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# **Children Behind Bars, Part I: Evaluating Pakistan's Juvenile Justice Policies**

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## **Abstract**

In Pakistan's legal landscape, a troubling narrative unfolds, where children aged 0-14, a substantial 30.76% of the population, have long been neglected since the nation's inception in 1947. Despite Pakistan's ratification of the United Nations Convention on the Rights of the Child (UNCRC) in 1990, the road to juvenile justice has been fraught with delays and indifference. It took a decade to enact the first legislation for juveniles, the Juvenile Justice System Ordinance 2000 (JJSO), and 18 more years to refine it through the Juvenile Justice System Act 2018 (JJSA). The efficient and just provision of justice to juveniles is not merely a legal obligation but a moral imperative, for anything to the contrary not only jeopardises their development but casts a long shadow over the future of a society that fails its most vulnerable segment.

**Key Words:** Juvenile, Justice, JJSA, JJSO, UNCRC, Juvenile Courts

## **I) Introduction**

In Pakistan, where children aged 0-14 comprise over a third of the total population,<sup>1</sup> the legislative framework governing their rights and protections has long been deficient. This brief embarks on a critical examination of Pakistan's journey in aligning its legal system with the United Nations Convention on the Rights of the Child (UNCRC) since its ratification in 1990. Despite becoming a signatory to the UNCRC, Pakistan's response to the rights of minors has been sluggish, marked by a stark disconnect between international obligations and domestic laws. Of particular focus is the recent legislative development, the Juvenile Justice System Act (JJSA) of 2018, which we will scrutinise considering its predecessor, the Juvenile Justice System Ordinance (JJSO) of 2000, using the UNCRC as a benchmark.

## **II) Contextual Significance of the UNCRC**

Throughout history, children of various ages have often been denied the childhood experiences they deserve, forced into premature adult roles, subjected to harsh labor practices, and exposed to child exploitation. However, progress began with the United Nations Convention on the Rights of the Child (UNCRC) in 1989, known as the "*magna carta of children's rights*."<sup>2</sup> Comprising 54 sections, it aims to create a peaceful, dignified, and equal environment for children, covering all aspects of their lives and emphasizing the importance of responsible adults and ratifying states in ensuring these rights are upheld.<sup>3</sup> Pakistan ratified the UNCRC in 1990, aligning itself with this global framework for safeguarding children's rights.

## **III) The On-Ground Situation in Pakistan Before 1990**

Before the UNCRC's ratification, Pakistan had an inadequate approach to juvenile rights, with scattered legal provisions in the Constitution, with Section 25(1) emphasizing equal protection before the law, Section 11(3) prohibiting child employment, and Section 25(A) affirming the right to education, and additional laws that were mostly dormant in practice. Juvenile justice was often administered through 'jirgas,' influenced by cultural norms and without appeal options, resulting in grave injustices such as underage marriages and harsh

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<sup>1</sup> UNICEF – 'How many children are there in Pakistan?' <https://data.unicef.org/how-many/how-many-children-under-18-are-there-in-pakistan/>

<sup>2</sup> Freeman, M, A Magna Carta for children?

<sup>3</sup> 'UN Convention on The Rights of The Child' (Together Scotland, 2021)

prison sentences for children.<sup>4</sup> Pakistan lacked comprehensive juvenile justice measures before the UNCRC.

#### **IV) Promulgation of the Juvenile Justice System Ordinance, 2000**

After the ratification of the UNCRC, Pakistan - after an extremely concerning period of 10 years - brought forth its first attempt at crystallizing Convention rights; the Juvenile Justice System Ordinance of 2000. The promulgation of this Ordinance sought to provide for the protection and granting of the rights of all juveniles involved in any aspect of national criminal litigation.

##### ***Content of the JJSO***

The Juvenile Justice System Ordinance (JJSO) was a concise six-page document comprising 15 sections, covering various aspects of juvenile justice, including definitions,<sup>5</sup> legal assistance,<sup>6</sup> juvenile courts,<sup>7</sup> and procedures<sup>8</sup>. Its introduction was initially seen as a remarkable milestone, particularly when coupled with President Pervez Musharraf's notification (No. F.8/41/2001-Ptns) granting sentence remission for juveniles below 18 years. However, this seemingly comprehensive safeguard quickly unravelled in practice, as juveniles continued to receive punishments in clear violation of the codified law. Examples include the sentencing of a 13-year-old, Sher Ali, to death in 2001, and Mohammed Nadeem and Sabir receiving prison sentences of 273 years and 63 years, respectively, for the same crime. Another case saw two juvenile brothers sentenced, respectively, to death and 14 years,<sup>9</sup> despite neither the Convention nor the Ordinance allowing for life sentences. This situation persisted until 2018 when a new statutory code concerning child rights was established, revealing the shortcomings of the JJSO and its limited impact on juvenile justice in Pakistan.

