

Juvenile Justice System in Pakistan: A Critical Appraisal

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Abstract

This research delineates the concept of Juvenile Delinquency and unfurls the rudimentary underpinnings, requisites and contours of the Juvenile Justice System in Pakistan. In the second half of 20th century, the concern for protection of best interest of juveniles has attracted attention under international conventions and national legislation, whose overarching and overriding aim is to deal and manage this crucial issue of juvenile delinquency while keeping in view the 'best interests of the child' and 'safeguard of their fundamental rights'. However, unfortunately some basic shortcomings persist in the overall Criminal Justice System of Pakistan to which Juvenile Justice System is a part, inter alia, overcrowding and inhuman conditions of detention centers, incapacitated staff of the prisons, callousness, abuse and exploitation at the hands of police, pathetic prosecution system and an overwhelmed judicial system whose eventualities culminate in problems for pre-trial offenders awaiting their trials, a fragile probation and parole system and lack of other diversionary measures to detention that can help reduce a great chunk of prisoners from already brimmed prisons. Juvenile Justice System particularly focuses upon not bringing the juvenile offenders encounter formal Criminal Justice System rather puts emphasis on alternate measures for the rehabilitation, re-socialization, and re-integration of the juveniles into the society. This research elaborately seeks to highlight the issues surrounding Juvenile Justice System in Pakistan and puts forward certain recommendations for the improvement of the said System with the aim of assisting policy and law makers to establish practicable strategies, translating Juvenile Justice System 'on paper' to 'in practice'. For conduct of research doctrinal method has been employed with analytical and critical approach.

Keywords: Juvenile, juvenile delinquency, juvenile justice system, Pakistan.

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Introduction

Children constitute the most important clique of any society and the foundation on which the future of any nation is built. They are considered to be the most indispensable and principal asset of any society. On account of their lesser and tender age, physical vulnerability and susceptible mind, minors need more care and protection as compared to adult members of the society. The family, community and state are responsible to play very decisive role in shaping the overall development and wellbeing of minors. Nonetheless, due to host of factors juveniles get involved in such activities which are termed as anti-social/illegal. This deviation by the juveniles from the standard norms or the existing laws is called 'juvenile delinquency'— a pattern of bad or disruptive behavior, which may lead to further serious anti-social acts, which can have far-reaching consequences.¹ Unfortunately some primary inadequacies persist in the overall Criminal Justice System of Pakistan to which Juvenile Justice System is a part, inter alia, overcrowding and inhuman situations of detention centers, undermined staff of the jails, heartlessness, abuse and exploitation at the hands of police, pathetic prosecution system and an overwhelmed judicial system whose possibilities end in difficulties for pre-trial offenders awaiting their trials, a fragile probation and parole system and want of other diversionary steps for detention that can assist to reduce a great chunk of prisoners from already abounded jails. Juvenile Justice System emphasizes upon not bringing the juvenile offenders encounter formal Criminal Justice System rather stresses on alternate steps for the rehabilitation, re-socialization, and re-integration of the juveniles into the society. So this research elaborately highlights the problems surrounding Juvenile Justice System in Pakistan and puts forward certain suggestions for the improvement of the said System.

1. Juvenile Justice System: An overview

Juvenile Justice System is a term, which suggests that it is the justice system for the young or a system that deals with the youth who come into contact or conflict with the social norms and laws of the state. The concept of Juvenile Justice System is taken from the belief that the problem of juvenile delinquency cannot be treated in a traditional manner and in the adult criminal justice system, albeit this system is a smaller part of larger Criminal Justice System whose core focus is to rehabilitate and re-integrate the children into the society keeping in view their immaturity of mind and fragile physicality.²

A juvenile justice system exclusively caters for the needs of the juveniles in contact or in conflict with law, and devises a mechanism for the prevention and rehabilitation of juvenile offenders or delinquents. It comprises of laws, policies, guidelines, traditional norms, personnel, institutions and special treatment to deal the juvenile delinquents.³

Juvenile justice system focuses on all the stages of the traditional justice system starting from arrest, prosecution, judicial adjudication and sentencing, albeit the principal objective is to rehabilitate and re-integrate the juvenile offender into the society. Protection and wellbeing of the juvenile delinquents is the corner stone of Juvenile Justice System, it differs in different countries because of different cultures, norms, religio-political arrangements, different approaches and principles that are devised to deal with such deviant and delinquent youth. Key international organizations and institutions regard the juvenile justice system very important to establish rule of law and overall well-being of the society.⁴

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Juvenile Justice System as recognized by the *United Nations Committee on the Rights of the Child* is a system of justice that is exclusively for the juveniles. This system focuses on the care, safety and protection of the children because of their vulnerability in terms of age mental development viz-a-viz the human rights paradigm.⁵

