

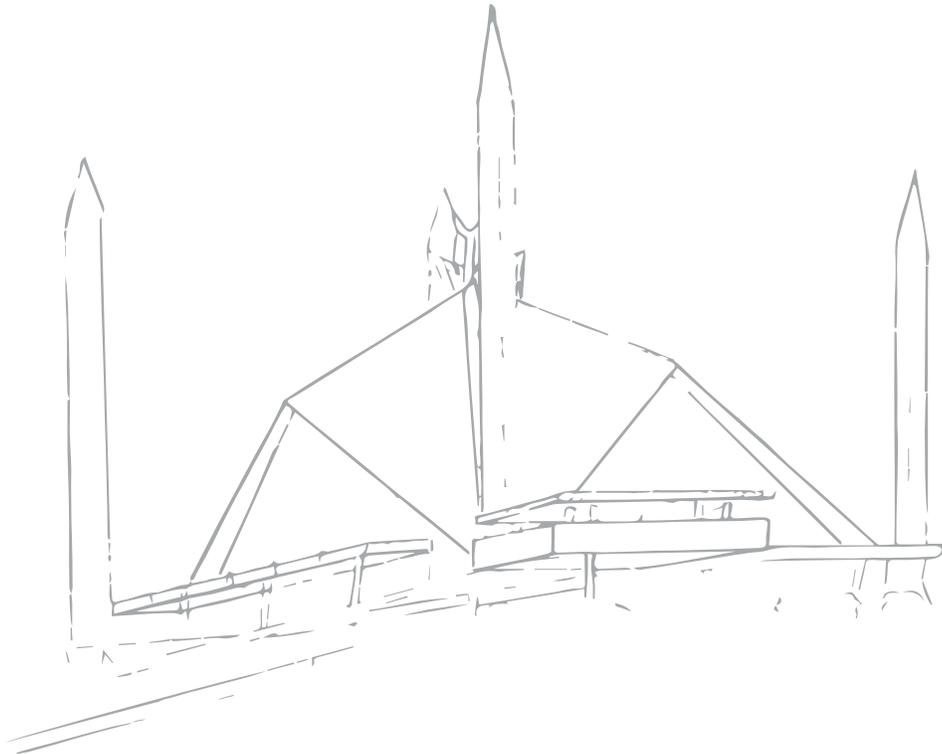


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The Gap between the Juvenile Justice System Act 2018 within the criminal justice system of Pakistan: Time to reform the Act

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Abstract

This article presents the current juvenile justice system act 2018 within the criminal justice system of Pakistan. The only major law dealing with children rights within the criminal justice system is Juvenile Justice System Ordinance 2000 which was repealed and Juvenile Justice Act 2018 was introduced. Effective legislation is needed for the implementation of the Act in Pakistan. Unfortunately, neither the Juvenile Justice System Ordinance 2000 was implemented nor the Juvenile Justice System Act 2018 has been implemented with its true spirit in the country. On a paper it is good to get the guidance and sometime good for academic purposes however no practical steps have been taken so far in the implementation of the law seriously. This paper examined all aspects of the issues, gaps and defects in legislation as well as the non-existence of separate institutions in the context of rehabilitation, placement and reformation of juvenile offenders.

Keywords: Juvenile Justice System, rehabilitation, Juvenile courts, psychosocial support program.

1. Introduction

Children in any country are one of the greatest national asset and resource. They deserve a healthy environment and it is the responsibility of the state to provide them with equal opportunity for example education, health facilities and life security. For the development of children, especially during the period of growth there is a need of reducing inequality and ensuring social justice. Pakistan is one of the signatory to the Convention on the Rights of Child (CRC). According to Article 37 of the convention, "States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by

