

JUVENILE JUSTICE



Introduction

Youth under the age of 18 plays important role in the fabric of any society. This population group has its unique set of developmental needs which makes it strength as well as weakness of the society at the same time. Lack of resources and developmental opportunities produces negative tendencies in youth which can put them in conflict with law. Involvement of young people in crime is a challenge faced by every country. Due to their limited social understanding because of young age and vast future ahead of them, young offenders are given a leeway by criminal justice systems and ‘correctional’ approach is applied in order to rehabilitate and reintegrate them in society. However, the responsibility lies on the justice system and its upholders to ensure that law and order situation doesn’t crumble due to inadequate handling of juvenile offenders. If crimes committed by young offenders are completely ignored then the trust on rule of law weakens. In contrast, if young offenders especially the first time offenders are treated as hardened criminals, then crime will only increase. Maintaining this balance is more critical for developing countries such as Pakistan.

At present Pakistan has the highest number of children and young people in its history. This situation presents a bright future for Pakistan however the challenges faced by young people in Pakistan are turning this situation in a threat. Poverty is widely recognized as the biggest driver of crime. Unfortunately, most of the Pakistani youth is living under financially challenged situations. They lack basic necessities such as education, health, nutrition and social protection. The ever-rising inflation is pushing these youngsters towards destructive tendencies, such as, substance addiction, sexual abuse, and conducting individual or coordinated crimes to meet their needs.

Pakistan ratified the United Nations Convention on the Rights of the Child³ (UNCRC), the utmost significant international child rights framework in 1990. The UNCRC and other human rights instruments such as the Universal Declaration of Human Rights⁴ and the specific texts such as the Standard Minimum Rules for the Treatment of Prisoners⁵, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁶, or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁷, all emphasize key value i.e. despite imprisonment, the young inmates hold all their human rights excluding a few which are denied by the court due in accordance to the crime commitment by them. These instruments are legal binding for Pakistan as it has committed to provide equal, affordable and quality justice services to the children in conflict or contact with the law.

Despite making progress on its national and international commitments on delivering the rights of juvenile offenders, Pakistan has yet to achieve desired results. The weaknesses of Pakistan's juvenile justice system are well documented. From initial step of arrest to imprisonment, the hurdles of conflicting legislations, limited resources and capacities of investigation, poor infrastructure and over-crowding of prisons, renders the chances of successful reintegration of young prisoners to

¹<https://nation.com.pk/22-Nov-2021/around-88-687-inmates-against-65-168-sanctioned-capacity-in-jails-report>

²<https://www.dawn.com/news/1659482>

³<http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>

⁴<https://www.un.org/en/universal-declaration-human-rights/>

⁵https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf

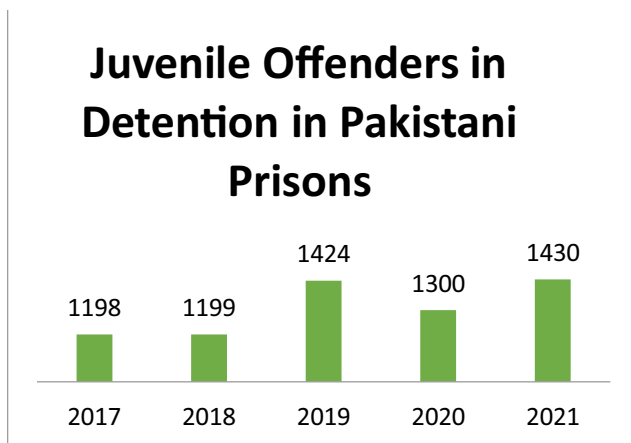
⁶<https://www.un.org/ruleoflaw/blog/document/body-of-principles-for-the-protection-of-all-persons-under-any-form-of-detention-or-imprisonment/>

⁷<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

zero. Whenever the prisoners come out, the social stigma attached with prisons haunts them. Lack of advanced and technical vocational training and psychosocial counseling means that the prisoners go back in to the same poverty struck with same skills and mental model and end up back into same vicious cycle of violent extremism. This is a reason prisons in Pakistan are often dubbed as breeding grounds for criminals. The juvenile justice system of Pakistan presented same depressing situation like previous years as state’s response to the rising needs of juvenile justice system remained slow.

Pakistan Statistics: Juveniles in Detention

According to official data (November 2021), Pakistan has a total prison population of more than 88,687, of which 1,430 are children⁸⁹ (under 18 years of age and comprising both males and females).



⁸<https://nation.com.pk/22-Nov-2021/around-88-687-inmates-against-65-168-sanctioned-capacity-in-jails-report>

⁹<https://www.dawn.com/news/1659482>

State of Pakistan's Juvenile Offenders

Despite state's promises, Juvenile in conflict or contact with law in Pakistan continued to suffer denial of their rights due to lacunas in legislations, absence of support mechanisms, limited capacities of law enforcement officials and lack of interest from policymakers and duty bearers. In almost all the cases where families of the victims were 'promised of justice', it was media reports and public protests which exerted pressure on the government to response.