Nonetheless, Juvenile justice experts and the critics of traditional justice system identify three salient dimensions of juvenile justice system:

(a) First, they emphasize on probing into the root causes of the commission of crime and hence called this approach as 'Prevention Approach'. It is considered as main component of juvenile justice system which remained missed for years and centuries. It is in best interest of a child that the all those factors should be eliminated which trigger a juvenile to come into conflict with law through preventive measures;

(b) Second dimension or aspect is the protection of the juveniles who come into conflict with law. During this phase children undergo the formal criminal justice system but their protection and special measures are ensured for their well-being;

(c) The third aspect is the successful rehabilitation and reintegration of the child into the society.⁶

Towards the betterment of the rights of children, *United Nations Convention on the Rights of Child (CRC)* is a momentous convention that was adopted in 1990 by the *UN General Assembly*. This is most widely ratified treaty in the history on human rights. This document provides an array of articles on all aspects related to a child. CRC legally binds the state parties' member to it and who have ratified it to submit the periodic reports on the state and situation of child rights in their respective countries. Article 37, 39, and 40 of the *CRC*⁷ specifically deal the rights of the juveniles who are in dispute with law.

Furthermore, four other landmark *UN Instruments*⁸ provide the guidelines specifically on juvenile justice and serve as guidelines. These four sets of *UN Rules and Guidelines* provide an all-inclusive framework for a productive juvenile justice system. *The Riyadh Guidelines* contain the provision stressing on the strengthening of social mechanisms, support system and polices for the juveniles in conflict with law. *The Beijing Rules* emphasize the development of a healthy and progressive juvenile justice system for juveniles and *UN Rules on the Protection of Juveniles Deprived of their Liberty* focus on protection of basic rights of the children like *CRC* provisions and emphasize the re-socialization and reintegration of the juveniles into the community. *The Tokyo Rules*, stress on the need of non-custodial measures for the juvenile offenders.⁹

2. Juvenile Justice System in Pakistan: Current State of Affairs

Pakistan borrowed most of the laws from the colonial masters before Independence in 1947. Colonial masters gave special institutional treatment to the young offenders through the laws such as the *Reformatory Schools Act 1897* and the *Borstal School Act 1926* to rehabilitate the young offenders. Despite many provincial laws Pakistan lacked a unanimous law applicable to all Pakistan before the *Juvenile Justice System Ordinance 2000*.

This law was introduced during Musharraf's regime to create an equal, central and uniform system for child delinquents. This ordinance is mostly in agreement with the international

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guidelines especially the *CRC* to which Pakistan is a signatory and has ratified it. A new legislation, *Juvenile Justice Act*, which has been passed in 2018 and has repealed this Ordinance, is a comprehensive law to protect the juveniles who come in conflict with law. Following is a list of international and national legal instruments that provide special care and protection to the Pakistani children.

2.1. International Instruments

Pakistan is a signatory of all key international human rights instruments including *CRC* that particularly deals with the Protection and Rights of the children including the children are in dispute with prevalent laws.¹⁰ The names of those instruments are as follows:

- *Universal Declaration of Human Rights (UDHR), 1948;*
- *The International Covenant on Civil and Political Rights, (ICCPR), 1966;*
- *International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966;*
- *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979;*
- *Convention on the Rights of the Child (CRC), 1990;*
- *Convention against Torture (CAT), 1984;*
- *Convention on the Rights of Persons with Disabilities (CRPD), 2006; and*
- *Convention on the Elimination of All Forms of Racial Discrimination (CERD), 1965.*

All the international human rights instruments give a huge range of guidelines for the state parties and require all state parties and members to improve the state of child rights in their respective jurisdictions. The *CRC* is a key international instrument on child rights. Pakistan was among the first six countries, which signed and ratified this convention in 1990¹¹.

2.2. National Legal Regime

Pakistan's legal regime does have an exuberance of laws on all the important subjects including the laws on children related issues and concerns. Constitution of Pakistan is the supreme law of land that provides many guarantees and safeguards to the children and many other national and provincial laws are present at national and provincial level. Before the promulgation of 18th Amendment¹² in the 1973 Constitution, all laws legislated at federal level had national jurisdiction All federal laws are de facto applicable to all the provinces unless any of the provinces repeals it.

2.3. Child Rights and the 18th Amendment in the Constitution of Pakistan

The 18th Amendment is a detailed document that is considered to be the most important legislative achievement to bring the constitution in its real contour. According to this amendment the legislative powers of the federal or central government have reduced to minimum scale. Most of the subjects have been delegated to the provinces in 2010 including the subject of the child protection and development. The federal government now can legislate on child related issues only to territories related to federal government but can give directions to provincial governments for enactment of certain legislation.