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persons below eighteen years of age.”¹ Even the Constitution of Pakistan, 1973 protects and safeguards the rights of the children. Being the signatory to the Convention on the Rights of Child (CRC), Pakistan introduced the first ever Ordinance which was called Juvenile Justice Ordinance, 2000 that was subsequently repealed and Juvenile Justice System Act, 2018 was introduced. Since the main purpose was to introduced new laws in the Juvenile Justice System Act 2018, unfortunately, those laws were missing in the previous ordinance. No data is available regarding the number of juveniles in the jails in different provinces of Pakistan. According to the juvenile justice ordinance 2000, any offender below the age of 16 will be entitle to the concession of bail irrespective of the nature of the offence. Similarly, if the offender is above 16 years of age then it is up to the court to use their own discretion. However in the current JJS Act 2018 has defined the juvenile as a child who has not attained the age of 18 years. In both the cases, the main element which is the implementation of the act was missing in the previous as well as in the current JJS act 2018.

2. Juvenile Justice within the context of Pakistan

2.1. Concepts and Definition

The Act defines a child as ‘a person who has not attained the age of eighteen years’². The children in any country are the most vulnerable not only because of their tender age but also the environment where they are living and therefore they are more prone to abuse. One of their fundamental rights is that they must be treated in a dignified way and their honor must be protected at any cost. To ensure this some of the High Courts in Pakistan have designated juvenile courts for the trial of children. Pakistan is not a single country on the globe where the juvenile are involved in different kind of offenses but around the globe whether it is developed or developing countries, they have more or less juvenile cases. However most of the developed countries have a separate system and laws for Juvenile offenders. For instance in the UK, USA and most of the European countries they have a well-established Juvenile justice system. In fact, it is basically one of the part of a criminal justice system specialized in dealing with those children who are involved in less or more heinous offenses. Through this system justice for all juveniles can be achieve.

¹ Convention on the Rights of the Child (CRC).

² The Juvenile Justice System Act, 2018.

2.2. Definition of Juvenile:

The Juvenile Justice System Act 2018 define juvenile as “*Child means for the purposes of this act a person who has not attained the age of eighteen years*”³ According to Article 1 of the UN Convention on the Rights of Child “*CRC*”, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.⁴

There is lot of factors which is responsible for the criminal conduct of the juveniles as well as adults. This is because where they do not have the complete knowledge of the nature as well as the severity of the offence. The child is the most vulnerable and can easily become the victim of circumstances, the result of which exhibits his criminal conduct, apparently, because of the lack of understanding of the act or sometime abuse of the others. The main responsibility of his criminal act cannot be attributed to one factor but it could be the parents, the society the education institution as well as work place. It has been established that neither conviction nor the punishment of a juvenile offender will help him or her in reforming as well as eliminating the crime from the society. Owing to this fact in most of the developed countries a separate juvenile justice system has been established which is gaining popularity and is now being followed and applied in legal justice system internationally.

3. International Law

A glance over the International Convention on the Rights of Child shows that all the articles specifically emphasis on the dignity, honour and safe guard against all types of discrimination. According to Article 2 of the International Convention on the Rights of Child:

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of

³ Ibid

⁴ Convention on the Rights of the Child.

discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Similarly, *Article 3*

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform to the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.⁵

Apart from the above mentioned Convention, there are also other human rights laws worldwide which recommend least guidelines corresponding to the treatment of adolescent reprobates and their restoration in the general public; for or example, the Beijing Rules 1985; the Riyadh Guidelines 1990 the UN Rules 1990. All these Rules describe the treatment of juvenile in the institutions.

4. National Legislation in Pakistan

When it comes to the National legislation in Pakistan, Article 10 and 10-A of the Constitution of Pakistan specifically describe the safeguards of Juvenile against arrest and detention. According to Article 10, "Safeguards as to arrest and detention. The same is stated in Article 10-A. Right to fair trial: This shows the civil rights of any person irrespective of his age especially in criminal offenses /cases a fair trial is his fundamental right. If the person detained he will be immediately informed of the grounds of his/her arrest,

⁵ Convention on the Rights of the Child (<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>)

Secondly he/she will be produced before the court of law and thirdly he /she will be provided the assistance of a legal counsel in order to ensure the protection of child.

