

Juvenile Justice



“Model the kind of behaviour you want your children to exhibit.”
Iovana Yao

“If we don’t stand up for children ... then we don’t stand for much”
Marian Edelman

2018 was a landmark year for the Juvenile Justice System in Pakistan

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 connections 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>

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 could not be

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

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.

⁶Justice 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*

⁷ The Juvenile Justice Systems Act 2018:
http://www.na.gov.pk/uploads/documents/1495634626_612.pdf

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).

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. Also see the section below: Increase in Minimum Age of Criminal Responsibility (MACR).

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 | |
|---|---|
| Section 82 | Act of a child under Seven 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 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 UN CRC 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

⁸ Ibid.

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

Juvenile Justice Committees (JJC's)

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's 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.

¹⁰ Ibid.

Further challenges include inadequate infrastructure, financial resources, and lack of trained personnel.

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

The United Nations Children’s Fund (UNICEF), estimates that over one million children are behind bars around the world. Many are held in decrepit, abusive, humiliating and demeaning conditions, and are deprived of: education; access to meaningful child development activities; and with no or very little contact with the outside world. Many of these children – and adults who were convicted of crimes committed when they were children – have received excessive or disproportionate sentences that violate international law and the UN CRC, which requires that the imprisonment of children shall be in

“conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”¹¹

USA: Congress Reauthorizes Juvenile Justice Act after 16 Years 12

The reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJDP A) on 13 December 2018, is a huge victory for child rights advocates in USA, since its funding was drastically reduced over the years, and its provisions had become outdated, putting children charged with crimes at risk. The revised JJDP A has provisions to: counter racial inequality within the system; keep children out of adult jails; and ensure that they are not detained for minor offences, such as skipping school or possessing alcohol. New additions to the law have strengthened these protections and have added new requirements, such as mandating that the states develop their own programmes to address the high rates of arrest and detention of non-white children. The amended law is seen as being a critical part of the justice reform movement in USA.

United Kingdom: New youth justice system needed for 16 to 21-year-olds¹³

An independent report, titled “New Youth Justice System” (28 November 2018) urges the authorities in UK to increase the age of criminal responsibility in Scotland to 16, and to set up a new youth justice system for juvenile offenders up to the age of 21. The report, commissioned jointly by the NGO Action for Children, and Bruce Adamson, Children and Young People’s Commissioner (Scotland), also highlights the lack of secure accommodation for juvenile offenders.

¹¹ UN CRC Article 37 (b)

<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

¹²https://www.huffingtonpost.com/entry/juvenile-justice-bill-reauthorized_us_5c1059d4e4b084b082fdcae5

¹³<https://www.worcesternews.co.uk/news/national/17261420.new-youth-justice-system-needed-for-16-to-21-year-olds-report-finds/>

Australia: Queensland Human Rights Bill (2018) has 'major flaws'¹⁴

In 2018, the Queensland government proposed a Bill which states that “a child in custody on remand must be segregated from all detained adults”. But the language becomes very vague for children subsequently convicted of offences. It states that they “must be treated in a way that is appropriate for a child’s age”. Amnesty International’s comment on this Bill: “As the Bill stands, children can continue to be detained alongside adults in prison. Amnesty International previously called for Queensland to address the growing numbers of children being held on remand; and for the age of criminal responsibility to be raised to 14 years of age.”

New Zealand: “Cocktail of disabilities’: Judges to develop new model for youth offenders”¹⁵

“The increasing number of youth offenders with disabilities going through the court system has prompted the concerned judges to discuss how to better address the needs of young criminals. The move follows research suggesting that up to 75% of youths involved in the justice system may have a mental disorder or disability. Chief District Court Judge Jan-Marie Doogue and the Principal Youth Court Judge John Walker announced today that they are working to address the mounting evidence of the impact of ‘a cocktail of disabilities’ on young offenders.”

USA: “Juvenile Diversion keeps kids out of court and away from crime”¹⁶

“The Juvenile Diversion program is a way for juvenile offenders to have their case heard in an informal setting, rather than in a courtroom. Part of the court’s Partnership for Youth Justice, the diversion program has found success on the Eastside and in the greater Seattle area.”

