



## **CHILD PARTICIPATION AS VICTIMS OR WITNESSES IN CRIMINAL CASES IN PAKISTAN**

**National Report for AIMJF's Comparative and Collaborative Research.**

*La participación de niños como víctimas o testigos en causas penales en Pakistan  
Informe nacional para la investigación comparativa y colaborativa de la AIMJF*

*La participation des enfants en tant que victimes ou témoins dans des affaires pénales  
au Pakistan*

*Rapport national pour la recherche comparative et collaborative de l'AIMJF*

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**Abstract:** The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation as victims or witnesses in criminal cases. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in Pakistan.

**Resumen:** El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre la participación de niños, niñas y adolescentes como víctimas o testigos en causas penales. El artículo explica los aspectos legales, institucionales y procesales de la participación infantil en el sistema de justicia en Pakistán

**Résumé :** Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur la participation des enfants en tant que victimes ou témoins dans des affaires pénales. L'article explique des aspects légaux, institutionnels et procéduraux de la participation des enfants dans le système de justice au Pakistan

### **Introduction**

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links between judges from different countries, promoting transnational judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.



The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of how child participation as victims and witnesses in criminal cases is organized worldwide.

This national report is based on a questionnaire prepared by AIMJF.

## **Research on Child Participation as Victim and Witnesses in Criminal Court**

### **Filled/completed questionnaire**

(Prepared by Mr. Mazhar Ali Khan (Research Officer) and reviewed by Ms. Ambrin Tariq Awan (Research Officer))

#### **1. Right to be heard**

##### **1.1. Are children presumed to be capable witnesses (or presumed invalid/untrustworthy by reason of their age alone, or similar)?**

In Pakistan, every child has, subject to national procedural law, the right to express his or her views, opinions and beliefs freely, in his or her own words, and to contribute especially to the decisions affecting his or her life, including those taken in any judicial processes, and to have those views taken into consideration according to his or her abilities, age, intellectual maturity and evolving capacity. Children have the right to participate in their own cases, including providing testimony as appropriate, expressing their views and ideas during investigative and other phases. Article 3 of the Qunan-e-Shahat 1984 relates to the competence of a witness, It reads as ***“Who may testify? All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind or any other cause of the same kind.”***

above definition of a competent witness sets prerequisites for any person to be a witness in the court. There is no exclusion clause, so any person who may be a child, an old and fragile person, or a sick person, bodily or mentally, if qualifies above conditions can be a witness in the court. It provides that "a person suffering from physical or mental illness, or of extremely old age, or of tender years, if capable of understanding the questions put to him, and giving rational answers thereto, is a competent witness." Therefore, a child is presumed to be capable witness and he is



not considered untrustworthy solely on the ground of tender age. In Pakistani law, children are not presumed to be incapable or untrustworthy witnesses solely due to their age. The competence of a child witness is determined based on their understanding and ability to give a rational account of what they have witnessed. In relation to competency of a child witness, the superior Courts of Pakistan have liberally interpreted Article 3 by broadening its scope. For instance, the Supreme Court of Pakistan in a case titled *Raja Khurram Ali Khan v. Tayyaba Bibi* reported as PLD 2020 SC 146 observed that “the "rationality test", which was applied by the presiding Judge at the commencement of the examination-in-chief of a child witness, should be made applicable throughout the testimony of the child witness; that if at any stage, the presiding Judge observed any hindrance or reluctance in the narration of events, the evidence should be stopped, and remedial measures should be taken to ease the stress and anxiety the child witness might be under, and if required, the case be adjourned to another date; and, that in case the child witness was still unable to narrate his testimony with ease, then the presiding Judge ought to record his findings on the demeanour of the child witness, conclude his evidence, and relieve him as a witness.”

## **1.2. Are there any restrictions to the right to be heard (minimum age, or other criteria)?**

The Convention on the Rights of the Child (CRC) was adopted by Pakistan in 1989. The Convention set a new vision of the child, embodying a consensus that emerged in favour of the empowerment, as well as protection, of children. It defines the four overarching rights or ‘general principles’ that are needed for the rights in the Convention to be realized i.e. non-discrimination; best interest of child; Right to life, survival and development; and the right to be heard. In the Pakistani context, the right to be heard is not absolutely restricted by age. The Qanun-e-Shahadat Order 1984, which governs the law of evidence in Pakistan, stipulates that all persons are competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, due to factors such as tender years, extreme old age, disease, or any other similar cause. The law does not set a precise age limit for competency as a witness; instead, it focuses on the individual's mental growth and ability to understand questions and provide rational answers. The sole test for determining the competency of a witness, including children, is whether the witness has sufficient intelligence to provide a rational account of what they have witnessed.

There is no absolute age restriction for the right to be heard in Pakistan, the competency of a witness, particularly a child, is determined on a case-by-case basis, with the court assessing the witness's intelligence and understanding.



