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**Juvenile Justice Act of Pakistan 2018:
Assessment, Analysis and
Capacity Building**

Rabia Chaudhry



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Rabia Chaudhry

Introduction

The promulgation of the Juvenile Justice System Act (JJSA) in 2018 was a significant step towards ensuring social reform and safeguarding the rights of the child keeping their vulnerabilities and special needs in mind. A bare reading of the law shows that the JJSA was enacted with the goal of transforming the treatment of juvenile offenders at every stage they encounter the legal system. It therefore emphasizes rehabilitation and enhanced access to justice mechanisms. However, five years later, doubts about the efficacy of the law, concerns regarding its implementation, and questions with respect to the extent it succeeded in protecting the juvenile, persist.

This study adopts a multifaceted approach and attempts to critically analyse both the text of the law and the state of its implementation to date. It identifies and highlights the existing gaps between the legal framework and the realities faced by juvenile offenders. In the process it underscores the difficulties in application and gives recommendations on how to bridge the divide between the law and its practical implementation.

Instead of restricting ourselves to the law in isolation, we approached it as a part of the broader judicial and administrative system through which it is implemented. This allowed us to not only critically appraise the letter of the law itself but also evaluate the surrounding factors that influence the effectiveness of the JJSA – these range from identifying the stakeholders and their attitudes, the body of laws that constitute the criminal procedure system and how they interact with each other, and the practices developed over time, both legal and attitudinal, that facilitate or pose as hindrances to the implementation of the JJSA.

As shall be demonstrated in due course, our research shows that there is a broad spectrum of factors, ranging from insufficient financial resources, dearth of manpower, to the ad hoc approach of the policy makers towards the criminal procedure system. It has been added to and amended so many times over the years, that the laws that constitute the criminal procedure system of Pakistan have simply stopped talking to each other, as it were. All of this is tied together with the political will. By considering these interrelated components, we have been able to present a holistic overview of the JJSA.

Our primary objective was to conduct a comprehensive gap analysis in which we juxtaposed the JJSA against the prevailing criminal procedure laws and practices. In doing so we were able to identify the discrepancies, inconsistencies, or inadequacies within the existing legal structure. Our focus was not just the body of laws but the offices and the prevailing practices through which they are implemented. This is because, laws like the JJSA and their modus of implementation are the first, and usually, the only point of interaction between the citizen and the state. They therefore are much more than a body of laws; for the common man, the citizen of Pakistan, they represent the state itself. We were then able to identify and evaluate pathways for guaranteeing protection of the juvenile not only through the judicial process but also ensuing their reintegration into mainstream society. In the process we examined the rehabilitative programs currently operational, both under government auspices and implemented by non-governmental organizations.

Our methodology and the approach towards data collection was therefore informed by our objectives. The nature of the research was such that we employed qualitative methods. The empirical framework for this study incorporates existing laws, international obligations, and literature on the subject. We used the Save the Children's Best Practices Model as the cornerstone to identify the stakeholders and evaluate and analyse the ground realities and implementation practices. The analysis that followed was specifically designed to capture and convey the experiences of the stakeholders of the JJSA. It awards centre stage to their professional experience of the JJSA, their personal narratives with respect thereto and the lessons learnt. The stakeholders on the implementation side the JJSA included police officers, probation and parole officers, prosecution lawyers, defence lawyers, social welfare department, prison staff, NGO's working in prisons, Home Department officials etc. The stakeholders identified as affectees of the JJSA were underage juveniles who were incarcerated in prisons and currently under trial.

By awarding centre stage to the [above] stakeholders we could ensure an objective understanding and evaluation of the effectiveness of the existing juvenile justice system and its rehabilitative structures – both legal and administrative. The purpose is to be able to determine where the system falls short and how the laws are subverted under the garb of procedural technicalities.¹

¹ As this research involved human subjects who deserved extra sensitivity and in order to ensure that ethics of research were observed, we obtained an IRB from HML (No. 2096). We started the interview and stakeholder interaction only once the full ethics review board had accepted our questionnaires and given us the permission to commence field work.

We then conducted policy dialogues at the Centre for Public Policy and Governance (FCCU), where experts on the subject and the stakeholders were invited and we shared our findings with them. The purpose of this exercise was twofold. First, to share our academic understanding of the state of the law and our analysis with those who practice in the field. Such a juxtaposition is vital for a well-rounded critical appraisal of issues as complex as the one at hand. Second, was to initiate a dialogue amongst the stakeholders to come up with solutions and recommendation. Again, the purpose was a comprehensive and balanced evaluation of the JJSA. Moreover, our intention was to create awareness, and this was the first step towards a policy initiative. All the findings have been incorporated in this study. Based on the issues identified in the research and the findings thereof, we conducted trainings. When the project started, we had intended these trainings for prison staff only. But as the research progressed and as we developed an understanding of the law and the issues pertaining thereto, we changed our tactic. For each training we invited personnel from the police (sub inspector level and above), prosecutors, social welfare workers, and probation officers. We also invited defence lawyers and young law students. The training content was generated from within the research. As the participants were the front-line workers in the implementation of the JJSA, these trainings generated a meaningful discussion and dialogue on the law. We have incorporated those insights in this report as well.

Chapter I: The Evolution of Juvenile Justice Systems

A separate system of justice for dealing with juvenile offenders is a relatively modern concept. The underlying premise behind the creation of a juvenile justice system is that of rehabilitation. This differs from the principles behind punitive criminal justice for adults. This chapter will briefly discuss the evolution of a separate system of juvenile justice throughout the world. It will then talk about what juvenile justice looks like in South Asia, focusing on countries with demographic, social, and geographic parallels to Pakistan. It will conclude with an overview of the juvenile justice system in Pakistan – its evolution, relevant laws, and current status.

1.1 Juvenile Justice System – A Historical Context

As aforementioned, a juvenile justice system as a separate entity from a criminal justice system is a historically modern concept. It developed in the early 19th century as a logical consequence of modernization and societal evolution. As assessment of history shows that such a system did not exist under either the English common law or early Roman law. Both these legal systems regarded very young children as not legally culpable.

As far back as the twelfth century, English Common Law considered children younger than 7 to be beyond the reach of the law. English Jurist Sir William Blackstone in his Commentaries on the Laws of England (English Common Law) published in 1765 said that “The capacity of doing ill, or contracting guilt, is not so much measured by years and days, as by the strength of the delinquent’s understanding and judgement²”. This is illustrated by the fact that for offenders between the ages of 7 and 14, a provision was made for the determination of the child’s legal responsibility before the law. Once this determination was made, however, the child was either subject to the same criminal law as were adults or he was beyond its reach³.

The modern juvenile justice system is thought to have originated in the United

² S. M. Das, “Globalization and Reforms in Juvenile Justice in South Asia: A Comparative Study of Law and Legal Advances in India, Pakistan, and Bangladesh,” in *Crime, Criminal Justice, and the Evolving Science of Criminology in South Asia*, ed. Shahid M. Shahidullah (Palgrave Advances in Criminology and Criminal Justice in Asia, 2017), 173-218.

³ M. M. Shirazi, “An Analytical Review of Juvenile Delinquents In Jails Of Sindh Province: Some Problems And Suggestions to Over Come,” *Indus Journal of Management & Social Sciences*, 4, no. 1 (2010): 43-54.

States, in the late nineteenth century. From there, the concept of a separate system of juvenile justice then spread to the whole of North and South America and to England and continental Europe from the early twentieth century. As one author described the history of juvenile justice in Europe: “Juvenile justice systems began in Europe at the turn of the century, shortly after the first juvenile court was established in Chicago in 1899. Children’s courts were created between 1905 and 1912 in the Netherlands, United Kingdom, Belgium, France, and Germany”⁴.

Given the perceived success of the Chicago experiment most early juvenile delinquency laws in Europe were modelled on the concepts and practices used in Chicago in the late 19th century. However, each European country modified and implemented laws suited to their own traditions, history, culture, and values. For example, France, prioritized the educational and emotional needs of juveniles. In another example, the contemporary juvenile system in Germany reflects the practices that developed in the West Germany after World War II⁵.

1.2 United Nations Convention on the Rights of Children (UNCRC) in 1989⁶

A key development for the evolution of juvenile justice was the passage of the United Nations Convention on the Rights of Children (UNCRC) in 1989. The UNCRC – often regarded as the ‘Magna Carta’ on the rights of children – is the most widely and rapidly ratified human rights treaty in history. 196 countries had ratified it by the early 2015. At the time of this research, the only countries who have not signed on to the treaty are the United States and Somalia⁷.

Articles 3 and 4 of the UNCRC of key importance to states when formulating their own Juvenile Justice law.

Article 3 (1) states that:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

⁴ L. K. Furbish, “Western European Juvenile Justice Models,” OLR Research Report (1999).

⁵ “Juvenile Justice.” Britannica. Accessed January 3, 2023. <https://www.britannica.com/topic/juvenile-justice/Continental-Europe>.

⁶ Convention on the Rights of the Child | OHCHR

⁷ K. Iftikhar, “Does a Juvenile Get a Better Law This Time-A Comparative Review of the New & Old Juvenile Laws of Pakistan,” LUMS Law Journal VI, no. 1 (2019): 160-169.

Article 4 states that:

“State Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social, and cultural rights, State Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.”

The UNCRC is complemented by relevant international standards such as the UN Guidelines for the Prevention of Juvenile Delinquency (the ‘Riyadh Guidelines’)⁸, the UN Standard Minimum Rules for the Administration of Juvenile Justice (the ‘Beijing Rules’)⁹ and the UN Rules for the Protection of Juveniles Deprived of their Liberty¹⁰. Broadly, the principle behind all these instruments is that the administration of juvenile justice should be directed towards rehabilitation and reintegration into society and not punishment. They work towards ensuring that children be treated in a manner consistent with their rights by the justice system. It also aims to protect their inherent dignity as human beings and considers their needs as unique from those of adults¹¹.

1.3 Juvenile Justice in South Asia

All South Asian countries have ratified the UNCRC. It is therefore logical that for most countries the impetus to develop their juvenile justice systems picked up pace during that time. This was compounded by the rising rates of juvenile crime and violence throughout the region. One of the reports on India, for example, found that between 2012 and 2014, there was about 30 percent rise in the number of juvenile offenders. Additionally, there was a growing indication that crimes committed by juveniles were becoming more and more serious, such as rapes, assaults, and narcotics use and distribution. These trends were paralleled in countries like Bangladesh, Pakistan, and Nepal¹².

⁸ United Nations Guidelines for the Prevention of Juvenile Delinquency: The Riyadh guidelines (A/RES/45/112) | Save the Children’s Resource Centre

⁹ United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) | Save the Children’s Resource Centre

¹⁰ United Nations Rules for the Protection of Juveniles Deprived of their Liberty | OHCHR

¹¹ UNICEF, “Improving the Protection of Children in Conflict with the Law in South Asia” (2007).

¹² S. M. Das, “Globalization and Reforms in Juvenile Justice in South Asia: A Comparative Study of Law and Legal Advances in India, Pakistan, and Bangladesh,” in *Crime, Criminal Justice, and the Evolving Science of Criminology in South Asia*, ed. Shahid M. Shahidullah (Palgrave Advances in Criminology and Criminal Justice in Asia, 2017), 173-218.

One interesting facet of juvenile justice in Asia is that given that many countries in Asia are former colonies of the United Kingdom or the United States, their existing Juvenile Justice systems are also influenced by their former colonial rulers. In some cases, countries have been able to draw a balance between this influence and their own culture and socio-economic traditions. Philippines, for example, (a former U.S. colony), a juvenile court system was established in Manilla in 1955 with the U.S. system as its model. This system was rarely used because of a lack of funds but also because of cultural traditions and government policies. It was replaced by a strong and far-reaching barangay¹³ system, legally established in 1978. This system was based on principles of reconciliation and informal mediation. Every person in the country lives within a barangay, which is a political unit headed by an elected official, a captain. Virtually all minor cases of juvenile offences are handled within this system, which explicitly excludes lawyers and the advocacy approach to resolving citizen complaints¹⁴.

In India, like the USA, juvenile justice is primarily the responsibility of state governments and Union Territories. Juvenile justice in India is based on two basic legal frameworks – the India Penal Code of 1860 (introduced by the British colonial government) and the Code of Criminal Procedure of 1973 built on the Code of Criminal Procedure of 1898. The government of independent India enacted its first juvenile justice legislation in 1960, called the Children Act. Under this act, juvenile courts were responsible for dealing with both delinquent children and neglected children. The Children Act of 1960 was amended in 1986 by the Juvenile Justice Act (JJA) of 1986. The JJA of 1986 was then amended in 2000 by the promulgation of the Juvenile Justice (Care and Protection of Children) Act of 2000. This act was amended twice in the next ten years – 2006 and 2010. Following the Delhi gang-rape (16th December 2012), the law received widespread criticism for its inability to combat crimes involving juveniles in heinous crimes like rape and murder¹⁵. The 2000 act was then replaced by the Juvenile Justice (Care and Protection) Act in 2015. This 2015 Act is currently the primary legal framework for the administration of juvenile justice in India.

Bangladesh first passed the Children Act in 1974, which was based on some

¹³ A type of early Filipino settlement

¹⁴ “Juvenile Justice.” Britannica. Accessed January 3, 2023. <https://www.britannica.com/topic/juvenile-justice/Continental-Europe>.

¹⁵ S. Mishra, “Role of Juvenile Justice System in India,” Legal Readings, India, June 14, 2022, accessed February 1, 2023, https://legalreadings.com/role-of-juvenile-justice-system-in-india/#History_of_Juvenile_Justice_System_in_India.

old laws of Bengal and some elements from the Criminal Procedure Code of Pakistan. However, this law was, at best inadequate, and did not provide a comprehensive framework for juvenile justice. Like Pakistan, it took Bangladesh over a decade and a half after signing on to the UNCRC to enact a new law. The Children Act 2013 was much more comprehensive than previous juvenile justice legislation and is currently the governing law in the country¹⁶.

1.4 Juvenile Justice in Pakistan

Pakistan is also a signatory to the UNCRC, having ratified the treaty on December 12, 1990. Despite the speed with which Pakistan signed on to this treaty – within just a year of its inception – it took a decade more for Pakistan to promulgate its first exclusive, law dealing with juvenile offenders¹⁷. This was the Juvenile Justice System Ordinance 2000 (JJSO) which was promulgated in July 2000. The JJSO remained the major law for dealing with juvenile crime until the enactment of the Juvenile Justice System Act 2018 (JJSA) on May 24, 2018. Both these laws will be discussed in detail in the subsequent chapters. The coming paragraphs will merely serve as an introduction to the JJSO 2000 and the JJSA 2018, as well as a brief look at some of the other laws relevant to the rights of juvenile offenders.

1.4.1 Juvenile Justice System Ordinance 2000

One of the most notable features of the JJSO was that this was the first law passed at the federal level, specially designed with a view to dealing with minors involved in crime. Prior to the passage of the JJSO 2000, there had been no laws with uniform applicability in all provinces¹⁸. The fundamental principles behind the JJSO were – ostensibly – to provide protection to children involved in criminal litigation, and to rehabilitate them into society¹⁹. To that end, some of the salient features of the ordinance were: provision of state sponsored legal assistance; the creation of separate juvenile courts; confidentiality of juvenile court

¹⁶ A. A. Absar, “Juvenile Justice System in Bangladesh – An Appraisal,” *International Journal of Law Management & Humanities* 3, no. 5 (2020): 493-513.

