

Introduction

It is widely acknowledged that children are inherently different from adults and thus are to be meted out special considerations during the legal processes in cases of juveniles' coming in conflict with law. The same is enshrined in the United Nations Convention on the Rights of the Child¹ (UNCRC) which asserts the rights of every human being below the age of 18 years. The Convention requires that the child's best interests must be a primary consideration (Article 3) and the child's right to maximum possible development (Article 6) be accounted for. The same is applicable in cases of criminal delinquency which the UNCRC addresses in Article 40:

“A child in conflict with the law has the right to treatment which promotes the child's sense of dignity and worth, takes the child's age into account and aims at his or her reintegration into society. The child is entitled to basic guarantees as well as legal or other assistance for his or her defense. Judicial proceedings and institutional placements shall be avoided wherever possible”.

Similarly, the national legal framework for dealing with juveniles is primarily governed by the Juvenile Justice System Ordinance, 2000² (JJSO). The law appeared as a much needed addition to the existing corpus of child protection laws in the country and it lays down the criteria to be followed at all stages of the juvenile offenders' trial proceedings with an overall aim at rehabilitation and reintegration into society. These national and international conventions exist to ensure that children are not subjected to consistent harm which can encourage a downwards spiral leading to further committed offences and increasingly violent behavior which can extend into adulthood.

Successive governments however, have remained negligent of the plight of juvenile offenders in the country hampering the implementation of JJSO. Juvenile offenders continue to be treated as hardened criminals thereby deflecting the attention from rehabilitation to punishment. Complete implementation of the law is

¹ Convention on the Rights of the Child:
<http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>

² Juvenile Justice System Ordinance, 2000 (XXII of 2000):
<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/81784/88955/F1964251258/PAK81784.pdf>

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further problematic due to the existence of certain conflicting laws which cannot be overridden by the JJSO as article 14 states that the Ordinance is “in addition to and not in derogation of any other law for the time being in practice”.

It can also be seen that there persists an inconsistency in laws regarding treatment of juveniles which leads to a disregard of children’s best interests. The JJSO prohibits corporal punishment of children in custody but in Punjab, the Borstal Act, 1926, permits corporal punishment for males in Borstal Institutions³.

While the JJSO prohibits the sentencing and imposition of the death penalty against juvenile offenders, since the lifting of the moratorium on death penalty in 2014, six juvenile offenders have been executed despite credible evidence showing them to be underage at the time of the alleged crime⁴.

In 2017, there were certain interventions that sought to improve the state of juveniles in the country which included a focus on rehabilitation, better access to justice mechanisms and legal developments. In spite of these it was seen that the Juvenile Justice System of the country continued to face problems primarily due to weak implementation mechanisms, inadequate infrastructure and resources.

National Developments in 2017

The Juvenile Justice System Bill 2017

The Juvenile Justice System Bill was introduced by the government on 24th May, 2017. After an amendment it was reintroduced, drafted, revised and finalized following a series of national and provincial level consultations and comments from stakeholders on 4th July, 2017⁵. It has since been passed by the National Assembly’s Rights panel but remains to be enacted.

³ Pakistan’s Country Report, Global Initiative to End All Corporal Punishment of Children: <http://www.endcorporalpunishment.org/progress/country-reports/pakistan.html>

⁴ Death Row’s Children, Justice Project Pakistan, 2017.

⁵ NA Body Approves Child Protection Bill: <https://www.dawn.com/news/1343318>

The Juvenile Justice System Bill 2017⁶ seeks to empower the state to make special provisions for the legal protection of children and seeks to repeal the Juvenile Justice System Ordinance 2000 to improve upon it and to ensure that this act overrides any contrary provisions (asserted in art. 23 and 25) which the JJSO 2000 did not do. Noteworthy clauses in the bill include determination of age, disposal of cases through diversion and formation of Juvenile Justice Committees;

a) Determination of Age

According to the clauses delineated in the bill, it is mandatory for the investigating officer to make an inquiry to determine the age of any such person who physically appears to be a juvenile based on his birth certificate, educational certificates or any other pertinent documentation. This clause if enacted would be an improvement over the JJSO, since the latter does not outline a procedure nor does it make these requirements mandatory. With this amendment it then becomes mandatory to determine the age prior to any proceedings, a feature that is often neglected in our current context (see Minimum Age of Criminal Responsibility).

b) Disposal of Cases through Diversion

The concept of diversion was introduced in the bill to dispose of cases without resorting to formal judicial proceedings for minor offences. Educating juvenile offenders through community service with an emphasis on education and training has also been added to prevent juveniles from being sent to prison in the company of hardened criminals⁷. The bill also binds investigating agencies and the courts to decide a case in six months.

The different modes of diversion include but are not limited to restitution, reparation, reprimand, fine payment and demand for apology. These measures if enacted would not only reduce the number of incarcerated juveniles in prisons and offer them an alternative to persecution but would also protect these children from

⁶ The Juvenile Justice Systems Act 2017:
http://www.na.gov.pk/uploads/documents/1495634626_612.pdf

⁷ Ibid.