¹⁴<https://www.theguardian.com/australia-news/2018/nov/23/queensland-human-rights-bill-has-major-flaws-advocates-say>

¹⁵<https://www.oijj.org/en/news/general-news/cocktail-of-disabilities-judges-to-develop-new-model-for-youth-offenders>

¹⁶<https://www.kirklandreporter.com/news/juvenile-diversion-keeps-kids-out-of-court-and-away-from-crime/>

New UNODC handbook (2018): “The role of the justice system regarding children recruited by terrorists and violent extremist groups”¹⁷

In 2018, the UN Office on Drugs and Crime (UNODC) issued a new handbook dealing with an emerging category of juvenile offenders: children forcibly recruited by terrorists and violent extremist groups. The UNODC Director, Division for Treaty Affairs, John Brandolino, said: “The world has been forced to face the reality that terrorists and violent extremist groups target children for their purposes”.

“The rise of terrorist and violent extremist groups has proved particularly problematic for justice systems around the world, with the underlying concern at the core of this UNODC publication being how States can preserve public safety and, at the same time, effectively protect the rights of the children involved in these groups.”

“The handbook, which addresses policy-makers and practitioners dealing with children, seeks to tackle the issue at three levels: by looking at methods to prevent the recruitment of children by terrorists and violent extremist groups; by identifying effective justice responses to children recruited and exploited by such groups, whether they are in contact with the justice system as victims, witnesses or alleged offenders; and by promoting the rehabilitation and reintegration of such children.”

“Prevention has become particularly complex, as evidenced by the innovative methods of propaganda and recruitment employed specifically by such groups. This jeopardizes our efforts to effectively tackle a security threat while, at the same time, limiting the victimization of such children. Furthermore, there is a reported lack of understanding, regarding the rehabilitation and reintegration measures that can be effective in addressing the particular stigma associated with terrorism, while taking into account the extreme violence that has always characterized the recruitment and exploitation of children.”

¹⁷<http://www.unodc.org/unodc/en/frontpage/2018/January/unodc-launches-handbook-on-children-recruited-and-exploited-by-terrorist-groups.html>

“This publication ties into the wider work of the UNODC – providing technical assistance in the area of children and extremist groups at the global, regional, and national levels.”

Pakistan Statistics: Juveniles in Detention

During 2018, 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. The statistics were published in a new report: “Addressing Overcrowding in Prison by Reducing Pre-Conviction Detention in Pakistan”. issued in May 2018 by the National Counter-Terrorism Authority (NACTA).

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 for minor 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.

Juvenile Offenders in Detention- National and Provincial Statistics

As per data from the Law and Justice Commission of Pakistan (LJCP),¹⁸ in 2018 there were 1,199 juvenile offenders in prisons across Pakistan, including 1,085 under-trial prisoners and 118 children convicted of crimes. There was only 1 girl child detainee recorded in the data, while the rest were boys. The Table below provides statistics of juvenile offenders in detention, from 2003 to 2018. There has been

¹⁸<http://ljcp.gov.pk/nljcp/home/provincialCommittee/2#>

a significant decline in the overall number of incarcerated juvenile offenders over the years, decreasing by about 60% in 15 years.

| Juvenile offenders 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 |
| 2018 | 1081 | 118 | 1199 |

Incarcerated Juvenile Offenders in Punjab (2018)¹⁹

| Punjab | Number of Incarcerated Juvenile Offenders | |
|---------------------------------------|--|---------------|
| | Male | Female |
| Juvenile Under-Trial Prisoners | 496 | 14 |
| Juvenile Convicted Prisoners | 72 | 0 |
| Juvenile Condemned Prisoners | 0 | 0 |
| Total Juvenile Prisoners | 582 | |

¹⁹Data retrieved from Punjab Prisons, Government of Punjab, as of 15 December 2018.

A statistical analysis of juvenile offence cases in Punjab for the years 2017 and 2018 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 (2018)²⁰

| Sindh | Number of Incarcerated Juvenile Offenders | |
|---------------------------------|---|--------|
| | Male | Female |
| Juvenile Under-Trial Prisoners | 175 | 0 |
| Juvenile Convicted Prisoners | 6 | 0 |
| Juvenile Condemned Prisoners | 0 | 0 |
| Total Juvenile Prisoners | 181 | |

In Sindh, a comparison of the data for 2017 and 2018 shows that only 6 under trial cases were completed and convicted over the year, while 181 cases still remained under trial.