### **1.3. Are children allowed to refuse to make a statement? If so, in which cases?**

Pakistani law does not provide any specific occasion for a child witness to refuse to make statement. However, the law under Article 3 of the QSO places the child witness and an adult/major witness on same footings. The issue of competency exclusively rests with the Court to decide. Based on analogy, it may be inferred that the privileges provided under the law for an adult witness can be extended to a child witness as well. For instance, an adult witness cannot be compelled to give evidence with respect of certain privileged communications, this principle is equally applicable to a child witness who can refuse to give any such statement. Similarly, if a child is under any influence or pressure, he/she may also refuse to make a statement. It must be noted that before recording any statement of a child, the Court must adhere to the rationality test.

## **2. Broad perspective of the legal framework and procedure**

### **2.1. Is there a specific legal framework that defines how to treat child victims/witnesses of crime (e.g. special norms in the criminal procedural code, special child code, special victims code, etc)?**

Yes, Pakistan has a developing legal framework for child victims/witnesses of crime. While there isn't a single, unified code, there are recent and ongoing efforts to create a more child-centered justice system. **The Juvenile Justice System Act (JJSA) of 2018:** This Act, though focused on juvenile offenders, includes provisions for protecting child victims and witnesses. These provisions may address recording of testimonies, use of child-friendly language, and having a support person present during questioning. **Child Protection Courts:** Following the JJSA, pilot programs established specialized Child Protection Courts in some districts. These courts handle cases involving children, including those where they are victims or witnesses. These courts aim to create a less intimidating environment for child participation in the legal process. There are some other laws which contributes to specific legal framework for children, these laws include: The Islamabad Capital Territory Child Protection Act, 2018; Zainab Alert (Response, And Recovery) Act, 2020; The Prevention Of Trafficking In Persons Act, 2018; The Punjab Destitute And Neglected Children Act, 2004; The Khyber Pakhtunkhwa Child Protection And Welfare Act, 2010; The Sindh Child Protection Authority Act, 2011; The Balochistan Child Protection Act, 2016 and the Khyber Pakhtunkhwa Police Act, 2017.

### **2.2. Is there any coordination between different role players (such as the police, education, social services, health system) to initiate legal proceedings and coordinate response (evidence collection and**



**intervention), including avoiding multiple interviews of the child? Is there any flowchart in your country to coordinate these interventions? If so, could you please share it?**

Yes! the law provides for the coordination between different role players such as judiciary, police, child protection units, social welfare departments, NGOs and lawyers. This coordination is not limited to but includes supporting the child at investigation and trial stages, rehabilitation of destitute and neglected child, necessary steps for ensuring the safety of child, medical and psychological support of child victims, and protecting child from abuses.

As far the flowchart is concerned, the same may be asked from the relevant authorities.

**2.3. Can you briefly explain what are the major steps of the legal procedure in criminal cases (felonies) with child victims or witnesses involved?**

In Pakistan, legal procedure in criminal cases involving child victims or witnesses includes following special stages;

**1. Reporting and Investigation:**

- **Reporting:** Ideally, a trusted adult (parent, teacher, etc.) reports the crime to the police. The JJSA encourages reporting through Child Protection Units (CPUs) within police stations.
- **Investigation:** Police, with the support of CPUs (ideally involving social workers and potentially health professionals), investigate the crime. The JJSA emphasizes a child-friendly approach during questioning, potentially using special techniques and having a support person present.

**2. Pre-Trial:**

- **Evidence Collection:** Evidence, including the child's testimony, is gathered. The Qanun-e-Shahadat Order (QSO) may be used to determine the admissibility of the child's testimony.
- **Child Protection Courts:** Depending on location, the case might be heard in a specialized Child Protection Court designed for a less intimidating environment.

**3. Trial:**

- **Minimizing Re-traumatization:** Procedures might be in place to minimize the child having to repeat their testimony multiple times.
- **Witness Protection:** Depending on the case, measures might be taken to protect the child's identity or location.

**4. Post-Trial:**



- **Support Services:** Ideally, the child would receive ongoing support services from social workers or psychologists to help them cope with the experience.

These steps are designed to ensure justice while also providing care and protection to child victims or witnesses throughout the legal process.

#### **2.4. In which moment(s) can a child be heard in this procedure?**

In Pakistani criminal cases with child victims or witnesses, the child's voice can be heard at multiple points. During the investigation, police ideally use a child-friendly approach with a support person present. Evidence gathering might involve a formal statement or a less formal interview with a trained professional. The most crucial moment comes at trial, where the child's testimony is heard. However, safeguards like video link testimony may be used to minimize re-traumatization. It's important to remember that the admissibility of the child's evidence depends on their understanding of the situation as determined by the judge.

#### **2.5. Does the child have the power to initiate, suspend or terminate the criminal procedure (such as giving consent for the complaint or the possibility to refuse consent or revoke consent)? If so in which cases?**

Under Pakistani law, a child does not generally have the legal authority to initiate, suspend, or terminate criminal proceedings. The power to initiate criminal proceedings typically lies with the state through the police or other law enforcement agencies, which can file a First Information Report (FIR) based on a complaint or cognizable offense. However, certain provisions allow for the involvement of a guardian or next of kin in the process, particularly in cases involving personal offenses. For instance, in cases of Qatl-i-Amd (intentional murder), the legal heirs of the deceased, which may include children if they are heirs, have the right to pardon the accused or enter into a compromise under the Qisas and Diyat provisions of the Pakistan Penal Code. This can effectively suspend or terminate the criminal proceedings if the court accepts the compromise. In the context of consent for initiating a complaint, it is generally the guardian or next of kin who would act on behalf of the child, especially if the child is under the age of understanding as defined by the law.