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child abuse, drug and substance abuse, problems which they are susceptible to in prisons⁸.

c) Juvenile Justice Committees

Juvenile Justice Committees (JJC) are to be formed within three months of the enactment of the law and these will be established for each sessions division. Consisting of four members including a serving Judicial Magistrate, a District Public Prosecutor, a member of the local Bar having at least seven years standing and a serving Probation Officer or Social Welfare Officer, the JJC will have the power to dispose of cases through diversion upon referral from the police, prosecution or the Juvenile Court, as the case may be, within a period of one month from the date of referral⁹. Inspecting the Observation Homes and Juvenile Rehabilitation Centers and giving directions to the officer in charge for the welfare and social re-integration of the juvenile will also be included in its functions.

These additional clauses seemingly encourage dissemination of justice in the best interests of the child but one is confronted with the question of its effective implementation, given the poor implementation of measures as outlined in the JJSO.

Juvenile Offenders Rehabilitation Project Launched at Quetta Jail

Prime Minister's Youth Programme (PMYP) in collaboration with the United Nations Office of Counter-Terrorism (UNOCT) launched a project for the rehabilitation of juvenile offenders at Quetta District Jail, Balochistan.

The objective of the project is to invest in juvenile offenders to offer them a fresh start at life by providing requisite training and equipment in trades like motorcycle mechanic and tailoring to reintegrate them into society.

⁸ The Juvenile Justice Systems Act, 2017:
http://www.na.gov.pk/uploads/documents/1495634626_612.pdf

⁹ Ibid.

The Sindh Prohibition of Corporal Punishment Bill, 2016 with Provision for Juvenile Prisoners

The Sindh Prohibition of Corporal Punishment Bill, 2016 passed by the Provincial Assembly of Sindh on 31st January, 2017 and assented to by the Governor of Sindh on 15th March, 2017 serves to offer protection to children against “corporal” or “physical” punishment, in which physical force is used and intended to cause some degree of pain or discomfort, however light it may be, which may involve hitting (“smacking”, “slapping”, “spanking”) a child, with the hand or with an implement (a whip, stick, belt, shoe, wooden spoon, etc.) including kicking, shaking or throwing a child, scratching, pinching, biting, pulling hair or boxing ears. Forcing a child to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing a child’s mouth out with soap or forcing him to swallow hot spices), including mental abuse or any other kind of punishment¹⁰ at the work place, in schools and other educational institutions including formal, non-formal, and religious, both public and private, in child care institutions including foster care, rehabilitation centers and any other alternative care settings, both public and private, and in the Juvenile Justice System¹¹.

It is further stated that the provisions of this Act shall override all other laws for the time being in force which categorically prohibits corporal punishment in all above mentioned settings and is of particular significance with regard to penal institutions as these have historically been grey areas under the JJSO which did not override all other laws.

The Act comprehensively outlines and defines the different forms of corporal punishment which includes use of physical force and mental abuse not previously defined as such and imposes penalties for violation of such acts which range from censure to dismissal from service depending on the severity of the violation.

It can thus be said to act as a strong mechanism to ensure that the treatment of children under the umbrella of the juvenile system is

¹⁰ The Sindh Prohibition of Corporal Punishment Act, 2016:
<http://www.pas.gov.pk/uploads/acts/Sindh%20Act%20No.VII%20of%202017.pdf>

¹¹ Ibid.

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safeguarded, while also maintaining that contradictory laws cannot be applied to justify corporal punishment in penal institutions.

Increase in Minimum Age of Criminal Responsibility

During March 2016 the minimum age of criminal responsibility (MACR) was increased from 7 to 10 years by amending Section 82 of the Pakistan Penal Code 1860 (PPC). Similarly, in Section 83 the word 7 was substituted with 10 and the word 12 was substituted with 14 making the respective clauses;

Section 82	Act of a child under ten years of age: Nothing is an offence, which is done by a child under seven years of age
Section 83	Act of a child above 10 and under 14 of immature understanding: Nothing is an offence which is done by a child above 10 years of age and under 14, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

It is commendable to note that Pakistan is now closer to the UNCRC recommendation of setting the “absolute minimum” age of 12 for criminal responsibility, moving from one of the lowest MACRs in the world to a more acceptable level. Such a measure also serves to reduce the overall number of juveniles in prisons positively impacting the problem of overcrowding.

International Developments

During its 36th session The Human Rights Council, on 29th September 2017 adopted the ‘*Human Rights in the administration of justice, including juvenile justice*’ resolution. The resolution invites governments to include in their efforts to implement the 2030 Agenda for Sustainable Development and their national development plans, the administration of justice as an integral part of the development process, and to allocate adequate resources for fair and effective justice systems, including the provision of legal aid services with a view to promoting and protecting human rights, and to address gender inequality. It has further invited states to consider the causes and effects of over-incarceration and overcrowding, including with

regard to non-discrimination and persons with increased vulnerability in the administration of justice to achieve the above.

Specific emphasis has been laid for states to incorporate inclusive measures to ensure that prejudice and discrimination of vulnerable groups does not lead to over-incarceration and overcrowding of these vulnerable groups. With regard to juveniles it was highlighted that there is a need for special vigilance and safeguards in the administration of juvenile justice because of their vulnerability to violence, abuse, injustice and humiliation.

