

# **Views & Suggestions**

**Of Mr. Mohammad Yasin Khan advocate**

At Workshop on the

**“Issue of International Parental Child Abduction”**

At Regency Hotel Mirpur on Monday 23<sup>rd</sup> November, 2009.

Organized in Collaboration with

**Reunite International & British High Commission**

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First of all I would well com honorable guests, Denise Carter, Director Reunite International London, Sarah Say, case worker from FCO and honorable members from British High Commission Islamabad. I am very thank full to Reunite International and British High Commission who give me this opportunity to arrange a Workshop with their collaboration on the Issue of International Parental Child Abduction. I am also thank full to honorable members of District Bar Association Mirpur who participate this workshop. I hope this workshop will give us chance to discuss and understand each other laws and views.

Pakistan is a country which is not a signatory of Haig Convention, whereas millions of people both Pakistani and Kashmir are settled in UK. But instead, if Britain is declared, the country of these citizens, it will not be wrong. Although there are relations and satisfactory contacts between the Britain, Pakistani and kashmiries peoples. But there are certain issues which otherwise are creating many problems between both the countries. Among these problems, child abduction is a pinching and knotty issue by which, one or other child or parents are likely to become prey under the cruel clutches of this nasty issue, resulting several quarrels are enduced causing fatal ends and thus many families loose their children and enmity takes place between the families for years to come. This dilemma affects not the children only but even their parents, people of their brotherhood and relations between the Britain and Pakistan Governments are affected.

To overcome the child abduction menace, FCO, British High Commission and Reunite International are unitedly doing positive efforts. In respect of this campaign during 1994 a British delegation to probe the matters regarding child abduction for the awareness of the people about the UK Pakistan Judicial Protocol, had a tour of Mirpur. It was the first attempt of the British High Commission Islamabad that after publicizing awareness, the exchange of views started, resulting child abduction cases came to light. Certain quarters of Mirpur objected on this move. However, some serious quarters took stand on the introduction of child abduction matters and referred them to the judicial protocol in different cases before the Azad Kashmir judiciary, but this protocol could not be agreed upon by the Azad Kashmir courts and did not take into their consideration.

There is no doubt that UK Pakistan Protocol is finalized between Pakistan and Britain. But since Azad Kashmir has its own government, administrative and judiciary system, therefore it is necessary that such kinds of agreement should be sign with the Azad Kashmir. It is essential to tell that to carry on such agreement there are certain sections which create hurdles in reaching the agreement in the existing Azad Kashmir Interim Act 1974. Due to which such hurdles if not withdrawn or rectified agreement is not

possible. It is unfortunate that due to non agreement in respect of child abduction, the children who have fallen prey to child abduction, their future seems to be bleak, and the parents are also hopeless. The reason for not reaching agreement with Azad Kashmir and UK Section 31 Sub Section 3 of Azad Kashmir Interim Act 1974 is the biggest hurdle. Herein I refer the relevant section:

**Section 31, Sub Section 3, Legislative Power, Neither the Council nor the Assembly shall have the power to make any law concerning-**

**(a) The responsibilities of the Government of Pakistan under the UNCIP Resolutions;**

**(b) the defence and security of the Azad Kashmir;**

**(c) the current coin or the issue of the bills, notes or other paper currency; or**

**(d) the external affairs of the Azad Jammu and Kashmir including foreign trade and foreign aid.**

I, in the capacity of a lawyer have probed and made a research for possible agreement. One of the solutions seems that in the light of Azad Kashmir Interim Act 1974 the legislation and external matters are not within the jurisdiction of Azad Kashmir legislative Assembly. Therefore, if government of Pakistan is pleased, it after necessary amendment may make it possible and government of Pakistan have intention to make amendment in Act 1974 but I became hopeless when Pakistan did not take positive step about UK-Pakistan Judicial Protocol on child abduction. Therefore in this position why such agreement will be endorsed by the Pakistan.

