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# Scan of Law and Policies Affecting Human Rights, Discrimination and Access to HIV and Health Services by Key Populations in Pakistan



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United Nations Development Programme  
4th Floor, Serena Business  
Complex Khayaban-e-Suharwardy  
Islamabad, Pakistan  
Tel: +92-51-835 5600  
Fax: +92-51-2600254-5  
Web: <http://www.pk.undp.org>

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Design: Inís Communication



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# Table of Contents

<b>FOREWORD</b> . . . . .	<b>V</b>
<b>ACKNOWLEDGEMENTS.</b> . . . . .	<b>VII</b>
<b>PART I - INTRODUCTION.</b> . . . . .	<b>1</b>
<b>Chapter 1 INTRODUCTION</b> . . . . .	<b>2</b>
1. Introduction . . . . .	2
<b>PART II - INTERNATIONAL COMMITMENTS</b> . . . . .	<b>5</b>
<b>Chapter 2 INTERNATIONAL BILL OF HUMAN RIGHTS</b> . . . . .	<b>6</b>
1. Introduction . . . . .	6
2. Universal Declaration of Human Rights. . . . .	6
3. International Covenant on Civil and Political Rights . . . . .	6
4. International Covenant on Economic, Social and Cultural Rights . . . . .	7
5. Convention on the Elimination of All Forms of Discrimination Against Women . . . . .	8
<b>PART III - CONSTITUTION</b> . . . . .	<b>9</b>
<b>Chapter 3 CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN.</b> . . . . .	<b>12</b>
1. Constitution of the Islamic Republic of Pakistan . . . . .	12
2. Distribution of Legislative Powers . . . . .	13
3. Practical Impact of the 18th Amendment . . . . .	15
<b>PART IV - LEGISLATIVE FRAMEWORK.</b> . . . . .	<b>17</b>
<b>Chapter 4 HEALTH LAWS.</b> . . . . .	<b>18</b>
1. Allopathic Systems (Prevention of Misuse) Ordinance, 1962 . . . . .	18
2. Allopathic System (Prevention of Misuse) (West Pakistan) Rules, 1968 . . . . .	19
3. Clinical Laboratories Law . . . . .	21
4. Health Services, Health Institutions and Regulatory Authorities . . . . .	21
5. Blood Transfusion Law . . . . .	24
6. General Health Related Laws . . . . .	25
<b>Chapter 5 HIV LAWS.</b> . . . . .	<b>26</b>
1. Disabled Person (Employment and Rehabilitation) Ordinance, 1981 . . . . .	26
2. HIV & AIDS Prevention and Treatment Act, 2007 (Bill) . . . . .	27
3. HIV (Safety and Control) Act, 2010 (Bill) . . . . .	29
4. Observations on the HIV Bills . . . . .	32



5. Relevant Provisions of the Pakistan Penal Code . . . . .	33
<b>Chapter 6 HIV ORDINANCE IN SINDH . . . . .</b>	<b>34</b>
1. Introduction . . . . .	34
2. Sindh HIV Control Treatment and Protection Ordinance, 2013 . . . . .	34
3. Observations on the Sindh HIV Law. . . . .	42
<b>Chapter 7 INJECTING DRUG USERS AND THE LAW. . . . .</b>	<b>43</b>
1. Control of Narcotic Substances Act . . . . .	43
2. Punjab Vagrancy Ordinance, 1958 . . . . .	46
3. Vagrancy (Karachi Division) Act, 1950 . . . . .	49
<b>Chapter 8 LAWS RELATED TO FSWs. . . . .</b>	<b>52</b>
1. Laws Related To FSWs . . . . .	52
2. Pakistan Penal Code . . . . .	57
3. Prevention and Control of Human Trafficking Ordinance, 2002 . . . . .	58
<b>Chapter 9 TRANSGENDER PEOPLE, MSM/MSWs AND THE LEGISLATIVE FRAMEWORK . . . . .</b>	<b>61</b>
1. Khawaja Saras Bill 2012 . . . . .	61
2. Constitution of the Islamic Republic of Pakistan . . . . .	64
3. Pakistan Penal Code . . . . .	64
<b>Chapter 10 CHILDREN AND LAW . . . . .</b>	<b>65</b>
1. Guardian and Wards Act, 1890 . . . . .	65
2. Majority Act, 1875 . . . . .	70
3. Punjab Educational Institutions (Promotion and Regulation) Ordinance, 1984. . . . .	70
4. Juvenile Justice System. . . . .	72
5. Pakistan Employment of Children Act, 1991 . . . . .	76
6. Workers Children (Education) Ordinance, 1972 . . . . .	81
7. Child Marriage Restraint Act, 1929 . . . . .	82
<b>Chapter 11 WOMEN AND LAW . . . . .</b>	<b>84</b>
1. Sexual Health and Reproductive Rights . . . . .	84
2. Abortion . . . . .	85
3. Maternal Rights . . . . .	91
<b>Chapter 12 LAWS OF GENERAL APPLICATION . . . . .</b>	<b>96</b>
1. West Pakistan Minimum Wages for Unskilled Workers Ordinance, 1969 . . . . .	96
2. Pakistan Bait-ul-Mal Act . . . . .	98
3. Workers Welfare Fund Ordinance, 1971 . . . . .	98
4. Electronic Crimes Act, 2003. . . . .	101



## **PART V -POLICIES . . . . . 105**

### **Chapter 13 HIV POLICIES . . . . . 106**

1. National HIV and AIDS Policy – Final Draft 2007 . . . . . 106

### **Chapter 14 NARCOTICS POLICIES. . . . . 113**

1. National Anti Narcotics Policy 2010 (Updated August 2011) . . . . . 113
2. Drug Abuse Control Master Plan 2010 – 14 . . . . . 120
3. Anti-Narcotic Force . . . . . 126

## **PART VI - KEY AFFECTED POPULATIONS . . . . . 129**

### **Chapter 15 PLHIV / IDUs . . . . . 130**

1. Introduction . . . . . 130
2. Group Interview with PLHIV . . . . . 130
3. NGO in Rawalpindi . . . . . 132
4. AIDS Control Programme . . . . . 132
5. NGO Working with IDUs in Islamabad . . . . . 133

### **Chapter 16 FEMALE SEX WORKERS . . . . . 134**

1. Introduction . . . . . 134
2. Karachi Perspective . . . . . 134
3. In the Walled City of Lahore . . . . . 137
4. Home Based FSWS in Lahore . . . . . 139
5. NGO Working with FSWS in Lahore . . . . . 140

### **Chapter 17 THE TRANSGENDER COMMUNITY . . . . . 141**

1. Introduction . . . . . 141
2. Constitution . . . . . 141
3. Laws Criminalizing Eunuchs . . . . . 142
4. Eastern Inheritance – Western Perspective . . . . . 143
5. Field Research . . . . . 144

### **Chapter 18 MSM AND MSW . . . . . 147**

1. Field Research . . . . . 147
2. Observations . . . . . 150

### **Chapter 19 WOMEN . . . . . 151**

1. NGO Working with Rape Victims in Karachi . . . . . 151



## **PART VII - FINDINGS . . . . . 153**

### **Chapter 20 LEGISLATIVE AND POLICY ENVIRONMENT . . . . . 154**

1. Observations and Comments on Specific Laws . . . . . 154
2. Observations on the National HIV/AIDS Policy – FINAL DRAFT 2007 . . . . . 161
3. Narcotics Policies . . . . . 165
4. Broad Overview of the Legislative Framework . . . . . 165
5. Gaps in the Legislative and Policy Framework . . . . . 166

### **Chapter 21 SUMMARY OF FINDINGS – KAPs . . . . . 168**

1. PLHIV . . . . . 168
2. MSWs / MSM . . . . . 168
3. FSWs . . . . . 168
4. Transgender People . . . . . 170

### **Chapter 22 SECTORAL PARTNERS . . . . . 170**

1. NGOs . . . . . 170
2. Blood Banks . . . . . 171
3. Law Enforcement Agencies . . . . . 172

## **PART VIII - RECOMMENDATIONS . . . . . 175**

### **Chapter 23 SHORT TERM RECOMMENDATIONS . . . . . 176**

1. Legislation . . . . . 176
2. Sensitization Campaigns . . . . . 176
3. Media Campaigns . . . . . 176
4. KAPs . . . . . 176
5. Human Trafficking . . . . . 177

### **Chapter 24 MEDIUM TERM RECOMMENDATIONS . . . . . 177**

1. Legislation . . . . . 177
2. KAPs . . . . . 178
3. Sexual and Reproductive Health . . . . . 178
4. Human Trafficking . . . . . 178

### **Chapter 25 LONG TERM RECOMMENDATIONS . . . . . 178**

1. Legislation . . . . . 178
2. KAPs . . . . . 179

### **Annex 1 SINDH HIV/AIDS CONTROL TREATMENT AND PROTECTION ORDINANCE, 2013. . . 180**

# FOREWORD

The law can have a profound impact on the lives of people – especially those who are vulnerable and marginalized. The true test of a humane society is reflected in its commitment to protect the rights of minorities.

In Pakistan, the HIV epidemic continues to be concentrated among key populations, who often represent highly ostracized and stigmatized segments within all societies. They are not only rejected socially but further marginalized through legal frameworks that have cast them as criminals. Criminal laws and discriminatory practices based on moral judgment, superstition, ancient beliefs, fear and misinformation, punish instead of protect. They drive at-risk communities underground, preventing them from accessing lifesaving treatment and prevention and heightening their risk for HIV.

The Global Commission on HIV and the Law (2010-2012), a high-level initiative launched in 2010 by UNDP Administrator, Helen Clark, examined how law and practices can transform the global AIDS response. The Commission's findings and recommendations reveal that evidence-based laws and practices firmly grounded in human rights do exist and are powerful instruments for challenging discrimination, promoting public health, and protecting human rights. The benefits are felt beyond HIV responses to encompass health and development outcomes more broadly.

Furthermore, the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) Resolutions 66/10 and 67/9 recommended that punitive laws and policies targeting key populations be abolished to reduce levels of social stigma, discrimination, violence and broader human rights violations.

Now more than ever, it is time for the country to adopt legal environments which can support an effective national AIDS response that mitigate the impact of HIV and promote and protect the human rights of people living with HIV and the most vulnerable to HIV.

It is my great pleasure to welcome the Scan of Laws and Policies Affecting Human Rights, Discrimination and Access to HIV and Health Services by Key Populations in Pakistan. This scan of HIV-related laws and policies identifies legal barriers to accessing health and HIV services for key populations and presents a set of recommendations that can save lives, save money and help end the AIDS epidemic in Pakistan.

I hope that individuals and civil society organizations will use this resource to claim their rights, and also that policy and lawmakers, officials responsible for criminal justice, law enforcement officers, national AIDS programme officials, and donors will use it to inform the development and implementation of an enabling legal environment for effective HIV and health responses.



**Marc-André Franche**  
Country Director, UNDP Pakistan

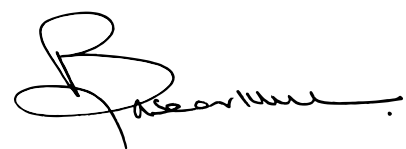


In the aftermath of 18th Amendment of the Constitution of Pakistan in 2010, the Government of Pakistan devolved the federal ministries and delegated the responsibilities of programme planning and implementation, including health programming to the provinces. This action aimed to ensure provincial autonomy to prioritize the health needs of the local population. The National AIDS Control Programme (NACP) continues to provide stewardship as an apex coordinating body; ensures the provision of technical assistance and capacity building for effective programming; and generates and collects HIV information and data.

The effectiveness of health programmes depends enormously on a supportive enabling environment. Despite arduous efforts made by a large spectrum of stakeholders, Pakistan now faces a concentrated HIV epidemic. Without understanding intricacies of factors affecting access to HIV services by people living with HIV and key populations, critical evidence for planning cannot be ascertained which impacts the effectiveness of programmes. Stigma and discrimination experienced by people who use drugs, sex workers, transgender persons and men who have sex with men, both by general public and service delivery providers including health service providers and police negatively affects access and utilization of health care services.

A supportive enabling environment includes a conducive legal environment and public-friendly policies which protect the most vulnerable. One of the important determinants of health is the layer of society where religious, social, political, environmental and legal interfaces influence each other to set the mind of society. Pakistan is signatory to various international commitments encapsulating both health and human rights, and continues to be guided by the ESCAP Roadmap and recommendations from the Global Commission on HIV and the Law to complement the national HIV response.

This assessment, titled as Scan of Laws and Policies Affecting Human Rights, Discrimination and Access to HIV and Health Services by Key Populations in Pakistan, is an invaluable effort undertaken by UNDP and the UN Country Team under the Multi-Country South Asia Global Fund HIV Programme. It provides ample information which many stakeholders may utilize to guide planning processes and implementation mechanisms in a human rights perspective. NACP appreciates the contribution of UNDP, the UN Country Team, the Global Fund, civil society, as well as the author of this report. The report will help advocacy initiatives to engage in constructive and open dialogues to address punitive laws and policies targeting key populations in order to reduce the levels of social stigma, discrimination, violence and broader human rights violations. This will ultimately contribute in keeping the treatment cascade intact and reduce chances of failure of adherence.



**Dr Abdul Baseer Achakzai**  
Director/National Program Manager  
National AIDS Control Program  
Ministry of National Health Services, Regulation & Coordination  
Government of Pakistan

# ACKNOWLEDGEMENTS

The main objective of the Scan of Laws and Policies Affecting Human Rights, Discrimination and Access to HIV and Health Services by Key Populations in Pakistan is to identify the current status of legislation, policies, institutional frameworks in Pakistan that safeguard the universal human rights of the key affected populations with regard to the HIV prevention, care and treatment. The scan establishes a baseline on the current enabling environment (law, policies and institutions) in relation to safeguarding the human rights of the key populations and second, and it provides a set of recommendations to input into any reforms to promote an enabling environment where the human rights of the key populations are protected.

We would like to thank the Steering Committee, comprising of the UN joint team on HIV (UNAIDS, UNDP, UNFPA, UNWOMEN, UNODC, WHO, UNICEF), representatives of the transgender community, representatives of men having sex with men, representatives of the Human Rights Commission, the Government of Pakistan and the International Development and Law Organization (IDLO) for their guidance and advice on the report.

This report was authored by Sheeza Ahmed with support from Faiqa Zaman.

The Punjab AIDS Control Programme and the Sindh AIDS Control Programme played an integral role in the preparation of this report; and their assistance and support is greatly appreciated.

A special thanks for the support provided by Naz Male Health Alliance (NMHA), without whom, it would not have been possible to obtain such in-depth information on the key human rights issues being faced by the key populations affected by HIV and AIDS in Pakistan.

Acknowledgement and thanks is also due to the facilitators who assisted with the section on Female Sex Workers and made it possible for us to conduct our study with this group; and we wish to thank Ms. Lubna of Sheed in Lahore and Ms. Rubab (associated with PAVHNA, Pehla Qadam), for all their support and help.

The work on this report contributed to a very important development in the province of Sindh - the promulgation of the Sindh HIV and AIDS Control Treatment and Protection Ordinance, 2013 ("**Sindh HIV Law**"), on 22 May 2013, which was subsequently passed as an Act of the Provincial Assembly in 2014. The Sindh HIV Law was only possible due to the persistent efforts of Mr. Mehmood Mandviwalla, the interim Minister for Law and Prisons, Sindh. We would like to acknowledge and thank Mr. Mandviwalla for all his efforts in making the Sindh HIV Law a reality.

And finally a note of appreciation and thanks to all those men and women, who shared their experiences and allowed them to be a part of this report, opening the way for positive development and change.

The Pakistan country process was led by Shakeel Ahmad, Policy Specialist from UNDP Pakistan and the initiative was managed by Edmund Settle Policy Advisor, UNDP Asia-Pacific Regional Centre Bangkok, Thailand. The Scan of Laws and Policies Affecting Human Rights, Discrimination and Access to HIV and Health Services by Key Populations in Pakistan was supported by UNDP under the Multi-Country South Asia Global Fund HIV Programme (MSA-910-G02-H).

Special thanks to UNAIDS Regional Support Team and the United Nations Economic and Social Commission for Asia and the Pacific (UN ESCAP) for their contribution and review during development of this Scan.







**PART I**  
**INTRODUCTION**

# Chapter 1 INTRODUCTION

## 1. INTRODUCTION

### 1.1 Pakistan – Laws and Policies

- 1.1.1 Pakistan continues to rely on the colonial laws that it inherited at the time of its independence; albeit with amendments and modifications in certain laws, however the amendments, modifications and new laws, as opposed to assisting the legal system often hamper it as they more often than not tend to be a reflection of the policy stance of the particular administration that is responsible for its promulgation. The lack of a uniform policy on key issues such as health, education and social welfare is reflected not only in some of our outdated laws but also the differences that exist in implementation of the key provisions of the main laws.
- 1.1.2 Additionally culture, custom and a fear of anti-religious sentiment not only interferes with implementation of the legal framework but also with the framing of progressive laws, that while within the constitutional parameters yet may be considered socially unacceptable, in a country which although signatory to the Convention on the Rights of the Child, yet continues to remain in denial about the occurrence of incest and child prostitution.
- 1.1.3 The need of the hour are new generation laws that not only uphold the rights of all citizens of Pakistan but also provide protection, in accordance with the provisions of Article 26 of the ICCPR; with a specific emphasis on social origin, in the context of the current Study.

### 1.2 HIV – Legislation and Policies

- 1.2.1 The number of HIV patients in Pakistan remains a matter of debate with the numbers of HIV cases ranging between 14,000 according to the official claims and 95,000 to 125,000 according to estimates by private medical practitioners. The facts remain however that since 1986 when the first AIDS patient was diagnosed in Pakistan, an estimated 5,800 people have lost their lives to the disease.
- 1.2.2 Since 1986 Pakistan's status as a "low prevalence high risk" country has changed to that of one in a "concentrated" epidemic in high risk groups; yet in the past few years no uniform National HIV Policy has been formulated nor has any law / regulation been promulgated for the prevention of the spread of the disease and the protection of the key affected populations.
- 1.2.3 However during the tenor of the interim caretaker Minister for Law and Prisons, Sindh, Mr. Mehmood Mandviwalla, a law for the control and treatment of HIV and the protection of people living with HIV and key affected populations was presented to the Ministry of Law and with the efforts of the Minister, the Governor of Sindh granted his assent to the Sindh HIV Control, Treatment and Protection Ordinance, 2013 ("**Sindh HIV Law**") on May 22, 2013 as a result of which the Sindh HIV Law was promulgated as an Ordinance. Efforts are now being made to ensure that the Ordinance is ratified into an Act, by the new Provincial Assembly.









**PART II**  
**INTERNATIONAL**  
**COMMITMENTS**

# Chapter 2 INTERNATIONAL BILL OF HUMAN RIGHTS

## 1. INTRODUCTION

- 1.1.1 Pakistan is signatory to numerous international conventions pursuant to which obligations have been created on Pakistan as a signatory state to ensure that the provisions of such international conventions and agreements are duly implemented and reflected in the laws of the country.

## 2. UNIVERSAL DECLARATION OF HUMAN RIGHTS

### 2.1 Universal Declaration of Human Rights

- 2.1.1 The Universal Declaration of Human Rights (“Human Rights Declaration”) is the first declaration stating the human rights to which all human being are inherently entitled and subsequently its provisions have been reflected in various international treaties and covenants.
- 2.1.2 Article 2 of the Human Rights Declaration provides that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.
- 2.1.3 The Human Rights Declaration, along with the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and its two Optional Protocols together constitute the “International Bill of Human Rights”.

## 3. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

- 3.1.1 Article 6 of the International Covenant on Civil and Political Rights (“**ICCPR**”) provides that every human being has an inherent right and this right shall be protected by law and no one shall be arbitrarily deprived of his life.
- 3.1.2 Article 7 of the ICCPR states that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and in particular no one shall be subject without his free consent to medical or scientific experimentation.
- 3.1.3 In terms of Article 10 of the ICCPR all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
- 3.1.4 Article 16 provides that everyone shall have the right to recognition everywhere as a person before the law.
- 3.1.5 Article 17 states that on one shall be subjected to arbitrary or unlawful interference with his privacy, family or correspondence nor to unlawful attacks on his honor

or reputation and everyone shall have the right to protection of law against such interference and attacks.

- 3.1.6 Article 26 states that all persons are equal before the law and are entitled without discrimination to the equal protection of the law. In this respect the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- 3.1.7 Pakistan is a signatory to the ICCPR and has ratified the ICCPR with the reservation that Article 3 shall be applied in conformity with the personal law of the citizens of Pakistan and the Qanoon-e-Shahadat; and with regard to Article 25 has made the reservation that the same shall be subject to Article 41(2) and Article 91(3) of the Constitution.
- 3.1.8 Article 3 is the crux of the ICCPR and contains the undertaking of the State Parties to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the ICCPR; however given the fact that Pakistan earlier had reservations on Articles 6, 7, 12, 13, 18, 19 and 40 of the ICCPR; the reservation on Article 3 and Article 25 would have been less onerous had the reservation on Article 3 been restricted only to the Qanoon-e-Shahadat.

## 4. INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

- 4.1.1 Article 2 of the International Covenant on Economic, Social and Cultural Rights (“ICESR”) reflects the provisions of Article 2 of the Human Rights Declaration and provides that the State Parties to the ICESR undertake to guarantee the rights contained therein without discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- 4.1.2 Rights with regard to health are recognised in Article 12 of ICESR and include, (a) reduction of the stillbirth-rate and infant mortality and for the health development of the child; (b) improvement of all aspects of environmental and industrial hygiene; (c) prevention and treatment and control of epidemic, endemic, occupational and other diseases; and (d) the creation of conditions which would assure to all medical service and medical attention in the event of sickness.
- 4.1.3 Pakistan is a signatory to ICESR and has ratified the ICESR with a reservation which reads “Pakistan with a view to achieving progressively the full realization of the rights recognized in the present Covenant, shall use all appropriate means to the maximum of its available resources.”

## 5. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

- 5.1.1 Pakistan is also signatory to the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") with a general declaration with regard to the accession to CEDAW being subject to the provisions of the Constitution of Pakistan and a reservation on Article 29(1) of CEDAW.
- 5.1.2 In terms of Article 12 of CEDAW, State Parties are obligated to take appropriate measures to eliminate discrimination against women in the field of health care on the basis of equality with men; which include access to health care services, including those related to family planning. State Parties to CEDAW are further required to ensure appropriate services for women in relation to pregnancy, post natal care, nutrition during pregnancy and lactation and to provide free services where necessary. In terms of Article 14(2)(b), State Parties are required to ensure adequate health care facilities for women in the rural areas on a non discriminatory basis; which include information, counseling and services in family planning.







**PART III**  
**CONSTITUTION**

# Chapter 3 CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN

## 1. CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN

1.1.1 The Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”) is the fountainhead of all laws for Pakistan and contains the relevant guarantees with regard to the fundamental rights for the citizens of Pakistan.

### 1.2 Fundamental Rights

1.2.1 The Fundamental Rights are embodied in Chapter I of Part II of the Constitution, being Articles 8 to 28; as follows:

- (a) Security of persons (Article 9);
- (b) Safeguards as to arrest and detention (Article 10);
- (c) Right to fair trial (Article 10A);
- (d) Slavery, forced labour, etc. prohibited (Article 11);
- (e) Protection against retrospective punishment (Article 12);
- (f) Protection against double punishment and self incrimination (Article 13);
- (g) Inviolability of dignity of man, etc (Article 14);
- (h) Freedom of movement, etc (Article 15);
- (i) Freedom of Assembly (Article 16);
- (j) Freedom of Association (Article 17);
- (k) Freedom of trade, business or profession (Article 18);
- (l) Freedom of Speech etc (Article 19);
- (m) Right to information (Article 19A);
- (n) Freedom to profess religion and to manage religious institutions (Article 20);
- (o) Safeguards against taxation for purposes of any particular religion (Article 21);
- (p) Safeguards as to education institutions in respect of religion etc (Article 22);
- (q) Provision as to property (Article 23);
- (r) Protection of property rights (Article 24);
- (s) Equality of citizens (Article 25);
- (t) Right to education (Article 25A);
- (u) Non discrimination in respect of access to public places (Article 26);
- (v) Safeguard against discrimination in services (Article 27); and
- (w) Preservation of language, script and culture.

(hereinafter collectively referred to as the “**Fundamental Rights**”)

1.2.2 The above list of the fundamental rights included in Chapter I of the Constitution, illustrates that health related rights are not included in the Fundamental Rights granted to the citizens of Pakistan.



## 1.3 Principles of Policy

- 1.3.1 It is pertinent to note however, that an obligation has been cast on the state with regard to health care in the form of Principles of Policy, in Chapter 2 of the Constitution.
- 1.3.2 Article 29 of the Constitution provides that it is the responsibility of each organ and authority of the State and each person performing such functions on behalf of such organ or authority to act in accordance with the Principles of Policy in so far as they relate to the functions of such organ or authority. Article 29 also casts an obligation on the President in relation to the affairs of the Federation to procure the preparation and provision to the Parliament each year, a report on the observance and implementation of the Principles of Policy. A similar duty is also cast on the Governor of each Province to provide a similar report on a yearly basis to the Provincial Assembly, in relation to the affairs of his respective province.
- 1.3.3 The Principles of Policy are provided in Article 31 to 40 of the Constitution and are as follows:
  - (a) Islamic Way of Life;
  - (b) Promotion of Local Government Institutions;
  - (c) Parochial and other similar prejudices to be discouraged;
  - (d) Full participation of women in national life;
  - (e) Protection of Family etc.;
  - (f) Protection of Minorities;
  - (g) Promotion of Social justice and eradication of social evils;
  - (h) Promotion of Social and economic well-being of the people;
  - (i) Participation of people in Armed Forces; and
  - (j) Strengthening bonds with Muslim world and promoting international peace.

## 2. DISTRIBUTION OF LEGISLATIVE POWERS

### 2.1 Legislative Lists

- 2.1.1 Article 142 of the Constitution "*Subject-matter of Federal and Provincial Laws*" is the Article in which the power to make laws of the Parliament and the Provincial Assemblies have been set out.
- 2.1.2 Prior to the 18th Amendment, the Constitution contained two Legislative Lists, namely, the Federal Legislative List which, enumerated matters in respect of which the Parliament had the sole power to draft laws ("**Federal Legislative List**"); and the Concurrent Legislative List, which enumerated matters in respect of which the Parliament as well as the Provinces had the power to draft laws ("**Concurrent List**"). Any matter that was not specifically provided for on either of the Legislative Lists was within the jurisdiction of the provinces to legislate on.
- 2.1.3 The Federal Legislative List comprises of two (2) parts, Part I and Part II. The Federal Government shall have exclusive power to make laws with regard to any matter listed in the Federal Legislative List, as per Article 142(a) of the Constitution.

- 2.1.4 Prior to its abolition the following matters, pertaining to health and medicine were listed on the Concurrent Legislative List:
- (a) Drugs and medicines (Item 20)
  - (b) Poison and dangerous drugs (Item 21);
  - (c) Prevention of the extension from one province to another of infectious or contagious diseases or pests affecting men, animal or plants (Item 22);
  - (d) Mental illness and mental retardation, including places for the reception or treatment of the mentally ill and mentally retarded (Item 23);
  - (e) Environmental pollution and ecology (Item 24); and
  - (f) Population planning and social welfare (Item 25).

## 2.2 18th Amendment

- 2.2.1 The Constitution has been amended by the Constitution (Eighteenth Amendment) Act, 2010 ("**18th Amendment**") as a consequence whereof, *inter alia* the Concurrent Legislative List has been abolished and certain matters have been devolved unto the Provinces.
- 2.2.2 There now exists only a Federal Legislative List that lists matters in respect of which the Parliament has the right to draft laws; and any matter that is not listed on the Federal Legislative List falls within the domain of the Provincial Assemblies.
- 2.2.3 However, Article 154(1) of the Constitution provides that the Council of Common Interests shall formulate and regulate policies in relation to matters in Part II of the Federal Legislative List and shall exercise supervision and control over the related institutions.
- 2.2.4 The devolution of power to the provinces by the 18th Amendment of the Constitution has had a further impact on Pakistan's health sector. Each of the items pertaining to health care on the Concurrent Legislative List, that now stands abolished, has resulted in these matters becoming provincial subjects and shall now require provincial legislation in relation to the same.
- 2.2.5 The "Prevention of the extension from one Province of another of infection or contagious diseases or pests affecting men, animal or plants" a matter listed on the Concurrent Legislative List has now devolved unto the Provinces as a consequence of the 18th Amendment. From the perspective of HIV in Pakistan, this is perhaps the most important item on the Legislative Lists and the only one that should have retained its Concurrent status; in view of the fact that the majority of Key Affected Population by HIV in Pakistan comprises of the MSM / MSW and Transgender community and given the social and cultural taboo these communities are migratory in nature and travel from one city to another. Similarly the FSW community is also migratory in nature due to the social and cultural taboos.
- 2.2.6 However, it is interesting to note that the ongoing AIDS Control Programme falls within the jurisdiction of the Council of Common Interests.

## 3. PRACTICAL IMPACT OF THE 18TH AMENDMENT

### 3.1 Ministry of Health

- 3.1.1 Prior to its devolution unto the provinces, the Ministry of Health was the division of the Federal Government responsible for all medical services, health policies and for the enforcement of the same. The Ministry of Health operated through the Federal Health Department and each province had a Health Department at the provincial level. The Ministry of Health served as the hub for all things health related in Pakistan, including but not restricted to the registration, monitoring and evaluation of medical and health related educational institutions, overview and control of (a) various health related autonomous bodies operating all over the country such as the College of Physicians and Surgeons, National Institute of Cardiovascular Disease etc. and (b) departments attached to the Ministry of Health, such as the Jinnah Post Graduate Medical Centre (Karachi), Pakistan Institute of Medical Sciences (Islamabad); ensuring efficient service delivery throughout the country via its various ongoing programmes, such as the Lady Health Worker Programme, Immunization Programme etc; Policy drafting, raising funds etc. All of these functions and powers of the Ministry of Health were centralized and were meant to be undertaken at the national level, albeit with the assistance of the provincial ministries and departments.
- 3.1.2 Keeping in view the importance of central mechanism of coordination required in matters related to information sharing in particular, the Ministry of National Health Services, Regulation and Coordination after devolution has been providing stewardship. Although the responsibility of planning and implementation, after 18th amendment, has been fully devolved to the provinces, yet programs including National AIDS Control Program, Malaria Control Program, National TB Control Program have been still continuing to provide role of technical assistance especially in monitoring and evaluation; coordination including with some donor agencies; research and procurement of medicine.





**PART IV**  
**LEGISLATIVE**  
**FRAMEWORK**

# Chapter 4 HEALTH LAWS

## 1. ALLOPATHIC SYSTEMS (PREVENTION OF MISUSE) ORDINANCE, 1962

- 1.1.1 The Allopathic System (Prevention of Misuse) Ordinance, 1962 (**“Allopathic Misuse Law”**) has been promulgated for the purpose of preventing the misuse of the allopathic system of medicine and to provide for matters connected therewith.
- 1.1.2 The Allopathic Misuse Law contains five (5) restrictions applicable upon persons practicing the Allopathic, Homeopathic, Ayurvedic, unani or any other system of medicine (**“Alternative Medicine”**) which are detailed hereinbelow:
  - (a) Section 3 of the Allopathic Misuse Law provides that no person practicing Alternative Medicine shall use the word **“Doctor”** or any grammatical variations, cognate expressions or abbreviations thereof with his name, address or business, so as to give out that he is entitled to practice medicine, unless such practitioner of Alternative Medicine is a **“registered medical practitioner”**. This Section 3 contains an exception in relation to the use of the term **“Doctor”** in relation to Doctoral Degrees awarded in fields other than medicine;
  - (b) Section 4 of the Allopathic Misuse Law provides that no person practicing Alternative Medicine shall use medical degrees or medical diplomas to give out that he is a qualified medical practitioner or for any purpose connected with the medical practice unless such degrees or diplomas has been conferred or awarded by a university or institution in or outside Pakistan recognised under Pakistan Medical Council’s Ordinance 1962;
  - (c) Section 5 contains a prohibition on performance of surgical operations by persons other than registered medical practitioners, except in the case of circumcisions, incision of boils and administration of injections;
  - (d) Section 6 provides that no person other than a registered medical practitioner or a person authorised in this behalf by the Government shall prescribe any antibiotic or dangerous drugs specified in the rules made under the Allopathic Misuse Law;
  - (e) Section 7 restricts the sale in the market, by any person, of any patent or proprietary medicine of the unani, ayurvedic, homeopathic or biochemic system of medicine, unless the true formula of such medicine is displayed, in a conspicuous and readily intelligible manner, on the label or container and also on the outer cover of the container, other than the ordinary wrapper.
- 1.1.3 The term **“registered medical practitioner”** as used in the Allopathic Misuse Law has been defined therein, to mean a person registered under the Medical and Dental Council Ordinance, 1962.
- 1.1.4 Section 9 of the Allopathic Misuse Law pertains to **“Penalty”** for violation of:
  - (a) Section 3 – Prohibition of the use of the word **“Doctor”** and its variations etc-; or
  - (b) Section 4 – Prohibition of the use of medical degrees or diplomas; or
  - (c) Section 5 – Prohibition of performing surgical operations by unqualified person; or

- (d) Section 6 – Prohibition of prescribing certain drugs; or
- (e) Section 7 – Restriction on the sale of patent and proprietary medicines

The penalty for contravention, of any of the above Sections, as stated in Section 9 of the Allopathic Misuse Law, is imprisonment which may extend to one (1) year or with fine not exceeding PKR 2,000 (Pak Rupees Two Thousand Only), or with both.

- 1.1.5 Section 10 of the Allopathic Misuse Law relates to the prosecution and jurisdiction of the Courts to try offences under the Allopathic Misuse Law. Section 10(a) provides that no prosecution under the Law can be instituted except by an Inspector under the Drug Act, 1940 or by a person specially empowered by the Central Government in this behalf. Section 10(b) states that no Court inferior to that of a Magistrate of the first class shall try offence punishable under the Allopathic Misuse Law; and further provides that notwithstanding anything contained in Section 32 of the Criminal Procedure Code, 1898 (“CRPC”) it shall be lawful for such Magistrate to pass any sentence of fine to the extent provided for by the Allopathic Misuse Law in excess of his powers under said Section 32 of the CRPC.

## 2. ALLOPATHIC SYSTEM (PREVENTION OF MISUSE) (WEST PAKISTAN) RULES, 1968

- 2.1.1 The Allopathic System (Prevention of Misuse) Rules, 1968 (“**Allopathic Rules**”) have been promulgated in exercise of the powers conferred by Section 8 of the Allopathic Systems (Prevention of Misuse) Ordinance, 1962.
- 2.1.2 The Allopathic Rules provides in Rule 3 that a person other than a registered medical practitioner desirous of prescribing antibiotics and dangerous drugs, may do so, subject to an application made to the Government in the manner prescribed therein.
- 2.1.3 The eligibility of the person to whom the permit referred to in Rule 3 may be granted is provided for in the Allopathic Rule 4.
- 2.1.4 The Allopathic Rules also provide for the constitution of “Screening Boards” at Provincial and Regional level for the purpose of screening the applications of the persons seeking to prescribe anti-biotics and other dangerous drugs.
- 2.1.5 The Regional Screening Boards, as per Rule 6 are required to scrutinize the applications, interview the applicants and submit their reports in respect of the eligibility of the applicants, along with all applications received to the applicable Provincial Screening Board. In accordance with Rule 7, the Provincial Screening Boards shall thereafter advise the government with regard to the particular applicants that fulfill the conditions for grant of a permit under Rule 9 of the Allopathic Rules and who may be granted a permit.
- 2.1.6 The anti-biotics and dangerous drugs that may be prescribed by a person to whom a permit has been granted under the Allopathic Rules have been listed in Schedule B to the Allopathic Rules.

- 2.1.7 A permit granted under the Allopathic Rules is for perpetuity unless cancelled or revoked under Rule 15. The process for cancellation of the permit has been provided in Rule 15 which states that the permit may be cancelled on the written complaint of a patient or a registered medical practitioner or by an Inspector of Drugs, subject to the Provincial Screening Board being satisfied that the person holding the permit has contravened any provision of the Allopathic Rules or prescribed any anti-biotic or dangerous drug not permitted under the permit or prescribed any anti-biotic or dangerous drug on wrong diagnosis causing death or serious damage to the patient taking the anti-biotic or drug, in which case the Provincial Screening Boards shall institute an inquiry. Upon the inquiry and the relevant Screening Board being satisfied that the mistake was caused due to lack of sufficient knowledge of Pharmacology or Therapeutics of such drug than the relevant Screening Board shall recommend to the Government to remove such anti-biotic / dangerous drug from the permit with a written warning. This Rule 15 further provides, that the permit may be cancelled if the act of prescribing the wrong anti-biotic or dangerous drugs or contravention of the Allopathic Rules has occurred as a consequence of negligence or if such mistakes of contravention occur frequently.
- 2.1.8 The eligibility criteria of a person to whom a permit may be issued pursuant to the Allopathic Rules has been prescribed in Rule 4, which states that no person shall be eligible for the grant of a permit unless the following criteria is fulfilled by the applicant:
- (a) he has studied for a period of not less than four (4) years the licentiate course or degree course of medical education in any institution and was eligible to appear in the final examination for such course on account of his having studied all the subjects prescribed for the final examination though he did not **pass the final examination or did not appear in the final examination;** or
  - (b) he has studied for a period of not less than one and a half years, a course of medical education in any institution which, in the opinion of the Provincial Screening Board had, at the time when the applicant studied therein the facilities listed in Schedule A of the Allopathic Rules, and has been declared successful in the final examination conducted by such institution and has not less than five (5) years experience in the practice of the Allopathic system of medicine; or
  - (c) he is a graduate from a recognised University in Science with Chemistry or Physiology or Microbiology or Pharmaceutical Chemistry or who is a graduate from such University in Pharmacy and has completed not less than five (5) years of practice in Allopathic system of medicine; or
  - (d) he is a Health Assistant duly registered with the West Pakistan State Medical Faculty and has not less than five (5) years of practice in Allopathic system of medicine; or
  - (e) he is a dispenser duly registered with the West Pakistan Medical Faculty and has not less than seven (7) years of practice in the Allopathic system of medicine.



## 3. CLINICAL LABORATORIES LAW

### 3.1 Balochistan Clinical Laboratories Regulatory Authority Ordinance, 2001

- 3.1.1 The Balochistan Clinical Laboratories Regulatory Authority Ordinance, 2001 (**“Balochistan Laboratories Ordinance”**) is a provincial law and provides for the establishment of a Balochistan Clinical Laboratories Regulatory Authority (**“Laboratory Authority”**).
- 3.1.2 The aim and objective of the Laboratory Authority, as set out in Section 3(1) of the Balochistan Laboratories Act is to undertake all measures in so far as possible, for ensuring safety, protection and promotion of human life through (a) a comprehensive and quality Clinical Laboratory service in the province of Balochistan; (b) ensuring a perpetual and sustained development of such services in the Province to an internationally acceptable standard for such services; and (c) by regulating the costs of these services in such manner which is mutually beneficial and affordable for the public and provider of such services.
- 3.1.3 Section 3(2) of the Balochistan Laboratories Act further provides that every Physician, Medical Practitioner, or any other person qualified to do so shall ensure that the clinical tests that are required for medical reasons are conducted by a Clinical Laboratory that has been duly licensed and is accredited by the Balochistan Laboratories Ordinance. Section 3(2) also contains a proviso, which states that in case of emergency or a special situation, where an accredited Clinical Laboratory is not available, and it is a question of saving injury to a human life, than the Clinical Tests may be undertaken by a laboratory that has not been accredited to take such tests in a manner prescribed by the rules made under the Balochistan Laboratories Ordinance.
- 3.1.4 In terms of the Balochistan Laboratories Ordinance, the Laboratory Authority shall have the power, to be exercised in the manner provided in the rules, to register, grant, extend, modify, suspend, or revoke a license in respect of creation, operation or any other matter related to a Clinical Laboratory in the province of Balochistan.
- 3.1.5 The Balochistan Laboratories Ordinance, defines the term “Clinical Laboratory” as “any premises or unit independent or in a clinic or hospital building where practice of pathology or one or more of its recognised disciplines is carried out. But it does not include a unit or premises independent or in a clinic or hospital building where practice or other diagnostic disciplines of medicine like radiology etc, is carried out”.

## 4. HEALTH SERVICES, HEALTH INSTITUTIONS AND REGULATORY AUTHORITIES

### 4.1 Medical and Dental Council Ordinance

- 4.1.1 The Medical and Dental Council Ordinance, 1962 (“PMDC Law”) has been promulgated for the purpose of consolidating the laws relating to the registration of medical practitioners and dentists in Pakistan and for reconstituting the Medical

and Dental Council in Pakistan in order to establish a uniform minimum standard of basic and higher qualification in medicine and dentistry. The PMDC Law provides for the establishment of a Medical and Dental Council and states the requirements for its constitution, tenor and certain other matters in relation thereto. The PMDC Law further sets out the list of the institutions that grant medical qualifications and shall be recognised medical qualifications for the purpose of the PMDC Law and also provides the manner in which institutions can apply for recognition of its medical qualifications under the PMDC Law. The Council is required to register of the practitioners possessing qualifications which are recognised medical qualifications and such register shall be a public document.

## 4.2 Medical and Dental Council (Amendment) Act, 2012

- 4.2.1 The Medical and Dental Council (Amendment) Act, 2012 (“PMDC Amendment”) amends the Medical and Dental Council Ordinance, 1962. The amendments of note incorporated therein are the provisions pertaining to Inspection (Substitution of Section 21) in terms whereof, the Council has the power to seek inspection of the facilities imparting training in medical and dental health; and the imposition of various penalties for violations under the PMDC Law, which include penalties for running or establishing or endorsing or advertising an institution that is not duly recognised in terms of the PMDC Law; penalty for fraudulent representation or registration; penalty for practicing without registration; however the penalty for practicing without registration is imprisonment for a term which may extend to two (2) years but shall not be less than six (6) months or a fine which may extend to Two hundred thousand Rupees (Rs. 200,000) but shall not be less than One Hundred Thousand Rupees (Rs. 100,000); or both.

## 4.3 Balochistan Private Hospitals Regulatory Act, 2004

- 4.3.1 The Balochistan Private Hospitals Regulatory Act, 2004 (“**BPHA**”) provides for the regulation of the establishment, accreditation, licensing, control and supervision of Private Hospitals in the province of Balochistan and for matters connected therewith and ancillary thereto. The BPHA repeals the Balochistan Hospital Regulatory Authority Ordinance, 2001.
- 4.3.2 Section 3 of the BPHA provides that the Government shall constitute District Hospital Regulatory Boards (“**Hospital Boards**”) in every District of the province of Balochistan in the Office of the Executive District Officer, except for the District of Quetta where the Board shall be constituted in the Office of the Director General Health Services.
- 4.3.3 The Board shall:
- (a) exercise its powers and perform its functions in accordance with the Rules and its business shall also be conducted in the manner and in accordance with the procedure provided in the Rules;
  - (b) ensure that the minimum prescribed standards regarding physical and technical facilities required to be provided in private hospitals are present and have been fulfilled prior to granting of registration / accreditation;

- (c) have exclusive powers to register, grant, extend, modify, amend, suspend or revoke a license in respect of creation, operation or any other related matter of a private hospital within the respective district, such power to be exercised in the manner prescribed in the Rules;
- (d) the applications for the grant of license shall contain such information and shall be in such format as is prescribed in the Rules.

#### **4.4 N.W.F.P Health Foundation Ordinance**

4.4.1 The N.W.F.P Health Foundation Ordinance, 1995 provides for the establishment of the N.W.F.P Health Foundation for the purpose of promoting and financing the development of basic health services and matters related thereto in the province of North West Frontier. The functions of the N.W.F.P Health Foundation shall include, subject to the approval of the Government, to take all measures that it may deem necessary for the development, promotion and financing of health institutions in the private sector catering to the needs of basic health services in line with the health policy of the Government.

#### **4.5 N.W.F.P Medical and Health Institutions and Regulation of Health-Case Services Ordinance**

4.5.1 The N.W.F.P Medical and Health Institutions and Regulation of Health-Case Services Ordinance, 2002 ("Medical Institutions Regulation Ordinance") consolidates the laws relating to medical and public health institutions and regulates, the services being rendered by a private hospital, nursing home, clinic, including medical, dental, x-ray clinics, clinical laboratory and blood bank, other than those owned or administered by Government, a Local Government or any other body or authority incorporated by law. The Medical Institutions Regulation Ordinance provides for the establishment of a "Health Regulatory Authority" that shall be responsible for registration of the private Health Institutions; monitoring of the institutional private practice in accordance with the provisions of the Medical Institutions Regulation Ordinance, setting standards for establishment of facilities for clinical care; health institutions, medical institutions (private and public); setting standards and define yardsticks for provision of preventive, promotive, curative, re-habilitative, environmental and occupational health; setting standards for regulation and provision on modern and scientific lines for the practice of traditional medicines including ayurvedic, homeopathic Tibb, etc., setting standards for the practice of medical, dentistry, nursing, para medical profession in accordance with the requirements of their regulatory bodies concerned and for issuance of licenses / permits for practice in the province of N.W.F.P for the members of such profession; dealing with and deciding cases of mal-practice or violation of standards in the private sector with a view to safeguarding the patients rights to good health; and undertaking research work.

#### **4.6 Punjab Health Foundation Act**

4.6.1 The Punjab Health Foundation Act, 1992 provides for the establishment of the Punjab Health Foundation for the purpose of promoting and financing the development of the health sector in the province of Punjab and matters incidental and supplemental

thereto. The functions of the Punjab Health Foundation comprise of taking all measures that it deems necessary for the promotion, development and financing of the health services in the private sector.

## **5. BLOOD TRANSFUSION LAW**

### **5.1 Balochistan Safe Blood Transfusion Act, 2004**

- 5.1.1 The Balochistan Safe Blood Transfusion Act, 2004 (“Balochistan Transfusion Act”) provides for the establishment of the Balochistan Safe Blood Transfusion Authority (“BSBT Authority”) with the aim and object of ensuring the safety, protection and promotion of human life by providing for the establishment and maintenance of comprehensive and quality Blood Transfusion Services in the province of Balochistan. The Balochistan Transfusion Act further provides that every Medical Practitioner and every other qualified person prior to engaging in transfusion of Blood or Blood Products shall ensure prior to such transfusion that the Blood or Blood Products are free from infection and injurious agents and are transfused in a manner as may be prescribed by the BSBT Authority in the Rules made from time to time; provided however; in case of emergency or where a special situation arises in relation to the saving of injury to human life, the transfusion may be made other than in strict compliance with the Balochistan Transfusion Act but subject to the provisions of the Rules made in this respect. The powers of the BSBT Authority as given in the Balochistan Transfusion Act mainly pertains to the establishment and regulation of the business of blood banks, however the same also include (a) undertaking mass awareness and educational campaigns for promotion of blood donation, safe blood transfusion and to promote the effective utilisation of blood bank services by the public and the medical profession; and (b) to establish a Blood Donation Committee for the furtherance of the cause of blood donation in the province. The Balochistan Transfusion Act prescribes a penalty of imprisonment of either description that may extend to five (5) years or fine of upto Rupees One Hundred Thousand (Rs. 100,000) with a minimum fine of Rupees Thirty Thousand (Rs. 30,000) in the event of any contravention of the Balochistan Transfusion Act or any rules made thereunder and thereby causing physical injury to another.

### **5.2 N.W.F.P Transfusion of Safe Blood Act, 1999**

- 5.2.1 The N.W.F.P Transfusion of Safe Blood Act, 1999 (“NWFP Transfusion Act”) has been promulgated for the purpose of regulating transfusion of safe blood and its products including plasma, free from viruses like immunodeficiency (HIV), Hepatitis B and C or infective agents like Malaria Parasite and Treponema Palidem (Syphilis), etc and matters connected therewith or incidental thereto. The NWFP Transfusion Act provides that every physician, surgeon and other medical practitioner registered as such under the Pakistan Medical and Dental Council Ordinance, 1962 while transfusing blood to a patient shall ensure that the blood being transfused is duly certified as safe blood by a registered Blood Bank after carrying out the due tests necessary for issuing the requisite certificate. Furthermore, Blood Banks are required to be registered with the NWFP Safe Blood Transfusion Authority, formed under the

NWFP Transfusion Act, prior to receiving or supplying blood. The NWFP Transfusion Act also sets out responsibilities for Blood Banks.

