

The International Covenant on Economic, Social and Cultural Rights, is one of the most comprehensive provisions for human rights, and Article 13 gives rights to everyone and

¹² Emine Zendeli, "The right to education as a fundamental human right" *Contemporary Educational Researches Journal*, Volume 7, Issue 4, p-158-166, E. (2017).

¹³ Larry Willmore, "Basic education as a human right" *Published by Blackwell Publishing, Oxford*, Volume 24, Issue 4, December 2004. Online access, <https://doi.org/10.1111/j.1468-0270.2004.00509.x>

anywhere the right to education.¹⁴ It recognizes the right of everyone to education and outlines specific obligations for states, including:

- The states ensure that primary education is compulsory and accessible free to all citizens.
- Ensuring secondary education, as well as technical and vocational education, is available and accessible to all people.
- Providing higher education equally accessible to all on the basis of capacity.
- Encouraging the development of a school system at all levels.
- Improving the material conditions of teaching staff.

1.3 Convention on the Rights of the Child (CRC), 1989

A lot of the education related clauses included in human rights treaties other than the CRC concern rights to education, proving that education is not just a child's privilege. Education is universally acknowledged as essential to development and ability to exercise their other rights. In this sense, the UNCRC writing process gave governments around the globe a chance to express a human right to education that was tailored to the needs of children.¹⁵

The Convention on the Rights of the Child expressly mentioned in some articles that every child has right to education, and its responsibility of states to guarantee that all children receive free and compulsory primary education, to support the growth of various secondary education options, and to make sure that education is focused on helping children develop to the fullest extent possible their unique personalities, talents, and mental and physical capacities.¹⁶

According to article 28 of CRC, every child has the right to education, and must have access to a free primary education as well as a variety of secondary education options. The discipline in schools must be respectful of the dignity and rights of children, and every child has his or

¹⁴ Klaus Dieter Beiter, *"The Protection of the Right to Education by International Law: Including a Systematic Analysis of Article 13 of the International Covenant on Economic, Social and Cultural Rights"* Chapter 10, Vol, 82, (Leiden: Martinus Nijhoff Publishers, 2006).

¹⁵ Laura Lundy and Patricia O'Lynn *"The Education Rights of Children"* Queen's University Belfast (2018), Online access; https://doi.org/10.1007/978-981-10-3182-3_11-1

¹⁶ Lundy L, Orr K, *"A hand book of Children's education rights: global perspectives"*, Chapter 22 Routledge, Abingdon, pp 364–380 (2016).

her personality, talents, and abilities fully developed by education.¹⁷ The state parties are required to share the responsibility for promoting school attendance, reducing dropout rates, ensuring school discipline adheres to the dignity of the child, encouraging international cooperation in matters related to education. The Convention on the Right of Child, article 29 addresses the right of parents to choose an education for their children in accordance with their his or her own cultural identity and own language.¹⁸ The education extends to all the experiences and learning processes from which children can develop their personalities, talents, and abilities and to live a satisfying and fulfilling life.

The convention on the rights of child is based on the principle of “*best interest of the child*”¹⁹ as embodied in the United Nations conventions, particularly the children's rights convention. The convention on the rights of child's, stipulates that all actions regarding children, whether they are undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, should aim at safeguarding the best interests of children. Globally, this principle emphasizes the importance of safeguarding children's well-being and holistic development in all decisions and actions, like physical, emotional, right to education, right to food, right to play, and social needs of a child are evaluated in a comprehensive way. Even though the best interest principle has gained widespread acceptance, cultural differences, varying legal interpretations, and resource constraints complicate its implementation.²⁰

The Convention on the Rights of Child's has three optional protocols; the first Optional Protocol is on the sale of children, child's prostitution, and child's pornography, the second Optional Protocol is on the involvement of children in armed conflict set out additional rights for children and the third Optional Protocol relates to Communications Procedure to the Committee against Child Rights violation.²¹

¹⁷ Silvia Angeletti, “*I Minori Tra Diritto E Religione*” Liberta Religiosa, *best interests*, educazione, P-187, Published by Societa Editrice Il Mulino, 2022.

¹⁸ Monica Jairam & Geeta Chopra, “*Children's Right to Quality Early Childhood Education*” The National Life Skills, Value Education & School Wellness Program, Vol. 5, No. 2, May-August 2019, University of Delhi.

¹⁹ Silvia Angeletti, “*I Minori Tra Diritto E Religione*” Liberta Religiosa, *best interests*, educazione, Published by Societa Editrice Il Mulino, 2022.

²⁰ Silvia Angeletti, “*The Children Act: alla ricerca del “superiore interesse del minore” tra famiglie, comunità religiose e giudici*” n. 20 del 2019, www.statoechiese.it

²¹ Children and Young People's Commissioner Scotland, *What are the optional protocols of the UNCRC?* accessed online; <https://www.cypcs.org.uk/faq/what-are-the-optional-protocols-of-the-uncrc/>

1.4 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979

The states are responsible for providing equality under article 10 of CEDAW, equal access to education for men and women at all levels, no discrimination against them in the education institutions. It highlights the necessity of removing gender-based stereotypes from educational institutions and the obligation of equal chances in education,²² such as guidance on family planning, physical education, support family's health and other well-being. Similarly, women are guaranteed the same rights to decide freely and responsibly on the number and spacing of their children, as well as access to the information, education, and means to enable them to exercise these rights under article 16(1)(e) of the CEDAW.²³

The Convention on the Elimination of All Forms of Discrimination against Women is an international legal instrument that requires states to eliminate discrimination against women in all areas and promotes women's equal rights.²⁴ According to article 1 of the CEDAW, says that:

*“Any distinction, exclusion, or restriction based on gender that results or causes the impairment or nullification of women's recognition, enjoyment, or exercise, regardless of their marital status, of human rights and fundamental freedoms in the political, social, economic, civil, cultural, or other spheres”.*²⁵

All states, who ratify this Convention pledge to end discrimination against women in all forms and to ensure equality between men and women in their domestic laws policies and practices, equal access and opportunities in political and public life, including the equal right to education is guaranteed by the Convention. For equal access and enjoyment of human rights and fundamental freedoms, all appropriate measures, legislation, in all fields, including the political, social, economic and cultural fields to ensure the full development and

²² The Government of Italian, Ministry of Foreign Affairs and International Cooperation, Discuss the Convention on the Elimination of all Form of Discrimination Against Women, online accessed; https://www.esteri.it/en/politica-estera-e-cooperazione-allo-sviluppo/temi_globali/diritti-umani/litalia_e_i_diritti_umani/

²³ Meghan Campbell, “The challenges of girls’ right to education: let’s talk about human rights-based sex education” The International Journal of Human Rights (2016), online access; <http://dx.doi.org/10.1080/13642987.2016.1207627>

²⁴ Mohd Nazish, “United Nations and Women’s Rights: A Historical Analysis of CEDAW” Springer Journal of Arts, Humanities and Social Sciences, P.41-47 Vol. 3(1), January 2024, online access <https://doi.org/10.55559/sjahss.v3i1.224>

²⁵ Article 2 of CEDAW.

advancement.²⁶ It is the responsibility of states parties to eliminate all forms of discrimination against women in the field of education to ensure that they have equal rights, and in particular to ensure that the equality of men and women is maintained to providing equal opportunities for career guidance, access to studies, and completion of diplomas in both rural and urban areas; this equality shall apply to pre-school, general, technical, professional, and higher education, as well as to all types of vocational training.²⁷ It makes sense to ensure that all children have access to the same curriculum, the same exams, the same teaching staff, and the same quality of school facilities and equipment. In order to achieve this goal, co-education and other forms of education, as well as revision of textbooks and school programmes, and adaptation of teaching methods, will help remove stereotypes based on gender roles at all levels and in all forms of education. The study grants and scholarships are should be provide to the both genders, a similar opportunity for access to programs of continuing education, including adult education and functional literacy that reduce any gaps in education between women and men at the earliest possible stage.²⁸

1.5 UNESCO Convention against Discrimination in Education, 1960

Many international organizations have social inclusion on their agendas these days, anticipating the best ways to remove barriers to inclusion in education, and improve the wellbeing of the whole school community, the policies focus on the school's support of establishing a more engaging and inclusive school culture. The special attention is provided to children with special educational needs, those from low-income families, and those who are particularly vulnerable in order to improve access to inclusive settings, facilitate transfers within the educational system, and facilitate the transition from school to the job. This convention aims to combat discrimination in education and promote equality of opportunity and dealing in education. It prohibits discrimination based on colour, race, gender, religion, language, political or other opinions, national or social origin, economic condition, or birth.²⁹

²⁶ Article 3 of CEDAW.

²⁷ Chiara Biasin & Gina Chianese, "*Italy: Gender Segregation and Higher Education*" International Perspectives on Gender and Higher Education, pp. 75-92, Nov 2020.

²⁸ Simone Cusack and Lisa Pusey, "*CEDAW and right to non-discrimination and equality*" Melbourne Journal of International Law, Vol-14, No-1, P-54-92, June 2013.

²⁹ Ksenija Romstein, "*Half a century of human rights in education by UNESCO: Advocating one's well-being from society to classroom and vice-versa*" Faculty of Education in Osijek, Ombudsman for Children Croatia, October 2018.

The Convention against Discrimination in Education 1960, is the first legal instrument to devote its entirety to the right to education.³⁰ The Articles 1 and 2 of convention define: “*any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality of treatment in education*”.³¹ As well according to the article 3, the state is required to take measures to eliminate and prevent discrimination between public and private education system, results, school fees and scholarship facilities for studying abroad.³²

The Convention on Technical and Vocational Education, providing to everyone has the right to access technical and vocational education equally to everyone, technical and vocational education is the study of technology and related sciences as well as the acquisition of practical skills, knowledge, attitudes, and understanding relating to occupations in various sectors of the economic and social life.³³ Specifically, article 2 states that, “*shall ensure that no individual who has reached the educational level for admission to technical and vocational education shall be discriminated against and shall take appropriate measures to accommodate people with disabilities and other marginalized groups*”.³⁴ The basic content requirements and elements that should be considered when designing technical and vocational education programs, the technical and vocational education teachers training, and employment conditions are described in article 5 alongside other implementing provisions.³⁵

³⁰ It was adopted on 14 December 1960 by UNESCO as part of its efforts to combat discrimination and racial segregation in the education sector.

³¹ Article 1 & 2 of the Convention against Discrimination in Education.

³² *Ibid*, Article 3.

³³ Margherita Russo & Paola Mengoli, “*Technical and Vocational Education and Training in Italy: Structure and Changes at National and Regional Level*” Università degli Studi di Modena e Reggio Emilia, January 1999.

³⁴ Article 2 of the Convention on Technical and Vocational Education (adopted 10 November 1989, entered into for 29 August 1991).

³⁵ Eugenia Ganea, & Valentina Bodrug-Lungu, “*Addressing Inequality in Vocational/ Technical Education by Eliminating Gender Bias*” Journal Revista Românească pentru Educație Multidimensională Volume 10, Issue 4, pages: 136-155 access online <https://lumenpublishing.com/journals/index.php/rrem/article/view/1077/pdf>

Section II:

1. Right to Education Without Discrimination

There are many international treaties and national laws that recognize the right to education without discrimination as a fundamental human right. The right to education protects all individuals from discrimination based on their race, gender, colour, language, faith, political opinion, property, national or social origin, or birth status. The entire corpus of international human rights law was intended to be applied equally from the start. In the preamble to the United Nations Charter, specifically stated that all persons have equal rights, and article 55 expressly states that all human rights should be helped without discrimination. According to the Universal Declaration of Human Rights, articles 2, 16 and 26, which guarantee equal rights for boys and girls in education and marriage, the principle of non-discrimination applies regardless of whether the entire corpus of international human rights law is applied. Further, the ICESCR explain the right to education is recognized for everyone and steps are outlined to help individuals realize their educational dreams without discrimination, and assurance the equality and non-discrimination of the economic, social, and cultural aspects of marital in article 2, 3 and 13.³⁶ The aims to protect rights of different vulnerable groups from discrimination as its core objective, because of their gender, women constitute the largest vulnerable group throughout the world, which is discriminated against in a variety of ways throughout their lives. A fundamental part of the right to education is that no person shall be denied an education, and state provided education should be of the same quality for all groups of society; girls should not be given inferior education compared to boys.³⁷

³⁶ Apart from the mentioned provisions, the following provides for the same; article 5(e)(v) of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, article 3(1) of the Declaration on the Elimination of All Forms of Racial Discrimination of 1963, article 9 of the Declaration on the Elimination of Discrimination against Women of 1967, article 5 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 1981, and article 10 of the Convention on the Elimination of All Forms of Discrimination against Women of 1979 will be referred to.

³⁷ P. DALL, *“Children's Right to Education: Reaching the Unreached”*, in: J. R. HIMES (ed.), *Implementing the Convention on the Rights of the Child - Resource Mobilization in Low-Income Countries*, The Hague: Martinus Nijhoff, UNICEF, 1995, pp. 143-183, at 153,158-163

2. Principles and Scope of the Right to Education

The right to education under international law encompasses several key principles and dimensions:

- *Availability*: Assuring the availability of primary schools for all children requires a considerable investment, which is improved by post-compulsory education and universities. It is important to note that the state is not the only investor, and it is required by international human rights law to ensure that primary schools are accessible to all children of school age. Aside from funding, ensuring education is rarely based solely on its accessibility. It is a fundamental principle of international human rights law that parents and communities have the right to establish schools. The international and domestic law apply to this right, since it is included in the sphere of civil and political rights, adequate infrastructure, trained teachers, and teaching materials.³⁸
- *Accessibility*: It is the overriding principle of international human rights law that non-discrimination should apply to the provision of public schools, including civil, political, economic, social, and cultural rights and the rights of children. Similarly, parental freedom to choose the education of their children should not be progressive, but should be fully and immediately guaranteed. While it is useful, sometimes its exercise conflicted with the elimination of discrimination against children, such as depriving girls of education. So, education must be accessible to everyone, which implies non-discrimination, economic accessibility and physical accessibility, and should be free at the primary level and progressively free at secondary and higher levels.³⁹
- *Acceptability*: A very extreme view of the role of states in education calls for the authorized departments to be sole funder and provide quality of education. While another view of the states as merely regulating education, like any other field, state practices are rarely characterized by extremes which obscure the international consensus regarding the regulatory role of the state, to establish and uphold educational standards and supply the required funding. The right to education necessitates states

³⁸ Katarina Tomasevski, “*Human Rights Obligations in Education*”, The 4-A Scheme (Wolf Legal Publishers, 2006). Explores the 4-A scheme (*availability, accessibility, acceptability, and adaptability*) as a framework for assessing the realization of the right to education. Online accessed; https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomasevski_Primer%203.pdf

³⁹ Nicole Hicks, “*Learning for Liberation: The Human Right to Education*” University of Padova, Italy, July 2021.

regulation, which may differ in time and location depending on community and individual needs and resources. The education methods instruction must be acceptable in both form and content, which means they must be up to date, suitable for society being studied and of outstanding quality pattern.⁴⁰

- *Adaptability*: It is an ongoing difficulty and change in what child's should learn in educational institutions and how their educational experience should be built up. The Convention on the Rights of the Child mandates that the child's best interests be given priority, even though the usual procedure of reviewing the curriculum and learning process from the perspective of the children as a future adult. The need for the educational system to become and stay adaptable is highlighted by the Convention's decision to refer to each child's best interests. The task of adapting the educational system to each individual child is extremely difficult since it goes against the historical tradition of eliminating all children who were thought to be unable to adjust to the system as it was. The education must be adaptable to meet the necessities of communities and societies that are evolving, and needs of the students in their various social and cultural contexts.⁴¹

3. State Obligations Stemming from Human Rights Law

The objective of the framework can be determined from this combination, rejecting and going beyond a false binary divide between 'negative' and 'positive' rights is one of the framework's primary objectives. However, every human right, civil-political or socio-economic, is connected to a comprehensive range of responsibilities. In terms of the human right, states are responsible for the following three things:⁴²

- *Respect*: The obligation to 'respect' human rights refer to the duty on the part of both individuals and institutions to refrain from directly or negatively impacting the rights of others. The exercise of the right to education cannot be impeded or prevented by state

⁴⁰ Thomas Hammarberg "Recommendation on systematic work for implementing human rights at the national level" Council of Europe Commissioner for Human Rights, February 2009.

⁴¹ *Ibid.*

⁴² David Jason Karp, "What is the responsibility to respect human rights? Reconsidering the 'respect, protect, and fulfill' framework" Published by International Theory (2020), online accessed; <https://doi.org/10.1017/S1752971919000198>

action. This entails abstaining from discriminatory actions and allowing people to pursue their education without difficulty.⁴³

- *Protect*: The states have to take action to guarantee that the enjoyment of the right to protect and right to education is not impeded by third parties. This includes preventing private actors from depriving individuals of access to education and ensuring that education provided by private entities meets minimum standards. The obligation of a third party, generally the state, to ‘protect’ human rights is to stop violations of those rights from occurring and to respond when they do.⁴⁴
- *Fulfil*: Every state needs to be proactive in order to ensure that the right to education is adequately implemented. Implementing the appropriate governmental, administrative, and financial procedures is necessary to ensure that education remains available, accessible, acceptable, and flexible to everyone in the states. The obligation to ‘fulfil’ human rights as the responsibility to grant each individual access to everything covered by their rights.⁴⁵

4. Challenges to the Right to Education

The world's population is changing quickly due to globalization and internationalization, and as a result, diversity in education is increasing more than it has ever been. The primary aspect dimensions are those characteristics, such as gender, ethnicity, race, sexual orientation, age, and physical or mental abilities and behaviours, that have a significant impact on an individual's identity and personality, while secondary aspects of variety are difficult to see, they can nonetheless have significant effects on the primary dimensions.⁴⁶ These include communication style, income, organizational role and level, first language, education background, region, religion, and family status along with to work style and experience.

⁴³ Radu Mares, “‘Respect’ Human Rights: Concept and Convergence”, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, January 2014, online accessed; https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2387345

⁴⁴ Björnstjern Baade, “Due Diligence in the International Legal Order” Chapter 6, “Due Diligence and the Duty to Protect Human Rights” Published by Oxford Academic, December 2020, <https://doi.org/10.1093/oso/9780198869900.003.0006>

⁴⁵ Richard Ashby Wilson, Catherine Buerger, “The Practice of Human Rights” 2nd Edition University of Chicago Press, 2017.

⁴⁶ Amrita Kaur, “Issues and Challenges in Education” Published by Wenzhou-Kean University, online accessed: <https://www.researchgate.net/publication/349126023>

Although the extensive legislative framework, many barriers stand in the way of full implementation of the right to education.⁴⁷

- *Economic Barriers:* Many families are unable to pay for the expenses of education, including books, uniforms, and transportation, making poverty a major barrier to education.⁴⁸
- *Gender Discrimination:* In addition to cultural traditions that place a premium on male and female education, early marriage, and gender-based violence, men and women frequently experience prejudice and obstacles to education.⁴⁹
- *Religious Discrimination:* Discrimination on the basis of religion in the school system affects child students, teachers, and the entire educational environment. In other words, it involves any practice or policy that leads to unequal treatment based on an individual's religious beliefs or practices.⁵⁰ There may be difficulties for students finding time and space for prayer during school hours, and for example, child students wearing hijabs, turbans, and yarmulkes, may be discriminated against inadvertently by policies; and as well as religious discrimination of employers in some association.⁵¹
- *Conflict and Displacement:* The armed conflict and migration to other place cause infrastructural destruction, disturbance of educational systems, and dangerous learning environments.⁵² As I know, the difficulties of migrants' religious affiliations and social networks have a significant impact on their lives and integration experiences, many aspects of their migrant journey can be affected by these elements, including their adaptation to a new environment, access to resources, overall health and well-being.⁵³

⁴⁷ E. S. M. Suresh, "The Quality of Education and its Challenges in Developing Countries" American Society for Engineering Education, 2017, online accessed; <https://peer.asee.org/the-quality-of-education-and-its-challenges-in-developing-countries>

⁴⁸ Waleerak Sittisom "Barriers in way Towards Quality Education: Poverty, Fertility Rate and Increasing Population" Journal of Security and Sustainability Issues, Vol-9, January 2020.

⁴⁹ Claudia Buchmann, "Gender Inequalities in Education" Annual Review of Sociology, Vol-34; P.P 319-337, June 2008, online accessed; <https://doi.org/10.1146/annurev.soc.34.040507.134719>

⁵⁰ Silvia Angeletti, "I Minori Tra Diritto E Religione" Liberta Religiosa, best interests, educazione, Published by Societa Editrice Il Mulino, 2022.

⁵¹ Fabio Balsamo, "The principle of religious non-discrimination in religious-ethos employers" Dipartimento di Giurisprudenza, Università degli studi di Napoli Federico II, Supplemento Rivista, Anno XV, n. 1-2020.

⁵² Sonja Fransen & Carlos Vargas, "The Impact of Refugee Experiences on Education: Evidence from Burundi", December 2016, online accessed at SSRN: <https://ssrn.com/abstract=2755540>

⁵³ Maria d'Arienzo, "Appartenenza religiosa e reti sociali dei migranti" Diritto e Religioni, Semestrale Anno XI - n. 2-2016.

- *Lack of Infrastructure:* The quality and accessibility of education are negatively impacted by inadequate educational infrastructure, which includes old schools, a dearth of sanitary facilities, and a deficit of trained teachers.⁵⁴
- *Legal and Policy Gaps:* In certain nations, there are insufficient legal and regulatory frameworks to ensure everyone has access to education, or the laws and regulations that are in place are not effectively implemented and enforced.⁵⁵

Section III:

1. Universalist Nature of Right to Education and the Challenges of the Cultural Relativism

It is impossible to overstate the influence that culture has on how a person develops their worldview as cultures provide both people and society with acceptable means and ways for pursuing ideals and interests. Using the certain principles and standards from a specific culture, hatch interprets cultural relativism as the judging of right and wrong. It is always experience that determines right and wrong in human affairs, and each individual interprets experience according to his or her own socialization. There are differences in the concept of right and wrong from one culture to another since these terms are relative.⁵⁶ Consequently, morality has no universal value since the history of the world is always characterized by a plurality of cultures. It is important to realize that human rights are not considered the same way in all cultures of the world, and equality and human rights are viewed differently by different cultures.⁵⁷ Furthermore, understanding of cultural relativism is the recognition of the differences between cultures and people. The one culture imperialism would result from the attempt to assert the universality of one culture as a criterion for morality. Cultural relativism and human rights universality pose a strong opposition to each other when they are considered

⁵⁴ Deborah Morporkor Zotto & Prince Dacosta Anaman “*Infrastructural Challenges and Student Academic Performance: Evidence from a Developing Nation*” International Journal of Innovative Science and Research Technology, Volume 7, November 2022, online accessed; <https://zenodo.org/records/7439990>

⁵⁵ Karen Mundy, and Antoni Verger, (eds.), *Global Governance, Development and Human Rights: Challenges for International Organizations in the 21st Century*. P.131-144 (2015).

⁵⁶ Hatch, Elvin, “*The Relativity of Values in Anthropology: Culture and Morality*” (Columbia University Press, New York, 1983).

⁵⁷ Vincent, R.J. “*Human Rights, and International Relations*” P.37-38, Published by Cambridge University Press, 1986.

together.⁵⁸ The cultural relativist perspective, we can deduce the following four important theories about human rights:

- Human rights relate to moral conditions.
- moral conditions are determined by the cultural commitments,
- these commitments differ from culture to culture; consequently,
- the interpretation of the human rights standards will also differ from culture to culture.⁵⁹

The human rights universalism and cultural and religious relativism are two opposing points of view with regard to human rights in general and the right to education in particular, and there are two opposing, mutually distinct schools of thought. The human rights, for universalists can be defined as, *"a moral right that every man deserves, no matter where he comes from, something that can never be denied him without grave injustice to justice, something which is owed to every human being simply because he is a human"*.⁶⁰ The human rights are based on the premise that humans are sacred, their humanity is valuable. As we recognize and celebrate our humanity, there are certain things we should do and some we shouldn't do. While human rights discourse originated in the West, Universalists believe that a common set of human rights standards should apply across cultures.⁶¹ The human rights are perceived as entitlements for all individuals by virtue of their humanity. Thus, human rights transcend culture, ideology, morality, and social value systems. The universalist arguments appeal to certain principles concerning humanity in order to demonstrate their power. As Universalists assume that human rights are universal, the cultural relativists assert that they may be relative phenomena that vary from culture to culture.

According to Cultural Relativists, morality is a social and historical phenomenon, rather than a timeless principle. The human rights are only valid in and for cultures that have established the discourse of rights, from a relativist perspective, and relativistic thinking, human rights values are at odds with traditional intercultural beliefs, and based on the belief that human

⁵⁸ Thomas Hylland Eriksen, "Global citizenship and the challenge from cultural relativism" Journal of Scientific Articles (2017), online accessed; <https://doi.org/10.21301/eap.v12i4.7>

⁵⁹ J. Herskovits, Melville: "Cultural Relativism, Perspectives in Cultural Pluralism", (Random House, 1972, New York).

⁶⁰ Cranston, M. (1973). "What are human rights"? London: Bodley Head. Dalai Lama (1999). Ethics for the new millennium. New York City: Riverhead Books.

⁶¹ Healy, P. "Human rights and intercultural relations: A hermeneutical-dialogical approach. Philosophy and Social Criticism", Vol-32, P.513–541, 2006.

rights can hinder some cultures control over their destiny.⁶² The cultural relativists perceive cultural traditions as constituting ‘different worlds’ that are independent of human rights standards.

2. Reservations at the Face of Cultural Relativism

The human rights are enforced worldwide by international organizations like the United Nations and applying these standards globally, however, can be challenging due to cultural relativism, since some nations may oppose interventions on the grounds that external human rights frameworks are imposing or undermining their cultural values. There is no religion or culture that can deny the inestimable dignity and value of the human being. The claim “*do to others what you would like them to do to you. Try not to do things to others that you would not like them to do to you*” can be regarded as an ethical code that can be accepted by all reasonable individuals.⁶³ According to the theory of cultural relativism, no culture's customs or beliefs are better than any other. On the other hand, the universality principle which holds that every person has unalienable rights regardless of cultural background forms the foundation of human rights. This conflict occurs when some cultural customs, like child marriage, female genital mutilation, or treating minorities unfairly in some societies, contradict internationally recognized norms of human rights. The early contributions of Buddhism, Hinduism, Taoism, Judaism, and other major religions reflect the idea of individual decency.⁶⁴ All religions, despite their apparent differences, share certain fundamental values: they honour human life and, consequently, refer to the issue of responsibility towards others, especially the suffering. Even though cultural relativism stresses the need of appreciating and comprehending many cultural practices, there are serious objections to it, particularly when those traditions go against the universal declaration of human rights. In the global human rights discourse, striking a balance between individual rights protection and cultural variety preservation continues to be a key concern.

⁶² Thomas Hylland Eriksen, “Global citizenship and the challenge from cultural relativism” Journal of Scientific Articles (2017), online accessed; <https://doi.org/10.21301/eap.v12i4.7>

⁶³ The Wikipedia, “Golden rules religion and in cultural”, online accessed; https://en.wikipedia.org/wiki/Golden_Rule

⁶⁴ Rushworth M. Kidder, “How Good People Make Tough Choices: Resolving the Dilemmas of Ethical Living” Harper, New York, 2003, p.159.

3. Permissibility of Reservations to Human Rights Treaties

The number of state parties is a measure of the success of an international regime, so, reservations within international human rights treaty regimes may facilitate widespread and universal coverage, allowing states to become parties to a specific treaty despite not accepting all its provisions. The Vienna Convention on the Law of Treaties,⁶⁵ article 19 say that, a state may formulate reservations when signing, ratifying, accepting, approving, or acceding to a treaty unless:⁶⁶

- a) The treaty prohibits the reservation;
- b) The treaty specifies only certain reservations, not including the reservation in question, may be made; or
- c) in cases not falling under sub-paragraphs (a) and (b), the reservation is contrary to the purpose and object of the treaty.

The reservation is further conditional for admissibility under article 20(2) of the Vienna Convention on the Law of Treaties by requiring that the existing state parties to the treaty regime in question must accept such reservation.⁶⁷

The application of a treaty in its entirety is an essential condition of each party's consent to be bound by the treaty when there are a limited number of the negotiating states and the purpose and object of the treaty, so, a reservation must be accepted by all parties.

Whereas the same article provides in para 3 and 4, following:

Para 3, it is necessary for the competent organ of an international organization to accept a reservation when the treaty is a constituent instrument of that organization.⁶⁸

Para 4, the following applies to cases which do not falling under the preceding paragraphs and unless otherwise provided in the treaty;⁶⁹

⁶⁵ Giuseppe Pascale & Tonolo Sara, the book name "*The Vienna Convention on the Law of Treaties*" (Sapienza University of Rome), Volume-8, Published in February 2022.

⁶⁶ Christian Walter, Chapter "*Article 19*" of the Vienna Convention on the Law of Treaties (pp.261-315), DOI: 10.1007/978-3-662-55160-8_21, January 2018.

⁶⁷ Oliver Dörr, & Kirsten Schmalenbach, "*Vienna convention on the law of treaties: A commentary*" Book published by Springer, July 2012. DOI:10.1007/978-3-642-19291-3.

⁶⁸ *Ibid.* Article 20(3).

⁶⁹ *Ibid.* Article 20(4)

(a) If the treaty is in force for those States at the time of the acceptance of the reservation by another contracting State, then the reserving State becomes a party to the treaty in relation to that State.

(b) As between the objecting and reserving States, an objection to a reservation does not preclude entry into force of the treaty unless the objecting State expresses an explicit contrary intention.

(C) The act expressing the consent of one state to be bound by a treaty and containing a reservation becomes effective once it has been accepted by at least one other contracting state.

The International Court of Justice ruled in the Genocide Convention case that, in order to preserve the integrity of the treaty, the reservation must not undermine the object and purpose of the treaty.⁷⁰ It is the reservation compatibility rule that determines whether or not the reservation is admissible under the Convention. This means that the reservation must not compromise the characteristics of the treaty but should be compatible with its object and purpose.

In order to gradually discourage, prohibit, and eliminate discrimination against women based on religion and culture, the CEDAW Committee urges the states to implement appropriate measures. The state party would then be able to withdraw its reservation to CEDAW as a result of such measures. The Committee states specifically in this regard with respect to article 16 of CEDAW:

It is not possible to justify violations of the CEDAW based on traditional, religious, or cultural practices or incompatible domestic laws or policies. The Committee remains convinced that reservations to article 16, whether lodged for national, traditional, religious or cultural reasons, are incompatible with the CEDAW and should be re-evaluated, modified, or withdrawn.⁷¹

⁷⁰ Advisory Opinion, International Court of Justice, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide, Bosnia and Herzegovina v Serbia and Montenegro*, 1991. In this case, ICJ addressed the issue of reservation.

⁷¹ General Recommendation No. 21. Para 44, '*Equality in Marriage, and Family Relations*' and article 7, 8 and CEDAW Committee, General Recommendation No. 35 para. 13.

Similarly, article 20(2) of CERD states:⁷²

Reservations that are incompatible with this Convention's object or purpose are never allowed, nor will reservations that are likely to inhibit the operation of any of the bodies established under this Convention be permitted. Reservations that are opposed by more than two thirds of States Parties to this Convention will be considered incompatible or inhibitive.

The Human Rights Committee's characterization of the International Covenant on Civil and Political Rights might lead one to think that the Vienna Convention on the Law of Treaties cannot provide solutions to reservations problems in relation to human rights treaties because 'many of its provisions are written to reflect the operation of a multilateral treaty between states in issues where states act in their own interest in respect of other states, where there are no third parties with their own rights or obligations involved and where the treaty does not establish an independent international mechanism for its application and interpretation'.

Similarly, according to Martin Scheinin, the General Comment No. 24 of the Human Rights Committee contains two elements that are incompatible with the Vienna Convention on the Law of Treaties. These are: (a) A human rights treaty body, established for the purpose of interpreting the treaty and monitoring the compliance by States with its provisions, has the authority to determine whether reservations can be permitted under the treaty in question; (b) A state that has made an impermissible reservation will usually (but not automatically) be deemed bound by the treaty, but without the benefits of the reservation.⁷³ As far as the second element is concerned, I do not see a contradiction per se with the Vienna Convention on the Law of Treaties in anything that is agreed upon within the framework of another treaty, including the creation of a special supervisory body in a human rights treaty.⁷⁴ If questions arise under human rights treaties regarding the competence of these bodies, it is a matter of interpreting the treaties in the first place.

