

Critical Study of Juvenile Justice System in Pakistan

*Aamir Fayyaz**

*Pakistan Audit and Accounts Service, 28th SMC (aamir.paas@gmail.com)

Introduction

Humans, being social animals, love to live with others of their kind. Society and the State join hands to provide them with an opportunity to live in an organized way and complement each other in relationships of diverse nature. The social contract defines this relationship and is meant to subject the members of society to some form of broader institutional controls so as to allow each individual progress in his or her life and strive for self-actualization in diverse manner. The contract tends to evolve with time and at any point of time remains fluid and susceptible to change in order to adjust the variations in the value system and to define and re-define, on continuous basis, human life in the society. It is interesting to note how this rather abstract contract affects the very existence of humans, made of flesh and blood. That explains to some extent, how and why, despite its overarching presence, balancing the collective state-societal expectations and an individual's desires and needs remains a challenge.

Individualism and collectivism tend to co-exist in varying degree, depending upon the type of society; with corresponding likelihood that this individualism may come in conflict with the common code-the law. Crime is the manifestation that this bond stands weakened and loosened at some knot since it is an intentional act that is a 'public wrong', and is a 'breach of general and public rights' and hence 'affect the whole community'.¹ The seriousness of the crime is such that it is deemed to be committed against the State as well, in addition to the 'victim'. Modern democratic societies, nevertheless, tend to deal with it in a civilized and predictable manner. This is done through the Criminal Justice System which comprise of the laws, procedures, institutions, and policies at play before, during, and after the commission of a crime. The objective is to provide justice, control and prevent crime."² This, in turn, affords confidence to the society at large and help keep the contract relevant and in place. The objective, however, is not just to punish the deviant individual and behaviour but to look deep at the causes and in most cases, arrange for the individual's re-learning, re-education, and re-integration into the fold of society. The branch of criminal justice

¹ Wilfrid Prest, ed., *Commentaries on the Laws of England* (Oxford: Oxford University Press, 2016), 83.

² Gorazd Mesko, Milan Pagon, and Bojan Dobovsek, "Some Dilemmas of Contemporary Criminal Justice," <https://www.ncjrs.gov/pdffiles1/nij/Mesko/207974.pdf> (accessed January 11, 2021).

system that deals with children, coming in conflict with law through crime and delinquent behaviour, is called Juvenile Justice System.

Statement of the Problem

The Constitution of the Islamic Republic of Pakistan, 1973, has taken upon itself to protect the Child. Pakistan is a signatory to the UN Convention on the Rights of Child. The Juvenile Justice System Act, 2018 is a dedicated legislation providing an exclusive justice system for the juvenile offenders. The new system has given confidence to the stakeholders, national and international, about the continued commitment of the State of Pakistan to the rights of juvenile delinquents. There apparently is a strong perception that significant gaps continue to exist when it comes to the implementation of the system. It is imperative to study the expected role of key actors involved in the juvenile justice system to ascertain the challenges, if any, that could possibly hinder the fulfilment of these commitments; and identify the strategic interventions, required at policy formulation and implementation levels, to achieve the intended objectives.

Significance and Scope of the Study

This study highlights the vulnerable section of the society i.e. the juvenile offenders. The study is of great value to all the key players involved in the dispensation of justice, the policy makers, independent researchers, national and international, academia as well as the public at large. The study is expected to contribute to the existing literature on the subject and will furnish to those charged with governance of juvenile justice system in the country with situation analysis that could pave the way for bringing tangible improvements in the system. In view of the Covid-19 related constraints, the scope of research has been kept primarily restricted to the province of Punjab.

Review of the Literature

Juvenile justice system is essentially a 20th century phenomenon. However, it remains part of the larger criminal justice system and hence the available literature is in abundance. The research and study of the Juvenile Justice System ostensibly took a boost after the United Nations Convention on the Rights of the Child (UNCRC) in 1990. However, the pure academic research into juvenile justice theory and practices is found mostly in the US and other developed countries of European and Scandinavian origin. The available documents relating to Pakistan are primarily in the form of government reports, newspaper articles and reports of international and national stakeholders. The

literature review done for the purpose of this study can be categorized in the following manner:

The first category comprises of the standards books and journal articles on the subject.

- *The Handbook of Juvenile Delinquency and Juvenile Justice (2015)* talks about trends in juvenile delinquency around the world and provides insights to systemic responses to delinquency.
- *Crime, Criminal Justice, and the Evolving Science of Criminology in South Asia (2017)* talks about trends and patterns of juvenile crime in South Asia and gives an exploratory analysis of reforms and modernization of juvenile justice in Pakistan from legal point of view.
- *Juvenile Justice: An Introduction (2013)*, is a basic read for the definition and extent of delinquency, juvenile court processes and juvenile probation and community corrections.

The second category comprise of reports by the UN and its organizations.

- *The UN Global Study on Children Deprived of Liberty (2019)* has a full chapter on children deprived of liberty in the administration of justice.
- *The UNICEF Report on Violence against Children in South Asia: A Systematic Review of Evidence since 2015 (2020)* highlights the magnitude of violence against children in South Asia; its drivers, risk, and protective factors.
- Another report by UNICEF, *Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law (2006)* provides country specific situation analysis and talks about juvenile justice legislation and procedures, conditions in detention, diversion, and alternative sentencing.
- *The UNODC Handbook on Restorative Justice Programmes (2006)* provides an overview of the dynamics of restorative justice interventions.

The third category is in the form of laws and reports by the government.

- The basic documents on the subject are the Constitution, 1973, the JJSO (2000), the JJSA (2018), Probation and Offenders Ordinance, 1960. Pakistan being a

Critical Study of Juvenile Justice System in Pakistan

signatory to the CRC, submits periodic report to the CRC and its latest report (2015) provides the view point of the GoP on the steps taken in the implementation of the CRC.

- Alongside, there is the *Implementing Child Rights in Pakistan: Alternative Report for UN CRC (2015)* by the Childs Rights Movement. Combined these give different perspectives on the problems relating to the children of Pakistan.
- *Addressing Overcrowding in Prisons by Reducing Pre-Conviction Detention in Pakistan (2018)* is a comprehensive report by NACTA that offers facts about the juveniles convicted and under-trial prisoners.

The fourth perspective is provided by the civil society organizations dealing with child rights in Pakistan.

- *SOPC (2019)* is the annual report issued by SPARC and it has a dedicated section on juvenile justice system that provides statistics about the juvenile offenders across Pakistan.
- *Death Row's Children: Pakistan's Unlawful Executions of Juvenile Offenders (2017)* is a report by JPP highlighting issues in the determination of age in Pakistan's JJS. The role of individual actors within the juvenile justice system in Pakistan like police and judiciary is also an area of interest among the researchers and stakeholders and in this regard.
- *Abuse of Juveniles by the Faisalabad Police (2014)* has been produced jointly by JPP and Yale Law School (YLS), presenting their research findings on police brutality.

The last one, not of course the least one, comprises of articles published in various journals, like Pakistan Journal of Criminology, besides articles printed in the national media.

Methodology

The research methodology adopted for this study primarily consisted of obtaining information form secondary sources and review of published literature, books, handbooks, articles, news reports and govt. documents. Keeping in view the broad contours of the study, an effort was made to approach the subject in a holistic manner.

In order to forestall any inclination to get biased, the conceptual understanding was developed through secondary sources in the first place and then this was augmented with unstructured interviews of the relevant stakeholders and practitioners with the objective to seek clarifications and understand the counter-narrative to arrive at the answers posed in the Statement of the Problem.

Organization of the Paper

The paper is divided into four sections. The first section provides an overview of the juvenile justice system in the country in an international context. The second section examines the magnitude of the problem, the steps involved in the dispensation of justice to the juvenile offender, linkages between various institutions and stakeholders within the system. The third section presents Pakistan's juvenile justice in the global context while the fourth and last section, following and flowing from the discussion in the previous ones, presents gap analysis, highlighting the issues and challenges that confront the system. The conclusion sums up the research narrative while recommendations are an extension to the issues and are meant to provide ways and means to improve strategy formulation and service delivery.

Section I

1. Juvenile Justice

1.1 Juvenile Delinquency

'Delinquency' is a euphemism for criminal behaviour exhibited by a juvenile. Adults committing crimes are 'criminals' whereas children doing the same are called 'delinquents'. The dividing line is the age of person which varies across jurisdictions.³ The Convention on the Rights of Child (CRC) defines a child as one below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.⁴ The rights and obligations of adulthood therefore start with the attainment of majority and that typically has been set between 15-18 years by most nations.⁵ This is the maximum age limit beyond which the law will not differentiate between the child and the adult and would rather focus exclusively on the crime committed. The

³ John T. Whitehead and Steven P. Lab, *Juvenile Justice-An Introduction*, 7th ed. (Elsevier, 2013).