The federal government can legislate on the subjects that are present in federal legislative list including foreign affairs, currency, defense etc. but many subjects like social welfare, health, education have been devolved. After the devolution of power through 18th amendment, now

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provincial assemblies have exclusive powers to legislate on child related issues. But in case of criminal law, evidence and criminal procedure both national and provincial governments can legislate.

Before 2010 when the 18th Amendment has been promulgated, a number of legislative proposals were initiated by the federal government ministries including a bill on *National Commission on the Rights of the Children*, amendment bill in *Criminal law for Child Protection in 2009*, *Child Rights Bill of 2009* are some of the examples. But after the 18th Amendment most of bills were not passed and process went in abeyance.¹³ Nevertheless, after 18th Amendment, the responsibility of legislation lies with provinces but this cannot be an excuse for the federal government to shirk its duties in directing the provincial governments in harmonizing the legal framework for children especially as per the guidelines of *CRC*.¹⁴

Following are the some of the important national and provincial laws that deal with the protection and rights of the children who come into conflict with law:

- *Juvenile Justice System Ordinance, 2000;*
- *Juvenile Justice System Act, 2018 (It has repealed JJSO, 2000);*
- *Qanoon-e-Shahadat Order, 1984;*
- *The Hudood Laws, 1979;*
- *Punjab Borstal Act, 1926;*
- *Punjab Youthful Offenders Act, 1983;*
- *Sindh Borstal School Act, 1955;*
- *Sindh Children Act 1955;*
- *The Baluchistan Borstal Institution Act, 2014;*
- *Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010;*
- *Khyber Pakhtunkhwa Borstal Institution Act (KP BIA), 2012;*
- *Punjab Destitute and Neglected Children Act (PDNCA), 2004.*

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Despite being part of many international treaties, conventions and other instruments and despite having excellent chronology and prevalence of national laws and especially the promulgation of *JJSO, 2000*, and *JJSA 2018*, which are the major laws dealing with the juveniles in conflict or dispute with law and require their protection and their rehabilitation and reintegration into the society, the performance of juvenile justice system is still very dismal. Moreover, there is a marked difference between theory and practice while keeping the ground realities in view.

Following are some of the special apprehensions of the system and practices of Juvenile Justice in Pakistan.

3.1. Definition of Child

There is no uniform definition of 'child' in Pakistani Laws. Following are some of the major laws of Pakistan where the definition of a child varies altogether:

The Constitution of Pakistan which is the supreme law of the land does not provide precise definition of the child but legal experts take the Article 11 and 25-A of the Constitution as a reference to define the child which are contextual in nature. According to Article 11 of the Constitution of Pakistan: "*No child below the age of fourteen years shall be engaged in any*

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factory or mine or any other hazardous employment". This definition is not in line with the definition provided by CRC or JJSA 2018. Similarly, Article 25-A of the Constitution states "State shall provide free and compulsory education to all children of the age of five to sixteen years". This definition again does coincide with the CRC or JJSA 2018.

The Juvenile Justice Ordinance 2000 defines child: "Child" means a person who at the commission of an offence has not attained the age of eighteen years"¹⁵. Juvenile Justice Ordinance is in compliance with the international standards and CRC. Similar is the definition, which is provided in JJSA 2018. The Child Marriage Restraint Act, 1929 (Amendment in 1981) defines the child in Section 2: "Child" means a person who, if a male, is under eighteen years of age, and if a female, is under sixteen years of age". The Offence of Zina (Enforcement of Hudood) Ordinance 1979 defines an adult in section 2: "Adult" means a person who has attained, being a male, the age of eighteen years or, being a female, the age of sixteen years, or has attained puberty". Sindh Children Act 1955 defines the child, "Child is such person who has not attained the age of 16 years"¹⁶.

The Sindh Child Protection Authority Act was adopted in 2011. According to this Act "Child" means a person who has not attained the age of eighteen years"¹⁷. Similarly, Khyber Pakhtunkhwa Child Protection Welfare Act, which adopted in 2010 defines child in Section 2 of the Act: "Child" for the purpose of this Act means a natural person who has not attained the age of eighteen years". These two laws are in compliance with the definition of child given in CRC, JJSO 2000 and JJSA 2018.

The concept of 'child' under different laws of Pakistan suggests that the legislative understanding of 'child' is not consistent under different statutes as it can be seen from the following laws, which contain different definitions of child:

Table No. 1¹⁸

LAW	Definition of Child
<i>West Pakistan Ordinance 1958</i> <i>Section (a)</i>	"Child" means a person who has not completed the age of 16 years.
<i>Railways Act 1890</i> <i>Section 130</i>	"A minor is under the age of twelve years".
<i>National Registration Act 1973</i> <i>Section 4 (Registration of Citizens) (a)</i>	"Every citizen in or out of Pakistan who has attained the age of 18 years shall get himself registered"
<i>Punjab Destitute and Neglected Children Act, 2004</i> <i>Section 3 (1) (e)</i>	"Child" means a natural person who has not attained the age of eighteen years.
<i>Factories Act 1934 (Amended in 1997)</i> <i>Section 2(c)</i>	"Child" means a person who has not completed his fifteenth year.
<i>Shops and Establishment Ordinance 1969</i> <i>Section 2(a)</i>	"Adult" means person who has completed his seventeenth year of age; (c) "Child" means a person who has not completed his fourteenth year of age".
<i>Pakistan Citizenship Act 1951</i> <i>Section 2</i>	"Minor" mans, notwithstanding anything in the Majority Act, 1875, any person who has not completed the age of twenty-one years.