### **5.3 Sindh Transfusion of Safe Blood Act, 1997**

- 5.3.1 The Sindh Transfusion of Safe Blood Act, 1997 (“Sindh Transfusion Act”) has been promulgated for the purpose of regulating transfusion of safe and healthy blood and blood products free from viruses and infective agents and to provide for matters connected therewith and incidental thereto. The Sindh Transfusion Act provides that every physician, surgeon, medical practitioner or any other qualified person transfusing blood or blood products to any patient shall ensure in the prescribed manner, before such transfusion that the blood or the blood products, as the case may be, is healthy and free from any of the viruses and infection listed in Section 2(e) of the Sindh Transfusion Act. Section 2(e) includes HIV. The Sindh Transfusion Act provides for the establishment of a Provincial Blood Transfusion Authority that shall register blood banks and accordingly blood banks shall not be permitted to receive or supply blood or blood products unless they are duly registered with the Provincial Blood Transfusion Authority. Any person who contravenes any section of the Sindh Transfusion Act shall be liable to imprisonment that may extend to two (2) years and a fine of upto PKR 500,000.

## **6. GENERAL HEALTH RELATED LAWS**

### **6.1 Injured Persons (Medical Aid) Act, 2004**

- 6.1.1 The Injured Persons (Medical Aid) Act, 2004 (“Medical Aid Act”) deals with the medical aid and treatment of injured persons who is brought to the hospital on a priority basis, without delay; over and above all other medico-legal formalities. The Medical Aid Act further provides that the police shall not interfere or interrupt while the injured person is under treatment at the hospital except with the written consent of the incharge of the hospital. This law also protects the persons who bring an injured person to the hospital from harassment. The violation of any provision of the Medical Aid Act or any Rules made thereunder is punishable by imprisonment which may extend to two (2) years and fine of not less than Rupees Ten Thousand (Rs. 10,000) or both, and with other penalty to which he may be liable under any other law in force. In case the fine is imposed, than half of such fine shall be payable to the injured person or his heirs, as the case may be.

# Chapter 5 HIV LAWS

## 1. DISABLED PERSON (EMPLOYMENT AND REHABILITATION) ORDINANCE, 1981

### 1.1 Introduction

- 1.1.1 The Disabled Person (Employment and Rehabilitation) Ordinance, 1981 (“DPO”) recognizes that it is expedient to provide for the employment, rehabilitation and welfare of disabled person and for matters connected therewith and accordingly the DPO has been enacted as a Federal Ordinance.

### 1.2 Disabled Person

- 1.2.1 The DPO defines a “disabled person” as a person “who on account of injury, diseases or congenital deformity, is handicapped for undertaking gainful profession or employment in order to earn his livelihood and includes a person who is blind, deaf, physically handicapped or mentally retarded”.
- 1.2.2 The term “disease” as used in the definition of “disabled person” has been defined to include “physical or mental condition arising from imperfect development of any organ”.

### 1.3 National Council

- 1.3.1 The DPO provides for the establishment of a National Council for the Rehabilitation of Disable Persons, consisting of representatives from *inter alia* Ministries of Health, Social Welfare, Water and Powers, Petroleum and Natural Resources.
- 1.3.2 The National Council as part of its functions is required to formulate policy for the employment, rehabilitation and welfare of the disabled persons; evaluate, assess and co-ordinate the execution of its policy by the Provincial Councils; and have overall responsibility for the achievement of the purposes of the DPO.
- 1.3.3 The policies that the National Council may be involved in may include the survey of the disabled persons in the country that are desirous of being rehabilitated; the medical examination and treatment of the disabled persons; the providing of training to the disabled persons; and the taking of such other measures that are necessary for carrying out the purposes of the DPO.

### 1.4 Employment of Disabled Persons

- 1.4.1 The DPO provides that an establishment shall at any time employ not less than one percent (1%) of the total number of persons employed by an establishment at any time shall be disabled persons whose names have been registered with the employment Exchange of the area in which such establishment is located and

against whose names in the register maintained under Section 12 of the DPO an endorsement exists to the effect that they are fit to work.

## 1.5 Training

- 1.5.1 The Provincial Councils shall arrange for the training of disabled persons in such trades or vocations as they think fit and shall establish training centres in such trades or vocations and in such manner as may be prescribed by the Provincial Government.

## 2. HIV & AIDS PREVENTION AND TREATMENT ACT, 2007 (BILL)

### 2.1 Introduction

- 2.1.1 The draft HIV & AIDS Prevention and Treatment Act ("**HIV Prevention and Treatment Bill**") was pending in the National Assembly and was not enacted. The bill will have to be taken afresh and has to be passed by the National Assembly (the lower house), the Senate (the Upper House) and thereafter receive the assent of the President, before it can become a law.

### 2.2 National and Provincial AIDS Commission

- 2.2.1 The HIV Prevention and Treatment Bill provides for the establishment of a National AIDS Commission ("**Commission**") by the Federal Government for the prevention, control, care, support and treatment of HIV and AIDS in the whole country and for the establishment of Provincial AID Commissions by Provincial Government in each province, for the prevention, control, care, support and treatment of HIV and AIDS in their respective provinces.

### 2.3 Protection against Discrimination

- 2.3.1 The HIV Prevention and Treatment Bill prohibits the discrimination against any person on the basis of his HIV status in any form in relation to any activity in the private or public sector; and further declares it unlawful that a person be required and / or coerced to be screened for HIV for any of the following purposes:
- (a) Employment, promotion, training or benefit, either in public or private sectors;
  - (b) Membership in any organization;
  - (c) Admission to any educational institution;
  - (d) Admission to any public or private place of accommodation;
  - (e) Marriage;
  - (f) Immigration to, emigration from, or citizenship of Pakistan; or
  - (g) Visiting another country for any purpose whatsoever, including but not limited to tourism, studies or work.
- 2.3.2 The HIV Prevention and Treatment Bill further provides that all private and public organisations shall keep the medical and personal information of their employees, students and members pertaining to HIV confidential; and every employer shall endeavor his best to provide reasonable alternative working arrangements and the maximum possible benefits to an employee who is HIV positive and is no longer able



to work. Additionally all HIV positive employees shall receive HIV related counseling and appropriate referral for treatment and social service from their employers. All places of employment having more than fifty (50) employees shall adopt a HIV Workplace Policy that shall conform to the model HIV and AIDS workplace policy prepared by the Commission.

- 2.3.3 Prohibitions are also contained in the HIV Prevention and Treatment Bill with regard to (a) discrimination in (i) seeking private and public accommodation and denial thereof on such basis; and (ii) provision or enjoyment of services, goods or benefits in or by any public or private facility based solely on his perceived or actual HIV status; and (b) publication, propagation, advocacy and communication by words, either spoken or written or by signs or by visible representation against any person on grounds of his HIV status.
- 2.3.4 The most important provision of the HIV Prevention and Treatment Bill in Section 20 provides, *inter alia*, that notwithstanding anything contained in any other law for the time being in force, the providing of any product even if the same is prohibited by law or any equipment to implement, enforce, plan, deliver, or monitor any of HIV prevention harm reduction services shall not in any manner be prohibited, impeded, restricted or prevented and the same shall not constitute a criminal offence by the persons working in good faith not to make any kind of profit whatsoever. Furthermore, no law enforcement or public officials shall arrest or detain or in manner harass, impeded, restrict or otherwise prevent any person implementing or using strategies and drug substitution therapies, in good faith and without any motive for profit for HIV prevention harm reduction services in accordance with the provisions of HIV Prevention and Treatment Bill, including publishing and dissemination of materials, sterile drug equipment paraphernalia, bleach and other disinfectants and condoms amongst the Most at Risk Population members.
- 2.3.5 Section 21(2) provides that women who have been raped or have experienced sexual violence shall be provided with counseling and clinical services at public and private health care facilities and services for rape survivors shall include post-exposure prophylaxis. Furthermore every survivor of sexual assault whether or not the same has been reported to the police shall have access, at a public health care facility to the following services on a confidential basis:
- (a) Counseling;
  - (b) Prevention and management of STIs, including testing and prophylactic treatment;
  - (c) Prevention, treatment and management of other medical conditions or injuries associated with the sexual assault;
  - (d) HIV related counseling and treatment, if required;
  - (e) Follow up treatment and care; and
  - (f) Referrals.
- 2.3.6 Section 22 provides that no person in the care or custody of the State in any kind of prison may be HIV screened without informed consent; but shall have the right to HIV prevention, counseling, testing and treatment services. Additionally any person in the prison shall be entitled to receive his complete medical records upon his release / discharge from prison.



- 2.3.7 Section 28 provides that prior to any HIV screening or pre-test counseling, voluntary written informed consent shall be obtained on a prescribed form; and no person, including children shall be screened when they are lodged in a governmental establishment. The age of consent for HIV testing shall be eighteen years and children below the age of eighteen (18) years shall require the consent of their guardians and parents. For children living independently who are not in contact with their parents / guardians shall be able to consent for HIV testing after they have been provided age sensitive information and counseling.
- 2.3.8 In the following cases, informed consent for HIV tests shall not be required:
- (a) when the HIV test is being conducted in accordance with a court order when the person being tested receives pre-test and post test counseling and when HIV related information of such person is kept confidential and is not disclosed; and
  - (b) surveillance and epidemiological purposes where the HIV test is anonymous and unlinked and is not for the purpose of determining the HIV status of the person in question.

## 3. HIV (SAFETY AND CONTROL) ACT, 2010 (BILL)

### 3.1 Introduction

- 3.1.1 The draft HIV (Safety and Control) Act ("**HIV Safety Bill**") was a private members bill introduced in the lower house of the Parliament; and just like the HIV Prevention and Treatment Bill, it will have to be introduced afresh and be passed by both the houses and receive the assent of the President before it can become a law.

### 3.2 HIV Safety Bill

- 3.2.1 The HIV Safety Bill is a provincial bill and applies only to Islamabad Capital Territory; and its purpose is to control the spread of HIV.
- 3.2.2 Section 3(1) of the HIV Safety Bill provides that HIV tests shall be carried out free of costs at public hospitals and clinics where laboratory facilities are available and screening for HIV shall be included in blood screening.
- 3.2.3 Section 3(2) further provides that HIV/AIDS tests can be required by court, public prosecutors or by a physician, primary health care giver, nurse, attendant, or paramedic involved in care of patients and no other person shall have the right to ask any person for the tests; and even in such cases the persons and authorities requesting for such tests shall be informed of the results in the strictest of confidentiality. The person being tested shall also be informed of the tests
- 3.2.4 In terms of Section 3(3) of the HIV Safety Bill any person can move the court for the purpose of seeking a test of another person if the person moving the court suspects such other person to have AIDS and if as a consequence of his / her association with such person, it can be proved that the person seeking the test is at significant risk of acquiring the disease. However, due to fear of punishment by the law, persons

engaged in out of wedlock relationships usually refrain from moving the court even if there is significant risk of exposure to HIV.

- 3.2.5 Section 4 of the HIV Safety Bill, pertains to Mandatory Testing and provides that the following persons shall be required to undergo mandatory testing:
- (a) persons intending to get married and the test report of both parties shall be included in the *nikahnama* or a certificate to this effect shall be attached therewith;
  - (b) ante-natal testing of pregnant women report of whom shall be submitted to the physician / surgeon involved in antenatal, post natal care of women;
  - (c) high risk groups including the following:
    - (i) all immigrant workers returning to Pakistan, at all entrance points, and the results shall be communicated to the person tested; and in case the results are positive than the tests of the family members shall also be conducted;
    - (ii) jail inmates, commercial sex traders, sex offenders, victims of crimes that have exposed them to risk of acquiring infection, habitual drug abusers and truckers;
  - (d) patients receiving repeated transfusions of blood.

It is pertinent to note that this is contradictory to the HIV Bill of 2007 which prohibits the coercive screening and testing of individuals.

- 3.2.6 Section 5 of the HIV Safety Bill requires that before a person undergoes a test for HIV, consent form, in the prescribed format shall be signed by such person; and in the case of a minor under 16 years of age or where a person lacks the mental capacity to understand the consent form than the same shall be signed by the parents or the legal guardian of such person. In the event of an emergency where a person is unconscious or is not in a position to sign the consent form, the consent shall be obtained from the relatives available at the spot.
- 3.2.7 The sharing of information in respect of the results of pregnant women and couples that undergo HIV tests is provided for in Section 6 of the HIV Safety Bill; which states that the results of HIV tests of pregnant women and couples shall be disclosed to them, whatever they may be. And in cases where the results are positive, the "relevant" hospitals and clinics shall be responsible for their counseling and preparing them to live with the disease and stop transfusion of it to their relatives.
- 3.2.8 Section 6 (2) further provides that doctors can inform at risk person's partners, spouse and shared syringe users about the positive results. Section 6(2) further states "*treatment facilities to be discussed follow up care and referral of positive person*". This section, as drafted would be subject to interpretation.
- 3.2.9 The HIV Safety Bill contains a "Confidentiality" provision under Section 7 which provides that other than as stated above in the HIV Safety Bill the tests cannot be shared with "*relatives other than spouse, friends other than those who are partners or could otherwise be infected, associates or employers unless a written consent form from the patient*". This section further states that test results are not to be posted on the internet or other electronic media; hospital case papers / reports are to be kept confidential; pre-marriage certificate showing AIDS test results posted can only be shared with prospective bride; and blood tests are to be done anonymously if part of a scientific research.

- 3.2.10 An exception to the Confidentiality provision contained in Section 7 has been provided in Section 8 (*Conditions under which disclosure of blood results are authorized by laws*); which states in sub-section (i) that “Results can only be divulged to any other then specified in the previous section as specified by this law; unless public safety is at risk”; and in sub-section (ii) that “where there is ongoing control surveillance of disease”.
- 3.2.11 Section 9 deals with penalties for breach of confidentiality and states that any person who negligently or willfully or maliciously divulges or directly or indirectly identifies an individual as having HIV that results in economic, bodily or psychological trauma / harm to person or persons than such a person shall be guilty of a misdemeanor and shall be punished by a jail period not extending beyond one (1) year and a fine of Rs. 50,000 or both plus court costs to be paid to the person or person whose confidentiality has been breached.
- 3.2.12 According to Section 10 of the HIV Safety Bill “Any person who by publication, by advocacy or propaganda spoken or written spreads prejudicial reports regarding a person or persons of AIDS /HIV in a way that could cause psychological, physical or mental trauma to that individual or individuals or result in their being victimized or discriminated against by society, by employers or prospective employers or associates” than the person so advocating or discriminating against an infected person will be guilty of misdemeanor and is liable to imprisonment or fine or both.
- 3.2.13 The HIV Safety Bill contains a “Section B” comprising of Section 11 (*Information Dissemination*), Section 12 (*Documentation*) and Section 13 (*Training of Health Personnel*). Section 11 sets out the details of the manner in which information about HIV should be disseminated including dissemination through the media, but it does not create any duties or obligations upon any particular organ of the government or the private sector. Similarly Section 13(i) simply states “Entry in National Data Bank”; there is no reference to a National Data Bank prior to this Section 13(i) nor is there any provision requiring the establishment of a National Data Bank; nor does this Section 13(i) state as to what has to be entered into the National Data Bank; however the later sub-sections do refer to information and it is open to interpretation that it is such information that is to be entered into the National Data Bank. Section 14 which pertains to Training of Health Professionals refers to training for health professionals as disseminators and counselors and that health professionals should be given sensitivity training with regard to the stigma attached to the disease; however this Section also does not create any special obligations with regard to such training and merely states that health personnel should receive such training.
- 3.2.14 Section C of the HIV Safety Bill pertains to safety measures and contains four sections, namely: Section 15 (*Blood and blood products and tissue safety*); Section 16 (*Safety and sanitation standards*); Section 17 (*Health personnel and safety measures*) and Section 18 (*Criminal Offence and its prosecution*).
- 3.2.15 Section 15 states that “Blood banks and organ banks have to follow regulations and safety measures.” It further provides that safety measures also have to be followed by organ transplant units, thalassemia, hemophilic and dialysis centres and all these facilities should be licensed. It is not clear as to what the intent of this section is, since it neither frames nor refers to any safety measures that should be followed by blood and organ banks and organ transplant units, thalassemia and hemophilic and dialysis centres. Furthermore it states that these centres should be licensed, but neither

elaborates upon nor refers to any licensing authority nor does it refer to any other law casting a similar licensing obligation. This section further states in sub-section (2) and (3) that all blood and organ donors require mandatory blood tests for HIV and all blood products, whole blood should be free from HIV anti body. Even in these sub-sections it does not cast any mandatory obligation on any person / authority / organization to ensure that (a) the blood and organ donors undergo the mandatory blood test; or (b) all blood products, whole blood should be free from HIV antibody before transfusion.

- 3.2.16 Section 16 pertains to Safety and sanitation standards and states that safety measures are to be followed in disposal of hospital waste, hypodermic needles, syringes, dressings, suture materials etc. and further states that hospitals, clinics and health centres must dispose needles of hypodermic syringes and sharps in disposal containers; hospital clinic waste to be properly disposed / incinerated; and all syringes, needles, drip sets etc to be sold on prescription by licensed pharmacies. As with the previous Section 15, this Section 16 also does not create any mandatory obligations on hospitals, clinics and / or medical practitioners. The law fails to ensure adherence on part of health managers and service providers both private and public to ensure the safe and environment friendly disposal of used syringes and sharps.
- 3.2.17 Although Section 17 states that dental professionals, surgeons, physicians paramedics are required to maintain occupational safety and standard guidelines for infection control; however it neither refers to any particular guidelines with regard to such occupational safety or infection control nor provides any such guidelines within the HIV Safety Law. Sub-section (2) of Section 17 states that all hospitals where there is a significant risk of acquiring HIV infection are required to take safeguards and sanitation measures to protect their employees; and it is mandatory for those health personnel to be tested every five (5) years for HIV who are at significant risk of exposure such as dentists, surgeons, phlebotomists. Despite the mandatory requirement for testing Section 17(2) does not impose any penalty for failure of any high risk professionals stated therein to test every five (5) years.
- 3.2.18 Section 18 of the HIV Safety Bill provides that any person who willfully exposes another person to HIV by not informing that person of his condition or by “(i) engaging in unprotected sex. (ii) sharing needles, shaving razors, scissors, tooth brushes etc; (iii) in case of dentist surgeons performing invasive procedures. (iv) barbers by using contaminated scissors, razors. (v) Quacks<sup>1</sup> using needles, syringes, drip sets, other material instruments contaminated by the virus.” shall be treated as a criminal and shall be charged with rigorous imprisonment for ten (10) years and with a penalty of not less than Rs. 100,000 and not more than Rs. 500,000 unless the victim requires otherwise.

## 4. OBSERVATIONS ON THE HIV BILLS

- 4.2.1 The HIV Prevention and Treatment Bill and the HIV Safety Bill are standing at opposing ends of the spectrum.

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<sup>1</sup> This is a quotation from the law and while slang, the word “quack” has been used in this law.

- 4.2.2 It is pertinent to note that while the HIV Prevention and Treatment Bill prohibits discrimination on the basis of HIV status for admission into schools, health treatment, enjoyment of services and provision of goods etc.; it does not take into consideration mandatory HIV testing in cases of rape, sexual assault and unnatural offences under Section 377 of the PPC. Nor does it provide for mandatory testing by the Commission in armed forces / hostels of armed forces<sup>2</sup>; in injecting drug users. Additionally it requires informed consent for testing of prisoners and minors. Given the current state of HIV in Pakistan and its status as a matter of public health, it would have been more beneficial had the HIV Prevention and Treatment Bill provided for stringent testing and screening requirements. Furthermore, the HIV Prevention and Treatment Bill also does not take into account Section 269 and Section 270 of the PPC; which should have been incorporated into the HIV Prevention and Treatment Bill by reference since the same are most relevant to HIV.
- 4.2.3 Notwithstanding the above, the HIV Prevention and Treatment Bill has now lapsed as a consequence of the 18th Amendment and can only be adopted by the Provincial Assemblies as provincial legislation with such amendments as may be considered necessary by the relevant Provincial Assemblies. The HIV Safety Bill, however, may still be enacted as an act of the Parliament, since it is a legislation applicable only to the jurisdiction of the capital territory of Islamabad.

## **5. RELEVANT PROVISIONS OF THE PAKISTAN PENAL CODE**

### **5.1 Section 269 – Negligent Act likely to spread infection of disease dangerous to life**

- 5.1.1 Section 269 of the PPC provides that whoever unlawfully or negligently does any act which is or which he knows or has reason to believe is likely to spread the infection of any disease that is dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six (6) months or with fine or with both.

### **5.2 Section 270 – Malignant Act likely to spread infection of disease dangerous to life**

- 5.2.1 Section 270 of the PPC pertains to the offence where a person malignantly does any act which is or which such person knows is likely to he has reason to believe is likely to spread the infection of any disease dangerous to life; shall be punished by imprisonment of either description for a term which may extend to two (2) years or with fine or with both.

### **5.3 Observations on Sections 269 and 270**

- 5.3.1 The difference Section 269 and Section 270 of the PPC lies in the fact that in order for Section 269 to be applicable it is necessary that the act causing the infection of the disease dangerous to life should have been caused negligently and / or unlawfully but the conditionality of malice is not required for the applicability of Section 269 while in order for Section 270 to be applicable it is necessary that the act should have

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<sup>2</sup> Mandatory testing in the armed forces and in the residences for the cadets and the armed forces was a suggestion actually made by the Assistant Inspector General of Capital City Police, Islamabad, during our interview in Islamabad.

been committed with a malicious intent; however negligent failure to disclose also constitutes an offence under Section 269.

- 5.3.2 In reliance upon Section 269 and Section 270 of the PPC, it is possible to legally seek prosecution against any person who has either knowingly with malice or unknowingly and thereby negligently caused any person to be infected by HIV.
- 5.3.3 Despite the availability of Sections 269 and 270 of the PPC, there are no instances of any relief having been sought by reliance upon these sections of the PPC in Pakistan, while case law on Sections 269 and 270 of the Indian Penal Code (which are identical to Sections 269 and 270 of the PPC) is available in India. No specific evidence is available as to why these provisions of the PPC have not been relied upon, however the cause may be a lack of awareness of the same.

## Chapter 6 HIV ORDINANCE IN SINDH

### 1. INTRODUCTION

- 1.1.1 The Governor of Sindh passed the Sindh HIV/AIDS Control Treatment and Protection Ordinance, 2013 ("**Sindh HIV Law**") on May 22, 2013.
- 1.1.2 The Sindh HIV Law is the first legislation in Pakistan that not only protects the interest of PLHIVs but also protects them against discrimination; fulfilling/placing strict confidentiality measures and contains provisions for the control of HIV/ AIDS transmission.

### 2. SINDH HIV CONTROL TREATMENT AND PROTECTION ORDINANCE, 2013

#### 2.1 Sindh AIDS Commission

- 2.1.1 The Sindh HIV Law provides for the establishment of the Sindh AIDS Commission by the Provincial Government within fifteen (15) days from the date of promulgation of the Sindh HIV Law.
- 2.1.2 The Sindh AIDS Commission comprises of the (a) Working Body and the (b) the Governing Body.
- 2.1.3 The HIV related projects shall be undertaken and implemented through the Working Body which shall report to the Governing Body. The Governing Body shall meet every six (6) months.
- 2.1.4 The Governing Body of the Sindh AIDS Commission shall comprise of five (5) eminent members nominated by the Government:
- 2.1.5 The Working Body of the Sindh AIDS Commission shall comprise of the following members:

- (a) Two (2) persons representing NGOs working in the field of HIV one of whom shall from the IDU and one from the most at risk high groups based on the IBBS;
- (b) Two (2) medical practitioners, one from the public sector and one from the private sector;
- (c) One (1) lawyer with experience in HIV;
- (d) One (1) person representing NGO working with social issues to be nominated by the Government;
- (e) Three (3) members of Most at Risk community, one of whom shall always be a woman;
- (f) One (1) member of the law enforcement agencies or a retired judge;
- (g) Provincial Programme Manager, Sindh AIDS Control Programme.

2.1.6 The Sindh HIV Law provides that the Commission shall establish a Fund which shall vest in the Commission and the following shall be credited to such Fund:

- (a) grants made by the Government and the Federal Government and Local Bodies;
- (b) income from investments made by the Commission;
- (c) donations and endowments;
- (d) revolving funds placed by the Government at the disposal of the Commission; and
- (e) all other sums received by the Commission and incomes from other sources.

## 2.2 Powers and Functions of the Sindh AIDS Commission

2.2.1 The Commission shall have the following functions and powers:

- (a) to formulate, institute and implement provincial HIV and AIDS related public awareness programmes;
- (b) to formulate and implement HIV and AIDS policy, which shall be reviewed and amended, if necessary, every three years after widespread consultation;
- (c) to make rules providing protocols for counseling, testing, care, support, treatment tailored specifically and separately for all members of Most at Risk Populations, for children, and for women who are vulnerable and at risk for HIV infection;
- (d) to monitor the Sindh AIDS Control Programme and their performance;
- (e) to recommend changes or amendments in the Programme designs on the basis of data and results of integrated behavioural and biological surveillance and changing scenario in HIV and AIDS epidemic;
- (f) to recommend for inclusion of reproductive health and HIV and AIDS in the curriculum for higher secondary education;
- (g) to monitor compliance with the Sindh HIV Law in the prescribed manner;
- (h) to receive reports of violations or other matters concerning the Sindh HIV Law;
- (i) to recommend investigation or initiation of cases against health workers and other sections of the population as prescribed in the Sindh HIV Law and the rules;
- (j) to plan for and coordinate the dissemination of informational, educational and communication materials on the topics of HIV and AIDS in a method as may be prescribed, and to plan continuing education courses for health workers, and others including the general public, on topics related to the Sindh HIV Law;



- (k) To advise the Provincial Government on all matters relating to the prevention, control, care, support and treatment of HIV and AIDS, particularly through education campaigns and to organize such campaigns;
  - (l) To register NGOs and CBOs providing HIV and AIDS prevention harm reduction services; and
  - (m) such other powers and functions that may be deemed necessary, incidental or ancillary to, the attainment of any purposes and objectives of the Sindh HIV Law.
- 2.2.2 With regards to proceedings and inquiries the Commission shall have the power of a Civil Court under the Criminal Procedure Code, 1908 with regard to the following matters:
- (a) Summoning and enforcing the attendance of witnesses and examine them on oath;
  - (b) discovery and production of any document;
  - (c) Receiving evidence on affidavits;
  - (d) requisitioning any public record or copy thereof from any court or office; and
  - (e) Issuing commissions for the examination of witnesses or documents.
- 2.2.3 In addition to the above, the Sindh AID Commission shall also have the power to require any person, to furnish information on such matters as it may consider to be useful for or relevant to the subject matter of any inquiry, and any person so required shall be legally bound to furnish such information within the meaning of Sections 176 and 177 of the Pakistan Penal Code, 1860. Section 176 of the Pakistan Penal Code, pertains to "*Omission to give notice or information to public servant by person legally bound to do give it*" and Section 177 of the Penal Code pertains to "*Furnishing False Information*".
- 2.2.4 The Commission shall conduct IBBS every two years to ascertain the trend of the disease, behavioural change for necessary amendment in the implementation strategies and for the purpose of development of relevant policies.

## 2.3 Discrimination

- 2.3.1 The Sindh HIV Law in Section 8 (1) prohibits discrimination by any person, whether in the field of health care services, education, employment, provision of general utility and or any other form of services and or in relation to accommodation, whether in respect of accommodation for lease, rent, to let or hire and or for purchase, against another person on the basis of such other person's HIV status, or presumed, suspected or alleged HIV status.
- 2.3.2 It is also unlawful under Section 8(2) of the Sindh HIV Law to require or to coerce another person to be screened for HIV for any of the following purposes:
- (a) employment, promotion, training, or benefit, either in public or private sectors;
  - (b) membership in any organization;
  - (c) admission to any educational institution;
  - (d) admission to any public or private place of accommodation;
  - (e) marriage;



(f) immigration to, emigration from, or citizenship of, Pakistan.

2.3.3 The Sindh HIV Law prohibits, pursuant to Section 8(7) and Section 8(8) respectively, the screening of any person for admission to an educational facility and the denial of admission on such basis and the screening of any person for the purpose seeking public or private accommodation and the denial of admission on such basis.

## 2.4 Confidentiality

2.4.1 Confidentiality is dealt with Section 8 and Chapter 9 of the Sindh HIV Law and contravention of confidentiality provisions in Section 8 and Chapter 9 contain separate penalties.

2.4.2 Any data relating to HIV screening or tests in the possession of any organization shall be maintained in the highest confidentiality as per the requirements of Section 8(3) of the Sindh HIV Law and shall not be disclosed and / or released to any other third party without the prior written information of the individual. In the event such records are required to be released to the Court, pursuant to a Court Order than such organization shall file an application in Court requiring that such records are not made part of public records and kept confidential.

2.4.3 All health care facilities, whether public or private, are required to maintain confidentiality of their patient's medical and personal records and information, including their HIV status, as prescribed by Section 8(6) of the Sindh HIV Law.

2.4.4 Chapter 9 in Section 18 casts an overarching obligation of confidentiality on all health workers, any person providing services or being associated in the course of his duties with the provision of any counseling, testing, care or through administration of the Sindh HIV Law or by conducting surveillance reporting, or research shall take all reasonable steps to maintain confidentiality and such persons shall prevent disclosure of any information that another person (a) is or is presumed to be HIV positive; (b) has or is presumed to have AIDS; and (c) has been or is being tested for HIV infection.

2.4.5 Section 19 provides that no person shall be compelled to disclose HIV related information or any other private information concerning himself, except when a Court determines it necessary for the determination of issues and in the interest of justice.

2.4.6 Disclosure of HIV related information or private information is authorized pursuant to Section 19(2) in the following cases:

- (a) By a health worker to the concerned personnel at the SACP involved in the provisions of care, treatment or counseling of a person when such disclosure is necessary to provide care or treatment in the best interest of that person;
- (b) By an order of the Court when it determines it necessary for the determination of issues and in the interest of justice;
- (c) In legal proceedings between persons where disclosure is necessary for purpose of initiation of proceedings;

- (d) In relation to statistical or other information of a person that could not reasonably be expected to lead to the identification of that person.

Any person to whom information is revealed is prohibited from making further disclosure except in accordance with the provisions of the Sindh HIV Law.

- 2.4.7 Section 20 of the Sindh HIV Law allows disclosure of a person's HIV status by the relevant health worker, being a physician or a counselor, only in cases where such person is directly under the care of such physician and the disclosure is to the spouse or partner of such person and in the following situations:
- (a) the HIV positive person has been thoroughly counseled to inform spouse or partner;
  - (b) counseling has failed to achieve appropriate behavioural changes and such person is unlikely to inform spouse or partner;
  - (c) the relevant health worker reasonably believes that the spouse or partner is at significant risk or transmission of HIV from such person;
  - (d) reasonable advance notice of intent to disclose HIV status of such person to the spouse or partner has been give by the relevant health worker; and
  - (e) if unavoidable, such disclosure is made in person and with appropriate counseling or referrals for counseling.
- 2.4.8 Section 21 prescribes a penalty of imprisonment of five (5) years and fine that may extend to PKR 200,000 for any person who person deliberately exposes other to the risk of transmission by non-disclosure of such persons HIV status.
- 2.4.9 In terms of Section 22, a health facility that is held negligent for transmission of HIV through exposure to contaminated biological material shall be liable to be punished with imprisonment for a term of not less than two (2) years and a fine that may extend to PKR 1,000,000.
- 2.4.10 Section 22(2) prescribes a penalty for fake experts of HIV representing to provide absolute cures for elimination of HIV, which shall be imprisonment for a term that may extend to one (1) year and a fine that may extend to PKR 500,000; provided however, if such alleged cures or elimination of HIV, include or result in the performance or abetting of any acts and / or deeds that may be punishable under any other law than the punishment under Section 22(2) shall be in addition to and not in derogation of the punishment prescribed under such other law.
- 2.4.11 The penalty for publicizing the confidential health information of any individual or the health records of any person, in contravention of the provisions of the Sindh HIV Law, is prescribed under Section 23 which provides that such person shall be liable to imprisonment for a term not exceeding five (5) years and not less than two (2) years and a fine not exceeding PKR 200,000.
- 2.4.12 In terms of Section 24, any person who undertakes any activity resulting in the transmission of HIV to another person, without disclosing his / her positive HIV status to another person shall be subject to the punishments prescribed under Section 269 and 270 of the Pakistan Penal Code.

## 2.5 Awareness Programmes

- 2.5.1 The Sindh HIV Law casts an obligation pursuant to Section 8(4) on employers of every workplace that has more than 10 employees, whether public or private, to undertake a HIV awareness programme, for the benefit of its employees, at least once a year.
- 2.5.2 Section 10(3) provides that every public and private sector organization and higher secondary educational institutions having more than twenty-five employees shall organize a HIV awareness programme on its premises, with its own funds, through public and private organisations working on HIV registered with the Health Departments and the Sindh AIDS Control Programme.
- 2.5.3 Pursuant to Section 10(2) Government is required to ensure that HIV awareness programmes are organized throughout the province that are accessible by such public and private sector organisations.
- 2.5.4 Section 10(4) provides that the Government shall issue directives to the transporters organisations and the local business organisations to organize HIV awareness programmes, to ensure attendance by their members.

## 2.6 Dissemination of Information

- 2.6.1 HIV related public awareness programmes shall be widely disseminated through all forms of media, including print, electronic, mass and digital media.

## 2.7 Healthcare Workers and Health Service Facilities

- 2.7.1 Section 11(2) makes it the duty of every health worker and every health care facility to make available information regarding the prevention, control and treatment of HIV to the public.
- 2.7.2 In addition to the above, Section 11(3) provides that every health care facility is also required to enhance the knowledge and capacity of all its workers with regard to the dissemination of information about HIV and education of the general public about HIV and on other HIV related issues, such as discrimination, confidentiality and informed consent.

## 2.8 HIV Screening

- 2.8.1 Section 8 (5) of the Sindh HIV Law provides that no person shall be required to undergo HIV screening for routine testing or diagnostic testing purposes, without their express consent, by any public or private health care facility.

## 2.9 Penalties for Discrimination

- 2.9.1 The penalties for contravention of any provision of Section 8 of the Sindh HIV Law are provided in Section 9, which states that any person who contravenes any provision of Section 8 of the Sindh HIV Law shall be punishable with imprisonment that shall not be less than PKR 50,000 or more than PKR 300,000.

- 2.9.2 Section 9 further provides that in the event, any contravention of Section 8 results in any delay or denial of the provision of healthcare services to any PLHIV by a health service provider, whether in a health care facility or otherwise, for any reason whatsoever, including but not restricted to the HIV status of the PLHIV, than the same shall render such health service provider to a fine of not less than PKR 100,000 and not more than PKR 2,000,000. And in the event such inordinate delay or denial of healthcare services results in the premature acceleration or death of the PLHIV than the health service provider responsible for such acceleration shall be liable for the relevant punishment under the PPC.

## 2.10 Duties of the Provincial Government

- 2.10.1 Section 12 creates an obligation on the Provincial Government to arrange programmes, with the active co-operation of the Sindh AIDS Commission, for the purpose of educating and raising awareness among *inter alia*, PLHIV, members of the Most at Risk Populations.
- 2.10.2 Section 13(2) provides that the Provincial Government shall organize and arrange, in consultation with the Sindh AIDS Commission, training and behaviour change and communication programmes on HIV and AIDS prevention and harm reduction services for the police and prison staff and other law enforcement officials.

## 2.11 Health Department

- 2.11.1 Section 13(3) provides that the Health Department shall ensure that the awareness and Voluntary Confidential Counseling and Testing service for HIV (“**VCCT**”) shall be made available at the level of basic health units, while ensuring that the VCCT, viral load test, ART for both adult and children, harm reduction services, psychological support, treatment for opportunistic infections and STIs, primary health care and oral substitution therapy is made available at all tertiary care health facilities through one window operation, by the establishment of family health centres.
- 2.11.2 Section 13(4) provides that all line Ministries and public health project shall integrate HIV related prevention activities in their programmes.

## 2.12 NGOs and CBOs

- 2.12.1 In terms of Section 13(5), NGOs and CBOs that are duly registered with the Sindh AIDS Commission shall work on HIV prevention harm reduction services and the Sindh AIDS Commission shall monitor such NGOs and CBOs that are working in the HIV sector.

## 2.13 Sexual Assault cases

- 2.13.1 In terms of Section 14(1) directives shall be issued by the Provincial Government to law enforcement agencies to conduct mandatory HIV screenings for the accused and the victims, subject to informed consent, in all sexual assault cases.

- 2.13.2 No person in charge of a health care facility and / or a member of a law enforcement agency shall report or release the information regarding the HIV results conducted on the accused or the victim and any information that is to be released to the Court shall not form part of the public records.
- 2.13.3 Rules shall also be made specifying protocols for the counseling and treatment of survivors of rape or sexual assault and for the training of health workers in the implementation of such protocols.

## **2.14 Children**

- 2.14.1 Section 15 of the Sindh HIV Law deals with children and provides in Section 15(1) that the Sindh AIDS Commission shall commence HIV screening campaigns in cities for street children through CBOs and NGOs working with street children and children that positive shall be provided with free treatment through SACP.
- 2.14.2 Section 15(2) states that the Provincial Government shall provide harm reduction, VCCT and referral treatment, on a confidential basis to street children, in consultation with the Sindh AIDS Commission, and the identity of the child tested for HIV and the results of such test shall not be revealed, except in accordance with the provisions of the Sindh HIV Law.

## **2.15 Prisons**

- 2.15.1 In terms of Section 16 of the Provincial Government is required to initiate awareness programmes about HIV in all prisons in the province and conduct regular screening of the inmates subject to informed consent. The results of the HIV screening and tests shall be not be revealed to any person by the health professionals conducting such tests or by the prison officials.
- 2.15.2 There shall be no discrimination on the basis of the results of the HIV screening / tests with regard to the health facilities, residence quarters and / or diet to be provided to the prisoners subsequent to the findings of the screenings / tests.
- 2.15.3 In the event of any contravention of the confidentiality provisions set out in Section 16, the person contravening such provisions shall be liable to the penalties set out in Section 16(4) which prescribes a fine of not less than PKR 100,000 and not exceeding PKR 2,000,000. Any prisoner who is adversely impacted by such disclosure shall have the right to seek relief under Section 16(4).

## **2.16 Reduction of Risk for Occupational Exposure**

- 2.16.1 The Sindh HIV Law provides that every health care facility, where there is a significant risk of occupational exposure to HIV shall provide free of cost universal precautions and post exposure prophylaxis to all persons working in such health care facilities that may be occupationally exposed to HIV and shall ensure that universal precautions and post exposure prophylaxis protocols are introduced at its facility are complied with by all concerned.

## 2.17 No Restriction from bringing proceedings

2.17.1 Section 25 of the Sindh HIV Law provides that no person shall be restricted from bringing any proceedings under the Sindh HIV Law against any person.

## 3. OBSERVATIONS ON THE SINDH HIV LAW

3.1.1 The Sindh HIV Law has been promulgated through the personal efforts of the Sindh Caretaker Minister for Law and Prisons, who upon being informed of the current HIV scenario in Sindh made all efforts to promulgate the current law.

### 3.2 Sindh HIV Law and the Draft HIV Policy

- 3.2.1 The Sindh HIV Law takes into account all the key points of the Draft HIV Policy being the following:
- (a) National Commission: the Sindh HIV Law provides for the establishment of a Provincial Commission;
  - (b) Priority Focus Areas: the Provincial Commission includes members of the KAPs as well as PLHIV and members of NGOs working with KAPs and PLHIV;
  - (c) Reducing HIV and AIDS stigma and discrimination: the Sindh HIV Law not only contains strict provisions with regard to discrimination and confidentiality but also contains provisions with regard to sensitization exercises to be undertaken and awareness programmes to be undertaken by the public and private employers as well as the government;
  - (d) Health System Strengthening: the Sindh HIV Law provides for the establishment / introduction of a one-window operation for HIV at the health care facilities as detailed above;
  - (e) HIV Prevention, Counseling and Testing: specific provisions have been introduced for the purpose of prevention, voluntary confidential counseling and testing; including VCCT for street children;
  - (f) Discouraging Unproven HIV cure: specific provisions have been added penalizing unproven cure and alleged elimination of HIV by such unproven cures.
- 3.2.2 While the Ordinance has been promulgated as a first step, yet concrete steps need to be taken by the relevant support groups for the purpose of ratification of the Ordinance into an Act by the Provincial Assembly.

### 3.3 Sindh HIV Law

3.3.1 The full text of the Sindh HIV Law is attached as ANNEX 1.

# Chapter 7 INJECTING DRUG USERS AND THE LAW

## 1. CONTROL OF NARCOTIC SUBSTANCES ACT

### 1.1 Control of Narcotic Substances Act, 1997

- 1.1.1 The Control of Narcotic Substances Act, 1997 (“**CNSA**”) has been promulgated to consolidate and amend the laws relating to narcotic drugs, psychotropic substances and to control the production, processing and trafficking of such drugs and substances. The CNSA includes provisions pertaining to the prohibition and prescription of the punishments for cultivation of narcotic plants, possession of narcotic drugs, import and export of narcotic drugs, trafficking or financing the trafficking of narcotic drugs.
- 1.1.2 The definitions of controlled substance, narcotic drug, psychotropic substance has been provided in Section 2 as follows:
- (a) “controlled substance” means any substance which may be used for the production or manufacture of narcotic drugs or psychotropic substance;
  - (b) “narcotic drug” means coca leaf, cannabis, heroin, opium, poppy straw and all manufactured drugs; and
  - (c) “psychotropic substance” means the substance specified in the Schedule to the CNSA and such substances as the Federal Government may, by notification in the Official Gazette declare to be psychotropic substance.
- 1.1.3 Chapter II of CNSA titled “Prohibition and Punishment” deals with various prohibitions and the punishments for the same. In terms of Section 4, the cultivation and gathering of any narcotic plant, such as cannabis, coca bush or opium poppy is prohibited; provided however, the same may be permitted by Provincial or Federal Government subject to specific conditions for medical, scientific or industrial purposes. The punishment for contravention of Section 4 as prescribed in Section 5, is imprisonment that may extend to seven (7) years or with fine; or with both.
- 1.1.4 The most important section of CNSA is Section 6, which contains a prohibition on the possession of narcotic drugs; and on:
- (a) production;
  - (b) manufacture;
  - (c) extraction;
  - (d) preparation;
  - (e) possession;
  - (f) offering for sale;
  - (g) selling;
  - (h) purchasing;
  - (i) distribution;
  - (j) delivering on any terms whatsoever;
  - (k) transporting;
  - (l) dispatching

any narcotic drug or psychotropic substance or controlled substance except for medical, scientific or industrial purpose and on such condition as may be specified under the CNSA or under any other law for the time being in force.

- 1.1.5 The (a) import into; (b) export out of Pakistan; (c) transport within Pakistan and (d) transshipment of narcotic drugs, psychotropic substance or controlled substances is prohibited under Section 7 of the CNSA; except in accordance with the rules made under sub-section 2 of Section 7 and in accordance with the conditions of any license or permit or authorization for such purpose that may be required to be obtained under such rules. Section 7(2) states that the Federal Government may make rules permitting and regulating the import into and export from Pakistan, transport within Pakistan and transshipment of narcotic drugs, psychotropic and controlled substances and such rules may prescribe the ports and places from where the same may be imported, exported, transshipped or transported; the form and conditions of the licenses and permits or authorities granting such licenses or permits and the fees to be charged for the same; and any other matter requiring effective control of the Federal Government in relation to the same.
- 1.1.6 Section 8 provides that no one shall organize, manage, traffic in or finance the import, transport, manufacturing or trafficking of narcotic drugs, psychotropic substances or controlled substances or use violence or arms for committing or attempting to commit an offence punishable under the CNSA.
- 1.1.7 The punishments for violation of Sections 6, 7 and 8 are prescribed in Section 9 of the CNSA which provides that whoever contravenes the provisions of Sections 6, 7 and 8 shall be punishable as follows:
  - (a) If the quantity of the narcotic drug, psychotropic substance or controlled substance is 100 gms or less than with imprisonment that may extend to two (2) years or with fine or with both;
  - (b) If the quantity of the narcotic drug, psychotropic substance or controlled substance exceeds 100 gms but does not exceed 1 kg, with imprisonment that may extend to seven (7) years and shall also be liable with fine;
  - (c) If the quantity of the narcotic drug, psychotropic substance or controlled substance exceeds 1 kg than with death penalty, or life imprisonment or with imprisonment that may extend to a term of fourteen (14) years and shall also be liable to a fine which may be upto one million rupees (PKR 1,000,000); provided however if the quantity exceeds 10 kg than the imprisonment shall not be less than imprisonment for life.
- 1.1.8 Chapter VI of the CNSA titled "Treatment and Rehabilitation of Addicts" contains provisions pertaining to the welfare of drug addicts. Section 52 provides that each Provincial Government shall register all addicts within its respective jurisdiction for the purpose of treatment and rehabilitation of addicts; and the Provincial Government shall bear all expenses for the first time compulsory de-toxification or de-addiction of an addict. This Section 52 further provides that an addict shall carry a registration card in such form as may be prescribed and produce it to any public authority on demand.



- 1.1.9 In terms of Section 53 the Provincial Government is required to establish as many centres as may be deemed necessary for the de-toxification, de-addiction, education, after-care, rehabilitation, social integration of addicts and for supply of such medicines as are considered necessary for the de-toxification of the addicts.
- 1.1.10 A National Fund for Control of Drug Abuse may be constituted by the Federal Government, by notification in the Official Gazette, as stated in Section 54, to be called the "National Fund for Drug Abuse" which shall consist of:
- (a) grants from the Federal Government or Provincial Government;
  - (b) the proceeds from the sale of any assets forfeited under the CNSA or any other law for the time being in force;
  - (c) the sale proceeds or unserviceable commodities and vehicles provided by the donor for narcotics control purpose;
  - (d) any grants made by any person or institution; and
  - (e) any income from the investment of the amounts credited to the Fund.

## 1.2 Establishment of Centres for Treatment and Rehabilitation of Addicts Rules, 2001

- 1.2.1 The Establishment of Centres for Treatment and Rehabilitation of Addict Rules, 2001 ("**Treatment and Rehabilitation Centre Rules**") have been made by the Government under Section 77 of the CNSA read with Sections 52 and 53 of the CNSA. The provisions pertaining to admission and treatment are dealt with hereinbelow.
- 1.2.2 The Treatment and Rehabilitation Centre Rules provide that Provincial Governments shall make arrangements for the registration of addicts for the purpose of their treatment and rehabilitation and shall issue registration cards to each addict. The first time expenditure in the registration and de-toxification of the addicts shall be borne by the Provincial Governments and refund shall be claimed from the Federal Government. In case of relapse, the addict shall be treated as an ordinary patient in a Government Hospital. All centres, hospitals and health care facilities, including basic and rural health units, dispensaries, including those established in jails shall be deemed to be centres for the treatment and rehabilitation of addicts and sufficient number of beds and other facilities shall be provided to the addicts.
- 1.2.3 Rule 5 of the Treatment and Rehabilitation Centre Rules provides that the addicts registered for the purpose of treatment and rehabilitation shall ordinarily be treated as patients and not as criminals, depending on the progress made by each individual patient.
- 1.2.4 In terms of Rule 8, any person who is an addict may apply for treatment to the Rehabilitation Centre who shall be provided with treatment for his drug dependency. The procedure as prescribed in Rule 8 is that the incharge of the centre shall as soon as possible upon receiving an application, arrange for the applicant to undergo tests, and as a consequence of such tests, the applicant is certified by a government medical legal officer or a registered medical practitioner as an addict, than the centre shall decide whether the applicant shall receive treatment and rehabilitation and after care at the centre or whether the applicant shall be placed under the supervision of the centre subject to the condition that the applicant shall abstain from narcotic drugs, psychotropic substances and controlled substances and shall also be subject

to such other conditions as the centre may consider necessary, which may include conditions with regard to residence, employment, associations, abstention from intoxication or attendance at the day care centre. In the event the applicant agrees to undergo treatment, than the applicant shall be required to execute a bond for such an amount as may be specified therein, along with such sureties as may be specified by the Rehabilitation Officer on such terms and conditions requiring payment of such amounts for his treatment, maintenance and rehabilitation.

