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Culture as a Factor in the Translation of International Human Rights Law into Local Justice: Evidence from Corporal Punishment of Children in Pakistan

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Summary

Culture is a main determinant of international human rights law's impact on local justice. To a large extent, the impact depends on the extent to which disjuncture between cultural values and global vision of human rights is addressed. This is best illustrated in the efforts for translation of Convention on the Rights of the Child (CRC) into elimination of children's corporal punishment in Pakistan. Evidence shows that there exists a socially acceptable standard of punishment in the country, whereas the CRC does not accept punishment in any form, to any degree, at any place. In this situation, the translation of the CRC into vernacular remains an uphill task because the cultural acceptability of punishment is rooted deeply in family and school cultures. The transnational, national, regional and local actors have been unable to clear the space for transnational standards and leverage sufficient demand for change. The Pakistani government has failed to effectively enforce ban on corporal punishment and to repeal Section 89 of Pakistan Penal Code which allows punishment. International human rights law is less likely to be effective unless intermediaries organize demand for change and remove inconsistencies between local practices and universal norms of human rights.

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Introduction

The extent to which international human rights law can impact on justice at local level is increasingly becoming an important terrain of academic inquiry. Over the past decade, a spate of research studies have focused, fully or in part, on the relationship between international human rights law and local justice (see Risse and Sikkink 1999; Langlois 2001; Cowan et. al 2001; Donders 2002; Rajagopal 2003; Merry 2004). The motivation for this growing interest appears to be driven by the transformation of global human rights system, which is “now deeply transnational, no longer rooted exclusively in the West” (Merry 2004, p.2). This transformation has enticed new legal and institutional frameworks in which international human rights law, as an ensemble of treaties, conventions, declarations and other such documents, has become an important resource for transnational and local human rights activism (Cowan et. al 2001; Rajagopal 2003). In this sense, international human rights law appears to have attained more prominence in local settings than ever before. However, it is widely believed that the translation of this prominence into effective justice for individuals and communities in specific cultural contexts still remains an uphill task.

In this context I attempt to examine the impact of international human rights law on local justice. I begin by defining the term 'justice' from the standpoint of human rights and its importance at the local level, and then briefly describe the *state-oriented* and *culture-oriented* analytic frameworks as they relate to human rights law and local justice. Then, I pick up one perspective, i.e. *culture-oriented*, and use it to analyze the extent to which the United Nations' Convention on the Rights of the Child, henceforth referred to as “the CRC”, as an international human rights law, has worked for bringing justice to children in Pakistan by influencing the legal and cultural practice of corporal punishment within the settings of schools and home.

The article has some limitations. First, the deficit of academically based data does not allow a robust analysis of the impact of the CRC on local justice in Pakistan. Therefore, I rely on the available documentation including research reports of civil society organizations, official reports and media coverage. Secondly, the analysis focuses on corporal punishment in only two settings, i.e. in schools and home; corporal punishment in workplace and other settings is not covered. Thirdly, the larger part of the analysis has been framed using *culture-oriented* approach to the study of international human rights law.

The Bond between International Human Rights Law and Local Justice

Concern about international human rights law's impact on local justice precipitates a few basic questions. What does 'local justice' mean in the context of human rights? Why should one be concerned about international law's impact on justice in the local milieu? What are the causal linkages, if any, that explain the effects of the international law on local justice? These questions and the like have led to the development of a range of intellectual constructs and perspectives in various disciplines some of which will be described in the next section.

The concept of 'justice' has been explained by a myriad of definitions in legal, social and political contexts. At a fundamental level, "justice is said to exist when a person receives that to which he or she is entitled" (Cohen 1986, p.1). In the context of human rights, this definition may be adapted to consider 'justice' as a situation in which an individual is guaranteed the protection and realization of human rights which he or she is entitled to, in accordance with the international declarations, treaties, conventions and other such instruments, and/or as embodied in the domestic law and norms. This implies that the conception of 'justice' may not be the same everywhere due to different cultural orientations towards universality of human rights.

Does the prefix 'local' make any difference to the concept of 'justice' in the context of international human rights law? Francioni (2007) explains that traditionally, international human rights law was considered as a mechanism through which the rights of individual were articulated in an international framework involving the states. In the recent years, however, it has become more relevant than ever to the lives of ordinary people at the local level due to the expansion of transnational networks and social movements (Rajagopal 2003, p.2). It is the local level where the subjects or holders of human rights live and work and where the violation occurs that invokes the need for justice for the vulnerable people. That is why it is important to study the effects of international human rights law in country settings.

