

# [Commercial sexual exploitation of children law international essay](https://assignbuster.com/commercial-sexual-exploitation-of-children-law-international-essay/)

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One can reasonably conclude that child sexual abuse is prevalent in Pakistan. Child sexual abuse is probably the least acknowledged and least explored form of child abuse in Pakistan. This may be due to the fact that such matters continue to be viewed as domestic affairs. Only cases of particular cruelty and violence are reported by the media or acted upon by the police. It appears that many children are at risk of sexual abuse. The child victims are young and innocent.

## Forms of Child Sexual Abuse in Pakistan:

Most common forms of child sexual abuse in Pakistan are :-1-Abduction for Sexual Purposes. To be carried off unlawfully and where there is an implicit danger of sexual abuse. 2 - Molestation. Sexually violated but no penetration takes place. 3 - Rape/Sodomy. When penetration takes place.´4 - Gang Rape/Sodomy. Penetration by two or more people.´5 - Murder after Sexual Assault..

## Commercial Sexual Exploitation of Children:

Owing to cultural and religious influences, the commercial sexual exploitation of children in Pakistan is kept underground. Its existence, however, is well known and acknowledged by many sectors of society, including law enforcement. Boys are often more visible victims than girls, but this should not be taken as an indication that prostitution is more prevalent among males than females. It is more likely to be an indication of the level of public tolerance for male prostitution over female prostitution. Boys can be found at bus stands, hotels and restaurants, while girls tend to be prostituted from private homes and in the dancing business. a) - Female prostitutes: Prostitution is illegal in Pakistan, but as noted above, it is prevalent in the country and is most often conducted under the guise of dancing businesses. Traditionally, these businesses operate legally in the red light areas of the major cities, but commercial sex is an essential part of the lives of the girls they employ. Over the years many of the " traditional" dancing girls have been replaced by prostitutes engaged solely in selling their bodies. Another form of prostitution is operated by elderly former prostitutes. These women rent houses in the cities to accommodate girls from the suburbs and adjoining towns, who stay for short periods of time for business. These " Naikas", as they are known, also encourage young women of the lower-middle class to join them. A third form of prostitution involves more exclusive upper class " call girls". There is a premium placed on virginity, and in Pakistan it is typically sold at an early age. The price of a " Nath Utrai" or " first night" is much higher than the typical rate. b) - Male prostitutes: The two most common categories of young male prostitutes are those working at small roadside hotels and bus stands, and the ones offering massage services. Most male prostitutes are reportedly first sexually abused between the ages of 12 and 15. Male prostitutes were found in all areas.

## International Covenants Ratified by Pakistan:

Pakistan ratified the Convention on the Rights of the Child on 12 November 1990. Pakistan is also a party to three other international instruments aiming at directly or indirectly improving the rights of the child: the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW), ratified in 1996, the Declaration and Agenda for Action adopted at the issue of the World Congress against Commercial Sexual Exploitation of Children, signed in 1996, and reaffirmed by the Yokohama Global Commitment in 2001, and the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Form of Child Labour Convention (C182), ratified in 2001 The Optional Protocols to the CRC have been signed and their ratification is in process. Other International and Regional Instruments on Child Rights include:• Pakistan ratified the Convention on the Rights of the Child on 12 November 1990.• SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia 2001• SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002• Millennium Development Goals, 2000• ILO Convention on Worst Forms of Child Labor (No. 182) in 2001• ILO Convention 138 on Minimum Age for Employment in 2006.

## Child Sexual Abuse Laws in Pakistan:

The following are the laws relevant to child sexual abuse in Pakistan:

## Constitutional Provisions:

Article 25(1) of the constitution enshrines the foundational concept of legal equality of citizens and holds that all citizens are equal before law and are entitled to equal protection of law. Article 25(3) of the constitution recognises the special right of protection for children due to their vulnerability. Further, Article 37(e) stipulates that the state shall make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex. Article 25-A, introduced recently in the Constitution through the 18th Amendment, has made free and compulsory education a basic human right. Section 82 of the Pakistan Penal Code, 1860 provides that Nothing is an offence, which is done by a child under seven years of age, Section 375 provides the definition for rape andSection. 292 of PPC deals with Child pornographySection 3 of the The Police Order 2002 provides that It is mandatory for the police officers to take special care in cases where vulnerable groups, including children, are involved."