¹⁷ K. Ifikhar, “Does a Juvenile Get a Better Law This Time-A Comparative Review of the New & Old Juvenile Laws of Pakistan,” *LUMS Law Journal* VI, no. 1 (2019): 160-169.

¹⁸ Omar Sial & Associates, Advocates and Counsellors-at-Law, “The Juvenile Justice System Ordinance,” CRIN – Child Rights Information Network, 2008, accessed January 30, 2023, https://www.ecoi.net/en/file/local/1297039/1227_1226505483_pakistan.pdf. The provisions in the Pakistan Penal Code which deal with minors are an exception. However, given the limited scope of these provisions, they were essentially non-existent.

¹⁹ M. Taimur, “Implementing JJSO,” *Dawn*, April 17, 2016, accessed January 15, 2023, <https://www.dawn.com/news/1252503>.

proceedings; immediate notification of parents/guardians of arrested juveniles; and juvenile release on bail. The JJSO also prohibited the use of the death penalty for juveniles below the age of 18²⁰.

1.4.2 Juvenile Justice System Act 2018

Despite the legislative developments put forward by the JJSO, the ordinance remained largely ineffectual for almost two decades, until it was repealed by the passage of the JJSA 2018. There were two main reasons for this: a) the JJSO had faced significant criticism over its inadequacies, and it was clear that a new law was needed to better conform to Pakistan's commitment to the UNCRC; b) the Lahore High Court issued a judgement which struck down the JJSO, and had called for a different enactment that was more discerning of the needs of children^{21,22}. The JJSA was largely considered an improvement over the previous law. The law aimed to improve the state of juvenile offenders by focusing on providing them better access to justice, and on their rehabilitation²³.

Some of the significant features of the JJSA are: clear definitions of terms such as 'Juvenile' and 'Juvenile Offender'; the creation of specialized Juvenile Rehabilitation Centres (JRC); definition and usage of 'best interests of the child' as used by the UNCRC; and the prohibition of the death penalty for juvenile offenders²⁴. Additionally, the JJSA introduced a 'diversion process' by which a juvenile offender would be able to avoid formal judicial proceedings, and instead be 'diverted' to an alternative process. This process would determine his responsibility, and treatment based on his social, cultural, economic, psychological, and educational profile. This was a particularly important addition, because the concept of diversion emphasizes restorative justice over retribution, or punishment for an offence committed²⁵.

²⁰ S. M. Das, "Globalization and Reforms in Juvenile Justice in South Asia: A Comparative Study of Law and Legal Advances in India, Pakistan, and Bangladesh," in *Crime, Criminal Justice, and the Evolving Science of Criminology in South Asia*, ed. Shahid M. Shahidullah (Palgrave Advances in Criminology and Criminal Justice in Asia, 2017), 173-218.

²¹ *Farooq Ahmed v. Federation of Pakistan* in WRIT petition No.20657 of 2002. This decision was later suspended by the Supreme Court of Pakistan, but the legitimacy of the JJSO as the governing document of the juvenile justice framework in the country was in question.

²² R. Noor, "Juvenile Justice System of Pakistan," *SZabist Law Journal* Volume 2.0 (2020): 77-83.

²³ SPARC, "The State of Pakistan's Children - Juvenile Justice System," Islamabad, 2019, accessed January 1, 2023, <https://www.sparcpk.org/SOPC2019/JJJO.pdf>.

²⁴ See Reference 21

²⁵ See Reference 16

1.4.3 Other major laws dealing with Juvenile Justice

In the decades preceding the enactment of the JJSO 2000, the provision of juvenile justice was carried out through a scattered collection of laws. Of these, the Provisions for Juvenile Offenders in the Pakistan Penal Code (1860), the Constitution of Pakistan 1973, and the Pakistan Criminal Code 1898 (Section 399) were applicable throughout the country. The others were mostly provincial level laws, which have remained in varying stages of dormancy.

- *The Sindh Children Act (SCA)*, enacted in July 1955 by the Sindh Assembly, is a juvenile justice and child protection law that succeeded the pre-partition Bombay Children Act of 1924 (Human Rights Watch 1999). This law deals with the procedure of handling children, provides rules and guidelines to save children from exploitation, abuse, victimization. It also sets punishments for those who abuse and exploit minors²⁶.
- Punjab passed the *Punjab Youthful Offenders Act*, in 1952, but this law was not enforced. It was repealed in 1983 after the passage of the *The Punjab Youthful Offenders Ordinance of 1983*. The 1983 law was modelled on the juvenile justice provisions of the Sindh Children Act, often directly replicating its language. This law also remained dormant until 1994, when it was enforced in Punjab's Sahiwal district as part of an unrealized experiment in juvenile justice (Human Rights Watch 1999)²⁷.
- Punjab and Sindh also laws governing borstal institutions²⁸ – the *Punjab Borstal Act of 1926 and the Sindh Borstal Schools Act, 1955*. Punjab has two functioning Borstal institutions and Juvenile Jails (BIJJs) at present – in Faisalabad and Bahawalpur. Both institutions are run by the Prison Administration Department of the provincial government of Punjab. Outside of Punjab, there are two other institutions specially designated for juveniles: the Remand Home and the Youthful Offenders Industrial School, both of which are in Karachi²⁹.

²⁶ See Reference 21

²⁷ Human Rights Watch, "Prison Bound - The Denial of Juvenile Justice in Pakistan," January 2, 1999, accessed January 12, 2023, https://www.hrw.org/reports/1999/pakistan2/Pakistan-01.htm#P384_50588.

²⁸ Borstals are institutions where juveniles may be detained and provided with "industrial training and other instruction" as well as "disciplinary and moral influences" that will encourage their reformation (Human Rights Watch 1999).

²⁹ See Reference 27

Chapter II: Juvenile Justice System of Pakistan: Context and need for reform

This study focuses on two questions. First, once a juvenile has committed a crime, has been found guilty and served term at a correctional facility, how is he / she equipped during incarceration to cope with what happens next? Secondly, it aims to provide an assessment and analysis of the Juvenile Justice System Act (2018) and to offer concrete and comprehensive policy recommendations in light thereof.

Whereas causes of juvenile delinquency are not the focus of this study, ensuring that young offenders successfully reintegrate back into the society post incarceration and do not fall into the loop of becoming repeat offenders certainly is.

As the focus of the study is on the time spent in the jail, the answer lies in understanding the juvenile justice system. The general attitude of the justice system towards young offenders is therefore extremely important. As shall be revealed in due course, it is critical to ask who is incarcerated and why. Starting from the moment they encounter the state via its criminal justice system, the processes they encounter along the way, and the conditions of and during imprisonment are all questions of significant importance. This includes efforts made to rehabilitate the juvenile prisoners as well as measures taken to minimise future recidivation.

Young offenders³⁰ encounter the juvenile justice system as consequence of a vast array of issues. These can be rooted within the socio-economic structure of the society or be a result of personal hardships (Mincey, Maldonado, Lacey, &Thompson, 2008). Irrespective of the crime or time served, once the sentence is completed, these juvenile offenders must not only return to the society but reintegrate into the mainstream as well. Instead, research shows that previously imprisoned youth return to the justice system, in

³⁰ For the purposes of this study the terms juvenile, youth and child will be used interchangeably. They refer to those members of the society who have been assigned criminal responsibility by the law but are distinguished from the adult offenders and the criminal justice system on account of their age. As per section 82 of the Pakistan Penal Code, 1860 the minimum age of criminal responsibility in Pakistan is 7 years. Juvenile offenders, therefore, fall within the age bracket of 7 to 18 years.

This study is cognisant of the fact that international law and conventions vary on the age of legal/criminal responsibility. It therefore does not exclude the possibility that some of the recommendations made therein may apply to those older than 18. For example, the United Nations Convention on the Rights of the Child defines “youth” as a “child until 18”, whereas as per the UN Habitat the age bracket is anywhere between 15 to 32 years.

one form or the other, at alarmingly high rates.³¹

Even though prisons represent only one point on the continuum of justice system / process, they play an integral role if not the most important one when it comes to juvenile justice (Aiello, 2003). Prisons are not just tasked with the responsibility of ensuring safe incarceration of the young offenders, but also with overseeing their rehabilitation. During imprisonment, the juvenile offender is removed from the society. The time that he / she was going to invest in acquiring skills to become a productive member of the community is spent behind bars, away from familial ties, social networks, and parental guidance. Moreover, the reason they landed in the system to begin with is more often than not due to the fact that they already lack the resources and skills to operate as productive citizens³².

The research aims to ascertain what legal safeguards have been extended to the youthful offenders once they encounter the criminal legal system and whether the juvenile justice system of Punjab province, can equip the incarcerated youth with the requisite skills to cope with, adjust to and integrate in the society once they have served their sentence. Even though prisons are not explicitly addressed in the JJSA, we have included them in our analysis. This study contends that prisons do not perform a punitive function only. They are just as much rehabilitative institutions, and the main purpose of rehabilitation is to reform and restore the juvenile delinquent thereby ensuring that once the youth offender has paid his / her dues, they do not fall back into familiar patterns. In other words, they are equipped to function as productive members of the society and do not recidivate.³³ And this falls directly within the ambit of the JJSA.

³¹ According to a recent study by Yesmen and Mau (2022), the recidivism rate in Pakistan stood at 26.3% in 2012 and 26.8% in 2013. Meanwhile, that of India was recorded at 7.2% in 2013 and 7.8% in 2014. While that of Bangladesh was recorded at 44% in 2012 and 45% in 2016.

³² L. Sametz, J. Ahren, and S. Yuan, "Rehabilitating Youth Through Housing Rehabilitation," *Journal of Correctional Education* 45, no. 3 (1994): 142-150.

³³ Dabrouze argues that correctional facilities, that oversee the rehabilitation of juvenile delinquents, need to a) ensure that the juvenile offenders are receiving adequate rehabilitative treatment during their imprisonment so that they "are less likely to recidivate, b) to equip the juvenile delinquent with "realistic and obtainable resources", and c) make sure that the "juvenile delinquent is fully aware and ready for the transition back into society". K. Darbouze, "Rehabilitative Methods and the Affect on Juvenile Delinquents," *University of Maryland • Inaugural Edition* (2008): 104-117.

2.1 Theoretical boundaries and analytical delimitations

A core issue related to children in conflict with the law is the fact that due to their age and immaturity, they are more vulnerable and limited in capacity than their adult counterparts. Save the Children (SCI) thus argues that the justice system on the whole and criminal procedures specifically need to extend them “separate and different treatment”³⁴. They are after all still in a formative stage of development.

The state’s responsibility, however, is two-pronged. On the one hand it is expected to maintain law and order and perform a punitive function in case of transgression. This includes underage delinquents as well. On the other it needs to develop a system which is responsive to the youth’s care and developmental needs. Only then can it ensure that these young offenders “...are reintegrated back into their communities as law abiding citizens”³⁵.

This study focuses on how to ensure effective implementation of laws, with a special focus on the JJSA so as to a) ensure rehabilitation and reduce recidivism amongst juvenile prisoners during incarceration,³⁶ and b) offer a critical evaluation and assessment of the JJSA, 2018. As is with any research of this nature, we need to develop a theoretical framework within which to posit our inquiry and the question at hand and ultimately develop concrete and applicable policy recommendations. Research shows that while literature on the subject recognises and highlights multiple methodologies through which juvenile justice systems can be improved, policy and practice approaches suggested therein are still based on a singular model of the ideal child rooted in the Western traditions³⁷. This shall be demonstrated in relative detail in the following section. This study attempts to offer a more practical approach. It makes the current justice system, along with its laws and mores, the primary focus. Additionally, it fills in the gaps in literature by falling back on the best practices and models suggested by the UN bodies and other transnational human and child rights bodies to critically evaluate the current legal regime pertaining to juvenile justice.

³⁴ Chiara Segrado. 2016. Child Rights and Juvenile Justice: Best practices and lesson learned from Save the Children Italy national and international programs. Italy: Save the Children Italy. Pg.8

³⁵ *ibid*

³⁶ Our focus being Punjab for the purposes of this study.

³⁷ T. S. Saraswathi, Shailaja Menon, Ankur Madan. 2018. *Childhoods in India Trends, Traditions and Transformations*. Routledge Taylor & Francis Group.

2.2 Limitations of the inquiry

However, it is important to mention here that we are working within certain methodological as well as theoretical limitations. The main theoretical constrain is that even though the literature on the subject provides multiple frameworks of rehabilitation, these are divided into two categories – those juvenile offenders who have left the prison system and are now attempting to reintegrate back into society, and that population of those juveniles who are still within the justice system. As improvement of the juvenile justice system is the primary focus of this study, the theoretical framework within which we conduct this research pertains to the latter category.

Secondly, the methodological constraint is that in the Pakistani system, once a prisoner is released the wider legal system does not keep any tabs on the ex-prisoner. So, there is no way of locating or contacting these personnel – this applies to both juvenile as well as adult offenders. Some data is maintained by the prison staff of those offenders who are on parole, but they are unable to share that with us for legal reasons. We therefore cannot include the released [ex] prisoners in our analysis to measure or ascertain the success of the efforts made by the prison systems. We have had to exclude from our theoretical framework literature pertaining to best practices and rehabilitation models suggested for released prisoners.

2.3 Developing a bottom-up approach to reform

Day to day running and the seemingly mundane practices that govern the juvenile justice system are inimical to not only understanding the *status quo*, but also as a reference point for developing a policy framework for reform. Therefore, a strong case be made for developing a bottom-up approach for policy reform.

A society, according to Sharma and Gupta (2009), is the sum of mundane everyday practices of the people. The state on the other hand is constructed through how it responds to its people and the bureaucratic structures and judicial avenues through which it interacts with its citizens. Therefore, the repetitive banal bureaucratic activities of the state are key to understanding the behaviour as well as structure of the state (Sharma & Gupta, 2006).

Police is particularly important in this context. As I have argued in detail elsewhere, police are the first point of contact between the citizen and the state³⁸. Majority of the people will only encounter the state via their local *thana or kachahri*. Their experiences of the local police station form the basis of their opinion of the state in general. This is because justice system and the police, perform a dual role. On the one hand the police are vested with the responsibility of maintaining public law and order. On the other, it is also the first point of contact between the state and the people³⁹. Therefore, how the justice system functions, matters at an infinitesimal level.

This is best illustrated by Sharma and Gupta (2013)⁴⁰ through example of a man named Banwari – a scheduled class person who lives in a remote village in India. When asked about his views on the state, Banwari claimed that he neither knows the state nor is concerned with it. What he does know however is that there is a police station a few kilometres away from his house, “... and that is corrupt. The police demand bribes and do not register complaints”⁴¹. In short, the Police is both an “...*instrument of control as well as the emissary of state, or even the state itself at the infinitesimal level*”⁴².

The state is arguably constructed discursively via everyday monotonous tasks together with perceived as well as real experience of the citizenry when they encounter the grassroot institutions. It matters who is seen, who is silenced, who is empowered and who is rendered powerless because the medium of interaction and its outcomes reflect on the statehood.⁴³ Policy frameworks and legal regimes, are a medium through which power is exercised and is exercised and inequalities instituted (Ferguson, 1994). The potentially discriminatory outcomes that define the contours of society through every day “technical” bureaucratic tasks then become indicative of a larger structure that operates in the background.