State-oriented versus Culture-oriented Perspectives

Convinced about the difficulties in quantifying the impact in arithmetic terms, the academics have developed several analytical perspectives on the study of the process or causal mechanism through which the international human rights law brings about change in local justice. I have categorized these perspectives into the following two types: *state-oriented* and *culture-oriented*.

The *state-oriented* perspectives look at the impact of international human rights law on local justice in relation to the changes in the state institutions such as its incorporation in domestic law or adoption of new legislation. An example is the recent work of Risse et. al (1999) on the impact of international norms set in the Universal Declaration of Human Rights (1948) on domestic practices in eight countries using a *state-oriented* approach. They argue that the degree of the international law's impact largely depends on the political transformation, which occurs as a result of instrumental adaptation and strategic bargaining, moral consciousness-raising, argumentation, dialogue, and persuasion, and institutionalization and habitualization of international human rights norms.¹

The *culture-oriented* perspective, on the other hand, emphasizes the primacy of cultural values, rather than the state institutions. The conceptual basis of this perspective draws on the universalism-cultural relativism debate. Universalism asserts that all human rights, as defined in various international instruments, apply to all human beings regardless of their nationality, cultural identity, racial background, or gender (Donders 2002). The cultural relativism, on the contrary, contends that human rights are socially constructed categories, and do not apply to all cultures in the same manner (Donnelly in Dunne and Wheeler 1999). A specific expression of the cultural relativism is found in the 'Asian values' debate of the 1990s. Langlois (2001) argues that this debate challenges the universal normative applicability of human rights on the ground that Asian values are unique, based on diverse sources such as Confucianism and Islam, and therefore, universal human rights cannot be as effective in local cultures of Asia as in the West.

Langlois argues that

“the possibility of justice amid cultural claims lies, *inter alia*, at the individual level, where discussion and genuine 'good faith' relationships between individuals may function to extend appreciation or agreement with different ways in which ideas of justice are interpreted” (Langlois 2001, p.151).

This viewpoint draws attention to a number of *culture-oriented* anthropological approaches to the effectiveness of international human rights law at the local level. At the cornerstone of these approaches lies the belief that human rights can only be effective if they are “translated into local terms and situated within local contexts of power and meaning. They need, in other words, to be remade in the vernacular” (Merry 2004, p.1). This process is crucial in creating ownership and overcoming cultural practices which might affect the implementation of international human rights in a particular milieu.

Culture, International Human Rights Law and Justice: An Analytic Framework

An extraordinary contribution to the *culture-oriented* perspectives has been made by

¹The authors have developed the state-oriented perspective into a five-phased “spiral model” to explain how transnational-international-regional linkages bring about political change (see Risse and Sikkink 1999: 17-34).

Merry (2004). Based on case studies of gender violence in four countries, she explains the process in which international human rights law is translated into local justice, and highlights the difficulties that arise when universal legal principles conflict with local practices. A salient feature of her work is its potential to provide a model approach that can be applied in many cultural contexts for understanding the impact of international human rights law on local justice. This section outlines a general framework of analysis based on her work.²

While describing the initial phase of international human rights law, Merry (2004) argues that the ideas about human rights are produced in the space of transnational modernity governed by the vision of universal standards and social reforms. These ideas are then codified into legal instruments and documents. This process of “creation” of human rights involves consensus-building for resolution or compromises on political and cultural differences. The products of this consensus-building process, namely declarations, treaties and conventions, etc. constitute the body of international human rights law that, in general, seeks change through persuasion rather than mandatory enforcement mechanisms.

Central to the effectiveness of international human rights law is the role of *intermediaries*, namely translational, national, regional and local actors such as non-governmental organizations (NGOs), social movements, national political elite, human rights lawyers, feminist activists, movement leaders, social workers, government officials, academics, etc. The intermediaries operate in two cultural discourses simultaneously: transnational and local. They participate in the process of creating human rights at the international level by framing issues at international conferences, making statements, working with and lobbying governments on the text of international documents, dissemination of information and demand articulation to push the governments for compliance with international law.

At the local level, the role of intermediaries is to appropriate, translate, and remake transnational concepts and standards into the vernacular for the local communities. They re-frame the local meanings and concepts into international language. The intermediaries also re-translate the local ideas into international human rights framework. They integrate the transnational human rights ideas into local social movements and local legal consciousness. This involves *transplanting institutions and programs* through 'appropriation' and 'translation'. The former refers to replication of ideas, institutions and programs from one social context to the other. This requires, among others, knowledge of alternative approaches and availability of funding from donors. Translation, on the other hand, means adjusting the rhetoric and structure of appropriated programs or interventions to local circumstances. This requires presentation of the appropriated programs in local images, symbols and stories with which local people are familiar.

