

JUVENILE JUSTICE SYSTEM

The Effective way to reduce and prevent juvenile crime is balance through enforcement measures with targeted, effective and intervention initiatives.

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Introduction

Pakistan ratified the United Nations Convention on the Rights of the Child¹ (UNCRC) in 1990. Over the past 28 years, the process of legislation, policy making and implementation to protect child rights in Pakistan has remained slow and uneven.

Pakistan promulgated the Juvenile Justice System Ordinance (JJSO) in 2000,² aiming to provide protection of the rights of children involved in criminal litigation; and their subsequent rehabilitation.

As is well-known, children need much more attention, protection, and special care than adults. In Pakistan, where poverty and deprivation are the root causes of the increasing crime rate, it is only to be expected that the rate of juvenile offences will correspondingly also be high.

In Pakistan, the criminal justice administration system has not yet succeeded in eliminating dishonesty in reporting and registering crimes (including false charges to settle personal vendettas) through false First Information Reports (FIRs); influencing, pressurizing or coercing victims/survivors of crimes, whether adults or children. *Pro bono* legal aid is a rarity, and is mostly seen in the large urban metropolises, hence the affordability of an eminent, experienced child rights lawyer plays no small part in the outcome of a case of juvenile offence. Nepotism and the use of influential or family

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>

connections is still the norm. Children still continue to be used and exploited as voiceless and powerless pawns between feuding adults, or in conflicts.

The UN CRC requires that the child's best interests must be a primary consideration (Article 3), which is equally applicable in cases of juvenile justice, which the CRC addresses in Article 40:

“A child in conflict with the law has the right to receive 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 defence. Judicial proceedings and institutional placements shall be avoided wherever possible”.

In Pakistan, since 2000, the national framework for dealing with juvenile offenders is primarily governed by the **Juvenile Justice System Ordinance, 2000**³ (JJSO). There was a critical need for the review, revision and strengthening of the JJSO – and also for several amendments to the existing corpus of diverse and conflicting child protection laws in Pakistan.

The JJSO laid down the criteria to be followed at all stages of the juvenile offenders' trial proceedings. The aim was the offenders' rehabilitation and eventual reintegration into society. The national laws and international Conventions aim to ensure that child offenders are not subjected to consistent harm or exposure to adult criminals/convicts in regular prisons, which can encourage a downward spiral, leading to the child committing further offences and promoting a tendency towards increasingly violent behaviour, which can extend to adulthood, or to hardened criminality.

Successive governments however, neglected the plight of juvenile prisoners, thereby hampering the implementation of the JJSO. Juvenile offenders still continue to be treated as hardened criminals, thereby deflecting attention and focus away from rehabilitation to punishment. The problems in implementation of the law were further compounded by the existence of conflicting laws, some of which

³ Juvenile Justice System Ordinance, 2000 (XXII of 2000):
<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/81784/88955/F1964251258/PAK81784.pdf>

could not be overridden by the JJSO, as its Article 14 states that the JJSO is “in addition to and not in derogation of any other law for the time being in practice”.

It is also seen that persistent inconsistency in the laws regarding the treatment of juvenile offenders leads to a disregard of the child’s best interests. For example, the JJSO(2000) prohibited the corporal punishment of children in custody. However, in Punjab, the Borstal Act(1926), permits corporal punishment for male juvenile offenders in Borstal Institutions⁴.

Similarly, the JJSO prohibited the death penalty –both in its sentencing and imposition – for juvenile offenders. However, since the lifting of the informal moratorium on the death penalty in 2014,⁵ six juvenile offenders have been executed, despite credible evidence demonstrating that they were minors at the time of their alleged crime⁶.

2018 saw a positive development in Pakistani legislation, namely, the JJSA 2018, which seeks to improve the state of juvenile offenders, with a focus on their rehabilitation and better access to justice mechanisms. But in spite of these efforts, it was evident that the Juvenile Justice System continued to face challenges, primarily due to weak implementation mechanisms, inadequate infrastructure, chronic shortages of financial and human resources, and, above all, the absence of political will and commitment required to focus on juvenile justice issues.

⁴ Pakistan Country Report, Global Initiative to End All Corporal Punishment of Children: <http://www.endcorporalpunishment.org/progress/country-reports/pakistan.html>

⁵ The moratorium on the death penalty was lifted in December 2014, following the terrorist attack on the Army Public School, Peshawar by the TTP.

⁶ Justice Project Pakistan (JPP) report: “Death Row’s Children”, 2017

The Juvenile Justice System Act, 2018 (JJSA)

In 2018, Parliament enacted the Juvenile Justice System Act, 2018 (JJSA), which repealed the JJSO, 2000.⁷ It is an improvement in the law, aiming to empower the State to make special provisions for the legal protection of child offenders, and also seeking to ensure that the new law overrides previous contrary or conflicting provisions, as stated in Articles 23 and 25 of the JJSA, which the JJSO 2000 did not do.

The most noteworthy sections of the JJSA are: determination of the Child's age; setting a higher minimum age of criminal responsibility (although it is still not in accord with the UN CRC); disposal of cases through diversion; formation of Juvenile Justice Committees (JJs); and setting up Juvenile Rehabilitation Centres (JRCs).

The JJSA 2018 provides for improved and strengthened criminal justice for children, as well as provisions for the subsequent social integration of juvenile offenders.

The JJSA states that every juvenile offender or survivor of a crime shall have the right of legal assistance at the expense of the State. He/she must be informed his/her rights and must be provided legal assistance within 24 hours. Soon after being apprehended and taken into custody by the police, a juvenile offender will be kept only temporarily for investigations, and only after obtaining remand from the Juvenile Court. All juvenile offenders will be kept separately from police stations or lockups or accused adults in custody.

The JJSA makes the following special provisions for girls accused of offences: that in no circumstances will a girl child be apprehended or investigated by a male police officer, or be released on probation under the supervision of a male police officer. She shall only be kept in a Juvenile Rehabilitation Centre (JRC), which is established or certified exclusively for female inmates, such as women's crisis centres (shelters).

⁷ The Juvenile Justice Systems Act 2018:

http://www.na.gov.pk/uploads/documents/1495634626_612.pdf

Determination of Age

The JJSA 2018 has included clauses which render it mandatory for the police Investigating Officer (IO) to make inquiries to determine the age of any such person who physically appears to be a juvenile – based on his/her birth certificate, educational certificates or any other pertinent documentation. In the absence of any documentation, a medical examination will be conducted to determine the age of the accused juvenile offender. This clause is an improvement over the JJSO 2000. This clause makes it mandatory for the State to determine the age of the accused child prior to starting any proceedings.