⁴ Convention on the Rights of Children, <https://www.ohchr.org/documents/professionalinterest/crc.pdf>.

⁵ Ido Weijers and Thomas Grisso, "Criminal Responsibility of Adolescents: Youth as Junior Citizenship," in *Reforming Juvenile Justice*, ed. J. Junger-Tas and Dünkel Frieder (New York: Springer, 2011).

determination of its corresponding Minimum Age of Criminal Responsibility (MACR) is an obligatory duty on the national governments, under Article 40(3)(a) of the CRC.⁶ In 2007, the Committee on the Rights of the Child set it at 12 and in 2019, it recommended 14 as the MACR.⁷ However, there is a lot of variety in this across nations. In Europe, this varies from 8, in Scotland, to 16 in Belgium. The implication is that the delinquent child will not be prosecuted if found below this age.⁸ However, children at or above the minimum age of criminal responsibility at the time of the offence can be held accountable for his/her actions and be subjected to the juvenile justice system in accordance with international human rights standards.⁹

1.2 Juvenile Delinquency in Pakistan

Pakistan conforms to the internationally acceptable upper age limit of 18 years. The MACR was 7 years till 2016 but with amendment of Section 82 of PPC, it was raised to 10. Section 83 of PPC was also amended in the same year and provided protection from criminal responsibility to the juvenile delinquent who is above ten and under fourteen years of age if he is found to be of ‘immature understanding’ at the time of commission of crime.

The MACR at 10 means, in the context of formal school system in Pakistan, a student of class 4-5! What are the factors that could possibly push this child into the criminal system and make him a juvenile delinquent or offender? There could be many push-and-pull factors, internal as well as external to the child. Some research has indicated that children of low socio-economic groups find rejection in society and this may lead them to aggression and non-compliance with social norms.¹⁰

Poverty, poor educational background, ineffective role of parents in socialization, and the role of peers especially in crimes committed in groups are some of the other reasons.¹¹ Similarly, some studies point towards inadequate parental supervision, lack of self-control, urban poverty, relative deprivation and access to illegal means being

⁶ https://www.unodc.org/pdf/criminal_justice/Manual_for_the_Measurement_of_Juvenile_Justice_Indicators.pdf, page 27 (accessed on 9.12.20).

⁷ <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-13/key-issues/4--justice-for-children-in-conflict-with-the-law.html> (accessed on 9.12.20).

⁸ John T. Whitehead and Steven P. Lab, *Juvenile Justice-An Introduction*, 7th ed. (Elsevier, 2013).

⁹ Wajahat Ali, “Juveniles and criminal responsibility”, <https://dailytimes.com.pk/359982/juveniles-and-criminal-responsibility/> March 1, 2019 (accessed on 9.12.20).

¹⁰ Janis B Kupersmidt, John D Coie, and Kenneth A Dodge, “The Role of Poor Peer Relationships in the Development of Disorder,” <https://psycnet.apa.org/record/1990-97775-009> (accessed January 10, 2021).

¹¹ Muhammad Nisar et al., “Juvenile Delinquency: The Influence of Family, Peer and Economic Factors on Juvenile Delinquents,” <https://docplayer.net/12352637-Juvenile-delinquency-the-influence-of-family-peer-and-economic-factors-on-juvenile-delinquents.html> (accessed January 2, 2021).

closely associated with juvenile delinquency.¹² Another study found that being illiterate was a typical trait of a juvenile offender and in fact it were the adolescents with age of 16-18 years that were more probable to commit crimes compared with the younger ones.¹³

The General Strain Theory links the likelihood of crime with the range of strains or stressors.¹⁴ Stresses caused by lack of money and low status in the society could be possible causes of juvenile crime. However, there cannot be any generalization and not all juveniles cope with stresses through crime. It has also been held that juvenile offenders typically exhibit abnormal symptoms in their cognitive behaviour and may have difficulty in finding the clues of socialization.¹⁵

1.3 Juvenile Justice – A System within System?

Is juvenile offender a wolf in sheep clothing or a sheep in wolf clothing? What should be the ideal age where criminal responsibility should be fixed? Should we align the age of criminal culpability with the rights of adulthood that the state grant to its citizens like those of voting and employment? Whether juveniles should be tried in regular courts as ordinary criminals or in separate juvenile courts?

These debates have somehow persisted and refuse to abate in the near future. For instance, in the US, the overall trend is to lower both the minimum and the maximum age thresholds. However, in Europe the trend is to increase the MACR.¹⁶ There is also a view that separate juvenile courts should be abolished and it would be good for the juvenile as well as for the society since the ordinary criminal courts could provide the required 'youth discounts' because of the children's vulnerability and immaturity.¹⁷

The collective conscience of the humanity, enshrined in the CRC, ratified by close to 200 nations, without an iota of doubt, provide for establishment of laws, procedures,

¹² Amber Ferdoos and Amama Ashiq, "Impact of Urbanization on Juvenile Delinquency: A Study of Muzaffarbad Jail", *International Journal of Criminology and Sociological Theory*, <https://ijcst.journals.yorku.ca/index.php/ijcst/article/view/40241/36349>(accessed January 2, 2021).

¹³ Shamim A et al., "A Study of Juvenile Crimes in Borstal Jail, Faisalabad," <http://www.thejaps.org.pk/docs/19-2-%202009/09-930.pdf> (accessed January 8, 2021).

¹⁴ Robert Agnew, "General Strain Theory: Current Status and Directions for Further Research," *American Psychological Association*, <https://psycnet.apa.org/record/2006-22890-003>(accessed January 10, 2021).

¹⁵ John E. Lochman, Louise B. Lampron, and David L. Rabiner, "Format Differences and Salience Effects in the Social Problem-Solving Assessment of Aggressive and Nonaggressive Boys," *Journal of Clinical Child Psychology*, https://www.tandfonline.com/doi/abs/10.1207/s15374424jccp1803_5 (accessed December 10, 2020).

¹⁶ Ido Weijers and Thomas Grisso, "Criminal Responsibility of Adolescents: Youth as Junior Citizenship," in *Reforming Juvenile Justice*, ed. J. Junger-Tas and Dünkel Frieder (New York: Springer, 2011).

¹⁷ Barry, C. Feld, "The Transformation of the Juvenile Court," https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1297&context=faculty_articles(accessed December 10, 2020).

authorities and institutions specifically applicable to the children alleged as, accused of, or recognized as having infringed the penal law.¹⁸ It translates into an implicit understanding that, in case of juveniles, the focus of the system would be more on the juvenile and as for the crime, the state and the society will weep over it, alongside the juvenile offender. After weeping it will make amends by investing on his reformation and rehabilitation in the hope that he/she will grow to be a responsible member of the society.

1.4 Commitments of Adults to the Juveniles

The late 1980s and the early 1990s heralded the awakening of the international community to the rights of children in general, and those of the juvenile delinquents, in particular. The UN took the lead in burning this flame of enlightenment. Three important instruments were finalized under the auspices of the UN. The Beijing Rules of 1985 are ‘Standard Minimum Rules for the Administration of Juvenile Justice’.¹⁹ Introduced in 1990, the UN Rules for the Protection of Juveniles Deprived of Liberty, commonly called the Havana Rules and the Riyadh Guidelines are other milestones.²⁰ The climax of this awakening came in 1989 with the CRC wherein it was resolved that “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.”

Section II

2. The Problem and the Players

2.1 Juvenile Justice System in Pakistan

The Reformatory Schools Act (RSA) was enforced in British India in March 1897.²¹ At the time, it was quite a modern legislation concerning the youthful offenders when placed in the context of the late 19th century and in view of the fact that the first juvenile court in the modern history was going to be established in the US two years later in 1899 under the ‘Illinois Juvenile Court Act of 1899’.²² Another old law, albeit with modern

¹⁸ <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>(accessed December 20, 2020).

¹⁹ <https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>(accessed December 20, 2020).

²⁰ <https://www.ohchr.org/en/ProfessionalInterest/Pages/PreventionOfJuvenileDelinquency.aspx>(accessed December 20, 2020).

²¹ The Reformatory Schools Act, 1897, <http://punjablaws.gov.pk/laws/14.html> (accessed December 20, 2020).