⁷² David Keane, "Mapping the International Convention on the Elimination of All Forms of Racial Discrimination as a Living Instrument" Human Rights Law Review, Pages 236–268, Vol 20, Issue 2, June 2020, <https://doi.org/10.1093/hrlr/ngaa013>

⁷³ Martin Scheinin, 'Reservations by States under the ICCPR and Its Optional Protocols', in I. Ziemele, Reservations to Human Rights Treaties and the Vienna Convention Regime: Conflict, Harmony or Reconciliation, at 44.

⁷⁴ Malgosia Fitzmaurice, "Third Parties and the Law of Treaties" by J.A. Frowein and R. Wolfrum (eds.) Year book of United Nations Law, P. 37-137, Vol-6, 2002.

4. Reservations of Pakistan to Relevant International Human Rights Treaty Regimes

Dealing with the Right to Education:

The one statement of Pakistan applies to the whole conventions, which it calls a reservation, that “*the Convention must be interpreted in accordance with Islamic Law and Values*”.⁷⁵ This reservation establishes the supremacy of Islamic values and laws; no promises are made to amend any law or practice to conform to Convention on the Right of Child if such change would be detrimental to Islamic values or laws.⁷⁶

The first positive side, it is likely that governments won't implement the Convention on the Right of Child in a way that violates their societies basic values or rules. The CRC rights are often described in general terms or are qualified, allowing governments to interpret CRC articles consistently with fundamental principles. It may be necessary for countries to change some attitudes and customs in order to implement the CRC fully, but this doesn't mean that fundamental laws or values must be changed. In Pakistan, the Government is not refusing to violate fundamental rights, which makes it stand out, because the reservation is so concise, and the Government is honest about not violating them, the reservation is exceptional.⁷⁷ It may have been necessary for Pakistan to introduce reforms through legislation and judicial decision, but their lack of a systematic Islamic rationale creates serious problems. The first question is whether the reforms are compatible with traditional law and the Islamic character of the laws. Secondly, as a result of this unresolved theoretical and methodological issue, all reforms appear to be in conflict with traditional Fiqh, which draws heavy criticism from conservative sectors of the population.⁷⁸ The majority of Muslims in each country must accept reforms on the basis of a systematic methodology with clear Islamic roots in order for them to produce a law that is both comprehensive and consistent. Muslims are capable of surviving social change in the

⁷⁵ I am unsure of the meaning of the phrase “*interpreted in light of*”. The Convention must be interpreted if a word in the Convention is unclear or if an article's application to a particular situation is unclear. It is generally regarded as the rule that treaties will be interpreted in light of their ordinary meanings and purposes as well as their objects and purposes. Neither the CRC nor religious laws or values will be interpreted according to religious laws or values. It is implied in the statement that the Government is limiting the change promise by explicitly labelling it as a reservation. In general, it should be understood that the phrase means “subject to” Islamic law and value.

⁷⁶ Shaheen Sardar Ali, “*A Comparative Perspective of the Convention on the Rights of the Child and the Principles of Islamic Law: Law Reform and Children's Rights in Muslim Jurisdictions*” Published by Cambridge University Press, 2009, online accessed; <https://doi.org/10.1017/CBO9780511511271.005>

⁷⁷ Tahira Jabeen, Sumera Jabeen, “*Ideals of Human Rights and Socioeconomic Realities: The Larger Context of Pakistan's Child Protection Policy*” p. 44-57. Oct 2016, <https://doi.org/10.1080/14754835.2016.1233807>

⁷⁸ Elisa Giunchi, “*Islamization and Judicial Activism in Pakistan: What Shariah?*” *Oriente Moderno*, P. 188-204, 2013, online DOI: 10.1163/22138617-12340008

twentieth century while preserving their connection to Islamic tradition if *Quranic* values are applied appropriately.⁷⁹

Secondly, it might be interpreted that Pakistan's reservation is a promise to its people that it will implement each CRC right in accordance with or based upon Islamic principles to fulfil the CRC, value choices need to be made. Defining standards such as appropriate measures, well-being of the child, and best interests of the child is not objective, value choices are necessary to apply them. The culture, religion, spiritual development, and morals are also frequently mentioned in the Convention on the Rights of Child, and all of these require value choices. The Pakistan reserves the right to control values based on the Islamic religion. What is the significance of making religious values the foundation of a country's value system? It enables states to criticize their laws, policies, and customs by ratifying the CRC. Several governments may be concerned that other states will not respect the principle of cultural diversity. During ratification, a government can state which value system will serve as a reference point to prevent foreign values from being imposed on its people.⁸⁰

The third factor is the possibility of a future interpretation of a treaty that contradicts the words of the treaty or the intentions of the state when ratified it. The state reservations are a way of preventing new interpretations from being imposed on them, when viewed as a positive side, Pakistan's reservation may not show a lack of commitment to children's rights. The Government may demonstrate that it is taking children's rights seriously by paying attention to moral and political aspects of implementation. The reservation, however, has some negative aspects. In the first place, Pakistan is almost the only country to make such a broad reservation. Even though many states are probably concerned about the respect of their religion or culture, they did not think it necessary to make such a large reservation about religion or culture. Secondly, the Committee on the Rights of Child monitors compliance with the CRC, but it does not make legal decisions. Thirdly, a number of countries agreed to the convention but made broad reservations.⁸¹ They made just a few reservations after ratifying the Convention on the Rights of Child. It was necessary for many states to review their national laws prior to

⁷⁹ John L. Esposito “*Women in Muslim family law*”, published by Syracuse University Press <http://hdl.handle.net/2027/heb.04699.0001.001>

⁸⁰ Pakistan could have made a declaration rather than a reservation if its only intention is to make Islam the reference point for value choices.

⁸¹ States become parties to treaties when they ratify them, not when they sign them. When Kuwait signed the CRC, it reserved its rights against any provision that it deemed incompatible with Islamic Shariah and the local laws. Only two articles 7 and 21 were reserved when it ratified the CRC a year and a half later.

ratifying the CRC to determine whether there were any conflicts. The public conferences and workshops were held as part of some of these reviews, thus, states didn't need to make extensive reservations.

The fourth point is that although a state must respect a society's religious foundation, and the diversity of religious beliefs within that society. The religious freedom is guaranteed in three articles 2, 14 and 30 of the UN Convention on the Right of Child's.⁸² Is the reservation going to have any effect on these articles? Are religious tolerance and Islamic values considered to be 'principles of Islamic law and values' by the Government? What are the implications of the reservation on the CRC rights of non-Muslim children, or does it only apply to children of Islamic faith?

The religion is protected by the constitution of Pakistan under article 20 and many several articles of the constitution that prohibit discrimination between religions.⁸³ It may be reasonable to expect that the government does not intend for the reservation to affect the rights of children who are not Muslim. In any case, NGOs must communicate their intentions with the states and concerns authorities.

In a negative light, Pakistan's reservation may appear to lack seriousness when compared to other states to CRC reservations. Moreover, Sweden expressed concerns about Pakistan's reservation, saying that it '*may raise doubts about their commitment*' to the Convention on the Rights of Child's objective and purpose. Finland and Ireland expressed their concerns differently, while Norway made a similar objection, but Pakistan has never been rejected by a state as a treaty partner.⁸⁴ There is no way to determine whether the statement should be viewed positively or negatively until the government explains its reasoning. In addition to religious leaders and scholars, the general public should be included in a discussion of the convention between the government and NGOs.⁸⁵ I examine that, how specific laws and practices affect children, evaluate them using the 'best interest' standard, and compare them against the Convention on the Rights of Child articles as well as with Islamic laws.

⁸² Religious Freedom protection under article 2, 14 and 30 of the Convention on the Rights of Child.

⁸³ Anita Wilson, Samina Saeed, Aziz ur Rehman, "*Constitutional Rights of Religious Minorities in Pakistan*" published in Global Political Review, March 2020 V(I) P.316-325, access, [http://dx.doi.org/10.31703/gpr.2020\(V-I\).34](http://dx.doi.org/10.31703/gpr.2020(V-I).34)

⁸⁴ A Look at the Reservations of Asian State Parties, written by International commission of Jurist, "*Reservations to the Convention on the Rights of the Child*" 2013, online accessed; <https://www.icj.org/wp-content/uploads/2013/10/Asia-Convention-Rights-of-the-Child-non-legal-submission-1994-eng.pdf>

⁸⁵ *Ibid.*

It will be crucial for the discussion to be productive to know the government's attitude towards children's rights. NGOs also have an important role to play, instead, of provoking unnecessary conflict, the dialogue can produce harmony by focusing on how the CRC can put religious values into practice.

5. Islamic Reservations and the Shariah Legal System

Islam is the official religion of the many states that is practiced by the largest number of people worldwide.⁸⁶ According to Yadh Ben Achour, the domestic legislation of Islamic countries and international human rights treaty regimes are incompatible, which results in reservations towards international human rights treaty regimes. In addressing the complexities of state and religion, the Special Rapporteur for Freedom of Religion and Belief points out that; *“there are no consensuses on classification of relations between state and religion, nor on the terminology for characterizing those relationships”*.⁸⁷

The most reservations to international human rights instruments have come from African and Asian countries where Muslims constitute a majority or a significant portion of the population. The reservations were intended to render important parts of the treaties inapplicable since they were incompatible with the fundamental Islamic law of these countries. As a preliminary observation, the so-called Sharia reservations do not pose any significant differences from other reservations made by different countries on various bases to the same human rights treaties.⁸⁸

The reservations made by Muslim countries, citing Islamic religious law in opposition to international human rights treaties, are not only detrimental to the claim that human rights are universal, but also undermine international treaty law principles, as many observers have pointed out. Additionally, it should be noted that the Shariah reservations bring a new paradigm into the universality discourse on human rights by invoking religious law rather than international law. The Muslim countries throughout the world have objected to the application of certain human rights within their jurisdictions due to their incompatibility with Islamic

⁸⁶ There are 41 countries that accept Islam as their official state religion, of which 25 follow Sunni Islamic law, which constitutes 60 percent of all states that recognize Islam, and 16 countries follow Shia Islamic system that amounts to 40 percent of the total official state religion of Islam.

⁸⁷ Yadh Ben Achour, Freedom of Religion and Belief, Special Rapporteurs Quoted para 14, A/HRC/3749, The Islamic Question before the United Nations Human Rights Committee (Ferrera; Jovene editor, 2021)

⁸⁸ Monforte, T. Broad Strokes and Bright Lines, *“A Reconsideration of Shariah Based Reservations”*. Columbia Journal of Gender and Law, 35(1), 1. 2017.

religious principles. As a result of their reservations, these Muslim nations have become members of international human rights treaties. The Shariah reservations do not seem to have any uniform formula or standard for their creation. That is, some states pass very generic and nonspecific reservations, while others elaborate in detail.⁸⁹

The states that adopt Shariah law as law of the land can be considered religious states, for example, several Islamic countries, such as Saudi Arabia and Indonesia, recognize the full implementation of Islamic Shariah law.⁹⁰ The Quran and the Sunnah are considered as the constitution in these states, ignoring any other form of law. The Islamic Republics espouse republican forms of government with elections as well as democratic institutions such as the judiciary, executive, and legislative branches. The constitutions of Islamic Republic's declare the republics to be Islamic. For example, Mauritania, Pakistan, Iran and Afghanistan all declare themselves Islamic Republics through their constitutions. Though they claim to be republican states, they have little in common with republican forms of government due to their Islamic foundations and nature.

Since article 2 of the constitution 1973 declares Islam the state religion of Pakistan, can be regarded as an Islamic republic and on 12 March 1949, was the date of the passing of the Objective Resolution, which is part of the constitution.⁹¹ There are several principles contained in the objective resolution that are based on Islamic law. According to that, God has delegated his sovereignty over the entire universe to humans as his chosen representative elected by the people. The Shariah law provides freedom, equality, tolerance, social justice, and democracy to be implemented, along with collective life "in accordance with Sunnah and Qur'an". Due to these objective principles, Pakistan has a Shariah based legal system in terms of criminal law, family law, and law of evidence that adheres strictly to these principles.⁹²

The concept of state religion is prone to numerous interpretations due to its ambiguous and general nature. Consequently, state religion has a different impact in different countries. Through the constitutions of some Muslim majority states including Turkmenistan,

⁸⁹ Salem, N. "*Sharia Reservations to Human Rights Treaties*". Max Planck Encyclopaedia of Public International Law, accessed on July 28, 2022, <https://opil.ouplaw.com/display/10.1093/law-epil/9780199231690/law-9780199231690-e2149>

⁹⁰ Marie Alix Depuydt, "*Beyond the Veil: A Critical Analysis of Sharia Law in Saudi Arabia and Indonesia*" Vol-14(2), P.87-95 March 2024.

⁹¹ Article 2 of the *Constitution of Pakistan 1973*. And *Objective Resolution of Pakistan* on March 12, 1949.

⁹² Zia Akhtar, "Constitutional legitimacy: Sharia Law, Secularism and the Social Compact" *INDONESIA Law Review*, Volume 2, No. 1, August 2011.

Turkey, Kazakhstan, Kyrgyzstan and Azerbaijan, they declare themselves secular.⁹³ It is important to consider the constitution of the state when classifying countries based on their religion policies. Considering only a state's constitution and structural provisions cannot determine its “Islamite”.

The fatality of the damage caused by reservations is so severe that reservations could even be considered to negate the universality of human rights standards. There can be various reasons for reservations to international human rights treaties; these include social, financial, cultural, religious, and political reasons. The supremacy of either the national or international human rights laws is determined by capacity, security, welfare of the people, political will, cultural and religious systems. The Islamic imperative plays an important role in determining the place and authority of Shariah moral conditions in politics within Islamic states. The state parties to the international human rights treaty regimes also seek to protect the place of religion as an element of national interest.⁹⁴ The claim of universal human rights standards is severely undermined when Islamic religious law is invoked against international human rights standards. The Shariah legal system that dominated state jurisdictions at the time of ratification often makes very general, loosely formulated reservations, which do not specify the provisions of the human rights treaties that are subject to the reservation.⁹⁵ The state parties to international human rights law regimes that are governed by Shariah law place reservations due to structural and philosophical reasons.

First of all, both public and private aspects of national laws are equally covered by international human rights laws. The public and private aspects of laws must be separated by international human rights law, which demands that the human rights law be applied equally within the private and public spheres of legal systems. The both domains public and private, in the public sphere: constitutional orders and criminal justice systems, while the private spheres of the legal system regulate and govern aspects of human life that are religious and personal. The challenge is that there is no clear distinction between private and public legal spheres when it comes to the uniform application of international human rights law within Shariah prevailing systems.

⁹³ The report published by Pew Research Centre “Many Countries Favor Specific Religions, Officially or Unofficially” OCT 3, 2017, online accessed; <https://www.pewresearch.org/religion/2017/10/03/many-countries-favor-specific-religions-officially-or-unofficially/>

⁹⁴ Salem, N. “*Sharia Reservations to Human Rights Treaties*”. Max Planck Encyclopaedia of Public International Law, accessed on July 28, 2022, <https://opil.ouplaw.com/display/10.1093/law-epil/9780199231690/law-9780199231690-e2149>

⁹⁵ It is the CEDAW and the CRC that have the highest number of Shariah-based reservations (19/204 and 14/132, respectively).

6. The Reservations Placed by Prominent Muslim Countries to CRC, and Specific Relating to the Right to Education:

6.1 Egypt:

The Egyptian government is one of the most prominent and leading states within the Shariah law prevailing states.⁹⁶ It was also among the first twenty countries to ratify the Convention on the Rights of the Child, proving its strong commitment to the promotion of childhood and motherhood as one of the six initiator countries to convene the World Summit for Children in 1990.⁹⁷ The Government of Egypt notified the Secretary General on 31 July 2003, it had limited its reservations to articles 20 and 21 of the convention on the rights of the child at the moment, Egypt reservation is;⁹⁸

Since the Islamic Shariah is one of the fundamental sources of legislation in Egypt positive law and because the Shariah, in enjoining the provision of every means of protection and care for children by numerous ways and means, does not include among those ways, and means the system of adoption existing in certain other bodies of positive law.

The Government of the Egypt expresses its reservation with respect to all the clauses and provisions relating to adoption in the said Convention, and with respect to the provisions governing adoption in articles 20 and 21 of the Convention.

This is actually the second report for Egypt. I searched the UN website and other websites, but could not find the first UN report, except a translation in Spanish, which does not help much. It mentions that the first report was presented in 1992 and not all the material in the second

⁹⁶ Maurits Berger & Nadia Sonneveld, *"Sharia and national law in Egypt"* Published by Leiden University Press 2012, online accessed; <https://doi.org/10.1515/9789400600171-005>

⁹⁷ The World Summit for Children took place at the United Nations on 29-30 September 1990, bringing together the largest gathering of world leaders in history. It was attended by 71 heads of state and government and 88 other senior officials, mainly ministers, and included a Declaration on the Survival, Protection and Development of Children and a Plan of Action for implementing the Declaration.

⁹⁸ Egypt reservation to Convention on the Right of Child's, accessed on October 18, 2022 https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4

report was repeated from that report.⁹⁹ Introductions and nine chapters are divided into various sections within the report. It appears that the report is a translation of the original French document. However, it can be noted that some of the provisions of Egyptian law are based on Islamic principles.

I observe the definition of child in Egyptian law, five paragraphs summarize the provisions is follow:

According to article 2 of the 1996 Children's Code, children are those under the age of 18.¹⁰⁰ The provisions of the Code apply to anyone who is not yet of that age, and the legislature has brought civil, legal, and commercial rights into harmony, and the legal age of accession has been set at 21 years old.

The children under the age of 18 are subject to parental authority over the person set forth in Act No. 118 and parental authority over property set forth in Act No. 119; both acts date from 1952.¹⁰¹ According to the two texts, the father or those replacing him may exercise parental authority (designation of the person exercising parental authority, withdrawal, or suspension of parental authority).

The children under the Child's Code cannot be employed until they are 14 years of age. It is legal to train children from the ages of 12 to 14 in seasonal employment subject to approval of the governor of the province concerned and the agreement of the Minister of Education, provided their physical growth, health, and attendance at school do not suffer as a result. Trade unions require members to be at least 15 years old to join.¹⁰²

⁹⁹ As required by article 44, paragraph 1, of the Convention on the Rights of the Child, Egypt is submitting its second periodic report to the Committee on the Rights of the Child, and follow-up to the initial report (CRC/C/3/Add.6) sent by Egypt in October 1992, the Committee considered the report at its third meeting in January 1993. Egypt will refer back to the corresponding sections of its initial report, with respect to certain matters covered by the report, in order to avoid repetition in accordance with the secretariat guidelines that were adopted at its thirteenth session in October 1996." See Report Submitted by Egypt, *supra* note 103, for guidance.

¹⁰⁰ Article 2 of the Egypt Promulgating the Child Law, No. 12, 1996. Amended by Law No. 126, 2008.

¹⁰¹ Both of these laws pertain to the concept of *Wiliiyah* in Islamic law, according to our understanding. We didn't find any access to these laws.

¹⁰² *Ibid*, Article 47 of the Egypt Promulgating the Child Law.

Everyone over the age of 18 has the right to directly exercise political rights, namely, expressing an opinion during consultations and elections for the People's Assembly.¹⁰³ A person must be at least 18 years old to be eligible for military service.

According to article 94 of the Children's Code states that children under the age of seven are not considered criminally responsible. A child aged 7 to 15 may not be sentenced to a criminal offense. Prevention or rehabilitation measures are available to such children (article 101 of the Code). The children between the ages of 15 and 18 are subject to reduced penalties, which include being freed from capital punishment and forced labour. A probationary sentence or placement in a social institution may be substituted for a prison sentence in the case of minor offences. The right to testify in a criminal trial is available to children aged 14 and over.

According to the above reference, Chapter VI, section B, relates to some Islamic personal law provisions, paragraph 73 states the following:

The parents (wilaya) or guardians (wisaya) are liable for a child who has not reached majority (age 21). Specifically, Act No. 18 of 1952 specifies that parental authority can be terminated under certain conditions, and that a person exercising parental authority (wali) can be a father, a grandfather, a mother, a guardian (wasi), or anyone in whose care a child is placed in the child's care by a court decision.¹⁰⁴

There are no changes to the information contained in section E, subsections 7, 8, 9 and 10, chapter IV, of the initial report.¹⁰⁵ Our view is that Article 21(3) of the CRC relies on the Egyptian practice of kafalah, which reads as follows: Such care could include, inter alia, foster care, the kafalah of Islamic law, adoption, or placement in suitable institutions for the care of children. In considering solutions, due consideration must be given to the child's ethnicity, religion, culture, and linguistic background as well as the child's desire for continuity.

¹⁰³ There is no explanation of the right provided by the Convention on the Right of Child, to children under 18 years of age.

¹⁰⁴ Reference is made to the Report Submitted by Egypt, supra note 103.

¹⁰⁵ UN Committee on the Rights of the Child (CRC), UN Committee on the Rights of the Child: State Party Report: Egypt, 11 November 1999, CRC/C/65/Add.9, available at: <https://www.refworld.org/docid/3afb97440.html>

6.2 Tunisia:

From a legal perspective, Tunisia is a signatory to a number of international human rights treaties, and ratified the Convention on the Rights of the Child on 31 January 1992. It entered into force three months later, and Tunisia's government made declarations and reservations to the Convention on the Right of Child. Initial reservations were made by Tunisia at the time of ratification regarding articles 2, 6, 7, and 40 para 2 (b) (v) of the United Nation Convention on the Right of Child. A decision was made by Tunisia on first march 2002 to withdraw all reservations from the CRC, which became effective on September 23rd 2008.¹⁰⁶

The pre-revolutionary law gave Tunisian citizenship to children of Tunisian fathers, Tunisian mothers, children of unknown fathers, children born without nationality to Tunisian mothers, or babies born to Tunisian mothers and foreign fathers. The government provided free education for children up to and including university. It was mandatory for children up to the age of 16 to attend school.¹⁰⁷ Minors who had been assaulted under the pre-revolutionary government faced severe punishments, but such offenses were very rare to be prosecuted. The children who had been abused were assisted by government-employed social workers, and the Ministry for women, families, children, and elderly people employed a child protection delegate in each of the country's districts to intervene when children were exploited sexually, economically, or criminally. The rules and protections must be in place after the revolution in Tunisia, assuming that they still exist.

¹⁰⁶ The Initial declarations and reservations of Tunisia to UNCRC were as following:

1. General Declaration:

This Convention declares that Tunisia's implementation of its provisions shall be limited by its available resources.

2. Reservation concerning article 40, paragraph 2 (b) (a):

The Government of the Republic of Tunisia views the provisions as a general principle that can be modified by national legislation. It should be noted that some crimes are dealt with by cantonal or criminal courts with a right of appeal to the Court of Cassation, which guarantees the implementation of law without prejudice to the right to appeal.

3. Reservation concerning article 2:

It enters a reservation with regard to article 2 of the convention, which may not interfere with the implementation of the provisions of the Tunisian national legislation concerning personal status, particularly in the area of marriage and inheritance rights.

4. Reservation concerning article 7:

Tunisia's Government considers that article 7 of the Convention could not be interpreted as prohibiting the implementation of national law on nationality, including cases of forfeiture.

5. Declaration concerning article 2, and 7:

It is the policy of the Government of the Republic of Tunisia that no legislative or statutory decision shall conflict with the Tunisian Constitution in the implementation of this Convention.

¹⁰⁷ Mouez Soussi & Donia Smaali Bouhlila, "*Child's Labour and Schooling in Tunisia*" published by The Economic Research Forum 2017.

Furthermore, Tunisia has ratified a number of other international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR), “*which provides that children should receive any protective measures that are required by their status as minors from their families, society and the government*”.¹⁰⁸ The children are also granted special rights under the International Covenant on Economic, Social, and Cultural Rights (ICESCR) which Tunisia is a signatory to,¹⁰⁹ as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),¹¹⁰ the Convention for the Ending of Racial Discrimination (CERD),¹¹¹ and the Convention for the Elimination of Discrimination against Women (CEDAW).¹¹²

6.3 Morocco:

The report of the Kingdom of Morocco on the implementation of the Convention on the Rights of the Child is provided, in accordance with article 44, paragraph 1, of the Convention as well as the concluding observations of the Committee on 10 July 2003. The report also contains Morocco's responses to the Committee's observations on Morocco's first report on the implementation of the Optional Protocol on the sale of children, child prostitution, and child pornography, which took place on 27 January 2006, and it examine Morocco's efforts to implement the rights of children established by the Convention during the period 2003–2011, and its progress in securing those rights.¹¹³ Describes both the factors that led to and hampered the implementation of child-rights policies and measures.

Since the second periodic report was considered, public policies related to protecting and promoting children's rights have been given a fresh impetus, drawing on the convention and responding to the committee's recommendations. The government of Morocco also plans to achieve the Millennium Development Goals as part of its commitments to international conferences on children and partnership network has been established, for example, among the

¹⁰⁸ The ICCPR, article 24 sub-section 1, which is also ratified in 1976 by Government of Tunisia.

¹⁰⁹ The ICESCR, articles 10, 12 and 13, which is also ratified in 1976 by Tunisia.

¹¹⁰ The Government of Tunisia ratified in November 1988.

¹¹¹ The Government of Tunisia ratified in 1969.

¹¹² This code was ratified in 1985 as well as with reservations to articles 9, 16 and 29: these dispositions "must not conflict with Personal Status Code provisions" primarily "concerning the granting of family names to children and the acquisition of property through inheritance".

¹¹³ The UN Committee on the Rights of the Child: Initial Reports of States Parties Due in 2004, Morocco, CRC/C/OPSA/MAR/1, 15 July 2005.

stakeholders, the departments responsible for the welfare of children, civil society, and international organizations.

The Government of Morocco notified the UN Secretary General on 19 October 2006 that they had withdrawn their reservation regarding article 14 of the Convention on the Rights of the Child.¹¹⁴ According to the Constitution of Morocco 1996 and other relevant provisions of Moroccan domestic law, Morocco interprets article 14, paragraph 1, of the Convention on the Rights of the Child as follows:

“Article 6 of Constitution of Morocco, that Islam, the State religion, guarantees freedom of worship for everyone”.¹¹⁵

The Family Code stipulates in article 54, paragraph 6, that parents are obligated to provide religious guidance and education to their children. This declaration reaffirms the commitment of the Kingdom of Morocco to universally recognized human rights and the purpose of the aforementioned Convention. Consequently, Morocco maintains its position as set forth in the new constitution.

6.4 Iran:

The Islamic Republic of Iran submitted a concise and precise report on 5 September 1991. It consists of seven chapters separated into several sections. In the first paragraph, the Republic's position is clearly expressed; the representative of the Islamic Republic of Iran signed the Convention on the Rights of the Child, which was ratified by the Islamic Consultative Assembly in March 1994.¹¹⁶ In accordance with Islamic norms and domestic laws, Iran reserves the right not to apply any provisions or articles of the convention that contradict its laws or regulations. The state of Iran expressed this general ‘reservation’ in its acceding to the Convention on the Rights of the Child, which became binding on Iran on 12 August. The domestic laws could be revised if they strongly differed from the Convention articles, provided

¹¹⁴ The Kingdom of Morocco submits reports on the implementation of the Convention on the Rights of the Child (CRC/C/OPSC/MAR/CO/1), accessed on 23 Oct 2022.

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/213/53/PDF/G1421353.pdf?OpenElement>

¹¹⁵ Article 2 of the Kingdom of Morocco Constitution 1996. Available on <https://wipo.lex-res.wipo.int/edocs/lexdocs/laws/en/ma/ma044en.pdf>

¹¹⁶ Marzieh Takaffoli & Meroe Vameghi, etc, “Child Protection in Iran” Pages 771–793, 22 March 2023, online accessed; <https://academic.oup.com/edited-volume/45764/chapter-abstract/399133667?redirectedFrom=fulltext>

they did not contradict Sharia principles.¹¹⁷ It is particularly important to appreciate this sentence: “When domestic laws differ significantly from the Convention's articles, they may be adjusted, as long as they do not violate the Shariah law”.¹¹⁸

In terms of Islamic law, Iran is the only country that has defined children rights is very strictly. Moreover, it has mentioned Fiqh, which we consider that the United Nation should also pay attention to. Below is the text of paragraph 2:

Children are considered minors in Fiqh (Islamic Jurisprudence) and law depending on whether they are male or female offspring who haven't reached maturity.¹¹⁹ Maturity comes naturally and instinctively. The age of a person is one of the signs that they are mature. Minors are people who have not reached majority age in the eyes of the law and Fiqh. Property can't be disposed of by a minor. There is no definition of a child in Iranian law, only the definition of maturity. A male child is mature when he reaches full 15 lunar years of age according to Civil Code article 1210.¹²⁰ It is mandatory in Iran for a person to prove his/her maturity before exercising their legal rights. It can be said that the age of minority has ended when two conditions are met in an individual, that is, physical growth and mental development.¹²¹

The following is stated regarding the principle of the best interests of the child: “Parents are expected to protect the moral and material rights of their children. Iranian parents are primarily responsible for securing the rights of their child. In the Civil Code, parents are responsible for maintaining and raising their children; the father is responsible for the expenses relating to the child's nourishment before and after birth.”¹²² It differs quite a bit from the reports submitted by other Muslim countries.

¹¹⁷ Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Initial reports of States parties due in 1996, Addendum, Islamic Republic of Iran. accessed on 25 Oct 2022 <https://www.refworld.org/docid/4ef9d03e2.html>

¹¹⁸ Jan Michiel Otto, “*Sharia and National Law in Muslim Countries: Tensions and Opportunities for Dutch and EU Foreign Policy*” published by Leiden University Press 2008, <https://hdl.handle.net/1887/20694>

¹¹⁹ The Hanafi School law allows minors to dispose of their property if they have reached a certain age of maturity and they have been authorised to do so by their guardians, provided the transaction does not cause them any loss. Guardian ratification is required for the transaction to be valid.

¹²⁰ Article 1210 of the Civil Code of the Islamic Republic of Iran,

¹²¹ Hanafi school Law Para No: 2. There is no doubt that this is a sound statement of Islamic law that should be accepted by all schools.

¹²² Report Submitted by Iran, supra note 115, Para No. 9.

7. The Philosophy of Reservations Placed by Islamic States

The Sharia reservations¹²³ to international human rights treaties are not uniform and monolithic reservations that have been consistently made by all Muslim or Arab countries on a consistent basis. Each country makes reservations to different human rights treaties based on its own specific content and selection of human rights treaties. It may be attributed to the lack of consistency and uniformity in the Shariah reservations; the diversity of cultures in Muslim countries; Political differences between them, Islam's sectarian differences, and dissimilarities between Islam and other political ideologies. These reservations have only one thing in common: they appeal to Islam to justify the exclusion of significant parts of the relevant human rights treaty from application within the territory of the reserving state parties.

Thus, states making Shariah reservations are attempting to create a separate domain within International Law for Shariah that does not exist currently. It has always been understood that international law is derived from international treaties, customary international law, and international judicial precedent. It is now considered a relic of the distant past that religious law dominated international relations, most notably in the Christian West, the origin place of modern international law.¹²⁴ It is a legal reality in the modern era that international law is justified through appeal to these sources.

According to Muslim jurists, Shariah is the body of laws of highest order.¹²⁵ In fact, some Shariah provisions may be viewed by some jurists as forming peremptory norms that must be adhered to by every Muslim without any room for deviation.¹²⁶ As a matter of fact, this concept

¹²³ Shariah reservations are defined in this study as reservations (including substantive and sweeping declarations and interpretative statements) made by Muslim countries regarding international human rights treaties, in which the reservations are explicitly stated to be a result of the non-compliance of treaty provisions with Islamic religious law norms. Several Islamic countries make reservations without referring to Shariah incompatibility, preferring instead to the codified national laws and constitutions. This study does not consider these reservations to be "Shariah reservations," but rather ordinary reservations that can help in assessing the religious concerns of the various countries involved.

¹²⁴ Francesco Alicino, *"Constitutional Democracy and Islam; The Legal Status of Muslims in Italy"* Book published by ICLARS Series on Law and Religion (2023), DOI: 10.4324/9781003309390

¹²⁵ Indeed, in this respect, one cannot overlook the analogy to the concept of 'higher law' in the Corwinian sense. On the concept of 'higher law'. See: Corwin, 1928: 151. Indeed, the marked characteristics of the concept of Shariah jurisprudence may be said to have a strong resemblance to how Cicero conceptualised *jus naturale*, "It is a sacred obligation not to attempt to legislate in contradiction to this law, nor may it be derogated from nor abrogated," it is "one eternal and unchangeable law binding all nations through time." See: Cicero, *De Legibus*, in: Corwin, 1928: 157.

