

The Juvenile Justice System Ordinance 2000

has been no legislation on this subject at the Federal level. The Provinces of Balochistan and NWFP still lack laws dealing with juvenile offenders, while the Punjab and Sindh only have partially enforced laws.

The Ordinance extends to the whole of Pakistan, and Federally Administered Tribal Areas (FATA), but does not apply to the territories comprising the Northern Areas and the State Of Azad Jammu and Kashmir.

The new law consolidates at the Federal level many of the provisions of the Provincial laws dealing with juvenile justice and brings improvement in two major areas:

- it sets the definition of a child at 18 years of age, raising it from 15 and 16 years in the Provincial laws and ending the ambiguity that prevailed earlier; and
- prohibits death penalty for convicts under the age of 18 years.

The Ordinance lays down criteria that is to be followed at all stages of the juvenile trial offender's proceedings.

Arrest & Bail

The guardian of an arrested child must be informed as soon as possible of the arrest and the time, date and name of the Juvenile Court before which the child would be produced {sec. 10(1)(a)}.



The Juvenile Justice System Ordinance (No XXII) was enacted on July 1, 2000 by the General Musharraf Government. The Ordinance provides for the protection of the rights of children involved in criminal litigation and is a significant and much needed addition to the existing corpus of child-friendly laws. Previously there

The concerned Probation Officer has to be similarly informed so that he or she can obtain information about the child which may be of assistance to the Juvenile Court {sec. 10 (1)(b)}.

A child arrested for a non-bailable offense must be produced before the Juvenile Court in less than 24 hours from the time of arrest {sec. 10(2)}.

A child arrested for a bailable offense should be released by the Juvenile Court on bail, with or without surety. The release may be refused if it would expose the child to any danger. In this case the child could be placed under the custody of a Probation Officer, or a suitable person. The child, however, should not under any circumstances be kept in a police station {sec. 10(3)}.

In case where bail is not granted, the guardian of the child should be traced out, following which the Court may immediately release the child on bail {sec. 10(4)}.

A child under the age of 15 years arrested for an offense punishable with imprisonment of less than ten years should be treated as if the child has been accused of commission of a bailable offense {sec. 10 (5)}.

Juvenile Courts

The Ordinance calls for the establishment of Juvenile Courts with exclusive jurisdiction to try cases in which a child is accused of committing an offense. Upon enforcement of the Ordinance, all pending cases in which a child is accused should be transferred to the Juvenile Court {sec. 4(3)(4)}.

On taking cognizance of an offense the Juvenile Courts should decide cases within four months {sec. 4(6)}.

A child under the age of 15 years cannot be arrested under preventive detention laws or under the provisions of Chapter VIII of the Code of Criminal Procedure 1898 (No V) {sec. 10(6)}.

Except in cases where the delay in trial has been caused by the accused, the detained child should be released on bail:

- if, involved in an offense punishable with death, and has been imprisoned for a continuous period exceeding one year and whose trial continues;
- if, being accused of any offense punishable for imprisonment for life, and has been detained for a continuous period beyond six months, and whose trial has not concluded; or
- if, being accused of any offense not punishable with death, or imprisonment for life, and has been detained for a continuous period exceeding four months, and whose trial has not concluded.

Such a release could be refused where a child of 15 years or above is involved in an offense which is of a brutal and shocking nature, or if the child is a previous convict of an offense punishable with death or imprisonment for life {sec. 10(7)}.

Juvenile Courts are to be established by Provincial Governments in areas within their jurisdiction. The High Court may either confer power of Juvenile Court on:

- Court of Sessions; or
- Judicial Magistrate of the First Class; and
- Appoint as Presiding Officers of Juvenile Courts, practicing advocates with at least seven years standing at the Bar {sec. 4(1)(2)}.

All the Provincial Governments by 2002 notified juvenile courts under this law. Punjab conferred upon the Senior Civil Judges the powers of the Juvenile Courts in the whole Province, and the Islamabad Capital Territory, through notification number 50 (Judicial II) 2(14) 2000 dated April 28, 2001.