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<i>Vagrancy Ordinance 1958 Section 2 (a)</i>	<i>"Child" means a person under the age of fourteen years.</i>
<i>Juvenile Smoking Ordinance 1959 Section (c)</i>	<i>"Juvenile" means any person who is under the age of sixteen years.</i>

3.2. Minimum Age of Criminal Responsibility

In different countries children in conflict with law are brought before a court when they are old and competent enough to understand the nature of their acts and significance of their behavior. In many countries the minimum age of criminal responsibility depends upon the discretion of the competent court below which a child cannot be held accountable for criminal responsibility for acts he or she has done. As per one of the reports of UNICEF 2006 the minimum age of criminal responsibility is a grave concern in many South Asian Countries including Pakistan.

This was the major concern of international community and this concern has been raised by the *UN Committee on the Rights of the Child* in their concluding observations against Pakistan's submission of 5th Periodic Report on the state of Child Rights and Protection. Due to the efforts of civil society and concerns of the *UN Committee on Child Rights, Criminal Law (Amendment) Act, 2016* has been passed by the Pakistan's Parliament and minimum age of criminal responsibility of the child has been raised to 10 years. Previously it was 7 years. As per the 82nd Section of *PPC "Nothing is an offence, which is done by a child under ten years of age"*¹⁹.

Still some non-governmental organizations and international community are lobbying with the government of Pakistan to raise this age up to 12 years.

3.3. Determination of Juvenility

This is most substantial and critical issue in any juvenile justice system because the whole edifice of the justice that follows depends on the age determination of the juvenile offenders. Criminal liability depends upon the age and juvenile justice system sets different standards for juveniles in justice system separate from adults and within the competency and jurisdiction of juvenile court. If this issue is not handled with proper care, then there is great risk for a juvenile to confront conventional criminal justice system.

After the promulgation of the *JJSO in 2000*, the age determination of a juvenile who comes into conflict with law is the core subject of a juvenile's criminal litigation. Absence of proper birth records and other documents which confirm the age of the juvenile especially in the rural areas is a colossal concern and the problem further compounds when child is not admitted in school or sometimes schools do not register the correct age of the child.

Different case laws show that courts give preference to primary documents such as birth certificates, school leaving certificates or national registration cards/Form B instead of going for medical examination.²⁰ There is an inconsistency in the leading judgments of the different courts and even of same court on same issue. The *ratio decidendi*²¹ remains different in different judgments. In some of the judgments the weightage has been given to the medical test and in some to the documentary evidence and in some of the cases the plea of juvenility has been out rightly rejected because it has been submitted 'too late' or 'at belated stage'.

In some of the judgments the older cases falling within the purview of lesser age have been

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taken up because of the retrospective effect of the law²² and in some case the plea has been rejected because of the non-retrospective effect of the law²³. In some of the cases juveniles were given death sentence²⁴ despite juvenility claim and in some cases the death sentence was converted to life imprisonment²⁵ because of the concession on the basis of the plea of juvenility.

Following are some of the leading judgments of the High Courts and Apex Court where the contradictions can clearly be found:

Table No. 2²⁶

Documentary Evidence has been given the weightage	Medical Test has been given the weightage	Pleas of juvenility have been rejected because of 'too late' Issue.	Pleas of Juvenility have been accepted at any stage
2015 PCr.LJ ²⁷ 604 (Peshawar)	2015 SCMR ²⁸ 955	PLD 2004 SC 758	2010 SCMR 182
2006 PCr.LJ 211	2015 PCr.LJ 166 (Lahore)	2007 SCMR 758	PLD ²⁹ 1997 SC 847
2008 PCr.LJ 710	2016 MLD 789	PLD 2010 SC 1080	2014 MLD ³⁰ 1575 Peshawar
PLD 2008 Lah. 220	2009 SCMR 1073	PLD 2015 SC 145	2014 PCr.LJ 1645 Peshawar
2013 PCr.LJ 1440	PLD 2013 Lah. 92	PLD 2009 SC 777	PLD 2002 Kar. 18
2009 SCMR 1073	2003 PCr.LJ 1507	2013 YLR ³¹ 895(a)(Peshawar)	2012 PCr.LJ 897
2012 YLR 161	2007 YLR 2151		2014 PCr.LJ 542 (Sindh)