Increase in Minimum Age of Criminal Responsibility (MACR)

The JJSA 2018 defines the child according to the definition in the CRC: “a child is a person who has not attained the age of 18 years”. The JJSA has increased the minimum age of criminal responsibility (MACR) to 10 years, by amending Section 82 of the Pakistan Penal Code 1860 (PPC). Similarly, in Section 83, the figure 7 was substituted with 10 and the figure 12 was substituted with 14, making the following respective new clauses:

Minimum Age of Criminal Responsibility Amended	
Section 82	Act of a child under Seven years of age: Amendment of Section 82 ACT XLV of 1860- In Pakistan Penal Code (ACT XI of 1860) hereinafter referred to as the Penal Code, for the word “Seven” the word “ten” shall be substituted
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 seven years of age and under 14, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his/her conduct on that occasion.

While this is a commendable development, yet it must be noted that Pakistan is not yet in adherence to the UNCRC provision of

setting the “absolute minimum” age at 12 for criminal responsibility. But with the JJSA, Pakistan is at least moving from one of the lowest MACRs in the world to a better status. It can and it must do better in future.

This amendment will also serve to reduce the overall number of juvenile offenders in prison, which will also decrease the chronic problem of prison overcrowding.

Disposal of Cases through Diversion

The concept of Diversion was introduced in the JJSA 2018 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 juvenile offenders from being sent to prison where they might be in the company of adult convicts and hardened criminals⁸.

The JJSA also binds the police/LEAs, investigating agencies and the courts to decide juvenile cases within six months. The different modes of diversion include, but are not limited to, restitution, reparation, reprimand, fine payment and demand for apology.

All offences, either minor or major, shall be compoundable for the purpose of diversion. For major offences, diversion can only be exercised if the age of the juvenile offender is below 16 years.

These measures are expected to (a) reduce the number of incarcerated juvenile offenders and offer them an alternative to a criminal record; and (b) they will also protect such children from child abuse, sexual violence, drugs and substance abuse, which they are greatly susceptible to, while in prison.⁹

Juvenile Justice Committees (JJs)

⁸ Ibid.

⁹ The Juvenile Justice Systems Act, 2018: <http://senate.gov.pk/en/acts.php>

The JJSA provides that Juvenile Justice Committees (JJC)s are to be formed within three months of the enactment of the law and will be established for each Sessions Court at the district level. The JJC will consist of four members, including a serving Judicial Magistrate, a District Public Prosecutor, a member of the local lawyers' Bar Association (having at least seven years' standing), and a serving Probation Officer or Social Welfare Officer. The Committee will have the power to dispose of cases through diversion, upon referral from the police, the Prosecution or the Juvenile Court, within a period of one month from the date of referral.¹⁰ The JJC will also inspect the offenders' residential locations and the Juvenile Rehabilitation Centres, and will give directions to the officers in charge. Monitoring of the welfare, rehabilitation and social re-integration of juvenile offenders is also included in the JJC's functions.

Juvenile Rehabilitation Centre (JRC)

The Juvenile Rehabilitation Centre (JRC) is a new, special prison established exclusively for housing juvenile offenders. They shall be confined to the JRC premises until the completion of their period of imprisonment or until they turn 18 years of age. While in the JRC, they shall receive an education as well as vocational and technical skills training for their development.

Challenges to Implement JJSA 2018

The main challenge is the pending enactment of the new Rules of business for carrying out the provisions of the JJS Act of 2018, e.g. allocation of resources, training police investigators, training the judiciary handling juvenile cases, establishment of juvenile courts, establishment of Juvenile Justice Committees and Juvenile Rehabilitation Centres.

Since the previously enacted Rules stand repealed after the promulgation of the new law (JJSA 2018), hence, the federal and provincial governments are required to make new Rules of business. Further challenges include inadequate infrastructure, financial resources, and lack of trained personnel.

¹⁰ Ibid.

The new law itself contains contradictions: Section 6 of the JJSA 2018 deals with the 'Release of Juvenile on Bail', but according to Section 6(4), a juvenile offender may not be released on bail if he/she is more than 16 years of age and is arrested for a heinous offence. It creates unnecessary confusion with regard to the fixation of age and its further classification, especially if read together with Section 15 of the Act, which stipulates the Power of a Juvenile Court to issue orders for a juvenile offender's release, but is silent concerning juvenile offenders aged over 16 years, who are arrested for a heinous offence.

In addition: Section 4 of the JJS Act 2018 deals with the establishment of a Juvenile Court, while Section 12 provides for a separate trial of a juvenile from an adult, but with exceptions.

The stated aim of the additional and strengthened clauses in the JJSA 2018 is to promote access to justice and the best interests of the child; but there remains the question of its effective implementation, given the history of implementation of its predecessor, the JJSO 2000; and also the absence of political commitment to addressing the above-cited contradictions and lacunae.

JUVENILE JUSTICE SYSTEMS: AN INTERNATIONAL PERSPECTIVE

European Commission's Conference on child-friendly justice and integrated child protection systems¹¹

On 25 and 26 June 2018, the European Commission held a conference on child-friendly justice and integrated child protection systems, with a special focus on the results and outputs of the EU

¹¹<http://www.oijj.org/en/news/juvenile-justice-in-the-world/report-european-commissions-conference-on-child-friendly-justice->

projects carried out in these areas. The conference had two objectives: to showcase examples of good practice to inspire others, and to take stock of what has been done since 2011/2012 with EU funds under the Rights, Equality and Citizenship Programme (REC), in order to help inform future policy and practice.

The United States' National Council of Juvenile and Family Court Judges publishes updated juvenile justice guidelines¹²

The [National Council of Juvenile and Family Court Judges](#) (NCJFCJ) announced the release of the *Enhanced Juvenile Justice Guidelines*, the most recent update documenting the improvement of court practices in juvenile justice cases. Since 2005, with the original publication of *Juvenile Delinquency Guidelines: Improving Court Practice in Juvenile Delinquency Cases* (JDG), the NCJFCJ has worked with juvenile justice courts to promulgate best practices in juvenile delinquency proceedings. The purpose of the *Juvenile Delinquency Guidelines* was to set forth the essential elements of effective practice for the court processes that are involved in the handling of juvenile delinquency cases. It identified recommended practices throughout the juvenile delinquency court system – from the determination of whether a case should enter the formal juvenile delinquency court system, to determination as to whether juvenile delinquency court jurisdiction should be waived and the youth transferred to criminal court, as well as post-disposition review of the re-entry process for youth returning to the community from out-of-home placement.

