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Juvenile Justice System in Pakistan

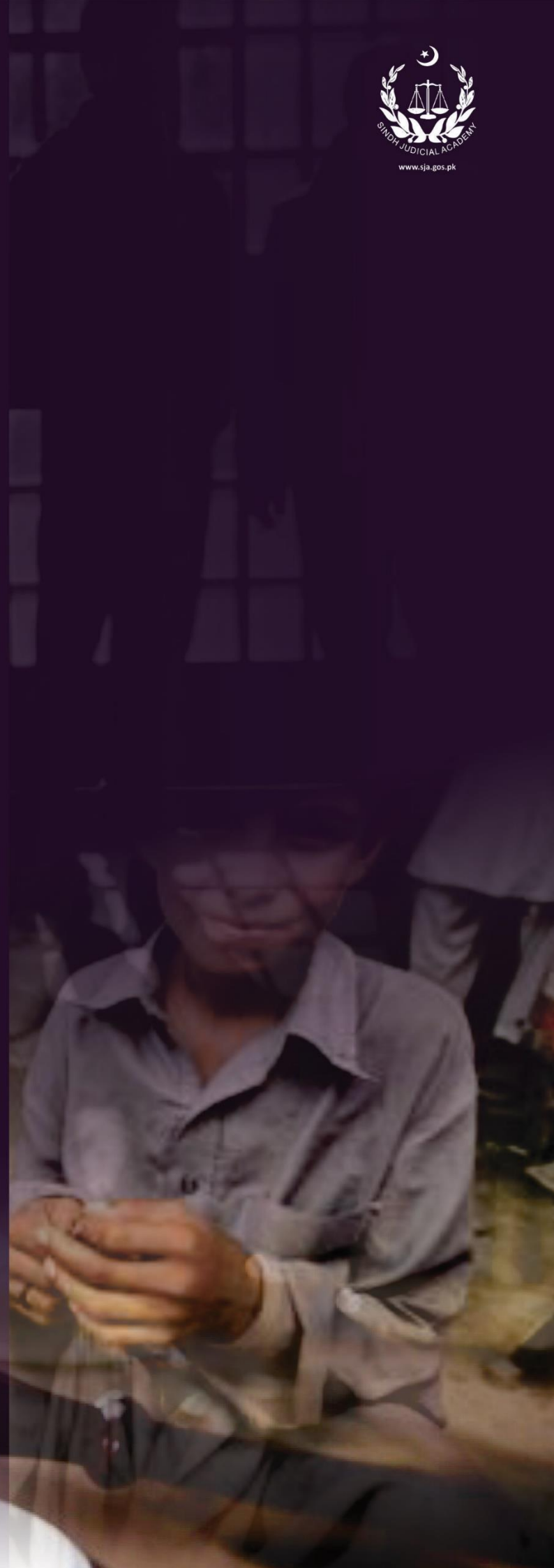
Guidelines/Toolkit for
Stakeholders - Investigators
Prosecutors - Judges
Probation Officers
Social Welfare Officers
Prison Jail Officials

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Tool Kit to Implement The Juvenile Justice System Act, 2018

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Dedicate to my family as they encouraged to denote time towards developing this toolki

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Objectives of Developing Guidelines

The Juvenile Justice System Act 2018 (JJSA) was enacted on 22nd May, 2018 with the object to provide an effective criminal justice system and enable social reintegration for juvenile.

It has been noticed by the Academy that children below the age of 18 are not dealt properly and the stakeholders are not well conversant with the procedure to be observed while dealing with categories of children both in contact with law and conflict with law. The Child Protection Authority Act, 2011 is one of the important legislations that discuss role of the Social Welfare Department in the case of children who are in contact with law and in conflict with law.

JJSA prescribes a time limit for disposal of juvenile cases. This document contains guidelines for the stakeholders that may be helpful for them while dealing with juvenile. The academy has attempted to design a training program for all stakeholders on these two legislations i.e. Juvenile Justice System Act (JJSA) 2018 and Sindh Child Protection Authority Act (SCPA)2011. The toolkit so developed by SJA will be used during the training process. It shall also be shared with the Departments of Home, Law, Social Welfare, IG Police office and Prosecutor General Office. This document also contains a few recommendations that may be considered by the administrative authorities while playing their role of monitoring in respect of dealing with children and during detention.

Efforts of Mr. Muhammad Shahid Shafiq and Iqbal Ahmed Detho along with research associates are appreciated, as they remained dedicated while developing these guidelines in the toolkit. I believe that the guidelines will be followed and observed by the stakeholders and shall supplement and facilitate effective functioning of the juvenile justice system.

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About the Authors

Muhammad Shahid Shafiq, District & Sessions Judge, started his judicial career in 1993 as a Civil Judge & Judicial Magistrate. He worked for High Court of Sindh as Research Officer and Additional Registrar. He was nominated as the Secretary Rules Committee and Member Board of Governors of Sindh Judicial Academy by the Chief Justice, High Court of Sindh. He headed Access to Justice Program in the Province of Sindh. He has presided a Juvenile Court and is inclined towards working for children, *while also having* presided Banking Court and Anti-terrorism Court. Moreover, he has arranged a number of conferences and training programs for justice sector stakeholders. He is master trainer and has undergone training of trainers (ToT). He is also the author of a number of legislative documents and has presented such papers at many national and international forums. He has also proposed amendments in many legislative documents and drafted a law on 'Illegal Dispossession Act'.

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Introduction

Children are the most vulnerable segment of any society. Many children in Pakistan continue to suffer from discrimination, economic exploitation and violence, along with physical and sexual abuse. Children are victims of unacceptable forms of violence, neglect and abuse in homes, communities, streets, and even in schools as well as places of custody such as detention centres, shelters and jails. The quality healthcare, education, protection, participation and access to rights are not equally accessible to all children. A large number of children live in abject poverty with limited social protection mechanisms in place to support them. Some children are at higher risk in Pakistan as compared to others, such as children detained due to conflict with law, children with disabilities, children without parental care, and those living in areas affected by internal conflict and terrorism related issues.

Despite Pakistan's ratification of the UN Convention on the Rights of Child (UNCRC) in November, 1990 that provides the basic framework needed for Juvenile Justice System particularly in articles 37, 39 and 40. The situation of children remains precarious all over Pakistan. Children's rights have long been a neglected issue in the arena of policymaking and institutional development. According to international standards, children should not be put through the same legal process as adults who have committed crimes or infringed the law. While there has been progress in legislation related to child rights and in the arena of Juvenile Justice when Juvenile Justice System Ordinance was promulgated on 1st July 2000 as requirement of UNCRC, Pakistan still lags behind according to international standards. This is a result of poor implementation of existing child protection laws, procedures and institutions as well as a general lack of awareness on key issues of children by all relevant stakeholders.

The passage of 18th Constitutional Amendment in 2010 brought several changes to the Constitution that resulted in the establishment and functioning of child rights mechanisms at provincial and district levels. The Provinces have taken important steps by introducing policy and legal reforms for child rights and child protection, which were positive indeed. The Sindh Province has also passed remarkable legislation, aimed at protecting the rights of child, particularly Sindh Child Protection Authority Act, 2011. However, the practical implementation of legislation, including ensuring access to child-friendly justice by establishing exclusive Juvenile Courts, is frequently constrained by a lack of capacity building of relevant stakeholders i.e. Police, Prison Staff working with and for children, as well as the poor will of the government and other duty bearers. Apart from lack of capacity of respective institutions, there is a general tendency to regard the juvenile offenders as criminals, resulting in failure of legal system to recognize its role as guardians of an imprisoned child.

Federal government enacted the Juvenile Justice System Act, 2018 on May 22, 2018, bringing the law into conformity with modern concepts of diversion and reformation by repealing the erstwhile JJSO 2000 that had earlier been struck down by the Lahore High Court in 2004 for substantiative and procedural defects.

This handbook/toolkit is not only a prescriptive document but provides ideas, tools and guidance for the practitioners which covers the chapters on the basic concepts and terms, comparison of JJSO and JJS Act, role of stakeholders and their guiding procedures, practical exercises, and coordinating structures existing protection mechanisms and international standards regarding Juvenile Justice System.

Acronyms

<p>ASI Assistant sub-Inspector</p> <p>CAT Convention against Torture</p> <p>CNIC Computerized National Identity Card</p> <p>CPU Child Protection Unit</p> <p>Cr.PC Criminal Procedure Code</p> <p>CRC Convention on the Rights of Child</p> <p>CSO Civil Society Organizations</p> <p>D&SJ District &Session Judge</p> <p>DG Director General</p> <p>DIG Deputy Inspector General</p> <p>DLEC District Legal Empowerment Committee</p> <p>DRP Directorate of Reclamation and Probation</p> <p>FIR First Information Report</p> <p>ICCPR International Covenant on Civil and Political Rights</p> <p>IG Inspector General</p>	<p>IO Investigation Officer</p> <p>JJSA Juvenile Justice System Act</p> <p>JJSO Juvenile Justice System Ordinance</p> <p>JSC Juvenile Justice committee</p> <p>M&E Monitoring and Evaluation</p> <p>MIT Member Inspection Team</p> <p>MLO Medico-legal Officer</p> <p>NADRA National Database and Registration Authority</p> <p>NGO Non-Governmental Organizations</p> <p>OIC Officer -in-charge</p> <p>PPC Pakistan Penal Code</p> <p>PPO Probation of Offenders Ordinance</p> <p>SCA Sindh Children Act</p> <p>SCMOO Small Causes Minor Offenses Ordinance</p> <p>SCMRA Sindh Child Marriage Restraint Act</p>	<p>SCPA Sindh Child Protection Authority Act</p> <p>SDPO Sub-Divisional Police Officer</p> <p>SHC Sindh High Court</p> <p>SHO Station House Officer</p> <p>SIO Senior Investigation Officer</p> <p>SIR Social Investigation Report</p> <p>SJA Sindh Judicial Academy</p> <p>SOP Standard Operating Procedures</p> <p>SP Superintendent of Police</p> <p>SWD Social Welfare Department</p> <p>UDHR Universal Declaration of Human Rights</p> <p>UN United Nations</p> <p>WMLO Woman Medical Legal Officer</p> <p>YOIS Youthful Offenders Industrial School</p>
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Juvenile justice system-child rights concepts, terms and phrases

Children in contact with law

Children who may be in contact with the justice system or support system institutions for other reasons such as custody, protection, care, observation, psychosocial support for rehabilitation, child parties to justice process for seeking inheritance, maintenance or succession.

Children in conflict with law

Children who have committed an offense or have been accused of committing one, or are recognised as having infringed the penal law.

Children who are victims, witnesses or otherwise affected by the consequences of crime.

1.1. Defining Child

A Child is defined in different ways in various National and Provincial laws. Simultaneously, a child means a person who has not attained the age of 18 years according to the Sindh Child Protection Authority (SCPA), Act 2011¹ and Sindh Child Marriage Restraint (SCMRA) Act 2013². However, Sindh Children Act 1955, under section 5 elaborates a child as a person who has not attained the age of 16 years at the time of initiation of any proceeding against him, which has not been repealed by Sindh Child Protection Authority Act 2011 and still applied in field for child custody related matters by elements of criminal justice system such as Remand Home established under section 26 of Sindh Children Act, 1955 and Remand Home Rules 2011. The Constitution of Pakistan in Article 11(3) set the age of child labour as below 14 years, while Article 25-A of the constitution describes the age from 5 to 16 years, which holds state responsible for provision of free and compulsory education³. According to Article 1 of the UN Convention on the Rights of the Child (UNCRC), a child refers to every human being below the age of eighteen years.⁴

1.2. Spectrum of Child Age in Various Laws

¹SCPA Act 2011 {Sec 2(g)}

²SCMRA 2013 (2{A})

³<http://www.lawsofpakistan.com/fundamental-rights-in-pakistan-constitution-of-1973/>

⁴<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

The age of child is not decided in uniform manner despite having a number of international obligations, commitments and ratification of conventions and treaties. Equally the legal framework i.e. constitutional provisions related to children, general laws and special laws vary while defining child. The uniformity in age is a long way from being achieved due to different legal provisions and interpretations. The Pakistan Penal Code (PPC) in Section 82 states 'nothing is an offence which is done by a child under ten years of age.' This age was raised from 7 years to the internationally acceptable level⁵ of 10 years. PPC Section 83 defines children from 10 to 14 years for determining the mature understanding of the Offender by Magistrate known as "Doli-incapax" meaning there by incapacity of committing an offense. However, under section 3 of Majority Act, 1875, the benchmark age of majority is at 18 years. Eligibility for getting Computerized National Identity Card (CNIC) and enrolment in Electoral Roll under Election Act 2017 is 18 years as well. The Muslim personal laws and Hudood laws recognize Child for boy at 18 years and girl at the age of 16 or when she has attained puberty. The age for Child is also mentioned in the Sindh Right of Children to Free and Compulsory Education Act 2013⁶ as 18 years. The Sindh Prohibition of Employment of Children Act 2017 defines the Child as below 14 years⁷. The Sindh Orphanages (Dar-ul-Itfal)⁸ Act 1976 defines "Orphan" as any child under the age of 18 years⁹. Thus as already discussed, The Sindh Child Protection Authority Act 2011¹⁰, The Sindh Child Marriages Restraint Act 2013¹¹, The Sindh Prohibition of Corporal Punishment Act-2016¹² and United Nations Convention on the Rights of the Child (UNCRC) have consensus on the age of child; the child shall be considered below 18 years.

1.3. Juvenile

A Juvenile is a person, who at the time of commission of an offence has not attained the age of eighteen years as per Juvenile Justice System (JJSA) Act 2018¹³. Section 29-B of Criminal Procedure Code 1898, sets the age of Juvenile at 15 years for trial by Judicial Magistrate in line with section 8(1) of the Reformatory Schools Act 1897. It is pertinent to mention that special laws override the general laws as rule of subsidiarity. Furthermore, section 23 of JJSA 2018 has overriding effect over other laws. According to UN Standard Minimum Rules for the Administration of Juvenile Justice known as "Beijing Rules 1985", a Juvenile is a child or young person, who under the respective legal system, may be dealt with for an offence in a manner which is different from an adult.¹⁴ Hence, if a child comes into conflict with law, he or she can be termed as "Juvenile".

⁵Criminal Law (2nd amend) 2016

⁶Sindh Right of Children to Free and Compulsory Education Act 2013 {Section 2 (b)}.

⁷The Sindh Prohibition of Employment of Children Act 2017 {Section 2(ii)}

⁸The word "Orphanage" replaced by "Dar-ul-Itfal" by ordinance in 1984.

⁹The Sindh Orphanages (Supervision and Control) Act-1976 {Section 2(j)}

¹⁰The Sindh Child Protection Authority Act 2011 (SCPA Act 2011) {Sec 2(g)}

¹¹Sindh Child Marriage Restraint Act SCMRA 2013 (2{A})

¹²The Sindh Prohibition of Corporal Punishment Act 2016 {Section 2 (b)}

¹³JJSA {Section 2(b)}

¹⁴Beijing Rules 1985 {Section 2.2(a)}

1.4. Juvenile Offender

According to section 2(l) of JJSA 2018, "juvenile offender" means a child who is alleged to have committed or has been found to have committed an offence;

Rule 280 of the chapter 12 of the Prison Rules 1978 defines "Juvenile offender", in case of male, as a prisoner who at the time of conviction is under 18 years of age and includes "youthful offender".

According to UN Standard Minimum Rules for the Administration of Juvenile Justice 'Beijing Rules 1985' section 2.2 (c), a Juvenile Offender is a child or young person who is alleged to have committed or has been found to have committed an offence.

1.5. Youthful Offender

According to section 5 of Sindh Children Act 1955, a child is defined as below 16 years and for custody purposes can be sent to Remand Home. Whereas a child above 16 years till 25 years is considered a "Youthful Offender" and sent to "Youthful Offenders Industrial School"(YOIS) under section 25 of the Sindh Children Act 1955.

"Youthful Offender" means a Juvenile who, when convicted, was 18 years of age (Rule 280 of Chapter 12 of the Prison Rules 1978).

1.6. Diversion

It is defined in Section 2(d) & 9, 10(4)(a) of JJSA 2018 as 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. without resorting to trial and sentencing.

1.7. Restorative Justice

It is a concept focussing on reparation and rehabilitation instead of resorting to retribution and punitive justice. In Juvenile Justice System Act 2018 Section 9 (Disposal of cases through Diversion) elaborates in subsection (4) different modes of diversion, including reparation and rehabilitation, and in subsection (5) makes the minor and major offenses compoundable hence adopting the Restorative Justice approach.

It is a way to promote the "Diversion" of children from imprisonment and other institutionalised responses to offending behaviour. Juvenile Justice System support solutions that encourage the offenders to recompense and apologise to the victim. It is a process to empower victims of crime and make wrongdoers accountable, using different modes such as victim offender mediation, family meetings and restitution¹⁵.

¹⁵Nicola Maccabean, "Juvenile Justice Toolkit " SPARC (2007) p.74

1.8. Probation

Probation also denotes the release of a convicted offender by a court under court-imposed conditions for a specified period during which imposition or execution of a sentence is suspended. Probation officer monitors the conditions imposed by court.

1.9. Probation Officer

JISA 2018 defines "probation officer" as a person appointed under the Probation of Offenders Ordinance, 1960 (XLV of 1960); and JISA section 5(b) obligates Police to "... inform the concerned probation officer to enable him to obtain such information about the juvenile and other material circumstances which may be of assistance to the Juvenile Court for making inquiry". Furthermore, section 14 of JISA underlines the duties of Probation Officer to assist and prepare a report on direction of the Juvenile Court within such time as may be directed by the Court at any stage regarding juvenile's character, educational, social and moral background; juvenile's admission of committing an offence, if any, has been made voluntarily and with free consent; any evidence that the juvenile actually committed the offence; all legal and appropriate assistance provided at all levels to juvenile for his/her understanding, concept and consequences, even to the child's family and guardian; steps taken for mediation or compromise with the complainant or victim and possibility of settlement; and possibility of sending the juvenile to Juvenile Rehabilitation Centre or release on probation.

1.10. Parole

It is the conditional release of a prisoner after serving one-third part of his or her sentence. This system intends to terminate needless imprisonment and orient a parole towards reintegrating in the community. The decision to grant parole is the responsibility of the 'Reclamation and Probation Directorate ' under Home Department. Parole is an executive function and violations of conditions of parole leads to revocation and re-imprisonment.

In the parole system, a parolee may get assistance from the Probation and Parole Officer or Parole Officer in problems concerning employment, residence, etc. It is expected that he or she will be able to restore to his/her community under supervision so that he or she is not a threat to the community and does not commit an offence again.

1.11. Parole Officer

The Parole Officer is appointed under the Probation of Offenders Ordinance (POO)1960 and in all provinces of Pakistan, Probation Officers also perform the duties of Parole Officers but are guided by Good Conduct Prisoners Probation Release Act1926 and Rules 2001 of Government of Sindh. Section 15(c)(d) of JISA 2018 also mentions release on probation for good conduct and submission of report.

1.12. Juvenile Rehabilitation Centre

JJSA section 2 (k) defines Juvenile Rehabilitation Centre as 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 centres, dar-ul-amaan and women crises centres established by the Government or by voluntary organizations certified by the Government.

The functions outlined for "Juvenile Rehabilitation Centre" in JJSA is analogous to functions of the institution of Remand Home as per Section 26 of Sindh Children Act 1955 and can cater to such need if Remand Homes are established in each district as per Section 3 of Remand Home Rules 2011.

Accordingly, Juvenile is not generally sentenced to imprisonment but may be sentenced to detention to young offenders 'institution i.e. Youthful Offenders Industrial School (YOIS) commonly known as "Juvenile Jail" as per section 25 of Sindh Children Act 1955 and in section 26 of Sindh Children Act 1955 "Remand Home" caters to juvenile below the age of 16 years

Section 16(2) of JJSA 2018 clearly says that no Juvenile Offender shall be committed to Prison, meaning that they should be kept separate from adults even in the cases where no abovementioned facilities exist.

In the Jail Manual 1978, Rule 294 provides for separation of Juveniles "in every prison which is provided with separate juvenile ward, such ward should be cellular for the purpose of separation of prisoner at night. If suitable ward does not exist, juvenile prisoners should be confined in cell at night".

1.13. Observation Home

JJSA section 2 defines "Observation Home" as 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; this means such an observation home must be distinguished from Police lock-up and has to be away from police station.

In the given situation, "Woman & Children Police Station" existing at district level can be declared as "Observation Home" where such separate facilities be upgraded.

As discussed above section 2(f) of Remand Home rules 2011 defines "Remand Home" as "place of safety to receive temporarily inmate for custody, care, protection, observation and treatment".

As per section 20(2) of JJSA 2018, Government may certify an "Observation Home" or a "Juvenile Rehabilitation Centre" managed or controlled by non-governmental organization

for reception of Juveniles. So Provincial Government can address these gaps while formulating the rules of implantation of the JSA2018. More importantly, Sindh Child Protection Authority Act, 2011 section 10 (c) (d) (e) (f) (g) in its functions already covers the mandate of certification of institutions for child protection.

1.14. Protection

A legal or other formal measure intended to preserve the rights. Protection encompasses all activities aimed at ensuring full respect for the rights of the individual in accordance with human rights law. States have the primary responsibility to protect people within their jurisdiction.

1.15. Child Protection

Child protection is “preventing and responding to violence, exploitation, neglect and abuse against children.” Child Protection is the term used to describe the responsibilities and activities undertaken to prevent or to stop children from being abused or ill-treated. In more detail, this means protecting children from specific acts of intentional or unintentional harm that may harm them physically, emotionally, sexually or by neglect.

1.16. Violence

The definition of violence draws in from Article 19 of the Convention on the Rights of the Child as “all forms of physical or mental violence, injury and abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse¹⁶”. Domestic Violence (Prevention and Protection) Act 2013 of Sindh defines domestic violence in section 5 as including, but not limited to, all acts of gender-based and other physical or psychological abuse committed by a respondent against women, children or other vulnerable persons, with whom the respondent is or has been in a domestic relationship. This definition encompasses criminal assault, criminal force, harassment, hurt as defined in Pakistan Penal Code but creates new definition such as emotional, psychological and verbal abuse and economic abuse as forms of violence¹⁷.

1.17. Gender

Gender refers to the social attributes and opportunities associated with being male and female and the relationship between women and men, girls and boys, as well as the relations between women and those between men. These attributes, opportunities and relationships are socially constructed and are learned through socialization processes.

1.18. Vulnerable

¹⁶ <https://www.cypcs.org.uk/rights/uncrcarticles/article-19>

¹⁷ Sindh Domestic Violence (Prevention & Protection) Act 2013 {Sec. 5(f)}

A vulnerable is one who is capable of being easily hurt, injured or harmed physically, mentally or emotionally. The Sindh Domestic Violence (Prevention & Protection) Act 2013 defines the term as a person vulnerable due to old age, mental illness, handicap, physical disability or for other special reason¹⁸

1.19. Protection v/s Prevention

In rights or liberal model, when we say that the child is a right holder, it means he has autonomy as an individual person. The children are born with rights that they have simply by virtue of being human. While in protection model, a child needs protection.

Basically, when we are talking about the protection issue, it falls in the next step of safeguarding the child, based and developed on response mechanism. In protection, once any uninvited or unwanted issue happens with the child that affects the child or harms them physically, emotionally and mentally, the next step is known as protection. The protection measures can be undertaken by providing relief to the child through a referral mechanism with concerned departments through child protection units.

Prevention approach is based on any kind of protective measures that are to be taken in order to avoid any mishaps or protection issue with the child on earlier basis by carefully calculating and observing the situation.

1.20. Juvenile Court

A juvenile court is established under the section 4 of JJSA with exclusive jurisdiction to try cases in which a child under 18 years is accused of commission of an offence. The proceedings of the court are not open to the general public and access is restricted and determined by the Judge.

¹⁸ Sindh Domestic Violence (Prevention & Protection) Act 2013 {Sec. 2-1(s)}

National laws related to juvenile justice

1.1 The Constitution of Pakistan 1973

Article 4 of the Constitution of Pakistan recognises the right of a citizen to be dealt with in accordance with law. Persons dealing with children can only implement this important obligation if they know what the law is.

Article 9 requires that no person shall be deprived of their life or liberty and will be treated in accordance with law. At the time of detaining a person, a police official or elements of criminal Justice system must keep in mind when they are required by the law to release him or her on bail failing which they will be violating the Constitution of Pakistan.

Article 10 provides safeguards as to arrest and detention. No person who is arrested shall be detained in custody without being informed, as soon as possible, of the grounds for such arrest, nor shall they be denied the right to consult and be defended by a legal practitioner of their choice. The arrested person shall be produced before a magistrate within a period of twenty-four hours of such arrest, and no such person shall be detained in custody beyond that period without the authority of a magistrate.

Article 10-A also provides right to fair trial that includes right to legal counsel at state expense in the case of deserving litigant. Particularly in the case of victims or accused, this right is also provided in section 3 of Juvenile Justice System Act, 2018.

Article 11(3) of Pakistan's Constitution prohibits the employment of children below the age of 14 years in any factory, mine or any other hazardous employment. Though this article is not related to Juvenile Justice but refers to protection and child in contact with law.

Article 25(3) allows the State to make special provisions for the protection of children and JJS is manifestation of such provision.

The principle of Policy or Policy directives enumerates the following constitutional provisions:
Article 35: State is responsible for protecting the marriage, the family, the mother and the child.

Article 37(e): The State shall make provisions of securing just and human conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment.

Article 38: Promotion of social and economic well-being of the people which includes children.

1.2 The Sindh Children Act, 1955

It would be appropriate to mention here that although certain laws including Sindh Child Protection Authority Act 2011 and JJSA 2018 are relatively new laws but as early as 1955 the Sindh Children Act (SCA) attempted to provide protection to juvenile offenders. This law is still a good law and has not been repealed.

In July 1955, Sindh province enacted the SCA, which is known as the juvenile justice and child protection law. From the juvenile perspective it lays down procedures to deal with children and from the child protection perspective provides rules and guidelines to save children from exploitation, abuse and victimization. It also sets punishments for those who abuse or exploit children. The most relevant provisions mentioned here:

The Act applies to children who are below the age of sixteen (section 5). It provides for the establishment of Juvenile Courts (section 7). The arresting officer may release a child charged with the commission of a non-bailable offence if they cannot be brought forthwith before a Court, if sufficient surety is available (section 64). Where a child is not so released, they may be detained by the police till their production before the court. Child should be kept separate from other offenders at police stations if necessary (Section 4(L)).

No child can be tried jointly with an adult (sections 9 & 10). An authorised police officer may bring before a juvenile court or a court authorized to exercise powers of a juvenile court the matter of a child who in his opinion has no home, is destitute or illegitimate, or is known to live with a prostitute, criminal or person with drinking habits, or is otherwise likely to fall into bad association, be exposed to moral danger or enter upon a life of crime (S.40). The court may commit the child to a certified school or to a fit person (S.45).

If the child is not released under section 64 of the SCA then the officer in charge of the police station will detain a child in proper manner and separate him from adults until that time child is brought before the court (Section 65);

Immediately after the arrest of the child, it shall be the duty of the police officer who arrested the child to inform the probation officer and the officer in charge of the remand home (Section 66 & 88);

Any police officer, not below the rank of ASI, may take to a "place of safety" any child in respect of whom there is reason to believe an offence has been, or is likely to be committed (section 78); safety place may include remand home or police station where proper arrangements are made for keeping children in custody separate from other offenders

(section 4 (L).There will be no proceedings and no order shall be passed against a child under the chapter VIII of the Pakistan Penal Code. Under this chapter, punishments are described for unlawful assembly (S.70).

When a child is appearing as a witness in any proceedings, the court may allow or order withdrawal from court of persons as it deems appropriate (this is done to protect his/her privacy) (Section.62).

Attendance of a parent or guardian during proceedings with respect to a child is required and can be enforced by the court. Legal practitioners are not required to appear, unless the court is of the opinion that such an appearance is in the public interest. Privacy of the child may be protected unless the court deems publishing of such a report to be in the interests of the child.

Furthermore, rights of child related to protection are enumerated in chapter VI of Sindh Children Act 1955 which deals with Special Offenses in respect of children (Sections 48-63) such as Section 48 Punishment for Cruelty to Children, Section 49 Employing Children for Begging, Section 51 Penalty for giving intoxicating liquor or dangerous drug to child, Section 56 Causing or encouraging seduction, Section 59 Exploitation of Child employees, etc. are all cognisable offenses except Section 61 Penalty for use of voluntary Home in contravention of Section 35.

Sindh Children Act, 1955 envisages institutions for the Children both in contact with law and Children in conflict with law such as Section 25 Youthful Offenders Industrial School (YOIS) which are commonly known as Juvenile Jail run by Prison Department and Section 26 Remand Home run by Directorate of Reclamation and Probation (DRP) under Home Department.

1.3 Criminal Procedure Code Provisions for Juvenile Offenders¹⁹

It is pertinent to mention here that it is not only through special laws like the SCA and the JJS that requires separate treatment of children by law. The Cr.P.C. also contained a section related to specially empowered courts to conduct trial of juvenile offenders.

Section 29-B: Jurisdiction of the case of juveniles: Any offence other than one punishable with death or transportation for life committed by any person who at the date when he appears or is brought before the Court is under the age of fifteen years may be tried by any judicial magistrate specially empowered by the Provincial Government to exercise the powers conferred by section 8(1) of the Reformatory Schools Act, 1897.

¹⁹Barrister Abdul Khaliq Shaikh, "Juvenile Justice System: Police Training Manual ", SPARC (2010) p.25

Section 169: If it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of accused to a magistrate, such officer, under section 196 of the Cr.P.C. can release the accused on his or her executing bond, with or without sureties. These two provisions of the criminal procedure are not child specific and are equally applicable to adult as well as juvenile offenders. A police officer dealing with the case of a juvenile can make use of these provisions on merits to release a juvenile where there is insufficient evidence to establish involvement of a juvenile in the offence.

1.4 Provisions for Juvenile Offenders in Pakistan Penal Code (1860)

A frequently referred statute by a police officer is the PPC 1860. There are certain provisions in the penal code related to juvenile offending. The PPC lays down provisions related to age of criminal liability or responsibility:

Section 82 PPC: Nothing is an offence that is committed by a child under the age of ten years.
Section 83 PPC: Act of a child above ten and under fourteen of immature understanding- nothing is an offence which is done by a child above ten years of age and under fourteen, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion.

It may be mentioned here that the PPC, although is a Major Act, is a general law for juveniles. The Juvenile Justice System Act, 2018 is a special law having overriding effect in Section 23. It is an established principle of law in the country that if there is any conflict between a general and special law, the special law will prevail.

Sections 8 of JJSA provides the procedure for age determination and whereas police rules 1934, 26.7 provides the mannerism for the documenting the identity of accused known as Hulo Form.

International laws and guidelines on juvenile justice system

1.1 United Nations Convention on the Rights of The Child (UNCRC)

The UNCRC 1989 is the most important and binding document that was ratified by Pakistani in 1990. It is a source of detailed guidelines pertaining to the rights of children. The following three Articles of the UNCRC provide guidelines for dealing with juvenile offenders:

- Article 3: 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.
- Article 4: States 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, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.
- Article 12(1): States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
 - (2) For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.
- Article 37: Under this article, a person below eighteen years of age:
 - Shall not be subject to torture or other cruel, inhuman or degrading treatment or punishment; neither capital punishment nor life imprisonment without possibility of release;
 - Shall not be deprived of his or her liberty unlawfully or arbitrarily;
 - If a child is arrested, then his or her detention or imprisonment shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
 - If a child is arrested, they shall be treated with humanity and respect and in a manner, which takes into account the needs of persons of his or her age;
 - Shall be kept separate from adults in the lock-ups or jails unless it is considered in the child's best interest
 - Shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
 - Shall have the right to prompt access to legal and other appropriate assistance on the expense of state;
 - Shall have the right to challenge the legality of the deprivation of his or her liberty before a court or other competent forum;
- Article 39: Under this article, a child has the right to rehabilitation and social integration of children victims of neglect, exploitation and abuse.
- Article 40: Under this article Government of Pakistan shall:

- Recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth;
- Seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular;
- Establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
- Design appropriate and desirable measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected; and
- Establish a variety of dispositions, such as care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programmes and other alternatives to institutional care available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Under this article a child has:

- The right to be presumed innocent until proven guilty according to law;
- The right to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense;
- The right to have his or her matter determined without delay by a competent independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
- The right to remain silent and not give testimony or confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
- The right to free assistance of an interpreter if the child cannot understand or speak the language used; and
- The right to his or her privacy fully respected at all stages of the proceedings.

Other Juvenile Justice Specific International Provisions

Besides Articles 37, 39 and 40 of the UNCRC, there are other international provisions that set rules and guidelines for dealing with juvenile delinquents and juvenile offenders at different stages from the time of arrest to dispositions in any institution. These are:

1.2 The United Nations Standard minimum rules for the administration of Juvenile Justice (the “Beijing rules”) 1985

- State parties shall endeavor to develop conditions that will ensure for the juvenile a meaningful life in the community and will foster a process of personal development and education that is as free from crime and delinquency as possible;
- State parties shall develop a comprehensive framework of social justice for all juveniles for the protection of the young and the maintenance of a peaceful order in society;
- These rules shall be applied to all juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status;
- A juvenile is a child or young person who will be dealt with for an offense in a manner which is different from an adult criminal system;
- The juvenile justice system shall focus on the well-being of the juvenile and any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offense;
 - Juveniles have basic procedural safeguards such as:
 - The right to be notified of the charges,
 - The right to be presumed innocent
 - The right to remain silent
 - The right to counsel
 - The right to the presence of a parent or guardian
 - The right to confront and cross-examine witnesses
 - The right to appeal to higher authority guaranteed at all stages of proceedings
 - The right to privacy at all stages of proceedings in order to avoid harm being caused to her or him by undue publicity or by the process of labelling. In principle, no information that may lead to the identification of a juvenile offender shall be published.
- Within the shortest time period, parents or guardian shall be immediately notified of arrest of their child;
- A judge or other competent official or body shall, without delay, consider the issue of release;
- Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case;
- Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority;
- Specialization within the Police: In order to best fulfill their functions, police officers who frequently or exclusively deal with juveniles or are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose;
- Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time;
- Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults;

- While in custody, juveniles shall receive care, protection and all necessary individual assistance -social, educational, vocational, psychological, medical and physical - that they may require in view of their age, sex and personality;
- The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely; capital punishment shall not be imposed for any crime committed by juveniles;
- Juvenile offenders shall not be subject to corporal punishment.

1.3 United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), 1990:

The Tokyo Rules provide a set of basic principles to promote the use of non-custodial measures and minimum safeguards for persons subject to alternatives to imprisonment the objective of Tokyo Rules is to promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, and also to promote among offenders a sense of responsibility towards society;

- It focuses on de-penalization and decriminalization;
- Member states, including Pakistan, will make serious efforts to ensure a proper balance between the rights of individual offenders, the rights of victims, and the concerns of society for public safety and crime prevention as well as take account of the observance of human rights, requirements of social justice and rehabilitation;
- Development of non-custodial measures will take place within the legal systems to provide other options, thus reducing the use of imprisonment;
- Application of non-custodial measures will consider the nature and gravity of the offence, personality and background of the offender, purpose of sentence, the rights of victim and protection of society, and will then proceed to avoid use of unnecessary imprisonment;
- Non-custodial measures can vary from pre-trial to post sentencing dispositions. The number and types of non-custodial measures available should be so determined that consistent sentencing remains possible;
- For custodial or non-custodial measures, consent of the offender is necessary;
- Non-custodial measures will be subject to application by the offender to competent authority; application will be reviewed on merits and circumstances;
- The police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender as appropriate and compatible with the legal system;
- Criteria or rules must be developed to discharge or determine the case proceedings;
- During trial or at the time of sentencing, the judge/magistrate may call upon social inquiry report (Social investigation Report) through a competent authority (Probation Officer);
- The inquiry report must include social information on the offender that is relevant to the person's pattern of offending and current offences as well as it must contain information and recommendations that are relevant to the sentencing procedure. The report shall be factual, objective and unbiased, with any expression of opinion clearly identified;

Sentence Disposition- Sentencing authorities may dispose of cases in the following ways:

- a) Verbal sanctions, such as admonition, reprimand and warning
- b) Conditional discharge
- c) Status penalties
- d) Economic sanctions and monetary penalties, such as fines and day-fines
- e) Confiscation or an expropriation order
- f) Restitution to the victim or a compensation order
- g) Suspended or deferred sentence
- h) Probation and judicial supervision
- i) A community service order
- j) Referral to an attendance center
- k) House arrest
- l) Any other mode of non-institutional treatment
- m) Some combination of the measures listed above

Post-sentencing dispositions may include:

- a) Furlough (a temporary leave from a prison) and half-way houses (recovery house for reintegration)
- b) Work or education release
- c) Various forms of parole
- d) Remission (reduction of prison sentence)
- e) Pardon

The state shall develop monitoring or supervisory mechanisms so that the chances of reoffending may be reduced and the offender may be assisted to reintegrate into society in a way that minimizes the likelihood of a return to crime.

Some of the abovementioned sentencing option may not be available in Pakistan but they have been included to give the trainers various alternatives to avoid imprisonment and emphasize the need to implement the principle of detention as a last resort rather than a norm.

These guidelines also demand to take measures for:

- Providing opportunities, particularly educational opportunities, to meet the varying needs of young person's specially those who are demonstrably endangered or at social risk and are in need of special care and protection;
- Safeguarding the well-being, development, rights and interests of all young persons;
- Raising awareness that, in the predominant opinion of experts, labeling a young person as "deviant", "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behavior by young persons.

- Ask for the use of community-based services and programmes for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should not be utilized as a means of last resort.

1.4 General Comment No 10 (2007): Children's Rights in Juvenile Justice²⁰

The General Comment says that all state parties including Government of Pakistan will:

- Implement measures for dealing with children in conflict with the law without resorting to judicial proceedings, and the use of deprivation of liberty only as a measure of last resort;
- Take measures to prevent children from coming into conflict with the law;
- Develop and implement a comprehensive Juvenile Justice policy to prevent and address juvenile delinquency; the policy must deal with the following core elements:
 - Prevention of juvenile delinquency;
 - Interventions without resorting to judicial proceedings and interventions in the context of judicial proceedings;
 - Minimum age of criminal responsibility and the upper age-limits for juvenile Justice;
 - Guarantees for a fair trial; and
 - Deprivation of liberty including pre-trial detention and post-trial incarceration.
 - Introduce alternative measures allowing for responses to juvenile delinquency without resorting to judicial procedures;
 - Promote, inter alia, the use of alternative measures such as diversion and restorative justice;
 - Take all necessary measures to ensure that all children in conflict with the law are treated equally without disparity and discrimination which may be the result of a lack of a consistent policy and involve vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, indigenous children, girl-child, children with disabilities and children who are repeatedly in conflict with the law;
 - Train all professionals involved in the administration of juvenile justice;
 - Measures for providing former child offenders with appropriate support and assistance in their efforts to reintegrate in society;
 - Do not criminalize children under the status offence such as vagrancy, truancy, runaways and other acts, which often are the result of psychological or socio-economic problems;
 - Abolish status offences which criminalizes children for certain acts;
 - Prevent further stigmatization, victimization and criminalization of young persons

²⁰This general comment is under review and draft has been shared with State Parties to be adopted by committee.

- under the status offences;
- Enact legislation to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person;
 - Implement child protective measures including effective support for parents and/or other caregivers and measures which address the root causes of this behaviour, for dealing with the issues of vagrancy, roaming the streets or runaways;
 - Consider the best interests of the child in all decisions taken within the context of the administration of juvenile justice;
 - Treat children differently from adults because they are different from adults in their physical and psychological development, and their emotional and educational needs; such differences constitute the basis for the lesser culpability of children in conflict with the law; these and other differences are the reasons for a separate juvenile justice system and require a different treatment for children;
 - Give preference to rehabilitation and restorative justice objectives in dealing with child offenders; the traditional objectives of criminal justice, such as repression/retribution, must be abolished or avoided;
 - Prohibit death penalty;
 - Use parole if awarded a life sentence; use of deprivation of liberty has very negative consequences for the child's harmonious development and seriously hampers their reintegration in society, therefore it should be the last resort;
 - Give freedom to the child to express their views freely in all matters affecting them throughout every stage of the process of juvenile justice;
 - Provide a set of fundamental principles for the treatment to be accorded to children in conflict with the law:
 - Treatment that is consistent with the child's sense of dignity and worth
 - Treatment that reinforces the child's respect for the human rights and freedoms of others
 - Treatment that takes into account the child's age and promotes the child's reintegration and the child's assuming a constructive role in society
 - Respect for the dignity of the child requires that all forms of violence in the treatment of children in conflict with the law must be prohibited and prevented
 - Take measures for the full and equal implementation of the rights to an adequate standard of living, to the highest attainable standard of health and access to health care, to education, to protection from all forms of physical or mental violence, Injury or abuse, and from economic or sexual exploitation, and to other appropriate services for the care or protection of children;
 - Ensure that the child's human rights and legal safeguards are thereby fully respected and protected;
 - Take measures to ensure that children are dealt with in a manner appropriate to

their well-being, and proportionate to both their circumstances and the offence committed. These should include care, guidance and supervision, counselling, probation, foster care, educational and training programmes, and other alternatives to institutional care;

These guidelines also demand to take measures for:

- Providing opportunities, particularly educational opportunities, to meet the varying needs of young person's specially those who are demonstrably endangered or at social risk and are in need of special care and protection;
- Safeguarding the well-being, development, rights and interests of all young persons;
- Raising awareness that, in the predominant opinion of experts, labeling a young person as "deviant", "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons.
- Ask for the use of community-based services and programmes for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should not be utilized as a means of last resort.

1.5 Other International Instruments

There are many other UN Instruments that entitle protection and guarantees to children such as the Universal Declaration of Human Rights (UDHR) 1948, the United Nations Code of Conduct for Law Enforcement Officials 1979, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) 1984, and UN's Basic Principles on the Use of Force and Firearms 1990.

These include a broad range of guarantees, addressing virtually every aspect of human life and human interaction. Police officers dealing with children, as victims of crimes or as offenders, should be aware of the basic rights guaranteed to human beings.

Among the main rights guaranteed to all human beings are:

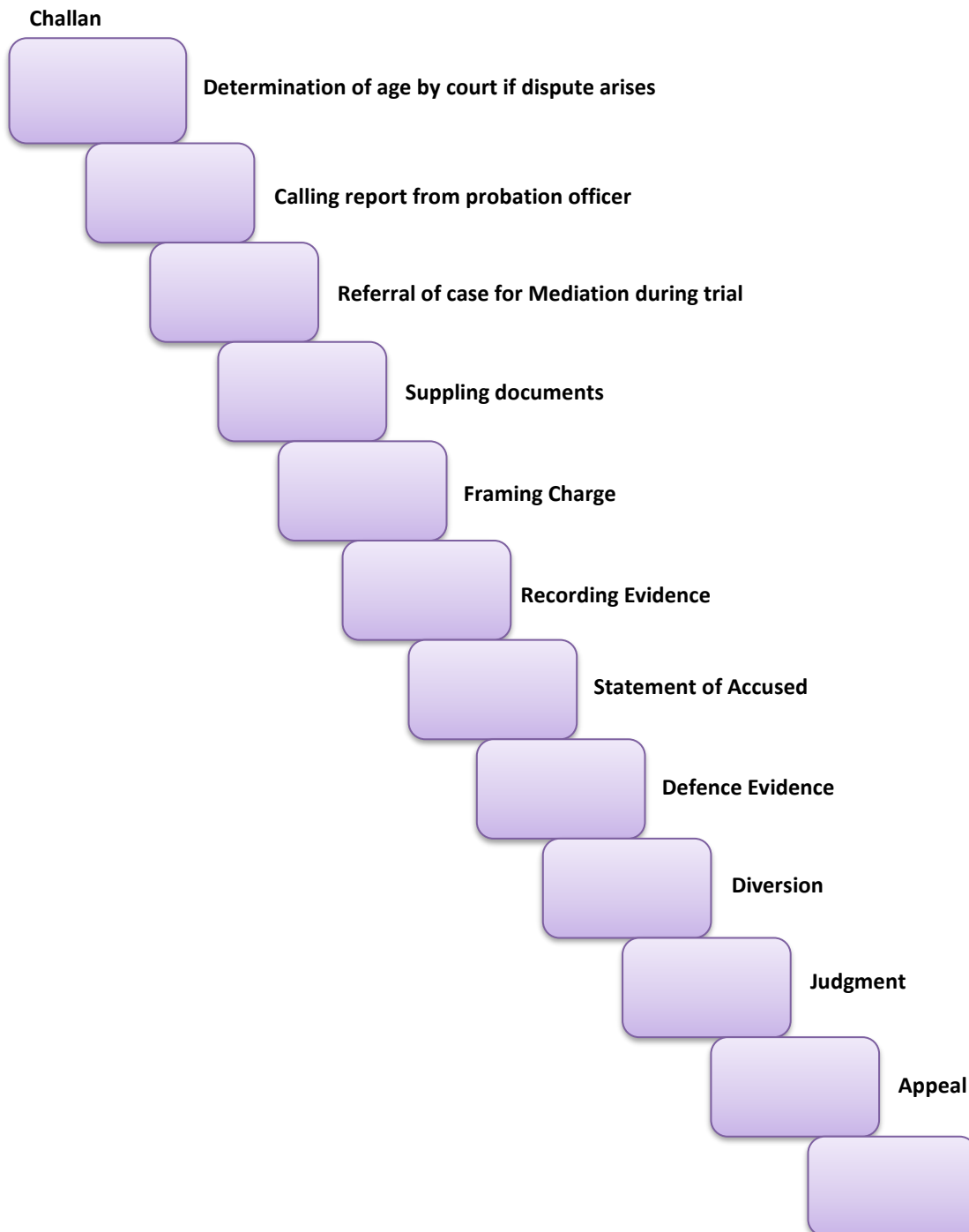
- The right to life (not to be arbitrarily deprived of life);
- The right to be free from torture and cruel, inhuman or degrading treatment or punishment;
- The right to be presumed innocent until found guilty in a court of law;
- Freedom from arbitrary arrest or detention;
- The right to a fair and public trial;
- The right to recognition as a person before the law, and equal protection of the law;
- Freedom from arbitrary interference with privacy, family, home or

correspondence;

- Freedom from discrimination;
- The right to apply for asylum;
- Freedom of association, expression, assembly and movement;
- The right to adequate food, shelter, clothing and social security;
- The right to participate in cultural life.

