

Q Critically analyse Juvenile Justice system of Pakistan and give pragmatic suggestions to improve it.

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AIM AND OBJECTIVE OF JUVENILE JUSTICE SYSTEM.

The aim and objective of Juvenile justice system is the protection of childrens involved in crime and saving them from mixing them with adults criminals.

WHO IS JUVENILE:

- * According to CRC, juvenile is every human being under the age of 18.
- * According to Black's law Dictionary, A person is juvenile, who has not reached at the age in which one should be treated as an adult in criminal system.

JUVENILE JUSTICE SYSTEM OF PAKISTAN:

a) The law on Juvenile offenders before Ratification of the "UNCRC":

The United Nation General Assembly adopted Convention on the Rights of the Child (CRC) on 20th Nov, 1989. So far,

190 nations have ratified the Convention. It provides for social, economic, and cultural rights of the children. Being signatories to this convention, the parties are bound to abide by its articles, the number of articles in Convention are 41. Pakistan ratified CRC on 12th, Nov, 1990 whereby arrangements were to be made to provide and ensure the rights of children as written in CRC.

Before the ratification of Pakistan to the UNCRC the laws on juvenile justice were not enacted in a single legislative document. The most significant ones are listed below.

PPC (Pakistan Penal Code): set the age of criminal responsibility to 10 years, or up to 14 years of age.

CRPC (Criminal Procedure Code): Contains various provisions aimed at protecting underage offenders. Section 29 B, provides a special procedure for the custody, trial and punishment of juvenile offenders. Section 497 of the CRPC gives a relaxation to juvenile offenders for the grant of bail of non-bailable offences if the juvenile is below the age 16 years at the time of commission of the offence. Section 399 of the CRPC provides in case of sentencing juvenile below the age of 15 shall be confined in rehabilitation centre

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Section 399 of the CRPC provides in case of sentencing juvenile below the age of 15 shall be confined in rehabilitation centre

instead of being prisoned in jail.

After unconditionally ratified the UNCRC on 12th Nov, 1990, the need arose to have a coherent set of laws on juvenile justice, which took 10 years.

b) The Juvenile Justice System Ordinance, 2000:

(JJSO 2000) was incorporated into the criminal legal system of Pakistan to provide protection and safeguards to juvenile offenders.

Among them the most important are: The right to legal assistance at the expense of the state, the establishment of courts with exclusive jurisdiction to try cases involving juvenile offenders, the prohibition of joint trial of juvenile with adult, the prohibition of the sentencing the juvenile to death or labour during the imprisonment and the prohibition of corporal punishment while in custody.

But, A report by "Amnesty International" states that the implementation of the (JJSO 2000) was very slow in the beginning 5 years.

Some of its provisions were not implemented at all, other were implemented rarely and partially.

To complicate matters in 2004, a Full bench of Lahore High Court declared the JJSO 2000 unreasonable, unconstitutional, and impracticable, and revoked its operations immediately.

On 11 Feb, 2005, the ~~Sump~~ Supreme court admitted appeals filed by the Federal Govt and Society for the Protection of the Rights of the Child (SPARC). The Judgement of Lahore court remained suspended until eventually, the Juvenile Justice System Act (JJSA 2018) 2018 enacted which repealed the previous ordinance.

c) The Juvenile Justice System Act 2018:

The JJSA 2018 overcomes the shortcomings of the JJSO 2000 and provides a much more articulated system for criminal justice and social reintegration of juvenile offenders. The act defines a child as a person who has not attained the age of 18 years. This act provides a special procedure for the **arrest, investigation, bail, trial, detention and rehabilitation** of juvenile offenders.

The JJSA 2018 prescribes that "no juvenile offender shall be committed to prison, ordered to labour, put in fetters, handcuffed, or given any corporal punishment at any time in custody."

The JJSA 2018 ordered that "no juvenile may be charged with and tried for an offence together with an adult."

The JJSA 2018, ordered that "Juvenile should not be sentenced to death or life imprisonment."

The JJSA 2018 compels the officer in-charge of the investigation of a crime "where juvenile is involved to inform as soon as possible the guardian of the juvenile of the arrest.

The Act also states that the custody and detention of juvenile offenders shall take place in observation homes and rehabilitation centres respectively.

Several other provision of JJSA 2018, provides for effective age determination protocols, and the involvement of the guardian of the juvenile offender at all stages of the proceeding and no female juvenile should be investigated by the male officers and must be kept in separate female rehabilitation centres.

Unfortunately, the ground reality is very different from these commendable legislative efforts. The next part will highlight the inefficiency of the Juvenile justice system of Pakistan and to what extent these Acts are really implemented.

ANALYSIS OF JUVENILE JUSTICE SYSTEM OF PAKISTAN:

1) EXECUTION OF JUVENILE OFFENDERS.