²² This Act held that children below the age of 14 were not criminally responsible. In 1987, the law raised the age to 18 years.

intonation, is the Punjab Borstal Act, 1926 which made provisions for the establishment and regulation of Borstal Institutions in the Punjab, as an alternative to the prison.²³

The vulnerability of the child is also addressed in the Constitution of the Islamic Republic of Pakistan, 1973 when it dedicated several of its articles to the welfare of the child, directly or indirectly. The fundamental rights promised to the child in the Constitution have been translated in legislative enactments. Sections 82 and 83 of the Pakistan Penal Code (PPC) hold that till age 10, there is no criminal responsibility and in the age group 11-14, there is rebuttable presumption of innocence and it must be proved that the child did have the sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion. The CrPC invokes the jurisdiction conferred by the Reformatory Schools Act, 1897 on Magistrates if the person is under the age of fifteen years and provides for confinement of youthful offenders in reformatories instead of a criminal jail. The reformatory is expected to provide suitable discipline and training in some useful industry.²⁴

The breakthrough in the legal framework came when Pakistan ratified the CRC in 1990. However, it took ten years to promulgate the Juvenile Justice System Ordinance in 2000, which was subsequently protected through the 17th amendment to the Constitution.²⁵ The hall mark of this legislation was that it provided for separate trial mechanism for the below 18 offenders. The State agreed to provide free legal assistance. The JCs were to be established by the Provincial Government in consultation with the Chief Justice of High Court and were to have exclusive jurisdiction. The law prohibited award of death sentence. The implementation of the JJSO suffered a serious blow when, in December 2004, a full bench of the LHC, in a unanimous judgment, struck down the JJSO being unconstitutional, unreasonable, and impracticable because of "downright absurdities" that were creating a havoc in the country's criminal justice system. The decision was nevertheless reversed by the SCP and the law continued till 2018 when the Parliament enacted the Juvenile Justice System Act (JJSA, 2018) repealing the JJSO.²⁶

The JJSA, 2018 has been drafted with the 'best interest of the child' in mind that provides the necessary basis for decisions concerning the juvenile delinquent. This is done by respecting his/her basic human rights and ensuring his/her social, physical, emotional, and psychological well-being and development. Being a considerable

²³ http://punjablaws.gov.pk/laws/38.html#_ftnref17, (accessed December 20, 2020).

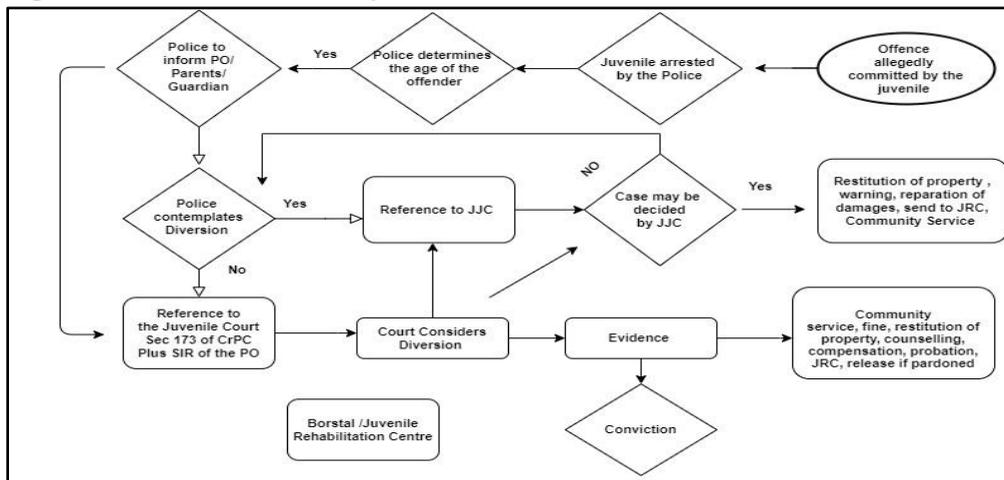
²⁴ Section 29-B read with Section 399 of the CrPC (accessed December 20, 2020).

²⁵ <http://www.pja.gov.pk/system/files/Juvenile%20Justice%20Ordinance%202000.pdf> (accessed December 20, 2020).

²⁶ <https://www.amnesty.org/en/documents/asa33/026/2005/en/> & "SC suspends LHC judgment: Juvenile justice system ordinance", Dawn, 13 Feb 2005, <https://www.dawn.com/news/402002> (accessed December 20, 2020).

improvement on the JJSO, the JJSA has kept its good things and introduced several innovations with the objective to provide social reintegration of the juvenile offenders. In contrast to the JJSO, the new law overrides all other laws that come in conflict with it. This vindicates the seriousness of the state in addressing the challenges that threaten the establishment and smooth functioning of the juvenile justice system. A striking feature of the new law is that it makes mandatory the consideration for the use of ‘diversion’ as an alternative to the formal judicial proceedings. Diversion is quite a modern concept and the law has envisaged and constituted Juvenile Justice Committee (JJC), as its implementation arm, to explore options like ‘community service, ‘restitution of property’, ‘reprimand’ and placement in the ‘Juvenile Rehabilitation Centre’, as an alternative to the prison. During the investigation and during the trial, the JO will be kept in the Observation Home (OH) and not in the police station or in prison. Since the thrust of the JJSA is on the OH and on the JRC, the government is required to establish these or to certify an existing OH or a JRC managed or controlled by an NGO for housing the JOs. Figure 2.1 has been constructed and it presents the process enshrined in the JJSA, 2018.

Figure 2.1: Juvenile Justice System in Pakistan

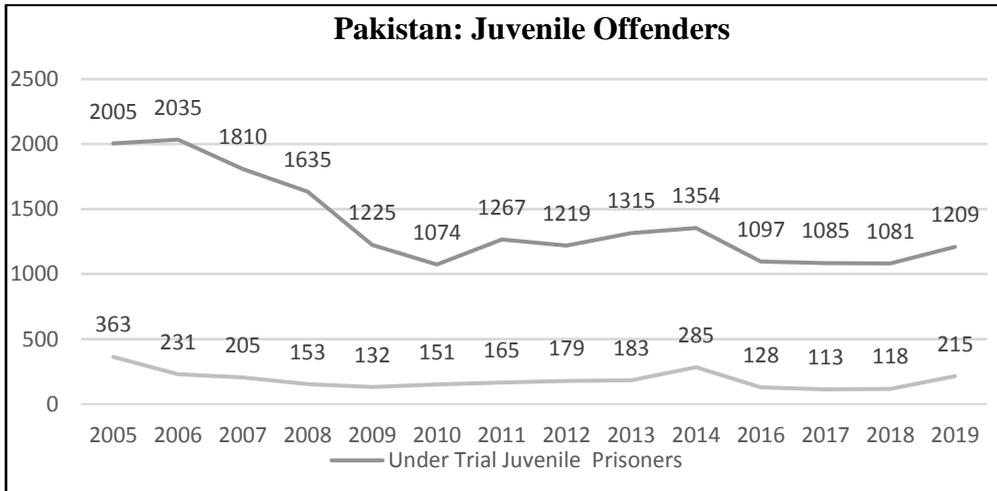


2.2 The Magnitude of the Problem

The total number of prisons across Pakistan are 116 and there are 79,603 inmates (including 1,273 juveniles) housed three against sanctioned capacity of 64,099. It means that over all there is excess of 15,504 inmates which is 24% over and above the sanctioned number. Out of 79,603, convicted prisoners are 23,027 while 53,385 are categorized under-trial. An additional point of concern is that about 90% of the juvenile

prisoners are UTPs.²⁷ Except for Sindh, where all the juvenile offenders have been accommodated in the four operational Y.O.I.S., and for Punjab, where some juveniles are in B.I.J.J, in the rest of the country, including Punjab, the juvenile prisoners are housed in regular jails.

Figure 2.2: Juvenile Population in Prisons



Source: SPARC, 2019

The country lacks an integrated prison information system that could show the number in real time. The number of children in jails obviously is in fluid state with children entering and going out of the system. The data therefore shows the number at a particular point of time when it is calculated and hence the number of about 1300-1500 juvenile offenders in the country should be taken as relative and not absolute.

As we can see that the population of convicted juvenile population remains quite stable however, the population of the under-trial prisoners keep on fluctuating. Considering the provincial data, we can see that again there are variations across all the provinces.

²⁷ NACTA, “Addressing Overcrowding in Prisons by Reducing Pre-Conviction Detention in Pakistan: A Study by NACTA, CODE and ICRC, 2018,” 2018.

