

POLICY BRIEF, SEPTEMBER 2023

Children Behind Bars, Part II: Evaluating Pakistan's Juvenile Justice Policies

MARYAM FATIMA

About the Author

Maryam Fatima completed her Bachelor of Laws (LLB hon.) from the University of London in 2021. Currently, she is the Research Associate, Lawfare and International Law at the Islamabad Policy Research Institute. Her areas of interest and research include public policy, public international law, and the laws of space.

About IPRI

The Islamabad Policy Research Institute (IPRI) is one of the oldest non-partisan think tanks on all facets of National Security, including international relations and lawfare, strategic studies, governance, public policy, and economic security in Pakistan. IPRI exemplifies two decades of rigorous and timely analysis of crucial strategic agendas and inter-governmental processes that influence national and regional policy community. Recognized for its objectivity and policy relevance, IPRI's publications offer current, up-to-date, and high-quality research in the form of authoritative journals, books, monographs, and policy briefs. The Institute's events vary from seminars on current international and national affairs to large-scale international conferences that attract renowned leaders, academics, and policymakers from all over the world.

I) INTRODUCTION	4
II) PROMULGATION OF THE JUVENILE JUSTICE SYSTEM ACT, 2018	4
III) A JUXTAPOSITIONAL ANALYSIS OF THE JJSA 2018 AND THE JJSO 2000	4
DIVERSION PROCESS	5
INVESTIGATION PROCEDURE	5
PENALISING THE DISCLOSURE OF IDENTITY OF COURT PROCEEDINGS	6
CATEGORISATION OF OFFENCES	6
SPECIAL PROVISION FOR FEMALE JUVENILES	6
OVERRIDING EFFECT	7
IV) SHORTCOMINGS OF THE ACT OF 2018	7
OBSERVATION HOMES AND OTHER DELAYS	7
WIDE JUDICIAL AND DISCRETIONARY POWERS	7
FEMALE JUVENILES	7
PUBLIC MORALITY	8
V) THE JJSA AND UNCRC IN PAKISTAN	8
VI) CONCLUSION	9
VII) RECOMMENDATIONS	10

Abstract

This brief highlights critical issues and recommendations concerning juvenile justice in Pakistan. It addresses shortcomings in the Juvenile Justice System Act of 2018 (JJSA), including judicial discretion, inadequate definitions, and challenges in implementing its provisions. Furthermore, it emphasizes the need for specialized training and sensitivity regarding child rights in the legal system. Pakistan's low global rankings in child rights underscore the urgency of reform, as neglecting children's needs can contribute to a rise in criminal populations. In conclusion, the imperative is to establish a juvenile justice system reflective of democratic ideals and committed to safeguarding the rights and well-being of the country's youth.

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

I) Introduction

In the labyrinthine corridors of justice, where the destinies of the young and vulnerable are decided, Pakistan's juvenile justice system has found itself at a crossroads of profound significance. The stark realities of this system, governed by the Juvenile Justice System Act of 2018, echo with both aspirations and inadequacies. While the legal framework seeks to protect the rights of juvenile offenders, it grapples with critical issues – from judicial discretion and the absence of precise definitions to the harrowing consequences of neglect.

II) Promulgation of the Juvenile Justice System Act, 2018

Following the revocation of the Juvenile Justice System Ordinance, 2000 (JJSO), a legislative void concerning juvenile justice emerged. In response, NGOs, activists, and human rights groups advocated for a more comprehensive framework, leading to the enactment of the Juvenile Justice System Act of 2018 (JJSA), which immediately applied nationwide. The JJSA retained key elements from the previous ordinance, such as legal aid for juvenile offenders, the establishment of Juvenile Courts, and special procedures for their arrest and investigation. Additionally, it introduced provisions for female juvenile offenders, established rehabilitation centres, and strictly prohibited the death penalty for individuals who were juveniles at the time of their offense, aligning with international standards. While preserving some aspects of the old law, the JJSA brought refinements and new provisions to the juvenile justice system.