As the citizen’s initial point of contact with the state is through one out of three following functionaries – the Station House Master (SHO) of the Police, the Patwari (Revenue Collector), and the lower courts, Session and Civil (Judiciary), “*these three*

³⁸ Rabia Chaudhry. 2013. Policing, Custodial Torture and Human Rights: Designing a Policy Framework for Pakistan. Monograph, Lahore: Centre for Public Policy and Governance

³⁹ Ibid pg.47

⁴⁰ Aradhana Sharma & Akhil Gupta. 2006. The Anthropology of the State: A Reader. Blackwell.

⁴¹ Ibid pg.225

⁴² Ibid pg.83

*officials have enormous power in the perception of the public and in reality, as well*⁴⁴. Saeed Shafqat (2020) argues that *“there is a need to adopt a bottom-up approach to introduce reform at the grass root level so that the ordinary citizen is able to see the benefits of reform clearly and convincingly”*⁴⁵.

Although literature on juvenile justice offers multiple criminological and sociological explanations of delinquency and suggests restructuring and reorganisation of the approaches towards the rehabilitation of youth offenders, it stops short of addressing the issue within the context of the justice system of which it is a part. This study makes an emphatic case that the policing and jailing systems need to be reformed while adopting a juvenile friendly approach. State machinery is “performative”⁴⁶. Procedures and protocols matter. Therefore, while identifying shortcomings of the system and suggesting reforms the policy maker needs to view the justice system as the state, but as responsible for and accountable to the juvenile.

2.4 Existing Literature on Juvenile Justice System and its Constraints

Research shows that the three main contenders in understanding the concept of juvenile delinquency are the Strain Theory by Merton (1938), Control Theory by Hirschi (1969), and Differential Association Theory by Sutherland (1947). No research on the subject at hand is complete without incorporating either one or all the above. However, as shall be demonstrated below, while all have their own merits, they are of limited applicability for the purposes of our research.

For instance, the existing frameworks theorising juvenile delinquency fail to provide a comprehensive and holistic explanation of the specific question that we seek

⁴³ This is not to say that the state is the only actor in the field. Partha Chatterjee for instance argues that the space between state and subaltern is necessarily negotiated. Although the playing field remains far from being even, the subaltern subject is never a passive object of the state. On the contrary, the state and the subject remain mutually constitutive. Interactions between the state and the people therefore become even more important; how the power dynamics are ultimately negotiated – via institutions of course – reflects on the nature / definition of the state. (Chatterjee, 2005) eed Sh

⁴⁴ Saeed Shafqat. 2020. *Pathways to Governance and Civil Service Reform in Pakistan: Federal, Provincial and Local*. Lahore, 7 February (pg.12)

⁴⁵ Ibid pg.13

⁴⁶ Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity*, New York: Routledge, 1990

an answer to in this study. Secondly, their respective perspectives are dated. Even though these theories have been critiqued and built upon over the years by various authors, they are yet to offer a viable alternative. Lastly, at the heart of the issue are real humans who have socio-centric concerns. Although human vulnerabilities do not have cultural contexts per se, institutions and legal systems certainly do. South Asian criminal and penal systems are still informed by colonial understanding / perspective of laws and procedures. Whereas the theoretical frameworks mentioned below offer universal explanations of the juvenile delinquency and failure of the juvenile justice system from an American perspective. Hence this study puts forth that while the existing literature certainly has its uses, if one is to develop a more holistic comprehension of the academic standpoint on juvenile delinquency, it needs to be perused with the understanding that it represents an American academic perspective and is of very limited use when it comes to developing a Pakistan centric policy framework. Below is a brief summation of the three main theoretical contenders of literature on juvenile delinquency.

2.4.1 Strain theory of Deviance by Robert Merton (1938)

Merton argues that people resort to criminal activity when they do not have sufficient legitimate opportunities available to achieve normal success goals of a society. He used the concept of the “American Dream” to define what he meant by success and goals in his theory. Criminal behaviour, especially in the youth, is therefore directly linked with an inability to achieve goals which in turn produces frustration and consequently “strain” in the society. As the youth are particularly susceptible, they fall in this trap more easily and frequently than the adults. To prove his point, Merton used the official statistics regarding crime (in the US) which showed that most of the people who committed crimes, hailed from unskilled manual backgrounds (or ‘lower social classes’).

Merton’s reliance on official statistics means he over-estimated the extent of working-class crime and underestimated the extent of middle class, or white-collar crime. Plus, not all working-class individuals turn to crime. Subcultural theorists argue that a strong case can be made for incentives to join urban gangs. Strain theory also unconsciously limits its definition of crime to an economic crime and fails to explain violent crime. Lastly, we simply cannot ignore the fact that capitalist economies are structured to favour the affluent and disadvantage the poor.

However, even though this classic yet overly simplistic argument has amassed its critics over the years, there is a clear inclination amongst academics to salvage the perspective, not retire it. It is thus that we see Merton's Strain theory is still being cited by criminologists and sociologists alike (Bernburg, 2002, Agnew, 2000; Akers, 2000; Hirschi, 1969). Moreover, we observe a tendency to revise and reinterpret the theory within an American context (Froggio, 2007) thereby ignoring socio-cultural and economic exigencies of the rest of the world.

2.4.2 Differential Association Theory by Edwin Sutherland (1947)

Sutherland's differential association theory is considered one of the most influential perspectives in explaining juvenile delinquency. According to Sutherland, crime stems from normative conflict which in turn occurs when there is contrast between how different groups within society define a law as something to be followed completely, partially, or not at all. Criminal behaviour therefore is learned through communication in intimate relationships whereby these definitions of law are determined.

The theory, while offering a viable explanation, has remained particularly difficult to test. Various theorists have since attempted to revise it (Cressy, 1954; Glaser, 1956; Weinberg, 1966; Voss, 1969). However, Kornhauser's (1969) critique has been particularly devastating to the theory for it pointed out theoretical shortcomings of differential association theory.

2.4.3 Social Control Theory by Travis Hirschi (1969)

The Social Control Theory sees crime because of social institutions in any given society losing control over its individuals. Institutions here includes state owned institutions like the police, as well communities and families that individuals hail from. Hirschi argued that humans are driven by a need to protect themselves and therefore act selfishly and aggressively. The only thing stopping us from acting on these desires are the social and familial bonds that we are either born into or willingly adopt. Evidence for Social Control Theory tends to focus on three problem areas that are correlated with higher crime rates. These are: Absentee parents; Truancy; Unemployment. Juvenile delinquents, according to this theory, commit crimes because they lack bonds such as secure attachment.

While the theory may clarify some criminal behaviour, it nonetheless falls short of a universal explanation for all criminality. Even Hirschi later in his career conceded the demerits of formulating an all-encompassing singular theory that explains all criminal behaviour (Hirschi & Gottfredson, 1990). Parent deficit does not automatically lead to children becoming criminals. Crimes have ‘pull factors’ such as peer group, economic, social pressures as well. Moreover, it displays a tendency of victim shaming. Instead of blaming the youth, we need to make the structures the focus of our analysis and how they failed the said youth.

As aforementioned, all the above theories are dated and have more flaws than merits. However, our research shows that discussions on juvenile delinquency and even rehabilitation to a certain extent, reverted to the frameworks provided by the above theories in form or another. Yet as we have demonstrated they are not only inherently problematic in this day and age, but they also do not provide a coherent and comprehensive answer to the causes of juvenile delinquency [which they purport to do]. They simply offer class based blanket explanations of crime. Most importantly, in this research we are not concerned with the causes of juvenile delinquency, as much as with how to rehabilitate the youth offender and to discourage recidivism. It was however not possible to simply ignore or bypass the said theories because of their ubiquity in literature.

In short, literature on the subject has thus far failed to provide workable theoretical explanations of different types of criminal behaviour that cut across socio-cultural and economic contexts. Interpretivist and postmodern criticisms have rendered the task even more difficult. Juvenile delinquency as a subject – in its current form – remains theoretically inadequate and far too culturally specific to the Anglo-American context to be relevant to this study. While causes of delinquency are extremely important, there is need to develop a culturally specific approach to understanding the issue. That is unfortunately beyond the purview of our current research. What we need to do is critically analyse the rehabilitative methods, interventions and programmes established or run by the concerned authorities to rehabilitate juvenile delinquents while still incarcerated.

To that end, taking inspiration from Blagg and Anthony (2019) this study makes a case that the structures within which policy frameworks and legal regimes are couched are extremely important and should be appreciated as such. Building on Oxley’s (2020)

critique of the aforementioned literature, we argue that everyday application and practice of laws, especially in Pakistan's case, needs to be contextualised within a more localised framework. Instead of focusing on causes of delinquency we need to concentrate on how to improve the current system.

This study adopts the best practices suggested by Save the Children as the cornerstone for analysis. These have been formulated on the framework suggested by UNCRC. As we could not find an adequate alternative in academic literature, and as signatory to various multilateral and transnational treaties Pakistan is under an obligation to follow and incorporate international standards, it made sense to adopt the Save the Children model. Most importantly, as shall be demonstrated in the proceeding chapter, the spirit of the new JJSA 2018 seems to follow this model as well.

2.5 Save the Children's Best Practices Model: A viable policy framework for Pakistan.

The Best Practices Model developed by SCI has a clear and simple objective; in order to ensure that justice is served, young offenders need to be treated in a manner that is dissimilar to that of their adult counterparts. If not, the said legal system is inherently flawed. Moreover, it is in direct and flagrant contravention of international law.

A juvenile justice system comprises of many actors. These include several ministries, governmental departments, and bodies – at national, provincial levels and local levels. Crucially, the role of international NGOs and other transnational bodies should not be ignored in this respect because not only do countries owe legal obligations under treaties, they are signatory to, but these organisations often act as watchdogs and therefore can oftentimes hold countries accountable on international fora. It therefore makes sense to align the local laws with the international standards / best practices. As mentioned above, this study will be using SCI's model of best practices as a benchmark for analysing existing legal and administrative framework of Pakistan regarding juvenile justice and making policy recommendations.

Before we discuss the specific strategic interventions prescribed by the SCI Best Practices Model, we need to state fundamental positions taken by the said model. First,

SCI Best Practices recommend defining the target of the suggested reform. In this respect they put forth that both the juveniles as well as officials of the juvenile justice system are beneficiaries of reform. Typically target groups include but are not limited to: *“children in conflict with the law; children deprived of their liberty; child victims and witnesses; children at risk; police officers, judges and prosecutors dealing with children”*⁴⁷.

Secondly, a clear agenda of reform must be identified. This can be articulated in very broad terms like the two-pronged goals of juvenile justice programming identified by the UNCRC *“... (a) child protection and children’s rights fulfilment; and (b) public safety and crime prevention”*⁴⁸. Or these objectives can be focussed on achieving a particular result. Either way, any policy reform in the area needs to be clear about its agenda the direction it is heading in. Based on these, the main areas of intervention identified by SCI, in order to ensure that juvenile justice system protects the rights of the incarcerated youth, are given below. *“[...] a comprehensive juvenile justice reform should include all the strategic areas of intervention”*⁴⁹.

2.5.1 Prevention

In this study our objective, as stated several times, is to ensure that the young offenders are supplied with adequate opportunities of rehabilitation during incarceration and to ensure that they do not become repeat offenders. However, as the focus of study is the entire juvenile justice system, we need to recognise that prevention plays a key part of any children’s justice programme. *“It aims to ensure that children do not come into conflict with the law in the first place. This means examining the root causes of children’s offending, which are varied and often complex: they include poverty, family disaggregation, lack of education and employment opportunities, peer pressure, lack of parental guidance”*⁵⁰.

To that end, The Riyadh Guidelines provide three different stages at which measures can be taken by the relevant authorities to ensure prevention of juvenile offences.

⁴⁷ Chiara Segrado. 2016. Child Rights and Juvenile Justice: Best practices and lesson learned from Save the Children Italy national and international programs. Italy: Save the Children Italy. Pg.16

⁴⁸ Ibid.

⁴⁹ Chiara Segrado. 2016. Child Rights and Juvenile Justice: Best practices and lesson learned from Save the Children Italy national and international programs. Italy: Save the Children Italy. Pg.20

- Primary Prevention – “general measures to promote social justice and equal opportunity”⁵¹. This helps tackle some of the more commonly perceived reasons of juvenile delinquency such as poverty and marginalisation.
- Secondary Preventions – “measures to assist children who are identified as being especially at risk, such as those whose parents are themselves in difficulties or are not caring appropriately for them”⁵².
- Tertiary Prevention – taking steps / initiating schemes to ensure that juveniles do not come in contact with the formal justice system to begin with. This also includes ensuring that recidivism is kept at the most minimal level. In short, efforts need to be made by the justice system overall to ensure crime prevention. Juvenile delinquency in turn should be seen as an integral part of the justice programme. “Prevention programs work at different levels, from national crime prevention strategies to the local level, where prevention involves working with the community, for example with schools and parents on education and skills development. The initial phase usually involves assessing the links between youth crime and factors such as poverty, lack of parental support and lack of education”⁵³.

2.5.2 Pre-trial detention and detention

Incarceration is naturally extremely damaging for the mental and physical wellbeing of the juvenile offender. During both pre-trial as well as post-trial custody, studies show that children are susceptible to abusive and cruel treatment. “Children, particularly girls, are also extremely vulnerable to sexual harassment or sexual abuse during arrest and interrogation”⁵⁴. Efforts should be made to not only protect the child if and once in custody, but prior to that, utmost effort should be made to minimise the chances of a child being taken into police custody to begin with.

Save the Children Italy has developed the following approach to children in detention based on the following principles as stated in the UN Rules for the Protection of Juveniles Deprived of Their Liberty (the JDL Rules):

⁵⁰ Chiara Segrado. 2016. Child Rights and Juvenile Justice: Best practices and lesson learned from Save the Children Italy national and international programs. Italy: Save the Children Italy. Pg.21

⁵¹ Chiara Segrado. 2016. Child Rights and Juvenile Justice: Best practices and lesson learned from Save the Children Italy national and international programs. Italy: Save the Children Italy. Pg.42

⁵² Ibid

⁵³ Ibid

- *Child detention should be a measure of last resort and for the shortest possible time.*
- *Children in custody should be separated from adults, and girls separated from boys.*
- *Children in custody should have regular access to parents, family, and lawyers.*
- *Children in custody should have access to post-custody reintegration into society through rehabilitation support and aftercare services⁵⁵.*

2.5.3 Diversion, alternative measures, and restorative justice

The concept of retribution lies at the very heart of the criminal justice system. If you have committed a crime, you must be punished for it. OR as we say in common parlance, you have to pay your dues to the society. Restorative justice instead highlights on restoring the balance in the society that was disturbed once the crime was committed.

SCI's Best practices model lists the four guiding principles of this approach as follows:

- *Repairing the harm done and restoring the balance within community and society.*
- *Guaranteeing the victim's right to restitution.*
- *Ensuring that the offender becomes fully aware and willing to take responsibility for his or her actions.*
- *Offering support to change and improve future behaviour of the offender⁵⁶.*

A key advantage of adopting a system, which focuses on alternative measures, is that the juvenile offender can be diverted from the mainstream criminal justice system. Needless to say, these alternative measures need to be commensurate to the crime. However, they create room to take the offender's age, willingness to cooperate, nature of crime, individual circumstances into consideration while sentencing. There are numerous kinds of diversion measures, applicable at various points during the process of helping children who have come into conflict with the law. The most common are: cautions, mediation programs, victim-offender mediation and reconciliations programs, pre-trial community service and family group conferencing.

