Juvenile Justice System in Pakistan: What Works and What Doesn’t

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Abstract

The concept of juvenile justice system in Pakistan -- its delineation -- and its practical application during the past decade have shown a marked drift away from efforts to reform and rehabilitate juvenile offenders in favor of incarcerating sentences. Juvenile Justice in its very conception is now acknowledged to be an inherently legal practice of peal policy. Needless to mention that juveniles need special attention of criminal justice and their protection is paramount responsibility of state. Juvenile laws are promulgated in order to protect, promote and rehabilitate children, who come in conflict with the law; as these children need special care and healing. Prior to promulgation of the Juvenile Justice System Ordinance 2000 (JJSO), Pakistan had no juvenile law at federal level and Code of Criminal Procedure (Cr.P.C) was the only applicable law in such cases. The need was felt to have unified law applicable throughout the country. The purpose of enacting JJSO 2000 was to prevent juveniles from hardships, sufferings and adversities of criminal litigation and reform them in conformity with the present day social requirements. The idea behind the juvenile laws is that the juvenile delinquents must pass through a judicial process which can help them to come out of the dilemma and psychological depression that is generated through criminal litigation in the courts. All the legal actors (Judges, advocates, police officials, probation officers, and borstal institutions) have to play a very special role in application of the juvenile law to the juvenile delinquents in such a way where it is ensured that the juveniles feel better than before coming to the court. This special role is to generate "healing capacity of law." However, after a decade of promulgation of JJSO, the juvenile justice in Pakistan is still in the nascent stage. Certain legal measures have been taken in order to implement the JJSO 2000; however, they are not satisfactory and sufficient. Absence of exclusive juvenile courts has further aggravated the situation and has created legal hardships for juveniles offenders. Such juvenile offenders face obstacles in all the four stages of judicial process including investigation, bail, trial, and sentencing. Close scrutiny of juvenile justice system in Pakistan indicates that proper implementation of JJSO 2000 is lacking. This paper attempts to critically analyze the juvenile justice system from the socio-legal perspective and provides viable recommendations to the policy makers in order to adopt measures necessary for the amelioration of juvenile justice system in Pakistan and to ward off all the situations that hinder the meaningful implementation in the society.

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The golden words of Maria Montessori are roaring in the ears that “humanity shows itself in all its intellectual splendor during this tender age as the sun shows itself at the dawn and the flower in the first unfolding of the petals; and we must respect religiously, reverently, these first indications of individuality”.

The concept of juvenile justice system in Pakistan -- its delineation -- and its practical application during the past decade have shown a marked drift away from efforts to reform and rehabilitate juvenile offenders in the favor of incarceration. Juvenile Justice in its very conception is now acknowledged to be an inherently legal practice of penal policy.

Every legal regime differentiates juveniles and adults and sets laws, rules and regulations for the implementation of the juvenile justice. The value of the society could be gauged as how society responds to juvenile who comes in conflict with law. In all jurisdictions, children continue to face critical legal issues and problems, which hamper their true functioning as a respectable member of the society. Although legal guarantees exist for juveniles in Pakistan, yet they are not adequate and properly implemented. Current laws relating to juveniles in Pakistan are not generally known to all stakeholders including police, judiciary, lawyers and general public.

The cardinal difference between the juvenile justice system and the traditional criminal justice is the greater emphasis which is laid on rehabilitation in the former, while retribution is considered as a primary goal in the latter. In order to protect the children from sufferings of criminal litigation and their rehabilitation in society and to fulfill its international obligations, the Government of Pakistan promulgated JJSO in the year 2000. It is aimed at extending protection to children involved in criminal litigation and their rehabilitation in the society. The purpose for enacting the Ordinance was to transform the tender aged offenders into useful citizens of the state by saving them from humiliation and excluding them from the hardened criminals in traditional jails.

Juvenile justice can be defined as the legislations, standards, procedures, mechanisms and institutions specifically applicable to children, in conflict with the law. The overriding effect is given to juvenile justice ordinance with an aim to protect and promote children’s fundamental rights and to give convicted children the greatest possible chance of reintegration into society.

Recently, the Chief Justice of Pakistan took suo moto notice of a report that about 1500 juveniles were imprisoned including 673 in Punjab; 262 in Sindh; 510 in KPK and 55 in Balochistan, which shows the aggravated situation of juvenile offenders which to our understanding is an excellent step to ward off all the evils haunting our
children and they definitely deserve better treatment. Here I would like to recall a Shakespearian verse;

“How far that little candle throws its light  
So shines a good deed in this naughty world.”

