

# **REFORMING THE JUVENILE JUSTICE SYSTEM**

**Report No. 30**

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# Reforming the Juvenile Justice System

## Summary of Recommendations

### A. Administrative Measures

(i) Separate juvenile courts should be created/designated for the trial of children in conflict with the law. This may increase the workload of existing courts, which problem should be overcome through gradual increase in the number of judges.

(ii) The Government should establish separate juvenile placement institutions for the protection, reform and rehabilitation of juvenile offenders. Appropriate facilities for board, lodging, health care, education and training of the inmates must be provided in such institutions. Where appropriate, philanthropists, NGO representatives and other volunteers may also be associated in the task.

(iii) The staff and personnel responsible for managing the juvenile justice system, namely, police personnel, judicial officers, probation officers, prison staff, court personnel and lawyers, etc must be given proper orientation/training

so that they are sensitised to and educated about the manners and methods of handling children.

(iv) The present system of probation should be properly organised so that children-in-detention are entrusted to the care/protection of probation officers, under the overall supervision of the court of law.

## **B. Legislative Measures**

(i) The Sindh Children Act 1955 has been in force since 1976. The Punjab Youthful Offenders Ordinance 1983, which is currently enforced only in one district, namely, Sahiwal should be enforced throughout the Province. Similarly, the provinces of the NWFP and Baluchistan should also enact/adopt appropriate legislation on the subject.

(ii) The Punjab Youthful Offenders Ordinance 1983, which incorporates fairly modern principles and concepts of modern jurisprudence in the area of juvenile justice may, with further necessary adjustments/improvements, be adopted as a model juvenile justice code. It should be given overriding effect, vis-à-vis other laws on the subject. The juvenile courts, due to their experience and professionalism, would be more appropriate fora for handling juvenile cases.

(iii) The age prescribed by the Sindh Children Act, viz. 16 years, may be uniformly followed all over the country and children below this age limit should be exclusively dealt-with by separate juvenile courts.

(iv) The detention of children alleged to have violated the law should be a measure of last resort and for the shortest possible period of time. Therefore, the courts should promptly decide the bail applications, keeping in view the best interest of the child. At the bail granting stage, the court may also consider sending the child under the supervision of probation officer or guidance of parents/guardian.

v) Custodial sentences of children should be minimised. The courts while disposing off juvenile cases, should consider employing other appropriate alternative methods, namely, restitution, financial compensation, placing the child in the care/guidance/supervision of a family member or probation officer or putting the child to community service, thereby ensuring the constructive utilisation of his potential/energies.

## **Introduction**

The Pakistan Law Commission in its meeting held on 19 December 1998, and again, 14 March 1999, considered a draft paper on reform of the juvenile justice system in the country. The Commission having examined all aspects of the issue, expressed its dissatisfaction over

gaps/defects in legislation on the subject and the non-existence of adequate number of separate institutions for the placement, reformation and rehabilitation of juvenile offenders. The Commission noted that the present legislation in the country on the subject is too sketchy and restricted to just one province, namely, Sindh. The Province of the Punjab, it was noted, has a statute i. e. Youthful Offenders Ordinance 1983 on the subject, but the same has not yet been enforced except in District Sahiwal. The other two provinces, namely, the NWFP and Baluchistan do not have any such legislation.

The Commission observed that children, because of their tender age, are vulnerable to abuse/exploitation, hence, require safeguards/protection. They must be treated more humanely and their honour and dignity fully protected. The Commission appreciated the fact that some High Courts have duly designated juvenile courts for the trial of children and the others are in the process of doing so.

The Commission considered and approved the following draft report on juvenile justice:

Factors or motivations, which instigate or induce criminal conduct, vary among juveniles and adults. This is so because whereas the former are not fully conscious of the effects and consequences of their conduct the latter are aware and know/understand their actions. A child, far from being the perpetrator of a criminal act, is often the victim of circumstances, which force him/her to react in a certain manner and exhibit criminal conduct. His/her criminal propensity is partly due to neglect, perhaps abuse, by others. His/her parents, guardian and society in general,

equally ought to share the guilt and should be indicted for the same. It is a proven fact that the trial, conviction and consequential punishment of a juvenile offender, neither help in reforming him/her nor in eliminating crime from the society. It was in recognition of this fact that a separate juvenile justice system was evolved and special laws and procedures devised for the treatment, trial, placement and rehabilitation of juvenile offenders. The system is gaining currency among the nations of the world and is being followed and applied in increasing jurisdictions.

