

# **Shari'ah Appraisal of Juvenile Justice System Act 2018**

**Thesis submitted in partial fulfillment of the requirements for the  
degree of LL.M Shari'ah and Law**



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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

## **DEDICATION**

This thesis is dedicated to

My Parents

For their unwavering love, endless support, and boundless encouragement throughout my academic journey. Their sacrifices, guidance, and belief in my abilities have been the cornerstone of my perseverance. The values and wisdom they imparted have shaped not only this research but also my character and aspirations. I am grateful for the opportunities they provided and the sacrifices they made to ensure my education. This dedication stands as a token of my immense gratitude and love.

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He who cannot acknowledge the favors of fellow beings can never truly acknowledge the blessings of his Lord.

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I cannot forget the spiritual presence and enduring legacy of my late grandfather, a renowned Islamic scholar of our region, whose scholarly life and piety have always been a source of silent inspiration for me. Though I never had the honor of meeting him in person, the accounts of his devotion and scholarship have profoundly influenced my

academic and personal journey. May Allah grant him the highest place in Jannah and keep his soul in eternal peace.

And how could I forget my father, my lifelong mentor, whose foresight and vision have empowered me with both religious and contemporary knowledge. This work stands as a reflection of that dual legacy. May he live a long and healthy life.

Above all, I praise Allah (SWT) first and last for granting me the strength to complete this complex work successfully.

Peace and blessings be upon His Last Messenger, Muhammad (PBUH).

Mujeeb ur Rahman

## ABSTRACT

This research examines the juvenile justice framework in Pakistan with specific focus on the Juvenile Justice System Act (JJSA) 2018 in light of Islamic Sharī‘ah principles. It evaluates whether the Act, which aims to protect and rehabilitate children in conflict with the law, aligns with Islamic teachings and Pakistan’s constitutional requirement to enforce laws consistent with Sharī‘ah. The study addresses core issues such as the definition of a juvenile, the age of criminal responsibility, rehabilitation, and diversionary practices. It critically assesses whether current statutory provisions are compatible with the moral and legal standards established by Islamic jurisprudence, which prioritizes mercy (raḥmah), reform (iṣlāḥ), and legal capacity (taklīf).

The research adopts a descriptive and comparative methodology. Primary Islamic sources including the Qur’ān and Sunnah along with classical juristic texts from the four Sunni schools of thought are consulted to understand the Islamic legal position on juvenile responsibility. Pakistani statutes such as the JJSA 2018, Pakistan Penal Code, and international conventions like the CRC are analyzed in parallel. Secondary sources including scholarly articles, case law, human rights reports, and academic treatises are used to highlight gaps in legal definitions, age determination processes, and enforcement mechanisms in Pakistan’s juvenile justice system.

The study reveal that the JJSA 2018 introduces important procedural protections and reflects some Islamic values such as rehabilitation and child-sensitive proceedings it falls short in aligning with Sharī‘ah in several key areas. Islamic law bases criminal responsibility on puberty (bulūgh) and discernment (tamyīz), not a fixed age, and exempts children from ḥudūd and qiṣāṣ penalties while allowing civil remedies like damān. The JJSA’s fixed age threshold, inconsistent implementation, and inadequate infrastructure for juvenile rehabilitation remain challenges. Therefore, the research

recommends legal reforms that incorporate Shari‘ah based age criteria, clearer protocols for age verification, and enhanced rehabilitation models rooted in the Islamic principles of justice and compassion.



## TRANSLITERATION TABLE

ا	a	ڈ	d	غ	gh	بھ	bh
ب	b	ذ	dh	ف	f	پھ	ph
پ	p	ر	r	ق	q	تھ	th
ت	t	ڑ	r	ک	k	ٹھ	th
ٹ	t	ز	z	گ	g	جھ	jh
ث	th	ژ	z	ل	l	چھ	ch
ج	j	س	s	م	m	دھ	dh
چ	ch	ش	sh	ن	n	ڈھ	dh
ح	h	ص	s	ں	n	ڑھ	rh
خ	kh	ط	t	ہ	h	کھ	kh
د	d	ظ	z	ی	y	گھ	gh

### Long Vowels

ا	ā
آ	ā
ی	ī
و	ū
و (Urdu)	ō
ے (Urdu)	ē

### Short Vowels

ا	a
ی	i
و	u

### Diphthongs

و	(Arabic) aw
و	(Persian/Urdu) au
و	(Turkish) ev
ی	(Arabic) ay
ی	(Persian/Urdu) ai
ی	(Turkish) ey

### Doubled

و	(Arabic) uww
و	(Persian) uvv
و	(Urdu) uvv
ی	iyy

أ (ʾ), when it appears at the middle or end of a word, is transliterated as elevated comma (') followed by the letter representing the vowel it carries. However, when أ appears at the beginning of a word it will be represented only by the letter representing the vowel it carries.

ع is transliterated as elevated inverted comma (').

ض as an Arabic letter is transliterated as (d), and as a Persian/Turkish/Urdu letter as (z).

و as an Arabic letter is transliterated as (w), and as a Persian/Turkish/Urdu letter is transliterated as (v).

اھ is transliterated as (ah) in pause form and as (at) in construct form.

Article ا is transliterated as (al-) whether followed by a moon or a sun letter, however, in construct form it will be transliterated as (l).

و as a Persian/Urdu conjunction is transliterated as (-o) whereas as an Arabic conjunction و is transliterated as (wa).

Short vowel (ا) in Persian/Urdu possessive or adjectival form is transliterated as (-i).