With this Constitutional and legal investigation and research, I, in the capacity of Lawyer and Social worker have given deep thought about the future of children. In result of which it is awakened that if no such agreement is possible then the relevant sections of Penal Code of Pakistan 1860 and Guardian and Ward Act 1890 can be amend from which satisfactory results can be achieved. Here I would like to refer the relevant section of the Pakistan Penal Code, which is also enforced in Azad Kashmir, Its sections from 359 two 373 kidnapping and abduction are relevant but all the more relevant section are 360,361 and 362.

**Pakistan Penal Code, 1860, Section 360, Kidnapping from Pakistan, etc: Whoever conveys any person beyond the limits of Pakistan without the consent of that person, or of some person legally authorized to consent on behalf of that person is said to Kidnap that person from Pakistan.**

**Section 361, Kidnapping from lawful guardianship: Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, said to kidnap such minor or person from lawful guardianship.**

**Section 362, Abduction: Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.**

If any amendment is made of these three sections, then they can be helpful in the cases of the children who fall in prey in child abduction and therefore the future of such children can be protected from being ruined.

Such amendments are possible under sections 33 Of Azad Kashmir Act 1974, where it is mentioned that:

**33. Amendment of this Act.**

**(1) the Provisions of this Act may be amended in accordance with the following provisions:**

**Provided that no amendment shall be made in Section 31, this section or Section 56 save with the prior approval of the Government of Pakistan.**

**(3) With fourteen days of the day on which a Bill to amend this Act is introduced in the Council or the Assembly, the President shall summon a joint sitting and if the Bill is passed in joint sitting, with or without amendment, by the votes of the majority of the total membership of joint sitting, the Bill shall be presented to the President for assent.**

The President of AJK is also had power under The Interim Constitution Act 1974, **Section 41 sub section (1) the president may, except when the Assembly is in session, if satisfied that circumstances exist which render it necessary to take immediate action, make and promulgate an Ordinance as the circumstances may require.**

Otherwise as alternative an agreement can be taken place between the **Principal Registry Office London** and **Azad Jammu Kashmir Supreme Court or Azad Jammu Kashmir High Court** because this proposed agreement would be about the system between the two courts and it conferred to courts not judicial but only administrative powers. For example there are several agreement has been sign between Mirpur development authority, Municipal Corporation and some UK Town and cities. Therefore there is neither necessity of taking prior permission for legislation from the government of the Pakistan and nor it clashes with 1974 Act.

I will also like to say that certain people do not give importance to the child abduction issue and there is also opposition within the Azad Kashmir and often It is noticed that this problem may be solved under Islamic law for which I have no objection but when I studied UK-Pakistan Judicial Protocol and other British Laws sent by Reunite International, FCO British High Commission and other institutions, I felt that there are such sections in UK-Pakistan Judicial Protocol and in British laws available, which not only protect British children but also protect Pakistani children and establish their welfare and future satisfactorily. Therefore I as a Lawyer has not only utilized UK-

Pakistan Judicial Protocol in my own cases but also utilized for the awareness of the judges, lawyers and parties. For example on Six\_October 2009, I got recovered three children of British Nationality holders, sons of British Nationality holding person, Muhammad Ikhlq, who were aggressively kept by their mother in wrong full confinement into her custody in the house of her parents in Kotli Azad Kashmir. For the recovery of children I under section 491 CRPC lodged petition before the Azad Jammu Kashmir High Court, the initial hearing of which was held before the Judge of the High Court, Mr. Justice Raffi-Ullah-Sultani. The Court ordered the recovery of children and issued production order to the concerning police. These children were kept hidden by their mother and her relatives in the far off area Narakot of the District Kotli Azad Kashmir. This village is situated at the border area of the line of control between Pakistan and India, where no road is available up to several miles, only pedlist path is available. This village lacks many necessities of life; the children of Muhammad Ikhlq instead of passing satisfactory life of England were passing the time in hopelessness in this village.