## Important Judgments relating to Child Sexual Abuse:

## State versus Abdul Malik:

Introduction: The Lahore High Court, in a case pertained to sexual abuse of a 7 years old girl child declared that the child molestation includes rape and, therefore, the offence being scheduled offence should have been tried by the learned Special Court constitutes under the Anti- Terrorism Act, 1997. The moot points which have come up for consideration before this Court in the instant cases are as follows:-Whether the facts in the prosecution case disclose an offence which could be tried by a Court established under the Anti-Terrorism act, 1997? A bare reading of the section 6 and section 7 of the Anti-Terrorism act, 1997 would indicate that the Act was enacted, " for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences and for matters connected therewith and incidental thereto." A heinous offence is an offence which is wicked, atrocious, cruel and offensive. The offence of raping a girl aged 6/7 years is an act which by all standards is cruel, wicked and offensive and, therefore, would fall within the ambit of the expression " heinous offence" used in the preamble of the Anti-Terrorism Act, 1997, calling for an extraordinary remedy in law. The offence complained of in the instant case is not only heinous but would also constitute a " terrorist act." The expression 'people' as defined in section 6 (b) of the ACT above provision encompasses all classes including parents and young children - a member of whose class was subjected to rape. The rape of a minor girl of seven years would ordinarily lead to a " sense of fear and insecurity" as stipulated in section 6 (b) above and thus the offence alleged would fall within the ambit of Anti-Terrorism Act. ii) - Whether the expression " child molestation" occurring in section 6, clause C of the Anti-Terrorism Act, 1997 include rape with a child. Coming to the second point, child molestation has not been defined in any law in Pakistan. The Concise Oxford Dictionary defines the word molest as under:-i) - annoy or pester (a person) in a hostile or injurious way; ii) - attach or interfere with (a person) specifically sexually. Sexual molestation is the sexual exploitation of a child, including rape, incest, fondling of the genitals, pornography, or exhibitionism. Most of the acts have not been made offences in our criminal law, nor the rape of a child has been separately catered to. The rape of a child or " Zina-bil-Jabr" is an aggravated form of child molestation and a person who is proved to have committed the offence would be punished in terms of the punishment provided in the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. The effect of Anti-Terrorism Act, 1997 is that this alleged offence of child rape would be tried by a Special Court under the afore-referred Act. The offence substantially remains the same, only form of trial has changed. The Court also referred to Article 19, 34 and 35 of the " International Convention on the Rights of Child, 1989." The court further held that Islam had laid down special stress on welfare of family and child and also as a member of United Nations, it was religious, moral and Constitutional duty of the State to bring required legislation and structural changes to honour the commitments to the rights of a child and the family. Need was to suitably amend Penal Laws with a view to make certain acts/wrongs against children punishable to give anew and fair deal to the child. Clause (c) of Section 6 of the Anti Terrorism Act, 1997, appeared to have been drafted in haste and the expression " Child Molestation" in its various connotations had not been defined and no punishment has been prescribed for other forms of " Child Molestation." High Court observed that the Government should examine the desirability to take some affirmative section in the matter. In Akhter Ali Versus The State, it was held that rape is a serious offence but a feature of horror when committed against a minor child. In Kazim Hussain alias Qazi versus The State a very important Observations was delivered by the Court:" The accused committing brutal act of sodomy with victim of tender age would deserve no leniency in the matter of sentence. Maximum sentence provided in Section 377 PPC should be awarded to accused in such case. It would be strange when Trial Court having found accused guilty of sodomy awarded him sentence of three years. Trial Court while trying sodomy cases should keep the judicial pronouncements in view" In Kashif Ikram Verses The State, the victim was a boy aged about ten years, Mulvi with a green turban forcibly took him from the mosque and then moved him to a deserted place. He threatened and also subjected him to torture. He committed " Ziadati" with him. It was held that the accused Mulvi with green turban belonging to a religious community would deserve no leniency, and is expected to maintain a higher slandered of morality and piety.