The resolution encouraged continued regional and cross-regional efforts, the sharing of best practices and the provision of technical assistance in the field of juvenile justice, noting in this regard the final declaration of the World Congress on Juvenile Justice, which among other things included promoting the child's rehabilitation and reducing recidivism by establishing laws, procedures, authorities and institutions specifically designed for children in conflict with the law and focusing on restorative justice with the aim of repairing the individual to contribute to his reintegration in the society¹².

The resolution reaffirmed that the best interests of the child must be a primary consideration in all decisions concerning the deprivation of liberty and, in particular, that depriving children and juveniles of their liberty should be used only as a measure of last resort and for the shortest appropriate period of time, in particular before trial, and the need to ensure that, if they are arrested, detained or imprisoned, children should be separated from adults to the greatest extent feasible, unless it is considered in the child's best interest not to be¹³.

Juvenile Justice System Ordinance, 2000

Legislative Framework

The Juvenile Justice System Ordinance 2000 provides for the protection of children involved in criminal litigation. The Law appeared as a much needed addition to the existing corpus child protection laws in the country and it lays down the criteria to be

¹² World Congress on Juvenile Justice Final Declaration Geneva, Switzerland, 30 January 2015: https://www.tdh.ch/sites/default/files/final_declaration_-_eng.pdf

¹³ Human Rights in the Administration of Justice, including Juvenile Justice' Resolution: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G17/276/62/PDF/G1727662.pdf?OpenElement>

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followed at all stages of the juvenile offenders' trial proceedings. The Law has the following main features;

- The Law defines "child" means a person who at the time of commission of an offence has not attained the age of eighteen years (section 2 (b)).
- The Law calls for the establishment of exclusive juvenile courts with exclusive jurisdiction of trying cases in which a child is accused of committing an offence. Upon enforcement of the ordinance, all pending cases involving juvenile offenders will be transferred to these courts (section 4(3) (4)).
- Law enforcers are obligated to inform guardian of the arrested child (as soon as possible) about the arrest along with the time, date, and name of the juvenile court where the child would be produced (section 10 (1) (a)). Furthermore, a child arrested for committing a non-bailable offence must be produced before a juvenile court within 24 hours of his/her arrest: a child arrested on a bailable offence should be released on a bail, with or without security (section 10 (3)). Similarly, a child under the age of 15 years, arrested for an offence punishable with an imprisonment of less than 10 years should be treated as if the child has been accused of commission of a bailable offence (section 10 (5)).
- A child accused of, or victim of an offence has the right to legal assistance at the expense of the state and provided by a legal practitioner with at least a 5-year experience of standing at the bar (section 3).
- Under the Ordinance, a child cannot be awarded a death penalty, or ordered to do labor during the time spent in a Borstal or any other institution. Moreover, a child cannot be put in fetters or administered corporal punishment at any time while in custody (section 12).
- The Law explicitly states that 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 (section 11 (a)); or sent to a Borstal Institution until he/she attains the age of 18 years or for the period of imprisonment, whichever is earlier (section 11 (b)).

Arrest and Bail

The JJSO outlines a detailed procedure for the arrest and bail of underage persons to ensure their protection through a trial that is neither punitive nor retributive. It is argued that the child is most likely to become a victim of torture and other forms of cruel treatment during this stage of the judicial process. This crucial stage lays the foundation for the following stages and dictates to a large extent the level of protection the child is offered through the presence of lawyers, social workers and/or parents.

Minimum Age of Criminal Responsibility

While the increase in minimum age of criminal responsibility has been conclusively decided on paper, it is its implementation that has suffered in the past, which still questions its efficacy. Since the law posits no mandatory requirement for the police, nor does it lay out any specific procedures or standardized protocols to investigate the age of the accused at the time of the arrest, the matter remains discretionary¹⁴. Age determination is conducted in a largely arbitrary manner by a cursory visual assessment of the prisoner by the interrogating officers, while the prisoners' own declaration of age can also be regarded as unreliable in certain instances given their low levels of awareness of such. The lack of awareness among the police about their duty under the JJSO to conduct age determination compounds the problem and results in an inadequate dispensation of justice.

This problematic practice has also been presented in a 2015 Supreme Court judgement by Justice Khosa who stated that "recording of an accused person's age at the time of recording his statement under Section 342 of the Code of Criminal Procedure (CrPC) is invariably based upon a cursory visual assessment which can substantially be off the mark, as proverbially, appearances can be deceptive"¹⁵. Following this, an empirical analysis of judgements demonstrates that there is no consistent procedure of age determination adopted by courts¹⁶.

¹⁴ Death Row's Children, Justice Project Pakistan, 2017

¹⁵ Shafqat's Lawyers Concerned about Premature Conclusion to FIA Inquiry: <https://www.dawn.com/news/1173471>

¹⁶ Death Row's Children, Justice Project Pakistan, 2017

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The problems for juvenile offenders are further compounded by their lack of valid legal identity documentation, which makes it next to impossible for the suspects to challenge these arbitrary assessments. Given Pakistan's abysmally low birth registration rates¹⁷, it is a natural consequence then that the criminal justice system is also marred by a high rate of child offenders who might be arrested, detained and executed due to insufficient and improper proofs of age.

