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Restorative Juvenile Justice System in Pakistan: An Overview

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Abstract

Restorative justice is a process which focuses on helping parties involved in an offence to collectively resolve the issue to ensure that its aftermath results in a better outcome for everyone concerned. In essence, it is a wide concept akin to the Jirga system of the Pukhtoon culture or of the Panchayat in the Punjab or the Sulh in the Arab world. These concepts may sound different but they are common in their focus on the relationships between victims, offenders and the community. As a result of the positive outcomes of the restorative justice system, nations around the world are shifting from purely punitive justice systems to one which is more restorative in nature. In view of this, Pakistan too had introduced the Juvenile Justice System Ordinance Act, 2000 which has been recently repealed and replaced by the Juvenile Justice System Act, 2018. The objective of this doctrinal research is to critically analyse these laws and discuss to what extent Pakistan has adopted a restorative juvenile justice system.

Keywords: Restorative justice, Juvenile Justice System Ordinance 2000, Juvenile Justice System Act 2018, Retributive justice.

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Introduction

In the past few decades, the juvenile justice systems of the nations around the world have shown a shift from punitive policies to a more renewed compassion and individualisation of juvenile justice practices (Bollin et.al, 2019). In line with this, there was a trend that focuses on the restorative justice system. Restorative justice is a process that aims to resolve the harm caused as a result of unlawful behaviour. This is best accomplished when the concerned parties meet willingly to decide on how to achieve this. This practice can lead to the transformation of people, relationships and communities (Corriero, 2006). Furthermore, where the criminal justice system fails to fulfil the requirements of society, restorative justice provides hope for the needs of victims, offenders as well as the community as opposed to just punishing the offender based on abstract legal principles. The juveniles who are involved in such cases might also be first-time offenders involved in either minor or severe offences (Winter, 2009). As a result, countries around the world including Pakistan are in the process of transforming their juvenile justice systems to emphasise restorative outcomes to ensure that the future of young offenders is not affected due to the stigma surrounding imprisonment. The United States is a clear example of a country that has adopted ‘soft approaches’ in its implementation of punishment for juvenile offenders. The United States has been moving away from ‘get tough’ juvenile justice practices which have been clearly indicated in a series of decisions from the Supreme Court (Benekos & Merlo, 2019 cited in Bolin et.al, 2019). The researchers listed the cases which showed this trend:

Roper v. Simmons (2005) – The Court held that the death penalty is unconstitutionally cruel and reasserted that juvenile are different from adults.

Graham v. Florida (2010) – The Court eliminated life-without-parole (LWOP) sentences for juveniles in non-homicide cases.

Miller v. Alabama (2012) – The Court asserted that “children are constitutionally different from adults for sentencing purposes”.

This movement is commendable as it is in line with the UN Guidelines on the prevention of juvenile delinquency (Riyadh Guidelines, 1990):

Youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood (OHCHR).

Despite the movement being seen as a commendable, studies have shown contradicting outcomes on the appropriateness of restorative justice for youth offenders. Suzuki and Wood (2018) claim that while many studies on restorative justice for youth offenders have shown favourable outcomes such as victim satisfaction and fairness, and offender accountability and perceived legitimacy, other studies have demonstrated more

problematic outcomes in terms of mutual understanding, the sincerity of apology and reoffending. However, they went on to assert it is almost axiomatic today within restorative justice literature and practice that it is a suitable and appropriate approach for youth offenders which has been proven through numerous evaluative studies conducted within the last 30 years. According to Strang et al. (2013), in comparison to existing criminal justice approaches, these studies have demonstrated favourable outcomes for victims in terms of satisfaction, fairness and redress; and for offenders in terms of accountability and perceived legitimacy. Bollin et al. (2019) have summarised the rationale advocated by supporters of the restorative justice practice into three main arguments; first, youth offenders generally commit less serious crimes than adult offenders (Dünkel & Pruin, 2012), second, youth offenders are considered less culpable than adult offenders (Steinberg & Scott, 2003) and third, youth offenders are seen as less cognitively developed and emotionally mature than adults (Cauffman & Steinberg, 2012). Based on this rationale, advocates including policymakers and practitioners are of the opinion that the restorative justice practice is the way forward towards a moralising and responsibilities response to young offenders (Hirschi, 1969; Farrington & Welsh, 2007; Becker, 1963; Young & Hoyle, 2003; Zehr, 1990; Bottoms, 2003; Braithwaite, 1989; Newburn, 1998; Johnstone, 2002).

As it stands today, Pakistan's demographics reflect that the bulk of the population (at least more than one third) are under the age of 18 years (Index Mundi, 2019). Further, it is reported to have a total population of 207,774,000 people, out of which, the percentage of those falling under 0-14 years is 31.36% (33,005,623 males and 31,265,463 females) and for 15-24 years is 21.14% (22,337,897 males and 20,980,455 females). Hence, enabling the youth to reach their full potential will augur well for the future of the country.