##### ***JJSO, Section 2(b): Definitions***

Section 2(b) of the Juvenile Justice System Ordinance defines a 'child' as someone below the age of eighteen, in line with international norms. However, this clashes with Section 14, which states that the Ordinance is not derogatory to other laws, leading to conflicts with existing statutes:

1. The Child Marriage Restraint Act, 1929 sets the age at sixteen for females,

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<sup>4</sup> Parekh, Vikram. Prison bound: the denial of juvenile justice in Pakistan. Human Rights Watch, 1999.

<sup>5</sup> JJSO 2000, S.2

<sup>6</sup> JJSO 2000, S.3

<sup>7</sup> JJSO 2000, S.4

<sup>8</sup> JJSO 2000, S.6

<sup>9</sup> PLD 1999 SC 504

2. The Offence of Zina (Enforcement of Hudood) Ordinance, 1979, has different age criteria for males and females,
3. The Sindh Children Act, 1955, defines a child as under 16,
4. The Frontier Crimes Regulation (Amended) 2011, prohibits the arrest of children under sixteen,
5. Pakistan Penal Code 1860 considers children below seven exempt from criminal liability,
6. The Factories Act 1934 defines a child as under fifteen,
7. The Employment of Children Act, 1991, defines an adolescent as someone between 14 to 18 years, and a child as under 14, and
8. The Constitution of Pakistan 1973 aligns with Islamic principles, where majority relates to puberty, possibly around age 15.

This conflicting discussion arises due to the differing interpretations of majority, with Islam considering puberty as the criterion, potentially at 15 or earlier, further complicating the determination of the age of majority in Pakistan's legal landscape.

### ***The Age Debate***

Blackstone's Commentaries emphasized two key elements for criminal accountability: malicious intent (*mens rea*) and the commission of an unlawful act (*actus reus*). He identified infants as incapable of committing offenses; *'These were not infants in the modern sense of the word, but children too young to fully understand their actions'*.<sup>10</sup> Contemporary scientific research underscores that *'teenagers, while not childlike, are less competent decision-makers than adults'*, often influenced by peer pressure and short-term gratification, making them less culpable.<sup>11</sup> *'How can we hold adolescents accountable as adults in adult courts for not exercising a level of maturity that they are not physically, emotionally or intellectually expected to possess?'*<sup>12</sup> Elizabeth S. Scott and Laurence Steinberg argue that children under 10 should be considered incapable of guilt, advocating for restorative welfare systems instead of criminal responsibility. They note that adolescents develop psychological capabilities at varying rates, challenging the idea of a uniform age of majority. The inconsistency in determining the age of a child under national law raises concerns about uncertainty and unjust procedures. Establishing clear, uniform criteria for the age of majority is crucial to strengthen juvenile justice systems and protect the rights of young individuals, serving as a foundational step in legal reform.

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<sup>10</sup> Ali A, 'Juvenile Justice System Ordinance 2000 Judgments Of Apex Courts In Pakistan'

<sup>11</sup> Scott E, and Steinberg L, Rethinking Juvenile Justice (2008)

<sup>12</sup> Corriero M, Judging Children as Children (2006)

### ***Pakistan and the Age of Majority in Practice***

In local police stations, it's common practice to misstate a juvenile's age<sup>13</sup> on the First Information Report (FIR)<sup>14</sup> and label them as adults, avoiding the complexities of juvenile procedures. While the age of majority in Pakistan is 18, minors under 18 are denied various rights and privileges enjoyed by adults, raising questions about inconsistency in their treatment. When a 17-year-old offender faces a proportional sentence extending beyond their 18th birthday, the dilemma of justice arises. Unlike cases dealt with under the provisions of the Penal Code, most cases involving juveniles do not operate on the presupposition that a child under seven years of age is to be presumed innocent<sup>15</sup> (*Mohammad Niaz v. The State*)<sup>16</sup>. Some suggest retaining dispositional jurisdiction over youths until age 24 or 25 to impose proportionate sentences without the risks associated with transferring them to adult prisons, potentially curbing recidivism and aligning with the intent of the juvenile justice system.