Police treatment

Due to lack of training and knowledge of the governing functions of the JJSO, children who come into conflict with law are treated as hardened criminals by the police officers. Police brutality and torture are common features which have reportedly been found meted out to juveniles. Disproportionate amounts of force during arrests and subsequent torture and harassment are relied on as means of interrogation. The juveniles are often recorded as "*Nojawan-ul-Omar*" in the FIR, which indicates that the offender is a young man as opposed to a child. Moreover, juveniles are often kept with adults in lockups with adult prisoners which stands in violation of the JJSO. A survey report produced by Justice Project Pakistan, on police brutality of Juveniles in Faisalabad discovered 58 cases of torture of juveniles out of a sample of 1,867 medico-legal certificates. The report further highlights evidence which shows that Faisalabad police have arrested—often on the basis of false allegations—those as young as 12 and have used disproportionate force during arrests, engaged in extortion, and relied on torture as a principal means of interrogation. When children and their families complained about the abuse, they were met with silence or retaliation¹⁸.

Arrested children are kept in lockups with adult prisoners which further exposes the children to violence and abuse from these hardened criminals. It was recently reported that "99% of the juvenile prisoners in Balochistan suffer sexual assault and turn out to be drug addicts by the time they complete their sentences"¹⁹. It is not uncommon for police officials to be complicit in this abuse since

¹⁷ Progress Report: Birth Registration 2013-2015, UNICEF, 2015:

https://www.unicef.org/pakistan/Birthregistration_LR.pdf

¹⁸ Abuse of Juveniles by the Faisalabad Police, Justice Project Pakistan, 2014.

¹⁹ Baluchistan Jails Termed Worst for Juvenile Prisoners:

<https://tribune.com.pk/story/1542448/1-balochistan-jails-termed-worst-juvenile-prisoners/>

reportedly “certain prison officials ‘supply’ them (juveniles) to adult prisoners”²⁰. The government’s failure to address these problems inadequately has resulted not only in officers’ impunity for continued abuse of children’s rights, but has also diminished public faith in the police force.

Bail and Custody to a Probation Officer

The JJSO allows lenient conditions for bail to be met for children who come in contact or conflict with the law. Article 10 of the JJSO states that; “Without prejudice to the provisions of the Code, a child accused of a bailable offence shall, if already not released under section 496 of Code, be released by the juvenile court on bail, with or without surety, unless it appears that there are reasonable grounds for believing that the release of the child shall bring him into association with any criminal or expose the child to any danger, in which case, the child shall be placed under the custody of a Probation Officer or a suitable person or institution dealing with the welfare of the children if parent or guardian of the child is not present, but shall not under any circumstances be kept in a police station or jail in such cases”²¹. This increases the role of the parole and probation department in the juvenile justice system and makes them an indispensable force in ensuring an alternative to imprisonment, particularly by offering rehabilitation. However, it is seen that due to the lack of coordination between the police and probation departments, these tasks fail to be performed in full measure as the departments lack the physical and material staff to function adequately. The departments suffer from problems of being underfunded, understaffed and the stakeholders lack proper training and orientation with governing laws for probation.

Social Investigation Report

Under the JJSO, a probation officer is required to prepare a Social Investigation Report (SIR) for the court which entails highlighting the child’s character, educational, social and moral background. These reports then inform judicial decision-making at the sentencing stage and enable the courts to determine what risk (if any) the offender poses to the community at large and delineate the terms of

²⁰ Juveniles Abused in Peshawar Jail: <https://www.dawn.com/news/1212760/juveniles-abused-in-peshawar-jail-alleges-teenage-inmate>

²¹ Juvenile Justice System Ordinance, 2000 (XXII of 2000): <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/81784/88955/F1964251258/PAK81784.pdf>

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sentence accordingly. Police officers are usually neither aware nor trained on this aspect of the law which puts the juvenile at a disadvantage in the beginning.

Furthermore, it is highlighted that in its current form the SIR only contains a section regarding the proposed treatment for the probationer and does not include a section to allow for the Probation Officer to make any recommendation regarding the duration of probation or specific conditions that ought to be imposed on the probationer for his/her rehabilitation²². This significantly undermines the purpose the SIR is supposed to serve, while the lack of communication and coordination between arresting police officers and probation officers rarely allows the process to be undertaken.

Trial and Courts Legal Aid

Pakistan has also failed to provide children with legal assistance when they come in contact with the law, despite it being a right guaranteed under the JJSO. Section 3 explicitly states that every child who is accused of the commission of an offence or is a victim of an offence shall have the right of legal assistance at the expense of the State, provided by a legal practitioner with at least 5 years' experience of standing at the bar²³. Unfortunately, successive governments in Pakistan have failed to provide free legal assistance to children who come in conflict with the law. Numerous legal aid mechanisms exist at the district and provincial levels but they lack effective ownership, oversight and performance management at the relevant levels. While these mechanisms exist to assist the indigent population it is noted that children (or juveniles) are seldom mentioned as possible beneficiaries. One of these mechanisms is through the District Legal Empowerment Committees (DLECs) which exist to provide civil and criminal legal aid to persons unable to obtain professional legal advice due to financial hardship, but these remain disproportionately under-utilized due to lack of awareness, inefficient orientation and oversight mechanisms²⁴.

²² Effecting Change in KP's Probation Regime, Research Society of International Law, 2015: <http://rsilpak.org/wp-content/uploads/2016/11/Final-Probation-Report-4.12.2015.pdf>

²³ Juvenile Justice System Ordinance, 2000 (XXII of 2000):

<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/81784/88955/F1964251258/PAK81784.pdf>

²⁴ District Legal Empowerment Committees – Supporting Legal Aid (Factsheet), Law and Justice Commission of Pakistan, 2016.

