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Analysis of Juvenile Laws and their Protection of Juvenile Offenders in Pakistan

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Abstract: This research article aims to analyze the current laws and regulations in Pakistan that pertain to juvenile offenders and their protection. The article will examine international legislation on the rights of children, including the Convention on the Rights of the Child 1989, Minimum Guidelines for Youthful Justice 1980, Article 77 of Additional Protocol-II 1977, and the Child Rights Declaration 1924. The article will also examine the national legislation in Pakistan, including the Penal Code of 1860, the Reformatory Schools Act of 1897, the Smoking Ordinance, the Probation Ordinance of 1960, and the Child Marriage Restraint Act of 1929. The article will further explore the scope of the Probation Ordinance 1960 and the constitutional provisions relating to children. The research will provide an in-depth analysis of the current laws and regulations in Pakistan that protect the rights of juvenile offenders and assess the extent to which these laws are being implemented effectively.

Introduction

The juvenile justice systems are prepared, and laws are drafted in order to provide protection for the section of society which is weak and fragile and vulnerable to the vices of the society itself. Thus the offenders who are underage and are not being protected by the general criminal laws of the day are being dealt with under the system of Juvenile Justice. It is being faced with several issues, such as the lack of laws, training of personnel, abusive trials, and the death ratio of juveniles. Thus, the same needs to be rectified and amended in order to provide better protection for the vulnerable section of society. The chapter analysis and assesses the detail of

the legislation promulgated at the international level as well as in the country.

The juveniles, when there was no separate legal arrangement for the preservation of their rights when they were posed as offenders, would be dealt with under the mainstream legal system of ancient times. Since the nations have paved their way towards the enforcement of their rights, children have received special attention in this regard. It was the start of the 20th century until which the minors would be dealt with, tried and jailed along with adults. This era came to an end when the state of Chicago saw the first juvenile court got in place for the first time back

in 1899. The women of Hull House had been advocating the deteriorated situation of children and thereby made getting compulsory education, and had been pushing towards the reformation of the system. The reforms in the system are credited to Julia and Lucy Flower. It was in late 1899 when the Illinois legislature passed the bill passed on the flower model of the juvenile justice system. The law introduced the formation of a system where the environment would be too relaxed, and it did not provide for the formal problems faced by the mainstream legal systems. The probation officers would plead that the rights of children were sacred and guaranteed to the judge. It was, nevertheless, the complete system as it lacked the right to counsel nor the right to trial through a jury. The system was informal; thus, hearsay was allowed (Panzai, S., Panzai, H., Wassan, A. A., & Saqib, S. E. [2019](#)).

The previous legislation has been enacted and impacted by Islamic law. Islamic law has time and again stressed kindness with children and orphans, which shows the concern of the religion. Likewise, it has stressed the protection and welfare of minors. The level of liability of minors for the commission of crimes has been largely relaxed merely on the basis of age. Three categories of people have been exempted from the operation of law, which is: the majority having not been acquired by the children, those who are asleep, and lunatic until he is sane. Thus, the initial days of Islam stressed that children be protected at all costs. The same goes for international laws as the same have been stressing the guaranteeing and preservation of the rights of children at all times, be that the conflicts or peace (Shah, S. A., Balasingam, U., Salman, N. W., Dhanapal, S., & Ansari, K. M. [2020](#)).

International Legislation on the Rights of Child

The international communities have been striving to ensure the protection of children in achieving their rights as being a vulnerable

section of society since it has united on different forums. The United Nations have adopted conventions and guidelines in addition to protocols for the purpose. All the countries have been part of the problem-solving treks. The legislation has mainly been impacted in accordance with the charter of the United Nations, which advocates the inalienable human rights of all human beings and ensures the equality of their rights. The same has been termed as the basis of freedom, peace and justice in the world.

Convention on the Rights of Child 1989

Before the coming into being of the convention, the minors who had not attained majority were not sufficiently provided with many securities in the form of rights. The multinational convention is a treaty which sets out the rights of children ranging from political, social, economic, as well cultural rights. A child has been defined by the convention as any human being of the age of eighteen years. Or when he is declared major by national legislation. The convention has burdened the states as well as individuals with the protection and care of children. The convention has thus been serving the interests of the children wherever they may be for the redressal of their rights (Burman, [1996](#)).

On November 12, 1990, the convention was ratified by Pakistan, with the proviso that its provisions should be interpreted in accordance with Islamic law and morals. Pakistan made the decision to end its reservation in 1997.

Pakistan ratified the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1996. under the banner of commercial sexual exploitation, the world congress adopted the declaration ad agenda for action in 1996. The same was further provided by the Yokohama Global Commitment back in the year 2001. Pakistan was party to the abovementioned conventions in addition to the convention on CRC 1989. Pakistan regrettably has

not yet ratified the Convention against Torture and other Torture and Cruel, Inhuman or Degrading Treatment or Punishment (CAT). In addition, be asserted here that Pakistan has not been a party to the Convention against Torture (Akimzhanova, M., Ilyassova, G., Nukusheva, A., & Rustembekova, D. [2018](#)).