It must be noted that children are not adults and therefore lack the maturity to know and appreciate the consequences of their actions. They are young and vulnerable and need to be treated differently from adults. According to Raha (2019), the central argument is that trial and punishment of children as adults, for any offence violates the right to non-discrimination recognised under International Human Rights Law (which allows States to make exceptions based on the serious nature of the crime alleged and the age of a child accused of an offence) as well as the principle of best interest, reintegration objective of juvenile justice and rights of juveniles provided in the UN Convention on Rights of the Child 1989 and other international instruments. As such, they should not be dealt with under the standard criminal system alongside hardcore adult criminals as they have a higher risk of being exploited and/or exposed to inhumane or degrading treatment. This type of exposure could jeopardise any opportunity for reform. On the other hand, a mistake made by a child offender can be turned into a positive lesson as they may have committed the crime for a multitude of reasons, the blame for which may or can be placed elsewhere. Hence, the best chance for them to have a promising future would be to ensure that their first brush with the law is dealt with appropriately.

In Pakistan, studies done on juvenile delinquency links it to the low socio-economic status of the child and family, lack of parental guidance (broken or fractured families), peer pressure and lack of a congenial environment for education (Zafar, 2012). This socio-economic dimension or environment which is outside the control of the offender requires redress as it directly contributes to the problem at hand. Further, Malik and Shirazi (2010)

identified “a wider spectrum of causes that contribute to juvenile crimes including land, money, sexual assault, illiteracy, honour killings, old enmity, drug addiction and the more recent establishment of militant ‘deeni madrisas’ (religious education institutions) that impart militancy and sectarian hatred to young teens”. They went on to add that “rural juvenile crimes are attributed to illiteracy, poverty, water theft, feuds, land dispute, child trafficking, extortion and money grab”. The crimes in the city include murder, attempted murder, hurt, robbery, burglary, drugs and motor vehicle theft. These kinds of crimes occur world-wide and some countries are more proactive and progressive in addressing these issues. According to Bochenek (2010), the number of children behind bars is more than one million and they suffer from isolation and internal conditions such as abuse, deprivation of education and access to regular family contact.

In view of this issue which has raised the concern of many stakeholders throughout the world, this paper aims to analyse the position of Pakistan in regards to its juvenile justice system. Since the restorative justice system aims to rehabilitate the child while providing restitution in favour of the victim and fostering peace within the community, there is a need for a special court that will cater to this. As such, this paper analyses two critical issues. Firstly, the paper aims to identify the need for a juvenile justice court system in Pakistan which would encompass child courts, special infrastructure, mechanisms, powers, procedures and the need for places of detention for children which are separate from the adult criminals. Secondly, the paper explores how juvenile crimes can be resolved in a separate child court in Pakistan via an alternative dispute resolution mechanism that seeks to be restorative in nature and provides a solution amicable to the offender, the victim and their families. As these are the special features incorporated within the Pakistan Juvenile Justice Act 2018 that came into effect after the repeal of the Juvenile Justice System Ordinance 2000, the researchers analysed the new Act in depth.

1. International Standard and Instruments Related to Juvenile Justice

The key international instrument for the juvenile justice system is the Convention on Rights of the Child 1989. The other UN Guidelines on juvenile justice includes the Beijing Rules 1985, Riyadh Guidelines 1990, Tokyo Rules 1990 and Rules for Protection of Juveniles Deprived of their Liberty 1990. Pakistan, like the rest of the world, (except for the United States and Somalia) is a signatory of the UN Convention on the Rights of the Child (CRC). It also ratified with reservation the Convention on the Rights of the Child on 12 November 1990. However, on 23 July 1997, the Government of Pakistan informed the Secretary General that it had decided to withdraw its reservation made upon signature and confirmed upon ratification which reads as follows and this shows that Pakistan is seeking to uphold the defined rights therein for the child:

Provisions of the Convention shall be interpreted in the light of the principles of Islamic laws and values (United Nations Treaty Collection 1990).

Some of the important features of the UN Convention on the Rights of the Child (CRC) include that under the convention, a child is a person below the age of 18 years unless the law applicable to the child’s maturity is attained earlier (Article 1). Article 19

provides for the protection of children from physical or mental violence or maltreatment. Article 34 requires state action to protect the child from sexual abuse. Article 37 provides that no child shall be punished in a cruel or harmful way; children who break the law should not be treated cruelly. They should not be imprisoned with adults; they must be allowed to be in contact with their families and should not be sentenced to death or to life imprisonment without the possibility of release. Article 40 requires state parties to promote and establish special laws, procedures, authorities and institutions for children who have been accused. This provision is the realisation of the separate criminal justice system for the juvenile and for fostering the aims of juvenile justice.