## **Table of Abbreviations**

<b>JJSA</b>	Juvenile Justice System Act 2018
<b>IPPC</b>	International Penal and Penitentiary Congress
<b>CrPC</b>	Code of Criminal Procedure
<b>CPC</b>	Civil Procedure Code
<b>CRC</b>	Convention on the Rights of the Child
<b>DSCs</b>	Dispute Settlement Committees
<b>FATA</b>	Federally Administered Tribal Areas
<b>HRC</b>	Human Rights Committee
<b>HRCP</b>	Human Rights Commission of Pakistan
<b>HRW</b>	Human Rights Watch
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>JJSO</b>	Juvenile Justice Ordinance
<b>KP</b>	Khyber Paktunkhwa
<b>NARA</b>	National Aliens' Registration Authority
<b>NWFP</b>	North Western Frontier Province
<b>GAS</b>	Organization of American States
<b>PBUH</b>	Peace Be Upon Him
<b>PPC</b>	Pakistan Penal Code
<b>PYOO</b>	The Punjab Youthful Offenders Ordinance
<b>RSA</b>	Reformatory School Act
<b>SEAD</b>	South East Asia Declaration
<b>UDHR</b>	Universal Declaration on Human Rights
<b>UN</b>	United Nations
<b>UNHCR</b>	United Nations High Commissioner for Refugees

**USA** United States of America

**USSR** Union of Soviet Socialist Republic

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## Sharī'ah appraisal of Juvenile Justice System Act 2018

### 1.1 Introduction

The Islamic conception of justice, which comprises delivering what is due to the person to whom it is due or defending the rights (ḥuqūq) belonging to others, is centred on this idea of balance. Respecting rights starts with one's relationship with God, where one acknowledges that He is the only one deserving of worship, the only sovereign, and the ultimate goal of one's endeavours (this is part of the fundamental testimonies of Islam).

The message of the Qur'an is:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُونُوا قَوَّامِينَ لِلّٰهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ عَلَىٰ ءَلَّا تَعْدِلُوا ؕ اَعْدِلُوا هُوَ أَقْرَبُ  
لِلتَّقْوَىٰ ۚ وَاتَّقُوا اللّٰهَ ۚ إِنَّ اللّٰهَ خَبِيرٌ بِمَا تَعْمَلُونَ<sup>1</sup>

O you who believe, be steadfast for Allah, (and) witness for justice. Do justice. That is nearer to Taqwa, Fear Allah. Surely, Allah Is All-Aware of what you do.<sup>2</sup>

Because of the immaturity of juveniles' actions are viewed as mistakes rather than crimes. Ignorance of crime or their purposeful participation in it. Consequently, someone who is unaware of the purpose of the act and does not understand it cannot be held criminally responsible. Completely cognizant of the gravity of the offense and its repercussions. "But if one is compelled by need, without deliberate compliance, or going beyond

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<sup>1</sup> Al-Qur'ān 5:8

<sup>2</sup> Mufti Muḥammad Taqī Uthmānī, *The Meaning of The NOBLE QUR'AN* (Maktaba Ma'ariful Al-Qur'ān, Karachi, July 2010), 198.

appropriate boundaries, then he is innocent’<sup>3</sup>

عَنِ ابْنِ عَبَّاسٍ، عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ " إِنَّ اللَّهَ وَضَعَ عَنْ أُمَّتِي الْخَطَأَ وَالنِّسْيَانَ وَمَا اسْتُكْرِهُوا عَلَيْهِ

Allah has forgiven my nation for mistakes and forgetfulness, and what they are forced to do<sup>4</sup>.

Justice for everyone is a crucial issue globally. Although rights for children have been discussed for years, there are still obstacles. The 2018 Juvenile Justice System Act (JJSA) was proposed to remedy the gaps in the previous law and repeal it. However, it is debatable if earlier errors have been removed. Minors ought to and must be addressed differently from adults on a national and international level.

The protection of juveniles' best interests has come under scrutiny in the latter half of the 20th century due to global agreements and national laws, the primary goals of which are to deal with and manage juvenile delinquency while maintaining the "best interests of the child" and "safeguard of their fundamental rights"<sup>1</sup> Unfortunately, there are still some fundamental issues with Pakistan's criminal justice system as a whole, of which the juvenile court system is a part. Like many other nations, Pakistan has put in place a distinct judicial system to cater to the particular requirements of young criminals. This strategy seeks to rehabilitate juvenile offenders as opposed to punishing them. However, as Pakistan is an Islamic country, it is imperative to determine whether this system complies with Islamic law. Important facets of Pakistan's juvenile justice system are examined in this study, including the permitted age for juvenile criminal responsibility, diversionary programs, circumstances of incarceration, and the function of religious

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<sup>3</sup> Ibn Mājah. Sunan Ibn Mājah. Hadith no. 2045, in Bāb Ṭalāq al-Mokrah wa al-Nāsi, (Al-Bushrā Publications, karachi.nd): p. 420

<sup>4</sup> ibd



authority.

As per the Juvenile Justice System Ordinance (JJSO) 2000, any individual who is under the age of eighteen at the time of committing an offense is legally regarded as a child. This definition aligns with both the Convention on the Rights of the Child (CRC) and broader international legal standards. A similar interpretation is reflected in the Juvenile Justice System Act (JJSA) 2018, which maintains consistency with the earlier ordinance. In contrast, Section 2 of the Child Marriage Restraint Act of 1929, as amended in 1981, defines a child based on gender: a female is considered a child if under sixteen, while a male is considered a child if under eighteen.<sup>5</sup>

The foundational texts of Islamic law and philosophy are the Qur'ān and Ḥadīth. Islamic legal doctrines unambiguously provide a different kind of justice for young criminals than for adults. According to Shari'ah, children are not considered guilty of any crime until they reach puberty (Bulūgh)<sup>6</sup>.

Islamic jurists hold that human irādah, niyyah, qaṣd, or free will, 'aql, or the capacity to distinguish between morality and error, and strength are formed prior to the onset of puberty (tamyīz), and that their intellect ('aql), or wisdom and judgment, reaches perfection between the ages of puberty and post-puberty (taklīf). Since the kid is well-suited to receive education at this age, they are taught fahm (understanding), beginning in childhood, or before the child is seven.

According to Islamic law, a minor is defined as "any individual who, according to the

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<sup>5</sup> *The Child Marriage Restraint Act, 1929*, Act No. XIX of 1929, § 2, Government of Pakistan, Accessed Jan 25, 2025, <https://punjablaws.gov.pk/laws/147a.html>.

<sup>6</sup> Chughtai, Anser Mahmood, Hafiz Ghulam Abbas, and Nadia Asghar. "Juvenile Justice System in Pakistan: An Islamic Perspective". *Ilkogretim Online* 20, no. 4 (2021).

law that applies to him/her, has not attained maturity"<sup>7</sup>.which highlights the significance of age and maturity in determining legal responsibility. In the context of Sharī'ah, the concept of maturity is closely associated with the attainment of puberty, which is viewed as a crucial milestone that signifies an individual's readiness to assume legal responsibilities and obligations.