Eighteen years after the promulgation of the JJSO, successive governments have failed to constitute panels of lawyers to provide state sponsored legal aid to juvenile offenders. Where and when these have been constituted they largely remained inactive due to inadequate funding resulting in negligible remuneration. Due to the lack of availability of legal aid the juveniles are also unable to raise juvenility pleas during investigation and trials and therefore are beyond the scope of applicability of JJSO²⁵. In the absence of specialized panels of lawyers appointed by the state, civil society organizations have remained at the forefront of providing legal aid to juvenile offenders all over Pakistan. The table below provides annual numbers of juvenile offenders who have been provided legal aid by SPARC through its Child Rights Committees and lawyers from district bar councils over the years;

Legal Aid Provided by SPARC to Children Over the Years	
Year	Number of Cases
2006	336
2007	474
2008	378
2009	385
2010	496
2011	521
2012	274
2013	286
2014	54
2015	17
2016	12
2017	24
Total	3257

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While Section 4(1) of JJSO binds federal and provincial governments to establish a juvenile court in each district, to exclusively try cases in which a child is accused of an offence. Exclusive courts are necessary for the quick dispensation of justice and the law includes procedures which outline; not taking up any other case a day when the case of a child accused is fixed, attendance of only specified

²⁵ Death Row's Children, Justice Project Pakistan, 2017.

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persons in the court and dispensing with the attendance of the child in the trial (Section 6). The establishment of the child friendly court in Lahore encompassing all the above while providing child friendly spaces, is a good model to be replicated in other districts and provinces. The government has previously notified courts, which function under the District and Session Judges, Additional District and Sessions Judges, Senior Civil Judges and Judicial Magistrates, as special juvenile courts. Within this context it is seen that juvenile offenders continue to be subjected to a slow judicial process due to overburdened courts resulting in prolonged and unnecessary deprivation of their liberty.

Probation

Probation is, by its nature, an important tool to effect positive criminal justice outcomes, but it stands neglected in the current context of Pakistan, which remains adamantly focused on punitive measures. The state fails to take into account the benefits it can offer in terms of lowered prison populations and subsequent improved management and reduced budgetary concerns. Overcrowding in prisons leads to juveniles' high risk behavior in addition to their vulnerability to a host of diseases given the poor hygiene and sanitation conditions. An additional benefit of the probation system is that it allows for the distinction between different offenders and provides sentences according to particular circumstances of the individual to ensure the best possible outcome for the juvenile i.e. in his best interests as enshrined in the UNCRC. It is estimated that the average probationer is often a first-time, non-violent offender, who can best be served by remaining in the community while serving out the sentence²⁶, while imprisonment usually transforms these offenders into hardened criminals. A stint in prisons results in stigmatization of these young offenders and significantly otherizes them from society, making reintegration difficult and leading them further to a life of crime.

Reclamation and Probation Department

The Reclamation and Probation Departments (R&PDs) in each province are responsible for monitoring the activities of probationers.

²⁶ The Neglected Probation System: <https://tribune.com.pk/story/1043366/the-neglected-probation-system/>

These departments are considered, on paper, an essential element of the criminal justice system because of their expected role of reforming and rehabilitating convicts released on parole and probation to protect them from languishing in prison²⁷. However, it is seen that these departments are practically dysfunctional in supervising and rehabilitating the probationers and parolees, due to which the number of probationers and parolees released has decreased during the previous year²⁸. The departments suffer in terms of both human and material resources to perform their duties effectively. The staff is not adequately trained to provide juveniles under their care with required counselling and they are oftentimes overburdened by the number of prisoners. Similarly, the departments suffer from low budgetary allocations, as a very small proportion of the Prisons Department budget goes to the R&PDs.

The provincial composition of the Provincial Prisons Departments and Reclamation and Probation Departments is given below:

- In Punjab, with an authorized capacity to house 32,235 inmates there were found to be **50,825 inmates as of 1st January, 2018**²⁹ including, 615 juveniles by the end of December 2017. The staff strength of the Prisons Department is around 4,862 with a total sanctioned budget of PKR 9.3 billion for the financial year 2017-18 with PKR 150 million allocated to R&PD. According to the Law and Justice Commission of Pakistan as of November 2017, there were 4,378 probationers and 4 parolees released from prison in the province.
- In KP around 10,811 prison inmates occupy the prison space allocated for 8,395 prisoners³⁰ which includes 360 juveniles. PKR 40 billion have been allocated for police and PKR 2 billion have been allocated for Prison Administration and Operation for the year 2017-18. There are approximately 188 probationers (including 57 juveniles) and 0 parolees in the

²⁷ Directorate of Reclamation and Probation Departments Revamped:
<https://www.dawn.com/news/1301341>

²⁸ Number of Convicts Released on Parole, Decreased: <https://www.dawn.com/news/1359269>

²⁹ Punjab Prison Population, Government of Punjab:
http://www.prisons.punjab.gov.pk/crime_wise_population_statement

³⁰ Prisoner Population as of November 2017, Law and Justice Commission of Pakistan:
http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/ji.pdf

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province recorded by November 2017³¹, while there were 42 probation officers, including 36 males and 7 females.