Beijing Rules (rule 5) provides that juvenile justice has two primary objectives, namely the promotion of the wellbeing of the juvenile and to ensure that any reaction should be proportionate to the circumstance of both the offence and the offender. Beijing rules provide for the United Nations minimum rules for the administration of juvenile justice. These rules were the first legal instrument before the CRC to comprehensively detail norms for the administration of juvenile justice with child rights and child developmental approaches. The rules are mentioned in the CRC preamble and have several principles incorporated into the CRC. The rules call for a juvenile justice system to be fair and humane. The emphasis is on the wellbeing of the child to ensure that the reaction of the authority is not just proportionate to the offence but also to the circumstances of the offender. It stresses the importance of rehabilitation and calls on civil society and community resources to assist in the form of education, employment or accommodation for the child.

The Riyadh Guidelines, on the other hand, provide a comprehensive and proactive approach to prevention and social reintegration together with social and economic strategies that cover family, school, community, media, social policy, legislation and a juvenile administrative system. It furthers the general welfare and wellbeing of the child with a focus on those who are at risk of being abandoned, neglected, exploited and abused.

The UN Rules for Protection of Juveniles Deprived of their Liberty (JDL) is another instrument which is very serious in ensuring that the detention of a child is only necessary as a last resort and for the shortest possible time and limited to exceptional cases. It seeks to counteract the detrimental effects of deprivation of liberty by ensuring respect of the human rights of the child. It sets out standards which are applicable when a child (any person under the age of 18) is confined to any institution or facility (whether it be penal, correctional, educational or protective) and there is a necessity for an evaluation of the detention to ensure whether it is on the grounds of conviction or suspicion of having committed an offence or simply because the child is deemed 'at risk' by any order of any judicial, administrative or other public authority.

The Tokyo Rules is the UN Minimum Rules for Non-Custodial Measures. It seeks to find the proper balance between the rights of individual offenders, victims and the society's concern for public safety and crime prevention. In order to be flexible with the nature and gravity of the offence or the age of the offender and to avoid unnecessary use of imprisonment, the criminal justice system is encouraged to provide a wide range of non-custodial measures from pre-trial to post-sentencing dispositions.

2. Domestic Laws in Pakistan

The Constitution of Pakistan though providing for equality allows for the laws to be discriminated and favour the protection of women and children. Hence, it paves the way to allow a child to be treated differently and more protectively than an adult for criminal offences. Although Article 25 provides that all citizens are entitled to equal protection of the law with no discrimination on the basis of gender, there is a provision stating that nothing in the article shall prevent the making of any special provision for the protection of women and children. Furthermore, Article 25(3) of the Constitution authorises the state to make special provisions for the protection of children. The Constitution of Pakistan also provides special protection for children under Article 35.

In reference to Pakistan's Constitution, the domestic legislation has specific provisions to ensure that the protection embedded in the Constitution is upheld. This is evident in the sections of Pakistan's Penal Code. Section 82 of the Pakistan Penal Code 1860 provides that the minimum age for criminal responsibility is seven years. Thus, an offender of a crime can be as young as seven years and will undergo the normal processes of an adult accused under the usual criminal justice system unless there are provisions indicating otherwise (Juvenile Justice, 2013 -14). Section 83 of the Pakistan Penal Code allows a defence that if it can be shown that a child is immature and unable to judge the nature and consequences of his or her conduct and is under the age of twelve, such a child is not subjected to criminal liability. However, the fact remains that pending that finding, there are pre-trial, trial and post-trial investigations, detentions, processes and proceedings that a child as young as seven years will be subjected to like an adult unless there are laws which are implemented and enforced providing for structures to protect the child.

2.1. Juvenile Justice in Pakistan Post 2000

Juvenile laws in Pakistan are special laws made to achieve special objectives. One such special law is the Juvenile Justice System Ordinance (JJSO), 2000. The objective of this ordinance was to have a softer approach of criminal justice towards the young who displayed deviant behaviour for certain reasons. JJSO (2000) was landmark legislation that set the age of below 18 years as the age of a juvenile to be accorded different treatment in a criminal charge. However, it is unfortunate that JJSO (2000) though well-intended was not successful in its objectives (Berti, 2003). A major weakness highlighted in the Juvenile Justice report is the lack of conformity to JJSO (2000) by the administrative stakeholders and this has been a cause for concern. The failure of the respective provinces, organs and bodies to act in accordance with the structure formulated with legally binding laws is a serious and apparent gap. The limited number or lack of Borstal institutions to house juveniles away from prisons is another weakness (Shujaat & Mirza, 2015).