### ***Section 10(7)(c) and Bail***

Section 10(7)(c) is problematic for its vague use of 'public morality' without clarification in the 6-page document, enabling exploitation and misuse in the Pakistani legal system. Courts employ it arbitrarily, hindering justice, and attempts to challenge it often face dismissive responses. This ambiguity has contributed to public disorder and requires mass consensus for fair interpretation. Internationally, 'public morality' as a limitation on human rights is mentioned in various human rights instruments, with states using its ambiguity to tailor it to their interests, raising questions about its justiciability and who determines its boundaries.

### ***Public Morality and the International Modus Operandi***

The concept of public morality as a limitation on human rights is evident in international and regional human rights instruments like the UDHR, ICCPR, and ECHR, aligned with the margin of appreciation principle, granting states significant discretion in balancing individual rights and national interests. However, this discretion's broad scope makes it challenging to regulate. The European Court of Human Rights acknowledges the absence of a uniform European conception of morals, emphasizing the uncertainty tied to public morality.<sup>17</sup> This ambiguity, as seen in section 10(7)(c), poses significant challenges, particularly in juvenile justice, where children's rights often face neglect, highlighting the need for a clear and

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<sup>13</sup> 'Punished for being vulnerable', Human Rights Commission of Pakistan, (2019)

<sup>14</sup> The First Information Report (FIR) is a record of the information available to the police regarding the commission of a cognizable offense, that is, an offense where the police may issue an arrest without a warrant. An FIR is ordinarily the starting point of a criminal investigation, but it is not required in order for an investigation to commence.

<sup>15</sup> Jahangir A, and Doucet M, Children of A Lesser God (1993)

<sup>16</sup> 1985 P.Cr.L.J. 1030 Karachi

<sup>17</sup> The Council of Europe, (Coe.int, 2021)

[https://www.coe.int/t/dghl/cooperation/lisbonnetwork/themis/echr/paper2\\_en.asp](https://www.coe.int/t/dghl/cooperation/lisbonnetwork/themis/echr/paper2_en.asp)



sensitive legal framework.<sup>18</sup> The state's authority to judge the application of this principle, as argued by Onder Bakircioglu<sup>19</sup>, grants it extensive discretionary powers due to the inherently vague nature of the public morality exception, making codification difficult.

## **V) Pakistan's juvenile justice system despite JJSO**

The implementation of Pakistan's Juvenile Justice System Ordinance (JJSO) has been strongly criticized for its poor execution by the Human Rights Commission<sup>20</sup> and Amnesty International. Problems include continued prohibited practices, overcrowded prisons with a high number of juvenile inmates<sup>21</sup>, low conviction rates, and long waits for trial.<sup>22</sup> The UN Committee on the Rights of the Child expressed concerns about the JJSO's effectiveness, the low age of criminal responsibility (7 years), and reports of juvenile offenders being sentenced to death<sup>23</sup>. Despite some sporadic positive actions, such as certain juvenile courts considering the best interests of young offenders, systemic issues persist. These isolated instances showed some adherence to the principles of juvenile justice, but systemic issues persist.

### ***Juvenile Justice and NWFP***

The JJSO was enforced in only four provinces, excluding Azad Kashmir, Northern Areas, and tribal regions<sup>24</sup>. In the NWFP, the Frontier Crimes Regulation (FCR) governed offenses with trials by tribal councils, lacking appeal options. Article 247(7) isolated NWFP from higher courts' jurisdiction. NWFP couldn't apply Pakistan's criminal code. During the JJSO era, NWFP imprisoned over 70 juveniles, often for collective family offenses under FCR, leading to disproportionately lengthy sentences. Notably, Qismat Khan, a 15-year-old sentenced to 45 years, was released following an appeal by the Society for the Protection of the Rights of the Child (SPARC) to the President, as the Peshawar High Court lacked NWFP jurisdiction.

### ***Lack of Training and Judicial Sensitivity***

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<sup>18</sup> Curren, Randall. "Moral Education and Juvenile Crime." *Nomos*, vol. 43, 2002, pp. 359–380. JSTOR, [www.jstor.org/stable/24220004](http://www.jstor.org/stable/24220004)

<sup>19</sup> O. Bakircioglu, "The Application of the Margin of Appreciation Doctrine in Freedom of Expression and Public Morality Cases," *Ger. Law J.*, vol. 8, no. 7, pp. 711–734, 2007.