But one positive aspect is that when two possibilities or probabilities are encountered regarding juvenile's age, courts normally tilt towards the probability or possibility, which favors the juvenile.³²

3.4. CRC and Periodical Reports/Concluding Remarks and Recommendations

Pakistan has submitted five Periodic reports to *UN Committee on Child Rights* so far, as a state party. The first one was submitted on April 25, 1994. The second report was due for submission in 1997 but it was submitted in 2002, five years late from the given time frame. Pakistan submitted the third and fourth reports jointly on 28 September 2009. These Periodic Reports were submitted on time and were commended by the Committee.³³

The fifth periodic report has been submitted on 23 May 2014 by Pakistan with a delay of 16 months. Despite many efforts to incorporate the guidelines of *CRC* in national legislation and practices as far as child rights are concerned *UN Committee on Child Rights* raised queries on many issues for non-compliance as per the *CRC*. All the guidelines have never been implemented in letter and spirit. One of the reasons behind this non-compliance of the *CRC* is the absence of a national body on Child Protection with statutory status. A body of national stature can ensure an effective implementation of all the international commitments, vis-à-

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vis national obligations³⁴, which is so far missing in Pakistan.

3.5. Prohibited Sentences

Article 37 of the CRC states, “Neither capital punishment nor life imprisonment without the possibility of release shall be imposed on children under the age of 18.” That means international law clearly prohibits the application of death penalty to the persons below 18 years of age. But capital punishment is permitted in some of the countries including Pakistan despite being signatory and ratifier of CRC. Pakistan officially lifted a seven-year moratorium on death penalty on December 17, 2014 in the wake of Peshawar Army Public School massacre. Initially executions were applied to the people convicted for terrorism related crimes but later on the Interior Ministry lifted the moratorium for all crimes eligible to death according to penal law of the country. After this many convicted persons are on death row for the offences that are ineligible under international law for death sentence. From December 2014 to March 2015, 24 people were executed with an average of 2 convicts per week. This range doubled in March 2015 with 5 convicted persons per week as executions were carried out for non-terrorism offences. 393 people were executed from March 2015 to September 2016, which is an alarming and appalling situation.³⁵

In Pakistan, all children who are convicted under *Islamic Laws (Hudood Ordinance, 1979)*, *Anti-Terrorism Laws and Blasphemy Laws* are subject to adult penalties including the capital punishment and life imprisonment. As for as mandatory sentences are concerned, various laws are equally applicable to children as adults.³⁶ Children who have attained puberty are subject to corporal punishment, solitary confinement and inhuman treatment in some offences under Shariah Laws. These are the sheer violations of the provisions of CRC and other international human rights instruments.³⁷

3.6. Diversionary or Non-Custodial Measures

Diversionary measures divert the juveniles from formal criminal justice process and the overriding aim is to save juveniles from negative impacts of the criminal justice system on the lives of the juveniles. *Sage Dictionary of Criminology* defines the “Diversion” as; “*Diversion is the process of keeping offenders and other problem populations away from the institutional arrangements of criminal justice or welfare*”. This is built on the principle that formal process of justice does not protect the best interests of the child and it can result in more damage than doing any good.³⁸ Mostly juveniles are diverted from the traditional or formal justice system on the basis of their admission of guilt, or may on the grounds of first-time offence or minor offence.³⁹

Diversionary measures protect the juveniles from stigmatization, which they have to face after the release, therefore juvenile justice experts stress on the need of a variety of diversionary measures to mainstream and reintegrate them into the society and protect them from the adverse and harsh effects of criminal justice system. Article 9 of *JJSA* elaborately discusses the modes and dimensions of diversion but it will have to go have way till its proper implementation.

3.7. Probation and Parole System

Pakistan continued to enact most of the laws of colonial rulers even after the partition of sub-

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continent. Like many other laws probation law '*Good Conduct Prisoners Probation Release Act, 1926* and some of the sections of *Indian Code of Criminal Procedures* (380, 562-564) were enacted in Pakistan to grant probation to certain offenders.⁴⁰

In 1927, British rulers established Reclamation and Probation Departments in all federating units (Provinces) to release the prisoners on probation and parole. *The Good Conduct Prisoners Probation Release Act of 1926* provided great opportunity for convicted offenders who showed good conduct. After the partition of sub-continent, Punjab was the only province that had this department. But later on, in 1957, *Reclamation and Probation Departments* were established in all provinces. Pakistan passed *Probation of Offenders Ordinance in 1960* and notified its rules in 1961. This legislation gave the mandate to the *Reclamation and Probation Departments* of all provinces to establish probation wing and appoint probation officers. *Juvenile Justice System Ordinance*, which was promulgated in 2000, also contains the provisions regarding probation of juvenile offenders.⁴¹

Three conditional release options are available in the existing criminal justice system of Pakistan; bail at the pre-trial stage, fines and probation at sentencing stage, and parole at post-sentencing stage. Bail is the most common non-custodial measure, which is commonly exercised unlike probation and parole, which are least practiced in court settings. Non-availability of these services deprives the individuals who come into conflict with law of their right to liberty, freedom, and family-life and above all in becoming a beneficial citizen.