### 1.3 Sindh Regulation and Control of Disposable Syringes Act, 2010

- 1.3.1 The preamble of the Sindh Regulation and Control of Disposable Syringes Act, 2010 (**“Sindh Disposable Syringes Act”**) that it has been enacted to provide for the regulation and control on the use of disposable syringes and for matters connected therewith.
- 1.3.2 A “disposable syringe” has been defined in the Sindh Disposable Syringes Act as “auto lock, auto destruct or auto break syringes which are automatically destroyed locked or broken and cannot be used for second time”.
- 1.3.3 The Sindh Disposable Syringes Act provides that no person shall manufacture, sell or use disposable syringes other than auto lock or auto destruct or auto break for injection, drawing of blood and other purposes and prescribes a punishment of imprisonment of a term that may extend to two (2) years or with fine that may extend to PKR 500,000 or with both and in case of a repeating offence the imprisonment offence may extend to three years and the fine may extend to PKR 1,000,000 or with both.

## 2. PUNJAB VAGRANCY ORDINANCE, 1958

- 2.1.1 The Punjab Vagrancy Ordinance 1958 (**“PVO”**) was enacted to regulate vagrants in the province of Punjab.
- 2.1.1 Section 2 Sub-Section (g) of the PVO defines “Vagrant” as a person who:
  - (a) solicits or receives alms in a public place;
  - (b) exposes or exhibits any sore, wound, injury, deformity or disease in a public place for the purpose of soliciting or receiving alms;
  - (c) allows himself to be used as an exhibit for the purpose of soliciting or receiving alms;
  - (d) enters on any private premises without the invitation of the occupier for the purpose of soliciting or receiving alms;

but does not include a person who solicits or receives money, food or gift for a purpose authorised by rules under a prescribed certificate.

### 2.2 Welfare Home and Manager

- 2.2.1 The PVO under the Section 3 provides for a welfare home for the detention and custody of vagrants.

- 2.2.2 In terms of Section 2(h) a welfare home is defined as an institution established and maintained by Government for the detention, training, employment and maintenance of vagrants and their dependents other than those who are lepers, lunatics or suffering from contagious diseases and includes an institution notified by Government as such for the purposes of this Ordinance.
- 2.2.3 The PVO under Section 3 provides for a Welfare Home for the detention and custody of vagrants.
- 2.2.4 Under Section 4 every welfare home is to be under the charge of a Manager appointed by the Government.
- 2.2.5 The Duties of the Manager under Section 5 are:
- (a) Medically examining the vagrant and stating the gender of the vagrant; whether the vagrant is a leper; whether he is suffering from any contagious disease; whether the vagrant is insane, or mentally deficient; the general state of health and bodily condition of the vagrant and for which, if any, of the prescribed types of work fit the vagrant.
  - (b) Keeping different classes of vagrants separate, i.e. children; females; lepers or persons suffering from contagious diseases; lunatics, infirm old or incapacitated and able bodied.
  - (c) Arranging for the education of the children detained in the welfare home, a child as defined in the PVO under Section 2 Sub-Section (a) is a person under the age of fourteen years.
  - (d) For such instruction of the vagrants, as may rehabilitate them in useful trades and make them self-supporting.
- 2.2.6 Section 6 provides that any old, infirm, disabled child may present himself before the District Officer, Social Welfare for being admitted to a welfare home and if the District Officer, Social Welfare is satisfied that such person has no source of livelihood, he may be detained in a welfare home till such time that person becomes possessed of a means of livelihood or applies for his release from custody.

## 2.3 Penal Provisions

- 2.3.1 Section 7 makes vagrancy a crime and provides police officers the power to arrest persons, without an order from a magistrate and without a warrant, who appears to him to be a vagrant and may seize anything found on or about such person which he has reason to believe to be liable to confiscation under the PVO.
- 2.3.2 A person arrested shall be released if he furnishes bail to the satisfaction of the police officer making arrest for his appearance before the magistrate having jurisdiction in the area where the arrest is made. If the person arrested is not able to furnish bail to the satisfaction of the police officer making arrest, such person shall be detained in custody and shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest. No such person shall be detained in custody beyond the said period without an authority of the magistrate.

- 2.3.3 Section 8 provides for the trial of person arrested under the PVO in accordance with the procedure prescribed for the trial of summons cases under Chapter XX of the Code of Criminal Procedure, 1898 .
- 2.3.4 Under Section 9 if a person is found guilty of being a vagrant by the magistrate such person shall be punished with imprisonment of either description for a period not exceeding three years.
- 2.3.5 Under Section 10 persons who employ or cause persons to ask for alms or uses a person as an exhibit for the purpose of soliciting or receiving alms or being the guardian of a child connives at or encourages the employment or the causing of the child to solicit or receive alms shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both.
- 2.3.6 Under Section 11 If a person has no ostensible source of subsistence and wanders about or remains in a public place in such condition or manner as raises a reasonable suspicion that he is there to solicit or receive alms, it shall be presumed, unless the contrary is proved that such person is a vagrant.
- 2.3.7 Under the Section 12 if a person sentenced under section 9 to a term of imprisonment has a child below seven years of age or any other person wholly dependent upon him, the magistrate may after inquiry and giving such person an opportunity of being heard, direct that such child or person shall be detained in the welfare home so long as the vagrant remains in custody. A child of the vagrant who is below the age of seven years shall be detained along with the vagrant until he attains the age of seven years. A child above seven years of age or when he attains the age of seven years may be directed by magistrate or any Officer employed by the Government in this behalf that such child be detained in any other institution approved by Government.
- 2.3.8 Under Section 14 vagrants arrested under the PVO shall remain in the custody, or if convicted serve his term of imprisonment in the prescribed manner as the case may be in the nearest welfare home or such other place as the Government may direct.
- 2.3.9 Under Section 15 vagrants may be transferred by Controller/ specifically empowered Government Officers to any place appointed by the Government.
- 2.3.10 Under Section 16 the Controller or any Officer appointed by the Government in this behalf may:
- (a) release any vagrant on probation after he has served imprisonment for a period not less than one year;
  - (b) release a vagrant detained in a welfare home by granting him a licence and, after the expiration of three months from the commencement of the release on licence, recommend to Government the unconditional release of such vagrant if he considers that there is probability of such vagrant's abstaining from vagrancy;
  - (c) grant short leave of absence to any vagrant detained in a welfare home.
- Vagrants may be re-arrested under the orders of the Controller and sent to the welfare home.

2.3.11 Under Section 17 vagrants may be discharged by the Controller or any Officer appointed by the Government in this behalf from the welfare homes if it is satisfied that a vagrant has become possessed of an income sufficient to enable him to support himself without resorting to vagrancy; relatives of vagrants enter into a bond to look after the vagrants and prevent them from resorting to vagrancy, on the certificate from Manager that satisfactory employment has been obtained, any other good reason.

2.3.12 Under Section 19 Offenses under PVO are bailable.

### 3. VAGRANCY (KARACHI DIVISION) ACT, 1950

#### 3.1 Definitions

3.1.1 The following terms have been defined in the Vagrancy (Karachi Division) Act, 1950 ("**Karachi Vagrancy Act**"):

- (a) "Child" has been defined in the Karachi Vagrancy Act to mean a person who has not completed his fourteenth year and is not neither a contagious leper nor a lunatic;
- (b) "Old, disabled or infirm" means and includes a person who by reason of age, disease or physical, mental defect is in the opinion of the Court not capable of earning his livelihood and is neither a contagious leper nor a lunatic;
- (c) "Poor House" has been defined in the Karachi Vagrancy Act to mean a house or institution for the detention and maintenance of vagrants who are children or old, disabled and infirm person and set up for the purposes by the Central Government or any private person or persons;
- (d) "Vagrant" has been defined to mean any person or any age or either sex who:
  - (i) solicits or receives alms, in a public place;
  - (ii) enters on any private premises without the permission of the occupant for the purpose of soliciting or receiving alms;
  - (iii) exposes or exhibits with the object of obtaining alms any sore, wound, injury, deformity or disease;
  - (iv) has no ostensible means of subsistence or no fixed abode and is or remains in any public place in such condition or manner as makes it likely that he lives by soliciting or receiving alms; or
  - (v) allows himself to be exhibited for the purpose of soliciting or receiving alms;

but does not include a person who:

- (i) solicits or receives alms in any place of Hindu worship; or
- (ii) solicits or receives money, food or gifts in accordance with any religious usage or for a purpose authorized by any law or authorized in the prescribed manner by the Provincial Government.

Provided however that on the application of the trustee or trustees of any place of Hindu worship the Provincial Government may direct that vagrant shall include a person who solicits or receives alms at such place.

## 3.2 Arrest

- 3.2.1 The Karachi Vagrancy Act provides that any police officer authorized in this behalf in pursuance of a direction of the Provincial Government may arrest any person who appears to be a vagrant, without a warrant; provided however, no such person shall be arrested if such person furnishes bail before appearance before the Special Magistrate. Upon arrest the police officer is required to send such person to the Special Magistrate without delay.

## 3.3 Inquiry by Special Magistrate

- 3.3.1 Upon appearance before the Special Magistrate, the Special Magistrate shall make summary inquiry about the circumstances and character of such person and if such enquiry cant be completed forthwith than the Special Magistrate shall adjourn it from time to time and order the person to be remanded no longer than 7 days at a time to such place and custody as may be prescribed.
- 3.3.2 In the event upon the inquiry the Special Magistrate is not satisfied that such person is a vagrant than the Special Magistrate shall order the release of such person; and in the event the Special Magistrate is satisfied that such a person is a vagrant than the Special Magistrate shall make a declaration to such effect and shall further enquire whether such a person is a child or an old, disabled or infirm person within the meaning of the Karachi Vagrancy Act.

## 3.4 Detention of Vagrants

- 3.4.1 If a person declared a vagrant upon further enquiry is found to be neither child nor old, disabled or infirm person, shall be liable to be ordered to be detained and upon first detention for vagrancy, for a period not exceeding one (1) month and for subsequent declarations for periods not exceeding six (6) months.
- 3.4.2 Any person declared to be a vagrant and found to be a child or old, disabled or infirm person shall be ordered to be detained in a Poor House; and in case there is also a dependent child with such person than such dependent child shall also be sent to the Poor House.

## 3.5 Externment

- 3.5.1 If any vagrant is discovered to be from an area outside Karachi division than the Special Magistrate may make an order for such person to be leave along with the dependents and to not return without permission in writing and a vagrant against whom an order in writing has been made fails to comply with such order or returns that he may be arrested without warrant and shall be liable on conviction, with rigorous imprisonment for a term which may extend to one (1) year. However, a child may not be proceeded against in this manner.

### **3.6 Release from Poor House**

- 3.6.1 A vagrant may be discharged from the Poor House by a written order of the Special Magistrate, if the Special Magistrate is satisfied, that (a) satisfactory employment has been obtained for the vagrant; or (b) the vagrant has become possessed of an income sufficient to enable him to support himself without resorting to vagrancy; or (c) a relative or other person of whom the Magistrate is satisfied that he is concerned about the welfare of the vagrant, has entered into a bond to look after the vagrant and prevent them from resorting to vagrancy; or (d) for other good or sufficient reason to be recorded by the Magistrate in writing.

### **3.7 Punishment for employing or causing person to solicit or receive alms**

- 3.7.1 Any person who employs or causes any other person to solicit or receive alms or abets the employment or the causing of a person to solicit or receive alms or exhibits a person for the purpose of soliciting or receiving alms or whoever having the custody, charge or care of a child, connives at or encourages the employment or the causing of the child to solicit or receive alms shall be liable to be punished on conviction before a Magistrate with rigorous imprisonment for a term which may extend to two (2) years or with a fine or with both.

# Chapter 8 LAWS RELATED TO FSWs

## 1. LAWS RELATED TO FSWs

### 1.1 West Pakistan Suppression of Prostitution Ordinance

- 1.1.1 The West Pakistan Suppression of Prostitution Ordinance, 1961 was promulgated in 1961 during the time when the four provinces of Pakistan had been merged under one for the purpose of amending and consolidating the laws relating to the suppression of prostitution in the province of West Pakistan. Initially this law was extended to the whole province of West Pakistan except the "Federal Territory of Karachi" and the Special Areas, however by the West Pakistan Suppression of Prostitution (Amendment) Ordinance, 1963 ("**Amendment to Ordinance II**") its application has been extended to the whole of West Pakistan except the Tribal Areas.
- 1.1.2 The Suppression of Prostitution Ordinance repealed the following laws:
- (a) Punjab Suppression of Immoral Traffic Act, 1935;
  - (b) Punjab Suppression of Immoral Traffic Act, 1935 as applicable to the former state of Bahawalpur;
  - (c) The North West Frontier Province Anti-Prostitution and Suppression of Brothels Act, 1937;
  - (d) The Sind Prevention of Prostitution Act, 1951.
- 1.1.3 The relevant provisions of the West Pakistan Suppression of Prostitution Ordinance, 1961 ("**Suppression of Prostitution Ordinance**") are dealt with herein below.
- (a) The Suppression of Prostitution Ordinance defines "Brothel" in Section 2(a) as "*any place kept or used for prostitution*" but provides an exception and states that when "*one woman takes a man or men to her own room for illicit intercourse with herself, shall not be deemed to be keeping a brothel*".
  - (b) The Suppression of Prostitution Ordinance provides in Section 3(1) that:
    - (i) whoever keeps or manages, or knowingly finances or takes part in the financing of a brothel or assists in the management of a brothel;
    - (ii) being a lessor or landlord of any premises or the agent of such lessor or landlord lets the same or any part thereof with the knowledge that it is intended to be used as a brothel;
    - (iii) shall be punished with imprisonment of either description for a term which may extend to two (2) years or with fine which may extend to Pak Rupees one thousand (PKR 1000) or with both.
  - (c) Section 3(2) of the Suppression of Prostitution Ordinance provides that in the prosecution of a tenant, lessee, occupier or a person in charge of any premises under Section 3 it is discovered that such premises or any part thereof has been used as a brothel, it shall be presumed, unless the contrary is proved that he knowingly permitted such use.



- (d) Section 11 of the Suppression of Prostitution Ordinance provides that any repeated conviction under Section 3 of the Suppression of Prostitution Ordinance, may be required by the Court to execute a bond with sureties for his good behaviour for such period, not exceeding three (3) years, as the Court may direct and in default of executing such a bond may be imprisoned for a period not exceeding six (6) months in addition to the punishment awarded under Section 3.
- (e) The order for execution of bonds under Section 11 of the Suppression of Prostitution Ordinance shall be subject to the provisions of Chapters VIII and XLII of the Code of Criminal Procedure, 1898 ("**Criminal Procedure Code**").
- (f) Section 12 of the Suppression of Prostitution Ordinance provides that in the event any tenant, lessee and / or occupier is convicted of an offence under Section 3(1) of the Suppression of Prostitution Ordinance; than the Court shall give notice of the same to the landlord or lessor of such person; who shall then be entitled to require that the person so convicted assigns the lease or the contract in relation to the premises to a person approved by the landlord or the lessor; which approval shall not be unreasonably withheld. In the event the person so convicted fails to assign the lease and / or the contract within three (3) months, than notwithstanding any law, contract, decree or order of court to the contrary, the landlord or lessor shall be entitled to determine the lease or the contract but without prejudice to the rights or remedies of any party to such lease or contract accruing before the date of such determination. Section 12(2) of the Suppression Prostitution Ordinance provides that in the event the landlord or lessor determines the tenancy or the contract under sub-section (1) than the Court which has convicted the tenant, lessee or occupier may make an order for delivery of possession to the landlord or lessor within such time not being less than seven (7) days as the Court may direct; and the order shall be served on the person against whom it is made in the manner provided in the Criminal Procedure Code.
- (g) Any failure to comply with an order under Section 12(2) of the Suppression of Prostitution Ordinance is liable for punishment of either description that may extend to one (1) month or with fine that may extend to Pak Rupees two hundred (PKR 200) or with both. The failure of the landlord / lessor to assert his rights under Section 12(1), after receipt of a notice in respect of the conviction of the tenant, lessee and / or occupier than the subsequent occurrence of such offence during the subsisting period of the lease shall be deemed to have occurred with the abetment of the landlord / lessor; unless the landlord / lessor can provide that all reasonable steps were taken to prevent the recurrence of the same. Similarly if the landlord / lessor enters into a new lease / contract with the same person and in such new instrument of lease / contract provisions are not added / inserted restricting the recurrence of such offence than the landlord / lessor shall be deemed to have failed to exercise his rights under the provisions of Section 12 and the commission of any such offences during the subsistence of the lease / contract shall be deemed to have been committed during the subsistence of the previous lease and / or contract.

- (h) The term "Prostitution" has been defined in the Suppression of Prostitution Ordinance in Section 2(d) to mean "*promiscuous sexual intercourse for hire, whether in money or kind*". The Suppression of Prostitution Ordinance also defines the term "Prostitute" in Section 2(e) to mean "*any female available or known to be available for the purposes of prostitution*".
- (i) The Suppression of Prostitution Ordinance prescribes a punishment, for a first offence, of imprisonment which may extend to six months or fine which may extend to Pak Rupees Two Hundred (PKR 200) or with both and for a subsequent offence with imprisonment which may extend to one (1) year and / or with fine which may extend to Pak Rupees One Thousand or both, for the following:
  - (i) Whoever in any street or public place or place of public resort or within sight of and in such manner as to be seen or heard from any street or public place, whether from within any house or building or not, – (a) by words, gestures or willful and indecent exposure of "her" person or otherwise attracts or endeavours to attract attention for the purpose of prostitution; or (b) solicits or molests any person or loiters for the purpose of prostitution.
- (j) The Suppression of Prostitution Ordinance provides definition of "Place of Public Amusement" in Section 2(b) as follows:  
 "any place, enclosure, building, tent, booth or other erection, whether permanent or temporary, where music, singing, dancing or any diversion or game or the means of carrying on the same, is provided and to which the public are admitted either on payment of money or with the intention that money may be collected from those admitted; and shall include a race-course, circus, theatre, music hall, billiard room, bagatelle-room, gymnasium or fencing school;"
- (k) A "Place of Public Entertainment" has been defined in Section 2(c) of the Suppression of Prostitution Ordinance as follows:  
 "any place whether enclosed or open, to which the public are admitted and where any kind of food or drink is supplied for consumption on the premises for the profit or gain of any person owning or having an interest in or managing such place; and shall include a refreshment-room, eating-house, coffee-house, liquor-house, lodging-house, hotel, serai or tavern, or wine, beer, spirit, arrack, toddy, bhang or opium shop;"
- (l) A fine which may extend to Pak Rupees Five Hundred is the punishment prescribed under the Suppression of Prostitution Ordinance for anyone who being a keeper of a Place of Public Amusement or Place of Public Entertainment permits, knowingly permits prostitutes to enter or remain in such a place for the purpose of their trade.
- (m) Penalty is also prescribed in the Suppression of Prostitution Ordinance for anyone, who being above the age of eighteen (18) years
  - (i) knowingly lives, wholly or in part, on the earnings of another's prostitution;
  - (ii) exploits the prostitution of another person, whether with or without that person's consent.
 (hereinafter collectively referred to as "**Living Off Prostitution**")

- (n) The penalty for Living Off Prostitution as prescribed under Section 6(1) of the Suppression of Prostitution Ordinance is imprisonment of either description for a term that may extend to two (2) years or with fine that may extend to Pak Rupees One Thousand (PKR 1000) or both; and if the person convicted is a male than he may be punished with whipping in lieu of or in addition to any other punishment provided in Section 6(1) of the Suppression of Prostitution Ordinance.
- (o) Section 6(2) of the Suppression of Prostitution Ordinance provides that where any person is proved to be living with or habitually in the company of a prostitute or is proved to have directed or exercised control or influence over the movements of a prostitute in such a manner as to show that he is aiding or abetting or compelling or exploiting her for prostitution with any other person or generally or keeping or managing or assisting in the management of a brothel, it shall be presumed that such person is knowingly Living Off Prostitution, unless the contrary is proved.
- (p) The Suppression of Prostitution Ordinance prescribes punishment for anyone, who having custody, charge or care of a girl under 16 years of age, causes or encourages or abets the seduction or prostitution of a girl under the age of sixteen years. The punishment prescribed in such case, under Section 7 of the Suppression of Prostitution Ordinance is rigorous imprisonment for a term which may extent to three (3) years or fine which may extend to Pak Rupees One Thousand (PKR 1000) or both; and in case the person convicted is a male than such person shall also be liable to whipping.
- (q) Two forms of procuration have been provided under Section 8 of the Suppression of Prostitution Ordinance, which are as follows:
  - (i) the (a) procuring, (b) enticement, (c) leading away or (d) attempting to procure, entice or lead away; any woman or girl for the purpose of prostitution whether with or without her consent;
  - (ii) persuading a woman or a girl to leave her usual place of residence, with the intent that she may become an inmate of or a frequent of a brothel for the purposes of prostitution.
 (hereinafter collectively referred to as **“Procuration”**)
- (r) Both forms of Procuration are punishable under Section 8 of the Suppression of Prostitution Ordinance with rigorous imprisonment for a term which may extend to three (3) years or with fine which may extend to Pak Rupees One Thousand Rupees (PKR 1000) and if the person convicted is a male than such person shall also be liable to whipping, in lieu of or in addition to any other punishment provided under this Section.
- (s) Any person who brings and / or attempts to bring into the province any woman and girl into the Province with a view to her becoming a prostitute, shall be punished under Section 9 of the Suppression of Prostitution Ordinance, with imprisonment of either description for a term which may extend to three (3) years or with fine which may extend to Pak Rupees One Thousand (PKR 1000) or with both, and if the convicted person is a male than he may be punished with whipping in lieu of or in addition to any other punishment provided for in Section 9 of the Suppression of Prostitution Ordinance.

- (t) Section 10(1) of the Suppression of Prostitution Ordinance prescribes the punishment of rigorous imprisonment for a term which may extend to three (3) years or with fine which may extend to Pak Rupees One Thousand (PKR 1000) or with both, and if the person convicted is a male, shall also be liable to whipping; for any person who:
  - (i) keeps any woman or girl in a brothel;
  - (ii) detains any woman or girl against her will, in any place with intent that she may have sexual intercourse with any man other than her lawful husband.
- (u) Section 10(2) of the Suppression of Prostitution Ordinance states that a person shall be presumed to detain a woman or girl in any place for the purposes referred to in Section 10(1)(b) if such person with the intent to compel or induce such woman or girl to remain there:
  - (i) withholds from her any jewelry, clothing or other property belonging to her; or
  - (ii) threatens her with legal proceedings if she takes away with her any jewelry or clothing lent or supplied to her under the direction of such person.

And further states in sub-section 10(3) that no legal proceeding, whether civil or criminal shall be taken against any such woman or girl for taking away or being found in possession of any such clothing as was necessary to enable her to leave such premises or brothel.

- (v) In terms of Section 13 of the Suppression of Prostitution Ordinance, if any complaint is made to any gazetted police officer about the commission of any of the offences punishable under the sections of the Suppression of Prostitution Ordinance listed in Section 13 thereof, or if such offences are committed in the view of a police officer than any Police Officer not below the rank of Sub-Inspector specially authorized in writing in this behalf by the Superintendent of Police shall have the power to arrest without warrant any person accused of commission of such offences.  
The offences referred to in Section 13 of the Suppression of Prostitution Ordinance are as follows:
  - (i) Section 3 (Punishment for keeping a brothel or allowing any place to be used as a brothel);
  - (ii) Section 4 (Punishment for soliciting);
  - (iii) Section 5 (Punishment for permitting prostitution in places of public amusement);
  - (iv) Section 6 (Punishment for living on earnings of prostitution);
  - (v) Section 7 (Punishment for causing, encouraging or abetting prostitution of a girl under sixteen);
  - (vi) Section 8 (Punishment for procuration);
  - (vii) Section 9 (Punishment for importing any woman or girl for prostitution);
  - (viii) Section 10 (Punishment for keeping any woman or girl for prostitution).
- (w) Section 14 of the Suppression of Prostitution Ordinance authorizes the Superintendent of Police and any gazetted Police Officer who has been specially authorized in this regard by the District Magistrate, to enter any

premises and remove to the prescribed place any girl who appears to be under the age of eighteen years, if such officer has reason to believe that (a) an offence punishable under Section 3 (*Punishment for keeping a brothel or allowing any place to be used as a brothel*) has been or is being committed; or (b) that a woman or a girl is to be found at such place, against whom an offence has been committed under the Suppression of Prostitution Ordinance.

- (x) Offences under the Suppression of Prostitution Ordinance shall not be tried on a summary basis or by a Magistrate below the rank of a Magistrate of the first class.

## 2. PAKISTAN PENAL CODE

### 2.1 Section 371A of the PPC

- 2.1.1 The Pakistan Penal Code contains several provisions that are relevant to this Part and the same are discussed hereinbelow.
- 2.1.2 Section 371A prescribes the punishment for the selling, letting on hire or otherwise disposing off any person with the intent or with the knowledge that such a person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose. The punishment for such offence as prescribed by the Pakistan Penal Code is imprisonment, which may extend to twenty-five (25) years and the perpetrator of such an offence may also be liable to fine.
- 2.1.3 An Explanation is provided in sub-section (a) which states that when a female is sold, let for hire or otherwise disposed off to a prostitute or to any person who keeps or manages a brothel, the person so disposing off the female shall until the contrary is proven shall be presumed to have disposed her off with the intent that she be used for the purpose of prostitution.
- 2.1.4 Sub-section (b) of Section 371A further explains that the term “illicit intercourse” means sexual intercourse between persons who are not married.

### 2.2 Section 371B of the PPC

- 2.2.1 Section 371B of the PPC prescribes the punishment for buying, hiring or otherwise obtaining possession of any person with the intent or with the knowledge that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful or immoral purpose. The punishment for such an offence as prescribed by the Pakistan Penal Code is imprisonment, which may extend to twenty-five (25) year and the perpetrator of such an offence may also be liable to fine.
- 2.2.2 The Explanation to Section 371B provides that any prostitute or any person keeping or managing a brothel who buys or hires or otherwise obtains possession of a female shall until the contrary is proved be presumed to have obtained the possession of such female with the intent to that she shall be used for the purpose of prostitution.

**(i) Observations on Sections 371A and 371B**

It is interesting to note that except for the “Explanations” contained in both Section 371A and Section 371B, both the sections do not specify the gender of the person being sold or bought for the purpose of prostitution and accordingly, the provisions of Section 371A and Section 371B are applicable to all genders.

## **2.3 Section 366A – Procurement of minor girl**

2.3.1 Section 366A provides the punishment for procuring a minor girl under the age of eighteen years to go from any place to another with the intent that such girl may be or knowing that it is likely that such girl shall be forced or seduced into illicit intercourse with another person. The punishment prescribed under this Section 366A is imprisonment, which may extend to ten (10) years and the perpetrator of such an offence may also be liable to fine.

## **2.4 Section 366B – Importation of Girl from foreign country**

2.4.1 Section 366B prescribes the punishment for importing any girl under the age of twenty-one into Pakistan from any country outside Pakistan, with the intent that such a girl may be or with the knowledge that she is likely to be forced or seduced into illicit intercourse with another person. The punishment prescribed by Section 366B is imprisonment which may extend to ten (10) and the perpetrator of such an offence may also be liable to fine.

## **2.5 Observations on Sections 366A and 366B**

2.5.1 Section 366A and Section 366B have been included in the PPC to reflect Pakistan’s obligations under the International Convention for Suppression of the Traffic of Women and Children.

# **3. PREVENTION AND CONTROL OF HUMAN TRAFFICKING ORDINANCE, 2002**

## **3.1 The Human Trafficking Ordinance**

3.1.1 The Prevention and Control of Human Trafficking Ordinance, 2002 (“**Human Trafficking Ordinance**”) has been promulgated to provide effective measures to prevent offences related to human trafficking and to protect and assist victims of such trafficking.

## **3.2 Definitions**

3.2.1 Certain relevant terms defined in the Human Trafficking Ordinance are as follows:

- (a) “exploitative entertainment” means all activities in connection with human sport or sexual practices or sex and related abusive practices;

- (b) "human trafficking" means obtaining, securing, selling, purchasing, recruiting, detaining, harbouring or receiving a person, notwithstanding his implicit or explicit consent, by the use of coercion, kidnapping, abduction or by giving or receiving any payment or benefit, or sharing or receiving a share for such person's subsequent transportation out of or into Pakistan by any means whatsoever for any of the purposes mentioned in Section 3;
- (c) "Government" means the Federal Government;
- (d) "inhuman sports" includes all sports involving, as a matter of normal course, infliction or physical or mental injury on a person against his will, intention or reasonable expectation;
- (e) "victim" means the person who is the subject of or against whom any offence under the Human Trafficking Ordinance has been committed.

### 3.3 Punishment for Human Trafficking

3.3.1 The Human Trafficking Ordinance prescribes the punishments for Human Trafficking under Section 3 which are as follows:

**(i) Punishment for Human Trafficking for Attaining Benefit, Exploitative Entertainment, etc**

Under Section (3)(i) the planning or execution, knowingly, of any plan for human trafficking into or out of Pakistan for the purpose of:

- (i) attaining any benefit; or
- (ii) for the purpose of exploitative entertainment,
- (iii) slavery or forced labour; or
- (iv) adoption in or out of Pakistan

shall be punishable with imprisonment that may extend upto seven (7) years and shall also be liable to fine.

In case of an accused, who in addition to the commission of an offence under Section 3(i) has also been guilty of kidnapping or abducting or any attempt thereto in connection with an offence under Section 3(i) than the imprisonment may extend to ten (10) years with fine.

The punishment for any person who plans to commit an offence under Section 3(i) but has not yet executed the same, is imprisonment for a term which may extend to five (5) year with fine.

**(ii) Punishment for Obtaining or Employing Labour through Coercion etc**

Under Section (3)(ii) the provision, obtaining or employment of labor or services, of a person by coercion, scheme, plan or method, intended to make such a person believe that in the event of non performance of such labour or service, he or any other person may suffer from serious harm or physical restraint or legal proceedings, shall be punishable with imprisonment that may extend upto seven (7) years and shall also be liable to fine.

In case of an accused, who in addition to the commission of an offence under Section 3(ii) has also been guilty of kidnapping or abducting or any attempt



thereto in connection with an offence under Section 3(ii) than the imprisonment may extend to ten (10) years with fine.

The payment of any amount as remuneration in lieu of service or labour of the victim shall not be treated as mitigating circumstances, while awarding the punishment.

**(iii) Punishment for Purchasing, Selling, Transporting a Child or a Woman through Coercion etc**

Under Section 3(iii) the purchasing, selling, harbouring, transporting, providing, detaining or obtaining, child or a woman through, coercion, kidnapping or abduction; or by giving or receiving any benefit for trafficking him or her into or out of Pakistan or with intent thereof, for the purpose of exploitative entertainment by any person; and expects to receive some benefit in lieu thereof, shall be punishable with imprisonment which may extend to ten (10) years and shall also be liable to fine.

In case of an accused, who in addition to the commission of an offence under Section 3(iii) has also been guilty of kidnapping or abducting or any attempt thereto in connection with an offence under Section 3(iii) than the imprisonment may extend to fourteen (14) years with fine.

The plea, if any, taken by the biological parents shall not prejudice the commission of offence under this Section 3(iii).

**(iv) Punishment for confiscation, possession, concealment and destruction of documents related to human trafficking etc**

The taking, confiscation, possession, concealment, removal or destruction, knowingly of any document related to human trafficking in furtherance of any offence committed under the Human Trafficking Ordinance, to prevent or restrict or attempt to prevent or restrict, without lawful authority, a persons liberty to move or travel shall be punishable with imprisonment that may extend to seven (7) years and with fine.

3.3.2 In the event of the commission of the offences stated in Section 3 by an organized criminal group, the term of imprisonment by each member of the criminal group shall be less than ten (10) years and may extend to fourteen (14) years, where the purpose of trafficking of the victim is exploitative entertainment; and shall also be liable to fine.

3.3.3 In case of any repeat offences, the term of imprisonment may extend to fourteen (14) years.

### **3.4 Compensation and Other Laws**

3.4.1 The Human Trafficking Ordinance provides that the Court trying the offences under the Human Trafficking Ordinance may where it deems appropriate, direct the Federal Government to extend the stay of the victim in Pakistan till such time as the Court deems necessary and payment of compensation to the victim in accordance with Section 545 of the Criminal Procedure Code. Additionally the Federal Government



shall be responsible for providing food and shelter and medical treatment to the victim who is a child or a destitute woman.

- 3.4.2 Proceedings under the Human Trafficking Ordinance shall be in addition to and not in derogation of any other proceedings initiated under any other law for the time being in force.

## Chapter 9 TRANSGENDER PEOPLE, MSM/MSWs AND THE LEGISLATIVE FRAMEWORK

### 1. KHAWAJA SARAS BILL 2012

#### 1.1 Protection and Welfare of Khawaja Saras Rights Bill, 2012

- 1.1.1 A bill for the protection and welfare of the TG Community in the Capital Territory of Islamabad, titled The Protection and Welfare of Khawaja Saras Rights Bill, 2012 (**“Khawaja Saras Bill”**) has been pending in the National Assembly since 2012.
- 1.1.2 The preamble of the Khawaja Saras Bill states that “it is expedient to provide for the protection, welfare and equal rights of eunuchs who are commonly known as Khawaja Saras or by different other names and expressions in the country and other matters relating to recognition and protection of their equal rights”.
- 1.1.3 The Khawaja Saras Bill is a Private Member Bill introduced in the National Assembly by Ms. Qudsia Arshad and Shaheen Ashfaq; both members of the PML(N).

#### 1.2 Appropriate Government and Khawaja Sara

- 1.2.1 The term “appropriate Government” has been defined in Section 2(a) of the Khawaja Saras Bill to mean the Federal Government or the Provincial Government as the case may be.
- 1.2.2 The term “Khawaja Sara” has been defined to mean “a child or a person by whatever name, expression or terminology who is called or known who is eunuch, transvestite or any other person whose sex is not clear or well defined at the time of his birth or for the time being thereafter according to available medical information”.

#### 1.3 Section 3 – Recognition and Protection of Rights of Khawaja Saras

- 1.3.1 Section 3 of the Khawaja Saras Bill titled *“Recognition and protection of rights of Khawaja Saras”* deals with discrimination against Khawaja Saras in sub-section (1) and provides, that notwithstanding anything contained in any other law for the time being in force, there shall be no discrimination towards any person including Khawaja Saras on the basis of sex, whether his or her sex is clear or well defined for

the time being or not, for the entitlement of rights under the Constitution of the Islamic Republic of Pakistan.

- 1.3.2 Section 3 further provides that the “appropriate Government” shall make arrangements for the medical examination of every child born in any hospital under the administrative control of such appropriate Government.
- 1.3.3 The medical officer incharge of labor room or gynaecology ward is required to make arrangements, as per the provisions of Section 3(3) to conduct comprehensive medical examination of each new born child for the purpose of examining the sex of such child and in the event any child of undetermined sex, eunuch or khawaja sara, the medical officer is required to consult with other medical officers for its surgical or other treatment at the earliest stage in consultation with the parents of the child.
- 1.3.4 Section 3(4) further states that the medical officer on finding a child of undetermined sex, eunuch or khawaja sara shall make arrangements for its surgical and other treatment or prescribe a timeframe for such surgical or other treatment to the parents of the child and it shall be the responsibility of the parents to ensure that such instructions are followed.
- 1.3.5 Section 4 provides that any child or person whose sex is not clear or well defined or is a eunuch commonly known as Khawaja Sara at the time of birth or thereafter shall not be discriminated against in “this” (the word “this” appears to be a typographical error for the word “his”) ordinary life and shall have equal protection of law and under the Constitution.
- 1.3.6 In addition to the above, Section 9 also provides that the appropriate Government shall make arrangements for “medical treatment” for the children of no determined sex or Khawaja Saras in view of modern research in the field of genetics in order “*so that they may be treated to be member of either sex i.e. male or female, if possible with the help of surgical or other clinical treatment*”. All expenses for such treatment are to be borne by the appropriate Government.

## 1.4 Citizenship and Voting

- 1.4.1 Section 5 of the Khawaja Saras Bill provides that notwithstanding anything contained in any law for the time being in force, Khawaja Saras shall not be deprived of their right to vote or to be elected to a public office from a constituency of their choice. This Section further states that it shall be the duty of the Election Commission of Pakistan to register all Khawaja Saras as voters in their area or localities of residence in the same electoral roll prepared for Ordinary. (The term “Ordinary” has not been defined.)
- 1.4.2 The right of the Khawaja Saras to have their name entered in the National Database as a citizen of Pakistan is provided for in Section 6 and this Section further provides that every Khawaja Sara shall have the right to receive a computerized National Identity Card.

## 1.5 Right to Education and Employment

- 1.5.1 Section 7 of the Khawaja Saras Bill pertains to non discrimination against the Khawaja Saras in the field of education and employment; and provides in sub-section (1) that there shall be no discrimination against the Khawaja Saras from taking admission in educational institutions.
- 1.5.2 The Federal Government as well as Provincial Governments shall be required to reserve one (1) percent quota in all employments for Khawaja Saras, as provided in Section 7(2).
- 1.5.3 Section 7(3) also casts a duty on private employers and states that it shall be the duty of private employers to provide employment opportunities to Khawaja Saras when they are fulfilling the prescribed requirements of the job advertised or available. Subject to the proviso in Section 7; private employers are required to reserve at least 2% vacancies in appropriate jobs for Khawaja Saras, when such private employers are employing more than one hundred employees or warders in their factory or establishment.
- 1.5.4 Non discrimination against Khawaja Saras in all other spheres of life with regard to provision of the facilities and benefits that are guaranteed under the Constitution as Fundamental Rights is covered by Section 8 of the Khawaja Saras Bill.

## 1.6 Social Security

- 1.6.1 Section 10 casts an obligation on the appropriate Government to issue “social security benefit cards” to all Khawaja Saras, “subject to their credentials by appropriate methods” except for those who are provided any under job under the Khawaja Saras Bill or under any other law for the time being in force. The amount of social security benefit is to be prescribed by the appropriate Government from time to time, however the same shall not be less than Pak Rupees Five Thousand.
- 1.6.2 The responsibility for meeting the financial requirements of the social security benefits prescribed under Section 10 of the Khawaja Saras Bill have been placed on the Board and the Managing Director of the Pakistan Bait-ul-Mal; as well as on the appropriate Government to provide grants and funds in relation to the same pursuant to Section 11.
- 1.6.3 The responsibility for making and issuing of social security benefit cards, referred to in Section 10, has been placed on the Managing Director of the Pakistan Bait-ul-Mal.

## 1.7 Power to Make Regulations and Removal of Difficulties

- 1.7.1 The power to make regulations for the purpose of the Khawaja Saras Bill has been granted to the Managing Director of the Pakistan Bait-ul-Mal and the regulations are required to be made within six (6) months from the commencement of the Khawaja Saras Bill; to take effect upon publication in the Official Gazette.

- 1.7.2 The appropriate Government has the power to make such provisions by notification in the official Gazette as may be appropriate or necessary for the purpose of removing any difficulty in giving effect to the Khawaja Saras Bill, provided the same are not inconsistent with the Khawaja Saras Bill.

## 2. CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN

### 2.1 Constitution of the Islamic Republic of Pakistan

- 2.1.1 Pursuant to the provisions of Article 37 of the Constitution, the State has a responsibility for “Promotion of social justice and eradication of social evils”. This Article 37 further provides in sub-clause (g) that the State shall “prevent prostitution, gambling and taking of injurious drugs, printing, publication, circulation and display of obscene literature and advertisement.”
- 2.1.2 Based on the above mentioned Principle of Policy, the State i.e. the Government has an obligation to prevent prostitution in all forms and of all sexes.

## 3. PAKISTAN PENAL CODE

### 3.1 Section 377 Pakistan Penal Code

- 3.1.1 Section 377 of the Pakistan Penal Code prescribes the punishment for unnatural offences and states that whoever voluntarily has carnal intercourse, against the order of nature with any man, woman or animal, shall be punished with imprisonment with life, or with imprisonment of either description for a term which shall not be less than two (2) years nor more than ten (10) years and shall also be liable to fine.
- 3.1.2 Section 377 of the Pakistan Penal Code has far reaching effect on the MSM /MSW community as the same declares the sexual acts of the MSM community as an offence. However it is interesting to note that all case law available with regard to Section 377 is in respect of complaints filed by the parents of young male children and no material is available of arrest and detention of adults engaged in the acts listed in Section 377.
- 3.1.3 Furthermore, it is also pertinent to note that in all instances of harassment by the police and other law enforcement agencies quoted by members of the MSM/MSW community during our field research, not a single particular instance was provided where arrest or detention was made on reliance on this Section of the PPC.

### 3.2 Sections 371A and 371B of the Pakistan Penal Code

- 3.2.1 Sections 371A and 371B of the Pakistan Penal Code also have relevance in relation to MSM and MSWs since these sections prescribe the punishment for (a) selling, letting on hire or otherwise disposing off any person with the intent or with the knowledge that such a person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose; and (b) buying, hiring or otherwise obtaining possession of any person with

the intent or with the knowledge that such person shall at any time be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful or immoral purpose; respectively.

- 3.2.2 Since the application of Sections 371A and 371B is not restricted to females, therefore these sections are also relevant with regard to any person, including a male who is sold, let on hire, disposed off or bought, hired or otherwise the possession of whom is obtained for the purpose of or with the knowledge that such a person shall be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful or immoral purpose.

## Chapter 10 CHILDREN AND LAW

### 1. GUARDIAN AND WARDS ACT, 1890

- 1.1.1 The Guardian and Wards Act, 1890 ("**GWA**") was enacted to regulate the laws relating to guardian and wards in Pakistan. The GWA defines:
- (a) "Minor" as a person who under the provisions of the Majority Act 1875 is to be deemed not to have attained his Majority;
  - (b) "Guardian" as a person having the care of the person of a minor or his property, or of both his person and property;
  - (c) "Ward" as a minor for whose person or property, or both, there is a guardian; Sub- solicits or receives alms in a public place.
- 1.1.2 Under Section 7 of the GWA the Court has the power to appoint a guardian of minor persons and property or both, where the Court is satisfied that it is for the welfare of a minor. The court has the power to declare a person to be a guardian. An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court. Where a guardian has been appointed by will or other instrument, or appointed or declared by the Court, an order under this Section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of the Act.
- 1.1.3 Under Section 8 no orders are to be made under Section 5 except on the applications of: persons desirous of being, or claiming to be, the guardian of the minor; any relative of friend of the minor; the collector of the district or other local area within which the minor ordinarily resides or in which he has property or the collector having authority with respect to the class to which the minor belongs.
- 1.1.4 In terms of Section 12 the Court may direct that the person who has the custody of the minor to produce him or cause him to be produced before such person as it appoints and may also make such order for the temporary custody and protection of the person or property of the minor as it thinks proper. There was an amendment

in this section wherein it was also included that provided where the minor has not attained the age of seven years in the case of male or the age of sixteen years in the case of a female, the court shall, on the first date of hearing, pass interim order for the custody of minor to the mother and visiting rights to the father, subject to the paramount consideration being the welfare of the minor. If the minor is a female who ought not to be compelled to appear in public, the direction of court for her production shall require her to be produced in accordance with the customs and manners of the country. Nothing in this Section authorizes the court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any nor authorize any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property.

- 1.1.5 Section 15 provides that separate guardians of a minor's person and property may be appointed by the Court i.e if the minor has several properties the Court may if it thinks fit appoint or declare separate guardian for any one or more of the properties.
- 1.1.6 Section 17 refers to the matters that are to be considered by the Court in appointing guardian. The Court shall be guided by what consistently with the law to which the minor is subject appears in the circumstances to be for the welfare of the minor. In considering what will be for the welfare of the minor, the court shall have regard to the age, sex, and religion of the minor; the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes if any of a deceased parent and any existing or previous relations of the proposed guardian with the minor or his property.
- 1.1.7 Under Section 18 where a collector is appointed or, declared by the court in virtue of his office to be guardian of the person or property, or both, of a minor, the order appointing or declaring him shall be deemed to authorize and require the person for the time being holding the office to act as guardian of the minor with respect to his person or property or both.
- 1.1.8 Under Section 19 guardians are not appointed by the Courts in cases where the guarding of the property of minor whose property is under the superintendence of a court of wards. Guardians are also not be appointed in cases where the guardian of the persons of a minor: who is a married female and whose husband is not unfit in the opinion of the court to be guardian of her person; whose father is living and is not in the opinion of Court unfit to be guardian of the person of the minor; or whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor.
- 1.1.9 Section 20 states that a guardian stands in a fiduciary relation to his wards must not make any profit out of his office. The fiduciary relation of a guardian to his ward extends to and affects purchases by the guardian of the property of the ward, and by the ward of the property of the guardian, immediately or soon after the ward has ceased to be a minor and generally all transactions between them while the influence of the guardian still lasts or is recent.

- 1.1.10 Under section 21 a minor is incompetent to act as a guardian of any minor except his own wife or child, or where he is the managing member of an undivided hindu family, the wife or child of another member of that family.
- 1.1.11 Under Section 22 guardians appointed or declared by the Court are entitled to such allowance as the court thinks fit for his care and pains in the execution of his duties. Fees for Officers of the Government appointed, as guardians shall be paid to the Government out of the property of the ward as the Government directs.
- 1.1.12 Under Section 23 a collector who is appointed or declared by court to be guardian of the person or property of the minor shall be subject to the control of the Provincial Government or any authority notified by the concerned Provincial Government.
- 1.1.13 Under Section 24 a guardian of the person of a ward is charged with the custody of the ward and must look to the wards support, health and education and such other matters as the law to which the ward is subject requires.
- 1.1.14 Under Section 25 if the court is of the opinion that it will be for the welfare of the ward to the return to the custody of his guardian, it may make an order causing the ward to be arrested and to be delivered into the custody of the guardian.
- 1.1.15 Under Section 26 a guardian, unless he is the controller or is a guardian appointed by will or other instrument shall not without the leave of the court remove the ward from the limits of its jurisdiction except for such purposes as may be prescribed.
- 1.1.16 Under Section 27 a guardian of the property of a ward is bound to deal with the property as carefully as a man of ordinary prudence would deal with if it were his own and is to do all acts which are reasonable and proper for the realization, protection or benefit of the property.
- 1.1.17 Under Section 28 testamentary guardians who are appointed by will or other instrument are subject to the any restrictions, which may be imposed on him by that instrument, to dispose of the property, unless he has been declared as guardian by the court which removes those restrictions by an order in writing.
- 1.1.18 Under Section 29 a guardian appointed by courts, who is not a collector or a guardian appointed by will, is not allowed without the previous permission of the court to dispose of the property of the ward or lease any part of property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.
- 1.1.19 Under Section 30 disposal of property by the guardian is voidable at the instance of any other person affected thereby.
- 1.1.20 Section 31 provides for the practice with respect to permitting the acts mentioned in Section 29. Permission shall not be granted by the Court except in case of necessity or for an evident advantage to the ward. The Court may in its discretion attach to the permission the following among other conditions:



- (a) Sale shall not be completed without the sanction of the court;
- (b) A sale be made to the highest bidder by public auction, before the court or some person specially appointed by the court for that purpose;
- (c) A lease shall not be made in consideration of a premium or shall be made for such term of years and subject to such rents and covenants the courts direct;
- (d) The whole or any part of the proceeds of the act permitted shall be paid into the court by the guardian, to be disbursed therefrom or to be invested by the court on prescribed securities or to be otherwise disposed of as the court directs.

Before granting permission to a guardian to do an act mentioned in Section 29 the court may cause notice of the application for permission to be given to any relative or friend of the ward.