Minimum Guidelines for Youthful Justice 1980

The Beijing Rules have been adopted by the United Nations in order to administer the juveniles involved in litigation. These rules are known as the Beijing Rules. The rules were aimed at the implementation of child rights as detailed in the rules on an annual basis. Research and database have been recommended for the constitution and development of research on the implementation of the rules. It has been recommended that the rules are widely accepted and spread in order to best serve the purpose, including the identification of info in the field of juvenile justice.

Article 77 of Additional Protocol-II 1977

The additional protocol II was the first international convention which provided protection exclusively affected by non-international armed conflicts, both civil and criminal. Article 4 of the protocol deals with the protection of juveniles. Clause 3 of the article under fundamental guarantees provides that children shall be the epicentre of protection in armed conflicts. Their education, social protection, and consent of parents in certain situations have been made incumbent upon the parties to the conflicts.

Child Rights Declaration 1924

Also known as Declaration de Geneva, the declaration on child rights emphasizes that all women and men owe rights to children because of their existence. The children need to be provided with the best care beyond any discrimination on the basis of race and culture. The resources shall be made available to children

at all costs. Hungry children must be fed and helped when they are backward, and they need to be placed in a position where they would be provided shelter and provided livelihood. The declaration thus serves as a guide for the countries and individuals as a road map in the protection of children wherever they may be and for countries to legislate on the subject as a priority (Jabeen, [2016](#)).

National Legislation in Pakistan

Till the overthrow led by Musharaf, which toppled the elected Government of Nawaz Sharif, the reign has been alternatively controlled by the people's party and Muslim League. The coup suspended the constitution as well as the legislatures. The country was governed through some provisional constitutional order as the constitution was not in force after the coup. "The Fundamental Rights given by Chapter I of Part II of the Constitution, not in contradiction with the Proclamation of Emergency or any Order made thereunder from time to time, will continue to be in force," declares Article 4(3) of the PCO No.1, 1999. After October 1999, the 1973 Constitution's core rights remained in effect, including the prohibitions on torture, hazardous underage labour, and the principle of non-discrimination. According to Article 5, clause 1 of the constitutional order (as modified later), total laws and regulations, except for the law of the land, were in effect unless they were changed or abolished by the Martial law administrator. They are still in effect up until they are changed, amended, or repealed by the Chief Executive. The family laws, Cr.PC, as well as the substantive penal laws used to protect the rights of children, which include the bulk of regulations pertaining to the rights of the child, are all covered by this clause. All courts that existed previous to the coup are guaranteed to continue to exist under Article 2(2) of PCO No. 1 of 1999. The administration has not given human rights a high priority throughout the three years of military rule. The setting of the regional crisis and

internal disputes with rival political and religious organisations have taken centre stage. The political agenda appears to have been more focused on passing more restrictive legislation against terrorism or corruption than on advancing human rights. The same was followed all over the rule of Musharraf except for the legislation on the rights of juveniles (Mehnaz, 2018).

Juvenile Justice System Ordinance (JJSO) 2000

The Ordinance, which Pakistan adopted in 2000, aims to safeguard juveniles involving the penal provisions as well as facilitating eventual restoration. It is true about children that they are vulnerable, and that is why they need to be provided with the attention, care, and guarantee of their rights more than the grownups. . It is only reasonable to predict that the rate of juvenile offences will be high in Pakistan, where poverty and hardship are the main contributors to the rising crime rate.

The criminal justice administration system in Pakistan has not yet been able to eradicate dishonesty in reporting and registering crimes (including false charges to settle personal grudges through false First Information Reports; or influencing, pressuring, or coercing victims/survivors of crimes, whether adults or children); or in influencing, pressuring, or coercing witnesses to crimes. Due to the scarcity of pro bono legal help, which is more common in major metropolitan centres, the cost of hiring a renowned, knowledgeable child rights attorney has a significant impact on how a case involving a juvenile offender will turn out. The use of powerful or familial ties and nepotism is still common. Children are still frequently used as weak, voiceless pawns in disputes or as bargaining chips by adults.

Since the inception of the 21st century, nationally, the legal framework mainly consisted of the ordinance of 2002. In order to better provide for their protection as well as the

preservation of their vulnerability, the ordinance needed to be revised and amended and to make adaptations to the then prevalent situation. In all phases of the juvenile offenders' trial procedures, the JJSO established the standards to be adhered to. The goal was the criminals' rehabilitation and a successful transition back into society. In order to prevent child offenders from experiencing ongoing harm or living among the grownups criminals in mainstream jails, it can be downgraded as the children may be inhabited with other criminals and thus they may become more dangerous towards society thus, thereby encouraging the vicious attitude in their personalities and could be subjected to hardened criminality, national laws and international conventions are in place.