### **3. Preparation for the child participation**

#### **3.1. Is there in your country specific child-friendly information material for children as victims or witnesses (e.g. brochure, video etc)? If so can you please share them?**

This information can be asked from the relevant department or authority.

#### **3.2. How do children have access to these materials? (e.g. brochure available at police station/court; brochure sent to the child together with summon; witness preparation conducted in court with support**



**of a video, or with support of a special professional; investigator/judge orally explaining in child-friendly language before interview/hearing, or any other?) How long before the interview/hearing does this happen?**

This information can be asked from the relevant department or authority.

**3.3. Is there any assessment of the child conducted before a child is interviewed/heard? If so, what is assessed / for what purpose (e.g. background and circumstances of child; whether the child would be able to speak freely; capacity of child to express him/herself; capacity to participate, if uncertain; capacity to handle interview and possible effects; potential vulnerabilities and special needs, etc)? If so, what is the legal background of their professional conducting this assessment? To which institution does this professional belong? Is there any kind of report produced?**

There is no specific mechanism for the assessment of a child before his/her interview is conducted. However, the child usually accompanied by his/her guardian or parents are assessed by the Investigation Officer or Prosecutor. Currently, specialized trainings are conducted by different academies, departments and Non-Governmental Organizations for judges, prosecutors and police officials on child victim's assessment and dealing.

**3.4. Is there any kind of contact or evaluation with the parents or legal guardians?**

Parents and guardians play a significant role throughout the legal process in Pakistani criminal cases involving child victims or witnesses. They are often the ones who report the crime, and social services may be involved to assess the family situation and ensure the child's safety. Parents are typically informed about court proceedings and may even accompany the child during testimony for support. However, the level of involvement and evaluation of parental capacity can vary depending on the case. In situations where the parents themselves are suspected of wrongdoing, their access to the child may be restricted.

**3.5. Is the child allowed/invited to visit the facilities where he or she will be heard prior to the interview/hearing?**

Pre-visit familiarization for child victims or witnesses in Pakistan isn't yet a nationwide practice. However, there are glimmers of hope. Pilot programs, especially those involving Child Protection Courts, might offer familiarization tours to ease anxiety. Additionally, the Juvenile Justice



System Act prioritizes creating child-friendly court environments with dedicated support staff and less intimidating settings. While pre-visits aren't standard yet, the legal system is evolving to make the courtroom experience less daunting for children. In specific cases, contacting the court beforehand to inquire about pre-visit opportunities might be beneficial.

### **3.6. Does the child receive any kind of support prior to the interview/hearing (psychological, social, medical, legal)?**

Children involved in legal proceedings as victims or witnesses may have access to pre-interview/hearing support. Ideally, the Juvenile Justice System Act encourages police to involve social workers. These professionals can assess the child's well-being, offer emotional support, and connect them with psychologists or counselors. Medical attention might also be available if needed due to the crime or the legal process. Legal aid programs are starting to take root, offering some children legal representation to explain the process and advocate for their best interests. However, the availability and quality of these resources can vary across the country. To ensure the child receives the necessary support, explore resources within Child Protection Units or seek out local NGOs or legal aid programs that specialize in helping children navigate the legal system.

It is mandatory to have the child medically examined through an authorized medical officer. Similarly, under the recently enacted Anti-Rape (Investigation and Trial) Act, 2021, there is a provision of legal assistance to the child victim alongside women. Moreover, the said law provides for Independent Support Advisor who shall accompany the victim during proceedings.

## **4. Protection and Support**

### **4.1. Is there any risk assessment conducted for the child victim/witness after a crime has been reported? If so, who conducts it? Is there any specific tool? If so, can you share it please?**

In the Pakistani legal context, there are provisions for conducting risk assessments for child victims/witnesses after a crime has been reported. Typically, in Pakistan, the police, social welfare departments, or specialized child protection units may be involved in conducting risk assessments for child victims/witnesses. These assessments aim to evaluate the level of risk to the child's safety, well-being, and mental health following their involvement in a crime. At federal level, risk assessment is conducted by the Child Protection Institutions. Whereas on provincial level, it is conducted either by the Child Protection Units or the Child Protection Officers. After a crime has been reported, it is generally conducted by police, or social welfare department or the respective child protection institution or officers. While there may not be a specific standardized tool universally used across all regions of





Pakistan, assessments are likely to incorporate a combination of interviews with the child, observation, and consultation with relevant professionals such as psychologists, social workers, or medical practitioners. The goal is to gather comprehensive information about the child's circumstances, including any potential threats or vulnerabilities they may face.