Probation and parole systems are in evolutionary process in Pakistan yet constitute a neglected system in Pakistan. Criminal justice system in Pakistan mainly focuses on retribution rather than restoration. Overcrowded prisons have become the nurseries of crime in Pakistan posing serious threats especially to juvenile offenders. Lack of coordination among all stakeholders, improper implementation, lack of awareness, and lack of funds are some of the key issues, which further compound the problem.⁴²

3.7. Detention

Detention snatches the liberty and dignity of a person and transforms a person into a prisoner involved in an offence as per the penal laws of the state. This is considered to be the most shocking aspect in a society. Laws all over the world have reached this conclusion that children should not be detained excluding exceptional cases and confinement should be the last resort in juvenile offending keeping in view their biological and mental immaturity. Moreover, in case of confinement the period of confinement should be the minimum possible and needs and requirements during confinement should be looked with sympathy and care. Rehabilitation and reintegration back into the social life should be the overriding aim of the detention.⁴³

Many countries around the world have introduced new laws, rules and regulations keeping in view the specific needs of the children while in confinement. All the laws emphasize the need of separate custodial measures detached from adults i.e., remand homes, Borstal institutes and rehabilitation centers. These countries are also ensuring the need of such institutions, which are very close to the permanent abodes of the juveniles where they long. This facility is provided to make sure that their families most frequently visit them and that also plays a pivotal role in their speedy rehabilitation. Corporal punishment is inflicted to the juveniles who are kept in detentions.⁴⁴ Moreover, juveniles are also handcuffed which is

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contrary to the provisions of prevalent statutory laws.⁴⁵

3.8. Pre-trial Confinement/Detention

All the international standards regarding juvenile justice require the juvenile offenders' pre-trial detention a worse treatment and should be avoided and in rare cases should be taken as a measure of last resort. They also require the juvenile courts to place least restriction on juvenile's liberty. Snatching or depriving the juveniles of their liberty should be for the shortest period of time in both the cases, i.e., pre-trial or post trial and it can greatly help in their rehabilitation. Unfortunately, children are kept imprisoned for long periods of time because of systemic procrastination, apathy, lack of resources, negligence and insensitiveness on law enforcement agencies' part.

The provisions of *JJSO 2000* and *JJSA 2018* clearly provide an easy mechanism for the release of the children on bail or on probation, except some exceptions where in extraordinary situation they are kept in custody because of the potential risk of their life or where they are involved in heinous crimes. If the provisions of the *JJSO 2000* and *JJSA 2018* are clearly applied, a significant number of juveniles who are behind bars waiting their trials will reduce. Procrastination and traditional delaying tactics coupled with laziness on the part of prosecution is one of the significant factors, inter alia.

Following are the statistics of past years clearing showing a great number of pre-trial juveniles awaiting their trials:

Table No. 3⁴⁶

Juvenile in Detention			
Year	Under Trial Prisoners	Convicted Prisoners	Total
2003	2523	537	3060
2004	2100	439	2539
2005	2005	363	2368
2006	2035	231	2266
2007	1810	205	2015
2008	1635	153	1788
2009	1225	132	1357
2010	1074	151	1225
2011	1267	165	1432
2012	1219	179	1398
2013	1315	183	1498
2014	1354	285	1456
2016	1097	128	1225
2017	1085	113	1198
2018	1081	118	1199
2019	1210	214	1424

3.9. Situation of Detention Centers & Incapacity of the Staff

Overcrowding in Pakistani jails is a serious concern and this issue makes the lives of juveniles

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more miserable. Moreover, physical and sexual abuse is rampant in such custodial settings along with their free mixing with hardened criminals further compounds the problem. Hygiene and malnutrition, lack of proper toilets even in Borstal institutes are some other problems. As per one of the reports of SPARC⁴⁷ the Borstal institution of Bahawalpur, which is the oldest one whose building has dilapidated. There is no proper mechanism for health care of the juveniles and education facility is also not up to the mark. Similarly, Faisalabad Borstal institute also lacks the basic facilities.

This is the situation of Borstal institutes let alone the situation of juvenile wards of other jails where children are kept. Lack of sanitation, proper ventilation and lighting, temperature, and provision of clean drinking water are some of the basic concerns. Psychosocial support is the major component of the juvenile justice system and this service is mandatory as per the international standards and guidelines for all the juveniles who come into dispute with law for their mental wellbeing and rehabilitation but in Pakistan, hardly such practices are in place.