Unfortunately, successive administrations failed to address the suffering of young detainees, which made the JJSO less effective. The continued treatment of juvenile offenders as seasoned criminals diverts attention from rehabilitation and places it on punishment. Conflicting laws made it more difficult to execute the legislation; according to Article 14 of the JJSO, the JJSO is "in addition to and not in derogation of any other law for the time being in operation," hence some of these laws could not be overturned. The handling of young offenders is governed by rules that are frequently inconsistent, which results in a disregard for the best interests of the kid. For instance, the JJSO(2000) forbade the physical abuse of children who were in care. Borstal Act 1926, promulgated by the legislature of Punjab, however, allows the use of physical punishment against male youth offenders housed in a Borstal Institution. The Ordinance of 2000 also barred the use of the death sentence for young criminals, both in sentencing and execution. About six underage criminals were subjected to death execution later when a virtual moratorium was raised in the year 2014 when sufficient proof of their being underage was available (Sadrudin, M. M. 2011).

The PPC 1860

The minimum age of criminal liability was set at ten years prior to the amendment in the Pakistan Penal Code, i.e. section 82. According to Section 83, as modified in 2016, a child between the ages of 10 and 14 could only conduct an offence when they have reached the necessary maturity to comprehend and assess the nature and ramifications of their behavior. Sections 372 and 373 of the same Code forbid dealing in the sale and purchase of adolescents for prostitution and carry fines and prison terms of ten years. It needs to be asserted here that the Zina Ordinance has removed the provisions later through Section 19, but the second schedule to CrPC still includes the aforementioned repealed sections of the Penal Code as consequential amendments.) A sessions court can hear an appeal from a sessions court order to the Federal Sharia Court for the offences listed in these sections. Aside from this, kidnapping or enslaving children less than 10 is indictable by life in prison or a death sentence by section 364-A of that Code.

The Reformatory Schools Act of 1897

On March 11, 1897, the Reformatory Schools Act was officially incorporated. This Act was created to update the legislation governing reformatory schools and to include any necessary safeguards for young offenders. The establishment and closure of the Reformatory Schools are decisions that the State Government makes. These Reformatory Schools must be established in a location deemed appropriate by the State Government. The State Legislature shall require anybody who is willing to establish a reformatory school to do so in accordance with the requirements of this Act and all other applicable laws. The reformatory schools that were established should always adhere to the standards set forth in this Act's provisions for such schools. The facilities required for separating the prisoners at dusk must be provided by these schools. The Youth Offenders will receive all the essential necessities from

these Schools, including hygienic facilities, food and clothes, medical facilities, water and bed facilities, and other amenities. Additionally, these schools must offer the industrial training required by this Act's stipulations. These Reformatory Schools must be thoroughly examined by the Inspector General to confirm their fitness to carry out their duties under this Act before the Juvenile Offenders are sent off to such Schools in order for them to operate in accordance with this Act.

The Inspector General shall frequently and as needed conduct investigations of these Schools. As and when necessary, in accordance with the terms of this Act, the IG then submits the findings of a Correctional Facility Institute to the provincial Government. The court will use its judicial authority to order juvenile criminals having subjected to imprisonment under the Penal Code to reform school schools with the goal of organising the attitude they expect better for the community. The provincial Governments make rules for the purpose which they are bound to follow at all costs. According to the provisions of the law, this sort of judgement needs to be made by the criminal courts, from Magistrate to the High court and sessions judge. The Youthful Offender who is found guilty of being sent to Reform school School must be sent there by general or Special Direction as per the provisions of the law. However, this may depend on the schools' capacity for receiving new students. The juvenile criminal will be kept in the jails made for juveniles as the same has been deemed fit by the provincial Government according to circumstances and which could be made available. At the age of 18, a juvenile delinquent may be classified as a juvenile criminal and led straight to a reform school. This law is very helpful to young offenders. This Act has since been changed as and when it was judged essential, and various further legislation or laws have been created in order to protect young offenders in a reformatory way (Tarar, I. A., Khan Rana, A. M., & Abbas, F. [2021](#)).

Smoking Ordinance

The Ordinance, as promulgated in west Pakistan, was legislated in order to prohibit the consumption of tobacco by juveniles. The law was aimed at the prohibition of smoking by juveniles all over the west Pakistan province, except some areas known as special areas being excluded from the operation of the law. Section 3 of the ordinance provided punishment for selling tobacco to juveniles in which the repetition of the offence was increased with increased punishment. In many cases, the licenses of people who violated the law could also be cancelled. The seizure of the smoked tobacco was also allowed to a teacher or proctor in cases of smoking in schools etc., and be destroyed as provided under section 4 of the Ordinance. The Ordinance was later on repealed because it was redundant as the selling of tobacco was already prohibited, and thus it covered the selling to juveniles too. Thus the Ordinance was later repealed through the West "Pakistan Juvenile Smoking Ordinance 1959."

Probation Ordinance 1960

When the subcontinent was ruled by the Britishers, probation was first made law in the year 1923. This first method, which mostly applied to minor offenders, constituted essentially signing over certain first-time criminals short of monitoring by probation officers. Though a type of "probational release" or "parole from longer jail sentences" was adopted in Punjab, developments and expansion to mature criminals were contemplated but not implemented during British control. Finally, Pakistan's first probation statute, the Offenders probation Ordinance 1960, was implemented at the National level under the martial regime of Ayub Khan. The law applied to the entirety of Pakistan and was set to take effect for the Region of West Pakistan on July 1, 1961. The law, which was Pakistan's first of its type, is still in effect.