<sup>20</sup> Most recently in Human Rights Commission of Pakistan, *The State of Human Rights 2004*

<sup>21</sup> Pakistan Law Commission, 'A Report on Jail Reform' (Government of Pakistan 1997)

<sup>22</sup> Human Rights Watch interview with Abdul Majeed Ahmed Auolakh, Principal, Central Jail Staff Training Institute, Lahore, May 16, 1998

<sup>23</sup> UN doc CRC/C/15/Add.217, 27 October 2003

<sup>24</sup> The Constitution of Pakistan of 1973 lists two sets of designated tribal areas, the Provincially Administered Tribal Areas (PATA) and the Federally Administered Tribal Areas (FATA)

Pakistan's juvenile justice system suffers from inadequate personnel training<sup>25</sup>, resulting in insensitivity during juvenile trials. The 1999 training manual issued by the National Commission for Child Welfare and Development had limited impact, leaving judges with an incomplete grasp of the JJSO. Issues include misunderstood bail provisions, overcrowded cells shared with adults, and dire conditions, including torture in police custody, as documented by Amnesty International. These problems underscore the need for comprehensive reform. A study found that from amongst the 50 child prisoners interviewed only 16 had been brought in front of a court within the stipulated period of 24 hours; 39 out of the same 50 children reported experiences of torture while in police custody.<sup>26</sup>

### ***The Question of Jurisdiction***

The enactment of the JJSO led to jurisdictional confusion, as it granted exclusive jurisdiction to juvenile courts for child offender cases but didn't address conflicts with specialized courts like anti-terrorism or anti-narcotics courts. This overlap sometimes resulted in prolonged detentions for juveniles. Notably, there were two categories: terrorism cases exclusively tried in Anti-Terrorism Courts regardless of age and cases under specific items in the ATA Schedule 3, which were tried by juvenile courts under the JJSO<sup>27</sup>. Courts had varying interpretations; for instance, the Lahore High Court ruled in 2004 that terrorism offenses must be tried exclusively in Anti-Terrorism Courts, while the Peshawar High Court in 2003 ordered a retrial for a juvenile initially tried under the Control of Narcotic Substances Act under the JJSO.

### ***The Death Penalty***

Despite the CRC's ban on sentencing juveniles to the death penalty<sup>28</sup>, 1998 records in Punjab showed 55 children with death sentences<sup>29</sup>, and nationwide, 49 juvenile wards faced death sentences among 3,480 in Pakistani prisons<sup>30</sup>, reflecting the "adult time for adult crime" principle. Even four years after the JJSO came into effect, the federal Interior Minister reported 13 juveniles serving death sentences in 2004<sup>31</sup>, with uncertain sentencing timelines due to

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<sup>25</sup> A UNICEF study in January 2005 conducted with Central Staff Training Institute (the Interior Ministry's institution for the training of jail staff in Pakistan) confirmed institutional ignorance amongst members of the criminal justice system.

<sup>26</sup> 1992 study AGHS Legal Aid Cell Lahore

<sup>27</sup> 32. Overriding effect of Act.- 1) The provisions of this Act shall have effect notwithstanding anything contained in the Code or any other law but, save as expressly provided in this Act, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a special Court, and for the purpose of the said provisions of the Code, a Special Court shall be deemed to be a Court of Sessions.

<sup>28</sup> U.N. Convention on the Rights of the Child, Art. 37(a)

<sup>29</sup> Prisons Department, 'A Crime-Wise/Section-Wise Monthly Population Statement for The Month Of February 1998' (Government of Punjab 1998)

<sup>30</sup> State of Human Rights in 1998, Human Rights Commission of Pakistan. "This figure is only surpassed by the United States of America where at the end of 1998 some 73 juveniles were on death row."