Sharī'ah explicitly states that individuals who have not reached puberty or the requisite level of maturity cannot be held legally accountable for their actions. This principle underscores the protective framework surrounding minors in Islamic jurisprudence, ensuring that children are safeguarded from legal repercussions until they are deemed capable of understanding and managing the consequences of their actions. The legal implications of this definition reflect a broader commitment within Islamic law to uphold the rights and welfare of children, affirming their need for protection and fostering a nurturing environment for their growth and development in accordance with Islamic principles.<sup>8</sup>

## **1.2 Significance of Research**

Understanding national and Islamic law as it relates to the juvenile justice system is crucial. One should treat youngsters in the same manner as the Prophet Muhammad

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<sup>7</sup> Rajabi-Ardeshiri, Masoud. "The rights of the child in the Islamic context: The challenges of the local and the global." *The International Journal of Children's Rights* 17, no. 3 (2009): 475-489.

<sup>8</sup> Kaas, Al-Hawary, Dubis Bhutta Birdsall, and Hossain Aziz. "Comprehensive approaches to child development in islamic law." *SYARIAT: Akhwal Syaksiyah, Jinayah, Siyasah and Muamalah* 1, no. 1 (2024): 58-70.

(Peace be Upon Him).

خدمتُ النبيَّ صلى الله عليه وسلم عشر سنين، فما قال لي: أففٍ قط، ولا قال لي لشيءٍ: لمَ فعلتَ كذا؟ ولا لشيءٍ تركته: ألا فعلتَ كذا؟ الراوي : أنس بن مالك.<sup>9</sup>

"I served the Prophet (peace and blessings be upon him) for ten years. Not once did he say to me 'Uff' (a word of displeasure), nor did he ever say to me about something I had done, 'Why did you do that?' or about something I had not done, 'Why didn't you do that?'"

Islam holds that justice is a part of the universe's fundamental essence. Commentators interpret the Qur'an's statement,

وَالسَّمَاءَ رَفَعَهَا وَوَضَعَ الْمِيزَانَ<sup>10</sup>

**" He raised the sky high, and has placed the scale, [7]"<sup>11</sup>**

To signify that "He established justice (athbata al-‘adl)". The Islamic conception of justice, which comprises delivering what is due to the person to whom it is due or defending the rights (ḥuqūq) due to others, is centered on this idea of balance. Juvenile justice refers to a structured framework of laws, regulations, and procedures established to govern the treatment of minors who commit legal offenses, while also ensuring they have access to appropriate legal remedies in situations involving conflict, neglect, or abuse. Every law passed by the parliament is examined in light of Islamic injunctions,

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<sup>9</sup> Muhammad ibn Ismā‘īl al-Bukhārī, Ṣaḥīḥ, Beirut: Dār al-Kitāb al-‘Arabī, 1323 A.H., no. 6038, p. 910.

<sup>10</sup> Al-Qur’ān 55:7

<sup>11</sup> Muhammad Taqi Uthmāni, *The meaning of the noble Quran*: (Karachi: Maktaba Ma'ariful Qur'an, 2007), 998.

and any that contradicts Islamic law is rejected outright. Nevertheless, the contradictory and inconsistent legal system regarding minors leads to ambiguity. It is important to talk about some specific concerns that the entire juvenile justice system is built around, paying particular attention to Pakistan and Islam. What constitutes an appropriate juvenile age must be made apparent for the administration of justice. That ought to be in compliance with Pakistani law and Sharī'ah.

### **1.3 Literature Review**

Numerous books and articles cover the topic of determining a minor's age for criminal liability and how it affects other juvenile-related issues. However, in my research, I discovered that there aren't many comparative studies in this area, especially when it comes to Pakistan's juvenile justice system and how it should be viewed in the context of Islamic law (Sharī'ah).

Following books, Articles and research papers will be consulted for the purpose of this work.

In the book “Al Tashri Al Jinaye , By Daktoor Abdul Qadir Aoda ( عنوان الكتاب: التشريع الجنائي الإسلامي مقارناً بالقانون الوضعي . المؤلف: عبد القادر عودة )” the criminal liability of juvenile and its impacts has been discussed, opinions of Islamic jurists are mentioned and compared this matter with Common Law. However, Pakistani law has not been addressed in the book.

In the book “Jami ul Ahkaam Al-Sighaar, By Muhammad bin Mahmood bin Hassan Al-Asroshoni ( عنوان الكتاب : جامع أحكام الصغار. المؤلف : محمد بن محمود بن الحسين بن أحمد الأسروشنى )” the liability, activity, capacity, educational attainments of juvenile and its impacts has been discussed, opinions of Islamic jurists are mentioned. However, the book lacks information on common law and Pakistani law.

Alotaibi, Haged, and colleagues conducted a study analyzing the application of Islamic criminal law across Muslim-majority countries, with a particular focus on its historical foundations and the modern challenges it faces. Their research, grounded in secondary data such as scholarly books, journal articles, and legal documentation, reveals that while many Islamic nations have adopted contemporary criminal codes, certain legal provisions remain influenced by interpretations of Islamic principles offered by independent religious scholars, often referred to as *jurists*. Islamic criminal law emphasizes the protection of individual rights, including personal privacy, correspondence, and freedom from arbitrary searches or seizures. The study concludes that this legal tradition is fundamentally rooted in divine revelation, with the goal of preserving human dignity and the sanctity of life. Nonetheless, the authors recommend further investigation into the application of Islamic criminal law within Pakistan, especially concerning evolving legal challenges and the issue of juvenile criminal responsibility.

Ijaz, Aqsa, and co-authors explore the implementation challenges and future prospects of the Juvenile Justice System Act (JJSA) in Pakistan. Their research focuses on identifying the procedural shortcomings and institutional hurdles that hinder the effective enforcement of the Act, particularly during legal proceedings involving minors. The study critically assesses areas where statutory obligations under the Act are inadequately observed and calls for systematic reforms to ensure the comprehensive application of juvenile justice provisions throughout the country.