#### **4.2. In case of identification of risks, what kind of protective measures are available in your country?**

In Pakistan, several protective measures are available for child victims/witnesses identified as being at risk following a crime. These measures aim to ensure the safety, well-being, and rights of the child are upheld throughout the legal process. Some of the key protective measures in the Pakistani legal context include:

1. **Child Protection Laws:** Pakistan has various laws and regulations aimed at safeguarding the rights of children, including the Islamabad Capital Territory Child Protection Act, 2018, and the Juvenile Justice System Act, 2018. These laws outline the rights of children and provide mechanisms for their protection, including child-friendly procedures in legal proceedings.
2. **Child Protection Units:** Many provinces in Pakistan have established specialized child protection units within law enforcement agencies or social welfare departments. These units are responsible for responding to cases involving child victims/witnesses and providing them with appropriate support and protection.
3. **Psychosocial Support:** Child victims/witnesses may require psychosocial support to help them cope with the trauma of their experience and navigate the legal process. This support can be provided by trained professionals such as psychologists, social workers, or counselors, either through government agencies, NGOs, or specialized service providers.
4. **Restraining Orders and Court Orders:** In cases where there is a risk of further harm to the child, restraining orders or court orders may be sought to restrict the actions of the perpetrator or ensure the child's safety. These orders may include provisions for prohibiting contact with the child, maintaining a certain distance, or imposing other conditions deemed necessary by the court.
5. **Education and Awareness Programs:** Public awareness campaigns and educational initiatives aimed at preventing child abuse and promoting child rights are important protective measures. These programs raise awareness about the rights of



children, provide information on how to report abuse, and empower children to speak up and seek help if they are in danger.

These protective measures are intended to ensure that child victims/witnesses are supported, protected, and empowered to participate effectively in the legal process while minimizing the risk of further harm or trauma. However, it's important to note that the effectiveness of these measures may vary depending on factors such as the availability of resources, the capacity of relevant institutions, and the level of coordination between different stakeholders involved in child protection.

#### **4.3. What kind of support measures are available for child victims / witnesses of crime (psychosocial, medical, legal) before, during, after the judicial process)**

Pakistan's legal system acknowledges the vulnerability of child victims and witnesses by offering various support measures. These include psychosocial support like therapy, support groups, and play therapy for younger children. Medical attention encompasses physical examinations, forensic examinations in abuse cases, and ongoing healthcare access. Legal support comes in the form of legal representation, child-friendly procedures, and victim/witness assistance programs. While collaboration between government bodies, NGOs, and healthcare professionals is crucial for delivering these services, their effectiveness can vary depending on resource availability and coordination.

In Pakistan, the legal system provides various support measures for child victims and witnesses of crime to ensure their well-being and protection throughout the judicial process. These measures include:

##### **1. Psychosocial Support:**

- i).** Counseling and therapy by trained professionals to help children cope with trauma .
- ii).** Support groups for sharing experiences and coping strategies .
- iii).** Play therapy for younger children to express emotions and process experiences .
- iv).** Trauma-informed care approaches that prioritize safety and empowerment .

##### **2. Medical Support:**

- i).** Medical examinations and treatment for physical injuries and health issues .
- ii).** Forensic examinations in cases of sexual abuse to collect evidence .



iii). Access to healthcare services for ongoing medical care .

### **3. Legal Support:**

- i). Legal representation to advocate for the child's rights, including legal aid and pro bono services.
- ii). Child-friendly legal procedures that consider the child's age and maturity .
- iii). Victim/witness assistance programs for guidance and support through the legal system .

These support measures are crucial for the recovery and empowerment of child victims and witnesses, and they involve collaboration between government, NGOs, healthcare providers, legal professionals, and community organizations. However, the effectiveness of these measures can vary based on available resources and coordination among stakeholders .

#### **4.4. In case of intrafamilial violence, which measures can be / are usually adopted to grant the child's security? Is there any/which kind of support offered to the remaining members of the family? Are there any specific measures in case of child abduction or child kidnapping?**

In the Pakistani legal context, measures to ensure the security of a child in cases of intrafamilial violence and to provide support to the remaining family members can involve a combination of legal, social, and protective interventions. Additionally, specific measures may be in place to address child abduction or kidnapping. In cases of intrafamilial violence, including domestic abuse or child abuse within the family, legal protection orders such as restraining orders may be sought from courts to ensure the safety of the child and other family members. These orders may prohibit the perpetrator from contacting or approaching the child or other family members. Shelters and safe houses are available for children and other family members who are fleeing from intrafamilial violence. These facilities provide a secure and supportive environment where victims can seek refuge, receive counseling, and access other necessary services. Child welfare authorities may become involved in cases of intrafamilial violence to assess the child's safety and well-being, provide support to the family, and if necessary, initiate child protection measures such as temporary removal from the home or placement in alternative care.

## **5. Environment**

### **5.1. In which institution/what kind of environment is the child interviewed/heard in pre-trial/trial phase?**



In the Pakistani legal context, child victims or witnesses are interviewed or heard in a child-friendly environment, often within specialized institutions or facilities equipped to handle such cases. The aim is to create a supportive and non-threatening environment that prioritizes the well-being and comfort of the child while ensuring their testimony is accurately recorded for legal proceedings.

In pre—Trial stage, the Federal laws and Provincial laws oblige the respective Child Protection Institutions and Units to deal with such type of situations especially providing a child-friendly environment for child victims/witnesses. However, specific details can be provided by the concerned departments/authorities.