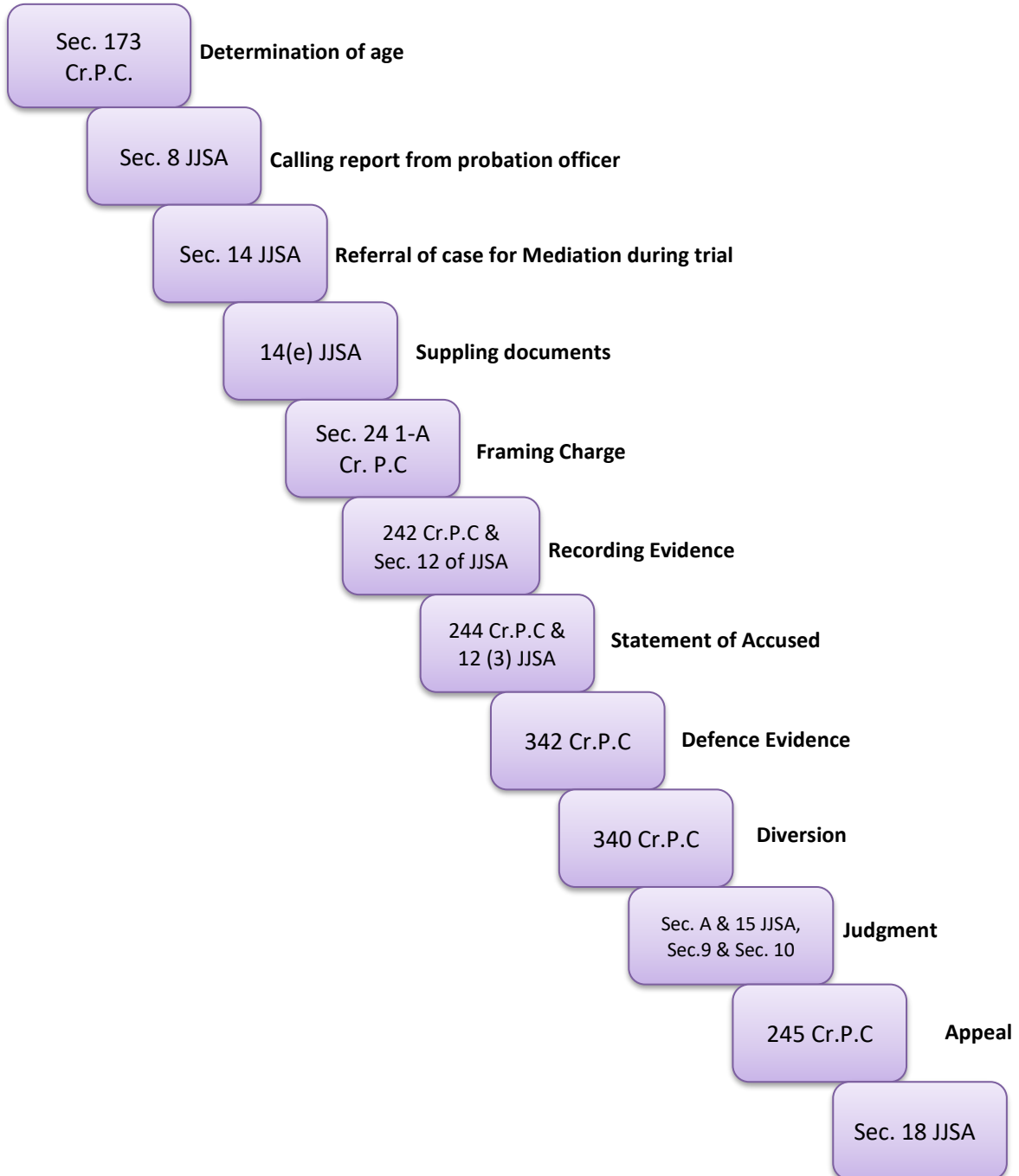
Juvenile Justice System in Sindh Trial Process

- *Remand in Police Custody (Observation home) Determination of age by police officer Referral of case to Juvenile Justice Committee Diversion or Submission of Challan*

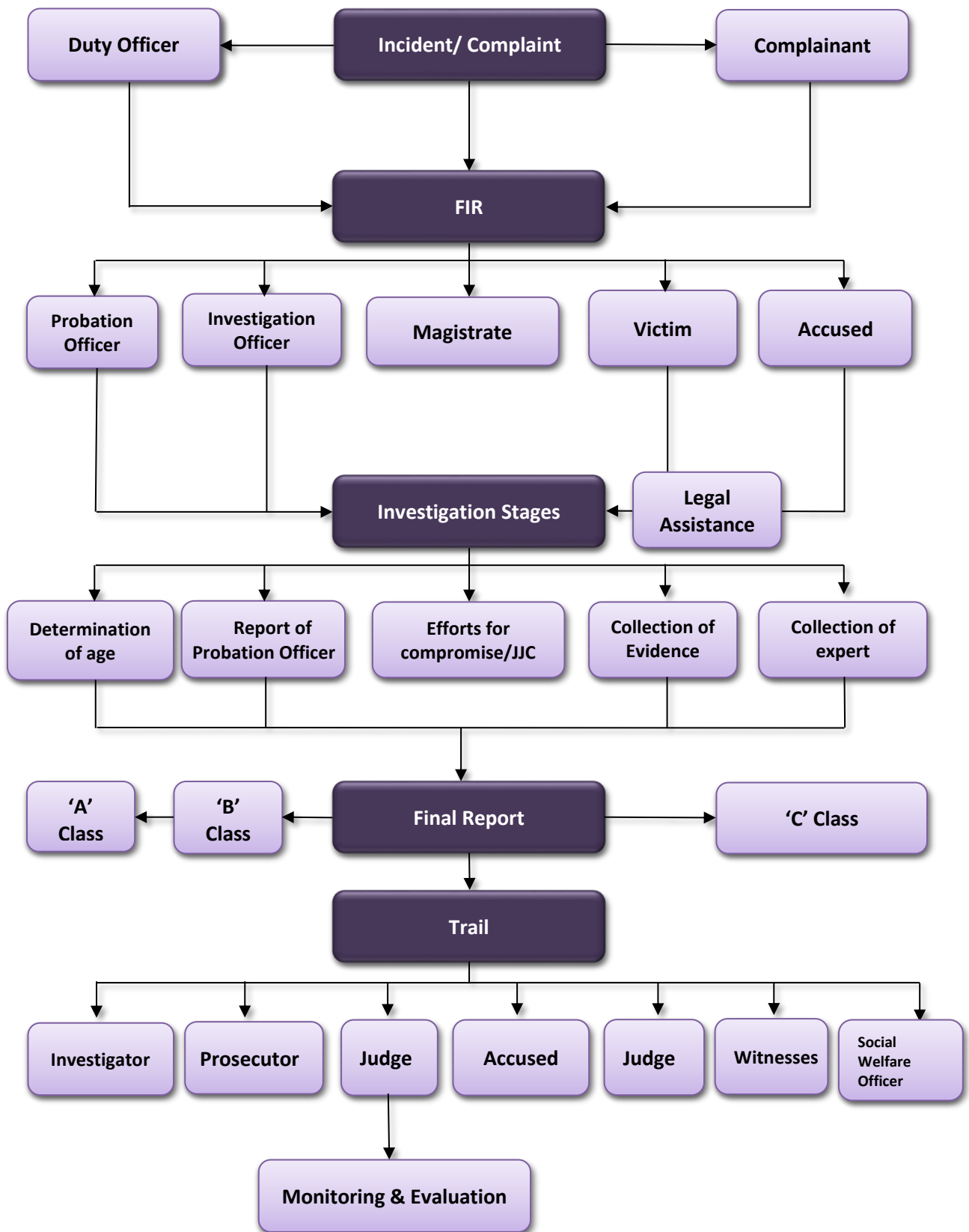


Juvenile Justice System in Sindh Flow Chart-I (with section)

Acceptance of Challan



JUVENILE JUSTICE SYSTEM IN SINDH: PROCESS AND STAKEHOLDERS



Acts, Ordinances, President's Orders and Regulations

SENATE SECRETARIAT

Islamabad, the 22nd May 2018

No. F.9(5)/2018-Legis — The following Act of Majlis-e-Shoora (Parliament) received the assent of the President on 18th May, 2018 and is hereby published for general information:

ACT No, XXII OF 2018

To provide for criminal justice system for juveniles

WHEREAS it is expedient to provide for criminal justice system and social reintegration of juveniles;

It is hereby enacted as follows: -

1. Short title, extent and commencement. - (I) This Act may be called the Juvenile Justice System Act, 2018.

- (2) It extends to the whole of Pakistan.
- (3) It shall come into force at once.

2. Definitions. - In this Act, unless there is anything repugnant in the subject or context, -

- (a) "best interest of the child" means the basis for any decision taken regarding the child to ensure fulfillment of his basic rights and needs, identity, social well-being, physical, emotional and psychological development;
- (b) "child" means for the purposes of this Act a person who has not attained the age of eighteen years;
- (c) "Code" means the Code of Criminal Procedure, 1898 (Act V of 1898);
- (d) "diversion" means 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;
- (e) "Government" means the Federal Government or the Provincial Government, as the case may be;
- (f) "guardian" in relation to a juvenile means a parent or a person who has been appointed as a guardian by the court or a person who has actual care of the child;

- (g) "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, 1860 (Act XLV of 1860) 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;
- (h) "juvenile" means, a child who may be dealt with for an offence in a manner which is different from an adult;
- (i) "Juvenile Court" means a court established under section 4;
- (j) "Juvenile Justice Committee" means a committee established under section 10;
- (k) "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 centres, dar-ul-amaan and women crises centres established by the Government or by voluntary organizational certified by the Government;
- (l) "juvenile offender" means a child who is alleged to have committed or who has been found to have committed an offence;
- (m) "major offence" means an offence for which punishment under the Pakistan Penal Code, 1860 (Act XLV of 1860) or any other law for the time being in force is more than three years and up to seven years imprisonment with or without fine;
- (n) "medical officer" means a medical officer notified as such by the Government;
- (o) "minor offence" means an offence for which maximum punishment under the Pakistan Penal Code, 1860 (Act XLV of 1860) or any other law for the time being in force is imprisonment up to three years with or without fine;
- (p) "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;
- (q) "prescribed" means prescribed by rules made under this Act;
- (r) "probation officer" means a person appointed under the Probation of Offenders Ordinance, 1960 (Act XLV of 1960); and
- (s) "suitable person" means any person, trusts association or society duly recognized by law whose object is welfare and protection of children.

Explanation. - person in this clause means the guardian of a juvenile or any other person appointed by a Juvenile Court for the purposes of this Act.

3. Legal assistance. - (1) Every juvenile or a child who is victim of an offence shall have the right of legal assistance at expense of the State.

(2) A juvenile shall be informed about his rights available under the law by a legal practitioner within twenty-four hours of taking him into custody.

(3) A legal practitioner appointed by the Government or by the Juvenile Court for providing legal assistance to a child victim of an offence or a juvenile shall have at least seven years standing at the Bar.

4. Juvenile Court. - (1) The Government in consultation with the concerned High Court shall [by notification in the official Gazette] establish or designate one or more Juvenile Courts, within a period of three months of the commencement of this Act.

(2) A Juvenile Court may be established for one or more sessions divisions and in that case the Juvenile Court may hold trial of a case at such place as the High Court may specify.

(3) No person shall be appointed as a Judge of a Juvenile Court unless he is or has been a Sessions Judge or an Additional Sessions Judge or a Judicial Magistrate vested with powers under section 30 of the Code or a practicing advocate who has at least ten years standing at Bar and the latter shall be appointed on such terms and conditions as the Government may determine in consultation with the concerned High Court.

(4) The Juvenile Court shall have exclusive jurisdiction to try cases in which a juvenile is accused of commission of an offence.

(5) Subject to sub-section (4), on commencement of this Act all cases pending before a trial court in which a juvenile is accused of an offence shall stand transferred to the Juvenile Court having jurisdiction.

(6) The Juvenile Court shall not, merely by reason of a change in its composition or transfer of a case under sub-section (5) be bound to recall or re-hear any witness who has given evidence and may act on the evidence already recorded.

(7) If any court taking cognizance of an offence finds that an accused brought before it is a juvenile, it shall transfer his case to the Juvenile Court for further proceedings.

(8) On taking cognizance of an offence, the Juvenile Court shall decide the case within six months.

(9) Where the case is not decided within six months in terms of sub-section (8), the Juvenile Court shall seek extension from the High Court concerned explaining the reasons for not being able to decide the case within prescribed time-limit. If no such extension has

been sought by the Juvenile Court, the complainant or the juvenile may make an application to the High Court in this respect.

(10) The Juvenile Court may hold its sitting at a place, other than the place in which the ordinary courts hold sittings for trial of other cases.

5. Arrest of a juvenile. - (1) The arrested juvenile shall be kept in an observation home and the officer-in-charge of the police station shall, as soon as possible, -

- (a) inform guardian of the juvenile, if he can be found, of such arrest and inform him of the time, date and name of the Juvenile Court before which the juvenile shall be produced; and
- (b) inform the concerned probation officer to enable him to obtain such information about the juvenile and other material circumstances which may be of assistance to the Juvenile Court for making inquiry.

(2) No juvenile shall be arrested under any of the laws dealing with preventive detention or under the provisions of Chapter VIII of the Code.

(3) The report under section 173 of the Code shall also describe the steps taken by the officer-in-charge for referring the matter to the Juvenile Justice Committee for disposal of case through diversion, where it was so required under section 9.

6. Release of a juvenile on bail. - (1) Notwithstanding anything contained in the Code, a juvenile accused of bailable offence shall, if already not released under section 496 of the Code, be released by the Juvenile Court on bail with or without surety unless it appears that there are reasonable grounds for believing that the release of such juvenile may bring him in association with criminals or expose him to any other danger. In this 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 shall not under any circumstances be kept in a police station under police custody or jail in such cases.

(2) The Juvenile Court shall, in a case where a juvenile is not released under sub-section (1), direct the police for tracing guardian of such juvenile and where guardian of such juvenile is traced out, the Juvenile Court may immediately handover custody of the juvenile to his guardian.

(3) Where a juvenile is arrested or detained for commission of a minor or a major offence for the purposes of this Act, he shall be treated as if he was accused of commission of a bailable offence.

(4) Where a juvenile of more than sixteen years of age is arrested or detained 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 commission of a heinous offence.

(5) Where the Juvenile Court is of the opinion that the delay in the trial of a juvenile has not been occasioned by an act or omission of such juvenile or any other person acting on his behalf or in exercise of any right or privilege under any law for the time being in force, such juvenile shall be released on bail if he has been detained for a continuous period exceeding six months and whose trial has not been completed.

7. Investigation in juvenile cases. - (1) A juvenile shall be interrogated by a police officer not below the rank of Sub-Inspector under supervision of Superintendent of Police or SDPO.

(2) The investigation officer designated under sub-section (1) shall 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.

8. Determination of age. - (1) Where a person alleged to have committed an offence physically appears or claims to be a juvenile for the purpose of this Act, the officer-in-charge of the police station or the investigation officer shall 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, age of such accused person may be determined on the basis of a medical examination report by a medical officer.

(2) When an accused person who physically appears to be a juvenile for the purpose of this Act is brought before a Court under section 167 of the Code, the Court before granting further detention shall record its findings regarding age on the basis of available record including the report submitted by the police or medical examination report by a medical officer.

9. Disposal of cases through diversion. - (1) With the consent of a juvenile or his guardian, as the case may be, the complaint against a juvenile relating to offences as specified in sub-section (6) shall be referred to the Juvenile Justice Committee for disposal of the same through diversion.

(2) The diversion can be exercised at any stage during the course of investigation by the police and during trial by the prosecution and the Court in the prescribed manner.

(3) Where a case is referred to the Juvenile Justice Committee by the police, the submission of report of police officer required under section 173 of the Code shall be postponed till the final order of the Committee.

(4) The Juvenile Justice Committee shall dispose of a case, with consent of the person against whom the offence was committed, by resorting to different modes of diversion including. -

- (a) restitution of movable property;
- (b) reparation of the damage caused;
- (c) written or oral apology;
- (d) participation in community service;
- (e) payments of fine and costs of the proceedings;
- (f) placement in Juvenile Rehabilitation Centre; and
- (g) written and oral reprimand:

Provided that where the complainant is a state functionary and the offence has not been committed against a private person, the Juvenile Justice Committee may dispose of the case through diversion with consent of the concerned public prosecutor.

(5) For the purposes of diversion, all offences either minor or major shall be compoundable.

(6) Diversion shall be exercised in the prescribed manner in cases, -

- (a) where a juvenile is accused of commission of minor offences; and
- (b) where a juvenile is accused of commission of major offences and the age of the juvenile is not more than sixteen years at the time of commission of offence.

10. Juvenile Justice Committee. - (I) On commencement of this Act but not later than three months, the Government in consultation with the concerned Sessions Judge shall establish the Juvenile Justice Committee for each session's division.

(2) The Juvenile Justice Committee shall consist of four members with following composition, namely: -

- (a) serving Judicial Magistrate with powers under section 30 of the Code, who shall also head the Committee;
- (b) district public prosecutor;
- (c) member of local Bar having at least seven years standing at the Bar, appointed by the concerned Sessions Judge for period of two years;
- (d) serving probation officer or social welfare officer not below the rank of an officer in BPS-17.

(3) The place of sitting of the Juvenile Justice Committee may preferably be in the same premises where the Juvenile Court holds sitting.

(4) The Juvenile Justice Committee shall perform following functions, namely: -

- (a) dispose of the cases through diversion upon referral from the police, prosecution or the Juvenile Court, as the case may be, within a period of one month from the date of the referral;
- (b) inspect the observation homes and 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
- (c) such other functions as may be prescribed.

(5) For the administration and functioning of the Juvenile Justice Committee, provision of staff shall be within the powers of the Sessions Judge of respective district.

11. Procedure of Juvenile Court. - (l) Juvenile Court shall follow the procedure provided for in the Code unless provided otherwise in this Act.

(2) No person shall be present at any sitting of the Juvenile Court, except-

- (a) staff and officers of the Juvenile Court;
- (b) parties to the case before the Juvenile Court and such other persons who are directly concerned with the proceedings including the police officers;
- (c) guardian of the juvenile; and
- (d) such other persons as the Juvenile Court directs to be present.

(3) At any stage of proceedings, the Juvenile Court may in the best interest of a juvenile's decency or morality, direct any person to withdraw from Court for such period as the Court may direct.

(4) If at any stage of proceedings, the Juvenile Court is satisfied that the attendance of the juvenile is not essential for the purposes of the trial, the Juvenile Court may dispense with the attendance and proceed with the trial of the case in absence of the juvenile.

(5) When a juvenile who has been brought before the Juvenile Court is found to be suffering from serious illness, whether physical or mental and requires treatment, the Court shall send such juvenile to a hospital or a medical institution where treatment shall be given to the juvenile at the expense of the State.

12. Trial of juvenile with adult person. - (1) Notwithstanding anything contained in section 239 of the Code or any other law for the time being in force and subject to the provisions of sub-sections (2) and (3), no juvenile may be charged with and tried for an offence together with an adult.

(2) A juvenile may be charged with and tried together with an adult by the Juvenile Court if the Court is satisfied that it is in the interests of justice to hold a joint trial.

(3) In case of joint trial, the Juvenile Court may dispense with the physical presence of the juvenile before it without any application in this regard and juvenile may be allowed to join the Court proceedings through audio-visual technology link.

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

(2) Nothing in sub-section (1) extends to any printing or publication of the name or any matter which may make known the identity of a juvenile if such printing or publication is,

- (a) by or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or
- (b) by or with the authorization in writing of the juvenile or the next-of-kin of the juvenile:

Provided that no such authorization shall be given by the next-of-kin to anybody other than the chairman or the secretary, by whatever, name called, of any recognized welfare institution or organization.

Explanation. - For the purposes of this sub-section, "recognised welfare institution or organization" means a social welfare institution or organisation recognised in this behalf by the Government.

(3) Whoever prints or publishes any matter in relation to any proceedings before a Juvenile Court with respect to a juvenile referred to in sub-section (1) without the previous permission of Juvenile Court shall be punished with imprisonment of either description for a term which may extend to two years and shall also be liable to fine.

Explanation. -The printing or publication of the judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.

14. Report of probation officer. - (1) The probation officer shall assist and prepare a report on direction of the Juvenile Court within such time as may be directed by the Court at any stage regarding, -

- (a) juvenile's character, educational, social and moral background;
- (b) juvenile's admission of committing an offence, if any, made with free consent and voluntarily;
- (c) any evidence that the juvenile actually committed the offence;
- (d) all legal and appropriate assistance provided at all levels to juvenile for his understanding, concept and consequences, even to the child's family and guardian;
- (e) steps taken for mediation or compromise with the complainant or victim and possibility of settlement; and
- (f) possibility of sending the juvenile to Juvenile Rehabilitation Centre or release on probation.

(2) Subject to sub-section (3) the report of the probation officer submitted to the Juvenile Court shall be treated as confidential.

(3) The Juvenile Court may, if it so thinks fit, communicate substance of the report to the juvenile's guardian and, where any one of them disputes the contents or views contained therein, the Juvenile Court may give such juvenile or guardian, as the case may be, an opportunity of producing such evidence as may be relevant to the matter stated in the report.

15. Powers of Juvenile Court to order for release. - On receipt of report under section 14 and on conclusion of an inquiry, investigation or trial, the Juvenile Court may, keeping in view the best interest of the child, -

- (a) pass an order for release of the juvenile offender after the victim or complainant, as the case may be, pardons him:

Provided that the Juvenile Court may refuse to release the juvenile offender even if the victim or complainant pardons if the Juvenile Court for reasons to be recorded in writing considers that such release is either against the public policy or the interests of the State;

- (b) pass an order for the community service, fine, compensation to the victim or complainant, restitution of property, counselling;
- (c) 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 such Juvenile Rehabilitation Centre established or certified for the purposes of this Act for any period not exceeding the period of confinement awarded to such juvenile;
- (d) direct the probation officer to submit probation report in prescribed manner:

Provided that if a juvenile offender fails to comply with the orders or violates the conditions of orders of release on probation, the Juvenile Court may pass any order as it may think fit, including cancellation of probation order; or

- (e) make an order directing the juvenile offender to be sent to a Juvenile Rehabilitation Centre until he attains the age of eighteen years or till the completion of period of imprisonment, whichever comes earlier.

16. Orders that shall not be passed with respect to a juvenile. - (1) No person who was a juvenile offender at the time of commission of an offence shall be awarded punishment of death.

(2) No juvenile offender shall be committed to prison, ordered to labour, put in fetters, handcuffed or given any corporal punishment at any time while in custody:

Provided that if there is reasonable apprehension of the escape of the juvenile offender from custody who is more than sixteen years of age and involved in heinous offence or he is previously convicted of an offence punishable with imprisonment for life, for reasons to be recorded, he may be handcuffed or put into a solitary confinement in a Juvenile Rehabilitation Centre or observation home for a period not exceeding twenty-four hours.

17. Special provision for female juvenile. - (I) No female juvenile shall in any circumstances be apprehended or investigated by a male police officer or released on probation under supervision of a male officer.

(2) A female juvenile shall only be kept in a Juvenile Rehabilitation Centre established or certified exclusively for female inmates.

18. Appeal. - (I) Any person convicted by a Juvenile Court may prefer an appeal in accordance with the provisions of the Code.

(2) In case of a juvenile offender, the appeal may be preferred by guardian acting on behalf of the juvenile.

(3) The Government or any person aggrieved by an order of acquittal passed by the Juvenile Court may, within thirty days, prefer an appeal against such order in accordance with the provisions of section 417 of the Code.

19. Removal of disqualification attached with conviction. - Subject to provisions of the constitution, a juvenile offender convicted under the provisions of this Act shall not suffer a disqualification, if any, attaching to a conviction of an offence under such law.

20. Establishment and certification of observation homes and Juvenile Rehabilitation Centres. - (1) The Government may establish and maintain observation homes and Juvenile Rehabilitation Centres for the reception of juveniles, including separate centres for female juveniles;

(2) The Government may certify an observation home or a Juvenile Rehabilitation Centre managed or controlled by a non-governmental organization for reception of juveniles.

(3) The Government may certify an already established association or society in any local area for social reintegration or rehabilitation of a juvenile offender who is released

on parole or discharged from a Juvenile Rehabilitation Centre and may regulate activities and functions of such released or discharged juvenile offender in the prescribed manner.

21. Power of the Government to withdraw certificate. - The Government, if dissatisfied with the condition, management or superintendence of a certified observation home or a Juvenile Rehabilitation Centre, may at any time withdraw the certificate issued under section 20 in prescribed manner.

22. Inspection of observation homes and Juvenile Rehabilitation Centres. – In order to report to the Juvenile Court or Juvenile Justice Committee on measures being taken for social reintegration, health, education or other conditions of the inmates a medical officer, a member of the Committee, with prior approval of head of the Committee or an officer authorized by the Government, may inspect an observation home or a Juvenile Rehabilitation Centre.

23. Act to override other laws. - The provisions of this Act shall have overriding effect notwithstanding anything contained in any other law for the time being in force.

24. Power to make rules. - The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

25. Repeal. - The Juvenile Justice System Ordinance, 2000 (XXII of 2000) is hereby repealed.

Statement of Objects and reasons

Article 35 of the Constitution of Islamic Republic of Pakistan provides that the State shall protect the child. Article 25(3) also empowers the State to make special provisions for the protection of children. Furthermore, Pakistan is signatory to the UN Convention on the Rights of Child and is under obligation to take special measures for the protection and rehabilitation of juveniles.

2. The object of this Bill is to modify and amend the laws relating to criminal justice system for juveniles by providing special focus on disposal of cases through diversion and social-reintegration of the juvenile offenders.
3. The Hon'ble Lahore High Court, Lahore in its judgment reported as PLD 2005 Lahore 15 while striking down the prevalent Juvenile Justice System Ordinance, 2000, observed that Parliament may enact a fresh law after attending to all the infirmities of Juvenile Justice System Ordinance, 2000.
4. It is further expedient to provide special procedure for judicial proceedings as well as provisions for diversion and social reintegration of children who alleged to have committed an offence and come in conflict with law without resorting to formal judicial proceedings and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established.
5. The Bill seeks to achieve the above-mentioned objectives.

(Minister-in-charge)
Ministry of Human Rights

Analysis of juvenile justice system 2018

Juvenile Justice System Act 2018 has improved the earlier Juvenile Justice System Ordinance 2000 both substantively and in procedural terms. It has defined minor, major and heinous offenses and the juvenile is entitled to bail in all these categories of offenses except for heinous offenses where the age limit for such entitlement has been fixed at more than 16 years. The Act provides for the right to legal assistance, establishment of observation homes and rehabilitation centres, age determination process, Juvenile Justice Committee and importantly disposal of cases through diversion. The Act also defines a child according to the definition of UNCRC (1989) as “a person who has not attained the age of eighteen years” in compliance with international legal obligation. The challenge would again be that of implementation, especially with regards to the establishment of juvenile courts, rehabilitation centres, observation homes, and functioning of the Juvenile Justice Committee and even more importantly the alignment of the authorities with the spirit of the law.

Furthermore, there will be the same challenges as highlighted above in the case of earlier JJSO 2000 implementation such as;

Establishment of Juvenile Courts as in previous case of JJSO was a very delayed process. Notification of Juvenile Court by Government of Sindh in consultation with Sindh High Court with exclusive jurisdiction as envisaged has been issued but with required resources both human and material as per section 4 of JJS 2018 or essential for its proper functioning.

Provision of legal aid or assistance/legal aid panel of lawyers to be notified by Juvenile court/respective D&SJ in consultation with District Bar Association as per section 3. Right of legal assistance: every juvenile or child victim of an offence shall have the right of legal assistance at the expense of the State. A juvenile shall be informed about their right of legal assistance within 24 hours of being taken into custody as per constitutional and criminal procedures code provisions.

Time frame for disposal has been increased to 6 months as compared to 4 months that was not met in most of the cases in JJSO 2000. Even now, the revised time frame is a bit ambitious unless the offense is Minor referred to Small causes court under Small Causes Minor Offenses Ordinance (SCMOO) 2002 or processed for summary trial under Cr.P.C. 345 or referred to juvenile justice committee. Secondly, this extension seeking permission clause from High Court is auto-monitoring clause and provided it is documented in case flow management system and factored into data sheets being compiled by D&SJ and monitored by Member Inspection Team (MIT) of SHC as per section 4(8)(9) of JJS 2018.

Safeguards of arrest and detention of Juveniles at separate Police lock-ups or observation homes are also difficult to be adhered with in those areas where physical infrastructure is

inadequate or Police stations away from District or Taluka headquarters as per section 5 of JJSA. Observation homes are a type of "Police Lock-up" but established away from Police Station and made child friendly places.

Investigation of Juvenile by trained Police Officials and subsequent release on bail during Police custody was rarely exercised in previous law even given under Cr.P.C Section 169 or referring for powers of Magistrate under 29-B (Jurisdiction of the case of Juveniles). So, in present Act unless practitioners are trained on provisions of this Act as per section 8 it will be difficult to get proper investigation by police officials not less than the rank of sub inspector under the supervision of SP or SDPO as per section 7(1) JJSA 2018.

Role of Probation Officers is critical, right from the tracing of parents/guardian of the Juvenile to writing of Social Investigation Report "SIR" for placing the juvenile under probation as in Section 9.

Similar is the role of Social Welfare Officer (Child Protection Officer in the context of Sindh Child Protection Authority Act2011) who has been made part for the first time while child is in conflict with law and empowered to write "SIR" as well to be part of "Juvenile Justice Committee" as per section 10(2)(d) of JJSA2018.

The mechanism of "Juvenile Justice Committee" is very innovative and seems to be a prototype of District Criminal Justice Coordination Committee as envisaged in section 109 of Police Order 2002 (In Sindh this Order has been repealed by Police Act1861 by 14th July 2011) but with more executive and diversion powers. However, it needs more ownership and urgency and if inclusion of member of support system institutions or participation from CSOs as per need was provided in section 10 of JJSA 2018 and further rules of implementation elaborates and members are co-opted.

Even when all avenues are exhausted and detention is last resort measure then placing them in Borstal institution under JJSO 2000 or Juvenile Jail/Youthful Offenders Industrial School (YOIS) as under section 25 of Sindh Children Act1955. It is pertinent to mention here that such institutions were supposed to be managed by non-uniformed persons but on the contrary are run by uniformed and unspecialized cadre of prison officials. However, this concept has now been replaced by "Juvenile Rehabilitation Centres" as defined in Section 2(k) and substantive functions in Section 20 JJSA-2018, which are a special kind of detention facility established exclusively for keeping juvenile offenders. The convicted juvenile shall be confined to the premises till the completion of period of imprisonment or until they turn 18 years of age. Here, convicts can receive an education as well as vocational or technical training for their development and includes certified institutions including women crises centres more similar as the functions of YOIS and Remand Home given in Sindh Children Act1955.

However, those government functionaries managing such "Juvenile Rehabilitation Centres" have not been made a formal part of "Juvenile Justice Committee" defined in section 10 of JJSA2018. Adding a provision in implementation Rules of JJSA 2018 by co-opting any member of criminal or support system institutions as per need basis can fill this gap. Though Juvenile Justice Committee has been empowered to visit and monitor detention conditions in observation and rehabilitation centres, this element of correction is less focused.

Section wise compression of juvenile justice system ordinance, 2000 & juvenile justice system act, 2018

JJSA, 2018		JJSO,2000		JJSA	JJSO
Section	Definition	Section	Definition	Section	Section
1.	Short title extent and commencement	1	Short title extent and commencement	1.	1.
2.	Definitions	2	Definitions	2.	2.
3.	Legal assistance	2	Legal assistance	3.	3.
4.	Juvenile Court	3	Juvenile Courts	4.	4.
5.	Arrest of a juvenile	10	Arrest and bail	5	10
6.	Release of a juvenile on Bail	10, 11(a), (b) and(c)	Release on probation	6	10,11
7.	Investigation in juvenile	1.		7 (New)	
8.	Determination of age	7	Determination of age	8	7
9.	Disposal of cases through diversion.			9(New)	
10.	Juvenile Justice Committee			10(New)	
11.	Procedure of Juvenile Court	6	Procedure of Juvenile Courts	11	6
12.	Trial of juvenile with adult person	5	No joint trial of a child and adult person	12	5
13.	Disclosure of identity of the juvenile	8	Prohibition to publish proceedings of cases	13	8
14.	Report of probation officer	11(a), (b) and(c)	Release on probation	14	9
15.	Powers of Juvenile Court to order for release. —	2.		15(New)	
16.	Orders that shall not be passed with respect to a juvenile	12	Orders that shall not be passed with	16	12

			respect to a child		
17.	Special provision for female juvenile	3.		17(New)	
18.	Appeal	13	Appeal, etc.	18	13
19.	Removal of disqualification attached with conviction			19(New)	
20.	Establishment and certification of observation homes and Juvenile Centres			20(New)	
21.	Power of the Government to withdraw certificate			21(New)	
22.	Inspection of observation homes and Juvenile Rehabilitation Centres			22(New)	
23.	Act to override other laws			23	14
24.	Power to make rules	15	Power to make rules	24	15
25.	Repeal			25	

Sec	JJSO,2000	JJSA,2018	REMARKS/Observations
1	<p>1. Short title and commencement. -(1) This Ordinance may be called the Juvenile Justice System Ordinance, 2000.</p> <p>2. It extends to the whole of Pakistan</p> <p>3. It shall come into force at once.</p>		
	<p>2. Definitions. - In this Ordinance, unless there is anything repugnant in the subject or context,</p> <p>(a) ‘Borstal^[1] institution ‘means a place where child offenders may be detained and given education and training for their mental, moral and psychological development;</p> <p>(b) ‘Child’ means a person who at the time of commission of an offence has not attained the age of eighteen years;</p> <p>(c) ‘Code’ means the Code of Criminal Procedure, 1898 (Act V of 1998);</p> <p>(d) ‘Guardian’ means a parent or a person who has actual care of child and includes such</p>	<p>2. Definitions. -In this Act unless there is anything repugnant in the subject or context</p> <p>(a) "Best interest of the child means the basis for any decision taken regarding the child to ensure fulfilment of his basic rights and needs, identity, social well-being, physical, emotional and psychological . development;</p> <p>(b) "Child" means for the purposes of this Act a person who has not attained the age of eighteen. years;</p> <p>(c) "Code" means the Code of Criminal procedure, 1 898 (Act V of 898);</p> <p>(d) "Diversion' means an alternative</p>	<p>This fundamental principle of "Best interest of the Child" is taken from UNCRC and has been invoked in some case laws particularly in matters of custody by domestic courts. But gender-neutral language is missing throughout the Act. [Emphasis is supplied by authors]</p> <p>An effort has been made to distinguish the definition of "Child “from “Juvenile" but still that is not in line with Beijing Rules 1985. It is also pertinent to mention that these legislative inconsistencies are reflected in "Concluding Observations on the fifth periodic report of Pakistan: which reads that "It [Committee on UNCRC] is also concerned about legal</p>

	<p>relative who is willing to bear the responsibility the child;</p> <p>(e) 'Juvenile Court' means a Court established under section 4;</p> <p>(f) 'Offence' means an offence punishable under any law for the time being in force; and</p> <p>(g) 'Probation Officer' means a person appointed under the Probation of Offenders Ordinance 1960 (XLV of 1960) or such person as the Provincial Government may appoint to perform the functions of Probation Officer under this Ordinance.</p>	<p>process of determining the responsibility of valid treatment of a juvenile on the basis of his social, cultural, economic, psychological and educational background without resorting to formal judicial proceedings;</p> <p>(e) "Government means the Federal Government or the Provincial Government, as the case may be;</p> <p>(f) "Guardian" in relation to a juvenile means a parent or a person who has been appointed as a guardian by the court or a person who has actual care of the child;</p> <p>(g) "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</p>	<p>inconsistencies concerning the definition of a child at the federal, provincial and territorial levels, and disparities in that regard between secular and sharia law.</p> <p>This new concept has been added in definitions and further elaborated in substantive clause but understanding needs to be mainstreamed with all relevant stakeholders.</p> <p>This is new addition/categorization of offenses according to punishment which makes it easier for Police to take bail for offenses allowed to Police at Police Station Level i.e. From Minor to Major offenses up to 16 years (Section 6 subsection 3&4)</p>
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		<p>Code 1860 (Act XIV of 1860) 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.</p> <p>(h) "Juvenile" means a child who may be dealt with for an offence in a manner which is different from an adult;</p> <p>(i) "Juvenile Court" means a court established under section 4:</p> <p>(j) "Juvenile Justice Committee" means a committee established under section 10;</p> <p>(k) "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</p>	<p>These definitions of "Juvenile" and "Juvenile Offender" are a new addition in line with Beijing Rules 1985.</p> <p>This is new procedural mechanism/process for deciding the cases of</p>
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		<p>includes certified institutions, juvenile training institutions, borstal institution, vocational centres, dar-ul-amaan and women crisis centres established by the Government or by voluntary organizational certified by the Government;</p> <p>(l) "Juvenile offender" means a child alleged to have or found to have committed an offence;</p> <p>(m) "Major offence" means an offence for which punishment under the Pakistan Penal Code 1860 (Act XIV of 1860) or any other law for the time being in force is more than three years and up to seven years imprisonment with or without fine;</p> <p>(n) "Medical officer" means a medical officer notified as such by the Government;</p>	<p>diversion and explained in substantive clauses.</p> <p>This is umbrella word for Child Protection Institutions. In Sindh, Remand Home under section 26 of Sindh Children Act 1955 is a peculiar institution for addressing such needs and which is reflected in Rules of Remand Home 2011 by Sindh Government. So, proposed draft rules of JJSA 2018 may benefit from such statutory provisions.</p> <p>This is new addition in line with Beijing Rules 1985.</p> <p>Already discussed.</p>
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		<p>(o) "Minor offence" means an offence for which maximum punishment under the Pakistan Penal Code 1860 (XLV of 1 860) or any other law . for the time being in force is imprisonment up to three years with or without fine;</p> <p>(p) "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;</p>	<p>This concept of temporary place of custody prior to seeking remand or after taking remand is a bit unpractical/infeasible as Police Stations sometimes are located away from sub/Tehsil or District headquarters so bringing for temporary custody "Observation home" is not workable.</p> <p>Previously appointment of Probation Officer was provided in the Ordinance JJSO 2000, in addition to Pakistan Probation Offenders Ordinance (PPOO) 1960 but this has been done away in this new Act. So now specialized cadre of Probation Officers for "Juveniles" is not envisaged</p>
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		<p>(q) "Prescribed" means prescribed by rules made under this Act;</p> <p>(r) Probation officer" means a person appointed under the Probation of Offenders Ordinance, 1 960 (X LV of 1960); and</p> <p>(s) "Suitable person" means any person, trust, association or society duly recognized by law whose object is welfare and protection of children.</p> <p>Explanation—Person in this clause means the guardian of a juvenile or any other person</p>	
	<p>3. Legal assistance. —</p> <p>(1) Every child who is accused of the commission of an offence or is a victim of an offence shall have the right of legal assistance at the expense of the State.</p> <p>(2) A legal practitioner appointed by the State for providing legal assistance to a child</p>	<p>appointed by a Juvenile Court for the purposes of this Act.</p> <p>3. Legal assistance. —</p> <p>(1) Every juvenile or a child who is victim of an of;8fence shall have the right of legal assistance at expense of the State.</p>	<p>The same provision was given in the previous law regarding panel of lawyers to be notified at district level i.e by D&SJ that has not benefited both children as accused or victim. So, this time both Juvenile Justice committee and Juvenile Court has to ensure the formation and</p>

	<p>accused of the commission of an offence, or victim of an offence, shall have at least five years standing at the Bar.</p>	<p>(2) A juvenile shall be informed about his rights available under the law by a legal practitioner within twenty-four hours of taking him into custody.</p> <p>(3) A legal practitioner appointed by the Government or by the Juvenile court for providing legal assistance to a child victim of an offence or a juvenile shall have at least seven years standing at the bar. Juvenile shall have at least seven years standing at the Bar.</p>	<p>materializing of this right to legal assistance.</p> <p>This new provision regarding making the accused aware about his/her legal rights is new innovation but this right/facility only be activated once Juvenile Court/ Juvenile Justice Committee notifies the panel of lawyers in consultation with District Bar Associations and Police Stations are informed of such panels which can avail those services. This provision can be equated with right to remain silent and equivalent to constitutional Article 13 protection from self-incrimination.</p> <p>Previously standing for legal counsel was 5 years and now it has been increased to 7 years.</p>
	<p>4. Juvenile Courts. – (l) The Provincial Government shall in consultation with the Chief Justice of High Court, by notification in the official Gazette, establish one or more Juvenile Courts for any local area within its jurisdiction.</p>	<p>3. Juvenile Court. – (1) The Government in consultation with the concerned High Court shall [by notification in the official Gazette] establish or designate one or more Juvenile Courts, within a period of three months of the</p>	<p>It is important to notify the Juvenile Court at earliest. In the context of Sindh, the high court of Sindh has notified the establishment of exclusive Juvenile courts in Sindh by 0.11.2018.</p>

<p>(2) The High Court may</p> <p>(a) Confer powers of Juvenile Court on,</p> <p>(i) Court of Sessions; or</p> <p>(ii) Judicial Magistrate of the First Class; and</p> <p>(b) Appoint, from amongst practicing Advocates having at least seven years standing at the Bar, Presiding Officers of Juvenile Courts with powers of a Judicial Magistrate of the First Class for the purposes of this Ordinance on such terms and conditions as the High Court may determine.</p> <p>(3) The Juvenile Court shall have the exclusive jurisdiction to try cases in which a child is accused of commission of an offence.</p> <p>(4) Subject to subsection (3), on commencement of this Ordinance, all cases pending before trial Court in which a child is accused of an</p>	<p>commencement of this Act.</p> <p>(2) A Juvenile Court may be established for one or more session's divisions and in that case the Juvenile Court may hold trial of a case at such place as the High Court may specify.</p> <p>(3) No person shall be appointed as a Judge of a Juvenile Court unless he is or has been a Sessions Judge or an Additional Sessions Judge or a Judicial Magistrate vested with powers under section 30 of the Code or a practicing advocate who has at least ten years standing at Bar and the latter shall be appointed on such terms and conditions as the Government may determine in consultation with the concerned High Court. .</p> <p>(4) The Juvenile Court shall have exclusive jurisdiction to try cases in which a juvenile is accused of</p>	<p>Establishment or assigning of Juvenile Court at sessions Division may not be confused with Revenue Division but it can be Session's Division at Judicial District as well.</p> <p>Criterion for appointment of Advocates as Judge has been increased from 7 years to 10 years.</p> <p>Same as in JJSO 2000</p> <p>Same</p>
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	<p>offence shall stand transferred to the Juvenile Court having jurisdiction.</p> <p>(5) The Juvenile Court shall not, merely by reason of a change in its composition, or transfer of a case under subsection (4), be bound to recall or rehear any witness who has given evidence and may act on the evidence already recorded.</p> <p>(6) On taking cognizance of an offence, the Juvenile Court shall decide the case within four months.</p>	<p>commission of an offence.</p> <p>(5) Subject to subsection (4), on commencement of this Act all cases pending before a trial court in which a juvenile is accused of an offence shall stand transferred to the Juvenile Court having jurisdiction.</p> <p>(6) The Juvenile Court shall not, merely by reason of a change in its composition or transfer of a case under subsection (5) be bound to recall or re-hear any witness who has given evidence and may act on the evidence already recorded.</p> <p>(7) If any court taking cognizance of an offence finds that an accused brought before it is a juvenile, it shall transfer his case to the Juvenile Court for further proceedings.</p> <p>(8) On taking cognizance of an offence, the juvenile Court shall decide the case within six months.</p>	<p>Same</p> <p>Same</p> <p>Time frame for disposal has been increased to 6 months as compared to 4 months, which was impractical. Even now, the time frame is a bit ambitious unless the offense is Minor referred to Small causes court under Small Causes Minor Offenses Ordinance (SCMOO)2002 or referred to Juvenile Justice committee</p> <p>This extension permission seeking clause from High Court is auto-monitoring clause and provided it is documented in case flow management system and reflected in monitoring tools at District and High court level.</p>
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		<p>(9) Where the case is not decided within six months in terms of subsection (8), the Juvenile Court shall seek extension from the High Court concerned explaining the reasons for not being able to decide the case within prescribed time limit. If no such extension has been sought by the Juvenile Court, the complainant or the juvenile may make an application to the High Court in this respect.</p> <p>(10) The Juvenile court may hold its sitting at a place, other than the place in which the ordinary courts hold sittings for trial of other cases.</p>	<p>This provision related to privacy of Juveniles was addressed in section 6 JJSO2000 but more akin to the concept of Juvenile Courts defined in sections 7,10,12 of Sindh Children Act1955.</p>
	<p>5. No joint trial of a child and adult person. -(1) Notwithstanding anything contained in section 239 of the Code, or any other law for the time being in force, no child shall be charged with or tried for an offence together with an adult.</p> <p>(2) If a child is charged with commission of an</p>	<p>4. Arrest of a Juvenile. -The arrested juvenile shall be kept in an observation home and the officer-in-charge of the police station shall, as soon as possible, —</p> <p>a) Inform guardian of the juvenile, if he can be found, of such arrest and</p>	<p>The requirement of keeping the Juvenile in separate lockup from Adults accused in the same Police Station was not adhered with in previous law so now requiring to keep them away from Police Station at "Observation home" which are yet to</p>

	<p>offence for which under section 239 of the Code, or any other law for the time being in force, such child could be tried together with an adult, the Court taking cognizance of the offence shall direct separate trial of the child by the Juvenile Court.</p>	<p>inform him of the time, date and name of the Juvenile Court before which the juvenile shall be produced; and inform the concerned probation officer to enable him to obtain such information about the juvenile and other material circumstances which may be of assistance to the Juvenile Court for making inquiry.</p> <p>(2) No juvenile shall be arrested under any of the laws dealing with preventive detention or under the provisions of Chapter V III of the Code.</p>	<p>established or designated is bit impractical and time taking process.</p> <p>The requirement for informing the Guardian /Parents and Probation officer by Police was seldom practiced in previous law, JJSO 2000, and Police officials, not only Officer-in-charge (OIC)/Station House Officers (SHOs) but duty officers, Head Muhrirs, and Investigation Officers (IOs) need to be trained on such provisions.</p> <p>This provision is more like the Social Information Report (SIR) that has been explained in section 7(2) of JJSO2018 and first time institutionalized in pre-trial stage and to be utilized for probation in trial stage.</p> <p>Protection of Pakistan Act (PPA)2014 overrides such provision and allows preventive detention.</p>
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	<p>6. Procedure of Juvenile Courts. -(I) Juvenile Court shall, unless provided otherwise in this Ordinance, follow the procedure provided for in the Code.</p> <p>(2) A Juvenile Court shall not ordinarily take up any other case on a day when the case of a child accused is fixed for evidence on such day.</p> <p>(3) No person shall be present at any sitting of a Juvenile Court except,</p> <p>(a) Members and officers of the Juvenile Court;</p>	<p>5. Release of a juvenile on Bail. -(1) Notwithstanding anything contained in the Code, a juvenile accused of bailable offence shall, if already not released under section 496 of the Code, be released by the Juvenile Court on bail with or without surety unless it appears that there are reasonable grounds for believing that the release of such juvenile may bring him in association with criminals or expose him to any other danger. In this 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 shall</p>	<p>Release of Juvenile at Police Station was not liberally exercised even it was mandated and authorized under JJSO section 10(5) for Juvenile under 15 years and punishment up to 10 years shall be treated bailable offense at Police Station level and section 29-B of Cr.P.C. authorized for Juvenile under 15 years for offenses punishable under 3 years as bailable offenses. One of the reasons apart from awareness that Police Officials during training cited was the Judicial officers' non-concurrence of the exercise of these powers by Police.</p>

<p>(b) Parties to the case before the Juvenile Court and such other persons who are directly concerned with the proceedings including the police officers;</p> <p>(c) Such other persons as the Juvenile Court directs to be present; and</p> <p>(d) Guardian of the child.</p> <p>(4) At any stage during the course of the trial of a case under this Ordinance, the juvenile Court may, in the interest of such child, decency or morality, direct any person to withdraw from Court for such period as the Court may direct.</p> <p>(5) Where at any stage during the course of the trial of a case, the juvenile Court is satisfied that the attendance of the child is not essential for the purposes of the trial, the juvenile Court may dispense with the attendance and proceed with the trial of the case in absence of the child.</p> <p>(6) When child who has been brought before a juvenile Court and is found to be suffering from serious</p>	<p>not under any circumstances be kept in a police station under police custody or jail in such cases.</p> <p>(2) The Juvenile Court shall, in a case where a juvenile is not released under subsection (1), direct the police for tracing guardian of such juvenile and where guardian of such juvenile is traced out, the Juvenile Court may immediately handover custody of the juvenile to his guardian.</p> <p>(3) Where a juvenile is arrested or detained for commission of a minor or a major offence for the purposes of this Act, he shall be treated as if he was accused of commission of a bailable offence.</p> <p>(4) Where a juvenile of more than sixteen years of age is arrested or detained 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 commission of a heinous offence.</p>	<p>This section deals with bail both at Police and court level and segregation of offenses in minor, major and heinous ones and cautious application of bail in major and heinous category by retaining the threshold of Juvenile for bail under 15 for minor and major offenses and raising above 16 onwards for heinous offenses.</p>
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	<p>illness, whether physical or mental, and requires treatment, the Court shall send such child to a hospital or a medical institution where treatment shall be given to the child at the expense of the State.</p>	<p>(5) Where the Juvenile Court is of the opinion that the delay in the trial of a juvenile has not been occasioned by an act or omission of such juvenile or any other person acting on his behalf for in exercise of any right or privilege under any law for the time being n force, such juvenile shall be released on ball if he has been detained for a continuous period exceeding six months and whose trial has not been completed.</p>	
	<p>7. Determination of age. -If a question arises as to whether a person before it is a child for the purposes of this Ordinance, the juvenile Court shall record a finding after such inquiry which shall include a medical report for determination of the age of the child.</p>	<p>7. Investigation in juvenile. - (1)A juvenile shall be interrogated by a police officer not below the rank of Sub Inspector under supervision of . Superintendent of Police or SDPO.</p>	<p>This provision again seems ambitious in Sindh context because Investigation is not separate on functional lines under Police Act 1861 i.e. Operation and Investigation except in Karachi. In most cases, IOs are ASI (Assistant sub-Inspector) so this threshold of Sub-Inspectors may not be practical and equally supervision by SDPO or SP rather than SHO or SIO as Cr.P.C. section 156-B& C envisages for investigation of Honor Killing cases and Blasphemy.</p>