The Research work lack information about the Sharī'ah on effectiveness of the Juvenile Justice System Act in improving outcomes for juveniles in the criminal justice system. Abbas, Hafiz Ghulam et al. in their research have investigated the concept of juvenile delinquency and the Juvenile Justice System in Pakistan. They concluded that in the

second half of the 20th century, there has been a focus on protecting the best interests of juveniles and safeguarding their fundamental rights through international convention and national legislation.

Muhammad Munir's article "The Rights of the Child in Islam and Pakistan's Juvenile Justice System Ordinance 2000" presents an early attempt to analyze juvenile justice from a dual legal perspective. However, as it was written before the enactment of the JJSA 2018, it lacks relevance to the current legislative framework.

Mawsū'at al-Fiqh al-Islāmī, published by the Ministry of Awqāf in Kuwait, provides a rich compendium of rulings on taklīf (legal responsibility), tamyīz (discernment), and bulūgh (puberty) from the four major Sunni schools of thought. Though doctrinally comprehensive, it does not address contemporary juvenile legal systems or provide any Pakistan-specific analysis.

Jasser Auda's Maqāṣid al-Sharī'ah: A Contemporary Perspective offers an essential framework for evaluating modern legislation through the higher objectives of Islamic law, such as the preservation of life, intellect, lineage, and dignity. His insights help contextualize juvenile justice within broader Sharī'ah goals but are not directly focused on Pakistan.

The yearly reports published by the Human Rights Commission of Pakistan (HRCP) and the Society for the Protection of the Rights of the Child (SPARC) provide valuable insights into how juvenile justice laws are applied in practice. These reports provide empirical evidence of the shortcomings in Pakistan's justice system, especially concerning the protection and rehabilitation of juveniles, though they do not address Sharī'ah compliance.

This collection of classical and contemporary sources reveals a scholarly gap in evaluating Pakistan's juvenile justice laws through a Sharī'ah lens. This study, therefore, seeks to contribute to this underexplored area by bridging Islamic legal theory with the statutory framework of the JJSA 2018.

#### **1.4 Research Questions**

The study is address the following questions:

1. What is the standard age for juvenile criminal liability in the legal system of Pakistan?
2. To what extent does the Juvenile Justice System Act 2018 align with Sharī'ah principles in determining juvenile criminal liability?
3. What are the legal implications of juvenile criminal liability in Pakistani law and Sharī'ah, and how do they impact the treatment and rights of juvenile offenders?

#### **1.5 Objectives of Research**

1. To compare and contrast the age thresholds for determining juvenile criminal liability in the legal system of Pakistan.
2. To evaluate the conformity of the Juvenile Justice System Act of 2018 with Sharī'ah principles in addressing juvenile criminal liability.
3. To analyze the legal consequences and effects of juvenile criminal liability in Pakistani law and Sharī'ah, and assess their implications for the treatment and rights of juvenile offenders.

## **1.6 Research Methodology**

The following methodology is adopted for the completion of this research work:

1. The research is descriptive and comparative.
2. The primary source of Islamic Law (The Holy Al-Qur'ān, The Sunnah, etc.) is consulted.
3. Secondary sources of Islamic Law are also be consulted.
4. Legal studies that determine the age of criminal responsibility of juveniles are analyzed.
5. As far as comparison is concerned, every point is compared separately under both Laws.
6. Information is collected using library books, articles, dictionaries, Law magazines, general remarks, research papers, and different websites.

## **1.7 Outlines of Thesis**

The thesis consists of four chapters.

The First Chapter explores the historical and legal development of juvenile justice in Pakistan. It outlines the definitions, international instruments (like the CRC), and the evolution from the Juvenile Justice System Ordinance 2000 to the Juvenile



Justice System Act 2018. It highlights legal reforms, challenges, and procedural frameworks introduced under Pakistani law.

The Second Chapter examines the Sharī‘ah perspective on juvenile justice. It discusses concepts such as bulūgh (puberty), tamyīz (discernment), and taklīf (legal accountability). It further explores the rules of criminal responsibility, exemption from ḥudūd and qiṣāṣ, and rehabilitative justice in Islamic jurisprudence. Classical and contemporary juristic views from the four Sunni schools are analyzed.

The Third Chapter provides a comparative study of the Juvenile Justice System Act 2018 with Sharī‘ah principles. It evaluates areas of convergence and conflict, focusing on age determination, punishments, procedural justice, rehabilitation, and moral reform. The chapter also critiques practical implementation issues and suggests the potential of integrating Sharī‘ah ethics into statutory mechanisms.

The Fourth Chapter concludes the research by summarizing key findings and providing Sharī‘ah-based and practical recommendations for reforming the Juvenile Justice System Act 2018 in Pakistan.

## Chapter 1

### Juvenile Justice System; A study from legal perspective

#### 1.1 Introduction

The term *juvenile justice system* refers to a legal framework specifically designed for handling cases involving minor's individuals who violate legal or social norms. This system is built on the premise that children, due to their physical vulnerability and underdeveloped cognitive abilities, require a distinct legal approach focused more on rehabilitation and reintegration than punishment. While the broader criminal justice system includes adult offenders, the juvenile justice component emphasizes the unique needs of young individuals and rejects treating juvenile delinquency as merely a scaled down version of adult crime.

The Juvenile Justice System Act (JJSA) of 2018 defines a child as any individual below the age of eighteen. However, various legal statutes in Pakistan offer differing definitions. For instance, under the Hudūd Ordinance, adulthood is determined either by reaching puberty or, in the case of females, surpassing the age of sixteen or eighteen. This ordinance takes precedence over other related laws. According to Pakistan's legal framework, specifically Section 82 of the Pakistan Penal Code (PPC) 1860, any act committed by a child under ten years of age is not considered an offense. Similarly, Section 83 of the PPC exempts children aged between ten and fourteen from liability if they lack the maturity to understand the consequences of their actions. Furthermore, Section 84 of the PPC states that individuals who are mentally incapacitated at the time of committing an act are not legally responsible, as they cannot comprehend the nature or unlawfulness of their behavior. Until 2015, Pakistan recognized seven years as the minimum age for criminal responsibility, which was subsequently raised to ten in 2016.