- In Sindh the prison population stood at 19,094 as against an authorized capacity of 12,613³². The Sindh Home Department has been allocated PKR 90.5 billion in the 2017-18, compared to an allocation of PKR 82.3 billion in the previous budget³³. There were a total of 133 probationers and 0 parolees released from prison in the province in 2017.
- As of 2017 there were 2,397 prisoners recorded in Balochistan as against an authorized capacity of 2,585³⁴. The Public Order and Safety Affairs Department had a budgetary allocation of PKR 32.9 billion, of which a meager allocation of PKR 2.5 million was allocated to the R&PD. There were a total of 62 probationers released in the province while the R&PD had 11 probation officers, 10 male and 1 female and 6 parole officers, 4 male and 2 female³⁵.

Provincial Statistics – Juveniles in Detention

By the end of 2017 they were a total of 1,198 juveniles in prisons across Pakistan, including 1,085 under-trial prisoners and 113 convicted. There was only 1 female detainee recorded in that data while the rest were male. The table below provides statistics of juveniles from 2003 to 2017. There has been a significant decline in the overall number of incarcerated juveniles over the years going down by about 60% in 15 years.

³¹ Number of Prisoners and Convicts released on Probation and Parole in November, 2017: http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/pap.pdf

³² Prisoner Population as of November 2017, Law and Justice Commission of Pakistan: http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/ji.pdf

³³ Law and Order gets 15% of the Entire Budget: <https://tribune.com.pk/story/1428107/law-order-gets-15-entire-provincial-budget/>

³⁴ Prisoner Population as of November 2017, Law and Justice Commission of Pakistan: http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/ji.pdf

³⁵ Number of Prisoners and Convicts released on Probation and Parole in November, 2017: http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/pap.pdf

Juveniles 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
2015	-	-	-
2016	1097	128	1225
2017	1085	113	1198

A provincial breakdown is provided below to highlight the status of juveniles in the preceding year.

Punjab

Punjab	Number of Incarcerated Juveniles	
	Male	Female
Juvenile Under Trial Prisoners	548	0
Juvenile Convicted Prisoners	67	0
Juvenile Condemned Prisoners	0	0
Total Juvenile Prisoners	615	

As of 2017, Punjab had the largest population of under trial and convicted juvenile prisoners anywhere in Pakistan. The table above

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reveals that in 2017 the province had a total of 615³⁶ juveniles imprisoned or detained in various jails and Borstal Institutes of the province. There has been a slight increase in the number of juvenile detainees from 559 in the year 2016 to 615 in 2017.

Sindh

Sindh	Number of Incarcerated Juveniles	
	Male	Female
Juvenile Under Trial Prisoners	183	0
Juvenile Convicted Prisoners	4	0
Juvenile Condemned Prisoners	0	0
Total Juvenile Prisoners	187	

By the end of 2017, Sindh prisons held a total of 187³⁷ juveniles. Out of the total, 183 were under trial and only 4 were convicted juveniles. All of the detained juveniles were male. The number of detained juveniles saw a significant decline from a total of 259 to 187 in the last year.

Khyber Pakhtunkhwa

KP	Number of Incarcerated Juveniles	
	Male	Female
Juvenile Under Trial Prisoners	320	0
Juvenile Convicted Prisoners	39	1
Juvenile Condemned Prisoners	0	0
Total Juvenile Prisoners	360	1

³⁶ Data Retrieved from Punjab Prisons, Government of the Punjab, as of 15th December 2017.

³⁷ Prisoner Population as of November 2017, Law and Justice Commission of Pakistan:
http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/ji.pdf

In 2017, there was a considerable increase in the number of juvenile prisoners in KP jumping from 330 to 360³⁸ making KP the second province to have a high number of detained juveniles. A total of 320 juveniles were found to be under-trial while 40 were convicted including 39 males and 1 female.

Balochistan

Balochistan	Number of Incarcerated Juveniles	
	Male	Female
Juvenile Under Trial Prisoners	34	0
Juvenile Convicted Prisoners	2	0
Juvenile Condemned Prisoners	0	0
Total Juvenile Prisoners	36	

By the end of 2017, the juvenile barracks of Balochistan's prisons held a total of 36³⁹ juvenile inmates, a decline from previous years' figures of 44. Out of the total, 34 were under trial and 2 were convicted juvenile offenders. All 34 of the juvenile inmates were male.

Borstal Institutions

Article 37 of the UNCRC, explicitly requires deprivation of liberty to be used "only as a measure of last resort and for the shortest appropriate time". An instrument of this sort unfortunately allows plenty of leeway for governments and authorities to negotiate the terms given their relatively arbitrary meaning. "A last resort" leaves plenty of room for punitive, retributive response by legislators and judges and "appropriate" can be and is interpreted as making the punishment fit the crime, maintaining "proportionate" approaches to sentencing⁴⁰.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Stop Making Children Criminals, Policy Paper, 2013 Child Rights International Network: <https://www.crin.org/en/library/publications/juvenile-justice-stop-making-children-criminals>

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The JJSO 2000 also institutes rehabilitative justice options for juvenile offenders in the form of detention in Borstal Institutions. Borstal Institutions are reformatory centers for delinquent juvenile offenders, designed primarily to protect juveniles from interaction with adult criminals and to offer them rehabilitation by offering educational and vocational training facilities to help reintegrate them into society upon release. In spite of the provisions of the JJSO 2000, the concept of a rehabilitative justice system through Borstal Institutions fails due to prevailing notions of effectiveness and acceptability of a more punitive model.