On March 14, 2021 a 14-year-old boy was found dead in Peshawar, Khyber Pakhtunkhwa¹⁰¹¹. According to the FIR, the seventh-grade student was arrested because he had pointed a weapon at a trader in market. The FIR also mentioned that the boy committed suicide by hanging himself. According to the boy's father, he received a call from the police that his son had been arrested and failed to produce the registration documents of his motorcycle. When the father rushed to the police station, he was made to wait for three hours and later told that his son had committed suicide. Police also showed a video of a person committing suicide however the family denied that it was not related to the boy in question. Family of the boy refused to believe police's explanation and protested outside the police station. The protested prompted a response from the provincial government as SHO of the station was arrested and investigation of the case began. This case is a blatant **violation of JJSA 2018** by the police and by the provincial government. Section 5 (1a) states that juvenile offenders must be kept in observation home before being produced in a Juvenile Court. At time of the case, no observation home has been setup in the province which shows lack of interest by the duty bearer's¹².Section 5 (1b) states that

¹⁰<https://www.dawn.com/news/1612546>

¹¹<https://www.thenews.com.pk/print/804422-student-dies-in-peshawar-police-custody>

¹²<https://dailytimes.com.pk/742269/pakistans-juvenile-justice-system-and-custodial-deaths/>

the in-charge of police station must also inform a probation officer who will collect relevant material to assist the court in decision making. In the said case, the investigation officer didn't inform probation officer¹³ nor did they inform the parents about any potential court procedures¹⁴.

This is not a one-off incident in Khyber Pakhtunkhwa. **On March 8, 2021 a young student was shot dead by two policemen in Peshawar**¹⁵¹⁶. The cops blamed the victims were not stopping at police warning whereas the boy's friends, who survived the incident, claimed that they weren't told to stop. As result of public protest, the two cops were arrested. Detailed investigation from the police found the cops guilty¹⁷ and Section 7 of the Anti-Terrorism Act was included in the FIR.

On June 12, 2021 a 15-year-old boy died in custody of Counter Terrorism Department (CTD) in Islamabad¹⁸¹⁹. The police gave conflicting statements for reason of arrest. Initially they claimed that boy had been arrest to question his involvement in murder of two policemen which happened on June 3, 2021 but later they said that boy had been arrest over suspicion of involvement in murder of a policeman which took place on March 7, 2021. The Crime Investigation Agency (CIA) questioned the boy for three days and after confirming his

¹³<https://www.dawn.com/news/1613829>

¹⁴<https://tribune.com.pk/story/2291030/custodial-death-of-a-child-and-juvenile-justice-system>

¹⁵<https://www.thenews.com.pk/print/801317-policemen-allegedly-shoot-dead-student>

¹⁶<https://www.dawn.com/news/1611433>

¹⁷<https://www.dawn.com/news/1658870/probe-holds-two-policemen-responsible-for-students-murder>

¹⁸<https://www.dawn.com/news/1628997/four-ctd-officials-booked-after-teenage-boy-dies-in-custody-in-capital>

¹⁹<https://www.thenews.com.pk/latest/848610-ctd-officers-arrested-in-islamabad-after-custodial-death-of-suspect>

innocence, released him. However, the boy was taken in custody this time by the CTD where he, according to the police, died due to lack of treatment while suffering extreme heat and fever. Initially, the investigation officer and two constables were booked under Pakistan Penal Code Section 322 (Unintentional Death) however later due to the protest of boy's family, the officers were charged with Section 302 (Murder). This **case violates JJSA 2018** Sections 3 which grants the juvenile offender right of legal assistance; 5 (1b) engaging probation officer; 7 (b) engaging probation officer / social welfare officer; 16 (2) which bans usage of 'corporal punishment' during custody.

On September 5, 2021 a 15-year-old boy was found hanging in a police station in Islamabad²⁰. This is another case where police report mentions suicide as the reason of death and another case where the staff deputed to watch the CCTV Cameras were not on the desk at time of the incident. According to the police, the boy was arrested over suspicion of involvement in a theft but later committed suicide. The DIG Police suspended two officials and said action will be taken if they're found guilty. The conduct by the police, as reported by father of the boy, makes this a unique case. According to the father who lives in Peshawar, he reached Islamabad after a call from police which informed him about the arrest and another which revealed that his son was being tortured. When the father reached police station, the police officials informed him about the suicide and told him to embark the ambulance containing the dead body. Later police escorted the ambulance to Peshawar. This **case violates JJSA 2018** Sections 3 which grants the juvenile offender right of legal assistance; 5 (1b) engaging probation officer; 7 (b) engaging probation officer / social welfare officer; 16 (2) which bans usage of 'corporal punishment' during custody.