Another big concern is lack of necessary staff, sensitized on child protection and well versed with the prevailing laws that deal the children who come in contact dispute with law and this becomes a major impediment in rehabilitation and reintegration of the juveniles. Family meetings and visits are highly restricted and prolonged deprivation with family contact, peers and other social circles makes these children vulnerable for rehabilitation because of limited contact even in Borstal confinement.

Though there is an overall improvement in alienating the juveniles from rest of the prisoners in all the provinces from past couple of years but still this segregation is not at finest level where even juveniles are segregated from adults during their transportation to the court proceedings, where they are segregated and detained in different custodial arrangements from other juveniles on the basis of nature of crime, or on sex or on pre-trial and post-trial criteria.⁴⁸

3.10. Police and Juveniles

Police is the principal law enforcement agency in criminal justice system, which is primarily responsible to maintain law and order, preserve peace, provide emergency and rescue services, detect and prevent crime and delinquency and to enforce the criminal laws where applicable.⁴⁹

Police are the prime respondent in the criminal justice system when an infringement of law takes place. Police plays an important role in prevention of crime and delinquency. It also plays a pivotal role in investigation of the cases.⁵⁰ The role and performance of Police regarding juveniles is not satisfactory as is required by the legal statutes; both national and international. The attitude of the police officials towards juveniles who come into conflict with law is very degrading and inhuman. Police officials lack specialized trainings and are not sensitized on child protection issues especially the lower ranked officials. They lack awareness regarding the rights of the children conferred to children by national and international laws. Police in Pakistan is not aware of the diversionary measures, which are observed all over the world to reintegrate children into the society and play an important role in child development. Abuse of every kind with pre-trial and post-trial juvenile offenders at the hands of police is rampant in Pakistan including the corporal torture and sexual abuse

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at the police stations and lock-ups.⁵¹

Children when come into conflict with law and face first encounter with police as the main body in any criminal justice system leaves indelible imprints on the minds of children forever in both the forms i.e., good and bad. So, the attitude and handling of the police officials to deal children matters a lot and it shapes the impression of the child for the whole process of criminal justice. Police in Pakistan, don't follow appropriate procedures because of lack of familiarity and sometime to exercise and exploit the power deliberately.⁵²

Ill-treatment abuse and exploitation by the police especially in police stations is explicit in their handling, which is again in contradiction with the provisions of national and international law. Children's confessions are forcefully taken in the police stations, illegal arrests are made and they are illegally kept in detention. Vulnerable children especially street children both male and female are easy victim of police torture and sexual abuse. Torture is used to extract the money and information from children.⁵³

3.11. Lack of Specialized Custodial Arrangements for Juvenile Offenders

Only two Borstal Institutions are functional in Punjab, four Youthful Offenders Industrial Schools in Sindh and two of those have recently been established and still lack proper infrastructure and facilities. There are no Borstal Institutions in Baluchistan and KPK. One Borstal Institution has been developed in Bannu KPK but it is not yet functional because of lack of funds and political will.

The Juveniles are kept in adult jails in a separate cell, which is called juvenile ward or juvenile cell. But sadly, juveniles are kept with adult prisoners without separate arrangements in some of the jails. Some efforts to separate these children from adults led to riots in the jails because of the stake of adult criminals in keeping the children with them. Medical reports of these children showed that more than 80 percent of these children are physically and sexually abused by the prison staff and the adult criminals. Sometimes medical reports are manipulated by the medical examiners because of the mutual understanding and settlement of the medical examiners and the jail staff.⁵⁴

3.12. Children with Handcuffs and Fetters

Against the statutory provisions of the *JJSO 2000* and recently enacted *JJSA 2018*, Prison Rules and standards set by the international instruments to which Pakistan is a signatory, Children involved in different offences are handcuffed and fettered⁵⁵. Children are also chained together especially when they are taken for court hearings or remands. When one juvenile appears before a court the rest chained with him also follow him. Even in some occasions juveniles are chained with adult and hardened criminals. These are the degrading punishments and there is no justification for these punishments though jail personnel justify it with their effort to stop the escape of these children. *Juvenile Justice Act, 2018* also places emphasis on this aspect by stating:

*"No juvenile offender shall be committed to prison, ordered to labor, put in fetters, handcuffed or given any corporal punishment at any time while in custody"*⁵⁶, and proviso clause states *"Provided that if there is reasonable apprehension of the escape of juvenile offender from custody who is more than sixteen years of age and is involved in heinous offence or he is*

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*previously convicted of an offence punishable with imprisonment for life, for reasons to be recorded, he may be handcuffed or put into a solitary confinement in a Juvenile Rehabilitation Center or observation home for a period not exceeding twenty-four hours*⁵⁷.