Although JJSO was considered to be a welcome step but its silence on major issues like prevention, detention and diversion paved the way for judicial review by the full bench of Lahore High Court on December 6, 2004 who struck it down declaring it unconstitutional, unrealistic and impracticable because it contained ‘downright absurdities’ so as to create havoc in the country's judicial system. The Bench also ordered the abolition of juvenile courts and transferred all juvenile cases to ordinary courts of competent jurisdiction. The Court also ordered that all accused who had been tried as juveniles between the dates of the promulgation (July 1, 2000) and announcement of the judgment (December 6, 2004) would have to prove their age at the time of the commission of offence to claim immunity from the death penalty. The Court withdrew legal protection available to juvenile offenders on the grounds that many articles of constitutional guarantees, plus a host of laws (including PPC and Cr.P.C) and numerous judgments of the Superior Courts already adequately safeguard the rights of child; therefore, the introduction of the juvenile justice law was deemed unnecessary and had created confusion in the legal field.

We the academicians and practitioners agitated the matter and fortunately the Supreme Court of Pakistan stayed the order of Lahore High Court on January 11, 2005 which is still pending adjudication and we hope that better sense will prevail.

The Purpose of trial of a juvenile is not punitive or retributive, but it is reformative. Of all phases of the juvenile justice procedure, central to all judicial processes is arrest of the child. The child could be saved through the ordeal of imprisonment and other hardships at this very stage. It is on arrest and while in police custody, that an accused juvenile is most likely to become a victim of torture and other forms of cruel and inhumane treatment. It is also at this stage that the Juvenile is likely to be denied the presence of parents, social worker or lawyer, who may best provide protection against such acts.

JJSO also calls for the active role of probation officer to encourage social reformation and rehabilitation of juvenile. The troika of police, probation officers and judicial officers, needs close coordination and smooth working relationship for the betterment of juvenile offenders. The emphasis on probation and parole supervision fits nicely with a justification for juvenile courts.
The parole system, which is another measure to tackle juvenile delinquency problem, is sometimes also termed as ‘juvenile aftercare’ which takes place after the release of a youth from an institution with the aim to counter the adverse effects of confinement and helping the offenders in readjusting to outside life.

We wonder why these two magnificent systems are kept at bay from prisoners who show good conduct and inclination to reform. Probation and Parole if properly utilized would yield innumerable benefits to society and prisoners families.

JJSO calls for the establishment of juvenile courts with exclusive jurisdiction to try cases in which a child is accused of committing an offense. But what we have witnessed and it’s very unfortunate that despite the very clear and elaborate intent by legislature this exclusivity of court is missing from the whole scenario. We have seen that certain courts of ordinary jurisdictions are declared as Juvenile Courts along with their regular judicial work. This faulty incorporation has completely bamboozled the very rationale of child protection philosophy and simply tantamount to over burden the already exhausted system.

The spirit of helping, correcting, curing and healing is nonetheless, the quintessence of the juvenile court philosophy. The judge of a juvenile court has to deal not only with law and facts to a far greater extent than judges of other courts. The juvenile judge must have acumen pertinent to child laws, juvenile delinquency and psychological and behavioral sciences, and is expected to act on the ancient doctrine of parens patriae which stresses the paternity as well as the authority of the state over its children. Hence such judge is supposed to be an expert not only in law relating to children, but also acts as a parent of the child, a psychologist, a counselor, and a teacher, whose aim is to rehabilitate and reform the child.

Several factors prolong trials of juveniles. The failure of police to complete investigation in time, delay in submitting challans, the reluctance of magistrates to commence trial even after submission of Challan or to grant bail to the juveniles in the statutory period as provided by JJSO, frequent adjournments of hearings and a paucity of probation officers have all contributed to the prolonged pre-trial detention of persons charged with criminal offenses. However, the juvenile prisoners are more conspicuous victims of the judicial neglect.

The JJSO lists a number of safeguards for the protection of privacy of children involved in litigation. Therefore, it should not ordinarily take up any other case on a day when the case of a child accused is fixed for evidence. Further, no outsider should be present at any sitting of a Juvenile Court. In the absence of exclusive juvenile courts, this policy of privacy, as envisaged, cannot be protected.
The stigma of traditional prisons along with its negative consequences was shunned by establishing borstal institutions. There are currently two borstal institutions in Bahawalpur and Faisalabad [Punjab]. Sindh has one such institute in Hyderabad and a Remand House and a Youthful Offenders Industrial School in Karachi. There are no separate arrangements for detention and rehabilitation of juvenile offenders in Balochistan, Islamabad Capital Territory and the tribal areas of FATA and PATA.

Moreover, while each of the four provinces has framed rules under the JJSO that, at least theoretically, aim to improve the living conditions of imprisoned children, the state has yet to fulfill its basic objective. This non-implementation stems at times from ignorance of the law by police and even judges, as well as willful neglect. “The JJSO has still not been made part of the curriculum in judicial and police academies, which demonstrates how low a priority it enjoys in official circles.