- 1.1.21 Under Section 32 where the guardian of a property who has been appointed by the court, and who is not the collector, the court may define, restrict or extend his powers with respect to property of the ward in such manner and extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.
- 1.1.22 Under Section 33 guardians so appointed or declared by court have a right to apply for an opinion in management of the property of the ward.
- 1.1.23 Section 34 lists the obligations of a guardian of property appointed and declared by the courts which include:
  - (a) giving a bond to the judge of the court with or without sureties to account for what he may receive in respect of the property of the ward;
  - (b) if required, within six months from the date of his appointment provide a statement of the immovable property belonging to the ward, of the money and other movable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward;
  - (c) if required, exhibit his account in the court
  - (d) if so required by the court to pay into the court at such time as the court directs the balance due from him on those accounts;
  - (e) apply for the maintenance, education and advancement of the ward and of such persons as are dependent on him, and for the celebration of ceremonies to which the ward or any of those persons may be a party, such portion of the income of the ward as the court directs.
- 1.1.24 Under Section 39 the Court may on its own motion, or on the application of any person interested, remove a guardian appointed or declared by the court, or by will or other instrument for any of the following causes:
  - (a) For abuse of his trust;
  - (b) For continued failure to perform the duties of the trust;
  - (c) For incapacity to perform the duties of his trust;
  - (d) For ill treatment or neglect to take proper care of his ward;
  - (e) For contumacious disregard of any provision of the GWA or any order of the court;



- (f) For conviction of an offence implying in the opinion of the court, defect of character which makes him unfit to be the guardian of his ward;
- (g) For having an interest adverse to the faithful performance of his duties;
- (h) For ceasing to reside within the local limits of the jurisdiction of the court ;
- (i) In the case of a guardian of the property, for bankruptcy or insolvency;
- (j) By reason of the guardianship of the guardian ceasing or being liable to cease, under the law to which the minor is subject

A guardian appointed under will or other instrument shall not be removed for:

the cause mentioned in clause (g) above unless the interest accrued after the death of the persons who appointed him, or if it is shown that the person made and maintained the appointment in ignorance of the existence of the adverse interest;

For the cause mentioned in clause (h) above unless such guardian has taken up such a residence as in the opinion of the court renders it impracticable for him to discharge his functions as guardian.

- 1.1.25 Section 40, 41 and 42 provide for discharge of the guardian, cessation of authority of the guardian and appointment of successor to the guardian who has died, discharged or has been removed.
- 1.1.26 Under Section 43 the court may on the application of any person or on its own motion make an order regulating the conduct or proceedings of any guardian appointed or declared by the court.
- 1.1.27 Under Section 44 a guardian appointed or declared by the court who removes the from the limits of the jurisdiction of the court in contravention of the provisions of Section 26 shall be liable to a fine of one thousand rupees or to imprisonment in the civil jail for a term which may extend to six-months.
- 1.1.28 Section 45 provides for penalties for contumacy. Persons, guardians or representatives shall be liable by order of the court to a fine not exceeding one hundred rupees and in case of recusancy to further fine up to ten rupees each day after it continues and to detention in the civil jail until he undertakes to produce the minor or cause him to be produced, or to compel his return, or to deliver the statement or to exhibit the accounts , or to pay the balance, or to deliver the property or accounts. Liability under the Section arises in the following cases:
  - (a) If a person having the custody of a minor fails to produce him in compliance with a direction under Section 12 Sub Section 1 or to do his utmost to compel the minor to return to the custody of his guardian in obedience to an order under Section Sub –Section 1;
  - (b) If a guardian appointed or declared by the court fails to deliver to the court within the time allowed under clause (b) of Section 34 a statement required under that clause, or to exhibit accounts in compliance with a requisition under clause (c) section, or to pay into the court the balance due from him on those accounts in compliance with a requisition under clause (d) of that section;

- (c) If a person who has ceased to be a guardian, or the representative of such a person fails to deliver any property or accounts in compliance with a requisition under Section 41, sub-section (3).

## 2. MAJORITY ACT, 1875

- 2.1.1 The objective of the Majority Act 1875 ("**Majority Act**"), as stated therein is to prolong the period of non-age, and to attain more uniformity and certainty respecting the age of majority then existed.
- 2.1.2 The Majority Age provides in Section 3 that the capacity of any person to act in the matters stated hereinbelow, shall not be affected by the Majority Act. The matters as stated therein are as follows:
  - (a) marriage, dower, divorce and adoption;
  - (b) the religion or religious rites and usages of any class of citizens of Pakistan.
- 2.1.3 Any person in respect of whom or in respect of whose property a guardian has been appointed pursuant to the Guardian and Wards Act before such person reaches the age of eighteen years, than such a person, notwithstanding anything contained in the Succession Act, or in any other law for the time being in force, shall be deemed to have attained majority upon completing twenty-one (21) years of age; in all other cases a person shall be deemed to attain majority upon completing his eighteenth year.

## 3. PUNJAB EDUCATIONAL INSTITUTIONS (PROMOTION AND REGULATION) ORDINANCE, 1984

- 3.1.1 The Objective of the Punjab Private Educational Institutions (Promotion and Regulation) Ordinance, 1984 ("**PPEI Ordinance**") is to provide for the promotion and regulation of private educational institutions and to promote and regulate the setting up and management of private educational institutions in the Punjab.
- 3.1.2 Under Section 3 of the PPEI Ordinance no institution shall be run unless it is registered in accordance with the provisions of the PPEI Ordinance and the rules and under Section 4 the Government may, by notification, exempt any institution from the application of the PPEI Ordinance and shall, by notification, constitute a District Committee in each district comprising of at least five members to perform such functions and in such manner as may be prescribed.
- 3.1.3 Under Section 6 (1) the incharge of an institution may make an application for registration of an institution to such officer and in such form as may be prescribed and the Officer upon receiving an application shall forthwith forward the same to the District Committee which, after making such enquiry about such matters as may be prescribed, shall submit its report with its recommendations to the Registering Authority within sixty days of the receipt of the application under sub-section (1).

- 3.1.4 The Registering Authority shall, after considering the report of the District Committee and after such further enquiry as may be necessary if satisfied that the conditions prescribed for granting registration are fulfilled, issue a Registration Certificate.
- 3.1.5 No order for refusing to grant a certificate of registration shall be made without giving the applicant an opportunity of being heard and without recording reasons therefore.
- 3.1.6 Under Section 8 the Registering Authority or an officer authorised by Government may inspect any institution and may give directions to require compliance with the conditions prescribed for registration. The directions under sub-section (1) shall be communicated to the incharge of the institution through an order and such person shall comply with the same within such time as may be specified therein. Under Section 9 a certificate of registration granted under section 6 may be cancelled by the Registering Authority after giving an opportunity of being heard to the incharge of the institution if there is a contravention of any of the provisions of the PPEI Ordinance or the rules: Provided that in case of a minor default which can be easily remedied, opportunity may be given to remove the default within a time specified in the order and if it is not removed within the time so specified cancellation shall follow; the incharge of the institution has failed within the period specified to comply with any direction issued under the provisions of the PPEI Ordinance or the rules; and the institution has ceased to exist.
- 3.1.7 Under Section 10 any person aggrieved by an order made under sections 6, 8 or 9, may within thirty days of the date of receipt of the order, prefer an appeal to such authority as may be prescribed and the decision of the appellate authority in appeal shall be final.
- 3.1.8 Under Section 11(1) Subject to the provisions of section 3 whoever continues to run an institution without registration or after refusal or cancellation of registration, shall be punished with fine which may extend to one hundred rupees for each day during which the contravention continues.(2) Where the contravention continues for a period of three months, the institution shall, be liable to closure by the Registering Authority: Provided that no order under sub-section (2) shall be made without giving to the incharge of the institution an opportunity of being heard.
- 3.1.9 Under Section 12 no Court shall take cognizance of an offence punishable under the PPEI Ordinance except upon a complaint in writing made by the Registering Authority or an Officer authorised by it in this behalf and no Court inferior to that of a Magistrate of the First Class shall try any such offence.
- 3.1.10 Under Section 14, The Punjab Registration of Unrecognized Educational Institutions Ordinance, 1962, is repealed.

## 4. JUVENILE JUSTICE SYSTEM

- 4.1.1 The objective of the of the Juvenile Justice System 2000 (“**Juvenile Justice**”) is to provide for protection of children involved in criminal litigation, their rehabilitation in society, reorganization of Juvenile Courts and matters connected therewith and incidental thereto.
- 4.1.2 Section 2 of the Juvenile Justice:
- (a) “Borstal institution” means a place where child offenders may be detained and given education and training for their mental, moral and psychological development;
  - (b) “Child” means a person who at the time of commission of an offence has not attained the age of eighteen years;
  - (c) Code means the Code of Criminal Procedure, 1898 (Act V of 1998);
  - (d) Guardian” means a parent or a person who has actual care of a child and includes such relative who is willing to bear the responsibility of the child;
  - (e) “Juvenile Court” means a Court established under section 4;
  - (f) “Probation Officer” means a person appointed under the Probation of Offenders Ordinance, 1960 (XLV of 1960), or such person as the Provincial Government may appoint to perform the functions of Probation Officer under this Ordinance.
- 4.1.3 Under Section 5 (1) every child who is accused of the commission of an offence or is a victim of an offence shall have the right of legal assistance at the expense of the State and a legal practitioner appointed by the State for providing legal assistance to a child accused of the commission of an offence, or victim of an offence, shall have at least five (5) years standing at the Bar.
- 4.1.4 Under Section 4 (1) the Provincial Government shall in consultation with the Chief Justice of High Court, by notification in the official Gazette, establish one or more Juvenile Courts for any local area within its jurisdiction.
- 4.1.5 The High Court may:
- (a) confer powers of Juvenile Court on:
    - (i) Court of Sessions; or
    - (ii) Judicial Magistrate of the First Class; and
- appoint, from amongst practising Advocates having at least seven years standing at the Bar, Presiding Officers of Juvenile Courts with powers of a Judicial Magistrate of the First Class for the purposes of this Ordinance on such terms and conditions as the High Court may determine.
- 4.1.6 The Juvenile Court shall have the exclusive jurisdiction to try cases in which a child is accused of commission of an offence. The Juvenile Court shall not, merely by reason of a change in its composition, or transfer of a case, be bound to recall or rehear any witness who has given evidence and may act on the evidence already recorded.
- 4.1.7 On taking cognizance of an offence, the Juvenile Court shall decide the case within four (4) months.

- 4.1.8 Under Section 5 notwithstanding anything contained in section 239 of the Code, or any other law for the time being in force, no child shall be charged with or tried for an offence together with an adult. If a child is charged with commission of an offence for which under section 239 of the Code, or any other law for the time being in force such child could be tried together with an adult, the Court taking cognizance of the offence shall direct separate trial of the child by the Juvenile Court.
- 4.1.9 Under Section 6 (1) Juvenile Court shall, unless provided otherwise in this Ordinance, follow the procedure provided for in the Code.
- 4.1.10 A Juvenile Court shall not ordinarily take up any other case on a day when the case of a child accused is fixed for evidence on such day.
- 4.1.11 No person shall be present at any sitting of a Juvenile Court except for:
- (a) Members and officers of the Juvenile Court;
  - (b) Parties to the case before the Juvenile Court and such other persons who are directly concerned with the proceedings including the police officers;
  - (c) Such other persons as the Juvenile Court directs to be present; and
  - (d) Guardian of the child.
- 4.1.12 At any stage during the course of the trial of a case under this Ordinance, the Juvenile Court may, in the interest of such child, decency or morality, direct any person to withdraw from Court for such period as the Court may direct. Where at any stage during the course of the trial of a case, the Juvenile Court is satisfied that the attendance of the child is not essential for the purposes of the trial, the Juvenile Court may dispense with the attendance and proceed with the trial of the case in absence of the child.
- 4.1.13 When child who has been brought before a juvenile Court and is found to be suffering from serious illness, whether physical or mental, and requires treatment, the Court shall send such child to a hospital or a medical institution where treatment shall be given to the child at the expense of the State.
- 4.1.14 Under Section 7 If a question arises as to whether a person before it is a child for the purposes of this Ordinance, the Juvenile Court shall record a finding after such inquiry which shall include a medical report for determination of the age of the child.
- 4.1.15 Under Section 8 (1), unless the Juvenile Court specifically authorizes, the Court proceedings shall not be published in any newspaper, magazine or journal in any form which may disclose the name, address, school or any identification or particulars calculated to lead directly or indirectly to the identification of such child nor shall any picture of the child be published.
- 4.1.16 Under Section 9 (1) the Probation Officer shall assist the Juvenile Court by making a report on the child's character, educational, social and moral background and subject to subsection (3) of Section 9, the report of the Probation Officer submitted to the Juvenile Court shall be treated as confidential. In terms of Section 9(3) the Juvenile Court may, if it so thinks fit, communicate the substance of the report to the child or his guardian and, where any one of them disputes the contents or views contained

therein, the Juvenile Court may give such child or, as the case may be, guardian an opportunity of producing such evidence as may be relevant to the matter stated in the report.

- 4.1.17 Under Section 10 (1) where a child is arrested for commission of an offence, the officer incharge of the police station in which the child is detained shall, as soon as may be, inform, the guardian of the child, if he can be found, of such arrest and inform him of the time, date and name of the Juvenile Court before which the child shall be produced; and (b) the concerned Probation Officer to enable him to obtain such information about the child and other material circumstances which may be of assistance to the Juvenile Court for making inquiry.
- 4.1.18 Where a child accused of a non-bailable offence is arrested, he shall, without any delay and in no case later than twenty-four hours from such arrest, be produced before the juvenile Court. Without prejudice to the provisions of the Code, a child accused of a bailable offence shall, if already not released under section 496 of Code, be released by the Juvenile Court on bail, with or without surety, unless it appears that there are reasonable grounds for believing that the release of the child shall bring him into association with any criminal or expose the child to any danger, in which case, the child shall be placed under the custody of a Probation Officer or a suitable person or institution dealing with the welfare of the children if parent or guardian of the child is not present, but shall not under any circumstances be kept in a police station or jail in such cases.
- 4.1.19 The Juvenile Court shall, in a case where a child is not granted bail under subsection (3), direct for tracing the guardian of such child and where the guardian of the child is traced out, the Juvenile Court may immediately release the child on bail.
- 4.1.20 Where a child under the age of fifteen years is arrested or detained for an offence, which is punishable with imprisonment of less than ten years, shall be treated as if he was accused of commission of a bailable offence.
- 4.1.21 No child under the age of fifteen years shall be arrested under any of the laws dealing with preventive detention or under the provisions of Chapter VIII of the Code.
- 4.1.22 Notwithstanding anything contained in the Code and except where a Juvenile Court is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf or in exercise of any right or privilege under any law for the time being in force, a child who, for commission of an offence, has been detained, shall be released on bail:
- (a) If, being accused of an offence punishable with death has been detained for such an offence for a continuous period exceeding one year and whose trial for such an offence has not concluded;
  - (b) If, being accused of any, offence punishable for imprisonment for life has been detained for such an offence for a continuous period exceeding six months and whose trial for such offence has not concluded; or
  - (c) Who, being accused of any offence not punishable with death, or imprisonment for life, has been detained for such an offence for a continuous

period exceeding four months and whose trial for such an offence has not concluded:

Provided that where a child of the age of fifteen years or above is arrested, the Court may refuse to grant bail if there are reasonable grounds to believe that such child is involved in an offence which in its opinion is serious, heinous, gruesome, brutal, sensational in character or shocking to public morality or he is a previous convict of an offence punishable with death or imprisonment for life.

4.1.23 Under Section 11 where on conclusion of an inquiry or trial, the Juvenile Court finds that a child has committed an offence, then notwithstanding anything to the contrary contained in any law for the time being in force, the juvenile Court may, if it thinks fit:

- (a) direct the child offender to be released on probation for good conduct and place such child under the care of guardian or any suitable person executing a bond with or without surety as the Court may require, for the good behaviour and well-being of the child for any period not exceeding the period of imprisonment awarded to such child: Provided that the child released on probation be produced before the juvenile Court periodically on such dates and time as it may direct.
- (b) make an order directing the child offender to be sent to a Borstal institution until he attains the age of eighteen years or for the period of imprisonment whichever is earlier.
- (c) reduce the period of imprisonment or probation in the case where the Court is satisfied that further imprisonment or probation shall be unnecessary.

4.1.24 Under Section 12 Notwithstanding anything to the contrary contained in any law for the time being in force no child shall be:

- (a) awarded punishment of death, or ordered to labour during the time spent in any Borstal or such other institution; and
- (b) handcuffed, put in fetters or given any corporal-punishment at any time while in custody;

Provided that where there is reasonable apprehension of the escape of the child from custody, he may be handcuffed.

4.1.25 Under Section 13 (1), a child convicted on a trial by a Juvenile Court, or any other person on his behalf, may, within thirty days from the date of such order, prefer an appeal in accordance with the provisions of the Code. The Provincial Government or any person if aggrieved by an order of acquittal passed by a Juvenile Court, may, within thirty days, prefer an appeal against such order in accordance with the provisions of section 417 of the Code.



## 5. PAKISTAN EMPLOYMENT OF CHILDREN ACT, 1991

### 5.1 Objective and Definitions

- 5.1.1 The Objective of the Pakistan Employment of Children Act, 1991 ("**PEC Act**") is to prohibit the employment of children in certain occupations and to regulate the conditions of work of children.
- 5.1.2 The PEC Act defines certain terms as follows in Section 2:
- (a) "adolescent" means a person who has completed his fourteenth but has not completed his eighteenth year;
  - (b) "child" means a person who has not completed his fourteenth year of age;
  - (c) "day" means a period of twenty-four hours beginning at midnight;
  - (d) "establishment" include a shop, commercial establishment, workshop, factory, farm, residential hotel or restaurant;
  - (e) "factory" means any premises, including the precincts thereof, wherein ten or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily carried on with or without the aid of power but does not include a mine, subject to the operation of the Mines Act, 1923;
  - (f) "family" in relation to an occupier, means the individual, the wife or husband, as the case may be, of such individual, and their children, brother or sister of such individual;
  - (g) "occupier" in relation to an establishment, means the person who has the ultimate control over the affairs of the establishment;
  - (h) "Inspector" means an official duly appointed and notified, as an inspector for the purpose of this Act by the Federal Government or the Provincial Government concerned;
  - (i) "Workshop" means any premises (including the precincts thereof) wherein any industrial process is carried on;
  - (j) "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried on, and includes all work, machinery, tramways and sidings, whether above or below ground, in or adjacent to or belonging to a mine: Provided that it shall not include any part of such premises on which a manufacturing process is being carried on unless such process is a process for coke-making or the dressing of minerals.

### 5.2 Prohibited Employments

- 5.2.1 Section 3 of the PEC Act provides that no child shall be employed or permitted to work in any of the occupations that are listed in Part I of the Schedule attached to the PEC Act or in any workshop wherein any of the processes listed in Part II of the Schedule of the PEC Act are carried on. Section 3 however, also contains a proviso, which states that nothing in this Section shall apply to any establishment wherein such process, is carried on by the occupier with the help of his family or to any school established, assisted or recognized by Government.



- 5.2.2 In terms of Section 4 of the PEC Act, the Federal Government, may by notification in the official Gazette, add any occupation or process to the Schedule and thereupon the Schedule shall be deemed to have been amended accordingly three months after the date of the notification.
- 5.2.3 Section 5 of the PEC Act provides that a National Committee to be called the National Committee on the "Rights of the Child" may be constituted by the Federal Government, by notification in the official Gazette, for the purpose of performing the functions as visualized in Article 43 of the UN Convention on the Rights of the Child, and to advise the Federal Government for the purpose of addition of occupations and processes to the Schedule. The Committee shall consist of a Chairman and 10 other experts of high moral standing and recognized competence.

### 5.3 Working Hours and Ancillary Matters

- 5.3.1 Subject to the provisions of Part II of the PEC Act not being applicable to any of the establishments that have been excluded by Section 3, Part II of the PEC Act, contains provisions that set out the acceptable number of work hours for children in permissible establishments.
- 5.3.2 In terms of Section 7, no child or adolescent shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments and:
- (a) the period of work on each day shall be so fixed that no period shall exceed three (3) hours and;
  - (b) that no child shall work for more than three (3) hours before he has an interval of at least one (1) hour for rest.
- 5.3.3 The period of work of a child shall be so arranged that inclusive of the interval for rest, under subsection, it shall not exceed seven (7) hours, including the time spent in waiting for work on any day.
- 5.3.4 No child shall be permitted or required to work between 7.00 p.m. to 8.00 a.m.
- 5.3.5 No child shall be required or permitted to work over-time.
- 5.3.6 No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.
- 5.3.7 Under Section 8 of the PEC Act, every child employed in an establishment shall be allowed in each week a holiday of one whole day, which day shall be specified by the occupier in a notice permanently displayed in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.
- 5.3.8 Under Section 9 (1) every occupier in relation to an establishment in which a child was employed or permitted to work immediately before the date of commencement of the PEC Act in relation to such establishment shall, within a period of thirty days from such commencement, send to the Inspector within whose local limits the

establishment is situated, a written notice containing the following particulars, namely:

- (a) the name location and address of the establishment;
- (b) the name of the person in actual management of the establishment;
- (c) the address to which communications relating to the establishment should be sent; and
- (d) the nature of the occupation or process carried on in the establishment.

5.3.9 Every occupier, in relation to an establishment, which employs, or permits to work, any child after the date of commencement of this Act in relation to such establishment, shall, within a period of thirty days from the date of such employment send to the Inspector within whose local limits the establishment is situated, a written notice containing the particulars mentioned in sub-section (1).

5.3.10 Nothing in sections 7, 8 and 9 shall apply to any establishment wherein any process is carried on by the occupier with the aid of his family or to any school established, assisted or recognized by Government.

5.3.11 Under Section 10 If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority.

5.3.12 Under Section 11 there shall be maintained by every occupier in respect of children employed or permitted to work in any establishment, a register to be available for inspection by an Inspector at all times during working hours showing:

- (a) the name and date of birth of every child so employed or permitted to work;
- (b) hours and periods of work of any such child and the intervals of rest to which he is entitled;
- (c) the nature of work of any such child; and
- (d) such other particulars as may be prescribed.

5.3.13 Under Section 12e every occupier shall cause to be displayed in a conspicuous and accessible place a notice in the local language and in the English language containing an abstract of sections 3 and 14.

5.3.14 Under Section 13, the appropriate Government may, by notification in the Official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class or establishments. Without prejudice to the generality of the foregoing provisions, the said rules may provide for all or any of the following matters, namely:

- (a) cleanliness in the place of work and its freedom from nuisance;
- (b) disposal of wastes and effluents;
- (c) ventilation and temperature;
- (d) dust and fumes;
- (e) artificial humidification;
- (f) lighting;

- (g) drinking water,
- (h) latrine and urinals;
- (i) spittoons;
- (j) fencing of machinery;
- (k) work at or near machinery in motion;
- (l) employment of children on dangerous machines;
- (m) instructions, training and supervision in relation to employment of children on dangerous machines;
- (n) device for cutting off power;
- (o) self-acting machines;
- (p) easing of new machinery;
- (q) floor, stairs and means of access;
- (r) pits, pumps, openings in floors, etc.;
- (s) excessive weights;
- (t) protection of eyes;
- (u) explosive or inflammable dust, gas, etc.;
- (v) precaution in case of fire;
- (w) maintenance of buildings; and
- (x) safety of building and machinery.

## 5.4 Penalties

5.4.1 Section 14 of the PEC Act provides that whoever employs any child or permits any child to work in contravention of the provisions of Section 3 of the PEC Act, shall be punishable with imprisonment for a term which may extend to one year or with a fine which may extend to twenty thousand rupees or with both and whoever, having been convicted of an offence under Section 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

5.4.2 Section 14(3) provides that whoever:

- (a) fails to give notice as required by section 9; or
- (b) fails to maintain a register as required by section 11 or makes any false entry in any such register, or
- (c) fails to display a notice; or
- (d) fails to comply with or contravenes any provisions of the PEC Act or the rules made thereunder

shall be punishable with simple imprisonment which may extend to one month or with a fine which may extend to ten thousand rupees or with both.

5.4.3 Under Section 15 (1) any person found guilty and convicted of contravention of any of the provisions regarding children and adolescents mentioned in Section 15(2), shall be liable to penalties as provided in sub-sections (1) and (2) of Section 14 of the PEC Act and not under other relevant Acts. The provisions mentioned in section (1) are the provisions regarding children and adolescents in the following Acts:

- (a) The Mines Act 1923;
- (b) The Factories Act 1934; and
- (c) The Shops and Establishments Ordinance 1969.

- 5.4.4 Any person, police officer or Inspector may file a complaint of the commission of an offence under the PEC Act in any court of competent jurisdiction and every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purpose of the PEC Act, be conclusive evidence as to the age of the child to whom it relates. No court inferior to that of a Magistrate of the first class shall try any offence under the PEC Act.
- 5.4.5 The appropriate Government may appoint Inspectors for the purpose of securing compliance with the provisions of the PEC Act and any Inspector so appointed shall be deemed to be a public servant within the meaning of the Pakistan Penal Code.
- 5.4.6 Section 19 of the PEC Act provides that subject to the provisions contained in Section 15, the provisions of the PEC Act and the rules made thereunder shall be in addition to, and not in derogation of, the provisions of the Mines Act, 1923; the Factories Act, 1934; the Sindh Children Act, 1955; the Shops and Establishments Ordinance, 1969; and the Punjab Children Ordinance, 1983. The definition of 'child' and 'adolescent' in these provisions shall be deemed to have been amended in accordance with the definitions in section 2 of the PEC Act.
- 5.4.7 The PEC Act repeals the Employment of Children Act, 1938.

## 5.5 Schedule to the PEC Act

- 5.5.1 Part I of the Schedule to the PEC Act lists the occupations referred to in Section 3 of the PEC Act, being any occupation connected with the following:
- (a) transport of passengers, goods or mails by railway;
  - (b) cinder picking, cleaning of an ash pit or building operation in the railway premises;
  - (c) work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train;
  - (d) work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines;
  - (e) a port authority within the limits of any port; and
  - (f) work relating to selling of crackers and fire works in shops with temporary licences.
- 5.5.2 Part II of the Schedule of the PEC Act lists the processes referred to in Section 3 of the PEC Act, being any of the following processes:
- (a) Bidi-making
  - (b) Carpet-weaving
  - (c) Cement manufacture, including bagging of cement
  - (d) Cloth printing, dyeing and weaving
  - (e) Manufacture of matches, explosives and fire-works
  - (f) Mica-cutting and sploting
  - (g) Shell as manufacture
  - (h) Soap manufacture
  - (i) Training

- (j) Wool-cleaning
- (k) Building and construction industry
- (l) Manufacture of slate pencils (including packing)
- (m) Manufacture of products from agate.
- (n) Manufacturing processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium; benzene, pesticides and asbestos.

## 6. WORKERS CHILDREN (EDUCATION) ORDINANCE, 1972

- 6.1.1 The objective of the Workers Children (Education) Ordinance ("**Workers Children Ordinance**") 1972, to provide for the education of Workers' children and matters ancillary thereto. This Ordinance is applicable to the province of Punjab.
- 6.1.2 The following terms have been defined in the Workers Children Ordinance:
- (a) "employer", in relation to an establishment, means the person who has ultimate control over the affairs of the establishment;
  - (b) "establishment" means any office, firm, industrial unit, undertaking, shop or premises in which workers are employed for the purpose of carrying on any business, trade, manufacture, calling, service, employment or occupation;
  - (c) "worker" means a worker as defined in Section 2 of the Punjab Industrial Relations Act 2010, but does not include:
    - (i) persons in the service of the State including members of the Armed Forces, Police Force and Railway servants;
    - (ii) persons employed in any undertaking under the control of any Defence organisation or Railway administration;
    - (iii) persons in the service of a local council, a municipal committee, a cantonment board or any other local authority.
- 6.1.3 Under Section 3 every employer of an establishment in which the number of workers employed at any time during a year is ten or more shall pay to the Government an education cess at the rate of one hundred rupees per worker per annum. Every employer shall, within every three months beginning from the first day of the calendar month following the commencement of the Workers Children (Amendment) Act, 1973 (XXIV of 1973), prepare and deliver, or cause to be prepared and delivered, in the form and to the officer prescribed by the Government, a return showing the number of workers employed in the establishment during the preceding quarter and shall subscribe a declaration of the truth of the return at the foot thereof. The levy of education cess shall be on the basis of the number of workers shown in the return.
- 6.1.4 Under Section 4 Government shall provide education free of cost upon any level of education to two children every worker employed in an establishment referred to in Section 3. Education free of cost includes provision of text books free of cost and exemption from admission fee, tuition fee, and examination fee and school fund.

## 7. CHILD MARRIAGE RESTRAINT ACT, 1929

### 7.1 Background

- 7.1.1 The Child Marriage Restraint Act, 1929 (coming into force in 1939), a law that Pakistan has inherited from British India, was lauded in British India as the first social reform issue agitated by the women activists of India. However the permissible age of marriage as fixed in the original Child Marriage Restraint Act was **14 years for girls and 18 years for boys**. The sentencing history of Child Marriage Restraint even during the colonial times showed a very bleak picture as out of 473 prosecutions only 167 were successful; with only 17 doing their full or partial sentence. The results of 1931 census also revealed that while the number of wives under 15 had increased from 8 million to 12 million; the number of husbands under 15 had also gone up from 3 to more than 5 million.
- 7.1.2 India has subsequently passed The Prohibition of Child Marriage Act, 2006 which has raised the age for marriage to **18 for girls and 21 for boys**. It also prescribes the punishment of rigorous imprisonment upto 2 years and a fine of upto one 100,000 Indian Rupees. The Act also provides for annulment of child marriage upto 2 years after the child reaches majority as child marriages are voidable

### 7.2 Child Marriage

- 7.2.1 A "child" is defined in the Child Marriage Restraint Act, 1929 ("**CMRA**") as a person "who if male, is under eighteen years of age, and if a female, is under sixteen years of age".
- 7.2.2 A "minor" is defined in the CMRA as a person of either sex who is under eighteen (18) years of age.
- 7.2.3 "Child marriage" is defined in the CMRA as a "*marriage to which either of the contracting parties is a child*" and the term "contracting party" has been defined to mean, in relation to a marriage, "*either of the parties whose marriage is or is about to be thereby solemnized*".

### 7.3 Penalties for Child Marriage

- 7.3.1 The CMRA provides penalties under three specific heads for child marriage which are as follows:
- (i) **Child Marriage of Male Adult above 18 Years**

Section 4 of the CMRA provides that when a male above the age of eighteen (18) years of age contracts a child marriage than he shall be punished with simple imprisonment that may extend to one (1) month, or with fine that may extend to Pak Rupees One Thousand or with both.
  - (ii) **Soleminizing a Child Marriage**

Section 5 of the CMRA provides the penalties for solemnizing a child marriage and states that whoever performs, or conducts or direct any child marriage

shall be punishable with simple imprisonment that may extend to one (1) month or with a fine that may extend to Pak Rupees One Thousand only or with both, unless such a person can prove that he had reason to believe that the marriage was not a child marriage.

### **(iii) Guardians and Parents involved in Child Marriage**

Section 6 deals with the role of guardians and parents of a minor involved in child marriage and provides that in the event the persons having the control of a minor, whether as a parent or as a guardian or any other capacity, lawful or unlawful, do any act to permit or promote the marriage of a minor, or for the same to be solemnized, or negligently fail to prevent the marriage of such minor from being solemnized than such a person shall be punishable with simple imprisonment that may extend to one (1) month or with a fine that may extend to Pak Rupees One Thousand or with both; provided however, that no woman shall be punishable with imprisonment. For the purpose of Section 6, where a minor has entered into a child marriage, it shall be presumed, unless and until the contrary can be proved, that the person having charge of such minor has negligently failed to prevent the marriage from being solemnized.

## **7.4 Cognizance of Offence**

- 7.4.1 Section 9 of the CMRA provides that no cognizance of any offence under the CMRA shall be taken by a Court except on the complaint made by a Union Council in the area, or by such an authority as the Provincial Government may in this behalf prescribe and such cognizance shall in no case be taken after the expiry of one year from the date on which such offence is alleged to have been committed.

## **7.5 Injunctions**

- 7.5.1 The CMRA under Section 12 empowers the Court to issue injunctions against any of the persons mentioned in Sections 3<sup>3</sup>, 4, 5 and 9 prohibiting the child marriage, if the Court is satisfied that the information laid before it through the complaint or otherwise, that a child marriage in contravention of the CMRA has been arranged or is about to be solemnized. However no injunction may be issued against any person unless the Court has previously given notice to such person and has afforded such person an opportunity to show-cause against the issue of the injunction. Any person who disobeys an injunction knowingly shall be punished with imprisonment of either term which may extend to three (3) months or with fine that may extend to Pak Rupees One Thousand only, or with both, however no woman shall be punishable with imprisonment.

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<sup>3</sup> Omitted by Muslim Family Laws Ordinance, 1961 Section 12, with effect from 15.07.1961.

# Chapter 11 WOMEN AND LAW

## 1. SEXUAL HEALTH AND REPRODUCTIVE RIGHTS

### 1.1 Hudood Laws

- 1.1.1 The most controversial amendment to the Pakistan Penal Code was the incorporation of the provisions pertaining to Rape, promulgated by "The Offence of Zina (Enforcement of Hudood) Ordinance, 1979" popularly known as the "Hudood Laws". Sections 4, 5 and 6 of the Hudood Law are relevant for the purpose of this section of this report.
- 1.1.2 Section 4 pertained to "Zina" being the act of the "willful sexual intercourse" between a man and a woman without being "validly" married to each other.
- 1.1.3 Section 5 set out the situations for "Zina Liable to Hadd" i.e. where "Zina" is punishable by "Hadd" literally translated to mean "the punishments prescribed by "Islamic Shariah"". These situations were as follows:
- (a) committed by a sane adult male with a woman with whom he is not married and does not "suspect" himself to be married;
  - (b) committed by a sane adult female with a man with whom she is not married and does not "suspect" herself to be married.

Two forms of punishments were prescribed by Section 5(2), being stoning to death at a public place in case it is committed by a "muhsan" i.e. adultery by married persons; and in case of "non-muhsans" whipping at a public place numbered at one hundred stripes.

- 1.1.4 Section 6 pertains to "Rape" i.e. "Zina-bil-Jabr" literally "Sex by Force" and provides the situations in which sexual intercourse by a person with a man or woman to whom such person is not legally married shall constitute Zina-bil-Jabr. These situations are as follows:
- (a) against the will of the victim;
  - (b) without the consent of the victim;
  - (c) with consent but when such consent has been obtained by putting the victim in fear of death or hurt;
  - (d) with consent but when the offender is aware that the offender is not validly married to the victim and the consent has been given by the victim in the belief that the offender is another person to whom the victim believes himself / herself to be validly married.

For the purposes of Zina-bil-Jabr penetration is sufficient to constitute sexual intercourse.

- 1.1.5 Although Section 6(1) pertains to Rape but Section 6(2) refers back to "Zina liable to Hadd" by categorizing certain forms of Zina-Bil-Jabr as Zina liable to Hadd. This was the most controversial provision of the Hudood Ordinance, since as a result



of this provision, Rape was turned into Zina liable to Hadd if it was committed in the conditions set out in the Section 5(2) and was accordingly liable to the same punishments.

## **1.2 Protection of Women (Criminal Laws Amendment) Act, 2006**

- 1.2.1 The Protection of Women (Criminal Laws Amendment) Act, 2006 omitted Sections 6 and 7 of the Hudood Ordinance and inserted the Section on Rape in the Pakistan Penal Code; and also removed all references to Zina-bil-Jabr from the Hudood Ordinance.
- 1.2.2 As a consequence of this amendment, firstly Rape is not punishable under the Hudood Ordinance and secondly and more importantly, in cases where Zina-bil-Jabr could not have been proved, the punishment of Zina is no longer applicable i.e. punishment of Zina is no longer applicable in cases where Rape cannot be proved.

## **1.3 The Pakistan Penal Code – Section 375 and 376**

- 1.3.1 Pakistan has inherited the colonial criminal law of the British era, being the PPC which provides the list of offences and the punishments prescribed for the same. Various provisions of the PPC have been amended from time to time to reflect modification to the offences and the punishments prescribed; with the amendment to the provisions pertaining to Rape having been amended by the controversial Hudood Ordinance and subsequently by the Protection of Women Act.
- 1.3.2 Section 375 of the PPC defines Rape as the commission of sexual intercourse by a man with a woman in any of the following circumstances:
  - (a) against her will;
  - (b) without her consent;
  - (c) with consent but when such consent has been obtained by putting her in fear of death or hurt;
  - (d) with consent but when the man knows he is not married to her and the consent has been given she believes him to be another person to whom she is or believes herself to be validly married; or
  - (e) with or without her consent when she is under the age of 16.
- 1.3.3 The punishment for Rape as prescribed by Section 376 of the PPC is death or imprisonment of either description for a term which shall not be less than ten (10) years or more than twenty-five (25) years and the accused shall be liable to fine. In case the Rape has been committed by two (2) or more person in furtherance of common intention than each of such persons shall be punished by death or life imprisonment.

## **2. ABORTION**

- 2.1.1 Abortion is a criminal act under the laws of Pakistan, with its punishment having been prescribed by the Pakistan Penal Code, 1860.

- 2.1.1 The provisions of PPC pertain to abortion at two different stages of development of the fetus and the punishments also differ for the same:
- (a) Section 338 of the PPC pertains to abortion, when the organs of the fetus have not formed and defines the same as “Isqat-i-Hamal ”; and
  - (b) Section 338B of the PPC pertains to abortion, when some limbs or organs of the fetus have formed and defines it as “Isqat-i-Janin”.

Both these sections also apply to women who cause themselves to abort.

## 2.2 Isqat-i-Hamal and Isqat-i-Janin

- 2.2.1 In case of Isqat-i-Hamal, i.e. if the organs of the fetus have not been formed, it would not constitute an offence under Section 338, if it has been “*caused in good faith for the purpose of saving the life of the woman or providing necessary treatment to her*”.
- 2.2.2 Under Section 338B, it would not constitute Isqat-i-Janin, i.e. abortion of a fetus whose limbs or organs have formed, when the same been “*caused in good faith for the purpose of saving the life of the woman*”.
- 2.2.3 The differences in Section 338 and Section 338B of the PPC also provide interesting parallels with regard to the situations and the time limit upto which abortion does not constitute an offence. To illustrate; if the limbs and organs of the fetus have not formed; abortion in the following situations would not constitute an offence (a) for the purpose of saving the life of the woman; or (b) providing necessary treatment; and if the limbs and organs have been formed than abortion only for the purpose of saving the woman’s life would be permissible and not constitute an offence; with the underlying expectation of each instance of abortion having occurred in good faith and without malafide intent. The difference in the exceptions in Section 338 and 338B would also be relevant in cases where abortions are necessarily required for medical reasons subsequent to formation of limbs and organs of the fetus; yet would constitute an offence under Section 338B of the PPC; and hence would be denied. However, any amendment and / or modification of Section 338B of the PPC would require review by the Council of Islamic Ideology or the Federal Shariat Court.
- 2.2.4 The punishment for Isqat-i-Hamal (being Abortion as described in Section 338) has been prescribed by Section 338A of the PPC; and Section 338A states that whoever causes Isqat-i-Hamal shall be liable to punishment as *ta’zir* , with:
- (a) imprisonment of either description for:
    - (i) a term which may extend to three (3) years in cases where Isqat-i-Hamal has been caused with the consent of the woman;
    - (ii) a term which may extend to ten (10) years in cases where Isqat-i-Hamal has been caused without the consent of the woman; and
  - (b) if as a consequence of the Isqat-i-Hamal any hurt is caused to the woman or if she dies than the convict shall also be liable to punishment for such hurt or death.
- 2.2.5 The term “*Ta’zir*” has been defined in Section 277(l) of PPC to mean “*punishment other than qisas, diyat, arsh or daman*”. In other words, the term “*Ta’zir*” refers to punishments

such as imprisonment, forfeiture of property and fine i.e. punishments other than those that have been prescribed by Shariah.

2.2.6 The punishment for causing Isqat-i-Janin is as follows:

- (a) One-twentieth of the *Diyat* if the child is born dead;
- (b) Full *Diyat* if the child is born alive but dies as a result of any act of the offender; and
- (c) Imprisonment of either description for a term which may extend to seven (7) years as *ta'zir*.

Provided if there is more than one child involved than separate *diyat* or *ta'zir*, as the case may be, shall be applicable for each such child.

2.2.7 The term "*Diyat*" has been defined in Section 299(e) to mean "*the compensation specified in Section 323 payable to the heirs of the victim*". The value of *Diyat* has been prescribed by Section 323 of PPC; and this Section provides that the Court shall fix the value of *Diyat*; subject to the injunctions of Islam and while keeping in view the financial condition of the accused / convict and the heirs of the victim; provided however the value of *Diyat* shall not be less than the value of thirty thousand six hundred and thirty (30630) grams of silver. The fact that *Diyat* is payable to the heirs of the victims, signifies that *Diyat* is payable in situations where the victim has been killed and not in cases of hurt.

## 2.3 Reproductive Healthcare and Rights Act, 2013

2.3.1 The National Assembly on March 12, 2013 unanimously passed the Reproductive Healthcare and Rights Act, 2013 ("**Reproductive Rights Bill**") and it shall now be placed before the Senate. Once the Reproductive Rights Bill is passed by the Senate, it shall be presented to the President for his assent whereafter it shall become an act of the Parliament.

2.3.2 It may be noted that the Reproductive Rights Bill was originally tabled in the National Assembly in 2012 and was turned down by a female legislator on the grounds that it was not in conformity with the injunctions of Islam. Several differences exist between the draft Reproductive Healthcare and Rights Bill as originally drafted, tabled and rejected ("**Original Bill**") and the Reproductive Rights Bill as passed by the National Assembly; and these differences are mentioned while discussing each provisions of the Reproductive Rights Bill.

2.3.3 The statement of objects and reasons of the Reproductive Rights Bill as provided therein state that Islamic injunctions enjoin that of all ordained rights, the principal right is the right to life and the Reproductive Rights Bill seeks to give legal status to this right as on an average eighty women die every day because of pregnancy related complications; and millions of women suffer from complications such as fistula; STD and infertility. The Reproductive Rights Bill seeks to promote the reproductive healthcare rights of men and women and to redress the complications related to pregnancy and childbirth that are among the leading causes of mortality and morbidity among women of reproductive age and reduce maternal deaths that have serious consequences within the family.

## 2.4 Chapter II – Promotion of Reproductive Health Care Rights

- 2.4.1 Chapter II of the Reproductive Rights Bill is titled "*Promotion of Reproductive Health Care Rights*" and contains two (2) sections. These sections are discussed in detailed hereinbelow.
- 2.4.2 Section 3 of the Reproductive Rights Bill is titled "Acceptance of Certain Facts" and provides that for the purpose of promotion of reproductive health care rights, the acceptance of the following facts is essential:
- (a) that men and women are the subject of reproductive health care, their joint involvement in responsible parenting is essential, as also their need for access to information;
  - (b) male involvement is essential in the attainment of reproductive health care rights; and
  - (c) the need to develop public awareness that maternal deaths are preventable and the suffering of women and children is avoidable.
- 2.4.3 The provisions of Section 3 are unusual in nature since they do not cast any obligations nor do they grant any rights, in fact Section 3 merely states the essential facts that are required to be accepted for promoting reproductive health care; however it does not elaborate as to whether such acceptance is required from the health care providers; the law enforcement agencies; the legal professionals or the general public at large; as a consequence whereof, this Section creates ambiguities and confusion.
- 2.4.4 It may also be noted that the Original Bill had presented this Section 3 differently although it contained the same sub-clauses except for sub-clause (b) which is a new addition in the Reproductive Right Bill; however there was no opening sentence in the Original Bill.
- 2.4.5 Section 4 "Promotion of reproductive healthcare rights" of the Reproductive Rights Bill comprises of four parts (1) "the manner in which reproductive healthcare information can be promoted"; and (2) "the right to gender neutral information"; (3) "the right to equality, and to be free from all forms of discrimination can be promoted by ensuring that-"; and (4) which pertains to protection from sexual abuse and harassment. Each of these sub-clauses are discussed below.
- 2.4.6 Section 4(1) provides the "Manner in which reproductive healthcare information can be promoted" and lists the following:
- (a) By providing reproductive healthcare information which provides awareness regarding the mental and physical health and well being of individuals and families;
  - (b) Through the exercise of parental responsibility which assures the rights of parents of educators;
  - (c) By taking into account the religious norms and cultural environment.
- 2.4.7 It is interesting to note while Section 4(1) lists the manner in which reproductive healthcare information may be promoted, but does not create any responsibilities for the Government, provincial or federal to participate in the dissemination of

information or to play any role in relation to the same. When viewed from the legislative perspective, the utility and role of Section 4(1) in the Reproductive Rights Bill remains an enigma, since it is only listing the manner in which reproductive healthcare can and is being provided. It does not state who is responsible for providing such information and who has the right to receive such information. It also does not elaborate on the mean of providing and / or seeking such information; in fact it is silent on all essential matters relevant to reproductive healthcare information.

- 2.4.8 It is pertinent to note that the Original Bill also contained a similar Section however, the same created a right and was titled “Right to Reproductive Health Information”; and although even the Section in the Original Bill did not clearly state as to who has the Right to Reproductive Health Care Information and whose obligation it is to provide such information yet it did use the word “Right” while any reference to “right” is missing in the Section appearing in the Reproductive Rights Bill. Furthermore, while sub-clauses (a) and (b) in both the Sections are same, but sub-clause (c) is different and in the Original Bill sub-clause (c) stated *“the reproductive health information and communication activities take into consideration the social milieu and given cultural environment”* and it appears that this sub-clause (c) has been replaced by the reference to “religious norms”.
- 2.4.9 Section 4(2) titled “The right to gender neutral information can be promoted” lists the following:
- (a) By access to information related to reproductive rights and responsibilities within a gender perspective, which is free from stereotypes, discriminatory and obscurantist customs, and is presented in an objective and pluralistic manner;
  - (b) By recognition that all couples have the right to information to ensure reproductive life decisions are made with informed consent; and
  - (c) By public awareness on the prevalence and impact of morbidity and mortality and availability of medical science to prevent this suffering.
- 2.4.10 As in Section 4(1), Section 4(2) also does not cast or create any responsibilities on the State or any state organ to ensure that gender neutral information is disseminated nor does it create an obligation on any third party to ensure that only gender neutral information is to be disseminated; in fact this Section 4(2) merely lists the manner in which gender neutral information can be promoted.
- 2.4.11 Section 4(2) as appearing in the Reproductive Rights Bill is also different from Section 4(2) as appearing in the Original Bill and it would be pertinent to discuss the differences. Section 4(2) of the Original Bill is titled as the “Right to gender-neutral information”, which means that at the very least it had aimed to create a right of the citizens to such information. The most important difference between Section 4(2) of the Original Bill and the Reproductive Rights Bill lies in sub-clause (b) where the word “adults” has been replaced by “couples” in the Reproductive Rights Bill. This change could have a far reaching effect, since it could be interpreted to mean that only “couples” have the right to information to ensure that reproductive life decisions are made with informed consent and individuals would not have the right to same.

- 2.4.12 Additionally, the word “technology” as appearing in sub-clause 4(2)(c) of the Original Bill has been replaced with “medical science” in sub-clause 4(2)(c) of the Reproductive Rights Bill.
- 2.4.13 Section 4(3) titled “The right to equality and to be free from all forms of discrimination can be promoted by ensuring that:-” lists the following:
- (a) No person shall be discriminated against in their reproductive lives, in their access to services and information on the grounds of race, colour, sex, creed or any other criteria of discrimination;
  - (b) All women have the right to protection from discrimination in social, domestic or employment spheres by reasons of pregnancies or motherhood;
  - (c) All efforts shall be made to promote a mutually respectful gender perspective which assists in responsible parenting and strengthens family relations;
- 2.4.14 Section 4(4) provides that “the right to be free from ill treatment can be promoted by ensuring that persons have the right to protection from rape, sexual assault, sexual abuse, sexual harassment and other forms of gender based violence”.
- 2.4.15 While Section 4(1) and 4(2) neither grant any rights nor create any obligations, since they merely state the manner in which the right to reproductive healthcare information can be promoted, and the right to gender neutral information can be promoted, respectively; Section 4(3) provides the manner in which the right to equality and to be free from all forms of discrimination can be promoted and consequently Section 4(3) contains the most important provision of the Reproductive Rights Bill since it contains the rights that have been granted and the obligations that have been created, albeit as an indirect consequence of providing the manner for the promotion of equality and non discrimination.
- 2.4.16 Chapter III titled “Promotion and Facilitation of Reproductive Health Care Services” states in Section 5 that the need for reproductive health care shall be accepted in order to:
- (a) Provide quality reproductive health through short and long term efforts, among others to professionalize obstetric care, emergency obstetric care and improve reproductive healthcare systems, particularly in the primary health care sector;
  - (b) To reach the underserved by increasing access to the disadvantaged, hard to reach and vulnerable including poor women and remote marginalized areas by strengthening Primary Health Units in addition to the other responsibilities, the provision of family planning maternal and neonatal healthcare;
  - (c) To provide quality ante-natal care remains the basic method to achieve a decline in maternal mortality and morbidity; and
  - (d) To meet women’s health needs:
    - (i) Through family planning services for prevention of unsafe and unplanned pregnancies; and
    - (ii) By observance of WHO standards of antenatal and post natal care thereby reducing incidence such as involuntary miscarriage and increasing access to trained birth attendants.