III) An Analysis of the JJSA 2018 and the JJSO 2000

The Matter of Definitions

The JJSA introduced essential definitions that were absent in the previous JJSO. It defines a '*Juvenile*' as a child treated differently from adults for offenses¹ and a '*Juvenile Offender*' as a child alleged to have committed an offense.² The Act expanded rehabilitation and education options for juvenile offenders by introducing '*Juvenile Rehabilitation Centres*,' encompassing various facilities for their development.³ Notably, it defined '*best interests of the child*' as the basis for decision-making, preventing arbitrary interpretations.⁴ The Act also introduced '*observation homes*' as temporary places for juveniles apprehended by the police

¹ JJSA 2018, S.2(h)

² JJSA 2018, S.2(l)

³ JJSA 2018, S.2(k)

⁴ JJSA 2018, S.2(a)

or under remand, aiming to separate them from adults and police stations to safeguard against potential abuse, although specifics remain unclear.⁵

Diversion Process

The Act introduced a significant innovation absent in the previous Ordinance, namely, the concept of '*an alternative process*',⁶ which prioritizes restorative justice by considering a juvenile's background for responsibility and treatment without formal judicial proceedings. This approach aims to address the harm caused by criminal behaviour and facilitate communication between offenders and claimants rather than branding juveniles as criminals.⁷ The Act also mandated the formation of 'Juvenile Justice Committees' within three months of its promulgation in each sessions division to oversee the diversion process. These committees are responsible for handling diversion cases,⁸ inspecting observation homes and rehabilitation centres,⁹ and other prescribed functions,¹⁰ promoting the welfare and social reintegration of juveniles within a one-month timeframe from referral by police, prosecution, or the Juvenile Court.

Investigation procedure

Section 7 of the Act introduces a significant change in investigative procedures, mandating that a Sub Inspector or higher-ranked officer, under the supervision of the Superintendent of Police or SDPO,¹¹ conduct interrogations of juveniles to prevent potential abuses during pretrial stages. Additionally, it requires the investigation officer to collaborate with a probation or social welfare officer appointed by the Government to prepare a social investigation report to be included with the Section 173 (Penal Code) report.¹²

⁵ JJSA 2018, S.2(p)

⁶ JJSA 2018, S.2(d)

⁷ Nikhil R, Wong M, Juvenile Justice: Modern concepts of Working with Children in Conflict with the Law, Resource Centre (2006) accessed 12th April 2021.

⁸ JJSA 2018, S.10(4)(a)

⁹ JJSA 2018, S.10(4)(b)

¹⁰ JJSA 2018, S.10(4)(c)

¹¹ JJSA 2018, S.7(1)

¹² JJSA 2018, S.7(2)

Penalising the disclosure of identity of court proceedings

While the 2000 Ordinance prohibited the publication of internal court proceedings without imposing penalties, the 2018 Act, through section 13, introduced criminalization for disclosing a juvenile's identity or court proceedings without prior authorization.¹³ This change recognizes the sensitivity of the juvenile justice process.

Categorisation of offences

The 2018 Act introduced a novel classification system for juvenile offenses into three categories: minor, major, and heinous. Minor offenses carry a maximum prison term of three years with or without a fine,¹⁴ allowing juveniles the right to bail, with or without surety. Major offenses involve punishments of more than three years and up to seven years,¹⁵ with juveniles also retaining the right to bail. However, heinous offenses, characterized by their seriousness and potential for severe punishment (death, life imprisonment, or more than seven years), grant bail rights only to juveniles under sixteen, while those sixteen or older leave bail decisions to the judge's discretion.¹⁶

Special provision for female juveniles

Section 17 of the Act notably safeguards the rights of female juveniles in the juvenile justice system. It prohibits male police officers from apprehending or investigating female juveniles¹⁷ and mandates that female juveniles can only be placed in Juvenile Rehabilitation Centres exclusively designated for them.¹⁸ While not comprehensive, these provisions represent a significant improvement over the 2000 Juvenile Justice System Ordinance in providing security and protection for female juveniles.

¹³ JJSA 2018, s13(1) "Whoever prints or publishes the name or any matter which may make known the identity of a juvenile shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine."