The most serious and inhumane violation of the right of juvenile offenders is the

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continual awarding of death sentences to juvenile offenders. Although, Pakistan has enacted legislation prohibiting the imposition of the death penalty against juvenile offenders hundreds of minors have been sentenced to death. (In 2014 the GOP lifted ban on the death penalty and in result at least six minors) ^{→ NCC to Justice Project Pak Report (2017)} have been unlawfully executed after even despite the existence of credible evidence in favour of their juvenility. (Even more disturbing fact is that 10% of the current death row population in the prisons of Pakistan consists of those prisoners who were juveniles at the ~~#~~ time of commencement of the offence and can be executed in the future.)

The most important factor that leads to the execution of juvenile convicts in Pakistan is the lack of implementation of age determination protocols. Under the JJS law in Pakistan it is the responsibility of the arresting officers to determine whether the person who is arrested is child or adult, which is primarily based on the visual age assessment.

2) Low Minimum Age of Criminal Responsibility for Juveniles: The low minimum age of criminal responsibility (10 years) as described by the

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PPC is not compatible with the internationally accepted minimum age of criminal responsibility for a juvenile offender.

The UNCRRC condemns the worsening situation of juvenile justice in Pakistan and urges Pakistan to revise its legislation and increase the minimum age of criminal responsibility to an internationally accepted level (14 to 16 years).

3) Torture and Abuse of Juveniles by the Police:

Police torture and brutality are common feature of policing in Pakistan. Juveniles can be especially easy targets for the police because they are young, and often unaware of their rights.

The Medico-legal Certificates (MLCs) stated that out of 1867 medical tests 1424 tests of juvenile confirmed the alleged abuses.

The data from (MLCs) indicates that Police abused Juveniles and adults using similar methods and use various abusive methods, the most common beating is severe beating. (Other methods includes torture, solitary confinement, suspension, crushing, cultural humiliation, sexual violence amounting to penetration, and sexual violence not amounting to penetration.)

4) Lack of Rehabilitation Centers:

Juveniles are housed with ^{adult} prisoners in some jails but in separate barrack. This leads to abuse of juveniles by other prisoners and prison staff. Such

conditions have also resulted in sexual abuse of a juvenile in prisons, which are not even investigated properly and the perpetrators go unpunished.

This situation arises from the lack of juvenile rehabilitation centres and observations home.

In Pakistan out of the total 112 prisons only 7 prisons are made for juvenile inmates.

5) Inadequate legal Representations:

Article 10(1) of the constitution states that no person shall be denied the right to consult and be defended by a legal practitioner of his choice.

The level of awareness is not there in poor sections of the society. Juvenile offenders who cannot afford to engage the private legal counsel are also behind the bars.

Therefore, legal counsels are provided to juvenile offenders at the expense of the state, but the quality of representation of these appointed lawyers is usually poor. Most of them are young and inexperienced lawyers or not aware of the technicality of the case. This resulted in convictions and in some cases the execution of juveniles.

PRAGMATIC SUGGESTIONS TOWARDS FOR BETTER JUVENILE JUSTICE SYSTEM.

1) Government to Reinstate the prohibition on Death Penalty.

The Government of Pakistan must

reimposed ban on death penalty. 10% of death row population consists of juvenile. In order to protect them from executions, the public administration should launch investigation into their cases to determine the evidence of juvenility and transform their death sentence into life imprisonment or pardon their remaining punishment.

2) Special Measures to be Taken for Age Determination.

Because the awarding of death sentence to juvenile is linked with the procedure used to determine their age, and which is mostly determine visually and inefficiently, it is strongly recommended that special measures be taken to formulate and enforce the age determination protocols in Pakistan.

3) Protection of Juvenile and Creation of Rehabilitation Centers.

The right to dignity of juvenile must be respected in prisons and effective measures must be taken to safeguards the juveniles from abuse therein.

Seperate Rehabilitation centers must be established all over the country. Juvenile under-trial prisoners must not be kept in ~~Prison~~ Prisons and should be released on probation under the supervision of probation officer.

4) ~~INCRE~~ Increase in the Age of Criminal Responsibility:

The minimum age of criminal responsibility for a juvenile described in PPC must be increased upto age of 16 yrs, which is an internationally accepted level of age of criminal responsibility for a juvenile.

CONCLUSION:

Juvenile justice system of Pakistan is faulty and ineffective, it is although present in legislative form but can no where be seen in practicality and in implementation. Several factors contribute it faultiness and ineffectiveness such as lack of resources, juveniles are tortured and kept in prisons with adults, they are put in custody, the age of criminal responsibility is not according to UNCRC and much more. However the government and authorized institution has to take steps in order to protect the dignity and right of juvenile offenders as well as should take steps in effectively implementing the JJSA 2018.