## **International Law**

The international instruments, namely, the Charter of the United Nations, Universal Declaration of Human Rights 1948 and International Covenant on Civil and Political Rights 1966, lay special emphasis on the inherent dignity and worth of human person.[1] They guarantee liberty and security of person,[2] prohibit torture as well as cruel, inhuman or degrading treatment or punishment[3] and the arbitrary arrest or detention of a person.[4] They also prohibit the imposition of death sentence for a crime committed by a child below 18 years of age.[5] The Convention on the Rights of the Child 1989, which came into force in 1990, has so far been ratified by 182 States,[6] including Pakistan.[7] In terms of number of accessions, the Convention stands almost at par with the Charter of the United Nations. Such an overwhelming response reflects the determination of the international community to improve the status and conditions of children and work for their welfare and development.

The Convention contains three articles, namely, Article 37, 39 & 40, which give a fairly exhaustive account of the rights and safeguards available to juveniles, confronted with the law. Such rights and safeguards may be listed under three (pre-trial, during-trial and post-trial) headings:

### **1- Pre-trial**

- i. The State shall fix a minimum age for criminal liability;
- ii. The accused child shall be presumed innocent till proven guilty;
- iii. The State shall ensure protection against retrospective punishment;
- iv. No child shall be arrested or detained save in accordance with the law and such detention must be as a "measure of last resort and for the shortest appropriate period of time";
- v. The child must be promptly informed, through his parents or guardian, of the charges against him;
- vi. The child must be treated with dignity and honour, and his privacy must be fully respected;
- vii. The State shall enact special laws and procedures for the trial and treatment of the juvenile offenders;
- viii. Such laws must provide for "diversion" and/or other alternatives to formal trial.

### **2- During Trial**

- i. An independent and impartial judicial forum of competent jurisdiction should conduct the trial;
- ii. The child should have the assistance of an interpreter, in case he does not understand the court language;
- iii. The child should have protection against self-incrimination and must not be forced to confess his guilt;
- iv. The State must make available to the child legal aid and other assistance in the preparation/presentation of his defense;
- v. The child should get a fair hearing; must be enabled to produce evidence in his favour and cross-examine witnesses against him;
- vi. The court should conduct the proceedings expeditiously and announce its judgment promptly;
- vii. The court while deciding the case, should consider "the best interest of the child" and must take into account the age and situation of the child;
- viii. The child must have the right to have an adverse Judgment reviewed by a higher (equally independent, impartial and competent) court of appeal.

### **3- Post-trial**

- i. No child below 18 years of age should be punished with death sentence or life imprisonment, without any possibility of release;

- ii. No child shall be subjected to torture or other cruel, inhumane or degrading treatment or punishment;
- iii. During detention, the juvenile delinquents must be kept separate from the adult criminals;
- iv. During placement in a juvenile institution, the child must have regular contact with his family.
- v. The State shall establish institutions for the care, education and training of the juvenile delinquents so that they are rehabilitated and reintegrated into the society;
- vi. As an alternative to placing the child in an institution, the State should establish a system of guidance, counseling and probation for his rehabilitation.

Besides the Convention, certain other international human rights instruments also exist which prescribe minimum standards for the treatment of juvenile delinquents and their reformation/rehabilitation in the society. Such instruments include the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules 1985); the United Nations Guidelines for the Prevention of the Juvenile Delinquency (the Riyadh Guidelines 1990) and the United Nations Guidelines for the Protection of Children Deprived of their Liberty (the UN Rules 1990). These Rules and Guidelines prescribe minimum standards for the handling of the juvenile offenders and their treatment in corrective institutions. They are couched in general words and have a degree of flexibility, so as to be conveniently adopted by

different states, at various stages of legal and socio-economic development. Their application is required to be impartial without any distinction/discrimination on any ground.