		<p>(2) The investigation officer designated under subsection (1) shall be assisted by a probation officer or by a social welfare officer notified by the Government to prepare social investigation to be annexed with the report prepared under section 173 of the Code.</p>	<p>Again, each revenue district/Police District consists of numerous Police stations whereas the current strength of Probation Officers is one per District and though Social Welfare Officers are at sub-District/Taluka level, this can be addressed in Rules of JJSA2018.</p>
	<p>8. Prohibition to publish proceedings of cases. -(1) Unless the juvenile Court specifically authorizes, the Court proceedings shall not be published in any newspaper, magazine or journal in any form which may disclose the name, address, school or any identification or particulars calculated to lead directly or indirectly to the identification of such child nor shall any picture of the child be published.</p>	<p>8. Determination of age. -(1) Where a person alleged to have committed an offence appears or claims to be a juvenile for the purpose of this Act, the officer-in-charge of the police station, the investigation officer, shall 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, age of such accused person may be determined on the basis of a medical examination report by a medical officer.</p>	<p>In most cases, age determination has been the contentious issue. This provision outlines the procedure/process at Police Station level for Police Official though Police Rules 26.7 of 1934 outlines "Hulio Form" (identity form) but is seldom followed by IOs and Police officials. So, in addition to that PPC 82 that provides the immunity for prosecution of any person under 10 years [amended in March 2016] and proper application of PPC-83 [10-14 years age] which gives discretion powers to Magistrate for reduction in sentence if applied properly rather than writing "Nojawan"</p>

		<p>(2) When an accused person who physically appears to be a juvenile for the purpose of this Act is brought before a Court under section 167 of the Code. The Court before granting further detention shall record its findings regarding age on the basis of available record including the report submitted by the police or medical examination report by a medical officer.</p>	<p>or "No Jawan ul umer" or "Balig" in Police charge sheet/Police challan deprives the juvenile of this statutory benefit.</p> <p>Secondly, provision of this checklist of Birth certificate, educational certificates or other documents in substantive clauses is legally binding while submitting challan under 173 of Cr.P.C. and equally for Magistrate to ensure that plea of juvenility has been established and in some cases plea not raised by defence counsel or judicial mind applied by presiding officer at earliest stage for remand or sending to juvenile detention facility under rule 289 of jail manual and pleaded during appeal stage. Thirdly, it mentions the medical examination during investigation stage, so proposed Rules of JJSA can address this issue.</p> <p>Medical report before seeking remand is a bit ambitious because Police is required to seek remand after 24 hours and cases where such</p>
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			<p>facilities are far way compound the procedural application.</p>
	<p>9. Probation Officer. -(l) The Probation Officer shall assist the Juvenile Court by making a report on the child’s character, educational, social and moral background.</p> <p>(2) Subject to subsection (3) the report of the Probation Officer submitted to the juvenile Court shall be treated as confidential.</p> <p>(3) The juvenile Court may, if it so thinks fit, communicate the substance of the report to the child or his guardian and, where any one of them disputes the contents or views contained therein, the juvenile Court may give such child or, as the case may be, guardian an opportunity of producing such evidence as may be relevant to the matter stated in the report.</p>	<p>9. Disposal of cases through diversion. – (l) With the consent of a juvenile or his guardian, as the case may be, the complaint against a juvenile relating to offences as specified in sub-section (6) shall be referred to the Juvenile Justice Committee for disposal of the same through diversion.</p> <p>(2) The diversion can be exercised at any stage during the course of investigation by the police and during trial by the prosecution and the Court in the prescribed manner.</p> <p>(3) Where a case is referred to the Juvenile Justice Committee by the police, the submission of report of police officer required under section 173 of the Code shall be postponed till the</p>	<p>As discussed earlier this is a new mechanism and stakeholders need to be oriented and procedural changes must be made particularly in Cr.P.C. 173.</p> <p>Diversion means "Probation" during investigation, pre-trial and post-trial is new idea as up till now it is considered as "Judicial function" rather than executive one as proposed to be exercised by Police and Prosecution in addition to "Juvenile Justice Committee" and "Court" so needing changes in corresponding Probationers Offenders Ordinance 1960 under which Probation officer is purported to be appointed.</p>

		<p>final order of the Committee..</p> <p>(4) The Juvenile Justice Committee shall dispose of a case, with consent of the person against whom the offence was committed, by resorting to different modes of diversion including.,</p> <ul style="list-style-type: none"> (a) Restitution of movable property, (b) Reparation of the damage caused: (c) Written or oral apology; (d) Participation in community service; (e) Payments of fine and costs of the proceedings (f) Placement in Juvenile Rehabilitation Centre; and (g) Written and oral reprimand: <p>Provided that where the complainant is a state functionary and the</p>	
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		<p>offence has not been committed against a private person, the Juvenile Justice committee may dispose of the case through diversion with consent of the concerned public prosecutor.</p> <p>(5) For the purposes of diversion, all offences either minor or major shall be compoundable.</p> <p>(6) Diversion shall be exercised in the prescribed manner in cases, (a) where a juvenile is accused of commission of minor offences; and</p> <p>(b) Where a juvenile is accused of commission of major offences and the age of the juvenile is not more than sixteen years at the time of commission of offence.</p>	
	<p>10. Arrest and bail. - (1) Where a child is arrested for commission of an offence, the officer in charge of the police station in which the child is</p>	<p>10. Juvenile Justice Committee. -(1) On commencement of this Act but not later than three months, the Government in consultation with the</p>	<p>This is new mechanism than JJSO 2000 as discussed above.</p> <p>There might be anomaly in hierarchy that Judicial</p>

<p>detained shall, as soon as may be, inform;</p> <p>(a) The guardian of the child, if he can be found, of such arrest and inform him of the time, date and name of the juvenile Court before which the child shall be produced; and</p> <p>(b) The concerned Probation Officer to enable him to obtain such information about the child and other material circumstances which may be of assistance to the juvenile Court for making inquiry.</p> <p>(2) Where a child accused of a non-bailable offence is arrested, he shall, without any delay and in no case later than twenty-four hours from such arrest, be produced before the juvenile Court.</p> <p>(3) Without prejudice to the provisions of the Code, a child accused of a bailable offence shall, if already not released under section 496 of Code, be released by the juvenile Court on bail, with or without surety, unless it appears that there are</p>	<p>concerned Sessions Judge shall establish the Juvenile Justice Committee for each session's division.</p> <p>(2) The Juvenile Justice Committee shall consist of four members with following composition, namely:</p> <p>(a) Serving Judicial Magistrate with powers under section 30 of the Code. who shall also head the Committee;</p> <p>(b) District Public Prosecutor;</p> <p>(c) Member of Local Bar having at least seven years standing at Bar, appointed by the concerned Sessions Judge for period of two years;</p> <p>(d) Serving probation officer or social welfare officer not below the rank of an officer in BPS-17.</p> <p>(3) The place of sitting of the Juvenile Justice Committee may preferably be in the same premises where the</p>	<p>Magistrate is BPS-18 official and District Public Prosecutor is BPS-18/19.</p>
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<p>reasonable grounds for believing that the release of the child shall bring him into association with any criminal or expose the child to any danger, in which case, the child shall be placed under the custody of a Probation Officer or a suitable person or institution dealing with the welfare of the children if parent or guardian of the child is not present, but shall not under any circumstances be kept in a police station or jail in such cases.</p> <p>(4) The juvenile Court shall, in a case where a child is not granted bail under subsection (3), direct for tracing the guardian of such child and where the guardian of the child is traced out, the juvenile Court may immediately release the child on bail.</p> <p>5) Where a child under the age of fifteen years is arrested or detained for an offence, which is punishable with imprisonment of less than ten years, he shall be treated as if he was accused of commission of a bailable offence.</p>	<p>Juvenile Court holds sitting.</p> <p>(4) The Justice Committee shall perform following functions, namely:</p> <p>(a) Dispose of the cases through diversion upon referral from the police, prosecution or the Juvenile Court as the case may be within a period of one month from the date of the referral;</p> <p>(b) Inspect the Observation homes and 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 reintegration of the juvenile kept under their supervision; and</p> <p>(c) Such other functions as may be prescribed.</p> <p>(5) For the administration and functioning of the Juvenile Justice Committee, provision of staff shall be within the powers of the Sessions</p>	
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<p>(6) No child under the age of fifteen years shall be arrested under any of the laws dealing with preventive detention or under the provisions of Chapter VIII of the Code.</p> <p>(7) Notwithstanding anything contained in the Code and except where a juvenile Court is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf or in exercise of any right or privilege under any law for the time being in force, a child who, for commission of an offence, has been detained, shall be released on bail,</p> <p>(a) If, being accused of an offence punishable with death has been detained for such an offence for a continuous period exceeding one year and whose trial for such an offence has not concluded;</p> <p>(b) If, being accused of any offence punishable for imprisonment for life</p>	<p>Judge of respective district.</p>	
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	<p>has been detained for such an offence for a continuous period exceeding six months and whose trial for such offence has not concluded; or</p> <p>(c) Who, being accused of any offence not punishable with death, or imprisonment for life, has been detained for such an offence for a continuous period exceeding four months and whose trial for such an offence has not concluded:</p> <p>Provided that where a child of the age of fifteen years or above is arrested, the Court may refuse to grant bail if there are reasonable grounds to believe that such child is involved in an offence which in its opinion is serious, heinous, gruesome, brutal, sensational in character or shocking to public morality or he is a previous convict of an offence punishable with death or imprisonment for life.</p>		
	<p>11. Release on probation. - Where on conclusion of an inquiry or</p>	<p>11. Procedure of Juvenile Court. - (1) Juvenile Court shall</p>	<p>This is more or less same in JJSO and discussed in definition clauses.</p>

<p>trial, the juvenile Court finds that a child has committed an offence, then notwithstanding anything to the contrary contained in any law for the time being in force, the juvenile Court may, if it thinks fit-</p> <p>(a) Direct the child offender to be released on probation for good conduct and place such child under the care of guardian or any suitable person executing a bond with or without surety as the Court may require, for the good behaviour and well-being of the child for any period not exceeding the period of imprisonment awarded to such child:</p> <p>Provided that the child released on probation be produced before the juvenile Court periodically on such dates and time as it may direct.</p> <p>(b) Make an order directing the child offender to be sent to a Borstal</p>	<p>follow the procedure provided for, in the Code unless provided otherwise in this Act.</p> <p>(2) No person shall be present at any sitting of the Juvenile Court, except,—</p> <p>(a) Staff and officers of the Juvenile Court;</p> <p>(b) Parties to the case before the Juvenile Court and such other persons who are directly concerned with the proceedings including the police officers;</p> <p>(c) Guardian of the juvenile; and</p> <p>(d) Such other persons as the Juvenile Court direct to be present.</p> <p>(3) At any stage of proceedings, the Juvenile Court may in the best interest of a juvenile's decency or morality, direct any person to withdraw from Court for .</p>	
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	<p>institution until he attains the age of eighteen years or for the period of imprisonment, whichever is earlier.</p> <p>(c) Reduce the period of imprisonment or probation in the case where the Court is satisfied that further imprisonment or probation shall be unnecessary.</p>	<p>such period as the Court may direct.</p> <p>(4) If at any stage of proceedings, the Juvenile Court is satisfied that the attendance of the juvenile is not essential for the purposes of the trial, the Juvenile Court may dispense with the attendance and proceed with the trial of the case in absence of the juvenile.</p> <p>(5) When a juvenile who has been brought before the Juvenile Court is found to be suffering from serious illness, whether physical or mental and requires treatment, the Court shall send such juvenile to a hospital or a medical institution where treatment shall be given to the juvenile at the expense of the State.</p>	
	<p>12. Orders that shall not be passed with respect to a child. ---Notwithstanding anything to the contrary contained in any law for the time being in force no child shall be,</p> <p>(a) Awarded punishment of death or ordered to</p>	<p>12. Trial of juvenile with adult person. —(l) Notwithstanding anything contained in section 239 of the Code or any other law for the time being in force and subject to the provisions of subsections (2) and (3), no juvenile may be charged with and</p>	<p>This provision is same as section 5 &6 of JJSO 2000.</p>

	<p>labour during the time spent in any Borstal or such other institution; and</p> <p>(b) Handcuffed, put in fetters, or given any corporal punishment at any time while in custody: --- Provided that where there is reasonable apprehension of the escape of the child from custody, he may be handcuffed.</p>	<p>tried for an offence together with an adult.</p> <p>(2) A juvenile may be charged with and tried together with an adult by the Juvenile Court if the court is satisfied that it is in the interests of justice to hold a joint trial.</p> <p>(3) In case of joint trial, the Juvenile Court may dispense with the physical presence of the juvenile before it without any application in this regard and juvenile may be allowed to join the Court proceedings through audio-visual technology link.</p>	
	<p>13. Appeal etc.-(1) A child convicted on a trial by a Juvenile Court, or any other person on his behalf, may, within thirty days from the date of such order, prefer an appeal in accordance with the provisions of the Code.</p> <p>(2) The Provincial Government or any person aggrieved by an order of acquittal passed by a Juvenile Court, may, within thirty days, prefer an appeal against such order in accordance with the</p>	<p>13. Disclosure of identity of the juvenile. - Whoever prints or publishes the name or any matter which may make known identity of a juvenile shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.</p> <p>(2) Nothing in subsection (1) extends to any printing or publication of the name or any matter which may make known the identity of a juvenile</p>	<p>This section is same as section 8 of JJSO 2000 and section 23 of Sindh Children Act 1955.</p>

	<p>provisions of section 417 of the Code.</p>	<p>if such printing or publication is, —</p> <ul style="list-style-type: none"> (a) By or under the order in writing of the officer-in-charge of the police station or the police officer making the investigation into such offence acting in good faith for the purposes of such investigation; or (b) By or with the authorization in writing of the juvenile or the next-of-kin of the juvenile: (c) Provided that no such authorization shall be given by the next of-kin to anybody other than the chairman or the secretary, by whatever name called, of any recognized welfare institution or organization . 	
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		<p>Explanation. — For the purposes of this subsection, “recognized welfare institution or organization” means a social welfare institution or organization recognized in this behalf by the Government.</p> <p>(3) Whoever prints or publishes any matter in relation to any proceedings before a Juvenile Court with respect to a juvenile referred to in subsection (l) without the previous permission of Juvenile Court shall be punished with imprisonment for a term which may extend to two years and shall also be liable to fine.</p> <p>Explanation. — -The printing or publication of the Judgment of any High Court or the Supreme Court does not amount to an offence within the meaning of this section.</p>	
	<p>14. Ordinance not to derogate from other laws. - The provisions of this Ordinance shall be in addition to and not in derogation of any other law for the time being in force.</p>	<p>14. Report of probation officer. -(1) The probation officer shall assist and prepare a report on direction of the Juvenile Court within such time as may be</p>	<p>This section is more elaboration of section 18 of Probation of Offenders Ordinance 1960 with new additions.</p>

		<p>directed the Court at any stage regarding,—</p> <ul style="list-style-type: none"> (a) Juvenile character, educational, social and moral background; (b) Juvenile’s admission of committing an offence, if any, made with free consent and voluntarily; (c) Any evidence that juvenile actually committed the offence; (d) All legal and appropriate assistance provided at all levels to juvenile for his understanding, concept and consequences, even to the child's family and guardian; (e) Steps taken for mediation or compromise with the complainant or victim and 	
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		<p>possibility of settlement; and</p> <p>(f) Possibility of sending the juvenile to Juvenile Rehabilitation Centre or release on probation.</p> <p>(2) Subject to subsection (3) the report of the probation officer submitted to the Juvenile Court shall be treated as confidential.</p> <p>(3) The Juvenile Court may, if it so thinks fit, communicate substance of the report to the juvenile's guardian and where any one of them disputes the contents or views contained therein, the Juvenile Court may give such juvenile or guardian, as the case may be, an opportunity of producing such evidence as may be relevant to the matter stated in the report.</p>	
	<p>15. Power to make rules. - The Provincial Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.</p>	<p>15. Powers of Juvenile Court to order for release. — On receipt of report under section 14 and on conclusion of an inquiry, investigation or trial, the Juvenile Court</p>	<p>Already commented in section 6 of JISA 2018 and same as sections 10 & 11 of JJSO 2000 that defines such functions.</p>

		<p>may, keeping in view the best interest of the child,</p> <p>(a) Pass an order for release of the juvenile offender after the victim or complainant, as the case may be, pardons him:</p> <p>Provided that the Juvenile Court may refuse to release the juvenile offender even if the victim or complainant pardons if the Juvenile Court for reasons to be recorded in writing considers that such release is either against the public policy or the interests of the State:</p> <p>(b) Pass an order for the community service, fine, compensation to the victim or complainant restitution of property, counselling;</p> <p>(c) Direct the juvenile offender to be released on probation for good conduct and place such juvenile offender under care of a</p>	
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		<p>guardian or any suitable person or such Juvenile Rehabilitation Centre established or certified for the purposes of this Act for any period not exceeding the period of confinement awarded to such juvenile;</p> <p>(d) Direct the probation officer to submit probation report in prescribed manner:</p> <p>Provided that if juvenile offender fails to comply with the orders or violates the conditions of orders of release on probation, the Juvenile Court may pass any order as it may think fit, including cancellation of probation order; or</p> <p>make an order directing the juvenile offender to be sent to a Juvenile Rehabilitation Centre until he attains the age of eighteen years or till the completion of period of</p>	
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		imprisonment, whichever comes earlier.	
		<p>16. Orders that shall not be passed with respect to a juvenile. -(1) No person who was a juvenile offender at the time of commission of an offence shall be awarded punishment of death.</p> <p>(2) No juvenile offender shall be committed to prison, ordered to labour, put in fetters, handcuffed or given any corporal punishment at any time while in custody: .</p> <p>Provided that if there is reasonable apprehension of the escape of the juvenile offender from custody who is more than sixteen years of age and involved in heinous offence or he is previously convicted of an offence punishable with imprisonment for life, for reasons to be recorded, he may be handcuffed or put into a solitary Confinement in a Juvenile Rehabilitation Centre or observation home for a period not</p>	<p>This provision is same as section 12 of JJSO 2000 but additions of new mechanisms with same sentencing guidelines. However, it is still short of Beijing Rules 1985 (administration of Juvenile Justice) and Tokyo Rules 1990 dealing with Juveniles deprived of their liberty (non-custodial measures) and Riydh guidelines 1990 on custodial measures.</p>

		exceeding twenty-four hours.	
		<p>17. Special: provision for female juvenile. -(1) No female juvenile shall' in any circumstances be apprehended or investigated by a male police officer or released on probation under supervision of a male officer.</p> <p>(2) A female juvenile shall only be kept in a Juvenile Rehabilitation Centre established certified exclusively for female inmates.</p>	<p>Police Rules 26.18 A clearly outlines that woman should be detained in Woman Police Station [Female juvenile treated as woman be kept in Woman Police Station] while procedure of arrest is dealt by lady Police officer where available hence application might be difficult in rural areas or far flung Police stations where female staff is not available. Proposed rules on JJSA 2018 should address this issue and in such situations, cases be transferred to Woman and Children Police stations rather than to general Police Station.</p>
		<p>18. Appeal. - Any person convicted by a Juvenile Court may prefer an appeal in accordance with the provisions of the Code.</p> <p>(2) In case of juvenile offender, the appeal may be preferred by guardian acting on behalf of the juvenile.</p> <p>(3) The Government or any person aggrieved</p>	<p>This provision is same as section 16 of JJSO 2000 but statute of limitation may be raised from thirty days stipulated given the fact that access of Justice and procedures of public legal aid is outlined in District Legal Empowerment Committee (DLECs) or other windows in both Public and Private sector.</p>

		by an order of acquittal passed by the Juvenile court may, within thirty days, prefer an appeal against such order in accordance with the provisions of section 417 of the Code.	
		19. Removal of disqualification attached with conviction. —Subject to provisions of the constitution, a juvenile offender convicted under the provisions of this Act shall not suffer a disqualification, if any, attaching to a conviction of an offence under such law.	This is new innovation and a rehabilitative approach rather than punitive or retributive. Therefore, pleading guilty approach stigmatizes the Juvenile and is tantamount to conviction, which needs to be ensured by presiding officers and pleading counsels.
		20. Establishment and certification of observation homes and Juvenile Centres. —(l) The Government may establish and maintain observation home and Juvenile Rehabilitation Centres for the reception of juveniles, including separate centres for female juveniles:	This is a new mechanism and temporarily filled through Remand home available under section 26 of Sindh Children Act1955 and section 2(f) of Sindh Remand Home Rules 2011 defines "Remand Home " as a place of safety to receive temporarily a inmate for custody, care, protection, observation and treatment. Sindh Child Protection Authority Act2011 and SCPA Rules 2017

		<p>2. The Government may certify an observation home as a Juvenile Rehabilitation centre managed or controlled by a non-governmental organization for reception of juveniles.</p> <p>3. The Government may certify an already established association or society in any local area for social reintegration or rehabilitation of a juvenile offender who is released on parole or discharged from a Juvenile Rehabilitation Centre and may regulate activities and functions of such released or discharged juvenile offender in the prescribed manner.</p>	<p>empowers the authority for certification and licensing authority.</p>
		<p>21. Power of the Government to withdraw certificate. —The Government, if dissatisfied with the condition, management or superintendence of a certified observation home or a Juvenile</p>	<p>Sindh Child Protection Authority Act2011 envisages the duties of Authority as registering, lice sensing and monitoring of Child Protection Institutes which may temporarily</p>

		Rehabilitation Centre may at any time withdraw the certificate issued under section 20 in prescribed manner.	fill the gap under General Clauses Act till such institutions are created.
		22. Inspection of observation homes and Juvenile Rehabilitation Centers. In order to report to the Juvenile Court or Juvenile Justice Committee on measures being taken for social reintegration, health. Education or other conditions of the inmates, a medical officer a member of the Committee, with prior approval of head of the Committee or an officer authorized by the Government, may inspect an observation home or a Juvenile Rehabilitation Centre.	Same as above the SCPA2011 section 10(e)(f)(g) undertakes the inspection functions.
		23. Act to override other laws. —the provisions of this Act shall have overriding effect notwithstanding anything contained in any other law for the time being" in force	This section is same as section 14 of JJSO 2000 except having overriding effect while JJSO was in addition to but needs be clarified while such cases are brought before court for interpretations particularly Anti-Terrorism Act ATA1997, Pakistan Protection Act PPA2014, Narcotic Control Substance Act NCSA1997, Railways Act and other personal laws.

		<p>24. Power to make rules. —The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.</p>	<p>Same as section 15 of JJSO and a cardinal element of legal normative framework.</p>
		<p>25. Repeal. —The Juvenile Justice System Ordinance, 2000 (XXII of 2000) is hereby repealed.</p>	<p>Once new legal norm is consolidated as in present case it is cardinal element of legal normative framework to have repeal clause.</p>

The Sindh child protection authority act, 2011

PROVINCIAL ASSEMBLY OF SINDH
NOTIFICATION
KARACHI, THE 9TH JUNE, 2011

NO.PAS/Legis-B-10/2011-The Sindh Child Protection Authority Bill, 2011 having been passed by the Provincial Assembly of Sindh on 16th May, 2011 and assented to by the Governor of Sindh on 9th June, 2011 is hereby published as an Act of the Legislature of Sindh.

THE SINDH CHILD PROTECTION AUTHORITY ACT, 2011.
SINDH ACT NO: XIV OF 2011

AN
ACT

to provide for the establishment of an Authority known as the Sindh Child Protection Authority.

Whereas it is expedient to provide for the establishment of an Authority known as the Sindh Child Protection Authority and to ensure the rights of the children in need of special protection measures and to provide for matters ancillary thereto;

Preamble.

It is hereby enacted as follows: -

1. (1) This Act may be called the Sindh Child Protection Authority Act 2011.

**Short title,
commencement and
application.**

(2) It shall come into force at once.

2. In this Act, unless there is anything repugnant in the subject or context –

Definitions

a) “Authority” means the Sindh Child Protection Authority established under this Act;

b) “Chairperson” means the Chairperson of the Authority;

c) “Child in need of special protection measures” includes a child who-

(i) is victim of violence, abuse and exploitations;

(ii) is subjected to physical and psychological violence, sexual abuse or commercial sexual exploitation;

(iii) is forced into the worst forms of the child labour, exploitative labour, or beggary;

- (iv) is subject to human trafficking within and outside Pakistan;
 - (v) is being misused for drug trafficking or is subjected to abuse of substances like glue drugs, spirit;
 - (vi) is engaged in an armed conflict;
 - (vii) is a child without primary care givers; and
 - (viii) is affected or infected with HIV aids;
- d) "Child protection institution" means an institution, established or recognized under this Act or the rules, for the admission, care, protection and rehabilitation of child requiring special protection measures;
 - e) "Child protection officer" means an officer appointed by the Government for carrying out the purposes of this Act;
 - f) "Child Protection unit" means a child protection unit established by the Authority for a local area under the Act;
 - g) "Child" means a person who has not attained the age of eighteen years;
 - h) "Fund" means the Sindh Child Protection Authority Fund established under the Act;
 - i) "Government" means the Government of Sindh;
 - j) "Local area" means a Union, Taluka, Town, District and City District as defined in section 5 of the Sindh Local Government Ordinance,2001;
 - k) "member" means a member of the Authority;
 - l) "prescribed" means prescribed by the rules made under this Act;

"Secretary" means the Secretary of the Authority.

3. (1) On the commencement of this Act, Government shall, within sixty days, by notification in the office Gazette, establish an Authority to be known as the Sindh Child Protection Authority.

Establishment of the Authority.

(2) The Authority shall be a body corporate, having perpetual succession and a common seal with power, to acquire and hold property, both movable and immovable and may by the said name, sue and be sued.

(3) Government may transfer state land or building, free of cost, to be utilized for the purpose to which the Authority is established.

(4) The headquarter of the Authority shall be at Karachi.

- 4.** (1) The Authority shall consist of-
- (a) Chairperson;
- (b) members.
- Composition of the Authority.**
- (2) The Minister-in-charge of the Social Welfare Department shall be the Chairperson of the Authority. **Chairperson**
- (3) The Secretary, Social Welfare Department. **Secretary/Member**
- (4) Government may nominate the following members.
- i. two members of the Provincial Assembly to be nominated by the Chief Minister; **Members**
 - ii. two well-known advocates having experience in the child rights; **Members**
 - iii. two representatives from the Nongovernmental Organizations working for the welfare and development of the children; **Members**
 - iv. Secretary to Government of Sindh Home Department; **ex-officio Member**
 - v. Secretary to Government of Sindh Law Department; and **ex-officio Member**
 - vi. Secretary to Government of Sindh Labour Department. **ex-officio Member**
- (5) The Authority may co-opt any other person or representative of the UNICEF or any International or National organization or agency
- (6) The Director General of the Authority shall be the Secretary.

5. (1) The members other than ex-officio members shall hold office for a term of three years and shall not be eligible for more than two consecutive terms.

Terms of office of the members

(2) The members shall act on gratis basis and shall only be entitled for traveling and daily allowances as may be prescribed.

(3) A nominated member of the Authority may resign from his office by writing under his hand to Government.

6. (1) Any vacancy caused due to the death, resignation or removal of a member other than an ex-officio member, shall be filled in by Government through appointment of another person as member who shall hold such office for the unexpired term of his predecessor.

Casual Vacancy.

(2) No act or proceeding of the Authority shall be invalid merely on the ground of existence of any vacancy, or any defect, in the constitution of the Authority.

7. (1) Government may remove a member if such person has-

Removal of a Member.

- (a) become an un-discharged insolvent;
- (b) been convicted and sentenced to imprisonment for an offence which involves moral turpitude;
- (c) become of unsound mind and has been so declared by a competent court;
- (d) abused the position as a member which is detrimental to public interest; provided that no person shall be removed under this clause until he has been given a written show cause notice and an opportunity of being heard;

(2) A vacancy caused under sub-section (1) shall be filled in by Government within thirty days through appointment of another person as member who shall hold such office for the unexpired term of such member.

8. (1) The Director General shall be the Chief Executive of the Authority and shall be appointed by Government in the prescribed manner.

Director General.

(2) The Director General shall exercise such powers and perform such functions as may be determined by the Authority.

9. (1) The meeting of the Authority shall be held at a place and on such day and at such times as may be fixed by the Chairperson and shall be presided over by him.

Meeting of the authority.

(2) No proxy representation shall be allowed in the meeting.

(3) The Quorum for a meeting of the Authority shall be half of the total members, a fraction being counted as one.

(4) All decisions of the Authority shall be taken by majority of the members and in the event of equality of votes, the Chairperson shall have a casting vote.

(5) All orders and decisions of the Authority shall be authenticated by the signature of the Chairperson or any other person authorized by the Chairperson in his behalf.

10. (1) For the purposes of this Act, the Authority shall have powers-

Functions of the authority.

- a) to coordinate and monitor the child protection related issues at the provincial and district level;
- b) to ensure the rights of the children in need of special protection measures;
- c) to support and establish institutional mechanisms for the child protection issues;
- d) to make necessary efforts to enhance and strengthen the existing services of different children welfare institutions;
- e) to set minimum standards for social, rehabilitative, re-integrative and reformatory institution and services and ensure their implementation;
- f) to supervise in the light of minimum standards, the functions of all such institutions established by government or private sector for the special protection measures of the children;
- g) to set minimum standards for all other institutions relating to the children (like educational institutions, orphanages,

shelter homes, remand homes, certified school, youthful offender work places, child parks and hospitals etc) and ensure their implementation;

- h) to review laws, propose amendments in the relevant law, wherever necessary, so as to bring those in conformity with the relevant international instruments ratified by Pakistan and to propose new laws;
- i) to recommend development of a Policy and Plan of Action for the children;
- j) to monitor and report on the violation of the national and provincial laws and international instruments and take suitable remedial measures for the protection of the child;
- k) to set up child protection management information system and prepare annual reports;
- l) to mobilize financial resources for programmes relating to special protection of children through provincial, national and international agencies;
- m) to promote and undertake systematic investigation and research on child protection issues;
- n) to initiate through relevant authorities, prosecution of the offenders when children are victim of the offence;
- o) to establish and manage the Fund;
- p) to do such acts as are ancillary and incidental to the above functions;
- q) to investigate or cause investigation, on its own or upon a complaint, into any matter having bearing on the interest of the children; and
- r) any other functions, which may be assigned to it by Government.

11. All the executive authorities shall assist the Authority in the performance of its functions.

Assistance to the authority.

12. The Authority may, subject to such conditions as it may specify, delegate all or any of its powers under this Act to Chairperson, or any of its members.

Delegation of the powers.

13. The Authority may appoint committees, consisting of its members as it thinks fit and may refer to them any matter for their consideration and report.

Appointment of the committees.

14. The Authority may appoint on short-term basis advisors, consultants and experts having specialization and expertise in the child protection related issues.

Appointment of Advisors etc.

15. (1) The Authority may appoint child protection officers, in child protection units, to carry out the purposes of this Act.

Appointment of the child protection officers.

(2) The Authority shall determine the eligibility for appointment, terms and conditions of service of the child protection officers.

(3) A station house officer shall provide appropriate police assistance to the child protection officer, whenever required.

16. (1) The Authority may establish a child protection unit for a local area.

Child protection unit.

(2) The unit shall consist of such members as the Authority may determine.

(3) The unit shall exercise such powers and perform functions as may be devolved upon it by the Authority.

17. (1) A child protection officer may, in case of a child in need of special protection measures, ask relevant authorities for an appropriate action.

Protective Measures.

(2) A child protection officer may, in consultation with the child protection committee, apply to the nearest magistrate to take into custody a child requiring special protection measures.

(3) Whenever a child is taken into custody, he shall immediately be taken to the nearest Child Protection Institution for temporary custody till appropriate orders are passed by the appropriate authorities.

18. (1) There shall be established by Government a **Fund.**
Fund, which shall consist of-

- (a) all sums paid by Government;
- (b) all grants, made by the Federal Government, Provincial Government or locals' bodies; and
- (c) donations, made by private individuals, national and international agencies.

(2) The Fund shall be administered by the Authority, which shall make such allocation for specific activities, as it may deems appropriate.

(3) The Fund shall be utilized for-

- (a) performing functions of the Authority;
- (b) protecting rights and welfare of the children, and
- (c) such other activities, which fall within the purview of the Authority.

(4) Government shall make annual budgetary allocation for the establishment charges of the Authority.

19. (1) The Secretary Social Welfare Department shall be **Financial Control.**
the Principal Accounting Officer of the Authority in respect of the expenditure incurred against budget grant or grants made to the Fund and shall, for this purpose, exercise all the financial and administrative powers delegated to him by the Authority.

(2) The accounts shall be maintained in accordance with the standards as prescribed by Government.

(3) The Authority shall appoint a Chartered Accountant who is a member of the Institute of Chartered Accountants of Pakistan, as an auditor who shall carry out the audit of the accounts of the Authority.

(4) The auditor referred to in sub-section (3) shall be appointed on such remuneration and on such terms and conditions as the Authority may determine.

20. The Authority shall prepare annual report of its activities and such other periodical or special reports, as it may consider necessary.

Reports.

21. The Chairperson, members, officers and other employees of the Authority shall be deemed to be the public servants within the meaning of section 21 of the Pakistan Penal Code.

Chairperson, Members and other staff of the Authority to be the public servants.

22. No suit, prosecution or other legal proceeding shall be instituted or Protection of action taken entertained against any person, acting or purporting to act under this Act under this Act. or the rules, in good faith and for the welfare of a child.

Protection of action taken under this Act.

23. The Authority may, with the approval of Government by Power to make rules. Notification in the official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

**BY ORDER OF THE SPEAKER
PROVINCIAL ASSEMBLY OF SINDH**

Sindh Child Protec

**HADI BUX BURIRO SECRETARY
PROVINCIAL ASSEMBLY OF SINDH**

**GOVERNMENT OF SINDH
SOCIAL WELFARE DEPARTMENT**

Karachi, dated the 31st January, 2017.

NOTIFICATION

No.SO (Coord)/2/ (439)2013: In exercise of the powers conferred by section 23 of the Sindh Child Protection Authority Act; 2011 (XIV of 2011), the Authority is pleased to make the following rules for carrying into effect the said Act.

1. (1) These rules may be called the Sindh Child Protection Authority Rules, 2016.
(2) They shall come into force at once.

Short Title and commencement

2. (1) In these rules, unless the context otherwise requires the following expressions shall have the meanings hereby respectively assigned to them, namely.

Definitions.

- (i) "Act" means the Sindh Child Protection Authority Act. 2011;

- (ii) "Prescribed Criteria" means the criteria and parameters, set out in these Rules.
- (iii) "Member" means Member of the Authority.

(2) The words and expressions used but not in these rules shall have the same meaning as assigned to them in the Act.

- 3. All non-official and co-opted members, if any, except two provincial members or Assembly who shall be nominated by the Chief Minister section 4 sub-section (1) of section (4) of the Act, shall be proposed and recommended by the Authority by a simple majority and approved by the Chairperson of the Authority. **Nomination to the Authority**
- 4. Any national or international organization co-opted by the Authority in accordance with rule 3 shall be granted observer status only. **Co-option to the Authority.**
- 5. (a) Any member, being other than ex-officio, may be removed due to non-attendance at three consecutive Authority meetings and in default of any intimation of the intended absence to the Authority. **Removal of member.**
 - (b) Matters relating to contents of sections 7 (1) of the Act shall be communicated in writing to the Chairperson by Authority.
 - (c) Following receipt of such a communication, the Chairperson shall make immediate enquiries into the matter and all such enquiries shall be completed within fifteen days.
 - (d) Should any enquiry into the matter uphold the said allegation(s) then written, confirmation of removal shall be sent by the Chairperson to the member, informing the Authority, outlining reasons for removal of member.
- 6. In the case any vacancy due to death, resignation, or removal or member other than an ex-officio member, all applications for nomination to be submitted to the Authority in accordance with rule 3, it shall be processed within Thirty days of the death, resignation, or removal of a member. **Vacancy due to Death, resignation or removal of a member.**
- 7. (a) the member other than ex office member, shall tender his resignation in writing to the Chairperson of the Authority. **Resignation.**
 - (b) No resignation shall become effective before the expiration of thirty days from the date of submission of the resignation.

(c) On receipt of the said resignation, the Chairperson shall review and provide written confirmation of acceptance of the same before the expiration of thirty days post submission of the said communication.

8. Any allowance paid to a member in furtherance of his Office shall be calculated in accordance with prescribed Government rates.

Rates for travel and subsistence allowances for members.

9. (a) The Chairperson shall notify each member of an upcoming meeting in writing, including an agenda, not later than seven days prior to the proposed date of the meeting.

Meeting notification.

(b) Confirmation of attendance or non-attendance of each member shall be communicated in writing to the Chairperson at least three days prior to the proposed date, including any suggested inclusions to the agenda.

10. (a) Subject to the discretion of the Chairperson, an extraordinary meeting may be convened on an emergency basis at any time.

Extraordinary meetings.

(b) Any member of the Authority may request in writing for meeting in to the Secretary not more than ten days prior to the proposed date of the meeting.

(c) Upon receiving such a request, the Secretary shall share the same with the Chairperson and a decision shall be made not more than three days of receipt of the same.

11. (1) The Secretary shall record and maintain the minutes of the proceedings of each meeting of the Authority.

Record of Meetings

(2) The said draft minutes shall be circulated amongst the members within seven days of the conclusion of the meeting. Members desiring any edits to the minutes shall convey the same in writing to the Secretary within seven days of receipt of the minutes.

(3) Any prior draft minutes shall be presented by the Secretary in the next following meeting for approval by the Authority.

12. (1) An office shall be established under the directions of the Director General to manage and implement the functions of the Authority

Establishment of Office of the Authority.

(2) The office to be staffed by such officers and staff as the Authority may determine.

- 13.** (1) The Director General shall supervise the functions of all Child Protection Units. **Function of the Director General.**
- (2) The Authority may delegate the powers and functions of the Director General to any officer of the Authority as deemed appropriate.
- (3) No officer below BPS 18 shall be eligible for such delegation of powers and functions.
- 14.** (1) The Authority shall compile a roster of advisors, to be maintained by the Secretary. **Appointment of Advisor.**
- (2) The services of any advisor shall be provided on a short-term basis only.
- (3) The qualifications for such advisors shall be as per recruitment rules.
- (4) Any member of the roster may tender his written resignation to the Secretary of the Authority.
- (5) The resignation shall become effective after the expiration of thirty days from the date of the said submission.
- (6) Terms of reference for each assignment shall be developed by the Authority in support of obtaining the services of any advisor on short-term basis.
- 15.** The services of any short-term expert consultant to be procured in accordance with the Government prescribed rules. **Expert short-term consultants.**
- 16.** (1) The Authority shall appoint at least one Child Protection Officer in each Child Protection Unit to deliver his or her functions defined under the Act. **Appointment of child protection officers in child protection units.**
- (2) Each Child Protection Unit will be headed by a Child Protection Officer.
- (3) Terms and condition of service to be developed by the Authority, as per Government recruitment policy.
- 17.** The Child Protection Unit shall: **Functions of Child Protection Units.**
- (a) liaise with child protection community structures and support, as far as possible, initiate for the prevention of abuse, neglect and exploitation of children;
- (b) receive, register, refer, where possible, manage and monitor cases of children in need of special protection measures in accordance with applicable minimum standards and procedures prescribed by the authority.
- (c) perform all other acts and duties as may be delegated by the Authority under the Act.

18. The Secretary Social Welfare Department shall prepare an annual budget on or before 31st December of each year. **Annual Budget.**

19. Annual accounts of the Authority shall be audited by the Accountant General Sindh. **Audit of Annual Accounts.**

20. (1) The Authority shall prepare a detailed annual report within two months of the completion of each financial year, wherein its performance shall be discussed and compared with its annual plan. **Annual Reports.**

(2) The said report, following its approval by the Authority, shall be submitted to the Government, as well as to various stakeholders, including specific national and international donors to the Authority.

21. (1) The Authority shall maintain a website containing contact details of all Child Protection Units and Child Protection Officers in support of enhanced access to the service by the public at large. **Website of the Authority.**

(2) The Act, the rules and any other legal instruments of statutory or procedural importance, including international human rights treaties and conventions ratified by Pakistan, shall be posted on the website in support of enhanced awareness of the public at large.

(3) All annual accounts, annual reports and audit report shall post on the website at the time of publication.

Dr. Shireen Narejo
Secretary to Government of
Sindh.

Sindh Remand Home Rules 2011

SINDH GOVERNMENT GAZETTE
DATED 28TH APRIL, 2011.

GOVERNMENT OF SINDH
HOME DEPARTMENT
Karachi dated the 15TH March, 2011.

NOTIFICATION

NO. HD(PRS-1)/1-3/10.: - In exercise of the powers conferred by section 109 of the Sind Children Act, 1955, the Government of Sindh are pleased to make the following rules: -

1. Short title and commencement, -

- (1) These rules may be called the Sindh Remand Home Rules, 2011.
- (2) They shall come into force at once.
- (3) They shall extend to the whole of the Province of Sindh.

2. Definitions. -

- (1) In these rules, unless there is anything repugnant in the subject or context-
 - (a) "Act" means the Sind Children Act, 1955;
 - (b) "Director" means the Director Reclamation and Probation Home Department, Government of Sindh;
 - (c) "Government" means the Government of Sindh;
 - (d) "In-charge" means the Superintendent appointed by Government to deal with the affairs of the Remand Home;
 - (e) "intimate" means a child admitted to and detained in a Remand Home;
 - (f) "Remand Home" means a particular place declared by Government under section 26 of the Act, as a place of safety to receive temporarily a inmate for custody, care, protection, observation and treatment
- (2) The words expressions used but not defined herein shall have the same meanings as assigned to them in the Act.

3. Government to declare a Remand Home. -

(1) Government may, by notification in the official Gazette, declare any particular place as a Remand Home for the proposes of the Act.

(2) Government shall declare at least one Remand Home in every District of the Province for the custody, care, protection, observation and treatment of children.

4. Section of a Remand Home. -There shall be two sections of Remand Home-

(a) for the detention of children who are involved in commission of any offence;

(b) for the custody of children in need of care and protection.

5. Superintendent of Remand Home. - Superintendent of Remand Home means –

i. The Superintendent appointed by Government, not be below the rank of BS-17 and shall possess Master’s degree of social Science.

ii. The Deputy Superintendent, not below the rank of BS-16, who shall act as Incharge in absence of Superintendent.

6. Accommodation of Superintendent. -The Superintendent and Deputy Superintendent shall have official residence within the premises of Remand Home, so as to have superintendence of Remand Home for 24 hours.

7. Accommodation for children. -Every Remand Home shall provide proper accommodation to the inmates including such as separate bed, sanitary, toilets and bathrooms.

8. Children to be admitted in Remand Home. - (1) No child shall be admitted into a Remand Home, except under a lawful order issued by a Juvenile Court, addressed to the Incharge of Remand Home to admit such child in the Remand Home.

(2) Any police officer, not below the rank of Assistant Sub-Inspector, or a police officer or a person authorized by Government may take to a Remand Home any child in respect of whom there is reason to believe that an offense has been, or is likely to be committed.

(3) A child so taken to a Remand Home and also any child, who seeks refuge in a place of safety may be detained, or as the case may be, kept in Remand Home until he can be brought before the Court:

Provided that such detention shall not in the absence of a special order of the Court exceeds twenty fore hours exclusive of the time necessary for the journey from the place of detention to the Court.

(4) On admission to a Remand Home, the Incharge, shall be responsible to receive the child, and shall maintain a register and record all requisite information about each inmate.

(5) On admission to a Remand Home, every child shall be bathed, weighed and photographed.

(6) On admission to a Remand Home, every child shall surrender his or her property, which shall be kept in safe custody and shall be returned to child on his or her release or discharge.

(7) On admission to a Remand Home, every child shall be examined by the District Health Officer regarding his age, weight, height, identification mark and shall get his or her medical test for diagnostic purpose whether suffering from any disease and Superintendent of Remand Home shall maintain the health report including diagnostic report of every inmate.

(8) The District Health Officer shall take appropriate steps for treatment of sick inmates for the purposes of any present and future disease.

(9) On admission to Remand Home, a female child shall be dealt by only female staff in all related matters.

9. Detention of female children. - (1) Female children shall be detained in separate enclosure of the Remand Home exclusively established for this purpose.

(2) In case there is no such enclosure, they shall be immediately transferred to any care home as ordered by the court.

(3) Female inmates shall in no case be kept in a police lockup or prison.

10. Health, Hygiene and Medical Care. - (1) A medical file of every inmate shall be maintained in the Remand Home along with previous medical history, if any.

(2) There shall be regular medical check-up of the inmates after every three months and the inmates shall be advised to maintain proper health and hygiene by the Medical Superintendent or Civil Surgeon of the District Headquarters Hospital.

(3) All medical tests of an inmate shall be arranged inside the Remand Home and if the arrangements do not exist in the Remand Home, the tests shall be carried out from the Hospital of Health Unit approved by Government.

(4) The specialized or emergency treatment on the advice of the be provided to an inmate at the Hospital or Health Unit, shall be provided to an inmate at the Hospital or Health Unit, where such treatment, investigations and expert consultancy is available.

(5) The cases of the inmates suffering from tuberculosis, asthma, chronic bronchitis, hepatitis B & C, HIV/AIDS, Cancer, Epilepsy, Leprosy and any other serious disease shall be reported to the Juvenile Court along with latest medical reports for such orders as deemed fit.

11. Facility of Meeting with inmates. - During detention in a Remand Home every inmate shall have a right to meet with his or her legal adviser, relatives or family members twice a week for not more than two hours on the day and time as may be notified by the Director.

12. Discharge and transfer of an inmate. - On receipt of written order from the Competent Court, the inmate shall immediately be discharged from the custody or transferred to a certified school or industrial school or any other institution as directed by the Court after due verification of the validity of the orders.

13. Death or serious illness to be reported. - The Superintendent shall at once report the death or serious illness of any inmate to the Director, the Police, concerned Court and parent or guardian of the inmate.

14. Powers and duties of Superintendent or Incharge. - (1) In case of emergency Superintendent or Incharge is empowered to transfer or admit child to hospital with the help of nearest police station.

(2) Every Station House Officer of the Nearest Police Station is duty bound to help the Superintendent of Remand Home on his request.

15. Inspection and complaints. - (1) Trained Inspectors or other duly constituted authority, who do not belong to the administration of the Remand Home shall be empowered to conduct inspections on a regular basis and to undertake surprise inspections on their own initiative.

(2) Every inmate shall have an opportunity to make a request or complaint to an independent and impartial authority without censorship as to substance.

16. Sports and Recreation. - The inmates shall be provided with recreational facilities and with the provision of indoor and outdoor games during their stay at Remand Home.

17. Facility of food for Inmates. - (1) Every inmate shall be provided by the Incharge of Remand Home at usual hours with food of nutritional value, adequate for health and strength of wholesome quality and well prepared.

(2) Clean drinking water shall be available to every inmate.

18. Production before court. (1) The production of inmates before the competent court be arranged by the Incharge for the date fixed for the production of the child or for the inquiry or on any subsequent date to which the proceedings may be adjourned through police escort arranged from local police headquarters.

(2) The incharge of the Police escort shall not be below the rank of A.S.I.

(3) In case of female inmates, female police escort shall be arranged but for any security reasons male police escort shall be arranged on the request of Superintendent Remand Home.

19. Probation and Parole facility--- (1) The Probation Officer shall be available at Remand Home.

(2) In case of any emergency or provisions as defined in parole laws, inmate may be given benefit of these laws.

20. No stigmatization, labour, corporal punishment. - No inmate shall be –

- (a) stigmatized in any matter relating to arrest, inquiry, court proceedings, prosecution and conviction.
- (b) Ordered to labour during the time spent in Remand Home; and
- (c) Handcuffed, put on fetters or given any corporal punishment at any time while in custody.

Secretary to Government of Sindh

GUIDELINES FOR THE STAKEHOLDERS

For Police Officer



ELEMENTS OF JUVENILE JUSTICE SYSTEM

1. Lawyer/Advocate
2. Police
3. Prosecution
4. Probation
5. Judiciary
6. Prison
7. Support Systems
8. Community
9. Social Welfare Officer (Social Welfare Department)
10. Medico-legal Officer (Health Department)

Advocate role to inform juvenile about child rights

1. Juvenile should know and be informed about his/her legal rights. An advocate appointed by the Juvenile Justice Committee shall inform all rights to the accused immediately after his/her arrest.
2. Juvenile has right to legal assistance on State expense and an experienced advocate is to be provided by the court incase juvenile make a request.
3. Juvenile is entitled to bail in normal circumstances.
4. Juvenile's parents or guardian are to be informed and called for immediately after his arrest.
5. Juvenile are not to be detained with adults in any circumstances.
6. Juvenile are not to be handcuffed or fettered. His/her case is tried separately from adult accused by juvenile court.
7. Juvenile case is decided in 6 months by special court established under JJSA 4(8). In case of non-disposal of case, complainant or the Juvenile has right of application to High Court under JJSA 4(9) for redressal.
8. Juvenile is informed that if he/she is first offender and found guilty, he/she would be offered diversion options.
9. Juvenile is provided assistance of Social Welfare Officer and Probation Officer for his/her mental development and to enable him/her to survive in society.