²⁰<https://www.dawn.com/news/1644886/body-of-teenager-who-died-in-police-custody-shifted-from-islamabad-to-peshawar>

On December 6, 2021 a teenage boy was shot dead by police in Orangi Town in Karachi²¹. The police initially claimed that the boy was killed in an exchange shootout however it was later revealed that it was a ‘fake’ encounter. After protests from public, the policeman involved in this murder was charged with Pakistan Penal Code Sections 302 and 34 and Section 7 of the Anti-Terrorism Act of 1997. A point of note in this case is that three leading newspapers of the country DAWN, Express Tribune and The News reported different ages of the murdered boy²²²³²⁴ (Express Tribune: 14 Years, The News: 16 Years, DAWN: 18 years). While all the ages make it a juvenile justice case under Section 2 (b) of JJSA 2018, the gap of 4 years in reporting of credible publications reveals the prevailing age identification issue in criminal justice system of Pakistan.

The issue of age identification also resurfaced earlier in the year when **on April 16, 2021, Peshawar High Court turned down bail plea of a murder accused who was a juvenile according to the report of medical board but an adult as per his official documents**. Police told the court that they didn’t comply with Juvenile Justice System Act 2018 (JJSA) Section 8 (Age Determination) because the accused didn’t claim to be juvenile at first and his documents mentioned him as adult. However report of a medical board revealed that the accused was 16 to 17 years old. The case went for re-trial however the high court rejected the bail plea. The high court mentioned that in such case where there’s conflict of age in medical report and official documents, JJSA Section 8 gives priority to official documents (birth certificate, school certificate etc.).

²¹<https://www.dawn.com/news/1662436/undercover-cop-his-friend-arrested-for-allegedly-killing-college-student-in-orangi-town-encounter>

²²<https://www.dawn.com/news/1644886/body-of-teenager-who-died-in-police-custody-shifted-from-islamabad-to-peshawar>

²³<https://tribune.com.pk/story/2332956/fake-encounter-victim-laid-to-rest>

²⁴<https://www.thenews.com.pk/print/914649-teenager-killed-in-fake-encounter>

In 2021, juvenile justice system of Pakistan made headlines throughout the world when **on July 25, 2021 a 9-year-old Hindu boy in Rahim Yar Khan was charged for ‘Deliberately Outraging the feelings of Muslim Community’ under Pakistan Penal Code (PPC) Section 295-A**²⁵. According to the police, the FIR was registered after a seminary leader accused the boy for urinating in the seminary. The boy was released on post-arrest bail after two days. The release enraged the local community who ransack a Hindu temple²⁶. The Hindu Community maintained that the boy was mentally challenged and police should have considered that fact before charging him. Although the accused got release, having an FIR against the name in such sensitive case can result in serious repercussions²⁷. The FIR is also **violation of Criminal Law (2nd Amendment) Act, 2016**, which increased the minimum age of criminal responsibility from 7 years to 10 years.²⁸ This news made international headlines as British daily newspaper The Guardian reported that boy charged with ‘Blasphemy’ can face death sentence²⁹. Hafiz Tahir Mehmood Ashrafi, Special Representative to the Prime Minister on religious harmony, called out³⁰ The Guardian for its erroneous reporting and stated at the newspaper confused 295-A (which is punishable by 10 years) with 295-C³¹ (punishable by death). Ashrafi however stated that FIR shouldn’t have been registered and legal action will be taken against those who registered it.

²⁵<https://tribune.com.pk/story/2314414/attackers-came-from-kacha-areas>

²⁶<https://www.dawn.com/news/1638816>

²⁷<https://www.thenews.com.pk/tns/detail/915981-when-they-make-an-accusation>

²⁸<http://www.mohr.gov.pk/Detail/YmJiZjQ5MmWYtYmEyYy00OWFILWFIZWetYzY1OTY1MTg3Y2Iz>

²⁹<https://www.theguardian.com/global-development/2021/aug/09/eight-year-old-becomes-youngest-person-charged-with-blasphemy-in-pakistan>

³⁰<https://nation.com.pk/11-Aug-2021/no-blasphemy-case-registered-against-hindu-boy-in-ry-khan-ashrafi>

³¹<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

The **poor infrastructural issues resulted in death of a 17 years old inmate at Lahore Prison on November 30, 2021**³². The prison official told media that 200 inmates died in Punjab during 2021 due to harsh weather, inadequate health facilities and overcrowding.