The 1960 Ordinance, which also applies to minor offenders, offers two different types of

relief to criminals. First, the offender may receive a conditional discharge or, failing that, might be placed on probation. A modest enough warning or a direction to discharge the offender is the basis of the requirement they post a pledge, whether requiring or without any collateral, promising to refrain from committing any crimes and to behave properly for a period of time that does not exceed a year following the date of the order, can both result in a conditional discharge. A person found guilty by a court of an offence punishable with two years of jail time might be subject to such an order even if they had never been convicted before. According to this statute, a judge may also issue probation in specific circumstances (Naveed, S., & Butt, D. K. M. [2020](#)).

Scope of the Ordinance of Probation of Offenders 1960

Instead of imposing a sentence, the court may, for reasons that must be shown in writing, place the offender under a probation officer's supervision for at least a year and an all-out of three years. Yet, men sentenced to crimes under the substantive penal law as per the provisions of chapters 6 and 7, as well as other sections of law *ibid*, as well as females guilty of crimes punishable by death or transportation for life, are not eligible for release on probation in accordance with the ordinance 1960. However, in court, probation is granted if the accused does not provide a bond to the satisfaction of the court and, in the like amount, promises to refrain from committing an offence, maintain public order, and behave properly for the duration of the bond, as well as to appear in court and be awarded punishment as and when required by the court. The court of law should also be convinced that the culprit or one of his sureties, if any, has a permanent address or a normal job only and is being cognizable by the court alone and is within its territory and is likely to remain at the address or work for a term of the bond before it issues a probation order. Age and health are not taken into account by the 1960 Ordinance's

requirements. However, it does not imply that young criminals are not eligible for probation. Simply put, it means that the judge is not required to consider this into consideration when deciding whether to award probation. The lawmakers decided to exclude the category of health for two reasons: first, they felt that cases involving physical or mental illness were hardly appropriate for probation; and second, it was possible that Pakistan's probation administration machinery would not have access to proper and sophisticated medical facilities for some time. However, when a criminal is released from custody, these considerations may be taken into consideration (Hyder, A. A., & Malik, F. A. [2007](#)).

Constitutional provisions relating to children.

Article 11 of the Constitution of the Islamic Republic of Pakistan, 1973, states that a person who has not attained majority, which is eighteen years, cannot be allowed to work in a dangerous place such as mines and factories. The National Children's Employment Act of 1991, which aims to control the working conditions for children under the age of 14 and prohibits their employment in dangerous jobs, is noteworthy in this regard. It adheres to the Constitution's definition. Khyber Pakhtunkhwa and Sindh still have a 14-year-old minimum employment age, although Punjab has increased that limit to 15 years. It goes without saying that the Constitution of Pakistan 1973—which has been authoritatively affirmed several times by higher courts—is the highest law of Pakistan and will supersede the abovementioned law in matters of age. Additionally, it is ordained in section 25A of the constitution that "The state shall offer free and obligatory education to every child of the age of five to 16 years in such way as may be prescribed by legislation." Of course, this Article is included in the Fundamental Rights Chapter and was added to the Constitution by the 18th Amendment. Since Pakistan is a United Nations member, it is important to copy Article 26(1) of the UDHR in its whole here: "Everyone has a right

to education. The fundamental and primary levels of education must be free. Elementary school must be required. The Juvenile justice Ordinance 2000 is pertinent to children's rights in criminal trials. The legislation's declaratory provision/preamble, *inter alia*, identifies the safeguard of minors in felonious proceedings, the methods and process through which they could be introduced in society and ultimately has the aim to reform and restructure juvenile courts. Articles 11, 25, 25A, 35 and 37 clause e of the constitution 1973 specially deal with juveniles and establish their rights under different laws (Fatima, F. 2016[Fatima](#)).

Child Marriage Restraint Act 1929

According to the Act, a man and a female cannot marry unless they are over the age of 18 and 16, respectively. It is important to note also that the Sindh Child Marriages Restraint Act of 2013 stipulates that both parties must be at least 18 years old before being married. But the Senate Standing Committee on Interior rejected a similar proposal by the national govt there Under Child Marriage Restraint (Amendment) Bill 2017. The Marriage Restraint Act, as adopted and promulgated by Sindh, which increased the possible time for marriage to eighteen, was overwhelmingly approved by the Sindh Assembly in 2014. It also turned the action into a criminal offence. A guy who marries a minor after turning 18 might now face a three-year jail sentence. Men who performed a minor marriage might potentially spend up to three years in prison. If they didn't intervene, even the guardians or parents who approved the marriage might face charges. Punjab approved the legislation in the year 2015, which followed the same scheme, amending the Child Marriage Restraint Ordinance of 1971. The legal marriage age was maintained at 16 years old, although the jail sentences and penalties were raised. A bill passed by the legislature of Khyber Pakhtunkhwa could have set the age at 18 had the same been passed back in the day, which could have increased the

marriage age to 18 years, but it was not passed by the legislature in 2016. Yet the province has promulgated the Child welfare and protection Act. The Act of 1929 at the national level still serves as the primary legal framework in Balochistan. In order to raise the legitimate age of consent for girls to marry between the ages of 16 and 18, Senator Sehar Kamran introduced a measure in 2017 to the national legislature. The measure was, however, overturned by a standing committee led by Rehman Malik of the PPP, who said it violated Islamic precepts. The Council of Islamic Ideology then received the bill, which is now waiting there. A nikah can be done at any age. However, the rukhsati can only occur after the age of 18, according to a 2018 announcement by the chairman of the CII.