It is important to note that the age threshold for juvenile responsibility varies globally. However, as children grow older and their mental capacity to grasp right from wrong matures, they gradually become accountable under the law. The United Nations Committee on the Rights of the Child recommends a standard minimum age of twelve, urging state parties to align with this guideline.

## **1.2 An overview of Juvenile Justice System**

The juvenile justice system is specifically structured to address and support minors who come into conflict with the law. Its primary objective is to prevent juvenile delinquency and ensure the rehabilitation and reintegration of young offenders. This system includes a combination of legal provisions, institutional policies, operational procedures, staff, infrastructure, and dedicated resources tailored to the unique needs of adolescents.<sup>12</sup> Although the juvenile justice process encompasses traditional phases such as arrest, trial, and sentencing, its foundation lies in safeguarding the welfare and future of the minor. The framework is not uniform globally; it varies significantly based on social values, religious beliefs, political structures, and each nation's unique strategies for managing youth related offenses. International organizations, including the United Nations, emphasize the essential role of juvenile courts in maintaining legal order and societal well-being.<sup>13</sup> According to the UN Committee on the Rights of the Child, the juvenile justice system is a distinct and protective mechanism established solely for minors. From a human rights standpoint, this system recognizes the physical and psychological

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<sup>12</sup> Mousumi Dey, "Juvenile Justice in India," *International Journal of Interdisciplinary and Multidisciplinary Studies* 1, no.6 (2014): 64-70. Accessed March 18, 2025. Available online at <http://www.ijims.com>.

<sup>13</sup> UN Congress, "Juvenile Justice: Before and after the Onset of Juvenile Delinquency" (working paper, Secretariat for the Sixth United Nations Congress, 180), 62-63, Accessed March 18, 2025. <https://www.ojp.gov/ncjrs/virtuallibrary/abstracts/juvenile-justice-and-after-onset-delinquency>

vulnerabilities of children and prioritizes their development, safety, and care.<sup>14</sup>

Experts and reformists within juvenile justice have identified three central pillars of this system:

The first is the "Preventive Approach," which focuses on identifying and addressing the root causes of juvenile offenses. This strategy has long been overlooked but is vital in reducing youth crime.<sup>15</sup>

The second pillar involves protective measures for minors once they enter the legal system. Though they may pass through formal procedures, specific safeguards are implemented to prevent harm and ensure their dignity is upheld.

The third critical element is rehabilitation and reintegration. This emphasizes restoring the child's role in society by equipping them with tools for personal growth and responsible citizenship.

The Convention on the Rights of the Child (CRC), widely ratified and considered a cornerstone of children's rights, plays a pivotal role in guiding global juvenile justice reforms. It contains detailed provisions across multiple articles, particularly Articles 37, 39, and 40, which address the treatment and rights of juveniles in legal conflict. Member states are obligated to submit periodic progress reports on the condition of children's rights within their jurisdictions.<sup>16</sup>

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<sup>14</sup> Stephanie Hoffman and Corinne Baerg, "Juvenile Justice in Ghana: A case Study to Assess the Status of Juvenile Justice in Ghana" (paper, the Commonwealth Human Rights Initiative, 2011), 1-29, Accessed March 18, 2025.

<http://www.humanrightsinitiative.org/old/publications/ghana/JuvenileJusticeinGhana.pdf>.

<sup>15</sup> Barbara Henkes, "The Role of Education in Juvenile Justice in Eastern Europe and the Former Soviet Union" (paper series, Open Society Institute, 2000), 1-7, Accessed March 18, 2025.

[https://childhub.org/sites/default/files/library/attachments/347\\_410\\_EN\\_original\\_1.pdf](https://childhub.org/sites/default/files/library/attachments/347_410_EN_original_1.pdf)

<sup>16</sup> Ruck, Martin D., Daniel P. Keating, Elizabeth M. Saewyc, Felton Earls, and Asher Ben-Arieh. "The United Nations Convention on the Rights of the Child: Its Relevance for Adolescents." *Journal of Research on Adolescence* 26, no. 1 (2016): 16-29.

Moreover, four key United Nations instruments supplement the CRC and serve as guiding frameworks for juvenile justice:

The first is the Riyadh Guidelines promote strengthening social systems and preventive strategies for youth in legal trouble.

The second is the UN Rules for the Protection of Juveniles Deprived of their Liberty stress humane treatment and the necessity of preparing youth for reintegration.

The third is the Beijing Rules outline comprehensive principles for establishing fair, effective, and forward-looking juvenile justice systems.<sup>17</sup>

The fourth is The Tokyo Rules highlight the importance of non-custodial alternatives for young offenders, encouraging community-based resolutions over incarceration.<sup>18</sup>

Together, these global standards advocate for a justice system that upholds the dignity of children, prioritizes reform over punishment, and aligns with the broader goals of social welfare and human rights.

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<sup>17</sup> Joutsen, Matti. "UN Standards and Norms on Juvenile Justice: From Soft Law to Hard Law." In *165th International Senior Seminar: United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), Fuchu, Tokyo, Resource Material*, no. 102, pp. 37-47. 2017.

<sup>18</sup> Abbas, Hafiz Ghulam, Anser Mahmood Chughtai, and Khalid Hussain. "Juvenile justice system in Pakistan: A critical appraisal." *International Research Journal of Education and Innovation* 3, no. 1 (2022): 76-92.

### 1.3 Pakistan's Juvenile Justice System: Current Situation

Pakistan inherited the bulk of its legal framework from the British colonial administration. Much of the early legislation relevant to juvenile justice was rooted in colonial laws that primarily reflected the imperial government's outlook on crime and rehabilitation, rather than being tailored to the social and cultural realities of the subcontinent. Among these early statutes were the Reformatory Schools Act of 1897 and the Borstal Schools Act of 1926, both of which aimed to provide institutional care and correctional education for young offenders, albeit in a custodial environment.<sup>19</sup> These laws laid the foundational structure for separating juveniles from adult criminals and introduced the notion of reformatory rather than punitive justice. Despite these colonial efforts, Pakistan lacked a unified national juvenile justice policy for over five decades. Until the turn of the 21st century, various provinces operated under a fragmented and inconsistent legal framework, making it difficult to ensure equal protection for children across the country. Each region had its own set of rules, procedures, and institutions, with no centralized mechanism for standardizing the treatment of juveniles.