So far as trial phase is concerned, special courts known as Child Protection Courts are established both at Federal level as well as provincial level. There are special playing room established near the Child Court premises with object to provide child friendly environment especially child victims/witnesses.

**5.2 Is there any specificity in this environment to adapt it for children? (e.g. separate ‘building’ specifically for children; non child-specific building, but separate entrance for children; separate interview/hearing room for children)**

While Pakistan doesn't have entirely separate buildings for child victims and witnesses, efforts are underway to make existing courts more child-friendly. Some courts, particularly those utilizing Child Protection Courts, might have dedicated interview and hearing rooms with child-sized furniture, brighter colors, and a less formal atmosphere. The Juvenile Justice System Act emphasizes the importance of support staff like social workers or specially trained officers who understand how to interact with children sensitively. However, full implementation of these adaptations and dedicated resources remains a challenge across the country. Despite this, the legal framework acknowledges the need for child-friendly environments, and pilot programs offer a promising glimpse into a more child-centered legal system.

At trial stage, there are separate courts and premises for children and even in some districts children parks are also established within the family courts premises. As far pre-trial proceedings are concerned, information may be asked from relevant departments/authorities.

**5.3. Are there guidelines for the environment where the child is interviewed/heard? (architecture, setting)? If so can you please share it? Can you share a photo of this space?**

The required information can be provided by the relevant departments.

**5.4. Is there a specific waiting area for the child?**

Yes.

**5.5. Are there protection measures to avoid direct contact (including visual) between the child and the alleged offender? if so what kind? ( e.g. separate entrance, separate waiting area, separate interview/hearing rooms, use of video link, voice or image distortion etc)**

Pakistan's legal system implements various measures to shield child victims and witnesses from contact with the alleged offender. Some courts, particularly those with Child Protection Courts, might have separate entrances and waiting areas to minimize contact from the outset. Separate interview and hearing rooms are a more common approach, keeping the child physically apart during these crucial moments. Technology plays a role as well, with video link testimony allowing children to give evidence from a safe, remote location. In some instances, voice or image distortion may be used for further anonymity. However, resource limitations and the child's own comfort level with technology can affect the implementation of these measures. Despite these challenges, Pakistan's legal framework prioritizes minimizing contact between vulnerable children and the accused throughout the legal process.

During trial proceedings, maximum level of care is taken in order to avoid direct contact between the child and the alleged offender. This is done through a separate waiting areas established for child victims near the Court premises. However, information regarding pre-trial proceedings can be provided by the relevant departments such as police, social welfare department etc.,.

**5.6. In case identification of the offender is needed, how is this conducted, and where?**

The identification of the offender may be conducted through various means, depending on the nature of the crime and the available evidence. The process of identification typically occurs during investigative stages and may involve different procedures to ensure accuracy and fairness. In cases where the suspect is in custody, the investigation officer may conduct identification parade in the presence and supervision of Area Magistrate. This involves presenting the suspect alongside other individuals to the victim or witness for identification. The identification parade may be conducted in Jail or in police station or even in Court. In this regard, the Supreme Court of Pakistan in a case titled ***Muhammad Hayat v. The State*** reported as **2021 SCMR 92** held as: “A Combined reading of R. 26.32 of the Police Rules, 1934 with Art. 22 of the Qanun-e-Shahadat Order, 1984, does not restrict the prosecution to necessarily undertake the exercise of test identification parade within the jail precincts”. In addition to eyewitness identification, forensic evidence such as DNA analysis, fingerprints, or other physical evidence may be used to identify the offender. Forensic analysis can provide scientific



support for the identification process and help corroborate eyewitness testimony.

**5.7. If the child lives in a different city in relation to the city where the proceeding is tried, what are the specificities at stake?**

As regard child involved in proceedings, section 18 of the Khyber Pakhtunkhwa Child Welfare and Protection Act, 2010 specifically provides that when the court dealing with the matters of child considers that trial by some other Court or at some other place is expedient for the ends of justice and is in the best interest of child, the Court shall report the matter to the concerned High Court or the District Judge, as the case may be, for transfer of the case to another Court after hearing the parties. If the child is a witness or victim, he/she may be produced in person or by order of the Court his/her attendance can also dispensed with through video link facility.

**5.8. Is it possible in your country that the interview is conducted virtually (the child and the interviewer are in different places)? In which circumstances? Are any / which special security measures (are) adopted?**

Yes, it is possible in Pakistan for interviews, including those involving children, to be conducted virtually with the child and interviewer in different places. This can occur under specific circumstances, such as when physical presence is not feasible due to geographical, health, or safety reasons. As far the special security measures are concerned, the Courts ordinary makes order for the security and safe custody of children. Moreover, section 8 of the Anti-Rape (Investigation and Trial) Act, 2021 provides for the special security measures for the protection of victims and witnesses including child.