Malik and Shirazi (2010) have identified cases where there are violations of JJSO (2000) in regards to the rights of juveniles. These include the parent(s) of the juvenile not being informed of the arrest, the juvenile not being presented before a court within 24 hours and the juvenile being brought in handcuffs with adult criminals. They added that the detention of children with adult criminals in the same jail is clearly a blatant contravention of the law and yet in Sindh, the two jails selected for their study detained juveniles with adults exposing them to torture, serious ill-treatment and sexual abuse even by police officers. It is evident that there is a lack of infrastructure for the detention of

juveniles and a lack of trained personnel to deal specifically with juveniles and these issues need to be addressed. Furthermore, the number of juveniles under trial and detention as indicated in Table 1 is a reflection of a failed system to provide timely and legally stipulated counsel to juveniles and/or the inability of the offender to provide bail for which there is no non-custodial alternative. As a result, this Ordinance was repealed and, in its place, the Juvenile Justice System Act 2018 was enacted.

Table 1. Number of Juvenile under Prison Detention

Province	Prisoners	No of Prisons	Male	Female
Punjab	Juveniles under trial	34	538	1
	Juveniles Convicted		60	
	Total		599	
Balochistan	Juveniles under trial		16	
	Juveniles Convicted		28	
	Total		44	
Sindh	Juveniles under trial	25	253	
	Juveniles Convicted		6	
	Total		259	
Kyber Pakhtunkhwa	Juveniles under trial	20	289	
	Juveniles Convicted		32	2
	Total		323	

Source: (Shujaat & Mirza, 2015).

2.2. Juvenile Justice System Act (2018)

As discussed, there were serious flaws in JJSO (2000). Since it was not adequate to protect the rights and restorative needs of juveniles, a need emerged for a new law to be passed. As a result, the new Juvenile Justice System Act 2018 (JJSA 2018) was passed by both Lower and Upper Houses of the Parliament. The uniqueness of this Act is that it focuses on the disposal of cases through diversion and restoration of juvenile victims and offenders. Rabiya Javeri Agha, the Secretary of Ministry of Human Rights said that the Act focuses on “processing juveniles by sending them to community services instead of sending them to jail that houses (hardened) criminals” (Shahid, 2018). Table 2 shows the tabulation of the key sections of JJSA (2018) that clearly stipulates special measures in place for the protection of juveniles.

Table 2. Key Sections of the Juvenile Justice System in the JJSA 2018

Section	Details
3. Legal Assistance.	<p>(1) Every juvenile or a child who is victim of an offence shall have the right of legal assistance at the expense of the State.</p> <p>(2) A juvenile shall be informed about his rights available under the law by a legal practitioner within twenty four hours of taking him into custody.</p> <p>(3) A legal practitioner appointed by the Government or by the Juvenile court for providing legal assistance to a child victim of an offence or a juvenile shall have at least seven years standing at the Bar.</p>

5. Arrest of a Juvenile.	<p>(1) The arrested juvenile shall be kept in an observation home and the officer-in-charge of the police station shall, as soon as possible, –</p> <p>(a) inform the guardian of the juvenile,</p> <p>(b) inform the concerned probation officer</p> <p>(2) No juvenile shall be arrested under any of the laws dealing with preventive detention or under the provisions of Chapter VIII of the Code.</p> <p>(3) The report under section 173 of the Code shall also describe the steps taken by the officer-in-charge</p>
6. Release of a juvenile on bail.	<p>(1) Notwithstanding anything contained in the Code, a juvenile accused of a bailable offence shall, if already not released under section 496 of the Code, be released by the Juvenile Court on bail with or without surety.</p> <p>(2) The Juvenile Court shall, in a case where a juvenile is not released under subsection 1 direct the police for tracing the guardian of such juvenile</p> <p>(3) Where a juvenile is arrested or detained for commission of a minor or a major offence for the purposes of this Act, he shall be treated as if he was accused of commission of a bailable offence.</p> <p>(4) Where a juvenile of more than sixteen years of age is arrested or detained for a heinous offence, he may not be released on bail if the Juvenile Court is of the opinion that there are reasonable grounds to believe that such juvenile is involved in commission of a heinous offence.</p> <p>(5) Where the Juvenile Court is of the opinion that the delay in the trial of a juvenile has not been occasioned by an act or omission of such juvenile or any other person acting on his behalf or in exercise of any right or privilege under any law for the time being in force, such juvenile shall be released on bail if he has been detained for a continuous period exceeding six months and whose trial has not been completed.</p>
9. Disposal of cases through diversion.	<p>(1) With the consent of a juvenile or his guardian, the complaint against a juvenile relating to offences as specified in sub-section (6) shall be referred to the Juvenile Justice Committee for disposal of the same through diversion.</p> <p>(2) The diversion can be exercised at any stage during the course of investigation.</p> <p>(3) Where a case is referred to the Juvenile Justice Committee by the police, the submission of a report of a police officer is required under section 173 of the Code and shall be postponed till the final order of the Committee.</p> <p>(4) The Juvenile Justice Committee shall dispose of a case, with consent of the person against whom the offence was committed, by resorting to different modes of diversion including, –</p> <p>(a) restitution of movable property; (b) reparation of the damage caused;</p> <p>(c) written or oral apology; (d) participation in community service;</p> <p>(e) payments of fine and costs of the proceedings; (f) placement in Juvenile Rehabilitation Centre; and (g) written and oral reprimand.</p> <p>(5) For the purposes of diversion, all offences either minor or major shall be compoundable.</p> <p>(6) Diversion shall be exercised in the prescribed manner in cases:</p> <p>(a) where a juvenile is accused of commission of minor offences; and</p> <p>(b) where a juvenile is accused of commission of major offences and the age of the juvenile is not more than sixteen years at the time of commission of offence.</p>
10. Juvenile Justice Committee.	<p>(1) On commencement of this Act but not later than three months, the Government in consultation with the concerned Sessions Judge shall establish the Juvenile Justice Committee for each sessions division.</p> <p>(2) The Juvenile Justice Committee shall consist of four members:-</p> <p>(a) serving Judicial Magistrate with powers under section 30 of the Code, who shall also head the Committee; (b) district Public Prosecutor; (c) member of local Bar having at least seven years standing at the Bar, appointed by the concerned Sessions Judge for period of two years; (d) serving probation officer or social welfare officer not below the rank of an officer in BPS-17.</p>

