



The Juvenile Justice System Act 2018



Introduction

There was no uniform juvenile justice system in Pakistan at the time of independence. Gradually, a few laws in some of the provinces dealing with children, including children coming into conflict with the law, were introduced in various provinces but were not implemented.

Pakistan was among the first twenty countries that signed and ratified the UN Convention on the Rights of the Child. But it took the country a decade to introduce a law dealing with the subject of juvenile justice when the Juvenile Justice System Ordinance 2000 was introduced. The law came into force in the whole country at once setting the age of a child to 18 for the first time in Pakistan and abolishing the death penalty. Other salient features of the law included legal aid at state expense, establishment of Juvenile Courts, and release of juveniles on probation.

This Ordinance was replaced by the Juvenile Justice System Act 2018 (No XXII) in May 2018. Like its predecessor, it applied to all of Pakistan and came into force at once.

Criminal Procedure in Pakistan

Arrest and Investigation of juvenile

An arrest is the stage where a child's rights are most likely to be violated. The Juvenile Justice System Act (JJSA) requires that the guardian of an arrested child must be informed as soon as possible of the arrest and the time, date and name of the Juvenile Court before which the child would be produced (Sec 5(1)). Similarly, the concerned Probation Officer should be informed so that he or she can obtain information about the child which may be of assistance to the Juvenile Court.

The stage of the arrest is also important as the police register the age of the child in the FIR. Where a person claims to be a juvenile for the purpose of this Act, the officer-in-charge of the police station or the investigation officer must make an inquiry to determine the age of such person on the basis of his birth certificate, educational certificates or any other pertinent documents. In absence of such documents, the age of the accused person may be determined on the basis of a medical examination report by a medical officer (sec 8).

Diversion process

The JJSA introduces a new concept called “diversion” which is defined to mean “an alternative process of determining the responsibility and treatment of a juvenile on the basis of his social, cultural, economic, psychological and educational background without resorting to formal judicial proceedings” (sec 2(d)).

Diversion during investigation

Diversion can be done at any stage of the investigation with the consent of a juvenile or his guardian in cases where a juvenile is accused of commission of minor offences, meaning punishment with less than three years of imprisonment (sec 2(o)); and where a juvenile is accused of the commission of major offenses and the age of the juvenile is not more than 16 years at the time of commission of offence. For resorting to diversion, the police can refer the complaint against a juvenile to the Juvenile Justice Committee (Sec 9(1),(2)&(6)). In cases of such referrals by the police, the submission of report of police officer required under section 173 of the Code of Criminal Procedure shall be postponed till the final order of the Committee.

Diversion and Juvenile Courts

The Juvenile Court, during a trial with the consent of a juvenile or his guardian, may refer the complaint against a juvenile to a Juvenile Justice Committee for its disposal through diversion. The Committee can dispose of a case, with the consent of the person against whom the offense was committed, by resorting to different modes of diversion including restitution of movable property; reparation of the damage caused; written or oral apology; participation in community service; payments of fine; costs of the proceedings; placement in Juvenile Rehabilitation Centre; and written and oral reprimand. If the complainant is a state functionary and the offence has not been committed against a private person, the Committee may dispose of the case through diversion with the consent of the concerned public prosecutor. For purposes of diversion, all offenses either minor or major, are considered compoundable; however, diversion can only be opted for in cases where a minor offence involving imprisonment up to three years with or without fine; or the age of juvenile at the time of commission of the offence was not more than 16 years where a major offence is involved (sec 9).

Observation Home

Unlike the Ordinance, the JJSA talks about keeping the child in an Observation Home during an investigation, instead of being released, which can either be established by the governments or any such center can be certified by it (sec 20). However, the juvenile cannot under any circumstances be kept in a police station under police custody or jail (Sec 6(1)).

Interrogation of juvenile:

A juvenile can only be interrogated by a police officer not below the rank of Sub Inspector under supervision of the Superintendent of Police or SDPO. The investigation officer must be assisted by a probation officer or by a social welfare officer notified by the Government to prepare social investigation report to be annexed with the report prepared under section 173 of the Code (sec 7). A female in all circumstances must be apprehended and investigated by a female police officer and can only be released on probation under the supervision of a female officer (sec 17(1)).

Bail

A juvenile accused of bailable offence, regardless of *whether a minor or a major offence*, if not already released under section 496 of the Code, must be released by the Juvenile Court on bail with or without surety unless it appears that the release of such child may bring him in association with criminals or expose him to any other danger. In such a situation, the juvenile shall be placed under the custody of a suitable person or Juvenile Rehabilitation Centre under the supervision of probation officer. The Juvenile Court where a juvenile is not released on bail as required above is required to direct the police for tracing guardian of such juvenile and where guardian of such juvenile is traced out, the Court may immediately handover custody of the juvenile to the guardian (sec 6(2)).

A juvenile can also be released on bail if he has been detained for a continuous period exceeding six months and whose trial has not been completed (sec 6(5)).

However, where a juvenile of more than 16 years of age is *arrested for a heinous offence*, he may not be released on bail if the Juvenile Court is of the opinion that there are reasonable grounds to believe that such juvenile is involved in the commission of the offense.

Trial in Juvenile Courts

The JJSA envisages the establishment of Juvenile Courts with exclusive jurisdiction to try cases in which a child is accused of committing an offence. All the Provincial Governments have notified Juvenile Courts under this law.