These detention facilities for juvenile offenders are yet to be established in all four provinces. Punjab has two functioning Borstal Institution and Juvenile Jails (BIJJ) in Faisalabad and Bahawalpur, both of which are run by the prison administration department and are likewise staffed by officials unequipped to deal with juveniles. SPARC, through its previous work, discovered that these centers lacked adequate sanitation and hygiene facilities and did not have provision for clean water.

The equivalent of these in Sindh are four Youthful Offenders' Industrial Schools (YOIS) in Karachi, Hyderabad, Larkana and Sukkur which have reportedly fewer prisoners than the authorized capacity⁴¹ of around 210 inmates, including 8 foreigners⁴², in addition to one remand home in Karachi. These facilities have also been found wanting of basic rehabilitative facilities and care. Khyber Pakhtunkhwa and Balochistan have yet to establish a functioning Borstal Institute.

The dearth of separate facilities for children subjects the majority to incarceration with adults usually in separate barracks/cells or rooms from adult prisoners. This provision still renders them vulnerable to exploit and abuse. Staff engaged at police stations and the Borstal Institutions is poorly trained on skills of handling children in trauma and lack negotiation skills. It is mandated by national and international obligations Pakistan is signatory to, that there be systematic and regular monitoring of detention places where children

⁴¹ Central Prison Karachi most overcrowded among 25 prisons in Sindh: https://epaper.dawn.com/DetailImage.php?StoryImage=01_01_2017_117_005

⁴² 95% Children are Under-Trial: <https://www.dawn.com/news/1372508>

are detained, in order to hold authorities accountable to ensure that children's rights are not violated.

SPARC's Work in Peshawar Jail, 2017

SPARC through its decades of experience of working on juvenile justice in Khyber Pakhtunkhwa identified Peshawar Central Jail for intervention, since it has the largest number of juvenile detainees across the province. The project has entailed the development of learning corners in the jail to benefit about 120 young detained male and female offenders over the course of a year. In the absence of specifically designed borstal institutions as outlined in the JJSO 2000, setting up of two well designed learning corners (one for males, other for females) in this location presents a viable alternative to help alleviate the plight of juvenile offenders currently incarcerated in this prison. The learning corners supported by teachers provide a safe-place to promote a culture of reading and inculcating better citizenship values, while also encompassing a component of non-formal education and skills training. The children have also been provided with health & hygiene kits and winter-wear. Working closely with the jail administration, the goal is to secure a suitable area for the learning corner within the premises, while also expecting support in the form of separate space from the jail authority to make the initiative a sustainable one.

The Hidden Victims: Children of Incarcerated Mothers

Under the current system of juvenile justice system and incarcerated juveniles there exists another category of prisoners often regarded as "hidden victims". These are children kept in incarceration with their mothers, who under the Pakistani law, are allowed to do so up till the age of 6 (in theory). In a report⁴³ published by Legal Aid Office for jails in Sindh, the majority of mothers, however were reported to be unaware of the prison rules or of the maximum age they could keep their children inside prison with them. The law clearly states that a child who is over the permissible age or whose mother has been executed or has died will not be permitted to stay in incarceration. Contrary to this it was found in the report that a child as old as 9 remained incarcerated which highlights the cracks in the system and their required implementation.

⁴³ Babies Behind Bars, Legal Aid Officer, 2015.

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It was further discovered that none of the children claimed any sort of awareness about the prison rules⁴⁴ (PPR), there was only one child who mistakenly thought the age limit to be 10. Additionally, some jail officials were also not aware of such regulations. The issue that arises is that jail officials become lenient towards mothers with children, allowing their children to stay past the legal age limit, since they have no other alternatives, with the result that children are unnecessarily denied their right to freedom. There are no adequate education or recreational facilities available to these children which diminishes their future prospects and makes reintegration into society a challenge, given that they have been brought up within the confines of prison and have only experienced that limited and harsh reality.

Recommendations

- Enact the Juvenile Justice Systems Bill, 2017 at the federal level, while Provinces should look towards formulating and enacting similar legislation.
- Ensure that the Juvenile Justice System Ordinance of 2000 prevails over all other contradicting laws.
- Coordination mechanisms between probation officers and police officers including prison and judiciary should be developed and instituted through increased staffing and improved training of the relevant authorities to promote the ends of the Juvenile Justice System Ordinance 2000.
- Establish juvenile courts staffed by specially trained juvenile judges, prosecutors, probation officers, defense advocates and other relevant personnel to oversee all aspects of cases involving children; including arrest and detention.
- Sensitization of police and prison officials about their respective treatment of juvenile offenders.
- Promote alternative measures to detention, such as diversion, probation, mediation, counselling or community service to ensure detention is used as a last resort and for the shortest period of time. In cases where detention, is unavoidable, ensure that children are not detained together with adults.
- Establish and implement effective age determination mechanisms in order to ensure that in cases where there is no proof of age, the

⁴⁴ Pakistan Prison Rules, 1978

child is entitled to a proper investigation to establish his or her age.