## **Domestic Legislation**

The Constitution of Pakistan contains sufficient safeguards against arrest and detention. The person detained is required to be promptly informed of the grounds of arrest, produced before the court and provided the assistance of a legal counsel.[8] Retrospective or double punishment and self-incrimination are prohibited.[9] The Constitution guarantees the dignity of man and prohibits torture for the purpose of extracting evidence.[10] It requires the State to make appropriate arrangements for the protection of child.[11]

Such constitutional safeguards are duly reflected in the criminal law. The Pakistan Penal Code 1860 confers absolute presumption of innocence on a child below 7 years of age[12] and a rebuttable presumption on a child between 7 - 12 years of age.[13] The Criminal Procedure Code 1908 provides that a child under 16 years of age may be released on bail, even if accused of a non-bailable offence carrying death penalty or life imprisonment.[14] The Code further provides for the confinement of a youthful convict (under the age of 15 years) in a reformatory school wherein necessary training should be given to such offender.[15] It empowers the court to release a first time convicted offender not punishable with death or life imprisonment, below 21 years of age, on probation of good conduct instead of being sentenced.[16] Similarly, the court, having regard to the age of a convicted person imprisoned for up to two years, may release him after due admonition.[17]

The Reformatory Schools Act 1897 -- the first special law on the treatment of juvenile convicts - - provides for the establishment of schools where male child convicts, below 15 years of age, may be kept. The Act provides for the proper training of such inmates. The inmates may have to spend from 3 to 7 years in such school. Similarly, the Punjab Borstal Act 1926 speaks of the establishment of borstal schools, for segregating adolescent prisoners (below 21 years of age) from adult ones, and giving them industrial training. The Act provides for the regulation and management of such schools. The Act further provides for a Visiting Committee with power to cause the release of an inmate on license. The Sindh Children Act 1955 is a consolidating and amending law on the custody, protection, treatment and rehabilitation of youthful offenders. This Act remained inoperative for some time and was enforced only in 1976. It applies to children under 16 years and accords them special rights in the areas of bail, trial and sentencing. The Punjab Youthful Offenders Ordinance 1983 is the latest law on the subject, but has not yet been enforced except in District Sahiwal. The law contains fairly modern notions and latest concepts on the treatment and rehabilitation of juvenile delinquents, below 15 years of age. It provides for the establishment of separate juvenile courts and prescribes special procedure for the arrest/detention, custody and trial of juvenile delinquents. It also sets up corrective schools and institutions for their placement and rehabilitation.

The Government has already initiated the process of reviewing the existing laws and procedures so as to bring them in conformity with the provisions of the CRC. It introduced the Child Offenders Bill 1995 in the Parliament. The Standing Committee of the Senate has since

approved the Bill. The proposed Bill is fairly comprehensive in scope and provides several safeguards for juvenile offenders. It seeks to establish special juvenile courts for the trial of children fewer than 16 years of age. It provides for the abolition of capital punishment, corporal punishment, whipping, labour and the use of fetters and handcuffs for children. Legal aid is required to be provided to the accused child at State expense. There are fairly liberal provisions for the grant of bail and release of child on probation. Children placed in borstal institutions are required to be given proper facilities of accommodation, food, health, education and training so as to reform and rehabilitate them in the society.

## **Recommendations for Reform**

### **A: Administrative Measures**

#### **1. Designating Juvenile Courts:**

Due to gaps in legislation as well as non-enforcement or flawed-enforcement of laws, children facing trial or detention, have to face great hardships. The Commission takes the view that financial constraints may prevent the government from resolving all the problems in one go, but it would be wrong to assume that even small and moderate steps in this respect cannot be taken. Given the political will and sincere commitment to implement the principles of the Convention, a gradual process of its enforcement/implementation can and must be initiated. Separate courts must decide juvenile cases, but all such courts cannot be created at once. This problem, however, can be overcome by designating some, from among the existing courts, to act as juvenile courts. This,

of course, will increase momentarily, the burden of such courts, but a gradual increase in the number of judicial officers, will ultimately resolve the problem. Let a modest but gradual programme of creating separate juvenile courts is planned in such a way that the process is completed within the next 5 years.