¹²⁶ The conceptualisation of Shariah as 'peremptory norms' is a well-settled point of jurisprudence in Islamic law. It is based on this notion that all subsequent laws be it civil, constitutional and criminal are required to be in conformity therewith. Being principally sourced from the Holy Quran and the Sunna or Traditions of the Prophet, great transcendental sanctity is attached

of Shariah as a set of peremptory norms from which there can be no deviation has been one of the main grounds of conflict between Shariah and international human rights law, parts of which are now recognized as peremptory norms under international law.¹²⁷

Conclusion to chapter I

In this work, the first chapter aims to present a picture of prevailing international human rights legal standards regarding education, employment, and protection rights within the institution of protection, and it also discusses Pakistan's relationship with these relevant international laws and shows how these rights are intertwined. Specifically, the state parties ensure that all aspects of the right to education, including accessibility of education, rights within education, and rights through education, are guaranteed by the right to education. The international labour and human rights standards state parties are required to align their domestic laws, policies, and practices pertaining to the right to work with international labour and human rights standards. For international standards to be met, mechanisms and procedures established by international labour and human rights laws will need to be adopted. The UN Universal Declaration of Human Rights recognizes the right to education as an inalienable right for every man and woman. Every child should be given this right in order to emancipate themselves and ensure society's future. The most powerful way to lift excluded children and adults out of poverty is by educating them.

The state parties are required to implement their human rights obligations within their internal laws, policies and practices, as well as the crosscutting obligation of non-discrimination as outlined in the United Nation Convention on the Right of Child's and other bodies of international human rights law. A state party is required to implement and implement effectively international human rights standards substantively within its domestic laws, practices, and policies by employing all of the means and methods provided within international human rights treaty regimes. The law and policy framework must be in place to

to some of the core provisions of Shariah. This includes matters regulating the faith of Muslims, issues on apostasy, and many other select issues. See: Rahman, 1994; Askari, 1978.

¹²⁷ The core group of select rights that are embodied under various international human rights regimes are considered as *jus cogens* or peremptory norms from which there exist no derogation. This has become a conceptually validated part of international law. See: Martin 1997; Brownlie, 1995.

guarantee non-discrimination, human rights obligations must be implemented immediately in a non-discriminatory manner, and compliance with these standards must be monitored. However, International human rights standards are universal, but they face cultural and religious relativity challenges. The prevalence of these challenges is caused by two main factors, one of which is the possibility that state parties will introduce reservations to the international human rights treaty regimes upon ratification, the other is the absence of effective enforcement mechanisms.

In order to overcome this challenge, domestic legal systems should incorporate international human rights standards. The social attitudes, behaviours and practices need to be reformed through education based on religious and cultural values both at the micro and macro levels. Rather than relegating individuals or groups to change and accommodate, it must be the social behaviour and institutions that change. As part of this process, it is necessary to consider the progressive experiences of similar legal setups prevailing in state parties. In addition, it is necessary to examine the role that trade, economic incentives, and other financial considerations, can contribute to the promotion of human rights standards, effective enforcement, and meaningful realization, as well as whether trade might be a useful medium for mediating the relativist challenge to universal human rights, as the saying goes “where there is trade, there is peace”.

CHAPTER II

CHILD’S RIGHT TO EDUCATION WITHIN THE DOMESTIC LAWS POLICIES AND PRACTICES OF PAKISTAN

1. Introduction

The constitution of Pakistan guarantees the right to education of child’s and is supported by a number of laws, policies, and practices that ensure their access to quality education. In Pakistan, 63 million children are between the ages of 5 to 16 years and the constitution of Pakistan ensure to provides them free primary education.¹²⁸ The constitution of Pakistan 1973, specifically elaborate in article 25-A, states; *“the State shall provide free and compulsory education to children who are 5 to 16 years of age in the manner prescribed by law”*.¹²⁹

At this time, Pakistan is the second most populous country with out of school children in the same age group, with 22.8 million children out of school and 5 million children in the 5 to 9 years age group not in school, and after primary school age, the number of out of school children is doubles, with 11.4 million youngsters between the ages of 10 to 14 years not receiving formal education.¹³⁰ The levels of inequality are significant based on gender, socio-economic status, and geography, in Sindh, 52 percent of the poorest children are not in school (58 percent are girls), and in Baluchistan 78 percent of girls are not in school. At the primary level, approximately 10.7 million boys and 8.6 million girls are enrolled, and this number drops to 3.6 million boys and 2.8 million girls by the lower secondary level.¹³¹

It aims to make ensure equal access to education, it does not leave its attainment dependent on privileged background or circumstance. Considering education, a human right makes it an essential component of being a citizen, but also essential for attaining dignity as a human being. In Pakistan, the debate over improving education quality and access has also focused on

¹²⁸ Huma Zia Faran & Zohair Zaidi *“The missing third: An out-of-school children study of Pakistani 5-16 year-olds”* the report published by *“The DAWN Newspaper”* 3rd September 2021 accessed online; <https://www.dawn.com/news/1643918>

¹²⁹ Article 25-A of the Constitution of Pakistan 1973, (18th Amendment).

¹³⁰ The UNICEF Pakistan report 2016-17, accessed at: <https://www.unicef.org/pakistan/education>, [accessed 29 Sep 2022].

¹³¹ Huma Zia Faran & Zohair Zaidi *“The missing third: An out-of-school children study of Pakistani 5-16 year-olds”*, the report published in *“The DAWN Newspaper”* on September 3, 2021.

addressing this issue through the paradigm of Right to Education and the state's responsibility to fulfil this right in recent decades. Pakistan now has the right to education recognized as a fundamental right through 18th amendment of constitution, so it is more important than ever to recognize how this right must be universally realized.

I will focus on the aspects of Pakistani law that are most challenging from the perspective of international human rights standards and that require modification to bring them into compliance with international human rights standards. It will begin with an analysis of the historical development and transition of the Pakistani legal system, also review the historical development of Pakistani municipal laws up to their present position in this chapter.

2. Historical Development of the Pakistani Legal System

In Islam religion, children have the right to an education based on historical customs and religious teachings that emphasize the value of education for both boys and girls. The Muslims people have a religious obligation to pursue knowledge, as stated in the Quran and Hadith. The Prophet Muhammad says that, “*seeking knowledge is an obligation upon every Muslim*”.¹³² Education for both boys and girls is encouraged in Islamic beliefs. Then Quran does not differentiate between men and women in term of seeking knowledge, and a number of Hadith emphasize the need of teaching daughters. The Islamic religion history has full of examples of educated women, such as Ayesha, the wife of Prophet Muhammad, who was famous for her knowledge and teaching of Hadith.¹³³

The Islamic Golden Age feature the establishment of education institutions that welcomed to philosophers from all backgrounds, such as Al-Qarawiyyin¹³⁴ in Morocco and Al-Azhar in

¹³² Abu Amina Elias (Justin Parrott), “*Forty Hadith on Knowledge*” *Sunan Ibn Mājah* 224, Grade: Sahih Bukhari, Published by Australian Islamic Library, online access;

<https://archive.nyu.edu/bitstream/2451/62210/2/40%20hadith%20on%20knowledge%20-%20Abu%20Amina%20Elias.pdf>

¹³³ Shabbir Hassan, “*The Role of Women in the Time of Prophet Muhammad*” Jan 25, 2019, online access; <https://medium.com/@shabbirhsn/the-role-of-women-in-the-time-of-prophet-muhammad-9da8bd9af020>

¹³⁴ Yasemin Nicola Sakay, “*Al-Qarawiyyin, world’s oldest, continually operating university, was founded by a Muslim woman*” Published by Daily Sabah on 07 June 2020 at Turkey. <https://www.dailysabah.com/life/history/al-qarawiyyin-worlds-oldest-continually-operating-university-was-founded-by-a-muslim-woman>

Egypt.¹³⁵ The University of Al-Qarawiyyin founded in 859 AD at Morocco,¹³⁶ and is considered the first Muslim women to have made a significant contribution to education in Islam. In sum, Islamic teachings, which support knowledge acquisition for all people regardless of gender, are firmly ingrained with regard to children entitlement to an education. Women attended these education institutions and made major contributions to a variety of professions, including literature, astronomy, and medicine, according to historical sources. The value of education in Islam is emphasized by both historical customs and modern initiatives.

In the modern world, several nations with a majority of Muslims have enacted educational reforms to guarantee that all children have access to education. The promotion of inclusive education has advanced significantly in states like Indonesia and Malaysia. Gender equality is emphasized in the activities of organizations like the Islamic Educational, Scientific, and Cultural Organization (ISESCO), which aims to advance education throughout the Muslim world.¹³⁷

However, cultural norms and socio-economic circumstances can occasionally impede children access to education, especially for girls, even in the face of religious teachings. Many Muslim activists and scholars working hard to remove these obstacles, stressing that it against Islamic law and principles to deny someone an education. It is the duty of parents to see to it that their children obtain an education within Islamic law, this includes both knowledge from the religious and secular domains, and also the community's duty to offer educational opportunities to every child's.

Historically, the most of educational institutions have been sponsored by waqf (endowments) and zakat (charitable donations). The activism of Malala Yousafzai, a well-known supporter of girl's education from Pakistan, emphasizes how Islamic ideals and educational rights are compatible.¹³⁸ Education methods are being brought into line with the fundamental principles of Islam despite persistent obstacles.

¹³⁵ Al-Azhar Mosque, known simply as "al-Azhar" in Egypt, is a mosque located in Cairo, Egypt's ancient Islamic district. The first mosque to be built in a city that would later be known as "the city of a Thousand Minarets" was erected in 970 when it was designated as the new capital of the Fatimid Caliphate.

¹³⁶ University Kairouine is located in Fez, Morocco. It was one of the most important spiritual and educational institutions of the Islamic Golden Era after being established as a mosque by Fatima al-Fihri in 857–859.

¹³⁷ F. Kukeeva, A. Smailova, S. Samat, "Role of ISESCO in modern international relation" Vol. 91 No. 3 (2020): International Relations and International Law Journal.

¹³⁸ Nargis Sultana, "Right to Education for Girls in Pakistan: Malala's Struggle Must Continue" Oct 19, 2012, at Foundation Open Society Institute-Pakistan

The constitution of Pakistan stipulates admissibility rules and requirements for existing as well as upcoming laws in order to maintain the status quo of the above-mentioned facts. The article 227 establishes this criterion thus: *“All existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Quran and Sunnah, this part was referred to, as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions”*.¹³⁹

The Islamic Ideology Council, known as the Advisory Council, was established in 1962 to assess the compatibility of existing laws with the Quran and Sunnah, and one of the articles of the constitution has two interpretations provided by the Advisory Council.¹⁴⁰ The Quran and Sunnah require that law should not contravene them, and existing law must be conforming to Fiqh. It's a bit confusing how the Islamic legal standards are treated in the constitution. A gender equality guarantee is contained in the 1973 constitution, but it is undermined by the constitution in itself and by the children's laws of Pakistan. Also providing for religious freedom, the constitution also prohibits discrimination on various grounds, as well as prohibiting various types of discrimination.¹⁴¹

Moreover, the Objective Resolution is a fundamental part of the 1973 Constitution, having been passed and adopted on 12 March 1949.¹⁴² Islamic law is cited in this resolution as a foundation for several principles. It establishes divine sovereignty over the entire universe, delegated to humans by God as his chosen representatives, and as well as democracies, equality, freedoms, tolerances, and social justice are implemented according to the spirit of Shariah. Furthermore, the Quran and the Sunnah provide that the Muslims of Pakistan have the right to organize their individual and collective lives according to their faith. Based on these objective principles, Pakistan's domestic law adheres strictly to Shariah in the areas of evidence, family law, and criminal law.

¹³⁹ The Constitution of Pakistan 1973, article 227.

¹⁴⁰ Sajid Hussain, *“Role of Council of Islamic Ideology in Islamization During Zulfikar Ali Bhutto Era”* Global Political Review V(I), P.P 241-250, March 2020, online accessed; DOI: 10.31703/gpr.2020(V-I).27

¹⁴¹ Niaz a. Shah, *“Women, the Koran and International Human Rights Law”*, Chapter 5. *“Gender Equality and the 1973 Constitution”*, Vol-4, P. 109–126, 01 Jan 2006 DOI: <https://doi.org/10.1163/ej.9789004152373.i-263.42>

¹⁴² The Objectives Resolution, *Islamic Studies*, Vol. 48, No. 1 (Spring 2009), pp. 89, 91-118, Islamic Research Institute, International Islamic University, Islamabad. <http://www.jstor.org/stable/20839154>

3. Child's Legal Protection under Pakistani Laws

A comprehensive child protection system is in place under Pakistani law, and it aims to protect the rights and welfare of children in many different aspects. A definition of a child in Oxford Advanced Learner's Dictionary is that; *“A young human who is not yet an adult”*.¹⁴³

The constitution of Pakistan 1973 ensures that all citizens, including children, are guaranteed fundamental rights under article 25(3), which allows the state to make special provisions to protect children and women. Moreover, article 25-A of the constitution specifies that, *“The state shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law”*.¹⁴⁴ Furthermore, it specifies that in article 35 for the protection of the family, mother, and child. And article 11(2) clearly specify the age of child, *“No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment”*.¹⁴⁵

There are several other laws and act that deal with protection of child, including the Punjab Child Protection Act 2014, the Sindh Child Protection Authority Act 2011, the protection of children from sexual offences Act 2016, the employment of children Act 1991, the prevention of trafficking in persons Act 2018, the right to free and compulsory education Act 2012, the national commission on the rights of child Act 2017.¹⁴⁶ Specifically, the Juvenile Justice System Act 2018, governs children's rights in criminal proceedings. In the declaration/preamble of Act, it is laid out, among other things, that the purpose of the legislation is to protect children in criminal cases, to help them reintegrate into society, and to reorganize juvenile courts. Section 2(b) illustrates the meaning of child as; *“A person who at the time of commission of an offence has not attained the age of eighteen years”*.¹⁴⁷

The Pakistan Penal Code (PPC), section 82, as amended by the Criminal Law Act 2016, stipulates that a person must be at least 10 years of age to be criminally responsible. This act described the children age under the 10 to 14 years, a child can commit an offense only if they

¹⁴³ The Oxford Learner Dictionary, https://www.oxfordlearnersdictionaries.com/definition/english/juvenile_2

¹⁴⁴ The Constitution of the Islamic Republic of Pakistan 1973, modified in 2012, online accessed; https://na.gov.pk/uploads/documents/1333523681_951.pdf

¹⁴⁵ Ibid

¹⁴⁶ Tahira Jabeen, “Child Protection Legislation in Pakistan: Bringing International Child Rights Obligations and Local Values Together” Pakistan Journal of Criminology, Volume 8, No.3. pp. 16-33 July 2016.

¹⁴⁷ The National assembly of Pakistan, passed a bill the Juvenile Justice System Act 2018; section 2, specify the age of child, https://na.gov.pk/uploads/documents/1518606490_243.pdf

are mature enough to understand and judge the nature and consequences of what they are doing. Moreover, under section 364(A) of the same code, kidnapping or abducting children younger than 10 years of age can result in life imprisonment or capital punishment.¹⁴⁸

In accordance with the Child Marriage Restraint Act 1929, it is prohibited to marry a girl under 16 years of age and a boy under 18 years old. Consequently, Sindh Child Marriages Restraint Act 2013, specifies that both genders must be over 18 years of age to marry. However, the Senate Standing Committee on Interior rejected a similar federal measure under the Child Marriage Restraint (Amendment) Bill 2017.¹⁴⁹

3.1 Muslim Family Law Ordinance 1961

In Pakistan, the Muslim Family Laws Ordinance 1961, was enacted to deal with govern numerous aspects of Muslim family law. Among the primary goals was to guarantee the protection of women and children in a manner consistent with Islamic teachings. The argument over the equal rights of sons and daughters between modernists and traditionalists revolves around Pakistan Muslim family law ordinance.¹⁵⁰ The Muslim family law ordinance was based on the report of the marriage and family law succession commission, which also included several recommendations meant to protect the right of children and women.

A mother or grandmother who is unable to support their child may file a complaint with the chairman of the union council, as per section 9 of the Muslim Family Law Ordinance. As part of the proceedings, the chairman will designate an arbitration council, which will issue a certificate detailing the total value of the properties and the amount of maintenance that the father is required to pay.¹⁵¹ If the father agrees to pay maintenance in this situation, he will have to do so. If the parties are unable to negotiate a settlement through discussion, they can bring their issue to family court. As will under section 17-A of the family courts act, the minor's

¹⁴⁸ The second amendment in Pakistan Penal Code (Criminal Law Act 2016) passed by Senate of Pakistan in 2016. Accessed https://na.gov.pk/uploads/documents/1467011388_916.pdf

¹⁴⁹ Nadya Haider, "Islamic Legal Reform: The Case of Pakistan and Family Law" the Yale Journal of Law and Feminism, Vol. 12: 287, 2000.

¹⁵⁰ Mumtaz Ahmad, "The Muslim Family Laws Ordinance of Pakistan", International Journal on Peace, Vol. 10, No. 3, P. 37-46, September 1993, online accessed; <https://www.jstor.org/stable/20751912>

¹⁵¹ Munir, M. "Talaq and the Muslim Family Law Ordinance, 1961 in Pakistan: An Analysis". The spectrum of International Law, 1, 16-18. (2011).

guardian has to file the maintenance lawsuit.¹⁵² On the day of the defendant's initial appearance in court, the family court may set an interim monthly support amount in the case of litigation. If the defendant fails to make maintenance payments by the fourteenth day of the month, the court will file a maintenance action using the plaint and any further supporting documentation, striking off the defendant's defence. The family court may, due to the passage of time, determine a greater maintenance sum than what was requested in the plaint. If the court does not specify a particular percentage increase, it will automatically raise maintenance by 10% annually. Any institution or body may be called upon to produce pertinent documentation so the court can ascertain the assets and estate of the accused.¹⁵³

The Muslim Family Law Ordinance was not a legitimate public demand since it was suggested by a commission rather than by parliament, and the panel was primarily composed of modernists with no traditionalist participation. A significant segment of the society, whose involvement was essential to any reform's acceptance and implementation in the nation. Ultimately, the initiative ran into significant resistance from the dominant group that makes up the traditionalist sector of society. The practice of taqlid was a strong opponent of the modernist modifications to shariah law that they developed under the theory of Ijtihad to address contemporary societal concerns.

3.2 The Islamization Process of Pakistani Laws and Hudood Ordinances

The Zia-ul-Haq dictatorship was first said to be concerned with preserving democracy. In an effort to prevent chaos in the nation following the coup on July 5, 1977, the military of Pakistan dissolved the government, organized new elections and withdrew to the barracks.¹⁵⁴ According to Zia, "the current political system is unrelated to the concept of Islam; and politicians are at each other's throats". After taking office, Zia used appeals to Islamic principles to justify his government. He pledged to "transform the country social and economic structures in line with Islamic principles" during a speech in which he blamed Bhutto demise on actions that were not

¹⁵² Muslim Family Law Ordinance Section 17-A of the statute was amended by the Family Courts Ordinance 2002.

¹⁵³ Dr. Mudarra Sabreen, *Maintenance of the Child in Pakistan: A Much-Needed Legislation*, Sheikh Ahmad Hassan School of Law. Accessed online <https://sahsol.lums.edu.pk/node/12888#:~:text=Conclusion-,Under%20Pakistani%20law%2C%20the%20father%20is%20responsible%20for%20paying%20maintenance,his%20legitimate%20and%20illegitimate%20children.>

¹⁵⁴ The DAWN newspaper published article on 6th July 1977.

in keeping with Islamic principles.¹⁵⁵ Thus, the objective of the 1980 is not restoration of democracy and the military return to its barracks, but rather the establishment of an Islamic regime and the implementation of Islamic reforms.

The Zia states that, “this nation is in desperate need of an Islamic, democratic, stable administration, which elections are the only way to bring about. A successful election outcome is essential; that is the nation must have a government that upholds Pakistani ideals while ensuring stability. No responsible individual can allow politics to breed instability and terrorism that would ultimately destroy democracy. My intention is that the spirit of Islam permeates our democracy and that people elected to public office truly care about Islam and the nation”.¹⁵⁶

He started martial law restrictions and used military troops to run mobile summary courts to enforce shariah law punishments, which included flogging and jail for violating a women’s modesty and cutting off a hand for theft and looting.¹⁵⁷ The government succeeded in pacifying the Ulema by proving its Islamic commitment and engrossing political parties in manifestos and electoral expectations, before executing its most powerful opponent, Bhutto. To gain more Islamic support, a number of Islamic reforms were put into place. Zia commanded female television presenters to wear a coverall, outlawed dancing on the grounds that it was remnant of evil Hindu civilization, and mandated that all government workers do five-time daily prayers. Moreover, he lowered the severity of the punishments imposed by the Quran and Shariah.¹⁵⁸

A) *Reforms under Shariah Law*

The new changes fall into four categories through judicial reform under shariah law (Islamic law), in social and educational reform, Islamic economic reforms and penal law reforms. The

¹⁵⁵ Shah, A. S., Waris, M., & Basit, A. (2016). “Islamization in Pakistan: A Critical Analysis of Zias Regime”. Global Regional Review, I(I), 260-270. [https://doi.org/10.31703/grr.2016\(I-I\).20](https://doi.org/10.31703/grr.2016(I-I).20)

¹⁵⁶ The General Zia-ul-Haq delivered a Speech at Pakistan Affairs, On 1 November 1979.

¹⁵⁷ M. Dawood Mohammadi, “Causes of General Zia Ul Haq's Islamization Program” History of International Relations Sessional Assignment, June 2018,

¹⁵⁸ Charles H. Kennedy, “Islamization in Pakistan: Implementation of the Hudood Ordinances”, University of California Press, Vol. 28, No. 3, pp. 307-316, (Mar. 1988). <https://www.jstor.org/stable/2644489>

general premise of punishing laws is that God has assigned penalties that are subject to Hudood Ordinance and that man owes this to him.¹⁵⁹ The following reforms in Islamic Penal laws;¹⁶⁰

- Any theft found to have taken more than 4.4 kg of gold will have his wrist severed of first time, and foot amputated in second time and life imprisonment in jail for the third time.
- The punishable for drinking beer, wine or any other alcoholic beverage, while non-Muslims and foreigner are allowed to use drugs and drink in home not public area.
- Men and women alike shall be stoned or shot to death for zina (adultery), and married people will be publicly whipped to death.
- Judges and anyone who are not Muslims are not allowed to testify against Muslims.

The economic measures provide the following;¹⁶¹

- It is suggested that private securities worth more than 84.48 grams of pure gold, firm capital, and individual savings all fall under the 2.5% optional zakat tax.
- Islam does not impose Jizya (head tax on non-Muslims) and forbids giving zakat to non-Muslims.
- Interest-free banking is progressively introduced over a three-year period, allowing lending institutions to make money as long as they acquire an ownership position in the projects they support.
- Each and every peasant must pay the 10% Ushr tax in cash or in kind on irrigated fields.

The following are the actions that Zia took to make Shariat the nation's supreme law;¹⁶²

- The provincial High Courts have been given the authority to decide whether laws violate Islamic injunctions with immediate effect.
- On the Shariat benches of the Supreme Court and High Courts, three Muslim judges will be chosen by a group of Ulema.

¹⁵⁹ Charles H. Kennedy, "Islamization and Legal Reform in Pakistan 1979-1989", Vol. 63, No. 1 (Spring, 1990), pp. 62-77, online accessed; <https://www.jstor.org/stable/2759814>

¹⁶⁰ Ibid.

¹⁶¹ Dr. Fazal Rabbi, "Islamization in Pakistan A Study of Zia-ul-Haq's Regime (1977-1988)", Research Journal Al Basirah, Vol-6, Issue-2, pp. 47-63, December 2017,

¹⁶² Charles H. Kennedy, "Islamization and Legal Reform in Pakistan 1979-1989", Vol. 63, No. 1 (Spring, 1990), pp. 62-77.

- The Attorney General, the Chief Justice of the High Courts, and the Supreme Court of Pakistan ought to be nominated to a permanent law commission, with the latter serving as its head.

B) Putting Reforms into Practice

The implementation of laws is a very different process from their promulgation; economic laws are challenging to administer and have already resulted in significant administrative issues. The economic rules are more difficult to handle than the criminal code, which may be more easily implemented through already-existing legal systems or military tribunals. It is only in some commercial communities that the voluntary donations of Zakat and Ushr have been made.¹⁶³ The people of Pakistan will probably be able to avoid these taxes if they chance to be religious, even if religion could play a role. Furthermore, it is doubtful that two tax systems based primarily on confidence would be able to function in a country characterized by widespread corruption, especially since many people believe that much of this money will be diverted to the government. Many people have already taken their funds or income out of banks due to their fear of 25% yearly tax on bank accounts, the imposition of these taxes would result in higher income inflation, which might exacerbate resentment among greater segments of the population.¹⁶⁴ Since, the new taxes are unpopular in Pakistan, officials hesitate to implement them and assess the situation prior to implementing them.

C) Reform Reaction

The reform changes elicited both favourable and negative reactions, within the Ulema they were happy for a significant accomplishment. The leaders of Jamaat-I-Islami Maulana Abul Maudoodi and Sheikh Sadiq Hasan, the Jamaat chairman for Karachi, hailed the legislation as a significant step forward in the country journey towards Islamic rule. According to Mian Tufail Muhammad, the Jamaat's Amir (chief), says that, the government of Mr. Bhutto and the government of the country opposed the people's movement when it began. In the struggle for establishing an Islamic system, it was the sheer might of the people that finally compelled the

¹⁶³ Salman Ahmed Shaikh. *Welfare Potential of Zakat: An Attempt to Estimate Economy wide Zakat Collection in Pakistan*, Vol. 54, No. 4, pp. 1011-1027. Published by Pakistan Institute of Development Economics, Islamabad, accessed online: <https://www.jstor.org/stable/43831380>

¹⁶⁴ Lorenz, Christian. 'Informal taxation systems – Zakat and Ushr in Pakistan as example for the relevance of parallel/semi-public dues' (2013), University of Muenster, Germany.

government and the army to support the nation.¹⁶⁵ The leaders of Jamiat-Ulema-Pakistan headed by Maulana Noorani and the Pakistan National Alliance by Mufti Mahmood, were also in favour of these reforms.¹⁶⁶

There were few voices on the negative side, a sense of constraint among the nonorthodox (not confirming to established doctrine) to remain silent since criticism of the laws could be deemed anti-Islamic. After all, a great deal of oppression of Muslims; many were victimized by censorship and persecution of journalists, arrested, imprisoned, and flogged in public.¹⁶⁷ The Many peoples of the Pakistan People Party cadres were incarcerated, and the free leaders were reluctant to jeopardize Bhutto's slim chance of escaping the hangman's cage. Therefore, only minorities or the *Ulema* opposed to the government could voice criticism and apprehension and they did, they claimed that the military junta turned matters upside down in implementing the measures and that some non-political theologians saw it as falsification of Islam. Governments cannot punish people who cannot eliminate deprivation, so they are prohibited from introducing such punishments in societies free of desire and temptation.

In the end, the Shia sect, which makes up about a quarter of the Muslim population that expressed apprehensions and criticisms about the new laws. While Shia sect follow different prescriptions in their religious teachings from Qadiani's, they are recognized as legitimate Islamic sects. In Shia law, only three fingers of the left hand are lost for unjustified theft or theft of need, if the thief apologises, Shia law grants forgiveness.¹⁶⁸ Further, the Shia sect have denied the order to teach religious instruction alongside Sunni students in schools, demanding equal treatment for religious instruction. The governments have insisted on a single law for a country, although treaties with non-Sunni sects were limited to personal law.

¹⁶⁵ The DAWN Newspaper published an article on 11 February 1979, Pakistan.

¹⁶⁶ The Pakistan National Alliance, Presidium; Abul Maududi, Ahmad Noorani, Zahoor Ilahi, Asghar Khan, founded on 5 January 1977.

¹⁶⁷ The announcement of 16 October led to the arrest of 300 political figures; thousands had already been imprisoned, and 80 had been publicly flogged. A report published by Amnesty International in its Bulletin, No. 12. V. 6. Dec 1979.

¹⁶⁸ Moamen Gouda, "*Stealing more is better? An economic analysis of Islamic law of theft*", European Journal of Law and Economics, Volume 42, pages 103–128, (2016).

3.3 Islamic Law of Inheritance: The Foundation of Pakistan's Municipal Law of Inheritance

The Pakistan's inheritance law is based on the Islamic principles, Islamic inheritance law aimed to reform Arab civilizations and practices. The Islamic inheritance law radically altered the pre-Islamic customary law, rather than abolishing it completely. If no inheritor was found, the deceased's widow and children, chattels, property, and other possessions were given to the deceased's stepson or brother.¹⁶⁹ First of all, Islam prohibited how property, belongings, and other goods of the deceased would be forfeited at the time of the deceased's death, following words of Quran, *“O ye who believe! It is not lawful for you forcibly to inherit the women (of your deceased kinsmen)”*.¹⁷⁰ This implies that the deceased's widow should not be subjected to an inheritance by her husband's family members, nor should they start enforcing their will against her. After her spouse passes away, then women have right of independence. She is free to travel anywhere and entertains life and marry anyone she chooses; the legally mandated waiting time expires.

The ownership rights were extended to those previously excluded from participating in the property. According to the following verse of the Quran, the relatives have the right to inherit; *“When someone approaches death and leaves wealth, it is prescribed that he bequeaths it to his parents and close relatives as a kind gesture. It is duties all who's strive to ward off evil have to do this. It is only those who change their wills and those who hear them who are guilty of the sin”*.¹⁷¹

This Quranic verse describes the parent's share of a deceased person's property. The inheritance rights of women and children were denied in pre-Islamic customary law since parents included both the mother and father. In Surah Nisa (Chapter 4) verse 7 of Quran, states that children are entitled to the inheritance rights of their parents; *Whether it be little or much a legally determined share, a share belongs to the men (of s family) from the inheritances of*

¹⁶⁹ Hamid khan, *“The Islamic law of Inheritance”* second edition, Published by Oxford University Press 2021.

¹⁷⁰ The Quran, Surah-An-Nisa, 4:19, online accessed; [https://www.islamicstudies.info/tafheem.php?sura=4&verse=19&to=19#:~:text=\(4%3A19\)%20Believers!,to%20women%20against%20their%20will,&text=It%20is%20not%20lawful%20that,guilty%20of%20brazenly%20immoral%20conduct](https://www.islamicstudies.info/tafheem.php?sura=4&verse=19&to=19#:~:text=(4%3A19)%20Believers!,to%20women%20against%20their%20will,&text=It%20is%20not%20lawful%20that,guilty%20of%20brazenly%20immoral%20conduct).

¹⁷¹ The Quran, Surah-Al-Baqarah, 180 & 181, online accessed; <https://www.al-islam.org/al-mizan-an-exegesis-of-the-qur-an-volume-2/suratul-baqarah-verses-180-182>

*their parents and near kindred, and a share belongs to the women from the inheritances of their parents and near relatives.*¹⁷²

In the same surah, more details are given about the distribution of property. In Pakistan, this provision is the most important part of the current municipal law of inheritance because it forms the basis of the current inheritance laws;

There is a will Allah decrees for your children; the male gets twice as much as the female. If there are more than two women among the heirs, they receive two thirds of the estate. In the case of only one daughter left, she gets one half. Those who have left offspring of the deceased will receive one sixth of their inheritance. The mother of the deceased, if he left no children, receives one third of the estate. The mother of the deceased gets one sixth after the deceased's will is fulfilled and all debts are paid. In terms of benefit, you don't know which of your parents or children are closest to you. It is an obligation [imposed by Allah] to hold these shares. The knowledge and wisdom of Allah is unending.¹⁷³

If your wives do not have children, you receive half of what they leave. However, if they have a child, what they leave is one fourth after any bequest or debt they make. If you do not leave children, you will leave one fourth to your wives. If you leave a child, then they will receive an eighth of what you leave, minus any bequest or debt you may have made. If a person has neither ascendants nor descendants but a brother or a sister, then each of them is a sixth. But, if there are more than two, they even share a third, after any bequests or debts made, provided there is no detriment to any of them. The ordinance comes from Allah, who is both knowing and forbearing.¹⁷⁴

Therefore, Islamic law of inheritance consists of legal rules laid down in the Quran and Sunnah. With the exception of those aspects that were abrogated by Islamic inheritance law, the practices and customs that existed in Mecca and Medina during the Prophet Muhammad's time have been replaced with Islamic inheritance law. It is therefore more accurate to describe the Quranic principles surrounding the legal system of inheritance as amending the existing one than introducing a totally new one.