**5.9. Must a child appear in court to be interviewed or are recorded investigative interviews admitted as evidence in court? If the child has to appear in court, which circumstances are determinant?**

Pakistan's legal system strives to minimize the number of times a child victim or witness has to recount their experience. The Juvenile Justice System Act encourages recorded investigative interviews conducted by trained professionals. These recordings, if following specific protocols, can be admitted as evidence in court, reducing the child's need for a formal courtroom appearance. However, factors like the child's age, understanding, and the complexity of the case can influence whether the judge deems a live testimony necessary. While a child's comfort is a priority, their preference to appear in court may not be the deciding factor. Overall, the system prioritizes recorded interviews but retains the



flexibility for a judge to require a child's physical presence in court for a fair trial.

Under the Pakistani law, only such statement is admissible which is recorded before the Court. Therefore, the child must record his statement before the Court for the purpose of admissibility.

## **6. Specific legal guarantees for the child**

### **6.1. Does the child have the right to legal assistance? for free? Is this assistance specialized? At what moment does this assistance come in (e.g. already advising whether or not to report a case / during the first interview / only in court / other)**

Under various laws of Pakistan, there are provisions for free legal aid to the victim including the child victim. For example section 6 of the Anti-Rape (Investigation and Trial) Act, 2021 provides for the free legal assistance to the victims of rape. This assistance is not limited to trial rather it begins with the registration of the case till the conclusion of the trial.

#### **6.1.1 What is the role of the legal assistant (representing views of child or best interests of child; advising the child; talking on behalf of the child; ...)?**

In the Pakistani legal context, the role of the legal assistant in cases involving children is multifaceted and centered around safeguarding the child's rights and well-being. It ensures that the child's perspectives and preferences are communicated accurately to the court. This involves understanding the child's wishes and conveying them effectively. The legal assistant advocates for outcomes that are in the child's best interests, which may sometimes differ from the child's expressed wishes. This involves a holistic approach, considering the child's long-term well-being and safety. Additionally, the legal assistant provides legal advice to the child, explaining the legal proceedings in an age-appropriate manner and helping the child understand their rights and the implications of different legal outcomes. In situations where the child is unable or unwilling to speak directly, the legal assistant communicates on the child's behalf, ensuring their voice is heard in the legal process. The legal assistant works to make the legal process less intimidating for the child, which may involve coordinating with the court to arrange for child-friendly procedures such as in-camera hearings or the use of recorded testimonies.

#### **6.2 Does the child have the right to be accompanied by a support person? If so, what is the role of this person? What is this person entitled to do in support of the child?**



Yes, in Pakistan, a child has the right to be accompanied by a support person during legal proceedings. This provision is intended to ensure the child's comfort and security throughout the process. For instance, in rape cases an independent Support Advisors are appointed among the psychologists, doctors, lawyers, para-legals, lady-health workers, social workers, or persons who are members or nominees of a civil society or a non-governmental organization. The primary role of the support person is to provide emotional and psychological support to the child. The support person aids in facilitating communication between the child and legal professionals. They help the child understand the questions being asked and assist in expressing their responses clearly. The support person ensures that the child feels safe and comfortable, helping them to remain calm and composed during the proceedings. In other matters, the child may be supported by the concerned Child Protection Officer.

### **6.3. What is the role of parents/legal representative?**

The roles of parents and legal representatives are integral to safeguarding the rights and best interests of children involved in legal cases. Parents are the primary source of emotional and psychological support for their children, helping to alleviate the stress and anxiety that may arise during legal proceedings. They are also key advocates for their child's best interests, ensuring that any decisions made are favorable to the child's welfare. Parents are responsible for providing the court and legal representatives with pertinent information regarding the child's background, needs, and circumstances, which may have a significant impact on the outcome of the case. Additionally, they often have the authority to give consent for various legal actions concerning their child and are involved in making critical decisions on the child's behalf.

Legal representatives, such as lawyers, play a crucial role in advocating for the child's legal rights and interests within the courtroom. They ensure that the child's perspective is represented and taken into account during legal proceedings. These representatives also offer legal advice to both the child and their parents, clarifying the legal process, potential outcomes, and the rights of the child in a manner that is understandable for all parties involved. They are instrumental in facilitating clear communication between the child, their parents, and the court, making sure that the child's wishes are accurately expressed and understood. Legal representatives strive to make the legal process as child-friendly as possible, advocating for accommodations like in-camera sessions or the use of recorded testimonies to protect the child's well-being. Moreover, they are tasked with the responsibility of protecting the child's legal rights throughout the process, ensuring adherence to relevant laws such as the Juvenile Justice System Act, 2018, and other child protection statutes.



### **6.3.1 When are parents/legal representative excluded (e.g. perpetrator, exploitative, intimidating/influencing, non-supportive, conflict of interests...)?**

There is no specific regime dealing with this type of situation but the parents or legal representatives may be excluded from participating in legal proceedings involving the child under certain circumstances where their presence or involvement could compromise the child's well-being or the integrity of the proceedings. These circumstances include: If the parent or legal representative is the alleged perpetrator of abuse or exploitation; If the parent or legal representative is found to be exploiting the child, either directly or indirectly; If there is evidence that the parent or legal representative is intimidating, coercing, or unduly influencing the child; If the parent or legal representative is non-supportive or uncooperative with the legal process, particularly if they are obstructing justice or failing to act in the child's best interests; If there is a conflict of interest where the parent or legal representative's interests are in direct conflict with the child's best interests; the court has the discretion to exclude parents or legal representatives if their presence is deemed detrimental to the child's well-being or to the fair conduct of the proceedings.