- 2.4.17 Section 6 of the Reproductive Rights Bill which deals with “Reproductive Healthcare services” provides that the facilitation of reproductive healthcare services shall focus on the following, namely:
- (a) The full range of services which address maternal mortality and morbidity shall be encouraged;
  - (b) Reproductive health system shall be strengthened so that the competencies of reproductive health providers ensure quality services which encourage choice are given in an environment of dignity and continuity;
  - (c) For access and affordability, focus and priority shall be given to the primary health care sector;
  - (d) It shall be recognized that all persons shall have the benefit of and access to available reproductive healthcare technology, including that relating to infertility, which is safe and free from gender discrimination;
  - (e) No person shall be subject to medical trials related to reproductive healthcare without their full, free and written consent;
  - (f) The Government shall take stringent measures to prevent the testing and dumping of harmful contraceptives and pharmaceutical in Pakistan, whether by domestic entities or foreign entities or multinational corporation (MNCs);
  - (g) All persons must be free to manage their reproductive life, having regard to the rights of others; and
  - (h) No person shall be subjected to forced pregnancy, sterilization, abortion or birth control.
- 2.4.18 The Federal Government shall be responsible for overseeing the Reproductive Health Care Bill and shall give effect to its provisions through all concerned public sector organisations and while giving effect to the same the Federal Government shall evaluate public policies and programmes to effectively promote reproductive rights and health, specially reduction of maternal mortality and morbidity and prenatal mortality.
- 2.4.19 The Government shall in collaboration with the media and private sector, work on operationalization, implementation and enforcement of the Reproductive Health Care Bill and specifically the promotion of the right to reproductive healthcare information and communication activities and the establishing of services to meet the needs of women and men throughout the reproductive life cycle.

## 3. MATERNAL RIGHTS

### 3.1 Sindh Protection of Breast-Feeding and Child Nutrition Act 2013

- 3.1.1 The Sindh Protection of Breast-Feeding and Child Nutrition Act, 2013 (“**Sindh Breast-Feeding and Nutrition Act**”) has been promulgated to ensure safe and adequate nutrition for infants and young children by promotion and protecting breast feeding and by regulating the marketing and promotion of designated products including breast milk substitutes and of feeding bottles and ancillary material and to provide for matters ancillary thereto.



- 3.1.2 The Sindh Breast Feeding and Nutrition Act is divided into 6 Chapters; with the definitions being provided in Chapter 1 namely the “Introductory” Chapter while the remaining Chapters deal with Administration (Chapter II); Prohibitions (Chapter III); Informational and Educational Materials (Chapter IV); Registration of Designated Products and Quality Assurance (Chapter V); and Penalties and Procedures (Chapter VI).
- 3.1.3 As per the provisions of Chapter II, an “Infant Feeding Board” is to be constituted by the Provincial Government of Sindh, which shall consist of two members of the Provincial Assembly, a Secretary and not more than such number of members as the Provincial Government may determine or as may be prescribed in the Rules; provided that not less than half of such members are professionally qualified with respect to infant and young child nutrition and at least one member shall be selected from the industry involved in the manufacturing and marketing of designated products (“**Board**”).
- 3.1.4 The Sindh Breast-Feeding and Nutrition Act prohibits:
- (a) the promotion of any designated product, except as provided under the Sindh Breast-Feeding and Nutrition Act;
  - (b) assertion by any person that any designated product is a substitute for mother’s milk or that it is equivalent to or comparable with or superior to mother’s milk;
  - (c) the offering or making of any gift or contributions of any kind and / or payment to any extent whatsoever and / or the giving of any benefit by a manufacturer or distributor to a health worker or his family or any personnel employed in a health care facility, whether directly or indirectly or any member of the Board or the employees thereof;
  - (d) the donation of any designated product and / or equipment and / or services related to a designated product free of charge or at a low cost to a health care facility by a manufacturer or a distributor and / or the giving of any benefit to a professional association of medical practitioners for such purpose;
  - (e) any person other than a health worker who is not engaged by a manufacturer or a distributor from instructing any user on the need and proper preparation and use of any designated product; provided that any manufacturer or distributor may instruct any user on the need and proper preparation in accordance with Section 8 of the Sindh Breast-Feeding and Nutrition Act;
  - (f) manufacturers and distributors from having direct and / or indirect contact with the general public within a health care facility for the purpose of or in furtherance of its business;
  - (g) the production and / or distribution of any educational or informational material by any distributor or manufacturer or any person engaged by them, relating to infant and young children’s feeding; provided such informational and educational material may be provided to health professional in accordance with the prescribed condition and shall be restricted to scientific and factual matters and not imply or create a belief that bottle feeding is equivalent or superior to breast feeding;
  - (h) the sale or marketing in Sindh of any designated product unless it has been labeled in accordance with the provisions of the Sindh Breast-Feeding and



Nutrition Act and the Rules made thereunder and in respect of the designated products already being sold the same shall be accordingly labeled within 180 days and the labels shall not discourage breast feeding and provide the necessary information in Urdu.

- 3.1.5 The term “designated product” as used in the Sindh Breast-Feeding and Nutrition Act means and includes:
- (a) any milk manufactured, marketed and promoted for the use of an infant or otherwise represented as a partial or total replacement for mother’s milk, whether or not it is suitable for such replacement;
  - (b) any products manufactured, marketed, promoted or otherwise represented as a complement to mother’s milk to meet the growing nutritional needs of an infant;
  - (c) any feeding bottle, teat, valve for feeding bottle, pacifier or nipple shield; and
  - (d) such other product as the Government may, by notification in the Official Gazette, declare to be a designated product for the purpose of the Sindh Breast-Feeding and Nutrition Act.
- 3.1.6 In terms of Chapter IV of the Sindh Breast-Feeding and Nutrition Act any informational and educational material (“**Material**”) that has been produced shall be submitted to the Board and all Material, whether in written, audio or visual form, that refers to infant feeding shall only contain correct information and not use any pictures, graphics or text that encourage bottle feeding or discourage breast feeding. The Provincial Government is required to arrange for and approve the dissemination of objective and consistent Materials on infant and young child feeding, in consultation with the Board, excluding medical literature, and may publish by notification in the Official Gazette such instructions, guidelines or policies it deems necessary or appropriate for the purposes of producing and distributing the Materials.
- 3.1.7 Chapter IV further casts an obligation on health workers and provides that they shall be expected to encourage, support and protect breast feeding and shall be expected to know the provisions of Section 9 of the Sindh Breast-Feeding and Nutrition Act and in particular any instructions, guidelines and policies issued by the Government pursuant thereto and shall implement the same whenever possible. Health workers are also required to not promote any designated product.
- 3.1.8 Chapter V in Section 11 provides that only those designated products shall be manufactured, sold or otherwise distributed in the province of Sindh that formulated industrially in accordance with the standards recommended by the Codex Alimentarius Commission and the Codex Code of Hygienic Practice for Foods for Infants and Children and meet such applicable standards that have been specified in the Sindh Breast-Feeding and Nutrition Act. This Chapter V also deals with inspectors for inspection of designated products and conducting of investigations in respect thereof.
- 3.1.9 Chapter V also provides that all offences under the Sindh Breast-Feeding and Nutrition Act shall be non-cognizable and any person sentenced by a Court under the Sindh Breast-Feeding and Nutrition Act may prefer an appeal to the High Court within

thirty (30) days of the judgment and Section 5 and 12 of the Limitation Act, 1908 shall apply to such appeal.

- 3.1.10 The penalties and procedures are provided for in Chapter VI which provides in Section 16 that any upon finding any contravention by any person, other than a medical practitioner, of any provision of the Sindh Breast-Feeding and Nutrition Act or the Rules, the concerned authority upon written recommendation of the Board after having given such a person an opportunity of being heard, may recommend to the Government to suspend or cancel his license for the practice of his profession or occupation or for the pursuit of his business.
- 3.1.11 In case of any contravention by any medical practitioner registered under the Medical and Dental Council Ordinance, 1962 the matter shall be referred to the Pakistan Medical and Dental Council for further action.
- 3.1.12 Section 17(1) pertains to the contravention by a manufacturer and / or distributor of specific provisions of the Sindh Breast-Feeding and Nutrition Act and prescribes the punishment of imprisonment for a term that may extend to two (2) years or with a fine that shall not be less than fifty thousand Rupees or more than five hundred thousand Rupees. The relevant provisions of the Sindh Breast-Feeding and Nutrition Act are as follows:
- (a) Section 7 (1) to (7) pertaining to "Prohibited Practices" and detailed in sub-paragraph 3.1.4 above;
  - (b) Section 8(1) which provides that no designated product shall be marketed or sold in Sindh unless its label is in accordance with the provisions of the Sindh Breast-Feeding and Nutrition Act and the Rules and approved in the manner as may be prescribed by the Government and all designated product already being sold in the market shall be conformed accordingly within 180 days;
  - (c) Section 11 (1) which has been detailed in sub-paragraph 3.1.8; Section 11 (3), (4) or (5) which provide that (a) no designated product will be sold in Sindh that does not meet the standards for use in its country of manufacture; (b) no designated product will be marketed, sold and / or distributed in Sindh that has reached its expiry date; and / or (c) a designated product shall only sold in its original container in order to prevent quality deterioration, adulteration or contamination; respectively.
- 3.1.13 Any contravention of any other provision of the Sindh Breast-Feeding and Nutrition Act or the Rules shall be punishable with a fine not exceeding Pak Rupees Five Hundred Thousand Only.
- 3.1.14 The Sindh Breast-Feeding and Nutrition Act repeals the Protection of Breast-Feeding and Child Feeding Nutrition Ordinance, 2002.

## **3.2 Punjab Protection of Breast-Feeding and Child Nutrition Ordinance, 2002**

- 3.2.1 The Protection of Breast-Feeding and Child Nutrition Ordinance, 2002 was originally enacted as a Federal Law, however due to the devolution of powers as a consequence of the Eighteenth Amendment, the subject of this law devolved unto the provinces. Accordingly it was adapted with amendments by the province

of Punjab pursuant to the Punjab Protection of Breast-Feeding and Child Nutrition Ordinance, 2012 ("**Punjab Breast-Feeding Ordinance**").

- 3.2.2 The provisions of the Sindh Protection of Breast-Feeding and Child Nutrition Act and the Punjab Breast-Feeding Ordinance are identical except for the fact that the Punjab Breast-Feeding Ordinance is applicable to the province of Punjab and the references therein to the Government are references of the Provincial Government of Punjab.
- 3.2.3 Furthermore, Section 6 of the Sindh Breast-Feeding and Nutrition Act has been omitted in the Punjab Breast-Feeding Ordinance, which pertains to the implementation and monitoring and the giving of directions by the Government for giving effect to any provision thereof.
- 3.2.4 Section 10(5) of the Punjab Breast-Feeding Ordinance requires that abstracts of the Punjab Breast-Feeding Ordinance shall be posted in English and Urdu and such other language as may be deemed appropriate by the health care facility; whereas the Sindh Breast-Feeding and Nutrition Act refers to the Sindhi language in addition to Urdu and English.

### 3.3 Punjab Maternity Benefit Ordinance, 1958

- 3.3.1 The West Pakistan Maternity Benefit Ordinance, 1958 has been amended by the Punjab Maternity Benefit Ordinance, 2012 ("**Punjab Amendment**") and in terms thereof all references to "West Pakistan" appearing therein have been replaced by "Punjab" and references to "Government" have been substituted with "Government of Punjab". Subsequent to the Punjab Amendment the West Pakistan Maternity Benefit Ordinance, 1958 in its application to Punjab, is referred to as the Punjab Maternity Benefit Ordinance, 1958 ("**Punjab Maternity Benefit Law**"), as amended from time to time and is discussed hereinbelow.
- 3.3.2 The Punjab Maternity Benefit Law prohibits (a) the employers, whether knowingly or unknowingly from employing; and (b) women from engaging in employment, in any establishment during the six weeks following which she has delivered a child.
- 3.3.3 In terms of the Punjab Maternity Benefit Law every woman employed in an establishment for a period of not less than four months immediately preceding the day on which she delivers a child, shall be entitled to receive and the employer shall be liable for payment of, maternity benefit for a total period of twelve (12) weeks comprising of six (6) weeks immediately preceding and including the day on which she delivers the child and for each day of six weeks succeeding that day.
- 3.3.4 The procedure regarding payment of maternity benefit has also been provided in Section 5 of the Punjab Maternity Benefit Law which states that any woman who is entitled to maternity benefit and is pregnant may give notice, either orally in person or in writing in the prescribed format to the employer that she expects to be confined for the next following 6 weeks and nominate a person in such notice for the purposes of Section 6; and in the event she has failed to give such notice and has delivered the child than she may issue such notice within seven (7) days from the date of delivery of the child. Upon delivery of the notice the employer shall allow

the woman to be absent from the “factory” from the date of the notice in the event notice has been issued prior to delivery and from the date of delivery in cases where it has been issued post delivery, until six (6) weeks of delivery.

- 3.3.5 A woman’s entitlement to maternity benefit under the Punjab Maternity Benefit Law does not stand terminated by her death. In the event she dies at the time of delivery or during the period thereafter while she is entitled to maternity benefit than the maternity benefit shall be paid to the person nominated by her as mentioned in Section 5 and in the event no such person has been nominated than the maternity benefit shall be paid to all her representatives. In the event that the woman dies prior to giving birth but during the period when she is entitled maternity benefit than she shall be entitled to maternity benefit for only the period upto and including the date of death and any amounts paid to her in excess of such liability shall not be recoverable from her legal representatives and all amounts shall be paid to the person nominated by her as mentioned in Section 5 for the benefit of all her legal representatives.

## Chapter 12 LAWS OF GENERAL APPLICATION

### 1. WEST PAKISTAN MINIMUM WAGES FOR UNSKILLED WORKERS ORDINANCE, 1969

- 1.1.1 The objective of the The West Pakistan Minimum Wages for Unskilled Workers Ordinance, 1969 (“**Minimum Wage Ordinance**”) is to fix the minimum rates of wages for unskilled workers employed in certain commercial and industrial establishments in Pakistan.
- 1.1.2 Section 1 of the Minimum Wage Ordinance shall apply to every commercial and industrial establishment wherein fifty or more persons are employed or were employed on any day during the preceding twelve months, but shall not apply to:
- (a) persons in the service of Pakistan, as defined in Article 260 of the Constitution (includes any body politic or corporate);
  - (b) any establishment, undertaking or installation relating to the defence services, civil armed forces, postal, telegraph and telephone services, ports, railways, fire-fighting services, electricity, gas, water-supply, public conservancy and hospitals; and
  - (c) any establishment or undertaking, which Government, by notification in the official Gazette, declares to be engaged in a public utility service for the purposes of this Ordinance.
- 1.1.3 Under the Minimum Wage Ordinance, the following terms shall have the following meaning:

- (a) "commercial establishment" means an establishment in which the business of advertising, commission or forwarding is conducted, or which is a commercial agency, and includes a clerical department of a factory or of any industrial or commercial undertaking, the office establishment of a person who for the purpose of fulfilling a contract with the owner of any commercial establishment or industrial establishment, employees workmen, a unit of a joint stock company, an insurance company, a banking company or a bank, a broker's office or stock-exchange, a club, a hotel, a restaurant or an eating house, a cinema or theatre and such other establishment or class thereof, as Government may, by notification in the official Gazette, declare to be a commercial establishment for the purposes of this Ordinance;
- (b) "employer" means a person owning or having charge of the business of a commercial or industrial establishment and includes an agent or manager or any other person acting on behalf of such person in the general management or control of such establishment;
- (c) "industrial area" means the districts of Hyderabad, Lyallpur, Lahore, Multan and Sheikhpura and Kotri Taluka in Dadu District, and any other area which Government may, by notification in the official Gazette, declare to be an industrial area for the purposes of this Ordinance;
- (d) "industrial establishment" means (i) a mine or quarry; (ii) a workshop or other establishment in which the work of making, altering, repairing, ornamenting, finishing or packing or otherwise treating any article or substance with a view to its use, sale, transport, delivery or disposal is carried on, or where any such service is rendered to a customer; and (iii) any other establishment which Government may, by notification in the official Gazette declare to be an industrial establishment;
- (e) "wages" means all cash remuneration payable to a workman, and includes dearness allowance, house-rent, conveyance allowance [, cost of living allowance, special allowances] and any other fixed allowance, but does not include travelling allowance, gratuity or bonus;
- (f) "unskilled worker" means a worker employed to do unskilled labour; and
- (g) "worker" means any person employed in a commercial or industrial establishment.

1.1.4 Section 3 of the Minimum Wage Ordinance provides that every unskilled worker, other than an apprentice, employed in a commercial or industrial establishment situated in the Karachi District, Industrial Area or Other Area shall be paid wages at a rate not lower than Rs. 6000 per month: Provided that where an employer provides housing accommodation to a worker, he may deduct from the wages of such a worker, an amount not exceeding that Rs 10 in the Karachi District, Rs 20 in the Industrial Area and Rs. 13 in other Areas, and where the employer provides a worker with transport to and from the place of work, he may deduct Rs 10 in the Karachi District, Rs 5 in the Industrial Area and Rs. 2 in other Areas.

1.1.5 Under Section 4 every employer shall be responsible for the payment of minimum wages required to be paid under the Minimum Wage Ordinance to all unskilled workers employed, either directly or through a contractor, in his commercial or industrial establishment.

- 1.1.6 Under Section 7 any employer who contravenes any provisions of the Minimum Wage Ordinance shall be punishable with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

## 2. PAKISTAN BAIT-UL-MAL ACT

- 2.1.1 Stipulates that it is the duty of the state to provide for basic necessities of life such as food, clothing, education and medical relief; establishes the Bait-ul-Mal Fund for providing assistance to the destitute and needy, widows, orphans etc who suffer from hardship. Provides free medical treatment and gives financial treatment, especially for the poor and needy.

## 3. WORKERS WELFARE FUND ORDINANCE, 1971

- 3.1.1 The objective of the Workers Welfare Fund Ordinance, 1971 (**“Workers Fund Ordinance”**) as stated therein is to provide for the establishment of a Workers Welfare Fund and to provide for residential accommodation and other facilities for workers and for matters connected therewith or incidental thereto.
- 3.1.2 The Workers Fund Ordinance defines the following terms as follows:
- (a) “employer” has the same meaning as in section 2 of the Industrial Relations Ordinance;
  - (b) “Fund” means the Workers Welfare Fund constituted under section 3;
  - (c) “industrial establishment” means:
    - (i) any concern owning or managing a factory, workshop or other establishment in which articles are produced, adapted or manufactured with the aid of electrical, mechanical, thermal, nuclear or any other form of energy transmitted mechanically and not generated by human or animal agency;
    - (ii) any concern working a mine or quarry or natural gas or oilfield;
    - (iii) any concern running a public transport service;
    - (iv) any concern engaged in the carriage of men and goods by inland mechanically propelled vessels;
    - (v) any establishment, to which the West Pakistan Shops and Establishment Ordinance, 1969 (W.P. Ordinance No.VIII of 1969), for the time being applies;
    - (vi) any concern engaged in the growing of tea, coffee, rubber or cinchona; and
    - (vii) any other concern or establishment which the Federal Government may, by notification in the Official Gazette, declare to be an industrial establishment for the purposes of Workers Fund Ordinance but does not include any concern or establishment which is owned by Government, or by Corporation established by Government or by a Corporation the majority of the shares of which is owned by Government;
  - (d) “Ordinance” means the Income Tax Ordinance, 2001;
  - (e) “worker” has the same meaning as in section 2 of the Industrial Relations, 2002.

- 3.1.3 The Workers Welfare Fund (**Fund**) is created pursuant to Section 3 of the Workers Fund Ordinance and shall consist of:
- (a) an initial contribution of Pak Rupees Ten Crore to be made by the Federal Government;
  - (b) such moneys as may from time to time be paid by the industrial establishments under Section 4 and Section 4A;
  - (c) the amount transfers to the Fund from time to time under Clause (d) of paragraph 4 of the Scheme set out in the Schedule to the Companies Profit (Workers Participation) Act, 1968;
  - (d) voluntary contributions in the shape of money or building, land or other property made to it from time to time by any Government or by any person;
  - (e) income from the investments made and properties and assets acquired from out of the Fund; and
  - (f) proceeds from loans raised by the Governing Body.
- 3.1.4 Section 4 states that every industrial establishment the total income of which in any year of account is not less than Pak Rupees Five Hundred Thousand Only (PKR 500,000) shall pay to the fund in respect of that year a sum equal to two percent of its total income. Amount has to be paid to the taxation officer. The Taxation Officer shall determine the amount due from the industrial establishment. Section 4 A states that every industrial establishment shall in addition to the amount payable pay such an amount as the Federal Government may determine on the recommendation of a committee which may be appointed by the Provincial Government. The committee shall examine the financial and other circumstances of each of the industrial establishments and make recommendations as to the further amount, if any, to be paid by such establishment in addition to the amount payable by it.
- 3.1.5 Under Section 5 any liability imposed on an industrial establishment by the Workers Fund Ordinance shall be deemed to be the liability of the person who is liable to pay income-tax in respect of the income relatable to such industrial establishment.
- 3.1.6 The purposes to which the moneys in the Fund may be applied to is set out in Section 6 and the same are as follows:
- (a) financing of projects connected with the establishment of housing estates or construction of houses for the workers;
  - (b) financing of other welfare measures including education training, re-skilling and apprenticeship for the welfare of the workers;
  - (c) the meeting of expenditure in respect of the cost of management and administration of the fund;
  - (d) the repayment of loans raised by the Governing Body; and
  - (e) investment in government, government guarantees, non-government securities and Real Estate.
- 3.1.7 Section 7 provides for the constitution of a Governing Body that shall be entrusted with the management and administration of the Fund and has the authority under Section 9 to lay down the procedure for making applications for grants from the fund.



- 3.1.8 The functions of the Governing Body as provided in Section 10, are as follows:
- (a) to allocate funds in accordance with the principles laid down in Section 9 to the Provincial Government, any agency of the Federal Government and any body corporate for any purposes mentioned in Section 6;
  - (b) to sanction expenditure in respect of the administration and management of the fund;
  - (c) investment in government, government guarantees, non – government securities and real estate;
  - (d) (ca) to dispose of the movable and immovable property of the Fund and Workers Welfare Boards;
  - (e) to raise loans and to take measure for discharging such loans;
  - (f) to do or cause to be done all acts and things necessary or desirable for the proper administration of the Fund; and
  - (g) to do all things ancillary or incidental to the aforementioned functions.
- 3.1.9 Section 11 D of the Workers Fund Ordinance provides that any rent or arrears of rent that are due from any person under the Scheme made under section 11C may be recovered by deduction by his employer from his wages if the board or any person authorized by it in this behalf direct the employer to do so. As arrears of land revenue or as a public demand if upon the application of the board a Magistrate so directs.
- 3.1.10 In terms of Section 11 E, a worker occupying a house constructed with the money allocated from the Fund, who is directed by a Board or an officer authorised by it in this behalf, by an order in writing to vacate the house, shall vacate such house within a period of two months from the date of service of the order on him; and in the event such a worker fails to vacate such house within such period, than the Board or the officer authorised by it in this behalf may lodge a complaint with a Magistrate. The Magistrate on hearing the parties may, notwithstanding anything contained in any other law for the time being in force, summarily decide the case and may pass an order of eviction giving the worker a reasonable time to vacate the house. When a Magistrate passes an order for the eviction of worker, he may, in such order, also direct a police officer to evict such worker and any other person occupying through such worker the house in respect of which the order of eviction is made, if the worker or such other person fails to vacate the house within the time allowed. A police officer acting under an order of the Magistrate under clause (4) shall notify the occupants of the premises in question the contents of the Magistrate's order and his intention to enter such house, allow at least two hours time to the occupants thereof to vacate it and give all reasonable facilities to the children and female occupants, if any, to withdraw therefrom before applying any force for taking over the possession of such house. Where a worker occupying such a house dies, the procedure prescribed in this section shall *mutatis mutandis* and so far as applicable, apply for evicting any person who was occupying the house through such worker and continues to remain in occupation thereof after his death: Provided that, where such person is the widow of the deceased worker, she shall not be evicted before the expiry of nine months following the death of the worker.
- 3.1.11 Section 11-F provides that an order passed by a Magistrate under Section 11-D or Section 11-E with regard to the recovery of rent or eviction, respectively, shall be final and no Court or authority shall entertain any plea as to jurisdiction of the Magistrate



or as the legality or propriety of the order or allow such an order to be called in question in any manner whatsoever.

## 4. ELECTRONIC CRIMES ACT, 2003

### 4.1 Introduction

- 4.1.1 The Electronic Crimes Act, 2003 ("**ECA**") has been promulgated for the purpose of deterring action directed against the confidentiality, integrity and availability of electronic system, networks and data as well as the misuse of such systems, networks, and data by providing for the punishment of such conduct and providing for sufficient powers to effectively combat such offences by facilitating their detection, investigation and prosecution and for matters ancillary thereto.
- 4.1.2 The ECA contains certain provisions that pertain to pornography that are relevant for the purpose of this Study and the same are dealt with hereinbelow.

### 4.2 Offences and Punishments

- 4.2.1 The relevant offences and punishments under the ECA are as follows:

#### (i) **Misuse of Devices**

Section 10 of the ECA provides that whoever produces, possesses, sells, procures, imports, distributes or otherwise makes available a device, including a computer programme, designed or adapted primarily for the purpose of committing any of the offences established under the ECA or a password, access code or similar data by which the whole or any part of an electronic system is capable of being accessed, with the intent that it be used for the purpose of committing any of the offences established under the ECA than such a person is said to commit the offence of misuse of devices.

Provided however this Section 10 shall not be applicable to in cases where the production, possession, sale, procurement, import, distribution or otherwise making available of a device, is not primarily for the purpose of committing an offence established under the ECA but for other lawful purpose such as for the authorized testing or protection of an electronic system.

The punishment for the offence of misuse of device as prescribed by the ECA is imprisonment of either description for a term that may extend to three (3) years or with fine not exceeding Pak Rupees Three Hundred Thousand or with both.

#### (ii) **Defamation**

Section 14 of the ECA prescribes the punishment for Defamation and states that whoever defames another in any form using electronic systems shall be punished with imprisonment of either description for a term that may extend to three (3) years or with fine not exceeding Pak Rupees Three Hundred Rupees or with both.

### **(iii) Cyber Stalking**

The crime of Cyber Stalking has been defined in ECA as “criminal intimidation, insult and annoyance through electronic system as defined in the Pakistan Penal Code, 1860”.

Section 15 of the ECA provides that if any one commits the offence of Cyber Stalking then such a person shall be liable to imprisonment of either description for a term that may extend to three (3) years or with fine not exceeding Pak Rupees Three Hundred Thousand Rupees or with both.

### **(iv) Pornography**

- (a) Section 18 of the ECA deals with Pornography and provides that whoever intentionally:
- (i) produces pornographic material for the purpose of its distribution;
  - (ii) offers or makes it available;
  - (iii) distributes or transmits it
  - (iv) procures it for himself or for another person; or
  - (v) retains it through an electronic system, is said to commit the offence of pornography.

The offence of pornography is punishable with imprisonment of either description for a term that may extend to five (5) years or with fine not exceeding Pak Rupees Five Hundred Thousand or with both.

- (b) If the pornographic material contains a minor or a person appearing to be a minor, engaged in sexually explicit conduct or images representing a minor engaged in sexually explicit conduct, the offender shall be guilty of child pornography. The term “minor” has been defined in the ECA to mean a person below the age of “eighteen” years. The offence of child pornography is punishable with imprisonment of either description for a term that may extend to ten (10) years or with fine not exceeding Pak Rupees One Million or with both.
- (c) An exception is provided in Section 18, which states that Section 18 shall not extend to any material produced, offered, distributed, procured or kept for bonafide religious, research or medical purposes.

### **(v) Attempt and aiding or abetting**

Section 23 of the ECA provides that if any person AIDED or abets the commission of or who attempts to commit or does any act or preparatory to or in furtherance of the commission of any offence under the ECA shall be guilty of that offence and shall be liable to conviction to the punishment provided for such offence.

For the offence to be committed under this Section 23 it is immaterial where the act in question took place or not.

### **4.3 Cognizance and Trial**

- 4.3.1 All offences under ECA shall be non bailable, compoundable and cognizable and on Court inferior to the Court of Sessions shall try an offence under the ECA.





**PART V**  
**POLICIES**

# Chapter 13 HIV POLICIES

## 1. NATIONAL HIV AND AIDS POLICY – FINAL DRAFT 2007

- 1.1.1 Pakistan currently does not have a HIV policy in place; however there is a draft HIV Policy of 2007 (“**HIV/AIDS Policy**”) that was pending before the National Assembly prior to its dissolution in March 2013.
- 1.1.2 The vision of the HIV Policy for the next ten years, as stated therein is for a “healthy prosperous nation that has responded effectively to HIV and that provides treatment, care and support for all the people affected by HIV and AIDS”.

### 1.2 Guiding Principles

- 1.2.1 The HIV Policy identifies certain principles that will be relied upon for guiding Pakistan’s response to HIV and AIDS, and these are as follows:
  - (a) Gender norms and relations are a key factor in determining who acquires HIV in Pakistan and in determining the treatment, care and support outcomes and Pakistan’s national programme acknowledges this and all programmes and services will devise and implement strategies that address gender norms and relations;
  - (b) Addressing the prevention and care needs of women and girls shall have particular focus, combined with attention to male behaviour and cultural norms that increase the likelihood of women contracting HIV;
  - (c) All policies and programmes shall take into account the challenges that HIV and AIDS presents to Pakistan’s development as a nation;
  - (d) PLHIV shall have the same rights as all other citizens and shall not be discriminated against on the basis of their HIV status, gender, socioeconomic status or HIV risk factors;
  - (e) Leadership across all sectors shall be fostered and valued and the capacity of each sector to contribute to the overall response will be strengthened and this shall include community leadership, which shall be encouraged and supported through the mobilization and support of communities to respond to HIV;
  - (f) All parts of society which include all levels of government, the private sector and civil society shall be encouraged and supported to play a role in HIV prevention and care and in reducing the impact of HIV and AIDS on individuals, families and communities;
  - (g) Approaches to HIV and AIDS shall follow international best practices and shall be consistent with Pakistan’s religious and cultural values;
  - (h) All persons shall be provided with the information that they need to protect themselves against HIV infection;
  - (i) The connection between HIV and AIDS prevention and care shall be acknowledged in programmes and service design – providing treatment, care and support to individuals and families affected by HIV and AIDS will be prioritized as a core HIV and AIDS prevention strategy;

- (j) Sustainability will be promoted by incorporating HIV and AIDS prevention and care initiatives into existing programmes;
- (k) The response will be backed up by sustained political commitment and by the mobilization of resources to sustain the required effort.

## 1.3 Co-ordination and Leadership

1.3.1 The main features of the HIV Policy pertaining to Co-ordination and Leadership are as follows:

### (i) National HIV and AIDS Commission

The National HIV Policy envisages the establishment of a National HIV and AIDS Commission that will be headed by the Chairman of the Senate and shall comprise of the representatives of the national and provincial governments, various government departments, PLHIV, members of civil societies, religious groups and private sector. The technical Support for the National AIDS Commission was to be provided by the Technical Advisory Committee on AIDS and Provincial Governments were to be encouraged to establish similar mechanism at provincial level.

### (ii) Political Commitment

An agreed response by all parties and governmental sectors at each level with regard to the HIV crisis is necessary and accordingly the political leaders to provide leadership by understanding the issues related to HIV in their respective jurisdictions by promoting the HIV and AIDS response.

### (iii) Support from Religious and Civil Society Leaders

Similarly a support and leadership is also required from religious and civil society leadership in order to create an environment in which HIV and AIDS can be effectively addressed. The leaders to help shape opinions within communities and to help communities to find ways to reduce the stigma and discrimination experienced by individuals and families affected by HIV and AIDS. Active participation of groups established by and for people with HIV and AIDS to be particularly encouraged; and religious and civil society groups to also have a key role to play in providing care and support within communities and their participation in this area of the response shall be valued.

## 1.4 Priority Focus Areas

1.4.1 The direction for Pakistan's HIV and AIDS response is set by the National HIV and AIDS Strategic Framework, with the National HIV and AIDS Strategic Framework 2007 – 2012 being currently in place and is dealt with in detail in this Chapter.

1.4.2 The concentrated epidemic being faced by Pakistan would be most efficiently faced by working in a targeted manner with the most-at-risk populations and vulnerable populations, most likely to be exposed to HIV and their partners, being the following:

- (a) Injecting Drug Users;
- (b) People who engage in sexual behaviour that puts them at risk;
- (c) Migrant workers;

- (d) Long distance truck drivers and associated population;
  - (e) Jail inmates;
  - (f) Sexual partners, spouses and children of the people in these groups; and
  - (g) Most-at-Risk-Adolescents
- 1.4.3 The primary focus of the prevention effort would be on reducing HIV infection among these populations which will involve a public health approach that seeks to work in partnership with these populations and take care not to further stigmatize them. As these populations are defined by behaviours and the people within these populations are members of the community at large therefore reaching these populations would involve working with health services, NGOs and community groups to determine approaches, strategies and messages that are accessible, appropriate and accessible to these populations.
- 1.4.4 Treatment, care and support efforts will focus on connecting all individuals and families affected by HIV and AIDS with healthcare and social support and on focusing resources on geographical areas most affected by HIV and AIDS and there will be a particular focus on bringing services as close as possible to communities most affected to ensure a long term connection between services and these communities.

## 1.5 Policy Approaches

- 1.5.1 The Policy Approaches section of the HIV/AIDS Policy sets out the approach for future policies in relation to HIV and this approach is expected to be reflected in the national laws and policies as well. The policy approach as stated in the HIV/AIDS Policy covers the following:
- (i) Reducing HIV and AIDS stigma and discrimination**
    - (a) PLHIV and KAPs shall:
      - (i) enjoy the same rights that are afforded to all citizens of Pakistan and shall be treated with dignity and respect when seeking health and welfare services and shall be encouraged to maintain contact with these services;
      - (ii) be cared for in communities in the same manner that other people are cared for and their participation in the design, delivery and evaluation of HIV and AIDS prevention and care initiatives shall be encouraged and valued;
    - (b) Particular attention shall be paid by health services to reducing the barriers that prevent PLHIV from coming forward to counseling and treatment and health workers shall be provided with training and support to ensure that they can provide non-judgemental care and support for PLHIV.
    - (c) Assistance shall be provided to employers for the purpose of modifying their employment policies in order to ensure that PLHIV have continued access to employment.
    - (d) Anti-discrimination laws shall be amended to make it illegal to discriminate against PLHIV or people perceived to be at particular risk of HIV infection.
    - (e) Media shall be encouraged to play a constructive role in the response to HIV and AIDS through reporting that increases accesses to accurate information and decreases HIV-related stigma and discrimination.



**(ii) Establishing a supportive legislative and policy framework**

Review of existing laws and policies with a view to ensuring that they do not increase HIV vulnerability and risk or work against the vision and objective of the national HIV and AIDS response.

All agencies working in the response shall be encouraged to examine their policies to determine whether they are inadvertently contributing to HIV risk or to HIV related stigma and discrimination.

The need for specific Public Health Legislation shall be examined within this process.

**(iii) Policy and programmes based on accurate data, evidence and knowledge**

This Policy Approach states that the response shall be driven by accurate data about the particular nature of HIV risk and vulnerability and the changing needs of the PLHIVs and surveillance, operational research, social research, monitoring and evaluation systems shall be strengthened to ensure that they provide the information required to ensure that the response remains flexible, relevant and effective.

**(iv) Integration of HIV and AIDS initiative and awareness into existing programmes**

HIV and AIDS information, prevention and care initiatives shall be integrated wherever possible into existing programmes and service. In the health sector this shall mean integration into the Sexual and Reproductive Health services, Maternal and Child Health Services, services for Sexually Transmitted Infections, Family Health and other mainstream services and programmes such as the Hepatitis Control Programme and the National TB Control Programme.

In other sectors this shall mean the development of strategies to ensure access for PLHIV and KAPs to welfare, housing and socio economic support programmes, drug treatment programmes, workforce development programmes and other appropriate programmes and services.

The focus shall be on breaking down access barriers and on avoiding the need for a range of unnecessary and unsustainable HIV specific services and programmes.

**(v) Encouraging a whole of government approach – across all government departments and at all levels of government**

All government ministries and departments shall identify strategies to contribute to the national response to HIV and AIDS and shall also examine their policies and programmes to ensure that they are not contributing to increased HIV risk and vulnerability.

The participation capacity of departmental and government service staff shall be enhanced through in-service training, review of policies and procedures and standard settings.

The priority of focus shall be the strengthened participation by the following Ministries and departments:

- (i) Interior;
- (ii) Women Development;
- (iii) Social Welfare and Special Education;
- (iv) Defence;
- (v) Law, Justice and Human Rights;
- (vi) Labour, Manpower and Overseas Pakistanis;
- (vii) Narcotic Control and Anti Narcotic Force;
- (viii) Local Bodies and Rural Development;
- (ix) Industries;
- (x) Population Welfare;
- (xi) Information; and
- (xii) Religious Affairs and Education.

All government departments shall be required to examine their policies and practices in order to determine ways to contribute to the response to HIV and AIDS.

Provincial and district level governments shall also be encouraged to participate in the response by adopting approaches consistent with the HIV Policy and by examining ways to reduce the impact of HIV and AIDS within their jurisdiction.

**(vi) Ensuring a multi-sectoral approach that includes the full participation of civil society and community groups, religious leaders and private sector**

The response shall recognize and support the key role of civil societies and community groups in HIV prevention and care and reaching the PLHIV and the KAPs shall require the cooperation and particular expertise and knowledge of civil society and community groups.

In particular networks of PLHIVs shall be supported and strengthened as key providers of information support and care. NGOs and community groups that works with the populations most at risk for HIV infections shall also be supported and encouraged to participate fully in the response and the programmes that bring these civil societies and community groups into the HIV and AIDS response shall be encouraged at national, provincial and district levels.

Encouragement for participation in the in HIV prevention and care shall also be provided to religious leaders and religious communities, by demonstration of leadership in the reduction of HIV related stigma and discrimination and providing programmes and services to reduce the impact of HIV and providing assistance to promote behaviours that reduce HIV transmission.

Similarly participation of the private sector shall also be encouraged and three particular aspects have been highlighted as follows:

- (i) Encouragement of the employers and employer groups for development and implementation of HIV and AIDS workplace policies that assist in reduction of HIV risks and supporting workers and families affected by HIV and AIDS;
- (ii) Private sector development projects will be encouraged to assess the HIV and AID impact of their projects and put in place strategies to minimize HIV and AIDS risk, vulnerability and impact; and
- (iii) Opportunities for public / private partnerships that enhance the national and provincial HIV and AIDS response shall also be identified and supported.

#### **(vii) Recognising the particular role of People Living with HIV**

PLHIV will be encouraged and supported to play a key role in HIV prevention and care at all levels and this shall be achieved through the support of PLHIV Networks and the implementation of strategies to foster the Greater Involvement of PLHIV (GIPA) in the design, implementation and evaluation of programmes and services.

Health and community services will work with PLHIV to develop and implement strategies that reduce barriers to service use and that promote health and well being for PLHIV and for individuals and communities affected by HIV and AIDS.

The particular role of PLHIV in raising awareness about HIV, promoting tolerance and assisting other PLHIV to access prevention, treatment, care and support services will be encouraged and supported.

#### **(viii) Health System Strengthening**

While recognizing the central role of the Health Ministry / Departments and the public services in HIV and AIDS prevention, treatment and care the HIV Policy provides that it shall be supported by a strengthening of the systems necessary to provide safe, accessible, co-ordinated and integrated care. The workforce of the health care system shall be provided with the knowledge, skills and resources that are needed to provide effective prevention, treatment and care services to PLHIV and this shall include training and workforce development, access to infection prevention guidelines and the equipment necessary to avoid HIV transmission in the workplace and access to PEP programmes for people potentially exposed to HIV.

#### **(ix) HIV Prevention**

Prevention efforts shall be concentrated on the populations most at risk and shall involve working with government and private health services, civil society and community groups to put in place a range of targeted interventions aimed at reducing risk behaviours. Strategies shall include targeted condom promotions, outreach to particular populations at sexual risk, integration of HIV into sexual and reproductive health services, needle exchange outreach to IDUs and referral to drug treatment services.

Efforts shall be made to ensure that accurate and relevant information about HIV and AIDS and the behaviours that put people at risk for HIV infections shall be made available to people in a language and format that they understand and from a source that they respect. There shall be a focus on reaching people with little formal education, people who cannot read and from marginalized groups and community and information about HIV and AIDS shall be included in curricula and teachers training for schools, graduate teachers training programmes including those for medical and para medical schools. The assistance of groups that reach into particular communities shall be sought to ensure that HIV and AIDS information reaches deep into those communities.

In addition to the population most at risk, the particular HIV prevention needs of vulnerable populations, e.g., in and out-of-school youth, prisoners, refugees and people in conflict zones and uniformed personnel shall be addressed through targeted government and NGO community programmes.

**(x) HIV Counseling and Testing**

HIV testing and counseling shall be voluntary and confidential and shall always be accompanied by access to information and counseling. Any person who tests positive shall be assisted in accessing on-going counseling, treatment, care and support. Test results shall be confidential and systems shall be put in place to ensure that the privacy of people who undergo such tests. In all cases specific consent shall be obtained including cases where services recommend testing due to perceived risks or as a diagnostic measure in the presence of illness.

Provisions shall be made in National HIV & AIDS law for voluntary counseling and testing for at risk minors an the age of consent shall be eighteen (18) years. Children under this age shall need the consent of their parents or guardians. In special cases children living independently who are not in contact with their parents or who do not have guardians shall be able to consent for HIV testing after they have been provided with age-sensitive information and counseling.

**(xi) Access to treatment, care and support**

PLHIV shall have the same access to health care services as other citizens of Pakistan and to improve access health services shall take steps to de-centralize HIV treatment, care and support services so that they are located as close as possible to the people who need them. Standards of care shall be set and monitored and the active participation of PLHIV shall be encouraged as a way of improving the quality of health services. The health services shall work towards achieving increased access to ART and consistent access to the medicines that prevent or treat opportunistic infections and ARTs shall be provided free of charge and shall be integrated into comprehensive care and support programme. The government shall work with UN agencies and international foundations to ensure that PLHIV are able to access ART therapy in line with Pakistan's commitment to the UN "Universal Access by 2010" goals.

**(xii) Prevention of parent-to-child transmission of HIV**

There is to be a focus on ante-natal care services and on assisting pregnant woman particularly wives of returning labor migrants to assess their HIV risk, to access voluntary, confidential HIV counseling and testing, to access ARTs for themselves, and to access Prevention of Mother-To-Child-Transmission programmes if HIV positive.

**(xiii) Blood and blood safety**

Public and private blood supplies to be secured to ensure that the transmission of HIV and other blood borne diseases through blood and blood products is eliminated; and unsafe practices associated with the sale of blood by donors and the use of unsafe injections in medical practices to be eliminated. All blood products to be screened for HIV prior to use. This is to be co-ordinated with the Blood Transfusion Authority.

**(xiv) Co-ordination between the national HIV and AIDS response and the national response to reduce illicit drug use**

A co-ordination mechanism to be established for the purpose of maximizing co-ordination and co-operation between the national efforts to reduce the use of illicit drugs and the national HIV and AIDS response; which will provide a forum for ensuring that these two important national responses work together.

**(xv) Discouraging the promotion of unproven HIV and AIDS cure**

As PLHIV are vulnerable to cure peddling and often seek treatment from a range of sources therefore promotion and selling of unproven HIV and AIDS cures shall be punishable by law, specially since this practice affects the families of the PLHIV financially as well as emotionally.

## Chapter 14 NARCOTICS POLICIES

### 1. NATIONAL ANTI NARCOTICS POLICY 2010 (UPDATED AUGUST 2011)

#### 1.1 The 2010 Anti Narcotics – Overview

- 1.1.1 The Policy objectives as stated in the National Anti Narcotics Policy 2010, as updated in August 2011 ("**Narcotics Policy**")<sup>4</sup> are (i) Drug Supply Reduction; (ii) Drug Demand Reduction; and (iii) International Co-operation.

**(i) Drug Supply Reduction**

The Drug Supply Reduction component of the Narcotics Policy comprises of a three pronged approach (a) Elimination of poppy cultivation to maintain Pakistan's poppy free status; (b) Prevent the trafficking and production of narcotic

<sup>4</sup> National Anti Narcotics Policy 2010 – Updated August 2011 – Ministry of Narcotics Control, Narcotics Control Division, Government of Pakistan.

drugs, psychotropic substances and precursor chemicals; and (c) Strengthen law enforcements agencies and streamline activities; each of which is dealt with below.

(a) *Elimination of poppy cultivation to maintain Pakistan's poppy free status*

- The Narcotics Policy provides that Pakistan's counter-terrorism strategy should be integrated with the poppy eradication strategy at the national level in order to ensure a comprehensive approach to transnational crime. The Governments of Khyber Pakhtoonkhwa province, Balochistan and FATA should strictly eliminate poppy cultivation while providing alternative means of livelihood to poppy cultivators. Federal and provincial Law Enforcement Authorities (LEAs) should work together and assist each other in the surveying, monitoring and elimination of poppy cultivation.
- Additionally an awareness campaign should also be launched to dissuade farmers from cultivating poppies and encourage them to pursue / engage in licit livelihoods.

(b) *Prevent the trafficking and production of narcotic drugs, psychotropic substances and precursor chemicals*

- The precursor chemicals that are listed in the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1998 are defined as "Controlled Substances" and their imports for licit industrial and pharmaceutical use is strictly controlled by the Ministry of Commerce and Ministry of Narcotics Control.
- However the smuggling of such Controlled Substances and their diversion for illicit uses is an ongoing challenge for LEAs. According to the Narcotics Policy, drug producers, specially of opiates have developed substitute chemical that are not included in the Controlled Substances list as a consequence of which the identification and interdiction of such precursor chemicals has become difficult.
- The Anti-Narcotics Force (ANF) needs to be enhanced with an identification unit of precursor chemicals at each regional directorate in order to prevent smuggling and illicit diversion of the same.
- Additionally the sharing of information between various concerned government departments and agencies will be streamlined in order to ensure faster and effective interdiction of controlled substances.

(c) *Strengthen law enforcements agencies and streamline activities*

- The Ministry of Narcotics Control is the policy level institution dealing with the narcotics control in Pakistan and ANF is the principal enforcement agency, however there are various other federal and provincial governmental departments and agencies that deal with drug enforcement; and as per the Narcotics Policy a "robust co-ordination mechanism" is needed to integrate such departments and agencies.
- On the Federal level an "Inter-Agency Task Force on Narcotics Control" is meant to co-ordinate drug interdiction operations of all

federal and provincial agencies, which is headed by the Director General of ANF and will comprise of the heads of drug LEAs.

- This Task Force is meant to monitor, review and analyse drug interdiction performance of all LEAs on a regular basis and to make necessary plans for effective implementation and co-ordination of enforcement strategies.
- On the provincial level, the “Provincial Narcotics Control Committees” established under the Anti Narcotics Policy of 1993 (“**1993 Policy**”) are to be reorganized in order for all relevant stake holder to be involved in the co-ordination and monitoring of the policy implementation, and to include all provincial agencies, departments and NGOs engaged in anti-narcotic activities.
- Additionally, “District Narcotic Control Cells” created under the 1993 Policy are to be made functional and directly responsible for prosecution of the drug dealers in their respective jurisdictions.
- District Governments are expected to ensure that no narcotic drugs are being trafficked through their jurisdictions and that known drug traffickers and financiers are accordingly prosecuted.

## (ii) Drug Demand Reduction

The key elements of the Narcotics Policy is to reduce demand by focusing on drug demand prevention and treatment of drug users. According to the 2006 National Assessment of Problem Drug Use in Pakistan (“**Problem Drug Use Survey**”), which although was not a comprehensive survey, the estimated prevalence of opiate use in Pakistan is at 0.7 percent of the adult population. However, according to the Narcotics Policy, there has been a substantial increase in Opium and Heroin production in neighboring Afghanistan since the Problem Drug Use Survey and a shift in the trafficking routes towards Pakistan; and as a consequence it is likely that the prevalence of opiate use is higher.