Juvenile Justice System Act 2018

The JJSA 2018, which strives to mend the situation of youthful lawbreakers emphasizing greater deals on rehabilitation and easy access to governmental authorities, including courts, remained a notable improvement in Pakistani law in 2018. Even then, the system has been deprived with certain limitations and shortcomings despite the progress of the governments. Firstly they existed by weak implementation mechanisms, poor structure, tenacious shortages of human resources and financial funds, and, utmost importantly, the inability and indifference necessary to concentrate on youthful justice issues; the Act of 2018 is further provided with the same has filled the gaps existing in the earlier law as the law provides more guarantees and protection in special for juveniles in certain situations. The key provisions of the Juvenile Justice Act 2018 include determining the child's age, raising the criminal liability age (albeit this is still beyond the guidelines of UNCRC), handling cases through case diversion, creating committees for juveniles called JJC and creating juvenile rehab centres. The Juvenile Justice Act of 2018 offers measures for juvenile offenders'

eventual social integration as well as enhanced and stronger juvenile criminal justice.

Any offender below the age of 18 years has been entitled under the provisions of the law to seek legal aid and be represented at the cost of the Government. This right or the legal option to get support has been given, and the same may be exercised in the span of twenty-four hours after his or her arrest. When such a person is arrested, he needs to be detained for the shortest possible time and then released when the investigations are completed and produced before the court of law. They need to be provided separate shelter other than those occupied by adults who are being held in prison or at police stations or jails. According to the JJSA, a girl child cannot be detained, subjected to an investigation by a male police officer, or placed on probation while being watched over by a male police officer. Only juvenile rehabilitation centres (JRCs) designed specifically for female convicts, such as women's crisis centres, are permitted to house her (shelters) (Smoot, N. [2019](#)).

The JJSA 2018 has provisions that make it essential for the police Investigation Officer (IO) to undertake enquiries in order to assess the criminal liability and guess the age of an individual that can be seen otherwise as a minor – based on his or her date of birth, educational records, or any other relevant evidence. A medical examination will be performed to establish the age of the alleged minor offender in the absence of any supporting proof. Comparing this provision to the JJSO 2000 is an improvement. This provision requires the State to establish the accused child's age before any legal procedures may begin.

In the JJSA 2018, a person who has been under eighteen years of age and has not reached the majority is a juvenile in accordance with the CRC. The JJSA amended Section 82 has been amended through the Act, and the criminal liability for offenders in terms of age (MACR) has been set at ten years (PPC). Similar changes were made to

Section 83, where Figure 7 was changed to Figure 10, and Figure 12 was changed to Figure 14, creating the following additional provisions.

Section 82	An act committed by a kid under the age of seven: Amendment to Section 82 of general penal law, which is the Penal code of 1860, also known as the Penal Code, the term "Seven" should replace by the word "Ten."
Section 83	Act of a kid over the age of 10 but under the age of 14 with immature understanding: Nothing that a child does over the age of seven but under the age of 14 does constitute an offence since they lack the mental maturity to grasp the nature and ramifications of their actions at the time.

Even while this is a positive trend, it is important to keep in mind that Pakistan has not yet adopted the UNCRC clause that states that the "absolute minimum" age for criminal culpability is 12. However, thanks to the JJSA, Pakistan seems to be at least improving its MACR, which was previously among the lowest in the world. Future efforts must and must be made to improve. Additionally, this modification would lessen the overall number of young offenders incarcerated, which will lessen the ongoing issue of prison overcrowding. The JJSA 2018 established the idea of diversion to resolve cases devoid of formal court processes for minor offences. To avoid habitual and hardened as well as desperate criminals, the youth offenders need to be separated from them. In all cases, the education of young offenders through voluntary work has also been included, with a focus on education and training.

The JJSA also requires that juvenile matters be resolved by the courts, police/LEAs, and investigating agencies within six months. The many forms of diversion might include but are not restricted to demands of an apology,

restitution, reparation, reprimands, and fine payments. All offences, no matter how serious, must be able to be combined for the purpose of diversion. Only if the juvenile offender is under the age of 16 can diversion be used for significant offences. These actions are anticipated to (a) decrease the number of juvenile offenders behind bars and provide them with a substitute for a criminal record; and (b) safeguard these kids from child abuse, sexual assault, drug use, and other harmful activities while they are incarcerated because they are highly vulnerable to these things.

According to the JJSA, district-level juvenile justice committees (JJs) must be constituted for each Sessions Court within three months of the law's passage. The JJs will have four members: an active Judicial Magistrate, an active Probation Officer or Social Assistance Officer, the head public prosecution in a district, and a lawyer registered with the bar association having a minimum of 7 years of expertise as a lawyer. Upon referral by the police, the prosecution, or the child court, the Committee has been vested with the authority to resolve cases through diversion within one month of the date of referral. 10 The JJ will also direct the police in charge and inspect the juvenile rehabilitation centres and the places where offenders dwell.