¹⁷² The Quran, Surah Nisa (Chapter 4) Verse 7.

¹⁷³ The Holy Quran, Surah Nisa'a (chapter 4), Verse 11.

¹⁷⁴ *Ibid*, Verse 12.

A) Representation as a Principle

There is no recognition of the principle of representation in Islamic law. For example, if a Muslim had two sons and one of them died before his child, the child of the deceased could not represent their father in the property/estate of their grandfather, so the child of the deceased cannot inherit their grandfather's property.¹⁷⁵ According to this principle, the nearest in degree of relationship excludes the more distant relatives, which is why the principle of representation is not recognized. Consequently, the deceased's property devolves over the nearer heirs upon his death.¹⁷⁶

In addition to the complicated principles of representation, the fact that if a person dies leaving a son who denies Islam's principles by birth or through apostasy imposes an exclusion on the other children who follow and obey the Islamic principles further complicates the process. The Islamic inheritance law does not grant inheritance to those who practice a religion other than Islam. As an example, suppose someone died and left behind a Muslim grandson and a non-Muslim son. Non-Muslim sons will be excluded from inheritance, and their Muslim grandchildren will inherit with their father's permission.¹⁷⁷

Case Study

Bhagay Bibi Vs Razia 2005 SCMR 1595

(Section 4 of the Muslim Family Law Ordinance does not affect the rights of other heirs while protecting the interests of orphaned grandchildren)

This is an important case on the conflict between the general provisions of Islamic law of inheritance and section 4 of the MFLO. According to the facts of the case, Maula died and left behind his son, Khizar Hayat and legal heirs (a widow and two daughters) and another son, Maula Dad who had predeceased him. Khizar Hayat inherited half of his estate while the other half was distributed to the legal heirs of Maula Dad. Maula Dad's widow was entitled to 1/8 and his daughters to 2/3 from his half share as sharers. The residue of Maula Dad's half share was

¹⁷⁵ Mohammad Saidul Islam, "Application of the Doctrine of Representation to Ensure the Inheritance Rights of the Orphaned Grandchildren in Bangladesh and Pakistan: A Critical Review of the Reforms of Islamic Law of Succession" The Chittagong University Journal of Law, Vol. XVII, (p.104-120) 2012.

¹⁷⁶ Ibid

¹⁷⁷ Zafar Iqbal Kalanauri, "The Law of Inheritance in Pakistan in view of Sec. 4 of the Muslim Family Law Ordinance (MFLO) 1961" Advocate Supreme Court of Pakistan, Lahore University of Management Sciences (LUMS) & Law College University of Punjab, Pakistan.

inherited by Maula Dad brother Khizar Hayat. The widow and the daughters of Maula Dad were not happy with the above distribution and argued that nothing should have been given to the brother of the deceased, namely, Khizar Hayat, from the estate devolved upon Maula Dad under section 4 of the MFLO. The residue given to the brother of the deceased ought to have been inherited by them under the doctrine of Rad (return).

The Supreme Court observed that the application of section 4 of the MFLO was meant to protect the rights of descendants of the predeceased children of a propositus, and the same could not be extended to override the share of other eligible heirs under the general provision of Islamic law. Thus, the application of the MFLO will be tolerated only to the extent where it does not interfere with the shares of other heirs under Islamic law. Consequently, it was held that the brother of the deceased was rightly awarded the residue after giving the widow and the daughters their due from the half share of Maula Dad.

B) The Pakistani Inheritance Law

In Pakistan, the Islamic law of inheritance governs the inheritance system through the West Muslim Personal Law Shariah Application Act 1962,¹⁷⁸ and the Muslim Family Law Ordinance 1961.¹⁷⁹ Under Sunni Muslim law, a deceased person's property is shared by twelve people, while under Shia law there are nine sharers. Sunni and Shia Muslims have the same percentage of females. Muslim Family Law Ordinance explains the principles under which Pakistani inheritance law is based on Islamic law;¹⁸⁰

- Property belonging to the deceased is distributed according to the intestate succession principle.
- Share of inheritance is determined by the relationship between legal heirs and the deceased. Closest relatives are blood relatives. Shares are allocated among blood relatives based on the number of children, brothers and sisters. Shares will vary from case to case depending on the number of such relatives.
- Shares are doubled for sons of the deceased compared to daughters.

¹⁷⁸ The West Pakistan Muslim Personal Law (Shariat) Act No. V of 1962, online access; https://kpcode.kp.gov.pk/uploads/The_West_Pakistan_Muslim_Personal_Law.pdf

¹⁷⁹ The Muslim Family Law Ordinance 1961, Ordinance No. 8 of 1961, online access; <https://pakistancode.gov.pk/english/UY2FqaJw1-apaUY2Fqa-apaUY2Npa5po-sg-jjjjjjjjjjjj>

¹⁸⁰ Muhammad Zubair Abbasi & Shahbaz Ahmad Cheema, “Family Laws in Pakistan” Book, Chapter 11, “Inheritance Law” page No. 358-404, published by Oxford University Press, Karachi, 2018.

- Women inherit 1/8 of the property of their husband.
- The share of deceased wives/wives will be 1/4 if the deceased had no children or a child of a son.
- Whenever an ancestor does not leave a son, the daughter receives 1/2 of the inheritance, and when there are more than one daughter without a son, all the daughters jointly receive 2/3 of the inheritance.
- There is a 1/3 share for the mother if there is no son; otherwise, it is a 1/6 share.

Pakistani inheritance law has been criticized for being incompatible with international human rights law standards due to the principle of direct representation, which deprives orphaned grandchildren of their rights if their father dies while the grandfather is alive. While the principle of representation is not recognized in MFLO, the Islamic principle of vested interest is recognized, which recognizes that the heir's right of inheritance within the estate/property of their ancestor is absolute even before the property has been distributed. Inheritance has a vested nature. In the event that the heir dies before the property is distributed and after the ancestor, he will be entitled to share in the estate/property.

Case Studies

Sher Muhammad Vs Mahmood Bakhsh 2000 SCMR 672

(Under the Sunni & Shia schools, collaterals get nothing in the presence of a daughter, children of a deceased daughter and a sister).

Allah Diwaya died in 1977, he was survived by a daughter, children from another daughter, and a sister. The estate left by the deceased was mutated to all the legal heirs (2/3 to the daughter and the children of another daughter, while 1/3 to the full sister). Afterwards, they transfer the entire estate through various transactions.

The petitioner were collaterals of the deceased, Allah Diwaya. They filed a suit to challenge the inheritance mutation and claimed that they were also entitled to their due share in the estate of the deceased. The case was defended by the daughter, the children of another daughter and sister of the deceased along with their subsequent transferees. According to Shia law of inheritance, they were liable to be concluded in the presence of the deceased children. The trial court concluded, from the evidence adduced that deceased professed Shia fiqh and hence, his estate had to be distributed according to that law. The court dismissed the suit while observing that the petitioner, being collaterals were not entitled to inherit from the estate of the deceased.

The petitioners assailed the decision in the first appellate court and thereafter in the high court. Both courts dismissed their appeals, therefore, the brought the matter before the Supreme Court. The petitioner argued that the deceased was the follower of the Sunni School of thought and his estate ought to have been distributed in accordance with Sunni law. The supreme Court, while referring to the categories of legal heir of Shia law mentioned in Mulla *Principle of Mahomedan Law*¹⁸¹ concludes that the petitioners would not inherit from the estate of the deceased. The mutation in favour of one daughter and another daughter children to the extent of 2/3 and the remainder 1/3 for the surviving sister was a legally accurate distribution of the estate. This was so because after awarding the prescribed share to the daughter and the children from another daughter, the remainder 1/3 had to be given to the sister. According to Sunni law, a sister is converted into a residuary in the presence of daughter provided the surviving collaterals are remoter in their degree of relationship with the deceased.

The Supreme Court was right in its conclusion that the petitioners were not entitled to anything from the estate in either situation, However, there was an important point with respect to Shia law of inheritance that the court misconstrued. According to Shia law, a brother and a sister do not inherit in the presence of a deceased children irrespective of their gender.¹⁸² In this case, the surviving sister who had inherited 1/3 of the estate was not entitled to that share had the case been decided correctly. The reminder ought to have been reverted to the daughter and the children from another daughter under the principle of *Radd (return)*. This is so because the children (son, daughter, and their children) of a deceased falls in class 1, while a sister is placed class 2, and in the presence of legal heir from class 1, the legal heir in class 2 and 3 are excluded and deprived of any share. Both court and the parties missed this point and hence, the sister was successful in retaining the reminder 1/3 of the estate.

Chaudhry Muhammad Boota Vs Bano Begum 2003 CLC 485 Lahore,

In this Case, the contest was between a brother and a sister, and the brother claimed the entire property to the exclusion of his sister on the basis of an alleged gift made by his mother. The court observed that mothers are ordinarily much more concerned about the welfare of their

¹⁸¹ Dinshah Fardunji Mulla, “*Principle of Mahomedan Law*” Thacker & Company Esplanade Road, Bombay, 1905, online access;[https://hostnezt.com/cssfiles/muslimlaw/Principles%20of%20Mahomedan%20law%20By%20D.F%20Mulla%20\(Full\).pdf](https://hostnezt.com/cssfiles/muslimlaw/Principles%20of%20Mahomedan%20law%20By%20D.F%20Mulla%20(Full).pdf)

¹⁸² S.A. Cheema, “*Shia Law and Sunni Law of Inheritance; A Comparative Analysis*”, Pakistan Journal of Islamic Research, Pp 69-82, V-10, 2012.

daughter and are not expected to deprive them of their share in inheritance without having exceptionally strong reasons. Since such extraordinary strong reasons did not exist to satisfy the judicial conscience as to the disinheritance of the daughter, the petition was dismissed by court.

Dur Muhammad Vs Abdul Sattar 1996 CLC 1596 Lahore.

Where parties were neither co-heirs nor co-sharers and it was proved that the defendants had been in possession of the land in question right from the death of the deceased landowner some forty years ago and his inheritance mutation was also attested in their favour to the exclusion of the plaintiff, the plaintiff suit filed after four decades was held to be barred by limitation.

Kullu Vs Faizi 2015 YLR 2014 Lahore.

In the presence of sharers, an estate of a deceased cannot devolve upon distinct kindred rather the same would return to the sharers under the principle of return (*Radd*). In this case, the deceased was survived by his mother (sharer) who would get 1/3 share out of his legacy while the remaining 2/3 share in the absence of any other residuary would revert to her to the exclusion of all distant kindred.

3.4 Islamic Laws views on Child Maintenances

The Islamic law defines Nafaqah (Maintenance) as a child's entitlement to care during their minor ages because they are reliant on their father.¹⁸³ Fathers have a distinct responsibility to support their children and spouses, in addition to providing maintenance for his wife, and children, even if their children live with their moms, or individually.¹⁸⁴ The legal rights of a child to inheritance, guardianship and maintenance are determined by the validity of their Nasab (lineage). The rights of maternity and paternity are among those granted by Nasab, paternity is founded on legality, and that's the basis for all other rights including

¹⁸³ Mohsina Munir, Tahira Abdul-Quddus, "Provision of Nafqah Right to Child: The Islamic Wisdom and Implementation in Pakistan", Journal of Islamic Thought and Civilization, Vol-08, Issue-01, pp, 167-177, March 2018.

¹⁸⁴ Dr. Mudrasa Sabreen, *Maintenance of the Child in Pakistan: A Much-Needed Legislation*, Sheikh Ahmad Hassan School of Law. Accessed online <https://sahsol.lums.edu.pk/node/12888#:~:text=Conclusion-,Under%20Pakistani%20law%2C%20the%20father%20is%20responsible%20for%20paying%20maintenance,his%20legitimate%20and%20illegitimate%20children.>

maintenance.¹⁸⁵ A child's legitimacy is proven when it is born into an irregular or lawful marriage (but not during a void marriage), father is responsible to make guarantee that only children born of marriage, not children born of adultery, are preserved. The father has no legal authority over the illegitimate child, its only mother's responsibility to raise it; for an illegitimate child, the state, maternal relatives or the mother responsible for custody.¹⁸⁶

The Islamic law mandates that fathers care for their children unless the child's best interests demand otherwise, depending on his financial situation, the father is responsible to paying for the family. From birth to maturity, a child's costs include those for food housing, clothes, a nanny or nurse and other needs of children.¹⁸⁷ Father have a duty to do this by law and by religion. While there is consensus among Muslim jurists about the need to preserve indirect descendants, there is disagreement over the retention of direct descendants. The majority of jurist four Muslim schools, Hanafi, Maliki, Shaffi, and Hanbali, hold that maintenance can be awarded to both direct and indirect descendants.¹⁸⁸ The Maliki school maintains that grandchildren are not entitled to support; maintenance is only owed to direct descendants. Financially capable people, regardless of their earning level, have a duty to support their parents and children. Because religious differences forbid inheritance and maintenance, it is imperative that the one receiving assistance and the one giving it are followers of the same faith.

The father must meet certain conditions in order to be responsible for maintaining the children. The first requirement is child poverty, if a child earns a sizable income on their own, fathers are exempt from paying child support, unless someone is in need of maintenance, one person should not be obliged to provide for another. Secondly, due to age or physical infirmity, the child must be unable of supporting themselves either intellectually or physically. Regardless of age, a father is responsible for his minor sons if he is unable to support them financially.

¹⁸⁵ Muhammad Zubair Abbasi & Shahbaz Ahmad Cheema, *"Family Laws in Pakistan"* Book, Chapter 7, *"Guardianship, Custody, and welfare of minors"* page No. 218-256, published by Oxford University Press, Karachi, 2018.

¹⁸⁶ Dr. Muhammad Munir, *"Maintenance of the Wife and Children in Islamic Law and Pakistani Legal System: An Appraisal"* International Islamic University Islamabad. Available at SSRN: <https://ssrn.com/abstract=4330754>

¹⁸⁷ Ibid,

¹⁸⁸ Suryansh Singh & Gautam Badlani , *"Schools of Muslim Law"*, October 2023, online access; <https://blog.ipleaders.in/schools-of-muslim-law/>

Thirdly need is that the father should be well-off or able to support his family. Adults who are self-sufficient are responsible for their own maintenance.¹⁸⁹

In General, legal scholars agree that fathers have the responsibility of raising their male children until they reach puberty, while they are also responsible for raising their female child's until they come of adulthood and get married.¹⁹⁰ In the case of a divorce, the daughter father is now obligated to provide for her maintenance; but upon the dissolution of the marriage, her husband takes on this responsibility.¹⁹¹ In most cases, a parent cannot legally make his daughter work for wages in this kind of situation. However, the father will not have to pay for her maintenance if she earns money within Shariah limits. When a boy reaches puberty, his only option is to receive maintenance if he is mentally or physically disabled or enrolled in school.¹⁹² Except in cases of Maliki, before maintenance claims are not permitted since maintenance is determined by the beneficiary current requirements.

3.5 Pakistani Laws views on Child Maintenance

In Pakistani law, a father is largely responsible for providing maintenance for his children. The maintenance not define the bill, but some law precedents indicate that it covers all costs that support the child's mental and physical health, such as clothes, food, shelter, and other essentials.¹⁹³ These precedents of maintenance are not exhaustive and does not apply in all situations. The child maintenance was covered in sections 488-490 of the code of criminal procedure Act. Fathers have a legal responsibility to provide maintenance for their wife and children, whether they are their own children or adopted children, as stated in section 488. The monthly maintenance income was limited 400 rupees, as per the provisions of this section clause. If maintenance instruction from the court were not followed by any person, imprisonments and fine would occur against him or her. The magistrate of first class has the

¹⁸⁹ Rohanee Machae & Abdul Basir Mohamad, "Children Maintenance: The Rights in Islamic Family Law and the Law of Thailand", Mediterranean Journal of Social Sciences, MCSER Publishing, Rome-Italy, Vol-6, No. 4, July 2015.

¹⁹⁰ Case Study, *Chaudhry Muhammad Bashir Vs Ansarun Nisa* 2012 MLD 1394 Lahore, (A father is to maintain unmarried adult daughters).

¹⁹¹ Case Study, *Muhammad Ali Vs Judge Family Court, Depalpur* 2010 YLR 520 Lahore, (An unmarried daughter who refused to marry according to the wishes of her father is entitled to be maintained by him).

¹⁹² Mohsina Munir, Tahira Abdul-Quddus, "Provision of Nafqah Right to Child: The Islamic Wisdom and Implementation in Pakistan", Journal of Islamic Thought and Civilization, Vol-08, Issue-01, pp, 167-177, March 2018.

¹⁹³ *Ibid.*

authority to rule and issue decrees relating to the enforcement of maintenance rights under sections 489 and 490 of the code of criminal procedure Act.¹⁹⁴

As an alternative, section 5 declared that, a judge may preside over a family court in accordance with West Pakistan Family Court Act 1964. Maintenance orders against father and husbands who fails to make monthly payments can be issued through civil and criminal procedure acts of Pakistan. The repeal of these clauses means that only the Family court Judge may make decisions about maintenance, rather than the first clause magistrate.¹⁹⁵ In case that statute law is lacking, the superior courts will use law established in case law on these matters.

In accordance with family court act, section 17-A a minor's guardian is required to file a maintenance claim.¹⁹⁶ If all relevant maintenance related information documentation is included in the complaint when the lawsuit begin, the family court judge may decide interim monthly maintenance as of the defendant's first appearance date.¹⁹⁷ The defendant defence is struck off on the fourteenth day of each month if maintenance is not paid by the fifteenth day of the next month. The family court will then decide the matter based on the plaint and other records. The family court has the authority to determine a larger maintenance payment than what was asked for in the plaint, depending on the situation and the passage of time. The maintenance amount will increase annually, if the court does not order a particular percentage increase, it will automatically increase the maintenance that it has determined by ten percent. The court may order to any department to find and calculate with proof documentation of the defendants' assets and estate the required amount of maintenance.¹⁹⁸

Cases Studies

Khalid Bashir Vs Shamas-un-Nisa 2015 MLD 11 Lahore, (A child is be maintained by the father even though the mother earns livelihood).

¹⁹⁴ The code of Criminal Procedure Act 1898, section, 488, 489 and 490 for protection of child maintenance.

¹⁹⁵ Section 5 of the West Pakistan Family Courts Act 1964.

¹⁹⁶ The West Pakistan Family Court Act 1964, following new section 17(A) was inserted by the Family Courts (Amendment) Ordinance 2002 (LV of 2002) and substituted by the Family Courts (Amendment) Act 2015 (XI of 2015), accessed online; <https://molaw.gov.pk/SiteImage/Misc/files/THE%20WEST%20PAKISTAN%20FAMILY%20COURTS%20ACT%2C%201964.pdf>

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid*, 17(B).

Syeda Adrish Vs Syed Anwar-ul-Haq PLD 2011 Lahore 569, (An unwilling wife without a lawful excuse could not recover past maintenance.)

Ali Haider Vs Syed Muhammad Asghar Shah 2015 YLR 511, (A father is bound to maintain his children till they attain the age of majority in case of a son and till her marriage in case of daughter. Law does not debar children to claim maintenance allowance from their father even after attaining the age of majority. However, if children after becoming major have their independent sources of income, then the father is not bound to maintain them).

Ali Adnan Dar Vs Judge Family Court PLD 2016 Lahore 73, The family court has power to pass interim maintenance order at any stage of suit. Such an order is normally passed after the filing of a written statement by defendant.

Muhammad Najeeb Vs Talat Shahnaz 1989 SCMR 119, (When an application filled by an ex-wife for maintenance for the period when the wedlock was intact and also for the *Iddat* period, she would be covered by the word ‘wife’ as contained in section 9 of the Muslim Family Law Ordinance).

4. Pakistan Commitment to International Laws Connected to Child’s Rights

As part of its international commitments, Pakistan has participated in a variety of international treaties related to child rights. Among its participation in key international treaties, particularly those related to child rights, are; Convention on the Rights of the Child (CRC), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention on the Rights of Persons with Disabilities (CRPD).

The children's have rights to civil, political, economic, social, and cultural rights are guaranteed under the CRC, and the right to survive and develop, it emphasizes respect for the child's views and the best interests of the child. The Pakistani government ratified the Covenant on the Rights of the Child on 12 November 1990 along with a reservation, which was withdrawn on 23 July 1997, according to this, the states: “All provisions of the Convention shall be interpreted in accordance with Islamic principles of law and ethics”.¹⁹⁹ Furthermore, the first two optional

¹⁹⁹ Khalid Rehman Khan, & other, “The Relationship of Child Protection Rights Observance with the Students' Level of Satisfaction at Secondary School Level”, *Globe Social Science Review*, Vol-5, No. 4, pp. 34-41, December 2020.

protocols to the CRC Convention have also been ratified by Pakistan. The first Optional Protocol to the UN Convention on the Rights of the Child on the involvement of children in armed conflict was adopted and entered into force on 12 February 2002. The government of Pakistan ratified the Optional Protocol with one declaration under article 3(2).²⁰⁰ The Second Optional Protocol, Pakistan ratified the CRC on July 5, 2011 concerning child prostitution, child exploitation, and child pornography.

As a condition of signing the ICCPR, the states must respect the civil and political rights of individuals, including the right to life, the right to freedom of speech and assembly, the right to fair trial, and the right to freedom of assembly. In June 2010, Pakistan became a state party to the ICCPR. Pakistan's general reservation against the ICCPR that is as follows; *"The Government of the Islamic Republic of Pakistan reserves its right to attach appropriate reservations, make declarations and state its understanding in respect of various provisions of the Covenant at the time of ratification."*²⁰¹ According to Article 3 of the ICCPR, international human rights standards are to be realized indiscriminately for civil and political rights, whereas article 25 provides for equal rights and opportunities, equal access to public services and equal voting rights without distinction.²⁰²

Among the rights protected by the ICESCR are the rights to education, the right to health, and the right to a standard of living adequate to one's needs. In April 2008, Pakistan ratified the international covenant on economic, social, and cultural rights, but with one reservation; *'To realize progressively the rights recognized in the present Covenant, Pakistan will use all*

²⁰⁰ The following are the details:

According to article 3(2) of the optional protocol to the convention on the rights of the child related to the involvement of children in armed conflict, the Islamic Republic of Pakistan declares that:

- A) Pakistan's armed forces recruit personnel who are sixteen years of age or older.
- B) Armed forces personnel are only permitted to serve in combat areas after they reach the age of eighteen.
- C) It is a purely voluntary process through which the Pakistani armed forces are recruited based on merit and without any need for force or coercion.

Recruits are required to present National Database and Registration Authority's B-Form as proof that they have reached the minimum age required by law to be recruited.

²⁰¹ The provisions of this law are subject to the requirements of the Pakistani Constitution and Sharia Laws; for more details see online https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=en&mtdsg_no=IV-4&src=IND#EndDec.

²⁰² Article 3 of ICCPR: "It is the commitment of the State Parties to the present Covenant that equal rights are provided for men and women in the enjoyment of all their civil and political rights".

Article 25 of ICCPR: "It is the right and opportunity of every citizen to be treated equally, without distinction or unreasonable restrictions as described in article 2;

A) To participate directly or through a representative freely chosen by oneself, Elections to which a universal and equal suffrage shall be guaranteed as well as secret balloting to guarantee the free expression of the electors' will at genuine periodic elections.

- B) The right to access the public service in his country on an equal basis.

appropriate means available to it in order to maximize its resources.”²⁰³ It has not been ratified by Pakistan the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which establishes the Committee's authority to receive and consider communications concerning complaints of individuals against the violations of economic, social and cultural rights as guaranteed by the Covenant.

A national action agenda is set out to end discrimination against women by defining what constitutes discrimination. A comprehensive set of initial, first, second, and third periodic reports Pakistan was submitted to the UN on August 3rd, 2005, and fourth on 16 June 2011 and fifth on 9th October 2018.²⁰⁴ When the CEDAW Committee was discussing Pakistan's possible accession to the Convention in 1984, the initial reservation that Pakistan proposed and presented was as follows; To the extent that the CEDAW's articles and sub clauses do not contradict the teachings of the Holy Quran, the Government of Pakistan will ratify the Convention, with the Government of Pakistan making the sole determination of whether such repugnancy exists.²⁰⁵ After the existing state parties to CEDAW at that time, especially Austria, Norway and Sweden, strongly critiqued and rejected the Pakistan reservation, Pakistan proposed and submitted the following modified reservation text to CEDAW committee in response to their criticism; *“The accession by [the] Government of the Islamic Republic of Pakistan to the [said CEDAW] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan”*.²⁰⁶

Moreover, the global movements for education emerged in the 1990s that pushed for Right to Education. In the aftermath of the Jomtien Conference,²⁰⁷ the call for Education for All became a global movement. The Declaration for Education for All of Jomtien was also signed by Pakistan, which focused primarily on primary education, early childhood education and literacy. These acts were not implemented despite legislation in place because business rules were not in place. The Pakistani government signed off on the Education for All Dakar

²⁰³The ICESCR reservation, available Online Accessed on 20/Dec/2022 at https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4#EndDec

²⁰⁴The United Nation CEDAW, *“Concluding comments of the Committee on the Elimination of Discrimination against Women: Pakistan”*, Thirty-eighth session, 14 May to 1st June 2007, <https://documents.un.org/doc/undoc/gen/n07/376/08/pdf/n0737608.pdf?token=Ovy2x3Zgoh3PxI271Z&fe=true>

²⁰⁵ Shaheen Sardar, *“Gender and Human Rights in Islam and International Law”* Book published on 01 Jan 2000, Accessed online <https://brill.com/display/title/11410>

²⁰⁶ *Ibid.*

²⁰⁷ World Declaration on Education for All, Jomtien, Thailand (1990), Accessed on December 28, 2022. https://bice.org/app/uploads/2014/10/unesco_world_declaration_on_education_for_all_jomtien_thailand.pdf

Declaration and participated in the Education World Forum in Dakar, Senegal, in 2000 as a way to reaffirm its commitment to the Jomtien Conference.²⁰⁸

According to the VCLT, a reservation to a treaty cannot be general in nature, as argued by the state parties objecting to Pakistan's reservation. So, it is necessary for state parties to specify their reservations sufficiently in order to ensure that they do not affect national laws that will be affected by such reservations.²⁰⁹ Additionally, they must specify in the same manner the provisions of both the said treaty and the national laws affecting such reservations. In the view of the objecting state parties, Pakistan's reservation is of a general character and refers in general to national law.

The purpose of this discussion is to analyse Pakistan's relationship with the aforementioned international human rights treaty regimes based on its cross-cutting character of applying and realizing international human rights standards indiscriminately. An interesting, yet complicated link exists between the inclusion of and observation of human rights law provisions within Pakistan's domestic laws, policies, and national practices, from the standpoint of Pakistan's reservations to those international laws and their interaction with the above-mentioned article 2-A and Article 227 of the Pakistani constitution. It is written in article 2 and 227 of the Pakistani constitution that "Islam will be the state religion" and "No law shall be passed against Quran and Sunnah".²¹⁰ Based on the above analysis, Pakistan always ratifies those parts of international human rights treaties that don't require significant efforts to comply with the legal obligations arising from the treaty. It always avoids its legal obligations when it comes to implementing means and methods that are more robust and effective by placing general and vague reservations against international human rights treaties, or by abandoning

²⁰⁸ World Education Forum in Dakar Senegal, 2000, assessed on December 28, 2022, at <https://press.un.org/en/2000/20000411.soc4543.doc.html>

²⁰⁹ Zaheer Iqbal Cheema, "Law on Reservations to Human Rights Treaties: Historical Development and Its Prospects", *Academic Journal of Interdisciplinary Studies*, Vol-10, No. 5, September 2021, online accessed; <https://doi.org/10.36941/ajis-2021-0129>

²¹⁰ The Constitution of Pakistan, 1973, accessed on 25 December 2022. <https://www.refworld.org/docid/47558c422.html>. According to article 2 and 227 of the Enforcement of the Shariat Act 1991, Islamic Law sits higher than other general laws of the country and international law, such as human rights obligations under international law. The full text of the Constitution of Pakistan 1973 article 2, and 227 and objective resolution is as following;

Article 2, Islam shall be the state religion of Pakistan.

Article 2A, the principles and provisions set out in the Objective Resolution... are hereby made substantive part of the constitution and shall have effect accordingly. The Objectives Resolution to form part of substantive provisions.

While Objective Resolution 1949 reads as following;

"The principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be full observed".

Article 227, All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Hol Quran and Sunnah, in this part referred to as the Injunctions of Islam, and no laws shall be enacted which is repugnant to such Injunctions.

the ratification of protocols that could hold it responsible for human rights violations before the committees concerned through individual complaints.

5. The Compatibility of Pakistan Domestic Laws with the Mentioned Standards on the Protection Right to Education

The Pakistan education statistics 2016-2017 indicate that there are over 22.8 million children in Pakistan between the ages of 5 to 16 year, who do not attend school. The Out of School Children's population is 22.8 million, of which 10.6 million are boys and 12.2 million are girls.²¹¹ The different age's children's are out of school such as primary schools ages children's more than 5 million (Age 5-9 Years), middle schools ages children's are 6.5 million (Age 10-12 Years), and secondary schools ages children's 11.2 million (Age 13-16 Years). According to the 2017-18 statistics reports, the number of schools is highest at the primary level (172.2 thousand schools) followed by the middle level (46.7 thousand schools) and the secondary level (30.9 thousand schools), because some middle and secondary schools aren't available in some areas, children have less education access to them.²¹²

The statistic report shows enrolled student 57% attend in public schools, while 43% attend in private schools. Although this is true, private schools have a larger percentage 51% of teachers while in public school teachers' percentage is 49%.²¹³ Also a gender-wise analysis, 56% were boys and 44% of students were girls, these percentages translate into 22.9 million primary school students, 7.3 million middle school students, and 3.9 million secondary school students. According to the Pakistan Technical and Vocational Institutes Council, 433.2 thousand students (an increase of 25.6% from 2016-17) were enrolled in 2017-18.²¹⁴ The Technical and Vocational based education's demand is increasing. Similarly, 83.2% of surveyed children within this age group attended government schools.²¹⁵

²¹¹ The Pakistan Education Statistics (2016-17), Academy of Educational Planning and Management (AEPAM), 2018), (Islamabad: National Education Management Information System (NEMIS), and also the UNICEF Report, online access; <https://www.unicef.org/pakistan/education>

²¹² Ibid.

²¹³ Pakistan Education Statistics 2016-17, pp 4-5, online access: <https://pie.gov.pk/SiteImage/Publication/PES%202016-17.pdf>

²¹⁴ Waqas Ahmed and other, "Special Section: Technical and Vocational Education and Training (TVET) in Pakistan: Issues and Challenges for Productivity Enhancement" The State of Pakistan's Economy, online access; <https://www.sbp.org.pk/reports/quarterly/fy20/Third/Special-Section.pdf>

²¹⁵ Ibid.

In the aftermath of the Jomtien Conference, education foundations were established in all provinces and the National Education Foundation established at the federal level, along with compulsory primary education legislation on provincial levels. The Pakistan Education Sector Action Plan 2001/02 and 2005 was devised in response to these international developments, and it includes the action plans for the Education for All and Millennium Development Goals.²¹⁶ Exactly seven months before the 18th Amendment passed, another National Education Policy was finalized, and many principles relating to NEP 2009 implementation were dislodged by the 18th Amendment. In spite of this, all provinces and the federal government agreed to keep the National Educational Policy (NEP) 2009, while incorporating the needed changes for the 18th Amendment to govern education.²¹⁷ Pakistan's education systems face many challenges, such as access and participation are limited and inequitable, high poverty levels in certain disadvantaged areas leading to high out of school children, high dropout rates in early grades due to limited investments in early childhood education, and programs offering non-formal and accelerated learning are of low quality.²¹⁸

Additionally, in 2018, the Annual Status of Education Report has collected data on the education indicators and learning outcomes of children in five districts of Punjab and Sindh.²¹⁹ Approximately 3000 households were randomly selected, and parents and primary caregivers were asked about their child's health, functioning, and education. The total number of 977/1264 children with disabilities (977 children) were found to be enrolled in school. The majority of students who were enrolled in a school already attended a mainstream school, including 18.73% who attended a special education school.²²⁰

In this regard, mainstream schools are questioned regarding their capability to facilitate learning for children with disabilities and to ensure their inclusion. This example illustrates the failure of the state to ensure education access by providing appropriate infrastructure and human resources on the one hand, and by removing cultural and religious stereotypes that impede education on the other.