Argentina : Unicef opposes lowering the age of criminal responsibility of children¹³

On the 16th January, in the face of the Argentinian government's project to establish new legislation on youth justice which proposes to lower the age of criminal responsibility from 16 years to 15, Unicef

¹²<http://www.ncjfcj.org/EJG>

¹³<http://www.oijj.org/en/news/juvenile-justice-in-the-world/unicef-opposes-lowering-the-age-of-criminal-responsibility-of-chi>

published a document entitled (Ideas contributing to the debate about the Juvenile Justice Law). Unicef considers the age of criminal responsibility “an important element of the Juvenile Justice Law that has to be dealt with alongside other aspects of this law, and not in an isolated manner. In Argentina, the reform of the Juvenile Justice System does not need to lower the age of criminal responsibility, something that would be interpreted as a setback and a regressive move in terms of human rights. It is necessary to find an approach to Juvenile Justice that does not affect the rights that are established within the international treaties which form part of the Argentinian Constitution.” Additionally, they believe “it is extremely important that Argentina has a Juvenile Justice Law that stands in line with international standards”, for which “a specialized justice system, with a focus on the prevention of conflict with the law rather than repression, and a strategy orientated around social reintegration that offers adolescents opportunities for education, professional training, and recreation is required.”

USA: Youths with a parent in prison, juvenile justice history three times likely to get depression, PTSD than peers¹⁴

Young adults with a childhood history of both personal involvement in the juvenile justice system as well as a parent in jail are nearly three times more likely to have depression or post-traumatic stress disorder (PTSD) compared to peers without any such experience. They are also nearly twice as likely to have anxiety compared to young adults without childhood exposure to the criminal justice system, says a new study. “Exposure to both parental incarceration (imprisonment) and juvenile justice involvement was associated with a greater risk of depression, anxiety, and post-traumatic stress disorder,” says the study published in JAMA Network Open.

New Zealand: Continued fall in youth offending rates¹⁵

The second Youth Justice Indicators Summary Report, published by the Ministry of Justice, shows the substantial drop in youth offending

¹⁴<https://meaww.com/study-youth-parent-prison-juvenile-justice-system-depression-ptsd-mental-issues>

¹⁵<http://www.scoop.co.nz/stories/PA1908/S00307/continued-fall-in-youth-offending-rates.htm>

identified in the first report has continued, says Associate Justice Minister Aupito William Sio. The report presents data showing the flow of children and young people through the youth justice system from 2010 to 2018. Oranga Tamariki, Police, and the Ministry of Justice each capture data about the performance of the youth justice system, which is then analyzed to produce the report.

South Sudan signs UN Optional Protocol to ban recruitment and use of children in armed conflict¹⁶

South Sudan's Ambassadors Kureng Garang and Agnes Oswaha formalised the country's accession to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC), during a ceremony that took place on the margins of the 73rd General Assembly debates at the UN headquarters in New York on September 27th. This makes South Sudan the 168th country to agree to the OPAC.

The OPAC also includes the commitment that South Sudan will work to demobilize all children under 18 present in the ranks of its armed forces, will provide physical and psychological recovery and help their reintegration. The Special Representative of the Secretary-General for Children and Armed Conflict, Virginia Gamba welcomed this accession saying "through the UN's active engagement with parties to conflict in South Sudan, we are laying the groundwork to improve the protection of boys and girls. Implementation will now be key to bring tangible progress in the lives of children who have been victims of or witnessed unspeakable violence. I also recommend that South Sudan further commit to the Paris Principles and the Vancouver Principles as soon as possible.

¹⁶<http://www.oijj.org/en/news/juvenile-justice-in-the-world/south-sudan-signs-un-optional-protocol-to-ban-recruitment-and-use>

UK: Children in prison twice as likely to have special needs, figures show¹⁷

[Children](#) in prison are twice as likely to have special educational needs as those in the general population, new figures reveal, prompting concern that vulnerable teenagers are being let down by mainstream services. Data from the Ministry of Justice (MoJ) reveals 30 per cent of children who entered custody over 2018-19 were assessed as having special educational needs or disabilities. Separate government data shows that less than 15 per cent of children nationally fall into this category. Experts said this discrepancy highlighted the “failure” of educational and other services to properly provide for such children in the community, and that sending them to “increasingly chaotic and violent” jails only compounded the damage caused.

Australia: The sound I didn't expect to hear in a juvenile detention facility¹⁸

I turned to my escort as we walked together through the desolate central yard of Frank Baxter. It wasn't the ten foot or so tall razor wire fence or the CCTV cameras in such abundance even Orwell would shiver that I found the most unsettling. It's what was not there that threw me. Sound. Aside from the odd crackling of a guard's radio or clanking of heavy steel on steel as doors were locked behind us, there was none. Not a whisper. Dead silence. 'So the centre's not full?' I asked the juvenile justice worker who was taking me to the secure classroom where I would be helping an NGO deliver a workshop, assuming the lack of noise corresponded to a lack of inmates. 'Actually, we've been operating at full capacity for some time now'.

Opened in 1999, Frank Baxter is NSW largest and most secure male juvenile facility. There's no higher security classification. This was the first of six visits to the centre before last week's riot. As I wondered how a centre could be supposedly full, yet the only life

¹⁷<https://www.independent.co.uk/news/uk/home-news/children-prison-special-educational-needs-jail-uk-a9034846.html>

¹⁸<https://www.smh.com.au/national/nsw/the-sound-i-didn-t-expect-to-hear-in-a-juvenile-detention-facility-20190729-p52bu9.html>

visible a few weeds pushing through the steel and concrete, out of my periphery from the direction of the squat besser block structures that made up the centre's accommodation units, came a precession of eight teen boys all clad in standard issue green tracksuits walking two by two.

Soon they arrived with their guards to where I was already waiting as my escort fumbled for the right key to unlock the training room. The boys seized upon this slightest gap in what was otherwise a tightly controlled routine to take a breather. Legislation relating to child offenders prevented me from being told their individual crimes. I was given a general overview. Terrorism, murder, sexual assault right through to more minor offences, but committed repeatedly enough to earn them a place here.

Nepal: Juvenile justice laws need to change¹⁹

Child rights defenders say laws related to juvenile justice need to be changed to make them compatible with international practices. Advocate Rabindra Bhattarai said Section 21 of the Child Act — which stipulates that police can take accused juveniles under control and keep them under surveillance — is flawed as it gives power to police authorities to keep juveniles under virtual custody. “Police often keep juveniles along with accused adults,” he said “Section 36 (2) of the Child Act stipulates that if a juvenile between the age of 10 and 14 is found guilty of a crime carrying jail term, then he can be sent to jail for up to six months depending upon the seriousness of the crime and, or, be sent to a correction home for up to one year.

¹⁹<https://thehimalayantimes.com/nepal/juvenile-justice-laws-need-to-change/>

Another child rights defender Tarak Dhital said this provision contradicted the concept of juvenile justice. “Juveniles should be sent to correction homes, not jails, but this provision does not distinguish between jail and correction home,” he added.