According to Section 22 k of the Juvenile JSA, a "Juvenile Rehabilitation Center" is a location where a child offender can receive mental and physical nourishment. This location can include accredited institutions like dar-ul-amain, vocational centres, women crisis centres and borstal institutions that have been set up by the government, including those made by nonprofit groups that have been approved by the government. At the same time, the second section describes an "observation home" as a location wherever a minor is provisionally held following their arrest by the police and after receiving a remand from the juvenile court. Since their quarters are not subjected to inspection and monitoring, no exclusive goals have been

made/built for the youngster. Juvenile criminals frequently experience mental and sexual abuse while in custody. The fact that the children detained in custody are being subjected to sexual abuse by the jail or premises' personnel and the absence of efficient complaint processes were dramatically brought to light by when protests erupted in the prison of Sahiwal situated in Punjab on April 11, 1999.

The incident started when prison staff members beat thirteen-year-old Aslam in the juvenile wing for reporting Zulfiqar, the chief warden, having sexually assaulted him. Although his pleas of Aslam to meet with a superintendent had been rejected by the jail staff, other inmates had brought up his situation during visits from their parents. Syed Alamdar Hussain Shah, a Sahiwal legal assistance attorney, was notified by the parents. Shah was given permission to visit the jail by the high-ups, but he was not allowed to meet any of the inmates as he was forbidden from meeting them under any circumstances, no matter what he said. Under Section 2(d) of the JJSA, the idea of "diversion" was also created. It is described to be a way in which youthful offenders evade trial and are led to other modes of censure, such as social work and rehabilitation. Using this method, their obligations and treatment will be decided in accordance with the psychological, cultural, social, educational and economic background they have belonged to. It has been held by the various committees of the rights of the child under CRC that laws are made outlining the circumstances, thereby permitting diversion. It has also been held by the same authority that children need to be protected from the prejudice of police and other officials regarding how they are supposed to work and protect the right of children. It has been reiterated by the committee established under the CRC that as much as possible and feasible, the states need to promulgate and provide legislation that supports the diversion in its many forms so that children may be protected from the evils of mistrial and litigation but the same needs to be

involved in the case of first-time offenders and in dealing with a child. The JJSA 2018 has therefore included regulations about the requirements to resolve a case via diversion, specified by section 9 of the Act that when a person has been wronged, he may resolve a case provided specific criteria were satisfied. Such as (a) moveable property restitution, (b) damage repair, and so forth. In addition, a public prosecutor may also decide the case if the crime was not committed specifically in relation to another human being/individual. And in this case, Section 5 stipulates that all major and minor crimes are compoundable. It has also been held under the Act that minor crimes are liable to compounding while the offences committed by persons under 16 years old or older may be dismissed in the first instance.

Comparison of the Act with JJSO

The JJSA includes useful definitions that were absent from the JJSO, such as those for terminology like "Juvenile" as well as "Juvenile Offender." According to the Act of 2018, a "Juvenile" has been defined as a youngster who may be tried and handled differently from an adult. A youngster who is accused of committing an offence or who has been shown to have done so is referred to as a "Juvenile Offender." Additionally, the term "Juvenile Rehabilitation Center" has expanded the range of facilities for the care of juvenile offenders in the new legislation. There are presently dar-ul-amaan, borstal institutions, juvenile training centres, certified institutions, women crisis centres, juvenile training centres and vocational centres (created by governmental as well as other non-profit organisations that have been authorised by the government) among them. The term "borstal institution," as it formerly existed at the time of the ordinance of 2000, simply denoted and described a location where a minor criminal would be imprisoned, receive instruction as well as training for the improvement of their faculties both mentally and morally. Under the JJSA, the

phrase "best interest of the child" has first been defined to bring the legislation into compliance with the UNCRC. In order to guarantee that a child's fundamental rights, needs, identity, and social wellness are met, as well as their psychological, social and emotional development, the "best interest of the child" has been recognised to be the foundation and a choice made involving the kid. Similarly, the word "Medical Officer" is being added to the Act of 2018 in order to address the specific situations in which the medical officer's report is necessary to identify a juvenile's age or to assess his physical or mental state as needed.

For a juvenile offender, Section 7 of the JJSA specifies a specific inquiry process. According to this clause, the inquiry must be conducted as per the direction of the SP police, or S DPO, by a police soldier of rank with a rank more than or equal to that of a sub-inspector. The social welfare officer and probation officer, as instructed by the government, should also help the investigating officer in preparing an investigation challan being social to be appended with the challan created in accordance with the provisions of the Cod of Criminal Procedure. (Cr. P.C). Regarding these discrepancies, the earlier national law in the form of an ordinance of 2000 was silent/mute...