Prisons: A ‘Safe’ place for Corona virus Pandemic

The global COVID-19 pandemic, which out broke in 2020, continued its devastation throughout 2021. Although Pakistan fared well in terms of infections and mortality rate, unfortunately, the prisoners confined in jails and correctional facilities of the country experienced an extreme form of social isolation. The institutional capacities of prisons also put the prisoners at extreme risk of outbreaks of pandemics and infections. The prisoners sleep in loaded halls commonly known as barracks where a single infected person can infect at least 100 others. As a preventive counter to such a catastrophe, in March 2020, several high courts in Pakistan, noticeably the Sindh High Court³³ and Islamabad High Court³⁴, ordered the release of under-trial prisoners, who were confined due to petty crimes, to reduce burden on the jails amidst the pandemic. However, Pakistan's Supreme Court on March 30, 2020, reversed this decision and halted the release of prisoners³⁵. The Supreme Court also ordered re-arrest of the prisoners who had been release before the directive but gave relaxation for the elderly and juveniles.

As a result of overcrowding, the prisons also got infected from COVID-19. According to Amnesty International, by August 2020, 2,313 Pakistani prisoners out of a total population of 79,603 had tested

³²<https://tribune.com.pk/epaper/news/Karachi/2021-12-14/NzU5ZGRiNzA4M2JmMjY5M2MwZGUzOWUzNDdjZTAyOGYuanBIZw%3D%3D>

³³<https://www.dawn.com/news/1544006>

³⁴<https://www.dawn.com/news/1542607>

³⁵<https://www.dawn.com/news/1544966#comments>

positive for COVID-19³⁶. According to Sindh Prisons Department, out of over 18,000 inmates the provinces, 1,638 tested positive by November 2020 but the number of active cases were only 31 as the rest had fully recovered³⁷. However within 2 weeks the number of active cases in jails of Sindh province peaked to 295³⁸. In January 2021, Federal Ombudsman reported that 500 inmates across the country were COVID-19 positive³⁹.

In April 2021, Pakistan began vaccination drive to counter COVID-19 and the prisons across the country planned the drives to vaccinate their staff and inmates⁴⁰⁴¹⁴². In order to counter the threat posed by omicron variant of COVID-19, Pakistan allowed booster shots (3rd dose of vaccine) from December 1, 2020. According to a media report⁴³, prisoners weren't on immediate agenda as they subject doesn't fall under Health Ministry. The prisoners can only become illegible for booster shots when the Interior Ministry makes the decision.

The other moves made by Prisons Departments in Pakistan to curb the spread of infection included reducing the influx, increased testing, cleaning drives and isolating drug addicts and sickly patients⁴⁴⁴⁵⁴⁶.

³⁶<https://www.amnesty.org/en/latest/news/2020/12/pakistan-overcrowding-in-pakistans-prisons-is-a-ticking-time-bomb/>

³⁷<https://tribune.com.pk/story/2274550/sindhs-prisons-beat-the-virus-odds>

³⁸<https://tribune.com.pk/story/2276766/virus-spreading-rapidly-in-sindhs-overcrowded-jails>

³⁹<https://tribune.com.pk/story/2279196/500-prisoners-suffering-from-covid-19-across-pakistan>

⁴⁰<https://www.brecorder.com/news/40105528>

⁴¹<https://tribune.com.pk/story/2296710/over-1000-prisoners-get-anti-covid-shots>

⁴²<https://www.geo.tv/latest/343564-covid-19-sindh-govt-to-vaccinate-prisoners-above-age-50-from-april-7>

⁴³<https://tribune.com.pk/story/2332802/inmates-nowhere-on-booster-shot-agenda>

⁴⁴https://www.unodc.org/documents/pakistan//UNODC_COPAK_Advocacy_Brief_2_Prisons_COVID-19-Sindh-Revised.pdf

Society for the Protection of the Rights of the Child (SPARC), during its intervention in prisons in Karachi in 2020-21, observed that more than physical health, the mental health of prisoners was at stake due to anxiety and stress caused by the pandemic.

A large chunk of inmates in prisons across Pakistan belong to the under-trial category i.e. the people who are awaiting their fate. Most of these cases result in an acquittal however the decision often takes time due to slow court proceedings and long queue. During the complete lockdown in 2020 and the partial lockdown in 2021⁴⁷, the courts halted their proceedings which meant that under-trials prisoners, who were hopeful of getting acquittal within couple of hearings, had to spent additional time in confined environment of jails. During the lockdown in 2020, the prisoners weren't allowed to see any visitors including their family members. This caused panic and mental stress for juveniles and first-time offenders, as most of the jails in Pakistan don't have the protocols to allow calls to outside.

Most of all the psychological support and vocational training interventions in Pakistani prisons are managed by non-profit organizations. The prisons, despite having vacant grounds, lack adequate sport and recreational setup. During the 2020, lockdown these activities were also ceased. This put prisoners under stress which can have negative lingering effects after their release.