⁵⁴ Chiara Segrado. 2016. Child Rights and Juvenile Justice: Best practices and lesson learned from Save the Children Italy national and international programs. Italy: Save the Children Italy. Pg.22

⁵⁵ Ibid

⁵⁶ Ibid

2.5.4 Judicial Proceedings

The courts should have available to them a wide range of options from which they can choose what is best suited for the child on a case-to-case basis. In fact, we would go so far as to say that they custody should be of the last resort. The judicial system should have exhausted all other options, like bail etc., before incarcerating the young offender. SCI states that the “...four General Principles of the CRC (survival and development; participation; best interest of the child; non-discrimination) should be complied throughout the juvenile justice system, including during court proceedings”⁵⁷.

Here we would also emphasis the role of probation services. “It is often part of the job of probation officers to explore the causes of the offending behaviour, try to find the “positive” side of each offender and advocate for a non-custodial sentence, wherever possible”⁵⁸. This gives the judge the opportunity and room to award lenient sentence to the youth in question.

2.5.5 Rehabilitation, reintegration and after care

A common dilemma of developing countries is that due to lack of resources, expertise, and we would argue due to age old institutional infrastructures, children held in custody are often deprived of any effective rehabilitation and re-integration program. This can arguably be a factor in high recidivism rates. “Children in conflict with the law must be treated differently from adults and should have access to rehabilitation and re-integration measures in their own communities.” this includes programmes of vocational training and skills generations during incarceration. Also work grants should be part of any project working with juveniles before their release. SCI Best practices model also insist on developing a highly individualised rehabilitation programme so as to ensure the reintegration of the juvenile delinquent back into mainstream community once they have served their time.

⁵⁷ Chiara Segrado. 2016. Child Rights and Juvenile Justice: Best practices and lesson learned from Save the Children Italy national and international programs. Italy: Save the Children Italy. Pg.24

⁵⁸ Ibid

This study has a two-pronged purpose. On the one hand it aims to encourage rehabilitation and reduce recidivism amongst juvenile prisoners during incarceration. On the other it offers a critical evaluation of the JJSA, 2018. In this chapter we mainly dealt with the first question while developing / adopting guidelines for the second – which will be dealt with in detail in the next chapter.

As this study aims to develop a more practical approach, we approached the literature with the perspective that it should be able to offer a workable and applicable theoretical framework within which to posit our inquiry and the question at hand and ultimately develop concrete and applicable policy recommendations. However, as demonstrated above, while literature on the subject recognises and highlights multiple methodologies through which juvenile justice systems can be improved, policy and practice approaches suggested therein are still based on a singular model of the ideal child rooted in the Western traditions.

The existing frameworks fall short of providing an effective juvenile justice system which can be adopted. We therefore use the SCI's best practices model in this study to analyse and evaluate the existing laws and policy regimes and to recommend policy changes to the juvenile justice system overall and to assess the efficacy of the current law – JJSA 2018.

The study is pursuing a holistic approach that pegs its support on restorative justice and alternative measures, thereby relying on structures and institutions such as community and family, that are better suited for the Pakistani context.

Chapter III: Legal Dimensions: A Comparative analysis of old and new laws

As things stand, the juvenile justice system of Pakistan is falls under the legislative domain of the JJSA. Previously, all legal and procedural aspects of juvenile justice were overseen by the Juvenile Justice System Ordinance, 2000 (hereinafter, JJSO). However, the old law had over the years become subject to critique from multiple concerned quarters for not encapsulating the true intent and spirit of the United Nations Convention on the Rights of Child (UNCRC) – the umbrella document which prescribes and proscribes the rights of incarcerated minors in signatory countries. Therefore, in 2005 the Lahore High Court repealed JJSO via its decision *Farooq Ahmed v Federation of Pakistan* (PLD 2005 Lahore 15) with the direction that a new and revised legislation be promulgated. This new law not only conforms to the principles encapsulated in the UNCRC but is more cognizant of and tailored towards the needs and issues of the juvenile offenders. Below are some of the issues that the new law has been able to successfully address.

3.1 Revised Definitions

Counter intuitively, the terms ‘Juvenile’ and ‘Juvenile Offender[s]’ were not defined adequately in the JJSO. This, as discussed in detail elsewhere in this research, is inimical to ensuring that justice is served to the juvenile offender. The first step that the new law has taken is that it now clearly defines a ‘Juvenile’ as a child “who has not attained the age of eighteen years” (s. 2 (b), JJSA, 2019) and therefore, by virtue of age, is entitled to be subjected to the force of law in a manner that befits a minor. This necessarily entails maintaining a judicial distinction between a juvenile and an adult. More importantly, a distinction is now introduced between a juvenile and [the newly introduced term] of ‘Juvenile Offender’. A ‘Juvenile Offender’ is a child who is alleged to or found to have committed an offence. In short there is now finally a *juridico* legal difference maintained between convicted and non-convicted young offenders.

The new law also now includes the much-needed term of the ‘best interest of the child’ thereby bringing the prevailing law in conformity with the prescriptions of the UNCRC. Best interest of the child is now understood, or at least is supposed to be understood, to be the ‘...basis of any decision taken regarding the child to ensure fulfilment of his or her [added] basic rights, needs, identity, and social well-being along with his/her

physical, emotional, and psychological development’.⁵⁹

In this vein, multiple institutions can now take custody of juvenile offenders. Previously, JJSO used a blanket term ‘borstal institutions’ to broadly refer to facilities where juvenile offenders were to be housed, receive education, and get trainings. JJSA has now streamlined the spectrum of institutions where child offenders are to be detained under the rubric of Juvenile Rehabilitation Centre. These include certified institutions, borstal, and juvenile training institutions, *dar-ul-amaans*, vocational centres, and women crises centres (established by the Government or other voluntary organizations as certified by the Government).

The JJSA also specifically inserted the term “Medical Officer’ in the new law. This is a particularly positive move in that not only a specialised professional is now available to meet the medical needs of the incarcerated, but technical issues, like ascertaining the age of the juvenile, determining their mental and / or physical health is now the responsibility of designated officer of the law who is professionally trained to deal with children.

3.2 Specialised investigative procedure

Section 7 of the JJSA, makes two very clear stipulations. According to s. 7 (1), JJSA a juvenile offender can now only be interrogated by a police officer of or above the rank of a sub-inspector. Moreover, the said investigation is to be conducted in the presence and the under the supervision of the superintendent of police or SDPO. S. 7(2), JJSA takes further steps to benefit and protect the child in that the investigation officer now has “to be assisted by a probation officer or by a social welfare officer”. The notified officer must prepare a “social investigation report” which is supposed to be annexed with the prosecution challan – prepared under s. 173, Cr.PC. whereas the previous law was entirely silent on the issue, the new law specifically employs the term “shall” in this regard. The absence of a probation or social welfare officer during investigation and the absence of [report] is now therefore a breach of law.

⁵⁹ Kashif Iftikhar. 2019. “Does a Juvenile Get a Better Law This Time-A Comparative Review of the New & Old Juvenile Laws of Pakistan.” *LUMS Law Journal* VI (1): 160-169.

3.3 Alternative detention centres

To make a legal arrest of a juvenile offender, s. 5, JJSA clearly prescribes a set of mandatory steps that need to be adhered to by the officers in charge. First and foremost, the law clearly states that the arrested juvenile “shall be kept in an observation home” as opposed to a police station. After having executed the arrest, the officer-in-charge of the police station is now required by law to inform the legal guardian of the juvenile in question [of the arrest]. Moreover, both the guardian and the probation officer must be intimated of the “... time, date and name of the juvenile court before which the juvenile shall be produced” (s.5 (1)(a), JJSA). Lastly, the officer-in-charge must prepare and submit a report clearly stating the steps that would be taken to “for referring the matter to the Juvenile Justice Committee for disposal of [the] case through diversion” (s. 5 (3), JJSA).

The second term introduced in this category is that of an ‘observation home’ – s. 2(p), JJSA. This is another example of how the new law is cognisant of the special needs of minors and tries to ensure that the juvenile offenders are kept away from traditional means of incarceration. An observation home is defined as a temporary accommodation where the juvenile has to be kept post arrest, during the remand and even while the investigation is on-going. Admittedly the exact specifications of the said observation home are not spelled out, however, the intention of the law is very clear – incarceration in formal police facilities / prisons should be avoided to every extent possible in case of underage offenders.

3.4 Introduction of diversion process

The JJSA has incorporated for the first time the concept of ‘diversion’ in the body of law. S. 2(d), JJSA defines it as “an alternative process of determining the responsibility and treatment of a juvenile on the basis of his [/her] social, cultural, economic, psychological and educational background without resorting to formal judicial proceedings”.

Again, we see the law trying its utmost to protect and keep the young offender out of the traditional legal and justice system to whatever extent possible. This is not to say that the underlying intention is to exonerate the offender or to diminish responsibility due to their age. It is more of a leaning towards restorative justice – which aims to restore the

balance upset by the criminal act – as opposed to subjecting the offender to the infrastructure of the formal criminal justice which is more retributive and therefore punitive in nature.

By diverting the juvenile offenders away from the formal criminal justice system, the law attempts to ensure that the child does not get labelled as a criminal at an early stage in life and the criminal event in question remains a one off event in his / her life and reduces the risks of recidivism.

Section 9 (6)(b) of the JJSA brings all minor and major offenses under the fold of the diversion process. The only stipulation is that in case of major offences, the diversion process is not applicable / available to juveniles above the age of 16. Section 9 (2) further stipulates that the process of “diversion can be exercised at any stage during the course of the investigation by the police and during trial by the prosecution and the Court in the prescribed manner”. This of course is subject to the consent of the accused juvenile and his/ her guardian (s.9 (1), JJSA).

Interestingly, the law also provides for resolution [of cases] via the diversion process as well. S. 9(4), JJSA clearly states that the Juvenile Justice Committee is entitled to dispose of cases “with the consent of the person against whom the offence was committed, by resorting to different modes of diversion including, a) restitution of moveable property; b) reparation of the damage caused; c) written or oral apology; d) participation in community service; e) payment of fine and costs of the proceedings; f) placement in Juvenile Rehabilitation Centre; and g) written and oral reprimand”.

3.5 Establishment of Juvenile Justice Committee (JJC)

The aforementioned Juvenile Justice Committees s. 2(j) and s. 10, JJSA, are an essential component of the diversion process and as per the law need to be established within three months of the commencement of JJSA. The JJC is to be headed by a Judicial Magistrate (who is also the head of the committee) and comprises of a district public prosecutor, a member of the local bar and a “serving probation officer or social welfare officer not below the rank of a BPS-17 officer” (s. 10(2)(d)).

The JJC is entrusted with the responsibility of speedy dispute resolution via

diversion, inspecting 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 any other functions that may be prescribed.

3.6 Re-categorisation and re-defining of what constitutes an “Offence”

The previous law (JJSO) approached the concept of offence as an umbrella term. JJSA has now created subcategories and has divided “offences” as major, minor, and heinous offences.

- **Minor offences:** All crimes which are subject to punishment of imprisonment for up to three years as per the Pakistan Penal Code or any other existing law are treated as minor offences.
- **Major offences:** Crimes punishable by imprisonment between three to seven years – under the criminal legal system – are considered major offences.
- **Heinous offence:** as per s. 2(g), JJSA, heinous offence means an offence which is serious, gruesome, brutal, sensational in character or shocking to public morality and which is punishable under the Pakistan Penal Code or any other law for the time being in force with death or imprisonment for life or imprisonment for more than seven years with or without fine.

3.7 Separate Juvenile Courts

The new law specifically provides for the establishment of specialised Juvenile Courts. Not only do these courts have exclusive jurisdiction to try cases pertaining to juvenile offenders (s.4(3), JJSA) but are required by law to decide the case in question within six months of having taken cognisance (s. 4(8), JJSA). Moreover, once the said Courts have been created, JJSA stipulates that “all cases” pending before any trial court which involve a juvenile offender “shall be transferred to the Juvenile Court having jurisdiction” s.4(5), JJSA.

3.8 Special provision for the protection of female juvenile offenders

Whereas there no special distinction maintained between male and female offender by the previous law (JJSO), s. 17 of JJSA makes special dispensation for the safeguard of female underage juvenile offenders with regards to the procedures that are to be followed for their arrest, investigation, and detention. No female, under any circumstances can be “apprehended or investigated by a male police officer or released on probation under supervision of a male officer” (s. 17(1), JJSA). Moreover, it goes on to stipulate that female juveniles can only be kept in specialised Juvenile Rehabilitation Centres “established or certified exclusively for female inmates” thereby adding another safety measure for the protection of female juveniles.

3.9 Other important addition protecting the right of the child

To protect the privacy of the juvenile, s. 13 expressly prohibits and criminalises revealing the identity [of the juvenile] or even disclosing the proceedings of the court without consent. s. 16, JJSA expressly forbids the awarding of death penalty to a person who was a juvenile (under the Act) at the time when the crime was committed. Additionally, “no juvenile offender shall be committed to prison, ordered to labour, put in fetters, handcuffed, or given corporeal punishment at any time while in custody. Lastly, JJSA states in no uncertain terms that the new law shall override any other law pertaining to the juvenile offender. This brings clarity and transparency to the legal framework under which the juvenile offender is to be subjected to the justice system.

Chapter IV: Status and condition of the juvenile justice system

4.1 Who does the law consider a child

This study is an assessment of the JJSA. It would, however, be remiss to restrict our analysis to the prescriptive / procedural aspects of the legal framework only. We also need to understand the preventive / protective measures incorporated by law to shield the child from legal machinery to the utmost extent. We therefore make a case that the very first step towards ensuring dispensation of justice – in accordance with law – while preserving the best interest of the child is to a) have a set legal definition of a minor / child, and b) constitute legal procedures which allow for determining the age of the child, in instances of ambiguity.

As aforementioned, s. 2 of the JJSA has settled the question who constitutes a child with a degree of finality. As it is a special law, it takes precedence over the ordinary law as well. Moreover, not only is the said law in line with the prescriptions of international law, s.23 JJSA clearly states that in matters pertaining to underage offenders, it has an overriding effect over any other provision in any other law. So, it is safe to say that the promulgation of JJSA has brought the much-needed semblance of uniformity to the body of law pertaining to youthful offenders which was previously missing.

During our research we discovered this to be particularly important within the context of the legal framework. The collective body of laws, as it stands, fails to adopt a consistent stance on the most fundamental question of who a child / underage offender is as per the law and therefore is eligible to be tried separately from the adults.