	<p>(3) The place of sitting of the Juvenile Justice Committee preferably in the same premises where the Juvenile Court holds sitting.</p> <p>(4) The Juvenile Justice Committee shall perform following functions:-</p> <p>(a) dispose of the cases through diversion upon referral from the police, prosecution or the Juvenile Court, within a period of one month from the date of the referral;</p> <p>(b) inspect the observation homes and Juvenile Rehabilitation Centres and may give directions to the officer-in-charge</p> <p>(5) For the administration and functioning of the Juvenile Justice Committee, provision of staff shall be within the powers of the Sessions Judge of respective district</p>
14. Report of probation officer.	<p>(1) The probation officer shall assist and prepare a report on the direction of the Juvenile Court within such time as may be directed by the Court at any stage regarding:</p> <p>(a) juvenile's character, educational, social and moral background;</p> <p>(b) juvenile's admission of committing an offence;</p> <p>(c) any evidence that juvenile actually committed the offence;</p> <p>(d) all legal and appropriate assistance provided at all levels to juvenile for his understanding, concept and consequences, and even to the child's family and guardian;</p> <p>(e) steps taken for mediation or compromise with the complainant or victim and possibility of settlement;</p> <p>(f) possibility of sending the juvenile to Juvenile Rehabilitation Centre or release on probation.</p>
15. Powers of Juvenile Court to order for release.	<p>On receipt of report under section 14 and on conclusion of an inquiry, investigation or trial, the Juvenile Court may, keeping in view the best interest of the child, -</p> <p>(a) pass an order for release of the juvenile offender after the victim or complainant, as the case may be, pardons him;</p> <p>(b) pass an order for the community service, fine, compensation to the victim or complainant restitution of property, counseling;</p> <p>(c) direct the juvenile offender to be released on probation for good conduct;</p> <p>(d) direct the probation officer to submit a probation report in the prescribed manner;</p> <p>(e) make an order directing the juvenile offender to be sent to a Juvenile Rehabilitation Centre.</p>
16. Orders that shall not be passed with respect to a juvenile.	<p>(1) No person who was a juvenile offender at the time of commission of an offence shall be awarded punishment of death.</p> <p>(2) No juvenile offender shall be committed to prison, ordered to labour, put in fetters, handcuffed or given any corporal punishment at any time while in custody:</p>
17. Special provision for female juvenile.	<p>(1) No female juvenile shall in any circumstances be apprehended or investigated by a male police officer or released on probation under supervision of a male officer.</p> <p>(2) A female juvenile shall only be kept in a Juvenile Rehabilitation Centre established or certified exclusively for female inmates.</p>
19. Removal of disqualification attached with conviction.	<p>Subject to provisions of the constitution, a juvenile offender convicted under the provisions of this Act shall not suffer a disqualification, if any, attaching to a conviction of an offence under such law.</p>
20. Establishment and certification of observation homes and Juvenile Rehabilitation Centres.	<p>(1) The Government may establish and maintain observation home and Juvenile Rehabilitation Centres, including separate centres for female juveniles;</p> <p>(2) The Government may certify an observation home or a Juvenile Rehabilitation Centre managed or controlled by a non-governmental organization</p> <p>(3) The Government may certify an already established association or society in any local area for social reintegration or rehabilitation of a juvenile offender.</p>