When the international human rights law creeps into the local settings, several disjunctures arise from differences between the global vision of human rights based on a neoliberal conception of choice rather than alternatives that could be more community-

² Merry does not propose a consolidated framework of analysis at a single place. The framework in this section has been compiled from different sections of her work (Merry 2004).

based or focussed on socialist or religious conceptions of justice. The local conceptions and practices often serve as firm barriers to clear the space for transnational standards. This necessitates the transnational, regional, national and local social movements to create meanings of the human rights in cultural contexts that the subjects could relate the rights to their daily life.

What does it take for an individual to relate the human rights to daily life? This requires a shift in subjectivities. Merry (2004) cites Henrietta Moore who argued that the post-structuralist concept of the self is predicated upon multiple subject positions within the same individual. Each individual takes up multiple and often mutually contradictory, subject positions within a number of discourses and social practices. This means that a single subject is not the same as the single individual. For example, a women might have two subjectivities - one the 'rights-bearing' subjectivity and the other 'good wife'. Her subjective position, for example, as a good wife is most likely to prevent her from using law against the violation of her rights by her husband. Similarly, a child might be unwilling to support the use of anti-corporal punishment law against parents or teachers because his subjective position as a son or a student is overwhelmed by his rights-bearing subjectivity.

The orientation of the transnational human rights system is based on an "essentialized model" of culture, a homogeneous and interconnected set of values and practices. This view, according to Merry (2004), looks at culture as fixed and unchanging context, and therefore, is considered to be a barrier to change. As a result, the adoption of international human rights law is resisted on the pretext of defending traditions or preserving national identities. She contends that culture has to be considered as a contentious domain in which values and practices are debated, contested, and changed. This requires a shift from the present perception of culture as a static space to a more dynamic and fluid set of values and practices.

Translating CRC into Elimination of Corporal Punishment at Local Level: Evidence from Pakistan

After looking at the topic in a general and wider context, I now examine the particular case of international human rights law dealing with corporal punishment of children and the extent to which it has been effective for local justice in Pakistan. The case study has been prepared within Merry's (2004) framework of analysis that has been described in the previous section.

The global human rights system had recognised children's rights generally in the Universal Declaration of Human Rights in 1948, and subsequently in a number of other declarations and conventions. However, it was not until 1989 that children's rights received specific recognition in the CRC.³ It is important to note that the CRC is the first international human rights law within the United Nations framework, which is legally binding on the signatory States. It requires the signatory States to bring their domestic law in conformity with the principles and provisions of the Convention.

³ The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984) also prohibits punishment, but it applies to children as well as adults. The CRC is the only global instrument which specifically deals with corporal punishment of children.

However, the enforcement mechanism is similar to other human rights treaties in the sense that the States, which fail to abide by the provisions of the Convention, cannot be punished. The accountability mechanism is rather conventional, and is based on the Child Rights Committee. The Committee monitors the performance of the States through a reporting process. The CRC demands, *inter alia*, that children be respected as human beings with the right to dignity and physical integrity. Article 19 of the CRC states:

“State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

Here, we are concerned with this text to the extent it relates to corporal punishment of children in school-based and home-based environment only. According to this Article, every child has the right to freedom from any form of corporal punishment, in any degree, at any place; a violation of this freedom amounts to injustice and disregard to a human right. It sets the universal norms, principles and standards, which constitute a set of obligations for the States as well as other parties including the parents, families, civil society and international community (United Nations Development Program [UNDP] 2000, p.116).

The creation of this universal right and corresponding obligations took place in a transnational space. However, Pakistan's participation in the drafting process of the CRC was predominantly led by the government; the role of transnational and local NGOs began mainly after ratification of the Convention.⁴ Nevertheless, in overall terms, it was a process of *transnational consensus-building*, to use Merry's (2004) term, because apart from the governments, many NGOs, alliances and networks were involved in consultations, meetings, and drafting of the CRC. From 1983 to 1989, an average of 20 NGOs participated in each sessions of the open-ended working group tasked to draft the CRC (LeBlanc 1995, p.42).

Initially, Pakistan approached the universal norms and standards set in the CRC from the standpoint of religious values that are central to Pakistani local culture. It ratified the Convention with the reservation that the "[p]rovisions of the Convention shall be interpreted in the light of the principles of Islamic laws and values" (Schabas 1996, p.478). Pakistan received a gale of criticism from the Western countries due to this reservation, as it could conceivably affect the application of every provision of the Convention. This suspicion had an element of truth because it created a large space for interpretation of the provisions of the CRC in many ways (Schabas 1996). Later, the Government of Pakistan withdrew this reservation on July 23, 1997.