Ireland: Minister announces new youth justice strategy²⁰

A new youth justice strategy is to be rolled out and the country's main detention centre for young offenders is to hire an additional 25 staff. Details of the new strategy and the associated Reform and Development Programme for 106 Garda Youth Diversion Projects (GYDPs) located around the country were announced by Minister of State for Equality, Immigration and Integration, David Stanton. It will begin with a GYDP Action Research Project that will work with 15 GYDPs across 10 counties over a two-year period in order to identify and disseminate best practice in working with young people at risk.

Pakistan Statistics: Juveniles in Detention

During 2019, Pakistan's juvenile justice system continued to face chronic challenges due to inadequate infrastructure, insufficient financial and human resources, overcrowded prisons, and the lack of political will for reforming the system.

Across Pakistan, there are 113 different types of prisons operational with 80,145 prisoners²¹. The highly overcrowded prisons lack satisfactory basic health, hygiene, sewerage and sanitation facilities, as well as trained staff, and also a chronic absence of learning, skills training and rehabilitation facilities. The situation for juvenile offenders, women, and former children living with their incarcerated mothers, is even worse than for men.

In almost all prisons, juvenile offenders are imprisoned with adult prisoners. They face and endure physical and psychological violence and intimidation, sexual abuse, rape and other extreme forms of abuse by the adult prisoners, and sometimes also by the jail staff.

²⁰<https://www.irishexaminer.com/breakingnews/ireland/minister-announces-new-youth-justice-strategy-913687.html>

²¹<https://www.prisonstudies.org/country/pakistan>

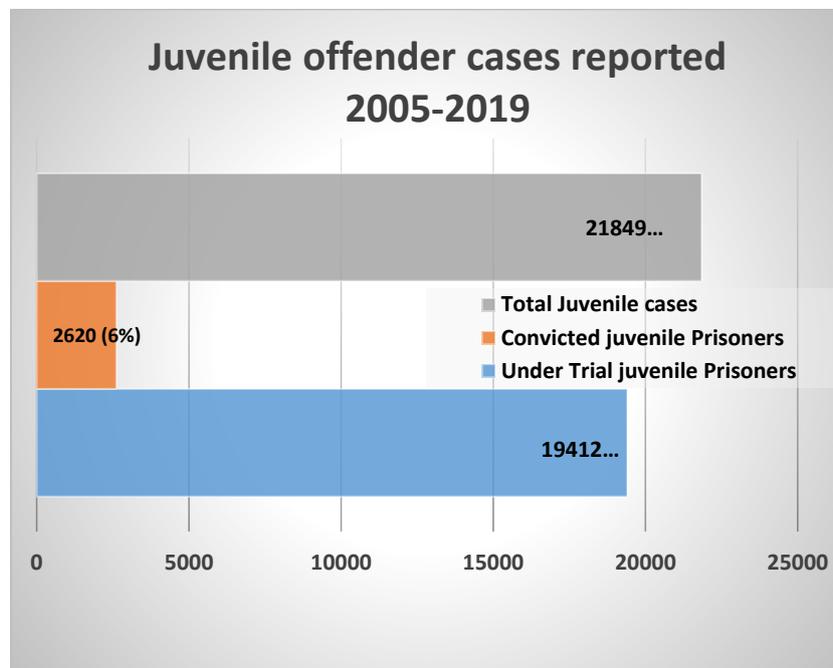
Juvenile Offenders in Detention- National and Provincial Statistics

As per data of Juvenile prisoners reported 1424 cases of juvenile offenders in prisons across Pakistan in 2019, including 1210 under-trial prisoners and 214 children convicted of crimes. There was only one case of female juvenile condemned prisoner reported in Sindh Province. The Table below provides statistics of juvenile offenders in detention, from 2005 to 2019.

Juvenile offenders in Detention			
Year	Under Trial Juvenile Prisoners	Convicted Juvenile Prisoners	Total
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
2018	1081	118	1199
2019	1209	215	1424

The below table shows cases of juveniles since 2005 to 2019 reported in Pakistan. A total 21849 juveniles cases reported out of them 44 % cases were under trials, however only 2620 which was 6% of the

total cases were convicted in last 15 years. The remaining cases were under detentions since years and awaited for prosecution since years.



The Provincial sex-disaggregated data for 2019 is provided below:

Incarcerated Juvenile Offenders in Punjab (2019)²²

Punjab	Number of Incarcerated Juvenile Offenders	
	Male	Female
Juvenile Under-Trial Prisoners	509	0
Juvenile Convicted Prisoners	109	0
Juvenile	0	0

²²https://prisons.punjab.gov.pk/number_of_juveniles_confined_in_punjab_prisons accessed on 10 December 2019.

Condemned Prisoners		
Total Juvenile Prisoners	618	

A statistical analysis of juvenile offence cases in Punjab for the year 2019 shows that the trial process under the current system of criminal justice administration remains very slow. In numerous documented cases, the children who were arrested when they were under 18, attained adulthood while still in prison, either awaiting the start of their trial or remaining under trial.

Incarcerated Juvenile Offenders in Sindh (2019)²³

Sindh	Number of Incarcerated Juvenile Offenders	
	Male	Female
Juvenile Under-Trial Prisoners	159	165
Juvenile Convicted Prisoners	09	51
Juvenile Condemned Prisoners	0	01
Total Juvenile Prisoners	385	

²³ In person data collected from Sindh Prison Department in November 2019.

In Sindh, a comparison of the data for 2018 and 2019 shows that number of Juvenile cases increased 181(2018) to 385 cases (2019). Only 60 cases convicted in a year while 325 cases remained under trial.

Incarcerated Juvenile Offenders in Khyber Pakhtunkhwa (2019)²⁴

Khyber Pakhtunkhwa	Number of Incarcerated Juvenile Offenders	
	Male	Female
Juvenile Under Trial Prisoners	327	0
Juvenile Convicted Prisoners	41	0
Juvenile Condemned Prisoners	0	0
Total Juvenile Prisoners	368	

In 2019 Khyber Pakhtunkhwa reported 368 cases of Juveniles, however in 2018 there were 383 cases reported in the province with a continuing very slow trial process.

Incarcerated Juvenile Offenders in Balochistan(2019)²⁵

Baluchistan	Number of Incarcerated Juvenile Offenders	
	Male	Female
Juvenile Under-Trial Prisoners	49	0
Juvenile Convicted Prisoners	4	0
Juvenile Condemned Prisoners	0	0
Total Juvenile	53	

²⁴In person data collected from KPK Prison Department in November 2019.