The basic aim of this Act is to codify the laws relating to the juvenile justice system by providing a special focus on the disposal of cases through diversion and social restoration of the juveniles. The process of diversion and restoration does not require adherence to

judicial proceedings where disposal of matters is done in the best interest of children. In Pakistan, there is a growing acknowledgement of the limits and failures of the criminal justice system. Similarly, the victims, offenders and community members usually feel that justice does not adequately meet their needs. Many feel that the process of justice deepens societal wounds and conflicts rather than contributing to healing or peace. Moreover, the backlog of court cases does not permit a thorough investigation. As of the year 2018, there are more than 1.8 million cases pending in Pakistan's courts (Asad, 2018). The delay in getting justice is another reason that encourages a restorative justice system especially for juveniles. Lengthy legal procedures create a sense of frustration and result in the loss of confidence in the system. It emboldens the criminals to exploit the legal lacuna in his favour and carry out criminal acts unabashedly. Besides, the current criminal justice system widens division and discord in society (Tarar, 2018). Section 4 (8) of JJSA (2018) asserts the need to expedite trials of juvenile cases to within six months to ensure that the juveniles do not undergo long proceedings.

JJSA (2018) also provides every juvenile with the right to free legal aid. In line with this, section 3 of the Act highlights the provision for legal assistance for a juvenile by the state. Section 3(1) asserts that the Government is responsible to provide legal assistance to every juvenile who is an offender. The same section also provides guidelines for legal assistance and it stipulates that the advocate must provide information regarding the assistance to the juvenile within twenty-four hours of his/her arrest. Therefore, a legal practitioner is hired by the state or by the court for providing legal assistance to the juvenile during the court proceedings. Section 3(1) to Section 3(3) state that the eligibility required under the law for appointing the advocate is that the advocate should have at least seven years of legal practice experience. However, the previous Governments in Pakistan had failed to provide free legal assistance to children who came into conflict with the law. According to Shujaat and Mirza (2015), almost 89% of the juveniles charged with bailable offences are suffering in prisons. It went on to assert that the reason for this lies in the state's failure to provide free legal support and the inability of poor families to secure self-funded legal assistance. It is of serious concern that after eighteen years of the promulgation of JJSA (2000), consecutive governments have failed to constitute a panel of advocates to provide state sponsored legal assistance to juveniles in court cases (SPARC, 2015).

The juvenile courts are also vested with powers that differ from normal criminal courts and there is a justification for it as its objective is to provide facilities for the juveniles and integrate them into society to continue with a normal life (Mughal & Ahmad, 2014). Section 5 of JJSA (2018) deals with the arrest of juvenile offenders where the Act states that for the purpose of safety, "the juvenile shall be kept in an observation home as soon as possible after the arrest". The guardians of the juvenile should be informed of the arrest, the date and time of the detention and the name of the court in which the juvenile would be tried. This information is also passed to the probation officer concerned for further course of action. This Act restrains the Government from arresting juveniles under any of the laws dealing with preventive detention or under the provisions of Chapter VIII of the Code. The section also requires that the report of the probation officer shall "describe the steps taken by the officer-in-charge for referring the matter to the Juvenile Justice

Committee for disposal through diversion”. This new Act protects the welfare and safety of the juvenile.

Furthermore, the new Act also has a provision to establish rehabilitation centres as indicated in section 6. The phrase ‘Juvenile Rehabilitation Centre’ is defined in the Act to mean “a better place where a juvenile may be kept and given education, vocational or technical training for his mental, moral and psychological development”. It also includes certified institutions, juvenile training institutions, Borstal institutions and vocational centres established through voluntary organisations certified by the Government. A similar provision to establish rehabilitation centres is also found in JJSO 2000 under the heading of ‘Borstal Institution’. In addition, section 6 of the 2018 Act states that in juvenile cases “the juvenile shall be placed under the custody of a suitable person or a Juvenile Rehabilitation Centre under the supervision of a probation officer”. The probation officer is required to “make a social investigation report for the court and to take custody of the juvenile released on bail” (where the child is not released to his/her guardian. Due to the lack of coordination between the police and probation department, probation officers face problems in accomplishing this task. Further, these departments are inadequately financed and staffed as well as lack material sources such as transportation and offices. These are needed for the probation officers to carry out their responsibilities for interviewing juveniles to keep an eye on the probationers (SPARC, 2015). The juvenile involved in legal cases shall not under any circumstances be kept in a police station under police custody or prison. This section is taking one step forward towards rehabilitation and also encourages the restoration of the juvenile.

The JJSA (2018) also sanctions more lenient conditions for granting bail to juveniles who come into conflict with the law. For example, section 6 of the Act 2018 states that:

A juvenile accused of bailable offence shall (if not already released under section 496 of the Criminal Procedure Code (CrPC)) be released by the juvenile court on bail, with or without surety, unless it appears that there are reasonable grounds for believing that the release of the child shall bring him/her into association with a criminal or expose the child to any danger, in which case the child shall be placed in custody of a probation officer or suitable person or institution dealing with the welfare of children if a parent or guardian is not available.