## **2. Establishing Juvenile Institutions:**

In the same way, planning must be made and action initiated for the establishment of juvenile institutions. Currently, there are only two separate juvenile jail-cum-borstal institutions in the country, one at Bahawalpur (Punjab) and the other at Landhi (Sindh). In NWFP, a separate juvenile circle has been established in the Central Prison at Peshawar. Similarly, the Prison at Haripur also has a juvenile camp, situated at Nathiagali. In Baluchistan, the convicted juveniles are housed separately at the Central Prison at Mach. Elsewhere in the country, complete separation of the juveniles from adult prisoners has not been effected. In places where it is done, the environments as well as conditions are far from satisfactory. This is so because juvenile sections are created within the precincts of jails.

International instruments and domestic law lay emphasis on the separation of juveniles from adults, not just in prison but also while in police/judicial custody, so that the young offenders are saved from abuse and criminal contamination. The Government must, therefore, prepare a planned strategy for resolving this

problem. To start with, arrangements must be made for separating juveniles from adults in all prisons. But segregation alone will not be sufficient; conditions inside such places must also improve, making them conducive for the education, training and rehabilitation of its inmates. The Government must also plan simultaneously for establishing separate juvenile institutions, equipped with necessary facilities of board and lodging including medical care and educational/training arrangements.

### **3. Training of Staff:**

Similarly, arrangements should be made for creating proper institutions and administrative structures for organising/managing the juvenile justice system. The staff of such institutions should be given proper orientation and training, sensitising them to the peculiar conditions and special needs of the juveniles. Thus, proper training must be arranged for all such personnel who come in contact with juvenile offenders. This would include, inter alia, police personnel, prosecution staff, lawyers, judicial officers, probation officers, jail staff and the staff working in juvenile placement institutions.

## **B. Legislative Measures**

As regards legal reforms, the Government must examine the possibility of gradually enforcing the Punjab Youthful Offenders Ordinance 1983 (hereinafter referred to as Ordinance). This law being the latest in the field is fairly up-to-date, as it incorporates

latest principles and concepts from modern jurisprudence, particularly in the area of criminal justice system. This Ordinance, with some minor adjustments and improvements, may be made into a model juvenile justice code. Such a code should be given overriding effect vis-a-vis other laws on the subject. It should be adopted by other provinces and gradually enforced. However, with a view to further improve its provisions and harmonise them with the Convention and other international instruments, the following changes/additions may be incorporated in its text:

### **1- Minimum and Maximum Age for Criminal Liability**

The Pakistan Penal Code prescribes 7 years as the maximum age for exemption from penal liability. The Code carries such exemption to 12 years, provided that it can be shown to the satisfaction of the court that the accused had not yet attained sufficient maturity of understanding the nature and consequences of his conduct on the occasion. This practice of fixing two age limits, one subject to binding presumption and the other rebuttable presumption, is followed in most of the Commonwealth jurisdictions. The practice elsewhere in the world is, however, different. Such practice as to minimum and maximum age limit varies, as different states have prescribed different limits, ranging from 6 to 18 years.[18] Some states, on the other hand, prescribe no minimum age limit.[19] There are certain other countries where the issue of criminal liability is decided, not on the basis of any prescribed age limit, but a study of the mental and psychological state/quality of the child, and his role in the commission of the

alleged offence. In such cases, there is an individual determination by the court as to whether or not the child deserves to be tried and punished as an adult.[20]

Keeping in view such wide and varied practice and the divergent views/opinions as to the merits and demerits of determining such minimum and maximum age limits, it is safe not to suggest any alteration to the provisions of the Pakistan Penal Code. Instead a procedural change may be proposed which will help improve the child situation. Accordingly, it is suggested that the proposed Code may be given overriding effect so that children are tried by juvenile courts. The juvenile court, due to its aptitude, experience and professionalism, would be indeed a more appropriate forum to decide such matters, and in keeping with the child's age, mental ability, character, etc decide upon appropriate course of action for release or placement in a correctional institution.

## **2- Maximum Age for Entry into Juvenile Justice System**

The Ordinance prescribes 15 years as the maximum age for entry into the juvenile justice system.[21] The Sindh Children Act 1955 puts the age limit at 16. The pending, Child Offenders Bill 1995, has followed the same. Elsewhere in the world, the age limit varies, the highest being set at 21 years.[22] Thus, there is no uniform international practice on the question of fixing maximum age limit for availing the system of juvenile justice administration. The international instruments though suggest 18 years as the maximum age.[23] Having examined

the issue, the Commission takes the view that, for the time being, the age limit prescribed by the Sindh Children Act 1955 i.e. 16 years may be retained and uniformly followed all over the country, and the cases of children below the said age limit be tried exclusively by the juvenile courts.