Timeline limit: Juvenile courts are required to decide the cases within six months. If a case is not decided within six months, they should seek an extension from the concerned High Court explaining the reasons for not being able to decide the case within the prescribed time. If the court fails to do so, the complainant or the offender can also make an application to the court (sec 4(8)&(9)).

Ensuring safe space for the trial: The Juvenile Courts can hold their sittings at a place other than where they hold sittings for a trial of other cases. However, it should not ordinarily take up any other case on a day when the case of a child accused is fixed for evidence.

No person should be present at any sitting of a Juvenile Court except members and officers of the Juvenile Court, parties to the case and persons directly concerned with the proceedings, such other persons as the Court directs to be present, and guardian of the child (sec 11(2)).

The Juvenile Court may, in the interests of the child, direct any person to withdraw from the Court, and where the attendance of the child is not deemed essential, proceed with the trial in the child's absence (sec. 11(3)).

Forbade publications: Unless specifically authorized, the trial proceedings involving a child cannot be published in any form which may disclose the name, address, school, or any identification which could lead to the identification of the child concerned, nor can any picture of the child be published (sec. 13).

Confidentiality of report: The Probation Officer's report on the child's character and background should be treated as confidential. It may, however, be communicated to the child or the guardian, in order to give them an opportunity to produce evidence relevant to the matter in the report (sec. 14).

Separate trial: No child can be charged with or tried for an offense together with an adult. If a child is charged with an offence for which he or she could be tried with an adult the child should be tried separately by the Juvenile Court (sec. 12).

Release on Probation

Upon conclusion of an inquiry, investigation, or trial, the Juvenile Court may, keeping in view the best interests of the child:

- pass an order for the release of the Juvenile Offender if the victim or complainant may pardon him;
- pass an order for community service, fine, compensation to the victim or complainant, restitution of property, or counseling;
- direct the juvenile offender to be released on probation for good conduct and place such juvenile offender under care of a guardian or any suitable person or a Juvenile Rehabilitation Centre for any period not exceeding the period of confinement awarded to such juvenile.
- However, if a juvenile offender fails to comply with the order or violates the conditions of release on probation, the Court may cancel the probation order; or
- make an order directing the juvenile offender to be sent to a Juvenile Rehabilitation Center until he attains the age of 18 years or till the completion of period of imprisonment, whichever comes earlier (sec 15).
- A female juvenile can only be kept in a Juvenile Rehabilitation Center established or certified exclusively for female inmates (sec 17(2)).

Punishments

Under the JJSA, no child can be:

- Awarded a death penalty;
- Sent to prison;
- Ordered to labor;
- Put in fetters, handcuffed, or given any corporal punishment at any time while in custody (sec. 16).

A convicted juvenile offender does not suffer any disqualification relating to a conviction of an offense under such law.

Appeals

A child has that right to appeal within 30 days after the order of conviction. Similarly, the Provincial Government or a party aggrieved by an acquittal order has the right to appeal within 30 days of the dated of such order (sec. 18).

Key Definitions

Juvenile Justice System Act 2018

- "Juvenile": a child who may be dealt with for an offence in a manner that is different from an adult
- "Child": a person who has not attained the age of eighteen years
- "Juvenile offender": a child who is alleged to have committed or who has been found to have committed an offence
- "Diversion": an alternative process of determining the responsibility and treatment of a juvenile on the basis of his social, cultural, economic, psychological, and educational background without resorting to formal judicial proceedings
- "Suitable person": any person, trust, association or society duly recognized by law whose object is welfare and protection of children
- "Juvenile Rehabilitation Centre" means a place where a juvenile may be kept and given education, vocational or technical training for his mental, moral and psychological development and includes certified institutions, juvenile training institutions, borstal institutions, vocational centers, *dar-ul-amaan* and women crises centers established by the Government or by voluntary, organization certified by the Government
- "Observation home" means a place where a juvenile is kept temporarily after being apprehended by police as well as after obtaining remand from Juvenile Court or otherwise for conducting inquiry or investigation for the purposes of this Act;

Hindrances in the way of JJSA 2018

Thousands of children almost daily appear in various courts as they have come into conflict with the law. Few, if any, reliefs are given to them under the JJSA and their trial continues for months if not years.

Non-establishment of Rehabilitation Centers:

Not a single Juvenile Rehabilitation Center mentioned in the JJSA has been established in the country. What is likely to happen is that existing Borstal jails may be declared as such centers which will not change things. Majority of the incarcerated children are being kept in regular prisons all over the country, although in separate cells.

Overcrowding and inability to attain bail:

Overcrowding, however, is a great matter of concern in these cells and even in the Borstal Jails. Despite a liberal regime provided for grant of bail to juvenile offenders, majority of the inmates are under trial and spend more time in prisons than actual sentence for the crime committed.

Untrained and inexperienced staff:

Another serious problem is the lack of training for correctional staff. There are no psychologists, psychiatrists, and social workers available for the counseling of the minor detainees. There is hardly any provision for education in these prisons, and the state of health is not good with many children suffering from skin and other ailments. Hygiene is often shaky. There is not even a drinking water supply system or a proper sewerage system.

Conclusion

These children in Pakistan are facing the wrath of the law for the "crimes" of being poor, neglected, or abused. Regardless of the reasons for their offenses, they are entitled to fair treatment at the hands of juvenile justice systems which must be designed to aid children's return to productive society as quickly as possible.'



If you would like further information on this subject, write to;
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