²¹⁶ Muhammad Zakria Zakar & others, "Universal Primary Education in Pakistan: constraints and challenges" A Research Journal of South Asian Studies, Vol. 28, No. 2, pp. 427-444, December 2013, online access; <https://sasj.pu.edu.pk/9/article/view/770/769>

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*

²¹⁹ Annual Status of Education Report (ASER) 2018, Pakistan, online access; https://aserpakistan.org/document/aser/2018/reports/national/ASER_National_2018.pdf

²²⁰ *Ibid.*

5.1 Pakistan's Constitution Provides Free Education for Children's

The Constitution of Islamic Republic of Pakistan 1973, committed the State to eradicating illiteracy and providing free education for children up to the end of secondary education. The Pakistani constitution guarantees the right to education in two articles. According to Article 37-B of Chapter 2 of the Constitution, this determination is as follows; *“The State shall remove illiteracy and provide free and compulsory secondary education within minimum possible period.”*²²¹

The constitution took on another dimension, when Article 38-D was created. It states that; *“The State shall provide basic necessities of life, such as food, clothing, housing, education and medical relief, for all citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment.”*²²²

In April 2010, the 18th amendment to the Constitution 1973 included, among other things, the enshrinement of Free and Compulsory education for all children aged 5 years to 16 years as a “Fundamental Right” for every citizen of Pakistan, as stated in Article 25-A, which states: *“The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law.”*²²³

According to legal international human rights standards, the right to education implies both positive and negative obligations for the state parties from the perspective of legally binding. Three aspects of the right to education can be distinguished here. The first is accessibility to education, the second rights within education, and the third is rights through education, that is, using education to benefit all other human rights. It is still difficult for Pakistani children to access education. The governments are also obligated to make education accessible through the provision of infrastructural and human resources, as well as the removal of cultural and religious barriers and the right to education barriers. Despite Pakistan's obligations to discourage and eliminate religious, cultural and social prejudices and attitudes that impede education, that obligation remains unfulfilled.

²²¹ The Constitution of Pakistan 1973, Article 37(b).

²²² The Constitution of Pakistan 1973, Article 38(d).

²²³ The Constitution of Pakistan 1973, Amendment 18th 2010, Article 25(A).

Cases Studies

In case *Maher Gul vs Government of Baluchistan Education Department* case were held at Baluchistan High Court.²²⁴ In this case Maher Gul submitted a petition against provincial government about article 25A stipulates that children in Baluchistan have a right to free and compulsory education. In the petition, there were a number of issues prevalent in the province, including ghost schools, unpublished contracts for repair and renovation of schools, and collusion between officials in the education department. Government inaction on these issues demonstrates a lack of concern about fraud and pilferage. Consequently, the Basic Right to Free and Compulsory Education was being denied to a substantial number of children in the province. As instructed by the Baluchistan High Court, all schools must be photographed and GPS coordinates determined, the Provincial Government is required to record all school details in the revenue record, each school's teachers' names should be displayed prominently, disciplinary action should be taken if district education officers and revenue officers do not fulfil their responsibilities, a website containing the aforementioned information should be launched, and requisite resources should be provided by the Provincial Government for storing and displaying it.

In case *Zubair Ahmed Khaskheli vs Federation of Pakistan*, in order to ensure children are aware of fundamental rights, a petition was filed seeking their inclusion in school curricula.²²⁵ Social and economic well-being are promoted by articles 25A, 37(a)(b)(c), and 38 when they are read together. It would remove illiteracy, raise awareness and improve basic quality of life for future generations if they were raised with knowledge of their Fundamental Rights. The Pakistani government is a signatory of the Universal Declaration on Bioethics and Human Rights, which requires that ratifying states give citizens information about their human rights. From academic year 2015 onwards, the Sindh High Court ordered the Sindh Government to make fundamental rights/human rights a compulsory subject in higher secondary education.

In case *Fakheryar Khan vs Agriculture University Peshawar* response to the petition, the respondent University granted the petitioner provisional admission.²²⁶ According to the prospectus, admission was rescinded when the petitioner entered his date of birth, which, as a result, disqualified him from admission. In Article 25A, children aged 5-16 are entitled to free

²²⁴ Case; *Maher Gul vs Government of Baluchistan Education Department* 2014, CLC 1810 Const. Petition 440 of 2011.

²²⁵ Case, *Zubair Ahmed Khaskheli vs Federation of Pakistan*, PLD 2015, Sindh High Court 118 Const. Petition 3210 of 2011.

²²⁶ Case, *Fakheryar Khan vs Agriculture University, Peshawar*. PLD 2016 Peshawar 266, Writ Petition 1085-P of 2015.

and compulsory education. In its ruling, the Peshawar High Court concluded that the university had the right to set an age threshold based on principles of ‘reasonability’. The Court refused to provide relief to the petitioner based on precedent, and dismissed the case.

5.2 Right to Free Education Conventions and Practices in Pakistan

The Universal Declaration of Human Rights, which was proclaimed and adopted by the United Nations General Assembly in 1948, established Free and compulsory elementary education for all humans. The document articulated, for the first time the rights and freedoms which are inalienably owed to every human being. This document, whose signing states include the Islamic Republic of Pakistan, strives to protect all human beings from discriminatory treatment in this universe from the hands of governments or institutions.²²⁷ According to Universal Declaration of Human Rights article 26, free education is a right recognized as follows;²²⁸

1. *Education is a right that belongs to everyone. The fundamental and elementary levels of education must be free. There shall be a compulsory elementary education. It is the duty of the government to ensure equal access to technical and professional education as well as higher education.*²²⁹
2. *Human rights and fundamental freedoms must be promoted through education in order to develop the human personality to its fullest potential. All nations, groups, and races shall be encouraged to understand each other and to tolerate one another, and the United Nations will be encouraged to maintain peace through its activities.*²³⁰

Furthermore, the UN General Assembly adopted the Convention on the Right of Children's on November 20, 1989, and the Government of Pakistan ratified it on November 12, 1990, explicitly recognizing education as a fundamental human right, and the following words are encapsulated in Article 28(1) of that same Convention;²³¹

²²⁷ Shahin Shah Babar Khan, “Challenges to Promotion of the Fundamental Right to Education in Pakistan”, Journal of Educational and Social Research, Vol. 3(2), May 2013.

²²⁸ Article 26 of the Universal Declaration of Human Rights, accessed on 10th Jan 2023, online <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

²²⁹ *Ibid.* sub clause 1.

²³⁰ *Ibid.* sub clause 2.

²³¹ The UNCRC 1989, Article 28(1), accessed on 10th Jan 2023, online <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

1. *To ensure the progress and equality of opportunity in reaching this right, States Parties recognize the right of the child to education; in particular, they shall;*
 - A) *To ensure that all children have access to primary education;*
 - B) *Take appropriate measures, such as introducing free education and offering financial assistance in case of need, to develop different types of secondary education, including general and vocational education, and make them accessible and available to every child.*

5.3 Constitutional Enactment Implementing on Provincial Governments

According to Constitution of Pakistan 1973, Chapter 2, Principles of Policy, provides for free and compulsory secondary education.²³² Nevertheless, the right remained non justiciable. The Constitution of Pakistan 1973 (Eighteenth Amendment) Act was passed by Parliament in April 2010.²³³ By inserting Article 25-A, the amendment made it possible for children of 5 to 16 years to receive free and compulsory education in a manner specified by law under the Right to Education.²³⁴ It is now the responsibility of Parliament and provincial assemblies to legislate for compulsory education in their jurisdictions after the 18th constitutional amendment.

A) The Khyber Pakhtunkhwa Free Compulsory Primary and Secondary Education Act 2017

The Khyber Pakhtunkhwa Provincial Assembly recently passed Free Compulsory Primary and Secondary Education Act 2017, which aims to achieve this objective and to provide a mechanism for the delivery of free and compulsory primary and secondary education to all children in the Province of Khyber Pakhtunkhwa between the ages 5 to 16.²³⁵ The child's will receive free and compulsory education from the government, while parents must enrol their

²³² The Constitution of Islamic Republic of Pakistan 1973, Chapter two, "*Principles of Policy*".

²³³ Amendment 18th of the constitution of Pakistan 1973, accessed on 12th Jan 2023, online https://na.gov.pk/uploads/documents/1302138356_934.pdf

²³⁴ Article 25-A, added new sub-clause through 18th amendment in Constitution of Pakistan 1973.

²³⁵ The Khyber Pakhtunkhwa Act, No XII of 2017, accessed online; <http://www.pakp.gov.pk/2013/acts/the-khyber-pakhtunkhwa-free-compulsory-primary-and-secondary-education-act2017/>

children in school until they have completed a secondary education, with the exception of a reasonable excuse if they cannot.²³⁶

In the case of illness, infirmity or mental incapacity of a child, when the school attendance authority determines, child to attend school, the child receiving education from another source which is considered adequate by the authority, and where there is no school within two kilometres of the child's home. Also, the act includes comprehensive provisions concerning the formation and responsibilities of the School Attendance Authority (SAA). There is also the option of establishing a 'Taleem Fund' where funds from philanthropists, alumni, etc. can be pooled and accessed by two School Attendance Authority members respectively.²³⁷

B) The Baluchistan Compulsory Education Act 2014

The Baluchistan Compulsory Education Act 2014 passed by the Provincial Assembly of Baluchistan. The Act expresses the government's determination to eliminate any obstructions that prevent children, especially female children, from obtaining an education, whether they be financial, physical or sociocultural.²³⁸ This Act repeals the Baluchistan Primary Education Ordinance 1962 as well as the Baluchistan Compulsory and Free Education Ordinance of 2013, as well as providing critical definitions for such terms as Child, Management Committee and Employer.²³⁹

According to this Act, parents are required to enrol their children in school until they have completed the highest level of education offered in the school, except when a reasonable excuse can be provided. If the child is unable to attend school because of mental or physical infirmity, the authority is satisfied by the level of education received by the child through another source, and the school is not available in the area where the child resides if the authority is satisfied by the standard of education. It is the responsibility of the parents to ensure that their children attend a special education school if they have mental or physical challenges. Furthermore, a school management committee must be formed with detailed duties assigned to it, and children

²³⁶ *Ibid.*

²³⁷ Mohammad Ashfaq, "KP govt finalises bill on free, compulsory education", Published in Dawn, January 30th, 2017, online access; <https://reliefweb.int/report/pakistan/kp-govt-finalises-bill-free-compulsory-education>

²³⁸ Baluchistan Compulsory Education Act 2014, passed by Baluchistan Provincial Assembly on 6th February 2014, accessed online; <http://emis.gob.pk/Uploads/ACT%20ON%20FREE%20AND%20COMPULSORY%20EDUCATION.pdf>

²³⁹ *Ibid.*

exempted from compulsory education because of a reasonable excuse are required to report their attendance to this committee.²⁴⁰ Additionally, the same committee must look after the facilities in schools, provide any missing amenities, and maintain a healthy educational environment. In the Act, the consequences for violating any of the rules outlined in this act are clearly stated, as is the procedure for forming a School Attendance Authority.

C) Punjab Free and Compulsory Education Act 2014

The Punjab's Provincial Assembly has passed the Punjab Free and Compulsory Education Act 2014.²⁴¹ It was introduced in the Punjab Assembly after it was promulgated by the Punjab Governor on 13th May 2014. Punjab passed an ordinance on November 10, 2014 making all children residing in Punjab between the ages of five to sixteen years are eligible for free and compulsory education, the implementation of which will be dependent on 'Rules of Business'.²⁴² Among the provisions of this Act is the right to free and compulsory education for all children from class one through ten, including vocational, non-formal, and a combination of these.²⁴³ The following are some of the duties;

- Ensure that all children receive free and compulsory education.
- Ensure that to prepare annual statements of admissions and retentions for all children enrolled in schools.
- Ensure that a record is maintained about all children under 16 in its jurisdiction in a prescribed manner.
- Is responsible for maintaining records of all admissions, attendance, and completions of education for all children under its jurisdiction.

It is also the responsibility of local authorities to ensure that the required number of schools is provided. A clear statement of the duties of parents concerning their child's compulsory education is provided in this Act. In addition, this Act allows schools to establish their own

²⁴⁰ Zubair Ahmed Chachar & others, "Enhancing Access and Quality of Secondary Education in Baluchistan: Identifying Challenges and Implementing Effective Solutions" Journal of Development and Social Sciences, Vol.4, No.3, September 2023, [http://dx.doi.org/10.47205/jdss.2023\(4-III\)27](http://dx.doi.org/10.47205/jdss.2023(4-III)27)

²⁴¹ The Punjab Free and Compulsory Education Act 2014, accessed online on 19th Jan 2023, <http://punjablaws.gov.pk/laws/2580.html>

²⁴² *Ibid.*

²⁴³ *Ibid.*

‘Taleem funds’, which can be contributed to by alumni, philanthropists, etc. Additionally, Private Schools are required to enrol ten percent of every class for free under the provisions of the Act. Also highlighted are provisions against capitation fees and screening procedures. Specifically, the Act prohibits expulsions and corporal punishments, and also explained in this Act are the duties of teachers.²⁴⁴

D) Sindh Right of Children to Free and Compulsory Education Act 2013

The Sindh Right of Children to Free and Compulsory Education Act 2013 was enacted by the Sindh Provincial Assembly. It contains 8 chapters and 30 articles, which define ‘Child’ from 5 to 16 years old, ‘Capitation Fee’, ‘Disadvantaged Child’, etc. Every child’s have a right to free and compulsory education regardless of their gender or race.²⁴⁵ Additionally, this Act covers out of school children, either because they did not enroll or dropped out, providing them with the same opportunities as enrolled students. As well as covering the duties of the government, to develop curriculum, provide facilities, and enabling learning environment.²⁴⁶ These are the provincial government's responsibilities follow;

- Ensure to provide free education for all children.
- Prevent discrimination against any child based on race, religion, gender or economic disadvantage.
- Ensure to provide proper infrastructure, libraries, laboratories, and so on.
- Ensure to provide training facilities and good quality education for teachers and students.

Furthermore, this Act outlines the role of parents and guardians in regards to their children's education and the necessity of teachers obtaining the necessary qualifications within a certain time frame. It is a requirement for private schools to provide free education to at least 10% of their student population, and proper registration of private schools is also required under the appropriate authority.²⁴⁷

²⁴⁴ *Ibid.*

²⁴⁵ The Sindh Right of Children to Free and Compulsory Education Act 2013, accessed online on 20th Jan 2023, <http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.XIV%20of%202013.pdf>

²⁴⁶ *Ibid.*

²⁴⁷ *Ibid.*

E) Islamabad Capital Territory, Right to Free and Compulsory Education Act 2012.

During the 2012 National Assembly session, the National Assembly of Pakistan passed the Right to Free and Compulsory Education Act 2012, for Islamabad Capital Territory.²⁴⁸ The Act recognizes and ensures that all children between the ages of five to sixteen years, regardless of gender, cultural, or ethnic background, will receive free and compulsory education in schools established by both the Federal Government and the Local Government in the Islamabad Capital Territory. The Act covers all of the Islamabad Capital Territory and defines terms such as ‘child’, ‘education advisory council’ and ‘appropriate government’. Governments are obligated under this law to provide free education to all children, to ensure that children from migrant families are admitted to schools, and to enforce compulsory education and graduation from such schools.²⁴⁹ According to article 3, to ensure the safety of children and teachers to and from school, to ensure no discrimination is committed against the disadvantaged child, to provide infrastructure, to establish the academic calendar, and to ensure good educational quality.²⁵⁰

In addition to provisions for out-of-school children, the act states that these children are to be enrolled and receive special training in order to be able to compete with their peers. Furthermore, this Act prohibits the denial of admission or expulsion and clarifies that capitation fees and screening procedures are illegal.

6. Addressing Gender Discrimination within the Society

The education system in Pakistan is characterized by substantial gender inequalities. The patriarchal society of Pakistan has a high level of discrimination against women, resulting in their low status in social, economic, and political aspects.²⁵¹ It is alarming that a large portion

²⁴⁸ Islamabad Capital Territory, Right to Free and Compulsory Education Act 2012, accessed online on 20th Jan 2023, <https://portal.mohr.gov.pk/wp-content/uploads/2021/03/Civil-Political-and-Economic-Rights-Federal-The-Right-to-Free-and-Compulsory-Education-Act-2012.pdf>

²⁴⁹ *Ibid.*

²⁵⁰ *Ibid.*, Article 3.

²⁵¹ Tazeen Saeed Ali, & others, “Perpetuation of Gender Discrimination in Pakistani Society: Results from a Qualitative Study Conducted in Three Provinces of Pakistan”, Journal of Research Square, March 25th, 2022, <https://doi.org/10.21203/rs.3.rs-1399382/v1>

of the country's population is illiterate, and this might be contributing to the lopsided economy of the country. A global gender gap report published in 2021, places Pakistan fourth on the list of countries with a lack of gender parity. According to the report, Pakistan ranks 152th out of 156 countries in terms of educational attainment. It is estimated that there is a 13% percent gender disparity in Pakistan's entire education system.²⁵² Furthermore, only 46.5% of women are literate, 61.6% have gone to primary school, 34.2% have completed high school, and 8.3% have gone to college.²⁵³ The number of government schools available to children is insufficient, or the ones that are available are not accessible. Rural areas of Pakistan suffer greatly from an acute lack of essentials such as power, water and other educational needs. Increasing gender inequality in education affects a family's socio-economic status. Consequently, gender disparities in educational achievement could stifle economic growth at the macro level by underutilizing human capital.²⁵⁴

Additionally, the government should revise its laws and norms in order to reduce the gender gap more rapidly. It can be said explicitly that women's education contributes to a wide range of social objectives, such as educating the next generation, reducing fertility, preventing child mortality and increasing child nutrition. Similarly, such social goals affect the economy in a positive manner, reducing poverty, human development, improving labour productivity, and eventually boosting economic growth.²⁵⁵ UNICEF estimates that 22.8 million children aged 5 to 16 years are out of school, with girls representing over 60% of these children.²⁵⁶ It would be beneficial for the government to build additional schools and train newly recruited teachers in order to combat the issue of school dropouts. Rather than allocating only 1.77 % GDP to education, the government should prioritize Education for All Children by allocating 9% of GDP rather than the current 1.77%, which does not satisfy education needs.²⁵⁷ In order to address the dire need for education, particularly for girls, the government should build state-of-the-art teacher training programs and facilities. It should ensure the implementation of these programs and facilities, and ensure that they are fulfilled and implemented effectively.

²⁵² Global Gender Gap Report, Publish by World Economic Forum, Geneva Swiss. March 2021. Accessed online https://www3.weforum.org/docs/WEF_GGGR_2021.pdf

²⁵³ *Ibid.*

²⁵⁴ Humaira Kamal Pasha. *Gender Differences in Education: Are Girls Neglected in Pakistani Society?* Journal of the Knowledge Economy, March 2023. Accessed online: <https://doi.org/10.1007/s13132-023-01222-y>

²⁵⁵ *Ibid*

²⁵⁶ The UNICEF Pakistan, accessed on 15th Feb 2023, <https://www.unicef.org/pakistan/education>

²⁵⁷ Kashif Abbasi, "Only 1.77pc of GDP spent on education last year" The DAWN Newspaper, published article on June 10, 2022, online access; <https://www.dawn.com/news/1693997>

In Pakistan, traditional dogmas and cultural customs prevent women from entering the workforce through education alone. Among the social factors leading girls to drop out is teenage pregnancy, while sons, especially those with tertiary degrees, are given priority in obtaining education.²⁵⁸ The implementation of measures to reduce household care obligations (such as free day care, and positive employment discrimination for women) will certainly boost women's economic participation. It is only through spreading awareness that these prejudices can be overcome. Moreover, public awareness and education efforts are needed to modify societal attitudes and customs discriminating against women. By promoting these efforts, women must convey their growing importance to their families and society as a whole.

7. Compatibility Situation with International Human Rights Standards from Administrative and Structural Perspective

The administrative and structural circumstances that call into question the conformity of international human rights norms are described below.

A) *The Treaty Implementation Cells*

Treaty Implementation Cells (TICs) were mainly formed at the Federal²⁵⁹ and Provincial²⁶⁰ levels to oversee the nation's compliance with its human rights legislation responsibilities. The Attorney General of Pakistan is in charge of monitoring and keeping eye and investigating them. A lack of coordination between the province and federal governments, together with capacity issues at the provincial level, affect treaty implementation cells with the exception of Punjab province. These difficulties are brought about by a lack of coordination, financial and human resources. According to the Federal Rules of Business, the Human Rights Divisions of Treaty implementation cells mandate encompasses a broad and varied range of functions that include oversight, implementation, review, legislation, advocacy, harmonization with international standards, awareness generation, compliance with treaty obligations, domestic

²⁵⁸ Kiran Mubeen, Marina Baig, "Adolescent Pregnancies: The case of Pakistan", Journal of Asian Midwives, Vol. 3, Issue. 2, 2016, online access; <https://ecommons.aku.edu/cgi/viewcontent.cgi?article=1043&context=jam>

²⁵⁹ The Government of Pakistan, "Human Rights Information Resource Portal" discussed the Treaty Implementation Cells, online access; <https://portal.mohr.gov.pk/governance/treaty-implementation-cells/>

²⁶⁰ The Provincial Government of Sindh, "Department of Human Rights" Treaty Implementation Cells, online access; <https://humanrights.sindh.gov.pk/Treaty-Implementation-Cell>

and international representation, redress for human rights violations, capacity building, coordination, administration of other human rights bodies, and social protection programs. The parliament monitors all matters as the country federal and highest legislative body, and takes human rights seriously, both federal and provincial committees have been established to handle the subject including social and legal elements.

B) The Merger of Tribal Areas Administered by the Federal Government with Khyber Pakhtunkhwa Province

On June 1st 2018, the 25th constitutional amendment was ratified combining the tribal territories that were formerly under federal administration with Khyber Pakhtunkhwa province. The tribal area of Pakistan has been added to the jurisdiction of Khyber Pakhtunkhwa High court and Supreme Court of Pakistan.²⁶¹ The 26th constitutional amendment bill 2019, gives the people living in the former FATA area more representation in the both provincial assembly and national parliament. However, the Khyber Pakhtunkhwa action ordinance 2019, which gives the military more authority to hold an accused person without charge or trial and expands their involvement in the combined area, is a step in the right direction. In 2019, the Peshawar High Court declared that this legislation is against the basic right of tribal area peoples and Pakistan constitution, but the judgement of Peshawar High Court was put on hold by the Supreme Court of Pakistan.

C) Fair Trial Rights and Access to Justice

It is the duty of states parties to provide the right of access to justice in order to safeguard and stop human rights breaches, but it can be difficult for children to access the legal system, particularly for young girls who labour in houses. The six essential components of the right to access justice are not being fulfilled in Pakistan; the availability of remedies for victims, the justiciability of the case, the quality of the justice system, accessibility and accountability of the legal system. These components are subject to violations. The International Human Rights standards are being violated by the use of a variety of extra judicial channels and methods in place of investigations and prosecutions of those who violate human rights, these include public

²⁶¹ The Constitution of Islamic Republic of Pakistan 1973, 25th amendment for tribal area combine with province of Khyber Pakhtunkhwa, (Chapter 3 Tribal Areas, Article 246), online access; [https://senate.gov.pk/uploads/documents/Constitution%20of%20Pakistan%20\(25th%20amendment%20incorporated\).pdf](https://senate.gov.pk/uploads/documents/Constitution%20of%20Pakistan%20(25th%20amendment%20incorporated).pdf)

memorials, justice commissions, pardons, apology, and guarantees of non-repetition.²⁶² The current multiple justice system alternative conflict resolution procedures, and out of court settlements are some of the problems that Pakistani girls encounter while trying to enter the legal system.²⁶³

8. The Approach of the Court's Cases Dealing with Child's Rights

The children's courts were established in Lahore Pakistan for the first time on December 19, 2017, in Peshawar on March 16, 2019, and in Mardan and Abbottabad on October 5, 2019. As part of the process of establishing the same court, the district Mohmand has been merged into Khyber Pakhtunkhwa as well as Quetta, Islamabad and Karachi. Currently, there are 10 to 12 reports of child abuse every day, so child courts are more important than ever before.²⁶⁴

The child protection courts have also been established as part of the Khyber Pakhtunkhwa Child Protection and Welfare Act 2010. Section 15(1) states; "The Government may, in consultation with the Peshawar High Court, notify different Courts of Sessions as Child Protection Courts in accordance with this Act". It is essential to establish children courts to protect children's interests, survival and dignity.

The Child Protection and Welfare Commission reported 30,000 cases of children facing risks in twelve districts in Khyber Pakhtunkhwa between 2011 and 2019. In this data, I do not include cases that have not been reported or those outside of the districts in question. As of the first day, the Peshawar children's court 60 cases, Mardan 80 cases, and Abbottabad 45 cases.²⁶⁵ According to the Peshawar High Court's press briefing on January 4, 2019, 450 cases related to child protection have been disposed of between March 2016 to 2019.²⁶⁶ It is a very impressive and important argument for the establishment of special courts for children.

²⁶² Nadir Hussain Jamali & others, "A Comparative Analysis of the Right to a Fair Trial in Pakistan in Context with ICCPR's Set out Standards" Beijing Law Review, Vol.15 No.1, March 2024, online access; <https://www.scirp.org/journal/paperinformation?paperid=131687#:~:text=The%20following%20is%20a%20reproduction,process%20of%20law%E2%80%9D%20as%20it>

²⁶³ Khyber Pakhtunkhwa's Jirga system, as well as Punjab's Panchayat system, disseminate justice, decide cases, and promote the so-called swift justice system, which is based on religious, indigenous and community laws and practices, customary, preventing access to justice for most Pakistanis.

²⁶⁴ Imran Takkar, "Child courts: a social and legal requirement", Daily Time Newspaper, January 21, 2020.

²⁶⁵ *Ibid.*

²⁶⁶ *Ibid.*

In spite of the fact that judicial systems are progressive in nature, some segments of them maintain a patriarchal mindset. Although courts have the discretion and the room to do so, the case law indicates they have frequently failed to protect the human rights of children despite having the legal authority to do so. Islamic ethical principles were not hesitated to be used by the comparatively liberal appellate courts in the 1990s as a basis for expanding judicial review powers. As can be seen in the public interest cases, writ petitions, and human rights petitions, this activism was clearly evident. Whenever Pakistani courts dealt with human rights and rule of law, they applied shariah legal principles as the foundation where they analysed the substance for compliance and consistency with the shariah. In this way, the superior judiciary validated the gender discriminatory cultural practices by deciding the cases based on the principles of Shariah law.

9. Conclusion

In summary, Pakistan's domestic laws, regulations, and practices pertaining to children's right to education have advanced significantly in the past several years, but issues still need to be resolved. Children between the ages of five and sixteen are guaranteed the right to free and compulsory education by the nation's Constitution, specifically Article 25-A. A number of programs and regulations, like the Ehsaas Program and the National Education Policy, are designed to increase minority participation and enhance access to education, particularly for underrepresented groups like females and rural populations.

The government provides financial assistance and incentives to help girls enrol and persist in school through programs like the Female Stipend Program and the Waseela-e-Taleem Program. In addition to the United Nations Convention on the Rights of the Child, Pakistan is a signatory to other international conventions and agreements that protect children's right to education. Ensuring equitable and inclusive quality education for all is a priority of Sustainable Development Goal 4, which requires the government to meet these commitments.

However, there are difficulties to the execution of these programs, including bad governance, limited funds for education, inadequate infrastructure, and sociocultural barriers. The public-sector education requires greater control and funding to guarantee that all children have fair access to high-quality education, even while non-governmental and private groups support government efforts in this area. In addition to highlighting strategies to improve access, quality,

and equity in education, specific measures are described for marginalized and disadvantaged children and to ensure that children receive an education across the country, the government has established public schools. Education efforts are being made to reduce gender disparities.

Additionally, changes are required to enhance teacher preparation programs and curriculum development, as well as to address regional differences throughout provinces. Even though Pakistan has created a legislative framework that upholds the right to education, the nation still has to improve policy implementation, expand financing, and deal with structural problems in order to fully fulfill this essential right for all children. The Pakistan's education system faces challenges such as a lack of resources, low-quality infrastructure, and gender disparities. It is the government's constant effort to improve the educational sector and meet these challenges in order to ensure that every child receives a quality education.

CHAPTER III

THE PRESENT COOPERATION BETWEEN PAKISTAN & EU LEGAL SYSTEM FOR TRADE AND PROTECTION OF THE CHILD RIGHTS TO EDUCATION

1. Introduction

As highlighted in earlier chapters, Pakistan's domestic laws, policies, and practices are hardly consistent with its international commitments to indiscriminately respect and realize international human rights standards. Basically, Pakistan lacks effective enforcement mechanisms that could direct domestically law enforcement and practice to ensure the indiscriminate implementation of international human rights standards. In order to facilitate this shortcoming, the international legal system provides tools of international cooperation to help domestic laws, policies, and practices implement and realize international human rights standards. The Pakistan and the European Union maintain a relationship through various channels and engage in a range of activities including trade, diplomacy, development cooperation and security. The European Union and Pakistan participate in regular political dialogues to discuss bilateral and regional issues, such as democracy, human rights, and security. During the discussion, both parties are agreeing for the region will be stabilized, peaceful, and developed, and as well as for working to enhance bilateral trade relations. Accordingly, Pakistan was granted GSP+ status by the European Union in 2014, which provides the country with enhanced trade preferences, including duty-free access to the European market.²⁶⁷ Pakistan receives substantial development assistance from the European Union in several areas, including education, health, governance, and rural development. It aims to reduce poverty, enhance social development, and improve living conditions for the people. Pakistan and the European Union work together to counter terrorism, promote regional security, and address common security challenges. As part of this, Pakistan is being provided with information, capacity building, and support to fight terrorism and extremism.

During these negotiations with Pakistan, the European Union encourages the country to uphold human rights, democracy, and the rule of law. Promoting and protecting human rights, including freedom of expression, gender equality, and minority rights, is part of its work with

²⁶⁷ Muhammad Riaz Shad. “*The GSP+ Status of Pakistan in the European Union: Challenges and Prospects*”, Global Political Review, Volume-VI, No, II, Pp., 1-8, June 2021, online access; [https://doi.org/10.31703/gpr.2021\(VI-II\).01](https://doi.org/10.31703/gpr.2021(VI-II).01)

Pakistani authorities, civil society organizations, and human rights defenders. Also, in collaboration with Pakistan, the European Union promotes environmental sustainability and addresses climate change. Among them are efforts to mitigate and adapt to climate change, to develop renewable energy sources, and to conserve the environment. In addition to education cooperation, the European Union promotes people-to-people exchanges between Pakistan and European Union member states. Pakistani students and professionals are offered scholarships and exchange opportunities, which promote mutual understanding and enhance the relationship between the two countries.

The European Union's collaboration with Pakistan on the basis of human rights, commerce, cooperation and other economic incentives, and right to education will be examined in this chapter. The nature and extent of the existing relationship between Pakistan and European Union are examined in the second part. In the last section of this work, I will evaluate how the European Union currently supports international human rights standards in Pakistan and successfully implements those standards. After all, as the saying goes, "*trade brings enemies together*", perhaps trade and education, along with progressive example of reservations, can actually serve as a means of mediating the relativist challenge to universal human rights.