The events of 9/11 and then 7/7 came to my mind and these were for my astonishment that in bomb blasts of 7/7 some British Kashmiries were found involved. I think when there is a ban to exhibit the armaments in England then how British Kashmiries could be involved in 7/7 attacks. But for me this was not so astonishing because I have often read in newspapers and heard that many people do illicit business of drugs and weapons living in the area of line of control. About such people informations are also received that they cross the border resulting often occurrences of terrorism erupt. About this terrorism and cross bordering, India and Pakistan used to complain each other. In short I have also thought in my mind that inspite of ban of use of weapons in UK, the Youngers who by seeing the films of the characters fully equipped with lethal weapons when they come to Pakistan and Azad Kashmir they indulge into using of weapons similarly like those they had seen in films in UK. They somehow or other fall into the hands of terrorists and then these very terrorists to achieve their ulterior motives use them, due to which all the world inclusive of Pakistan, peace and tranquility have been destroyed.

In my view had the children of Muhammad Ikhlq been living in the border area of Azad Kashmir there was apprehension that they might had become tools of these terrorists, therefore I have given priority that these children must go to England, where they will have not only well education and well breeding but they will also remain safe from the terrorism.

Any how after having been issued production order by the Court, the Kotli police under the difficult circumstances got recovered the children from the far off area of the Kotli and then other day produced them before the Court, where the mother of the children and relatives opposed the petition. Against which my arguments were that children are British National their habitual residence is Britain therefore for the welfare of these children they may be sent to their habitual residence. Because if the children remain in the border area, they in future will be involved in terrorism and suesideal activities and they can be used by the terrorist organizations due to which in future not only Britain but Pakistan will have to face difficulties, further told that legislatively and legally and

as per Islamic norms, it is their right that they should live as per their own will. The Britain courts have already given the decision in favour of Muhammad Ikhlq, which decision has not been abided by Aysha jabeen. I requested the court that for the welfare, children may be handed over to their father; otherwise orders of sending the children to England may be issued. On this the honorable court recorded the statement of the mother, who agreed to take the children with her to England on which the court issued the order. After decision mother by taking possession of children went to England, where she has been arrested and the matter of children is before the UK courts, therefore about the future of British National Children will be decided by the Britain Courts. There is no doubt that the decision of the future of the minor British Nationality holder children will be decided by the UK courts. But this case has raised many question marks behind, which are as under:-

1. That the judges of the Azad Jammu & Kashmir do not take Child Abduction cases as per UK Pakistan Judicial Protocol or as per rules of UK and do not decide as per UK courts.
2. Due to non existence of agreements between Britain and Azad Kashmir on governmental or administrative and on court level, we cannot take such steps, by which way the Child Abduction affected children and parents may be benefited.
3. The Azad Kashmir Act 1974 or any kind of law does not allow that in the case of Child Abduction, British children may be sent to Britain but the rules of this area for the habitual residence children give more importance of the welfare of the children and welfare is considered and interpreted that children should remain here.
4. The lawyers working on the Child Abduction cases there is no aid or support to them from the Britain.
5. In Azad Kashmir no such liaison judge has been appointed who should know the legislation and Britain court decisions so that if case of Child Abduction comes to light, he may be able to decide in view of the rules of Azad Kashmir and Britain.
6. There is no good working relation between the Britain and Azad Kashmir judges.
7. Neither there is an arrangement for training of Azad Kashmir judges and lawyers in Azad Kashmir and nor there is any arrangement for their training at UK.

8. The Azad Kashmir lawyers neither are recognized in Britain nor there is even a working relation between them.

But even then we are working as per our capacity to eliminate the child Abduction and in the case of abduction, we depend upon the section 491 and 100 of Code of Criminal Procedure, 1898, The Guardians and Ward Act 1890 and family Court Act AJK. But these laws are of different nature, sections 100 and 491 are only meant for the recovery of children, whereas Children and Ward Act and Family Court Act's relevant sections does not allows to courts to send the children to their habitual resident, these section are about the welfare of the children, so it is necessary that in the light of above stated submissions, not only FCO, Britain High Commission and Reunite International work together but judges, lawyers, police and civil society of Azad Kashmir should be made activate, so that future of child abduction affected children and their parents may be saved.

At the last once again I am very thankful to participants of this workshop and expect that in future this effort should be continue. I hope in future FCO, British High Commission and Reunite International give us more opportunities to learn the judicial system of Britain.

**Your Sincerely,**

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