The “Drug Demand Reduction” objective of the Narcotics policy also comprises of three elements.

- (a) *Enhance demand prevention efforts through education and community mobilization campaigns and projects*
- A “Drug Free” campaign is to be launched in educational institutions and work places in each city that will aim at educating young people about drug abuse and will involve parents, teachers, students, religious leaders, health professionals, community leaders and social workers.
  - For the purpose of combatting drug abuse in jails the Ministry of Interior in collaboration with provincial jail departments shall develop special training and treatment programmes for drug abuse and drug related HIV prevention and rehabilitation.
  - The first model for drug free jail was to be launched at Adyala Jail in Rawalpindi.
  - A campaign for Drug Free cities will also be launched where a drug free city will be established in each province as a model for other to



emulate and the help of provincial governments will be sought with regard to these projects.

- Lahore has been selected as the first model drug free city for which a comprehensive plan has been evolved by the Ministry of Narcotics and Control and the Government of Punjab.
- In addition to the above, material creating awareness about drug abuse shall be developed for inclusion in the curriculum of primary, secondary and higher secondary schools and universities and in order to ensure drug free work place, labour unions shall be engaged in to promote the message against drug abuse.
- Labour Unions shall also be engaged to facilitate rehabilitation of drug addicts and assist their induction back into their places of employment after their treatment.
- In addition to the various “Drug Free” campaigns the Drug Demand Reduction objective also includes improvement of recreational facilities; community mobilization and launching of awareness campaigns against drugs; and engaging the leaderships of political parties and Members of Parliament to play an active role against drug proliferation and trafficking.

(b) *Develop effective and accessible drug treatment and rehabilitation systems*

- In order to reduce drug related health problems, to encourage prevention, rehabilitate drug addicts and to successfully reintegrate addicts into the community it is necessary that effective, efficient and accessible drug treatments systems are developed and for this purpose the Narcotics Policy provides that the drug treatment and rehabilitation centres must be mainstreamed into the healthcare system and should be established in each federal, provincial and district hospital in accordance with international best practices; as a matter of priority.
- Provincial health departments should develop wards in both district hospitals and tehsil hospitals for treatment and detoxification of drug users and the Narcotics Control Department (**NCD**) and ANF shall also upgrade the facilities available at the Model Addict Treatment and Rehabilitation Centres in Quetta, Karachi and Islamabad and establish new ones in Lahore and Peshawar.
- The treatment and rehabilitation centres functioning under the aegis of various NGOs shall be also assisted through financial support and the provision of experts with international assistance.
- Drop In Centres (**DIC**) for Injecting Drug Users (**IDUs**) shall be established in all major cities of Pakistan.
- Additionally rehabilitation programmes for skill development of drug addicts shall be launched through vocational training centres.
- Drug treatment and rehabilitation facilities shall be extended to key jails in Pakistan beginning with Adiala Jail in Rawalpindi; as according to available estimates 40% of Pakistan’s prison population indulges in drug abuse.



- Special treatment centres shall be established for women in five cities of the country.
  - Specially designed programmes shall be introduced for street children with solvent abuse problems in major cities, including outreach and residential treatment programme.
  - Ministry of Narcotics and Control shall establish a Technical Task Force comprised of psychiatrists, psychologists and NGOs to develop a uniform drug treatment protocol and standard service for all government, private and NGO run drug treatment centres and training of staff of NGOs and other institutions in drug treatment through national and regional courses, workshops and seminars shall be arranged.
- (c) *Conduct a drug abuse survey to determine the prevalence of drug addiction*
- A nationwide survey shall be conducted in order to determine the current pattern and prevalence of drug addiction in Pakistan and in order to ensure that the drug demand reduction and treatment and rehabilitation programmes are compatible with needs of the drug addict population of the country.
  - Support for conducting the survey shall be sought from UNODC and other donor agencies.

### **(iii) International Cooperation**

The successful implementation of the Narcotics Policy is dependent on regional and international cooperation. The Government Pakistan being a signatory to all UN Drug Control Conventions as well as the SAARC Convention on Drug Control continues its policy of cooperation on drug related intelligence sharing, border management and joint operation against drug trafficking and precursor chemical smuggling. Pakistan shall collaborate in regional and international forum to counter narcotics trafficking including at forums hosted by international LEAs and UNODC by sharing information and considering joint initiatives. International cooperation is to be enhanced by placing Drug Liaison Officers in various countries under a phased programme including Vienna (Austria), Kabul (Afghanistan), Tehran (Iran), Bangkok (Thailand) and Dubai (UAE).

## **1.2 The Implementation Partners – Federal Government**

1.2.1 As per the Narcotics Policy anti narcotics issues are the shared responsibility of a number of ministries and government departments and the following ministries and government departments and the roles assigned to them have been listed in the Narcotics Policy:

- (a) *Ministry of Interior*
- Assistance in implementation of supply reduction strategies through LEAs under its control
  - Assistance in developing “Drug Free” cities in all provinces
  - Assistance in developing intelligence related to drug trafficking
  - Promote drug free culture in prisons

- Assist in money laundering cases and investigation of drug generated assets
  - Assist in mutual training of drug LEAs
  - Eliminate corruption in LEAs
- (b) *Ministry of Commerce*
- Monitor the import and use of prohibited precursor chemicals
  - Monitor the emergence of substitute precursor chemicals not on the controlled substance lists
- (c) *Ministry of Finance*
- Monitor drug related assets and suspicious transactions through FMU and share information with other Ministries
- (d) *Ministry of Foreign Affairs*
- Promote and actively participate in bilateral, regional and international efforts to combat drugs
  - Boost international understanding and cooperation towards precursor control and demand reduction
- (e) *Ministry of Human Rights*
- Ensure human rights of drug users are upheld, and they are treated as victims and not criminals
- (f) *Ministry of Information and Broadcasting*
- Collect information for launching an awareness campaign against drugs
  - Actively participate in social movement against drugs and promote themes of a drug free society
  - Facilitate the projection of drug free homes, cities, educational institutions and jails
  - Promote awareness campaigns outlining the harms of drug use
- (g) *Ministry of Human Resources*
- Promote drug free culture among migrant workers
  - Encourage rehabilitation and reintegration of prisoners with drug offences
  - Develop programmes for skill development of drug addicts
  - Encourage labour unions to promote drug free workplaces
- (h) *Planning and Development Division*
- Plan for the impacts of infrastructure development and trade on drugs and precursor trafficking
  - Consider emerging drug related needs for example drug related facilities when planning new trade centres
  - Promote alternative livelihood strategies for poppy cultivating farmers

- Encourage economic development in rural areas to provide a licit alternative to the drug trade
- (i) *Ministry of Railways*
  - Facilitate drug-free travelling on trains as part of the drug supply reduction strategy through the Railway Police
  - Train doctors and para medical staff in the treatment of drug users in Railway Hospital
  - Encourage labour unions to promote drug free workplaces
- (j) *Ministry of Religious Affairs*
  - Develop special courses on drug abuse prevention for students and teachers of madrasas
  - Promote a drug free society in madrasas
- (k) *Ministry of Law and Justice*
  - Improve the legislative framework against drug abuse
  - Improve the capacity and training of prosecutors and judges working on drug cases

### **1.3 Provincial Governments, Capital Administration and Development Division**

1.3.1 In addition to the Federal Ministries and Government departments, Provincial Governments also have an important role to play in the policies and efforts of the anti-narcotic department and the provincial government departments and their relevant roles are detailed hereinbelow:

- (a) *General*
  - Assist in implementation of all facets of National Anti Narcotic Policy
  - Conduct survey of drug users
  - Encourage all provincial departments to develop a drug free society and be part of the social movement against drugs
  - Support the development of drug free cities and educational institutions in provinces
- (b) *Education*
  - Develop curriculum against drug abuse
  - Publish anti drug messages in text books / note books for schools, colleges and universities
  - Develop a model drug free educational institute
  - Promote extra curricular sports and others activities through educational institutions
  - Support university research and assessment studies on drug abuse
- (c) *Health*
  - Establish special wards in Government hospitals for drug treatment
  - Register drug treatment centres run by the private sector and NGOs

- Arrange programmes for training of doctors and paramedical staff in treatment and detoxification of drug users
  - Ensure the strict enforcement of the prescription code
  - Effectively control the manufacturing and sale of medicines which can be abused
  - Develop best medical practices for treatment of drug users
- (d) *Population Welfare*
- Support widespread participation in the drug users survey
  - Assist in educating people about HIV related to injecting drug users
  - Promote a drug-free Pakistan
- (e) *Social Welfare*
- Identify and support NGOs working on anti-drug programmes
  - Ensure NGO treatment and rehabilitation centres are functioning effectively
- (f) *Youth*
- Develop programmes for youth to support drug demand prevention
  - Organise sports activities to create healthy activities among youth
  - Launch an awareness campaign against drugs for youth through seminars, workshops and sports and cultural programmes
- (g) *Women Development*
- Mobilize women within the community to participate in the social movement against drugs
  - Develop special programmes for families for developing a drug-free home
  - Assist women drug victims in rehabilitation
- (h) *Sports*
- Enhance sport facilities in each city and town
  - Launch an awareness campaign against drugs for youth through seminars, workshops and sports and cultural programmes.

## 2. DRUG ABUSE CONTROL MASTER PLAN 2010 – 14

### 2.1 Introduction

2.1.1 The Drug Abuse Control Master Plan 2010 – 14 has been prepared by the Ministry of Narcotics Control and the ANF on the basis of a consultative process through a Steering Committee led by ANF (**“Drug Abuse Master Plan”**).

### 2.2 Goal and Objectives

2.2.1 The goal of the Drug Abuse Master Plan, as stated therein is to reduce the health, social and economic costs associated with drug trafficking and substance abuse in Pakistan.

- 2.2.2 On the basis of the above stated goals the Drug Abuse Master Plan has formulated the following five (5) drug control objectives for the following five (5) years:
- (a) Control the production and trafficking of narcotic substances;
  - (b) Limit smuggling, trafficking and distribution of illicit narcotic and psychotropic substances, amphetamine type stimulants and precursor chemicals;
  - (c) Check the increase in drug demand and achieve reduction in the number of drug addicts through prevention and treatment and rehabilitation measures;
  - (d) Enhance efforts to forfeit drug generated assets and curb money laundering;
  - (e) Promote international co-operation in the fight against drugs.
- 2.2.3 The Drug Abuse Master Plan provides that the awareness, prevention, treatment and rehabilitation of drug use requires a multi-pronged implementation strategy that combines school based programmes, community based prevention, health promotion activities and targeted prevention and intervention programmes focusing on street children and Most At Risk Adolescents. It further provides that the drug treatment facilities should be able to adapt to meet the emerging and diverse needs of drug dependent persons especially those with co-morbidities such as HIV, HCV and TB and accordingly the area of prevention, treatment and rehabilitation requires capacity building which includes specialized drug demand reduction staff in the ANF.

## 2.3 Issues to be Addressed

- 2.3.1 The Drug Abuse Master Plan identifies the issues that need to be addressed during the Drug Abuse Master Plan period of 2010 – 14, and these include *inter alia* the following, under the head of “**Check the Increase in Drug Demand and Achieve Reduction in the Number of Drug Addicts through Prevention and Treatment and Rehabilitation Measures**”:
- (a) Absence of consistent drug abuse prevention programmes;
  - (b) High prevalence of HIV among injecting drug users;
  - (c) Introduction of cocaine and synthetic drugs (ecstasy and solvent abuse etc);
  - (d) Limited availability of comprehensive drug treatment programme, including prisons, street children and women;
  - (e) Lack of regular data collection and dissemination on drug abuse pattern and trends;
  - (f) Lack of co-ordination between Ministry of Narcotics Control, Ministry of Health, Ministry of Social Welfare and provincial departments;
  - (g) Limited technical capacity to deliver demand reduction programmes in the public sector and civil society.

## 2.4 Institutional Framework for Narcotics Control

- 2.4.1 Chapter 3 of the Drug Abuse Master Plan pertains to the “Legal and Institutional Framework for Narcotics Control” (“**Chapter 3**”) and deals with the various institutions, within the Government that deal with Narcotics Control and the legal framework which regulates Narcotics control and the amendments required in the same.

2.4.2 The relevant institutions dealing with Narcotics Control, as set out in Chapter 3 are as follows:

- (a) Ministry of Narcotics Control ("**MNC**"), which is responsible for making and planning Pakistan's drug control policy.
  - (i) **National Narcotics Control Council** – For the purpose of overseeing the implementation of the Drug Abuse Master Plan and the Narcotics control policies and programmes in the country it has been proposed that a National Narcotics Control Council ("**NNCC**") be set up under the chairmanship of the Prime Minister of Pakistan. The secretariat of the NNCC is to be based at the MNC.
  - (ii) **Policy Review Board** – The Policy Review Board ("**PRB**") has been set up for the purpose of reviewing the implementation of the narcotics policy by various organisations and for making such recommendations to the Federal Cabinet on policy issues pertaining to Narcotics as it may deem necessary and appropriate. The PRB is required to meet once a year and has been established at the federal level.
  - (iii) **Narcotics Interdiction Committee** – The Narcotics Interdiction Committee ("**NIC**") has been established for the purpose of reviewing, monitoring and evaluating Narcotics interdiction operations of all LEAs and to make necessary plans for more effective control over drug trafficking throughout the country. NIC is required to meet every six (6) months. The Drug Abuse Master Plan has proposed that the NIC be renamed the "Narcotics Interdiction and Drug Assets Seizure Committee" to emphasize the Government's resolve in tackling the problems created by drug-generated assets.
- (b) Pursuant to the Control of Narcotics Substances Act, 1997, the ANF has the main responsibility for combatting drug trafficking in Pakistan and for interdicting the production, smuggling, trafficking and abuse of narcotics and illicit psychotropic substances.
- (c) The Frontier Corps ("**FC**"), a paramilitary organization deployed along Pakistan's border with Afghanistan in the Khyber Pakhtoonkhwa province and Balochistan and along Pakistan's border with Iran in the province of Balochistan, are primarily responsible for guarding the border areas, however they also undertake counter drug-trafficking operations. ANF has delegated anti-narcotic powers to the FC. According to the Drug Abuse Master Plan their investigative capacity requires to be enhanced.
- (d) Pakistan Customs ("**Customs**") has two main arms of service and drug control falls within the remit of both and both employ specialist drug units of varying sizes, with larger units being located at international airports and ports of the country.
- (e) Pakistan Coast Guards ("**Coast Guard**") although responsible for security for the security Pakistan's coastline is currently concentrating mainly on drug trafficking. The Drug Abuse Master Plan has proposed that during peace time the Coast Guard should be placed under the administrative control of ANF.
- (f) The provincial Police forces and the Excise Department are required to check the trafficking and distribution of drugs within the country specially with regard to the consumption level, specially in view of the fact that ANF's is

involved in high value consignments of narcotic drugs and do not have the manpower to police the streets for drug peddlers.

- (g) Maritimes Security Agency (“**MSA**”) is responsible for patrolling the Exclusive Economic Zone in co-operation with Pakistan Navy and Army manned Coast Guards which include narcotics interdiction.
- (h) Pakistan Rangers (“**Rangers**”) are responsible for the internal security of the country and are organized at a provincial level; their duties include interdiction of narcotic drugs and psychotropic substances.
- (i) Airport Security Force (“**ASF**”) has a presence at all the airports in the country and while its primary responsibility is control of weapons and ammunition smuggling onto aircrafts, however it is responsible for security of airports and also assists in detection of narcotics trafficking through its baggage screening mechanisms at different airports.

## 2.5 Proposed Amendments in the Legal Framework

2.5.1 The main law pertaining to narcotics in Pakistan is the Control of Narcotics Substances Act, 1997 (“**CNSA**”), which covers all aspects of drug abuse, drug trafficking.

2.5.2 The Drug Abuse Master Plan has highlighted certain amendments to the CNSA, as follows:

- (a) Provisions should be added to include Amphetamine Type Stimulants (ATS), synthetic drugs, semi synthetic drugs and their destructive effects;
- (b) Currently the CNSA does not provide any time limits for the finalization of inquiries and investigations by the Investigating Officers (IO) in the asset cases nor are the courts bound to complete the trials of the asset cases within a specified period of time, consequently conviction often takes a long period of time. Amendments have therefore been proposed in the CNSA to the extent of asset matters having some embargo on the IO and the Special Courts. Additionally provisions have also been suggested in connection with limiting the period of inquires and investigation by the IO, trial courts and filing of appeals before the Appellate Courts;
- (c) Drug cases that involve juveniles are not properly prosecuted as public prosecutors do not have proper experience of narcotics cases and accordingly amendments have been proposed for empowering ANF Special Courts to try juvenile drug cases.

## 2.6 Drug Demand Reduction

2.6.1 Chapter 6 of the Drug Abuse Master Plan deals with Drug Demand Reduction and while addressing the HIV risk to the IDU provides that a comprehensive strategy for drug abuse prevention, treatment and rehabilitation in Pakistan should address all the main areas of intervention:

- (a) policy measures to address the control of both licit and illicit substances developing an environment that is conducive to prevention and treatment efforts;
- (b) prevention of drug abuse;

- (c) reduction of the social and health consequences;
- (d) treatment of drug dependence and criminal justice system measures.

2.6.2 The “Priority Areas to be Addressed” as identified in the Drug Demand Reduction section of the Drug Abuse Master Plan, include (a) School and Community Based Prevention Programmes; and (b) Improved Delivery of Treatment Services.

## 2.7 Improved Delivery of Treatment Services

2.7.1 Under the head of improved delivery of treatment services, the Drug Abuse Master Plan has identified the requirement for:

- (a) developing standards and protocols of essential services that should be provided through drug treatment facilities;
- (b) certification of drug treatment facilities for the quality of services provided based on the developed standards and protocols;
- (c) instituting training programmes for developing and upgrading the skills of key staff and service providers in the drug treatment facilities;
- (d) putting in place a system ongoing monitoring of the delivery, quality and coverage of drug treatment services as well as the evaluation of the various interventions.

2.7.2 Improved delivery of treatment services has also identified the requirement for “addressing the diverse and evolving needs for treatment and care” and has recognized that opioid users are mostly poly drug users with many of them being injecting users, resulting in co-morbidities such as Hepatitis C, Tuberculosis and HIV and accordingly the treatment and services should be developed that take these challenging and changing demands for care of the drug dependent person into account, along with the provisions of conventional interventions as a continuum of care. Some of the issues that need to be considered are:

- (a) Managing withdrawal on a poly user or a person who has HCV, HIV or TB;
- (b) A system within treatment facilities for a referral for diagnosis, treatment and care of concurrent conditions or diseases such as HCV, HIV or TB;
- (c) The capacity of key service providers to treat drug users other than opioid dependence e.g for dependence on inhalants or stimulants; and
- (d) Adequate knowledge of key service providers in treatment facilities.

## 2.8 Implementation Strategy

2.8.1 The main pillars of implementation strategy comprise of the following heads and the relevant provisions thereof have been set out hereinbelow:

### (i) Drug Abuse Prevention

NGOs working in the field of drug demand reduction and HIV prevention are to establish national and provincial umbrella organisations and these organisations shall act as clearing houses for information and represent NGOs in general policy discussion with the government at national and provincial levels and such organisations that are already functioning shall need strengthening;



District governments to establish District Drug Abuse and HIV Prevention Committees in at least forty districts and these committees shall design projects targeting youth, secure funding, implement, monitor and evaluate the projects;

MNC / ANF will in close collaboration with the Ministry of Information and mass media departments of universities develop drug abuse and HIV prevention campaigns for electronic and print media and informal communication media such as street theatres, puppet shows etc, to target rural youth and other specific groups;

The Ministry of Education, Curriculum Wing in collaboration with MNC and UNODC will incorporate drug abuse and HIV prevention material in curriculum for classes 8 to 14 and teacher training courses on drug abuse prevention to be organized at provincial teacher training institutions;

The Ministry of Religious Affairs and Dawa Academy in collaboration with MNC to develop special courses for madrasa students and for religious teachers undergoing training at the Academy.

## **(ii) Drug Abuse Treatment and Rehabilitation**

Provincial health departments in collaboration with Ministry of Narcotic Control (MNC) and Anti Narcotic Force (ANF) to upgrade twenty (20) existing treatment centres in the public and private sectors, throughout the country and to provide quality drug treatment and rehabilitation services. ANF to register all drug treatment centres for monitoring and evaluation. The CNSA provides that the first time free treatment shall be provided for every addict registered with the by the provinces;

ANF shall co-ordinate training of drug abuse treatment staff and other institutions through national, regional and international courses and other means which shall include methodologies for handling emerging issues in drug abuse such as *inter alia* dealing with HIV, HCV and TB positive drug users and establishing drug treatment and rehabilitation programmes to prevent drug related transmission of HIV in prisons;

The MNC / ANF in collaboration with the National Prison Staff Training Institute Lahore to develop special training packages on drug abuse and drug related HIV prevention and rehabilitation of drug addicts for prison staff trainees at the institute and a drug abuse prevention and treatment programme will be established in 20 prisons;

The MNC / ANF in collaboration with the NACP to expand and strengthen the outreach services for motivational counseling, HIV education, referrals for IDUs for treatment and follow up.

## **(iii) Capacity Building and Coordination**

The drug demand reduction capacity of ANF at national and provincial levels shall be increased by appointment of professional staff and enhancement of their capacity to develop, monitor and evaluate projects and programmes for drug abuse prevention, treatment and rehabilitation of addicts and prevention of drug related HIV transmission in the IDU.

Roles and responsibilities of ministries and agencies shall be clearly defined for drug abuse prevention, treatment and rehabilitation of drug addicts and transmission of HIV among IDUs. A co-ordinating body shall be established comprising of Ministries of Narcotic Control, Health, Social Welfare, Education, relevant provincial departments and civil society organisations and shall design and monitor the demand reduction programmes.

National level technical working groups shall be established to address and make recommendations on challenging issues of IDUs, street children abusing solvents and other drugs and HIV in prisons etc.

**(iv) Drug Abuse Monitoring System**

District health officers in collaboration with the provincial HIV Control Programmes and regional directorates ANF will regularly investigate all HIV outbreaks among IDUs and provincial and district authorities shall develop contingency plans to stop the spread of HIV and other blood borne infections, particularly among IDUs and implement these plans as necessary.

## **3. ANTI-NARCOTIC FORCE**

### **3.1 Anti-Narcotic Force**

- 3.1.1 Initially Pakistan established a Pakistan Narcotics Board that comprised of representatives from the Provincial Governments and representatives from certain Federal Ministries and divisions to deal with the illicit drug trade. The Pakistan Narcotics Board was subsequently reorganized into the Pakistan Narcotics Control Board and after the formation of the Anti Narcotics Task Force in 1991, the Pakistan Narcotics Control Board and the Anti Narcotics Task Force were amalgamated to form the Anti Narcotics Force ("**ANF**") in 1995.

### **3.2 Model Addiction Treatment and Rehabilitation Centres**

- 3.2.1 Notwithstanding that the responsibility for the registration and rehabilitation of addicts, under the CNSA vests with the Provincial Governments, the ANF has established Model Addiction Treatment and Rehabilitation Centres ("**MATRC**") in three cities of Pakistan, namely, Islamabad, Quetta and Karachi. According to the information provided by ANF the majority of the facilities in the public sector do not provide rehabilitation services and only provide de-toxification of drug addicts. The MATRC provide free treatment, food, boarding and rehabilitation to drug addicts.







**PART VI**  
**KEY AFFECTED**  
**POPULATIONS**

# Chapter 15 PLHIV / IDUs

## 1. INTRODUCTION

- 1.1.1 According to the findings of the “*Drug Use in Pakistan 2013 Summary Report*” prepared by UNODC, an estimated 5.8% or 6.54 million of the population of Pakistan aged between 15 and 64 used drugs during the last 12 months. The study has also revealed that there are around 420,000 injecting drug users (“**IDUs**”) in Pakistan that represent 0.4% of the population of Pakistan; which is a number higher than previously reported, with the highest number of IDUs in the province of Punjab, being 250 thousand followed by Sindh with 95 thousand.
- 1.1.2 As per an estimate by Nai Zindagi Trust, 40% of the street based IDUs in Pakistan fall within the category of PLHIV, with 50% of them already married with three children per household.
- 1.1.3 The field research with regard to PLHIV comprised of group interviews and discussions with a specific group of PLHIV in Karachi; discussions with a NGO representative working with PLHIV in Rawalpindi; members of the SACP and PACP and the findings are detailed in this Chapter. As the PLHIV and IDUs formed part of the same group therefore both are discussed in this Chapter.

## 2. GROUP INTERVIEW WITH PLHIV

### 2.1 Composition

- 2.1.1 Interviews and group discussions were conducted with a group of PLHIV in Karachi<sup>5</sup>. Out of the group of nine (9) PLHIV:
  - (a) Two (2) PLHIV, which includes one (1) IDU contracted HIV from FSWs;
  - (b) One (1) PLHIV (HSW) contracted HIV from a male client;
  - (c) One (1) PLHIV (MSW) contracted HIV from sex work;
  - (d) One (1) PLHIV (returning immigrant) contracted HIV from a MSW; and
  - (e) The remaining four (4) PLHIV (recovering IDUs) contracted HIV through syringe re-use.

### 2.2 Education

- 2.2.1 All members of the group had differing levels of literacy but no member of the group was literacy challenged.

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<sup>5</sup> Interviews conducted with PLHIV in Karachi at Parwaz Male Health Society, Karachi May 2013.

## 2.3 Health Sector

- 2.3.1 All members of the group were satisfied with the services being provided by the SACP and had no specific complaints about the doctors, health service providers at the SACP or any of the services being provided there.
- 2.3.2 The only complaint, and a recurring one was by the PLHIV with opportunistic infections such as HCV, who reported facing extreme difficulty in receiving treatment which they attributed to administrative processes. There was also a general sense of distrust about the cost of medication and the availability of medicines.

## 2.4 Employment

- 2.4.1 All members of the group were currently un-employed and reported that they faced discrimination upon disclosure of their HIV positive status.
- 2.4.2 Additionally all members of the group were concerned about the fact that they were unable to find employment due to their health status and were of the view that steps should be taken to ensure that there is no discrimination in employment due to health status.

## 2.5 Marital Status

- 2.5.1 Five (5) members of the group were married, yet two (2) were separated from their wives. Out of the remaining three (3) one of the wives was HIV positive while the other two (2), while duly screened were HIV negative, as confirmed by the group members. Two (2) members of the group had children but the children were HIV negative, as confirmed by the group members.

## 2.6 Stigmatization and Discrimination

- 2.6.1 Each member of the group confirmed facing discrimination and stigmatization in every sphere of life, starting from family members for some to health care providers for all, in situations when they were being dealt with in departments of public hospitals other than the HIV department. The members of the group reported that the level of discrimination in the private hospitals was comparatively less.
- 2.6.2 Discrimination towards PLHIV in the health sector has been widely reported, directly by PLHIV and indirectly by KAPs, in all three cities, with the consequent outcome of the PLHIV terminating the ongoing treatment.
- 2.6.3 The members of the current group reported that they did not face any discrimination at the SACP.

## 2.7 Field Findings

- 2.7.1 The majority of the group was aware of the source of the HIV transmission. The group as a whole was mainly concerned about the following:

- (a) The ongoing treatment for HIV at the public health facilities, with which the majority did not report any complaints;
- (b) The inability of the group and other PLHIV to be gainfully employed and the discrimination faced by the PLHIV when seeking employment;
- (c) The hardships faced by PLHIV when accessing health facilities in relation to the allied infections and medical situations; where as per the report of each member of the group, they not only face discrimination but also have to face hardships and great inconvenience.

## 3. NGO IN RAWALPINDI

### 3.1 Perspective with regard to PLHIV in Pakistan

- 3.1.1 The general perspective with regard to PLHIV in Pakistan, as ascertained from our discussion with a NGO working for the rights of PLHIV in Rawalpindi<sup>6</sup> is that there exists a lack of awareness among the general population with regard to HIV, which lack of awareness ranges from among the law enforcement agencies to the common man.
- 3.1.2 The discrimination faced by PLHIV is also common across the board and has been reported from all sectors of the PLHIV community and was also confirmed by the said NGO; which also included employment related discrimination and discrimination in the health sector, which was perceived as the initial stage of social discrimination and stigmatization, in most cases.
- 3.1.3 The lack of awareness among the law enforcement agencies is being addressed by the NGO by arranging special awareness programmes.

## 4. AIDS CONTROL PROGRAMME

### 4.1 Sindh AIDS Control Programme

- 4.1.1 The personnel of the Sindh AIDS Control Programme ("**SACP**") were most receptive and informative and provided the information required<sup>7</sup>.
- 4.1.2 SACP did not corroborate the delays in receiving treatment for HCV reported by PLHIV, although they did agree that the lack of one window operation for HIV and its allied opportunistic infections such as HCV, HBV and TB did create delays and problems for PLHIV in accessing treatment and also resulted in certain amount of discrimination and stigmatization, due to lack of awareness and training among the health care providers in other departments.
- 4.1.3 A problem that is faced by the PLHIV in other departments is the lack of identification documentation; since majority of the PLHIV are IDUs and therefore may not have

<sup>6</sup> Association for People Living with HIV in Islamabad. (Interview with Mr. Asghar Satti in Islamabad on May 17, 2013)

<sup>7</sup> Interviews were conducted at the SACP with the Principal Programme Manager, Enhanced HIV Control Programme, Government of Sindh, Health Department, Karachi and Dr. Abro, the medical official in charge of the SACP's HIV treatment centre at the Civil Hospital at Karachi.



identification documentation they face hurdles in registration in other departments for treatment of health care facilities. It was suggested that a one-window system would be helpful and would reduce the problems of the PLHIV greatly since the PLHIV are registered with the HIV unit and therefore that should constitute sufficient registration for all other departments.

- 4.1.4 There were a number of children reporting co-morbidities of Thalassemia and HIV infections.
- 4.1.5 The SACP is funded by the Government of Sindh.

## 4.2 Punjab AIDS Control Programme

- 4.2.1 In comparison to SACP, the Punjab AIDS Control Programme (PACP) was more organized and advanced; with regard to the service delivery and surveillance<sup>8</sup>.
- 4.2.2 The PACP is handling service delivery directly in nine (9) cities of Punjab, namely (a) Lahore; (b) Faisalabad; (c) Sargodha; (d) D. G. Khan; (e) Okara; (f) Sheikhpura; (g) Mandi Bahaudin; (h) Sialkot; and (i) Gujrat.
- 4.2.3 PACP has established a first of its kind 5 days training programme in Prevention of Parent to Child Transmission that has been successfully implemented in 6 districts in Punjab.
- 4.2.4 As reported by PACP, Punjab has a very effective Blood Transfusion Authority which has a direct impact on HIV transmission.
- 4.2.5 PACP has suggested that NGOs should be encouraged to undertake sensitization and awareness programmes.
- 4.2.6 In case of harassment faced by members of the PLHIV and / or the KAP community at the hands of the law enforcement agencies, the PACP confirmed providing support; by communicating with the law enforcement agencies.
- 4.2.7 The PACP is also funded by the Provincial Government.

## 5. NGO WORKING WITH IDUs IN ISLAMABAD

### 5.1 NGO Introduction

- 5.1.1 The interview was conducted with a NGO working with IDUs in Islamabad and providing drug harm reduction, drug demand reduction and socio economic rehabilitation services<sup>9</sup>. The said NGO actively works with PACP and is also active in HIV related services.

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<sup>8</sup> Interviews were conducted at the PACP with Director, Punjab AIDS Control Programme, Dr. Salman Shahid and other members of his team on May 23, 2013.

<sup>9</sup> Nai Zindagi – Islamabad

## 5.2 Identified Issues

- 5.2.1 As per the laws of Pakistan, possession and use of narcotics is illegal and therefore one of the challenges faced by NGOs working with IDUs is in dealing with the law enforcement agencies.
- 5.2.2 Health is the basic right of every citizen and therefore the IDUs should be provided health care facilities by the State; accordingly the programmes designed by the NGO are now only providing wound management for the IDUs on the basis that all other health requirements of the IDUs should be looked after by the State.
- 5.2.3 Currently the NGO is only working on a Needle Exchange programme as the oral substitution programme designed in co-operation with the UNODC is awaiting authorization by the Drug Regulatory Authority.
- 5.2.4 Rehabilitation of the IDUs is one of the biggest issues and challenges being faced currently by the nation and the sentencing of the IDUs should take rehabilitation into account; however this would not be possible given the current lack of proper rehabilitation centres in the country.

# Chapter 16 FEMALE SEX WORKERS

## 1. INTRODUCTION

- 1.1.1 The field research with regard to FSWs was conducted in Karachi and Lahore and comprised of group interviews in Karachi and Lahore and interviews with a NGO working with FSWs in Lahore; and the findings are detailed in this chapter.

## 2. KARACHI PERSPECTIVE

### 2.1 Group Composition

- 2.1.1 The interviews were conducted with two distinct groups of FSWs in Karachi; of which the first group was a mixed one as detailed below ("**Group 1**") and the second one was Kothi Khana (**KK**) based ("**Group 2**").
- 2.1.2 Group 1 comprised of 5 women, out of which 3 were street based; one was no longer employed and 1 had only particular clients and was a dancer<sup>10</sup>.

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<sup>10</sup> The interview was conducted on May 15, 2013 at the residence of one of the FSW in the Gulistan-e-Jauhar area of Karachi, and all other FSWs arrived at the said residence for the interview.

- 2.1.3 In order to meet Group 2 we visited a KK<sup>11</sup>, peopled by 3 “aunties” and eleven (11) girls of varying ages; however we only spoke with 1 aunty; 2 FSWs who by their own admission were aged 15 and one 1 FSW who by her admission was aged 21; while the remaining girls and women at the KK were uncommunicative and hostile.

## 2.2 Age

- 2.2.1 The FSWs forming Group 1 were aged 25 – 35.
- 2.2.2 The girls forming part of Group 2 visually appeared to be under age; however when we inquired the age; two of the girls said that they were 15 and one said that she was 21; while in our estimation the girls who said that they were 15 did not appear to be older than between 12 to 14 years; and the girl who said she was 21 did not appear to be older than 18 years. All other girls in the KK also appeared to be not older than 16 years with the only exception being the girl who said that she was 21 years old.

## 2.3 Marital Status

- 2.3.1 All the FSWs in Group 1 reported that their marital status was “married” and reported having gotten married between the ages of 15 to 16 years. However, out of the 5 FSW forming Group 1, Three (3) FSWs confirmed that they were separated from their husbands; while 2 were living with their husbands, with the husbands being unaware of the source of their income.
- 2.3.2 Two of the FSWs that we spoke to in Group 2 were married, with the husband of one of them being present in the KK and procuring clients. The term “husband” appeared to be a euphemism for “handler”.

## 2.4 Children / Dependants

- 2.4.1 All the FSWs in Group 1 had between 2 to 3 children and all their children were studying in schools and were not aware of their mother’s employment status.
- 2.4.2 The 21 year old FSW in Group 2 had 2 children.

## 2.5 Health Issues

- 2.5.1 Group 1 reported large scale health issues among the FSWs due to lack of awareness and availability of health services among FSWs. They also reported a lack of service delivery with regard to basic health facilities and awareness of STI and HIV among the majority of FSWs. One of the reasons for not seeking health care that was reported stemmed from financial difficulties and non availability of subsidized health facilities.

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<sup>11</sup> In order to conduct the interview of the FSWs operating at the Kothi-khana (KK) we visited a KK during their business hours (after 9 pm) on May 15, 2013 operating in an apartment building in the Gulistan-e-Jauhar area of Karachi. Cameras or tape recorders were not permitted at any stage of the interviews. Majority of the girls were operating under pseudonyms and there was a general sense of suspicion and fear. We also met birth mothers of three of the girls who were operating there that night and the “husband” of one of the girls. A raid by the police was expected at any minute and half an hour after we left there was indeed a raid by the police in which all girls were arrested only to be released after payment of the requisite fee (as later told to us by the FSW who had arranged for the visit to the KK).

- 2.5.2 Another reason listed by Group 1 FSWs for proper health care was that due to a large number of FSWs being of a young age in Karachi, they also failed to seek medical and health care facilities and were dependant on the aunties. This is was mostly applicable in case of KKs. In such case it was the older FSWs that were able to seek medical help while the younger ones went by untreated.

## 2.6 Sexual and Reproductive Health Rights

- 2.6.1 Both Group 1 and Group 2 had knowledge about HIV; however as reported by Group 1, protection usage was at 50% among FSWs in Karachi; being dependant on the choice of their clients.
- 2.6.2 In case of the married women in Group 1, they reported that had been unable to exercise their sexual and reproductive rights within their married life as well; and in each case the husbands had insisted that all such choices are the man's domain.
- 2.6.3 Upon our visit to the KK, we were informed, without enquiring that protection was mandatorily used, while none of the FSWs at the KK had knowledge of or were aware of HIV; including the aunty.<sup>12</sup>

## 2.7 Law Enforcement and Rights Violation

- 2.7.1 Group 1 reported severe violation of rights by the law enforcement agencies; which ranged from rape to framing of false charges, if arrested, while in no situation were any arrests were made on the grounds of prostitution or solicitation. In each case that was narrated, FSWs were only able to seek release from the law enforcement agencies by payment in cash and kind.
- 2.7.2 Security was an issue for Group 1 since they were at risk not only from the law enforcement agencies but also from their clients, as they reported serious cases of rights violations which ranged from assault, battery, rape to murder; and in each such situation they were unable to report the same or seek help due to their profession.
- 2.7.3 Security was comparatively less of an issue for Group 2 since the KK was under the protection of the "aunty" who was operating the same and had undertaken certain security measures. However, at times, certain KKs were also raided in which case all persons present at the KK were arrested.

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<sup>12</sup> When we had arrived at the KK, the "aunty" was extremely hostile towards us and had instructed us to finish our "business" quickly, as a consequences the girls were also hesitant in talking to us. We were moved to one of the rooms where the girls came to talk to us. A uniform modus operandi was adopted for each interview conducted by us for this report, which involved introducing ourselves by name, our profession i.e. we are lawyers and the purpose and intent of the interviews and research. However, despite this introduction, the girls at the KK were unable to comprehend the professional difference and mistook us for health professionals which resulted in our continued reiteration of being legal professionals. Upon inquiring about the use of protection the general consensus was that the usage was dependent on the client's choice. Upon getting a chance to speak to the "aunty" we inquired about HIV and she did not appear to be aware of the same, however she did go to great lengths to convince us about condom use and that it is strictly practiced at her KK.

## 2.8 Remuneration

- 2.8.1 The street based FSWs among Group 1 stated that they received a remuneration of PKR 1500; while the home based ones received PKR 2000. The FSWs from Group 2 received PKR 1500.

## 2.9 Background

- 2.9.1 The Group 1 FSWs were all housewives that took up the profession due to financial need, lack of resources and inability to support family through any other means. The majority of the Group 1 FSWs, minus 1 had only been educated upto primary classes.
- 2.9.2 Each of the Group 2 FSWs, was from outside of Karachi and had been brought to Karachi and left here for the sole purpose of engaging in the sex trade by their family members.

# 3. IN THE WALLED CITY OF LAHORE

## 3.1 Group Composition

- 3.1.1 The interview was conducted primarily with a NGO working with FSWs in the walled city of Lahore and providing health care services to the FSW within the walled city and basic educational services to their children<sup>13</sup>.
- 3.1.2 Subsequently interviews were conducted in the offices of the NGO with: Two (2) Nayikas (dancers); Two (2) Madams and Five (5) FSWs.

## 3.2 Background

- 3.2.1 As per the details provided by the NGO a "*Tawaif is not a FSW and does not engage in sex work*" and the walled city mainly had areas of residence of the Tawaif's with only one main area populated by the FSW. However after the attempt to close down the area during the military regime of General Zia Ul Haq, the Tawaif's moved out and the vacant spaces were taken up by people from outside of Lahore, due to the opportunity to make quick money in Lahore.
- 3.2.2 There was a ruling from the High Court in Lahore which has categorized the dancing girls in the Walled City of Lahore as artists has allowed them to engage in their art during the hours of 9 to 1 am. However according to the NGO, the said order is not being enforced as the law enforcement agencies do not implement the same and do not provide protection in relation to the same.

## 3.3 Age

- 3.3.1 The majority of the group members were aged between 35 – 40; with the Nayikas aged between 25 – 30 and the Madams being 50 plus.

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<sup>13</sup> Lubna Tayyab of SHEED in Lahore. Interview conducted at the offices of SHEED in Taxali Gate area of the red light district of Lahore on May 24, 2013

### **3.4 Marital Status**

3.4.1 The marital status was not discussed with any of the members.

### **3.5 Children**

3.5.1 Children were not discussed with the group specifically; however generally the members referred to their children and at least four (4) members of the group specifically referred to their children; one of whom had brought along a child.

### **3.6 Health Issues**

3.6.1 The FSWs reported certain health care violations, with certain practitioners harassing the FSWs in cases where the professions of the FSWs were disclosed. In most cases however they preferred to not disclose their profession.

3.6.2 With regard to HIV and STIs they had been reliant on the NGO which had been providing services in the area; however due to lack of funding the NGO was forced to stop its operations and at the time of the interview this appeared to be a cause of great concern for the FSWs.

### **3.7 “Bey” Form**

3.7.1 The FSWs in the walled city also faced problems in obtaining B-Forms from the National Database and Registration Authority for their children and had filed a petition in this regard.

### **3.8 Violations and Abuse**

3.8.1 FSWs in this group also reported physical abuse and violations of rights from their clientele; however they were unable to seek any redress for the same, due to their chosen profession.

### **3.9 Sexual and Reproductive Health Rights**

3.9.1 The had excellent knowledge about HIV and prided itself on the HIV awareness campaign that it had ongoing on a door to door basis in which several group members were involved as out reach members. The group as a whole confirmed that protection usage although was dependant on the client however was preferred by the FSWs.

3.9.2 With regard to usage of the “Femidom” the NGO confirmed that a trial had been conducted with respect to its usage and although no written data was available with respect to the said trial, however, the outcome of the trial, as verbally confirmed, revealed that (a) the Femidom was preferred by the FSWs that were frequently travelling abroad; and (b) although the use of the Femidom was successful yet due to its unavailability in Pakistan and the higher cost impact it could be adopted as a permanent means of protection; unless subsidized service delivery is introduced.

### **3.10 Remuneration**

3.10.1 Remuneration was not discussed.

### **3.11 Nayikas**

3.11.1 The Nayikas are trained as dancers and perform at weddings and other functions. They also travel outside of Pakistan to perform as dancers / artists at hotels; and as per the Nayikas forming part of the interview, a popular destination is Dubai where they perform in hotels frequented by the South Asian community.

3.11.2 With regard to their travel abroad, as reported it was in violation of labor laws. Although they travel on work permits arranged by their operators and receive a total amount of PKR 100,000 to PKR 150,000 for a three month engagement; yet they do not have any claim on the tips that are given to them during their performances at the hotel. They are also lodged in small rooms which are over crowded often with six girls locked up in one small room. The food that is given to them is also substandard. They are also man handled during their performances both while performing in Pakistan as well as abroad.

## **4. HOME BASED FSWs IN LAHORE**

### **4.1 Group Composition**

4.1.1 The group comprised of One (1) home based FSW and one (1) masseuse who visited clients from home to home.

### **4.2 Age**

4.2.1 Both the FSWs were aged between 35 and 40.

### **4.3 Marital Status**

4.3.1 The home based FSW was married and the masseuse was unmarried.

### **4.4 Children / Dependants**

4.4.1 The home based FSW had children and while the masseuse did not have children but had several dependants who she was solely responsible for.

### **4.5 Health Issues**

4.5.1 Both the FSWs confirmed that they visited private health care facilities and did not disclose their profession at the time of such visits. They did not report any discrimination or stigmatization.

## 4.6 Sexual and Reproductive Health Rights

- 4.6.1 While both FSWs had HIV and STI knowledge, however they were not aware of any NGO that was providing service delivery to NGOs in Lahore and had obtained all such information from the Green Star Office in their area. For any SRH issues they sought help from private health care facilities and reported a need for establishment of CBOs and NGOs that would assist FSWs in this regard.

## 4.7 Law Enforcement / Violations

- 4.7.1 The FSWs reported harassment from the law enforcement agencies which included arrests for carrying protection.

# 5. NGO WORKING WITH FSWs IN LAHORE

## 5.1 Outreach

- 5.1.1 In an interview with a NGO<sup>14</sup> working on a project with FSWs outside of the red light area in Lahore, it was reported that their outreach has extended down to all level of FSWs in Lahore, which includes not only the street based FSWs, but also beggars and the lower end FSWs from the tented communities in Lahore. As per their estimation 95% of the FSWs are need based.

## 5.2 Sexual and Reproductive Health

- 5.2.1 In the estimation of the said NGO, despite knowledge and awareness of HIV and STIs, the protection usage among FSWs is economic driven and the financially stable FSWs are more likely to insist on the same.
- 5.2.2 With regard to the Femidom, the NGO reported having conducted a trial several years back, and while no written data was available on the same, however as per the verbal confirmation, the same was not popular among the FSWs due to inability to correctly employ the same.

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<sup>14</sup> Contech International . Interview conducted at their offices in Lahore on May 23, 2013.



# Chapter 17 THE TRANSGENDER COMMUNITY

## 1. INTRODUCTION

- 1.1.1 Although the transgender community (“**TG Community**”) has always been an integral part of the Indo-Pak culture, albeit existing on the fringes of its society in more recent times; however with the advent of HIV as an “early concentrated epidemic” in Pakistan, the plight of the TG Community vis-à-vis their rights, or the non recognition thereof, has come into the limelight.

## 2. CONSTITUTION

### 2.1 Laws and Fundamental Rights

- 2.1.1 Article 8 of the Constitution of the Islamic Republic of Pakistan (“**Constitution**”) provides that any law, custom or usage that is in derogation of or inconsistent with the fundamental rights granted by Chapter I of Part II of the Constitution shall to the extent of such inconsistency be void.

This Article further provides that the State shall not make any law that takes away or abridges the fundamental rights and in the event any such law is made that is in contravention of Article 8 than such law, to the extent of such contravention, shall be void.

Certain exceptions are also provided from the application of Article 8 and these are (a) laws pertaining to the members of the armed forces, police or any other force that is responsible for maintaining public order; (b) laws specified in the First Schedule to the Constitution.

### 2.2 Fundamental Rights

- 2.2.1 The Fundamental Rights are set out in Article 9 to Article 28 of the Constitution and include the following:
- (a) Security of persons (Article 9);
  - (b) Safeguards as to arrest and detention (Article 10);
  - (c) Inviolability of dignity of man, etc (Article 14);
  - (d) Freedom of movement, etc (Article 15);
  - (e) Right to information (Article 19A);
  - (f) Provision as to property (Article 23);
  - (g) Equality of citizens (Article 25);
  - (h) Right to education (Article 25A);
  - (i) Non discrimination in respect of access to public places (Article 26);
  - (j) Safeguard against discrimination in services (Article 27); and
  - (k) Preservation of language, script and culture.

(hereinafter collectively referred to as the “**Relevant Fundamental Rights**”)

- 2.2.2 As citizens of Pakistan, members of the TG Community have the right to the Relevant Fundamental Rights. Particularly the Relevant Fundamental Right set out in Article 25 being “Equality of Citizens”, which states that *“there shall be no discrimination on the basis of sex”*.

## 2.3 Principles of Policy

- 2.3.1 The Principles of Policy set out in Article 38(a) of the Constitution being “Promotion of social and economic well being of the people” casts a responsibility on the State to secure the well being of the people irrespective of the “sex”, caste, creed or race; by raising their standards of living, preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees and landlords and tenants.
- 2.3.2 Similarly the Principle of Policy set out in Article 38(b) requires the State to provide for all citizens of Pakistan facilities for work and adequate livelihood with reasonable rest and leisure.
- 2.3.3 Both the abovementioned Principles of Policy would be applicable on the State in the case of the TG Community as well; specially with regard to the provision of facilities for work and adequate livelihood.