Child Courts and Justice Committees in accordance with Juvenile Justice System Act (JJSA) 2018

On February 24, 2021, two child courts were inaugurated in Malir and East District in Karachi in accordance with JJSA 2018 Section 4. These

⁴⁵<https://rsilpak.org/2021/mapping-pakistans-response-to-covid-19-in-prisons/>

⁴⁶<https://inkstickmedia.com/battling-covid-19-behind-bars-in-pakistan/>

⁴⁷<https://www.pakistantoday.com.pk/2021/04/27/sindh-asks-shc-to-suspend-routine-work-allow-only-urgent-proceedings/>

are the first courts set up in Sindh Province⁴⁸. The media were informed that over 1,921 children (1,490 boys, 431 girls) have benefitted from justice system as a result of these child courts. During the ceremony, media was told that 9 Juvenile Justice Committees were also established in accordance with JJSA 2018 Section 10.

On April 9, 2021, four child courts were inaugurated for divisional headquarters in Khyber Pakhtunkhwa province. This took the number of child courts in the province to 8 which is highest number in the country⁴⁹. The overall number became 12 (8 in Khyber Pakhtunkhwa, 2 in Sindh, 1 in Punjab, 1 in Balochistan, and 1 in ICT).

State's Efforts to Uplift the Conditions of Prisons

On November 21, 2021, the Federal Ombudsman Secretariat presented its 10th quarterly implementation report, in Supreme Court of Pakistan, on the status of prison reforms across the country.⁵⁰ Main of the focus interventions this year was tackling overcrowding problem, biometric identification of prisoners, and countering the influx of drug abusers. New prisons are in construction phase in Islamabad Capital Territory and Swat and Hangu Districts in Khyber Pakhtunkhwa province whereas three new prisons have been approved for Sindh Province in Karachi, Benazirabad and Thatta.

Sindh Prisons Department initiated Prisons Management Information System which is linked was linked with NADRA and Police database in November 2021 for biometric identification of prisoners. Punjab and Balochistan are working with PITB and UNODC respectively to initiate similar systems by next year.

⁴⁸<https://tribune.com.pk/story/2285907/first-juvenile-court-inaugurated-in-city>

⁴⁹<https://www.dawn.com/news/1617326>

⁵⁰<https://mohtasib.gov.pk/NewsDetail/ZTk3MzlmY2QtMDVhYi00ZDZjLWlzMzc tZTMxMDI kOTIOMWY1>

Punjab and Balochistan provinces also made progress on drug rehabilitation as prisons face issue of establishing separate barracks for drug addicts. Punjab Prisons department issued testing kits with capacity to screen 10 various substances, to all the prisons in provinces. Balochistan prisons department has established drug rehabilitation centers in five jails in the province with the help of anti-narcotics force.

On December 12, 2021, Ministry of Human Rights informed media⁵¹ that the Criminal Justice Legal Aid and Justice Authority Legal Act 2020⁵², was applied in its entirety and as a result juvenile, women and poor criminals were getting legal aid relief in jails.

The Torture and Custodial Death (Prevention and Punishment) Bill 2021: A Ray of Hope for Juvenile Offenders

On 12 July, 2021, Senate of Pakistan passed **‘The Torture and Custodial Death (Prevention and Punishment) Bill 2021’**⁵³ which is awaited to be approved by the National Assembly. According this move, any public official who is found involved in torture will be punished with up to 10 years of imprisonment and a fine of PKR 2 million. Any official, failing to prevent the torture (whether deliberately or inadvertently) will have to face up to five years imprisonment and a fine of up to PKR 1 million. In addition, any person committing, allowing, or supporting custodial death or rape, will be sentenced for life and a fine of PKR 3 million.⁵⁴ It is noteworthy that in March 2015, the Senate of Pakistan passed a similar bill, ‘The Torture, Custodial Death and

⁵¹<https://dailytimes.com.pk/854073/mohr-makes-effective-legislation-to-protect-prisoners-rights/>

⁵²https://senate.gov.pk/uploads/documents/1598591762_273.pdf

⁵³<https://www.dawn.com/news/1634704/senate-passes-landmark-bill-criminalising-torture-deaths-in-custody>

⁵⁴<https://www.thenews.com.pk/print/863457-senate-passes-torture-custodial-death-prevention-punishment-bill>

Custodial Rape (Prevention and Punishment) Bill 2014⁵⁵ but the bill draft wasn't presented before the National Assembly⁵⁶.