To what extent has the CRC affected the conception and accessibility of justice at the local level in Pakistan? To answer this question, the emergence of *intermediaries* provides an important starting point. Prior to Pakistan's ratification of the CRC, corporal

⁴ This observation is based on the information about advocacy programs of Pakistan-based organizations which indicate that the NGOs became active against corporal punishment in early 1990s.

punishment of children did not seem to be a priority of the government as well as the NGOs and transnational advocacy networks, relative to other issues such as child labour and sexual abuse. After ratification of the CRC, however, a genre of local NGOs, donor agencies, and transnational alliances emerged as advocates against corporal punishment. Child Rights Information Network (CRIN), which was established in 1991 as a global network for coordinating and promoting information especially in relation to the CRC, alone has 67 Pakistani NGOs as its members. CRIN circulates information and resources on the CRC to its members for use in advocacy campaigns and programs. The Geneva-based World Organization against Torture, Global Initiative to End All Corporal Punishment of Children, Save the Children and UNICEF have also been actively working for making the CRC relevant to Pakistan's context, along with local organizations such as Rozan and SPARC.

In reality, however, the protection of children from corporal punishment is far from realization. Apart from the disjunctures between the international law and Pakistan's domestic law, the local attitudes towards corporal punishment of children do not conform to the transnational modernity and vision that forms the basis of the CRC. The attempts of the State and intermediaries to appropriate, translate, and remake the transnational concepts and standards of the CRC into the vernacular have brought about little change.⁵ This viewpoint is explained below in two contexts of corporal punishment: school-based and home-based.

In schools, corporal punishment of children has been a common practice for long. Children are punished with sticks, smacking, kicking, punching, hair-pulling and ear-twisting, hitting with an object, hair-pulling, ear-twisting, and awkward and humiliating physical positions. The majority of teachers punish their students to maintain discipline and force them to concentrate on studies. Their actions are, very often, supported by the parents who believe that corporal punishment facilitates learning. This perception is recorded by a nationwide study, which showed that only 29.5 percent parents disapproved corporal punishment at schools, compared to 40.6 percent parents who considered it necessary and 26.8 percent parents who believed that it was wrong but unavoidable (UNICEF 1999). Indeed, there exists a socially acceptable standard for corporal punishment of children in schools (UNICEF 2001). The parents do not react strongly, and very often not at all, if the punishment is not severe. Some parents even instruct the teachers to punish their child if he or she does not perform well in studies. This is particularly commonplace in *madrassahs* (religious school). A study showed that in some *madrassahs*, children were locked in iron chains to a heavy wooden block to prevent them from escaping. A number of children between the ages of 8 to 14 years had been continuously chained for up to one year. The head of the *madrassah* reported that parents leave their children with us and ask us to chain them because they have fallen into bad habits of watching satellite television” (Amnesty International 1998). Clearly, such practices do not conform to the universal standard set in the CRC, which sets zero tolerance for violence and punishment of children.

⁵ This is evident from dissatisfaction of the Committee on Child Rights with Pakistan's progress on the CRC and dissenting voices from the intermediaries (see Berti 2003; UNICEF 2001; Concluding Observations of the Committee on Child Rights on Pakistan's Second Report 2000).

The application of the CRC has been problematic in schools due to unwillingness of the majority of parents and teachers to give up their approval of punishment. Convinced by the magnitude of the problem, the *intermediaries* pushed the government to ban the corporal punishment in schools. To some extent, the international pressure was exerted by the Child Rights Committee as well. As a result, corporal punishment was banned through a Federal Ministerial directive and provincial ministerial directives in the provinces of Punjab, Khyber Pakhtunkhwa and Sindh in 2000, 2003, and 2004, respectively (TopNews 2008; Government of Pakistan undated, p.92-94). In the province of Balochistan, the provincial government issued a notification in 2010 which condemns corporal punishment and encourages awareness about this practice, but it does not ban corporal punishment in schools.

Realizing that corporal punishment was embedded in school culture and attitudes of teachers, the Punjab government packaged the transnational norm of the CRC into a persuasive idiom, “*mar nahin payar*”, which means, “no punishment, but affection”. This vernacular packaging of the transnational principle entails a connotation that the traditional attitudes and practices embedded in the local culture have to be changed. The government directives also established a complaint mechanism for parents and students to report incidence of punishment. There is little empirical evidence available, however, on the extent to which this procedure has been invoked. This can be explained in terms of Henrietta Moor’s (cited in Merry 2004) subjectivity model. The use of the complaint procedure requires the children to shift their subjectivity from being an “obedient” student to a “victim” of human right violation by the teacher. This shift may isolate the child in the school, as teachers may react unfavourably by decreasing attention on the child, in case the child or his parents chose to file a complaint against corporal punishment.