SOPS for Police Officer-I (English Version)

Stepwise responsibilities to be followed by Police Officer in case child is victim

- 1 Deal with child without uniform.
- 2 Keep the victim away from accused and examine him/her medically, if so needed.
- 3 Do not keep the victim in Police Station overnight in any circumstances; he shall be kept in an observation home.²¹
- 4 Arrange an interpreter, if needed.
- 5 Record the statement of child victim verbatim.
- 6 The investigation officer, while recording the statement of the victim, shall ensure that the victim is made comfortable before proceeding to record the statement.
- 7 The statement of the victim may be recorded at the residence of the victim or any other place where the victim can make statement freely and without fear.
- 8 The statement of the victim may be recorded in question answer form. When the victim is of a tender age and is unable to describe/give details of the offensive act, any gesture made by the child victim should also be taken note of by the police officer concerned.
- 9 Lodge/Register First Information Report (FIR) promptly.²²
- 10 Investigation Officer in the case of sexual abuse and physical injury shall promptly secure articles properly for forensic examination. Clothing and articles necessary to be examined by forensic examiner shall be sent to him on priority basis and report shall be collected at an early date.
- 11 The investigation officer shall attempt to ensure that at no point in time the victim child should come in contact with the accused except in Court, and when in Court the officer may ensure that the offender does not communicate with the victim or intimidate his/her using gestures.
- 12 Keep the identity of the victim protected.
- 13 Request Court to appoint a legal practitioner having at least seven years standing at the Bar to provide legal assistance to a child victim²³.



²¹Sec 5(1) Juvenile Justice System Act, 2018

²²154 Code of Criminal Procedure, 1908

²³Sec. 3(3) Juvenile Justice System Act, 2018

SOPs for Police-I (Urdu Version)

پولیس آفیسر ان مرحلے وار ذمیداریوں پر عمل پیرا یوہوں بالفرض اگر کوئی بچہ مظلوم ہے تو۔

1. متاثر بچے کے ساتھ بغیر وردی مخاطب ہونا۔
2. متاثر بچے کو ملزم سے الگ / دور رکھیں اگر ضرورت محسوس ہو تو ڈاکٹر سے معائنہ کروائیں۔
3. متاثر بچے کو کسی بھی صورت میں رات بھر پولیس سٹیشن میں نہیں رکھنا چاہیے بلکہ اسے مرکز بحالی سینٹر میں رکھا جائے۔
4. اگر ضرورت ہو تو مترجم سے مدد لیجیے۔
5. متاثر بچے کا بیان اس کی زبان میں جیسا کہے ویسا لکھا جائے۔
6. بچے کا بیان تحریر کرنے سے پہلے تفتیشی افسر اس بات کو یقینی بنا لے کے متاثرہ بچہ بہتر ماحول میں رہے۔
7. متاثرہ بچے کا بیان اس کے گھر پر یا ایسی جگہ لیا جائے جہاں وہ اپنے آپکو آزاد اور بے خوف محسوس کرے۔
8. مظلوم کا بیان سوال و جواب کی شکل میں تحریر کریں اگر بچہ چھوٹا ہے اور جرم کی نوعیت بیان کرنے سے قاصر ہو تو اس کے کیے گئے تمام اشارے میں بھی ریکارڈ کریں۔
9. جرم کی فوری طور پر FIR درج کریں۔
10. تفتیشی افسر جنسی استحصال اور جسمانی تشدد کی صورت میں فوری طور پر کپڑے اور دیگر چیزیں جانچ پڑتال کے لیے Forensic examination کے لیے کو ترجیحی بنیاد پر بھیجے اور رپورٹ حاصل کرے
11. تفتیشی سافسر اس بات کو یقینی بنا لے کے متاثر بچے کا ملزم سے کسی قسم کا رابطہ نہ ہو ماسواے کورٹ میں اور تفتیشی افسر اس بات کو بھی یقینی بنا لے کہ ملزم کا عدالت میں بچے سے کسی قسم کا رابطہ نہ ہو اور نہ ہی وہ بچے کو اشاروں میں دھمکی دے یا ڈرائے۔
12. مظلوم کی شناخت کو محفوظ رکھیں۔

13. عدالت کو درخواست کرنا کہ وہ کم از کم 07 سال تجربہ رکھنے والے قانونی پریکٹیشنر کی قانونی امداد فراہم کرنے کے لئے مقرر کریں۔

SOPs for Police-I (Sindhi Version)

نابالغ ٻار سان لهه وچڙڪرڻ لاءِ پوليس آفيسر جون ذميداريون

1. نابالغ ڏوهاري سان بنا وردي مخاطب ٿيو.
2. نابالغ ڏوهاري کي بالغ ڏوهاري کان پري رکيو وڃي ۽ سندس ميڊيڪل چيڪ اپ ڪرايو وڃي اگر ضرورت هجي ته.
3. ڪنهن به حالت ۾ نابالغ ڏوهاري کي سڄي رات پوليس اسٽيشن ۾ نه رکيو وڃي ۽ انکي مشاهدي گهر ۾ رکيو وڃي.
4. ترجمان جو بندوبست ڪيو وڃي اگر ضرورت هجي ته.
5. نابالغ ڏوهاري جو بيان انجي زباني مطابق لکيو وڃي.
6. نابالغ ڏوهاري جو بيان رڪارڊ ڪراڻ کان اڳ ۾ ان ڳالهه کي يقيني بڻايو وڃي هو بهتر ماحول ۾ آهي.
7. نابالغ ڏوهاري جو بيان ان جي رهائش يا ڪنهن اهڙي جڳهه تي رڪارڊ ڪجي، جتي هو پنهنجو پاڻ کي آزاد سمجهي ۽ بنا ڪنهن خوف جي بيان رڪارڊ ڪرائي سگهي.
8. نابالغ ڏوهاري جو بيان سوال ۽ جواب واري طريقي سان رڪارڊ ڪيو وڃي، جيڪڏهن ٻار ننڍي عمر جو آهي ۽ ڪنهن به غلط عمل کي پوري طرح بيان نه ٿو ڪري سگهي ۽ ان عمل بابت اشارن ۾ ٻڌائي ٿو ته پوليس آفيسر ان جي اشارن کي به نوٽ ڪري.
9. ايف آئي آر (FIR) جلد کان جلد داخل ڪئي وڃي.
10. ڪنهن به جنسي تشدد ۽ جسماني تشدد جي صورت ۾ 1.0 جلدي ان جي ڪپڙن ۽ بين شين کي پنهنجي حفاظت ۾ وٺي ڪري جانچ پڙتال لاءِ فرانسزڪ ليبارٽري ڏانهن موڪلي ۽ جيترو جلدي ٿي سگهي ان جي فرانسزڪ رپورٽ ورتي وڃي.
11. جانچ ڪندڙ آفيسر انهي ڳالهه کي يقيني بڻائي يا ڪوشش ڪري ته ٻار جو بالغ ملزم سان ڪنهن به قسم جو رابطو نه ٿئي، سواءِ ڪورٽ ۾ ۽ انهي صورت به ۾ ان ڳالهه کي يقيني بڻائڻو ته عدالت ۾ نابالغ ڏوهاري ٻار سان ڪو به رابطو نه ٿيندو نه ڪوئي ان کي اشارن ۾ ڌمڪي ڏيندو.

12. نابالغ ڏوهاري جي سڃاڻپ مخفي رکڻ.

13. عدالت کي درخواست ڪئي وڃي ته نابالغ ڏوهاري جو اهڙو وڪيل مقرر ڪيو وڃي جنهن جو گهٽ ۾ گهٽ 7 سال ڪيس هلائڻ جو تجربو هجي جيڪو انکي قانوني مدد فراهم ڪري سگهي.

SOPs for Police Officer-II (English Version)

Stepwise responsibilities to be followed by Police Officer (in cases where child is offender)

1. Immediately inform about the arrest of juvenile to his/her parents or guardian and Probation Officer.²⁴
2. Produce the juvenile before the Magistrate within 24 hours.²⁵
3. Juvenile is to be medically examined immediately, if so needed.
4. The juvenile in Police custody should not be handcuffed, chained or fettered.²⁶
5. Prepare a separate challan and present the custody of child in Juvenile Court through prosecutor if the co-accused is adult.²⁷
6. The juvenile should never be compelled to confess his/her guilt and he/she should be interviewed only in a child-friendly environment or a child friendly corner in the police station.²⁸
7. A Police Officer should not detain/keep the child with adult accused during the process of investigation.
8. The privacy of juvenile has to be fully respected. SHO concerned is to ensure that no harm is caused by stigmatic exposure, publicity, or labelling, to a child in conflict with law.²⁹
9. A juvenile should be informed promptly and directly of charges against him/her, if appropriate, through his/her parents or legal guardian. In case formal FIR is registered, then a copy of FIR should be made available, to the juvenile and/or to his/her parents or guardian and Probation Officer, at the earliest to enable the juvenile to explain the circumstances which resulted in that child coming in a station of conflict with law.³⁰
10. The investigation of the case of female juvenile shall be handed over to an officer not below the rank of sub-inspector, preferably a lady police officer, appropriately trained to deal with child related cases.
11. A female juvenile shall only be kept in a Juvenile Rehabilitation Centre established or certified exclusively for female inmates.³¹



²⁴Sec. 5 (a) Juvenile Justice System Act, 2018

²⁵Sec. 61 Cr.P.C.

²⁶Sec. 16 (2) Juvenile Justice System Act, 2018

²⁷Sec. 10 Sindh Children Act, 1955

²⁸163 Cr.P.C.

²⁹Sec. 13 Juvenile Justice System Act, 2018

³⁰Sec. 5 of Juvenile Justice System Act, 2018

³¹Sec. 167 (5) Cr.P.C. & Sec. 17 (2) Juvenile Justice System Act, 2018.

12. No female juvenile shall, in any circumstances, be apprehended or investigated by a male police officer or released on probation under supervision of a male officer.³²
13. Investigation officer shall initiate an inquiry to determine the age of juvenile offender on the basis of:
 - a. Birth Certificate
 - b. Education Certificate
 - c. Another pertinent document
 - d. Medical Report by a medical officer³³

³²Sec. 17 (1) Juvenile Justice System Act, 2018

³³Sec. 8 (1) Juvenile Justice System Act, 2018

SOPs for Police Officers-II (Urdu Version)

پولیس آفیسر ان مرحلے وار ذمہ داریوں فوراً ادا کرے کوادا اور اگر کوئی بچہ ملزم قرار دیا جائے تو۔

1. نابالغ کی گرفتاری کے بارے میں فوراً اس کے والدین یا سرپرست اور پروبیشن آفیسر کو اطلاع کریں۔
2. 24 گھنٹے کے اندر مجسٹریٹ کے روبرو پیش کریں۔
3. اگر ضرورت ہو تو فوری طور پر اس کا طبی معائنہ کروائیں۔
4. پولیس کی حراست میں اس کو ہتھکڑی نہ لگائیں۔
5. شریک ملزم بالغ ہونے کی صورت میں الگ چارج شیٹ بنائیں اور بچے کی تحویل Prosecutor کے ذریعے Juvenile Court میں پیش کریں۔
6. نابالغ کے ساتھ اقبال جرم کروانے کے لیے زبردستی نہ کریں اس کا بندوبست دوستانہ ماحول میں کریں یا پولیس اسٹیشن کے child friendly corner میں۔
7. پولیس افسر کی ذمہ داری ہے کہ بالغ اور نابالغ ملزم کو تفتیش کے دوران الگ الگ رکھیں۔
8. نابالغ کی ذاتی زندگی میں کوئی مداخلت نہیں کی جائے گی اسٹیشن ہاوس افسر اس بات کو یقینی بنائے کہ کوئی بھی انتہائی قدم نہیں اٹھایا جائے جو قانون کے خلاف ہو۔
9. نابالغ کو اس پر لگے الزام کے بارے میں مناسب ہو تو اس کے والدین یا سرپرست کے ذریعے مطلع کریں FIR درج ہونے کی صورت میں نابالغ کو اس کے والدین یا سرپرست اور Probation Officer کو FIR کی کاپی دیں اور نابالغ ملزم کو وہ حالات بیان کریں جو قانونی تنازعہ کا باعث بنی ہے۔
10. نابالغ لڑکی کو کسی بھی صورت میں مردانہ حوالات میں نہیں رکھا جائے گا، اور اسکو خاتون پولیس افسر کی زیر نگرانی رکھا جائے۔
11. نابالغ لڑکی کو عدالت میں پیش کرنے کے لیے بھی کسٹڈی مرد پولیس افسر کے حوالے نہیں کی جائے بلکہ خاتون پولیس کو دی جائے۔
12. نابالغ لڑکی کی کسی بھی صورت میں گرفتاری یا تفتیش کسی مرد پولیس افسر کے حوالے نہیں کی جائے گی اور نہ ہی اس کو کسی مرد پولیس افسر کی نگرانی میں پروبیشن میں چھوڑا جائے گا۔
13. تفتیشی افسر نابالغ کی عمر کی تحقیقات کے لیے ان چیزوں کی تحقیقات سر انجام دیں گے۔

پیدائشی سرٹیفکیٹ	.i
تعلیمی سرٹیفکیٹ	.ii
دیگر اہم دستاویز	.iii
میڈیکل افسر کی میڈیکل رپورٹ	.iv

نابالغ/ڏوهاري ٻار سان لهه وچڙ ڪرڻ لاءِ پوليس آفيسر جون ذميداريون

1. نابالغ/ڏوهاري جي گرفتاري جي آگاهي جيترو جلدي ٿي سگهي اُنجي والدين يا سرپرست ۽ "آزمائشي آفيسر" کي ڏني وڃي.
2. نابالغ ڏوهاري کي 24 ڪلاڪن اندر مئجسٽرٽ جي سامهون پيش ڪيو وڃي.
3. نابالغ ڏوهاري جو طبي معائنو جلدي ڪرايو وڃي جيڪڏهن ضرورت هجي ته.
4. نابالغ ڏوهاري کي گرفتاري دوران هٽڪڙيا پيڙيون نه هيون وڃن.
5. جيڪڏهن شريڪ جرم نابالغ مُجرم ٻار آهي ته انجو الڳ سان چالان شيٽ ٺاهي ويندي ۽ پراسيڪيوٽر جي ذريعي اُن کي ٻارن واري ڪورٽ ۾ پيش ڪيو ويندو.
6. نابالغ/ڏوهاري کي اعترافِ جرم قبول ڪرڻ لاءِ ڪنهن به قسم جو زور نه ڀريو ويندو ۽ اُنکان دوستاڻي ماحول ۾ پڻ پڇاڳڇا ڪئي ويندي.
7. پوليس آفيسر ڪيس جي جانچ پڙتال دوران نابالغ ڏوهاري کي بالغ ڏوهاري سان گڏ نه رکيو ويندو.
8. نابالغ ڏوهاري جي ذاتي زندگي ۾ دخل اندازي نه ڪئي ويندي ۽ لاڳاپيل SHO کي ان ڳالهه جو يقين بنائڻو پوندو ته ڪو به اهڙو قدم نه کيوندو جنهن سان قانون جي خلاف ورزي ٿي ٿي.
9. نابالغ ڏوهاري ته لڳايل الزامن بابت جلد کان جلد انکي سندس وارثن يا قانوني طور سپالينڊر کي آگاهي ڏني وڃي، ۽ جيڪڏهن ان ٻار ته ڪائي "ايف آئي آر" داخل ٿيل آهي ته اُنجي هڪ "فوٽو ڪاپي" ٻار کي، اُن جي والدين يا آزمائشي آفيسر کي فراهم ڪئي وڃي، ته جئين هو انهن لڳايل الزامن جي حالت بيان ڪري سگهي.
10. اگر نابالغ ڏوهاري چوڪري آهي ته ان ڪيس جي جانچ ڪنهن اهڙي آفيسر جي حوالي ڪئي ويندي جنهن جو عهدو سب انسپيڪٽر کان گهٽ نه هجي، ۽ ترجمي بنياد ته تربيت يافته عورت پوليس آفيسر کي مقرر ڪيو وڃي.
11. اگر نابالغ ڏوهاري چوڪري (Child Girl) آهي ته ڪيسن صرف ننڍي عمر وران ٻارن جي بحالي واري مرڪز ۾ رکيو ويندو جيڪور صرف عورتن لاءِ مخصوص هوندو.
12. ڪنهن به صورت ۾ نابالغ ڏوهاري چوڪري کي مرد پوليس آفيسر نه گرفتار ڪندو، نه جانچ ڪندو نئي ڪنهن مرد آفيسر کي آزمائش لاءِ حوالي ڪندو.
13. جانچ آفيسر نابالغ ڏوهاري جي عمر جي تحقيقات جي لاءِ هيٺ ڏنل بنيادن ته فيصلو ڪندو؛
i. پيدائشي سرٽيفڪيٽ

- .ii تعليمي سرٽيفيڪٽ
- .iii ٻيا لازمي ڪاغذات
- .iv ميڊيڪل آفيسر جي ميڊيڪل رپورٽ

SOPs for Probation Officer (English Version)

Responsibilities to be followed by Probation Officer

1. Assist the Investigation Officer during the course of investigation.³⁴
2. Prepare Social Investigation Report (SIR) and maintain a proper record of the children who are in conflict with law. If possible, in a database designed for the purpose.³⁵
3. Ensure that probationers observe terms and conditions of probation order.³⁶
4. Coordinate with juveniles released on probation and refer them to the Social Welfare Department or any other organization for their rehabilitation, if needed.
5. Identify juveniles who immediately need rehabilitation services and submit report to Director Rehabilitation.
6. Submit probationers' conduct reports periodically before trial court or on a date fixed by court.
7. Coordinate and assist the investigation agencies and trial Courts.
8. Identify Civil Society Organizations involved in upgrading the Juvenile Justice System and introduce their expertise with all the stakeholders.
9. Take steps for mediation compromise between the complainant and accused.³⁷
10. To obtain information regarding Juvenile's antecedents, family history, or any other material information, for Court's assistance, after his arrest.³⁸
11. Act as a member of Juvenile Justice Committee³⁹ and perform the following functions namely;
 - (a) Dispose of the case within a period of one month.
 - (b) Monitor observation homes and Juvenile rehabilitation centres, and direct officers in charge to take measures for welfare and Social reintegration of the Juvenile kept under his supervision.⁴⁰

³⁴Sec 7(2) Juvenile Justice System Act, 2018

³⁵Sec. 14 Juvenile Justice System Act, 2018

³⁶Sec 13 Juvenile Justice System Act, 2018

³⁷Sec (14) (e) Juvenile Justice System Act, 2018

³⁸Sec (66) Sindh Children Act, 1955 & Sec. 5(b) of Juvenile Justice System Act, 2018

³⁹Sec. 10(2)(d) Juvenile Justice System Act, 2018

⁴⁰Sec 10(4)(a)(b) Juvenile Justice System Act, 2018

SOPs for Probation Officer (Urdu Version)

پروہیشن آفیسر ان مرحلے وار ذمہ داریوں پر عمل پیرا ہوں۔

1. تحقیقات کے دوران تحقیقاتی افسر کی مدد کریں۔
2. سماجی جانچ رپورٹ Social Investigation Report تیار کریں اور نو عمر ملزمان کا ریکارڈ ترتیب کریں اگر ممکن ہو تو اس مقصد کے لیے Database ڈیزائن کریں۔
3. اس بات کو یقینی بنانے کے لئے پروہیشنرز پروہیشن آڈر کی شرائط و ضوابط کا پابند کریں۔
4. نو عمر ملزمان جو پروہیشن پر رہا ہوئے ہیں ان سے ملیں اور اگر انہیں Rehabilitation بحالی کی صورت درپیش ہو تو سماجی بہبود Social Welfare Department یا دیگر Organization سے رجوع کروائیں اگر ضرورت ہو۔
5. ان نو عمر ملزمان کی شناخت کریں جنہیں فوری طور پر rehabilitation یا بحالی کی ضرورت ہے اور رپورٹ Director Rehabilitation کو جمع کروائیں۔
6. پروہیشنرز کے برتاؤ کی رپورٹ وقفہ وقفہ سے عدالت میں جمع کروائیں یا عدالت نے اگر کوئی وقت مختص کیا ہو تو اس پر جمع کروائیں۔
7. تفتیشی اداروں اور عدالتوں کے ساتھ تعاون اور مدد کریں۔
8. Civil Society Organization کی شناخت کریں جو نو عمر ملزمان کے بہتری کے لیے سرگرم ہیں اور ان کی اس مہارت کو Stakeholder میں متعارف کروائیں۔
9. ایسے اقدام اٹھانا جس سے مدعی یا مظلوم سے صلح ہو سکے یا ممکنہ تصفیہ ہو سکے۔
10. نابالغ بچے کو گرفتار کرنے کے بعد ان سے منسلک معلومات، اسکے خاندان اور ان سے منسلک دیگر معلومات حاصل کر کے عدالت سے تعاون کریں۔
11. نابالغ کمیٹی کے رکن کامندر جہ ذیل کردار ہے۔
 - i. مقدمہ کو ایک ماہ کے اندر ختم کریں۔
 - ii. بچوں کے بحالی مرکز Child Rehabilitation Centers کا معائنہ کریں اور ویلفئیر آفیسر کو ہدایت دیں اور بچوں کی نگہبانی کریں اور سزا کی دوبارہ تفتیش کروائیں۔

1. جانچ جي دوران جانچ آفيسر جي مدد ڪئي وڃي.
2. جيڪي نابالغ ڏوهاري قانون سان تنازعي ۾ آهن، انهن جي سماجي تحقيقاتي رپورٽ ٺاهي وڃي، ۽ انهن جو رڪارڊ برقرار ڪيو وڃي، اگر ممڪن هجي ته ڊيٽابيس ۾ جيڪي خاص ڪري ان مقصد لاءِ ٺاهيا ويا آهن ان ۾ شامل ڪيو وڃي.
3. ان ڳالهه کي يقيني بنايو ته جيڪي آزمائش هيٺ وارا ٻار آهن اهي آزمائشي آرڊر ته عمل ڪن؟
4. جيڪي نابالغ ڏوهاري آزمائش تي ڇڏيا ويا آهن انهن سان تعاون ڪيو ۽ انهن کي Social Welfare Department يا ٻئي ڪنهن آرگنائيزيشن ۾ موڪليو جنهن ۾ انهن جي پلائي ٿي اگر ضرورت هجي ته.
5. انهن نابالغ ڏوهاري ان جي شناخت ڪريو جن کي تمام گهڻي بحالي جي ضرورت آهي ۽ انهن جي رپورٽ Director Rehabilitation کي جمع ڪرايو.
6. وقتن به وقتن ٽرائيل ڪورٽ ۾ آزمائش هيٺ ڏهاري ٻارن جي وقتي رپورٽ يان مقرر وقت تي رپورٽ ڪورٽ ۾ جمع ڪرايو.
7. تفتيشي ايجنسين ۽ ٽرائيل ڪورٽس جي مدد ڪيو ۽ انهن سان تعاون ڪيو.
8. اهڙين سماجي پلائي وارين تنظيمن جي سڃاڻپ ڪيو جيڪي نابالغ ڏوهاري ٻارن جي انصاف واري نظام جي ستاري جي ڪوشش ۾ مصروف عمل آهن ۽ پنهنجون مهارتون ذميوار آفيسرن سان متعارف ڪرائن ٿيون.
9. اهڙا قدم کنيا وڃن جنهن سان فريادي ۽ ملزم جي وچ ۾ صلح ٿي سگهي يا اڏي پڇا ٿي.
10. نابالغ ڏوهاري کي گرفتار ڪرڻ کا پوءِ ان جي متعلق معلومات جهڙي طرح ان جي خاندان بابت ٻار سان جوڙيل هر اها تمام معلومات حاصل ڪيو جيڪا عدالت جي لاءِ مددگار ثابت ٿي.
11. جونائيل جسٽس ڪميٽي جي ميمبر هيٺيون ڪردار آهي
i. ڪيس کي هڪ مهيني اندر ختم ڪيو وڃي.

.ii ٻار جي Rehabilitation Centers جو معائنو ڪريو ۽ ويلفيئر آفيسر کي هدايت
ڪيو ته ٻار جي نگهباني ڪري ۽ ان جي بيهرسماجي ۽ بهبودي بهتري لاءِ ڪوشش
ڪري.

SOPs for Social Welfare Officer (English Version)

SOPs to be followed by Social Welfare Officer

1. Assist the investigation officer during the course of investigation.⁴¹
2. Maintain proper record of the juvenile.⁴²
3. Maintain proper record of detained juveniles at rehabilitation centres of the social welfare department or at any institution such as Child Protection Authority for imparting technical training and they were provided counselling services.⁴³
4. Maintain a proper record of juvenile, in a database specially designed for the purpose if possible or in a file, and prepare a report with regard to their social behaviour.⁴⁴
5. Arrange & supervise psychosocial counselling services for juveniles in Police custody or in Borstal Institution/Reformatory School.
6. Identify juveniles who have an immediate need for rehabilitation services and submit report to Director Rehabilitation and the Secretary, Social Welfare Department.⁴⁵
7. In order to rehabilitate juveniles, the District Welfare Officer may coordinate and meet with the District & Session Judge bi-monthly to discuss issues relating to children in conflict with law, who were facilitated by the Social Welfare Department.⁴⁶
8. Coordinate and assist with all stakeholders, especially the investigation agencies and trial courts.⁴⁷
9. Identify Non-Government Organizations having mandate to support juvenile justice system and introduce their expertise with all the stakeholders.⁴⁸
10. Invite all stakeholders of juvenile justice system for consultation and improving legislation relating to children.⁴⁹



⁴¹Sec 7(2) Juvenile Justice System Act, 2018

⁴² S.14 Juvenile Justice System Act.2018

⁴³ Sec. 10 (4) (b) Juvenile Justice System Act, 2018

S.20 Sindh Child Protection Authority Act, 2011

⁴⁵S.17(i) Sindh Child Protection Authority Act, 2011

⁴⁶S.10 (1 a) (b) Sindh Child Protection Authority Act, 2011

⁴⁷S.10(1(a) Sindh Child Protection Authority Act, 2011

⁴⁸S.10 (I(f) Sindh Child Protection Authority Act, 2011

⁴⁹S.10(I)(N) Sindh Child Protection Authority Act, 2011

11. Arrange awareness programs on child related issues for general public.⁵⁰
12. The I.O. who investigates the case of juvenile shall be assisted by probation officer or by social welfare officer notified by Govt. He shall prepare Social Investigation Report and annexe it with 173 reports.⁵¹
13. After releasing child, if the court is of the opinion that release may bring him in association with criminals or expose him to any damage, juvenile shall be handed over to the custody of probation officer.⁵²
14. Juvenile Justice Committee which consist of Social Welfare Officer with the consent of juvenile or his guardian shall exercise the powers of diversion at any stage of trial or investigation and dispose of the case by opting to any mode which include:⁵³
 - i. Restitution of property
 - ii. Apology or reprimand
 - iii. Reparation of damage, payment of fine
 - iv. Community service placement in Rehabilitation Centre
15. Case through diversion should be disposed of in one month from the date of refusal. Inspect observation homes, rehabilitation and issue direction, which are necessary for Juvenile welfare.⁵⁴
16. Do not disclose the identity of juvenile to any print or publication except the Chairman or Secretary of Social welfare organization recognized by Government.⁵⁵
17. Where Court directs to send the juvenile offender under the supervision of suitable person or Rehabilitation Centre it must provide him proper facilities until he completes his probation or attains the age of 18 years.

⁵⁰S. 15(N) National Commission on Rights of Child Act, 2015

⁵¹Sec. 7 (2) Juvenile Justice System Act, 2018

⁵²Sec. 6 Juvenile Justice System Act, 2018

⁵³Sec. 9 Diversion Juvenile Justice System Act, 2018

⁵⁴Sec. 10 Juvenile Justice System Act, 2018

⁵⁵Sec. 13 Juvenile Justice System Act, 2018

سماجی ویلفیئر آفیسران مرحلے وار ذمہ داریوں پر عمل پیرا ہوں۔

1. تحقیقاتی افسر کی تحقیقات کے دوران مدد کریں۔
2. نابالغ کا مناسب ریکارڈ قائم کریں۔
3. حراست میں لئے گئے نابالغوں کا مناسب ریکارڈ قائم رکھنا جو کہ محکمہ سماجی فلاح بہبود کے بحالی مرکز یا کس بھی ادارے میں جیسے کی بچوں کے تحفظ کا ادارہ ہے جو کہ فنی تربیت اور مشاورت کی خدمات فراہم کر رہا ہو۔
4. اگر ممکن ہو تو نابالغوں کے مناسب ریکارڈ کو کسی ڈیٹا بیس میں قائم رکھا جائے جو کہ مخصوص طور پر اس مقصد کے لیے ہی تیار کیا گیا ہو یا کسی فائل میں جس پر ان کے سماجی رویے کے حوالے سے رپورٹ تیار کی جا سکے۔
5. پولیس کی حراست میں یا بروسٹل ادارے میں نوجوانوں کیلئے نفسیاتی سماجی مشاورت کی خدمات کا بندوبست اور نگرانی کی جائے۔
6. ان نابالغوں کی شناخت کی جائے جن کو فوری طور پر بحالی سروس کی ضرورت ہو اور ساتھ ہی بحالی مرکز کے ڈائریکٹر اور محکمہ فلاح و بہبود کے سیکریٹری کو رپورٹ جمع کی جائے۔
7. ان نابالغوں کی شناخت کی جائے جن کو فوری طور پر بحالی Rehabilitation سروس کی ضرورت ہو اور ساتھ ہی بحالی مرکز کے ڈائریکٹر اور محکمہ فلاح و بہبود کے سیکریٹری کو رپورٹ جمع کی جائے۔
8. نابالغوں کی بحالی کیلئے ضلعی فلاح و بہبود کے افسر اور ضلعی شیشن جج سے مل کر باہمی تعاون سے سال میں دو دفعہ ان نابالغوں پر تبادلہ خیال کرنا چاہئے جو کہ قانون کے ساتھ تنازعہ میں ہیں جن کو سماجی بہبود آبادی فراہم کر رہے ہے۔
9. غیر سرکاری اداروں کی شناخت کی جائے جن کو نابالغ کے نظام انصاف کی حمایت کرنے کا حکم / فرمان ہو اور جو اپنی مہارت تمام متعلقین کے ساتھ متعارف کروائیں۔
10. تمام متعلقین کو نابالغوں سے متعلق نظام انصاف کی مشاورت کیلئے دعوت دیں اور بچوں سے متعلق قانون سازی کو بہتر بنایا جائے۔
11. عوام الناس کیلئے بچوں سے متعلق مسائل پر آگاہی پروگرام کا بندوبست کیا جائے۔

12. تحقیقاتی افسر جب بھی نا بالغ سے تحقیقات کرے گا تو وہ پروبیشن افسر یا سوشل ویلفیئر افسر جس کو حکومت نے متعین کیا ہو اس کی مدد لے سکتا ہے، وہ self-investigation report بنائے گا جس کو report U/S 173 CRPC کے ساتھ لگا یا جائے گا۔

13. نا بالغ کو چھوڑنے سے عدالت یہ سمجھتی ہے کہ اس کا میل جول مجرموں سے ہو سکتا ہے یا اس کو کوئی نقصان ہو سکتا ہے تو عدالت اس کو پروبیشن افسر کے حوالے کر سکتی ہے۔

14. Juvenile Justices Committee جس میں سوشل ویلفیئر افسر بھی شامل ہوتا ہے وہ مقدمہ یا تحقیقات کے دوران Diversion کے پاور استعمال کر سکتی ہے اور کیس کو خارج کر سکتی ہے جس میں۔

i ملکیت کی واپسی۔

ii معافی یا صلح۔

iii نقصان کو ٹھیک کرنا اور جرمانا بھرنا۔

iv بحالی سینٹر میں سماجی خدمت کا ہونا۔

15. کیس کو Diversion کے تحت انکار کی تاریخ کے بعد ایک ماہ میں خارج کرنا observation بحالی کا مرکز کا معائد کرنا۔

16. نا بالغ کی شناخت کو کسی بھی اشتہاری ادارے کو ظاہر نہ کرنا سوائے چیئرمین یا سوشل سیکریٹری بہبود ادارہ جو حکومت کے مقرر کیے ہوں۔

17. جب بھی عدالت کسی نا بالغ مجرم کو کسی مناسب شخص یا بہود مرکز میں بھیجے تو اس کے لیے مناسب سہولیات مہیا کرے جب تک وہ پروبیشن کا دورانیہ پورا کرے یا جب وہ اٹھارہ سال کا ہو جائے۔

فلاحي اداري جي آفيسرن جون ذميداريون

1. جانچ آفيسر جي جانچ جي دوران مدد ڪيو.
2. نابالغ مجرمين جو مناسب رڪارڊ محفوظ رکيو.
3. سماجي پلائي واري کاتي جي بحالي مرڪز يا ڪنهن به اداري جي ٻار بچاءُ واري شعبي ۾ جتي ٽيڪنيڪل تربيت ۽ صلاحڪاري خدمتون به مهيا ٿيل هجن، اتي گرفتار ڪيل نابالغ ٻار جو مناسب رڪارڊ رکيو.
4. اگر مرڪن هجي ته هڪ ترتيب ڏنل ڊيٽا بيس ۾ نابالغ ٻار جو خاص رڪارڊ محفوظ ڪيو وڃي جيڪو انهن جو سماجي رويي جي بابت رپورٽ ٺاهڻ لاءِ تيار ڪيو ويو آهي.
5. پوليس جي حراست، نابالغ مجرمين جي جيل، يا اصلاحي اسڪولن ۾ رکيل نابالغ ٻارن لاءِ نفسياتي ۽ سماجي صلاحڪاري خدمتن جو بندوبست ڪيو وڃي.
6. انهن نابالغ ٻارن جي شناخت ڪريو جن کي بحالي خدمتن جي فوري ضرورت هجي ۽ انهن جي رپورٽ بحالي سينٽر جي ڊائريڪٽر، سيڪريٽري ۽ سماجي پلائي واري کاتي کي جمع ڪرايو.
7. ٻار جي بحالي لاءِ مهيني ۾ ٻه دفعا ضلعي ويلفيئر آفيسر ۽ ضلعي سيشن جج پاڻ ۾ ملاقات ڪن ۽ انهن ٻارن جي بابت ذڪر ڪن جيڪي قانون جي تنازي ۾ آهن جن کي سماجي بهبودي اداري طرفان مدد حاصل آهي.
8. سڀني ادارن خاص ڪري تحقيقي ايجنسين ۽ عدالتن (Trial Courts) سان سهڪار ۽ انهن جي مدد ڪئي وڃي.
9. اهڙن غير سرڪاري ادارن جي شناخت ڪئي وڃي جن کي ٻارن جي نظام انصاف جي مدد ڪرڻ جو اختيار هجي. ۽ انهن جي مهارتن کي تمام لاڳاپيل قوتن سان متعارف ڪرائين.
10. ٻار جي متعلق قانون سازي کي بهتر بڻائڻ لاءِ سمورين ڏرين کي دعوت ڏيو جيڪي نابالغبانن جي انصاف واري عدالتي نظام جو حصو آهن.
11. عوام جي ڄاڻ/شعور لاءِ ٻارن جي مسئلن سان جوڙيل پروگرام رکيا وڃن.
12. جيڪو تفتيشي آفيسر ٻار جي ڪيس جي تحقيقات ڪندوان کي حڪومت طرفان مقرر ڪيل آزمائشي آفيسر يا سوشيل ويلفيئر آفيسر جي مدد حاصل هوندي، اهو سماجي تفتيشي رپورٽ تيار ڪري 173 رپورٽ سان لڳائيندو.

13. نابالغ ٻار کي ڇڏڻ کان پوءِ ڪورٽ اهو سمجهندي آهي ته هن جو ملڻ جلڻ مجرم سان ٿي سگهي ٿو يا ٻار کي ڪوئي نقصان پهچي سگهي ٿو ته پوءِ ڪورٽ هن کي آزمائشي آفيسر جي حوالي ڪري سگهي ٿي.
14. Juvenile Justices Committee جنهن ۾ سوشل ويلفيئر آفيسر به شامل هوندو آهي، جيڪا ٻار جي والدين يا سرپرست جي رضامندي سان ٺاهي ويندي، ۽ ان کي اهي اختيار هوندا ته ڪيس يا تفتيش کي ڪنهن به طرف موڙي يا ختم ڪري سگهي ٿي.
- i. ملڪيت جي واپسي
- ii. معافي يا صلح
- iii. نقصان کي نڪ ڪرڻ ۽ جرمانو ڀرڻ
- iv. بحالي سينٽر ۾ سماجي خدمت جو هجڻ
15. انڪار جي تاريخ کان هڪ مهيني اندر Diversion جي تحت ڪيس کي ختم ڪرڻ گهرجي.
16. نابالغ جي شناخت کي ڪنهن کي به اشتهاري اداري کي ظاهر نه ڪيو سواءِ سوشل ويلفيئر جي چيئر مين يا سيڪريٽري جنهن کي حڪومت مقرر ڪيو هجي.
17. جڏهن به ڪورٽ به نابالغ ٻار کي ڪنهن مناسب شخص يا بهبود مرڪز ۾ موڪليو ته ان جي لاءِ مناسب سهولتون ڪيون وڃن جيستائين هو آزمائشي جو عرصو پورو يا وري هو 18 سالن جي ٿئي.

SOPs for The Prosecutor (English Version)

Responsibilities to be followed by Prosecutor.

1. Scrutinize the final report/challan and suggest courts to separate the case of juvenile from the case of an adult accused at the initial stage.
2. If Court is satisfied in the interest of justice, juvenile may be tried together with an adult by the Juvenile Court.⁵⁶
3. Assist the Court in determining the age of the juvenile.
4. Make sure that the juvenile has legal assistance and if found to be otherwise, suggest Court to provide legal assistance from District Legal Empowerment Committee.⁵⁷
5. Make sure that the juvenile's Social Investigation Report has been submitted by the Probation Officer immediately after the completion of investigation⁵⁸.
6. Collect past criminal record of a juvenile and produce it before the Court prior to the final verdict and if he is a first offender, inform the Court.
7. Assist Court in disposing of bail matter on priority and the main cases of juveniles within six months' time.⁵⁹
8. Ensure that each juvenile is housed/detained at a proper place of Safety/Reformatory School or observation homes.⁶⁰
9. Maintain proper record of juveniles who were earlier provided counselling services through the Social Welfare Officer or Psychologist/Therapist.
10. Identify cases where, on completion of trial, diversion is possible and bring this to the notice of juvenile court.⁶¹
11. To assist the Court and investigation agencies in observing provisions of laws relating to children.
12. Act as liaison officer between the police and the judiciary.

⁵⁶ Sec. 12 (2) Juvenile Justice System Act, 2018

⁵⁷Sec. 3 (1 & 2) Juvenile Justice System Act, 2018

⁵⁸Sec. 14 (1) Juvenile Justice System Act, 2018

⁵⁹Sec. 4 (8) Juvenile Justice System Act, 2018

⁶⁰Sec. 5 (1) Juvenile Justice System Act, 2018

⁶¹Sec. 9 Juvenile Justice System Act, 2018

SOPs for The Prosecutor (Urdu Version)

پراسیکیوٹر آفیسران مرحلے وار ذمہ داریوں پر عمل پیرا ہوں۔

1. حتمی رپورٹ کی جانچ پڑتال کرے اور عدالتوں کو نابالغوں کے مقدمے کی ابتدائی مرحلے میں ہی بالغ ملزم کے مقدمے سے علیحدہ کرنے کی تجویز دیں۔
2. اگر عدالت انصاف کے تقاضے لیکر مطمئن ہو جائے تو وہ نابالغ کا کیس بالغ کے کیس کے ساتھ چلا سکتی ہے۔
3. ملزم کی عمر کا تعین کرنے میں عدالت کی مدد کرنا۔
4. اس بات کو یقینی بنایا جائے کہ ملزم کو قانونی مدد فراہم کی جارہی ہو ورنہ (بصورت دیگر) عدالت کو تجویز کیا جائے کہ وہ ملزم کو ضلعی یا اختیار قانون کمیٹی سے مدد فراہم کروائے۔
5. اس بات کو یقینی بنایا جائے کہ ملزم کی سماجی تحقیقاتی رپورٹ پروبیشن افسر تحقیقات مکمل ہونے کے فوراً بعد ہی جمع کروائے۔
6. نابالغ کا ماضی کا تمام مجرمانہ ریکارڈ جمع کیا جائے اور عدالت میں حتمی فیصلے سے پہلے پیش کیا جائے اور اگر وہ پہلی بار مجرم ہے تو عدالت کو اس بارے میں بھی آگاہ کیا جائے۔
7. عدالت کی مدد کی جائے کہ وہ ضمانتی معاملات میں نابالغوں کو ترجیح دے اور نابالغوں کے اہم مقدمات کو 6 ماہ کے وقت میں نمٹائے۔
8. اس بات کو یقینی بنایا جائے کہ حراست میں لیا گیا نابالغ حفاظتی / اصلاحی اسکول میں مناسب جگہ پر مقیم ہے۔
9. ان نابالغوں کا مناسب ریکارڈ رکھا جائے جو پہلے سماجی بہبود آفیسر یا ماہر نفسیات سے مشاورتی خدمات لے چکے ہوں۔
10. ان مقدموں کی شناخت کی جائے جہاں سماعت کے موڑ کی تکمیل ممکن ہو اور عدالت کو اطلاع کی جائے۔
11. بچوں سے متعلق قوانین پر مشاہدہ کرنے میں عدالت اور تحقیقاتی اداروں کی مدد کی جائے۔
12. پولیس اور عدلیہ کہ درمیان ایک رابطہ افسر کے طور پر کام کریں۔

SOPS FOR THE PROSECUTOR (SINDHI VERSION)

پروسيڪيوٽر جون ذميداريون

1. ايف آئي آر ۽ فائنل چالان کي جي جانچ کان پوءِ ڪورٽ کي صلاح ڏيو تہ بالغ ٻار ملزم جو ڪيس ٻئي ملزم الڳ هلائي .
2. اگر ڪورٽ انصاف جي تقاضن تي پوري مطمعن آهي ته پوءِ اها نابالغ جي ڪيس کي بالغ جي ڪيس سان گڏ هلائي سگهي ٿي.
3. ٻار جي عمر کي تعين ڪرڻ ۾ ڪورٽ جي مدد ڪيو.
4. ان ڳالهه کي يقيني بڻايو وڃي ته ملزم ٻار کي قانوني مدد حاصل آهي، نه ته ٻئي صورت ۾ عدالت کي ضلعي بااختيار قانوني ڪميٽي جي مدد لاءِ عرض ڪيو وڃي.
5. جانچ پڙتال پوري ٿيڻ بعد ان ڳالهه کي يقيني بڻايو وڃي ته آزمائشي آفيسر ملزم ٻار جي سڌاري جي سماجي تحقيقاتي رپورٽ جلد کان جلد جمع ڪرائي.
6. ملزم ٻار جي ماضي جو سمورو رڪارڊ ڪورٽ جي سامهون پيش ڪيو وڃي فيصلي کان پهريان اگر هو پهريون ڀيرو ڏوهي آهي ته اهو به ڪورٽ کي ٻڌايو وڃي.
7. ضمانت جي معاملات ۾ ڪورٽ ۽ ملزم ٻار جي مدد ڪيو ۽ اهم ڪيسن کي چهن مهينن جي اندر ختم ڪيو.
8. اهيا پڪ ڪئي وڃي ته ٻار ملزم کي مقامي اسڪول يا ڪنهن صحيح جڳهه تي حفاظت ۾ رکيو ويو آهي.
9. ان ملز ٻار جو رڪارڊ تيار ڪيو وڃي جنهن کي سماجي پلائي واري آفيسر يا Psychologist/Therapist جي ذريعي صلاحڪاري خدمتون مليون هجن.
10. انهن ڪيسن جي سڃاڻپ ڪئي وڃي جيڪي جلدي ختم ٿي سگهن ٿا ۽ انهن کي ڪورٽ جي ڄاڻ ۾ آندو وڃي.
11. ڪورٽ ۽ تفتيشي ايجنسين جي قانوني مدد ڪئي وڃي جيڪي ملزم ٻار سان لاڳاپيل هجن.
12. پراسيڪيوٽر کي عدليا جي وچ ۾ هڪ رابطا آفيس جي طور ڪم ڪرڻ کپي.

SOPS FOR JUDICIAL OFFICERS (ENGLISH VERSION)

Stepwise responsibilities to be followed by the Judicial Officers.

1. A Judge, after he has taken cognizance of any offence, finds that an accused brought before him is a juvenile, shall forthwith transfer his case to the Juvenile Court for further proceedings.⁶²
2. Decide the case within the prescribed time limit of six months.⁶³
3. An Application for extension of time, may be filed before the High Court, by the Judge of the Juvenile Court, if the matter could not be decided within the prescribed time limit and, shall also mention reasons for such extension thereof.⁶⁴
4. Closely monitor and supervise investigation process while acting as Area Magistrate.
5. A Judge of Juvenile Court, where a juvenile is involved in a bailable offence, and has not been released under section 496 and there are grounds for believing that the release of the juvenile may bring him/her in association with criminals, shall, unless he/she is sixteen years of age or, detained in a heinous offence, release the juvenile on bail, with or without sureties and shall also ensure:
 - (a) The juvenile be kept in the custody of a suitable person; or
 - (b) The custody of juvenile be kept before Juvenile Rehabilitation Centre under the supervision of probation officer; or
 - (c) Direct the police officer to trace out the guardian of the juvenile and handover the custody to him; and
 - (d) The custody of juvenile shall not under any circumstances be kept in police custody or in jail.⁶⁵
6. Use the services of all stakeholders in quick dispensation of justice and wellbeing of juvenile as provided under the national/local laws and global polices ratified by Government of Pakistan from time to time. Keep copy of SOPs of other stakeholder and ensure each actor performs their duty effectively.
7. Release the juvenile on bail where the delay in trial is not associated with any act or omission of the juvenile.