²⁵Data collected in person.

Prisoners	
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In 2019, prisons in Balochistan held 53 juvenile inmates, all male. During 2019, of the 53 under-trial cases, 4 juvenile offenders were convicted. The rest remained under trial.

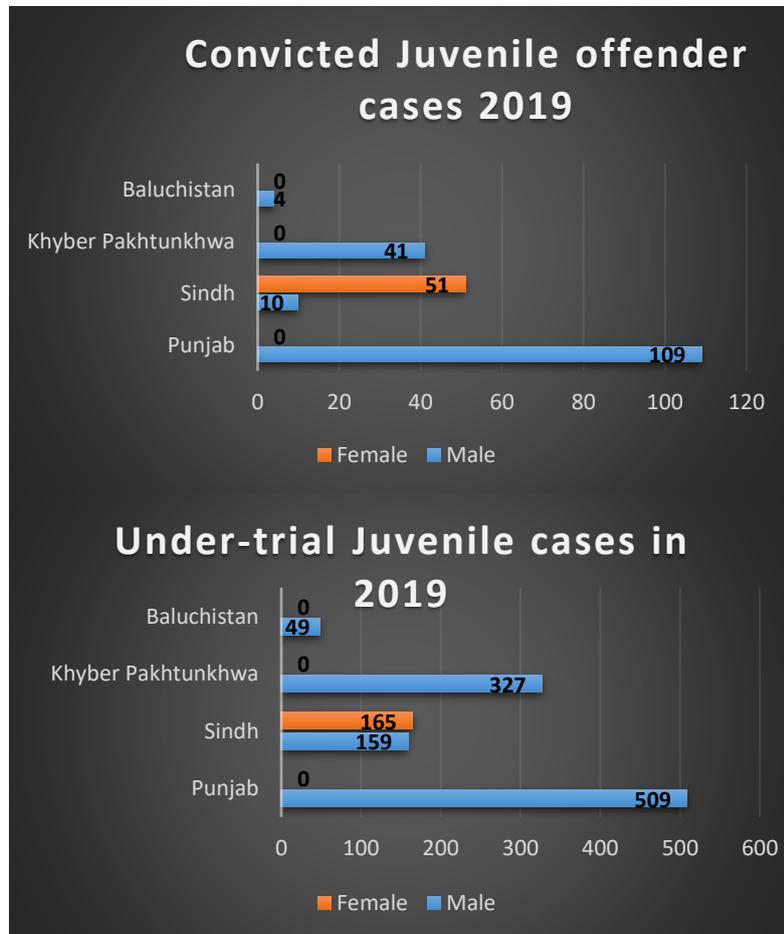
Pakistan: Juvenile Prisoners (under trial or convicted)

Many children and adults who were convicted of crimes committed when they were children, have received excessive or disproportionate sentences that violate international law, which requires that imprisonment of children must be in “conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate time span.”²⁶

The reported numbers of juvenile prisoners in Pakistan are housed in overcrowded adult prisons, in miserable conditions. The children under 18 are vulnerable to all forms of violence by adult prisoners, prison staff, and their own peer groups.

In 2019 there were 1,424 juvenile cases were reported across the Pakistan including 1,209 cases of under trail juveniles and 215 cases of convicted juveniles. The graphs below gives the provincial gender-disaggregated data of Juveniles under trail and convicted prisoners in Pakistan.

²⁶<https://www.hrw.org/world-report/2016/children-behind-bars>



Database /Record of Juvenile Offenders

Punjab province has introduced a prison database system, known as the “Prisoners Management Information System) (PMIS).²⁷ The PMIS data shows that 618 Juvenile Offenders’ cases²⁸ were reported

²⁷https://prisons.punjab.gov.pk/number_of_juveniles_confined_in_punjab_prisons

²⁸https://prisons.punjab.gov.pk/number_of_juveniles_confined_in_punjab_prisons

in 2019 in Punjab, in different crime categories. 109 juvenile cases have been convicted in the province.

Role of the LEAs

The Table below, compiled from data obtained from the 4 provinces, shows that 28 cases of Juvenile Offenders in Khyber Pakhtunkhwa province are pending trial, due to non-submission of official *Challan* forms, which are a legal requirement.

There might be other cases of juvenile offenders in the other provinces, pending trial due to non-submission of the above or other legal requirements, or administrative red tape, hampering access to justice for accused juvenile offenders in Pakistan. This shows the indifference, apathy, and non-professional attitude of the police/LEAs, which is of even graver concern when it pertains to child offenders. The children's entire future lives are at stake.

Number of Juvenile Offence Cases reported as Pending Trial due to non-submission of Challan Forms by Police/LEAs

<i>Province</i>	<i>Male</i>	<i>Female</i>
<i>Punjab</i>	<i>0</i>	<i>0</i>
<i>Sindh</i>	<i>0</i>	<i>0</i>
<i>Khyber Pakhtunkhwa</i>	<i>28</i>	<i>0</i>
<i>Balochistan</i>	<i>0</i>	<i>0</i>
<i>Total</i>	<i>28</i>	<i>0</i>

REHABILITATIVE INSTITUTIONS

Globally, there are now a number of mechanisms, entities and processes for the rehabilitation, education, skills training, and eventual reintegration of juvenile offenders back into their communities and societies.

However, in Pakistan, before the JJSO 2000 and JJSO 2018 laws, there existed only the Borstal institutions. Globally these are now

considered outmoded, and the name itself is no longer in vogue. They are now being replaced by Juvenile Rehabilitation Centres (JRCs), which are included as part of the JJSA (2018). They are described above in sub-section 2.

Borstal Institutions

Article 37 of the UNCRC explicitly stipulates that deprivation of liberty, i.e. imprisonment, is to be used “only as a measure of last resort and for the shortest appropriate time”. Unfortunately, such vague, non-specific language allows a lot of leeway for member states, governments and authorities to interpret the terms as they wish.

Imprisonment “only as a last resort” leaves plenty of room for severe punitive or retributive responses by legislators, judges and the LEAs/police.

The word “appropriate” can be and is most often interpreted as making the punishment severe enough to fit the crime, maintaining “proportionate” approaches to sentencing²⁹.

The JJSO 2000 also reactivated the old, dysfunctional rehabilitative justice option for juvenile offenders, i.e. detention in Borstal Institutions, away from adult prisoners in regular jails.³⁰

Borstal Institutions are a relatively modern concept, practised in the more technologically advanced countries, of housing juvenile offenders in reformation and rehabilitation centres, designed primarily to protect them from interaction with, and proximity to, adult convicts.