For instance, the Punjab Destitute and Neglected Children Act 2004 defines a child as a person under the age of 18. But then as shall be discussed in due course, they have developed SOPs according to which only children under the age of 15 are eligible to be protected under the said law. Another example is that of the legal age of marriage. Whereas anybody under the age of 18 is considered a minor in all other areas of life, in Punjab the age of consent of marriage is 16⁶⁰. According to the Factories Act 1934, a child

⁶⁰ According to Child Marriage Restraint Act, 1929 and Muslim Family Laws Ordinance, 1961, the age of consent for marriage for a girl is 16 for a boy its 18 years.

is 15 years old, The Mines Act 1923, child is defined as less than 17. The Punjab Restriction on Employment of Children Act 2016, treats 15 years and below as children. For both Sindh Prohibition of Employment of Children Act 2017 and The Punjab Prohibition of Child Labour at Brick Kiln Act, child is 14 years and below. Net result is that this not only lends to the existing ambiguity but causes hindrances in extending the protection of law to the under-age child.

With respect to the issue of age we should bear in mind that the law is a part of the larger system. And the larger system has lacunae that work counter to the interests of juvenile offenders in general but also undermine the spirit of the JJSA. For example, it is estimated that in Pakistan up to 70 percent of births are not registered in the first year of the birth of the child⁶¹. It is therefore inimical to have legal procedures which, in absence of requisite proof / documentation, ensure determination of age of children who find themselves in conflict with the law. This allows for all individuals under the age of 18 to be “dealt with in a child-and gender-sensitive manner under a specialized juvenile justice system”⁶².

JJSA has introduced clear protocols for determination of age. Even though the previous law prescribed an ossification test, it was not adhered to, it was a relatively cumbersome process and was ambiguous. Experts say that the child’s counsel / guardian could make case anytime during the trial that the child was a juvenile. This could even happen if the trial had reached the Supreme Court and the child’s age had not been determined during the course of the proceedings⁶³. In the absence of clear legal protocol prescribed by law, the authorities were naturally confronted with a “*huge challenge*” and the best possible solution was to “*rely on information gathered from either birth certificates, education certificates such as a school admission/registration form or any pertaining document such as hospital discharge slips, surgery records from the hospital etc. I was recently conducting a training of police on the Act and one officer present mentioned that the age can be determined by polio records/certificates as well, as polio drops are distributed all over Pakistan*”.⁶⁴

⁶¹ S. Ali, “Juvenile justice system of Pakistan,” The Daily Times, September 9, 2020, accessed from <https://dailytimes.com.pk/664341/juvenile-justice-system-of-pakistan/>.

⁶² UNODC, “Technical Assistance Need Assessment in the area of Juvenile Justice in Lahore, Punjab,” (2022), pg.24

⁶³ Interview dated 16th November 2022 with Syed Miqdad Naqvi Advocate High Court by Rabia Chaudhry and Arfeen Naeem Baig.

⁶⁴ *ibid*

Now that the JJSA had prescribed a legal procedure, one would assume that the situation has improved. Experts and lawyers defending the juveniles are not, however, satisfied. They claim that as per the letter of the law, the age of the young offender is to be determined at the first point of contact between the said offender and the legal system. That, therefore, is the responsibility of the police and should be a part of the investigation process. Instead, in reality the police try to determine the age of the child based on the oral evidence of the child, that too based on perceptions, what the child looks like and convenience.⁶⁵ The child thus becomes the first source of determining his / her own age. If the information matches their physical description, it becomes the basis for filing their report which in turn is accepted by the state machinery at every stage of the proceedings.

There are two reasons behind this. First, as I have argued elsewhere, the police genuinely lack training in investigation, investigative tools⁶⁶ and a sensitization to the importance of treating young offenders separately and differently from the adults. Secondly, our respondents argue that a young offender poses far more legal and procedural challenges than an adult. So, the police also try to cut corners. *“Because if the convicted is under 18 years of age they have to take special measures which the police try to avoid in these matters. So, the police try their best to show the convicted as adults for their ease”*⁶⁷.

This unfortunately was a recurring theme during our investigation. On the one hand the JJSA has been promulgated to extend extra stringent safeguards to the underage offenders because they are more vulnerable due to their age and require specialized treatment. On the other hand, we consistently see this higher duty of care being cited as the reason for consistent lapses in the implementation of the JJSA. Simply put, as a child at odds with the law is more vulnerable than his / her adult counterparts, no one wants to take responsibility because a) a higher duty of care is required, b) lapses will result in penalty under the JJSA and most importantly c) compliance with the JJSA requires large scale investment in dedicated infrastructure by the concerned governmental authorities (the Home Department in this case). And as things stand, juvenile welfare is not of priority on any governments policy agenda. This will be shown more clearly below in the delays in implementation of the diversion process.

⁶⁵ Ibid

⁶⁶ Rabia Chaudhry, Policing, Custodial Torture and Human Rights: Designing a Policy Framework for Pakistan (Lahore: Centre for Public Policy and Governance, 2013).

⁶⁷ See Reference 38

Age determination protocols are also important because “in light of the international law (Art 6(5) of the ICCPR, and Art 37 CRC) [there is a] prohibition of the imposition of the death penalty for crimes committed by persons below the age of 18 at the time of the offence”⁶⁸. This means that any person who is a juvenile at the time of the commission of the offense – irrespective of their real or foreseeable age at the time of sentencing or at the time of punishment – cannot as per international law, face the death penalty. And as Pakistan is signatory to the ICCPR it has a legal obligation to abide by these provisions. This is of particular importance in the Pakistani context because, while the JJSA aligns with the international law, capital punishment has still not been abrogated. As result, experts observe that there currently are a number of people on the death row who at the time of commission of the offence were underage. The reasons are twofold. One, it is impossible to ascertain which of the current prisoners on death row were underage at the time of the commission of offence, because the age determination provisions are a recent phenomenon.

Second, in 2001 the Presidential Notification was issued under which special remission was to be granted to all children on death row under article 45 of the Constitution. Any child who had been sentenced to death before 17 December 2001, was to have his / her death sentence commuted to life imprisonment. This became subject to legal proceedings which are pending till date and the issue is yet to be resolved.

Unfortunately, legal lacunae, misuse of the intent of law and cultural insensitivity plays a huge role in implication and ultimately, the incarceration of children. The use of juveniles to avoid capital punishment or even harsher sentences in Pakistan is a common practice according to legal experts. During our visits to the juvenile jails, the police officers expressed their frustration that as the child is subject to lesser sentences, and the judicial system tries its utmost to protect the child to whatever extent it can, in that officials involved the procedural aspects try to commute sentences, charge the child with lesser offences or in some instances even try for informal mediation between the parties, the family members themselves often implicate the child. The crime would be committed by an adult, but his own family would implicate the child in the belief that the system would show leniency.

⁶⁸ UNODC, “Technical Assistance Need Assessment in the area of Juvenile Justice in Lahore, Punjab,” (2022), pg.25

These are societal and behavioural issues which cannot be addressed by the legal system, in fact if anything, they are misuse of the law and its intention.

For example, while interviewing SP of District Jail, Lahore he highlighted a case of framing of a juvenile by the owner of where they worked *“This child (Juvenile) was working at a motorcycle repair shop, the owner reported a robbery while the juvenile went home for holidays when he returned, he was arrested by the police and charged for the robbery. As the owner had “connections,” the child was convicted and sent to prison, so framing is very common as children are easy targets.”*⁶⁹

Legal ambiguity regarding ‘age’ is compounded by unwritten practices that concerned departments have incorporated and adopted over the years. Child Protection Bureau too has developed certain Standard Operating Procedures (SOPs) that take advantage of uncertainty surrounding the issue of the age of a child and therefore act to the detriment of the child. For instance, even though their parent act clearly stipulates 18 years and under as the age of a child, the Child Protection Bureau only accepts custody of children under the age of 15. The justification being that in our society, children grow up much quickly.

This argument was repeated by many other stakeholders, both during the policy dialogue in which we presented our study and the trainings. Some of the stakeholders went so far as to add that the current age of 18 years as the age of majority is “a blind reflection of international laws and norms and not representative of the realities of our society” and therefore should be reduced from 18 to 15 years for the purposes of criminal jurisprudence.

We can only conclude that the ambiguity of the law merely reflects the uncertainty and - to a certain extent - the callousness of the stakeholders dealing with juveniles subject to the law. Instead of following the letter of the law and interpreting the loopholes to the advantage of the children, some of the concerned personnel and stakeholders entrusted with the protection and safety of the child, are not only not exploiting the lacunae but actively incorporating SOPs that run contrary to the legal prescriptions. We also discovered that the Child Protection Bureau refuses to take custody of children who are on drugs.

⁶⁹ Interview dated 24th January 2023 with Ali Akbar SP prison District Jail Lahore by Rabia Chaudhry & Arfeen Naeem Baig.

4.2 Arrest, Investigation, and pre-trial detention

As established in the previous chapter, s. 5, JJSA lays down definitive guidelines pertaining to the arrest of the underage offender.

4.2.1 Arrest

As aforementioned an underage offender is not to be interviewed or arrested by an officer under the rank of sub-inspector. Our research and stakeholder testimony shows this is never the case. There are two main reasons thereof. First, the police are short staffed. There are no defined duty hours or for that matter job streams. Anything ranging from maintaining law and order to providing protocol to politicians all fall within the police jurisdiction.⁷⁰

Second and most importantly, there is a complete lack of awareness regarding the law. Once laws are drafted, they are not shared by the Provincial legal authorities with the police department. Even if they are, the laws are in English and expressed in such complicated legalise that it is absolutely impossible for a grade 16 and below policeman to understand. Police are therefore entirely unaware of the very existence of the law let alone its provisions. Here it must be clarified that we are talking about police officers from the rank of grade 7 to 16 - the first responders from the state as it were. The officer ranks are heavily invested in by the state and regularly receive trainings and other perks. The police officer at the thana level, who is approached by and interacts with the people. During this research we were asked on multiple occasion by the police personnel we interacted with what does juvenile mean. They were also entirely unaware of the special rights and protections that it extends to the child. Once made aware by us, they would express their concern that in absence of resources and given their workload, this law was absolutely impossible to implement.

⁷⁰ We witnessed this first hand during our training sessions. The police attended the training sessions enthusiastically but then for the last two sessions we were told that the nominated personnel would not be able to attend because they had been placed on security details for Moharram preparations. The nominated officers called us later and asked if we would be willing to offer any trainings at a later date because they were genuinely interested in learning about the law.

4.2.2 Probation

The JJSA clearly spells out the role of the probation officer. As shown in section 3.3 above, as soon as an underage offender encounters the legal system, the JJSA makes clear provision as to the scope and extent of involvement of the probation or social welfare officer to offer maximum protect to the child. However, it would be pertinent to highlight a glaring gap in the law at the very outset. S.7(2), JJSA makes it clear a child should not interact with any state personnel below the rank of Grade 17, whereas probation officers are Grade 16 officers and as is discussed in detail below, remain Grade 16 officers for the length of their career. The law therefore requires ostensible review in this regard.

During our research we found that even though sufficient time has passed since the promulgation of the law, there is a lack of clarity regarding the role of the probation officer on both the parts of police officers and the parole officers. So much so, that one of the probation officers whom we approached for an interview requested a day so that he could read the JJSA first and educate himself before responding to us. Point being, there is considerable ambiguity amongst those directly affected by the JJSA, regarding the law itself.

Our findings, show that instead of working in tandem, the police and the probation functions are working parallel to each other. The reason is twofold – a) lack of resources and b) legal lacunae.

For instance, while the JJSA clearly identifies the roles of the police and probation vis the underage offender, the Rules are yet to be drafted. As a result, the referral mechanism between the police and the probation under the JJSA has not been identified and therefore the most fundamental prescriptions of the JJSA are not being / cannot be followed. This was reified repeatedly by the stakeholders both during the Policy Dialogue and the trainings.⁷¹

⁷¹ We have been told by multiple probation officers that rules are being drafted. However, they claimed this is at least the fifth attempt of drafting the rules. Committees are formed, rules are drafted, and then there is a shuffle or posting transfer of the concerned officer at the Home Department. When the new officer takes charge, they scrap the previous draft and the whole process begins from the scratch again. As the caretaker government is expected to take charge in August 2023, they were all expecting that the current attempt at drafting rules would go to waste yet again.

One of the probation officers we spoke to, expressed his frustration that his office can only perform its s.7 duties when the police inform them of the fact that a juvenile has been taken into custody. They have no other mechanism of finding it out on their own. However, in absence of clear Rules on the matter, establishing channels of communication and prescribing penalties for the failure to do so, there is no way of ensuring implementation of such a key provision of the law. The net result is that in most cases there is no probation officer involved at all.⁷²

The police officers also express similar frustrations. When asked how many times they contact a probation officer, all officers stated that they never did. Conversely the probation officers too agreed that they had never been approached by a police officer. The lack of resources in monetary as well as institutional terms plays an instrumental role here. One of the most often cited issue by the police, the probation and even the lawyers (both prosecution and defence) was that effective implementation of the law requires additional manpower and infrastructure. For example, to ensure implementation of s.7 requirements, there need to be sufficient probation officers at the very least, which they are not. The level of disconnect between the probation and other departments is such between the probation and other departments that during one of the trainings conducted as a part of this study, the police officers, and one occasion as prosecutor, told us that this was the first time ever that they were meeting a probation officer. The prosecutor quipped it is akin to meeting a unicorn.

The law states that once the guardian and the probation officer has been informed, the child shall be taken to an observation home. And Observation Homes do not exist (see sections 2.5.2 and 4.2.2). The point being, even if the police officers contact the probation officers, the latter cannot dispense their responsibility because the needed infrastructure does not exist.⁷³

⁷² Interview dated 16th December 2022 with Rana Gulam Sarwar Probation officer by Rabia Chaudhry & Arfeen Naeem Baig. 2022.

⁷³ A rather disquieting trend has come to fore in this respect. The implementation of laws is largely dependent upon the personality and the level of awareness of the person in charge. The law has made provision with respect to an Observation Home and it is not being adhered to mainly due to the non-existence thereof. But multiple probation officers shared that every now and then a judge comes along who is cognisant of the provision of Observation Homes and would therefore make orders that the child be taken to one. One officer narrated a personal experience that when he informed the judge that no such place exists, the judge responded that this was not his concern, and he was bound to follow the letter of the law. The probation officer was left with no choice but to take the child with him and made private arrangements on his own to keep the child safe till the next hearing. However, the

There is also the issue of personnel. There is a serious dearth of personnel. For the entire city of Lahore, there are only five probation officers. The probation officer from Toba Tek Singh told us that he is the only probation officer in the entire district. He is currently dealing with 1800 cases singlehandedly. Probation officers from all over Punjab shared similar numbers. Moreover, none of these are cases regarding children, because as aforementioned they are never contacted by the police with respect to cases of juveniles. The nature of the legal system, the length and complicated nature of the trials, and the sheer volume of cases on the judges is such, that we were told that the probation office is being used as a speedy and easy way to dispose cases. The probation officers shared that the only time they are contacted is when the concerned judge offers the option of plea bargaining to the accused. Should the accused plead guilty, he is released under the custody of the probation officer. For the length of the time prescribed by the judge, the now former accused is supposed to report to the probation officer once a month and the probation officer in return is supposed to prepare and submit a report to the court, which is a lengthy process. Not only does the case gets disposed of quickly, as opposed to resorting to a trial that will last years if not decades, but the accused is kept out of the prison system thereby lessening the burden on the jails as well as ensuring that the accused does not become a part of the criminal system but retains his / her day to life.