¹⁴ JJSA 2018, S.2(o)

¹⁵ JJSA 2018, S.2(m)

¹⁶ JJSA 2018, S.2(g)

¹⁷ JJSA 2018, S.17(1)

¹⁸ JJSA 2018, S.17(2)

Overriding effect

In contrast to the submissive stance of the 2000 Juvenile Justice Ordinance, the new Act establishes a dominant provision in Section 23, stating that its provisions take precedence over any other existing laws. This clarifies many previous procedural and jurisdictional ambiguities, particularly in cases involving special laws like anti-terrorism and narcotics. The Juvenile Justice System Act of 2018 now firmly defines the scope of juvenile justice.

IV) Shortcomings of the Act of 2018

Observation homes and other delays

The JJSA introduces new institutions for the improvement of juvenile justice but lacks clarity in several areas. It doesn't specify who will manage these homes, the qualifications of their staff, or their location in relation to police stations. No such homes have been constructed since the Act's inception, indicating neglect of juveniles' welfare. The Act also calls for separate Rehabilitation Centres, but there are only seven in the country, with none in Balochistan. Juvenile Justice Committees and Juvenile Courts have not been established except in Lahore. These shortcomings may lead to legal challenges against the entire Juvenile Justice System Act of 2018.

Wide judicial and discretionary powers

Similar to the Juvenile Justice System Ordinance (JJSO), the Juvenile Justice System Act (JJSA) grants judges considerable discretion in crucial matters like granting bail, setting fines regardless of the juvenile offenders' socio-economic status, and accepting the age of juveniles based on police reports rather than the legally required ossification test. Despite this legal violation, judges often rely on the recorded age in the investigative reports, treating juveniles as adults in some cases. This discretionary approach raises concerns about the proper application of the JJSA's provisions.

Female juveniles

Despite Section 17 of the JJSA prohibiting the interrogation and supervision of female juveniles by male police officers, this rule is often violated. The legislation's provisions related

to females in the juvenile justice system are notably inadequate, with limited efforts to address this issue, resulting in a lack of available data.

Public morality

Surprisingly, the critique regarding the absence of a definition for 'public morality' remains valid. It is crucial to observe the absence of any improvements and the ongoing misuse of this clause by the judiciary.

V) The JJSA and UNCRC in Pakistan

In late 1979, the government established the National Commission for Child Welfare and Development (NCCWD) through a resolution, which was provisionally enforced as of January 1, 1980.¹⁹ The primary responsibility of the NCCWD is to monitor and facilitate the implementation of the United Nations Convention on the Rights of the Child (UNCRC) in conjunction with other national, regional, and international commitments. This Commission is tasked with submitting mandatory periodic reports concerning the enforcement of the UNCRC in Pakistan to the UN Committee on the Rights of the Child in Geneva and relevant authorities.

In 1991, the NCCWD was placed under the Ministry of Health and Social Welfare to serve as an advisory body to the government on matters pertaining to children. In 2011, it was moved to the Ministry of Human Rights, where it continues to function. In September 2017, the Parliament of Pakistan passed legislation permitting the establishment of a second 'National Commission on the Rights of the Child,' although no significant progress has been made in this regard to date.

The tragic rape and murder of six-year-old Zainab Ansari in early 2018 prompted an extensive national and international outcry. In response, the Parliament enacted the Islamabad Capital Territory Child Protection Act later that year. This legislation mandated the formation of a 'Child Protection Advisory Board' and the establishment of Child Protection Institutions. However, as of now, no such board has been established, and the actual state of child rights protection in Pakistan appears to be increasingly challenging.

¹⁹ Ministry of Human Rights Pakistan

VI) Conclusion

It is a matter of significant concern that Pakistan ranks poorly in global child rights rankings, standing at 154th out of 182 countries, even falling behind most neighbouring countries. According to another index, Pakistan's ranking as of 2020 is 147th,²⁰ highlighting challenges in health, education, and child protection. Unfortunately, enforcing laws that require government expenditure is a formidable challenge, given the limited influence of children as a lobby group.²¹ However, it is crucial to recognize that children constitute a substantial portion of the population (35%),²² and neglecting their needs can contribute to a rise in the criminal population, an undesirable outcome for any legal system.²³