- Development of databases at the provincial police, prisons and probation departments for planning and research purposes: Police data should be disaggregated by gender, offense, and origin of the child along with the type of detention facility in which they are detained.
- The Government of Balochistan should establish Borstal Institutions for the detention of juvenile offenders in the province and the Government of KP should make the Bannu and Haripur Borstal Institutions functional. Punjab and Sindh Governments accordingly should ensure the provision of adequate facilities in Borstal Institutions and youth detention facilities.
- Regular monitoring of detention facilities where children are detained should be carried out to investigate and report on the conditions of the jails and the juveniles.
- Ensure the provision of free, qualified and independent legal representation to children in conflict with the law, following the spirit of the JJSO. The provincial governments should provide funds for legal assistance to juvenile offenders as well as victims by activating the panel of lawyers already constituted for the purpose; or by establishing panels in the districts which have none.
- There is a need to increase public awareness about the plight of juvenile offenders in Pakistan. The media should be engaged in this regard to highlight the suffering and violence these children face.

Conclusion

Whenever the deplorable state of juveniles in prisons across Pakistan is discussed, the issue is often trivialized by arguments pertaining to whether juveniles should or should not be given the death penalty for capital offences. The fact is that while juveniles have known to have gone scot-free for rape and murder in the past⁴⁵; there have been instances where there have been cases registered on accounts of

⁴⁵ Gang Rape Victims Battle for Justice in Pakistan:
<http://www.dailymail.co.uk/video/news/video-1010310/Gang-rape-victim-battles-justice-Pakistan.html>

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murder and attempted murder on children as young as 1 and 5⁴⁶. Similarly, juveniles have found to grieve about prison officials 'supplying' them to adult prisoners to be sexually abused⁴⁷.

Regardless of whether one is for or against the death penalty for capital crimes committed by juveniles, the broken legal system in the country cannot be ignored. Be it juveniles or adult prisoners, the prerequisite for any punishment seems to be the inability of the prisoner or his family to bribe police officials, afford an expensive lawyer or to coerce the victim. It seems that the laws can be bended for anyone with influential connections, and a bag load of money. While poverty stricken children can end up in jail on frivolous charges or petty crimes. Moreover, it isn't all that difficult to file false charges to settle personal vendettas, be it adults or underage children.

As long as the broken system of justice prevails and prospers in the country, there can be but little hope for common people. Juveniles from poor households shall continue to suffer and languish in prisons, whereas adolescents of influential households will continue to evade even the most heinous crimes.

It is imperative to focus on the provision of justice, without delay or compromise. At the same time the need for diversion and reformatory justice is necessary to rehabilitate juvenile delinquents, instead of turning them into hardened criminals.

⁴⁶ Punjab Police Files FIR Against Toddlers: <https://www.geo.tv/latest/152103-police-in-punjab-files-fir-against-two-toddlers>

⁴⁷ Juveniles abused in Peshawar Jail: <https://www.dawn.com/news/1212760>

Abbreviations

ADP	Annual Development Plan
AIDS	Acquired Immune Deficiency Syndrome
AEPAM	Academy of Educational Planning and Management
AIDS	Acquired Immune Deficiency Syndrome
AJK	Azad Jammu and Kashmir
BISP	Benazir Income Support Programme
BHU	Basic Health Unit
CDA	Capital Development Authority
CDL	Child Domestic Labour
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CLC	Child Labour Cell
CNIC	Computerized National Identity Card
CPU	Child Protection Unit
CPWC	(Child Protection and Welfare Commission)
CRM	Child Rights Movement
CSA	Child Sexual Abuse
CTP	Criminal Traditional Practices
DHQ	District Head Quarter
DVC	District Vigilance Committee
ECA	Employment of Children Act
EmONC	Emergency Obstetric and Neonatal Care
FATA	Federally Administrated Tribal Areas
FCR	Frontier Crimes Regulation
FDE	Federal Directorate of Education
FGD	Focus Group Discussion
FIA	Federal Investigation Agency
GB	Gilgit-Baltistan
GDP	Gross Domestic Product
GER	Gross Enrollment Rate
GPI	Gender Parity Index
HC	High Court
HDI	Human Development Index
HEC	Higher Education Commission
ICT	Islamabad Capital Territory
IDPs	Internally Displaced Persons
ILO	International Labour Organization

Abbreviations

JJSO	Juvenile Justice System Ordinance
KPK	Khyber Pakhtunkhwa
LHW	Lady Health Worker
MDGs	Millennium Development Goals
NA	National Assembly
NCCWD	National Commission for Child Welfare and Development
NCHR	National Commission for Human Rights Pakistan
NCSW	National Commission on the Status of Women
NDMA	National Disaster Management Authority
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Co-operation and Development
PA	Provincial Assembly
PCLU	Provincial Child Labour Unit
PDMA	Provincial Disaster Management Authority
PPC	Pakistan Penal Code
PSLM	Pakistan Social and Living Standards Measurement
SC	Supreme Court
TB	Tuberculosis
UNCRC	United Nations Convention on the Rights of the Child
UNDP	United Nations Development Program
UNESCO	United Nations Educational Scientific & Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children Fund
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development
WHO	World Health Organization