There are two take aways from this. First, there are inherent lacunae and flaws in the system which are being exposed and exploited. In this instance it is being done with the best of intentions, and one would argue for the benefit of both the system as well as the accused individual. It is true that trials last for decades Pakistani legal system, moreover they are costly which the average person cannot afford, and lastly, instead of detaining the under trial person in the jail, and thereby exposing him / her to other criminals as well as removing them from the normal life, it is better to find a way to keep them out of prisons and in their normal lives to every extent possible. However, the net result is that the plea-bargaining option is not being used for its intended purposes and nor is the function of the probation office.

child (age 11-12 years) was a drug addict and started experiencing withdrawal symptoms during the night. The probation officer was not equipped to deal with such a scenario, but more importantly he would have been held accountable had anything happened to the child a result of the drug withdrawal. The child was presented in court the next morning and sent on judicial remand.

The second is that the workload and the understanding of the very purpose of the probation officer has become so skewed over time, that both the police officers and probation officers openly admit that they neither have the time, nor the means to contact each other with respect to the juvenile offender and therefore an extremely important safeguard provided by the JJSA is not being implemented.

More importantly there is serious dearth of trainings. We were told by probation officers that since their induction in the profession they have never been provided any kind of training whatsoever. In fact, the training at CPPG under this project was the first time they had ever been formally trained on the subject. They narrated that when they joined the profession, they simply learnt either from their seniors or just started working and learnt on the job.⁷⁴

Here it must be noted that during our interaction with the police and the probation personnel, all were of the view that things are changing. The younger lot getting recruited are more sensitive to the vulnerability of children and women, are more educated and are willing to depart from conventional practices. That said, as aforementioned, the institutional support to back them up does not exist. Not only does the probation officer does not have the time to deal with the additional burden of juvenile offenders, but in the absence of observation homes, they are unable to perform their duties as well.

4.2.3 Observation Homes and Rehabilitation Centres

To avoid detention of an underage child in formal detention centres like the thana and the prison, JJSA streamlined the spectrum of institutions where child offenders can be detained under the rubric of Juvenile Rehabilitation Centre. Here are two categories of alternative detention facilities prescribed by the law. The first is that of Observation homes. As soon as the child offender is first apprehended, and while they await their judicial remand, s. 5, JJSA prescribes that the juvenile “shall be in kept in an observation home” as opposed to a police station. Observation home as aforementioned is defined as a temporary accommodation where the juvenile must be kept post arrest, during remand and while

⁷⁴ Conversely, the prosecution told us that they receive regular training and international jurists and lawyers are hired to train them on state-of-the-art subjects.

under investigation. The intention is to keep the juvenile offender as far away as possible from the traditional means of incarceration from the first point of contact with the law. The less they are exposed to harsher conditions and more importantly other criminals, the higher the chance of their rehabilitation.

The second category is that of Rehabilitation Centre. These include certified institutions, borstals, and juvenile training institutions, *dar-ul-amaans*, vocational centres, and women crises centres (established by the government or other voluntary organisations certified by the government). Traditionally, there are two kinds of prison facilities that have been delineated by law for the incarceration of juvenile offenders. Under trial juveniles have a separate facility in their respective district jail, those who are convicted are shifted to a specialized Borstal. There are currently two borstals in Punjab, one is Faisalabad and one in Bahawalpur.⁷⁵

Rehabilitation Centres are a particularly important and a welcome addition by the new law because there is sufficient evidence that one of the key factors in recidivism and hindrances to the child's rehabilitation is exposure to adult inmates. The child is already vulnerable due to age. Moreover, a juvenile offender clearly does not have stable familial support structure or mentorship, otherwise they would not have committed the crime to begin with. If they are then exposed to older seasoned criminals, chances of recovery of the said juvenile offender stand diminished.

However, our research shows that there is not a single Observation Home or Rehabilitation Centre constituted or operational in the entire Punjab province. The reason cited is the lack of resources.⁷⁶ The net result is that the most fundamental of protections that the law extended the juveniles, that is avoid incarceration in formal detention centres, is not being enforced due to absence of political will and lack of allocation of resources by the concerned government department – in this case, the Home Department.

The Home Department conversely argues that the JJSA requires a major rethinking

⁷⁵ The Faisalabad Borstal suffered considerable structural damage due to heavy rains therefore the juvenile residents have been shifted to district jails across the province.

⁷⁶ Our research shows that notifications for the establishment of Rehabilitation have been issued. Experts say that the provincial government is in the process of identifying land and floating tenders to begin construction.

of the entire policing and justice system, which is necessary and timely but requires undoing of the past 75 years of laws and governmental and cultural attitudes, as well as installation of large organizational refurbishment that ensures compliance with the law in terms of personnel and provides the requisite infrastructure. This requires both political will as well large-scale monetary investment, neither of which is possible under the current system.

There is a specific intent informing the JJSA. It seeks to extend utmost protection to any child who encounters the legal / justice system. According to a probation officer we interviewed, one of the chief responsibilities of the probation officer is to collect background information regarding the underage offender. However, due to lack of resources, or the late involvement of the probation officer, this report usually gets delayed. “The probation officer is helpless due to limited capacity of the system in creation of Rehabilitation centres. This makes it complicated, and the child must spend time in jail till a resource is produced”⁷⁷.

4.3 Diversion

General Comment Committee on the Rights of the Child No. 24 (2019) defines diversion as “referral of matters away from the formal criminal justice system, usually to programs or activities. In addition to avoiding stigmatization and criminal records, this approach yields good results for children, is congruent with public safety and has proven to be cost-effective”. It goes on to state that not only should “opportunities of diversion be available from as early as possible after contact with the system, and as various stages throughout the process”, but “diversion should be the preferred manner of dealing with children in the majority of cases”. Diversion in short is a restorative justice measure which relies on non-coercive and mostly educative measures with respect to children in the justice system. It aims at rehabilitation and ultimately reducing the number of children who come in contact with the law as opposed to penalizing them. It is thus, that Article 40 (3) (b) of the CRC states that signatory states “shall” promote diversion measures “whenever appropriate and desirable, measures for dealing with such children⁷⁸ without resorting to judicial proceedings, providing that human rights and legal safeguards are fully protected”.

JJSA too, makes clear provision for the inclusion of diversion process in the

⁷⁷ See Reference 71

⁷⁸ “Children alleged as, accused of, or recognized as having infringed the penal law ...” Art. 40. CRC

Pakistani legal system, thereby not only meeting Pakistan's obligations as signatory state, but as a way of recognizing the importance of rehabilitating the child. The list of measures incorporated by the JJSA, have been listed and explain in s. 2.5.3 above. The law, in short, takes exhaustive measures for the promotion of diversion with respect to underage offenders. The issue again is with implementation.

The stakeholders we spoke to all agree on the importance of diversionary process and hail its inclusion as a positive step towards the rehabilitation and protection of the juvenile offender. First, it safeguards the child from psychological harm that he / she might incur during the trial and detention process. More importantly, it limits the exposure of the child to adult prisoners. This is the most crucial aspect of child protection. *“Due to poor divisional facilities in Faisalabad prison, it is common to see that drug peddling through these juveniles via other inmates is common. They (juveniles) are fragile minds and this activity leads to drug addiction and poor health of the juveniles”*⁷⁹. However, the stakeholders also agreed that the reality was very different from the letter of the law.

The JJSA clearly stipulates that the moment the child comes in contact with the law, in addition to informing the probation officer, the police are legally bound to ensure that the child is not incarcerated in any of the formal detention centres like the police station or the district jail. In absence of the diversion and rehabilitation centres, this fundamental safeguard extended by the JJSA cannot be implemented (see s.4.2.1 and 4.2.2 above).

Experts in the field do offer alternative measures that can be taken in the interim which allow the system to uphold the JJSA and offer the requisite protection to the child as well. Some things are entirely the purview of the government of the day, for instance recruitment of probation officers, special and separate juvenile courts etc. However, provisions of the JJSA like the diversion process can easily be met even right now. For instance, multiple interviewees, lawyers, prosecutors, and human rights advocates believed till such time that the government of the day can take concrete measures in order to ensure compliance with the diversion process, the niche can be filled in by the Child Protection Bureau. They have the facility in terms of buildings and other child conducive infrastructures, they have the requisite training and know how to deal with children. Here it

⁷⁹ Interview dated 24th November 2022 with Nadeem Ashraf, board member of the National Commission of Human Right (NCHR), Punjab by Rabia Chaudhry & Arfeen Naeem Baig.

must be noted that the Social Welfare Department, which is a stakeholder identified by the JJSA to has ample space which can be used as either a premises for an Observation Home or a Rehabilitation Centre. Moreover, by virtue of being the social welfare department they have the personnel trained too.

Our research shows that one of the biggest hurdles is that as a child poses extra responsibility, no one wants to take the added responsibility. Definitional and procedural lacunae are cited and often exploited to avoid assuming an extra charge. For example, the Child Protection Bureau's charter makes it responsible for neglected and destitute children only.⁸⁰ Juveniles therefore do not fall under the preamble of the Child Protection Act, the parent act of the Child Protection Bureau. Therefore, they refuse to take any responsibility in ensuring compliance with the diversionary process. As mentioned above, not only is this a simple definitional issue in that the law can be altered to include juveniles along with "street children, orphans, abandoned children and those children without parental or legal guardianship"⁸¹. Moreover, experts argue that any child who commits a crime is for already, all intents and purposes, both neglected and destitute. Any child who is being taken care of and has a healthy life that a child deserves, would not commit a crime to begin with.

4.4 Establishment of Juvenile Courts and Committees

Not a single juvenile court has been established till date. It should be noted that the juvenile courts are not the same as the child courts⁸². According to the JJSA, Juvenile courts are to be established on a separate premises and operated according to the dictates of JJSA. However, in absence of any such entity, all courts in Punjab have been declared

⁸⁰ The Punjab Destitute and Neglected Children Act 2004, Act XVIII of 2004.

⁸¹ According to the The Punjab Destitute and Neglected Children Act 2004, Act XVIII of 2004. Section 3-K, "Destitute and Neglected child" means a child who—

(i) is found begging; or (ii) is found without having any home or settled place of abode and without any ostensible means of subsistence; or (iii) has a parent or guardian who is unfit or incapacitated to exercise control over the child; or (iv) lives in brothel or with a prostitute or frequently visits any place being used for the purpose of prostitution or is found to associate with any prostitute or any other person who leads an immoral or depraved life; or (v) is being or is likely to be abused or exploited for immoral or illegal purpose or unconscionable gain; or (vi) is beyond the parental control; or (vii) has lost his parents or one of the parents and has no adequate source of income; or (viii) is victim of an offence punishable under this Act or any other law for the time being in force and his parent or guardian is convicted or accused for the commission of such offence;

⁸² There are a handful of Child courts are functional across Punjab however, these are not physically distinct entities.

as juvenile courts. Physically, it is the same premises as the regular courts, but we were told by prosecution lawyers that when the decision comes out the judgement states that the orders were made by a juvenile court established by the JJSA. In some cases, the women's courts have also been observed to be operating as juvenile courts, otherwise it is the one child court in Lahore which is doing the entire heavy lifting. Instead of giving additional charge to officers of the law thereby distributing the burden on an ad hoc basis and hiding behind language, there is a need to have specialised courts upholding the JJSA.

A standard practice in criminal courts is that three under trial prisoners are brought to the court together. Even if the child is kept in separate premises in the prison itself, he / she is transported to the court along with the adult prisoners and arrives in court literally handcuffed to them. Not only does the JJSA clearly prohibit chaining or putting the child offender in fetters or handcuffs, but this practice is emblematic of far more than that.⁸³

The JJSA clearly stipulates provision of free legal aid to the juvenile by the state. Our research shows that while orders to the effect exist on paper, in reality, as with other requirements of the JJSA is not being implemented. For instance, the office of the Prosecutor General regularly notified lists of lawyers who are on the rota for providing free legal aid. However, the respondents who were prosecutors told us that the method of assigning prosecutors, distribution of cases and process of remuneration is so complicated that it is easier for the system to ignore its obligations as opposed to implement them. Moreover, there are no rules overseeing the dispensation of legal aid. So, there is no way of identifying where the legal aid is supposed to come from, criteria for qualification, remuneration of council, etc. In short no way of implementing the requirement of JJSA of legal aid. The net result is that in absence of legal aid, there are adverse ramifications for the child at every stage of the criminal proceedings. For example, in absence of legal aid, for a child who cannot afford or have access to a good lawyer there is no one there to make sure that he / she is shown as a child to the system. The child never doesn't even stand of being able to benefit from the protections extended by the JJSA.

⁸³ Another lawyer told us that halfway through the trial, the child that he was defending told him that he did not require legal representation anymore. The other two adult criminals that he had been fettered to on the way to the court had offered to have his case dismissed by paying the judge on the condition that he came worked for their gang. As trials are lengthy and because the job offer was going to have obvious economic benefits, the child agreed

4.5 The Cycle of Juvenile offender: Ordinary to Skilled Criminals

The police, prison staff and even the lawyers (both defence and prosecution) reported that the legal personnel involved at every stage of the criminal proceedings are extremely sensitive to the vulnerability of underage offenders and women and therefore and willing to go above and beyond its capacity to protect them. It is safe to aver then that those who end up in juvenile delinquency centres are therefore rightfully convicted and guilty of the crime. While in some rare cases they initially start with the juvenile being framed by a friend, cousin, or family member.

One juvenile interviewed in Prison shared that he was forced to turn himself in because the others involved in the crime fled. His friend has been a drug dealer while our respondent smoke plain cigarettes only. The police caught them smoking. The friend fled and later framed him for smuggling drugs. This was how he ended up in the prison for the first time.⁸⁴ That said, this was his third time in the prison. After the initial drug smuggling charge, he had been back for domestic dispute and sexual assault. Out of 45 incarcerated youth that we met, for more than 90% this was not their first time in the prisons. We met juveniles whose recidivism rates were high as 9 times. The nature of crimes varied from theft to sexual assault.

Hence, the pattern of juveniles coming in as ordinary children and coming out as a skilled criminal is prevalent. One juvenile lawyer recalls his interaction with such a case reported that a juvenile who had previously served as a lookout for a bike-stealing gang was released from custody and offered to give the expert a stolen bike as a gift. “He said to me Sir, thank you, you got me released as soon as I get out of here, I will get you a brand-new motorcycle (bike).⁸⁵

This illustrates how juvenile offenders may become further entrenched in criminal activities and continue to be exploited even after their release. An expert stated that *“You see these children abandoned and roaming the streets, they are easy targets for various gangs who have a strong criminal network and need children to do the work for them. Why?”*

⁸⁴ Interview dated in January 2023 with Juvenile inmate (anatomized) from Hafizabad Prison conducted during Hafizabad Jail visit by Rabia Chaudhry & Arfeen Naeem Baig.

⁸⁵ See Reference 62

Because these children can reach inside prisons forming a stronger criminal network with the criminals outside”⁸⁶.

Thus, chances of juvenile committing crime and wounding up in prison again is very high. As now he will be viewed as a loophole by the adults involved in criminal activities to avoid capital punishment and long prison sentences.

4.5.1 Research Uncovers Social Realities

While this study pertains to the assessment and analysis of the Juvenile Justice System we observed a rather disquieting phenomenon amongst the incarcerated juvenile offenders, during our research. Once a child is exposed to the criminal legal system the attitudes of these (children) change adversely towards any forms of remorse and guilt for committing the crime. Rather the incarcerated juveniles exuded confidence and pride regarding their actions. The lack of remorse and guilt for their actions may hinder their rehabilitation and increase the likelihood of recidivism.