It is highly regrettable that children continue to be arrested for petty offences; illegally detained for days and even months; kept alongside adult prisoners, including hardened criminals and militants; raped and tortured by police, prison staff and adult inmates; brought to court in fetters; sentenced to rigorous imprisonment; and even sentenced to death. The legal complexities of a warped legal system also undercut the JJSO’s legal protections. For instance, the Hudood Ordinances override both the Pakistan Penal Code and the JJSO, including provisions relating to minimum age requirements. The definition of a child accused of a crime under the Hudood Ordinances is a person who has not attained puberty, making even a twelve-year-old potentially vulnerable to trial and punishment, including the capital sentence.

On the whole, the current juvenile justice regime is characterized by the lack of systematic action and the absence of task-oriented and effective social work with both offenders and victims, whether real or potential.

The following recommendations would encapsulate four stages of judicial process including investigation, bail, trial and sentencing and also include general recommendations for all stakeholders to develop an appropriate response for the improvement of juvenile justice system in Pakistan.

1. Immediately after the arrest of a juvenile, the officer in charge of the police station must inform either parents or guardian of the juvenile. Without this provision, child will have no legal guarantee as afforded by the juvenile justice system.
2. Sharing of information with the Directorate of Reclamation and Probation is the responsibility of the police officer. The information sharing with Probation Officer is not made compulsory, which in a way also hinders the access to justice to juveniles, and can help the judge while deciding the matter.

3. The police must determine the age of accused which can save Juvenile Court's time during the trial proceedings.

4. Production of the juvenile accused within 24 hour is constitutional and legal requirement, which must be acted upon on priority basis. Likewise, children are produced before court along with adults. This practice must be avoided.

5. Police report under criminal procedure must be submitted without delay and the provisions of section 173 should be strictly followed.

6. Use of torture for extracting information from the child offender should be avoided.

7. Police stations need to establish a database in order to provide the exact number of children arrested and produced before the Juvenile Court.

8. The juvenile offenders are kept in police lockups along with the adults. The need is to construct separate custody places immediately after arrest within police stations.

9. Method of lodging complaints by child or his guardian must be made simple and prompt with swift investigation.

10. Where the juvenile commits a bailable offence, he should be released on bail with or without surety. The bail provisions for young offenders are far more liberal than those applicable under Cr.P.C and these must be applied without hesitation.

11. The juvenile offender is afforded legal assistance by the State. Further, appointment of panel of lawyers is the responsibility of session judge, which should be selected at all levels without delay.

12. Often the juvenile trial proceedings get protracted due to the unavailability of the document pertaining to age of offender. The Court has to refer back the age determination issue to medical board. Child offender continues to languish in jail and his or her trial proceedings do not commence till the
production of medical board’s report. This causes inordinate delay and has to be rectified at the initial stage by police.

13. Since there are no juvenile courts, therefore, juveniles are unable to express themselves freely during the trial proceedings. The environment is not conducive for juvenile offenders in the absence of juvenile court. This problem must be addressed immediately.

14. The judge presiding over the juvenile offender’s case should sentence him/her only as a last resort. The 'last resort' principle as applied to sentencing means that deprivation of liberty must not be imposed unless the objectives of the measures principally rehabilitation in the case of juveniles could not in the opinion of the judge, be achieved in a non-custodial setting.

15. Juvenile Courts should be set up in every major city of Pakistan in order to provide an enabling environment to juvenile offenders.

16. The number of probation officers should be increased and at least one probation officer should be appointed in every district besides recruiting female probation officers in each province.

17. All the key stakeholders in association with the juvenile justice system must know their respective legal responsibilities, limitations and possibilities. The judge is the pivot around whom the entire functioning of juvenile justice system revolves. All other actors are subject to his decisions and supervision from the start of proceedings until the point at which the sanction has been fully enforced. The lawyers must be trained on juvenile laws along with the police so that they could fully perform their legal obligations for an effective juvenile justice system.

18. The female juvenile offenders should be released on probation as early as possible. There is a dire need to establish borstal institutions in all the major cities of Pakistan, which would reduce burden on the jail authorities as well, and would be a step forward towards rehabilitation of the juvenile offenders.

19. Our last recommendation would sound a bit stranger to many but Ladies and Gentlemen there is a dire need to genuinely dispose the pending cases of juvenile offenders on priority basis and the same can only be achieved by
constituting special appellate bench in Provincial High Courts, which we termed as “Masoom Benches”.

Lastly, I would like to end with the words of Gabriel Mistral;

    We are guilty of many errors and faults,
    But our worst crime is abandoning the children,
    Neglecting the foundation of life,
    Many of the things we need can wait,
    The child cannot,
    Right now is the time,
    His bones are being formed,
    His blood is being made,
    And his senses are being developed,
    To him we cannot answer,
    Tomorrow, His name is Today,
    Dare we answer Tomorrow?