Salient features 'The Torture and Custodial Death (Prevention and Punishment) Bill include:

- I. Inclusion of mental torture in a clearly defined definition of torture which is in accordance with UNCAT Article 1
- II. Strict punishment for the offenders which is in accordance with UNCAT Article 4
- III. Including punishment for public servants other than police
- IV. Criminalizing sexual violence during custody
- V. Recognizing the importance and recommending the process of a compliant system which is in accordance with UNCAS Article 13
- VI. Prohibiting the confinement of any person in order to get information or evidence about any accused person

The pressure to curb custodial rape and death comes from Pakistan's international commitments towards human rights. On 17 April, 2018, Pakistan signed the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)⁵⁷. Pakistan ratified the convention on 23 June, 2010⁵⁸. However it still hasn't signed or ratified CAT's Optional Protocol.

Pakistan submitted its first State Report to UNCAT in 2016. The report mentioned that physical torture during custody was proscribed, examined and impeached as per the current legal policies. The report also affirmed that government was working on the pending

⁵⁵<https://www.dawn.com/news/1167065>

⁵⁶https://www.omct.org/en/resources/reports/pakistan-open-call#_ftnref3

⁵⁷<https://www.refworld.org/docid/480c6e132.html>

⁵⁸https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=141&Lang=EN

legislations⁵⁹. In the concluding observations, UNCAT urged Pakistan to enact legislation to stop and criminalize custodial torture⁶⁰.

In June 2020, Pakistan as part of its application for United Nations Human Rights Council⁶¹, voluntarily vowed before the United Nations, that the pending bill i.e. Torture, Custodial Death and Custodial Rape (Prevention and Punishment) Bill 2018 was soon to be presented before the National Assembly/Senate⁶².

A dedicated legislation is need of the hour because the current procedures aren't adequate enough to counter custodial torture and rape⁶³. Usage of inflicting physical harm in order to obtain evidence is banned under Article 14(2) of the Constitution of Pakistan⁶⁴. Some secondary forms of torture are banned under Pakistan Penal Code Sections⁶⁵ 339, 340 and 349. However the major forms of torture such as inflicting psychological anguish has been unaddressed by these sections. It is noteworthy that this form of torture is discouraged by UNCAT Article 1⁶⁶.

Similarly, Usage of custodial torture is banned under The Police Order 2002 Article 156 (d)⁶⁷ however its implementation remains minimal because of certain loopholes. The order, which is applicable only in Punjab Province, doesn't define torture and doesn't include public officials other than police officers.

It is important that the National Assembly of Pakistan passes the Torture and Custodial Death (Prevention and Punishment) Bill and the

⁵⁹<https://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=596f51fe4>

⁶⁰<https://www.refworld.org/docid/596f52784.html>

⁶¹file:///C:/Users/Karachi%20Office/Downloads/A_75_119-EN.pdf

⁶²<https://www.omct.org/en/resources/reports/no-defence-acceptable-for-crime-of-torture-senator-farhatullah-babar>

⁶³<https://www.thenews.com.pk/print/813885-anti-torture-law>

⁶⁴<http://www.pakistani.org/pakistan/constitution/part2.ch1.html>

⁶⁵<http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>

⁶⁶<https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

⁶⁷<http://punjablaws.gov.pk/laws/2185a.html>

subsequent procedures are adapted quickly otherwise the juveniles in-conflict with the law will continue to face supersession of their rights. The year 2021 much like previous years saw multiple cases juveniles facing their rights curbed by the very people empowered to safeguard their rights.

Probation and Parole: Solutions to ailment of Juvenile Justice System in Pakistan

Probation and Parole systems are universally recognized practices for tackling the overcrowding of prisons and at the same time providing convicts with correctional opportunities to ease their reintegration in society⁶⁸. The main beneficiaries of these systems are juveniles and ‘first time’ offenders because they have higher chances of successful rehabilitation.

Probation means a time period prior imprisonment in which the offender is given an opportunity to convince the judiciary that s/he wants to rehabilitate himself/herself. Upon approval, the offender is either granted probation without a pre-determined verdict, or the judge may find the defendant guilty, and temporarily suspend the sentence while the accused person is on probation. If the accused person satisfies the judge, then s/he may not be sent to prison to finish the sentence or given a new sentence based on the probation violation and initial crime.

Parole means the restrictive release of prisoners or offenders in certain cases before the conclusion of the term of announced confinement. The parolees spent the later stages of their judgment in the civic work after finishing a compulsory period of applicable sentence in prison. In compliance to the recommendation made by the National Judicial Policy Making Committee (NJPMC) in June 2009, all the four provinces have

⁶⁸<https://tribune.com.pk/story/1043366/the-neglected-probation-system>

established Parole Committees, which recommendation the Home Secretary the case to approve for parole.

In Pakistan, releases on probation have increased in recent years, particularly in cases of child offenders. However, it is mostly in cases such as narcotics where the state is the party. Cases in which a private party is a victim, the courts hesitate from granting probation in fear that the victim may take the law into its own hands and resort to revenge outside the court. During the consultations organized by SPARC under the project ‘Social and Economic Rehabilitation Support to Young People in Prisons and under Probation in Sindh Khyber Pakhtunkhwa’, professionals from the field pointed out various problems at different levels of Probation and Parole System in Pakistan which are hindering the process of administration of justice.

