

### **Amendments in Juvenile Justice System Ordinance, 2000**

Children are the most important segment of a society and hold a special place in our lives. A child of today is an adult of tomorrow and as such his proper mental and physical growth guarantees a responsible generation and shapes the future of any society. However, on the same time due to tender age and immature understanding children are most vulnerable to abuse and exploitation. A child being completely unaware of consequences of his any act can easily be fell victim to the motivation and thus could be used as a tool for commission of an offence. A good, clean, caring and healthy environment is necessary for upbringing of a child to employ his potentials in the formation of any society. Unfortunately, due to negligence and injustices our cities and even villages have been converted into nurseries of child criminals.

Previously a child offender and an adult offender were treated alike and even harsh punishments were inflicted upon the young offenders without considering their age. Moreover, the young offenders were detained in ordinary prisons with hardened criminals. This not only led to abuse and exploitation but also increased the risk of making them criminals. Realizing the adverse effects of this practice the policy makers started considering the advisability of making distinctions between the mode of trial of an adult and a juvenile offender. This realization led to enactments of laws under which separate courts were established to deal with the juvenile offenders and their reformation and rehabilitation.

The principle of treating juvenile differently as that of an adult is recognized in Islamic jurisprudence and even they are exempted from imposition of Hadd and Qisas. In subcontinent the first distinction between the major and a minor offender was drawn in the Pakistan Penal Code and provisions under the Code of Criminal Procedure were provided for confinement of youthful offenders in a reformatory school established under the Reformatory Schools Act 1897.

In Pakistan before promulgation of Juvenile Justice System Ordinance, 2000 there was no comprehensive law of national application. However, special provisions relating to juveniles were contained in some laws i.e. Pakistan Penal Code, Code of Criminal Procedure, Reformatory School Act 1897 and

Probation of offenders Ordinance, 1960. On other hand in the Province of Punjab the Borstal Act 1926 and the Punjab youthful Offender Ordinance 1983 and the Punjab Children Ordinance 1983 was enforced while in Sindh, the Sindh Children Act 1955 was applicable where-under besides establishment of Juvenile Courts various provisions for special treatment to the Juveniles were provided. Unfortunately, there was no special enactment in the provinces of Balochistan and NWFP and the cases of juveniles were dealt with under the general criminal justice system.

The Juvenile Justice System Ordinance 2000 was promulgated to provide protection to the children involved in criminal litigation and their rehabilitation in society. The important features of the Ordinance are that it promotes the concept of institutional and non-institutional treatment to the child in conflict with law for his reformation. Besides prescribing special forums i.e. juvenile court, the Ordinance prescribes special procedure for arrest, investigation, bail, trial and rehabilitation of the Juvenile offenders. Section 5 of the Ordinance prohibits joint trial of the Juvenile offender with an adult accused.

The Juvenile Justice System Ordinance acknowledges the importance of probation system by conferring powers upon the juvenile courts to release the delinquent child under the care of guardian or any suitable person subject to furnishing bond with or without surety. Moreover, under the Ordinance the court can send the delinquent child to borstal institutions to undergo the period of sentence or until he attains the age of 18 years. It also allows the juvenile court to reduce the period of imprisonment or probation subject to the satisfactory report of the probation officer.

The U.N. Convention on the Rights of the Child, 1989 (CRC) came into force in 1990 which was also ratified by Pakistan. Article 37, 39 and 40 of the Convention give a fairly exhaustive account of the rights of the juvenile delinquents, the safeguards available to them during their trial and the privileges they are eligible for during their placement in a juvenile institution. Being member of international community and signatory of CRC, Pakistan has to fulfill its commitment by taking different measures which includes reformation of laws to bring them in conformity with the provision of the relevant articles of the Convention. Promulgation of JJSO 2000 is a step towards

fulfillment of its obligation to adopt all the international standards for children of this country.