While interacting with these juveniles we observed that within the prison environment, they were happy and enjoyed their (repeated) short terms stay. They are provided with three meals a day covering all the nutritional daily value, comfortable beds, entertainment, and education/vocational trainings. Another common cited reason by the incarcerated youth was that here we are not being criticised and subjected to corporal punishments by parents or teachers – as the case maybe. It appeared that the juveniles were far more comfortable and felt safer in the prison system. It would not be entirely wrong to say that the attitude was more of treating the prison as a resort or hostel, rather than as a place of punishment return or rehabilitation. This can also add to the list of reasons apart from criminal influence to prisons for these juveniles.

When asked, it is unclear what is considered a “Goodlife” according to these juveniles they were happy in their lives prior to conviction, most of them were going to school, while other were doing part time jobs to add to their household income. Yet, all of them wound up in prison. Was it peer influence? economic hardships? or just instilled criminal mindsets, it is unclear. Whatever the reason, our research shows that there is a

⁸⁶ See Reference 78

cultural deficit and collective lack of responsibility at the household unit, which try as it may, the legal system cannot fix.

And it is the family and social structure that is responsible here. For instance, for the year 2022 not a single juvenile girl was reported to be arrested. Reason cited by almost all interviewees was that parents are more careful about girls in our society and have more control over daughters as opposed to sons. While this research is an attempt at analysing the juvenile justice system, one cannot help but observe that there is a fiduciary role that the family and the society must play towards the underage and the more vulnerable. This role cannot be played by legal system only. It can offer protections and ensure safeguards to the juvenile offenders – the JJSA being a step in that direction – but the journey from child-to-child offender is beyond the jurisdiction of the state.

Multiple stakeholders who are in regular contact with child offenders told us that they have observed certain commonalities among the juveniles – for instance they inevitably hail from broken homes or unstable living environments. Monetary motivations play an important role here too. Both Prosecution and Police personnel went so far as to state that in instances of a child caught in an organised crime, in their experience children are pushed into it by their parents. That is because the law extends extra protections to the vulnerable groups which includes children and women. Parents who are criminally inclined or whose means earning a living are not strictly legal, often involve their children so as to avoid the harsher penalties of law.

Based on our findings juvenile offenders can easily be categorised according to the crime committed. Those who are apprehended in offences such as kite flying or loitering etc – in short, minor offences – are usually one-off incidents or instances of genuine mistakes. These are the children, who as per our findings never repeat the offence and therefore are in a more urgent need for protections extended by the JJSA. They need to be housed in Rehabilitation Centres and Observation Homes and extended the protection of Juvenile Courts and Probation Officers so that they do not encounter the criminal procedure system at all. In short, the JJSA can play its intended role with considerable efficacy in such instances.

The second category are those juveniles who are apprehended under charges of

drugs, theft/robbery, dacoity and other sexual offences – ranging from harassment to rape. These children based on our research are the ones who were either pushed into crime by parents or ran away from home or we would go so far as to say, were failed by the societal and institutional neglect. These, unfortunately, were the children we met in the prisons during the course of our study.

All stakeholders claim there is an almost set pattern of how things come to pass. Let's say, a child runs away from home because he is not being paid sufficient attention commensurate to his age, or is unhappy, or is subjected to corporal punishment etc. – there are a whole host of reasons. Social welfare and police officers say that criminal gangs are already present at bus stops and railway stations looking for the runaways. In absence of an adult, they are an easy target and as they are far away from home by now, they need money to sustain themselves. Once they become a part of the criminal system, there is almost no going back. And that is where the JJSA potentially has a role to play, albeit an exceptionally important. Instead of the juvenile offender being exposed to even more criminals in the jails, who will only expose him to bigger crimes and more serious offences, the underage offender needs to be housed in specialised facilities. Efforts need to be made for his rehabilitation so as to ensure his reintegration back into society. The JJSA provides legal avenues to achieve that.

One of the most concerning trends or realities that we discovered during the course of this research is that a large number of children are not only just apprehended in crimes related to drugs and alcohol but are in fact suffering from one form of drug addiction or another. It is not just the children. This seems to be a societal issue at large. According to the Police and prison staff almost every child (and adult) that they apprehend is on one drug or another. The children have the added indignity of being involved in peddling the said drugs as a) they are usually above suspicion due to their age and b) penalties are less harsh in case of juveniles and hence are preferred by the criminal gangs. The police shared time and again that their biggest concern for as long as a child is in their custody is how to deal with the drug withdrawal, as they are no longer being provided any in police custody. The prison authorities claim that they have informally assigned a section of the jail as a rehabilitation centre because once in the prison, access to drugs is only possible if being brought in from the outside. And that is not possible. As a result, there are serious drug withdrawals that the staff has to manage till such time that the inmates are weaned off

drugs. Even though it is not exactly within the purview of our research, but this is a harsh reality of the society which not only needs to be understood but it is playing an undeniable role in exploiting and enhancing the vulnerability of the underage children who are the subject of this study.

Chapter V: Conclusion and Recommendations

Our research shows that the violation of both the letter and the spirit of JJSA begins as early as the first point of contact between the juvenile child and the legal system – be it as the victim or the accused. Evidently, the JJSA is not being implemented.

For instance, in order to benefit from the protections ensured by the JJSA, his or her status as a child needs to be established as defined by the law. However, as we have demonstrated in detail above, there are multiple institutional and legal hurdles in age determination. So much so that it is often the defence lawyer who first brings the issue of age to the attention of the court by taking age as a defence. Additionally, the burden of proof lies on the child and his defence team as opposed to the state, as intended by the JJSA. Only then is the case shifted to the child court. Even if they are successful, by this time the trial has already begun, and the child never got to benefit from the multiple protections extended by law listed in Chapter III. The police and probation verified this to be true and cited their own limitations in terms of lack of awareness, resources, and institutional framework. This is just one example out of many that we collected over the course of the research. However, it encapsulates the crux of the matter. It represents lack of awareness of lack, sensitivity towards the vulnerable on the one hand, but also a lack of resources. During this research, we discovered that the lack of resources manifests itself not just in economic terms, but also in terms of institutional support, in term of lack of awareness of the laws, in terms of practices and attitudes that have developed over the years and are now impossible to change.

After every single training we were told by prosecution and defence lawyers that JJSA was not in their law syllabus, by the police that they were not aware of most of the obligations under the JJSA, and by the probation and social welfare how they are not even treated as a stakeholder in the criminal justice system. The trainings were not only a good platform to create awareness regarding the law, but they provided a platform where multiple stakeholders sat across the table and were able to share their experiences, frustrations, and shortcomings with each other.

They weren't rivals appearing against each other in the court of law but learning together, understanding the others' perspectives and most importantly they discovered that

their problems were not so different from each other's.

It seems, a crucial aspect of the problem is that the state simply does not invest time and resources on the training of Grade 7 to 16 officers - incidentally all of whom who have been entrusted with the implementation of the JJSA. Moreover, as we have made an emphatic case above, in so far as the citizen of Pakistan is concerned, these officers represent the state. Thana and kachehri is the most common, and often the only point of contact between the citizen and the state. However, during the training sessions and through our interactions during the course of the research it came to fore that they are the most neglected elements of the state. There are no prospects of advancement in careers. They are not provided sufficient on the job training. But crucially, the system is designed in a way that the focus is quantity as opposed to quality. Efficiency of a police officer, or a probation officer, judges etc. [stakeholder of this study] is measured in terms of numbers – the number of arrests, the number of probationers, the number of cases disposed. Not only is there no space left for rehabilitation and reconciliation, which are the focus of laws like JJSA, but instead of conflict management, the first responders of the state are occupied with arresting and convicting the citizens as professional necessity.

Laws like the JJSA are certainly a step in the right direction but because they are often promulgated in isolation via specific orders, they do not gel in with the system. This is because these are what the stakeholders refer to as project driven and project-initiated measures. The net result is that they are either implemented through specialised committees and courts and or not at all.

The bottom line is that even though the JJSA has been in force for five years now the main reason for it not being implemented is twofold. First, there is an absence of awareness regarding the JJSA – horizontally across departments regarding the letter of the law and vertically across various ranks to ensure implementation. Secondly, there is a dearth of resources – in terms of political will required to implement the JJSA, capital needed to do so and most importantly, in terms of establishing the institutional framework essential for the implementation and execution of the law. Below are some of the recommendations that would be instrumental in addressing the lack of implementation of the JJSA.

1. **Rules under the JJSA need to be drafted** on an urgent basis so that the multiple

stakeholders identified by the JJSA have clarity regarding their own role and duty under the law and vis-à-vis each other as well. Only then can steps towards the implementation of the Act be taken.

2. **Promote coordination and collaboration among key stakeholders through collective trainings.** these include law enforcement agencies, judiciary, social welfare departments, education authorities, and civil society organizations. Effective inter-departmental cooperation can ensure a holistic approach to juvenile justice, streamline processes, and facilitate information sharing for better decision-making.
3. **Establish the requisite infrastructure** for example Observation Homes, Rehabilitation Centres, Juvenile Justice Committee and Juvenile Courts so that there are avenues available to extend the rights to the child which are enshrined in law.
4. **Invest in comprehensive rehabilitation and reintegration programs** that address the educational (degree), vocational (skill set), and mental health (clinical child psychologists/therapy) needs of juvenile offenders. These programs should be tailored to individual circumstances and promote their successful transition back into society as poor social reintegration results increase in recidivism rates.
5. Develop a consensus to **facilitate the juvenile under the Child Welfare Bureau and Social Welfare Department mandate** as majority of these juveniles are neglected in many ways as reported by experts. A small amendment in the definition of the charter would provide better rehabilitative opportunities for the juvenile and would push towards a better sustainable solution.
6. **The probation officer** has been awarded additional role and added responsibility under the JJSA. However, no measure has been taken to ensure their career advancement. They are overburden, understaffed and untrained. Concrete measures need to be taken for their on-the-job training and to ensure that their careers and not dead-end jobs.
7. There is an urgent need to **transform the perception of the public regarding the thana culture.** And for that it is incumbent upon the state to develop a bottom-up approach towards bureaucratic reform. Grade 7 to 16 needs universal overhauling.
8. **The police** at the thana level need to be facilitated in both monetary and personnel terms, but more importantly a clarity is needed regarding their exact scope and focus of job.
9. **Introduce community service to reduce punishment** or as an alternative of sentencing to prisons for minor offences. This can be used as a means of allowing juveniles to give back to their communities and learn from the harm they might have

caused. For this guidelines, collaboration, and community service option appropriate to the juveniles should be developed first hand.

10. **Develop comprehensive training programs** for all professionals working within the juvenile justice system. Training should focus on child rights, child development, restorative justice, diversionary approaches, and rehabilitation strategies. Continuous professional development should be encouraged to keep professionals updated on evolving practices and research.
11. **Counselling of juveniles and their family** who are in the system for acceptance and avoiding social stigma that leads the juvenile back to prison.
12. **Introduce child sensitivity training mechanisms** for law enforcement officers, lawyers, and judges to ensure the best possible outcomes for child victims and witnesses. As this would reduce the trauma response we see having in courts with the juveniles.
13. **Establish robust monitoring mechanisms to ensure compliance with the Juvenile Justice System Act** and its amendments. This includes regular inspections of detention facilities, training programs, and rehabilitation services to ensure they meet international standards and child rights principles. These reports should be conducted and evaluated by the Home Department.
14. **Recognise and address the rampant drug abuse amongst juveniles.** Drug abuse plays an undeniable role in exploiting underage children and exposing them to the criminal world. There is a need to understand the root causes of the issue and recognising the additional vulnerability of the juveniles, institutional and structural measures need to be taken.

Annexure I - Training Manual: Juvenile Justice Act, 2018

Juvenile Justice System Act (JJSA) 2018

TRAINING MANUAL

BY

Arfeen Nacem Baig
Dr. Rabia Chaudhry

Context

This manual is developed as a part of the capacity building measure for the Project “*Juvenile Justice System Act (JJSA) 2018: Assessment, Analysis and Capacity Building*”. It has two broad objectives: First to provide comprehensive guidance and disseminate knowledge on the Juvenile Justice System Act (JJSA) 2018 for relevant departments of Punjab. Second, to assist concerned government departments in understanding their roles and responsibilities, promoting effective collaboration, and ensuring the seamless execution of the juvenile justice system in Punjab.

Purpose

- **Educate stakeholders:** This manual aims to provide a detailed understanding of the JJSA, its provisions, and the principles underlying juvenile justice system. It seeks to equip all stakeholders with the necessary knowledge to effectively carry out their respective duties.
- **Promote consistency:** By providing standardized information and guidelines, this manual promotes consistency in the interpretation and application of the JJSA across different departments. It helps establish a communal understanding and approach among stakeholders.
- **Enhance collaboration:** Effective implementation of the juvenile justice system requires close collaboration between various departments. This manual emphasizes the importance of interdepartmental cooperation, clarifies roles, and highlights areas of shared responsibility.

Target Audience

It is primarily designed for the following six departments and their personnel involved in the juvenile justice system:

- **Probation & Parole Department:** Probation officers, counsellors, and professionals responsible for the supervision and rehabilitation of juvenile offenders. Parole officers and staff engaged in the release and reintegration of juvenile offenders into society.
- **Prosecution Department:** Prosecutors and legal professionals involved in handling cases related to juvenile offenders.
- **Judicial Department:** Judges, magistrates, and court staff responsible for adjudicating cases involving juvenile offenders.

- **Police Department:** Police officers, investigators, and personnel involved in the apprehension, investigation, and detention of juvenile offenders.
- **Prison Department:** Prison officers, administrators, and staff responsible for the custody and welfare of juvenile offenders in correctional facilities.
- **Social Welfare Department:** Social welfare officers to facilitate probation officer in creation of the investigation report of the juvenile.

Structure of the Manual

This training manual is organized into various sections to facilitate comprehensive learning and understanding of the JJSA 2018:

- **Overview of the JJSA:** This section introduces the act, its objectives, and key principles. It explains the rationale behind a separate justice system for juveniles and highlights the rights and protections accorded to them.
- **Roles and Responsibilities:** This section outlines the specific roles and responsibilities of each stakeholder department. It defines the roles and responsibilities associated with probation, parole, prosecution, judicial, police, social welfare department and prison departments, emphasizing collaboration and coordination among them.
- **Procedural Guidelines:** This section presents a step-by-step overview of the juvenile justice process, including arrest, investigation, detention, bail, trial, rehabilitation, and reintegration. It explains the legal requirements, timelines, and decision-making processes involved in each stage.

Training Methodology

This manual adopts a participatory training approach, combining theoretical concepts with practical exercises, case discussions, and group activities. It encourages active engagement, knowledge sharing, and collaborative learning among stakeholders. The trainer is encouraged to adapt and customize the content to suit the specific needs and requirements of their respective departments.

Definition of a Child

- The Constitution of the Islamic Republic of Pakistan is ambiguous in defining the term “child” but has a few special provisions related to children. For example,
 - Article 11 prohibits child labor under the age of 14 years.