According to Juvenile Justice System Act 2018 it has clearly mentioned at section 6(3) that if a juvenile is arrested either minor or major offences in any case the juvenile will be treated as he has been arrested for the commission of minor offense. Similarly in the same act, a juvenile is entitled to the concession of bail even in non-bail able offence. Similarly in a case of any juvenile below the age of 15, he/she must be referred to a reformatory school and if there is any need training should be given to such juvenile. Even the court has been empowered in criminal cases in terms of juvenile to release those juveniles who are convicted for the first time. Similarly, the court, having regard to the age of a convicted person imprisoned for up to two years, may release him after due admonition.⁶ However, The Government has done very little in the context of implementing the above constitutional rights of the juvenile. Though some bills have been approved for example Child Offender Bill” separate juvenile courts been proposed, unfortunately all these bills and recommendation has been gone to a cold storage. Now the time is to give a practical shape to all these bills and recommendations proposed by the legislature of the country.

5. Recommendations to reform

5.1. Separate Juvenile Courts and Juvenile Institutions

Throughout the country the judiciary has been overloaded with the pendency as well as disposal of cases. According to the institution of cases the ratio of judges in each district is very low. Therefore access to justice cannot be achieved with a small number of judges recruited in different districts of the country. Due to theses gaps and due to the non-compliance of laws, the juvenile are the most who are facing trial or detention and facing lot of difficulties. Not a single government till date has allocated a separate budgetary head for the juvenile cases, reformative schools and education establishment where they can feel like a normal child and not like a culprit. There is need to make a setup for juvenile within the existing courts for example separate time or days may be allocated for Juvenile cases. Similarly, the number of judicial officers/judges may increase and will ultimately resolve the problem. Presently there are few separate juvenile institutions in the country. Throughout the country there is no separate Juvenile institution .Therefore separate Juvenile

⁶ Section 562(1A).

institution may be established not at provincial level but at district level. The juveniles in prison must be separated from adults as well as necessary steps must be taken to ensure that they are also safe in judicial custody.. It is the duty of the government to established committee's which will be responsible for making policies and rules for juvenile institutions. The segregation of juvenile from adults will not be enough; the environment within such places must also take into account and practical steps must be ensure where they will be exposed to opportunities like education, psychosocial support program and vocational trainings etc.

5.2. Administrative Structure:

Similarly, the government must ensure a proper mechanism and a structure for the juvenile within the juvenile justice system. The staff that is responsible to look after the juvenile should be equipped with training as well as they should be train in giving psychosocial support to the Juvenile offenders. The government should also follow the similar training program already exists in western countries. The must be sensitized about the issues of the juvenile and must be well equipped with all the necessary training. Apart from the staff working in juvenile placement institutions, police officers staff from prosecution department, judges, lawyers, probation officers, and jail staff.

5.3. Legislative Measures

Currently, the legislative measures for Juvenile justice system are not enough .To give a feeling of security as well as to protect the juvenile from every kinds of discrimination, juvenile delinquency and to safe guard them against the damage to their personality the government must do proper legislation to bring at par with constitutional requirements and international conventions and standards. Unfortunately, presently one juvenile law exists which is struck down by Lahore High court and no final decision has been made so far by the Honorable Supreme Court of Pakistan. The legislatures should come up with a proper legislation which will address all the issues pertaining to the best welfare of child offenders. Most importantly, the lawyers' role is very crucial and they must be involved to come up with the proper law reforms and legislation for the child offenders.