### **3. Detention Pending Trial**

The Criminal Procedure Code empowers the court to release a child under 16 years of age on bail, even when charged with a non-bailable offence. The Ordinance on the other hand provides that when a child, accused of a non-bailable offence is arrested and cannot be brought before the court forthwith, the Officer-in-Charge of the police station shall release him on bail. The court, however, may cancel such a bail, if convinced that the release is likely to expose the child to danger or criminal activities or would defeat the ends of justice.[24] But since the Ordinance has not yet come into operation, this provision does not apply and the issue continues to be governed by the Criminal Procedure Code. The court that decides the issue of detention pending trial is an ordinary criminal court, which follows the general criminal law.

The detention of a child is indeed a serious matter as it exposes the child to several harmful consequences. Firstly, the child loses the care, support and protection of his family, thus is vulnerable to abuse, exploitation and criminal contamination. Secondly, the child may suffer from torture or cruelty or some

other inhuman or degrading treatment, which may damage his personality. It is, therefore, necessary that pre-trial detention be not resorted to as a routine measure. Exceptional circumstances and pressing reasons, such as preventing repetition of crime, recidivism, enforcing attendance before the court of law or saving the child from further harm/danger, etc alone, would ordinarily qualify to be reasons/grounds for such detention. Both the Convention[25] and the Beijing Rules[26] provide that detention pending trial must be used "only as a measure of last resort and for the shortest possible period of time." Certain countries duly incorporated this provision in their national laws.[27] It is, therefore, necessary that the present legislation pertaining to detention pending trial is reviewed and reformed on the following lines:

- i. Detention should be as a measure of last resort, meaning it should be resorted to under exceptional circumstances and for pressing reasons;
- ii. Detention should be for the shortest possible period. The court should immediately take up the matter and after weighing the facts and circumstances of the case, promptly decide the question of release on bail. In doing so the age, antecedents and status of the child must be given due consideration;

- iii. In dealing with the bail issue, the court must also examine other alternative measures such as supervision by probation officer, guidance of parents/guardian, etc.

#### **4- Disposal of Juvenile cases by Diversion**

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[28] as well as Beijing Rules[29] 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 the 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.

## References

1. Preamble of the Charter of the United Nations; Art 10 of International Covenant on Civil and Political Rights 1966.
2. Art 4 of the Universal Declaration of Human Rights 1948; Art 9 of the International Covenant on Civil and Political Rights 1966
3. Art 5 of Universal Declaration of Human Rights 1948; Art 7 of the International Covenant on Civil and Political Rights 1966
4. Art 9 of the Universal Declaration of Human Rights 1948 and Art 6 of the International Covenant on Civil and Political Rights 1966
5. Art 6(5) of the International Covenant on Civil and Political Rights 1966
6. By 30 June 1996
7. Pakistan ratified the Convention on 12 November 1990
8. Art 10
9. Articles 12 & 13
10. Art 14
11. Art 35
12. Section 82
13. Section 83
14. Section 497(1)
15. Section 399
16. Section 562
17. Section 562(1A)
18. 6-12 years in some States of Mexico and USA; 7 years in Bangladesh, Egypt, Switzerland; 10 years in Malaysia and Japan; and 18 years in Iraq & Venezuela

(Source: Report prepared by the Special Rapporteur, Mary Conception, Bautista for the Sub-Commission on Prevention of Discrimination and Protection of Minorities (ECOSOC).

19. France and Uruguay
20. USA, J.K. & Canada
21. Section 2(1)(a)
22. 17 years in Costa Rica, Guyana & Jamaica; 18 years in China, Switzerland, Egypt & Iraq; 19 years in Austria; 20 years in Cuba and 21 years in Philippines and Sweden
23. Article 1 & 37(a) of the Convention on the Rights of the Child 1898 and Article 6 of the International Covenant on Civil and Political Rights 1966
24. Section 41
25. Article 37(b)
26. Rule 13.1
27. Australia and Brazil
28. Article 40(3)(b)
29. Rule 11