These include:

- I. Lack of adequate resources
 - a. Shortage of professional Probation/Parole officers
 - b. Low monetary and career rewards in comparison to the higher workload
 - c. Absence of modern means of communication required for multi-agency and community rehabilitation work
 - d. Unavailability of criminal law specialists, criminologists and social workers on the penal of R&P departments
 - e. Absence of Research and Development wings in R&P departments and Home Ministries of the Provinces
- II. Low technical capacities of staff
 - f. Lack of understanding on rights of juvenile offenders and rehabilitation techniques
 - g. Lack of proper training, motivation, problem solving skills and modern innovative techniques among Probation/Parole officers.

- h. Inability to ensure active participation and engagement of family, friends and community of the offenders released on Probation or Parole.
- III. Not utilizing parole system for juvenile offenders

On August 2, 2021, the Khyber Pakhtunkhwa Assembly passed the **KP Probation and Parole Bill, 2021**⁶⁹, in order to effectively utilize the system to reduce the burden on criminal justice system in the province. Some of the salient feature of the bill includes:

- I. Enhanced role of Directorate of Reclamation and Probation
- II. Pre-Sentencing report filed by probation officer which will provide complete details of the probationer and assist the court in deciding probation for him/her
- III. In contrast to the Probation of Offenders Ordinance, 1960⁷⁰, where probation options were restricted, the current bill allows the courts to grant probation to male and female convicts sentenced under any law
- IV. Convicts can be granted probation by court for 6 months to 3 years in accord to the passed judgment and its stated circumstances.
- V. The passed law also allows the courts grant probation considering several options such as age, gender or mental and physical health of the convict.
- VI. The law also calls for formation of a parole committee at the provincial level and a parole sub-committee in every prison. The sub-committee upon confirmation that a convict has shown good conduct can recommend to the parole committee to release him.

⁶⁹<https://www.pakp.gov.pk/wp-content/uploads/The-Khyber-Pakhtunkhwa-Probation-and-Parole-Bill-2021.pdf>

⁷⁰<https://balochistan.gov.pk/wp-content/uploads/2019/08/THE-PROBATION-OF-OFFENDERS-ORDINANCE-1960.doc.pdf>

Amendments in Juvenile Justice System Act (JJSA) 2018

In other moves, Pakistan made some changes in Juvenile Justice System Act (JJSA) 2018⁷¹ through Juvenile Justice System (Amendment) Bill 2021⁷². The changes made are as follows⁷³:

Amendments made by Juvenile Justice System (Amendment) Bill 2021			
S. #	Section of JJSA 2018	Text before Amendment	Text after Amendment
1	Section 2 (n)	Government	Division concerned or relevant department of provincial governments
2	Section 3 (3)	Government	Division concerned or relevant department of provincial governments
3	Section 4 (1) Section 4 (3)	Government	Prime Minister
4	Section 10	Government	Law and Justice Division
5	Section 20 (1)	Government	Interior Division in consultation with concerned division
6	Section 20 (2) Section 20 (3)	Government	Interior Division

⁷¹<https://pakistanlaw.pk/statutes/3683/juvenile-justice-system-act-2018>

⁷²<https://www.dawn.com/news/1660433/senate-body-approves-three-child-rights-bills>

⁷³[http://www.mohr.gov.pk/SiteImage/Misc/files/The%20Juvenile%20Justice%20System%20\(Amendment\)%20Bill%2c%202021.pdf](http://www.mohr.gov.pk/SiteImage/Misc/files/The%20Juvenile%20Justice%20System%20(Amendment)%20Bill%2c%202021.pdf)

7	Section 21	Government	Interior Division
8	Section 22	Government	Division concerned or relevant department of provincial governments

SPARC’s Efforts for Juvenile and Young Prisoners

The Society for the protection of the rights of the child (SPARC) is among the pioneer organizations in Pakistan that highlighted the problems met by youth in jails and operated in the direction of establishing humanitarian and reconstructive environments for them. Since 1992, SPARC has strived for refining prison environments and effectively led rehabilitative projects with juvenile, young and adult inmates across the country. SPARC has also been actively involved in bringing prisoners related legislations in conformity with Pakistan’s international and national commitments and enhanced capacities of police and prison staff to enable them to deal prisons with caring behaviour.

In 2021, SPARC in support of United Nations Development Programme (UNDP) Pakistan, delivered project titled ‘Social and Economic Rehabilitation Support to Young People in Prisons and Under Probation in Sindh and Khyber Pakhtunkhwa’. This project is part of UNDP’s Kamyab Jawan - Youth Education, Employment and Empowerment Programme (YEEEP), which is a holistic effort in collaboration Government of Pakistan, to provide empowerment opportunities for youth in poverty and conflict situations to turn their lives around and make positive contributions towards development of the society.