⁶²Sec. 4(7) Juvenile Justice System Act, 2018

⁶³Sec. 4(8) Juvenile Justice System Act, 2018

⁶⁴Sec 4(9) Juvenile Justice System Act, 2018

⁶⁵Sec 6 Juvenile Justice System Act, 2018

8. Direct that any case, pending trial before him, be referred to the Juvenile Justice System Committee.⁶⁶
9. Decide issue of age immediately if disputed by any party. The magistrate/court may itself initiate the process of determining age if so, needed by adopting appropriate methods which may include collection and examination of following record:⁶⁷
 - i. NADRA record such as Form “B”, Child Registration Certificate, CNIC.
 - ii. School registration certificate, school leaving certificate, school admission form, board enrolment form/card.
 - iii. Permanent residence certificate, domicile.
 - iv. Medical examination report.
10. Maintain proper record of children who are in conflict with law (if possible, in database specially designed for the purpose) and call for report from probation officer with regard to juvenile’s social and education status.
11. Use and share the report with other stakeholders if needed during the course of investigation or trial.
12. Direct the probation officer to submit probation report in prescribed manner.⁶⁸
13. Make on order directing the juvenile offender to be sent to a Juvenile Rehabilitation Centre until he attains the age of eighteen years or till the completion of period of imprisonment.⁶⁹

⁶⁶Sec 9 Juvenile Justice System Act, 2018

⁶⁷Sec. 10 (I) (K), Sindh Child Protection Authority Act,2011 and Sec. 8 Juvenile Justice System Act, 2018

⁶⁸Sec. 15 (d) Juvenile Justice System Act, 2018

⁶⁹Sec. 15 (e) Juvenile Justice System Act, 2018

1. کسی بھی کیس کی کاغذات لینے کے بعد جج کو چاہئے کہ اگر ملزم ایک بچہ ہے / نابالغ تو فوری اس کا کیس Juvenile کورٹ میں بھیجے -
 2. چھ مہینوں میں مقرر وقت کے اندر مقدمہ کا فیصلہ سنایا جائے۔
 3. وقت کی توسیع کے لیے ایک درخواست High Court میں دی جائے اگر کیس مقررہ وقت میں ختم ہو جس کے اندر وجوہات بھی شامل ہوں
 4. علاقے کے مئجسٹریٹ کے طور پر کام کرنے کے دوران تحقیقاتی عمل کی قریبی نگرانی کی جائے۔
 5. اگر کسی جرم میں وہ بچہ شامل ہے جسکی عمر 16 سال سے کم ہے تو اسے بنا ضمانتی بانڈ پر ضمانت دی جائے۔
- بچے کی تحویل کسی معزز آدمی کو دی جائے۔
- i. بچے کی تحویل جونائیل ریجیبلیشن سنٹر کی نگرانی میں پروبیشن آفیسر کو دی جائے یا۔
 - ii. پولیس آفیسر کو ہدایت دی جائے کہ وہ بچے کے والدین کی تلاش کریں اور بچے کو انکے حوالے کریں۔
 - iii. بچے کو کسی بھی صورت میں پولیس کی حراست یا جیل میں نہ رکھا جائے۔
6. انصاف کے فوری سلسلے میں تمام متعلقین کی خدمات کو استعمال کریں اور اس وقت کے طور پر پاکستان کی حکومت کی طرف سے منظوری دی گئی قومی / مقامی قوانین اور عالمی پالیسیوں کے تحت جو نوجوانوں کی نیک خواہش ہے
 7. اگر ضرورت ہو تو اس رپورٹ کو دوسرے متعلقین کے ساتھ تحقیق یا مقدمے کی سماعت کے دوران استعمال کریں۔
 8. جو نابالغ قانون کی گرفت میں ہیں ان کا ریکارڈ قائم رکھنا (ڈیٹا بیس میں ریکارڈ قائم رکھنا اگر ممکن ہو سکے) اور نابالغ کی سماجی یا تعلیمی حیثیت کی رپورٹ پروبیشن آفسر سے کال کرنا۔
 9. اس رپورٹ کو دیگر متعلقین سے شیئر کیا جائے تفتیش کے دوران اگر ضرورت ہو۔

10. اگر کسی بھی فریق کا نابالغ کی عمر سوالیہ نشان ہو تو اس کی عمر کا جلد تعین کرنا۔
مئجسٹریٹ خود سے ہی نابالغ کی عمر کا تعین کرنے کے لیے اقدام اٹھا سکتا ہے اور مندرجہ
ذیل دستاویز کا معائنہ کر سکتا ہے۔

i. شناختی کارڈ ، B فارم ، پیدائشی سرٹیفکیٹ

ii. اسکول رجسٹریشن سرٹیفکیٹ، اسکول چھوڑنے کا سرٹیفکیٹ، اسکول کی داخلا
سرٹیفکیٹ،

iii. مستقل رہائشی سرٹیفکیٹ

iv. طبعی معائنہ کا سرٹیفکیٹ

11. ان نابالغوں کا مخصوص ریکارڈ د برقرار رکھا جائے جو قانون کے ساتھ تنازع میں ہیں (اگر ممکن
ہو تو ڈیٹا بیس جو کہ اس کام کے لیے مخصوص کیا گیا) ہو اورنگران افسر سے نابالغوں کی
سماجی تعلیمی رپورٹ طلب کرتے رہیں۔

12. پروبیشن افسر کو ہدایت کی جائے کہ وہ قانونی طریقے کے مطابق رپورٹ جمع کرائے۔

13. آرڈر کے تحت ہدایت دی جائے کہ نابالغ کو نابالغ بہبود مرکز میں ڈالا جائے جب وہ اٹھارہ
سال کا ہو جائے یا وہ اپنی سزا پوری کر لے۔

SOPS FOR JUDICIAL OFFICERS (SINDHI)

جوڊيشل آفيسر جو ڪردار ۽ ذميداريون

1. ڪنهن به ڪيس جي چالان وٺڻ کانپوءِ جج کي گهرجي ته، اگر مُلزم هڪ ٻار آهي تهانجو ڪيس جلد ٻارن جي عدالت ۾ موڪليو وڃي.
2. ڇهه مهينن ۾ مقرر ٿيڻ وقت جي اندر ڪيس جو فيصلو ٻڌايو وڃي
3. جيڪڏهن ڪيس مقرر ٿيڻ وقت ۾ ختم نه ٿيو ته وقت جي واڌ لاءِ هڪ درخواست هاءِ ڪورٽ ۾ ڏني وڃي، جنهن ۾ اسباب به شامل هجن.
4. علاقائي مئجسٽريٽ کي ڪيس جي تفتيش جي محتاطي سان نگراني ڪرڻ کپي.
5. جيڪڏهن ٻار جي عمر 16 سالن کان گهٽ آهي ته انکي بغير ڪنهن ضمانت يا ضمانتي بانڊ کان ضمانت ڏني وڃي.
 - i. ٻار کي ڪنهن معتبر شخصيت جي نگراني ۾ ڏنو وڃي يا
 - ii. آزمائشي آفيسر جي نگراني ۾ ٻار جي تحويل ٻارن جي بحالي واري سينٽر ۾ ڏني وڃي.
 - iii. پوليس آفيسر کي هدايت ڏني ته ٻار جي والدين جي ڳولاهه ڪري انهن جي حوالي ڪيو وڃي.
 - iv. ڪنهن به صورت ۾ ٻار کي ٿاڻي يا جيل ۾ نه رکيو وڃي.
6. انصاف جي احصالات لاءِ انهن سڀني سهولتن جو استعمال ڪيو وڃي جيڪي ٻار جي بهتري لاءِ مقامي، قومي ۽ بين الاقوامي طور مهيا ٿيل آهن ۽ پاڪستاني پاليسيز مطابق وقتن به وقتن ڪم ڪري رهيون آهن.
7. اگر ڪيس ۾ دير ٻار جي ڪنهن به عمل سان ناهي ٿي ته انکي ضمانت ڏئي آزاد ڪيو وڃي
8. ڪيس جو حوالو دوران هلندڙ مقدمو JSC کي ڏنو وڃي.
9. ته ڪو به مئسٽرو آهي ته جيترو جلدي ٿي سگهي انکي حل ڪيو وڃي. مئجسٽريٽ پاڻ مرادو ٻار جي عمر جي ڄاڻ حاصل ڪرڻ لاءِ هنين طريقن ذريعي رڪارڊ طلب ڪري سگهي ٿو، نادرا جو رڪارڊ:
 - i. جهڙي طرح رجسٽريشن CRC سرٽيفڪيٽ، قومي شناختي ڪارڊ
 - ii. اسڪول جو داخلا وارو سرٽيفڪيٽ، اسڪول چڏڻ وارو سرٽيفڪيٽ اسڪول جو داخلا فارم، بورڊ انرولمينٽ فارم / ڪارڊ
 - iii. ڊوميسائل، پرميننٽ ريزيڊنس سرٽيفڪيٽ

10. جيڪي به ٻار ڏوهاري آهن انهن جو خاص رڪارڊ ٺاهيو وڃي ۽ جيڪڏهن ممڪن هجي ته انکي ڊيٽابيس ذريعي محفوظ ڪيو وڃي ۽ آزمائشي آفيسر کان ٻار جي سماجي ۽ تعليمي حيثيت جي رپورٽ گهراي وڃي.
11. جانچ دوران جيڪڏهن ضرورت پوي ته ٻين اسٽيڪ هولڊرز کان رپورٽ وٺي سگهجي ٿي.
12. آزمائشي آفيسر کي هدايت ڏني وڃي ته متعلقه پربيشن رپورٽ جمع ڪرائي.
13. ٻار کي جونائيل ريحبيليشن سينٽر ۾ رکيو وڃي جيسٽائين هو 18 سالن نه جو ٿو ٿي يا وري پنهنجي سزا مڪمل نه ٿو ڪري.

PROPOSED DIVERSION MECHANISM FOR JUVENILE OFFENDERS FOR JUVENILE JUSTICE COMMITTEE

Introduction

The aim of writing this guideline for JSC is **to strengthen capacities of justice sector stakeholders** and to **promote diversion and child friendly investigation** for children in conflict with law and contact in law, and to enhance their knowledge and **implementation of the Juvenile Justice System Act, 2018** (JJSA).

The JJSA 2018 binds relevant institutions in establishing a process for timely diversion of cases for children in conflict with law and advocate for nominating **special Investigation Officers, Public Prosecutors, and Judges for children**. This document **provides technical assistance to the justice sector stakeholders** to address issues of children in conflict with the law in accordance with the JJSA and the Sindh Children Act, 1955 (SCA).

Concept of Diversion

Restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behaviour. Practices and programs reflecting restorative purposes may respond to crime by:

1. Identifying and taking steps to repair harm;
2. Involving all stakeholders; and
3. Transforming the traditional relationship between communities and their governments in responding to crime.

In many jurisdictions (countries), the following programmes and mode are followed to achieve objective of restorative justice:

- i. Victim offender mediation
- ii. Conferencing
- iii. Circles
- iv. Victim assistance
- v. Ex-offender assistance
- vi. Restitution
- vii. Community service

Three principles that form the foundation for restorative justice may be observed:

1. Justice requires that we work to restore those who have been injured.
2. Those most directly involved and affected by crime should have the opportunity to participate fully in the response if they wish.
3. Government's role is to preserve a just public order, and a community is to build and maintain a just peace.

Reverting to **Diversion**; it is a term applied to various measures to “divert” offenders from the formal criminal justice system to an informal justice system. A few diversionary options exist for young offenders in Pakistan. These include verbal and written warnings, formal cautions, community service, victim-offender or family conferencing, and probation. However, this list does not exhaust the range of appropriate diversionary options that could be developed. We have covered Human rights obligations and diversionary options for young offenders in chapter on International Law and guidelines but reproducing for the convenience of Juvenile Justice Committee here as;

The *UN Convention on the Rights of the Child* (the CRC) recognizes the importance of diverting young offenders from the formal processes of the criminal justice system. The CRC was ratified by Pakistan on December 12, 1990.

By becoming a party to the CRC, Pakistan has voluntarily undertaken to introduce appropriate diversionary measures for juvenile offenders and to ensure that such measures comply with a number of minimum standards. Article 40.3 of the CRC states:

“States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.”

Diversionary options aim to avoid the stigma associated with prosecution and the danger of trapping young people in a pattern of offending behaviour. They seek to temper the punitive nature of criminal justice processes in recognition of the particular vulnerabilities of juvenile offenders. They also recognize that most juvenile offending is episodic and transitory - most young people mature out of criminal behaviour.

The obligation in the CRC to develop diversionary options is elaborated upon by several United Nations rules and guidelines that include:

- i. United Nation Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)
- ii. United Nation Standard Minimum Rules for Non-Custodial Measures 1990 (Tokyo Rules)
- iii. United Nation Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines)
- iv. United Nation Rules for the Protection of Juveniles Deprived of their Liberty

Principles for juvenile diversion

These international standards establish the following principles for the development of diversionary options:

a) Viable alternatives to detention

Diversion requires the provision of viable community-based alternatives to detention. Options that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are specifically commended. However, the specific form of diversion should be adapted to meet local needs. Public participation in the development of all non-custodial options should be encouraged (Tokyo Rule 17.1).

b) Availability of diversionary options

Diversion may be used at any point of decision-making by the police, the prosecution, or other agencies such as the courts or tribunals (Beijing Rule 6.1). It is clear that the earlier in the process diversion occurs, the more effective it can be in avoiding stigmatisation of the young offender. However, diversion should also be possible in the later stages of proceedings when the young person is before the court. The fact that a juvenile has previously participated in a pre-court diversionary option should not preclude future diversion or referral to diversion in subsequent legal proceedings. If a juvenile offender breaches the conditions of a diversionary option, this should not automatically lead to the imposition of a custodial measure (Tokyo Rule 14.3).

c) Offences where diversion is appropriate

Diversionary measures should not be restricted to minor offences. Diversion should be an option “whenever appropriate”. There may be mitigating circumstances that make diversion appropriate even when a more serious offence has been committed (Beijing Rule 11.4).

d) Criteria for diversion

Agencies with the discretionary power to divert young people from formal proceedings must exercise that power on the basis of established criteria. Access to diversionary programs must not be arbitrary. Tokyo Rule 3.1 requires that the “introduction, definition and application of non-custodial measures shall be prescribed by law”.

e) Training of justice personnel

All law enforcement officials involved in the administration of juvenile diversion should be specially instructed and trained to respond to the needs of young persons (Riyadh Guidelines 58; Beijing Rule 12.1). Justice personnel should reflect the diversity of juveniles who come into contact with the juvenile justice system (Beijing Rule 22.2). Beijing Rule 6.3 requires that those who exercise discretion at all levels of juvenile justice administration shall be specially qualified or trained to exercise that discretion “judiciously and in accordance with their functions and mandates”.

f) Consent

Diversion requires the informed consent of the young offender (or the parent or guardian) to the particular diversionary option (Beijing Rule 11.3). Young people should be given sufficient information about the diversionary options available and any consequences of withholding consent. They should not feel pressured into consenting to diversion programs (for example, to avoid a court appearance). Care should be taken to minimize the potential for coercion at all levels in the diversion process.

g) Procedural safeguards

Diversionary options must respect procedural safeguards for young people as established in the CRC and the ICCPR. These include the presumption of innocence, the right to be informed promptly and directly of the charges, the right to silence, respect for the privacy of the young person and their family at all times, equal treatment before the law, the right to access to legal assistance, to the presence of a parent or a guardian and access to an interpreter.

h) Review and accountability

Any discretion exercised in the diversion process should be subject to accountability measures. The Beijing Rules emphasise the provision of specific guidelines on the exercise of discretion and the provision of systems of review and appeal to permit scrutiny of decisions and accountability in juvenile justice administration (Beijing Rule 6.2). They do not specify precise mechanisms of review and accountability because it

is not possible to cover all differences among justice systems. However, efforts must be made to ensure sufficient accountability for the exercise of discretion at all stages and levels.

i) Complaints

Tokyo Rules 3.5 and 3.6 provide that the participant in a non-custodial program shall be entitled to make a complaint to a judicial or other competent independent authority on matters affecting their individual rights in the implementation of a non-custodial measure and in respect of any grievance relating to non-compliance with human rights.

j) Monitoring

An effective, fair and humane juvenile justice system requires mechanisms for monitoring and evaluation to curb any abuses of discretionary power and to safeguard the rights of young offenders. Beijing Rule 30 also requires that “efforts be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyze relevant data and information for appropriate assessment and future improvement and reform of the administration”. Tokyo Rule 2.4 similarly requires non-custodial measures to be monitored and “systematically evaluated”.

The CRC, article 40, requires governments to recognize the right of every child accused or convicted of a criminal offence to be treated in a manner;

- Consistent with the promotion of the child's sense of dignity and worth
- That reinforces the child's respect for the human rights and fundamental freedoms of others
- That takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Diversionary options in Pakistan

At present, there is a specific and structured diversionary program in Pakistan at pre-adjudication stage for juvenile offenders. With the consent of juvenile or his guardian, the investigation officer, during the course of investigation, and the prosecutor, during the course of trial, make attempts to reconcile the matter and send it for disposal before the **Juvenile Justice Committee**. They adopt a prescribed practice for reconciling or diverting the matter. In fact, the policy has been provided to them, under section 9 and 10 of the JSA2018, in this regard.

The Juvenile Justice Committee shall proceed with following modes of diversion;

- (a) Restitution of movable property;
- (b) Reparation of the damage caused;
- (c) Written or oral apology;
- (d) Participation in community service;
- (e) Payments of fine and costs of the proceedings;
- (f) Placement in Juvenile Rehabilitation Centre; and
- (g) Written and oral reprimand.

Diversion Mechanism

In our criminal justice system, offences are categorized in two ways viz. cognizable and non-cognizable. Generally, cognizable offence means a police officer has the authority to make an arrest without a warrant. The police are also allowed to start an investigation with or without the permission of a court. By contrast, in the case of a non-cognizable offence, a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without a court order. The police can file a First Information Report (FIR) only in cases of cognizable offences. Normally, serious offences are defined as cognizable; these usually carry sentence of 3 years or more. In Pakistan, crimes like rape, murder, theft etc. are considered cognizable, and crimes like public nuisance, simple hurt, mischief, etc. are considered non-cognizable.

Law of land and Islamic Jurisprudence permit parties to the matter in certain kind of offences to compound. Terminology “compoundable offences” mean offences that can be compromised by the parties to the dispute. So, there is room in our legal system for diversion by opting an informal justice system.

Diversion efforts may be initiated at two stages; one when victim appears for lodging report and secondly during trial. The former may be initiated by a police officer who, during the course of investigation, may refer the case for disposal to the Juvenile Justice Committee. The police officer may associate other stakeholders such as social welfare officer/cytologist from Social Welfare Department and probation officer from Home Department.

The second stage may be under the supervision and direction of juvenile court and prosecutor where, for purposes of disposal of the case of juvenile, the matter is sent to the Juvenile Justice Committee. The Juvenile Justice Committee shall consist of four members with following compositions, namely:

- (a) Serving Judicial Magistrate with powers under section 30 of the Code, who shall also head the Committee;

- (b) District public prosecutor;
- (c) Member of local Bar having at least seven years standing at the Bar, appointed by the concerned Sessions Judge for period of two years;
- (d) Serving probation officer or social welfare officer not below the rank of an officer in BPS-17.

The Juvenile Justice Committee shall be entrusted to perform the following functions namely:

- (a) Dispose of the cases through diversion upon referral from the police, prosecution or the Juvenile Court, as the case may be, within a period of one month from the date of the referral;
- (b) Inspect the observation homes and 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
- (c) Such other functions as may be prescribed.

Once a juvenile is selected for diversion by a police officer at initial stage of occurrence of incident and reporting; following procedure may be followed by a police officer:

1. In-charge of the police station/Child Protection Unit (CPU) may maintain a list of officers having experience of dealing juveniles and have undergone a training program on handling juveniles;
2. A handbook containing guidelines for handling juveniles may be kept at police station/CPU;
3. The in-charge of Police Station/CPU may refer disputes to a trained officer and may share the handbook being guiding document;
4. The in-charge of Police Station/CPU may maintain particulars of each stakeholder as to use at the time of need;
5. The in-charge of Police Station/CPU may maintain a list of community service organization;
6. The police officer may interact with the juvenile in civil dress;
7. The police officer may make an entry in *Roznamcha* about arrival or presence of juvenile at police station;
8. The police officer may make necessary entries in a specially designed database developed for maintaining record of juvenile ignoring the fact whether a formal report has been registered or not;
9. The police officer may inform a juvenile about the cause of his attendance/arrest at police station;
10. The police officer may house a juvenile at a reasonable place and may not allow him to accompany any adult accused/suspect;

11. The police officer may immediately contact the parents or guardian of a juvenile;
12. The police officer may immediately call probation officer and social welfare officer for seeking assistance in interviewing a juvenile and knowing his social and educational background;
13. The police officer may arrange a meeting between offender and victim along with their parents or guardian as to assess whether the matter may be resolved at initial stage or not;
14. The police officer may assess mental agony and financial loss caused to victim due to the act of juvenile offender;
15. The police officer if conducting mediation session himself may associate social welfare officer or probation officer for his assistance;
16. The police officer at the request of the parties may refer the dispute to an independent mediator or a man of parties' choice for the purpose of reconciliation;
17. Outcome of mediation/reconciliation proceeding may be reduced in writing if so needed; and
18. Record of successful and unsuccessful diversion including mediation may be maintained being example of good practices.

Probation officer's role and responsibility may be to:

1. Coordinate with all stakeholders specially the investigation agencies;
2. Assist members of investigation agencies on their request during the course of investigation;
3. Maintain proper record of children who are in conflict with law, in a database specially designed for the purpose if possible, and prepare report with regard to their social and educational status;
4. Share the report with other stakeholders if needed during the course of investigation or trial;
5. Identify children who immediately need rehabilitation services and submit report to the Director Rehabilitation and the Secretary Social Welfare Department;
6. Identify Non-Governmental Organizations involved in upgrading juvenile justice system, and in particular rehabilitation of children, and share with all the stakeholders;
7. Maintain proper record of those who were released on probation or otherwise by the court orders under diversion scheme of law;
8. Call time to time the children released on probation and may refer them to the court or social welfare department if so needed; and
9. Submit their conduct reports to the court when asked, and in any case a half yearly report is to be submitted to the court and Secretary Home Department and Secretary Social Welfare Department indicating juvenile's general behaviour and attitude towards society.

Social Welfare officer's role and responsibility may be to:

1. Coordinate with all stakeholders specially the investigation agencies and trial courts;
2. Assist members of investigation agencies and courts on their request during the course of investigation and trial;
3. Maintain proper record of children who are in conflict with law, in a database specially designed for the purpose if possible, and after interviewing them prepare a report with regard to their social behavior;
4. Share the report with other stakeholders needed during the course of investigation or trial;
5. Identify children who immediately need rehabilitation facility and submit report to Director Rehabilitation and the Secretary Social Welfare Department;
6. Identify Non-Governmental Organizations involved in upgrading juvenile justice system, and in particular rehabilitation of children, and share with all the stakeholders;
7. Maintain proper record of children who were provided counseling services;
8. Engage children at rehabilitation centers of the social welfare department for imparting technical training and formal/informal education;
9. Visit state administrated remand homes, reformatory and educational institutions set up to keep juvenile and initiate programs for their wellbeing; and
10. District Welfare Officer to coordinate and meet with District & Sessions Judge in alternate months to discuss issues relating to children in conflict with law who are admitted in SWD for the purpose of rehabilitation.

Judicial officer's role and responsibility may be to:

1. Closely monitor and supervise the investigation process while acting as area magistrate;
2. Use services of all stakeholders in quick dispensation of justice and wellbeing of juvenile as provided under the national/local laws and global polices ratified by Pakistan from time to time;
3. Decide issue of age immediately if disputed by any party. The magistrate/court may itself initiate the process of determination of age if so needed by adopting appropriate methods which may include collection and examination of the following record:
 - i. NADRA Record such as Form 'B', Registered Birth Certificate, CNIC
 - ii. School registration certificate, School leaving certificate, School Admission Form, Board Enrolment Form/Card
 - iii. Permanent Residence Certificate, Domicile
 - iv. Medical Examination Report
4. Maintain proper record of children who are in conflict with law, in a database specially designed for the purpose if possible, and call for report from probation officer with regard to juvenile's social and education status;
5. Use and share the report with other stakeholders if needed during course of investigation or trial;
6. Identify children who immediately need rehabilitation facility and refer them to the Director Rehabilitation and the Secretary Social Welfare Department for facilitation;

7. Maintain proper record of children who were provided counseling services through social welfare officer/psychologist;
8. Supervise children in conflict with law housed at rehabilitation centers of the social welfare department or any other place notified by the Government for placing the children;
9. Dispose of bail matters and main cases of juveniles within a period of four months as provided in law, and attempts may be made to release them on probation in case they are found guilty, instead of sending them to a place of detention. Directions given under National Judicial Policy on child related issues may be observed in letter and spirit.

There may be at least one prosecutor in a district whose role and responsibility may be to:

1. Provide technical assistance to the investigation agency and the court in dealing with the matters relating to children who are in conflict with law;
2. Act as liaison officer among all stakeholders of the juvenile justice system;
3. Maintain proper record of children who are in conflict with law, in a database specially designed for the purpose if possible, and assist court in calling report from probation officer with regard to juvenile's social and education status;
4. Identify cases where diversion is possible and bring them in the notice of court;
5. Collect past criminal record of the child and produce it before court prior to final verdict;
6. Identify children who immediately need rehabilitation services and refer to the Director Rehabilitation and the Secretary Social Welfare Department for facilitation of the children;
7. Maintain proper record of children who were provided counseling services through social welfare officer/psychologist; and

Assist court in disposing of bail matters and main cases of juveniles within a period of four months as provided in law and attempts may be made to release them on probation in case, they are found guilty instead of sending them to a place of detention.

MONITORING & EVALUATION SYSTEM WITHIN DEPARTMENTS

Suggestions for Monitoring Department



Monitoring Role of MIT, High Court of Sindh

1. High court of Sindh has notified the juvenile courts (one of Additional Sessions Judge and one of Judicial Magistrate) in each district for dealing cases relating to juvenile.⁷⁰
2. To ensure that case of the juvenile is dealt by a court notified as juvenile court.⁷¹
3. Call reports from juvenile courts about the pending cases and examine causes of delay in disposal of cases and accordingly advise judges for timely disposal.⁷²
4. Develop and maintain web-based Monitoring & Evaluation (M & E) system for Juvenile cases.
5. Direct Sessions Judges to ensure that juvenile courts' request for providing legal assistance to juvenile is immediately responded and funds are made available from the District Legal Empowerment Committee Funds within a period of 7 days.⁷³
6. Ensure that all stakeholders coordinate and cooperate with juvenile courts and are performing duties as per guidelines notified by the High Court.
7. Request to the Sindh Judicial Academy to arrange training program for the judges and other stakeholders on the JJS Act 2018 from time to time and especially for those associated with the juvenile courts.

Ensure that juvenile is detained in proper place of safety during investigation.

⁷⁰Sec 4(3) Juvenile Justice System Act, 2018

⁷¹Sec 4(4) & 4(5) Juvenile Justice System Act, 2018

⁷²Sec 4(8) & 4(9) Juvenile Justice System Act, 2018

⁷³Sec 3(1) Juvenile Justice System Act, 2018

Monitoring Role of Inspector General Police

1. Notify police stations and investigation officers at District Level for dealing juvenile case.
2. Circulate guidelines among SHOs and notified investigation officers and develop SOP on Juvenile Justice for Police Officers.
3. Maintain record of juvenile and track them so that prescribed procedure of investigation during trial may be observed.
4. Ensure that case of the juvenile is dealt by a court notified as juvenile court.
5. Call quarterly meeting of SPs to review investigation and trial of juvenile cases.
6. Develop and maintain web-based Monitoring & Evaluation (M & E) system for Juvenile cases and/or if any other stakeholder has designed an application for the said purpose it may be used.
7. Ensure that all stakeholders coordinate and cooperate with juvenile courts and perform their duties as per guidelines notified by the High Court.
8. Request Sindh Judicial Academy to arrange training program for the investigation officers on the JJSA 2018 from time to time and especially for those associated with the juvenile cases.

Accessing District Legal Empowerment Committee⁷⁴ (DLEC) for Legal-Aid

GUIDELINES

1. DLEC is constituted by Law & Justice Commission of Pakistan with the concurrence of High Court and Provincial Government.
2. District Judge chairs the committee whereas DCO/DC, Superintendent district/central jail, president, District Bar Association & a representative of civil society act as members.
3. The Committee in consultation with Vice Chairman of the Provincial Bar Council, President of the District Bar Association, and with the approval of the Hon'ble Chief Justice, maintains a list of legal practitioners having (7) years' experience and they are paid Rs. 20,000/- as fee for one case.
4. The Committee operates its bank account through the Chairman and the Accountant of District Court maintains all records including books of account.
5. The Committee submits half yearly and annual audited report of the Committee through High Court.
6. Deserving litigants submit request in writing to the Chairman and copy of CNIC or other documents of identity is annexed with the application. The committee decides fate of application.
7. Superintendent of District Jail may also send application to the Chairman of the Committee.
8. Any court working in the district may also move an application for legal aid to the Chairman of the Committee.
9. The Committee releases its funds in favour of Advocate in two installments.
10. The Committee extends funds to deserving litigants on account of professional fee of advocate, court fee, copying charges fee and process fee.

⁷⁴DLEC is working at District level under the District legal empowerment committee (Constitution & Functions) Rules, 2011. It is headed by District & Sessions judge of the district.

Sample Minutes of a Meeting of the DELC

The meeting of the DLEC was held under the Chairmanship of the District & Sessions Judge Karachi East to consider the following agenda points:

1. To consider three applications for legal assistance received from the courts of 1st Sr. Civil Judge.
2. To consider two applications received directly to district court for providing legal assistance.
3. To evaluate progress of the advocates to whom this committee released funds.
4. Any other point with permission of the Chairman.

Agenda item No. 1

To consider three applications for legal assistance received from the courts of 1st Sr. Civil Judge
Three applications were perused. Applicants are deserving and the members are of the view that they may be provided legal assistance and funds in the sum of Rs. 20000/- each may be allocated in their favour. Approved list of the advocates is examined and committee members suggested that Mr. Saleem Meo may be assigned two cases whereas Mr. Haleema Saeed advocate may be assigned the case of Applicant Sabbir Jan. Chairman endorsed the proposal. It was resolved at 50%.

Role of various Stakeholders in Monitoring Detention Conditions for Juveniles

Administrative Inspections:

1. Under Section 10(4)(b) of JJSA-2018, Juvenile Justice Committee, "inspect the Observation homes and 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 reintegration of the juvenile kept under their supervision".
2. Medical Officer under the directions of Juvenile Court or Juvenile Justice committee under Section 22 of JJSA-2018 can inspect the observation homes and Juvenile Rehabilitation Centres for ascertaining the measures being taken for social reintegration, health, education or other conditions of inmates for reporting purpose to Juvenile Court or Juvenile Justice Committee.
3. In case existing detention facility of Youthful Offenders Industrial School (YOIS) commonly known as "Juvenile Jail" is declared as a "Juvenile Rehabilitation Centre", which are being run by Prison Department, than supervision and monitoring is to be exercised by the Superintendent of Jail or DIG Prison. In Pakistan, the governing law for prisons is Prison Act 1894, revised in 1900, and Rules 1978 commonly known as "Jail Manual". It is pertinent to mention here that the thrust of such laws was punitive in nature and more powers vested with superintendent of Prison for punishment⁷⁵. Internal accountability for misconduct, mistreatment or corruption at place of detention or prison is seldom investigated or redressed at superintendent level and sometimes representations are made to high authorities (DIG Prison, IG Prison, Home Department)
4. The other administrative mechanism under Jail Manual is of Board of Visitors envisaged under Prison Rule 920-921, which is being headed by District Co-ordination Officer/Deputy Commissioner as ex-officio chairman of the board along with other members such as Senior Superintendent of Police (SSP), District Health Officer (DHO), Superintendent Engineer (Works & Services), and one member having NOV status.

Judicial Monitoring

5. Judiciary, apart from heading the Juvenile Justice Committee, can make visits to jails and detention facilities and issue various directions. However, in 2009, Judicial Policy issued directions to the Judges of High Court for inspections of prisons periodically for ensuring

⁷⁵Authority of punishments Rules-582,583,584 Pakistan Prison Rules 1978.

compliance of Prison Rules and giving on the spot remedy/relief to the deserving prisoners in accordance with law⁷⁶on quarterly basis.

Inspection by Non-Judicial Bodies-Provincial & National Commission for Human Rights & Ombudsman Office

6. The members of such commissions can visit or inspect the jails but their efficacy is limited due to condition of prior intimation as reflected in section 4 (iv) of powers of Sindh Human Rights Commission established under Sindh Human Rights Protection Act 2011, which states that they can visit under intimation to government, any jail or institution under the control of government where persons are kept or detained or admitted for purpose of treatment, reformation or protection or to see the living conditions of the inmates, and make recommendations there on.

7. Recently on the directions of Supreme Court of Pakistan in regard to recommendations by Wafaqi Mohtasib (Federal Ombudsman), the Provincial Home Department has notified "Oversight Committees for the Prisons of Sindh" which includes YOIS (Juvenile Jail) for monitoring the conditions and sending recommendations to Provincial IG Prisons and Home Department.

Inspection by Civil Society

8. Provincial governments has powers to appoint NOV status or ex-officio visitors under Chapter 38 of Jail Manual, Rule 913 of Pakistan Prison Rules 1978 and criterion is laid down in Rules 917-918 in detail. But this mechanism is not utilized and prison authorities are reluctant to give access to such visitors without prior intimation.

⁷⁶ National Judicial Policy Making Committee, National Judicial Policy 2009, A year on the focus on justice at the grass root level. Available at: <http://www.ljcp.gov.pk>

Case Law Related to Child Protection

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Constitutional Petition No- D-1262 of 2017
Additional Registrar.....Petitioner

VERSUS

Incharge Darul Aman Sukkur & other..... Respondents

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

C.P.No. D-1262 of 2017

C.P.No. D- 3550 of 2017

C.P.No. D- 1285 of 2015

Date of hearing

Order with Signature of Judge

26.06.2018

Petitioner Mst. Shaheen, present in person.

Mr. Khuda Bux Chohan, Advocate for Sukkur Municipal Cooperation

Mr. Shahryar Imdad Awan, Assistant Advocate General Sindh.

1- Pursuance to order date 14.06.2018, Barrister Arslan Islam Shaikh(Mayor Sukkur), Awais Mushtaq (Assistant Commissioner Rohri) on behalf of Deputy Commissioner Sukkur Pir Wahid Bux (Municipal Commissioner, Sukkur Municipal Corporation), Abdul Qudoos Memon (Deputy Director Rehabilitation Centre for Physical Handicapped Children _ RCPHC, Social Welfare Department Sukkur) on behalf of Director General child Protection Authority Sindh and Naseem Laique (Deputy Director Darul- Aman Sukkur) are present. Reports have been filed by Deputy Commissioner Sukkur and Deputy Director (RCPHC) Social Welfare Department Sukkur, which are taken on record.

2- At the outset, Deputy Director (RCPHC)/Child Protection Unit, present, contends that basically he is working in Social Welfare Department and charge of "Officer of Child Protection Unit" is his additional duty. He contends that yet Child Protection Unit officers are not appointed though authority, as provided under the Sindh Child Protection Act, 2011, is created and Chairman is the Minister of Child Protection Authority, but budget is not released and officers appointed under such authority are in additional duties. They have no skills to handle the issues of children; that Habiban (abductee) is minor and was remanded by Magistrate in Crime No.85/2014 of Police Station Januji / Kandhra, that case pertains to abduction.

3- Pursuance to above referred order, Mayor Sukkur is present; contends that he has once visited Darul-Aman and he would look into the issue of minor Habiban with regard to finding out of her parents. He also contends that though there is no room in local government ordinance regarding housing the 'minor' however, Sukkur Municipal Authority with the coordination of Deputy Commissioner Sukkur would take positive steps to strengthen the capacity and infrastructure of Darul-Aman.

4- The admissions, made by the Officer of Child Protection Unit, are themselves sufficient to prima facie show the seriousness of quarter concerned on a 'issue' which otherwise has guarantee of Article 9 and 11 of the Constitution. Attempts to provide protection to child with unskilled persons admittedly a prima facie cause of failure in achieving the real object of the Act (The Sindh Child Protection Act, 2014) while non-releasing of budget seems to frustrate the Act as things cannot be achieved by paper work but practical works which difference must always be kept in view all quarters concerned. Accordingly, Chief Secretary Sindh is hereby directed to ensure that the Act finds its spirit as it was/is aimed by the legislature and it (Act) be not defeated in its in its purpose for want of budget or skilled officials/staff. Since, the Act always speaks of its date of enforcement hence it is be believed that no technicalities shall be allowed to delay the purpose and object of such an impartial and vital enactment.

5- Reverting to another aspect, R and Ps of Sessions Case available with regard to abduction of minor Habiban shows that accused persons have been acquitted by the trial Court. Admittedly, police recovered minor Habiban from the clutches of accused nominated in referred FIR. They were challaned and minor was sent to Darul-Aman by learned Magistrate. We have taken judicial notice that after sending minor in Darul-Aman, police investigation Officers as well learned Magistrate including learned trial Judge has not taken pain to ensure wellbeing of minor who is in Darul-Aman since 2014. The accused succeeded in earning acquittal but the abductee minor Habiban neither found her parents nor legal guardian but is compelled to reside in Darul-Aman which prima facie is never meant for minor hence circumstances, require for a growing minor, cannot be expected to exist in/ at a place not meant for minor. This is an example of collective failure of all quarters concerned, including judiciary, police and administrations which resulted in costing a minor of her childhood. At this juncture, it would be conducive to refer paragraph 6 of referred order, which is that:

*"It's prima facie appears that alleged abductee Habiban has been in Darul-Aman and no effort seems to have been made so as to let her have her parents or proper guardian. **The responsibility of police does not come to an end only be getting such a victim enrolled/registered with a Darul-Aman but continues till such a victim reaches to proper end lawful hands. Equally, the Darul-Aman is nor supposed to become idolon registering a victim but require continuous efforts in making them independent and safe which shall always include reaching of such a victim to lawful hand.** The fact of four years continuous housing of said victim without any effort towards her right to have their parents/lawful guardian has exposed negligence of both police and Darul-Aman incharge. We would also*

add that **Darul-Aman prima facie is not meant for children rather proper authority is the Child Protection Unit** who, on complaint of availability of any abandoned child is not only supposed to provide proper protection and safety but also make efforts **in searching /locating his/her parents.** The quarter concerned, nowhere, figures in whole scenario. Accordingly, Director General Child Protection and Deputy Director Child Protection Sukkur shall be in attendance on the next date with a detail report regarding its functioning and object thereof.

6- The above is sufficient to establish a collective failure. It is needless to mention that Darul-Aman is never for minors and that is only for female but learned Magistrate failed to consider this aspect while sending her in Darul-Aman. During this span, not a single authority proved to have paid any heed to work out the scheme with regard to wellbeing of minor. Besides, Act regarding destitute women (Women Act 1994) provides, a complete mechanism and Darul-Aman is not like a shelter home for not having funds and proper (skilled) staff. Worth to add that the Government (State) is the ultimate guardian of an abandoned minor/child and all above government department are supposed to know this very fact but regret to admit again that things proved otherwise. Here, referral to Section 8 of Guardians & wards Act, 1890 being relevant is made hereunder: -

“8 Persons entitled to apply for order. —Any order shall not be made under the last foregoing section except on the application of-

- a)
- b)
- c) the Collector of the district or other local area within which the minor ordinarily resides or in which he has property, or
- d) the Collector having authority with respect to the class to which the minor belongs;

7. Moreover, petitioner Shaheen Mirani, who is confined in Darul-Aman since last three years, is seeking protection and contends that she intends to contract marriage on her own choice but she has apprehension that if she would be set at liberty, Police posted at Darul-Aman may leak this news, that would cause serious threat to her, she prayed that her marriage may be arranged at Darul-Aman. It is also pleaded that many of the married girls, taking refuge in Darul-Aman, file Suits for Khulla and intend to contract marriage as well as other girls, but there is no mechanism by Darul-Aman Authorities/Social Welfare Department to arrange their marriage in Darul-Aman. It has also come on record that Zakat Council has allocated a head of “marriage support program but not a single precedent is quoted that Zakat Council has arranged

marriage of any female having shelter in Darul-Aman. Such failure is again wort regretting as purpose of allocation of funds for specific purpose shall always remain thirstyif authority (controlling such funds) does not actively involved in ensuring the funds to reach in/ for deserved. The Authority shall also keep in minds that poor girls (having families) do deserve to be helped in getting their marriage but those, taking refuge in such like institutions, should begiven preference least a balanced part of such allocated funds because they are not only poor but abandoned by their blood-relation. Since the purpose and object of Darul-Aman is never permanent but to provided “aman” (Protection/ Safety) till the aggrieved reaches to proper and lawful hands which shall always include ‘husband’ if aggrieved is sui-juris and wishes so. To have the husband in exercise of right of puberty (sui juris) must always be protected by providing necessary assistance and every possible aid. The temporary **aman** (Protection /Safety) shall never be an excuse to defeat such lawfully protected right. The police, administration of Darul-Aman as well Zakat council must show a vital role in this regard and so is hoped for future. However, as temporary arrangement, the Secretary Social Welfare Department and Secretary Zakat Council is directed to constitute a committee which shall ensure that the girls, taking refuge in Darul-Aman, are provided complete assistance in contracting marriage(s) of their own freewill and choice by the expenses to be paid by the Zakat Council as well by the Social Welfare Department. The committee shall also recommend a comprehensive mechanism to take such grievance on permanent basis which should include an answer to apprehension of any future harm and reach of such couple to a secure place. Similarly, marriage of petitioner Shaheen Mirani shall be arranged within one month with compliance report but with person of her choice and consent. Thereafter, she would be at a liberty to leave Darul-Aman as and when she feels comfortable and no hindrance would be created.

8. Further, we appoint Mr. Sohail Ahmed Khoso and Mr. Ali Raza Baloch, advocates as amicus curiae to assist on the issue of child protection, destitute women, and affairs of women shelter home (Darul-Aman) till the Act and relevant enactment are assured to have been functional in letter and spirit. It is further directed to Chief Secretary Sindh and Child Protection Authority to ensure that proper mechanism is provided with regard to education of minor girls and boys and those shall be taken. At this juncture, Mr. Hadi Bux Bhatt, advocate states that one Ms. Farzana Khoso, advocate is also working on the issues of women. Accordingly, she would be at liberty to visit Darul-Aman fortnightly basis and to refer complaint (s) to quarter concerned as well as District & Sessions Judge which be ensured to have a legal and lawful disposal thereof.

9. We further direct District & Sessions Judge Sukkur and all other District Session Judges to depute any Family Judge, who shall visit Darul-Aman (s), Darul-Atfal (s) and

Sweet Home (s), preferably along with any active female member of the Bar and to submit report to the District & Sessions Judge with regard to hardship, being faced by inmates. District & Sessions Judge (s) would be competent to pass any direction to Social Welfare Department, Deputy Commissioner, SSP and concerned departments. In case of non-compliance they would be competent to initiate proceeding.

10. It has come on record that majority of girls take shelter till decision of their case of Khulla, hence, learned District & Sessions Judge Sukkur shall assign such case to one Family Judge, and cases pending in other districts of Sukkur Division stand transferred to Family Judge Sukkur, who shall decide the same, after adopting all modes of service preferably within six weeks.

11. It has also come on record that in Darul-Aman, one lady Doctor is assigned to provide treatment in day time, but without faculty, hence, on urgent basis **Director General Health Sindh** shall visit and ensure that ultrasound machine, fridge and other relevant equipment and medicine is provided immediately.

12. Besides, two inmates are insane and one minor is lunatic, hence under the **Sindh Differently Able Persons** (Employment, Rehabilitation and Welfare) Act, 2014, Government is bound to provide complete assistance; hence, on emergent basis **Secretary Health and Director General Health** Sindh shall provide separate place, having all facilities which such lunatic deserve. Thus, Chief Secretary Sindh shall ensure that the Sindh **Differently Able Persons** (Employment, Rehabilitation and Welfare) Act, 2014, is implemented within one month.

13. It has also come on record that male staff is working and posts are vacant even facility of cook is not available. Accordingly, **Secretary Social Welfare Department** shall personally visit and shall ensure posting of all staff within 15 days. Since there also came complaint of insufficient budget as well insufficient milk for minors hence this aspect would also be considered and budget shall be enhanced so as to meet with such basic need of minors.

14. It is matter of record that lady police personnel are not deployed at Darul-Aman. Accordingly, one police mobile under the charge of lady Assistant Sub Inspector shall be deployed at the disposal of Incharge Darul-Aman and Family Judge, designated by District & Sessions Judge.

15. It has also come on record that only one Teacher is appointed by the Social Welfare Department to impart education to minor girls but there is no comprehensive mechanism of their education, proper affiliation with Education Board and a fair opportunity of participating in examination; hence, **Directors, Primary & Secondary**

School shall not only depute a lady teacher for imparting education but proper certificate (s) to successful inmates so that their detention /housing should not be a hurdle if such inmates make their such detention / housing use for their future. This exercise shall be completed within one month.

Let the copy of this order be circulated to all District & Sessions Judges for execution of this order as well Senior Superintendents of Police, Sindh Province for guidance in housing the miners at proper place, if produced as abductee or abandoned children.

To come up on 07.08.2018 at 11:00 am

Sd/- Salahuddin Panhwar
JUDGE

Sd/- Adnan Iqbal Chaudhry
JUDGE

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

CP NO. S-2116/2018

Date Order with signature of Judge

17.10.2018

Mr. Altaf Hussain advocate along with petitioner Mst. Beenish& Urooj sister of petitioner.
Mr. Qadir Hussain Khan, Advocate for respondent No.2 along with Ayesha Younus, Adnan Khan, Basalat A. Khan.

Aashique Hussain Kalhoro and Muhammad Rehman, Deputy Directors, Social Welfare Department along with Abdul Khalique Qureshi.

Salahuddin Panhwar, J: Precisely relevant facts of this petition are that petitioner approached the District and Sessions Judge under section 491 Cr.P.C. with regard to custody of minor Ayesha. According to petitioner, she contracted marriage without consent of parents, her husband was living in UAE, she joined him and after conceiving they decided delivery in Pakistan as they were not in a position to bear the cost there hence, she returned back, after seizure baby Ayesha was born on 07.09.2018. Since her family was not happy therefore her sister on the second day of delivery removed the custody from hospital to Sarim Burney Welfare Trust, thereafter petitioner approached District and Sessions Judge for custody which case was entrusted to 2nd Additional District Judge Karachi South (Ghulam Mustafa Laghari) who, after hearing, dismissed application by order dated 19.02.2018 with findings that: -

5. I have considered the arguments of learned advocates for the respective parties and also have gone through the material available on record. It is admitted fact that the minor is kept at the shelter home of Sarim Burney Welfare Trust. Applicant did not hand over the custody of minor baby Aisha to Sarim Burney Welfare Trust. Baby Aisha handed over to the Sarim Salam Burney Welfare Trust by one lady as per arguments of learned counsel for applicant that the said lady is sister of applicant. The father of baby Aisha is not come in the court nor filed any affidavit in favour of applicant. **It seems that the dispute of the parentage is involved over the minor baby Aisha.** Proceeding U/s 491 Cr.P.C. are not available for declaring any person as guardian or for determining all the questions relating to the custody of minor because the final decision of regular custody was to be decided in the proceedings initiated by, the parties claiming the custody of the minor before the Guardian court.

6. In view of the above circumstances, I am of the humble view that **the custody of the minor with the respondent No.2 cannot be considered as illegal.** However, the applicant is at liberty to knock the door of Guardian/Family Court for deciding the parentage of the minor

if so desires. "Hence petitioner approached this court while exercising concurrent jurisdiction. It would be conducive to refer relevant portion of direction of this Court on 15.10.2018: -

"3. Since petitioner being mother is claiming custody of minor of a tender suckling age, she has been deprived from custody since 7th September 2018; she approached the trial Court where her request was declined and now, she is before this Court. No doubt custody cannot be denied to the mother; the Trust is claiming that they are not in a position to identify the minor. Accordingly, petitioner shall approach the Trust with counsel and identify her daughter; on her identification minor shall be produced before this Court.

7. Besides, officers of Women Development Department and any officer from the Social Welfare Department shall visit M/s. Sarim Burney Welfare Trust International and submit report with regard to inmates, as well respondent No.2 shall submit complete record of inmates along-with parentage and the Trust including the mechanisms. At this juncture judicial propriety demands that learned District and Sessions Judge Karachi South shall depute any Magistrate to visit respondent No.2's trust and submit report in the light of this order."

8. Pursuant to that learned Magistrate visited Sarim Burney Welfare Trust, relevant portion of that report is that: -

"Respected Sir, the undersigned received the order dated 15-10-2018 passed by the Honourable High Court of Sindh in CP No. S-2116 of 2018 on 16-10-2018 for compliance through the Honourable District & Sessions Judge Karachi-South where-after the undersigned visited the head office of Sarim Burney welfare Trust International (hereinafter referred to as SBWTI) situated in Wassiamall Building, near Dow Medical College, M.A Jinnah Road, Karachi and reached at the said office at 01:30 PM.

Respected Sir, after apprising the Chairman SBWTT Mr. Sarim Burney about the visit of undersigned in compliance of above said order dated 15-10-2018, the undersigned was informed by the Chairman SBWTI that **on 07-09-2018 one Mst. Urooj Liaquat Ali and Anjum Parvez S/o. Parvez Akhtar lodged/ shifted one new born baby girl to SBWTI after submitting one Statement/ Bayan-e-Halfi to the effect that the said baby girl had born to her sister namely Mst. Beenish D/o. Liaquat Ali on the same day i.e. 07-09-2018 at about 05:00 PM and since the said baby girl having no legal father**, her custody is being handed over to SBWTI for her better upbringing with no concern with the said baby girl by Mst. Beenish or anyone else and the SBWTI will have all rights to either provide the said baby girl best upbringing or to handover the custody of said minor to anyone. (Copy of the Statement/ Bayan-e-Halfi is annexed herewith at R-1 for kind perusal of the Honourable Court).

Respected Sir, the Chairman SBWTI further informed the undersigned that at the time of receiving baby girl from Mst. Urooj and Anjum Parvez the SBWTI had taken photograph of Mst. Urooj as well as of baby girl who was given name by SBWTI as Palwasha. The SBWTI also

have the CCTV Camera recording which was handed over to the undersigned in USB. (Photograph of Mst. Urooj and baby girl, copy of CNIC of Anjum Parvez, and relevant CCTV Camera recording in USB is annexed herewith at R-2 to R-5 for kind perusal of the Honourable Court).

Respected Sir, the undersigned was further informed that on 15-10-2018 at about 02:00 PM the petitioner party along with their learned Counsel approached for identification purpose in compliance of order passed by the Honourable High Court but they left the office of SBWTI at about 04:00 PM without identifying the baby girl by stating that they cannot wait anymore. The reason for keeping them on wait is stated to be the brining baby girl from shelter home of SBWTI situated at Hyderi, North Nazimabad, Karachi which consumed more than expected time of transportation due to traffic jam on M. A Jinnah Road. In this regard the conversation between the staff of SBWTI and petitioner party through text message/SMS is also provided to the undersigned in printed form. (Copy of the conversation through text message/SMS is annexed herewith at R-6 for kind perusal of the Honourable Court).

Respected Sir, the undersigned was further informed that at the time of shifting the baby girl at SBWTI, the petitioner Mst. Beenish, was not on record and since there was a baby girl in existence and Mst. Urooj and Anjum Parvez were ready to leave her at SBWTI, the SBWTI had no issues with parentage of the baby girl, however as a precautionary measure, the SBWTI had duly informed the general public through its Facebook page (www.facebook.com/sarimburneyofficial) and YouTube channel which has a considerable viewership of general public.

Respected Sir, with regard to internees, the undersigned was informed that presently around 100 persons including, children (male/female) and 08 males are available at SBWTI. All the females and children are kept at shelter home situated at Hyderi, North Nazimabad. Two old age male inmates are also residing at shelter home, however other male inmates are kept at head office of SBWTI. The handy available informal list of inmates has also been provided to the undersigned. (List of the inmates provided to the undersigned is annexed herewith at R-7 for kind perusal of the Honourable Court)."