It would not be out of place to mention here that the Law and Justice Commission of Pakistan in its meeting held in 1998 and 1999 considered the draft paper for reformation of the juvenile Justice System in the country. After great deal of deliberation, the Commission recommended that a separate juvenile justice system is to be evolved and special laws and procedures should be devised for the treatment, trial, placement and rehabilitation of juvenile offenders. The recommendations could be broadly categorized as administrative measure, legislative measures which also includes disposal of juvenile cases by diversion. On the issue of diversion, the Commission recommended as follows:

“With a view to saving the youthful offenders from the possible negative effects/consequences of criminal justice administration (involving the trial ordeal and stigma of conviction/punishment), the Convention as well as Beijing Rules envisage the disposal of juvenile cases through diversion, meaning disposition without resorting to formal trial. Cases involving minor penalties or only financial liabilities may be disposed of through this mechanism. Similarly, in keeping with the age, character and status of the offender and the circumstances of the case, such an alternative method of disposition may be employed. The disposition measures may involve restitution or compensation to victim, placement of the juvenile under guidance or supervision of the family/probation officer and referral to community service, etc.”

“No equivalent provision of this nature exists in our national law. In keeping with the international standards and with a view to improve our present system of juvenile administration, it is recommended that an appropriate provision providing for diversion may be enacted. Such a provision must specify the type of cases (non-violent, involving minor penalties, only financial compensation, etc) and category/characteristics of offenders (age, personality, character, etc) to be dealt with through diversion. Disposition measures such as restitution, financial compensation, care/guidance/supervision by family / schools / community / institutions, etc must also be specified.”

The mechanism of diversion is considered a best method to settle the cases of juvenile offenders away from the formal criminal courts and since it involves simple procedure and provides an opportunity to the accused to take responsibility for his act and make good the harm caused. Therefore, this concept is being recognized world wide. Keeping in view the international standards it is necessary that an appropriate provisions regarding empowerment of police and prosecution to dispose of cases of minor nature through diversion without restoring to regular trial. The scope of this provision can also be enhanced by addition of compoundable offences.

The Reformatory Schools Act 1897 was enacted for establishment of reformatory schools for the detention of youthful offenders instead of detaining them in ordinary jails with adult criminals. Vide Section 31 of the said Act distinctive treatment is prescribed for the child accused. The section empowers the court either to discharge the youthful offender after due admonition or deliver him to his parents guardian or any other suitable person on bond instead of awarding him a sentence. It has been experienced that in some cases the children are involved in minor offences but due to time consuming and lengthy proceedings of the court they have to face agony of trial, therefore, keeping in view the nature of offences they could be released after admonishing. It is suggested that a provision may be added in the Ordinance enabling the Juvenile courts to release the accused child involved in minor offences after admonishing.

As per Sub-section 3 of section 4, the juvenile Court shall have exclusive jurisdiction to try cases in which a child is accused of an offence. For convenience and reference the relevant section is reproduced herein below;-

4. Juvenile courts;- (1) The Provincial Government shall, in consultation with the Chief Justice of High Court, by notification in the official Gazette, establish one or more juvenile courts, for any local area within its jurisdiction.

(2) The High Court may;  
(a) confer powers of juvenile court on-  
(i) Court of Sessions; or

- (ii) Judicial Magistrate of the first Class; and
  - (b) appoint, from amongst practicing advocates having at least seven years standing at the Bar. Presiding Officers of Juvenile Courts with powers of a Judicial Magistrate of the First Class for the purposes of this Ordinance on such terms and conditions as the High Court may determine.
- (3) The juvenile court shall have the exclusive jurisdiction to try cases in which a child is accused of commission of an offence.

(3) Subject to sub-section (3), on commencement of this Ordinance, all cases pending before a trial court in which a child is accused of an offence shall stand transferred to the juvenile court having jurisdiction.

(4) The juvenile court shall not, merely by reason of a change in its composition, or transfer of a case under sub-section (4), be bound to recall or rehear any witness who has given evidence and may act on the evidence already recorded.