- Article 25-A, children up to age 16 years have a right to free and compulsory education

“Child” in Pakistani Law

The following Acts define a “Child” in Pakistani law as

- **The Guardians & Wards Act, 1890:** “minor” means a person who, under the provisions of the Majority Act, 1875, is to be deemed not to have attained his Majority¹.”
- **Child Marriages Restraint Act, 1929:** According to this law, “child” means a person who, if a male, is under eighteen years of age, and if a female, is under sixteen (16) years of age²
- **Sindh Child Marriage Restraint Act, 2013:** Sindh has amended and removed the discrimination, defining “child” as a person, male or female, who is under 18 years of age for the purpose of marriage³.
- **The Prevention of Trafficking in Persons Act, 2018:** “child” means a person under eighteen (18) years of age.⁴
- **The National Commission on the Rights of the Child Act, 2017:** “Any person below the age of eighteen (18) years”.⁵
- **The Punjab Destitute and Neglected Children Act, 2004:** The Punjab Destitute and Neglected Children Act, 2004 “Child” means a natural person who has not attained the age of eighteen (18) years.⁶

Overview of the JJSA

In 2018, Parliament enacted the Juvenile Justice System Act, 2018 (JJSA), which repealed the JJSO, in 2000. It is an improvement in the law, aiming to empower the State to make special provisions for the legal protection of child offenders, and seeking to ensure that the new law overrides previous contrary or conflicting provisions, as stated in Articles 23 and 25 of the JJSA, which the Juvenile Justice System Ordinance (JJSO) 2000 did not do.

For the purposes of this Act, a “child” is a person who has not attained the age of 18 years⁷.

A “juvenile” means a child who may be dealt with for an offence in a manner which is

*different from an adult.*⁸

The most noteworthy sections of the JJSA are:

- Determination of the Child's age
- Setting a higher minimum age of criminal responsibility
- Disposal of cases through diversion
- Formation of Juvenile Justice Committees (JJs)
- Setting up Juvenile Rehabilitation Centres (JRCs).

The JJSA 2018 provides for improved and strengthened criminal justice for children, as well as provisions for the subsequent social integration of juvenile offenders.

The JJSA states that

Every juvenile offender or survivor of a crime shall have the right of legal assistance at the expense of the State. He/she must be informed of his/her rights and must be provided legal assistance within 24 hours. Soon after being apprehended and taken into custody by the police, a juvenile offender will be kept only temporarily for investigations, and only after obtaining remand from the Juvenile Court. All juvenile offenders will be kept separately from police stations or lockups or accused adults in custody."

Objectives:

- **Rehabilitation and Reintegration:** The Act aims to facilitate the rehabilitation and reintegration of juvenile offenders back into society through appropriate interventions and support systems.
- **Protection of Juvenile Rights:** It seeks to safeguard the rights of juveniles, including their right to a fair trial, protection from physical and psychological harm, and access to education, healthcare, and social services.
- **Prevention of Recidivism:** The act strives to prevent the recurrence of juvenile offenses by addressing the underlying causes and risk factors through comprehensive interventions and targeted programs.

- **Accountability and Restorative Justice:** It promotes a balanced approach to accountability, emphasizing restorative justice principles that encourage dialogue, repair of harm, and the involvement of victims, offenders, and the community.

Fundamental Principles

Best Interests of the Child: The Act places the best interests of the child as a primary consideration in all decisions and actions related to the juvenile justice system. This principle ensures that the well-being, safety, and development of the child remain paramount.

As provided under Section 2(a), the best interests of the child means that any decisions regarding the child must be made with the aim to fulfil his:

- Basic rights and needs
- Identity
- Social well-being
- Physical, emotional, and psychological development
- **Non-Discrimination and Equality:** The Act prohibits any form of discrimination based on gender, race, religion, social status, or any other grounds. It emphasizes the equal treatment and protection of all juveniles within the justice system.
- **Proportionality and Individualization:** The Act emphasizes the need for individualized responses and measures that are proportionate to the gravity of the offense and the circumstances of the juvenile offender. It discourages overly punitive or harsh measures.
- **Minimum Use of Deprivation of Liberty:** The act promotes the minimum use of detention and deprivation of liberty for juveniles, considering it as a measure of last resort. It encourages alternatives to incarceration, such as diversion programs, community-based rehabilitation, and restorative justice practices.
- **Privacy and Confidentiality:** The act ensures the protection of the privacy and confidentiality of juvenile offenders throughout the justice process. It restricts the disclosure of their personal information and records, except when necessary for legal proceedings or their best interests.

Annexure II - Interview partners and training attendees

Juvenile legal experts

Waheed Anwar (Adv.), Advocate High Court

Syed Miqdad Mehdi (Adv.), Advocate High Court

Abu Bakar Nauman (Adv.), Deputy Prosecutor General, Punjab

National commission of Human Rights Government of Pakistan (Punjab)

Nadeem Ashraf, Member Punjab

Fatima Sajid, Helpline Officer

Ayesha Ali, Helpline Officer

Social Welfare and Bait-ul-Mal

Lubna Jabeen (and team), Deputy Director (NGOs)

Zaib Waseem, Director Programs Social Welfare

Muhammad Suleman, Director (Planning and Evaluation)

Ayesha Raiz, Social Welfare Officer (Kotlakpat Jail)

Mohsin Raza, Social Welfare Officer

Punjab Prisons

Abubakar Abdullah, SP Prison

Ali Akbar, SP Prison

Prison Staff, 12 in total (anonymised)

Juveniles, 45 in total (anonymised)

Punjab Police

Shahid Razzaq Gill SI/T

Ali Hassan Syed SI/T

Gohar Matloob SI (PS City Farooqabad)

Waqas Ahmad SI (PS Ferozaywala)

Mushtaq Shah SI (PS Sadar Sangala)

Muhammad Naeem SI

Muhammad Tariq SI

Probation and Parole Department, Punjab

Rana Ghulam Sarwar, Senior Probation Officer (Lahore)

Muhammad Iqbal, Probation Officer (Rahim Yar Khan)

Asif Bashir, Probation Officer (Bahawalpur)

Abid Mahmood, Parole Officer (Bahawalpur)

Sajid Mehmood Shakir, Probation Officer (Nankana Sahib)

Ulfat Hussain, Probation Officer (Bhakar)

Muhammad Inam Ullah, Parole Officer

Almas Raza, Parole Officer

Hafiz Muhammad Irfan, Probation Officer

Majid Ali Khan, Probation Officer

Akhtar Abbas, Probation Officer

Khawar Waheed, Probation Officer (Okara)

Raheel Khalid, Parole Officer (District Sahiwal)

Muhammad Imran, Probation Officer (Multan)

Naseer Ahmad, Probation Officer (Jhelum)

Muhammad Amir Aslam, Parole Officer (Sargodha)

Fozia Haider, Parole officer (Sahiwal)

Muhammad Saleem Haider, Parole Officer (Sahiwal)

Sajid Sarwar, Probation Officer (Rahimyar Khan)

Shaheen Ishfaq, Probation officer (Rahimyar Khan)

Irfan Hameed Salain, Probation officer (Lahore)

Muhammad Gulam Rafique, Probation Officer (Rajapur)

Malik Asad Ali, Probation Officer

Muhammad Sultan, Parole Officer (Rawalpindi)

Muhammad Ishfaq, Probation Officer (Tobatek Singh)

Prosecutor General Punjab

Mian Aslam, Assistant Director Public Prosecutor

Abdul Sami, Assistant Director Public Prosecutor

Mehwish Farooq, Assistant Director Public Prosecutor

Fayyaz Bhatti, Assistant Director Public Prosecutor

Iqra Altaf, Assistant Director Public Prosecutor

Neelma Anjum, Assistant Director Public Prosecutor

Saleem Ahmad Gill, Assistant Director Public Prosecutor
Ms. Ayesha Tufail, Deputy Public Prosecutor
Iftikhar Ahmad, Assistant District Public Prosecutor
Razia Munir, Assistant Director Public Prosecutor
Aqsa Irum, Assistant Director Public Prosecutor
Nuzhat Bashir, Deputy Prosecutor General
Sarfraaz Ahmad Khichi, Deputy Prosecutor General
Haroon Rasheed, Deputy Prosecutor General

NGOs

Muaz Hameed, (Advocate) Legal Protection Officer (Dastak)
Qamar-un-Nisa, Assistant Crisis Manager (Dastak)
Tayyaba Javaid, Executive Director (Sanjog)
Uzma Ashiq, Clinical Phycologist (Pahchaan)
Faria Rehman, Clinical Phycologist (Pahchaan)
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Talat Tariq (Kinnaird College for Women)
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Sijal Zafar (Kinnaird College for Women)
Rida-e-Zainab (Kinnaird College for Women)
Sehrish Bano (Kinnaird College for Women)
Touqeer Iqbal (Lahore School of Law)
Tayyba Haris (Lahore School of Law)
Jahangeer Ikram (Lahore School of Law)
Gashmira Naeem (Lahore School of Law)
Zaraar Asif Law (Lahore School of Law)
Haseeb Awan (Lahore School of Law)
Qasim Abbas (Lahore School of Law)
Syed Moiz Ali (Lahore School of Law)
Haroon Hanif (Lahore School of Law)

Annexure III - Questionnaire Stakeholders

A. Disaggregated Data collection

This section pertains to the offender's profile and consists of questions such as:

1. What sort of backgrounds do the juvenile offenders typically have? religion, age, gender
2. What sort of relationship do the offenders have with their parents/primary caregivers?
3. Are the offenders usually enrolled in school prior to the crime?
4. What sort of relationships do the juvenile delinquents usually have with their peers and the opposite sex?
5. What is the quality of life for the juveniles before committing the offense?

B. Pretrial detention and detection

This section deals with the pre-trial/post-offense experiences of juvenile delinquents:

1. For how long are the offenders detained the first time?
2. Typically, what type of alleged crimes are the juveniles detained for?
3. To what extent are alternative measures to detention exhausted prior to conviction?
4. What is normally the experience of detention for the juvenile offender?
5. What measures are usually taken to ensure a clear segregation between adults and children in the detention center/lock-up?
6. What measures are taken to ensure segregation between the convicted and those awaiting trial?
7. What measures are taken to ensure the safety of children, prevention of violence?
8. What measures are taken to ensure regular access to parents/family members?
9. What measures are taken to ensure access to education?
10. What sort of rehabilitative services are available to the children? What measures are taken to reduce the traumatic effects of detention?
11. What sort of legal consul is typically available to the children?
12. What kind of health facilities and recreational facilities are available for children?

C. Diversion, alternative measures and restorative justice

This section deals with the experiences of the trial and legal handling of the juvenile delinquents' cases with reference to diversion, alternative measures and restorative justice:

1. What efforts are made for diversion in case of petty offenses?
2. What sort of alternative measures to detention are explored?
3. What sort of training is given to the key actors such as community leaders, members of local authorities and offices of the justice system to ensure diversion?
4. What sort for restorative justice programs were developed under the 2018 Act to help offenders become aware of their actions, take responsibility for their actions, find way to repair the harms they caused?
5. In what ways is the health of the child dealt with?
6. What sort of measures are taken to provide the offender access to education?
7. What is the role of the community in the justice system?
8. What elements of the child's protective factors championed by the justice system? And how?
9. What elements of the child's protective factors ignored or harmed by the justice system? And how?
10. What alternative measures would the interviewee consider possible?
11. Is there adequate well-trained staff available to help the juvenile?

D. Judicial proceedings

1. In what ways is juvenile's trial different than an adults?
2. What measures are taken to ensure child-friendly court proceedings?
3. What efforts have been made to build a specialized child-centered justice system?
4. How any Child Courts have been built and what sort of training have been provided to judges, prosecutors and lawyers to deal with child offenders?
5. What criteria has been used to set the Minimum Age of Criminal Responsibility?
6. What sort of efforts are made to help juvenile offenders to understand the committed offence and its consequences?
7. To what extent are the judicial proceedings inspired by the principles of fair and just trial?

E. Rehabilitation and incarceration

1. To what extent has the rehabilitation of young offenders made a priority?
2. What measures have been made to ensure effective reintegration?
3. What additional measures have been taken to reduce recidivism?
4. How hopeful is the incarcerated youth about their future?

5. What sort of vocational training is being provided to the incarcerated youth?
6. What sort of programs (such as work grants) are made available to the incarcerated youth?
7. What kinds of vocational/education programs have been set into place for the early release of the juvenile?
8. What sort of educative activities have been incorporated into the correctional process?
9. What sort of emphasis is placed on the juvenile's mental and physical well-being?
What kind of healthcare and recreational facilities are available to them?

Annexure IV - Questionnaire Juveniles

A. Disaggregated Data collection

This section pertains to the offender's profile and consists of questions such as:

1. Demographics: ethnicity, religion, age, gender
2. Were you enrolled in school? What was your experience like in school?
3. What sort of relationships did you have with your peers?
4. What was the quality of life before (allegedly) committing the offense?
5. Are you pre trial or post trial?

B. Pretrial detention and detection

This section deals with the pre-trial/post-offense experiences of juvenile delinquents:

1. When were you detained for the first time and for how long? (what alleged crime, walk me through what happened, how were you arrested)
2. To what extent were alternative measures to detention exhausted prior to conviction?
3. Do you feel safe here?
4. Does your family visit you regularly?
5. Do you have access to education?
6. What sort of rehabilitative services are available to you? What measures were taken to reduce the traumatic effects of detention?
7. What sort of legal consul is available to you?
8. What sort of health facilities and sports and recreational facilities were available to you?

C. Judicial proceedings

1. What was your experience of trial?
2. Did you feel safe during court proceedings (child-friendly)?
3. Was the offence and its consequences explained to you? By Whom?
4. To what extent do you feel the judicial proceedings were inspired by the principles of fair and just trial?

D. Rehabilitation and incarceration

These questions pertain to the experience of jails and rehabilitative efforts in place:

1. What has been your overall experience of incarceration?
2. In what ways do you feel like you will be able to reintegrate easily after finishing your sentence?
3. How hopeful are you about your future?
4. What measures have been taken to ensure a clear segregation between adults and children in the jail?

Annexure V - Questionnaire Jail / Prison Staff

A. Disaggregated Data collection

This section pertains to the offender's profile and consists of questions such as:

1. What sort of backgrounds do the juvenile offenders typically have? religion, age, gender, class

B. Pretrial detention and detection

This section deals with the pre-trial/post-offense experiences of juvenile delinquents:

1. Typically, what type of alleged crimes are the juveniles detained for?
2. To what extent are alternative measures to detention exhausted prior to conviction?
3. What is normally the experience of detention for the juvenile offender?
4. What measures are usually taken to ensure a clear segregation between adults and children in the detention center/lock-up?
5. What measures are taken to ensure segregation between the convicted and those awaiting trial?
6. What measures are taken to ensure the safety of children, prevention of violence?
7. What measures are taken to ensure regular access to parents/family members?
8. What measures are taken to ensure access to education?
9. What sort of rehabilitative services are available to the children? What measures are taken to reduce the traumatic effects of detention?
10. What sort of legal consul is typically available to the children?
11. What kind of health facilities and recreational facilities are available for children?

C. Rehabilitation and incarceration

1. What measures are taken to ensure effective reintegration?
2. What additional measures are taken to reduce recidivism?
3. How hopeful is the incarcerated youth about their future?
4. What sort of Healthcare and recreational facilities are available to the juveniles?
5. What are your frustrations with the current law?
6. What improvements would you like to see?

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