9. Besides representative of Sarim Burney Welfare Trust has submitted trust deed along with details of shelter homes, tax receipts and details of inmates. At this juncture Deputy Director, Social Welfare Department submits his report which is that: -

Under the directives of Honorable High Court of Sindh in CP. NO. S-2116/2018, the undersigned paid visit of Shelter Home running in Sarim Burney Welfare Trust International, in Hyderi, North Nazimabad behind Saima Paari mall and met with Mrs. Alia Sarim vice Chairperson/Incharge of the Shelter home and Mr. Basalat Ali Khan (Welfare Officer)/Lawyer of welfare trust. According to them Sarim Burney Welfare Trust registered under Trust Act,

bearing the registration No. 237, dated 10-7-2012. At the time of visit 88 homeless women and children/inmates were available there of different ages, (3) three children under two years including baby Aisha also them. During visit the undersigned observed that the shelter home providing good services/facilities for the inmates like clothing, feeding, recreational activities, informal education and religious education with the support of different philanthropists. The undersigned also felt that all inmates were quite satisfied regarding the basic necessities providing to them by the shelter home, regarding baby Ashia a caretaker female was also available for her care.”

10. Further, focal person of Child Projection Authority is present and contends that building for destitute children is under construction for last 5/6 years and same is near completion, it is contended that social welfare department has signed MoU with Sarim Burney Trust to provide shelter to women.

11. Typical facts, so surfaced during hearing of instant petition, resulted into bringing number of *unfortunate* facts onto light which, I am unable to ignore. I will attend each *separately*.

No one can deny to the fact that protection and rehabilitation of every single un-owned or destitute *child* is the **ultimate** responsibility of the State which it (**State**) cannot avoid even on mere plea of working of some NGOs with help of philanthropists. The roles of **NGOs** can never be a substitute to that of **responsibility** of the State but may, at the most, could be of **help / assistance** which, *too*, shall always require a supervisory eye because the **State** is never supposed to compromise on **protection, life** and **rehabilitation** of such children. Entry of a single child into such like institutions of an **NGO** must be supervised till the *child* either reaches to **safe-hands** or is made capable of leading an honourable **life**. Such aspect I, *painfully*, admit to be **‘missing’** which allows raising of number of questions on working and *even* existence of such *government institutions / authorities*.

12. Worth to add here that Sindh Child Act was promulgated in 1955 which not only demands taking of a **destitute** child into custody by the State but with concept of reformatory institution. Such *vital* Act *however* seems to have served no purpose at all but seems to have gotten rust and dust thereon. The Act, I would again insist, is never meant for its presentation or to talk about in **seminars** on **issues** but demands purposeful enforcement thereof. The *grief* continues when I have to admit that since 1955 no mechanism is provided. Even Child Protection Authority is established about 2/3 years back but again only on papers because State is not visible in the field.

13. At this juncture, a reference to Section 10 of Sindh Child Protection Authority Act, 2011, being relevant, is made hereunder which reads as: -

10. (1) For the purposes of this Act, the Authority shall have powers-

- (a) to coordinate and monitor the child protection related issues at the provincial and district level;
- (b) to ensure the rights of the children in need of special protection measures;
- (c) to support and establish institutional mechanisms for the child protection issues;
- (d) to make necessary efforts *to enhance and strengthen the existing services of different children welfare institutions;*
- (e) to set minimum standards for *social, rehabilitative, re- integrative and reformatory institution and services and ensure their implementation;*
- (f) to supervise in the light of minimum standards, the functions of all such institutions established by government or private sector for the special protection measures of the children;
- (g) to set minimum standards for all other institutions relating to the children (like educational institutions, orphanages, shelter homes, remand homes, certified school, youthful offender work places, child parks and hospitals etc) and ensure their implementation;
- (h) to review laws, propose amendments in the relevant law, wherever necessary, so as to bring those in conformity with the relevant international instruments ratified by Pakistan and to propose new laws;
- (i) to recommend development of a Policy and Plan of Action for the children;
- (j) to monitor and report on the violation of the national and provincial laws and international instruments and take suitable remedial measures for the protection of the child;
- (k) to set up child protection management information system and prepare annual reports;
- (l) to mobilize financial resources for programs relating to special protection of children through provincial, national and international agencies;
- (m) to promote and undertake systematic investigation and research on child protection issues;
- (n) to initiate through relevant authorities, prosecution of the offenders when children are victim of the offence;
- (o) to establish and manage the Fund;
- (p) to do such acts as are ancillary and incidental to the above functions;
- (q) to investigate or cause investigation, on its own or upon a complaint, into any matter having bearing on the interest of the children; and
- (r) any other functions, which may be assigned to it by Government.

14. The *functions*, so appearing from above section of the Act, *prima facie* reaffirms the fact that all the government, private or other institutions, including NGOs, have been brought

under direct supervision/control of the Authority and that a **minimum** standard for **social, rehabilitative, re- integrative** is required to be assured by all such *institutions* which, *too*, under direct supervision of *Authority* with a sense of assurance that any departure/violation shall expose *guilty* to lawful action. The above also burdens the *Authority* not only to promote and undertake **systematic investigation** but to ensure initiation of prosecution of the offenders through relevant authorities, when the victims of the offences are **children**. We, unfortunately, have been experiencing an *abnormal* increase in offences relating to **children** but the **victims** and *parents* of such **victims** have never been heard of any help/assistance by **Authority**. This, I admit *painfully*. Representatives of Social Welfare Department are unable to satisfy this court as well assist this court whether they have provided any shelter home/reformatory institutions.

15. Taking a *pause* here, I would add that it is also claimed that since 25 years this Trust (respondent No.2) is in existence but representative of that trust is unable to point out that any minor nestled in their Trust has received good education and has qualified even up to bachelor degree. This again is the *failure* of Authority of all the laws, enacted on such *subject*. It, *however*, claimed that in case of orphanage kids usually many families approach them and they hand over the custody after adaptation through Courts. Without making any comments onto the *sincerity* of the Trust, I would say that when a *trust/institution* claims to be working for **protection, welfare & rehabilitation** of children then it must ensure such objectives. Even in cases of *giving* custody of **orphanage** to families there must be some *mechanism* to know about **welfare** of such child but without troubling the *families*.

16. Resuming again, the Representatives of Social Welfare Department, present, are unable to satisfy this court as well assist this court whether they have provided any shelter home or they have done any *concrete* things so as to achieve the object of the Act by assuring requirement of Section 10 *supra*. Under these circumstances, Social Welfare department and DG Child Protection Authority shall submit record of last two years with regard to efforts taken for the destitute children or the recovered children; adopted and thereafter are under the control of any *darulaman*. Such report shall also include as to what steps were / are being taken so as to achieve objectives of Section 10(m), (n) and (q) of the Act in particular. They shall also ensure proper publication by all *means* of *its* objectives and availability of all *kinds* of help, as permissible by Act. Further they shall also physical *visit* to all such *institutions* and shall ensure that such *institutions* are having **minimum standards**. Reformatory/hostel centers shall be established on every division to ensure that in case minors are destitute concerned police with the approval of magistrate as provided under the Child Protection Act shall nestle them in those centers. Needless to add that per Section 11 of the Act all the **Executive authorities** have been placed under *mandatory* obligation to assist the Authority in performance of its functions. Any departure shall not only be violation of such section but may also expose them to legal consequences. Compliance report shall be submitted through

A.R. of this Court, on quarterly basis. Learned MIT shall ensure compliance of this order in its letter and spirit.

17. Now, reverting to merits of the case. Today, the minor is produced, parentage is not disputed. I have examined the order passed by learned ADJ and I am shocked that how and in what manner an Additional Sessions Judge declined custody to mother on the plea that parentage is involved and petitioner's sister has not filed affidavit in her favour. It needs not be insisted that provision of Section 491 Cr.PC can well be invoked in matters of custody of *minor children* even where question of *illegal* confinement is not involved. The provision itself shows that it can well be exercised even if the custody is not *illegal* but is *improper*. The facts, *prima facie*, involved custody of a child of *days* therefore, learned lower court judge was supposed to take a little more effort and was never supposed to fall prey of *technicalities*. Though, remedy under section 491 Cr.PC is *summary* in nature yet it (*summary nature*), nowhere, restrains one to make an *inquiry* particularly when it may advances the cause of justice and is *otherwise* not restrained. Reference may well be made to the case of *Zohra Bibi v. Sultan Mahmood* (2018 SCMR 762) where at Rel. P-766, it is observed as: -

“...Whenever it is possible to grant relief under the law, then technicalities in the ways of administration of justice should be avoided to the possible extent by remaining within the domain of law.”

18. It is a matter of record that a little effort by this Court resulted into making it clear that:

- i) According to the Trust at the time of receiving possession photograph of baby and that of petitioner's sister was captured as well CCTV footage are proof.
- ii) Statement of *depositor* did disclose the name of the present petitioner, as ***mother***,
- ii) Learned Magistrate in his report about the trust has opined that there is no issue of parentage and without dispute they have handed over the custody to the petitioner (mother).
- iv) Custody of suckling baby Ayesha is handed over to mother (petitioner).

19. The courts are required to adjudicate the issue. Learned judge was competent to call any person so as to make a *prima facie* enquiry about status of mother *least* entitlement of petitioner for custody or otherwise but he (*Mr. Ghulam Mustafa Laghari, Additional District & Sessions Judge*) rather went on in saying that “***It seems that the dispute of the parentage is involved over the minor baby Aisha***” though this issue was not there. All, including Courts, must avoid bringing *legitimacy* of a child into dispute except such **issue** is raised for its determination. The manner in which the learned lower court judge has dealt with the matter, *prima facie*, resulted in keeping the petitioner (***real mother***) deprived *least* away from her child for ***days***, despite of fact that parentage was not disputed. I would add that *lap* of the

mother has been considered as *lap* of GOD. In this case mother from the day one was deprived by the family members, thereafter when she approached the Additional District Court on 15.09.2018 since then she has been deprived on technicalities by the respondents. Since the Authority (Sindh Child Protection Act, 2011) seems to have kept its *significance* into dark else petitioner could have been rescued in *hours* without forcing her to keep wondering at doors of the Courts.

20. Without going any further, I would painfully, conclude that all learned Magistrates and District Judges in cases of section 491 Cr.P.C. or where minor children are recovered, shall ensure *least* an inquiry so as to examine fitness/claim of petitioners and if none is there then child shall be ensured to be nestled at proper place. They shall not dispose of matters in mechanical manners if the situation is *alike* the one, surfaced during hearing of the instant petition, **but are believed to go a little further to help and achieve object of justice.**

21. In terms of above, instant petition is disposed of. Office shall communicate this order to all concerned for compliance and information.

J U D G E
IK

HIGH COURT NOTIFICATION FOR ESTABLISHMENT OF EXCLUSIVE JUVENILE COURTS IN KARACHI

THE HIGH COURT OF SINDH, KARACHI

All communication should be addressed to REGISTRAR HIGH COURT OF SINDH KARACHI & not to any call by name

No Gaz/Estab Juvenile Courts
Dated 10.11.2018

From: The Registrar, High Court of Sindh Karachi

To: The Secretary, Government of Sindh, Home Department, Karachi.

CHIEF OF THE DISTRICT SESSIONS JUDGE KARACHI CENTRAL
585312
14-12-18
[Signature]

Subject: ESTABLISHMENT OF EXCLUSIVE JUVENILE COURTS IN KARACHI

Reference: Letter No SOJ/9-2/2018 dated 23-11-2018 of Section Officer (Judicial), Home Department, Government of Sindh

I am directed to state that the Hon'ble Chief Justice has been pleased to designate all the Courts of District & Sessions Judges and 1st & 11th Additional Sessions Judges in all districts of Sindh to exercise powers for trial of offences under Juvenile Justice System Act 2018. Further the following Judicial Magistrates in Sindh have also been vested with said powers and also the powers under Section 30 Cr. P.C.

Karachi (South)	Judicial Magistrate-I to IV
Karachi (East)	Judicial Magistrate-I to IV
Karachi (West)	Judicial Magistrate-I to IV
Karachi (Central)	Judicial Magistrate-I to IV
Malir Karachi	Judicial Magistrate-I to IV
Hyderabad	Judicial Magistrate-I to III
All other districts in Sindh	Judicial Magistrate-I & II

Moreover, all Anti-Terrorism Courts in Sindh have been designated as Juvenile Courts.

It is, therefore, requested to issue the necessary notification accordingly.

It is further requested to notify the nominees for each district in Sindh whose names have already been sent by the concerned District & Sessions Judges to constitute the Juvenile Justice Committee as per Section 10 of the Act *ibid*.

[Signature]
 (GHULAM RASOOL SAMSON)
 REGISTRAR

Copy forwarded to:
 All the District & Sessions Judges in Sindh for information and circulation to all concerned. All the concerned Judicial Officers of district judiciary are directed to make compliance of Section 2(5) of the Juvenile Justice System Act, 2018 in respect of transfer of cases of juveniles to the Juvenile Courts after the notification of Government of Sindh is issued for establishment of Courts in this respect.

Handwritten notes:
 To all concerned Judges (1st to 11th) (14-12-18)

GOVT. OF SINDH NOTIFICATION FOR "WOMEN & CHILDREN POLICE STATIONS"



GOVERNMENT OF SINDH
HOME DEPARTMENT

NOTIFICATION

No. POL-I/HD/07-06/2018: The Government of Sindh is pleased to re-designate / re-name the following "Women Police Stations" as "Women & Children Police Stations" with strength shown against each in terms of clause (s) of Sub-Section (1) of Section (4) of the Code of Criminal Procedure 1898, with immediate effect.

S. #	Re-designated "Women & Children Police Station"	Insp	SI	ASI	HC	PC	Total
01.	West Zone Karachi	4	8	16	50	122	200
02.	East Zone Karachi	4	8	16	50	122	200
03.	South Zone Karachi	4	8	16	50	122	200
04.	Hyderabad Range	4	8	16	50	122	200
05.	Mirpurkhas Range	4	8	16	50	122	200
06.	Shaheed Benazirabad Range	4	8	16	50	122	200
07.	Larkano Range	4	8	16	50	122	200
	Total	28	56	112	350	854	1400

02. The jurisdiction of the above "Women & Children Police Stations" shall remain the same as already notified for the concerned "Women Police Station". Moreover, the requirement of human resource / strength will be met out from the existing / available resources of the Ranges / Zones concerned.

sd/-
QAZI SHAHID PERVEZ
HOME SECRETARY, SINDH

No. POL-I/HD/07-06/2018

Karachi dated 28th March, 2018

A copy is forwarded for information and necessary action to:-

1. The Chief Secretary, Sindh, Karachi.
2. The Principal Secretary to Governor, Sindh, Karachi.
3. The Principal Secretary to Chief Minister, Sindh, Karachi.
4. The Secretary, Finance Department, Govt. of Sindh, Karachi.
5. The Secretary, Social Welfare Department, Karachi.
6. The Senior Member Board of Revenue, Sindh at Hyderabad.
7. The Inspector General of Police, Sindh, Karachi.
8. The Additional IGP, Karachi Range.
9. The Registrar, High Court of Sindh, Karachi.
10. The Commissioners all in Sindh.
11. The DIGsP Ranges all in Sindh.
12. The DIGsP, West Zone Karachi, East Zone Karachi, South Zone Karachi.
13. The District & Session Judge, all in Sindh.
14. The Deputy Commissioners all in Sindh.
15. The District SSP / SP all in Sindh.
16. The Superintendent, Sindh Government Printing Press, Karachi.
17. The Deputy Secretary (Staff) to Home Minister Sindh, Karachi.
18. The PSO to Home Secretary, Sindh, Karachi.
19. Office Order file.

Fateh Ali Rahimoon
28/03/18
(FATEH ALI RAHIMOON)
SECTION OFFICER (POLICE-I)

P L D 2005 Lahore 15

**Before Khawaja Muhammad Sharif, Mian Muhammad Najam-uz-Zaman and Asif Saeed
Khan Khosa, JJ**

FAROOQ AHMED ----Petitioner

Versus

**FEDERATION OF PAKISTAN through Secretary Law and Parliamentary Affairs, Government
of Pakistan, Islamabad ----Respondent**

Syed Farooq Hassan Naqvi for the Petitioner.

Mr. Muhammad Nawaz Bhatti, Deputy Attorney General for the Federation of Pakistan.

Mrs. Nasmin Sehgal, Assistant Advocate-General for the Province of the Punjab.

Mrs. Asma Jahangir and Mr. Manzoor Ahmad Malik as amici curiae.

**Dates of hearing: 18-12-2002, 12-3-2003, 20-3-2003, 25-3-2003, 1-4-2003, 2-4-2003, 24-6-
2004 & 22.11.2004**

JUDGMENT

ASIF SAEED KHAN KHOSA, J.---Sages down the ages have generally perceived an accused person, before establishing of his guilt beyond reasonable doubt, as the darling of a criminal court and if such an accused person happens to be a child then the romance-about him usually receives a further sympathetic boost. The raison d'etre for such sympathy may not be difficult to discern as by and large a child is considered to be deserving of special treatment because of his innocence and lack of proper understanding of the nature or consequences of his conduct. However, a young person who has already lost his childhood virtue, innocence and incorruptibility and who understands the nature or the normal consequences of his conduct, no matter what his age, may cease to qualify for such special handling as a child. It is the quandary posed by such a mature pubescent or a ripe juvenile, who may be of a relatively young age but has already attained sufficient maturity of understanding, that is the subject of the present petition. It is mainly in this context that we have been called upon through this petition to examine the vires of the Juvenile Justice System Ordinance, 2000 introduced in our legal system on July 1, 2000 through Federal Ordinance No. XXII of 2000. The petitioner bringing up this challenge happens to be the complainant of a case of murder in which an accused person is claiming to be a 'child' within the purview of the Juvenile Justice System

Ordinance, 2000 and thus, entitled to concessionary treatment in the matters of bail, trial and sentence, if any.

2. For facility of reference the Juvenile Justice System Ordinance, 2000 may be reproduced here in its entirety (as published in PLD 2000 Central Statutes 385):

"ORDINANCE XXII OF 2000

JUVENILE JUSTICE SYSTEM ORDINANCE, 2000

An Ordinance to provide for protection of the rights of children involved in criminal litigation

[Gazette of Pakistan, Extraordinary, Part I, 1st July, 2000]

No. F.2(1)/2000-Pub., dated 1.7.2000. ---The following Ordinance made by the President is hereby published for general information: --

Whereas it is expedient to provide for protection of children involved in criminal litigation, their rehabilitation in society, reorganization of Juvenile Courts and matters connected therewith and incidental thereto;

And whereas the National Assembly and the Senate stand suspended in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999;

And whereas the President is satisfied that circumstances exist which render it necessary to take immediate action;

Now, therefore, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999 and the Provisional Constitution Order No. 1 of 1999, as well as Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance: --

1. Short title and commencement. -- (1) This Ordinance may be called the Juvenile Justice System Ordinance, 2000.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions. -- In this Ordinance, unless there is anything repugnant in the subject or context,--

(a) 'Borstal institution' means a place where child offenders may be detained and given education and training for their mental, moral and psychological development

(b) 'child' means a person who at the time of commission of an offence has not attained the age of eighteen years;

(c) 'Code' means the Code of Criminal Procedure, 1898 (Act V of 1898);

(d) 'guardian' means a parent or a person who has actual care of the child and includes such relative who is willing to bear the responsibility of the child;

(e) 'Juvenile Court' means a Court established under section 4;

(f) 'offence' means an offence punishable under any law for the time being in force; and

(g) 'Probation Officer' means a person appointed under the Probation of Offenders Ordinance, 1960 (XLV of 1960), or such person as the Provincial Government may appoint to perform the functions of Probation Officer under this Ordinance.

3. Legal assistance. --(1) Every child who is accused of the commission of an offence or is a victim of an offence shall have the right of legal assistance at the expense of the State.

(2) A legal practitioner appointed by the State for providing legal assistance to a child accused of the commission of an offence, or victim of an offence, shall have at least five years standing at the Bar,

4. Juvenile Courts. -- (1) The Provincial Government shall in consultation with the Chief Justice of High Court, by notification in the official Gazette, establish one or more Juvenile Courts for any local area within its jurisdiction.

(2) The High Court may--

(a) confer powers of Juvenile Court on--

(i) Court of Session; or

(ii) Judicial Magistrate of the First Class; and r

(b) appoint, from amongst practising Advocates having at least seven years standing at the Bar, Presiding Officer of Juvenile Courts with powers of a Judicial Magistrate of the First Class for the purposes of this Ordinance on such terms and conditions as the High Court may determine.

(3) The Juvenile Court shall have the exclusive jurisdiction to try cases in which a child is accused of commission of an offence.

(4) Subject to subsection (3), on commencement of this Ordinance, all cases pending before trial Court in which a child is accused of an offence shall stand transferred to the Juvenile Court having jurisdiction,

(5) The Juvenile Court shall not, merely by reason of a change in its composition, or transfer of a case under subsection (4), be bound to recall or rehear any witness who has given evidence and may act on the evidence already recorded.

(6) On taking cognizance of an offence, the Juvenile Court shall decide the case within four months.

5. No joint trial of a child and adult person. - (1) Notwithstanding anything contained in section 239 of the Code, or any other law for the time being in force, no child shall be charged with or tried for an offence together with an adult.

(2) If a child is charged with commission of an offence for which under section 239 of the Code, or any other law for the time being in force such child could be tried together with an adult, the Court taking cognizance of the offence shall direct separate trial of the child by the Juvenile Court.

6. Procedure of Juvenile Courts. - (1) Juvenile Court shall, unless provided otherwise in this, Ordinance, follow the procedure provided for in the Code.

(2) A Juvenile Court shall not ordinarily take up any other case on a day when the case of a child accused is fixed for evidence on such day.

(3) No person shall be present at any sitting of a Juvenile Court except--

(a) members and officers of the Juvenile Court;

(b) parties to the case before the Juvenile Court and such other persons who are directly concerned with the proceedings including the police officers;

(c) Such other persons as the Juvenile Court directs to be present; and

(d) guardian of the child.

(4) At any stage during the course of the trial of a case under this Ordinance, the juvenile Court may, in the interest of such child, decency or morality, direct any person to withdraw from Court for such period as the Court may direct.

(5) Where at any stage during the course of the trial of a case, the juvenile Court is satisfied that the attendance of the child is not essential for the purposes of the trial, the juvenile Court may dispense with the attendance and proceed with the trial of the case in absence of the child.

(6) When child who has been brought before a juvenile Court and is found to be suffering from serious illness, whether physical or mental, and requires treatment, the Court shall send such child to a hospital or a medical institution where treatment shall be given to the child at the expense of the State.

7. Determination of age. - If a question arises as to whether a person before it is a child for the purposes of this Ordinance, the juvenile Court shall record a finding after such inquiry which shall include a medical report for determination of the age of the child.

8. Prohibition to publish proceedings of cases. - (1) Unless the juvenile Court specifically authorizes, the Court proceedings shall not be published in any newspaper, magazine or journal in any form which may disclose the name, address, school or any identification or particulars calculated to lead directly or indirectly to the identification of such child nor shall any picture of the child be published.

9. Probation Officer. - (1) The Probation Officer shall assist the juvenile Court by making a report on the child's character, educational, social and moral background.

(2) Subject to subsection (3) the report of the Probation Officer submitted to the juvenile Court shall be treated as confidential.

(3) The juvenile Court, if it so thinks, communicate the substance of the report to the child or his guardian and, where any one of them disputes the contents or views contained therein, the Juvenile Court may give such child or, as the case may be, guardian an opportunity of producing such evidence as may be relevant to the matter stated in the report.

10. Arrest and bail. - (1) Where a child is arrested for commission of an offence, the officer incharge of the police station in which the child is detained shall, as soon as may be, inform--

(a) the guardian of the child, if he can be found, of such arrest and inform him of the time, date and name of the juvenile Court before which the child shall be produced;
and

(b) the concerned Probation Officer to enable him to obtain such information about the child and other material circumstances which may be of assistance to the juvenile Court for making inquiry.

(2) Where a child accused of a non-bailable offence is arrested, he shall, without any delay and in no case later than twenty-four hours from such arrest, be produced before the juvenile Court.

(3) Without prejudice to the provisions of the Code, a child accused of a bailable offence shall, if already not released under section 496 of Code, be released by the juvenile Court on bail, with or without surety, unless it appears that there are reasonable grounds for believing that the release of the child shall bring him into association with any criminal or expose the child to any danger, in which case, the child shall be placed under the custody of a Probation Officer or a suitable person or institution dealing with the welfare of the children if parent or guardian of the child is not present, but shall not under any circumstances be kept in a police station or jail in such cases.

(4) The juvenile Court shall, in a case where a child is not granted bail under subsection (3); direct for tracing the guardian of such child and where the guardian of the child is traced out, the juvenile Court may immediately release the child on bail.

(5) Where a child under the age of fifteen years is arrested or detained for an offence which is punishable with imprisonment of less than ten years, shall be treated as if he was accused of commission of a bailable offence.

(6) No child under the age of fifteen years shall be arrested under any of the laws dealing with preventive detention or under the provisions of Chapter VIII of the Code.

(7) Notwithstanding anything contained in the Code and except where a juvenile Court is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf or in exercise of any right or privilege under any law for the time being in force, a child who, for commission of an offence, has been detained, shall be released on bail, --

(a) if, being accused of an offence punishable with death has been detained for such an offence for a continuous period exceeding one year and whose trial for such an offence has not concluded;

(b) if, being accused of any offence punishable for imprisonment for life has been detained for such an offence for a continuous period exceeding six months and whose trial for such offence has not concluded; or

(c) who, being accused of any offence not punishable with death, or imprisonment for life, has been detained for such an offence for a continuous period exceeding four months and whose trial for such an offence has not concluded:

Provided that where a child of the age of fifteen years or above is arrested, the Court may refuse to grant bail if there are reasonable grounds to believe that such child is involved in an offence which in its opinion is serious, heinous, gruesome brutal, sensational in character or shocking to public morality or he is a previous convict of an offence punishable with death or imprisonment for life.

11. Release on probation. - Where on conclusion of an inquiry or trial, the juvenile Court finds that a child has committed an offence, then notwithstanding anything to the contrary contained in any law for the time being in force, the juvenile Court may, if it thinks fit--

(a) direct the child offender to be released on probation for good conduct and place such child under the care of guardian or any suitable person executing a bond with or without surety as the Court may require, for the good behaviour and well-being of the child for any period not exceeding the period of imprisonment awarded to such child:

Provided that the child released on probation be produced before the juvenile Court periodically on such dates and time as it may direct.

(b) make an order directing the child offender to be sent to a Borstal institution until he attains the age of eighteen years or for the period of imprisonment whichever is earlier.

(c) reduce the period of imprisonment or probation in the case where the Court is satisfied that further imprisonment or probation shall be unnecessary.

12. Orders that shall not be passed with respect to a child. - Notwithstanding anything to the contrary contained in any law for the time being in force no child shall be--

(a) awarded punishment of death, or ordered to labour during the time spent in any Borstal or such other institution; and

(b) handcuffed, put in fetters or given any corporal punishment at any time while in custody:

Provided that where there is reasonable apprehension of the escape of the child from custody, he may be handcuffed.

13. Appeal, etc. - (1) A child convicted on a trial by a juvenile Court, or any other person on his behalf, within thirty days from the date of such order, prefer an appeal in accordance with the provisions of the Code.

(2) The Provincial Government or any person aggrieved by an order of acquittal passed by a juvenile Court, may, within thirty days, prefer an appeal against such order in accordance with the provisions of section 417 of the Code.

14. Ordinance not to derogate from other laws. -The provisions of this Ordinance shall be in addition to and not in derogation of, any other law for the time being in force.

15. Power to make rules. - The Provincial. Government may; by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance."

3. Due to the importance of the matter and the far-reaching consequences of any conclusion that we may arrive at while deciding this petition we had issued notice to the learned Attorney-General for Pakistan and the learned Advocate-General, Punjab and had also requested Mr. Abid Hassan Minto, Mrs. Asma Jahangir and Mr. Manzoor Ahmad Malik, Advocates to assist us as amici curiae. We have heard the learned counsel for the petitioner, the learned Deputy Attorney-General appearing for the Federation of Pakistan, the learned Assistant Advocate-General representing the Province- of the Punjab and two of the learned amici curiae at some length and have gone through the material referred to by each of them.

4. It has been argued by the learned counsel for the petitioner that the matter of treatment of a child accused of committing a crime has already been adequately and satisfactorily taken care of by sections 82, 83 and 299 (a) & (i) of the Pakistan Penal Code, 1860 as well as by section 399 of the Code of Criminal Procedure, 1898 and that introduction of the Juvenile Justice System Ordinance, 2000 (hereinafter referred to as the impugned Ordinance) has created unnecessary confusion in this field. He has maintained that most of the provisions of the impugned Ordinance are unreasonable, absurd and downright impracticable. He has added that the matter of sentencing of a young offender always receives a careful and generally sympathetic consideration by our courts keeping in view the special features of a particular case and, thus, there was no occasion for the impugned Ordinance to categorically forbid passing of a sentence of death against an offender below the age of eighteen years. He has gone on to maintain that the provisions of Articles 25(3) and 26(2) of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter, referred to as the Constitution) do not envisage extending protection to children in a manner that leaves others unprotected at the

hands of such children. According to the learned counsel for the petitioner the protection afforded to young offenders through the impugned Ordinance against the sentence of death has encouraged the adults in our society to settle their murder feuds by prompting their young ones to kill their enemies and to get away with lesser sentences. This abuse or misuse of the provisions of the impugned Ordinance, according to him, has promoted murders and has gone a long way in denying the victims their right to life guaranteed by Article 9 of the Constitution. It has also forcefully been maintained by the learned counsel for the petitioner that the impugned Ordinance has encouraged and promoted corruption in the society inasmuch as fake School Leaving Certificates are being obtained, incorrect medical opinions about age are being procured, forgeries and interpolations are being committed in the Registers of Births maintained at the Union Councils and false Nikahnamas of parents of accused persons are being prepared with a view to show the age of an offender to be less than eighteen years at the time of occurrence so that a possible sentence of death may be avoided against him to cases of terrorism, murder, gang rape or trafficking in narcotics, etc. It has, thus, been canvassed by the learned counsel for the petitioner that a law which corrupts the society at large in the name of protection to children is not worth retaining on the statute book. It has been added by him to this context that the impugned Ordinance had been introduced without prior public debate and in the absence of any discussion in the Parliament which was non-existent at that time. It has lastly been argued by him that the impugned Ordinance had been promulgated by an unrepresentative government under the pressure of the Western governments and donor agencies without appreciating that in view of the peculiar social, economic, climatic and dietary factors a child in our part of the world attains maturity of understanding relatively sooner than in the West. Thus, according to him the Western standards in this regard could not blindly or slavishly be applied in our country. He has referred to the case of Emperor v. Paras Ram Dube [AIR 1915 Allahabad 134] wherein it had been held that in our part of the world a boy aged less than fourteen years may have sufficient maturity of understanding, the case of Tehal Singh and others v. State of Punjab [1985 PSC 1407] wherein it had been observed that a thirteen years old witness may not necessarily be termed as a child witness and the case of Sheikh Hassan v. Bashir Ahmad and another 1PLD 1966 (W.P.) Peshawar 97](FB) wherein it had been laid down that in a case of murder mere youth of an offender may not by itself be a mitigating factor in the matter of sentence to be passed against him. With these submissions the learned counsel for the petitioner has prayed that the impugned Ordinance may be struck down by this Court on account of its unreasonableness as well as on account of its provisions being violative of the mental Rights contained in Articles 9 and 25 of the Constitution.

5. At the time of admission of this Petition to regular hearing on 28.11.2002 we, had issued a notice of this petition to the learned Attorney-General for Pakistan and on 18.12.2002 Mr. Makhdoom Ali Khan, Attorney-General for Pakistan personally appeared before this Court in connection with this petition along with Mr. Muhammad Nawaz Bhatti, Deputy Attorney-General for Pakistan. It, however, appears that thereafter Mr. Muhammad Nawaz Bhatti,

Deputy Attorney-General had been entrusted by the learned Attorney-General the task of representing not only the Federation of Pakistan but also the learned Attorney-General. Mr. Muhammad Nawaz Bhatti, Deputy Attorney-General has wholeheartedly supported the impugned Ordinance before us and has argued that by virtue of the provisions of Articles 25(3) and 26(2) of the Constitution laws can be enacted and special provisions can be made for the protection of children and, therefore, despite a number of impracticalities in the impugned Ordinance the same may not be interfered with by this Court as the precedent law requires this Court to be extremely slow in striking down a law duly enacted or promulgated by the legislature. In this connection he has referred to the cases of Sh. Liaquat Hussain and others v. Federation of Pakistan through Ministry of Law, Justice and Parliamentary Affairs, Islamabad and others [PLD 1999 SC 504], Mehr Zulfiqar Ali Babu and others v. Government of the Punjab and others [PLD 1997 SC 11], Messrs E1ahi Cotton Mills Ltd. and others v. Federation of Pakistan through Secretary, Ministry of Finance, Islamabad and six others [PLD 1997 SC 582], Mehram Ali and others v. Federation of Pakistan and others [PLD 1998 SC 1445] and Federation of Pakistan and another v. Malik Ghulam Mustafa Khar [PLD 1989 SC 26]. We have found the said precedent cases to be quite illuminating and instructive but, with profound respect, hardly relevant to the issues involved in the present petition.

6. On 28.11.2002, at the time of admission of this petition to regular hearing, we had also issued a notice of this petition to the learned Advocate-General, Punjab but the learned Advocate-General has never appeared before this Court in connection with this petition and instead Mrs. Yasmin Sehgal, Assistant Advocate-General has been appearing for the Province of the Punjab. She has, while assisting this Court honestly and candidly, expressed reservations about the validity and propriety of the impugned Ordinance and has maintained that the law existing prior to introduction of the impugned Ordinance adequately catered for the interests of a young or minor accused person. In this connection she has referred to the provisions of sections 306 and 308 of the Pakistan Penal Code, 1860 and to the case of Muhammad Afzal alias Seema v. The State [1999 SCMR 2652]. In the said case it had been held that the question of maturity of a young offender is to be gone into by the court before proceeding to convict and sentence him. She has gone on to maintain that the impugned Ordinance has created unnecessary confusion in our criminal justice system and also that the impugned Ordinance is replete with practical difficulties.

7. Mrs. Asma Jahangir, Advocate had appeared as an amicus curia on a couple of dates of hearing and had partially addressed her arguments on one of such dates. Thereafter she never entered appearance in connection with this petition despite the fact that her name kept on appearing in the cause-list regularly. She had, as was expected of her as she is a renowned human rights activist, supported the impugned Ordinance and had explained the conceptual background in which the said Ordinance had been introduced. According to her the impugned Ordinance is an outcome of a growing awareness in the world about the `rights of a child which awareness was epitomized by the United Nations Declaration of the Rights of the Child

(1959) and then the United Nations Convention on the Rights of the Child (1989). Pakistan is said to have voted in favour of the Declaration of 1959 and the Convention of 1989 is stated to have been ratified by. Pakistan. She had read out different parts of the said Declaration and Convention to show that the impugned Ordinance is completely in accord with that Declaration and Convention. According to Mrs. Jahangir Pakistan was under an international moral and legal obligation to legislate in that regard and, thus, the Federal Government was quite justified in promulgating the impugned Ordinance. She had however, agreed that due to lack of any public or parliamentary debate before enactment of the impugned Ordinance various factors highlighted by the learned counsel for the petitioner had remained unattended to at the time of promulgation of the said Ordinance. She too had referred to Articles 25(3) and 26(2) of the Constitution which permit enactment of laws and making of special provisions for the protection of children.

8. Mr. Abid Hassan Minto, Advocate appeared before this Court as an amicus curia on a couple of dates of hearing but he could not get an opportunity to address the Court on those dates. Thereafter he too did not show any interest in assisting this Court and failed to appear before the Court in connection with this petition despite his name regularly appearing in the cause-list issued for each and every date of hearing. We have, thus, been deprived of his assistance which, we are sure, would have been valuable.

9. Mr. Manzoor Ahmad Malik, Advocate appearing as an amicus curiae has addressed elaborate arguments before us and has seriously criticised the impugned Ordinance. He has submitted that the title of the impugned Ordinance contains the word 'juvenile' but the said word has not been defined in the Ordinance but instead a 'child' has been defined by section 2(b) of the said Ordinance to be "a person who at the time of occurrence of an offence has not attained the age of eighteen years". Mr. Malik has pointed out that by virtue of section 29-B of the Code of Criminal Procedure, 1898 a 'juvenile' already stood defined as a person "under the age of fifteen years" and section 29(1)(a) of the Punjab Youthful Offenders Ordinance, 1983 already defined a 'child' as a person who "has not attained the age of fifteen years" and, thus, the definition of a 'child' contained in section 2(b) of the impugned Ordinance fixing the Age as below eighteen years is in direct conflict with the above mentioned existing laws. He has brought the entire Ordinance under scathing criticism but has taken particularly strong exception to the provisions of section 5 thereof which requires separate trial of a 'child' and section 12 thereof which contains a prohibition against the punishment of death for a 'child' offender. According to him in cases where a 'child' commits an offence jointly with an adult section 5 of the impugned Ordinance ensures duplicity of effort by the prosecution and also contains an inherent risk of conflicting judgments being rendered by a Juvenile Court and an ordinary court. Being a busy trial lawyer, and very able too, he has categorically stated on the basis of his personal experience that the spirit of the provisions of the said section is invariably being ignored by the trial courts as the same Sessions Judges and Additional Sessions Judges are functioning both as the ordinary courts as

well as the Juvenile Courts and more often than not a 'child' accused is tried by the same Judge who tries the adult accused and the evidence recorded in the adult's trial is usually transferred and adopted by such courts for the purposes of the child's trial. He has also maintained that because of the prohibition against the punishment of death for a 'child' contained in section 12 of the impugned Ordinance more and more cases are now coming up for trial in which accused persons below the age of eighteen years are alleged to have committed 'serious offences like murder and gang-rape or alleged to have indulged in terrorism or dealing in narcotics. He has further argued that the law existing prior to introduction of the impugned Ordinance took adequate care of a minor offender and that the impugned Ordinance is idealistic and divorced from the local ground realities.

10. After hearing the learned counsel for the petitioner, the learned law officers and the learned amici curiae at some length and after going through the material referred to by each of them we are constrained to observe at the outset that the impugned Ordinance has not appeared to us to be the finest example of legislative draftsmanship inasmuch as its language as well its contents have been found by us to be defective and unthoughtful in many ways. A defect in the form or language of a legislative instrument can be swallowed with a pinch of salt or overlooked with disappointment but a defect in its substance or content cannot remain without being followed by the requisite or necessary legal consequences. There is no denying the fact that on account of his tender age a child deserves special handling and treatment and even before the introduction of the impugned Ordinance different laws in our country; already provided for sympathetic and concessionary treatment of minor accused persons and offenders in the matters of capacity to commit a crime, bail and custody as is evident from the provisions of sections 82 and 83 of the Pakistan Penal Code and sections 29-B, 497 and 399 of the Code of Criminal Procedure. The concept of Borstal Institutions and Reformatory Schools for young prisoners already stood recognized and put into practice by various legislative enactments even prior to promulgation of the impugned Ordinance. Even in the matter of sentencing the courts have all along been particular in attending to the factor regarding age of the offender before passing a sentence against him. All these measures had blended well with the remaining body of laws and the progress and direction of the law relating to children was by and large steady and positive. The injection of the impugned Ordinance into our legal system has, however, been found by us to be rather abrupt and not very well thought of besides the dose being heavier than required at such a stage of development of our laws and social behaviour. Apart from that we are constrained to observe that we have found the impugned Ordinance to be inconsistent with and violative of Articles 4, 9 and 25 of the Constitution besides being replete with incompatibilities with other laws, glaring impracticalities, some downright absurdities and a number of obscurities rendering the same unfit and unsafe for retention in our criminal justice system. Definition of a 'child', provisions relating to separate trial of a child a part of the provisions concerning bail during trial and abolition of the sentence of death vis-s-vis a child are some of the areas which require special attention in this context.

11. The age fixed by the impugned Ordinance for determining' whether an accused person is a 'child' or not has been found by us to have been fixed arbitrarily and randomly. Section 2(b) of the impugned Ordinance defines a 'child' as "a person who at the time of commission of an offence has not attained the age of eighteen years". This definition of a 'child' makes no distinction between a male and a female and no other yardstick has been provided by this definition except age in terms of years. In England, according to section 50 of the Children and Young Persons Act, 1933 as amended by section 16 of the Children and Young Persons Act, 1963, there is a conclusive presumption that no child under the age of ten years can be guilty of any offence and an infant between the ages of ten and fourteen years is presumed to be doli incapax incapable of possessing the requisite mens rea for committing a crime. Thus, in England the age limit for a child stands fixed at fourteen years. In India section 2(h) of the Juvenile Justice Act, 1986 provides that 'juvenile' means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years". This shows that in Pakistan, England and India different ages have been specified for, declaring an accused person a 'child' or a 'juvenile' for the purposes of special treatment as such. In Pakistan itself different measures have been provided in this regard by different statutory provisions. Section 3 of the Majority Act, 1875 fixes the age of majority as eighteen years and in one particular situation twenty-one years. Section 82 of the Pakistan Penal Code provides that "Nothing is an offence which is done by a child under seven years of age" and section 83 of the same Code provides that "Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion." As already mentioned above the impugned Ordinance fixes the age of a 'child' as less than eighteen years. As against that according to the definition of an 'adult' contained in section 2(a) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 " 'adult' means a person who has attained, being a male, the age of eighteen years or, being a female, the age of sixteen years, or has attained puberty". This definition of an 'adult' contained in the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 not only recognizes the distinction between different ages at which males and females attain adulthood but it also recognizes that adulthood may be attained by both males and females even before the specified ages if it is established that they have attained puberty. Even section 2(a) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 and Article 2(a) of the Prohibition (Enforcement of Hadd) Order, 1979 define an 'adult' as a person who has attained the age of eighteen years or puberty". In the case of Farrukh Ikram v. The State [PLD 1987 SC 5] the Hon'ble Shariat Appellate Bench of the Supreme Court of Pakistan had decided that a female attains puberty when she starts menstruating and, in the case, of Abdul Jabbar v. The State [PLD 1991 SC 172] the same Court had laid down that a male attains puberty when he starts secreting semen. Section 29-B of the Code of Criminal Procedure, 1898 refers to a 'juvenile' as a person "under the age of fifteen years" and according to section 29(1)(a) of the Punjab Youthful Offenders Ordinance, 1983 a 'child' is as a person who "has not attained the age of fifteen years" The law officers

appearing before us on behalf of the Federation and the Province have failed to point out as to on what basis, material or criterion the impugned Ordinance has fixed the age of a 'child' as less than eighteen years. They have also failed to refer to any meaningful or detailed study of our social patterns or criminal trends or any statistical data in that regard supporting such fixation of age of a 'child' by the impugned Ordinance. All this shows that while fixing the age of a 'child' in the impugned Ordinance the criterion adopted was nothing but arbitrary and whimsical. Such an arbitrary or random exercise in legislation can hardly be accepted by a court of law as reasonable or based upon any intelligible differentia so as to save it from a challenge based upon unreasonable classification and discrimination.

12. We have also found a lot of substance in the argument of the learned counsel for the petitioner that the stages and standards pertaining to attaining of maturity by young persons in different parts of the world are different and the stages and standards in that regard acceptable in one part of the world may not be strictly relevant to other parts of the world. Such attainment of maturity of understanding is dependent upon social, economic, climatic and dietary factors and we have every reason to understand that a child in our part of the world starts understanding the nature and consequences of his conduct sooner than a child in the West. Growing up in close proximity and interaction with adults due to social and economic conditions, doing odd jobs and getting employed at a 'relatively young age due to general poverty, hot climate and exotic and spicy food all contribute towards a speedy physical growth and an accelerated maturity of understanding of a child in our society. Criminal liability of an infant in the Indo-Pak sub-continent was commented upon by Piggott, J. in the case of *Emperor v. Paras ram Dube* [AIR 1915 Allahabad 134] in the following words:

"The presumption of English Law against the possibility of the commission of the offence of rape by a boy under the age of 14 years has no application in this country. The law on the subject of infancy in connection with criminal liability is laid down in Ss. 82 and 83 of the Indian Penal Code and nowhere else."

It is relevant and significant to mention here that the British Parliament which had enacted sections 82 and 83 of the Pakistan Penal Code (at that time the Indian Penal Code, 1860) had subsequently fixed a different yardstick in terms of age regarding attainment of maturity of understanding of the nature and consequences of conduct to respect of young offenders in England. As already observed above, according to section 50 of the Children and Young Persons Act, 1933 as amended by section 16 of the Children and Young Persons Act, 1963 there is a conclusive presumption that no child under the age of ten years can be guilty of any offence and an infant between the ages of ten and fourteen years was presumed to be *doli incapax* but this presumption was rebuttable by evidence of ".`mischievous discretion" or guilty knowledge that he was doing something which was wrong. This aspect of the matter has been commented upon by Smith and Hogan ('Criminal Law', Tenth Edition, Butterworths 2002) at pages 211 and 212 in the following words:

"Infants or, in more modern terminology, minors; persons under eighteen years of age: As such, they are (with some exceptions) incapable of making contracts or wills but the law imposes no such limitations on their ability to commit crimes, for, as Kenny put it,

`a child knows right from wrong long before he knows how to make a prudent speculation or a wise will'.

Ten is a comparatively low age for the beginning of criminal responsibility; but as Ingleby Committee pointed out:

`In many countries the "age of criminal responsibility" is used to signify the age at which a person becomes liable to the "ordinary" or "full" penalties of the law. In this sense, the age of criminal responsibility in England is difficult to state: it is certainly much higher than eight.'

At common law there was a rebuttable presumption that a child aged not less than 10 but under 14 years was doli incapax, incapable of committing crime. The presumption was rebutted only if the prosecution proved beyond reasonable doubt, not only that the child caused an actus reas with mens rea, but also that he knew that the particular act was not merely naughty or mischievous, but `seriously wrong'. If there was no evidence of such knowledge, other than that implicit in the act itself, the child had no case to answer. In *C v. DPP* ([1996] AC 1) the Divisional Court held that this ancient rule of the common law was outdated and no longer law; but the House of Lords ruled ([1995] 2 All ER 43) that it was not open to the courts so to hold. That decision was followed by a series of acquittals which caused disquiet. Parliament responded by abolish the rebuttable presumption (Crime and Disorder Act, 1998, section 34). This was probably intended to put children aged ten and above on an equal footing with adults, so far as liability to conviction is concerned."

Such different treatment of young delinquents in different parts of the world by the same legislative source goes a long way in fortifying our observations made above that no universal yardstick can be fixed in that regard. Speedy attainment of maturity of understanding by children in rural areas of the Indo-Pak sub-continent was also commented upon by, the Supreme Court of India in the case of *Tehal Singh and others v. State of Punjab* [1985 PSC

1407] and while discussing the statement of a thirteen years old witness in a case of murder it had been observed as follows:

"6. Hardip Stngn is a lad of 13 years. In our country and particularly in the rural areas it is difficult to think of a lad of thirteen years as a child. A vast majority of boys round about that age go to the fields and do men's work. They are certainly capable of understanding the significance of the oath and the necessity to speak the truth. The learned Sessions Judge who had the opportunity of seeing the witness Hardip Singh in the witness-box did not consider it necessary to treat him as a child witness. A perusal of his evidence also shows that he has certainly attained a measure of mature understanding. We do not think we can accept Dr. Chitale's argument and on the basis that Hardip Singh is a child witness."

Even in England in the case of *B. v. R.* [(1960), 44 Cr. App. Rep. 1] evidence that a boy, aged just under nine years, came from a respectable family, had been properly brought up and was generally well behaved was held sufficient to prove that he knew that house-breaking and theft were wrong. That case was, of course, decided when the minimum age of criminal responsibility was eight years. In the case of *F. v. Padwick* [(1959) Crim. L. R. 4.39] the Divisional Court in England went further by emphasising the general desirability of admitting evidence of the child's home background "and all his circumstances", even at the risk of disclosing information highly prejudicial to him, so as to assess his maturity of understanding. In England a boy under the age of 14 cannot be found guilty of committing rape or of assault with intent to commit rape or of offences involving carnal knowledge. This rule primarily rests upon the principle of physical impossibility and, therefore, no evidence is admissible to prove that the particular boy had attained puberty before the age of 14. The law in this regard is, however, different in Pakistan. It has already been observed by us above that according to the definition of an 'adult' contained in section 2(a) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 "adult" means a person who has attained, being a male, the age of eighteen years or, being a female, the age of sixteen years, or has attained puberty" and even section 2(a) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 and Article 2(a) of the Prohibition (Enforcement of Hadd) Order, 1979 define an 'adult' as "a person who has attained the age of eighteen years or puberty". As mentioned above, the Hon'ble Shariat Appellate Bench of the Supreme Court of Pakistan has already decided that a female attains puberty when she starts menstruating and that a male attains puberty when he starts secreting semen. This difference in the laws of Pakistan and England in this regard may have a direct nexus with the-local social, economic, climatic and dietary factors and the same goes a long way in highlighting that questions of adulthood may receive different responses in different parts of the world. Even in the Indo-Pak sub-continent itself the standard of adulthood in the context of juvenility has been fixed differently. We have already noticed that according to section 2(b) of the impugned Ordinance a 'child' is "a person who at the time of commission of an offence has not attained the age of eighteen years" whereas

in India section 2(h) of the Juvenile Justice Act, 1986 provides that " 'juvenile' means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years". This again highlights the importance of undertaking an in-depth study of the local social and other conditions before promulgating a law like the impugned Ordinance but, alas, no such exercise is shown to have been undertaken in this regard in our country before introduction of the impugned Ordinance. This has made the unreasonableness in this regard worst confounded.