(6) On taking cognizance of an offence, the juvenile court shall decide the case within four months.

Perusal of above provision shows that the Juvenile courts have exclusive jurisdiction to try all cases in which a child is an accused of an offence whatsoever it may be. On the other hand there are some specified offences which are exclusively triable by special Courts like Anti Terrorism Courts, Narcotics Courts, Drug Courts and Banking Courts. Moreover, as per section 14 of the Ordinance, the provisions of this Ordinance are in addition to all other laws. Presently, if a Juvenile commits a schedule offence exclusively triable by special court even then by virtue of subsection (3) of section 4, he would be tried by the Juvenile Court despite having no jurisdiction to try that particular offence. This provision creates legal complication, therefore, needs to be amended suitably. It is thus necessary that the provisions of this

Ordinance are given overriding effect over all the laws for the time being in force.

It is matter of great concern that inspite of establishing exclusive juvenile courts the provincial governments have conferred powers on the judges of the regular courts. Since these courts are trying other cases involving adult criminals, therefore, cases involving children are not systematically separated than those of adults. Resultantly, children cases are being tried on the same day with adults in such environment which vitiates the purpose of the legislation. Therefore, to achieve maximum benefit of the legislation it is recommended that exclusive juvenile courts should be established instead of conferring powers of the juvenile courts on the judges of ordinary courts.

Presently the juvenile offenders are investigated in the police station where other criminals are also interrogated. This practice increases the chances of abuse and exploitation of juvenile accused. Realizing the seriousness of the issue in most of the countries juveniles are placed for investigation in separate investigation units; therefore, it is recommended that in each district separate investigation units should be established for investigation of juveniles. Where the accused children should be interrogated by a police officer not below the rank of a Sub-Inspector trained in the field in the presence of Psychiatrist/Psychologist.

Section 8 of the Juvenile Justice System Ordinance, 2000 prohibits publication of Court proceedings in any newspaper, magazine or journal in any form which may disclose the name, address, school or any identification or particulars that lead directly or indirectly to the identification of such child without prior authorization of the juvenile Court. Nowadays electronic media is a major source of information as that of print media and since the subject provision does not covers electronic media and it has been noticed that the TV channels are highlighting cases of juvenile offenders to create sensation; therefore, the prohibition under section 8 requires to be extended to the extent of relying or transmitting such information through electronic media.

Section 10 provides procedure for the arrest and bail of a child involved in the commission of an offence with some special relief of bail for children under the age of 15 years involved in

non-bailable offences. Under sub-section (7) of section 10 if a child is detained for a continuous period exceeding one year, or six months, or four months in offences punishable with death, imprisonment for life or in the commission of an offence not punishable with death or imprisonment for life, as the case may be, and whose trial for such offences has not been concluded he shall be released on bail. However, under the provision to said sub-section (7), the Court may refuse to grant bail to a child of the age of 15 years or above if there are reasonable grounds to believe that he is involved in an offence which is serious, gruesome, brutal and sensational in character or shocking to public morality or he is a previous convict. As no such relief is available for such children who are also involved in offences under the Anti Terrorism Act, 2007 or under the Control of Narcotic Substances Act, 1997, so the proviso may be amended accordingly to deny bail to such children in said offences.

Section 12 of the Ordinance prohibits certain types of punishments which include death, labour etc in respect of a juvenile offender. However, statistics show that a lot number of juveniles confined in various jails are involved in murder, drug trafficking and other heinous offences. Besides, there are various offences in the PPC, Hudood Laws, Anti Terrorism Act 1997 and Control of Narcotic Substances Act 1997 where the prescribed penalty is only death penalty. Since the juvenile courts could not inflict death penalty thus the only course left for the juvenile court is to acquit the accused. So far as vulnerability of child is concerned they shall not be awarded death sentence but their brutality and cruelty is certainly punitive in nature and character. Therefore, it is necessary that the court should have power to inflict the penalty of imprisonment considering the age, gravity of the offence and manner in which the offence is committed.