Recognizing this critical gap, the government under General Pervez Musharraf introduced a comprehensive legal instrument in the year 2000 known as the Juvenile Justice System Ordinance (JJSO) 2000. This marked the first attempt to formulate a coherent, nationwide juvenile justice policy in Pakistan. The Ordinance aimed to ensure the protection, welfare, and rehabilitation of children in conflict with the law by outlining specialized legal procedures, including the creation of juvenile courts, diversion

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<sup>19</sup> Khushhal, Asif, Muhammad Zahid, and Azizullah Jan. "Analysis of Familial Factors behind Children's Involvement in Delinquent Acts in Mardan, Pakistan." *Liberal Arts and Social Sciences International Journal (LASSIJ)* 1, no. 2 (2017): 50-59.

measures, and probation services.<sup>20</sup> It was a significant step forward in aligning Pakistan's domestic laws with international human rights commitments, particularly the United Nations Convention on the Rights of the Child (CRC), which Pakistan ratified in 1990. The implementation of the JJSO remained inconsistent, and over time, the need for a more robust and updated legal framework became apparent. In response to mounting criticism from child rights organizations, legal experts, and international bodies, the Juvenile Justice System Act (JJSA) 2018 was enacted, repealing the previous Ordinance.<sup>21</sup> This new law introduced clearer definitions, procedural safeguards, and comprehensive protection for children accused or convicted of criminal offenses. It also institutionalized the formation of Juvenile Justice Committees, strengthened the use of diversion programs, and prohibited practices such as handcuffing and placing juveniles with adult offenders. The JJSA 2018 seeks to uphold the best interests of the child, focusing on rehabilitation, reintegration, and non-custodial measures rather than punitive incarceration. The current juvenile justice system in Pakistan is shaped by both international human rights standards and evolving national legislation. While the JJSA 2018 represents a significant milestone in legislative reform, its success depends on effective implementation, inter-agency coordination, and resource allocation. A wide range of international and domestic legal instruments contribute to the protection and promotion of children's rights in Pakistan, and these continue to inform ongoing reforms and advocacy efforts in juvenile justice.

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<sup>20</sup> Qazi, Sania, MUHAMMAD. Jan, and Nazar Hussain. "Analysis of Juvenile Laws and their Protection of Juvenile Offenders in Pakistan." *Journal of Social Sciences Review* 3, no. 1 (2023): 347-361.

<sup>21</sup> Khan, S. "Critical analysis of the juvenile justice system in Pakistan: Challenges & way forward." *KJPP* 2, no. 3 (2023): 26.

## 1.4 Global Instruments

Pakistan has demonstrated its commitment to the protection of human rights by ratifying several key international treaties, many of which lay a specific emphasis on the rights and welfare of children. These international instruments provide foundational legal standards for ensuring that the dignity, safety, and freedoms of minors particularly those entangled in the justice system are safeguarded under domestic law.

Among the most significant international treaties is the United Nations Convention on the Rights of the Child (CRC), which establishes a thorough framework for safeguarding children against abuse, neglect, and unfair treatment. The CRC places special emphasis on the rights of minors involved in legal conflicts, promoting a justice system that prioritizes rehabilitation, reintegration, and responses that are appropriate to the child's age and development. In addition to the CRC, Pakistan has ratified several other key international human rights conventions, including:

- a) The Universal Declaration of Human Rights (UDHR), adopted in 1948, which outlines the fundamental rights and freedoms that apply to all human beings, including children.<sup>22</sup>
- b) The International Covenant on Civil and Political Rights (ICCPR) of 1966, which obligates states to ensure the right to life, liberty, and security including the legal safeguards for children facing criminal charges.<sup>23</sup>
- (c) The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment

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<sup>22</sup> Alfredsson, Gudmundur, and Asbjørn Eide, eds. *The Universal Declaration of Human Rights: a common standard of achievement*. Martinus Nijhoff Publishers, 2023.

<sup>23</sup> Bidin, Aishah, and Shereen Khan. "Compatibility analysis of Malaysian civil and Syariah laws to the International Covenant on Civil and Political Rights (ICCPR)." *Human rights commission of Malaysia (SUHAKAM)* (2022).



or Punishment (CAT), adopted in 1984, strengthens safeguards to protect individuals especially children from torture and other forms of inhumane or degrading treatment, particularly while in detention or custody.

(d) The Convention on the Rights of Persons with Disabilities (CRPD), ratified in 2006, guarantees inclusive legal and social protections for individuals with disabilities, ensuring that children with disabilities, including those engaged in legal processes, receive equal treatment and appropriate accommodations.<sup>24</sup>

e) The International Convention on the Elimination of All Forms of Racial Discrimination (CERD), adopted in 1965, which prohibits racial discrimination in all aspects of life, including access to justice and fair treatment for children.<sup>25</sup>

As a signatory to these instruments, Pakistan is bound to adhere to international human rights obligations, including the development of legal systems that respect and promote the best interests of the child. These agreements call for legislative, administrative, and judicial reforms aimed at eliminating discriminatory practices and ensuring that children especially those in contact with the justice system receive humane, fair, and child-sensitive treatment. The Convention on the Rights of the Child (CRC) is especially notable as it has achieved near-universal ratification. Pakistan was among the first six nations globally to ratify this treaty shortly after its adoption in 1990. By doing so, it pledged to align its national laws, including juvenile justice policies, with the principles enshrined in the CRC, such as non-discrimination, survival and development, participation, and the paramountcy of the child's best interests.<sup>26</sup>

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<sup>24</sup> Guide, Training. "The convention on the rights of persons with disabilities." *New York and Geneva. United Nations of Human Rights* (2014).

<sup>25</sup> Meron, Theodor. "The meaning and reach of the international convention on the elimination of all forms of racial discrimination." *American Journal of International Law* 79, no. 2 (1985): 283-318.