In home-based settings, corporal punishment is considered to be inevitable in the relationship between parents and children and is strongly entrenched in social attitudes. Some common justifications for the use of corporal punishment include that a child’s upbringing is the family’s responsibility, not the State’s, and that it has been practised since time immemorial (SPARC website). In a study carried out in Pakistan, interviews with 4,200 children showed that all respondents had received physical punishment at home. The forms of punishment included slapping on face and back, hitting with a stick and kicking (UNICEF 1999). Another study showed that in three districts of the province of Khyber Pakhtunkhwa – Peshawar, Hangu and D. I. Khan, 28 types of punishment were used in homes. In Lahore district of the Punjab province, interviews of 300 parents found that 83 parents inflicted corporal punishment on their children, mostly slaps or kicks (Ahmad, F. and Najam, N. undated).

Like the corporal punishment in schools, a child may not perceive the punishment by his father or mother as a violation of his or her human right, contrary to the universal norms set in the CRC. Indeed, certain forms of punishment such as pulling ears and slapping have social sanction; it is considered a *haq* (right) of the parents. This implies that all universal human rights are not “legally enforceable” in specific cultures at all, or are at least difficult to enforce.

These cultural practices in home and educational institutions are embedded in Pakistan's

domestic law as well. The Section 89 of Pakistan Penal Code (1860, with amendments) states:

“Act done in good faith for benefit of child or insane person, by or by consent of guardian – nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person.”

The fissure between the transnational norms on corporal punishment and Pakistan's domestic law and cultural practices have been taken seriously in the transnational space by the human rights activists and the Child Rights Committee. While commenting on the second monitoring report, the Committee observed:

The Committee is deeply concerned that the State party's Penal Code (sect. 89) allows for corporal punishment to be used as a disciplinary measure in schools and at the fact that corporal punishment is widely practised, especially within educational and other institutions and within the family, many times resulting in serious injuries.” (27 October 2003, CRC/C/15/Add.217)

The Committee recommended Pakistan to repeal section 89 of the Penal Code of 1860 and to explicitly prohibit all forms of corporal punishment as a matter of urgency. It further recommended the government to undertake well-targeted public awareness campaigns on the negative impact of corporal punishment on children, and provide teachers and parents with training on non-violent forms of discipline as an alternative to corporal punishment. However, the articulation of concerns by the Child Rights Committee, NGOs, UNICEF and human rights activists has been unable to create effective demand for social and legal reforms based on transnational modernity and universal conception of punishment on child. The efforts to exert pressure on the government to repeal section 89 of the Penal Code and effectively enforce ban on corporal punishment in schools have been sporadic and “projectized” without any systematic initiatives for addressing the tension between cultural practices and universal norms of human rights. The transnational advocacy networks and local organizations need to organize demand for change in domestic law and removal of social barriers to corporal punishment of children in Pakistan.

Conclusion

This article has examined the extent to which international human rights law can affect justice in local setting. It has been noted that this topic is becoming increasingly important due to the use of international human rights law as a resource by transnational networks and local movements for social reforms. In this regard, two main perspectives stand out distinctively in the literature: *state-oriented and culture-oriented*. The former looks at the impact of international human rights law on local justice in relation to change in the state institutions such as its incorporation in domestic law or adoption of new legislation, whereas the latter asserts primacy of cultural values. Over time, tension between culture and international human rights law has been seen as a major determinant of the latter's effectiveness in local setting.

Using the *culture-oriented* framework of analysis drawn from Merry (2004), the article has illustrated the tension between international human rights law and local cultural practices of corporal punishment of children in Pakistan. The case study suggests that punishment of children in schools and homes is considered necessary by the majority of teachers and parents. There exists a socially acceptable standard of punishment in Pakistan, whereas the international law, the CRC, does not accept punishment in any form, to any degree, at any place. In this situation, the translation of the CRC into vernacular remains an uphill task because the social acceptability of punishment is rooted deeply in family and school cultures. This situation reinforces the need for greater inter-cultural dialogue to resolve the conflict between universal norms and local practices for making the international human rights law more effective for local justice. Moreover, the slow progress in implementation of the CRC can be enhanced by the greater role of transnational advocacy networks, which have not been able so far to leverage sufficient demand for change.

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