## 3. LAWS CRIMINALIZING EUNUCHS

### 3.1 Criminal Tribes Act, 1871

- 3.1.1 The first law to refer to the TG Community in the Indo-Pak Subcontinent is the notorious Criminal Tribes Act, 1871 (**“Criminal Tribes Act”**) of British India.
- 3.1.2 The preamble to the Criminal Tribes Act states that it is an *“Act for the Registration of Criminal Tribes and Eunuchs”* and further provides that the Criminal Tribes has been enacted to provide for the *“registration, surveillance and control of certain criminal tribes and eunuchs”*.
- 3.1.3 Part II of the Criminal Tribes Act pertains to eunuchs and provides that the Local Government shall cause registers in relation to the matters listed therein, to be made and kept up by such officers as are appointed by the Local Government from time. The matters in relation to the registers are to be maintained are as follows:
- (a) A register of the names and residence of all eunuchs residing in any town or place to which the Local Government specially extends this Part of this Act, who are reasonably suspected of kidnapping or castrating children, or of committing offences under section three hundred and seventy-seven of Indian Penal Code, or of abetting the commission of any of the said offences; and
  - (b) A register of the property of such of the said eunuchs as, under the provision hereinafter contained, are required to furnish information as to their property.

## 4. EASTERN INHERITENCE – WESTERN PERSPECTIVE

### 4.1 Eunuchs in History

- 4.1.1 The term “Eunuch” has been historically used and is universally understood to refer to men who have undergone castration; whether by force or by choice. Eunuchs have been a part of almost all world cultures, ranging from Italy with their Castrati in the West; to the Imperial Eunuchs of the Chinese Courts in the East. Even in the context of the Indo-Pak sub-continent, the presence of the Eunuchs cannot be overlooked not only in the histories of the Sultanate of Delhi but also in the annals of the Mughal Empire as well as contemporary Indian kingdoms.
- 4.1.2 In each historical appearance of eunuchs, the recurring factor has been the castration of the male genitals: either for the official functions to be performed by the future eunuchs as keepers / servants of the royal harem, in the case of the Chinese eunuchs of the Imperial Court, the eunuchs of the Ottoman Empire or the khawaja saras of the Indian royal courts; or as punishment for crimes, meted out to war criminals.
- 4.1.3 In tracing the history of the TG Community in Sindh, reference has been found to “Nazars”; who were men of “Sheedi” or African lineage and were sold as slaves after being castrated and had access to the harems; and the Mirs of Sindh are recorded as having several Nazars<sup>15</sup>.

### 4.2 The Near East

- 4.2.1 Muslim jurists have used the term “Khuntha” for a person “whose anomalies in sexual physiology made it impossible to determine whether that person was a male or a female<sup>16</sup>”. This was further explained as “*Khunutha*” a congenital impairment, in which an infant cannot be identified at birth as either male or female; for the reason that the infant has both female and male sexual organs or has no sexual organs at all<sup>17</sup>.
- 4.2.2 The “Khuntha” is not be confused with the “Mukhannath”; “a term used for a man who chooses to behave and dress like a woman (an effeminate man) but is clearly identifiable as sexually male<sup>18</sup>”. However the term “Mukhannath” has also been used as a common synonym for homosexuals<sup>19</sup> and it is perhaps this reference to homosexuality in the colloquial slang of Arabic speakers that has resulted, from the Pakistan perspective, in Mukhannath being used as a term of general reference with regard to members of the TG Community as well as certain MSWs who form part of the TG Community.

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<sup>15</sup> “Ancient Sindh’s Famous Cities and Personalities” by Mirza Qaleech Baig (in Sindhi) as quoted in “Teesri Jins” Translation: “Third Gender – A Study on the economics of the Khawaja Saras of Sindh”: Akhtar Baloch. Interview also conducted with Akhtar Baloch.

<sup>16</sup> “Gendering the Ungendered Body: Hermaphrodites in Medieval Islam”: Paula Sanders

<sup>17</sup> Al-Zabidi 1969, v.5, 242; Ibn Manzur 1955, v.2, 145; Lane 1956, v.2, 815, Sabiq 1972 v.3, 454: as quoted in “Disability in Islamic Law”: p.69 Vardit Rispler-Chaim;

<sup>18</sup> “Disability in Islamic Law”: p. 69 Vardit Rispler-Chaim;

<sup>19</sup> “Encyclopedia of Islam”: Second Edition

- 4.2.3 The medieval Muslim world just like its contemporaries in other parts of the globe had a significant number of “eunuchs” who performed numerous duties in the palaces and were invested with important functions. The term “*Khasi*” (plural “*khisyan*”) meaning castrated man, eunuch<sup>20</sup> appears to have been used with reference to eunuchs; however after the advent of the Mamelukes it has been interchangeably used with the term “*Tawashi*” which was originally the title applied to the head eunuch who was responsible for the Mameluke Sultan’s wife and for the other eunuchs in the palace as well as for their training.

### 4.3 The Pakistan Perspective

- 4.3.1 The only available study in respect of the physiological examination of Hijras is the “Report on the Genital Examination of Hijras”<sup>21</sup> based on the data collected during the National Study of Reproductive Tract and Sexually Transmitted Disease in 2004 by the National AIDS Control Programme (“**Study on Hijras-2004**”).
- 4.3.2 The Study on Hijras-2004 was undertaken in view of the fact that despite several studies about the socio-sexual behaviour of Hijras, any material in relation to the genital examination of Hijras is not available. As part of the Study on Hijras-2004, four hundred (400) Hijras from the cities of Karachi and Lahore were examined and a random sampling of the “Gurus” of Hijras in each city formed part of the Study on Hijras-2004 along with all Hijras under such selected Gurus; and the subject ages ranged from 13 years to 50 years.
- 4.3.3 Out of the total study subjects of 400 Hijras, the male genitalia was absent in only three (3) Hijras (0.8%) and of the remaining 397, 98.7% were circumcised and 1.7% were non circumcised<sup>22</sup>.
- 4.3.4 The fact that 98.7% were circumcised establishes that these study subjects were identified as males and were received into the Islamic community as males.

## 5. FIELD RESEARCH

### 5.1 Surveys and Interviews

- 5.1.1 For the purpose of this study, interviews and group discussions were conducted in Lahore and Rawalpindi<sup>23</sup> with members of the TG community.

### 5.2 Education

- 5.2.1 The majority of the members of the TG community had not received education beyond lower primary classes; and were not inclined towards education.

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<sup>20</sup> “Encyclopedia of Islam”: Second Edition

<sup>21</sup> “Genital Examination of Hijras”: Naghma Rehman, Research associates, Askari X, Airport Road, Lahore.

<sup>22</sup> “Genital Examination of Hijras”: Naghma Rehman, Research associates, Askari X, Airport Road, Lahore.

<sup>23</sup> Interviews were conducted in Rawalpindi at “Dareecha” the Rawalpindi office of Naz Male Health Alliance on March 7, 2013 with 4 members of the TG community; and in Lahore at “Dostana” the Lahore office of Naz Male Health Alliance on March 12, 2013 with 5 MSWs.

## 5.3 Employment

- 5.3.1 With regard to employment the members of the TG community in Rawalpindi and in Lahore were interested in alternate modes of employment and showed interest in vocational training. Additionally some members deemed it their right to receive vocational training so that they have the necessary skill set to leave their current professions (whether begging or sex work) and considered a failing on the part of the government to not have established the requisite vocational centres. None of the TG members had government jobs, and were only aware of two (2) members of their community who had been given employment by the provincial government.

## 5.4 Sex Work

- 5.4.1 The lines between MSW community and TG community appear to be quite fluid and MSWs who did not outwardly appear to be members of the TG community declared themselves to be “Khawaja Saras” during the course of the study; and as a consequence there was no clear defining characteristic as to who is or is not a Khawaja Sara. The members in question mentioned their Khawaja Sara status, in reference to their sex work.

## 5.5 Citizenship

- 5.5.1 Despite the Supreme Court judgment only one member of the TG community that formed part of the Study had received the TG National Identity Card; and for the others, some were not inclined to apply for the same as they already had a National Identity Card in which their gender was listed as male; and the others were not pursuing it due to the difficulty in applying for the same.

## 5.6 Discrimination and Stigma

- 5.6.1 There were clear and distinct references to discrimination and stigma faced from (a) the law enforcement agencies; (b) health service providers; and (c) the public at large. These are listed hereinbelow, in brief, divided on the basis of the cities:

### (i) Rawalpindi

The TG Community is facing harassment from the law enforcement agencies primarily due to their activities as HSW and in such capacity they are threatened with consequences under Section 107 and 109 of the Criminal Procedure Code being “*Security for keeping Peace in other cases*” and “*Security for good behaviour from vagrants and suspected persons*”. The members of the law enforcement agencies also seek sexual favours from the HSW. Additionally an instance was reported where the law enforcement agencies failed to register a complaint where a TG community member was violently assaulted and suffered injuries; the matter was settled by the law enforcement agencies upon receipt of financial compensation from the person who committed the assault, yet the TG community member received just a token amount. As reported, the non-HSW are also being discriminated upon by the public at large due to their gender and identity; however there was an instance where members of

a religious organization were supportive of the TG community and in fact a member of the TG community had even joined the said religious organization as a male. With regard to the health sector, the group reported wide spread discrimination in the public health facilities and preferred private health facilities or facilities provided by NGOs. On the whole, Rawalpindi appears to be a more tolerant city.

**(ii) Lahore**

The HSW in Lahore reported harassment by members of the law enforcement agencies as well as by health facility providers, including sexual harassment. TG community members reported that even in case of sexual abuse they were not in a position to report the same as they did not expect to receive any support or assistance from any section of the society and also narrated an incident where there was an instance of gang rape, yet no report was filed by the police. The TG community members also reported that the health service facility providers also discriminated against the members of their community who fell within the category of PLHIV with the consequence that such community members preferred stay at home rather than face the discrimination at public hospitals. The NGO also confirmed such instances of discrimination against PLHIV; and also reported an incident where there was an incident of assault and rape of a member of TG community who consequently avoided seeking treatment at a hospital due to such discrimination.

## **5.7 Child Abuse**

5.7.1 The TG community members both in Rawalpindi as well as in Lahore reported instances of child abuse between the age of 7–11 years.

## **5.8 Marital Status**

5.8.1 A number of the TG Community members were married and appeared to be living dual lives, whereby they would live the lives of men when visiting their families/wives in their villages / cities and continue to live the life of a TG / HSW while living in the city of their employment. While being aware of the risks associated with HIV and the transmission of the same, the members of the current group had not communicated the risks to their wives, as their double lives had not been disclosed to their family and wives and accordingly any reference to HIV may have led to a disclosure of the same.

# Chapter 18 MSM AND MSW

## 1. FIELD RESEARCH

### 1.1 Surveys and Interviews

- 1.1.1 For the purpose of this study, interviews and group discussions were conducted in Karachi, Lahore and Rawalpindi<sup>24</sup> with members of MSM/MSW community in each of the three cities. The average age group in each of the three cities was between the age of 18 to 24, with two individuals aged 29 and 42 each in Karachi. The largest group of MSM/MSW community members was in Karachi, which included a street based masseuse (*Malishia*).

### 1.2 Legal Awareness

- 1.2.1 The group as a whole was aware that being a MSM is an offence under the laws of Pakistan; as a consequence of which they failed to report any abuse that they faced in their daily lives.
- 1.2.2 Additionally, all groups in each of the cities reported that carrying condoms is a crime in Pakistan.

### 1.3 Education

- 1.3.1 The majority of the members of the MSM community were at least graduates.
- 1.3.2 The general trend, however, in the MSW community was not towards receiving education and in the groups that formed part of the discussion, except for two members that had received education upto the twelfth standard, most were not inclined towards education. The reasons for this lack of education and disinterest in education can be broadly grouped into three categories (a) financial; (b) sexual abuse in educational institution; and (c) introduction to sex trade and hence no interest in education. Each of these categories is discussed below.
- (a) a number of interviewees reported having faced financial difficulties at a young age due to which they had to give up their education or could not pursue education at all. Each of such MSWs community members were however interested in pursuing education;
  - (b) 3 MSW community members reported incidents of child abuse in educational institutions between the ages of 7–12, which included an incident of abuse in a religious educational institution at the age of 7. The obvious result of such child abuse was (i) the MSWs as children did not pursue education further; and (ii) turned to sex work to earn their living;

<sup>24</sup> Interviews were conducted in Rawalpindi at "Dareecha" the Rawalpindi office of Naz Male Health Alliance with 2 MSWs; in Lahore at "Dostana" the Lahore office of Naz Male Health Alliance on March 12, 2013 with 2 MSWs; and in Karachi at "Parwaz" the Karachi office of Naz Male Health Alliance on April 30, 2013 with 5 MSWs.

- (c) in case of 2 MSWs, further education was not pursued due to the fact that the MSWs in question had been introduced to sex work and had started earning better remuneration through sex work and as reported by them they did not feel a need to pursue education.

## 1.4 Employment

- 1.4.1 The MSM included in the surveys for the Study were employed in regular jobs and did not report any discrimination in such jobs.
- 1.4.2 The MSWs on the other hand did not have any alternate employment and were reliant on sex work as their means of earning a living. The reason for no alternate employment as reported was that the gains from sex work were vastly lucrative and paid in excess of what could have been earned from a regular job. Additionally, it was also reported by MSWs in Lahore that they faced stigmatization while trying to take up employment in regular jobs due to their mannerisms; despite the fact that the MSWs in question were not effeminate in appearance or TGs. The MSWs in Rawalpindi reported that they were inclined to take up alternate employment and give up sex work but were unable to find alternate employment due to their lack of education and effeminate appearance.
- 1.4.3 The exception to the above, were the masseuse (*Malishia*) and an auto-rickshaw driver who also engaged in sex-work. The masseuse provided street based sex work and formed part of a network of masseuses operating all over Karachi. Although the prime mode of employment of the masseuse are massages provided on street locations, however the term "*Malishia*" is recognized all over the country for specialized network of street based MSWs. Additionally, as reported the earnings of the masseuse are only from sex work and not from massages. As regards the auto-rickshaw driver his main earnings were from the auto rickshaw and he supplemented his earnings from sex work. It is also pertinent to note that he was not a confirmed MSM and reported instances of having engaged in sex with females in exchange for the cost of the auto-rickshaw conveyance.

## 1.5 Discrimination and Stigma

- 1.5.1 Each of the groups interviewed had complete knowledge about HIV and means of furthering the infection. They also had knowledge about screening and tests.
- 1.5.2 There were clear and distinct instances of discrimination and stigma in each city<sup>25</sup>, which fall under two heads (a) discrimination by members of the law enforcement agencies; and (b) discrimination in the health sector; and the same is discussed hereinbelow in detail.

### (i) Rawalpindi

In comparison to other cities, the members of the MSW community appear to face the least amount of discrimination and stigma in Rawalpindi. There were

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<sup>25</sup> Based on interviews conducted at "Dareecha" in Rawalpindi on March 7, 2013, "Dostana" in Lahore on March 12, 2013 and "Parwaz" at Karachi on April 30, 2013.



instances of excesses by members of the law enforcement agencies, but as in the other cities these excesses were of the nature where MSWs were required to give favours for free to personnel of the law enforcement agencies or face arrest.

In the health sector no particular instances of discrimination were reported by members of the MSW community, the reason for which perhaps lies in the fact that they did not use public health services.

### (ii) **Lahore**

The worst cases of discrimination and lack of sensitivity against members of the MSW community were reported in Lahore; **which included a particular instance where an individual was made to parade naked in front of members of the law enforcement agencies and subsequently abused for 2 hours. There were also instances where members of the law enforcement agencies violated the privacy of the MSWs home with the intent to seek sexual favours.** Additionally, the society at large also appeared to discriminate against the MSWs and they faced wide spread stigma and reported an inability to travel within the city with their family. Similarly in the public health sector MSWs also faced widespread discrimination that ranged from the health practitioners not entertaining the MSWs to publicly insulting them for their practices (this was done when the MSWs had sought medical treatment with regard to STIs). As a consequence MSWs prefer private health care as opposed to public health facilities and / or drop-in-centres providing in house health facilities. Instances were also reported where PLHIV have preferred not to seek treatment due to the stigma attached to their health status, in the public health sector facilities.

### (iii) **Karachi**

As with the other two cities MSWs in Karachi also reported instances of excesses by members of the law enforcement agencies, which included an instance of a gang rape by members of the law enforcement agencies which went unreported. Furthermore, it was also reported that the members of the law enforcement agencies framed members of the MSW/MSM community on false charges of carrying narcotics on their persons. In one particular instance, the masseuse was arrested under Section 109 (*Security for good behaviour from vagrants and suspected persons*) of the Criminal Procedure Code, 1898 and remained in Landhi jail for nine (9) months. As regards the health sector, discrimination and stigma was reported only when the profession was disclosed. Additionally members of the NGO<sup>26</sup> also confirmed that discrimination was faced if the profession of the MSW was disclosed and / or if the MSW fell within the category of PLHIV.

## 1.6 Marital Status

- 1.6.1 Out of the total sample group, One (1) MSW was currently married with two (2) wives and eight children and Two (2) MSWs signified a desire to marry in the future.

<sup>26</sup> This was confirmed by the in-house therapist of Parwaz, who was present during the interview and confirmed having accompanied the referrals to the public health facilities.

Similarly Two (2) MSM also signified a desire to marry in the future, although no MSM were currently married.

- 1.6.2 All MSWs and MSM were well aware about the risks of HIV transmission and confirmed regular screening and tests.

## 2. OBSERVATIONS

### 2.1 Law and Law Enforcement

- 2.1.1 The provisions of law that are applicable to MSM and MSWs are Section 377 of the PPC, being the section pertaining to “Unnatural Offences”. However it is interesting to note that not a single reported case under Section 377 is in respect of consensual sex and each of the reported cases is with regard to molestation of young children and has been filed by their guardians / parents.
- 2.1.2 During the course of our field research the instances of abuse by members of the law enforcement agencies was on the grounds that the MSM/MSWs were indulging in criminal activity and hence were liable to penalty; yet instead of arresting or penalizing them for such acts; the members of the law enforcement agencies took advantage of the MSWs and received sexual favors in exchange for the freedom of the MSWs.
- 2.1.3 It is also pertinent to note that even the MSWs who are arrested and imprisoned are not booked under the relevant provisions of the PPC i.e. Section 377 and are at the most sentenced under Section 109 of the CRPC.
- 2.1.4 Currently as a consequence of the presence of Section 377 of the PPC there is widespread violation of the rights of MSM and MSWs in Pakistan; since MSM and MSWs are unable to seek any relief under Section 377 of PPC upon the occurrence of any events of abuse; since the presumption of guilt would always be in favour of the MSM/MSW due to their profession; preferences and existing biases and prejudices.

### 2.2 Section 375 and Section 377

- 2.2.1 Furthermore, it is also relevant to note that the provision on rape of minors under the PPC is restricted to female children, as Section 375 only recognizes sexual intercourse with “a woman” with or without her consent under the age of sixteen years of age as Rape. Sexual intercourse with a boy under the age of sixteen with or without consent does not constitute Rape as per the provisions of the PPC.
- 2.2.2 The recognition of underage Rape is relevant since the punishment of Rape as provided in Section 376 of the PPC is “death or imprisonment of either description for a term which shall not be less than ten years or more than twenty-five years and shall also be liable to fine”; and in case of rape committed by two or more persons in furtherance of common intention of all, “each of such persons shall be punished with death or imprisonment with death or imprisonment for life”. While the maximum punishment for committing an offence under Section 377 is imprisonment for life or imprisonment of either description for a term not exceeding ten years and for a term of not less than two years; and shall also be liable to fine. The difference between the term of imprisonment between the offences committed under Section 375

and Section 377 require that underage sexual abuse of boys should be included in the definition of Rape in order for the same to have the benefit of the punishments prescribed by Section 376.

## Chapter 19 WOMEN

### 1. NGO WORKING WITH RAPE VICTIMS IN KARACHI

1.1.1 Interview was conducted with a NGO in that provides legal aid and counseling to rape victims in Karachi<sup>27</sup>.

#### 1.2 Rape – the hidden perspective

1.2.1 The NGO reported that due to stigma the cases of rape and molestation went unreported in most instances, and even in instances where such cases were brought to the attention of the said NGO the victims did not pursue the matter to the extent of filing a case; due to the stigma associated with the offence.

#### 1.3 Delays in Rape Cases

1.3.1 The NGO reported that the delays in the proceeding of rape cases should be addressed as the same creates a hurdle in the proper administration of justice. This was illustrated by a particular instance where the case had been filed in 2006 and by the time the verdict was received in 2012, the victim girl's father had already expired and due to the circumstances the family had moved from Karachi and was no longer contactable and as such the verdict remained unreported to the victim.

#### 1.4 Sensitization and Awareness

1.4.1 The acceptance of incest cases is dependent on the sensitization level of the particular law enforcement officer dealing with the matter, and for most part the law enforcement agencies are unable to accept cases of incest. This was highlighted by a particular case, where a young girl was being abused by the father and when she filed the report with the law enforcement agencies of such abuse, instead of filing such report they called in the father to confirm the veracity of her statement. The father apologized for his acts and undertook to never repeat the same and to send the daughter to family outside of Karachi. The NGO has since been checking on the family but has not been able to locate either the father or the girl.

1.4.2 The NGO has reported that in each case of sexual abuse, the law enforcement agencies seek confirmation from the alleged abuser prior to registering the complaint.

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<sup>27</sup> War Against Rape, Karachi, interview conducted at their offices in Zamzama.





**PART VII**  
**FINDINGS**

# Chapter 20 LEGISLATIVE AND POLICY ENVIRONMENT

## 1. OBSERVATIONS AND COMMENTS ON SPECIFIC LAWS

### 1.1 Allopathic System Misuse Law

- 1.1.1 The Allopathic System Misuse Law allows the performance of circumcisions and incisions of boils by the practitioners of Alternative Medicine and there is no monitoring mechanism for the practitioners of Alternative Medicine. Since the performance of circumcisions and incisions of boils, both carry significant HIV risks the Allopathic System Misuse Law should contain specific provisions for training universal precautions and post exposure prophylaxis.

### 1.2 Allopathic Rules

- 1.2.1 The current rules do not contain any provisions with regard to the dissemination and / or awareness about HIV and / or the training in respect of universal precaution protocols.
- 1.2.2 The Allopathic Rules allow the grant of a permit to an individual who, while having studied for a period of not less than four (4) years for a licentiate or degree course of medical education in "any" institution and was eligible to appear in the examinations, yet has not passed or failed to appear in the final examinations; and such an individual upon the grant of a permit is authorised to prescribe anti-biotics and the dangerous drugs listed in Schedule B of the Allopathic Rules.
- 1.2.3 As a consequence of Rule4(a), the Allopathic Rules allow the prescription of anti-biotics and dangerous drugs, in accordance with the Allopathic Rules by individuals who have failed to successfully pass their medical examinations, for any reason whatsoever, whether as a consequence of passing the examinations or as a result of failing to appear in the examinations.

### 1.3 PMDC Law

- 1.3.1 Pursuant to the PMDC Law all medical practitioners are required to be registered and only duly registered medical practitioners are allowed to provide / be employed in health service / health facilities. In view of the PMDC Law, it is apparent that there is a system of legislation that regulates the health service industry in Pakistan.
- 1.3.2 Similarly the provision of health care facilities is also regulated at the provincial level as evidenced by the provincial laws detailed above.

### 1.4 Safe Blood Transfusion Laws

- 1.4.1 In addition to the Safe Blood Transfusion Laws earlier mentioned, there are also similar laws governing the transfusion of blood and blood products in the province of Punjab and in the capital territory of Islamabad, namely the Punjab Transfusion of Safe Blood Act 1999 and the Islamabad Transfusion of Safe Blood Act, 2002.

- 1.4.2 The Transfusion of Safe Blood Act provides for the establishment of the Blood Transfusion Authority which is responsible for the monitoring for the safe blood transfusion practices in its relevant provincial jurisdiction, however the implementation or otherwise of the Transfusion of Safe Blood Ordinance remains dependent on the particular approach of the Blood Transfusion Authority in each province, which can also be measured by the number of cases of HIV transmission through blood transfusion reported in each province.

## **1.5 Disabled Person (Employment and Rehabilitation) Ordinance, 1981**

- 1.5.1 While the DPO has been promulgated in 1981 and could have been relied upon by the PLHIV for purpose of seeking employment however no such reliance has been reported.
- 1.5.2 The definition of “disabled person” as provided in DPO is broadly drafted and includes a person who is unable to undertake gainful employment in order to earn his livelihood on account of disease; and can be interpreted to include PLHIV.
- 1.5.3 Accordingly, PLHIV can take benefit of the 1% quota provided in the DPO law to seek employment, in the provinces where there is no HIV Law. However, this would require that the PLHIV seek a registration with the relevant employment exchange and on the register maintained under Section 12 of the DPO.
- 1.5.4 It may be more appropriate to seek an amendment of the DPO to include HIV and to also seek a modification in terms whereof the registration of the PWD would only require the notification of their name and contact details and not the disability. This would ensure that at no point in time would the confidentiality be breached and the PLHIV be faced with discrimination and stigmatization.
- 1.5.5 Another amendment that may be incorporated in the DPO would be to include provisions with regard to discrimination. These amendments can be general and non HIV specific in nature; but would ensure protection to the PLHIV.

## **1.6 HIV Prevention and Treatment Bill**

- 1.6.1 With regard to the provisions on routine testing and / or diagnostic testing, while the intent of this provision may have been that such testing is prohibited without consent, however as currently drafted Section 13(1) only provides that “No person shall be required to be HIV screened for routine testing or diagnostic testing purposes by any public or private health care facility”. It would be more appropriate to insert “without his / her consent” at the end of this sub-section.

## **1.7 HIV Safety Bill**

- 1.7.1 Certain ambiguities exist in the provisions of Section 3. It is not clear as to what is meant by “*screening of HIV shall also be included in blood screening*”. Is the intent of this provision that whenever blood screening conducted at any blood laboratory than screening of HIV shall be conducted throughout the Capital Territory of Islamabad, with or without consent of the patient. Furthermore this Section 3(2) provides

that HIV tests can be undertaken by a “*primary health care giver, nurse, attendants, paramedics involved in care of patient*”. This sub-section also requires further review in order to ensure that only facilities that have the requisite expertise should be permitted to carry out the HIV tests.

- 1.7.2 The provisions of Section 3(3) appear to be discriminatory in nature and should only be restricted to the person that can prove that he / she has contracted the disease from association with a person who has AIDS / HIV and negligently associated with such other person and / or voluntarily failed to disclose such fact. Although this Section provides that a Court, Public Prosecutor or a Physician may request HIV tests and then goes on to state that the results shall be informed to such person in the strictest of confidentiality, however, given the discriminatory treatment faced by HIV patients in Pakistan and further provided that Court records are public in nature, there should be (a) an exception for such results to not form part of the public records of the Courts; and (b) all individuals asking for such records to sign a confidentiality undertaking and a penalty for breach of such confidentiality undertaking.
- 1.7.3 The interpretation of Section 8 could result in ambiguities and this Section needs further clarity, specially since this Section pertains to disclosure and deals with exceptions to the confidentiality provisions contained in Section 7. It is not clear as to who would determine whether “public safety is at risk” and additionally no parameters or defining modes have been provided for either “risk to public safety” or for “control surveillance of the disease” and in such case the exceptions to disclosure contained in this Section are open to interpretation.
- 1.7.4 Section 9 does not take into account the breach of confidence by medical practitioners or people working in hospitals and breach of confidence by members of law enforcement agencies; there should be a special provisions for those.
- 1.7.5 Section 10 does not detail the fine or the imprisonments.

## 1.8 Control of Narcotic Substances Act

- 1.8.1 In terms of the CNSA, any person found in possession of a narcotic drug would be subject to the punishments that are set out in Section 9 of the CNSA, which range from an imprisonment for a term of two (2) years for possession of 100 gms or less of a narcotic drug / psychotropic or controlled substance (“**contraband**”); to death penalty or life imprisonment or imprisonment that may extend to fourteen years and a fine that may extend to PKR 1,000,000 in case of possession of contraband exceeding 1 kg.
- 1.8.2 Section 9 does not differentiate between a person trafficking contraband and a person in possession of the contraband for personal use. The purpose why the distinction between trafficking and possession is relevant would be for the reason that a person who possesses contraband for personal use, could be classified as an addict and therefore the welfare of such a person should be the responsibility of the State.



- 1.8.3 As opposed to uniform punishments for all possession of contraband, which results in the stigmatization of the drug addicts and consequently the IDUs, there should be a staggered and structured level of punishment which should include rehabilitation and community service as the first step of penalization for first time offenders.

## 1.9 Treatment and Rehabilitation Rules

- 1.9.1 While Rule 5 states that all addicts registered for the purpose of treatment shall be treated as patients and not as criminals however there are no provisions for the monitoring and evaluation of the treatment meted out to such addicts at the Rehabilitation Centres; nor any specific provisions given in the Rules with regard to the training and sensitization of the staff of such Rehabilitation Centres.
- 1.9.2 Rule 8 which deals with voluntary treatment, provides that the treatment of the addicts at these Rehabilitation Centres is subject to the execution of a bond for such an amount as may be specified along with such sureties as may be specified by the Rehabilitation Officer on such terms and conditions, requiring payment of such amount for his treatment, maintenance and rehabilitation. In view of the same, it would appear that treatment would not be provided free of cost and in such case what avenue for rehabilitation and treatment would be available for the street based addicts who do not have the financial means for such treatment. Clarity is required in relation to this Rule. Would the Provincial Government be responsible for such treatment.

## 1.10 Sindh Disposable Syringes Act

- 1.10.1 No particular authority has been prescribed for the purpose of monitoring and checking whether disposable syringes other than "auto lock, auto destruct or auto break syringes which are automatically destroyed locked or broken and cannot be used for second time" are being used in Sindh.
- 1.10.2 Additionally the Sindh Disposable Syringes Act does not restrict the import into Sindh of disposable syringes that do not fall within the category of auto lock, auto destruct or auto break syringes which are automatically destroyed locked or broken and cannot be used for second time; as a consequence such syringes could well be imported into Sindh and could be used in the black market.
- 1.10.3 It would also be appropriate to seek an amendment in the Customs Schedule to ensure that any syringe that does not fall within the category of "auto lock, auto destruct or auto break syringes which are automatically destroyed locked or broken and cannot be used for second time" should be included in the list of contraband items.

## 1.11 Vagrancy Laws

- 1.11.1 The Vagrancy laws of Pakistan are a prime example as to why new generation laws are required in Pakistan.

- 1.11.2 The Punjab Vagrancy Ordinance is actually the West Pakistan Vagrancy Ordinance, 1958 that is applicable to all provinces of Pakistan and has effect not only in Punjab but also in Balochistan and KPK.
- 1.11.3 It was subsequently amended in 2001 by Balochistan and Punjab to amend Sections 6 and 21, however these were administrative amendments.
- 1.11.4 The Vagrancy Law refers to medical examination of vagrants by the Manager under Section 5 for the purpose of determining their gender and ascertaining whether they are “lepers”, suffering from a contagious disease, insane or medically deficient and the general state of health and bodily condition of the vagrant. This section does not refer to any informed consent from the alleged vagrant prior to such examination.
- 1.11.5 The sentence for vagrancy is imprisonment that can extend to three (3) years under the West Pakistan Vagrancy Law, which includes the Punjab Law and a period not exceeding one (1) month and for subsequent punishments not exceeding six (6) months under the Karachi Vagrancy Law.
- 1.11.6 Although the vagrancy laws may have been used at the time they were promulgated for the purpose of penalizing criminal / “vagrant” elements in the society, however in the current scenario they could well be used to the detriment of the KAPs, specially the IDUs and the street children.
- 1.11.7 It may also be taken into account that penalties under Section 269 and Section 270 which pertain to spread of infectious diseases dangerous to life, carry a sentence of that may extend to six (6) months and two (2) years, respectively, yet under the West Pakistan Vagrancy Ordinance, 1958 and the Punjab Vagrancy Ordinance, 1958, a person could well be punished with imprisonment for a period not exceeding three (3) years.

## **1.12 Child Marriage Restraint Act**

- 1.12.1 Although there continues to be a strong movement for amendment in the CMRA for amending the definition of child as provided therein; so that whether male or female a child would be a person who is below the age of eighteen.
- 1.12.2 Despite the suggested amendments to the CMRA, the problem with the CMRA remains that in most cases of child marriage, the age of majority for a female is determined on the basis of the Hudood Ordinance, which defines the same to be the age of puberty; and on such basis even the marriage of a child under the age of sixteen can stand solemnized, notwithstanding the CMRA.
- 1.12.3 The amendments and modifications that should be suggested to the CMRA should be disengaging the CMRA from any other law for the purpose of determining the age of the contracting parties to the marriage. This can however, only be undertaken once awareness has been created among all sectors of the society with respect to the ills of child marriage; including the religious scholars and the community at large.
- 1.12.4 Additionally, child marriages are not reported as the same are considered as acceptable practice in the communities with a high incidence of child marriage.

Accordingly either there should be a surveillance mechanism that monitors and reports on the occurrence of child marriages at district level or there should be wide level awareness campaigns that would ensure that such communities would report all incidents of child marriage.

- 1.12.5 The punishments prescribed by the CMRA are simple imprisonment and a fine of PKR 1,000, irrespective of the offence committed i.e.; whether the offence is under Section 4, namely, child marriage by a male adult above 18 years of age; or under Section 5, being the solemnization of a child; or under Section 6 allowing a child marriage by the parents of guardians. Notwithstanding that Pakistan law recognizes neither statutory rape nor marital rape, however given the severity of the offences dealt with under Section 4, 5 and 6 it would have been appropriate that, firstly the sentences would differ in severity; and secondly, that all three punishments / penalties would have been updated in accordance with the changing times.

### 1.13 Suppression of Prostitution Ordinance

- 1.13.1 The Suppression of Prostitution Ordinance is a legislation that appears to have been drafted for penalizing and discouraging prostitution in the 1960's but thereafter has remained unused and forgotten.
- 1.13.2 This is the only law that contains such detailed provisions for penalizing actions that may result in exploitation of women, however over time this law has neither been updated nor has it been relied upon. A review and modification of this law in order to update the same will greatly benefit the FSWs.
- 1.13.3 Certain provisions contained in the Suppression of Prostitution Ordinance are specially worth nothing, are the penalties prescribed for the following:
- (a) anyone above the age of 18 who lives off the earnings of another's prostitution whether with or without such person's consent;
  - (b) anyone who is proved to have coerced or influenced the movements of a prostitute in a manner that show that he has aided or abetted or compelled or exploited her for prostitution with any other person or keeps or manages or assists in the management of a brothel;
  - (c) causing, encouraging or abetting the seduction or prostitution of a girl under 16 years;
  - (d) procuring, enticing or leading away a woman or a girl, or attempting to do the same for the purpose of prostitution;
  - (e) bringing or attempting to bring into the province a girl for the purpose of prostitution.
  - (f) The PPC in Sections 371A and 371B prescribes the punishment for selling and buying a woman for the purpose of prostitution; and the punishment as prescribed by the PPC, being imprisonment that may extend to twenty-five (25) years is more severe than the one prescribed by the Suppression of Prostitution Ordinance.
  - (g) Similarly the PPC also prescribes a more severe punishment for procurement of a minor girl under Section 366A, being imprisonment for a term that may extend to ten (10) years.

- (h) Notwithstanding the provisions of the PPC, it would be more beneficial as a whole, if the punishments in the Suppression of Prostitution Ordinance are rationalized and matched to the ones prescribed in the PPC and the Suppression of Prostitution Ordinance is accordingly revisited, reviewed, revised and duly implemented in all provinces.

## 1.14 Human Trafficking Ordinance

- 1.14.1 The Human Trafficking Ordinance does not deal with human trafficking within the boundaries of Pakistan and only pertains to human trafficking “out of or into Pakistan”. For the purpose of human trafficking within Pakistan reliance has to be placed on Section 366A of the Pakistan Penal Code.
- 1.14.2 It is interesting to note that not a single case is reported in the superior courts under the Human Trafficking Ordinance with regard to human trafficking for exploitative entertainment which deals with sexual practices or sex related abusive practices.
- 1.14.3 Section 3(i) of the Human Trafficking Ordinance also reflects the punishment for trafficking as prescribed by Section 366 B.
- 1.14.4 It is important to note however, that the only piece of legislation that currently addresses trafficking of woman within the borders of Pakistan, is the Suppression of Prostitution Ordinance, and the punishment as prescribed therein for such offence is imprisonment for a period of three (3) years; and a fine that may extend to PKR 1,000 and whipping in lieu of any other punishment.

## 1.15 Khawaja Saras Bill

- 1.15.1 The Khawaja Saras Bill, was pending in the National Assembly and was not enacted. The bill will have to be taken afresh and has to be passed by the National Assembly (the lower house), the Senate (the Upper House) and thereafter receive the assent of the President, before it can become a law
- 1.15.2 The concept of conducting medical examinations of each child born for the purpose of determining the sex of such child and thereafter providing medical consultation and subsequent treatment in order for such child to be treated as a member of either sex, is violative of the human rights of the child in question; for the choice is being made for the child prior to the child being capable to decide on its own behalf. Additionally the provisions of the Khawaja Saras Bill pertaining to medical treatment appear to be advocating gender reassignment of children born with undeterminable sex and the government is required to bear all costs of the same.

## 1.16 Guardian and Wards Act

- 1.16.1 This law requires review and amendment in view of the fact that it recognizes the marriage of a minor, as it provides that the Court may authorize the placement of a female minor in the custody of a person who claims to be her guardian on the grounds of him being her husband, if she is in his custody with the consent of her parents. This would mean that a marriage of a minor has been solemnized by the parents of such minor in contravention of the provisions of the Restraint of Child

Marriage Act, and the Court is allowing the placement of such minor in the custody of her husband, despite the fact that such marriage was in contravention of the provisions of law.

- 1.16.2 Section 21 not only refers to the marriage of two minors but also to children of minors.
- 1.16.3 The law of Guardian and Wards also needs to be reviewed and updated, as the pecuniary punishments prescribed hereunder do not reflect the current financial values; for e.g. the fine prescribed for Contumacy pursuant to Section 45 shall not exceed PKR 100, and in case of recalcancy a further fine not exceeding PKR 10 for each day after the first during which the default occurs, not exceeding PKR 500.

## 1.17 Electronic Crimes Act

- 1.17.1 The exception to pornography / child pornography being the material produced, offered, distributed, procured or kept for bonafide religious, research or medical purposes requires clarification; and the qualification of “material produced, offered, distributed, procured or kept for bonafide religious purposes” should be removed.

## 2. OBSERVATIONS ON THE NATIONAL HIV/AIDS POLICY – FINAL DRAFT 2007

### 2.1 Introduction

- 2.1.1 Currently there is no HIV/AIDS Policy in Pakistan however there is a National HIV/AIDS Policy – Final Draft 2007 that has been reviewed and discussed in Chapter 13 (HIV/AIDS Policies).
- 2.1.2 While the policy approach section of the HIV/AIDS Policy states that the key aim of the legal and policy framework would be to “provide and maintain an enabling environment for HIV and AIDS prevention and care programme and services” however unless the policy approach in itself is not a sensitized one, and one which is cognizant of and acknowledges and identifies the existing issues and problems faced by the PLHIV and the KAPs, than all future laws and policies would be similarly vague and unable to uphold the rights of PLHIV and KAPs and address the violations.

### 2.2 First Guiding Principle

- 2.2.1 The opening statement of the first “Guiding Principles” as set out in the HIV/AIDS Policy is that “*Gender norms and relations are a key factor in determining who acquires HIV in Pakistan*”. This is a confusing and convoluted opening statement for the guiding principles, in fact it is bordering on a factually incorrect statement, for while gender relationships might determine the “transmission” (and not “acquisition”) of HIV, but it is more sexual relationship based. This opening statement sets the tone for the entire HIV/AIDS Policy. While as a statement of existing facts this would not have been a cause of concern, however the connection of all future programmes and services (as stated further in the first guiding principle) that will devise and implement strategies

that address gender norms and relations should be a cause for concern; since it completely ignores that the future programmes and services should be devised and implemented on the basis of the key modes of transmission as evidenced and recorded in the monitoring, evaluation and surveillance conducted by the national and provincial programmes.

- 2.2.2 While addressing the prevention and care needs of women and girls is appreciated however, the national surveillance reports provide that HIV prevalence among FSWs being the only female category included in the Key Affected Population, is at the lowest, out of all the “populations most at risk”. Additionally, as no data of the female population comprised in the bridging population is available therefore for the purpose of discussing the prevention and care needs of the female KAPs only the FSWs are taken into account.
- 2.2.3 The prevention and care needs of the highest risk group being the IDUs have not received a special mention in the HIV/AIDS Policy and specially the HIV/AIDS Policy does not take into account or mention the likelihood of intersectional IDU / FSW interaction that may result in a higher prevalence rate among the FSWs.

### **2.3 3rd Guiding Principle**

- 2.3.1 If a PLHIV is a citizen of Pakistan than such a PLHIV does indeed should have the same rights as all other citizens of Pakistan and by law cannot be discriminated against, on the basis of health status, gender, socio-economic status or HIV risk factor. In the event discrimination does indeed exist, than firstly the HIV/AIDS Policy needs to provide measures for the identification of each sector in which such discrimination exists and thereafter provide stringent measures for the elimination of such discrimination, whether by legislation, policy or programmes.

### **2.4 6th Guiding Principle**

- 2.4.1 The statement that approaches to HIV and AIDS shall be consistent with Pakistan’s religious and cultural values is paradoxical in nature and would have resulted in disputes at the time of interpretation; when approaches to HIV and AIDS could have been viewed as opposed to Pakistan’s religious and cultural values.

### **2.5 National HIV/AIDS Commission**

- 2.5.1 As the HIV/AIDS Policy dates back to the pre-18th Amendment period therefore the reference to the National AIDS Commission is relevant. However, in view of the 18th Amendment there should be HIV/AIDS Commission on the Provincial level in each of the four (4) provinces and a National HIV/AIDS Commission at the national level.
- 2.5.2 The National HIV/AIDS Commission should comprise of representatives from each of the Provincial Commissions and stake holders at the national level.
- 2.5.3 The HIV/AIDS Policy does not set out the role of the AIDS Commission and considering that the HIV/AIDS Policy is the national policy in relation to HIV and is establishing the Commission therefore it should have clearly set out what the role of

the Commission was, in order to avoid further conflict and discrepancies. Additionally, it merely sets out that the Commission will be headed by the Chairman of the Senate without devising the role of the head of the Commission either.

## 2.6 Priority Focus Areas

- 2.6.1 While the HIV/AIDS Policy states that there should be no discrimination against PLHIV and KAPs, yet it discriminates against them itself, by failing to correctly identify the most at risk populations and the vulnerable populations.
- 2.6.2 The National AIDS Control Programme has conducted several surveillance rounds in Pakistan which include mapping exercises of the most-at-risk populations, and the results of such exercises have clearly identified the most at risk populations as the (a) Injecting Drug Users; (b) Hijra Sex Worker / Male Sex Workers; (c) Men who have Sex with Men; and (d) Female Sex Workers yet all three of these categories listed here at (b) to (d) have been clubbed together in the above list at item (b) as “People who engage in sexual behaviour that puts them at risk” and (g) “Most-at-Risk-Adolescents”.
- 2.6.3 The fact that the HSW and MSW community has been ranked as the second highest in terms of HIV prevalence in the last surveillance report and yet the HIV/AIDS policy is unable to openly list them among the most at risk populations and vulnerable populations most likely to be exposed to HIV, is a clear indication of the societal pressures and the taboos that exist when dealing with HIV related issues in Pakistan.

## 2.7 Reducing AIDS Stigma and Discrimination

- 2.7.1 Reduction of HIV and AIDS stigma and discrimination as a policy statement and the further elaboration of this policy approach by stating that the PLHIV shall have the same rights that are afforded to all citizens of Pakistan and they shall be treated with dignity and respect (only while seeking health and welfare services with no mention of such dignity and respect in daily life) would be as ineffective a policy statement as a statement prohibiting discrimination, unless accompanied by specific measures that would firstly ensure that the rights of the PLHIV and KAPs are safeguarded and guaranteed not only in the sphere of health and welfare services but also in every walk of life and secondly by including stringent measures on restricting acts that are discriminatory in nature .
- 2.7.2 The manner in which equal rights to PLHIV and KAPs would have been ensured should have formed the most important Policy Approach of the HIV/AIDS Policy in view of the fact that the majority of the PLHIV and the KAPs comprise of populations that would be identified as individuals engaged in activities that are in violation of certain laws of Pakistan and hence even if such individuals are not discriminated against at all levels of society, including health care and law enforcement, on the basis of their HIV / health status than they would be and are discriminated against on the basis of their addiction, profession and/or sexual preferences.
- 2.7.3 As identified in the course of our research the barriers that prevent PLHIV from coming forward for counseling and treatment are (a) the stigmatization and discrimination faced by PLHIV in the public health sector at the hands of the health



facility providers that have not been sensitized to the HIV sector and usually include the health facility providers working in departments connected and allied to the HIV department; (b) the inconvenience of (i) traveling from far flung areas of the province to the main cities where the testing and counseling facilities are available, which includes not only a cost element but also a time and inconvenience factor; and (ii) distant parts of the city to various locations within the city where the testing and the other facilities are located. However, none of the above have been addressed in the HIV/AIDS Policy and no measures have been suggested to resolve the above referred issues.

## **2.8 Establishing a Supportive Legislative and Policy Framework**

- 2.8.1 As mentioned above, the majority of the PLHIV and the KAPs comprise of individuals that are engaged in activities that are considered to be in violation of various laws of Pakistan. All data, surveillance reports, research studies bear witness to this fact.
- 2.8.2 The title of this Policy Approach being “Establishing a supportive legislative and policy framework” and the contents thereof, which provide that there “should be a review of all existing laws and policies with a view to ensuring that they do not increase HIV vulnerability and risk or work against the vision and objective of the national HIV and AIDS response”, are contradictory. The vision is “for a healthy, prosperous nation that has responded effectively to HIV and that provides treatment, care and support for all people affected by HIV and AIDS”.
- 2.8.3 The Policy Approach with regard to the establishment of supportive legislative and policy framework should have reflected that upon review of the existing laws and policies efforts should be made for modification of the laws that create an environment of stigmatization and / or discrimination against the populations most at risk by HIV and to the extent possible, with consultation and involvement of the community leaders and religious leaders a rational and realistic policy should have been framed reducing the burden of penalization against the populations most at risk by HIV due to their sexual and / or professional preferences.

## **2.9 Recognizing the particular role of PLHIV**

- 2.9.1 The HIV/AIDS Policy includes a Policy Approach section titled “Recognizing the particular role of PLHIV”. While the recognition of the particular role of PLHIV is integral for the success of any HIV policy however such recognition would be futile unless the subject policy first recognizes the populations and communities that comprise the PLHIV, the difficulties faced by such populations and communities and incorporates effective measures for reducing such difficulties, either by introducing policies or suggesting amendments to the existing legal framework. Not only is introduction of a policy framework and suggested amendment to laws specifically with regard to the PLHIV / KAP community missing in the HIV policy but even the list of the population of most at risk by HIV do not correctly identify the same.



## 3. NARCOTICS POLICIES

### 3.1 CNSA

- 3.1.1 Pursuant to the Control of Narcotic Substances Act, the possession of contraband constitutes an offence and accordingly addicts are liable to be sentenced in accordance with the terms of the CNSA, unless the Narcotics Policy makes special qualifications for the rehabilitation of the addicts; which would then required to be reflected appropriately in the legislative framework.

### 3.2 Prisons and Contraband

- 3.2.1 The practical and realistic picture is that upon being sentenced and imprisoned all addicts continue to receive contrabands in the prisons in Pakistan. The Narcotics Policies do not adequately address this issue nor do they provide effective measures for overhauling the supply chain mechanism.
- 3.2.2 The practice in most provinces appears to be for all IDUs that are sentenced to be transferred to one prison facility, and as a consequence such facility becomes the main source for not only contraband but also of HIV infections. This is not only evidenced by the large number of HIV infections that are reported in particular prison facilities in each province, but has also been confirmed by the PLHIV that were interviewed during the course of the research. A news item confirming "*Eight Adiala Jail inmates test HIV positive*"<sup>28</sup> appearing in today's paper also bears witness to this situation.
- 3.2.3 The above should be adequately covered in the Narcotics policies as the same is an inherent HIV risk and a necessary prevention and control measure.
- 3.2.4 In addition to the Narcotics Policies there should be an IDU policy that pertains specifically to the IDUs and the policies that are to be undertaken with regard to the protection and welfare of the IDUs and the IDUs should not be categorized as part of the Narcotics policy; primarily due to the fact that by framing of a separate and distinct policy for the users of contraband / IDUs the State would be acknowledging its responsibilities towards the addicts and IDUs; and the addicts and IDUs would / should be invested with rights as a consequence of the drafting of such a policy.