<sup>26</sup> Arshad Mahmood, "Child Rights in Pakistan: An Unfinished agenda," *The Express Tribune*, November 19, 2014. Accessed March 18, 2025. <https://tribune.com.pk/story/793859/child-rights-in-pakistan-an-unfinished-agenda/>

Through these international commitments, Pakistan not only reinforces its legal and moral obligations toward children but also opens the door to international scrutiny and cooperation in strengthening its juvenile justice framework.

### **1.5 Federal Legal Framework**

Pakistan's legal framework encompasses a broad spectrum of legislation that addresses various societal matters, including the rights and welfare of children. At the core of this system is the Constitution of Pakistan, which serves as the supreme law of the country. It provides a comprehensive set of rights and protections for children, complemented by a series of both federal and provincial laws enacted at different levels of governance.<sup>27</sup> Before the adoption of the 18th Constitutional Amendment in 2010, federal legislation had a blanket effect across the entire country unless explicitly repealed by a provincial assembly. This meant that even though provinces had their own legislative setups, federal laws were applicable nationwide by default, creating a centralized structure for legal governance. The 18th Amendment, brought about a significant shift in legislative authority. Widely regarded as a transformative reform, it devolved numerous subjects from the federal to the provincial level, including areas related to child welfare, education, and development. As a result, provinces were empowered to enact their own child protection laws, reducing the central government's legislative role in this domain to matters concerning only federally administered regions.<sup>28</sup> Nonetheless, the federal government still retains an advisory role and can provide guidance to the provinces to ensure that local laws are aligned with international standards such as those outlined in

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<sup>27</sup> Ali, Shaheen Sardar. "Rights of the child under Islamic Law and Laws of Pakistan: A thematic overview." *J. Islamic St. Prac. Int'l L.* 2 (2006): 1.

<sup>28</sup> Zahra, Syeda Sajjal, and Rehana Saeed Hashmi. "Role of Opposition in the Development of the 18th Amendment." *Annals of Human and Social Sciences* 3, no. 2 (2022): 429-438.

the Convention on the Rights of the Child (CRC), to which Pakistan is a party.<sup>29</sup>

Prior to the 18th Amendment, several legislative initiatives were proposed by the federal ministries to strengthen child rights in Pakistan. These legislative efforts comprised the Child Rights Bill (2009), the National Commission on the Fundamental Rights of Children Bill, and proposed amendments to the Criminal Justice Reform Act, all intended to strengthen child protection frameworks. Despite the intricate interplay of constitutional provisions and legislative reforms, the legal rights and protections afforded to minors particularly those entangled with the justice system remain governed by a combination of federal laws, provincial enactments, and certain repealed statutes still cited in practice.<sup>30</sup>

The following laws have either contributed to or been replaced in the development of Pakistan's juvenile justice framework:

- a) Juvenile Justice System Ordinance (2000), repealed and replaced by the JJSA 2018
- b) Qanoon-e-Shahadat Order (1984)
- c) Hudood Ordinances (1979)
- d) Punjab Borstal Act (1926)

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<sup>29</sup> Heymann, Jody, Kristen McNeill, and Amy Raub. "Assessing compliance with the CRC: Indicators of law and policy in 191 countries." *The International Journal of Children's Rights* 22, no. 3 (2014): 425-445.

<sup>30</sup> Lundy, Laura, Ursula Kilkelly, and Bronagh Byrne. "Incorporation of the United Nations Convention on the Rights of the Child in law: A comparative review." *The International Journal of Children's Rights* 21, no. 3 (2013): 442-463.

- e) Punjab Youthful Offenders Act (1983)
- f) Sindh Borstal School Act (1955)
- g) Sindh Children Act (1955)
- h) Baluchistan Borstal Institution Act (2014)
- i) Khyber Pakhtunkhwa Child Protection and Welfare Act (2010)
- j) Khyber Pakhtunkhwa Borstal Institution Act (2012)
- k) Punjab Destitute and Neglected Children Act (PDNCA) (2004)

These laws though enacted at different times and across various jurisdictions reflect Pakistan's evolving legal stance on juvenile rights, rehabilitation, and child protection. The repeal of outdated laws and the creation of new child-specific legislation under the post-18th Amendment framework reflect the state's ongoing efforts to modernize its juvenile justice and child welfare systems.

### **1.6 Pakistan's Juvenile Justice System: A Critical Evaluation**

Despite Pakistan's formal association with numerous international human rights treaties, conventions, and legal frameworks including the Juvenile Justice System Ordinance (JJSO) 2000 and the Juvenile Justice System Act (JJSA) 2018 the implementation of juvenile justice remains deeply inadequate. Although these laws are intended to safeguard the rights of minors in conflict with the law through protection, rehabilitation, and reintegration, a considerable gap persists between legislative intent and ground

realities.<sup>31</sup> When the actual functioning of the system is assessed, a clear disparity emerges between what is codified in law and what is practiced. While the legislation appears well-structured, its execution is marred by institutional weaknesses and systemic inefficiencies. A major challenge within the juvenile justice framework is the inconsistent definition of “child” across various Pakistani laws, leading to confusion and inequality in application. Several key legal instruments define the term differently, causing a lack of standardization in judicial proceedings involving minors.

For instance:

- a) Article 11 of the Constitution of Pakistan prohibits the employment of children below the age of fourteen in hazardous occupations such as mines or industrial settings, thereby establishing a rights-based legal safeguard against exploitative child labor.<sup>32</sup>
- b) According to the Juvenile Justice System Ordinance, 2000, any person under the age of eighteen at the time of committing an offense is considered a child. This aligns with international norms, particularly the CRC.
- c) The Juvenile Justice System Act (JJSA) 2018 maintains a similar definition, affirming that individuals below eighteen are to be treated under the juvenile legal regime.
- d) In contrast, the Child Marriage Restraint Act of 1929 (amended in 1981) defines

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<sup>31</sup> Abbas, Hafiz Ghulam, Anser Mahmood Chughtai, and Khalid Hussain. "Juvenile justice system in Pakistan: A critical appraisal." *International Research Journal of Education and Innovation* 3, no. 1 (2022): 76-92.

<sup>32</sup> Khurshid Iqbal, "Judging Juvenility: Determination of age of Juvenile Offenders under Pakistan's Juvenile Justice System," *Pakistan Journal of Criminology* 1, no. 3 (2009): 105-118, Accessed March 18, 2025. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2305488](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2305488)

a child as any male under eighteen and female under sixteen years of age.