Figure 2.3: Juvenile Population in Prisons

Year	Province	Under Trial		Convicted		Condemned		Total
		Male	Female	Male	Female	Male	Female	
2019	Punjab	509	0	109	0	0	0	618
	Sindh	159	165	9	51	0	1	385
	KPK	327	0	41	0	0	0	368
	Balochistan	49	0	4	0	0	0	53
	Total	1044	165	163	51	0	1	1424

Source: SPARC, 2019

It may be mentioned that in 2018 and 2017, the total number of juvenile prisoners stood at 1199 and 1198 respectively. Another estimate puts the total prison population of Pakistan as on 30.9.2019 to be 77275 and estimates the juvenile population to be around 1.7% as on 31.12.2019 which comes to about 1313 juvenile prisoners.²⁸

2.3 The Juvenile Steps to Justice

We must not ignore the fact that a crime has been committed against the state as well as against an innocent person and the juvenile offender, whatsoever the reason, has been instrumental in it. This fact cannot be ignored otherwise the aggrieved party will lose trust in the system and the penal laws will become a mockery. Therefore, the juvenile offender is passed through various steps and stages to bring it home that the state exists through its institutions and that there is no getting away from the crime. However, the state expects its pillars of criminal justice system-police, probation, prosecution, prison, and the judiciary, to be cognizant of the age of the JO and provide hand-holding throughout this walk-through. The way these state agents and institutions perform has the potential to make or mar the envisaged system.

2.4 Arrest and Investigation

The police is the first point of contact and like the gate-keepers to the penal system, for the juvenile offender. When it arrests the juvenile, the law assigns some critical duties to it. One, the focal person is the officer-in-charge of the police station. Two, the juvenile is not to be handcuffed and nothing is done that violates his dignity. Three, he is not to be kept in the police station but in an Observation Home. Four, after the arrest the parents/guardians and the Probation officer must be informed of the arrest. Five, the interrogation of the arrested juvenile shall be conducted by police functionary not

²⁸ Institute for Crime & Justice Policy Research, “World Prison Brief”, <https://www.prisonstudies.org/country/pakistan> (accessed 10.1.2021).

below the rank of Sub-Inspector with the assistance of PO or the SWO and under the supervision of the SP or SDPO. Six, since the law assigns great importance to the ‘Diversion’ method, it has provided for a control to forestall the tendency among the police not to use it.

Hence it has required from the IO, to submit to the Court, as part of challan under Section 173 of the CrPC, to describe steps taken by him for using the diversion method and why it could not work. Seven, it is the duty of the police to determine the age of the person who ‘physically appears or claims to be a juvenile’.

2.5 The Age Factor

The age is what entitles the juvenile to get himself registered with the brand. Since there is possibility of its misuse by those for whom it is not meant, the determination of age of the person apprehended by the police assumes critical importance. The law requires the OIC/IO to perform due diligence, utilizing the available evidence like birth certificate, education certificate or any other pertinent documents, to arrive at the age of the accused or through the medical examination. That the police and the judiciary should give preference to the documentary evidence over a medical board for determination of age of a person claiming to be a juvenile has been acknowledged by the superior judiciary of the country.²⁹

However, simultaneously it shows the mind-set of the police and the trial courts to prefer the medical and ignore the readily available documentary evidence although it is fraught with complications as there apparently is no “‘silver bullet’ method to determine precise chronological age of an individual.³⁰ Case law in Pakistan highlights the contradictory nature of evidence brought forth during investigation and trial.³¹

2.6 The Trial

There is the interest of the child and then there is also the interest of justice. The law cannot compromise on either. Hence it has attempted to find a balance by bringing clarity on the trial of the juvenile and providing a clear path for that. At the outset, it requires dedicated juvenile courts to be established or notified and lays down clear

²⁹ Waseem Ahmad Shah, “View from the Courtroom: Documentary Proof Gets Priority to Determine Juvenility of Accused,” *Dawn*, 12.10.20, <https://www.dawn.com/news/1584529>(accessed 15 December, 2020).

³⁰ A. Aynsley-Green et al., “Medical, Statistical, Ethical and Human Rights Considerations in the Assessment of Age in Children and Young People Subject to Immigration Control,” *OUP Academic* (May 14, 2012), <https://academic.oup.com/bmb/article/102/1/17/312555>(accessed January 21, 2021).

³¹ Judgment Sheet, Criminal Revision No.64759 of 2017, Lahore High Court, <https://sys.lhc.gov.pk/appjudgments/2019LHC4294.pdf>(accessed 15 December, 2020).

requirements that the judge shall be of the rank of a Sessions Judge or an Additional Sessions Judge or a Judicial Magistrate vested with Section 30 powers.

These Juvenile Courts will have the exclusive jurisdiction to try cases relating to the juveniles. Secondly, the JC is required to conclude the case within six months or seek extension from the High Court. Third, it does not allow open court system for the juvenile offender and it may direct any person to withdraw from Court. Fourth, the joint trial of the juvenile with the adult is prohibited as a general principle but if circumstances so warrant, then the JC may dispense with the physical presence of the child during the trial in favour of his virtual participation. Fifth, in case the juvenile is physically or mentally ill, it is expected of the court to send him for treatment at public expense. Sixth, the JC is required to have on record both the SIR and the FIR and seeks active assistance of the probation officer in dealing with the case both inside as well as outside the court room. Seventh, the JC has been entrusted with the protection of the dignity and identity of the Juvenile and it has powers to punish those responsible for publication or printing of the juvenile identity in any way. Eight, in disposing off the case, the JC has variety of options, traditional and non-traditional. These include releasing him on probation, entrusting him with a suitable person, ordering him to do community service, sending him to a JRC like a borstal institution, etc.

2.7 The Probation

Probation is the lynchpin of the entire juvenile justice system being an essential tool for reformation, rehabilitation, restoration, and reintegration of the offender into the society, in other words, for turning an offender into a defender of the value system of the society. The word literally means ‘an act of proving’³² and juvenile probation is used at the “front end” of the juvenile justice system for first-time and low-risk offenders while the “back end” probation is used as an alternative to institutional confinement for more serious offenders.³³

Probation Officer (PO) derives mandate from the Probation of Offenders Ordinance, 1960 and is expected to be a mentor for the offender as the law encourages him to “advise, assist and befriend the offender, and when necessary endeavor to find him suitable employment.”³⁴JJSA therefore places the PO in the pivotal position throughout the justice dispensation starting right at the investigation stage where the PO and the IO are jointly mandated to interrogate the child and later on, it is the PO who has been

³² <https://legal-dictionary.thefreedictionary.com/Probation#> (accessed on 12.12.20).

³³ Patricia McFall Torbet, “Juvenile Probation: The Workhorse of the Juvenile Justice”, <https://www.ncjrs.gov/pdffiles/workhors.pdf>(accessed January 11, 2021).

³⁴ The Probation of Offenders Ordinance, 1960 (Pakistan, 1960).

required by law to satisfy the court that child's admission to the offence, if made at all, was voluntary and with free consent and if there is any evidence that the juvenile did commit the offence. Similarly, the PO, being the member of the JJC, is expected to utilize the 'diversion' method and he also apprises the court regarding steps taken for mediation or compromise. The PO, provides the necessary link between the state and the offender and his family outside the court premises. In that capacity the law expects him to see to it as to what kind of assistance has been provided to the juvenile and his family.

The modern probation concept has three main components: investigation, intake, and supervision.³⁵ In line with that, at the time of disposition of the case, the JC consults the PO to explore the possibility of sending the juvenile to the JRC or be released on probation. In case of latter, the PO will continue to monitor and report on him and based upon his reports, the JC may revoke the probation order and send the JO to the JRC until he attains the age of eighteen or till the completion of period of imprisonment. It seems the PO is expected to provide the Court with the counter-factual or alternative narrative than the one that is presented to the court by the police and the prosecution. To serve the ends of justice, the PO has been required to prepare under Section 7 of the JJSA, a 'Social Investigation Report' on the juvenile offender. This report is meant to throw light on the circumstances and situation of the child and the economic and social factors that possibly led him into the offence.³⁶ The importance of the SIR can be gauged from the fact that it is required to be annexed with the police challan under Section 173 of the CrPC.