<sup>31</sup> SPARC, The state of Pakistan's children 2004

limited case information. Pakistan, one of six countries executing juvenile offenders in the 1990s<sup>32</sup>, saw its last known juvenile execution in 2001 involving 13-year-old Sher Ali, underscoring the urgent need to differentiate between minors and adults in the justice system, as emphasized by Justice Anthony Kennedy in the *Roper v. Simmons* decision.<sup>33</sup>

### ***Abuses in Detention***

Abuse against juveniles in Pakistani detention facilities, documented by various human rights organizations, remains a disturbing issue. Reports reveal alarming statistics, such as 11% of juveniles suffering from respiratory ailments and 57% from mouth diseases due to neglect and abuse in borstal schools.<sup>34</sup> Physical abuse, including beatings, sleep deprivation, and food deprivation, is common in police custody.<sup>35</sup> Sexual abuse and organized crimes like narcotics trafficking and extortion prevail, leading to dire consequences for non-compliance. Systemic issues persisted during a legislative void in juvenile justice, including a lack of knowledge and sensitivity among judiciary and personnel, inadequate facilities, and rights violations often going unreported and unaddressed. A sixteen-year-old girl reported in an interview with Amnesty International, to being beaten, raped and having raw chilies inserted into her vaginal cavity by up to six police officers in 1998.<sup>36</sup> These challenges underscored the urgent need for comprehensive reforms in Pakistan's juvenile justice system.

## **VI) Conclusion**

The examination of Pakistan's juvenile justice system reveals a troubling history marred by systemic flaws, human rights violations, and legislative shortcomings. Despite efforts to enact laws like the JJSO 2000, serious issues have persisted, including abuse of juveniles in detention, lack of judicial sensitivity, and inadequate facilities. The revocation of the 2000 Ordinance in 2004 further exacerbated these problems, leaving a legislative void that persisted until the promulgation of the JJSA in 2018. During this period, numerous child rights violations went undocumented. Moving forward, Pakistan must continue to address these deeply entrenched issues, focusing on creating a fair, sensitive, and protective juvenile justice system that upholds the rights and well-being of its youngest citizens.

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<sup>32</sup> The other five countries are Iran, Nigeria, Saudi Arabia, the United States, and Yemen. Human Rights Watch, Human Rights Watch World Report 1999 (New York: Human Rights Watch, 1998)

<sup>33</sup> David Hudson, 'Law Review: Psychological Research, Juvenile Justice, and the Need for More Reform' (2019) ABA [https://www.americanbar.org/groups/public\\_education/publications/insights-on-law-and-society/volume-18/insights-issue-2---vol-18/law-review-psychological-research--juvenile-justice--and-the-/](https://www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-18/insights-issue-2---vol-18/law-review-psychological-research--juvenile-justice--and-the-/)

<sup>34</sup> 'Prison Bound' (Human Rights Watch 1999)

<sup>35</sup> Human Rights Watch interview with Imtiaz Ahmad, District Jail, Lahore, May 21, 1998

<sup>36</sup> Jahangir A, and Doucet M, Children of A Lesser God (1993)

## **VI) Recommendations**

These recommendations aim to address the systemic challenges and human rights violations within Pakistan's juvenile justice system, ultimately working toward a more equitable and protective environment for children in conflict with the law.

- In accordance with Article 37(b) of the UNCRC, children are only to be arrested when deemed necessary. A juvenile under arrest is to be guaranteed and provided the safeguards codified in section 10 of the Constitution as well as sections 61 and 167 of Pakistan's Code of Criminal Procedure.
- Establish and promote protocols for verifying the age of accused juveniles to prevent misclassification as adults, ensuring that children are not denied their rights due to incorrect age assessment.
- It must be ensured that when a juvenile is taken under arrest, his or her parents or guardians must be immediately notified, and they are not interrogated except under the presence of their lawyer, parent, or guardian.
- Create specialized juvenile courts in every province with judges trained in child psychology and juvenile law to ensure fair trials and sensitive handling of juvenile cases.
- It must be ensured that all processes from the moment of arrest until release or imprisonment must be performed by officials with specialist child sensitive training. Furthermore, females undergoing this process must be dealt with by female officials.
- Encourage the use of alternative sentencing measures such as community service, counselling, and rehabilitation programs, prioritizing the best interests of the child over punitive measures.
- Take immediate steps to reduce overcrowding in juvenile detention facilities by expanding capacity, utilizing non-custodial alternatives, and addressing lengthy trial delays.
- It must be ensured that, in accordance with the U.N. Convention on the Rights of the Child, the prohibition on the imposition of the death penalty on juveniles must be effectively implemented in letter and spirit. Furthermore, all existing death sentences for juveniles must be commuted.
- Establish a national database for tracking juvenile cases, collecting data on arrests, detentions, and trial outcomes to monitor progress and identify areas needing improvement.