This section makes the parole and probation department an important component of the juvenile justice system of Pakistan. A similar provision was also provided in section 10 of JJSO 2000.

It must be agreed that every criminal act leaves an emotional scar which lasts very long. A victim goes through a painful trauma, feelings of revenge and stay committed to settling the score. No other justice system gives as much respect to a victim’s inner feelings as the restorative justice system (Tarar, 2018). There is a section in JJSA (2018) on the disposal of cases through diversion which is stipulated in section 9. This section defines that with the permission of a juvenile or his guardian, the case may be referred to the Juvenile Justice Committee set up under Section 10, JJSA 2018 for disposal through diversion (Section 9(1) JJSA 2018). Section 9(2) states that the diversion may be exercised at any step during the time of investigation by the police and throughout the trial by the prosecution and the court in the prescribed manner. Diversion refers to an alternative process of determining

the responsibility and treatment of a juvenile on the basis of his social, cultural, economic, psychological and educational background without resorting to formal judicial proceedings (Section 2 (d) JJSA 2018). Furthermore, section 9(4) asserts that the Juvenile Justice Committee shall dispose of a case with permission of the victim against whom the offence was committed by resorting to different modes of diversion including “restitution of movable property, reparation of the damage caused, written or verbal apology, participation in community service, payments of fine and costs of the proceedings, placement in Juvenile Rehabilitation Centre and written and oral reprimand”.

However, section 9(6) describes that diversion shall be exercised in the given procedure in cases where (a) a juvenile is accused of committing minor offences and (b) where a juvenile is accused of committing major offences and the age of the juvenile is not more than sixteen years at the time of committing the offence. Further, the Government in consultation with the judge of the Sessions Court shall establish the Juvenile Justice Committee for each session’s division not later than three months from the commencement of this Act (Section 10 JJSA 2018). Additionally, the JJSA (2018) states that the Juvenile Justice Committee shall consist of four members including a serving Judicial Magistrate, a district Public Prosecutor, a member of the local Bar and a serving probation officer or social welfare officer (Section 10(2) JJSA 2018). The functions of the Juvenile Justice Committee are; (a) “dispose of the cases through diversion upon referral from the police, prosecution or the Juvenile Court, as the case may be, within a period of one month from the date of the referral”, (b) “inspect the observation homes and Juvenile Rehabilitation Centres and may give directions to the officer-in-charge of such places for the measures to be taken for welfare and social re-integration of the juvenile kept under their supervision” and (c) “such other functions as may be prescribed” (Section 10(4) JJSA 2018). Pakistan is a country where juvenile misbehaviour is increasing and there are insufficient juvenile prisons to accommodate them for their rehabilitation, the sections of the new Act are relevant. It is hoped that the implementation of these steps proposed by the Act for the rehabilitation of young offenders will transform them into good citizens (Malik & Shirazi, 2010) and at the same time, alleviate the issue of insufficient prisons.

In a justice system that advocates restoration, the probation officer plays an important role. Section 14 of JJSA 2018 states that the probation officer shall assist and prepare a report for the direction of the Juvenile Court to determine the juvenile’s character, educational, social and moral background. They also need to report any voluntary admission of guilt by the juvenile or any evidence to show that the juvenile actually committed the offence. The probation officer also must provide legal assistance needed at all stages for the juvenile. The most important point described in the Act regarding the probation officer’s role is the “steps taken for mediation or compromise with the complainant or victim and possibility of settlement” and the possibility of sending the juvenile to a Juvenile Rehabilitation Centre or to be released on probation. Furthermore, the Act asserts that the Juvenile Court may, if it sees fit, communicate substance of the report to the juvenile’s guardian and where any one of the disputes the contents or views contained therein, the Juvenile Court may give such juvenile or guardian, as the case may be, an opportunity of producing such evidence as may be relevant to the matter stated in the report (Section 14, JJSA, 2018).

The Act assures the powers of the Juvenile Court to order the release in the best interest of the juvenile to also pass an order for the release of the juvenile offender after the victim or complainant pardons him or to pass an order for community service, a fine, compensation to the victim or complainant, restitution of property and counselling (Section 15, JJSA, 2018). However, for the safeguard and self-respect of the juvenile, the JJSA (2018) prohibits any imposition of serious punishments to the juvenile including the death penalty or order to work as a labourer or to be put in fetters, handcuffed or given any corporal punishment at any time while in custody (Section 16, JJSA, 2018).

Great emphasis is also placed on safeguarding the dignity of women and with this in mind, there is a special provision for female juveniles in the Act which states that “female juveniles shall not (in any circumstances) be detained or investigated by a male police officer”. Further, female juveniles shall only be held with exclusively female inmates in Juvenile Rehabilitation Centres which are established by the Government (Section 17, JJSA, 2018). However, it was observed by Human Rights Watch in its report that there are no sufficient specific facilities for female juvenile prisoners. The report asserts that prison authorities rarely maintain a separate register of juvenile females and usually keep them together with adult women in the same prison (Human Rights Watch, 1999).