Globally, such institutions offer education and vocational skills training facilities, aiming to help resocialize juvenile offenders, and

²⁹ Stop Making Children Criminals, Policy Paper (2013), Child Rights International Network:
<https://www.crin.org/en/library/publications/juvenile-justice-stop-making-children-criminals>.

³⁰ See M. Hamiduzzafar’s book on Borstal institutions: “Correction Without Tears” (published circa 1960s).

eventually reintegrate them back into society upon their release. But in Pakistan, despite being a component of the JJSO 2000, the concept of a rehabilitative justice system through special institutions, unfortunately has not been implemented, due to the prevailing societal norms and notions of the effectiveness and acceptability of a more punitive, harsh model of criminal justice for child offenders.

It was observed in 2018 that, even 18 years after the promulgation of the JJSO 2000, the stipulated Borstal detention-cum-education and training facilities for juvenile offenders had not yet been established in all four provinces.

Currently, Punjab has two functioning Borstal Institutions and Juvenile Jails (BIJJs) – in Faisalabad and Bahawalpur, both of which are run by the Punjab provincial government Prison Administration Department. It is observed that both the BIJJs are staffed by officials unequipped and untrained to deal with children or child offenders.

SPARC, through its programmes and projects, discovered that these jails lacked adequate sanitation and hygiene facilities and did not even have provision for clean drinking water.

Sindh has set up four centres, called the Youthful Offenders' Industrial Schools (YOISs) – in Karachi, Hyderabad, Larkana and Sukkur. They are reportedly housing fewer prisoners than the authorized capacity.³¹ There are reported to be around 210 juvenile inmates, including 8 foreigners³².

Additionally, Sindh has one Remand Home for children in Karachi. Considering the population of Karachi, and its astronomical crime rate, this is not even a drop in the ocean of need for rehabilitative, reintegrative care and protection of juvenile offenders. There are a number of reports of juvenile offenders who are not incarcerated, only due to lack of proper facilities.

³¹Central Prison Karachi most overcrowded among 25 prisons in Sindh: https://epaper.dawn.com/DetailImage.php?StoryImage=01_01_2017_117_005

³² 95% Children are Under-Trial: <https://www.dawn.com/news/1372508>

Both Khyber Pakhtunkhwa and Balochistan have yet to establish a functioning Borstal Institution (under JJSO 2000) or a JRC (under JJSA 2018).

However, there is an urgent need for an independent assessment and evaluation of a previously well-functioning juvenile jail at Haripur in Khyber Pakhtunkhwa. Two decades ago, it housed juvenile boys separately from adult men in the Haripur jail, and provided the adolescent boys/youth both education and vocational skills training classes, notably, computer training. A sizeable number of desktop and laptop computers were donated for the boys by a few philanthropists and rights activists, through a private initiative.³³ It used to be a well-run outfit – it needs to be re-visited now to review its functional status. Perhaps it could provide a feasible, replicable model for other juvenile jails and rehabilitation centres – initially within the Khyber Pakhtunkhwa province and then across Pakistan.

It is mandated by Pakistan's national and international obligations, that there must be structured, systematic, regular and independent monitoring of institutions/centres/jails where children are detained, in order to ensure that children's rights are not being violated during their incarceration, and to hold the relevant authorities accountable if they are.

It is abundantly clear that there are insufficient facilities, untrained personnel, inadequate resources, and **an absence of the concept of child rights, child protection, child care and child rehabilitation.**

SPARC reaching out to Juvenile Prisoners in Central Jail Peshawar through stakeholders' Involvement

In 2018, SPARC reached out to juvenile offenders in the Central Jail in Peshawar, Khyber Pakhtunkhwa. The project aimed to improve the restorative justice system, as well as improving the prison conditions for incarcerated child offenders.

This project involved the following components:

³³ For example, project for women and children in Khyber Pakhtunkhwa (then-NWFP) jails by Ms. Rukshanda Naz, AF, 2000 onwards.

- 1) formation of a cohort of dedicated stakeholders willing to work towards improving the restorative justice system;
- 2) development and dissemination of resource materials on the roles and responsibilities of stakeholders working to improve the Juvenile Justice System (JJS);
- 3) improved access to sports, recreation, and health needs of between 120-125 juvenile inmates;
- 4) SPARC conducted non-formal education (NFE) sessions with batches of 120-125 male juvenile prisoners as a value addition to its ongoing work. The NFE classes were mainly conducted during the morning hours, and included recognition of alphabets (in Urdu and English), basics of numeracy and mathematical calculations, how to write words, sentence-formulation, along with general knowledge information and questions;
- 5) a teacher conducted Life Skills-Based Education (LSBE) sessions with 125 incarcerated male juvenile offenders, to create awareness on personal hygiene and health, interpersonal relationships, the importance of recognizing and expressing one's feelings, reinforcing one's self-esteem, and so on. The objective of these sessions was to inculcate self-awareness and civic sense among juvenile prisoners.

Children living with their incarcerated mothers also benefited through this project, as they were provided with items of winter and summer clothing, books and play facilities.

SPARC reaching out to Incarcerated Juvenile Offenders through Education at the Industrial School in Karachi

SPARC's project at the Youthful Offenders Industrial School (YOIS) in Karachi aims to re-socialize, rehabilitate and reintegrate imprisoned children back into their communities and society. Over a time span of 12 months, from October 2018 to September 2019, the project is providing Non-Formal Education (NFE), Computer Literacy and Life Skills-Based Education (LSBE) to around 120 juvenile offenders.

Formation of classes and division of juvenile offenders into groups based on age and educational levels: Based upon initial assessments

and discussions with the inmates, the NFE, LSBE and computer teachers divided their students into two categories: basic and primary level learners.

Basic level: The basic level comprises students who are beginners, with little or no learning skills, computer skills or language skills (e.g. no recognition of alphabets or written words).

Primary level: The primary level is for those students who have some prior education, or knowledge of word recognition, and some idea of the computer.

In the *Non-Formal Education (NFE) classes*, the primary level curriculum of the Sindh Textbook Board is taught, comprising the teaching of Urdu and English languages. However English is taught to the primary level students only. Word recognition in English and Urdu, simple Mathematical numeracy, story-telling, and peer learning are some of the teaching/learning methods used in the NFE classes. Around 100 juvenile detainees have learnt computer skills in three shifts per day. Students were enrolled in three different levels- basic, primary and advanced.

Computer Classes: The students are taught basic computer interface, including familiarization with the keyboard and its functions, and the use of MS Word.