2.8 Rehabilitation through Confinement

If somehow all the possibilities stand exhausted and nothing worked, then imprisonment order is passed. The Court, however, keeping in view the best interest of the child, and to ensure 'the reintegration of the child into the society', "may make an order directing the juvenile offender to be sent to a Juvenile Rehabilitation Center until he attains the age of eighteen years or completes the period of imprisonment, whichever is earlier."³⁷

The JRCs, in practical meanings, for the time being, are the two Borstal Institutes & Juvenile Jails at Bahawalpur and Faisalabad and five Youthful Offenders Industrial School in Karachi, Hyderabad, Sukkar, Larkana and Dadu. The last one is not

³⁵ <https://www1.nyc.gov/site/probation/about/history-of-probation.page>.

³⁶ <https://www.lawinsider.com/dictionary/social-investigation-report>.

³⁷ Section 15 (e), JJSA, 2018.

functional. The KPK has one Borstal in Bannu while in Balochistan, there is none. Based on information collected from Borstal Jail, Bahawalpur, the following fact sheet has been constructed.

Figure 2.4: Borstal Institute and Juvenile Jail, Bahawalpur

Borstal Institute and Juvenile Jail, Bahawalpur						
Authorized 196	Accommodation:	Rigorous Imprisonment	Simple Imprisonment	Under-trial prisoners (District)	Under-trial prisoners (District)	civil prisoners
Actual 101	Accommodation:	33	7	50	10	1
Education	1 teacher from DEA for formal education and two assistant professors from SE College Bahawalpur deputed for delivering lectures once a week. However, due to covid no classes are being held.					
Psychologists	Two sanctioned posts of psychologist and junior psychologist. Presently these are vacant. One psychologist from central jail Bahawalpur visits every Saturday.					
Vocational training	With the help of TEVTA, 03 vocational trainings for motorcycle mechanic, welder and electrician are conducted.					
Seminars and camps	Social welfare department has an office and performs this activity					
Library	341 books available					

Source: Office of the Superintendent Jail, Bahawalpur (29-11-20)

As far as the BI&JJ Faisalabad is concerned, it had 143 inmates (Under-trial, 105; Convicted, 38), against the sanctioned strength of 244. The vocational and academic education has been entrusted with TEVTA and Comsats. Besides formal education, courses on computer, motorcycle mechanics, welding, domestic tailoring, and motor winding are arranged. As on 30.11.20, the Borstal was dysfunctional with its prisoners transferred to the Central Jail in Faisalabad.³⁸ Keeping in view these ground realities, it could be very difficult even to imagine that the objectives of the law to send the juvenile to prison will ever be fulfilled.

Section III

3. Pakistan’s Juvenile Justice and the Global Context

The current global thinking, post CRC, has some broad principles. Firstly, when children come in conflict with law, the priority should be not to pass them through any justice system at all, juvenile or adult, but to provide alternatives to deal with their delinquent or offending behaviour. Secondly, juveniles should have a distinct and exclusive justice system. Thirdly, the acceptable MACR is 14 and persons should be treated as juveniles till they turn 18. Fourthly, during the investigation, the juvenile is

³⁸ Source: BI&JJ Faisalabad, 30.11.20.

not to be kept in the typical police facilities and judicial process should be swift and there should not be any compromises to the dignity of person of the juvenile offender. Fifthly, after conviction, if it does takes place, the juveniles should not be kept in a prison but in a correctional facility. Last but not the least, the state should send this message to the juvenile that it has hope for him or her and the punishment is meant for his restoration, rehabilitation, and reintegration into the society.

Pakistan's JJSA of 2018, talks of 'social reintegration' of the children. The means to it have been provided through specialized judicial proceedings, diversion, observation homes and juvenile rehabilitation centres. These goals and means are in line with the global thinking and best practices although there is much variety and debate as far as the 'how' part is concerned based on empirical research. It has been established, for instance, that the therapeutic approaches based on counseling, skill building and multiple services had the greatest impact in reducing further criminal behavior.³⁹

Cognitive behavioral therapy has been found effective with juvenile and adult criminal offenders in various criminal justice settings, including prison, residential, community probation and parole and it significantly reduced recidivism even among high-risk offenders.⁴⁰ The community is expected to play active role to accomplish reintegration. There is however no "one size fits all" approach to reintegration. Restorative justice is one such tool that is available and is perceived as a comprehensive one because it most effectively meets the needs of crime victims, offenders, and community at large. That explains why, in many countries, juvenile justice legislation provides specifically for the creation of diversion programs for youth being in line with restorative and participatory justice principles.⁴¹

Similarly, in some jurisdictions like Australia, Belgium, Chile, Colombia, Finland, France, Ghana, The Netherlands, the Philippines, Russian Federation, and Uganda, the law trusts the discretion of the police and prosecutors to divert certain offenders from the conventional justice system to a restorative program. Some nations like Austria, Czech Republic, Denmark, Germany, Norway, Portugal, Slovenia make it binding on

³⁹ Mark W. Lipsey, "The Primary Factors That Characterize Effective Interventions with Juvenile Offenders: A Meta-Analytic Overview," *Victims & Offenders* 4, no. 2 (2009): 124-147.

⁴⁰ Nana A. Landenberger and Mark W. Lipsey, "The Positive Effects of Cognitive-Behavioral Programs for Offenders: A Meta-Analysis of Factors Associated with Effective Treatment," *Journal of Experimental Criminology* 1, no. 4 (2005): 451-476.

⁴¹ United Nations, "Handbook on Restorative Justice Programmes", <https://www.un.org/ruleoflaw/files/Handbook%20on%20Restorative%20Justice%20Programmes.pdf> (accessed January 11, 2021).

the criminal justice actors to consider the potential for diversion. New Zealand makes mediation or diversion-type program mandatory.⁴²

The police have choice between a warning, a diversion, a training program, a curfew, a referral to a family group conference or being charged in the youth court. However, in case of manslaughter or murder, children aged 10 to 14 can be prosecuted and will be dealt with in adult criminal courts.⁴³ In Brazil, the juvenile offenders are legally afforded a series of protective measures such as foster home or institutional placement, school enrollment, as well as drug, medical or psychiatric treatment. There are options like warnings; redress of harm caused to the victim; community service; probation; partial deprivation of liberty; and deprivation of liberty in an educational institution. Social services organizations are partnered with to achieve the rehabilitation goals.⁴⁴

China makes use of three interventions to reform the juvenile delinquents: educational assistance programs, work study schools; and juvenile reformatories. The work study boarding school, designed for juveniles involved in petty theft, fighting, or gambling repeatedly, is a unique example and is done without the court adjudication. Juvenile offenders having committed heinous crimes like manslaughter are sentenced to juvenile reformatories through court adjudication. It is pertinent to note that both the Work-Study Schools and Juvenile Reformatories lay great emphasis on education and labor with varying nature and intensity.⁴⁵ In recent past, in the US, the focus has been on the evidence-based programs that are proven to be effective and cost-efficient.⁴⁶

Scientific evidence is at the centre which has illustrated that the adolescent brain does not fully develop until about age 25 and that the majority of young offenders generally outgrow delinquency and criminal behavior, while their engagement in school and work increases as they reach adulthood.⁴⁷ Similarly, there is no “one true light assumption” and the recommendation now is on having prescriptive programming tailored to the individual needs to of the juvenile delinquents.⁴⁸ In the Scandinavian

⁴² Ibid.

⁴³ Ido Weijers and Thomas Grisso, “Criminal Responsibility of Adolescents: Youth as Junior Citizenship,” in *Reforming Juvenile Justice*, ed. J. Junger-Tas and Dünkel Frieder (New York: Springer, 2011).

⁴⁴ Paulo Ricardo, Diniz Filho, and Giza Lopes, “Youth Violence in Brazil: Law, Prevalence, and Promising Initiatives,” in *The Handbook of Juvenile Delinquency and Juvenile Justice*, ed. Marvin D. Krohn and Jodi Lane (Chichester, West Sussex, UK: Wiley Blackwell, 2015).

⁴⁵ Bedi Dong, “Juvenile Delinquency and Juvenile Justice in China,” in *The Handbook of Juvenile Delinquency and Juvenile Justice*, ed. Marvin D. Krohn and Jodi Lane (Chichester, West Sussex, UK: Wiley Blackwell, 2015).

⁴⁶ Barry Glick, “Institutionalization and Treatment,” in *The Handbook of Juvenile Delinquency and Juvenile Justice*, ed. Marvin D. Krohn and Jodi Lane (Chichester, West Sussex, UK: Wiley Blackwell, 2015).

⁴⁷ Sarah Alice Brown, “Trends in Juvenile Justice State Legislation 2011-2015,” https://www.ncsl.org/documents/cj/Juvenile_Justice_Trends.pdf (accessed January 11, 2021).