### **6.3.2. If excluded, is there another legal representative appointed/ if so by whom?**

Yes, if parents or the current legal representative are excluded from participating in legal proceedings involving the child in Pakistan, another legal representative can be appointed by the Court to ensure the child continues to receive appropriate legal support and representation.

### **6.4. What kind of measures are adopted to grant the right to privacy / confidentiality (public excluded / in all cases / in which cases? press statements so that child can not be identified?)**

In Pakistan, several measures are adopted to ensure the right to privacy and confidentiality for children involved in legal proceedings. These measures are specifically provided under the Anti-Rape (Investigation and Trial) Act, 2021 and include: In-camera proceedings and non-disclosure of identity of child. The primary object of these provisions is to ensure the protection of the right to privacy of children and women.

Pakistan's legal system is taking steps to safeguard the privacy and confidentiality of child victims and witnesses. Judges have the authority to exclude the public from parts of the hearing, particularly during the child's testimony, to create a less intimidating environment. Additionally, media outlets are generally discouraged from publishing any details that could identify the child, such as their name, address, or school. In some cases, judges may even issue court orders to further restrict the spread of such information. However, achieving consistent implementation of these measures across the entire country remains a challenge. The legal



system is still navigating the balance between ensuring open court proceedings and protecting the vulnerable child.

### **6.5. Is the child allowed to plea for cautionary measures?**

Yes, there is no bar under the Pakistani legal system on child to plea for cautionary measures.

Pakistan's legal system is taking steps to safeguard the privacy and confidentiality of child victims and witnesses, though the child doesn't have the direct right to plea for such measures. Judges have the authority to exclude the public from parts of the hearing, particularly during the child's testimony, to create a less intimidating environment. Additionally, media outlets are generally discouraged from publishing any details that could identify the child, such as their name, address, or school. In some cases, judges may even issue court orders to further restrict the spread of such information. However, achieving consistent implementation of these measures across the entire country remains a challenge. The legal system is still navigating the balance between ensuring open court proceedings and protecting the vulnerable child.

### **6.6. Does the child have the right to appeal any decision?**

Yes being a complainant, victim or accused, the child has the right to appeal under different laws.

## **7. Interviewing structure and procedure**

### **7.1 Who hears the child victim/witness in the pre-trial phase / who in the trial phase? How often is a child usually heard in total (pre-trial and trial)? Does the law limit the total number of interviews/hearings conducted?**

**Pre-Trial Phase:** The child victim or witness is typically heard by specially trained police officers, child protection officers, or investigators during the pre-trial phase. This may also involve psychologists or social workers to ensure a child-friendly environment.

**Trial Phase:** During the trial phase, the child is heard by the judge and, if necessary, cross-examined by the defense and prosecution lawyers. Efforts are made to minimize the child's exposure to the court environment, often using in-camera sessions or video links.

The number of times a child is heard can vary, but efforts are generally made to limit it to reduce trauma. Generally, once or twice during the investigative stage and once for direct testimony and potentially again for cross-examination. There are no limitations on numbers of hearing, however, the Court may fix the numbers of hearing which the child must attend.



**7.2. Is it mandatory that this professional has specific training for child interviews?**

This information may be asked from the concerned quarters.

**7.4. Who is allowed to participate in the interview/hearing? Who is sitting in the same room as the child / who is sitting in another room, if any?**

This information may be asked from the relevant authorities.

**7.5. Who is addressing the child victim/witness: only the interviewer? cross examination allowed? if only the interviewer, how can other participants ask questions? How is the communication between those who follow the interview and the interviewer? What kind of communication tool is used?**

This information may be asked from the relevant authorities.

**7.6. Is the interviewer allowed not to ask the questions raised by others? Is the interviewer allowed to rephrase the questions raised by others?**

This information may be asked from the relevant authorities.

**7.7. Is the interviews audio and video recorded, if so for what purpose (accuracy of statement, use as evidence in court, use in other courts, other)?**

This information may be asked from the relevant authorities.

**7.7.1. In case the recording is admitted as evidence in court: what protection measures can be applied (e.g. image and voice distortion, child heard in a separate room etc)?**

There are no specific guidelines or protocols on this aspect. However, information may be asked from the relevant Child Protection Institutions.

**7.8. How is the quality of the recording? In case of failure in the recording, what are the measures adopted?**

This information may be asked from the relevant authorities.

**7.9. If no audio/video recording: is the child allowed to review his or her statements and to correct them? Is the child/legal representative allowed to get a copy of written statement / recording?**

In Pakistan, if there is no audio or video recording available, by way of re-examination the child is allowed to review their statements and make corrections if necessary. Additionally, both the child and their legal representative are generally allowed to obtain a copy of the written statement or recording for their records. These measures ensure transparency, accuracy, and fairness in the legal process.