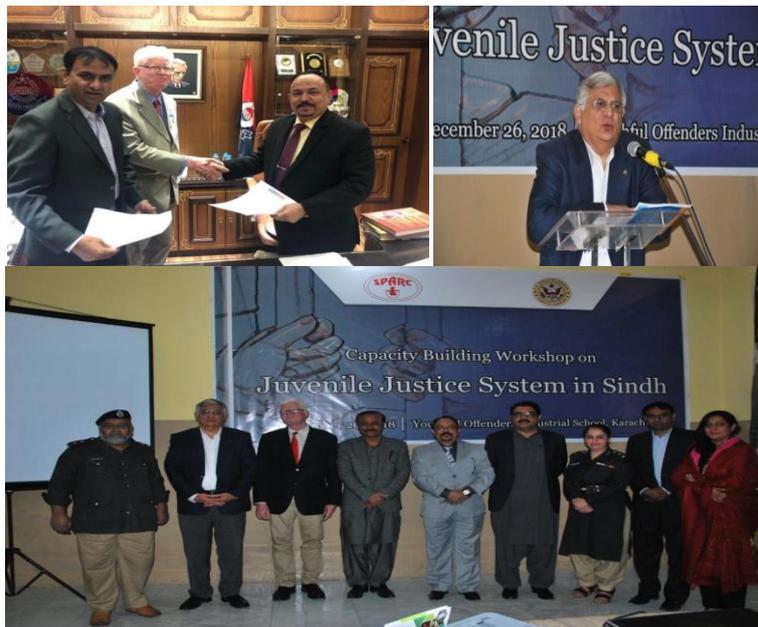
LifeSkills-Based Education (LSBE) sessions: Group sessions on LSBE are conducted with children where the key topics include self-awareness, self-control, handling bad behaviour, mutual respect, good manners, personal hygiene and health, interpersonal relationships, the importance of recognizing and expressing one's feelings, reinforcing one's self-esteem, and prevention of future offences.

Following a series of the LSBE sessions conducted by the SPARC staff, improved social interaction and positive reinforcement in the students' behaviour has been observed, both by their teachers and the prison staff.

Sports: In addition to the above, there is also a Sports component, with various sports activities, to offer a healthy outlet for the students' energies. Similarly, the introduction of a Learning Corner aims to help nurture an environment to enhance the students' cognitive, linguistic, social and civic learning skills.

SPARC has also provided orientation/training to the prison staff on the Juvenile Justice System Act (2018) and for the long-term sustainability of the above-cited project interventions.

A booklet on Juvenile Justice System 2018 was produced in Sindhi and circulated among prison and YOIS staff and other relevant stakeholders for complete guidance and understanding of the law in local language. Same booklet is used for the capacity building workshops for the guidance and support of the participants including Prison and YOIS staff.



Socio-economic rehabilitation of young prisoners in Karachi

SPARC is implementing a project on social, economic reintegration and rehabilitation of young prisoners (male & female) in selected prisons of Sindh i.e. Malir Prison, Women Prison, and the adjoining Youthful Offenders Industrial School Karachi. The main purpose of this project is addressing the societal stigma associated with life of prisoners and providing psycho-social support to the prisoners. Through project interventions, SPARC involved different stakeholder's particularly private sector to place juveniles and youthful offenders in the different professions. The project is supported by UNDP and Embassy of Japan. The project shall cater to largely invisible youth behind bars through specialized programs to build sustainable counter narratives that would prevent liberated prisoners from slipping back into same vicious cycle of extremism and crime. SPARC intends to reach out to 100-120 youth in prisons where YOIS inmates between 15-18 years of age will be provided with non-formal education and continuation of computer course initiated by SPARC earlier in 2018. Male youth prisoners (19-29 years) will be provided with market oriented skills such as motorcycle repair whereas girls/women will be trained on embroidery and patch work.

The Invisible Victims: Imprisoned Children of Incarcerated Mothers

Under the current criminal justice administration system, along with the incarcerated juvenile offenders, there is another category of children, often regarded as hidden or "invisible victims". These are the children kept in incarceration with their mothers. Under Pakistani law, they are allowed to be with their mothers until the age of 6 (in theory). The law clearly states that a child who is over the permissible age, or whose mother has been executed or has died in prison, will not be permitted to remain in incarceration.

However, a research study report³⁴ published by the Legal Aid Office for jails in Sindh, shows that the majority of mothers were unaware

³⁴ Report: "Babies Behind Bars", Sindh Legal Aid Office, 2015

of the prison rules and of the maximum age they could keep their children in prison with them. Contrary to the law, the study found that children as old as 9 remained incarcerated, which highlights the cracks in the system and the absence of implementation of the law by the prison authorities and the police/LEAs.

It was further discovered that none of the children had any sort of awareness about the law or the prison rules (PPR)³⁵ either. There was only one child who mistakenly thought the age limit to be 10. Additionally, some jail officials were also not aware of the PPR regulations. Therefore, the situation arises that the prison authorities become lenient towards mothers with children, allowing their children to stay past the legal age limit, since most often they have no other alternative options, with the result that the State is guilty of breaking the law, by denying children their rights to liberty, education and recreation, since adult women's prisons lack educational facilities for children.

This diminishes their future prospects and makes their reintegration back into their community and society a much bigger challenge, given that they have lived and have been brought up within the confines of prison, and have only experienced that harsh situation.

RECOMMENDATIONS

The following selected recommendations on the Juvenile Justice System are presented as being needs for priority focus by the Executive branch (especially the LEAs/police and prison authorities), the Judiciary and the federal and provincial Legislatures:

1. There is an urgent need to revise the JJSA 2018, to uniformly define the Child as a person below the age of 18, and thereby to review, revise and re-fix the Minimum Age of Criminal Responsibility (MACR) at 18.
2. The federal and provincial governments need to establish and implement an effective age determination mechanism, using

³⁵ PPR: Pakistan Prison Rules, 1978

various modern scientific and technological tools, e.g. DNA and bone density tests, in order to ensure that in juvenile offence cases, where there exists no proof of age documentation, the child will receive a proper technical investigation to establish his/her age.

3. The antiquated juvenile offenders' databases of police records at the provincial and district levels need to be strengthened, improved, computerized (electronic vs. paper logbooks or registers), updated and disaggregated by age, sex, offence, sentence, and geographic origin of the children, along with the type of detention facility in which they are detained.
4. Strengthen the JJSA 2018, and remove the existing lacunae and gaps, e.g. Sections 6, 6(4) and 15; Sections 4 and 12; and so on (see detailed explanations in the JJSA 2018 sub-sections above).
5. The JJSA 2018 Rules need to be notified on an urgent basis.
6. Review and revise the Pakistan Prison Rules, in light of the provisions of the JJSA 2018 and also of the recommendations in this report and others.
7. The Juvenile Courts, police/LEAs, probation, prosecution, investigation, detention and prison staff, as well as MLOs, psychologists and social workers, need to be sensitized, oriented and trained on the provisions of the JJSA 2018 – the law and its Rules, as well as on the mechanisms for its practical implementation.
8. Establish separate new exclusive Juvenile Courts (as well as increasing and strengthening them where they do exist), with specially trained Juvenile Court Judges, prosecutors, investigation officers, probation officers, detention facilities staff, defence lawyers, social workers, medico-legal officers (MLOs), psychologists, child rights experts as *amicus curae*, and others, to oversee and conduct all aspects of cases involving children; including arrest, detention, trial and sentencing. This will ensure the segregation of juvenile offenders from adults; and should also minimize the possibility of a miscarriage of justice.