⁴⁸ Barry Glick, “Institutionalization and Treatment,” in *The Handbook of Juvenile Delinquency and Juvenile Justice*, ed. Marvin D. Krohn and Jodi Lane (Chichester, West Sussex, UK: Wiley Blackwell, 2015).

countries, there are a whole range of choices in disposing cases through diversion. The interesting thing is these are no specific juvenile justice systems or specialized juvenile courts rather the onus is on the discretion of prosecutors and courts to apply diversionary measures like for instance, mediation, which has gained particular importance in Norway and Finland. There is also a practice of withdrawing the charges against the youth delinquent by stipulating specific conditions, called the youth contracts.⁴⁹

Viewed in that context, the law in Pakistan is quite modern in nature in terms of the role expected from the institutions like police and probation, and from the civil society or the community. The community, for instance, comes to play its role through several institutions established by the law. Firstly, the juvenile offender can be entrusted in the custody of a suitable person. This suitable person is the guardian as well as a trust, association, or society, duly recognized by the relevant law, whose objective is welfare and protection of children. Through this provision, the law has essentially put the civil society at par with the legal guardians of the juvenile. This provision is especially important in the context of Pakistan where at times the family of the JO, in a state of acute stigmatization and social disapproval, may tend to disown him/her, and therefore to provide an alternative, the law has relied on the civils society at large.

Juvenile Justice Committee has three official members and one member is from the bar, the community. This Committee is responsible for disposing the case of the JO through use of a technique called, 'Diversion'. The use is quite flexible and could be utilized at any stage of the judicial process and the JJC, acting upon referral from the police, the court, or the prosecution, will be deciding the case within one month from the referral. Diversion will involve fine, reprimand, apology, restitution of property, placement in the JRC. The law, however, in the interest of justice, considers it necessary to seek free consent of the victim party and/or the public prosecutor before allowing diversion from the juvenile court to the JJC. The Committee appears to be a basic instrument of organized community justice system and its functions are quite broad in nature and is therefore much more than a mere dispute resolution mechanism. The JJC is expected to follow up and make inspections on the juveniles housed in observation homes during the trial proceedings and in the JRCs after being sentenced or in the post- trial period and give directions for the welfare and social reintegration of the children housed there. The type of institutions envisaged to act as the JRCs are

⁴⁹ Frieder Dünkel, "Diversion: A Meaningful and Successful Alternative to Punishment in European Juvenile Justice Systems," in *Reforming Juvenile Justice*, ed. J. Junger-Tas and Dünkel Frieder (New York: Springer, 2011).

primarily the government established institutions like juvenile training institutions, borstal institutions.

Section IV

4. Gap Analysis

Juvenile justice system is an attempt to provide equitable treatment to the children offending the law and causing harm to the members of society and the State. The UN Committee on the Rights of Child, in 2016, while observing the compliance of Pakistan to the CRC, deplored the “worsening situation of juvenile justice” and pointed out insufficient implementation of the JJSO, lack of mechanisms and obligation to investigate the person’s age in the absence of a birth certificate, the detention of children together with adults, leading to the abuse of children by other prisoners and prison staff.⁵⁰

The country, on an overall basis also, continues to have low rankings when it comes to children. In 2020, the Kids Rights Index placed Pakistan at 147th position out of 182 countries with Bangladesh and India placed at 112 and 113 respectively.⁵¹ The Global Childhood ranked Pakistan in 2019 at 149 out of 176 countries having score of 626/1000. Turkey, Malaysia, India, and Bangladesh were ranked at 66, 71, 113, 127 with scores of 904, 890, 769 and 728 respectively.⁵² The situation is therefore far from ideal. The enactment of JJSA, 2018 is a step in the right direction. However, it is yet to be implemented in letter and spirit. The child courts established in parts of country, albeit in small number, are not primarily meant for the juvenile offenders but for the children at risk.

Juvenile courts have not been established to fulfil the requirements of law in spirit. Except for the notification of a few juvenile justice committees in KPK and Sindh, the same have not been established in the length and breadth of Pakistan.⁵³ In KPK, seven

⁵⁰ UN Committee on the Rights of Child, “Concluding Observations on the Fifth Periodic Report of Pakistan,” 2016, <http://www.mohr.gov.pk/>, (accessed 26.12.20).

⁵¹ Kids Rights Foundation, “The Kids Rights Index 2020 Report,” <https://kidsrights.org/research/kidsrights-index/>, (accessed 15.12.20).

⁵² Save the Children, “Global Childhood Report 2019”, https://resourcecentre.savethechildren.net/node/15264/pdf/global_childhood_report_2019_english.pdf (accessed 15.12.20).

⁵³ Sarmad Ali, “Juvenile justice system of Pakistan”, *Daily Times*, 9.9.20, <https://dailytimes.com.pk/664341/juvenile-justice-system-of-pakistan/> (accessed 10.1.21).

JJCs have been notified but only one remains functional in Peshawar.⁵⁴ Practically the provincial High Courts have simply vested powers of dealing with juvenile cases to district and sessions judges.⁵⁵ There is just talk of appointing separate judges while the work on separate jails for juvenile remains underway.⁵⁶

The five pillars of the criminal system: police, prosecution, probation, judiciary, and the prison all four have their own statements of problems, related with human, financial, logistic and infrastructure related challenges and these institutions continue to point out to the stakeholders about this quite visible disconnect between legislation and budget. The Police Reforms Committee in its report, while appraising the latest legislation on women, juveniles and witness protection, discovered to its dismay that the “constitutional relationship between the lawmaking and budget making is missing. Excessive legislation was introduced without allocating resources for implementation. Resultantly, there are more new laws with no resources, hence eroding the trust of citizens on the fundamental rights and the constitutional dispensation.”⁵⁷

Additionally, there is also a persistent dilemma in the system i.e., the need to balance out between the juvenile offender and his /her victim who may also be a juvenile. Viewed from this angle, the Police, being the gate-keeper, is genuinely concerned with seriousness of the crime and not with the age of the offender.

Research has pointed out that while police at officers’ level have comparatively high level of knowledge about different laws including JJSO-2000, the lower police officials have less knowledge about the practicing laws at police station level. This is in sharp contrast to the high expectations that the law has developed from the police at the police station level. One of the critical duties assigned to the police in the JJSO is the determination of age of the accused. In the JJSO, this duty was with the trial court. It means that the law now trusts the police to do this job. The SCP has also held that, “the Police are to determine the juvenility of the accused and thereafter the case is put up before the Juvenile Court for trial.”⁵⁸

⁵⁴ Bureau report, “Child Courts in KP Disposing of Cases in Short Span: Official,” *The News International*, 31.7.20, <https://www.thenews.com.pk/print/694671-child-courts-in-kp-disposing-of-cases-in-short-span-official.ial> (accessed January 10, 2021).

⁵⁵ Justice Project Pakistan, “Comments on Pakistan’s Replies to the List of Issues in Relation to Its Fifth Periodic Report to the Committee on the Rights of the Child,” 2016.

⁵⁶ Wadood Jan, “KP Cabinet approves Juvenile courts for effective juvenile justice system”, *The Frontier Post*, 24.1.20, <https://thefrontierpost.com/kp-cabinet-approves-juvenile-courts-for-effective-juvenile-justice-system/> (accessed 10.1.21).

⁵⁷ Law and justice commission of Pakistan, ‘Police Reforms, way forward’, 2019: <http://ljcp.gov.pk/nljcp/assets/dist/Publication/b1896-title-brochure-final-14-01-2019-pdf> (accessed 15.1.2021).

⁵⁸ “Supreme Court of Pakistan, Criminal Petition No.251-L of 2020,” <https://gdpakistan.org/wp-content/uploads/2020/09/Age-Determination-Protocol.pdf> (accessed December 12, 2020).