Our existing criminal justice system attaches a disqualification to the conviction which is a hurdle to utilize the potential of convicts even after repentance. In cases of juvenile convicts there is always possibility that after proper care and moral treatment he can be converted into a responsible civilized law abiding citizen. Though this aspect is considered in the Juvenile Justice Rules 2001 and it is provided that no Juvenile shall be stigmatized in any of the matter relating to arrest, inquiry, court proceeding, probation, prosecution, and conviction unless specifically authorized by the court. Since the provision of these rules have

not been given overriding effect over the existing laws therefore, despite availability of this provision the stigmatization of convicts is not averted. Therefore, it is warranted that a necessary provision regarding removal of disqualification attached to conviction is added in the Juvenile Justice System Ordinance 2000 having overriding effect.

According to SPARC ( Society for the Protection of Rights of the Child) Report 2008 more than 1843 children are confined in various jails and most of them are under trial prisoners as either their trial have not been started or yet to be completed. These children mostly belong to low socio economic back ground are involved/charged with petty theft, drug trafficking, mobile phone snatching, kidnapping, rape, murder etc. the Amnesty International further disclosed that there is not a single juvenile jail or Borstal Institution that meets the criteria set by Juvenile Justice System Ordinance 2000 and the CRC. As there are no Borstal Institutions in most of the jails and therefore children are kept in a condition where they are easily accessed by adults and other hardened criminals. In the said situation, jails have become 'crime schools' and many of the inmates come out of the jails as professional criminals.

It is noteworthy to mention here that in 2004 the Government of Punjab enacted the Destitute and Neglected Children Act 2004. As per preamble the object of enactment is to consolidate the law for the rescue, protection, custody, care and rehabilitation of destitute and neglected children in the province of Punjab. As per section 5 of the said Act the provincial government shall establish a Bureau to be called as the Child Protection and Welfare Bureau. Besides other functions, the Bureau shall exercise powers and take measures for establishment, management, reorganization of child protection institutions for any local area.

The aforesaid enactment is a positive step towards rehabilitation of destitute and neglected child therefore; addition of a provision to keep the juvenile accused in child protection institutions would minimize the possibilities of their contact with hardened criminals. In view of above the Commission may recommend similar legislation for the other provinces.

Existing Provisions	Proposed Amendments
<p><b>4. Juvenile courts:-</b> The Provincial Government shall, in consultation with the Chief Justice of High Court, by notification in the official Gazette, establish one or more juvenile courts, for any local area within its jurisdiction.</p>	<p>No Change</p>
<p>(2) The High Court may;</p> <p>(a) confer powers of Juvenile Court on-</p> <p>(i) Court of Sessions; or</p> <p>(ii) Judicial Magistrate of the First Class; and</p> <p>(b) appoint, from amongst practicing Advocates having at least seven years standing at the Bar, Presiding Officers of Juvenile Courts with powers of a Judicial Magistrate of the First Class for the purposes of this Ordinance on such terms and conditions as the High Court may determine.</p>	<p>No Change</p>
<p>(3) The Juvenile Court shall have the exclusive jurisdiction to try cases in which a child is accused of commission of an offence.</p>	<p><b>3) Notwithstanding anything contained in any other law,</b> the juvenile court shall have the exclusive jurisdiction to try cases in which a child is accused of commission of an offence.</p>