5.4. Juvenile Age for Criminal Liability

In Penal Code of Pakistan (PPC) minimum and maximum age from the exemption from criminal liability is prescribed, that is 7 years, is

minimum and 12 years is maximum, with the exception that the court must firstly satisfied that whether the offender had enough maturity of understanding the intensity of the crime. This practice of minimum and maximum age is different in different around the globe. However, we have the example of some of the countries in the world where the liability in the context of a crime is still not decided on when we talk about the age but decision is taken on the basis of the mental capability of child offender as well as the environment where he is living .Since the changes in the Pakistan Penal code may be very difficult, however the proposed law may be practiced in a such away and the juvenile court may hear the cases of juvenile offenders. The juvenile courts must decide the cases on the basis of his/her own experience and professionalism.

6. The Death of a juvenile in one of the police station Peshawar v. The law of detention of Juvenile offender under section 5 of JJS Act 2018

The Juvenile Justice System Act 2018 defines the detention of Juvenile offender in the following terms:⁷

Section 5. Arrest of Juvenile, (1) the arrested juvenile shall be kept in an obseroation home and the officer -in-charge of the police station shall as soon as possible,

- a. Inform the guardian of the child, if he can be found, of such arrest and inform him of the time, date and name of the Juvenile Court before which the child shall be produced; and*
- b. Informed the concerned Probation Officer to enable him to obtain such information about the Juvenile and other material circumstances which may be of assistance to the juvenile Court for making inquiry.*

(2) No Juvenile shall be arrested under any of the laws dealing with preventive detention or under the provisions of Chapter VIII of the Code.

(3) The report under section 173 of the Code shall also describe the steps taken by the officer-in-charge for referring the matter to the Juvenile Justice Committee for disposal of case through diversion, where it was so required under section 9.⁸

⁷ The Juvenile Justice System Act 2018.

⁸ Ibid.

Alone in 2019 ,2020 and 2021 only few cases have been reported where the juvenile offenders were taken into the police custody and later on sometime they were found dead or brutally tortured. The recent death of the 14 years old child dated 14 March 2021 in the custody of the police is an example that the juvenile justice system act is very interesting while reading it but on other hand it shows that no serious compliance has been so far made to implement the Juvenile justice system act 2018 in the country. In such like cases the only action taken by the government is to suspend the concern police officer. In such like cases the story ends with a compromise with the victim family. It is obvious that government still needed to do effective legislations. Most importantly, the JJS Act 2018 is completely salient regarding the misuse of power by the police officer in relation to JJS Act. Therefore strong legislation is needed in the terms of the abuse of any law of JJS Act by any police officer vice versa.

6.1 Procedure of Juvenile cases

The dignity of any child offender is very important within the meaning of this act. Since we are living with a complex oriented society and it is very easy to get stigmatised. Therefore, it is important that the cases involving minor penalties may be dispose promptly and in a very dignified way. Similarly, the probation officer must be responsible for the supervision of the Juvenile offenders as well as other train staff of the institution. In the same way the parents of the Juvenile must be sensitize and should also arrange awareness session for them. Keeping in view the International standards and to improve the exciting Juvenile administration system, serious steps must be taken in order to dispose of the juvenile cases like compensation, supervision of the child offender ,involvement of parents/guardians, referral mechanism must be specified. ⁹

Conclusion

Due to weak legislation and improper mechanism in the terms of Juvenile offenders, therefore there is a possibility that the Juvenile offenders may be maltreated and sexually abused in prisons and cases like the 14 years old child will be repeated in different ways. Therefore, it is the duty of the government to take practical steps and ensure the establishment of separate juvenile rehabilitation centers for both male and female Juvenile offenders. The government must allocate sufficient budget to ensure and protect

⁹ Pakistan ratified the Convention on 12 November 1990.

the well-being of the Juvenile offenders. It is also recommended that since there is no proper data available regarding the juvenile offenders in the country therefore a proper mechanism must be in place to get the data on monthly basis from each province. Similarly, each province may come up with legislations and Provincial Acts for juvenile justice system. Since each province has a different geography, culture and modes of committing crimes therefore each province will need its own legislation and act.¹⁰

¹⁰ Article 1 & 37(a) of the Convention on the Rights of the Child 1898; and Article 6 of the International Covenant on Civil and Political Rights 1966.