However, there are inconsistent practices in how the evidence about the age of the person, perceived to be a juvenile, is handled at the investigation and/or at the trial stage. Let us assume that the police want to fulfil the requirements of law, in that case, there are resource issues at the police station level like lack of exclusive vehicles and dedicated remand homes for the juveniles. Similarly, at the trial stage there are inconsistent practices and sometimes the opinion of the medical board is rejected in favour of the documentary evidence while in some other cases medical opinion was accepted even though contradictory documentary evidence was presented.⁵⁹

Additionally, accusations of torture by the police are quite serious and despite all reforms brought into the system, these are not going away despite Pakistan having ratified the UNCAT in 2010. Consider this research which analyzed 1,867 medico-legal certificates for the period 2006-2012 and observed that 1,424 showed signs of police brutality or torture. Of these 1,424 victims, 58 individuals, or 4%, were juveniles. The dominant methods police used to abuse juveniles was severe beating like banging the victim, burning, dragging, kicking, punching, or slapping, etc.⁶⁰

Similarly, concerns about police corruption, misuse of authority, illegal detentions, torture, and faulty investigations are no secret.⁶¹ Another survey conducted in juvenile prisons of Punjab in 2015 reported varying degrees of torture by over 95% of the children.⁶² Furthermore, the mindset problem forces the police to believe that harsher punishments and stricter laws will deter people from committing crimes and hence they apply the same methods to adult as well as young offenders.⁶³

Despite the availability of JJSO 2000 from 2000-2018 and from 2018 onwards the availability of the JJSO, 2018, when we have a look at the ground realities, we come to understand that the rehabilitation, reintegration, and psychological counselling are completely ignored. Sections 295-296 of Pakistan Prison Rules, 1978 acknowledges that juveniles are receiving treatment in prison. This treatment is through sustained work, physical, mental, and moral training with a view to teach them self-discipline and to create in them a 'high standard of social behaviour'. They will receive careful

⁵⁹ Justice Project Pakistan, "Comments on Pakistan's Replies to the List of Issues in Relation to Its Fifth Periodic Report to the Committee on the Rights of the Child", https://tbinternet.ohchr.org/Treaties/CRC/Shared_Documents/PAK/INT_CRC_NGO_PAK_23777_E.pdf (Accessed 26.12.20).

⁶⁰ "Abuse of Juveniles by the Faisalabad Police - Yale Law School," https://law.yale.edu/sites/default/files/documents/pdf/JPP_Abuse_of_Juveniles_Follow_Up_Report_053014.pdf (accessed January 11, 2021).

⁶¹ Tariq Khosa, "Policing Principles," *Dawn*, 27.9.2020, <https://www.dawn.com/news/1581867> (accessed January 11, 2021).

⁶² Child Rights Movement, "Implementing Child Rights In Pakistan : Alternative Report for UN CRC," 2015.

⁶³ Abdul Khaliq Shaikh, "Protecting Young Offenders," *Dawn*, <https://www.dawn.com/news/841414/protecting-young-offenders> (accessed December 30, 2020).

individual attention. Focus is also on keeping young prisoners ‘out of sight of adult as far as possible’.⁶⁴ Practically, the juveniles are brought in the prison van along with adults.⁶⁵ The POs or other ‘responsible persons’ as provided in the law, have no arrangements to keep a child under their supervision during the investigation or the trial. Throughout the country, not a single rehabilitation centre or even a Borstal exists that could be considered an exemplary one and that has a defined plan and a curriculum for the rehabilitation of the juvenile offender. Those that exist are for all practical purposes, jails and are called as such.

5. Conclusion

What is the sine qua non or raison d’être for having a juvenile justice system? Why invest on the offender? A crime is a crime. Does it matter to the aggrieved whether the theft was by a 14-year boy or by a 50-year man? These are on-going debates across the world. However, the conclusion always is that the state and the society have hope for and from the child.

Pakistan has a dedicated legislation that paves for a specialized juvenile justice system in the country. The juveniles have not been promised a new law, but a new system in substitution and replacement to the prevalent criminal justice system. The language used, the objectives highlighted, the defined role of the institutions, the visible focus on the offender, the Social Information Report side by the side with the First Information Report, the minute details offered and in fact the overall impression that we get is that punishment of the juvenile offender is the last item on the agenda and is being considered as a matter of last resort. What the law intends to do with the offender is to facilitate his/her way back to the society but this time as protector of value system.

However, the real issue is the implementation of the law and the fulfilment of duties assigned to the individual and institutional players like the police, the probation, the court, the prison, and the society at large. There are challenges and gaps here. There are reasons for these gaps as well that need to be addressed on war-footing basis to remove the hurdles that stand in the way of justice. We need to consider the seriousness of the issue in total disregard to the actual numbers of juvenile offenders in the system. There is no cost-benefit analysis here.

⁶⁴ Pakistan Prison Rules 1978, available on <https://prisons.punjab.gov.pk/>, (accessed 12.1.2021).

⁶⁵ Masmoom Shahwani, “Innocence Handcuffed: Juvenile justice system in Balochistan”, *The Balochistan Point*, 17.3.2017, <http://thebalochistanpoint.com/innocence-handcuffed-juvenile-justice-system-in-balochistan/>(accessed 1.1.2021).

Numbers are no criteria as each child matters, he/she should. Issues that need immediate attention of the policy makers relate to the traditional mind-set of those responsible and involved in the dispensation of justice, directly or indirectly; disconnect between legislation and the budgeting regimes, lack of clarity in determining the age of the alleged offender, lack of facilities like observation homes and rehabilitation centres, aversion to the diversion method, non-establishment of juvenile justice committees, using the existing facilities to house the juveniles while at the investigation stage and on top of all, the non-existent juvenile courts, the dedicated ones to exclusively deal with the juvenile offenders in line with the intents and purposes of the law.

Once convicted, the system forgets about the juvenile offender and allows him/her to languish in the regular jails having no plan for his reintegration into the society as a responsible citizen.

6. Recommendations

Firstly, and it would be best if this is done by a Parliamentary Committee, is to have the stakeholders come together and develop a vision for the juvenile justice system. If the country needs it and surely it does, this should be followed up with an implementation plan, with timelines and milestones. The law has been enacted by the Parliament with quite noble intentions and the Committee therefore should see to it that it gets implemented in letter and spirit.

Secondly, the direct linkage between the implementation of the JJS and the budgetary and human resource must be understood, appreciated, acknowledged, and addressed on immediate basis. The resource pool availability to the critical government agencies may be ensured in the first place and to address and map overall condition of children in the country, it is suggested that juvenile budgeting component, on the lines of gender budgeting, may be made part of the existing budgetary regimes at the three levels of the government.

Thirdly, the diversion method introduced in the JJSA need to be implemented immediately without any further delay. This does not require any additional resources rather will lessen the burden on the judiciary. The composition of the JJC responsible for diversion has been provided in the law and therefore these need to be notified.

Fourthly, in partnership with the NGOs and civil society's organizations, the available facilities of government departments be reviewed and a plan for their refurbishment be

chalked out to turn these into dedicated observation homes so that the practice of putting the juveniles in police lock-ups is discontinued. Provincial governments should procure specific, custom-designed vehicles for transportation of the juveniles. A specialized police unit in the medium-to-long term may also be given serious consideration and it should not be a uniformed police cadre. The unit should be assisted by psychiatrists and psychologists.

Fifthly, there is a need to reorient our thinking about borstal as these are just prison facilities in all intents and purposes and are governed by prison rules. These do not have and under the current scheme of things cannot chalk out a plan for the rehabilitation and reintegration of the inmates into the society.

There is a need to urgently establish the brand-new rehabilitation centres outside the prison rules. This would be best done under a public-private partnership mode. The facilities available with the NGOs may be jointly reviewed by the parliamentary committee and certified for the purposes of rehabilitation as is provided for in the law.

The existing rehabilitation facilities should be regularly monitored and researchers should be encouraged to focus on this area of research endeavors to build up literature on the subject that could be used for evidence-based decision making in addressing the juvenile crimes in the society.

Addressing poverty, illiteracy, unemployment and conducive to delinquency neighborhoods, the street children, will have to be prioritized or the problems will continue to grow. It is suggested that the BISP may be involved in this critical area to provide support to the family of the juvenile.

Six, side by side with focus on the FIR, at least same emphasis should be placed on the SIR. This objective could not be accomplished unless we have the requisite probation officers available and are appropriately trained to come up to the task.

Seven, a real time monitoring of prisoners through an integrated PMIS may be ensured to facilitate evidence-based decision making regarding each individual juvenile offender. Eventually, this could be made part of an overall database covering the children of the country.

Eight, birth registration on timely basis is the responsibility of the state. Penal clauses may be introduced for the health facilities and they may be made duty bound to inform NADRA helpline about the birth event and the latter should proactively get it done.

Nine, instead of designating the existing courts as juvenile courts, dedicated juvenile courts should be established in accordance with the intention of the law and the location of the juvenile courts should be away from the regular criminal premises and the setting inside the court should have no uniformed personnel.