Incarcerated Juvenile Offenders in Khyber Pakhtunkhwa (2018)²¹

| Khyber Pakhtunkhwa | Number of Incarcerated Juvenile Offenders | |
|---------------------------------|---|--------|
| | Male | Female |
| Juvenile Under Trial Prisoners | 345 | 2 |
| Juvenile Convicted Prisoners | 36 | 0 |
| Juvenile Condemned Prisoners | 0 | 0 |
| Total Juvenile Prisoners | 383 | |

In 2018 in Khyber Pakhtunkhwa, there were 345 cases of male juvenile offenders and 2 cases of girls under trial. 36 cases of juvenile offences were convicted in 2018. Overall, the number of cases reported in 2018 increased slightly, as compared to 2017. However, the number of

²⁰Prisoner Population as of November 2018, Law and Justice Commission of Pakistan: http://ljcp.gov.pk/nljcp/assets/dist/news_pdf/ji.pdf

²¹ Ibid.

convicted cases in 2017 and 2018 remained the same, with a continuing very slow trial process.

Incarcerated Juvenile Offenders in Balochistan (2018)²²

| Balochistan | 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 Prisoners | 53 | |

In 2018, prisons in Balochistan held 53 juvenile inmates, all male. This is a noticeable increase from the previous figure of 36 in 2017. During 2018, 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.”²³

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 April 2018, the Law and Justice Commission of Pakistan LJCP reported²⁴ a total of 1,199 cases of juvenile offenders. Of these, a total

²²Ibid.

²³ <https://www.hrw.org/world-report/2016/children-behind-bars>

²⁴ <http://ljcp.gov.pk/nljcp/#3>

of 118 were convicted in the four provinces, whereas 1,081 cases were still under trial.

The Table below gives the provincial sex-disaggregated data.

| Province | Juvenile under-trial prisoners | | Juvenile convicted prisoners | | Total |
|---------------------------|--------------------------------|--------|------------------------------|--------|--------------|
| | Male | Female | Male | Female | |
| Punjab | 496 | 14 | 72 | 0 | 582 |
| Sindh | 175 | 0 | 6 | 0 | 181 |
| Khyber Pakhtunkhwa | 345 | 2 | 36 | 0 | 383 |
| Balochistan | 49 | 0 | 4 | 0 | 53 |
| Total | 1,065 | 16 | 118 | 0 | 1,199 |
| Grand Total: | | | | | 1,199 |

Database Record of Juvenile Offenders

Punjab province has introduced a prison database system, known as the “Prisoners Management Information System) (PMIS).²⁵ The PMIS data shows that 582 Juvenile Offenders’ cases²⁶ were reported in 2018 in Punjab, in different crime categories. Of these 582 cases, 1 girl’s case, and 496 boys’ cases are still under trial. 76 juvenile cases have been convicted.

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.

²⁵ <https://prisons.punjab.gov.pk>

²⁶ https://prisons.punjab.gov.pk/number_of_juveniles_confined_in_punjab_prisons

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

| Province | Male | Female |
|---------------------------|-------------|---------------|
| Punjab | 0 | 0 |
| Sindh | 0 | 0 |
| Khyber Pakhtunkhwa | 28 | 0 |
| Balochistan | 0 | 0 |
| Total | 28 | 0 |

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 JJSA 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 UN CRC 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 sentencing²⁷.

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.²⁸

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 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.

²⁷ Stop Making Children Criminals, Policy Paper (2013), Child Rights International Network:
<https://www.crin.org/en/library/publications/juvenile-justice-stop-making-children-criminals>.

²⁸ See M. Hamiduzzafar’s book on Borstal institutions: “Correction Without Tears” (published circa 1960s).

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.²⁹ There are reported to be around 210 juvenile inmates, including 8 foreigners³⁰.

Additionally, Sindh has one Remand Home for children in Karachi. Considering the population of Karachi, and its astronomic 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.

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

²⁹Central Prison Karachi most overcrowded among 25 prisons in Sindh: https://epaper.dawn.com/DetailImage.php?StoryImage=01_01_2017_117_005

³⁰ 95% Children are Under-Trial: <https://www.dawn.com/news/1372508>

and rights activists, through a private initiative.³¹ 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:

- 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;

³¹ For example, project for women and children in Khyber Pakhtunkhwa (then-NWFP) jails by Ms. Rukhshanda Naz, AF, 2000 onwards.

- 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.

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

Life Skills-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.

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 report³² published by the Legal Aid Office for jails in Sindh, shows that the majority of mothers were unaware 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)³³ 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.

³² Report: “Babies Behind Bars”, Sindh Legal Aid Office, 2015

³³ PPR: Pakistan Prison Rules, 1978

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 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.³⁴

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 privatizing it, as well as by unfairly privileging it to the wealthy feudal elites.³⁵ 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

³⁴A 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.

³⁵ 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.

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 reformatory 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.