In Karachi, the project with additional support of Sindh Education Foundation provided social, economic reintegration and rehabilitation support to 55 young prisoners in District Prison Malir and Central

Prison for Women Karachi. The inmates were also provided career guidance, basic education and psychological counseling. In District Prison Malir 35 male inmates were engaged in motorcycle mechanic course whereas in Central Prison for Women 20 female inmates were engaged in Mehndi Design course.

In Khyber Pakhtunkhwa, SPARC engaged 44 recently released youth offenders in motorcycle mechanic course to minimize their chances of relapsing in crime. 18 ex-offenders were trained in Abbottabad District, 16 in Swat district and 10 in Nowshera district. The inmates were also provided career guidance, and psychological counseling.

In both provinces, SPARC also conducted capacity building trainings for prisons and probation staff directly engaged with the young prisoners. In order to supplement the intervention, SPARC engaged business sector to advocate for the need of providing employment opportunities to trained inmates to reduce the ratio of repeated offenses.

Recommendations

The following selected recommendations on the Juvenile Justice System are presented as being needs for priority focus for all the stakeholders:

Improving Support Mechanisms

- Federal and Provincial Governments need to ensure swift establishment and adequate strengthening of Juvenile Courts, Juvenile Justice Committees, and Juvenile Rehabilitation Centers and observation homes as per the instructions of Juvenile Justice System Act (JJSA) 2018.
- The ongoing prisons expansion efforts should be carried out on time.
- Juveniles under no circumstance must be confined together with adult prisoners.
- Adequate resource allocation must be made to ensure that all juvenile offenders get free and satisfactory legal aid. Resources for assurance fee (fine imposed by the court) should also be kept to enable the needy offenders get bail.

- Provincial and Federal Governments should ensure that up-to-date (monthly basis) statistics of male and female juveniles in imprisonment and probation are available on websites of relevant departments.

Enhancing Investigative Procedures

In Pakistan, due to prevailing corruption the medical examinations can be fudged however having age identification documents of over / under the real age, is also a common practice. Therefore federal and provincial governments and courts must come up effective age determination mechanism, using a combination of document verification and modern scientific tools, e.g. DNA and bone density tests.

Building Capacities of Justice Providers

Rigorous trainings and refreshers on laws, child rights and investigative techniques, are required for staff of Juvenile Courts, police, probation, prosecution, investigation, detention and prison staff, as well as medico-legal officers, psychologists and social workers. The training shouldn't be done on decades old 'classroom style' techniques and instead utilize modern case study and activity-based learning which is measurable and reproducible.

Improving Rehabilitation and Reintegration Programs

The prisons should play their role of 'correctional facilities' by setting up workshops to impart vocational training for juvenile offenders.

Instead of 'keeping prisoners busy' the aim of vocational training should be to impart market-oriented skills which can enable the prisoners to find respectable income generation opportunities after their release to break free from the cycle of crime.

Along with vocational training, the prisoners must be provided professional psychosocial counseling, mental, spiritual and religious healing exercises, and sport and art therapy classes to improve the rehabilitation process.

Role of Probation and Parole

The Directorate of Reclamation and Probation should be strengthened through provision of adequate financial, human and technological resources in order to allow release of the maximum number of juvenile prisoners on probation.

Female probation officers should be appointed to provide juvenile girls the benefits of probation system.

Parole system should be utilized for juvenile offenders.

Epidemic / Pandemic Response

Interdepartmental coordination must be strengthened to ensure that prisoners especially juvenile offenders don't fall victim to infectious diseases due to overcrowding, lack of treatment and slow response due to medical protocols.

Non-Discrimination

All forms of gender, racial, physical, ethnic, religious discrimination should be strictly discouraged and punished whether it involves juveniles in conflict or contact with the law or the duty bearers.

Role of Civil Society

Civil Society should be provided its due place in Juvenile Justice Committees and Prison Reform Committees.

The capacity building and psychological support component must be strengthened through collaboration with civil society organizations.

Civil Society Organizations should lend their strengths to prison departments, policies and judiciary to improve the rehabilitative and reintegration environment for juvenile offenders.

Role of Media

The media must ensure that ethical standards of reporting are following while reporting on juvenile offenders' cases, including conserving their privacy and dignity.

Ensure the independent and regular monitoring of the facilities/centres where child offenders are imprisoned, in order

to track, investigate and report on the environments of the facilities and on the status of the children housed in them.

The print and electronic media needs to highlight the background context and suffering of juvenile offenders, as well as to promote opportunities for their rehabilitation and reintegration back into their community and society.