Last but not the least, the state while taking care of the juvenile offender, should not lose sight of the victim of the juvenile offender. Diversion, probation, mediation, counselling, or community service, should not be used to benefit the offender at the cost of the victim but the players should look for a win-win situation and aim at reconciliation between the parties and appropriate compensation to the aggrieved by the state/juvenile offender.

Bibliography

Primary Sources

Amjad, Athar Ismail, PSP.

Cheema, Sajjad. Executive Director. SPARC.

Imran, Section Officer, Judicial, Home Department, Government of the Punjab.

Kamran, Superintendent, BI&JJ, Faisalabad.

Khan, Rafiq. Chief, Child Protection. UNICEF Ghana Country Office.

Khan, Salman Ali, PSP.

Mahmood, Arshad, Director Probation and Parole Services.

Raza Ali, BI&JJ, Bahawalpur.

Secondary Sources

“Abuse of Juveniles by the Faisalabad Police - Yale Law School.”
https://law.yale.edu/sites/default/files/documents/pdf/JPP_Abuse_of_Juveniles_Follow_Up_Report_053014.pdf(accessed January 15, 2021).

“Handbook on Restorative Justice Programmes - United Nations.” Accessed January 11, 2021.
<https://www.un.org/ruleoflaw/files/Handbook%20on%20Restorative%20Justice%20Programmes.pdf>(accessed January 15, 2021).

“Supreme Court of Pakistan, Criminal Petition No.251-L of 2020.”
<https://gdpakistan.org/wp-content/uploads/2020/09/Age-Determination-Protocol.pdf>
(accessed January 15, 2021).

A, Shamim, Batoo Z, Zafar M I, and Hashmi N. “A Study of Juvenile Crimes in Borstal Jail, Faisalabad”.
<http://www.thejaps.org.pk/docs/19-2-%202009/09-930.pdf> (accessed January 15, 2021).

Agnew, Robert. "General Strain Theory: Current Status and Directions for Further Research." *American Psychological Association*. <https://psycnet.apa.org/record/2006-22890-003>(accessed January 15, 2021).

Aynsley-Green, A., T.J. Cole, H. Crawley, N. Lessof, L.R. Boag, and R.M.M. Wallace. "Medical, Statistical, Ethical and Human Rights Considerations in the Assessment of Age in Children and Young People Subject to Immigration Control." *OUP Academic*. Oxford University Press, May 14, 2012. <https://academic.oup.com/bmb/article/102/1/17/312555>(accessed January 7, 2021).

Bilchik, Shay. "Redefining the Footprint of Juvenile Justice in America." Essay. In *Justice for Kids: Keeping Kids out of the Juvenile Justice System*, edited by Nancy E. Dowd. New York: New York University Press, 2016.

Bishop, Donna M, Charles E. Frazier, and Lonn Kaduce. "Get-Tough Juvenile Justice Reforms: The Florida Experience." <https://journals.sagepub.com/doi/abs/10.1177/000271629956400110>(accessed January 15, 2021).

Brown, Sarah Alice. "Trends in Juvenile Justice State Legislation 2011-2015." https://www.ncsl.org/documents/cj/Juvenile_Justice_Trends.pdf (accessed January 15, 2021).

Clarke, David C. "Crime." *Encyclopedia Britannica*, November 12, 2020. <https://www.britannica.com/topic/crime-law>(accessed January 15, 2021).

Dong, Bedi. "Juvenile Delinquency and Juvenile Justice in China." Essay. In *The Handbook of Juvenile Delinquency and Juvenile Justice*, edited by Marvin D. Krohn and Jodi Lane. Chichester, West Sussex, UK: Wiley Blackwell, 2015.

Dünkel, Frieder. "Diversion: A Meaningful and Successful Alternative to Punishment in European Juvenile Justice Systems." Essay. In *Reforming Juvenile Justice*, edited by J. Junger-Tas and Dünkel Frieder. New York: Springer, 2011.

Feld, Barry C. "The Transformation of the Juvenile Court" https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1297&context=faculty_articles(accessed January 15, 2021).

Ferdoos, Amber, and Amama Ashiq. "Impact of Urbanization on Juvenile Delinquency: A Study of Muzaffarbad Jail." *International Journal of Criminology and Sociological Theory*.

<https://ijcst.journals.yorku.ca/index.php/ijcst/article/view/40241/36349>(accessed January 11, 2021).

Glick, Barry. "Institutionalization and Treatment." Essay. In *The Handbook of Juvenile Delinquency and Juvenile Justice*, edited by Marvin D. Krohn and Jodi Lane. Chichester, West Sussex, UK: Wiley Blackwell, 2015.

Iqbal, Nasir. "Judiciary Body to Take up Trial Pendency Issue." *DAWN.COM*. Last modified December 23, 2020. <https://www.dawn.com/news/1597338/judiciary-body-to-take-up-trial-pendency-issue>(accessed January 15, 2021).

Junger-Tas, J., and Dünkel Frieder. *Reforming Juvenile Justice*. New York: Springer, 2011.

Khosa, Tariq. "Policing Principles." *Dawn*. Last modified September 27, 2020. <https://www.dawn.com/news/1581867>(accessed January 15, 2021).

Kkienerm. *Crime Prevention & Criminal Justice Module 13 Key Issues: Topic Four - Justice for Children in Conflict with the Law*. <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-13/key-issues/4--justice-for-children-in-conflict-with-the-law.html>(accessed January 15, 2021).

Kupersmidt, Janis B, John D Coie, and Kenneth A Dodge. "The Role of Poor Peer Relationships in the Development of Disorder." <https://psycnet.apa.org/record/1990-97775-009>(accessed January 15, 2021).

Landenberger, Nana A., and Mark W. Lipsey. "The Positive Effects of Cognitive–Behavioral Programs for Offenders: A Meta-Analysis of Factors Associated with Effective Treatment." *Journal of Experimental Criminology* 1, no. 4 (2005): 451–476.

Lipsey, Mark W. "The Primary Factors that Characterize Effective Interventions with Juvenile Offenders: A Meta-Analytic Overview." *Victims & Offenders* 4, no. 2 (2009): 124–147.

Lochman, John E., Louise B. Lampron, and David L. Rabiner. "Format Differences and Salience Effects in the Social Problem-Solving Assessment of Aggressive and

Nonaggressive Boys.” *Journal of Clinical Child Psychology* 18, no. 3 (1989): 230–236. https://www.tandfonline.com/doi/abs/10.1207/s15374424jccp1803_5(accessed January 15, 2021).

Mesko, Gorazd, Milan Pagon, and Bojan Dobovsek. “Some Dilemmas of Contemporary Criminal Justice.” *Policing in Central and Eastern Europe: Dilemmas of Contemporary Criminal Justice*. (2004). <https://www.ncjrs.gov/pdffiles1/nij/Mesko/207974.pdf>(accessed January 15, 2021).

Nisar, Muhammad, Madad Ali, Shakir Ullah, and Sadiq Alam . “Juvenile Delinquency: The Influence of Family, Peer and Economic Factors on Juvenile Delinquents.”. <https://docplayer.net/12352637-Juvenile-delinquency-the-influence-of-family-peer-and-economic-factors-on-juvenile-delinquents.html>(accessed January 15, 2021).

Prest, Wilfrid, ed. *Commentaries on the Laws of England*. Oxford: Oxford University Press, 2016.

Report, Bureau. “Child Courts in KP Disposing of Cases in Short Span: Official.” The News International, July 31, 2020. <https://www.thenews.com.pk/print/694671-child-courts-in-kp-disposing-of-cases-in-short-span-official>(accessed January 10, 2021).

Ricardo, Paulo, Diniz Filho, and Giza Lopes. “Youth Violence in Brazil: Law, Prevalence, and Promising Initiatives.” Essay. In *The Handbook of Juvenile Delinquency and Juvenile Justice*, edited by Marvin D. Krohn and Jodi Lane. Chichester, West Sussex, UK: Wiley Blackwell, 2015.

Shaikh, Abdul Khaliq. “Protecting Young Offenders.” *Dawn*. Last modified April 19, 2010. Accessed November 30, 2020. <https://www.dawn.com/news/841414/protecting-young-offenders> (accessed January 10, 2021).

Torbet, Patricia McFall. “Juvenile Probation: The Workhorse of the Juvenile Justice.” <https://www.ncjrs.gov/pdffiles/workhors.pdf>(accessed January 5, 2021).

Weijers, Ido, and Thomas Grisso. “Criminal Responsibility of Adolescents: Youth as Junior Citizenship.” Essay. In *Reforming Juvenile Justice*, edited by J. Junger-Tas and Dünkel Frieder. New York: Springer, 2011.