3.13. Jail Manual

The legal regime for juveniles is satisfactory in Pakistan, albeit some of the laws are as old and outdated as existing from more than a century. Juvenile offenders in Pakistan are governed by the *Prison Act 1894* and the *Prison Rules 1978*. These two laws are commonly known as Jail Manuals. Chapter 12 of the *Prison Rules 1978* exclusively deals with the juvenile offenders.⁵⁸ But even these rules not exercised in letter and spirit and children are dealt with the same rule and regulations that are applicable to adults. The same rules are applied in the juvenile cells or wards except one instruction to the warden of the juvenile cell to remain less strict to the juveniles and even this is not implemented. Juvenile cells or wards cannot be equated with the Reformatories, Rehabilitation Centers or Borstal Institutions which are exclusively designed for these children keeping in view their best interests but due to lack of such institutions a large number of juveniles are kept in jails and in some cases with adult criminals.

3.14. Prosecution System

Prosecution plays an important role in the administration of justice and is a pivotal component of criminal justice system. Prosecution system forms the core of any criminal justice as this system takes the case to trial and conclusion. Prosecution was a liaison department of police in Pakistan but after the promulgation of *Police Order 2002* prosecution system got separated from the police and came under the Provincial Home Department. All the four provinces passed their legislation in subsequent years⁵⁹ for an efficient and effective Prosecution services at the provincial level.⁶⁰

Unlike other developed countries, Prosecution department in Pakistan has not developed as a mature institution. There are no specialized and trained public prosecutors to deal the juvenile offenders and they prosecute the juveniles like the adult offenders. They lack the information of international and national laws and are not sensitized appropriately on the issues related to child rights. The Public Prosecutors lack competence in psychosocial support and counseling requirements of the children, which are very essential for child development and wellbeing. Though it is a detached and autonomous department but still it is scant with staff and required appropriate infrastructure to meet the needs.⁶¹

Conclusion

Under the backdrop of above study, it is stated that *Juvenile Justice System Act, 2018* is a recent most but comprehensive enactment, a special law, which encompasses almost all the protection dimensions of children who come in dispute with law and it also aligns with the guidelines of international child rights instruments including *CRC*. But real problem lies with the implementation of laws in letter in spirit, which is the missing link in Pakistan. The earlier legislation *Juvenile Justice Ordinance, 2000*, persisted for 18 years but the situation of Juvenile Justice System remained appalling in protecting the rights of such children. Children constitute the future of any nation and failing to provide a protective environment to the

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children in the justice system shows the level of dedication and commitment of any country towards its children. One important aspect of the Juvenile Justice System is the prevention mechanism but regrettably, prevention of delinquency is the most neglected system in the Juvenile Justice System in Pakistan. Delinquency prevention can be the most effectual instrument to save the future generations from coming in dispute with law. Effective prevention programs are employed all over the world to save the children from any prospective risks or their exposure to different hazards. Prevention is considered to be the most effective tool among all known interventions to lessen the phenomena of juvenile delinquency.

A juvenile justice policy without proper measures to prevent crime is not a good policy and contains the shortcomings. Preventing the children from involving in delinquent acts is better for children, families and for societies. Vulnerable children or children 'at risk' i.e., migrant and refugee children, street children, unaccompanied or orphan children should be the major focus of these juvenile justice policies and programs. There is a need to employ community level mechanisms that can contribute positively and effectively in identifying and addressing delinquent behavior. Prevention of children from entering into the formal justice system is highly required in the juvenile justice system but it is also, regrettably, missing in Pakistan's case that hampers the proper nourishment and development of the children.

Policies and programs focusing on delinquency prevention should be developed and applied as pre-emptory measures to save the children from coming into conflict with law and UN Riyadh Guidelines should be employed in these policies and programs as a benchmark. Moreover, authentic and reliable research studies focusing on the determinants of offending/delinquency are also the fruitful tools to reckon with while developing such juvenile prevention programs. Strengthening the family structures, provision of basic services at community level including provision of free education, provision of health care, awareness raising through mass media, development of social programs to equip and sensitize the parents with parental skills to better manage their children, social gatherings & programs, and some special small scale projects to address the issue of poverty and unemployment especially for 'at the risk' families and juveniles, can be some of the preventive measures for the juveniles who come into dispute or conflict with law.

Furthermore, state should evolve a comprehensive and effective mechanism for implementation of policies and programs dealing with the juveniles by allocating sufficient budgetary resources and at the same time a concerted monitoring & evaluation system should also be developed. It will greatly help to avoid recidivism among juveniles and their quick mainstreaming into the society as a productive citizen. Moreover, coordination and synergized efforts of all stakeholders i.e., government entities, non-profit social sector working in the same arena and civil society, can yield miraculous outcomes.

Conflict of Interest

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