13. The impugned Ordinance has also been found by us to be marred by various impracticalities of diverse nature. For instance, subsection (3) of section 4 of the impugned Ordinance provides that "The Juvenile Court shall have the exclusive jurisdiction to try cases in which a child is accused of commission of an offence". This shows that all offences allegedly committed by a child are triable exclusively by a Juvenile Court. This provision is, however, directly in conflict with many other laws which make certain specified offences triable exclusively by Special Courts, i.e. Anti-Terrorism Courts, Narcotics Courts, Drug Courts, Banking Courts, etc. It is interesting to notice that a Juvenile Court has been conferred the exclusive jurisdiction to try an offender whereas the Special Courts mentioned above have the exclusive jurisdiction to try the relevant offences. An offender cannot be tried by a court having no jurisdiction to try the relevant offence and conversely an offence cannot be tried by a court having no jurisdiction over the offender! Section 14 of the impugned Ordinance providing that "The provisions of this Ordinance shall be in addition to and not in derogation of, any other law for the time being in force" has compounded the confusion in this regard as instead of resolving the conflict it has provided feed to the same.

14. Likewise, the provisions of section 5 of the impugned Ordinance present a nightmare of impracticality by mandating that "no child shall be charged with or tried for an offence together with an adult" and in a case involving adult as well as child accused persons separate trials are to be conducted of the adult accused by the ordinary court and of the child accused by the Juvenile Court. Such separate trials of different accused persons in the same case by different courts not only raise questions of undue inconvenience and hardship for the complainant party involving issues pertaining to equality before law and equal protection of law under Article 25 of the Constitution but they also present a real prospect of conflicting judgments being rendered by different courts trying the same case. Interestingly section 5 of the impugned Ordinance excludes the application of section 239 of the Code of Criminal Procedure in this regard but at the same time section 14 of the impugned Ordinance provides that "The provisions of this Ordinance shall be in addition to and not in derogation of, any other law for the time being in, force". We may, therefore, not be unjustified in observing that the impugned Ordinance has appeared to us to be unthoughtful and not a fine example of legal draftsmanship. It may not be out of place to mention here that in England section 6 of the Children and Young Persons Act, 1969 permits a joint trial of a juvenile and an adult where the offence charged is an indictable one. Even section 46 of the Children and Young

Persons Act, 1933 recognized a few exceptions to the rule that the criminal jurisdiction over juvenile offenders was to be exercised by a juvenile court and not by any other court of summary jurisdiction. One of such exceptions enabling an adult court to hear the charge was where the juvenile was involved with an adult in the same or allied offence. This was meant to avoid separate trials and a possibility of conflicting judgments being handed down by different courts hearing the same case. In India section 24 of the Juvenile Justice Act, 1986 requires that "no juvenile shall be charged with or tried for any offence together with a person who is not a juvenile". Similar provisions were also incorporated in the earlier statutes like the Children Act, 1960, the West Bengal Children Act, 1959, the Bombay Children Act, 1948 and the Madras Children Act, 1920. In the case of *Robin Bapari and another v. State* [1986 Cri.L.J. 381] the Calcutta High Court and in the case of *State v. Bansilal Chhotelal and another* [AIR 1957 Bombay 13] the Bombay High Court were of the view that a juvenile could be tried only by a Juvenile Court and hence when the trials of an adult and a juvenile were separated by virtue of the Children Act, the trial of the adult was to proceed under the Code of Criminal Procedure while that of the child would be by the children's court under the Children Act. However, in the case of *Sessions Judge, Tirunelveli v. Perumal* [1947 Cr.L.J. 261] a Full Bench of the Madras High Court had rendered the same opinion as was expressed in the case of *in re Keralin* [(1972) Mad. L.W. (Cri) 195] by Maharanjan, J. in the following words:

"Where a plurality of persons jointly take part in an offence and some of them happen to be adult and others happen to be juveniles, it is eminently desirable and certainly permissible that the same forum tries all the accused, adult and juveniles, not jointly but separately, trying the adult accused in accordance with the provisions of the Cr.P.C. and the juvenile accused in accordance with the provisions of the Madras Children Act and the rules framed thereunder. Such a procedure will, besides avoiding conflict of decisions in respect of the same occurrence, instil in the minds of the accused that even-handed justice is rendered to them at least in the matter appreciation of evidence, without any discrimination being shown merely on the ground of age."

In her book titled 'Treatise on The Juvenile Justice Act' (published by The Indian Law Institute, New Delhi in 1993) Ved Kumari has observed at page 189 that:

"One finds that during the debates in Parliament on a similar provision in the Children Bill, 1953 and the Children Bill, 1959 the apprehension was raised that separation of trials of the juvenile and the adult accused of the same offence will require duplication of work. It may result in different decision by the two forums. Also, findings of one court may prejudice that of the other. On the other hand, the provision was welcomed as separation of trial would mean that the child was not kept waiting while the case of the non-jvenile accused dragged on, in the criminal court. The provision was made

to ensure protection of the interest of the child by the Juvenile Court rather than to consider the magistrate's difficulties and other things. "

We may, however, observe here with respect that it is not just the difficulties of a Magistrate or the delay in the child's trial which are of primary or paramount importance but what is at stake is the interests of justice in the larger context. After all such serious questions of justice pertaining to adults cannot be lightly or conveniently sacrificed at the altar of interests of children or juveniles. Left to us we would prefer the English approach in respect of joint or separate trials of adults and children rather than the Indian approach towards the issue. Such differences of approach and the merits or demerits of each such approach could have been thrashed and ironed out if a public or parliamentary debate had preceded the promulgation of the impugned Ordinance but unfortunately that was not the case. Apart from that it has been agreed before us by all concerned that, as pointed out by Mr. Malik, the spirit of the provisions of section 5 of the impugned Ordinance is invariably being ignored by the trial Courts as the game Sessions Judges and Additional Sessions Judges are functioning both as the ordinary courts as well as the Juvenile Courts and more often than not a 'child' accused is tried by the same Judge who tries the adult accused and the evidence recorded in the adult's trial is usually transferred and adopted by such courts for the purposes of the child's trial. Such a practice is highly objectionable besides being clearly illegal and the same appears to us to be counterproductive to the interests of the child accused as he is not even present before the ordinary court at the time of recording of the evidence in the adult's trial. It is better not to have a law rather than to have a law which is universally disregarded or flouted with impunity.

15. Section 6 of the impugned Ordinance is yet another example of impracticability. According to sub-section (2) of section 6 of the impugned Ordinance "A Juvenile Court shall not ordinarily take up any other case on a day when the case of a child accused is fixed for evidence on such day". The word "ordinarily" has not been explained by the impugned Ordinance nor any exception has been specified and, thus, a discretion has been conferred without spelling out or indicating the parameters of its exercise. It has, therefore, not surprised us to learn that this provision is being completely ignored by the Juvenile Courts while conducting cases. Apart from that the same Sessions Judges and Additional Sessions Judges are functioning both as the ordinary courts as well as the Juvenile Courts and it is not practically possible for such courts to abstain from taking up any other case on a day when the case of a child accused is fixed for evidence on such day. Such a manner of protection for a child at the cost of complete paralysis or breakdown of the judicial system at the plenary level vis-a-vis the adult citizenry has appeared to us to be too big a price to be even seriously contemplated, considered or mulled over.

16. While adverting to section 7 of the impugned Ordinance we may unhesitatingly observe that this provision has created nothing but havoc in our criminal justice system in particular

and in the society in general. According to section 7 "If a question arises as to whether a person before it is a child for the purposes of this Ordinance, the juvenile Court shall record a finding after such inquiry which shall include a medical report for determination of the age of the child". We take judicial notice of the fact that because of this provision a large number of criminal cases witness a mini-trial regarding the age of an accused person before or during, and sometimes even at the fag end of, the main trial of the accused person and during this exercise evidence, both oral and documentary, is received. A decision of the trial Court in that regard is then assailed through a revision petition before this Court and then the matter is taken to the Hon'ble Supreme Court. Sometimes such issues are also raised for the first time in appeals before this Court and in appeals or petitions before the Hon'ble. Supreme Court without this matter having been agitated before the trial Court at all. A lot of time is consumed in this process and more often than not such an exercise is undertaken with intentions and purposes which are other than bona fide. In the case of Ziaullah v. Najeebullah and others PLD 2003 SC 656 the Hon'ble Supreme Court of Pakistan had not only taken notice of but had also deprecated a growing trend that convicts already sentenced to death were trying to prove themselves to be children for the first time after the matters of their convictions and sentences had attained finality through the judgments rendered by the apex court itself. According to its annual report published by the Human Rights Commission of Pakistan on the 'State of Human Rights in 2003' in July, 2003 over 300 cases were pending in the Province of the Punjab alone wherein the ages of convicts on death row were being contested and after exhausting all the judicial remedies against their conviction and sentence the convicts were trying to establish that they were less than eighteen years of age on the day of occurrence and, thus, they could not be sentenced to death.

17. With our experience in this sphere we are constrained to observe that the impugned Ordinance is encouraging and promoting corruption in the society at a scale which is not only large but is also extremely alarming. Almost every day cases are coming up before us wherein fake School Leaving Certificates are obtained, incorrect medical opinions about age are procured, forgeries and interpolations are committed in the Registers of Births maintained at Union Councils and false Nikahnams of parents of accused persons are prepared with a view to show the age of an accused person to be less than eighteen years at the time of occurrence so that a possible sentence of death may be avoided against him in cases of terrorism, murder, gang-rape or trafficking in narcotics, etc. We are, therefore, inclined to agree with the learned counsel for the petitioner that the impugned Ordinance is promoting falsehood, lies, forgeries and corruption in the society at a large scale and a law which corrupts the society at large in the name of protection for children is not worth retaining on the statute book. Destruction of the moral fibre of the society as a whole is once again too big a price to be paid for protection of children. Such a protection of a child in one criminal case at the micro level is surely not protection at all in the larger context or in the real sense if the society which such child is about to enter as an adult is allowed to be polluted and corrupted at the macro level. Even otherwise a law which contains such incentives for and has tendencies to corrupt the

society in such a manner is counterproductive, paradoxical and at odds with the "protection of law" contemplated by the provisions of Articles 4 and 25 of the Constitution.

18. Section 10 of the impugned Ordinance provides for bail for a child accused but sub-section (3) of section 10 contemplates a situation where a child accused of even a bailable offence may not be released on bail. This is clearly a negation of the 'right' of bail in such cases provided for by section 496 of the Code of Criminal Procedure. Such a denial of the right of bail by the impugned Ordinance is nothing but incongruous and impracticable in the absence of an appropriate amendment of section 496 of the Code of Criminal Procedure. Apart from that the concession of bail for a child accused contemplated by subsection (7) of section 10 of the impugned Ordinance has been whittled down by the proviso to that sub-section with reference to the nature and gravity of the offence allegedly committed or previous conviction of the accused. If such considerations are acceptable or relevant for refusing even bail to a child accused then there does not appear to be any justification for not allowing passage of the normal sentence against such accused person for such an offence committed by him. This inaptness in the impugned Ordinance exposes its lack of profundity and soundness.

19. All these infirmities in the impugned Ordinance have convinced us that the same is an impracticable piece of legislation which has been enacted without proper deliberation, thoughtfulness, care and attention to detail. In our considered view allowing such a law to continue to hold the field is risky and unsafe besides being perilous and hazardous to our, criminal justice system.

20. By virtue of section 12 of the impugned Ordinance "Notwithstanding anything to the contrary contained in any law for the time being in force no child shall be--(a) awarded punishment of death". In England the Children Act, 1908 made an immunity from the sentence of death available to an offender who is less than sixteen years of age and in India such an immunity is available under the Juvenile Justice Act, 1986 to a boy less than sixteen years of age and a girl less than eighteen years of age. No reasonable or rational basis has been disclosed or made available before us to show as to why the age of eighteen years has been fixed in that regard in Pakistan through the impugned Ordinance. Such an exercise of legislative authority is clearly unreasonable and discriminatory as the relevant classification is not based upon any intelligible differentia.

21. Apart from an immunity from the sentence of death provided by section. 12 of the impugned Ordinance the provisions of section 10 of the impugned Ordinance contemplate a lenient and liberal approach towards bail for such accused persons and after their conviction section 11 of the said Ordinance provides for their release on probation. We have found a lot of substance in the argument of the learned counsel for the petitioner that such immunity from the sentence of death, lenience in the matter of bail after arrest and prospects of release on probation after conviction provided for in the impugned Ordinance contain incentives for

and have the tendency of not only encouraging persons below the age of eighteen years to commit heinous crimes like murder, gang-rape, terrorism and trafficking in narcotics, etc. but the same may also embolden the older people in our society to prompt their young ones to commit such crimes with an understanding and assurance that they would get away with lesser sentences apart from availing of concessions in the matters of bail and release on probation. It has, thus, not surprised us to learn that incidents involving such crimes have significantly increased after introduction of the impugned Ordinance and a substantial number of cases being tried at present by the Juvenile Courts involve such heinous offences. According to its annual report published by the Human Rights Commission of Pakistan on the 'State of Human Rights in 2003' over 12,000 children of less than 18 years of age were arrested in the Province of the Punjab from July 01, 2002 to March 01, 2003. The Amnesty International had reported that in June, 2003 around 4,500 juveniles were in detention across Pakistan and in July, 2003 over 300 cases were pending in the Province of the Punjab alone wherein the ages of convicts on death row were being contested and after exhausting all the judicial remedies against their conviction and sentence the convicts were trying to establish that they were less than eighteen years of age on the day of occurrence and, thus, they could not be sentenced to death. The extent of involvement of young persons in cases involving a sentence of death can well be gauged from the said report. The statistics published in the Daily Jang, Lahore on 15.11.2003 reveal the following picture as far as the Province of the Punjab is concerned:

Juvenile prisoners in the Punjab Jails

Penal provision(section)	Offence	Under-trial (boys)	Under-Trial (girls)	Convicted (boys)	Convicted (girls)
302, PPC	Murder	432	4	147	2
324, PPC	Attempted murder	197	-	25	
392/395, PPC	Robbery/ dacoity	159	-	10	-
452/379/382/411, PPC	Trespass/theft/ handling stolen property	161	1	8	-
365/366, PPC	Kidnapping/ abduction	12	-	-	-
3/4, PEHO	Narcotics	158	-	73	2
10/11, OZEHO	Zina/ abduction	135	8	20	1
12, OZEHO	Sodomy/ abduction	122	-	33	-
	Other crimes	49	-	1	
Total		1425	13	317	5

General statistics

Total juvenile prisoners	1992
Total boys	1974
Total girls	18
Total boys and girls sentenced to death	13
Convicted boys	357
Convicted girls	5
Under-trial boys	1604
Under-trial girls	13
Number of jails	30
Jails for juveniles	2

These figures clearly manifest that the apprehensions expressed by the learned counsel for the petitioner in this regard are not merely hypothetical or conjectural but the same find support from hard facts and conscious and deliberate misuse of the impugned Ordinance is more of a stark reality than merely a possibility.

22. The Preamble to the impugned Ordinance has also received our careful consideration. According to the Preamble the impugned Ordinance is "An Ordinance to provide for protection of the rights of children involved in criminal litigation": This Preamble is remarkably different from the Preamble to the Indian Juvenile Justice Act, 1986 which reads as follows: "An Act to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to, and disposition of, delinquent juveniles". According to section 2(e) of the Indian Act. a "delinquent juvenile" is "a juvenile who has been found to have committed an offence" and according to section 2(1) a "neglected juvenile" is a juvenile who is found begging or who is homeless and without any ostensible means of subsistence and is a destitute or whose parent or guardian is unfit or incapacitated or who lives in or frequently visits a brothel or who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain. Thus, the emphasis in India appears to be on a juvenile already found guilty of committing a crime or a helpless and neglected juvenile whereas in Pakistan the focus is only on protection of the "rights of children" "involved in criminal litigation". These so-called "rights" of children have been debated before us by the learned counsel for the parties as well as the learned amici curiae at some length. The learned Deputy Attorney General and one of the learned amici curiae, namely Mrs. Jahangir, have tried to defend the impugned Ordinance on the premise that the same is meant to protect the "rights" of children but they have, however, failed to refer to any such "right" recognized by our Constitution. All that they could allude to in this respect are Articles 25 and 26 of the Constitution which provide as follows:

"25. **Equality of citizens.** --(1) 'All citizens are equal before the law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex alone.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children."

"26. **Non-discrimination in respect of access to public places.** (1) In respect of access to places of public entertainment or resort, not intended for religious purposes only, there shall be no discrimination against any citizen on the ground only of race, religion, caste, sex, residence or place of birth.

(2) Nothing in clause (1) shall prevent the State from making any special provision for women and children."

They could not dispute the fact that "special provisions" for the protection of women and children contemplated by these provisions of the Constitution are meant to be additional advantages for women and children in certain respects, and such "special provisions" cannot be allowed to have the effect of denying others their own rights under the said or other provisions of the Constitution. The case of Shirin Munir and others v. Government of Punjab through Secretary Health and another (PLD 1990 SC 295) has already settled this issue. As regards the generality of citizens the right to life guaranteed by Article 9 of the Constitution is to be read in conjunction with Article 4(1) of the Constitution which provides that "To enjoy the protection of law" is an inalienable right of every citizen and with Article 25(1) which mandates that all citizens "are entitled to equal protection of law". It has already been observed by us above that different provisions of the impugned Ordinance contain incentives for and have the tendency of encouraging young persons to commit serious crimes and for older people in our society to prompt their young ones to commit such crimes with an understanding and assurance that they would get away with lesser sentences apart from availing of concessions in the matters of bail and release on probation. Such a plausible and serious potential for misuse of the impugned Ordinance surely poses a grave threat to and creates a grim peril for the lives of citizens at large and we cannot disregard, overlook or ignore the same. In this view of the matter, we have felt confident that the constitutionally guaranteed right to life, enjoyed by generality of citizens has become vulnerable and the constitutional assurance regarding their enjoying the protection of law has either been taken away or seriously abridged by the impugned Ordinance. We are sanguine that through providing protection for the benefit of one relatively small section of the society the impugned legislation has rendered the other and larger sections of the society unprotected. Possibility of an equal or proportionate, reprisal or punishment has always been accepted as the surest deterrence against aggression. The Maker of human body, mind and soul surely knows how the same can function or adjust best in their interaction with others. It has been ordained by Almighty Allah in respect of Qisas (retaliation) that: --

"O believers! Retaliation is prescribed for you-in the cases of, murder; a free man for a free man, a slave for a slave, and a female for a female. But if anyone is pardoned by his aggrieved brother, then bloodwite should be decided according to the common law and payment should be made with gratitude. This is a concession and a mercy from your Lord. Now, whoever exceeds the limits after this, shall have a painful punishment.

O men of understanding! There is security of life for you in the law of retaliation, so that you may learn self-restraint."

(Al-Qur'an: Sura 2, Verses 178 & 179)

An attempt by a creation to become wiser than its Creator would hardly commend itself for appreciation or approval. The recent movement in some parts of the Western world in favour of abolishing the penalty of death may just be a passing or a temporary phase in the sociological development of human race and we are not surprised that: in many of such parts of the world the penalty of death is staging a comeback and is being reintroduced, not for the love of such a punishment but purely for its utility and efficacy as the most suitable deterrence.

23. An exercise in legislation which, while affording protection to the life of one, exposes another's life to danger or which, while extending a benefit to one, exposes another to a serious disadvantage may militate against Articles 4, 9 and 25 of the Constitution and the same cannot be termed or accepted as reasonable. An analogy in this regard may be found in the law relating to civil servants that provides for relaxation of rules by the competent authority for the benefit of a civil servant whose case may be one of hardship, inequity or injustice. It had been held by the Hon'ble Supreme Court of Pakistan in the case of Muhammad Iqbal Khokhar and 3 others v. The Government of the Punjab through the Secretary to Government of the Punjab, Lahore and 2 others [PLD 1991 SC 35] that:

"The dispensation under section 22 of the Punjab Civil Servants Act is individual and is limited and controlled by a proviso which establishes the supremacy of the Act and the Rules The relaxation can be beneficial to the civil servant without being prejudicial to anyone else even to the civil servant who is granted relaxation or exemption." (per Shafiur Rahman, J.)

(Emphasis has been supplied)

It was further held that:

"This section is primarily a saving section, basically intended to correct serious cases, where unusual factors place a civil servant in serious disability, which requires correction on the basis of equity and justice by the Governor himself, sitting at the apex of the executive hierarchy. Amendments, additions and substitutions effected in the rules from time to time, mergers in and transfers from one service to another, etc., create a host of problems, where civil servants placed under serious disability and hardship call for a fair and equitable resolution of their difficulties. To meet these genuine cases, the Governor has been granted this special savings power to deal with such cases, so as to remove injustice and inequity which may stand in the way of a civil servant in securing his just rights. In short, it is a power rarely used, unless to serve justice or correct grave injustice, and perhaps never used arbitrarily to reward a

person or to grant him an undue privilege over the right of another. ----- These provisions permit the Chief Minister and the Punjab Government in individual cases of hardship to relax the rules. It is one thing to remove the strict application of a rule to remove hardship in an individual case. It is another to defeat the rule to bolster an individual's case, so as to destroy another's right. ----- Still further, the order of the Governor relaxing the condition of 5 years' service in the Department as Assistant Engineer for promotion of the said respondent No. 2 to the post of Executive Engineer out of turn, contravenes the rights of others because the respondent has been given forced seniority. ----- The order of the learned Governor in the instant case not only violates the law declared by this Court, which strikes down retrospective regularisation, but directly contravenes Rule 8 of the 1967 and 1974 Rules and adversely affects the seniority and right of promotion of the 1974 batch of direct inductees and I would, therefore, with profound regret to the learned Governor, declare that the same deserves to be set aside." (per Rustam S. Sidhwa, J.)

(Emphasis has been supplied)

We may observe here in the context of Article 25 of the Constitution that if children have a right to be protected from the harm of adults then a corresponding right must also be implied that adults or other children must also enjoy a right to be protected from the harm deliberately inflicted upon them by children consciously or otherwise of their privileges in the law as children.

24. The discussion made above leads us to observe that the impugned Ordinance has many incompatibilities with some other laws of the land and, therefore, the same does not fit well in our system of criminal justice. The law and the judicial pronouncements referred to above clearly highlight the fact that special treatment of a child is necessarily referable to his innocence and lack of understanding of the nature or consequences of his acts and the moment he is shown to have lost his childhood innocence, he ceases to qualify for any special treatment and also that no particular or exact cut-off age limit can be prescribed in this regard except in cases of extreme tenderness of age where there cannot be any doubt about absence of proper understanding of the nature or consequences of acts. This jurisprudential concept finds a very clear and categorical expression in the provisions of sections 82 and 83 of the Pakistan Penal Code in the following words:

"82. Act of a child under seven years of age. - Nothing is an offence which is done by a child under seven years of age."

"83. Act of a child above seven and under twelve of immature understanding. - Nothing is an offence which is done by a child above seven years of age and under

twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion."

According to section 14 of the impugned Ordinance, "The provisions of this Ordinance shall be in addition to and not in derogation of any other law for the time being in force". This shows that the impugned Ordinance has not done away with or replaced the above-mentioned jurisprudential concept contained in the Pakistan Penal Code in this regard and the provisions of the Code reproduced above are still the law of the land pertaining to young offenders. The provisions of sections 82 and 83 of the Pakistan Penal Code show that a child below the age of seven years is incapable of committing an offence because he is a *doli incapax*, incapable of forming or possessing the necessary *mens rea* for an offence, whereas a child between the ages of seven and twelve years can be capable of forming or possessing the necessary *mens rea* for an offence unless it is established that he "has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct." It is interesting to notice that as regards a young delinquent above the age of twelve years, the Pakistan Penal Code as well as the impugned Ordinance treat him at par with an adult as far as his criminality or liability to conviction are concerned but the two differ mainly in respect of the mode and forum of his trial and with regard to his sentencing. Under the Offence of Zina (Enforcement of Hudood) Ordinance 1979, the Offences Against Property (Enforcement of Hudood) Ordinance 1979, and the Prohibition (Enforcement of Hadd) Order 1979, an offender who has already attained puberty is to be treated as an ordinary criminal even if he is otherwise below eighteen years of age and some of the offences under the said enactments carry a sentence of death. Even the Anti-Terrorism Act 1997 and the Control of Narcotic Substances Act 1997 recognize no significant distinction between a child and an adult once the offender's criminality is established on the record. It is interesting to point out that an offence of gangrape under section 10(4) of the Offence of Zina (Enforcement of Hudood) Ordinance 1979 carries only a sentence of death and no other sentence, as already held by the Hon'ble Supreme Court of Pakistan in the cases of *Shahzad alias Shaddu and others v. The State* [2002 SCMR' 1009] and *Bashir Ahmed and two others v. The State* [PLD 2002 SC 775], and the position regarding an offence of blasphemy under section 295-C of the Pakistan Penal Code is also the same. If the Ordinance impugned through the present petition is to have its way then a "child" committing a heinous offence of gangrape or perpetrating an outrageous offence of blasphemy cannot be sentenced to death. In such a situation such a child can be convicted for the offence but cannot be sentenced at all! Nothing could be more absurd and unreasonable than such a situation. There has to be something seriously wrong with a law that allows such grave and serious offences to go unpunished. In this backdrop we are quite clear in our minds that on the jurisprudential plane what is relevant is the capacity of an accused person to understand the nature and consequences of his conduct and if an accused person is found to be of sufficient maturity of understanding then no special treatment is warranted to him by the law in the matter of sentence which should be left to the relevant court to be decided in the light of the peculiar circumstances of a given case. Tender age of

the offender can surely be one such peculiar circumstance. By making a departure in this regard through providing a cut-off age limit for special treatment, the impugned Ordinance has not only become incompatible with the rest of the body of our laws but the same has also made a departure from the established jurisprudential concepts.

25. It may not be lost sight of in this context that in societies which are still struggling to get out of medieval criminal trends or tendencies, a young person's criminality is, barring cases of exceptional and extraordinary circumstances, generally not visited with any special treatment or lenience only on account of his tender age. It may be argued in this context that a criminal who starts his criminal activity at a relatively young age cannot be turned loose on the society for a possible repetition of his offence or unlawful activity. To nip the evil in the bud is not just a cliché or an adage. It is based upon human experiences and accumulated wisdom and it was expressly referred to by the Hon'ble Supreme Court of Pakistan with approval in a case to be referred to shortly. The matter of sentencing of a young offender, nay an adjudged young murderer, in the Indo-Pak subcontinent had come under discussion in the case of Sheikh Hassan v. Bashir Ahmad and another [PLD 1966 (W.P.) Peshawar 97] and an Hon'ble Full Bench of the erstwhile West Pakistan High Court especially constituted to consider a question in that regard had observed in that respect as follows:

"8. We had the advantage of full argument on the subject and on a careful review of the case-law on the point, we are clearly of the view that it is almost well settled that mere youth by itself would not entitle the accused on the charge of a deliberate murder to the lesser penalty, and that; at any rate, a person aged 16 years who commits a deliberate act of murder must be assumed to act with full responsibility unless it is shown that he is mentally retarded, or that he had acted under the influence of somebody. It will be convenient here to read section 83 of the Pakistan Penal Code, which is as under: -

9. It will be plain from, reading the language of the section reproduced above that where the accused is above seven years of age and under twelve, "sufficient maturity of understanding" is to be presumed in case of such a child unless negative be proved on defence, i.e., the burden of proof lies on the accused above the age of seven and below twelve to show that he had not attained sufficient maturity. A person at the age of sixteen is sufficiently matured to understand the full implication of his acts, and therefore if he commits a deliberate murder, he cannot on account of mere age legitimately claim the benefit of the lesser penalty."

After making those observations the Hon'ble Full Bench adverted to the entire caselaw available on the subject till then and concluded as under:

"To sum up all the authorities referred to above are agreed that mere youth by itself would not earn the accused the lesser penalty ----- in absence of any other extenuating circumstances. ----- the overwhelming authority including the authority of the Supreme Court referred to above that youth by itself is not round for awarding a light sentence."

Later on, in the case of Shana and two others v. The State [1999 SCMR 1507] the Hon'ble Supreme Court of Pakistan had commented upon this aspect of the matter in the following words:

"It is a cardinal principle of criminal law that every case is to be adjudged on the totality of its own facts and the attending circumstances. If a, boy of sixteen years, forces a girl to marry him and on refusal kills her or compels a boy of lesser in age than him to make friendship with him for illicit purposes and on his denial, murders him, then on what legal or moral basis such murderer can claim the benefit of lesser penalty and on what moral value the factum of "tender age" can be pleaded as a mitigating circumstance. In such a case it would be most appropriate to award normal penalty of death so as to nip the evil in the bud. On the other hand, if an immature lad, who is entirely defendant on his father and remains under his influence, commits murder in the company of his father or independently of him but at his behest and instigation in order to take revenge of his close relation or to avenge family honour, then ends of justice would not be defeated if he is given lesser penalty of life imprisonment."

The American approach in this respect also appears to be somewhat similar as in that country mere young age of the offender is not the sole criterion for treating him as a juvenile or for extending a concession to him in the matter of sentence. We may refer in this context to the relatively recent cases of *Kevin N. Stanford v. Kentucky* and *Heath A. Wilkins v. Missouri* [106 L. Ed. 2d. 306] decided by the Hon'ble Supreme Court of the United States of America wherein the question to issue was as to whether the imposition of capital punishment on juvenile offenders constituted cruel and unusual punishment prohibited by the Federal Constitution's Eighth Amendment or not. In one of those cases a boy aged about seventeen years had robbed a gas station, raped and sodomized a station attendant and finally shot the attendant to death so that she could not identify him. The Jefferson District Court, Kentucky, determined that the boy should be tried as an adult in the Jefferson Circuit Court, Kentucky, as allowed by the state law, in the light of seriousness of the offences. The boy was ultimately convicted of murder, first-degree sodomy, first-degree robbery and receiving stolen property and was sentenced to death plus forty-five years' imprisonment. The Supreme Court of Kentucky affirmed the convictions and sentences of that boy. In the second case, a boy aged about sixteen years conceived a plan to rob a convenience store and to murder whoever would be behind the counter so as to leave no witness and, in executing that plan, stabbed the store's owner/operator and left her to die. A Missouri Juvenile Court certified the boy for trial as an

adult on account of the viciousness of the crime, the boy's maturity and the failure of the juvenile justice system to rehabilitate him after previous delinquent acts. The trial Court convicted the boy and found that the death penalty was appropriate, given the fact that it was committed in the course of a robbery. The Supreme Court of Missouri affirmed the boy's convictions and sentences. In both those cases the Hon'ble Supreme Court of the United States of America affirmed the young convicts' sentences of death as valid and held that:

(1) The imposition of the death penalty for crimes committed at age 16 or 17 was not one of the modes or acts of punishment that was considered cruel and unusual at the time that the Constitution's Bill of Rights was adopted;

(2) There was no modern national consensus forbidding the imposition of the death penalty for crimes committed at those ages, given that (a) a majority of the states that permitted capital punishment authorized it for crimes committed at age 16 or above, (b) the number of states which did not permit capital punishment at all was irrelevant to the specific question of the propriety of the death penalty for juveniles, (c) foreign countries' sentencing practices not reflecting American conceptions of decency were irrelevant to such question, (d) the provision of the Anti-Drug Abuse Act of 1988 limiting the death penalty for certain drug-related offences to offenders aged 18 and over did not embody a judgment by Congress that no murder was heinous enough to warrant the execution of younger offenders, (e) even if there were no federal statute permitting the execution of persons under age 18, that would not establish a national consensus forbidding such executions in the face of a substantial number of state statutes to the contrary, and (f) statistics indicating that the death penalty is very rarely sought or imposed for offences committed by persons under age 18 did not establish that prosecutors or juries found the imposition of the death penalty categorically unacceptable in such cases, but might mean only that they thought it should rarely be imposed;

(3) There was no relevance in statutes which set 18 or more as the legal age for engaging in such activities as driving, drinking and voting;

(4) Other evidence of a national consensus, such as public opinion polls and the views of interest groups and professional associations, was not sufficient for constitutional purposes and should properly be addressed to the citizenry;

(5) The Supreme Court could not apply its own "informed judgment" as to the desirability of permitting the death penalty for crimes by 16 and 17-year-olds; and

(6) The Supreme Court had never invalidated a punishment solely on the basis of a disproportion between that punishment and the convict's blameworthiness.

Inspired by the above mentioned observations made by the Hon'ble Supreme Court of Pakistan, as well as by the Hon'ble Supreme Court of the United States of America, we may remark here that it may be advisable to keep the deterrence of the capital sentence intact even in cases of young offenders while leaving the matter of sentencing in the hands of the courts so as to pass an appropriate order in that regard while keeping in view the circumstances of a given case, including the factor regarding the offender's age. It may not be out of place to mention here that although special concessions have been extended by the impugned Ordinance to a child in the matter of bail but even in respect of bail it has been provided by the proviso to subsection (7) of section 10 of the impugned Ordinance that bail may be refused to an offender by the Court "if there are reasonable grounds to believe that such child is involved in an offence which in its opinion is serious, heinous, gruesome, brutal sensational in character or shocking to public morality or he is a previous convict of an offence punishable with death or imprisonment for life". It therefore defies reason that in a case of such nature the impugned Ordinance envisages refusal of bail during trial but at the same time it provides for withholding of the normal sentence and release on probation after conviction. It, thus, appears that the impugned Ordinance has been unthoughtful in this regard as well and all these critical aspects of the matter, including the accumulated wisdom gathered through consistent judicial pronouncements, had not been adverted to or considered before its promulgation.

26. We consider it necessary to reiterate here that the law in our country existing prior to introduction of the impugned Ordinance already substantially and satisfactorily took care of the objectives and purposes of the impugned Ordinance and, thus, there was hardly any pressing requirement or need for promulgating the impugned Ordinance at this stage and thereby to add unnecessary confusion and oddities in this regard. A survey of the pre-existing laws shows that the existing laws already provided for sympathetic and concessionary treatment of minor accused persons and offenders in the matters of capacity to commit a crime, bail and custody as is evident from the provisions of sections 82 and 83 of the Pakistan Penal Code and sections 29-B, 497 and 399 of the Code of Criminal Procedure. The concept of Borstal Institutions and Reformatory Schools for young prisoners already stood recognized and put into practice by various legislative enactments. Even in the matter of sentencing the courts have generally been very particular in attending to the factor regarding age of the offender. In that backdrop, introduction of the impugned Ordinance, and that too in the absence of any public debate or parliamentary discussion, has been found by us to be imprudent, to say the least, if not an exercise in superfluity at this stage.

27. On the authority of Lord Reid in the case of *Haughton v. Smith* 1975 A.C. 476, 500 it is said that the law may sometimes be an ass but it cannot be so asinine as that. The Hon'ble Supreme Court of Pakistan had also observed in the case of *Rashad Ehsan and others v. Bashir Ahmad and another* [PLD 1989 SC 146] that "The law sometimes is called an ass but the Judge

should, as far as it is possible, try not to become one". Similarly, in the case of *Mst. Aziz Begum v. Federation of Pakistan and others* PLD 1990 SC 899 the Hon'ble Supreme Court of Pakistan had reiterated "the principle" that the "law may be blind but the Judge is not". The unconstitutionality, infirmities, impracticalities, absurdities, obscurities and unreasonableness of the impugned Ordinance found by us above have convinced us that the said law does not fit into and piece well with our Constitutional and legal system of dispensation of criminal justice and, thus, the same needs to be struck down in the larger interest of our society. In this view of the matter notwithstanding any moral or legal obligation created by any international Declaration or Convention we cannot blindly or blindfolded allow the impugned Ordinance to destroy the moral and legal fibre of our criminal justice system at this stage. According to the United Nations Declaration of the Rights of the Child (1959) and the United Nations Convention on the Rights of the Child (1989), a child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection. However, the said international instruments did not provide anything for a "child" who has already attained physical and mental maturity and who is capable of intentional commission of serious and heinous crimes. Even otherwise it has not been shown before as to how the provisions of any such international declaration or convention have a binding effect vis-à-vis the municipal law of our country. It is a settled principle of public international law that considered in themselves, and particularly in their inception, all declarations, conventions or even treaties are, formally, only a source of obligation rather than a source of law. A statute is always, from its inception, law whereas a declaration, convention or treaty may reflect or lead to law but, particularly in its inception, is not as such, law. A source of international obligation cannot be allowed by us to, through its premature local application, become a source of our domestic social doom.

28. It ought not to be ignored or overlooked in this context that the West has reached its present state and stage of criminal law and criminology after centuries of social and behavioural developments peculiar to its own culture and history and the impact and real results of its reforms in this regard are yet to be properly assessed and examined. We, thus, cannot blindly modulate our own policies and approaches and emulate the Western standards in this regard without appropriate social advancement and behavioural development in terms of our own social patterns and outlooks. In his book titled "The Young Offender" (published by Penguin Books, Ltd., England in 1967) D. J. West had found that according to the published statistics the young offenders in England were mostly involved in crimes like petty theft, larceny, breaking and entering property; robbery, simple violence, sexual delinquency and to some extent fraud. In his words most of such reported crimes "were rather trivial". He had found that:

"Violence constituted no more than ten per cent of the total of offences. Among these offences of violence, no more than six per cent led to serious injury or death. The circumstances of the offences divided into three groups of roughly equal number:

youngsters brawling among themselves, fights with the police in the course of arrests, and attacks made on others in the course of thefts. In addition, there were a few cases of family squabbles. In the bulk of offences, the violence consisted of punching or pushing aside, and the injury was trivial or technical".

He had gone on to observe that:

"At the same time, one must never lose sight of the fact that, though the majority of young offenders may not commit very serious crimes, a small minority are as dangerous as anyone can ever be, and are responsible for some of the most atrocious and brutal crimes on the record. Robbery with violence is most frequent among young men in their late teens or very early twenties. In the case of murder, it is often pointed out that the majority of offenders are over thirty years of age and that most of them are ordinarily law-abiding citizens who have attacked one of their own family under the influence of insanity or serious mental stress."

He had added that:

"Most of the offences of juveniles lack the gravity and substance, or the scheming and planning, which the public associates with crime. Even when one examines the crimes of boys from approved schools, many of whom are confirmed recidivists, it appears that their range is mostly limited to minor thefts and traffic offences, and that serious violence, sexual assaults and professionally organized crimes are most uncommon. A somewhat older age group, the late teens and early twenties, includes some of the most dangerously violent offenders in existence, but fortunately they are very rare, and have little in common with the general run of young thieves or sporadic hooligans. The over-all impression left behind from a cursory examination of the statistical trends is that though the numbers are enormous they mostly stand for minor offences."

If England is to be taken as a representative sample of the Western society or standards then the above analysis by D. J. West highlights the fact that the criminal trends in the West sharply differ from those in our society. It has already been observed by us above that in our society it is not uncommon for young persons to be involved in serious and heinous crimes like murder, gangrape, terrorism and trafficking in narcotics, etc. and the impugned Ordinance, through the concessions visualised by it in the matters of bail, trial, sentence and probation, contains a serious potential for aggravating the situation in this regard besides providing incentives and impetus to older members of the society to prompt their young ones to commit such crimes. Today the youth in the West is, by and large, not involved in the serious crimes being committed by our youth and this trend in the West has evolved over a period of centuries. There were times when young persons in the West were prone to committing

serious offences and they were also dealt with and sentenced appropriately and accordingly. D. J. West had observed that:

"On the scale of history, methods of disposal of convicted offenders of any age other than by death, flogging or imprisonment under highly deprived conditions are quite recent developments. The hanging of small children used to be 'by no means unusual' in England. In 1816, Samuel Romilly, in pleading unsuccessfully before the House of Commons for the abolition of hanging as a penalty for shop-lifting, mentioned the case of a ten-year-old boy at that very moment in Newgate Prison under sentence of death. In fact, since crime has always been a youthful activity, most of those hanged in the days when thieves were liable to execution were youngsters. The English Solicitor general, in 1785, noted that nine, out of ten offenders hanged at that time were under twenty-one. In the first part of the nineteenth century, in England as in most other countries' children and young persons, both those convicted and those awaiting trial, were sent to the same appalling prisons as adults; where no doubt they were quickly depraved and brutalized by their experience. In 1817, the Second Report of the House of Commons Committee on the State of the Police in the Metropolis, reported that in the previous year the new prison at Clerkenwell had received 399 felons aged from nine to nineteen, and that young and old were mixed indiscriminately, regardless of the nature or gravity of their offences. The report went on to describe how petty street pilferers, many of whom might be boys just starting a career of crime, were 'usually committed for a short time to prison, sometimes seriously flogged, and then, without a shilling in their pockets, turned loose upon the world more hardened in character than ever'. Sir Edmund Du Cane, writing of the same period, 1816, noted that of the 3000 prisoners in London aged under twenty a half were juveniles under seventeen."

In his book titled "The Law Relating to Children" (published by Butterworths, London in 1973) H. K. Bevan had, in relation to orders that may be passed against juvenile offenders by criminal courts, observed as follows:

"Whatever view earlier law or practice may have adopted concerning the punishment of juveniles and there are indications of some mitigation in their favour certainly by the 17th century the principle of equality was firmly established, with no distinction being drawn between juvenile and adult offenders in the forms of punishment that could be inflicted. Depending upon the penalties attaching to the particular offence committed, juveniles, like adults, could be hanged, transported, imprisoned, subjected to various forms of corporal punishment or fined.

In the 18th century cases of juveniles being sentenced to death were quite common and sometimes the sentence was carried out. Nevertheless, there was a distinct reluctance to execute children, save for a period at the beginning of the 19th century

when there was apparently some readiness to do so in order to check the practice of parents ordering their children to steal on the assumption that the latter would escape the penalty because of their age. This stricter attitude seems to have been short lived; yet, it was only with the passing of the Children Act 1908 that sentence of death was abolished in respect of persons under the age of 16.

The steep rise in the number of juvenile offenders from 1800 onwards is, however, only partly explained by parental pressures. The main cause lay in the new social conditions created by the Industrial Revolution. Overpopulated urban areas soon became fertile breeding grounds for juvenile offenders, many of whom, especially in London, frequented the notorious "flash houses", which served as social centres for debauchery and the organisation of criminal activities. That juvenile delinquency was one of the main social problems is evidenced by the formation in quick succession of two reforming bodies both of which devoted much of their work to inquiries into the reasons for its widespread existence. These were the Society to Inquire into Causes of Juvenile Delinquency, founded in 1815, and the Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders, founded in 1818. But the solution to the problem would not be found merely in inquiries of this kind. Reformers recognised also the need for mitigation of the severity of the criminal law -and the introduction of separate methods for dealing with juvenile offenders. The immediate response of the legislature was modest. As we have seen, its relevant contribution to the substantive law was essentially to extend summary jurisdiction over young offenders, but gradually much more began to be done with regard to the treatment of young offenders. It will be seen that some of the orders which a court may make today owe their origin to 19th century legislation."

It was in that backdrop that, according to D. J. West and H. K. Bevan, the process of reform started and progressed in England piece by piece and through such a progression of gradual and steady historical and socio-legal developments the said process has reached its present stage. It may be said that children in the West have by now been, by and large, tamed and disciplined by centuries of social and legal guidance and instruction and it would be naive to believe that we can cover this distance of centuries through one quantum leap or to expect that our peculiar socio-legal culture would undergo a drastic metamorphosis through one stroke of pen or through introduction of one Ordinance. Was it not Sir Francis Bacon who had observed in his essay titled "Of Innovations" that:

"As the births of living creatures at first are ill-shapen, so are all innovations, which are the births of time. Yet, notwithstanding, as those that first bring honour into their family are commonly more worthy than the most that succeed, so the first precedent (if it be good) is seldom attained by imitation. For Ill, to man's nature as it stands perverted, hath a natural motion, strongest in continuance; but Good, as a forced

motion, strongest at first. Surely every medicine is an innovation and he that will apply new remedies must expect new evils. For time is the greatest innovator; and wisdom and counsel shall not alter them to the better, what shall be the end? It is true that what is settled by custom, though it be not good, yet at least it is fit; and those things which have long gone together, are, as it were, confederate within themselves; whereas new things piece not so well; but, though they help by their utility, yet they trouble by their inconformity. Besides, they are like strangers, more admired, and less favoured. All this is true, if time stood still; which contrariwise moveth so round that a forward retention of custom is as turbulent a thing as an innovation; and they that reverence too much old times, are but a scorn to the new.

It were good, therefore, that men in their innovations, would follow the example of time itself; which indeed innovateth greatly, but quietly, and by degrees scarce to be perceived; for otherwise, whatsoever is new is unlooked for; and ever it mends some, and pairs other; and he that is holpen takes it as a fortune, and thanks the time, and he that is hurt, for a wrong, and imputeth it to the author.

It is good also not to try experiments in States, except the necessity be urgent, or the utility evident; and well to beware, that it be the reformation that draweth on the change, and not the desire of the change that pretendeth the reformation: and lastly, that the novelty, though it be not rejected, yet be held for a suspect; and, as the Scripture saith, that 'we make a stand upon the ancient way, and then look about us, and discover what is the straight and right way, and so to walk in it'."

29. For what has been discussed above we have entertained no manner of doubt that most of the provisions of the impugned Ordinance, in the words of Bacon, "piece not so well" with the Constitutional and legal dispensation of criminal justice in our country and they also "trouble by their inconformity" because, perhaps, it was not strictly the reformation that drew on the change but just the desire for change that had preceded the reformation. Our societal attitudes do not appear to be ripe enough at this stage for the desired change. A quantum leap may be possible in the fields of science or technology but the same is surely not achievable in social or legal trends or attitudes which take some time to evolve. It appears that the impugned Ordinance has tried to achieve through a revolution an objective that was fit for evolution and measured growth. An imported romance for a young offender should not have been allowed to stretch the legal dispensation in our country to the limits of absurdity. How can we forget in this context that the concept of avoidance of fasad-fil-arz is a cornerstone of Islamic system of dispensation of criminal justice? We are sanguine that if the impugned Ordinance had been preceded by a parliamentary or at least a public debate then the same would not have suffered from the maladies and infirmities noticed by us therein.

30. On the basis of the reasons recorded above this writ petition is allowed and the Juvenile Justice System Ordinance, 2000 (Federal Ordinance No. XXI1 of 2000) is hereby struck off the statute book on account of it being unreasonable, unconstitutional and impracticable. It, however, goes without saying that the Parliament may, if it so desires, enact a fresh law in this regard after attending to all the infirmities of the impugned Ordinance highlighted by us above. As a necessary consequence of the declaration made and the order passed by us above, the Juvenile Courts established under the said Ordinance shall stand abolished forthwith and all the cases pending before all such Courts shall ipso facto stand transferred to the ordinary courts of competent jurisdiction. There shall be no order as to costs.

31. For the purpose of removal of a possible doubt, we consider that a clarification may be necessary. From the date of promulgation of the Juvenile Justice System Ordinance 2000 to the date of its annulment by us through the present judgment, accused persons below the age of eighteen years involved in criminal cases have enjoyed immunity from the sentence of death but now through annulment of the said Ordinance that immunity from the sentence of death has disappeared. By virtue of the provisions of Article 12(1)(b) of the Constitution of the Islamic Republic of Pakistan 1973, an accused person who has enjoyed such immunity from the sentence of death at the time of commission of an offence cannot subsequently be sentenced to death. In view of this constitutional position it is clarified that an accused person involved in an offence committed between the date of promulgation of the Juvenile Justice System Ordinance 2000 and the date of announcement of this judgment shall be well within his constitutional right to assert and establish that he was less than eighteen years of age at the time of commission of the alleged offence and then to claim immunity from the sentence of death.

32. Before parting with this judgment we would like to place on record our appreciation of the hard work put in by the learned counsel for the petitioner and the learned law officers and the valuable assistance rendered to us by the learned amici curiae.

M.B.A./P-71/L

Order accordingly.

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

MR. JUSTICE GULZAR AHMED

MR. JUSTICE QAZI FAEZ ISA

MR. JUSTICE SAJJAD ALI SHAH

CRIMINAL APPEAL NO. 90-L OF 2017

AND

Crl. Misc. Application No. 307-L/2018

(On appeal from the judgment dated 24.03.2014

of the Lahore High Court, Lahore passed in

Criminal Appeal No. 2374/2010)

*Muhammad Adnan son of Khadim Hussain. ... **Appellant***

Versus

The State.

...Respondent

For the Appellant : Kh. Muhammad Saeed, ASC.