In the Frontier Province, the Peshawar High Court through notification number 44 dated April 16, 2002, has conferred the powers of Juvenile Courts upon all the District and Sessions judges. The Frontier Government has given powers to the District and Sessions Judges to hold exclusive courts for children.

The Rights to Legal Assistance & Medical Treatment

A child accused of, or victim of, an offense, has the right to legal assistance at the expense of the State and provided by a legal practitioner with at least five years standing at the Bar {sec. 3}.

Five panel of lawyers have been notified in the Punjab, seven in the Frontier Province and none in Sindh.

A child suffering from serious illness, whether physical or mental, should be sent to a hospital and given medical treatment at the expense of the State {sec. 6(6)}.



Definitions

For the purposes of this Ordinance:

- "Child" is a person who at the time of commission of an offense is below the age of 18 years {sec. 2 (b)}.
- "Guardian" means a parent, person, or relative who has actual care of the child or is willing to bear the responsibility of the child {sec. 2(d)}.
- "Probation Officer" means a person appointed under the Probation of Offenders Ordinance 1960 (No XLV). The Provincial Government may also appoint Probation Officers under the Ordinance {sec. 2 (g)}.
- "Borstal Institution" is a place where child offenders may be detained and given education and training for their mental, moral and psychological development {sec. 2(a)}.

Sindh through notification number VIII(7)SOJ/2001(PP) dated June 29, 2001, has established Juvenile Courts consisting of the two Additional District Judges and two Judicial Magistrates at Judicial Complex for Karachi Division; and the First Judicial Magistrate of the Districts other than the Districts in Karachi Division for the local areas within their respective jurisdiction.

The Balochistan High Court through notification number 202/150/BHC dated August 21, 2001, has conferred the powers of Juvenile Courts upon the District and Sessions Judges and the Additional District and Sessions Judges; and the Judicial Magistrates of the First Class.

Protection of Privacy

The Ordinance lists a number of safeguards for the protection of privacy of children involved in litigation.

A Juvenile Court should normally follow the procedure provided for in the Code. However, it should not ordinarily take up any other case on a day when the case of a child accused is fixed for evidence.

No person should be present at any sitting of a Juvenile Court except:

- members and officers of the Juvenile Court;
- parties to the case and persons directly concerned with the proceedings;
- such other persons as the Juvenile Court directs to be present; and
- Guardian of the child.

The Juvenile Court may, in the interests of the child, direct any person to withdraw from court and where the attendance of the child is not deemed essential, proceed with the trial in the child's absence {sec. 6(4)(5)}.

The trial proceedings involving a child cannot be published in any form, unless specifically authorized, which may disclose the name, address, school or any identification which could lead to the identification of the child concerned, nor can any picture of the child be published {sec. 8}.

The Probation Officers report on the child's character and background should be treated as confidential. It may, however, be communicated to the child or the guardian, in order to give them an opportunity to produce evidence relevant to the matter stated in the report {sec. 9}.

No Joint Trial of Adult & Child

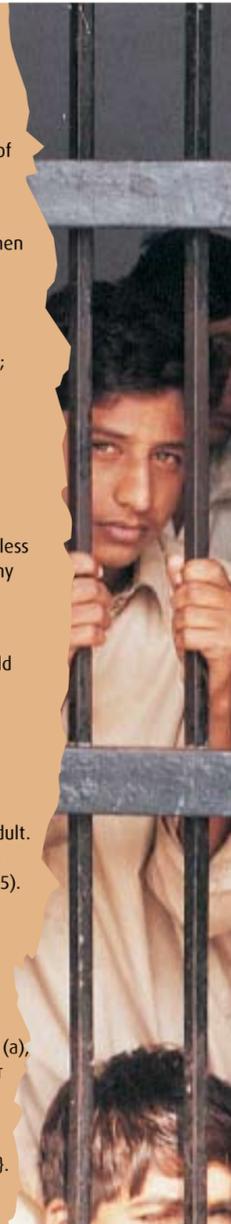
No child can be charged with or tried for an offense together with an adult. If a child is charged with an offense for which he or she could be tried with an adult, the child should be tried separately by the Juvenile Court {sec. 5}.