According to Section 5 of the JJSA, the person who has been burdened with the running of affairs of a police station needs to follow certain mandatory steps after arresting a juvenile offender. These steps include 1) keeping the juvenile offender in an observation home following the arrest; 2) notifying the caretaker and the responsible probation officer at the earliest possible time; & 3) describing in challan that certain things need to be met and fulfilled and be referred to disposition. "Observation home" is defined as a location at which a delinquent will be confined momentarily following the capture, while on incarceration, or subject to the order of the court, including investigating the age or assessing the behaviour

under Section 2(p) of the JJSA. Although the definition is vague regarding the location that may be referred to as an "observation house," the goal of the "home" is clear: young criminals need not be subjected and detained in the same jails as those adults, not even for a brief period of interval. Simply this means, after being arrested, a youthful criminal must be housed at an observation home rather than being held in a regular police station.

In the JJSA, a fresh idea of "diversion" that was not covered by the JSSO has been heavily emphasised. The Act's section 2(d) describes it as a way for a juvenile criminal to bypass formal legal processes and be directed to an alternate course of action. Using his educational, social, economic, cultural and psychological backgrounds as a base, this channel would be utilised to assess his responsibility and treat him accordingly. While traditional criminal legal systems exhibit and are founded and based on the fact that the same is made punishment and retribution as their goals, diversion stresses recuperative justice. Restorative justice emphasizes on significance shown in repairing harm done to the persons involved as well as reestablishing the equilibrium of certain conditions upset by the conflict of crime. Children frequently find the official criminal justice system to be very upsetting since they are more likely to stay criminals after going through the formal justice system. Children who are kept out of the official criminal justice system are less likely to commit the same crime again, and this is especially true for first-time offenders.

In contrast to the JSSO, the JJSA divides the term "Offence" into three subcategories: minor offences, serious offences, and heinous offences. All offences which have been made punishable with imprisonment amounting to three years as per the provisions contained in the penal law or other legislation shall be regarded as minor offences; however, offences in which the imprisonment exceeds or is seven years, the same have been termed as major. There is yet

another categorization of the offences under the Act. Those offences are grave, gory, cruel, astonishing in nature, or upsetting to public decency and are punished by death, life in prison, or a sentence of more than seven years under the PPC or any other legislation.

Regarding their arrest and questioning, female juvenile offenders are given specific protection under Section 17 of the JJSA. According to the clause, no female shall ever be detained, subjected to an investigation by, or placed on parole controlled by a male official. A female could be housed in a facility which has been designed for girls. She may only be housed in a juvenile detention facility designed or approved solely for female detainees. Under the JJSO, there was no distinction made between male and female juvenile offenders. In the past, young female criminals received the same treatment as adult female offenders and were housed in separate female police stations. The JJSA has created a separate facility for confinement for female juvenile offenders in recognition of their vulnerability.

Another distinguishing aspect of the new law is the need for some courts to be established which could exclusively be made for juveniles in a district with a period of three months since the inception of the law. According to the JJSA, this exclusive Court had been burdened with deciding the case over a period of six months. Had they been not able to do so after having taken cognizance of such a case, they need to ask the relevant High Court for an extension and provide an explanation of why it was unable to resolve the case within the allotted time frame. The High court may be approached by the party who has complained about the case if the extension has not been requested by the court. The Juvenile Justice Committee, which is described in 2 j of the Act, established under the Act, had to come into being in the first three months of promulgation and would oversee the diversion process. The following people will make up the committee:

1. Magistrate of the first class appointed under the Code of Criminal Procedure overseeing as the chairman of the committee
2. head of the prosecution in the district
3. an advocate of the bar association having expertise of 5 years or more and having been nominated by the sessions judge; and
4. an officer of social welfare.

Although it was forbidden to print any documentation of juvenile court proceedings (apart from decisions of the superior judiciary, there existed no legal punishment for doing so under the JJSO. The offence has been rendered penal under Section 13 of the JJSA on two grounds: i) Failure to get consent before exposing a minor's name. ii) Printing or publishing court proceedings without authorization is against the law. Such orders may be issued by the police station supervisor or an officer conducting an inquiry or investigating the matter bonafide; alternatively, the minor offender or the person in relation to the offender may authorise publishing or printing thereof in writing. Only the chairman or secretary of a registered welfare institution may be given the authorisation.

The use of the death sentence on someone who was juvenile when the act was committed a juvenile at the time the crime was committed is specifically forbidden under Section 16 of the JJSA. Additionally, no adolescent shall ever be subjected to corporal punishment while in jail or be sentenced to hard labour or put in a shackle. There are three situations in which handcuffing is not appropriate:

1. The juvenile is older than sixteen;
2. There were good reasons that the person may be released, as well as
3. The offender is convicted of a severe crime or was earlier sentenced to 25 years in prison.

While it was in effect, the JJSO's provisions were not in derogation of any other laws; rather, they

supplemented them. Due to this, there was confusion over the jurisdiction when adolescents' cases were being tried for suspected involvement in crimes punishable by laws specially made for the purpose, including antiterrorism and drug legislation. Nevertheless, Section 23 of the law clarifies the uncertainty by stating and asserting the prior implementation will take precedence over any provisions of any other laws (Smoot, N. 2019).