2. Historical Background of European Union and Pakistan

Historically, Pakistan has had complex relationships with the EU since 1962, when the European Union was still in its infancy.²⁶⁸ A European Economic Community (EEC) was established in Islamabad to establish diplomatic relations between the two countries. Firstly, it signed in 1976 that the EC and Pakistan established Commercial Cooperation, and it was opened in 1985 that the EU had its first institutional representation in Pakistan, and Secondly, in 1986, another Generation Agreement was signed for a period of five years and was meant to promote commerce, the economy, and cooperation for development.²⁶⁹ Thirdly, since 1995, the EU has incorporated human rights clauses into its commercial policy, and both the May 1998 Pakistani nuclear tests following the Indian explosion and the October 1999 military coup

²⁶⁸ Jorge Soutullo, and others, "Fact Sheets on the European Union", The European Parliament, online access; <https://www.europarl.europa.eu/factsheets/en/sheet/181/south-asia>

²⁶⁹ Ana Ballesteros Peiró, "the EU is Pakistan's leading trading partner, although this has not translated into political influence. A new policy aims to enhance the traditional relationship between the two partners". Elcano Royal Institute, published on 14 May 2015, online access; <https://www.realinstitutoelcano.org/en/analyses/the-eu-pakistan-relationship-looking-beyond-the-trading-partnership/>

have slowed the process down.²⁷⁰ Several ad-hoc summits between the EU and Pakistan have taken place since 2009, 2010 and March 2012. During the five-year period from 2007 to 2013, both sides endorsed a new political framework that provided a framework for cooperation on counterterrorism, trade, human rights, right to education and democracy.²⁷¹

Pakistan receives the most donations from the EU, it is most important trading partner for Pakistan. The EU and its member states contributed Euro 55.9 billion in financial assistance from 2007 to 2013.²⁷² The European Union's Ambassador Marc Vanheukelen of the World Trade Organisation said: *"A total of Euro 20 million has been donated by the EU to the WTO trust funds over the past 15 years, in addition to significant contributions from the EU member states individually"*.²⁷³ The European Parliament accepted Pakistan's application for Generalized Scheme of Preferences Plus status and signed the Cooperation Agreement on Partnership and Development.²⁷⁴

The GSP aims to promote sustainable development, good governance, and closer relations between countries. The EU Commission was authorized to invest 265 million Euros in Pakistani projects and programmes through agreement from 2021 to 2024.²⁷⁵ According to the new governing system, Pakistan has a unilateral market access under GSP Plus, for the first three years, the status allowed for zero percent tariffs on 20 percent of exports to the EU. Furthermore, 76 percent of Pakistani products were given preferential access to European markets.²⁷⁶ As part of the EU market analysis, 74 high-potential exporting products from 11 sectors of Pakistan were also considered, while agriculture was maintained as the sector that

²⁷⁰ Ibid.

²⁷¹ Khurram Abbas, *"Pakistan Relations with the European Union"* IPRI Conference Paper, 31 March 2015, <http://www.ipripak.org/pakistans-relations-with-europeanunion-eu/>

²⁷² Prof. Carlos Frenk, and others, *"UK research and the European Union: the role of the EU in funding UK research"* published by The Royal Society, December 2015, online access; <https://royalsociety.org/~media/policy/projects/eu-uk-funding/uk-membership-of-eu.pdf>

²⁷³ The World Trade Organization, *"European Union donates Euro 1 million to Help Developing Countries Participate in Trade Talks"*, Press Release on 13 December 2016, https://www.wto.org/english/news_e/pres16_e/pr786_e.htm

²⁷⁴ The official Journal of the European Union *"Information and Notices C369,"* volume 61, 11 October 2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2018:369:FULL&from=DE>

²⁷⁵ The European Commission *"Aid, Development cooperation, Fundamental rights"*, press release by the Directorate-General for International Partnerships, online access; https://international-partnerships.ec.europa.eu/countries/pakistan_en

²⁷⁶ The European Commission *"EU trade relations with Pakistan. Facts, figures and latest developments"*, press release by the Directorate-General for Trade, online access; https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/pakistan_en#:~:text=The%20EU%20supports%20Pakistan's%20integration,EU%20duty%20and%20quota%20free.

was most sensitive.²⁷⁷ The government of Pakistan, however, needed to maintain ratifications as well as implement twenty seven core international conventions in the fields of good governance, environmental protection, and labour rights.²⁷⁸ Under the Pakistan-EU Commission, a trade sub-group has also been established for the purpose of facilitating two-way trade. In light of Pakistan's comparatively still restrictive trade regulatory regime, the commission will consider trade development policies. In February 2018, the International Trade Committee of the parliament convened in Brussels to review the Second Biennial Assessment Report of GSP Plus, and it's observed that Pakistan's National Action Plan for human rights has made significant progress, meeting the expectations of the EU.²⁷⁹

3. External Relations and Actions of the European Union with Pakistan

The European Union works to uphold and defend human rights both domestically and internationally among its member nations. The principles of the European Union are founded on human rights, which are codified in the EU Treaty. The human rights are aggressively advocated by the European Union in international venues like the United Nations, with policies highlighting the rights' universality and indivisibility as well as its interdependence, respect, and safeguards. It collaborates extensively with international organizations and other nations to solve issues pertaining to human rights collectively.²⁸⁰ Among the EU's key tools in promoting human rights are dialogue, diplomacy and regular political dialogues are conducted with partners to address human rights concerns, share best practices, and promote development. Throughout the world, the European Union conducts dialogues, and consultations on human rights, in these dialogues specific human rights issues are discussed, concerns are shared, and areas for improvement are identified. The external relations are conditional on human rights. European Union trade agreements, development cooperation, and other forms of engagement

²⁷⁷ The Pakistan Business Council "*A Roadmap for Optimising Pakistan's GSP Plus status*" effective from 1st January 2014, <https://www.pbc.org.pk/research/a-road-map-for-optimizing-pakistans-gsp-plus-status/>

²⁷⁸ Veronica Nilsson, "*Enforcing Labour Standards in Pakistan*," Friedrich Ebert Stiftung, 26 December 2017.

²⁷⁹ The Express Tribune "*Pakistan Wins EU's Praise for Meeting GSP Plus Criteria*" News report published on 20 February 2018, accessed online, <https://tribune.com.pk/story/1640084/1-european-parliament-lauds-pakistans-implementation-core-conventions/>

²⁸⁰ Tasneem Sultana, "*An Overview of EU-Pakistan Relations; Focus on Democratization of Pakistan*", Journal of European Studies, Volume 29, No. 1, Pp. 22-34, January 2013.

promote human rights commitments among its partner countries.²⁸¹ It provides support and protection to individuals, activists, and civil society organizations working for the promotion and protection of human rights worldwide. They play a crucial role in advancing democracy and human rights. If a country or individual violates human rights significantly, the European Union may impose targeted sanctions or restrictive measures on them, such as travel bans or asset freezes. In partner countries, it supports initiatives that strengthen democracy, rule of law, and human rights protection, the EU strives to ensure the rights of the human being are considered.²⁸² The agency promotes human rights, labour rights, and environmental sustainability, and suspends preferential trade arrangements if these principles are violated. For its external actions, the European Union has developed different guidelines and strategies on human rights. Specific thematic documents include those that address freedom of expression, prevention of torture, and women's and children's rights.

Since the study focus is on the European Union external relations and activities, it is critical to determine which legislative clauses in European Union instruments control the EU external relation with third countries. Whether the European Union may operate internationally and forge relationship with outside countries of the European Union, as well as the steps that should be taken in this respect, including a review of relevant case studies and legal requirements. The last part, how human rights have been incorporated by Pakistan and the European Union into domestic laws, policies and practices in order to promote and safeguard these rights and indiscriminately realize them.

3.1 European Union Legal Basis

The Union is composed of three layers; an inner layer, middle layer, and interior layer. The EU institutions wouldn't function without the Inner Layer, so member states parties can be included under this heading.²⁸³ Each member state voluntarily consents to being engulfed by the Union's

²⁸¹ *Ibid.*

²⁸² Ammar PARVEZ, and others, “*The association between Pakistan and the European Union, with a particular focus on trade*”, Scientific Papers of Silesian University of Technology Organization and Management Series 2024, Pp. 387-416.

²⁸³ Henri de Waele, “*Legal dynamics of European Union External Relations*”, Dissecting a Layered Global Players, 2nd Edition (Antwerp: Springer Publishers, 2017. Three layers of the European Union External Relations and Actions provided within, Communication from the commission: *Trade for All- Towards a More Responsible Trade and Investment Policy*’. The member states remain free to conduct their national foreign policy within the framework of the Common Foreign and Security Policy while keeping in mind their national interests. Further, as long as the diplomatic relations with non-European Union states do not fall within the collective structure of the Union, as specified by relevant European Union Laws, the member states

laws and policies within the capacity they have within their individual capacities, this constitutes the core of the Union. In this respect, they do not completely surrender all sovereignty aspects, rather, they retain some external competences which ensure their active and visible international presence.²⁸⁴

The middle layers include issues such as common commercial policy, development cooperation, human rights, and the environment. Middle layers contain those areas of competence of the European Union that were formerly part of European Community law but are now found in the Treaty on the Functioning of the European Union. European Union external policy is formed by the Common Foreign and Security Policy. European Union's external relations are dominated by its Common Foreign and Security Policy (CFSP).²⁸⁵ The European Union's foreign policy aims to advance its interests and values on the global stage, safeguard the security of its member states, and contribute to peace and stability throughout the world. Many areas are covered by the CFSP, including foreign policy, crisis management, defence policy, and international cooperation. Common foreign and security policy is a comprehensive set of actions and foreign policies taken by the European Union on the international stage, which enables the European Union to demonstrate its identity to its international partners.

The union is presented as a single voice within the following six domains and policy areas, namely Development cooperation,²⁸⁶ Humanitarian Aid,²⁸⁷ Trade,²⁸⁸ Assistance,²⁸⁹ and Solidarity, as a whole to the rest of the world as a block and single voice from the perspective of the Union's outer and middle layers. European Union external actions and relations with non-European Union countries are governed by two primary instruments, the Treaty on the

are generally responsible for maintaining those relations in their individual capacity. For instance, the Union adopts unified official steps during the enlargement process with acceding countries. It is the 'hard core' of the Union's global role as a layered player.

²⁸⁴ *Ibid.*

²⁸⁵ The Common Foreign and Security Policy is one of the newest additions to the European Union legal system, joining in 1993 with the Maastricht Treaty. Accordingly, CFSP is not an all-encompassing policy instrument of the Union.

²⁸⁶ It is the ultimate objective of development cooperation to eradicate poverty throughout the world, as outlined in Articles 208 to 211 of the Treaty of the Functioning of the European Union (TFEU).

²⁸⁷ The humanitarian aid operation by the European Union to help victims of natural or man-made disasters, as stipulated in Article 214 of the Treaty on the Functioning of the European Union (TFEU); under title III of the Treaty on the Functioning of the European Union, part five contains humanitarian assistance aspects of the external actions.

²⁸⁸ It is an exclusive EU competence that the European Parliament and the Council are co-legislators - ensuring the harmonious development of world trade, as laid out in Articles 205 to 207 of the Treaty on the Functioning of the European Union (TFEU).

²⁸⁹ In accordance with Articles 212 to 213 of the Treaty on the Functioning of European Union, financial assistance is provided to non-EU countries, excluding developing countries.

European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), both of which establish the legal framework for the aspects and dimensions of EU external relations. The legal instruments establish the legal competence and mandate of the Community in establishing its external relations with third countries.²⁹⁰

The European Union exercises its mandates based on the principles of competence conferral. The article 5 of the TEU specifies that the European Union has the authority to act within the boundaries set by the European Union member states in the treaties for the achievement of the Union's common objective.²⁹¹ The elements of these conferred competences are listed in articles 2 to 6 of the Treaty on the Functioning of the European Union. Members of the Union retain all competences not defined in these articles, and which are not granted in these articles.²⁹² In accordance with the Treaty of Lisbon, these competences are categorized into three categories; competences exclusive, competences shared, and supporting competences.

The Treaty on the Functioning of the European Union, article 3 provides for exclusive competences. In the exclusive competence area, the European Union is the only institution empowered to pass legislation and binding acts. The European Union authorizes and empowers member states to do so only in cases in which members are authorised by it. In addition to the customs union, which establishes competition rules required for the functioning of the internal market, the union has exclusive competences in the fields of monetary policy for euro area countries, fisheries policy, and common commercial policy.

The EU member states and the European Union have the authority to adopt legislation and binding acts in the area of shared competence. The Treaty on the Functioning of the European Union article 4 discusses shared competences, whenever the European Union does not exercise or decides not to exercise its competency, then the member states of the European Union exercise that competency.²⁹³ The European Union can intervene through its supporting competences in order to provide support, coordination, or complement to the actions of member states. Under Article 6 of Treaty on the Functioning of the European Union, supporting

²⁹⁰ As an example, article 210 of the Treaty on the Functioning of the European Union stipulates that the European Union Community has legal personality.

²⁹¹ Hermann-Josef Blanke, Stelio Mangiameli, *"The Treaty on European Union (TEU)" A Commentary Book*, Published by Springer (2013).

²⁹² The University of Oslo, Department of Law explaining the Treaty on the Functioning of the European Union (TFEU), online access; https://www.jus.uio.no/english/services/library/treaties/09/9-01/tfeu_cons.html

²⁹³ *Ibid.*

competences are related to the following policy areas: Industry, Protection and Improvement of Human Health, Tourism, Culture, Education, Civil Protection, Youth and Sports, Administrative Cooperation.²⁹⁴ The European Union Commission and European Parliament are responsible for implementing decision making procedures, while the European Council and Council define and implement policy, whereas the European Union is represented by the High Representative for Foreign and Security Policy and the President of the European Council.

Furthermore, under article 216 of the TFEU, the union has the power to enter into agreements with third countries or international organizations whenever the treaty so provides, and where the conclusion of the treaty is necessary in order to accomplish the objectives outlined in the treaty within the framework of union policies.²⁹⁵ For external relations and actions, the TUE and TFUE have the following legal provisions;

- The external action of the Union and the Common Foreign and Security Policy are covered by Article 21 to 47 of the TEU.
- According to TFEU Articles 205-222, the Union's External Action relates to external matters including Common Commercial Policy and Development Cooperation.

By establishing and maintaining relationships and partnerships with non-EU states and organizations through international agreements, these specific legal provisions provide the Union with its legal basis for external relations and actions.²⁹⁶ A treaty's subject matter determines its legal basis, the required procedures, and the relevant institutions and bodies in the Union which are charged with concluding it.²⁹⁷ Under the title of External Action by the Union, the Union's external actions and relations are consolidated in part V of the TFEU, which were previously scattered throughout the TEU and TEC. The Common Foreign and Security Policy, however, is not included in this title, due to its different position within the EU treaties. Consequently, the EU's external actions have legal dualities related to Common Foreign and

²⁹⁴ *Ibid.*

²⁹⁵ *Ibid.*

²⁹⁶ A treaty making competence of the EU is provided for by Article 218 of the Treaty on the Functioning of the European Union. The EU-US partnership agreement of 2014 is an example. Based on common values, including protecting and promoting human rights, this agreement relates to related areas between the parties.

²⁹⁷ For instance, articles 207 and 209 of the TFEU relate to the Common Commercial Policy and Development Cooperation, respectively. TFEU article 219 specifically addresses monetary policy agreements. As well, articles 216 and 217 TFEU contain mechanisms that relate to treaty making competences of the Union within different scenarios.

Security Policy, and non-CFSP.²⁹⁸ Due to this duality, the Lisbon Treaty established the post of High Representative for Foreign Affairs and Security Policy. The High Representative is also the Vice President of the Commission, responsible for ensuring consistency throughout all Union's external actions and relations, whether related to the Common Foreign and Security Policy or not. As well as its central role in adopting restrictive measures in Common Foreign and Security Policy, matters, the High Representative and the commission have the possibility of making joint proposals in non-common Foreign and Security Policy issues.²⁹⁹

3.2 From the Perspective of Trade, the Union is a Strong Economic Organization

The Union has reached the highest standing on the world scene primarily as a result of economic activity.³⁰⁰ In terms of trade with the outside world, the union's standing united position greatly increases its bargaining power, allowing it to negotiate favourable and desirable trading conditions with external trading partners, while maintaining the Union's objectives, which have been outlined in relevant legal instruments.³⁰¹

The European Union has more than 500 million consumers, making it the world's largest market. The rules must be followed in a uniform manner, and it is attractive to third countries as an economic venue. The European Union's constitute a strong economic powerhouse that has more strength than, for instance, the United States, China, or Japan for that matter. As a single entity, the European Union is the largest exporter and importer of goods and services worldwide, as well the largest destination for foreign direct investment and the largest dispenser.³⁰² These characteristics and attributes make it the world's biggest trading partner for third countries, having trading agreements with 80 countries in the world. It also stands at number two among the other 40 countries.

²⁹⁸ Christina Eckes, The CFSP and Other EU Policies: A Difference in Nature? *European Foreign Affairs Review*, Volume 20, Issue 4 (2015) pp. 535–552, online access; <https://doi.org/10.54648/eerr2015044>

²⁹⁹ *Ibid.*

³⁰⁰ Steven McGiffin, "External Economic Relations", P.92. Published Pluto Press London, 2005.

³⁰¹ Christian Burckhardt, "*The European Union as an Actor in International Trade Relations in Global Power Europe; Policies, Action and Influence of the European Union's External Relations*", published by Springer 2013, Vol. 2, Eds. Astrid Boening and Jan-Frederik Kremer, P.272 (Berlin).

³⁰² *Ibid.*

3.3 Agreements between the EU and Third Countries for the Next Generation of Trade

The human rights promotion and protection serve as the main goal of the union's exterior actions and relations. The Generalized Scheme of Preferences (GSP) falls under the Common Commercial Policy, from 1971 to 2014, the now-in-force regulation relating to GSP was adopted in 2012 and entered into force.³⁰³ I will explain that GPS is a comprehensive and elaborated mechanism for promoting international standards primarily related to labour rights. In exchange, the union's common commercial policy has provided economic and financial incentives for the promotion of international standards. A beneficiary state's status does not necessarily have to be reciprocal between the union and the third country or with EU members, because GSP grants unilateral preferential status to developing countries according to the World Trade Organization's classification as low- and middle-income economies and least developed countries.

From the perspective of this research, the Generalized Scheme of Preferences pertains to the middle layer of the Common Commercial Policy and the Common Customs Tariff specifically. It is the Generalized Tariff Preferences Regulation, also known as the GSP regulation, that contains the rules of tariff preferences. As part of the GSP, barriers to free trade are lowered to the greatest extent possible in order to facilitate and promote the export of developing and least developed countries to the European Union, aiming to eradicate poverty, promote sustainable development, and foster good governance in developing and least developed countries outside of Europe.³⁰⁴

The GSP under the Common Commercial Policy exempts non-EU countries from tariffs and customs duties in full or in part. The beneficiary state is given a special status within “Everything but Arms”, with this status, the least developed countries do not have to pay any quota restrictions, customs, or tariff duties on their imports other than weapons.³⁰⁵ Standard GSP status is awarded to countries listed by the World Bank as low-income or lower middle-income countries that do not qualify as least developed nations, and to allows 60 percent of EU

³⁰³ Muhammad Riaz Shad. “*The GSP+ Status of Pakistan in the European Union: Challenges and Prospects*”, Global Political Review, Volume-VI, No, II, Pp., 1-8, June 2021, online access; [https://doi.org/10.31703/gpr.2021\(VI-II\).01](https://doi.org/10.31703/gpr.2021(VI-II).01)

³⁰⁴ In the Regulation 978/2012, a generalized tariff preference scheme is applied, and Council Regulation 732/2008 is repealed, OJ (2012) L303/1.

³⁰⁵ Malgorzata Czerminska, “*Significance of Rules of Origin in European Union’s Unilateral Generalised System of Preferences (GSP) to Everything but Arms System Beneficiaries*” Przegląd Europejski, ISSN: 1641-2478, vol. 2023, no. 4, December 2023. <https://www.orcid.org/0000-0002-6935-1031>

tariffs to be reduced. The countries without economic diversification will benefit from duty-free access to 66% of tariff lines in order to become part of the global economy. The GSP+ program, which reduces tariffs to 0% for vulnerable low and lower-middle income countries that abide by 27 international conventions relating to human rights, labour rights, environmental protection, and good governance, is available to low and lower-middle income countries.³⁰⁶ Among these 27 conventions, its divided them into two groups. First, there are the core human rights and labour standards codified in the UN and ILO conventions. Meanwhile, the second group consists of conventions related to the principles of governance and the environment. Environmental, narcotics, and drug issues are the main concerns of these conventions. The economic interests of the countries involved primarily determine these two conditional groups. Later, it will be discussed that the suspension or termination of this preferential status has mostly been used in cases where international labour standards have been violated, rather than in cases where international human rights standards have not been realized or protected indiscriminately.

³⁰⁶ For developing countries to keep their GSP+ status with the EU, they must ratify the following 27 conventions under;

- 1) Convention on the Prevention and Punishment of the Crime of Genocide (1948)
- 2) International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- 3) International Convention on Civil and Political Rights (1966)
- 4) International Convention Economic Social and Cultural Rights (1966)
- 5) Convention on the Elimination of All Forms of Discrimination Against Women (1979)
- 6) Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- 7) Convention on the Rights of Childs (1989)
- 8) Convention concerning Forced or Compulsory Labor, No.29 (1930)
- 9) Convention Concerning Freedom of Association and Protection of the Right to Organize, No.87 (1948)
- 10) Convention concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, No.98 (1949)
- 11) Convention concerning Equal Remuneration of Man and Woman workers for Work for Equal Value, No.100 (1951)
- 12) Convention concerning the Abolition of Forced Labor, No.105 (1957)
- 13) Convention concerning Discrimination in Respect of Employment and Occupation, No.111 (1958)
- 14) Convention concerning Minimum Age for Admission to Employment, No.138 (1973)
- 15) Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, No.182 (1999)
- 16) Convention on International Trade in Endangered Species of Wild Fauna and Flora (1973)
- 17) Montreal Protocol on Substances that Deplete the Ozone Layer (1987)
- 18) Basel Convention on the Control of Trans boundary Movements of Hazardous Wastes and their disposal (1989)
- 19) Convention on Biological Diversity (1992)
- 20) The United Nations Framework Convention on Climate Change (1992)
- 21) Cartagena Protocol on Biosafety (2000)
- 22) Stockholm Convention on persistent Organic Pollutants (2001)
- 23) Kyoto Protocol to be United Nations Framework Convention on Climate Change (1998)
- 24) United Nation Single Convention on Narcotics Drugs (1961)
- 25) United Nations Convention against illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
- 26) United Nations Convention on Psychotropic Substances (1971)
- 27) United Nations Convention against Corruption (2004)

A GSP beneficiary state must cooperate with the European Commission by sharing any relevant information about its binding commitments related to human rights with the European Commission. With respect to a GPS beneficiary state, the commission is mandated with the responsibility of monitoring compliance with international human rights conventions, as well as recommendations and conclusions adopted by the relevant treaty bodies. Using the GPS tool helps developing and least developed countries to create value-based economies, create jobs, and integrate themselves into global value chains, thereby bringing them out of poverty. A GSP integration with good governance and human rights leads to the diversification of the economy of the beneficiary state, since good governance and human rights always need to be relevant to capitalizing GSP. Every two years, the commission provides a detailed report to the European Council and Parliament on the status of ratification of core 27 international treaty regimes of beneficiary GSP plus states.³⁰⁷ The GSP plus states are required to report on international treaties in question, as well as the overall level of compliance within the beneficiary state's domestic laws, policies and practices regarding these international treaties.³⁰⁸

During the evaluation process of the GSP state, the Council and the Parliament make sure that these obligations are being met. In light of this evaluation, shortcomings and failures have been highlighted, and efforts are made regularly to address such shortcomings and failures with the GSP beneficiary state. Objections can be made to the withdrawal of GSP status by the commission by both the Council and Parliament. Whenever there is no objection, the Commission's delegated acts can issue a confirmation through the working party on the Generalised Scheme of Preferences.³⁰⁹

Currently, the GSP regime is set to expire at the end of 2023, following which a new GSP proposal will commence in 2024.³¹⁰ The new proposal for GSP regulation seeks to maintain the current GSP regulation framework with improved efficiency and effectiveness for GSP beneficiary states as they face contemporary challenges. A number of issues and areas are

³⁰⁷ Axel Marx, “*Integrating Voluntary Sustainability Standards in Trade Policy: The Case of the European Union’s GSP Scheme*” *Journal of Sustainability* Vol-10(12):4364, November 2018, Doi:10.3390/su10124364.

³⁰⁸ *Ibid.*

³⁰⁹ It is similar to shadow reporting which is undertaken by the international human rights monitoring mechanism in that the civil society shadow reports are also investigated by the working party, (Article 14(3)).

³¹⁰ In September 2021, the European Parliament and the Council proposed a generalised scheme of tariff preferences, COM/2021/579 final, which repealed Regulation (EU) No 978/2012.

highlighted in the new GSP proposal as being in need of further improvement.³¹¹ As part of this process, the recommendations relate to environmental challenges, as well core labour and human rights issues, whereby the transition from LDCs to GSP plus can be facilitated and encouraged. It will be possible to facilitate the transition of existing GSP plus beneficiaries to the new GSP plus status, which will require ratifying newly added treaty regimes. To comply with the proposed GSP regulation, the states will have to develop a plan for implementing the newly ratified treaty regimes domestically. Among the six new international treaty regimes included in this proposed GSP Regulation are the following:

- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000)
- Convention on Labour Inspection No. 81 (1947)
- Convention on the Rights of Persons with Disabilities (2007)
- Convention on Tripartite Consultations No. 144 (1976)
- United Nations Convention against Transnational Organised Crime (2000)
- The Paris Agreement on climate change (2015)

A number of improvements are proposed within the proposed regulation to ensure that GSP+ obligations are monitored and implemented more effectively. In the proposed GSP Regulation, the Compliance Reporting Period will be increased from two to three years to align with UN treaty body reporting periods. Earlier appointed by the Commission, the Chief Trade Enforcement Officer (CTEO) developed a complaint mechanism known as Single Entry Point to strengthen the implementation and realization of trade-related commitments, which allows complaints on issues relating to trade policy and non-compliance with GSP commitments to be brought.³¹² Single Entry Point SEP compliance has been incorporated into the proposed GSP Regulations. Through a temporary withdrawal procedure, the usual period of withdrawal will be shortened to 7 months instead of 18 months. Therefore, the monitoring and evaluation procedure, which is currently six months, will be shortened.

³¹¹ Considering the 2018 Mid-Term Evaluation of GSP, the External Study associated with the Impact Assessment, and the 2020 Open Public Consultation, these improvements are proposed.

³¹² Yves Melin & Jin Woo Kim, “European Commission appoints its first Chief Trade Enforcement Officer “ Reed Smith Driving progress through partnership, Brussels, online access; <https://www.reedsmith.com/en/perspectives/2020/08/european-commission-appoints-its-first-chief-trade-enforcement-officer>

It is expected that this proposal will enter into force after it is adopted by the European Parliament and Council in the last quarter of 2022. The new GSP Regulation will take effect on January 1st, 2024, if this is the case. After the ratification of the six international treaty regimes related to environmental and human rights standards, GSP+ beneficiaries, including Pakistan, will have to reapply for the overhauled status.

We understand, the state effort in implementing suggestions and recommendations will be slowed down if three years are provided for reporting instead of two. According to the FATF, Pakistan is now no longer on its Gray Sanctions List, each state is required to submit a report every six months to FATF. Within less than two years, Pakistan has implemented most of the recommendations due to its robust and rigorous compliance monitoring mechanism.³¹³

3.4 Conditionality for the European Union in Respect of Human Rights

The objectives of the union according to the Common Commercial Policy are sustainability, environmental goals, economic independence, as well the protection of human rights, social standards and labour rights, which enhance the social and ethical dimension of the Common Commercial Policy.³¹⁴ It is the European Union's and its member states responsibility to promote and ensure compliance with the international human rights standards in all of their instances, both externally and internally. The European Union member states have a commitment to the United Nations Charter, which entails adhering to its articles 55 and 56, which require them to protect and promote, and no distinction should be made between races, languages, genders, or religions when it comes to respecting and observing human rights and fundamental freedoms.³¹⁵ According to article 103 of the UN charter, international and regional laws are arranged in a hierarchical order, and takes precedence over EU law as well. Therefore, from the perspective of external obligation, the union and its member states are required to promote and protect human rights internationally as outlined in the UN Charter, within all the internal and external actions and relations.

³¹³ Asma Iqbal, and others, “Analysing FATF’s Concerns and Actions taken by Pakistan for Compliance”, Pakistan Social Science Review, Vol-5, Issue-3, Pp,219-234, July 2024.

³¹⁴ Among other policy areas, the EU incorporates and specifies such subjects into trade policies and agreements. Among those is the common commercial policy, which promotes sustainable development worldwide.

³¹⁵ Article 55, and 56, Chapter IX, “International Economic and Social Co-operation” the United Nation Charter.

From the perspective of its obligations under the UN Charter, the Union has actively promoted the respect for human rights. In its 2012 Action Plan, the Union committed to providing the UN Human Rights Council with any assistance it may require in order to ensure human rights compliance and address cases of human rights violations. Furthermore, the Union committed to ensuring that the Human Rights Council is effectively functioning by contributing continuously and vigorously through the said Action Plan. In every way possible within the framework of the United Nations, we must ensure that international human rights standards are effectively implemented and meaningfully realized internationally.³¹⁶

The human rights policies in the union are based on the principle of contributing to the universality of human rights standards, which is distinct from the external obligations arising from the United Nations Charter. This work examines the respect for human rights in Pakistan as the analytical framework. Within all its international engagements with states outside the European Union, the EU is required by its internal legal framework to respect/promote human rights. The European Union will for sure contribute to the promotion of human rights in Pakistan, even though it is not very relevant to the mentioned framework. The 1991 declaration by the European Council serves as the starting point for this policy:

Human rights and fundamental freedoms are to be promoted and safeguarded throughout the world as a policy by the community and its member states. Whether acting individually or collectively, all states are obligated to do this. Human rights are sought to be respected universally by the European community and its member states.³¹⁷

According to article 21 TEU, the European Council must ensure that the Union's interests and objectives are realized when adopting measures and decisions regarding its engagement with non-European Union States. Article 2 maintains that:

The Union is founded on principles of respect for human dignity, democracy, freedom, equality, the rule of law, and respect for human rights, including the rights of minorities. In a society with pluralism, non-discrimination, justice, tolerance, solidarity, and equality between men and women, these values are common among member states.³¹⁸

³¹⁶ Union Action Plan both recognizes the Human Rights Council as the appropriate forum to promote and protect economic, social, and cultural rights, and encourages and assists it whenever possible.

³¹⁷ In 1991, the European Council adopted a declaration on human rights.

³¹⁸ Article 2 of TEU, title I common provisions, OJ C 236, 7.8.2012, P. 17.

Based on the guiding principles and goals outlined in both articles, provides the guiding principles and goals guiding these external actions and relations, which include safeguarding the values, interests, security, consolidating and supporting democracy, independence and integrity of the EU, human rights, the rule of law, and international law principles, preserving peace, preventing conflicts and strengthening international security. On the international scene, the Union will act in accordance with the principles that have motivated its creation, development, and expansion, and those it seeks to advance elsewhere; democracy, the rule of law, human rights and fundamental freedoms that are universal and indivisible, respect for human dignity, equality and solidarity, and respect for the United Nations Charter and International Law principles. Developing relations with third countries and building partnerships is the Union's priority,

- a. Maintains its integrity and independence, while safeguarding its values, security, and fundamental interests.
- b. Democracies, rule of law, human rights, and international law must be consolidated and supported.
- e. Encourage all countries to integrate into the world economy through progressive abolition of international trade restrictions.

3.5 The European Union's Human Rights Policy Concerning with Third Countries

Several measures have been taken by the union to promote and develop coherent policies, and in relation to and actions with countries outside the EU, a stronger and more proactive strategic approach is being adopted with regard to human rights which could benefit the cause of democratization and human rights. The EU has taken a number of initiatives in this regard, including a strategic framework and an action plan for Human Rights and Democracy,³¹⁹ as well as the appointment of the first Special Representative for Human Rights in 2012.³²⁰ Trade for All, an initiative adopted by the commission in 2015, signifies the Union's intention to add

³¹⁹ In this plan, priority focuses are set, including the eradication of turtles, ensuring freedom of expression, and abolishing the death penalty etc, p. 121. In Towards a more Effective Approach, COM (2011) 886; to EU External Action, a joint communication from the European Commission and the EU High Representative. The EU Framework and EU Action Plan is responsible for human rights and democracy, Council Doc. No. 11855/12, 25 June 2012.