9. As per the JJSA, establish Juvenile Justice Committees (JJs) at all tiers of governance, especially at the local government tiers, in order to increase access to justice, especially for people living in remote rural areas.
10. As per the JJSA, establish Juvenile Rehabilitation Centres (JRCs) and also promote alternative measures to incarceration, such as diversion, probation, mediation, counselling, education and community service, in order to ensure that imprisonment is used only as a last resort and for the shortest time span.
11. There is a need to gradually do away with the outmoded Borstal institutions wherever they still exist, and to revamp and transform them into model JRCs.
12. The Government of Balochistan needs to establish its first JRC at the earliest, followed by one in each district, in a phased manner.
13. The Government of Khyber Pakhtunkhwa needs to transform the Bannu and Haripur Borstal Institutions into model JRCs; and next to establish a JRC in each district.
14. The Governments of Punjab and Sindh need to establish one JRC in each district; to upgrade and strengthen their existing juvenile rehabilitation facilities, and to equip them with all basic minimum needs, particularly clean water and sanitation facilities.
15. The Constitutional fundamental Right to Education (RTE: Article 25-A) needs to be adhered to, with regard to all child offenders, regardless of the kind of detention facility or probation.
16. In cases where imprisonment is unavoidable, it must be ensured that children are not detained together with adults in a common jail.
17. Ensure the provision of free, qualified and independent legal representation to children in conflict with the law. The provincial governments need to budget and provide funds for legal assistance and defence lawyers for juvenile offenders, as well as for child survivors/victims of crimes, by maintaining a roster/panel of committed and dedicated lawyers, both at the provincial and

district levels. This has to be done speedily, regardless of the existing panels of *pro bono* lawyers already working for the cause of child rights.

18. Ensure: (i) increased gender-balanced recruitment; (ii) improved training, retraining and regular refresher training; (iii) effective cooperation, coordination and collaboration between the main stakeholders in the juvenile justice system: the LEAS/police, prosecution, investigation, probation, MLOs, Juvenile Court judges, JJs, JRCs, prison staff, social workers, psychologists, rehabilitation instructors, and so on. In particular, there is a need to ensure that the FIR against child offenders is written and registered with the utmost honesty and due diligence, especially the girl child, who is the most voiceless and powerless of children, along with CWDs and TGI children.
19. Strengthen the Directorate of Reclamation and Probation, in terms of its staffing, training, budgets, logistics and equipment.
20. Special focus and attention is needed on the sensitization of all categories and cadres of the authorities of the criminal justice administration, the judiciary and all lawyers, on how to deal with child offenders in an empathetic and child-sensitive manner and environment.
21. The media too urgently needs this sensitization on the ethics of how to report on juvenile offenders' cases, while preserving their privacy and dignity.
22. Ensure the independent and regular monitoring of the facilities/centres where child offenders are detained, in order to track, investigate and report on the conditions of the facilities and on the status of the children housed in them.
23. There is a need to increase public awareness about the state of juvenile offenders in Pakistan. The print and electronic media need to be involved, in order to highlight the background context and suffering of juvenile offenders, as well as to promote opportunities for their rehabilitation and reintegration back into their community and society.

24. Language matters. Words are important. Terminology evolves. Thus, there is a need to substitute outmoded terms like “**Borstal Institution**” with “**Juvenile Rehabilitation Centre**”. There is an urgent need to stop using the term “juvenile **delinquent**” for a “juvenile **offender**”, and to substitute it in all laws, policies, rules, regulations, prison manuals; police/LEAs training and instruction curricula, syllabi, textbooks, modules; court procedures; prosecution and defence arguments; court orders, judgements and sentences; and so on.

CONCLUSION

As is evident from the long list of recommendations above, there is an urgent need to rectify the dysfunctional and outmoded Juvenile Justice System in Pakistan, in order to restore a measure of honesty, integrity, hope, confidence and trust in it, for the non-privileged majority of the citizens.³⁶

This is required especially in view of the disproportionately high poverty-stricken, low income groups which comprise the majority of the prison population. The rich are seen to “buy their way out of convictions and jail sentences” via the prevalent “compromise” settlement option, which makes a mockery of justice, both by

³⁶A beacon of light and hope in 2018 was: (1) the judgement of the Islamabad High Court in the T. child maid torture case, where a serving judge (of the subordinate judiciary) and his spouse were found guilty, convicted and sentenced, despite several documented attempts at an out-of-court settlement and compromise; and (2) rejection of the convicts’ Appeal in the IHC, replaced by an enhanced sentence and a strongly worded judgement.

privatizing it, as well as by unfairly privileging it to the wealthy feudal elites.³⁷ The elites are seen to literally get away with murder – and with impunity – thumbing their noses at the LEAs/police, courts, judges and the rule of law.

The privatization and commercialization of justice needs to end forthwith. It requires law reform; attitudinal and behavioural changes in society; a proactive and progressive – non-sensational, non-melodramatic – role of the print and electronic media; and a drastically revised public education system, particularly its curricula and textbooks.

Whether the child is an offender in trouble with the law, or is a survivor of criminal activity, the State must not be permitted to neglect or abdicate its Constitutional obligations. In the absence of responsible parental actions, the State must assume the role of “Waali” (guardian) of the child, with all its attendant responsibilities and duties.

Society, communities, families, and, above all, the child’s parents, have a pivotal role to play, and need to be conscientized, made aware of, and sensitized to their basic responsibilities. In achieving this, the media’s proactive role and involvement is critical.

It is imperative to focus on the provision of justice to child offenders, without delay or compromise. At the same time, the need for diversion and reformative justice is urgent and necessary to rehabilitate juvenile offenders and reintegrate them back into society as educated, trained, skilled, productive citizens, and positive human beings. In return, it is vital for their communities and society to perceive them thus too.

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³⁷ The several twists and turns, and the outcome of the Shahrukh-Shahzeb murder case remains a moot point in public cynicism and distrust of the juvenile justice (or, injustice) system, and points to the urgent need for law reform, to do away with the entrenched “*raazinaama*”, “*muaafinaama*”, “*sulahnaama*” (compromise settlement) tradition.