**7.10. If there is a special procedure for hearing child victims and witnesses, is it mandatory for the child to participate in such a way or has he/she the right to choose to be heard as any other victim or witness? Are there still adaptations in this case?**

In Pakistan, while there may be special procedures for hearing child victims and witnesses, the child has the right to choose how they wish to participate in the legal process. However, adaptations are often made to accommodate the child's age, maturity, and specific needs, regardless of their choice. These adaptations ensure that the child's rights are upheld and that they are treated with sensitivity and respect throughout the proceedings.

**8. Offender's right during or after the interview**

**8.1. Is the alleged offender allowed to participate in the interview of the child witness? Is his/her defence attorney allowed to participate? Is participation of either of the two mandatory?**

In Pakistan, the alleged offender or their defense attorney is generally not allowed to participate in the interview of the child witness. The interview is typically conducted by trained professionals in a manner that prioritizes the child's well-being and minimizes any potential distress or intimidation. Participation of the alleged offender or their defense attorney is not mandatory during the interview process. Instead, their participation typically occurs during formal court proceedings, such as cross-examination, where they have the opportunity to question the child witness within the boundaries of legal procedures and protections for the child.

**8.2. If the offender is not present during the interview, how can he or she make additional questions to the child? How can he or she contradict the child's statements?**

If the alleged offender is not present during the interview of the child witness, they and their legal representative have the opportunity to make additional questions or contradict the child's statements during formal court proceedings, particularly during cross-examination.

**9. Parallel proceedings – coordination**

**9.1. In case of parallel proceedings (such as in family or child protection procedures) based on the same facts, is it clear who has the priority to conduct the interview?**

In the Pakistani legal context, determining priority in conducting interviews in cases of parallel proceedings, such as family or child protection procedures based on the same facts, may not always be explicitly defined. The agency or court with jurisdiction over the specific



aspect of the case may take precedence in conducting the interview. For example, if child protection services are involved, they may conduct their own interview as part of their investigation. Similarly, the agency or court with specialized expertise in handling cases involving children, such as child welfare authorities or family courts, may be given priority to conduct the interview to ensure that the child's welfare and best interests are addressed appropriately. It is to be noted that collaboration and coordination between agencies or courts involved in parallel proceedings are crucial. While one entity may conduct the initial interview, information should be shared appropriately among all relevant parties to ensure a comprehensive understanding of the case.

**9.2. Is there any coordination procedure between different courts/authorities? How is the coordination procedure?**

Yes, there is always a coordination between different courts/authorities. This coordination is provided under the law, where the matter is sub judice before one forum, the other should wait till the final outcome of the matter.

**9.3. If another court/authority has not participated in the interview and needs additional information, is this court/authority allowed to interview the child again? And/or can interviews be shared (who can share with whom)?**

In Pakistan, if another court or authority requires additional information that was not covered in a previous interview, they may be allowed to conduct a separate interview with the child witness. However, this decision would typically be made in consideration of the best interests of the child and any legal or procedural requirements.

**10. Training**

**10.1. Are judges and magistrates trained to deal with child victims?**

Pakistan's legal system acknowledges the importance of specialized training for judges and magistrates who handle cases involving child victims and witnesses. The Federal Judicial Academy and some provincial counterparts might include child protection modules in pre-service training programs for new judges. Additionally, some academies may offer in-service training for existing judges and magistrates. However, these training programs aren't yet universally available or mandatory. Limited resources and a lack of qualified trainers can hinder their implementation. Despite these challenges, the Juvenile Justice System Act of 2018 highlights the importance of such training, reflecting a growing recognition of the need to equip legal professionals with the skills to effectively handle these sensitive cases.



Yes most of the judges and magistrates are trained to deal with child victims. These trainings are organized by judicial academies at Federal and provincial level.

**10.2. Is the content of the training interdisciplinary? Do other professionals also participate in the same training?**

Yes its contents are mostly interdisciplinary. It is also true that other professionals also participate in the same training.

**11. Reforms in progress**

**11.1. Are there reforms in progress in your country regarding child's victim rights, the procedure among others? What is the aim and the main subject of it?**

Yes Reforms are in progress and in this regard National Commission on the Rights of Child is performing its part by formulating recommendations to governments.

Pakistan's legal system is undergoing a period of reform to better protect child victims and witnesses within the justice system. The core aim is to establish a child-centered approach that prioritizes the child's well-being and minimizes re-traumatization throughout legal proceedings. This can encourage child participation in a safe and appropriate manner, ultimately increasing the success rate of prosecutions involving child victims. The Juvenile Justice System Act (JJSA) of 2018 serves as a foundation for these reforms, outlining procedures and advocating for child-friendly practices. Pilot programs utilizing Child Protection Courts (CPCs) with specialized staff and potentially separate, less intimidating waiting areas and interview rooms are examples of these efforts. Additionally, the JJSA highlights the importance of support services like social workers and psychologists, alongside potential legal aid, to assist child victims and witnesses. Training for legal professionals on child protection, development, and interaction best practices is another area of growing focus. However, uneven implementation across the country due to resource constraints and the need for continued public awareness campaigns remain challenges. Despite these hurdles, Pakistan's ongoing reforms represent a significant step towards a more just and supportive legal environment for vulnerable children.