Legislation in Khyber Pakhtunkhwa

The province of Khyber Pakhtunkhwa has been quite serious about the protection of the rights of juveniles. It is common knowledge that children are the future of every nation and need particular care. Every state has a duty to give its citizens equal chances, and nobody should be mistreated because of their race, religion, family, place of residence, language, gender, culture, class, or handicap (Jamal, 2010); Children in Pakistan, like other developing nations, face a variety of socioeconomic issues and have their rights violated by their families, communities, and even the government, which is failing to uphold its international obligation to safeguard children (Ali, 2004; Bhalotra, 2003). Children are used as child labour in the nation's public auto workshop and for a variety of tasks in the agriculture and manufacturing sectors (Naeem, 2011). One of the social issues that are accepted and practised nationally, particularly in rural regions, is child marriage (Nasrullah, 2014).

KPCPWA 2010

The PCPWA was adopted by the provincial administration in 2010. The primary goal of the law was to safeguard children's rights and ensure their rehabilitation in the province. The act's introductory section said that it would be known as the KPCPWA, 2010. All provinces shall be covered by this act, and it shall take effect immediately. Several terms and ideas are specified in the first section of the act, including "Child," which refers to a person who is under

the age of 18. The law stated unequivocally that a kid "must be deemed at risk" if they lack a parent, engage in child labour, are homeless, engage in immoral behaviour, have abusive parents, or are born in prison... An institution or location utilized for the safety and rehabilitation of a child who is in danger in society or who has been recorded by the authority or community is referred to as a "Child Protection Institution."

The statute mandates the establishment of an institution for child protection. The law designated child harm as physical punishment. The current law defines "Protection" as giving a child a secure home with attentive parents and a nurturing environment. Compiling a kid to engage in sexually explicit or sexual public conduct with or without the child's permission is referred to as "sexual abuse." The formation, membership, and duties of an independent commission created for child protection were laid forth in the second portion of the legislation. According to the legislation, the government must set up the relevant commission in the province as soon as it enters into force. The commission's members are listed in the act as the minister of social welfare (chairman), the govt secretary of the same department in charge of finances, the secretary of home and tribal affairs, the secretary of parliamentary laws, secretaries of local government, secretary of education, six people who represent civil society, members who were chosen by the provincial assembly, attorneys, and ulema. The Chief Protection Officer shall be the Secretary of the Commission (CPO).

Through accredited facilities, the commission is responsible for providing the children with food, shelter, education, and training. Under the legislation, it is forbidden to harm children physically, and funding organisations are encouraged to support child protection initiatives. A child's birth must be registered, and the commission is in charge of keeping them out of juvenile jail. In the event of any natural or man-made crisis in the province, the

commission should have the capacity to respond quickly to deal with children's difficulties. For the optimal planning and execution of government initiatives in the province, the commission has to create a method for collecting data on children.

A welfare fund for children in need must be established by the government as per this statute. Donations, grants, and other government-approved financing sources must make up the fund. The well-being of vulnerable youngsters will be the only purpose of all funds (Ali, F., & Taieb, M. [2021](#)).

In collaboration with the Peshawar High Court, certain session courts would be designated as child protection courts. The Peshawar High Court has the authority to delegate to the session judge local area powers. According to the statute, the court is required to carry out a number of duties and have specific authority, such as ensuring that children in danger are placed in the care of an individual or institution. Before making a decision about the child's custody, the court must first tell the kid at risk. It is apparent from the court's duties that it must take the kid in danger into account.

This statute applies to children under the age of 18. If a child is believed to be in danger, the district child protection officer has 24 hours to save the child and bring them before the court. It is forbidden to publish a child at risk's name, photo, or other address in any print or electronic media that might be used to identify them as the victims of child exploitation. On the basis of information from a person the court has received under oath or solemnly, the warrant for the production of a child needs to be issued by the court. In line with federal rules, the commission is required under the act to safeguard a child who is at risk of an early marriage based on customary customs. According to the law, any youngster who is older than 12 but less than 15 must be supervised by a probation officer while living in the community. If a kid under the age of 14 is found guilty of a crime, they will get a suspended

sentence or a fine. For the care of children aged 15 or older but under 18 years, there is a juvenile justice system (Ali, F., & Taieb, M. [2021](#)).

Conclusion

Based on the analysis of the existing laws and regulations in Pakistan pertaining to juvenile offenders and their protection, it can be concluded that while Pakistan has made progress in addressing the rights of juveniles through various international and national legislation, there is still much room for improvement. The implementation of these laws remains a challenge, and further measures need to be taken to ensure that the rights of juvenile offenders are effectively protected.

Recommendations

1. Strengthening the implementation of existing laws and regulations, especially the Convention on the Rights of the Child 1989, to ensure that the rights of juvenile offenders are effectively protected.
2. Providing necessary training and resources to law enforcement officials and other relevant stakeholders to increase their understanding and awareness of the rights of juvenile offenders.
3. Developing a comprehensive rehabilitation program for juvenile offenders that includes education, vocational training, and mental health support.
4. Reviewing and updating the current laws and regulations in Pakistan to ensure that they align with international standards and best practices for protecting the rights of juvenile offenders.
5. Involving relevant stakeholders, such as community leaders, civil society organizations, and juvenile offenders themselves, in the development and implementation of laws and policies aimed at protecting the rights of juvenile offenders.

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