³²⁰ Special Representative for Human Rights for the EU has been appointed by Decision 2012/440/CFSP.

special significance to sustainability from a horizontal perspective. The trade and economic growth were primary objectives, as were social justice and the protection of human rights.³²¹

The EU guidelines on human rights with third countries were adopted by the Council of the European Union in 2001 as a consequence of the said policy and in order to assist the Union in determining that the issues of human rights should be dealt with in dialogues with non-EU countries.³²² The dialogues are very structured and institutionalized, and are primarily devoted to human rights, based either on conventions, treaties or agreements, or they are exclusively focused on one human rights issue. At the moment, the union maintains dialogues with more than 40 countries outside of the European Union, including China, Pakistan, India, and Iran. The guidelines for human rights dialogue are not specific to the GSP dialogues since the union engages in different types of dialogue related to human rights.³²³

Aside from legal obligations, the EU can also use its political influence to persuade third countries to comply with international human rights standards. It is evident in Asia Bibi's case that the Union was directly responsible for human rights compliance in Pakistan.³²⁴ The Pakistani Lower Courts sentenced Asia Bibi to death for blasphemy on accusations she is a Christian minority woman. On the basis of insufficient evidence, the Pakistani Supreme Court acquitted her in 2018. The case against Asia Bibi for blasphemy went unresolved for over nine years in spite of the fact that she was accused of blasphemy back in 2009.³²⁵

It is necessary for the Union's external relations to incorporate and compile all the pertinent international human rights standards. All aspects of an external action or relationship, such as laws, policies, and practices, must directly or indirectly promote democracy and human rights.³²⁶ Aside from the Union, third states that will engage with it through external relations

³²¹ The European Parliament and the Council adopted Regulation No 235/2014 on 11 March 2014, which promotes democracy and human rights outside of the European Union.

³²² Human rights working group (COHOM) has developed guidelines regarding human rights for third countries.

³²³ The European Union carries out human rights dialogues and conditional trade dialogues with third countries, but the member states of EU also hold bilateral dialogues with them on their own. While these dialogues are conducted within national capacities, all external engagements of the member states will be guided equally by the EU principle of democracy, human rights, and fundamental freedoms.

³²⁴ Muhammad Kamil Lakho, *"Portrayal of Aasia Bibi Blasphemy Case: A Comparative Analysis of News Headlines in Pakistani Newspapers"*, Pakistan Journal of International Affairs Vol-4, Issue 3, 2021.

³²⁵ Asia BiBi VS State, *"Study Case"* CrI.A. 39-L-2015, 2018.

³²⁶ Paivi, Leino, *The Journey towards all that is good and beautiful: Human Rights and Common Values as Guiding Principles of the European Union Foreign Relations Law in EU Foreign Relations Law Constitutional Fundamentals*, Ed. Marise Cremona and Bruno de Witte P.259-283, Hart Publishing 2008, Oxford.

and actions must comply with international human rights standards as well. This is a crucial condition for the initiation and maintenance of these relations with the Union.³²⁷ Furthermore, the Union's external actions pertaining to bilateral and multilateral agreements with third countries or international organizations under the common commercial policy must respect human rights in full. Agreements involving the Union with third countries include special human rights clauses, which refer to the importance of respecting human rights, fundamental freedoms, and democratic principles within the agreement.³²⁸

3.6 Violations of the Conditionality Clause May Lead to the Adoption of Restrictive Measures Against Third Countries

The non-European Union countries have a more sophisticated and effective system for protecting human rights as a result of GSP conditionality than we have within the United Nations system. In such a situation, trade agreements can be suspended or terminated, and preferential status can be withdrawn. A combination of trade, foreign, and human rights policies can result in the restrictive measures of the Union against the beneficiary countries. When a beneficiary state violates international human rights standards set by the United Nations, the ILO, and other core conventions and instruments, the GSP arrangement can be withdrawn.³²⁹

When human rights are violated, the commission notifies the GSP beneficiary country about initiation of the withdrawal process. Initial negotiations provide the GSP country with six months to clarify their positions and provide clarification regarding their human rights practices and reservations regarding the withdrawal procedure. The commission may withdraw trade preferential status from a GSP beneficiary country through a delegated act if no remedial measures are taken within six months. After withdrawal, the GSP country has sufficient time to answer any questions about its human rights commitment and make any necessary corrections.

³²⁷ Achieving relations with third countries and international organizations in accordance with articles 2, 21 of the TEU and article 208 of the TFEU is possible under article 209 TFEU. A good example is the EU-Philippines agreement signed in 2011.

³²⁸ Paivi, Leino. P.119.

³²⁹ The GSP mentioned it in the part A of Annex VII.

It has been observed that the preferential status of beneficiary states under GSP has been suspended in numerous cases. When there is a violation, the European Union is more likely to incentivize improvement through dialogue strategies rather than withdrawing the preference status immediately. For example, in June 1995, Myanmar was complained about because it held GSP preferential status. During 1996, Myanmar was investigated by the commission. By the end of 1996, the commission proposed withdrawing Myanmar's GSP beneficiary status. The proposal was adopted by the Council in March 1997. Second, a complaint against Belarus' GSP beneficiary status was filed in January 2003, which triggered the suspension procedure in December 2003. The Council adopted the measures of suspension of Belarus' GSP status in 2006 following the commission's report in 2005 and its proposal for withdrawal in 2006. Throughout all these cases, violations of workers' rights were the main reasons for taking legal action.³³⁰

Additionally, the Council demoted Sri Lanka's beneficiary status from GSP+ to GSP in 2010 after launching investigations in October 2008 and submitting a report by the Commission in October 2009. Due to violations of binding human rights obligations, Sri Lanka was demoted. After Sri Lanka responded to the Commission's recommendation to reconsider its recommendation to the Council, a period of six months was granted for compliance measures and corrective actions to be taken.³³¹ Nevertheless, Sri Lanka did not fulfil this obligation, so in 2010 it was demoted to GSP tariffs from GSP+. In the event that the circumstances for which Sri Lanka was granted GSP+ status no longer exist, the status can be reinstated.³³²

As part of this process, in 2008 the Commission opened an investigation against EL Salvador, a GSP+ beneficiary at the time, for non-compliance with the ILO principle of freedom of association. While EL Salvador is still a beneficiary, its status has not been revoked. For the same reason, an investigation against Bolivia was launched in 2012 for not complying with the

³³⁰ Shad M. R. A case study of the GSP+ status of Pakistan in the European Union: Challenges and prospects. *Global Political Review*, VI(II) 1-8.

³³¹ The 17th Amendment to the Constitution was implemented after the state of emergency was cancelled, the 'Prevention of Terrorism Act' abolished, and the state of emergency was cancelled. However, Sri Lanka's government denounced these proposals as infringing on its sovereignty.

³³² Henri de Waele, Second Ed. 'Legal dynamics of EU External Relation: Dissecting a Layered Global Player'. Published in Springer 2017.

UN Single Convention on Narcotic Drugs, but the country's beneficiary status was maintained.³³³

3.7 Is the GSP Human Rights Conditionality Effective?

Since this scheme of the European Union has been granted to so few states and will only be suspended or withdrawn for very few states, it will be too early to evaluate whether it is successful or not. On the other hand, we can analyse the effectiveness of this system based on the present facts and figures. As we mentioned above, there are three types of tools at the disposal of the EU within the GSP system, namely, EBA, standard GSP, and GSP+. Standard GSP has limited economic and financial considerations, which causes beneficiary states to be less likely to honour the human rights conditions of such beneficiary statuses, and consequently, GSP+ beneficiaries are more careful about withdrawing or suspending their such statuses. Among the most effective leverages offered by this scheme, particularly within GSP+, is the potential loss of trade and economic incentives that act as a deterrent for states to observe and comply with human rights standards. Therefore, GSP+ is more likely to have a significant influence on labour and human rights when it comes to the European Union.³³⁴

The Union adopts actions in accordance with the positions taken by the relevant international labour rights monitoring bodies on the promotion, suspension, demotion, or withdrawal of beneficiary status for beneficiary states. Generally, incentives are considered more effective than sanctions, and should be implemented in most cases, with sanctions applied only in extreme cases. Using this tool, beneficiary states are able to maintain market access and comply with labour and human rights standards while gaining access to the global market. Thus, the monitoring and dialogue phases are the first stage, and only in the event of grave violations should restrictive measures be taken.³³⁵

³³³ Magdalena Słok-Wódkowska, “The Revised EU GSP+ - New Rules to Promote Sustainable Development”, Polish Review of International and European Law, Vol-2(4):51, December 2013.

³³⁴ Steven P. Mc Giffen, *External Economic Relations*, (Publisher Pluto Press 2005). According to the Millennium Development Goals 2015, wealthier economies are obligated to contribute at least 0.7 percent of their GDP to the development of poor countries.

³³⁵ There are other restrictive measures that can be taken in cases of human rights violations by third states. In addition to this scheme, the EU is also allowed to impose trade restrictions based on grave human rights violations within the Common Foreign and Security Policy framework. Examples of such measures include trade restrictions against Syria and an arms embargo against China. Besides the Common Foreign and Security Policy, the EU can impose unilateral trade restrictions under the

4. Pakistan and the European Union's Engagements

It is crucial to emphasize that Article 177 of the EU Treaty determines the objectives of the EC-Pakistan Cooperation before moving forward with the historical details, and its specified three broad objectives of Community Cooperation with developing countries are to foster sustainable economic and social development, to ensure that developing countries integrate smoothly and gradually into global economies, and to work for poverty.³³⁶

Initially, the EU and Pakistan engaged mainly in trade and development cooperation, which have traditionally dominated their relations. The economies, trade, and development cooperation, which has evolved into a strategic partnership in the past few years, has evolved from economic, trade, and development cooperation. After realizing EC's growing economic significance, Pakistan expressed interest in forging ties with it. Industrialization and development were to be promoted through access to the duty-free EU market.³³⁷ When the six European Common Market countries met in Brussels on 2 August 1962, they proposed signing trade agreements with Pakistan, India, and Sri Lanka with the condition that Britain join the Common Market.³³⁸ Negotiations were initiated between Pakistan and EEC members in order to conclude trade agreements. Consequently, on 1st June 1976, EEC and Pakistan signed their first Commercial Cooperation Agreement, which became effective on 1 July 1976.³³⁹ Similarly, another resolution entitled 'Democracy building in external relations' was adopted by the European Parliament in October 2009. EU external relations should be coordinated with the promotion of democratic values, human rights, and development policy instruments, according to the resolution, and democracies as well as their underpinning values such as

Common Commercial Policy to protect human rights. In some cases, the CCP framework has already adopted trade restrictions, while in other cases, it is still being prepared.

³³⁶ Consolidated version of the Treaty on the Functioning of the European Union [2016] OJ C202/143, https://eur-lex.europa.eu/resource.html?uri=cellar:9e8d52e1-2c70-11e6-b497-01aa75ed71a1.0006.01/DOC_3&format=PDF

³³⁷ Anatol Lieven, *The pressures on Pakistan* Foreign Affairs, P.115 (2002).

³³⁸ The Dawn Newspaper published report on 3rd August 1962.

³³⁹ Official Journal of the European Communities, '*concluding the Commercial Cooperation Agreement between the European Economic Community and the Islamic Republic of Pakistan*' Council Regulation (EEC) No 1503/76, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31976R1503&from=GA>

respect for human rights, rule of law, and good governance are the basis of agreements between the EU and Pakistan.³⁴⁰

The GSP Scheme is used by three countries, Pakistan, Sri Lanka and Bangladesh, for the purpose of reducing tariffs and promoting exports to the EU. The EU has greater leverage over these countries, since they contribute and receive GSP+ free trade status, to secure trade preferences for the promotion of labour and human rights. From the perspective of the broader Common Commercial Policy, GSP, through its conditionality, should contribute directly as well as indirectly to the improvement of human rights.

Since 2007, Pakistan has been granted GSP+ status two times, and is gaining GSP status for a third time as of 7th March 2020. The main objectives of this status are to integrate Pakistan at the global level, to promote sustainable development, and to diversify Pakistan's export portfolio. During the period 2008-2022, Pakistani imports increased from 3.6 billion euros to 6.8 billion euros, with a sharp rise between 2014 and 2016. Pakistani exports to the EU increased by 30% after it was granted GSP+ beneficiary status for a second time. At present, Pakistan exports to the EU account for more than one third of its international exports, making the EU Pakistan's third largest export market.³⁴¹ While Pakistan is the EU's 41st largest trading partner in goods, it only accounts for 0.3% of EU trade, which is extremely small.³⁴²

The European Union & Pakistan trade relations occupy a central role in engagements and relations. Among the initiatives taken in this regard are the European Union Pakistan Strategic Engagement Plan, which entered into force in 2019. With the incentive offered by GSP+, both of these agreements aim to improve Democracy, Rule of Law, Good Governance, Human Rights, and Trade Investments in Pakistan. The European Union Pakistan Joint Commission provides a mechanism for tracking and analysing GSP implementation progress, which is an

³⁴⁰ The European Parliament resolution No. OJ C265E/3, 22 October 2009 on democracy building in the EU's external relations.

³⁴¹ EU Specialist Incentive Arrangement for Sustainable Development and Good Governance assessment of Pakistan for the period of 2018-19, signed by the High Representative of the Union for Foreign Affairs and Security Policy, SWD final 22, Brussels 10/02/2020, 6.

³⁴² In 2014, Pakistan gained GSP+ status which increased its exports to the EU by almost 1 billion Euros. This represents a considerable increase for a country with an economically unstable economy. The GSP+ allows Pakistan to export more than 78% of its total exports to the EU duty and quota free, including clothing and textiles. Pakistan's exports represent almost 33% of the global market. In 2016, Pakistan imported machinery and transport equipment accounting for 40.2% of its imports from the EU, followed by chemicals accounting for 19.5%. Over the last decade, EU28 exports to Pakistan have almost doubled, increasing from 3,319 million euros in 2006 to 6,273 million euros in 2016. Pakistan's imports have grown at a particularly fast rate since it was awarded GSP+ (5,515 million in 2014).

important mechanism on human rights and trade. During 2014 to 2020, the European Union Pakistan cooperation column totalled 603 million euros, with 31% to education and vocational training, 54% allocated to rural development, and 15% to human rights, democracy, good governance, rule of law, security, and displacement.

Pakistan has ratified the relevant international labour and human rights instruments as part of the condition for obtaining the preferential trading position, but there are a number of challenges to their implementation. For example, as discussed above, Pakistan holds general and broad reservations against these treaty regimes, and the comprehensive implementation mechanisms, such as individual complaint mechanisms, cannot be accepted by Pakistan. Moreover, Pakistan still faces challenges in adopting and implementing international human rights norms and legal obligations within its domestic laws, policies, and practices. Since the joint Committee Document for 2018-19 was completed, the situation regarding GSP+ conditionality compliance has worsened rather than improved.³⁴³

4.1 EU Financial Support to Education Rural Development in Pakistan

The cooperation agreement between EU's and Pakistan on sustaining development collaboration within the framework of external action funding for elementary and secondary education. Secondly, assisting with changes to basic education as well as technical and vocational training at the federal and provincial levels. Thirdly, the enhancing collaboration in the field of skills development by enlisting the help of companies, academic institutions, and other pertinent parties in addition to EU members. The both sides reaffirms for higher education to supporting the growth of educational opportunities and contacts, fostering connections between academia and business, and encouraging staff, researchers, and students to move around in higher education, with a focus on ensuring that women have full access to the field, particularly through programs that increase their admittance to universities, and promoting academic exchange and fellowship programs across EU Member States, higher education fairs, Erasmus+, the Marie Skłodowska-Curie project, and other means of strengthening communication and collaboration on education. The strengthening education quality while promoting higher education's modernity, innovation, and internationalization, and

³⁴³ An annual report covering the period 2018-19 on the Generalized Scheme of Preferences is submitted jointly to the European Parliament and Council. Brussels, Join 3 final, 10.2.2019.

collaborating to increase access to high-quality, inclusive, and equitable education and workforce readiness.

The European Union awarded to Pakistan a 150 million Euro grant to support education, rural development, and democratic institutions. In this way, the EU expresses its commitment to helping Pakistan develop in an inclusive, educational, and democratic manner. The project “Development through Enhanced Education Programme” in the Province of Sindh government earmarked for 50 million euros to improve universal access to quality education. The project will focus both on supporting young people to find productive jobs or higher education and vocational training as well as on issues such as reducing drop-out rates, increasing enrolment rates, and improving the quality of education in the context of persistent demographic pressure.

Approximately 50 million euros is allocated to the project “Growth for Rural Advancement and Sustainable Programme” for rural development in the province of Sindh and Baluchistan. By supporting the development of rural SMEs, this programme will help reduce poverty in rural areas by creating jobs and incomes. In these areas, the program will specifically focus on women. Furthermore, 45 million Euros are allocated to support parliamentary democracy in Pakistan under the 18th constitution amendment. Additionally, that project is part of the EU's assistance to provincial assemblies in addition to the ongoing assistance to provincial assemblies and recent support to the federal parliament.

4.2 European Union and Pakistan Strategic Engagements Plan

In order to promote peace, progress, and prosperity, both parties reaffirm their commitment to fortifying their long-term, forward-thinking, and wide relationship. This collaboration is based on common commitments, beliefs, and tenets. The UN Charter, international law and conventions, the values of mutual respect and trust, and shared interests would all serve as the foundation for the Strategic Engagement Plan. The progress made thus far under the 2004 Cooperation Agreement on Partnership and Development between the European Community and the Islamic Republic of Pakistan, the 2009 and 2010 EU-Pakistan Summit Joint Statements, and the 5-Year Engagement Plan (2012-2017) are also being built upon.

The EU-Pakistan summit that took place in Brussels on 4 June 2010, both sides expressed their desire to build a partnership for development and peace between their countries.³⁴⁴ Leaders reaffirmed their commitment to share information and ideas relating to regional and global security, economic and trade cooperation, human rights, and humanitarian assistance, as well as taking the dialogue a step further. Moreover, the EU expressed its desire to continue cooperating with Pakistan in order to strengthen Pakistan's democratic institutions and government.³⁴⁵

The EU President indicated in his statement that over 1 million Pakistanis live in the EU, so there is a good connection between the two and a need to work together on important issues facing Pakistan. Moreover, he emphasized, “the EU is Pakistan's largest trading partner and one of its biggest development cooperation partners”. Developments in Pakistan have a significant impact on Europe, as well as the global economy.³⁴⁶ The statement further reads, “however, while EU is ready to pursue cooperation in a number of areas, we also anticipate reacting to EU concerns, especially in security and human rights issues, such as protecting minorities and freedom of expression”. EU assistance cannot be fully effective without significant structural, economic, and fiscal reforms. According to the EU President remarks, the EU is providing the necessary assistance to Pakistan for strengthening its law enforcement system and bringing about necessary reforms in the functioning of the police and judiciary, as well as urging Pakistan to take steps to combat terrorism.³⁴⁷

4.3 Pakistan Assuring ILO & EU of Compliance with Labour Standards

Pakistan ratified among the 36 international conventions, eight related to the International Labour Organization (ILO), which are governed by GSP+.³⁴⁸ One of the major challenges to guaranteeing the right to education in Pakistan is child work. The International Labour

³⁴⁴ Joint Statement of EU Pakistan Summit on 4th June 2010, Brussels, https://www.europarl.europa.eu/meetdocs/2009_2014/documents/dsas/dv/council_2-eu-pkst/council_2-eu-pkst_en.pdf

³⁴⁵ *Ibid*

³⁴⁶ Herman Van Rompuy, the President of European Council Remarks in the press conference after the EU-Pakistan Summit 2010. https://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/114929.pdf

³⁴⁷ *Ibid*

³⁴⁸ The International Labor Organization; accessed online; https://normlex.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:11200:0::NO::P11200_INSTRUMENT_SORT,P11200_COUNTRY_ID:2,103166

Organization and other international labour standards, which emphasize the abolition of child labour, are enforced in Pakistan in cooperation with the EU. The initiatives' goal is to guarantee that these children can go to school by lowering the number of child's engaged in labour. The main challenges in ensuring compliance with ILO conventions are the capacity constraints at the provincial level and the weak labour management systems.³⁴⁹ Consequently, refractions are never reported and brought to the attention of authorities at the provincial level because labour inspections are weak and corrupt. Oversight of provincial labour departments was the responsibility of the Ministry of Overseas and Human Resource Development at the federal level. Until new laws were enacted by the provinces, the federal law remained in force. In comparison to Sindh and Baluchistan, which lag behind in legislating new labour laws, Khyber Pakhtunkhwa and Punjab have made considerable progress in enacting their labour laws. However, all four provinces have enacted and ratifies the important piece of law, *the Industrial Relation Act*.

In 2006, the government developed the system of labour inspection for the purpose of implementing labour laws through the Labor Inspection Policy and the Labor Protection Policy.³⁵⁰ The deficiency of skilled labour inspectors covering all industries in Pakistan and allegations of corruption and employer interaction were the main reasons that the labour inspection system failing. The ILO, in collaboration with federal and local authorities, identified four main priority areas that needed attention: (i) reforming labour laws; (ii) focusing on marketable skills in HRD; (iii) providing social safety, including in the informal economy; and (iv) encouraging social discourse and tripartite discussions.³⁵¹

A project on International Labor and Environmental Standards Applications in Pakistan's SMEs was financially supported by the EU, and the main aim of the project is to promote Pakistan's economy's integration into the regional and global economy by enhancing competitiveness and labour and environmental standards compliance.³⁵² This will be

³⁴⁹ An assessment of Pakistan's performance under the EU Special Incentive Arrangement for Sustainable Development and Good Governance (GSP Plus) for the period 2016-2017 is published in the Joint Staff Working Document Brussels no. 13 of the European Commission.

³⁵⁰ The ILO Curriculum on Building Modern and Effective Labour Inspection Systems “*Module 3, Policy and planning of labour inspection*”, online accessed; <https://www.social-protection.org/gimi/Media.action;jsessionid=7ivbAuNBz-JtzdNuFGKvn6llb0P2TtUVfg7gBhU8wJfYGVLHSgxY!1393577045?id=19297>

³⁵¹ The role of the ILO in technical cooperation, “*International Labour Conference, 95th Session*”, International Labour Office Geneva, 2006. Online accessed; <https://webapps.ilo.org/public/english/standards/reim/ilc/ilc95/pdf/rep-vi.pdf>

³⁵² International Labour and Environmental Standards Application in Pakistan's SMEs (ILES), online accessed; <https://webapps.ilo.org/DevelopmentCooperationDashboard/#btihvdrn>

accomplished by concentrating on public and private sector institutions, supporting federal and four province public sector institutions in strengthening the enforcement of existing laws, adhering to international labour and environmental standards, and enacting new laws as needed. Pakistan's exports, which include leather and textile goods, to the European Union have been made easier by the EU's awarding it GSP Plus status. Because these two sectors contribute significantly to trade and GDP growth, it is imperative that labour and environmental standards be more strictly adhered to in these sectors. This would fulfil Pakistan's GSP + related requirements and assist to improve Pakistan's reputation in the global trade system.

5. Suspension Proceedings Initiated Against Pakistan

Pakistan was also the subject of complaints from international trade unions regarding child labour practices in different sectors of the economy, similar to Sri Lanka and other GSP beneficiary states. Textile, garment, and leather workers unions filed the complaint mostly in 2014. The initial complaint was rejected, the Federation sent a second complaint accusing Pakistan of forced and child labour, especially in the carpet industry. In response to the said complaint, the EU Economic and Social Committee supported the Commission, and the investigation was initiated. The government of Pakistan provided all the necessary information, including relevant laws, policies, and practices. Furthermore, Pakistan asked the commission for assistance in addressing the problem. During the investigation, the Commission found no practical effort was made by the Pakistani government to investigate, identify the problem, and provide penalties and remedies for those responsible. However, decision was adopted against Pakistan's beneficiary status withdrawn on basis of negatively.³⁵³ This decision is definitely not due to Pakistan's satisfactory performance, but rather because of techno-legal hindrances that prevented the commission from revoked Pakistan's beneficiary status.³⁵⁴ In the relevant GSP regulation, article 9 speaks of core human and labour rights '*forced labour*' per se rather than '*Child Labour*'. Since Pakistan is not a member of the relevant child labour conventions, it is not bound by those conventions, and the ILO committees have not commented on the observance by Pakistan of the child labour standards, the complaint was alleging Pakistan of

³⁵³ Clara Portela and Hane Orbie, "*Sanctions under EU Generalized System of Preferences and Foreign Policy: Coherence by Accident in the trade development nexus in the European Union; Differentiation, coherence, and norms*", by Maurizio Carbone and Jane Orbie, P.69 (New York; Routledge Publishers, 2015).

³⁵⁴ *Ibid.*

child labour use. Most probably Pakistan would have lost its GSP Plus status if the complaint had been made regarding forced labour in general.³⁵⁵

In most cases, GSP sanctions are based on formal condemnations of the ILO and these condemnations are used as objective benchmarks. By taking the initiative to initiate an investigation against a beneficiary country as a response to the criticism or recommendation adopted by the relevant treaty body, the Commission follows up on the criticism or recommendation adopted by the relevant treaty body. In this case, the specific treaty body condemned the state party that is a beneficiary state formally.

For instance, Burma and Belarus were condemned by the ILO, enabling the EU to document the violations. Although the relevance of child labour practices in Pakistan with respect to ILO Conventions was not very straight forward and clear cut. It is noteworthy that Pakistan was not a party to the relevant convention at the time, so there was no formal condemnation or criticism by the convention committee. Thus, Pakistan was not under the legal obligations of the ILO Convention prohibiting child labour at the time. Consequently, trade unions can file complaints easily under the EU GSP system, to the existence of the ILO condemnations. The EU only recently raised doubts about Pakistan's respect for the conditionality clause on the basis of violations by the Pakistani government of human rights obligations, rather than ILO standards as discussed later.³⁵⁶

The right of children to education is not given express priority under the present Generalized Scheme of Preferences Plus (GSP+) system, while covering a number of human rights, labour rights, environmental, and governance related norms. A few of the treaties include children rights in general but do not often focus on education explicitly; recipient nations of the system must ratify and execute these 27th core international convention.³⁵⁷ The Generalized Scheme of Preferences Plus mandates compliance with agreements such as the United Nations Convention on the Right of Child, which guarantees the right to education. However, there is often little emphasis on educating and a broad focus on monitoring and execution of many concerns. While all 27 Conventions are frequently covered in European Union monitoring reports on GSP+ recipients, there is frequently little in-depth discussion of how these

³⁵⁵ Muhammad Riaz Shad. “*The GSP+ Status of Pakistan in the European Union: Challenges and Prospects*”, Global Political Review, Volume-VI, No, II, Pp., 1-8, June 2021, online access; [https://doi.org/10.31703/gpr.2021\(VI-II\).01](https://doi.org/10.31703/gpr.2021(VI-II).01)

³⁵⁶ *Ibid.*

³⁵⁷ *Ibid.*

agreements specifically affect children's educational outcomes.³⁵⁸ Although GSP+ incorporates education into its larger human rights framework, there is no clear mandate or program aimed at guaranteeing and improving children access to school.

In light of these findings, highlighting the right to education within the GSP+ framework could include taking the subsequent actions; make the right to education a top priority and a major area of attention by amending the GSP+ framework. This might involve certain criteria and metrics relating to the accessibility, the quality and result of education. Establish reporting guidelines and specialized monitoring systems to measure advancements in beneficiary countries children right to an education, and promote educational endeavours in beneficiary countries develop and fund focused programs under GSP+.³⁵⁹ This might involve creating new infrastructure, educating teachers, improving the curriculum and providing scholarships to children who are disadvantaged. Make receiving GSP+ benefits contingent on observable gains in children's educational achievements, and offer extra rewards to nations that make noteworthy advancements in this area. Through finding solutions of these issues, the GSP+ program has the potential to greatly improve the rights of children to an education, hence supporting more general sustainable development goals and general welfare of future generations in participation nations.

6. Conclusion

The current trade and education collaboration between Pakistan and the European Union (EU) is indicative of a comprehensive partnership that balances social duties with financial incentives. Pakistan is granted preferential economic access to EU markets under the Generalized Scheme of Preferences Plus (GSP+) in exchange for upholding international agreements on trade, labour standards, child protection, and human rights. Pakistan is encouraged by this framework to enhance its institutional and legal safeguards for children's rights, especially the right to education. Pakistan and the EU work together on trade and the protection of children's rights to an education through a variety of means, including trade agreements, policy lobbying, financing for educational initiatives, and technical help. Even

³⁵⁸ *Ibid.*

³⁵⁹ Omer Aamir, "A decade of Generalized System of Preferences Plus Status for Pakistan by EU, Achievements, Opportunities, Limitations and Future" Georgetown University Law Center; CASS, (May 16, 2023). Available at SSRN: <https://ssrn.com/abstract=4558281>

with its difficulties, the cooperation offers a lot of potential for both parties to gain and for advancements in economic growth and human rights. The European Union engages with non-EU member nations in the six expenses covered above, viewed from the middle and outer levels. The Generalized Scheme of Preference makes up a significant portion of the Common Commercial Policy. Developing and least-developed countries are allowed free access to the world's largest market through the GSP, which requires them to follow a single set of rules and regulations. As identified, foreign policy relativist reservations as well as the absence of an effective monitoring system for compliance and enforcement are prevailing challenges to domestic implementation of international human rights standards.

In addition to helping Pakistan's economy through commerce, the EU is essential in promoting children's right to an education by means of policy support, capacity-building programs, and development aid. EU-funded projects aim to provide equal access to high-quality education for disadvantaged groups, such as females, rural residents, and children impacted by violence. Even with advancements, there are still issues like gender inequality, geographical differences, and child labour, which makes it difficult for some people to acquire education. The goal of continued collaboration is to overcome these obstacles by bringing Pakistan's internal policies into compliance with international legal requirements. This would eventually guarantee that economic progress is accompanied by appreciable advancements in the defence of children's rights, especially those related to education. The collaboration between the European Union and Pakistan is a strong example of how trade and social development objectives may be combined, promoting economic expansion as well as the improvement of basic human rights like education and trade.

It's a pleasure for Pakistan to receive GSP+ status for a third time, and exports to the EU amount to one third of its total international exports, which makes EU the country's third largest export market. The benefits of GSP+ status to the economy of Pakistan can be seen from the fact that GSP+ is Pakistan's third largest market for exports. However, Pakistan's exports to the EU comprise less than 1% of the EU's total international imports. The Pakistani economy is feeble, which indicates that it needs further improvement to fully utilize its trade preferential status. The EU and Pakistan Strategic Engagement Plans are other ways in which Pakistan interacts with the EU, in addition to GSP. In terms of technical issues, the GSP Regulation has shortcomings that prevent the ability to withdraw beneficiary status if the beneficiaries do not comply promptly and aptly with the stipulations. When withdrawal procedures were initiated against Pakistan for violating certain ILO standards, Pakistan escaped the withdrawal due to

an engineering-legal loophole regarding the definition of child labour and the definition of the minimum age for employment in accordance with international standards and whether they applied to Pakistan.

Summary, the legal and developmental collaboration between the European Union and Pakistan is based on global accords and treaties that prioritize safeguarding children's rights, especially their education. The EU plays a critical role in supporting Pakistan's efforts to provide all children, especially the most disadvantaged, with high-quality education through legal frameworks, financial incentives, and developmental aid.

CHAPTER IV

THE ENHANCEMENT OF THE COOPERATION BETWEEN EU & PAKISTAN FOR PROTECTION OF HUMAN RIGHTS, CONCLUSIVE REMARKS

1. Introduction

The EU and Pakistan have had a rich and long history of cooperation, founded on mutual interests and shared goals. It has evolved over time from basic trade agreements to a comprehensive partnership that involves political dialogue, economic cooperation, security collaboration, and development aid for the education sector and labour rights. It is clear that despite the achievements made, this partnership can still be further strengthened to address emerging global and regional challenges more effectively. The European Union and Pakistan relationship has been based on trade and economic cooperation for a long time. Pakistan's exports to the EU have been boosted by its Generalized Scheme of Preferences Plus (GSP+) status, which has been granted to Pakistan largely because of its proximity to the EU. However, scope for improving this economic relationship through the diversification of trade, the promotion of investment, and the addressing of barriers that inhibit greater economic integration. A more balanced and sustainable economic growth can be achieved for both Pakistan and Europe by improving the business environment, encouraging foreign investment, and fostering innovation and technology transfer.

The EU and Pakistan cooperation on development is another critical area in which they can deepen their relationship. Throughout Pakistan's development, the EU has provided substantial financial aid to support poverty reduction, health, education and governance reform. The development initiatives of EU coordinate with Pakistan's national goals in order to maximize the effectiveness of this collaboration, and resource use must be ensured. Furthermore, development programs may be made more impactful and sustainable by encouraging public-private partnerships and integrating local communities. The EU and Pakistan's security cooperation has grown in importance in recent years, especially in areas like border control, counterterrorism, and regional stability. More extensive and coordinated security coordination is required, given the changing security environment in South Asia and the wider region. This can involve exchanging intelligence, working together on training initiatives, and providing assistance to develop capacity in areas like combating violent extremism and supporting the

rule of law. The encouraging mutual understanding and respect between Pakistan and the EU requires both people-to-people connections and cultural exchanges. The improving professional and student interactions, encouraging cultural diplomacy, and streamlining visa procedures for visitors and professionals may all aid in bridging cultural divides and fortifying the partnership's social unity.