<p>(4) Subject to subsection (3), on commencement of this Ordinance, all cases pending before trial Court in which a child is accused of an offence shall stand transferred to the Juvenile Court having jurisdiction.</p>	<p>No change.</p>
<p>(5) The Juvenile Court shall not, merely by reason of a change in its composition, or transfer of a case under subsection (4), be bound to recall or rehear any witness who has given evidence and may act on the evidence already recorded.</p>	<p>No Change</p>
<p>(6) On taking cognizance of an offence, the Juvenile Court shall decide the case within four months.</p>	<p>No Change</p>
<p><b>8. Prohibition to publish proceedings of cases.</b>-(i) Unless the juvenile court specifically authorizes, the court proceedings shall not be published in any newspaper, magazine or journal in any form which may disclose the name, address, school or any identification or particulars calculated to lead directly or indirectly to the identification of such child nor shall any picture of the child be published.</p>	<p><b>8. Prohibition to publish or telecast proceedings of cases.</b>—Unless the juvenile Court specifically authorizes, the court proceedings shall not be published in any newspaper, magazine or journal <b>or transmitted through electronic media</b> in any form which may disclose the name, address, school or any identification or particulars calculated to lead directly or indirectly to the identification of such child nor shall any picture of the child be published <b>or exhibited</b>.</p>
<p><b>10. Arrest and bail.</b>- (1) Where a child is arrested for commission of an offence,</p>	<p>No change.</p>

<p>the officer incharge of the police station in which the child is detained shall, as soon as may be, inform-</p> <p>(a) the guardian of the child, if he can be found of such arrest and inform him of the time, date and name of the Juvenile Court before which the child shall be produced; and</p> <p>(b) the concerned Probation Officer to enable to obtain such information about the child and other material circumstances which may be of assistance to the Juvenile Court for making inquiry.</p> <p>(2) Where a child accused of a non-bailable offence is arrested, he shall, without any delay and in no case later than twenty four hours from such arrest, be produced before the Juvenile Court.</p> <p>(3) Without prejudice to the provisions of the Code, a child accused of bailable offence shall, if already not released under section 496 of Code, be released by the Juvenile Court on bail, with or without surety, unless it</p>	<p>No change.</p> <p>No change.</p> <p>No change.</p> <p>No change.</p>
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appears that there are reasonable grounds for believing that the release of the child shall bring him into association with any criminal or expose the child to any danger, in which case, the child shall be placed under the custody of a Probation Officer or a suitable person or institution dealing with the welfare of the children if parent or guardian of the child is not present, but shall not under any circumstances be kept in a police station or jail in such cases.

(4) The Juvenile Court shall in case where a child is not granted bail under subsection (3), direct for tracing the guardian of such child and where the guardian of the child is traced out, the Juvenile Court may immediately release the child on bail.

(5) Where a child under the age of fifteen years is arrested or detained for an offence which is punishable with imprisonment of less than ten years, shall be treated as if he was accused of commission of bailable offence.

(6) No child under the age of fifteen years shall be arrested under any of the laws dealing with preventive detention or under the

No change.

No change.

No change

provisions of Chapter VIII of the Code.

(7) Notwithstanding anything contained in the Code and except where a Juvenile Court is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf or in exercise of any right or privilege under any law for time being in force, a child who, for commission of an offence has been detained, shall be released on bail,

(a) if, being accused of an offence punishable with death has been detained for such an offence for a continuous period exceeding one year and whose trial for such an offence has not been concluded;

(b) if, being accused of any offence punishable for imprisonment for life has been detained for such an offence for a continuous period exceeding six months and whose trial for such offence has not concluded;  
or

No Change

Provided that where a child of the age of fifteen years or above is arrested, the Court may refuse to grant bail if there are reasonable grounds to believe