Release on Probation

A child convicted by a Juvenile Court may be:

- released on probation and placed under the care of a guardian or a suitable person upon execution of a bond, with or without surety. This placement should not exceed the period of imprisonment awarded {sec.11(a)},
- sent to a borstal institution until he or she attains the age of 18 years or for the period of imprisonment, whichever is earlier {sec. 11(b)}.

The period of imprisonment or probation may be reduced if the court is satisfied that further imprisonment or probation is unnecessary {sec. 11(c)}.



Punishments

Under the Ordinance no child can be:

- Awarded a death penalty, or ordered to labor during the time spent in any borstal or any other institution;
- Hand-cuffed, put in fetters or given any corporal punishment at any time while in custody. However, where there is reasonable apprehension that the child may escape from custody, he or she may be hand-cuffed (sec.12).

Appeals

A child has the right to appeal within 30 days after the order of conviction. Similarly, the Provincial Government or a party aggrieved by an acquittal order has the right to appeal within 30 days of the date of such order (sec. 13).

Rules

The Provincial Government is empowered to make rules for carrying out the purposes of this Ordinance by notification in the official Gazette.

Punjab was the first Province to notify rules under the JJSO through notification number SO(R&P)10-38/85 Volume III on February 2, 2002. The Punjab Rules call for the constitution of a panel of legal practitioners by the Sessions Judge for the purpose of providing legal assistance to the juvenile prisoners at State expense. Such a lawyer cannot be appointed in more than two cases at a time, and should not be paid less than Rs 5,000 and not more than Rs 10,000. The Punjab Rules also envisage establishment of one borstal institution in at least every district of the Province.

Balochistan was the second Province that notified the Rules through notification number SO(Judicial)5(18)/2001/365-93 on February 26, 2002. The Balochistan Rules are the only ones among the four Provinces that give the juvenile prisoners the facility of parole. These Rules also call for the provision of cots and other facilities including nutritional food, and facility of remission for convicted juveniles. They also make it the duty of the Provincial Law Secretary to visit and inspect every institution within the Province to satisfy himself that the provisions of the JJSO and the Rules are duly observed.

The Government of the Frontier notified the Rules through notification number SO(Prisons)HD/4-63/2002 on May 9, 2002.

The Government of Sindh notified the Rules through notification number VIII(7)SOJ/2000 on May 27, 2002; the Rules drafted by the Sindh Province are perhaps the most comprehensive ones and cover subjects that remain uncovered by the rules devised by the other provinces. Rule 20 of the Sindh Rules call for the provision of diet at State's expense and even provides a diet menu. Rule 21 prescribes the procedure for the production of inmates in the court. Rule 22 deals with the subject of production of inmates in the hospital for medical treatment at State's expense.



International Guidelines

International guidelines for developing more humane juvenile justice systems, given in the CRC and elaborated in the Beijing Rules, offer juveniles the basic procedural safeguards common to general justice systems with the addition of special protection measures and higher standards on account of their age.

Some of these principles include:

- prohibition of torture and cruel treatment or punishment, unlawful or arbitrary detention;
- prohibition of death sentence or life imprisonment without the possibility of release for persons under the age of 18 years;
- deprivation of liberty to be used as a last resort and for the shortest appropriate period;
- the right to be held and tried separately from adults;
- the right to maintain contact with their families and to legal assistance;
- avoidance of unnecessary delay in handling of cases; the right to privacy;
- development of various disposition measures in order to avoid institutionalization;
- development of laws and provisions specifically applicable to juvenile offenders.



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