## 4. BROAD OVERVIEW OF THE LEGISLATIVE FRAMEWORK

### 4.1 Health Laws

- 4.1.1 While laws in the health sector have been updated and new laws have been promulgated / enacted however the effectiveness of such laws remains dependent on the particular agency / authority responsible for their implementation; and accordingly the effectiveness of such laws differs from province to province.

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<sup>28</sup> The Express Tribune- May 30, 2013.

## 4.2 Relevant Laws

- 4.2.1 The promulgation of the Sindh HIV Law is the only law pertinent to HIV in Pakistan and to the issues of PLHIV. While the Disabled Person (Employment and Rehabilitation) Ordinance, 1981 is available in other provinces for the purpose of seeking employment benefits and training, yet it remains to be seen whether reliance on such law would prove beneficial for the PLHIV, given the sensitivity of the confidentiality requirements and the stigmatization and the discrimination element.
- 4.2.2 The Suppression of Prostitution Ordinance, a law promulgated for the purpose of suppressing prostitution, contains several provisions that can be utilized for the purpose of better safeguarding the rights of FSW and if re-enacted with due rationalization then it may be relied upon for better protecting the rights of a larger group of KAPs.

## 4.3 Welfare

- 4.3.1 Pakistan is a welfare state and the legislative framework for such a welfare state is available; as evidenced by laws such as the Minimum Wages for Unskilled Workers Ordinance, 1969, Workers Children (Education) Ordinance, 1929, Maternity Benefits Ordinance, 1958. These laws should be updated in order to reflect the current cost of living, uniformly implemented all over the country and should include private sector involvement.

# 5. GAPS IN THE LEGISLATIVE AND POLICY FRAMEWORK

## 5.1 The Laws that were never made

- 5.1.1 As per the statistical data available on child sexual abuse (**CSA**), total number of 3861 cases were reported in 2012 out of which, 9% were victims of rape, 9% were victims of sodomy and 6% were victims of sexual assault; with a total number of 2788 cases having been reported in newspapers, out of which 29% were boys and the remaining 71% were girls. A total of 6% of the victims out of the 2788 were murdered after sexual abuse. It is also relevant to note that 60 cases of CSA were reported in school, 48 at workplace and 31 in mosque; with the school being the third most unsafe place for children, followed by the workplace<sup>29</sup>.
- 5.1.2 There are currently no laws in Pakistan to protect children from CSA.
- 5.1.3 The provisions of law that are relied upon are Section 375(v) and 377 of the PPC; however these are not specifically child specific laws; albeit that Section 375(v) refers to a woman under the age of sixteen years.
- 5.1.4 There is an urgent need for laws that protect children from CSA and prescribe the strictest of punishments for the perpetrators of such heinous crimes, irrespective of their colour, cast and creed.

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<sup>29</sup> Cruel Numbers 2012 – a compilation of statistics on child sexual abuse of reported cases in Pakistan by Sahil.

- 5.1.5 Additionally, given the fact that schools are the third most unsafe places as per the CSA data available, there should be rules framed under such CSA law, for monitoring both schools as well as Madrassas.

## 5.2 Employment of Children Act

- 5.2.1 Although the Employment of Children Act, prescribes that children are not be employed during the hours of 7 pm and 8 am, however it is an undeniable fact that not only are children engaged in employment during these hours, but are also engaged in employment that is prohibited under the Employment of Children Act; accordingly the Employment of Children Act should be reviewed and revised and updated; a monitoring authority should be established thereunder and rules should be framed in accordance with the provisions of the Employment of Children Act.

## 5.3 Dilemma of Social Origin

- 5.3.1 The Most at Risk Populations engaged in sex work are unable to report any abuse that they may encounter due to their professions. This situation requires rationalization and appropriate amendments in law, in order to ensure that despite their professions, all citizens should have a right to seek relief upon being aggrieved and should not be judged by their social origin.

## 5.4 Incest

- 5.4.1 Not only the law enforcement agencies but also the judiciary does not readily accept cases of incest; as evidenced by the following reported judgment:
- 5.4.2 “When relations between complainant wife and accused/husband were strained and due to which such drama has been staged by the complainant. I have applied my and in my view when the relations between the wife and husband are strained such allegation could be leveled at the instigation of some intriguer; it appears improbable for the man of common prudence that a real father could attempt to commit zina with his real minor daughter – -Doubt has arisen in the prosecution story and case appeared to be of further inquiry – Accused was granted bail, in circumstances.”<sup>30</sup>
- 5.4.3 The above judgment supports the view that there should be legislation that penalizes incest without any gender bias; and / or age limitations.

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<sup>30</sup> 2010 PCrLJ 1950 – Karachi High Court – Ali Muhammad vs. The State

# Chapter 21 SUMMARY OF FINDINGS – KAPs

## 1. PLHIV

- 1.1.1 If the status of the PLHIV is disclosed than they face discrimination from all quarters and in case the PLHIV falls within any of the Most at Risk Populations; than such discrimination is intensified upon discovery of HIV contraction.
- 1.1.2 The most relevant concern for the PLHIV, being primarily from the marginalized community, is financial in nature, stemming from their inability to earn a livelihood; either due to their HIV positive status in which case, they are discriminated against by the employers; or due to their IDU status, in which case also they are not financially independent.

## 2. MSWs / MSM

- 2.1.1 The MSWs were the most financially stable as well as the most educated group of the KAPs; despite the discrimination that they face at the hands of the law enforcement agencies. Additionally, they also do not have any desire for further education and / or to change their current lifestyle.
- 2.1.2 There appears to be a fluid line between “Khawaja Saras” and MSW as a number of MSWs would also identify themselves as Khawaja Saras; it is worth noting that at the time that these statements were made no actual Khawaja Saras were present and therefore the acceptability or otherwise into the Khawaja Sara community remains to be seen.
- 2.1.3 There is a very clear distinction between the FSWs and the MSWs, while majority (95%) of the FSWs are need based, the majority of MSWs were MSM (based on our research) who decided to enter the sex trade after bitter experiences in life / breach of trust.
- 2.1.4 There appears to be a lack of empathy as a whole in the MSW / MSM community for the minors who are being initiated into the sex trade; and this is also a feature that is different and distinct from the FSWs; as the FSWs have both sympathy as well as empathy for the underage girls.
- 2.1.5 In case of abuse / assault none of the MSM/ MSWs report the same, due to a fear of being arrested and / or being prosecuted for their preferences.

## 3. FSWs

- 3.1.1 The father of the science of sexology, German physician Iwan Bloch, was of the view that prostitution develops as a by-product of the regulation of sexuality: “It is nothing else than a substitute for a new form of primitive promiscuity.”<sup>31</sup> This statement

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<sup>31</sup> “The Origin of Prostitution in Mesopotamia”: Gerda Lerner, Signs, Volume 11, No. 2, University of Chicago Press, pp 236–254 (JSTOR).

appears to be truer for Pakistan than one would expect, however from the Pakistan perspective prostitution appears to be a combined result of a glaring social and economic disparity and the prevalent yet latent and unacknowledged promiscuity in the society.

- 3.1.2 While in the course of study and research on FSWs in Pakistan, they have been divided into the following broad categories on the basis of their mode of operating, into, (a) Street based; (b) Home based; (c) KK based and (d) Brothel based; however for the purpose of better understanding the difficulties being faced by them, it would be pertinent to divide them laterally into (a) Need Based; (b) Familial Choice/Force; (c) Choice By Birth; and (d) By Choice.
- (a) Need Based: being those FSWs, that were pursuing lives other than as FSWs however due to a great economic crisis or need they had to turn towards sex-work. They are generally married and with children and although they do not have any other specific skill set but are keen to develop any other skill in order to earn a living. The Need Based category cuts across both the Street Based and the Home Based category.
  - (b) The Familial Choice/Force category is one where the FSWs are forced and / or coerced into sex work by their families, which could be the parents (either or both), brothers or uncles and includes the sale of the women/ girls to the handlers who then marry them for the purpose of giving a sense of respectability in the event of apprehension by the law enforcement agencies.
  - (c) In certain situations where the girls are born into a community of FSWs they consider sex work to be their inherited profession of their mothers and in such situations due to the lack of opportunities they continue in the same profession.
  - (d) There are certain FSWs who undertake sex work out of their own choice, however they do not form part of this study.
- 3.1.3 It is pertinent to note that there is an ongoing trafficking of children within the country for the purpose of prostitution; and strict measures are required to control such trafficking, specially in view of the fact that these children are not being kidnapped rather they are being brought across provincial borders by their own families for the purpose of sexual exploitation.
- 3.1.4 Once they enter the trade they are so burdened with the baggage of the trade and social pressure of maintaining the family from the money that they earn that it is practically impossible to extricate them from this industry. Additionally, they are also burdened with children at a very young age.
- 3.1.5 It is interesting to note that in the Pakistani society, while on paper the penalty exists for both selling and buying a woman for sexual exploitation, yet within the social norms, the discrimination and stigmatization is only for the woman who engages in the sex trade, while her clients do not receive any negative feedback from the society. Awareness needs to be created about this aspect, as well.

## 4. TRANSGENDER PEOPLE

- 4.1.1 The Supreme Court judgment has empowered the transgender community and now they are a force to be reckoned with. Three transgender candidates participated in the National Elections 2013, which was a historical move.
- 4.1.2 As regards their awareness of their rights; there was a mixed response, while some were excited about this move, there were others who did not care.
- 4.1.3 The members of the TG community were inclined that means of employment should be made available for them in order to enable them to leave their current modes of employment.

# Chapter 22 SECTORAL PARTNERS

## 1. NGOS

### 1.1 FSWs and NGOs

- 1.1.1 During the course of our research we faced considerable difficulty in identifying NGOs working with FSWs in Karachi; and upon establishing contact with the FSWs, this was also confirmed by FSWs. The FSWs of Group 1 reported that despite the fact that they have established a CBO yet they have not been received any guidance and / or any assistance from any governmental and / or developmental quarter; and there is no other NGO / CBO that is working with FSWs in Karachi; except for one NGO that is engaged with FSWs in a particular area of Karachi.
- 1.1.2 Group 1 FSWs were of the view that a FSW CBO would be best able to understand the on ground issues and problems of FSWs and access the FSWs for service delivery purposes; however they felt handicapped in accessing the donor agencies and the developmental institutions due to their lack of literacy and computer skills.
- 1.1.3 A similar situation was reported by the NGO the Walled City in Lahore, which as per their say so, was also unable to access donor agencies and developmental institutions due to their lack of literacy skills and inability to prepare reports and compile statistical data.
- 1.1.4 While the NGO in Lahore working outside of the Walled City is reported to have accessed over 9500 FSWs, however the homebased FSWs that formed part of our research were unaware of such NGO and had expressed a need for a DIC for FSWs.

### 1.2 Knowledge Base

- 1.2.1 All NGOs that formed part of the research were providing information with regard to health, STIs and HIV and there did not appear to be any organization that was working in Karachi, Lahore or Islamabad that worked towards creating legal

awareness with regard to an individual's rights in society or the corresponding obligations.

- 1.2.2 This is illustrated by two particular instances: firstly, with regard to the awareness of rights; in all three cities the outreach workers of the NGOs working with MSM/MSWs reported being harassed by the law enforcement agencies for possession of condoms in bulk; despite the fact that there is no law which describes / defines the same as an offence and every individual has the right to have on his person any such thing which is not forbidden by the law of the land and / or deemed to be a contraband. Secondly with regard to the obligations, while discussing CSA, a MSW narrated that one of his clients was renting his apartment for the purpose of introducing young boys into the sex trade; but the MSW in question did not feel any obligation towards the boys, despite the fact that they were minors. These two incidents underline the fact that there is a requirement for creating an awareness of rights and obligations.
- 1.2.3 The international conventions that Pakistan is a State Party to would have little significance unless its citizens understand the import of the provisions of such conventions and start reflecting the same in their lives.

### **1.3 KAP Research Models**

- 1.3.1 Due to the number of researches that are conducted by the numerous agencies, authorities and the media that require KAP participation, not just on HIV but also on the lifestyle, shortcomings and difficulties in lives of the KAPs, that these interviews and research seem to be a means of livelihood and there are specific rates for each KAP community that is being interviewed.
- 1.3.2 It may be worthwhile for the KAPs to consider establishing an association, either at a provincial level that would regulate such interviews and would also be the lobbying point for their rights and for legislative and policy amendments.

## **2. BLOOD BANKS**

### **2.1 Deficiencies**

- 2.1.1 As part of the field research, interviews were also conducted with the head of an eminent blood bank in Karachi; who narrated a large number of irregularities that have been discovered by the Sindh Blood Transfusion Authority in the operation of blood banks in Sindh.
- 2.1.2 The Punjab Blood Transfusion Authority has a stronger remit than the Sindh Blood Transfusion Authority and far less irregularities are reported in the province of Punjab since the Punjab Blood Transfusion Authority has become operational; while in Sindh the remit of the Sindh Blood Transfusion Authority is challenged quite regularly by criminal elements engaged in the business of blood and blood products.
- 2.1.3 This is also supported by the fact that while in Punjab not more than two cases of children with Thalassemia testing positive for HIV have been reported; while in Sindh,

Thalassemia and HIV co-infection is more prevalent; due to the transmission of blood and blood products that are not duly screened.

## 3. LAW ENFORCEMENT AGENCIES

### 3.1 Virgin Cure for AIDS

- 3.1.1 Unscrupulous individuals in disguise as local medicine men and faith healers have tried to defraud the public with miracle cures for various diseases and ailments, which include HIV. One such instance which was recently reported in the press, involved an individual who claimed to be an AIDS patient and abducted, raped and killed young women, as an alleged cure for AIDS, and allegedly prescribed to him by a local medicine man. This was the only reported incident of its kind, that involved murder of innocent women for the sake of curing HIV and therefore formed part of our research for this study.
- 3.1.2 The facts of the case, as detailed by the Capital City Police, Islamabad (“**Islamabad Police**”)<sup>32</sup> were that in February 2013, a man was arrested in the Bhara Kahu area of Islamabad, for raping and murdering an 11 year old girl, with the help of his female accomplice. During the investigation the accused claimed that he had AIDS and was abducting and raping women and young girls with the help of his accomplice to cure his ailment. The couple also confessed to the rape and murder of a 9 year old and the unsolved murder of a 22 year old daughter of a police officer in Bhara Kahu in November 2012. Additionally the accused also confessed to the murder and rape of a girl in Lala Musa. The accomplice in the current case was released on a bail before arrest order from the court<sup>33</sup>.

### 3.2 Meeting with the Islamabad Police

- 3.2.1 In order to further investigate the above-referred matter, we had a meeting with the Assistant Inspector General of Capital City Police, Islamabad and it was confirmed by the Islamabad Police that the accused was not HIV positive and / or suffering from AIDS and had mentioned HIV in order to mislead the police, although no reference to screening of the accused was made with regard to the basis of such confirmation. The accused had also committed similar offence with two (2) women in Lahore but in both those instances there had been no reference to HIV; and the reference to HIV had only been made in relation to the offences committed in Islamabad.
- 3.2.2 Certain suggestions were made by Islamabad Police with regard to the current HIV situation in Pakistan, being, (a) regular HIV screenings should be conducted at all military cadet academies and police academies; and (b) at the time of issuance of heavy vehicle licenses to truckers and long route bus drivers and at the time of renewal of the heavy vehicle licenses to truckers and long route bus drivers; there should be an opportunity for HIV screening with informed consent and HIV awareness programmes should be arranged accessible by such license holders.

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<sup>32</sup> We met with the Assistant Inspector General of Capital City Police, Islamabad on May 17, 2013 in Islamabad.

<sup>33</sup> “Virgin Cure: Three women killed to ‘cure’ AIDS”: The Express Tribune, published February 28, 2013









**PART VIII**  
**RECOMMENDATIONS**

# Chapter 23 SHORT TERM RECOMMENDATIONS

## 1. LEGISLATION

### 1.1 Law Review Committees

- 1.1.1 Law Review Committees should be formed in each province, directly responsible to the Minister for Law in each province; with private sector membership, including a member of the judiciary either retired or current, funded by a developmental agency.

## 2. SENSITIZATION CAMPAIGNS

### 2.1 Law Enforcement

- 2.1.1 In view of the fact that all KAPs have reported wide spread discrimination and harassment by the law enforcement agencies, it appears that it is imperative that sensitization campaigns be organized at a mass scale for the law enforcement agencies.
- 2.1.2 However given the deep rooted taboo and stigmatization attached to both the professions (law enforcement as well as the sex workers) the sensitization campaigns will need to be well organized and thought out.

## 3. MEDIA CAMPAIGNS

### 3.1 HIV Awareness

- 3.1.1 Awareness of HIV among the community at large is at a low scale. As part of the prevention exercise it is necessary that the media awareness exercise be stepped up, however the awareness campaign should include that discrimination against the PLHIV in any walk of life against the law, and would result in legal action, if reported. For provinces that do not have the benefit of the HIV law, reliance can be placed on the Constitution of Pakistan, which contains a broadly worded prohibition against discrimination.

## 4. KAPs

### 4.1 Rights Awareness

- 4.1.1 Introduction workshops should be arranged for all marginalized communities on basic human rights and basic laws of Pakistan. These can be arranged in partnership with the NGOs / CBOs, the provincial governments and the development agencies. For unless the marginalized communities are aware of their rights they will not be able to stand up for their rights; it is therefore essential that they should be educated about their rights.

## 5. HUMAN TRAFFICKING

### 5.1 Task Force

- 5.1.1 An Inter Provincial Task Force should be formed to battle human trafficking and should work with FSWs and NGOs working with FSWs in order to eliminate human trafficking with the borders.

## Chapter 24 MEDIUM TERM RECOMMENDATIONS

### 1. LEGISLATION

#### 1.1 Law Review Committee

- 1.1.1 The Law Review Committee shall be entrusted with the following duties:
- (a) Preparing policy papers on:
    - (i) the shortcomings of Sections 375, 376 and 377 of the PPC and setting out the necessity of an all encompassing section on rape and seeking a Fatwa from a Shariah scholar on the necessity of such a provision in law;
    - (ii) the necessity of a section on incest, irrespective of gender or age limit, in the light of existing court rulings, (reliance may also be placed on subordinate court rulings, if required) and support the same by comparative case law and legislative provisions;
    - (iii) the existing provisions on rape in the light of existing case law, and suggest appropriate amendments therein, with regard to restricting courts from making derogatory comments about the victim's character and / or casting doubts about the victims character and including provisions whereby a rape victim is presumed innocent and treated as a victim irrespective of its profession;
    - (iv) and seeking Fatwas from Islamic scholars in respect of the proposed amendments;
  - (b) preparing a draft law incorporating the relevant provisions of the Suppression of Prostitution Ordinance and including provisions for the purpose of further safeguarding the interests of all Most At Risk populations;
  - (c) preparing a draft law on the Khawaja Saras that will effectively protect the rights of the TG Community;
  - (d) reviewing all laws pertaining to children; all bills pending in each provincial assembly pertaining to children; reviewing comparative legislation in neighbouring countries in respect of children rights and preparing a draft Child Protection Law that will incorporate provision protecting children from CSA;
  - (e) preparing a policy paper on the Control of Narcotic Substances Act, with regard to the amendments required to protect the rights of the addicts.

## 2. KAPs

### 2.1 Special Scholarships for children of FSWs

- 2.1.1 In order to ensure that children of FSWs do not enter the sex trade, special scholarships should be offered by the Provincial Government / private donors, for such children of the FSWs that demonstrate an interest in pursuing education or a vocational skill.

## 3. SEXUAL AND REPRODUCTIVE HEALTH

### 3.1 Femidom

- 3.1.1 For the purpose of empowering women, large scale Femidom trials should be re-conducted in Pakistan.

## 4. HUMAN TRAFFICKING

### 4.1 Child Prostitution

- 4.1.1 Currently there does not appear to be any NGO working on child prostitution; provincial cells should be formed to battle child prostitution, which should work with the guidance of a child psychologist.

# Chapter 25 LONG TERM RECOMMENDATIONS

## 1. LEGISLATION

### 1.1 Law Review Committee

- 1.1.1 The Law Review Committee would conduct an Annual Audit of all laws passed in the last 12 months in order to ensure that:
- (a) All such laws are compliant with the international conventions and commitments that Pakistan is a state party to;
  - (b) Do not contain any provision that is violative of any human rights of the citizens of Pakistan;
  - (c) Do not replicate any law already in existence in Pakistan; and in the event any such law is indeed passed than the Law Review Committee shall take a decision with regard to the repeal of the older; subject to incorporating all such provisions that are beneficial to the interests of the State / Province and the citizens of Pakistan in the new law;

## 2. KAPs

### 2.1 Microfinance for the Marginalised Community

- 2.1.1 As detailed above, a number of the FSWs as well as members of the TG community fall within the need based community; and are engaged in their current professions due to financial constraints. The State very obviously wants to reduce, if not eliminate, the sex trade, in which case, alternate means of livelihood should be provided for all such persons who are currently engaged in it. Vocational / Skill based training institutes with microfinance facilities should be offered to such of the marginalized community that are interested in availing it; subject to strict monitoring and evaluation.

# Annex 1 SINDH HIV/AIDS CONTROL TREATMENT AND PROTECTION ORDINANCE, 2013

## AN ORDINANCE

*to control the transmission and spread of HIV in the Province of Sindh and to provide measures for the treatment, care and support of the People Living With HIV and AIDS.*

**WHEREAS** there is an urgent need to control the transmission of HIV and AIDs and to undertake measures for the treatment, care and support of people living with HIV and AIDS, and to provide for matters ancillary thereto;

▣ **Preamble.**

**AND WHEREAS** the Provincial Assembly is not in session and the Governor is satisfied that circumstances exist which render it necessary to take immediate action.

**NOW, THEREFORE,** in exercise of the powers conferred by clause (1) of Article 128 of the Constitution of the Islamic Republic of Pakistan, 1973, the Governor is pleased to make and promulgate the following Ordinance.

## CHAPTER I PRELIMINARY

1. (1) This Ordinance may be called the Sindh HIV and AIDS Control Treatment and Protection Ordinance, 2013.  
(2) It extends to the whole of the Province of Sindh.  
(3) It shall come into force at once.

▣ **Short title, extent and commencement.**

2. In this Ordinance, unless there is anything repugnant in the subject or context -

▣ **Definitions.**

- (a) "AIDS" means Acquired Immune Deficiency Syndrome and is a condition characterized by a combination of signs and symptoms, caused by HIV, which attacks and weakens the body's immune system making the HIV-positive person susceptible to other life threatening infections or conditions, or as may be defined by the Sindh AIDS Commission from time to time;



- (b) "blood bank" includes a private, Government or Armed Forces blood bank maintained for the purpose of receiving, preserving, storing, analyzing and processing blood and blood products registered under the Sindh Transfusion of Safe Blood Act, 1997;
- (c) "children" or "child" means a person up to the age of eighteen years;
- (d) "Commission" means the Sindh AIDS Commission constituted under section 4;
- (e) "discrimination" includes any act or omission including a policy, law, rule, practice, custom, tradition, usage, condition or situation which directly or indirectly, expressly or by effect, immediately or over a period of time imposes burdens, obligations, liabilities, disabilities or disadvantages on, or denies or withholds benefits, opportunities or advantages, from, or compels or forces the adoption of a particular course of action by any person or category of persons, based solely on a person's HIV status, actual or perceived;
- (f) "Government" means the Government of Sindh;
- (g) "health care facility" or "health care facilities" means any basic health unit, rural health centre, any hospital including a Tehsil, District, or a teaching hospital, and any private medical facility, supervised by a medical practitioner;
- (h) "health workers" means any person providing services as a medical practitioner, homeopath practitioner, nurse, nutritionist, midwife, traditional birth attendant, pharmacist or dispensing chemist, hospital administrator or employee, whether professional or not, paid or not, and any other person providing such services as may be notified by Government in the official Gazette;
- (i) "HIV" means Human Immunodeficiency Virus which causes AIDS in humans, by infecting the cells of the human immune system and destroying their function, resulting in the progressive depletion of the immune system;
- (j) "HIV-positive" means the presence of HIV infection as documented by the presence of HIV or HIV antibodies in the sample being tested;
- (k) "HIV screening" means a systematic application of a medical procedure or the conducting of surveys and or interviews by addressing questions to a pre-identified population, with the intent to determine the presence or absence of HIV or HIV virus and antibodies, on the basis

of the results and or the response to such surveys and or interviews to a defined population, for a broad public health purpose;

- (l) "HIV test" means a medical procedure used to determine the presence or absence of HIV or HIV antibodies in an individual, administered typically for diagnostic or clinical purposes;
- (m) "HIV transmission" refers to the transfer of HIV from an infected person to an uninfected individual, most commonly, but not limited to, through –
  - (i) unprotected sexual contact;
  - (ii) direct blood contact, including injection drug needles, blood transfusion, accidents in health care settings, or certain blood products; and
  - (iii) mother to baby: before or during birth or through mothers milk;
- (n) "HIV and AIDS prevention harm reduction services" means all quality assured, training measures designed to mitigate the risk of HIV infection and other health, social, economic consequences of illicit drug taking and other behaviours, including but not restricted to information and promotion of Voluntary Confidential Counseling and Testing, and referrals for treatment of opportunistic infections and for Anti-Retroviral Therapy; establishment of 'drop in' and mobile outreach centers for the Most at Risk Populations;
- (o) "informed consent" means voluntary and continuing permission of the person, whether written or oral, or if the person is a minor, his guardian, for assessment or to receive a particular treatment based on an adequate knowledge of the purpose, nature, likely effects, and risks of that treatment, including the likelihood of its success and any alternatives to it and the cost of treatment;
- (p) "involuntary HIV Testing" refers to HIV testing imposed upon a person attended or characterized by the lack of consent, use of physical force, intimidation or any form of compulsion;
- (q) "Most at Risk Populations" means such populations that are considered to be at disproportionately high risk for HIV due to behaviours and practices that heighten their vulnerability to the virus;
- (r) "people living With HIV and AIDS" means people living with asymptomatic HIV infection and AIDS confirmed by different diagnostic tests;

- (s) "person" means one or more individuals, partnerships, associations, unincorporated organizations, companies, cooperatives, trustees, agents or any group of persons;
- (t) "prescribed" means prescribed by rules;
- (u) "rules" means rules made under this Ordinance;
- (v) "post-test counseling" refers to the process of providing to the person who took the HIV test, whether result is positive or negative, at the time that the test result is released, risk-reduction information, partner notification and emotional support counseling, referral to relevant Non-governmental organizations and establishments dealing with the issue of HIV, and other social and health safety net mechanisms;
- (w) "pre-test counseling" means the process of providing individual information on the biomedical aspects of HIV and AIDS, assessing and evaluating the persons concerned threshold to the consequences of being positive, emotional support to any psychological implications of undergoing HIV testing and the test result itself before the person takes the test;
- (x) "Programme" means the Sindh AIDS Control Programme;
- (y) "safe blood" means human blood or blood product which is healthy and free from HIV, Hepatitis B and C viruses or other viruses or infective agents, like malarial parasites and treponema pallidum (syphilis) and or such other viruses or infective agents as Government may, by notification in the official Gazette, specify;
- (z) "universal precautions" means infection control measures that prevent exposure to or reduce the risk of transmission of pathogenic agents including HIV and includes education, training, personal protective equipment such as gloves, gowns and masks, hand washing, and employing safe work practices, transportation of bio-medical material and disposal of waste; and
- (aa) "voluntary HIV testing" refers to HIV testing done on an individual who, after having undergone pre-test counseling, willingly submits himself to such test.

## CHAPTER II

# ESTABLISHMENT OF SINDH AIDS COMMISSIONS

3. (1) Government shall be responsible for the implementation and enforcement of this Ordinance and shall have the following powers and functions:- **Implementation and Monitoring.**
- (a) to promulgate such rules as are necessary or proper for the implementation of this Ordinance and the accomplishment of its purposes and objectives;
  - (b) to call for consultations with the interested persons to ensure implementation and compliance with the provisions of this Ordinance and the rules; and
  - (c) to exercise such other powers and functions that may be necessary for, incidental or ancillary to, the attainment of any purposes and objectives of this Ordinance, or the rules.
- (2) Government may, by notification in the official Gazette, direct that all or any of its powers and functions under this Ordinance may, subject to such limitations, restrictions or conditions, if any, it may from time to time impose, be exercised or performed by the Commission.
4. (1) Government shall within fifteen days from the date of promulgation of this Ordinance, by notification in the official Gazette, establish a Commission for the prevention, control, care, support and treatment of HIV and AIDS in the Province of Sindh. **Sindh AIDS Commission.**
- (2) The Commission shall comprise of –
- (a) Working Body, that will be responsible for undertaking and implementing projects HIV and AIDS related projects in the province of Sindh that fulfill the objectives of this Ordinance; and
  - (b) a Governing Body that shall meet every six months to evaluate the progress of the Working Body.
- (3) The Working Body of the Commission shall comprise of -
- (a) two persons representing Non-governmental organizations working in the field of HIV and AIDS, one of whom shall be from Injecting Drug Users (IDU) and other from the Most at Risk High Group on basis of integrated behavioural and biological surveillance;
  - (b) two medical practitioners working in the field of HIV and AIDS, one from public sector and other from private sector;

- (c) one lawyer with experience in HIV and AIDS;
  - (d) one person representing non-governmental organizations working with social issues to be nominated by Government;
  - (e) three members of Most at Risk community, one of whom shall be a woman;
  - (f) one retired member of the law enforcement agencies or a retired Judge.
  - (g) Provincial Programme Manager, Sindh AIDS Control Programme.
- (4) The Governing body of the Commission shall comprise of five
  - (5) eminent members to be nominated by the Government.
  - (5) A non-official member of the Commission shall hold office for a period of two years from the date of his appointment, and shall be eligible for re-appointment for such duration as Government may determine.
  - (6) A non-official member may at any time, before the expiry of his term, resign from his office, or be removed from office without assigning any reason.
  - (7) Any person appointed on a casual vacancy in the office of non-official member shall hold office for the unexpired portion of the term of such vacancy.
  - (8) The Commission may invite an expert to take part in its meetings as an observer; and may constitute committees, or hire the services of experts, consultants, or employees, for the purposes of detailed study of any specific matter before it.
  - (9) The members of the Commission shall exercise such powers as may be prescribed.
  - (10) No act or proceedings of the Commission shall be invalid on the ground of the existence of any vacancy in the Commission.
- 5. (1) The Commission shall be located within the Health Department, Government of Sindh.
  - (2) The Chairperson of the Commission and the Secretary of the Commission shall be elected by the Governing Body.
  - (3) The Commission shall meet as often as considered necessary by the Chairperson but no less than every six months at such time and place as may be intimated by its Secretary.
  - (4) The majority of the members of the Commission shall constitute a quorum for a meeting.

 **Administration  
of Sindh AIDS  
Commission.**

- (5) The decision of the Commission shall be taken by the majority of its members present and, in case of a tie, the member presiding a meeting shall have a casting vote.
  - (6) All orders, determination and decisions of the Commission shall be taken in writing by the Secretary of the Commission.
  - (7) The Commission shall establish a fund in such name as the Commission may determine which shall vest in the Commission and to which shall be credited –
    - (a) grants made by the Government and the Federal Government and Local Bodies;
    - (b) (b) income from investments made by the Commission;
    - (c) (c) donations and endowments;
    - (d) (d) revolving funds placed by the Government at the disposal of the Commission; and
    - (e) (e) all other sums received by the Commission and incomes from other sources.
6. (1) Subject to the provisions of this Ordinance, the Commission shall have the following powers and functions:-
- (a) to formulate, institute and implement provincial HIV and AIDS related public awareness programmes;
  - (b) to formulate and implement HIV and AIDS policy, which shall be reviewed and amended, if necessary, every three years after widespread consultation;
  - (c) to make rules providing protocols for counseling, testing, care, support, treatment tailored specifically and separately for all members of Most at Risk Populations, for children, and for women who are vulnerable and at risk for HIV infection;
  - (d) to monitor the Sindh AIDS Control Programme and their performance;
  - (e) to recommend changes or amendments in the Programme designs on the basis of data and results of integrated behavioural and biological surveillance and changing scenario in HIV and AIDS epidemic;
  - (f) to recommend for inclusion of reproductive health and HIV and AIDS in the curriculum for higher secondary education;
  - (g) to monitor compliance with this Ordinance in the prescribed manner;
  - (h) to receive reports of violations or other matters concerning this Ordinance;

 **Powers and Functions of Commission.**

- (i) to recommend investigation or initiation of cases against health workers and other sections of the population as prescribed in this Ordinance and the rules;
  - (j) to plan for and coordinate the dissemination of informational, educational and communication materials on the topics of HIV and AIDS in a method as may be prescribed, and to plan continuing education courses for health workers, and others including the general public, on topics related to this Ordinance;
  - (k) to advise Government on all matters relating to the prevention, control, care, support and treatment of HIV and AIDS, particularly through education campaigns and to organize such campaigns;
  - (l) to register NGOs and CBOs providing HIV and AIDS prevention harm reduction services; and
  - (m) such other powers and functions that may be deemed necessary, incidental or ancillary to, the attainment of any purposes and objectives of this Ordinance.
- (2) In proceedings and inquiries before the Commission, it shall have all the powers of a civil court under the Code of Civil Procedure, 1908 (V of 1908) in respect of the following matters, namely:
- (a) summoning and enforcing the attendance of witnesses and examine them on oath;
  - (b) discovery and production of any document;
  - (c) receiving evidence on affidavits;
  - (d) requisitioning any public record or copy thereof from any court or office; and
  - (e) issuing commissions for the examination of witnesses or documents.
- (3) The Commission shall have power to require any person, to furnish information on such matters as, in its opinion, may be useful for, or relevant to, the subject matter of an inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Pakistan Penal Code, 1860 (XLV of 1860).
7. Nothing contained in this Chapter prohibits, limits or otherwise restricts the right of a person to other remedies provided under this Ordinance or any other law for the time being in force to address violations of the provisions of this Ordinance.

 **Right of Redress.**


## CHAPTER III

# PROTECTION AGAINST DISCRIMINATION

8. (1) No person shall discriminate against another on the basis of such other person's HIV status or presumed, suspected and or alleged HIV status, whether in the field of health care services, education, employment, provision of general, utility and or any other form of services and or in relation to accommodation, whether in respect of accommodation for lease, rent, to let or hire and or for purchase.
- (2) Except in accordance with this Ordinance, it shall be unlawful to require, or to coerce, a person to be HIV screened for purposes of -
- (a) employment, promotion, training, or benefit, either in public or private sectors;
  - (b) membership in any organization;
  - (c) admission to any educational institution;
  - (d) admission to any public or private place of accommodation;
  - (e) marriage;
  - (f) immigration to, emigration from, or citizenship of, Pakistan; or
- (3) All organizations having possession of health records of any individual that pertain to HIV and AIDS screening and or HIV and AIDS Tests and or the results thereof and or any other matter relating to HIV and AIDS shall keep the same confidential and shall neither disclose nor release the same to any other third party without the prior written information of the relevant individual; provided however in the event, such records are required to be released to the Court pursuant to a Court Order than the organization shall immediately file an application in Court that such records shall be kept confidential by the Court and shall not be made part of the public record.
- (4) Every workplace, public or private, having more than 10 employees, shall undertake an HIV and AIDs awareness programme for the benefit of its employees at least once every year.



 **Prohibition on Discrimination Based on HIV Status.**



- (5) No person shall be required to be HIV screened without their express consent, for routine testing or diagnostic testing purposes by any public or private health care facility.
  - (6) All public and private health facilities shall maintain confidentiality of patients' medical and personal information, including their HIV status.
  - (7) No person, including a minor, seeking admission in a private or public educational institution shall be HIV screened, and shall ever be denied admission based solely on his HIV status.
  - (8) No person seeking private or public accommodation anywhere shall be screened for purposes of denying admission based on his HIV status
  - (9) No person shall publish, propagate, advocate or communicate by words, either spoken or written, or by signs or by visible representations or otherwise, against any person on grounds of his HIV status.
9. (1) Any person who contravenes any provision of section 8, shall be punishable with fine which shall not be less than Rupees fifty thousand or more than Rupees three hundred thousand; provided however, any denial or delay in provision of health services to a PLHIV by a health service provider whether in a health care facility or otherwise, for any reason whatsoever, including but not restricted to the HIV status of the PLHIV shall render such health service provider liable to a fine not less than PKR 100,000 (Pak Rupees One Hundred Thousand) and not exceeding PKR 2,000,000 (Pak Rupees Two Million Only); provided however any such inordinate delay or denial of health services or treatment of PLHIV results in the premature acceleration of the disease or death of the PLHIV than the health service provider responsible for such acceleration shall be liable for the relevant punishment under the Pakistan Penal Code, 1860.
-  **Penalties for Discrimination.**

## CHAPTER IV

# AWARENESS, BEHAVIOUR CHANGE COMMUNICATION AND ADVOCACY OF HIV AND AIDS PREVENTION MEASURES

10. (1) All persons have the right to information about HIV and AIDS.  **Measures with regard to Awareness of HIV**
- (2) Government shall ensure that HIV awareness programmes are organized throughout the province that are accessible by such public and private sector organisations.
- (3) Every public and private sector organization and educational institutions of higher secondary having more than twenty-five (25) employees shall organize a HIV awareness programme on its premises through public and private organization working on HIV AIDS and registered by Health Department and Sindh AIDS Control Programme through their own resources.
- (4) Government shall issue directives to the transporters organisations and the local businesses organisations to organize HIV awareness programmes and to ensure attendance by their members.
- (5) Any person failing to comply with the provisions of this Section 18 shall be deemed to have committed an offence under Section 269 of Pakistan Penal Code and shall be liable for the punishments stated therein.
11. (1) All HIV and AIDS-related public awareness programmes shall be disseminated widely through all forms of media, including print, electronic, mass and digital media.  **Need for Behaviour Change Communication and Advocacy.**
- (2) (2) It shall be the duty of every health worker, and health care facility, to make available to the public, subject to the provisions of this Ordinance, such information as is necessary in the prevention, control, as well as treatment of HIV and AIDS.
- (3) (3) Every health care facility shall enhance the knowledge and capacity of all its health workers in relation to dissemination and education of the general public about HIV and AIDS; and on other HIV-related issues such as discrimination, confidentiality, and informed consent.

12. Programmes shall be established by the Provincial Government, with the active cooperation of the Provincial AIDS Commission to educate and raise awareness among:
- (a) persons living with HIV and AIDS;
  - (b) Women vulnerable and at risk for HIV;
  - (c) Members of Most at Risk Populations concerning their rights and generally to empower them;
  - (d) judges, judicial staff and among legal practitioners concerning the rights of protected and Most at Risk Populations, and for the purpose of encouraging the provision of legal services to enforce those rights, and to develop expertise on HIV-related legal issues among such persons.

 **Support for Education and Awareness Raising Programmes.**

## **CHAPTER V**

# **REDUCTION OF RISK OF HIV EXPOSURE AMONG MEMBERS OF MOST AT RISK POPULATIONS**

13. (1) The Working Body shall advise the Governing Body on the possible actions that may be taken to promote individual safe behaviours, and other actions to reduce risk of exposure to HIV among members of vulnerable groups, and from them to the general population.
- (2) Government, in consultation with the Commission, shall organize and arrange training in the field of behaviour change and communication (BCC) and on HIV and AIDS prevention harm reduction services, for police and prison staff, and other law enforcement officials.
- (3) The Health Department shall ensure HIV and AIDS awareness and Voluntarily Confidential Counseling Testing at level of basic health unit while ensuring HIV and AIDS awareness, Voluntarily Confidential Counseling Testing, CD4, viral load testing, Anti-Retroviral treatment (adult and children) harm reduction services, psychological support, treatment for opportunistic infections and sexually transmitted infection, primary health care and oral substitution therapy in all tertiary care health facilities through one-window operation by establishing family health centre.
- (4) All line Ministries and public health projects will integrate HIV related prevention activities in their programmes.

 **HIV and AIDS Prevention Services Amongst Most at Risk Populations.**


- (5) NGOs and CBOs duly registered with the Commission shall work on HIV prevention harm reduction services and the Commission shall monitor the NGOs and CBOs working in the HIV/AIDS sector.
- (6) The Commission shall conduct integrated behaviour and biological surveillance every two years to ascertain the trend of disease, behavioural change for necessary amendment in implementation strategies and for the purpose of development of relevant policies.
14. (1) Government shall issue directives to the law enforcement agencies to conduct mandatory HIV screenings for the accused and the victims subject to informed consent of the victims in all sexual assault cases. **▶ HIV Screening for Sexual Assault Cases.**
- (2) No person in charge of a health care facility and / or a member of a law enforcement agency shall report or release information regarding the HIV results conducted on the accused or the victim, pursuant to this Section 14.
- (3) Due to the stigmatization attached to HIV/AIDS all information in relation to HIV/AIDS status of an individual that is to be released to any court in the Province shall not form part of the public record.
- (4) Rules shall be made specifying protocols for the counseling and treatment of survivors of rape or sexual assault and for the training of health workers in the implementation of such protocols.
15. (1) The Commission shall commence HIV/AIDS screening campaigns in the city for street children through the CBOs and NGOs working with street children and any street child that tests as HIV positive shall be provided with free treatment through the Sindh AIDS Control Programme. **▶ Children.**
- (2) The Government, in consultation with the Commission, shall provide to street children harm reduction, Voluntary Confidential Counseling and Testing), and referral treatment, on a confidential basis; and the identity of the child, tested for HIV, or the results of the HIV test, or of the counseling provided to such child, shall not be revealed, except in accordance with law.
16. (1) Government shall initiate awareness programmes about HIV in all prisons in the province of Sindh and shall conduct regular screening of the inmates in the prisons of Sindh, subject to informed consent of each such prisoner. **▶ Prisoners.**

- (2) The results of HIV screening and tests shall not be revealed to any person by the health professionals conducting such tests or by the prison officials.
- (3) No prisoner shall be discriminated against on the basis of his HIV Screening and / or HIV Tests, with regard to the health facilities, residence quarters and / or diet provided to such prison subsequent to the findings of such HIV Screenings and / or tests.
- (4) Any person who contravenes any provision of this Section 16 with regard to confidentiality, shall be liable to a fine of not less than PKR 100,000 (Pak Rupees One Hundred Thousand Only) and not exceeding PKR 2,000,000 (Pak Rupees Two Million Only). Notwithstanding anything contained herein, any prisoner adversely impacted by such disclosure shall have the right to seek relief under this Section 16(4).

## CHAPTER VI

# REDUCTION OF RISK FOR OCCUPATIONAL HIV EXPOSURE

17. (1) Every health care facility, where there is a significant risk of occupational exposure to HIV, shall provide free of cost universal precautions, and post exposure prophylaxis, to all persons working in such health care facility who may be occupationally exposed to HIV and appropriate training for the use of such universal precautions.
- (2) Every health care facility shall ensure that the universal precautions and the post exposure prophylaxis protocols introduced at its facility are complied with by all concerned. It shall in this regard inform all persons working in the health care facility about the details of availability of these precautions and protocols and shall make special efforts to ensure that all workers in health care facilities are trained in using and accessing them.

 **Provision of Universal Precautions and Post Exposure Prophylaxis.**

## CHAPTER IX

# REQUIREMENT OF CONFIDENTIALITY

18. (1) Except as otherwise provided in this Ordinance, all health workers, and any other person while providing services, or being associated in the course of his duties with the provision of any HIV counseling, testing, care, support or treatment services or care; or through administration of this Ordinance or by conducting surveillance reporting, or research, shall take all reasonable steps to maintain confidentiality. Such person shall prevent disclosure of any information that another person:

- (a) is or is presumed to be HIV positive;
- (b) has or is presumed to have AIDS; or
- (c) has been or is being tested for HIV infection.

 **Confidentiality of Information.**

19. (1) No person shall be compelled to disclose HIV-related information or any other private information concerning himself, except when a court determines by an order that the disclosure of such information is necessary for the determination of issues and in the interest of justice in a matter before it.

 **Authorized Disclosure of Information.**

- (2) Disclosure of HIV-related information or private information is authorized in case the disclosure is made -
- (a) by a health worker to the concerned quarters of Sindh AIDS Control Programme who is involved in the provision of care, treatment or counseling of a person, when such disclosure is necessary to provide care or treatment in the best interest of that person; or
  - (b) by an order of a court when it determines by such order that the disclosure of such information is necessary for the determination of issues and in the interest of justice in a matter before it; or
  - (c) in legal proceedings between persons, where the disclosure of such information is necessary in the initiation of such proceedings or for instructing counsel; or
  - (d) if it relates to statistical or other information of a person that could not reasonably be expected to lead to the identification of that person.
- (3) Any person to whom disclosure is made under this section is prohibited from making further disclosure except as provided in this Ordinance.

20. (1) A health worker who is a physician or a counselor, may inform the spouse or a partner of a person under his direct care of such person's HIV-positive status only when -
- (a) the HIV-positive person has been thoroughly counseled to inform such spouse and/ or partner;
  - (b) Counseling of the HIV-positive person has failed to achieve the appropriate behavioural changes and he is unlikely to inform his spouse and/ or partner through the Sindh AIDS Control Programme;
  - (c) the health worker reasonably believes that the spouse and/ or the partner is at significant risk of transmission of HIV from such person;
  - (d) the health worker has given the HIV-positive person a reasonable advance notice of his intention to disclose the HIV-positive status to such spouse and / or partner; and
  - (e) if unavoidable, such disclosure to the spouse/ and or partner is made in person and with appropriate counseling or referrals for counseling.
- (2) A pregnant woman in antenatal period attending public and private health facility shall be verbally screened for her and her partner high risk behaviour and a susceptible case shall be referred to the Voluntary Confidential and Counseling Testing and further to treatment facility for safe AIDS free delivery.

**Authorized Disclosure of Information.**

21. Any person who deliberately exposes others to the risk of transmission by non-disclosing his HIV/AIDS status shall be liable to be punished with imprisonment of five years and with fine which may extend to two hundred thousand rupees.

**Penalties for risk of transmission HIV/AIDS.**

22. (1) Any health facility which is held negligent for transmitting HIV AIDS through exposure to contaminated biological material shall be liable to be punished with imprisonment of not less than two years and fine which may extend to ten hundred thousand rupees.
- (2) Any person who represents himself as an HIV and AIDS expert and / or makes any representation with regard to an absolute cure and / or elimination of HIV, shall be punishable with imprisonment for a term that may extend to one year, and with fine which may extend to five hundred thousand rupees; provided however if such alleged "cure and / or elimination" include and / or result in the performance and / or abetting of any acts and / or deeds that may be punishable under any other law for the time being in force; than the punishment stated above shall not be in substitution of the same but shall be in addition to the punishment as prescribed under such law.

**Penalties for negligence of a health facility.**

23. Any person who publicizes the confidential health information and / or records of another person in contravention to the provisions of this Ordinance, shall be liable to imprisonment not exceeding five (5) years and not less than two (2) and a fine not exceeding two hundred thousand rupees. **Penalties for unauthorized disclosure.**
24. Sections 269 and 270 of the Pakistan Penal Code shall be applicable to any person who undertakes any activity resulting in the transmission of HIV to another person, without disclosing his /her positive HIV status to such other person. **Application of Sections 269 and 270 of Pakistan Penal Code.**

## CHAPTER XIII MISCELLANEOUS

25. No person shall be restricted in any way from bring any proceeding under this Ordinance against any person. **Redress for Grievances of Prohibited Discrimination**
26. If any difficulty arises in giving effect to any of the provisions of this Ordinance, the Provincial AIDS Commission may make such order, not inconsistent with the provision of this Ordinance, as may appear to the Provincial AIDS Commission to be necessary for the purpose of removing the difficulty. **Removal of difficulties.**
27. Government may, in consultation with the Commission by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance. **Power of to Make Rules.**

**(DR. ISHRAT-UL-EBAD KHAN)**  
**GOVERNOR OF SINDH**

Karachi,  
Dated:-







*Empowered lives.  
Resilient nations.*

## **United Nations Development Programme**

4th Floor, Serena Business  
Complex Khayaban-e-Suharwardy  
Islamabad, Pakistan  
Tel: +92-51-835 5600  
Fax: +92-51-2600254-5

Web: <http://www.pk.undp.org>