Finally, cooperation and coordinated efforts are needed to handle global issues including migration, climate change, education, labour rights, and health crises, and to promoting sustainable development, renewable energy, and catastrophe resilience in Pakistan and the wider area may be greatly aided by the cooperation of the EU and Pakistan. The EU and Pakistan's partnership might be very helpful in promoting sustainable development, renewable energy, health sector, education, labour right and catastrophe resilience in Pakistan and the surrounding region. Although there is a solid basis of collaboration between the EU and Pakistan, there is still plenty of time to grow and expand this partnership. The EU and Pakistan may establish a more strong and successful collaboration that benefits both sides and advances regional and international security by concentrating on areas of shared interest, resolving obstacles, and utilizing one another's capabilities.

2. Existing Human Rights and Trade Cooperation between EU-Pakistan

It is significant that the Multi-Annual Indicative Program 2021-2027 has been shaped by a wide range of EU projects that have been implemented under the Multi-Annual Indicative Program 2014-2020.³⁶⁰ It consists of supporting local governments at a variety of levels in order to increase their responsiveness and effectiveness so that citizens trust is restored; providing clean energy to rural populations and improving opportunities for economic development and livelihood for those living in electrified areas; improving access to basic services and education, mobilizing and empowering rural communities, as well as technical and vocational education and training, and providing support to the rule of law and improving the human rights situation by building capacity for public authorities, at all levels, to improve

³⁶⁰ The Islamic Republic of Pakistan, “*Multi-Annual Indicative Program 2021-2027*”, Report published by AICS Islamabad 2022, online accessed: https://islamabad.aics.gov.it/wp-content/uploads/2022/12/mip-2021-c2021-8992-pakistan-annex_en.pdf

service provision by developing new policies and improving the management of public funds and governance.³⁶¹

In the Multi-annual Indicative Programme, social mobilisation and community-driven local development support will be built on successfully providing local development support in the past, and will be used to foster the development of the local private sector, including through small-scale enabling infrastructure, making the EU the partner to turn to for long-term, integrated support in backward areas of the country.³⁶² And the supporting peace and stability in the region, the MIP will provide economic and social development on the Pakistani side of the Afghan border. Afghanistan was overthrown by the Taliban in 2021, and the regional programme will provide the majority of help for Afghan refugees in Pakistan, with strong complementary actions on the national level.³⁶³ In the Multi-annual Indicative Program, political instability, inequality, unemployment and demographic pressure are fully integrated into the causes of irregular migration and force displacement.

The support previously given under the Multi-Annual Indicative Program 2014-2020, which concentrated on three sectorial priority rural areas development, education, and good governance, human rights, and rule of law.³⁶⁴ The MIP program concentrated on providing assistance to the provinces of Khyber Pakhtunkhwa and the region of Gilgit-Baltistan, the first part of the program which runs until 2024, relating to how the Afghan problem develops. In general, programs for Baluchistan will start in the second phase in 2024 and will evaluate the lessons gained from implementing the substantial continuing EU portfolio in other regions and districts.³⁶⁵ The European Commission's overall geopolitical plan (2019–2024) and the nation's strategic development goals provide to represent MIP's fundamental values.³⁶⁶ The objectives

³⁶¹ *Ibid.*

³⁶² The Cooperation European Union and Pakistan, “*launching multi-annual indicative program 2021-2027*” press released on 4th august 2022, online accessed: https://www.eeas.europa.eu/delegations/pakistan/press-release-european-union-launches-support-package-pakistan-under-multi-annual-indicative_en?s=175

³⁶³ The Asia and Pacific, “*Regional Multi-annual Indicative Program 2021-27*”, online accessed: https://international-partnerships.ec.europa.eu/system/files/2022-01/mip-2021-c2021-9251-asia-pacific-annex_en.pdf

³⁶⁴ The European Union & Pakistan, “*Multi-Annual Indicative Program 2014-20*” online accessed: <https://brace.org.pk/wp-content/uploads/2020/10/EU-Pakistan-MIP-2014-2020.pdf>

³⁶⁵ The Cooperation European Union and Pakistan, “*launching multi-annual indicative program 2021-2027*” press released on 4th august 2022, online accessed: https://www.eeas.europa.eu/delegations/pakistan/press-release-european-union-launches-support-package-pakistan-under-multi-annual-indicative_en?s=175

³⁶⁶ Ursula von der Leyen, “*A Union that strives for more, My agenda for Europe*”, Candidate for president of European Union Commission. Online access available; https://commission.europa.eu/document/download/063d44e9-04ed-4033-acf9-639ecb187e87_en?filename=political-guidelines-next-commission_en.pdf

are in alignment with the goals of the Pakistani government and will support equitable economic development by enhancing the standard of living and steadily raising the income of the country's youth population, which is primarily made up of the most vulnerable groups, such as migrants and returnees. Additionally, the private sector can be leveraged to create jobs, increase value addition, and foster economic growth through the creation of Micro, Small, and Medium-Sized Enterprises. Facilitating initiatives in human development and governance, including the digital sphere, will further ensure that all citizens have equal access to the benefits of economic growth.³⁶⁷

The support will expand on the successes of EU support in the Technical and Vocational Education and Training sector, where the EU is the model long-term partner and consistently shows up as the primary contributor in policy forums. In the future, the EU plans to monitor the need for change at the federal, provincial, and private sector/industry delivery levels of policy, namely through its involvement in federal policy conversation with the National Vocational and Technical Training Commission.³⁶⁸ The EU support in this area may be further increased by extra funds from the regional Asia Pacific MIP 2021–2027, mobilized on the basis of a flexible initiative strategy, depending on the requirements and developments recorded in the framework of the migratory relationship with the EU. In light of this, additional funding from the regional Asia Pacific MIP 2021–2027 could be activated based on a flexible initiative approach.³⁶⁹ This would enable the government to take steps to strengthen its capacity to manage migration generally in a way that complies with the highest international standards and protects human rights, as well as fight against human trafficking and migrant smuggling.

According to the European Union, Pakistan's commitment to strengthening its anti-money laundering and counterterrorism financing framework significantly influenced the EU's decision to remove it from the list of high-risk countries. The government of Pakistan has made significant reforms over the years to bring its regulatory and financial systems into compliance with international norms established by organizations like the Financial Action Task Force (FATF).³⁷⁰ Among these reforms were the introduction of more stringent financial transaction

³⁶⁷ *Ibid.*

³⁶⁸ The Asia and Pacific, “Regional Multi-annual Indicative Program 2021-27”, online accessed: https://international-partnerships.ec.europa.eu/system/files/2022-01/mip-2021-c2021-9251-asia-pacific-annex_en.pdf

³⁶⁹ *Ibid.*

³⁷⁰ Asma Iqbal & Uzma Naz “Analysing FATF's Concerns and Actions taken by Pakistan for Compliance” Pakistan Social Science Reviews, vol.5 (issue 3), Page 219-234, July 2024.

monitoring legislation, better systems for detecting and reporting suspicious activity, and more collaboration between law enforcement and financial institutions. The Pakistan is finally lifted off the high-risk list after proving to the EU that it was dedicated to fighting financial crimes and the funding of terrorism by making achievements toward correcting deficiencies in its anti-money laundering and counter terrorism financing systems.³⁷¹

Pakistan has taken an aggressive stance in addressing issues concerning financial security and transparency with the EU, through high-level visits and talks, the Pakistani government has been able to improve understanding of its reforms and its commitment to fighting money laundering and the funding of terrorism.³⁷² These kinds of interactions have been vital in fostering confidence and supporting the EU's decision to loosen banking restrictions. The possibility for further economic collaboration between the EU and Pakistan is also reflected in the EU's decision. The European Union seeks to promote trade and investment possibilities by lifting financial constraints, so fostering economic growth in both areas. In order for EU businesses to expand their global presence, Pakistan has an excellent location, abundant resources, and an emerging market potential.

The status improving of human rights is a top priority for the EU and one of its main objectives for external action and EU supports compliance to the twenty-seven UN fundamental conventions concerning human and labour rights, good governance and environmental protection in developing nations by using GSP Plus status as a tool. The EU evaluates the state of human rights in the nations to whom it has given GSP Plus status every two years. Pakistan's GSP Plus status was extended by the European Union parliament for a further two years, until 2027.³⁷³ The Pakistani government deserves credit for its excellent cooperation with the European Union in providing information on the actions it has taken to adhere to the twenty seven UN Conventions.³⁷⁴ While expressing concern about Pakistan's inability to fully implement those laws, it also stated that there were ongoing cases of custodial torture, the execution of the death penalty, increased restrictions on freedom of expression, target killings,

³⁷¹ *Ibid.*

³⁷² Tahseen Ahmed Shaikh, “Dynamics of money laundering and terrorist financing: A challenge to Pakistan” Global Journal for Management and Administrative Sciences, vol-3(1): page 17-40, April 2022.

³⁷³ An official website of the European Union, “Generalised Scheme of Preferences Plus (GSP+)”, online accessed; <https://trade.ec.europa.eu/access-to-markets/en/content/generalised-scheme-preferences-plus-gsp>

³⁷⁴ Delegation of the European Union to Pakistan, “The European Union Releases, The Fourth GSP Report: Evaluating Implementation of 27 International Conventions in Beneficiary Countries, including Pakistan” the European Commission and the European External Action Service (EEAS) have published a joint report on GSP on 21th November 2023.

and enforced disappearances, the strict and non-transparent registration process, forced labour and child labour prevails, unionization is denied, and pollution of the environment continues. In response, it recommended that Pakistan should improve its efforts to ensure that its own legislation is implemented and enforced. The human rights conditions in Pakistan have deteriorated over the past few years. The EU's and Pakistan commitment to protect human rights, like child rights, women rights, and labour rights, and also take considerable measures to protect minorities and underprivileged groups.

3. Making Cooperation Stronger and More Effective

3.1 Alignment with International Standards

The several strategic measures might be implemented in order to significantly enhance and improve Pakistan & EU collaboration in the area of children's right to education. The developing legislative frameworks, allocating more resources, building institutional capacity, guaranteeing strict oversight, encouraging inclusive education, utilizing technology, and raising public awareness should be the main goals of these kinds of initiatives. The government of Pakistan must to endeavour to bring its education and child rights legislation more into line with global norms, including the UN Convention on the Rights of the Child (CRC). The Pakistan's legal system must be brought into compliance with EU norms through the difficult but necessary process of harmonizing legislation between the EU and Pakistan. The EU and Pakistan alignment promotes commercial relations, economic growth, and collaboration in a number of areas, including as labour standards, human rights, environmental protection and governance, and both sides gain a great deal from the harmonization process. Pakistan may take use of this chance to update its institutional and legal frameworks, which will increase Pakistan's attractiveness to foreign partners and investors. Along with providing advantages such as the EU's Generalized Scheme of Preferences (GSP+), it also aids Pakistan's economic integration on a worldwide scale, by supporting stability, growth, and common values in a vital region, and benefits the EU and fortifies its link with Pakistan.³⁷⁵

However, there are still issues to be resolved, including as striking a balance between international commitments and national sovereignty, making sure harmonized laws are

³⁷⁵ Muhammad Riaz Shad, “*The GSP+ Status of Pakistan in the European Union: Challenges and Prospects*”, Global Political Review Vol-VI(II), page1-8, June 2021.

implemented effectively, and dealing with Pakistan's complicated political and socioeconomic structure. The EU and Pakistan capacity building initiatives, as well as ongoing communication and understanding, will be essential to the achievement of this harmonization. While the process of harmonizing legislation between Pakistan and the EU is still underway, it has the potential to be beneficial to both parties, improve collaboration, and build a stronger partnership based on similar values and interests. To overcome obstacles and realize this partnership's full potential, both parties must maintain their commitment.

The European Union and Pakistani policy changes pertaining to children's rights to education are a big step in the right direction for expanding educational possibilities for every child. These changes are intended to tackle important problems including curriculum relevance, teaching quality, accessibility to education, and safeguarding children's rights in the educational system. These reforms help improve Pakistan's compliance with international agreements, including the United Nations Convention on the Rights of the Child (UNCRC), by putting it into line with best practices and international standards.³⁷⁶ A stronger infrastructure for schools, higher enrolment rates, and improved teacher preparation are just a few of the observable benefits of the collaboration, but issues like geographical variations, socioeconomic gaps, and cultural perspectives on education, especially for girls, remain to be addressed. Pakistan and the EU have a same objective for a more inclusive and fair educational system, as seen by the continuing policy reforms in child rights to education. The continuation of cooperation, dedication to implementation, and tackling the underlying cultural and socioeconomic impediments are essential for the success of these developments. This collaboration fosters common ideals of social development and human rights while also strengthening the larger connection between the EU and Pakistan, and it also improves the lives of children in Pakistan.

3.2 New Bilateral Legal Agreements

The new bilateral legal agreements between European Union and Pakistan, suggest a strategic alliance based on shared goals and benefits. These new agreements highlight a commitment to respecting international norms in many of sectors, including as sustainable development, human rights, right to education, labour rights and governance, in along with developing economic and commercial relations. The lowering obstacles and harmonizing regulatory

³⁷⁶ The Government of Pakistan, “*National Commission on the Rights of Child*” online access available on; <https://ncrc.gov.pk/child-rights/>

standards, the agreements support education, commerce, protect investments, and promote market access. In both regions, this collaboration promotes economic growth and opens up opportunities for business. The fight against terrorism and transnational crimes depends on strengthened legislative frameworks that encourage judicial collaboration, including extradition and mutual legal aid.

The international norms and best practices, the agreements highlight a common commitment to labour rights and protection, environmental sustainability, and human rights. Even though these agreements provide a solid framework for cooperation, issues including disparate legal systems, political environments, and socio-economic circumstances may provide difficulties. The mutual respect for the legal and cultural contexts of each party, strong institutional structures, and continuous interaction are all necessary for the successful execution of these agreements. The significant first step toward a more extensive and cooperative collaboration is the signing of new bilateral legal agreements between the European Union and Pakistan. They promote a shared commitment to international norms and values in addition to fortifying political and economic relationships. To fully realize benefits of these agreements and handle any obstacles that may come up, continued participation and collaboration will be necessary.

3.3 Increased Funding and Resources

A significant contribution to tackling major developmental challenges and advancing peace and prosperity in the area has been the EU's targeted financial aid given to Pakistan. This financial support is provided to different sectors, such as infrastructure, education, healthcare, governance, environmental sustainability, and also economic changes, infrastructural development, and poverty alleviation programs have all benefited from financial support. Many Pakistanis, especially those living in areas of poverty, have an improved standards of life because to investments in social services, healthcare, and education.³⁷⁷ There has also been improving in programs that support women's empowerment and child rights and protections. The financing of initiatives promoting sustainable development and environmental preservation has improved the management of natural resources and addressed the problems posed by climate change.

³⁷⁷ The Cooperation European Union and Pakistan, “*lunching multi-annual indicative program 2021-2027*” press released on 4th august 2022, online accessed: https://www.eeas.europa.eu/delegations/pakistan/press-release-european-union-launches-support-package-pakistan-under-multi-annual-indicative_en?s=175

These consist of tackling socio-political complexity, making sure funds are used effectively and transparently, and getting beyond implementation challenges. Furthermore, for sustained results, community engagement and aid that is in line with Pakistan's national goals are essential. The EU's targeted financial aid to Pakistan has produced significant results, advancing social progress, economic growth, and better governance. In order to maximize the impact of this aid, continued engagement is important with an emphasis on transparency, accountability, and alignment with local needs. These financial measures have deepened the connection between Pakistan and the EU, and they bode well for future progress toward their shared objectives of peace and prosperity.³⁷⁸

3.4 Extend Institutional Capacities

A crucial component of their bilateral relationship has shown to be the strengthening of institutional capacity between Pakistan and the EU. The initiative aims to improve Pakistan institutions efficacy, accountability, and transparency through a number of initiatives, such as technical assistance, capacity-building initiatives, and institutional changes. With the help of the EU, Pakistan public administration procedures and governance frameworks have become better. The application of public sector management best practices, which improves the effectiveness and accessibility of government operations. Pakistan legal and judicial institutions have been reinforced by institutional capacity-building initiatives. This has meant updating legislative frameworks, improving the administration of justice, and providing training for judges and attorneys. More access to services, better service delivery, and better results for citizens have resulted from the strengthening of institutions in the health and education sectors. The skills and capacities of public service providers have been improved through capacity-building efforts.

In along with improving public services, governance, and socioeconomic growth, building institutional capacity between Pakistan and the EU has produced impressive outcomes. Achieving long-term development goals and furthering these initiatives will need continuous collaboration, a dedication to sustainability, and an inclusive and adaptable strategy.

³⁷⁸ Delegation of the European Union to Pakistan, “*European Union Projects with Pakistan*”, online accessed; https://www.eeas.europa.eu/pakistan/eu-projects-pakistan_en?s=175

3.5 Promotion of Inclusive Education, Gender Equality and Special Need Education

The European Union and Pakistan are working together to promote gender equality in education with the goal of empowering women and girls by creating an inclusive environment and providing fair access to education for all genders. This initiative is essential for promoting socioeconomic growth and guaranteeing that every person has opportunity to make a positive contribution to society. Making great progress toward a more inclusive and equitable educational environment has been made possible by the EU and Pakistani collaboration in advancing gender equality in education. The objectives of the initiative are to abolish gender inequality, improve girls access to school, and create an atmosphere in which gender equality is valued as a basic value.

The gender norms and stereotypes have been challenged by the development of gender-sensitive curriculum and teaching materials, which has encouraged educators and students to develop a more inclusive perspective. The gender equality and inclusive education practices training programs have raised the standard of instruction and produced a welcoming environment for each student. The gender equality in education has gained more support due to community engagement and increased knowledge of the advantages of education for females. In the areas of resolving gender gaps and empowering females, the EU and Pakistani partnership's promotion of gender equality in education has produced significant outcomes. It is important to ensure that everyone, regardless of gender, has equal opportunity to achieve and contribute to society, it will be necessary to overcome remaining hurdles by continued collaboration, continuous investment, and a comprehensive approach.

One effective way to close educational gaps and promote equitable growth is to extend e-learning platforms to rural and poor areas, providing accessible education. These platforms are able to provide high-quality education to those who would not otherwise be able to because of social, economic, or geographical barriers by utilizing digital technology. Through this effort, education is made more accessible to everybody and people are given the information and skills they need to better their lives while contributing back to their communities. It is important to guarantee that e-learning platforms are built with user accessibility in mind, provide material that is appropriate for the target culture, and are backed by a sufficient infrastructure, including dependable internet connectivity. Moreover, collaborations with regional authorities and groups may expand the scope and efficiency of these platforms, guaranteeing that education genuinely turns into an instrument for social justice and sustainable development.

The modernizing of education and improve teaching effectiveness, it is imperative that teachers receive training in the use of information and communication technology (ICT). Teachers may create more dynamic, interactive, and engaging learning experiences for students by being prepared to use ICT into their teaching approaches. This helps draw in pupils and gets them ready for a digital future. Furthermore, ICT training gives teachers the ability to work together more effectively, access a greater variety of materials, and modify their lessons to fit a range of student requirements. In the end, providing teachers with ICT training is a crucial first step toward raising student achievement and developing a more creative and adaptable educational system.

3.6 Advocacy and Public Awareness

To create a society that is more informed, fair, and equal national initiatives to promote awareness of the value of education and children's rights must be developed. These kinds of initiatives have the power to unite people, shape public opinion, guarantee that all children receive excellent educations, and uphold their rights. Through the involvement of parents, educators, and legislators, these programs can eliminate barriers to education, including child labour, discrimination, and gender inequity. A culture that regards education as a basic right and a major factor in both individual and social development is also fostered by increasing awareness. These efforts play a critical role in bringing about long-lasting transformation and guaranteeing that every child has the chance to realize their greatest potential.

The ensuring long-term, systemic change requires backing advocacy initiatives aimed at advancing and passing legal reforms that increase the protection of children's rights to education. A strong foundation is provided by legal changes to ensure that every child's right to an education is respected and shielded from abuses including discrimination, exploitation, and neglect. In order to close legislative gaps and increase public awareness, advocacy activities are essential in persuading lawmakers and bringing about the legislative reforms that are required. We can contribute to the establishment of a more fair and equitable society where every child has the chance to learn and grow by supporting these initiatives, which will help ensure that education is not only available but also protected as a fundamental human right.

4. Reforms of Municipal Law Through the Use of External Tools

4.1 Towards Indiscriminate Realization of Civil, Political, and Economic Rights Under ILO Conventions:

The main goals of the Generalised Scheme of Preference tool, which is part of the Common Commercial Policy, is a harmonious development of international trade and to remove any barriers and restrictions. The twenty-seven core international treaty regimes that are conditional on the GSP may be categorized into two groups, as we have described in the previous chapter: conventions relating to environmental and governance requirements and core labour and human rights standards. These agreements, which are primarily centred on the economic interests of the participating nations, mostly address environmental, drug, and narcotics concerns as well as corruption. The GSP beneficiary status is usually suspended or withdrawn when international labour organization standards are officially condemned. The Commission initiates investigations against the relevant beneficiary state in response to objective benchmark condemnation of ILO norms. It was a violation of labour rights that was the primary reason for four out of six suspensions and investigations, whereas only one suspension and investigation was based on the violation of civil and political rights.

The history of the GSP sanctions and investigations reveals that, when it comes to cases of GSP beneficiary status suspension, the commission is more focused on the rights of labour and workers, while the rights of vulnerable individuals and groups, such as the indiscriminate application and realization of all civil and economic rights to all, be that men or women are not given priority by the GSP tool because of the economic and trade interests of European industrialist states. For example, sanctions were taken in response to verified violations of ILO rules in the situations of Belarus.³⁷⁹ Similar grounds for GSP suspensions were the violations of ILO norms and labour rights in the situations of El Salvador³⁸⁰ and Myanmar³⁸¹. Pakistan is suspected of violating labour laws; thus, investigations were also launched to revoke the country's GSP beneficiary status. The one case when Sri Lanka's beneficiary status was

³⁷⁹ Council of European Union, “European Union Sanctions against Belarus”, online accessed; <https://www.consilium.europa.eu/en/policies/sanctions-against-belarus/>

³⁸⁰ Maria Luz Vega, “Labour Inspection Sanctions: Law and practice of national labour inspection systems”, Labour Administration and Inspection Programme LAB/ADMIN, International Labour Organization, Geneva.

³⁸¹ Human Rights Watching, “Myanmar; Junta Evading International Sanctions”, UN Report Shows Foreign Banks Help Military Receive Revenue, Buy Arms. Online accessed; <https://www.hrw.org/news/2024/06/28/myanmar-junta-evading-international-sanctions>

revoked, due to noncompliance with its duties for civil and political rights, and secondly, investigations were started against Bolivia due to its violation of the UN Single Convention on Narcotic Drugs. The foundations of the Union are based upon the values of respect for human dignity, freedom, democracy, equality, the rule of law, respect for human rights, and non-discrimination as laid out in Articles 2 and 21 of the TEU.³⁸² In every situation inside the Union, these principles will be maintained and advanced.

We believe that this scheme lacks protection and the indiscriminate realization of civil and political rights; adding these elements will increase the value and significance of the current GSP tool arrangement. From the perspective of the EU Guidelines on Human Rights with third countries, which were adopted by the European Union in 2001, trade and economic growth go hand in hand with the indiscriminate realization of international human rights standards. In this regard, these guidelines give the actions and commitments necessary, as well as goals and benchmarks for the Union and the global community. A human rights centred approach is more beneficial than a trade agreement that focuses on labour rights. For Examples, include the indiscriminate application of privacy, freedom of speech, and human rights principles. Accordingly, Pakistan's future eligibility for GSP+, which is start from January 2024 to until 2027, need to be contingent upon the fulfilment of women's rights in Pakistani domestic laws, policies, and practices, in compliance with the recommendations of the UNCRC, CEDAW committee.

1. In order for Pakistan to ratify the optional protocols to human rights treaty regimes, which mandate that the committees concerned receive and review communications originating from individuals or groups of individuals concerned with violations of rights guaranteed by the respective treaties, it must be encouraged. For example, the optional protocols to the ICCPR, ICESCR, CRC, and CEDAW that specify the authority of committees to accept and evaluate communications.
2. The following treaty regimes are recommended for ratification by Pakistan, and the appropriate domestic laws should be enacted and modified as a result.
 - Convention concerning Home Work, 1996 (C-177).
 - Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951(C-100).

³⁸² Official Journal of the European Union, “*Consolidated Version of the Treaty on European Union*”, online accessed; https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF

- International Labour Organization's Domestic Workers Convention No. 189 of 2011.³⁸³
3. In order to fulfil its binding obligations under international human rights law, Pakistan should hold talks with the relevant parties and guarantee their full participation in the development, adoption, implementation, monitoring, and evaluation of national laws, policies, and practices.
 4. It is important to motivate Pakistan to commit to specifically addressing gender discrimination, and this should be reflected in both the reports submitted to the European Union and the Universal Periodic Reports (UPR).³⁸⁴

It may be possible for Pakistan to improve its economy in two ways through these financial and economic incentives and benefits coupled with the elimination of domestic violence in municipal laws, policies, and national practices. Pakistan's exports to the European Union's markets will be encouraged on a priority basis and at reduced tariffs in the short run as a result of free trade and low tariffs. The second reason is that, in the long term, empowering the women, child right to education in the school system within the national sphere by eliminating discrimination against them in line with international human rights standards will result in half of Pakistan's population positively contributing to the country's development.

4.2 Reform/Suggestion for the Right to Education

The creation of essential rules and regulations, as well their subsequent implementation and review, do not appear to have any clearly defined timeline. Although the laws that have been passed give the government responsibility for financing, there are some innovative measures that need to be taken to get private/personal investments, raise more money, and make political commitments to allocate more funds. The first fragment of this research discusses several approaches. The legislation should include specific rules that govern public-private partnerships for school projects. The following are some reforms/suggestions;

³⁸³ The current list of 31 state parties and the detailed text of the aforementioned convention are available online at; <https://normlex.ilo.org/dyn/normlex/en/f?p=1000:11003:0>

³⁸⁴ Additional measures for combating violence against women: Such as the EEAS can summon the UN Special Rapporteur on the violence against women in the cases of widespread violence against women. Or the EEAS can follow up the recommendation of the Rapporteur made with respect to the widespread violence against women and it can play its role for the implementation of the said recommendations. The EEAS can provide for supporting measures that will combat the existing (if any) impunity of the legal and judicial system.

- It is imperative that the federal government and the provincial government prioritize the right to unrestricted and compulsory education for all children, especially in rural areas.
- The target of allocating 1.5% of GDP, down from 1.7% the previous year, which is significantly less than from previous year allocations to education. It is important that the more money spent in annual budgets is used wisely and openly, and that a report is presented to parliament to demonstrate how the funds were used for edification.
- A right to education legislation was required by Article 25 A in all four federating units and other territories. The federal and provincial governments will need to accelerate the process of implementing equal law.
- The literacy rate has remained around 54% in rural area and 76% urban area, despite efforts by the federal and provincial governments. The difference among gender was more prominent, males rising from 73%, compared to females which is 52%. Special initiatives will need to be started in order to guarantee that more kids enrol in school and stay there until they have finished at least their secondary education.
- Gender inequality persists in education, as evidenced by gender differences of at least 20% in literacy rates between provinces and the overall nation. The authorities, especially in rural regions, must establish a supportive environment in order to ensure that girls receive an education.
- The concern authorities should update its curricula for edification, make reforms in its madrasas, and encourage tolerance, constructive ideals, and intellectual motivation for pupils.
- The technical education should be included in secondary school, courses in carpentry, electrical, and other technical education must be included in the curriculum.
- In addition to promoting literacy and edification, the country's local government system is beneficial to the education system. Local governments would use funds designated for edification as needed.
- Corruption in edification departments is one of the reasons for the country's low literacy rate, and efficient monitoring by education departments is necessary.
- It is essential to develop appropriate structures in order for a system to function properly, and it's important to develop a structure and legislation to promote edification across the nation.

- The 18th Amendment has made education a province-specific issue, which means provinces must ensure high standards through legislation and policies.
- Unemployment among educated men and women is a major concern in Pakistan. As part of school curriculums, career counselling should be offered to students to help them learn more about the job market and improve their skills.
- In the past few years, government educational institutions have not developed new and active programs for elementary-aged students. It is essential to expand the number of coaching programs, sports and physical education courses, and exploratory courses in federal and provincial government schools.

4.3 Reforms/Suggestion for Children's Rights

The results shown above determination that Pakistan's attempts to implement the UNCRC have been insufficient, reactive, and frequently marred by a lack of ownership. Due to insufficient funding, poor coordination and awareness, the limited capabilities and responsibility of duty bearers, a lack of data, and the absence of a clear national plan for children, law enforcement is still weak. Parts of society continue to see child rights as an imposition of a "foreign agenda." This perception deteriorates when actions related to children's rights are not grounded in or informed by local scientific research, when civil society, communities, and experts are not consulted, or when 'change' is implemented with the intention of satisfying populist demands and calming the public rather than resolving a pressing issue. In addition, the persistence of damaging old practices, gender discriminatory norms, and taboos have all contributed to opposition against the implementation of child rights. The higher judiciary has been instrumental in bringing Islamic jurisprudence to the forefront in order to safeguard and advance children's rights while also upholding the UNCRC and fundamental constitutional values, but much more contribution and implantation is needed for children rights. The following are some reform/suggestions;

- Revise and implement a national child rights action plan; create a national child protection strategy after consulting with all provinces; and create a national child justice road map.

- Legislate to raise the age of consent for girls to marry from 18 years and implement in all provinces; guarantee that obtaining a valid CNIC is a prerequisite to celebrating and registering a marriage; establish consequences for adults who break the law.
- To prohibit child labour under the age of 18 as a type of modern slavery, amend the Pakistan Penal Code.
- Operationalize juvenile courts, diversion programs, observation houses, and rehabilitation facilities in accordance with UNCRC General Comment twenty-four.
- To reduce poverty, work toward enforcing the minimum wage, encouraging women's financial inclusion, and advancing gender justice.
- In initiatives to build universal education, change the curriculum to incorporate the sciences, age-appropriate Life Skills Based Education, gender equity, peace, and religious liberty.
- Increase the number of women working in the court system. map, accept, imitate, and enhance regional models of effective child rights practices.
- Create judicial teams, prosecutors, defence attorneys, and police units with specialized knowledge that is only allowed to handle matters of children.
- Put family-based alternative care structures and comprehensive, multi-sectoral child safety measures into action.
- Implement innovative, youth-driven programs to raise public awareness about child protection and child rights.

5. Conclusion

Pakistan's exports to the EU market have increased significantly as a result of the GSP Plus program, with the textile sector benefiting substantially. In order to improve commercial ties between Pakistan and the EU, the Pakistani government must make sure that obstacles are removed and trade restrictions are minimized. These include the inability to compete on global markets, the excessive dependence on a small number of export goods, the instability of currency rates, and the breaches of human rights. The government grappling with a significant current account deficit, massive public debt, and balance of payments issues may be able to increase its foreign reserves by fully utilizing the GSP Plus status. Pakistan could not always be in the GSP Plus category, according to the EU. Therefore, Pakistan must make sure that the

right laws are put in place and that investments are made in order to help its export industry become more competitive.

It becomes imperative to count on secure, healthy, and empowered young in an era where human rights are progressively influencing global discourse and the transformational processes needed to meet and hopefully overcome global crises. The GSP+ monitoring mission will undoubtedly observe that Pakistan has taken historic actions and occasionally produced historic outcomes to comply with the UNCRC. However, much more work has to be done, sometimes very urgently, especially in the cases of juveniles, children from religious minorities, and youngsters living on the streets. The purpose of this brief is to give pertinent stakeholders a helpful starting point and approachable guidelines so they can collaborate and come to a decision about how the GSP+ mechanism can further support the protection and advancement of children's rights in Pakistan in accordance with the UNCRC and its optional protocols.

It will need a multifaceted strategy to strengthen and effectively defend children's rights to education, labour, and commerce in Pakistan and the EU through partnership. Both states cooperation can significantly and sustainably improve the trade and education landscape by strengthening legal frameworks, increasing funding, developing institutional capacities, improving monitoring mechanisms, promoting inclusivity, utilizing technology, and raising public awareness. The EU-Pakistan cooperation on human rights is a step towards not just mutual growth but also a contribution to global peace and stability. A sustained commitment to dialogue, investment in human development, and respect for each country's unique socio-political context will ensure the strength and success of this partnership.

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