The imperative behind advancing and enhancing juvenile justice is to acknowledge the fundamental differences between juveniles and adults in their development. It necessitates comprehensive sensitivity training and legal knowledge for all involved parties. It underscores the profound impact judges can have on the lives of the juveniles they oversee, emphasizing the importance of striving to make a positive difference rather than minimizing harm.²⁴

In the words of Corriero, *"A democratic society should demand more from its juvenile justice system than quick fixes for complex problems. It should aspire to have a juvenile justice system that reflects and upholds democratic ideals."*²⁵

²⁰ 'Kidsrights Index - Kidsrights Foundation' (KidsRights Foundation, 2021)

https://kidsrights.org/research/kidsrightsindex/?gclid=CjwKCAjwj6SEBhAOEiwAvFRuKlR6j70CmVK9BlbTduF8qJMzpkHDfhW1oWuSOJ4mAv00g1jGEDR3JR0Cx6sQAvD_BwE

²¹ Jahangir A, and Doucet M, Children of A Lesser God (1993)

²² 'Pakistan: Children as A Percentage of The Population 2018 | Statista' (Statista, 2021)

<https://www.statista.com/statistics/678275/pakistan-children-as-a-percentage-of-the-population/#:~:text=This%20statistic%20shows%20the%20share,indicating%20no%20change%20since%202011>

²³ Slogan News, sept 1989 p. 57

²⁴ Dowd N, A New Juvenile Justice System: Total Reform for A Broken System

²⁵ Corriero M, Judging Children as Children (2006)

VII) Recommendations

In light of the observations and deficiencies discussed in this paper, the following recommendations and reviews are proposed:

- In accordance with Article 37(b) of the United Nations Convention on the Rights of the Child (UNCRC), juveniles should only be subjected to arrest when absolutely necessary. When a juvenile is arrested, the safeguards stipulated in Section 10 of the Constitution and Sections 61 and 167 of Pakistan's Code of Criminal Procedure must be guaranteed and provided.
- It is imperative to ensure that when a juvenile is taken into custody, immediate notification to their parents or guardians is mandatory. Furthermore, juveniles should not be subjected to interrogation except in the presence of their legal counsel, parent, or guardian.
- To uphold the principles outlined in the UNCRC, all processes from the moment of arrest until release or imprisonment should be carried out by officials with specialized training in handling children. Female juveniles must be attended to by female officials.
- In strict adherence to the UN Convention on the Rights of the Child, the prohibition on imposing the death penalty on juveniles must be rigorously implemented, both in letter and spirit. Additionally, all existing death sentences for juveniles should be commuted.
- It is recommended that the State expeditiously establish independent investigative bodies empowered to initiate investigations into police misconduct based on complaints or other available information. These bodies should have unrestricted access to police stations and all detention facilities, including unofficial ones, and be readily accessible to children and their families.
- The State should enforce disciplinary measures and initiate criminal proceedings against officers found to have violated their duties and the rights of detainees or subjected them to cruel, inhuman, or degrading treatment or punishment.
- Future enactments concerning young offender laws should include a 'review clause,' obligating federal and provincial legislatures to periodically review the laws after a specified time.²⁶
- It is strongly recommended that Pakistan promptly submit its overdue second report to the Committee on the Rights of the Child.

²⁶ Jahangir A, and Doucet M, Children of A Lesser God (1993)

- The State should take decisive action to implement the recommendations outlined in the Pakistan Law Commission's Report on the Criminal Justice System, 1997.
- The State should take resolute steps to implement the recommendations presented in the Pakistan Law Commission's report titled "Reforming the Juvenile Justice System," submitted to the government in June 1999.
- It is strongly recommended that the National Commission on Child Rights Act 2017 be promptly enforced, along with the establishment of a Child Rights Fund as mandated by relevant law. Furthermore, legislation such as the Punjab Restriction on Employment of Children Act 2016, Punjab Domestic Workers Act 2019, Punjab Destitute & Neglected Children Act 2004, KP Child Protection & Welfare Act 2010, and Balochistan Child Protection Act 2016 must be rigorously enforced to protect children's rights and welfare.