Article 63A of the Constitution of the Islamic Republic of Pakistan has a provision that any person who is convicted would be deemed disqualified from all public office. However, the JJSA 2018 provides a safeguard to the juvenile from the threat of this disqualification by asserting that subject to provisions of the constitution, a juvenile offender convicted under the provisions of this Act shall not suffer a disqualification (Section 19, JJSA, 2018).

The point which is worth discussing is that in the JJSA (2018), there is a call for the establishment and certification of observation homes and Juvenile Rehabilitation Centres for the welfare of the juvenile. The Government may “establish and maintain observation homes and Juvenile Rehabilitation Centres for the reception of juveniles, including separate centres for female juveniles” (Section 20, JJSA, 2018). In summary, it can be seen that the analysis of the provisions of JJSA 2018 on the restoration juvenile justice process seems to have taken into consideration the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (1985), (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and other related international instruments.

Conclusion

Pakistan has a comprehensive legal framework to regulate its juvenile justice system. However, the country is constantly unsuccessful in the implementation of these laws. The previous laws failed to provide the required facilities for juveniles. Similarly, the Government also failed to provide facilities which were required by law. Juvenile offenders under trial or in the prisons are facing many issues including lack of legal assistance, basic rehabilitative services, skills development and psychological counselling. This has resulted in further criminalisation of prison populations especially juveniles who are often imprisoned with adult prisoners due to lack of space. There are multiple reasons for this such as comprising of the fact that jails and detention centres do not accommodate intervention focusing on restoration of juveniles and inherent cultural bias against juveniles

who have broken social norms. Thus, there is an urgent need to overcome these biases and to provide juveniles in jails with the support and rehabilitation that they rightfully deserve.

With the introduction of the Juvenile Justice System Act, 2018, it is expected that the new law will be implemented in its letter and spirit. It is noted that the new law has many good features that can help the implementation of a restorative juvenile justice system in the country. The new law includes some new structures for a restorative approach. For example, disposal of cases through diversion, powers of the juvenile court to order for release, special provisions for female juveniles, removal of disqualification attached with conviction, establishment and certification of observation homes and Juvenile Rehabilitation Centres. However, it is evident that there are no separate juvenile courts established so far in every district of the country. Additionally, for the children who come into conflict with the law, parole and probation departments remain understaffed and officers overworked to handle the huge number of juvenile offenders.

This research gives recommendations for all stakeholders to develop an appropriate response for the improvement and implementation of a restorative juvenile justice system. It is recommended that the government needs to establish juvenile courts, dispose of cases through diversion, uplift the parole and probation system, activate the Juvenile Justice Committees, provide special provisions for female juveniles, establish observation homes and Juvenile Rehabilitation Centres and assure that the provisions of JJSA (2018) are met during the juvenile's trial. Further, it is recommended that the probation department should be strengthened both in terms of resources and capacity. In addition, the police, probation and prison departments, as well as the judiciary, should have more cooperation and coordination. This research also recommends that the federal and provincial Governments should allocate more funds for the implementation of the restorative juvenile justice system. The Government should provide funds for legal assistance to juvenile offenders as well as victims by activating the panel of lawyers already constituted for the purpose or by establishing panels in districts which have none. Further, the juvenile offender should be offered legal assistance from the state as required by the Act. Appointment of a panel of lawyers is the responsibility of the Sessions Court Judge.

Furthermore, there is a need to increase public awareness about the plight of juvenile offenders. The media should be engaged in this regard for this is the only way by which the suffering and violence that these children face can be highlighted to the public. Additionally, police stations need to establish a database in order to provide the exact number of children arrested and produced before the Juvenile Court. The method of lodging complaints by the child or his guardian must be made simple and prompt with the swift investigation. Since there are no juvenile courts in all the districts of the country, juveniles are unable to express themselves freely during the trial proceedings. Juvenile Courts should be set up in every major city of the country in order to provide an enabling environment for juvenile offenders. The judge presiding over the juvenile offender's case should sentence him/her to imprisonment only as a last resort. Cases should be diverted towards negotiation and towards settlement. The number of probation officers should be increased with at least one probation officer being appointed in every district and female probation officers recruited in every province. It is important that female juvenile offenders be released on probation as quickly as possible. There is a dire need to establish

Borstal Institutions in all major cities of the country as this would be a step forward towards the rehabilitation of the juvenile offenders. If all these recommendations are taken into consideration, there is a possibility that Pakistan's juvenile justice system will achieve its goal of implementing a restorative justice system and effectively reduce juvenile crimes and juvenile recidivism.

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