<p>(c) who, being accused of any offence not punishable with death, or imprisonment exceeding four months and whose trial for such an offence has not concluded:</p> <p>Provided that where a child of the age of fifteen years or above is arrested, the Court may refuse to grant bail if there are reasonable grounds to believe that such child is involved in an offence which in its opinion is serious, heinous, gruesome, brutal, sensational in character or shocking to public morality or he is a previous convict of an offence punishable with death or imprisonment for life.</p>	<p>that such child is involved in an offence under the Anti Terrorism Act, 1997, or the Control of Narcotic Substance Act, 1997, or an offence which in its opinion is serious, heinous, gruesome, brutal, sensational in character or shocking to public morality or he is a previous convict of an offence punishable with death or imprisonment for life.</p> <p><b>10-A. Investigation in juvenile cases. - Notwithstanding anything contained in any other law for the time being in force, the child accused of an offence shall be interrogated by a police officer not below the rank of Sub Inspector of police.</b></p> <p><b>Provided that in such cases investigation shall be conducted by officer specialized in the field assisted by psychiatrist/psychologist.</b></p> <p><b>10-B. Disposal of cases through Diversion. (1). Notwithstanding anything contained in any other law for the time being in force, where at any stage of proceedings, inquiry or trial it appears that the offence in which the child</b></p>
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is involved is of a trivial nature or compoundable then the court may dispose of the case through amicable settlement with compensation or otherwise with the consent of the parties as the Court may think fit.

Provided that the Court shall not proceed for amicable settlement of offences for reasons to be recorded in writing, where it considers such settlement to be either against the public policy or interest of the State.

(2). If a settlement is reached between the parties, the offence shall be deemed to have been compoundable in terms of the compromise and the Court shall pass order accordingly.

**11. Release on probation.-**

Where on conclusion of an inquiry or trial, the Juvenile Court finds that a child has committed an offence, then notwithstanding anything to the contrary contained in any law for the time being in force, the juvenile court may, if it thinks fit-

(a) direct the child offender to be released on probation for good conduct and place such child under the care of guardian or any suitable person executing a bond with or without surety as the

**11. Release on probation.-**

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(a) direct the child offender to be released on probation for good conduct and place such child under the care of guardian or any suitable person or **institution established for welfare of child** executing a

court may require, for the good behavior and well-being of the child for any period not exceeding the period of imprisonment awarded to such child:

(b) make an order directing the child offender to be sent to a borstal institution or until he attains the age of eighteen years or for the period of imprisonment whichever is earlier.

(c) reduce the period of imprisonment or probation in the case where the court is satisfied that further imprisonment or probation shall be unnecessary.

bond with or without surety as the court may require, for the good behavior and well-being of the child for any period not exceeding the period of imprisonment awarded to such child:

**Provided that no female child shall be placed under the supervision of male Probation Officer.** No change

No change.

No change.

**(d) make an order directing the child offender to be sent to a welfare institution for work for such term as may be specified by the Court.**

**11-A. Power to deal in other ways with juvenile offenders.-**

**(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, the juvenile Court may, if it shall think fit, instead of sentencing any child to imprisonment or directing him to be detained in a Borstal Institution, order him to be discharged after due admonition**

<p><b>14. Ordinance not to derogate from other law. -</b> The provisions of this Ordinance shall be in addition to, and not in derogation of, any other law for the time being in force.</p>	<p><b>11-B. Removal of disqualification attached with conviction:-</b> <b>Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attached with conviction of offence under such law.</b></p> <p><b>14. Ordinance to override other laws.-</b> The provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force except provisions of such law which are more conducive for giving relief to the child.</p>
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### Commission's Deliberations on 05 December, 2009

The Commission considered amendments in the Juvenile Justice System Ordinance 2000 and recommended that the investigation of juvenile cases may be carried out by senior and experienced police officers not below the rank of BPS-17. The Commission further proposed that such investigation should be carried out with the assistance of psychiatrist/psychologist or Medical Officer. The Commission further recommended for the release of a child of good conduct during trial or on the conclusion of the trial on probation. The Custody of child on probation should be given to the guardian or some other suitable person or some institution established for the welfare of the child. The Commission clarified that no female child shall be kept under the supervision of a male probation officer.

The Commission also recommended that if the child is found guilty of the offence then rather sending him/her to prison, such child should be placed in a borstal institution, where there are facilities for further education, health care, so that by placing

them in such environment, the children are reformed and become useful members of the society. The Commission further recommended that in compliance with the law, the provincial governments should establish borstal institutions and make necessary budgetary provision for the purpose.