Mrs. Tasnim Amin, AOR (absent).

For the State : Ch. Muhammad Waheed Khan,

Additional Prosecutor General, Punjab.

Date of Hearing : 13.09.2018.

J U D G M E N T

QAZI FAEZ ISA, J.

Criminal Miscellaneous Application No. 307-L/2018: Since we have proceeded to hear the main appeal, this Application seeking the suspension of sentence, has lost its relevance and is disposed of.

Criminal Appeal No. 90-L of 2017:

1. This appeal, with the leave of the Court, assails the judgment dated 24th March, 2014 of a Division Bench of the Lahore High Court, Lahore which had upheld the judgment dated 15th September, 2010 of the Judge Juvenile Court CNSA, Sheikhpura, who had convicted the appellant Muhammad Adnan son of Khadim Hussain under section 9 (c) of the Control of Narcotic Substances Act, 1997 and sentenced him to imprisonment for life and imposed on him a fine of one million rupees and in default of payment of fine directed that he undergo a further simple imprisonment for six months.

2. The case against the appellant was that he was driving a motorcycle *rickshaw* bearing registration No. 7664/LEO ("**the vehicle**") from which a huge quantity of narcotic drugs,

comprising of four *maunds*, three kilograms and two hundred grams of *charasand* one hundred and eighty grams of heroin, were recovered. The learned Trial Judge observed: (1) that the case was poorly investigated by the police, (2) that the section 173 of the Code of Criminal Procedure (“**Code**”) police report/*challan* was submitted to the Court after over two years and that too only after the Court had issued specific directions in this regard after receipt of an application from the appellant through the Chairman Human Rights, (3) that the nominated co-accused/absconding accused were not proceeded against, one of whom was a police constable and (4) that the ownership of the vehicle was not inquired into. We enquired from the learned Additional Prosecutor General, Punjab (“**APG**”) whether the directions of the learned Trial Judge were justified and whether the said directions had been complied with. The learned APG candidly responded that in the facts and circumstances of the case the observations and the directions of the learned Trial Judge were justified, however, he was not in a position to state whether the directions had been implemented.

3. The appellant, admittedly, was not even a teenager when the narcotic drugs were seized from the vehicle. Can a child of such tender age be the owner, or be deemed to be the owner, of the huge quantity of narcotic drugs which had been seized? Whether he could be the owner of the vehicle? Whether it could be accepted that he was driving the vehicle? Whether he had the requisite understanding to know what he was doing? None of these matters were investigated by the police. The Trial Court was a Juvenile Court in terms of section 4 of the Juvenile Justice System Ordinance, 2000 (“**the Ordinance**”) and as such was required to ensure that the interest of the child whose trial it was conducting was fully protected, however, it did not formulate the aforementioned questions as “points for determination” (subsection (1) of section 367 of the Code) nor considered them. The Trial Court treated the appellant as an adult, without considering that the accused was a child of tender years, and presumed that he had full capacity and understanding. The High Court, which exercised appellate jurisdiction, perpetuated the error, and the learned Judges who heard the appeal also effectively treated the appellant as an adult offender as they too did not consider, let alone determine, the aforesaid questions which should have been amongst the *points for determination*.

4. The prosecution case against the appellant was that the police had received prior information that a huge quantity of narcotic drugs was going to be transported in the vehicle. The police had therefore posted a police picket, but despite this the co-accused slipped through. The police arrested the appellant who did not try to run away. The two witnesses in whose presence the narcotic drugs were recovered from the vehicle and who were stated to have signed the memorandum of recovery (Exhibit PA) were Muhammad Ashraf and Shahid Ali; Muhammad Ashraf (PW-8) however denied his signature on it. The other witness Shahid Ali (PW-2) disowned any knowledge of Exhibit PA therefore he was declared hostile, and, despite his cross-examination by the prosecution, he stood firm in his denial and reiterated

that the signature on Exhibit PA was not his. The prosecution did not seek to have their signatures sent for forensic determination.

5. It appears to have weighed with the learned Trial Judge that the appellant was the brother of an absconding co-accused, namely Muhammad Azam. Inspector Arshad Latif (PW-3) who had set up the picket and apprehended the appellant was the complainant of the case. He stated that the appellant was driving the vehicle but admitted when he was cross-examined that he made no attempt to determine the ownership of the vehicle nor sought its registration book nor wrote to the concerned motor registration authority to determine in whose name it was registered. He further stated in his cross-examination that the narcotics belonged to one Muhammad Riaz and admitted that, *"I have acted negligently and by this way I have also spoiled the prosecution case to this extent"* and again that, *"in this sense negligence was committed by me"*. ASI Abdul Razzaq (PW-5) stated that he was amongst the members of the police picket but he did not state that the appellant was driving the vehicle and as such undermined the reliability of the testimony of Arshad Latif (PW-3) to this effect. He admitted that the appellant was a twelve-year-old minor at the relevant time; that the police report/*challan* was submitted after two years; that the prosecution had spoiled the case; that the warrants of arrest of the co-accused had not been obtained; proceedings were not initiated against them pursuant to section 87 of the Code to have them declared as proclaimed offenders and to have their properties attached under section 88 of the Code. The third witness on whose testimony the learned Trial Judge relied in convicting the appellant was Muhammad Ashraf (PW-8) who is stated to have signed the recovery memorandum (which has been discussed in the foregoing paragraph). Muhammad Arshad (PW-8) admitted that he was not from the locality where the vehicle was stopped, and when he was questioned to explain his presence there, stated he had visited Shahid Ali (PW-2) at his home, but when questioned further stated that he would not be able to take a person, if so appointed by the Court, to Shahid Ali's house. He was also unable to answer the question, *"whether Shahid Ali was along with him at the time of recovery"*. In reply to a specific question this witness disclosed that two criminal cases were registered against him, which raised the possibility that the police may have persuaded him to testify. It was on the testimony of these three unreliable prosecution witnesses of doubtful integrity that the prosecution case against the appellant rested. It also appears that the policemen were shielding the co-accused whilst arresting and prosecuting a young boy merely because he was the brother of Muhammad Azam a co-accused. The statement of Inspector Arshad Latif (PW-3) alleging that the appellant was driving the vehicle was not supported by ASI Abdul Razzak (PW-5). The fact that at the relevant time the appellant was not even a teenager further detracted from his assertion that the appellant was driving the vehicle. A boy of such tender age could also not be assumed to be the owner of the narcotic drugs or of the vehicle in which they were being transported.

6. We, therefore, without any hesitation can state that the prosecution had completely failed to establish its case against the appellant, let alone having established it beyond

reasonable doubt. Through a short order passed on 13th September, 2018 this appeal was allowed and the conviction and sentence passed by the Trial Court and maintained by the High Court were set aside and it was directed that the appellant be released forthwith, if not required to be detained in any other case, and these are the detailed reasons for doing so.

7. We, however, are not setting aside the observations made by the learned Trial Judge and the directions issued by him on pages 9 and 10 of his judgment dated 15th September, 2010 and direct the Inspector General of Police, Punjab, the Deputy Inspector General of Police, Sheikhupura Range and District Police Officer, Sheikhupura to abide thereby and to immediately implement them, if they have not done so already.

8. It saddens us to note that because of an inept investigation a child remained incarcerated for over eleven years and attained majority in jail. In this case the police appeared to be more interested in protecting the real perpetrators of the crime. The Trial Court needlessly indulged the prosecution, which took over two years to submit the police report/*challan*, and it took three years to conclude the trial. The Trial Court also overlooked section 10 (7) of the Ordinance which stipulates that if the trial is not concluded within a year the accused "*shall be released on bail*" and all the more so when the appellant was not responsible for the delay. The High Court, which was the Appellate Court, then took another four years to decide the appeal of the appellant. In the present case an appeal to this Court did not lie as of right therefore a petition for leave to appeal was filed in the year 2014 and leave to appeal was granted in terms of Article 185 (3) of the Constitution by this Court in the year 2017, and the appeal has been decided on the first day of its listing.

9. The Juvenile Justice System Ordinance, 2000 does not specifically stipulate the period within which trials should be concluded nor the period within which appeals should be decided, however the stated purpose of the Ordinance is to "*provide for protection of children*" (the title and the preamble of the Ordinance). The delay in the conclusion of a juvenile's trial before a juvenile court is also a ground for his release on bail as provided in section 10 (7) of the Ordinance. Therefore, considering the provisions of the Ordinance and being mindful that the Constitution envisages "*the protection of women and children*" (clause (3) of Article 25) it would be appropriate to direct that trial of juveniles be concluded by juvenile courts without delay and appeals against conviction be prioritized and expeditiously decided. Therefore, the Hon'ble Chief Justices of the provinces and of the Islamabad High Court through their respective Registrars should be pleased to issue necessary directions to prioritize the hearing of appeals filed by juvenile convicts and in this regard may be further pleased to direct that appeals by juvenile convicts are so highlighted on the file covers of the appeals. Requisite instructions by the Hon'ble Chief Justices, through their respective Registrars, should also be issued to the juvenile courts within their respective territorial jurisdictions to ensure the expeditious conclusion of trials. The juvenile courts should be further directed not to entertain routine requests for adjournments and if the case is to be

adjourned it must only be in exceptional circumstances. The Office of this Court is directed to communicate this paragraph (nine) of the Judgment to the Registrars of all the High Courts, the Prosecutor Generals of the provinces and of the Islamabad Capital Territory and to the Attorney General for Pakistan.

The Office of this Court is directed to insert the word “Juvenile” on the cover of the files of all criminal petitions and appeals filed by juvenile convicts and to prioritize their fixation in Court.

JUDGE
JUDGE
JUDGE

Bench-III

Islamabad:

15.09.2018

Approved for Reporting

(M. Tauseef)

Case-Law

Law of determination of Age of Juvenile Offenders

While scanning section 7 of the said Ordinance, it is evident that the view of beneficial scope of Ordinance, as had been observed in numerous cases, the provisions are to be interpreted liberally and that when two views are possible, one favouring the accused has to be taken particularly qua the juvenility inasmuch as it can be proved to be helpful for his rehabilitation on account of aid of ordinance, the accused is held to be entitled to the benefit of a year's margin and he is declared as juvenile as such with the result that his trial is ordered to be sent to juvenile Court.

According to my mind the best test for determination of the age was ossification and report of Radiologist because there was a rate chance of wrong decision because the same was based upon result given by highly technical and advance equipment's, so time and again Hon'ble Superior Courts of the country had laid down dictum that best test for determination of age was ossification and report of Radiologist, these things were negated by the learned trial Court and without dilating upon true facts passed the order in a mechanical and stereotype way.

In criminal dispensation of justice, benefit of doubt is extendible at all stages of inquiry and trial. ***Sajjad Serhani VS the State and another [2017-P Cr. LJ 474***

Coming to the facts of the present case, it seems that on 8-9-2012, Medical Board has given opinion that age of the applicant is about 20 years. The alleged incident took place on 17-3-2011 i.e. 1 year, 5 months and 21 days prior to the date of medical examination and, as such, on the date the alleged offence took place, the age of the applicant was about 18 years 6 months and 9 days, therefore, he was aged about 18 to 19 years.

In view of the beneficial scope of the Ordinance, as has been observed in various cases, the provisions are to be interpreted liberally and that when two views are possible, one favouring the accused, has to be taken particularly qua the juvenility inasmuch as it can be proved to be helpful for his rehabilitation account of aid of the Ordinance, the accused is held to be entitled to the benefit of a year's margin and he is declared as juvenile as such with the result that his trial is ordered to be separated from the case of the co-accused and he may be sent to the juvenile Court. ***Sadam VS the State [2014 P Cr. LJ 542]***

So far as the case of accused Shahbaz, is concerned, as per school certificate produced by the applicant Shahbaz his date of birth is 22-8-1998 and thereby on the date of incident his age would be about 14 years, while as per Municipal certificate produced by the complainant his date of birth is shown as 11-7-1995 and thereby he becomes 17 years. The applicant Shahbaz was present at the time of hearing of arguments and his physical appearance he appears to

be a minor therefore in such circumstances when there is conflicting documentary evidence then in such circumstance the opinion of expert is necessary for determination of his age. Accordingly, the Civil Surgeon Hyderabad is directed to constitute a Board for determining the age of applicant Shahbaz son of Muhammad Hanif the applicant in Criminal Bail Application No. 312 of 2013 and submit the report within fifteen days. **Muhammad Hanif and others VS the State [2013 P Cr. L J 1105]**

It abundantly clear that a claim of juvenility is base upon an assertion of fact and the onus to prove such fact is upon the accused person and if he fails to establish such fact through positive evidence then no advantage can be taken by him on this score and no benefit of any doubt regarding his age can be extended to him. **Muhammad Raheel Ilias Shafique VS the State [PLD 2015 SC 145]**

برقناطیسی شعاعوں کے ذریعے عکس لینے والی مشین کی ساخت اور اس کی درست کارکردگی بھی ہمیشہ ایک سوالیہ نشان رہتا ہے اور ان پر قائم کردہ رائے اندازوں پر مبنی ہوتی ہے لہذا اس کو ہرگز قطعی نہیں سمجھا جاسکتا، اسکول کے رجسٹر میں درج تاریخ پیدائش ملزم کی مکمل اور پوری تائید کرتی تھی جس کو صرف مضبوط شہادت کے ذریعے ہی رد کیا جاسکتا تھا لیکن مثل مقدمہ پر ماسوائے مذکورہ طبی ماہرین کی رائے کسی اور قسم کی شہادت موجود نہ تھی۔ نیز انصاف اور قانون کا مسلمہ اصول یہ ہے کہ اگر دو مختلف نوع کے رپورٹ یا شہادت فوجداری مقدمہ میں آجائے تو عدالت شہادت اور کو ترجیح دے گی جو ملزم کو فائدہ دے نہ کہ اس شہادت اور مواد کو جو کہ استغاثہ کے حق میں جاتا ہوں، لہذا اس مسلمہ اصول جو کہ ایک صدی پر محیط ہے کو بروئے کار لاکر ملزم کو اس کا فائدہ لینے کا حق پہنچاتا ہے یہاں پر یہ امر انتہائی قابل ذکر ہے کہ عدالت ابتدائی سماعت مقدمہ اس نوع کے مقدمات میں اپنی پہلی ہی فرصت میں ملزم کے ظاہری خدوخال کو دیکھ کر اگر اس کو اگر اس کی صحیح عمر کا تعین کرنے پر شک دوچار ہو تو عدالت پر لازم ہے کہ اس ملزم کا نہ صرف دانتوں اور ہڈیوں کے ماہر معالجین سے تعین کروائے بلکہ ملزم کو مزید موقع دیں کہ وہ سرکاری دستاویزات یا سرکاری یادداشت محفوظ شدہ کے ذریعے اپنی کم سنی یا نا بالغ ہونے کا ثبوت پیش کرے کیونکہ خصوصی قانون نابالغان ملزمان کیوروسے سے یہ سوال عدالت کے اختیار کار کو متاثر کرنے والی ہوتی ہے۔ لہذا عدالت بروقت کارروائی کر کے اپنی اختیار سماعت کا فیصلہ بروقت کرسکتی ہے اور فریقین مقدمہ کو غیر ضروری اخراجات اور طوالت مقدمہ سے بچا سکتی ہے۔

انتظار حسین سائل VS حمزہ امیر وغیرہ جواب کنندگان [2017 SCMR 633]

The Petitioner had submitted a photocopy of his school leaving Certificate to support his claim for minority. The learned trial Court discarded the said certificate on the ground that the original had not been produced. However, in order to hold that the Petitioner was not a child on the relevant date, he relied upon his CNIC and the electoral roll which he held were conclusive evidence for determination of his age. In “Muhammad Anwar v. Muhammad Suffyan and another” (2009 SCMR 1073), Supreme Court of Pakistan held that entry of date of birth in the register “Dakhil Khariji” and in “Provisional Result Certificate” were not independent sources of information about the age of the accused because both the documents followed the information volunteered by the student himself or someone connected with him. In my opinion, the same observation also holds good for School Leaving Certificates. Situation may, however, be different after some years because of social

development and increasing emphasis on documentation. Be that as it may, the learned trial Court erred in law in not requisitioning the record of the school concerned and examining its custodian to verify the genuineness of the certificate in question. ***Muhammad Ayaz VS The State and another [2018 P Cr. LJ 132]***

The National Identity card and the entries in the NADRA Database do carry weight and hold the field unless they are rebutted. Since the entries in the electoral rolls are nowadays made on the basis of National Identity Card/NADRA Database, the above dictum of the Hon'ble Supreme Court would apply to them with equal force. The fact that section 7 of the Ordinance obligates the Court to seek the opinion of the medical expert may be because the legislature itself did not consider their data as conclusive evidence of the age of a person. In the instant case, the National Identity Card and the electoral rolls are important documents which must be taken into consideration for reaching a just conclusion in the inquiry under section 7. Since I am minded to remand the matter to the learned trial Court, I refrain from making any comments in this regard least it may prejudice the case of any of the parties. ***Muhammad Ayaz VS the State and another [2018 P Cr. LJ 132]***

Conviction and sentence awarded to accused by Trial Court was maintained by High Court as well by the Supreme Court---Accused filed mercy petition, which was referred to the Home Secretary for its adjudication in the spirit of S. 7 of the Juvenile Justice System Ordinance 2000---Accused also filed petition before the Trial Court for conducting inquiry under S. 7 of the Juvenile Justice System Ordinance, 2000, which was dismissed---Validity---Matter pertained to the year 1993---Juvenile Justice System Ordinance, 2000, was not promulgated at that time---Provision of S. 299, P.P.C., was available to the accused, he should have availed the said remedy at that time-Accused had not taken the plea of his minority in terms of S. 299, P.P.C.--- Accused had pleaded said plea while making his statement under S. 342. Cr.P.C. and even at the time of final adjudication of appeal and before the Supreme Court, while assailing the vires of judgment passed by the High Court---Plea of Juvenile was taken by the accused after the lapse of 14 years--Such plea taken as belated stage just to frustrate the proceedings as such carried no legal sanctity-Plea was dismissed in circumstances. ***Ehsan ullah Alias Ehsana VS The State [2018 P Cr LJN 53]***

Determination of age of accused person vis-a-vis his claim of minority---Trial Court, relying on the birth and school certificates, concluded that the accused was less than eighteen years of age at the time of occurrence, therefore direction was given for submitting separate challan in that context--Objection was raised that such order was passed without recording any evidence, which was against the relevant provision of law-Validity-Provisions of S.7, Juvenile Justice System Ordinance, 2000 mandate a proper inquiry into the said issue wherein the courts should require production of evidence including medical reports for proof of age in accordance with the manner and the procedure prescribed by Qanun-e-Shahadal, 1984--- Other side was also afforded opportunities which were envisaged and guaranteed by the

Qanun e-Shahadat, 1984.-Order having been passed violation of law, revision petition was allowed accordingly. ***Ehsan ullah Alias Ehsana VS The State [2018 P Cr LJM 53]***

The standing medical board submitted his report before the learned trial Court on 17.08.2013 and according to the opinion furnished by the Medical Board the petitioner was about 16 years to 17 years of age at the time of his ossification test conducted on 07.03.2013 i.e. eight months and twenty days after the occurrence. Thus, taking into consideration possibility of variance of one year in both sides existed in medical opinion, the petitioner was less than eighteen years of age and he falls within the definition of a 'child' to get the benefit of Juvenile Justice system Ordinance, 2000. Thus revision petition is, therefore allowed, the impugned order dated 24.08.2013 of the learned trial Court is set aside and it is directed that the trial of the petitioner be conducted separately under Juvenile Justice System Ordinance. ***Farhan VS The State [2017 YLR 1605]***

If the age of applicant Pir Ali is calculated with date of offence, it appears that at the time of alleged incident he was aged about 13 years. During arguments, it was admitted by the prosecution side that said certificate was not challenged by them anywhere, thus this medical certificate of age of applicant carries weight and his case falls under first proviso of section 497(1), Cr.P.C. Besides this, the certified true copies of the case diaries of the trial Court from 03.11.2012 up to 12.12.2014 filed by learned Counsel for the applicants along with his statement dated 07.4.2014 shows that applicant Pir Ali is continuously in custody and during this period of two years charge was not framed and the delay occurred during this period is not shown to have been on the part of applicant. Section 10(7)(a) of the Juvenile Justice System Ordinance gives statutory right of bail to every child irrespective of nature of offence if he has remained in custody for a continuous period exceeding one year and his trial has not been concluded. However, a bar is imposed on bail under proviso attached to clause (c) of subsection (7) of section 10 of the Juvenile Justice System Ordinance, 2000 for the child of 15 years or above, if is involved in an offence, which in the opinion of the Court is serious, heinous, gruesome, brutal, sensational in character or shocking to public morality or he is a previous convict of an offence punishable with death or imprisonment for life. ***Pir Ali and another VS The State [2017 P Cr LJ 65]***

So far as the case of accused Shahbaz, is concerned, as per school certificate produced by the applicant Shahbaz his date of birth is 22-8-1998 and thereby on the date of incident his age would be about 14 years, while as per Municipal certificate produced by the complainant his date of birth is shown as 11-7-1995 and thereby he becomes 17 years. The applicant Shahbaz was present at the time of hearing of arguments and on his physical appearance he appears to be minor therefore in such circumstances when there is conflicting documentary evidence then in such circumstances the opinion of expert is necessary for determination of his age. Accordingly, the Civil Surgeon Hyderabad is directed to constitute a Board for determining the age of applicant Shahbaz son of Muhammad Hanif the applicant in Criminal Bail

Application No.312 of 2013 and submit the report within fifteen days. ***Muhammad hanif and others vs the state [2013 P Cr. LJ 1105]***

Release on Probation

At the time of commission of the offence, the age of appellant was 13 years and at the time of conviction the appellant was 16 years old, therefore, keeping in view the age, sentence, and nature of offence for which the appellant was charged and convicted. Section 11 of Juvenile Justice System Ordinance, 2000 empowers the Juvenile Court to release the accused on probation keeping in view the following points:

- a. First offender.
- b. Age at the time occurrence.
- c. Sentence awarded to the Juvenile
- d. In this case, the appellant is first offender, his age at the time of occurrence was 13 years and he has been awarded 10 years Simple Imprisonment; therefore, he be sent to Borstal institution until he attains the age of eighteen (18) years or for the period of imprisonment, whichever is earlier.

Although Section 11 of Justice Juvenile System Ordinance, 2000 provides the concept of release of Juvenile on probation but the juvenile accused has committed the offence of rape with a minor girls, therefore, at this stage it is not appropriate to release a juvenile/appellant on probation unless he completes his period in the Borstal institution and thereafter his remaining period of sentence, if any, will be subject to report of Probation Officer as well as report obtained form Borstal institution. Probation Officer shall submit the said report before the concerned Juvenile Court which has passed the sentence, the said court will thereafter pass the appropriate order, keeping in view, the report, behavior and development of the juvenile (for the period the appellant remained in Borstal) decide the said question of remaining sentence after hearing the juvenile/appellant. ***Wishal Masih VS the State and others [2017 YLR 2031]***

The plain reading of section 11 of the Ordinance provides that the Juvenile Court, after it has decided that, that the accused Juvenile has committed the offence may “if it thinks fit”, pass appropriate order for releasing the said juvenile on probation. Thus, there is discretion vested in the Juvenile Court to decide the issue of release of a juvenile on the probation. No doubt the legislation has bestowed the final authority upon the Juvenile Court to decide the same but by not exercising the said discretion or the in-action the Juvenile Court would be offending the dictates of Law. Reference is made to 2006 P Cr. LJ 1862 where in it is held: “The general principle of criminal jurisprudence is that all criminal statutes shall be interpreted in favour of offender and that benefit of any discretionary power cannot be withheld”. ***Mian Khan VS the State [2013 P Cr. LJ 182]***

This statutory provision is clear manifestation of the intention of the Legislature that on attaining the age of 18 years, the convict/juvenile is no more entitled to any such leniency as he loses his status of juvenile accused in that eventuality. In view of above scanning of the law, it can safely be discretionary matter only to be decided by the trial court/Juvenile Court and; secondly, the Juvenile Court too cannot exercise such discretion on extinguishment of the status of the convict as juvenile. The learned trial court has turned down the pleas of the appellant on the same ground which is in accordance with law and within the parameters of Section 11 of the Ibid Ordinance. ***Mian Khan VS the State [PLD 2014 127]***

After hearing the learned counsel for the petitioner, the learned Deputy Prosecutor-General, the learned counsel for the complainant and also after going through the record it has straightaway been noticed by this Court that the petitioner was tried as a juvenile offender by the learned trial Court and he was convicted to life imprisonment after a regular trial. It has also been noticed that major role has been ascribed to the petitioner which is proved through confidence-inspiring evidence of P.Ws. and the role attributed to the petitioner is also borne out from the Post-mortem Examination Report of the deceased. The conduct of the petitioner and the method as well as mannerism of the commission of the offence adopted by him indicates him to be an evil. and a well-planned designer, which also indicates more towards the mature skill of an accused than of an innocent child. The statutory protection of' legislation on Juvenile Justice was meant for a minor who was an innocent law breaker and was not an accused having a mature mind who used the plea of minority as a ploy or sentence of the offence committed by him. ***Shahrukh VS Bashir Ahmed and another [2013 P Cr. LJ 584]***

The probation system in our country is usually considered as a boon for some of the selected offenders, but it is more than this limited scope. It is a system which provides a means of rehabilitation without the necessity of breaking up the offender's normal life and removing him from the natural surroundings of his home. It may be used as a tool to raise the status of a convicted offender by making him a useful member of the society. As the appellant is an amateur and a novice offender, therefore, it will be beneficial for him and the society alike to place him on probation. I, therefore, while maintaining the sentence of imprisonment of one year imposed by the learned Additional Sessions Judge, give the appellant under the supervision of the Probation Officer for one year upon executing the requisite bonds subject to furnishing surety of Rs.10,000/, and P.R. bond of equalling amount. The bond shall contain a condition that during the period of probation, the appellant/ probationer shall restrain from any immoral, illegal activities and felonies and shall also improve his behavior. ***Saeed Ahmed Kalhoro VS the State [PLD 2017-592].***

Refusal of Bail

There is no documentary proof regarding the enmity of the applicant with the complainant party has been shown being involve him in heinous matter falsely. The offence is punishable with death and comes within the ambit of prohibitory clause 1 of section 497, Cr.P.C. and the age of 20 years, therefore the applicant failed to make out his case for enlargement on bail. It is well-settled principle of law as laid down by the apex Court that deeper assessment cannot be allowed and only tentative assessment should be made at the bail stage. **Habib-ur-Rehman Shaikh, J Nabi Gul VS the State [2013 P Cr. LJ 735]**

The bare reading of proviso quoted above depicts the intention of the legislature that a child who is below 15 years is to be granted bail notwithstanding the nature of the charge. Case of the petitioner is not falling within the above category as his age has been mentioned 14 years in Card of Arrest prepared by the Investigation Officer on 20.8.2016. Till date none from the complainant or prosecution has challenged the same before any forum. Without dilating upon the merits of the case the petitioner is entitled to the grant of bail under Section 10 of juvenile Justice System Ordinance 2000.

Investigation in the case if complete and petitioner who is behind the bars since his arrest, is no more required to the investigation agency for interrogation therefore, keeping him behind the bars would serve no useful purpose.

For what has been discussed above, this petition is allowed and petitioner is admitted to bail subject to furnishing bail bonds to the tune of Rs. 1,00,000/- (One lack) with two sureties each in the like amount to the satisfaction of illaqa Judicial Magistrate/MOD concerned. In addition to that father of petitioner being natural guardian is directed to submit recognizance to the tune of Rs. 100,000/- to the above-mentioned Court, that he will properly look after the child i.e., the accused/petitioner. **Bakhtiar VS the State and another [2017 YLR 2526]**

Undeniably the petitioner is named in the FIR with specific allegation, but admittedly the petitioner is a juvenile and he is behind the bars since 18-9-2009. It would be advantages to reproduce the section 10(7) of Juvenile Justice system Ordinance 2000.

Notwithstanding anything contained in the Code and except where a juvenile Court is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf or in exercise of any right or privilege under any law for the time being in force, a child who, for commission of an offence, has been detained, shall be released on bail, --

The object of every law is welfare of the society and Juvenile Justice System Ordinance,2000 is no exception. Therefore, being Juvenile at the date of occurrence and is behind the bars

since the date of arrest i.e. 18-9-2009. The case of the petitioner is one of instant reaction and not serious, heinous, gruesome, brutal or shocking to public morality. Further the motive is also not attributed to the petitioner.

Resultantly the instant petition is accepted and the petitioner is admitted to bail after-arrest subject to his furnishing bail bonds in the sum of Rs. 2,00,000 with two sureties in the like amount to the satisfaction of the learned trial Court. ***Sufyan VS the State and another [2014 YLR 422]***

It appeared from the record that in more than two years' time, the prosecution produced some of its witnesses only on four occasions, 17.9.2015, 9.10.2015, 24.11.2015 and 9.12.2015, but only whence, some of the co-accused of the petitioners and sometimes a few of the were not produced from the jail. The petitioners could not be held responsible for the said idleness of the prosecution, as being in jail, their movements were curtailed and regulated by the jail authorities.

There existed little to believe that the petitioners are hardened, desperate or dangerous criminals they have not been shown to have ever committed and act of terrorism, punishable under the Anti-terrorism Act, 1997 or the other allied laws. Being in jail for such a long period of time, easily exceeding the statutory limits, they have earned a valuable right of being released on bail under the 5th proviso to section 497(1), Cr.P.C if some of their co-accused have been playing hide and seek with the trial court or causing delay in conclusion of their trial, the petitioners could not be saddled with any responsibility in this regard nor could they be penalized for it.

For the foregoing reasons, these applications (Crl. Misc. No.3352-B/2016, Crl. Misc. No. 9220-B/2016 and Crl. Misc. No.11028-B/2016 are accepted and the petitioners, Sharafat Ali, Muhammad Khan, Jaffar Ali Zafar and Muhammad Tayyab Raza are admitted to post-arrest bail subject to furnishing bail bonds in the sum of Rs. 5,00,000/- (five lac) each with two sureties each in the like amount to the satisfaction of the learned trial court. ***Sharafat Ali VS the State and another [2017 MLD 399]***

According to original school leaving certificate produced by learned counsel for the applicant during course of arguments, the date of birth of applicant is 1-3-1996 which shows that at the time of offence his age was less than 15years. The school leaving certificate produced during course of arguments was issued by Govt. (N) D.A.V. High school Ghotki and another school leaving certificate issued by Govt. Boys Anwar Abad school also shows same date of birth i.e. 1-3-1996, so in both school leaving certificates issued by Primary and Secondary School date of birth is same Medical certificate issued by medical Board of Ghulam Muhammad Mahar Hospital, Sukkur on 28-12-2011 also shows that according to opinion formed by the medical Board, the age of applicant appeared to be 18/19 years. The applicant himself mentioned in

the bail application that at the time of incident, his age was 17 years and, on that basis, the counsel for section 497, Cr.P.C. in which it is provided that court may direct that any person under the age of sixteen years or any woman or any sick or infirm person accused of such offence be released on bail. Proviso makes aforesaid proviso, court may only direct to release person on bail who is found under the age of 16 years. ***Syed Amanullah Shah VS the State [2013 YLR 110]***

The court is of the humble view that the respondent has not only misused the concession of bail but even otherwise, he was not entitled for the grant of bail even on the ground of delay in final disposal of case. Section 10 Juvenile Justice System Ordinance 2000 and its last proviso is reproduced as follows for the better comprehension of the jural point: "Provided that where a child of the age of fifteen years or above is arrested, the Court may refuse to grant bail if there are reasonable grounds to believe that such child is involved in an offence which in its opinion is serious, heinous, gruesome, brutal, sensational in character or shocking to public morality or he is a previous convict of an offence punishable with death or imprisonment for life." ***Muhammad Bashir VS Ghulam Murtaza and another [PLD 2014 503]***

Mere fact that applicant was below 16 years of age at the time of incident will not ipso facto entitle him to a concession of bail. Even otherwise according to proviso 10(7) Juvenile Justice System Ordinance 2000 the court may refuse to grant bail to a child of age of 15 years or above if there are reasonable grounds to believe that such child is involved in an offence which in its opinion is serious, heinous, gruesome, brutal, sensational in character and shocking to public morality. ***Inayatullah VS the State [2013 ULR 533]***

The bail can be granted if an accused has good case for bail on merits and mere absconding would not come in way while granting the bail. In view above dictum laid down by the apex Court, mere alleged absconding of applicant will not come in way of his bail.

For the reasons discussed above, I am of the considered opinion that applicant Pir Ali has made out a prima facie case for grant of bail on the ground of statutory delay in trial of the case and his case also does not come within the exceptions provided under section 10(7) of the Ordinance referred above, therefore, this applicant is admitted to bail on furnishing surety in the sum of Rs. 300,000/- Rupees Three Lac only) and P.R. bond in the like amount to the satisfaction of trial Court. ***Pir Ali and another VS the State [2017 P Cr LJ 65]***

The offence allegedly committed by the petitioner does not fall within the prohibitory clause of section 497, Cr.P.C. and in such like cases grant of bail is a rule and refusal thereof is an exception.

Similarly, as per school certificate, the petitioner is the regular student of Class 10th and his stay in jail with other hardened criminals would spoil his character. Besides that, his education

career would also be badly affected inside the Jail. Minority shall be a good ground for granting bail even in cases carry capital punishment. Furthermore, investigation in the case is complete and the petitioner is no more required for further investigation/interrogation. ***Yaser Rehan VS the State and another [2014 Cr. LJ 620]***

So far as the question of limitation is concerned the contention of the learned counsel for the respondents/accused is that as section 13(2) of Juvenile Justice System Ordinance, 2000 prescribed the period of 30 days for preferring the appeal against order of acquittal passed by a Juvenile Court, therefore, this appeal having definitely been filed beyond the period of thirty days was barred by time and was liable to be dismissed because a valuable right had accrued to the respondents/accused to presume their acquittal as a past and close transaction, after the expiry of period of limitation prescribed for preferring the appeal, therefore, this appeal was liable to be dismissed. ***Sayed Bashir Hussain VS Abdul Waheed and 3 another [2013 MLD 1675]***

Joint Trial

Wherein accused is declared as child/juvenile after regular procedure, he shall neither be charged with nor tried for and offence together with an adult and the Court taking cognizance of the offences shall direct separate charge as well as trial of the child in the Juvenile Court, In the present case, not only Muhammad Imran and Muhammad Bashir/respondents were declared child but they were also separately charged and their trial was also held separately likewise.

Therefore, judgment in both the trials also should have been recorded separately, otherwise the object of framing separate charge and holding of separate trial would have become meaningless and by recording the consolidated judgment the learned trial Court rendered the entire exercise as illegal. Even otherwise recording of separate judgment of juvenile accused/respondents was the mandatory requirement under law i.e. section 6(1) of juvenile justice System Ordinance, 2000 and section 367, Cr.P.C we are fortified in our view that requirement of separate judgments on both the cases was mandatory by a judgment of Sindh High Court in the case of Ghulam Hussain and another v. the State (1996) PCr.LJ 514. ***Sayed Bashir Hussain VS Abdul Waheed and 3 another [2013 MLD 1675]***

So far as the argument of learned counsel for non-releasing the appellant on probation by the trial Court is concerned, no doubt, under, section 11(a) of the Juvenile Justice System Ordinance the Court has discretionary powers to release on probation a child found to have committed the offence but his request is not convincing one because as per evidence the accused has committed sodomy in the holy place. Malakand Division is special area and the people over there always strive hard for implantation of Sharia laws. The appellant has committed the offence in the holy mosque which is heinous, scandalous gruesome, brutal

and the punishment is one of the modes to give an impression of deterrence to the public at large and release of appellant on probation in such like cases would certainly give an impression that no law is there to restrain people from the commission of such like offences. We have to curb such like offences otherwise it would definitely affect the whole society. However, it is ordered that the appellant-convict be sent to a Borstal institution until he attains the age of eighteen years or for the period of imprisonment whichever is earlier.

Hazrat Bilaal VS the State [2013 P. Cr. LJ 800]

It is a legal ground and can be agitated anytime. Perusal of card of arrest of appellant Hasnain Ali alias Ali reveals that his age is mentioned as 16/17 years. Formal charge framed by the learned trial Court also indicates the same age of the appellant. Section 2(b) of Juvenile Justice System Ordinance, 2000 defines a child as a person who at the time of commission of an offence has not attained the age of eighteen years. In such circumstances, the learned trial Court was required to first determine exact age of the appellant Hasnain Ali alias Ali before proceeding with the case, because if found below the age of eighteen years, he could not be tried together with adult co-accused Mohammad Bilawal in view of the provisions contained in section 5 of the Ordinance. ***Muhammad Ghazanfar Khan VS Muhammad Bilawal and another [2016 YLR 1810]***

Needless to say that the offence with which the applicant is charged is the offence of snatching mobile and looting money etc. from the innocent person/passenger on gun point by putting him under fear of death etc. and I am of the view that such an offence by its nature is a serious and heinous offence, falling within the proviso herein above reproduced and the bail could be refused to the applicant/accused even on this ground, had he established himself to be a juvenile offender what say about the applicant/accused who has not produced any material worth consideration to even prima facie establish that he is a juvenile offender as discussed. The cases relied upon by the learned advocate for the applicant, being distinguished on facts and circumstances than the case one in hand, are not applicable to this case as in case of Sher Shah, there was enmity between the complainant and the accused and it was the case of attempt on the life of complainant and not a case of heinous crime involving snatching mobile and cash etc. in case of Siraj Din, the age of applicant based on x-ray examination was between 16 and 17 years, in case of Khurram Shahzad, co-accused Ali Irfan Shahzad was apprehended by the complainant and PWs at the spot and whereas the petitioner, who was not apprehended at the spot, fled away, in case of Muhammad Danish, there was tussle between the accused and the police on non-production of license and documents of the motorcycle, in case of Ali Ahmed, the applicant had remained in custody for more than one and half years and in case of Ghulam Mustafa, the petitioner had not been nominated in FIR in any capacity whatsoever and he had been implicated in the case for the first time through a supplementary statement made by the complainant and the allegation of abetment in absentia and thus none of the cited cases is helpful for the applicant. 9. In view of what has been discussed above, I am of the considered view that the applicant has failed

to make out his case for grant of bail and his bail application is liable to be dismissed. ***Safeer Ahmed VS the State [2018 P Cr. LJ Note 40]***

Petitioner Fawad Khan, via card of arrest has been shown to be the age of 15/16 years. In this respect Secondary School Certificate of the accused/petitioner produced, according to which his date of birth is 15.03.2000, whereas the alleged occurrence took place on 23 .08.2017. if his age is counted from the date of birth till date of occurrence, it came out 17 years 5 months and 8 days. Section 10 of the Juvenile Justice System Ordinance, has provided some concession for the accused. who are under the age of 15 years, but there is a proviso under section 10(7) of the Juvenile Justice System Ordinance, according to which, if they are involved in a case of heinous nature, then they may not be released on bail. While the age of accused/petitioner is above 15 years, according to SSC certificate. The person who is charged for a crime of heinous nature cannot claim any premium, on the basis of his minor age, because mere minority per-se, is no ground for grant of bail. Section 10 of the ibid Ordinance, does not give the concession of bail to a juvenile accused in an offence falling within the Prohibitory Clause of section 497, Cr. P.C., nor the tender age, can be used as a license by a juvenile to kill or attempt to kill, the innocent people. In genuine cases, it may be invoked in favour of the accused to get him released on bail, but it is noticed that this concession is being misused in the society by the youngsters. So, to curb the menace of rampant crimes, by the youngsters, it is in the interest of society, not to allow them bail on such technical grounds to discourage them in commission of crimes for their better future. ***Fawad Khan VS Jamshed Khan and another 2018 P Cr. LJ 498***

Bail Granted

It is settled law that-the Ordinance has been promulgated to safeguard the human rights of a section of the society who deserves special protection in view of tenderness of their age. In Afsar Zamin's case it was held by a Single Judge of this Court as under: - "The Ordinance is aimed at extending protection to the children involved in criminal litigation and their rehabilitation in society. In a way, it safeguards the human rights of a section of society who deserve reasonable concession because of their tender age, therefore, the Ordinance is to be construed liberally in order to achieve the said object. In view of the figures 17/18 years and in absence of any medical report to the contrary the benefit arising out of the circumstances is to be extended to. the applicant. He is, as such, entitled to bail." Every law is meant for welfare of the society whether it aims to achieve welfare by granting a relief or by creating a deterring wall. Either way the objective of every law in a civilized society is welfare of the society. The Ordinance is no exception to it. Therefore, section 10 (7) of the Ordinance cannot be read as to have negated the provision contained in first proviso to section 497, Cr.P.C. because two complainant each other and do not negate each other. Moreover, they cater to two different situations. ***Raheem Dad and 2 others VS the State [2012 YLR 590]***

Perusal of the above-mentioned order-sheets shows that the complainant and his witnesses intentionally avoided to appear before the court with an ulterior motive just to prolong agonies and miseries of the accused. While disposing of the earlier bail petition on 10.4.2016 it was conceded by the learned Dy. A.G. that the petitioner has been declared juvenile by a medical board held on 17.12.2014 wherein the doctors have opined the age of petitioner ranges from 14 to 16 years. There is no cavil in proposition of law that whenever there are two situations before the court the situation which favours the accused is to be followed. In the instant case the age of the accused has been assessed between 14 to 16years, hence the provisions of Section 10(7), of Juvenile Justice System Ordinance, 2000 could validly be called in aid of accused/petitioner. Furthermore, it is well settled principle of interpretation of statute that construction of a statute should be beneficial to the citizen and if there can be two interpretation of a provision of law in a statute the one which is consistent with reasons should be adopted and the one which leads to absurdity or unreasonableness or patent injustice to a citizen should be avoided. It would be wholly illogical to penalize an accused person for no wrong act on his own part or any one on his behalf and deprive him of the benefits of the above provisions of law. The point of any justifiable delay which are the result of bona fide acts of an under-trial prisoner or his counsel cannot be deducted from the period of delay of one year and if the said prescribed period has reached then it is the bounden duty of the court to release such an accused on bail. ***Muhammad Ismail VS the State [2017 P Cr. LJ 373]***

Ghulam Dastagir and 3 others v. The State PLD 2014 Bal. 100 rel.

Ahsan Ahmed Memon for Appellant.

Ali Gul Shaikh, DDPP.

Date of hearing: 25th April, 2017.

JUDGMENT

FAHIM AHMED SIDDIQUI, J.--The appellant, through the instant criminal appeal assailed the judgment dated 31.03.2017 passed by the learned Additional Sessions Judge-III, Shikarpur (hereinafter. referred to as "the impugned judgment"). Through the impugned judgment the learned trial Court convicted the appellant to undergo imprisonment for a period of one year and pay fine of Rs.50000/- and in case of default, he has to undergo simple imprisonment for three months in addition to the aforesaid sentence.

2. The facts of the case are that on 08.06.2016, during routine patrolling, complainant received spy information about a suspected person. The police party rushed towards the reported place where they found appellant who tried to escape but apprehended by the raiding police party. The complainant found a pistol in possession of the appellant, as such he is booked in a case under Section 23(i)(a) of P.S. Madeji in FIR No.54/2016.

3. The prosecution produced three witnesses; all of whom are police officials i.e. complainant H.C. Ubaidullah (PW-1), P.C Anwar Ali (PW-2), and I.O. of the case ASI Mumtaz Ali Abro (PW-3), Gul Zaman (PW-4). The appellant also recorded his statement under Section 342 of the Criminal Procedure Code but did not produce any defence witnesses. On the basis of evidence so recorded, the learned trial Court convicted the accused as mentioned above by finding him guilty of the offence.

4. Haji Ahsan Ahmed Memon, the learned counsel for the appellant; states that the case against the appellant is one of insufficient evidence and he has never been involved in any criminal activity and is enjoying a good reputation in his locality. He prays for a lenient view regarding the appellant because he is not a habitual criminal and a first offender.

5. Mr. Ali Gul Shaikh, the learned DDPP supports the conviction and sentence and submits that the trial court has already taken a lenient view.

6. After an initial hearing, this Court has called a report from the concerned police station about the appellant, and it is reported by the SHO of P.S. Madeji that the appellant is not involved in any other case except the instant case in which he is awarded a sentence. From the report, the contention of the learned counsel for the appellant is fortified that the appellant is a first offender. In my humble view, there are good chances of reformation and rehabilitation for the first offenders, and it will be least beneficial for the society to send such offenders to jail instead of providing them with an opportunity of reformation.

7. The Probation of Offenders Ordinance 1960 (hereinafter referred as 'the said Ordinance') is a reformatory measure, and its object is to reclaim amateur offenders who, if spared the indignity of incarceration, can be usefully rehabilitated in society. A jail term should normally be enough to wipe out the stain of guilt, but the sentence which the society passes on convicts is relentless. The ignominy commonly associated with a jail term and the social stigma which attaches to convicts often render the remedy worse than the disease and the very purpose of punishment stands in the danger of being frustrated. In recalcitrant cases, punishment has to be deterrent so that others similarly minded may warn themselves of the hazards of taking to a career of crime. But the novice who strays into the path of crime ought, in the interest of society, be treated as being socially sick. Crimes are not always rooted in criminal tendencies, and their origin may lie in psychological factors induced by hunger, want and poverty. The said Ordinance recognises the importance of environmental influence in the commission of crimes and prescribes a remedy whereby the offender can be reformed and rehabilitated in society. An attitude of social defiance and recklessness which comes to a convict who, after a jail term, may think that he has no more to lose or fear, which resultantly may breed a litter of crime. The object of the said Ordinance is to nip that attitude in the bud.

8. The probation system in our country is usually considered as a boon for some of the selected offenders, but it is more than this limited scope. It is a system which provides a means of rehabilitation without the necessity of breaking up the offender's normal life and removing him from the natural surroundings of his home. It may be used as a tool to raise the status of a convicted offender by making him a useful member of the society. The institution of probation may also be used for recompensing the society if it is integrated with community services for the benefit of the society. In this respect, I would like to take reliance from a case reported as Ghulam Dastagir and 3 others v. the State (PLD 2014 Balochistan 100), in which it is held as: -

"The said language of subsection (2) of section 5 of the Ordinance does not exclude the making of a community service order. The court can impose conditions with regard to the offender's environment and which prevent a repetition of the same offence and which rehabilitate him as an honest industrious and law-abiding citizen. Under the Rules also an offender can be required to take advantage of the social, recreational and educational facilities which might contribute towards his welfare and general well-being. The question under consideration is whether the petitioners would repeat the offence and would they indeed be rehabilitated if they were simply required to periodically mark their attendance before their probationer officer or is there a better chance to make them law-abiding citizens if they were to serve the community. I am drawn to the irresistible conclusion that the latter course with its element of reparation/pay-back would better achieve the stated goal, and one that would also benefit the community."

9. As the appellant is an amateur and a novice offender, therefore, it will be beneficial for him and the society alike to place him on probation. I, therefore, while maintaining the sentence of imprisonment of one year imposed by the learned Additional Sessions Judge, give the appellant under the supervision of the Probation Officer for one year upon executing the requisite bonds subject to furnishing surety of Rs.10,000/ and P.R. bond of equalling amount. The bond shall contain a condition that during the period of probation, the appellant/probationer shall restrain from any immoral, illegal activities and felonies and shall also improve his behaviour. There shall also be a condition of the probation and the bond that the appellant shall render community service. As the appellant is a Muslim, therefore, it is hereby directed that he shall perform 'the community service by participating in arrangements of Jumma Prayer in a Jamia Masjid close to his residence or workplace. He has to give assistance in sweeping and wiping the prayer area, spreading the prayer mats and other ancillary work along-with the regular staff and/or volunteers of the said Jamia Masjid. At the end of each month, the appellant shall obtain a certificate from the Imam of the Masjid or the President of the Masjid Committee that he is regularly performing such community service and produce the said certificate before the Probation Officer. The Probation Officer shall assure that the appellant is performing the regular community service. In the case of violation of any terms and condition of the bond including the condition of community service, the probation officer may submit a report before the trial Court. The trial Court is authorised to pass an appropriate order on such report either by imposing a fresh condition or extending the period of probation or even cancellation of the probation order. In the case of cancellation or annulment of the probation order, the appellant will be sent back to jail to pass the remaining period of his sentence. The instant appeal is disposed of in the above terms.

WA/S-27/Sindh

Order accordingly.

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The following International Human Rights Law and Standards can be accessed at www.ohchr.org

- Universal Declaration Human Rights
- UN Convention on the Rights of the Child
- International Covenant on Civil and Political Rights
- Beijing Rules on Juvenile Justice
- UN Rules on the Protection of the Rights of all Children deprived of their liberty
- Riyadh Guidelines for the Prevention of Delinquency
- UN Guidelines for the Protection of all persons under any form of detention
- Convention against Torture

- Law Department, Government of Sindh can be accessed at www.sindhlaws.gov.pk
- Case laws and notifications from Sindh High court can be accessed at www.sindhhighcourt.gov.pk
- Resources and material from Sindh Judicial Academy can be accessed at www.sja.gos.pk



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