- e) Under Section 2 of the Offense of Zina (Enforcement of Hudood) Ordinance, 1979, adulthood is established at the attainment of puberty, or sixteen or eighteen years in the case of females.
- f) The Sindh Children Act, 1955, describes a child as any individual under the age of sixteen.
- g) The Sindh Child Protection Authority Act of 2011 considers anyone below eighteen as a child.
- h) Similarly, the Khyber Pakhtunkhwa Child Protection and Welfare Act, 2010, defines a child in Section 2 as a natural person under the age of eighteen.

These conflicting age thresholds across different legal instruments illustrate a fragmented legislative landscape. Such inconsistencies create ambiguity in legal procedures and undermine the uniform application of justice for minors.<sup>33</sup> Therefore, despite well-drafted laws and Pakistan's obligations under international agreements like the CRC, the juvenile justice system continues to struggle due to definitional discrepancies, poor implementation, and lack of institutional coordination.

## **1.7 Minimum Age of Criminal Responsibility**

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<sup>33</sup> Ritter, Michael J. "Just (juvenile justice) jargon: An argument for terminological uniformity between the juvenile and criminal justice systems." *Am. J. Crim. L.* 37 (2009): 221.

In many legal systems around the world, a child is held criminally accountable only when they have reached a level of maturity and understanding sufficient to grasp the nature and consequences of their actions. The minimum age of criminal responsibility (MACR) is a legal threshold below which a child is presumed incapable of forming criminal intent and, therefore, cannot be prosecuted. In numerous countries, this age is determined by legislation or judicial discretion, aiming to protect young children from the harsh consequences of criminal prosecution.<sup>34</sup>

A 2006 UNICEF report identified that Pakistan, along with several other South Asian nations, faced significant challenges concerning the low threshold set for criminal responsibility.<sup>35</sup> At the time, Pakistan's legal framework allowed for the prosecution of children as young as seven years old, raising serious concerns among child rights advocates and international monitoring bodies. This issue was highlighted by the United Nations Committee on the Rights of the Child in its concluding observations following Pakistan's Fifth Periodic Report on the state of children's rights and legal protections.<sup>36</sup> The Committee, alongside civil society organizations, urged Pakistan to revise its criminal laws to better align with international child rights standards.

In response to these recommendations and sustained advocacy efforts, Pakistan's Parliament enacted the Criminal Law (Amendment) Act, 2016, which raised the minimum age of criminal responsibility from seven to ten years. This legal reform was formalized under Section 82 of the Pakistan Penal Code (PPC), which now reads:

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<sup>34</sup> Scraton, Phil, and Deena Haydon. "Challenging the criminalization of children and young people." *Youth Justice: critical readings* (2002): 311-327.

<sup>35</sup> Shahidullah, Shahid M. "Criminalization of child abuse and violence against children in South Asia: law and legal advances in India, Pakistan, and Bangladesh." *Crime, criminal justice, and the evolving science of criminology in South Asia: India, Pakistan, and Bangladesh* (2017): 109-144.

<sup>36</sup> Rafique, Haroon, Rubeena Zakar, Muhammad Zakria Zakar, and Florian Fischer. "Institutional Barriers to the Implementation of Children's Participation in Pakistan under United Nations Convention on the Rights of the Child (UNCRC): Qualitative Study in Pakistan." (2024).

*"Nothing is an offense which is done by a child under ten years of age."*<sup>37</sup> This amendment marked a step forward in harmonizing Pakistan's juvenile justice practices with global norms, although further reforms are still needed to fully comply with international standards, such as the recommended age of twelve years by the UN Committee.

## **1.8 Determining the Juvenile**

Determining the exact age of a juvenile offender is a fundamental aspect of any juvenile justice system, as it directly influences the legal procedures and judicial forum through which the case is processed. Since criminal responsibility is generally linked to age, juvenile courts operate under distinct protocols that separate minors from the adult legal system. If this determination is mishandled, a child may be unjustly subjected to the adult criminal justice process, which undermines the protective intent of juvenile laws.<sup>38</sup> Since the promulgation of the Juvenile Justice System Ordinance (JJSO) 2000, the question of age verification has remained central to juvenile legal proceedings in Pakistan. One of the most persistent challenges is the lack of reliable documentation, particularly in rural or under-resourced areas, where birth certificates, school records, or identification documents are often unavailable or inaccurate.<sup>39</sup> In

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<sup>37</sup> The *Pakistan Penal Code (Act XLV of 1860)*. Islamabad: National Assembly of Pakistan, updated through Act X of 2016. Section 82: Accessed Jan 22, 2025.  
<https://pakistancode.gov.pk/pdf/Acts/1860XLV.pdf>

<sup>38</sup> Abrams, Laura S., Sid P. Jordan, and Laura A. Montero. "What is a juvenile? A cross-national comparison of youth justice systems." *Youth justice* 18, no. 2 (2018): 111-130.

<sup>39</sup> Emery, Robert E., Randy K. Otto, and William T. O'donohue. "A critical assessment of child custody evaluations: Limited science and a flawed system." *Psychological Science in the Public Interest* 6, no. 1 (2005): 1-29.



some cases, children are not enrolled in schools, or even when they are, institutions may fail to record or update correct age information.

Judicial practice in Pakistan reveals inconsistencies regarding acceptable evidence for age determination. Courts have often shown a preference for documentary evidence such as birth certificates, school leaving certificates, B-form registration, or National Identity records over medical assessments. However, case law reflects significant variability: decisions from different courts, and even within the same court, demonstrate divergent interpretations and outcomes. The ratio decidendi the legal reasoning underpinning judgments continues to vary, making the application of juvenile protections unpredictable. In some rulings, the plea of juvenility has been dismissed outright due to procedural delays or because the claim was raised at a “belated stage” in the trial<sup>40</sup>. Other cases have allowed retrospective consideration, especially where credible documents supported the juvenile’s age as below the statutory threshold.

As a member of the United Nations Convention on the Rights of the Child (CRC), Pakistan has submitted five periodic reports to the UN Committee on the Rights of the Child, outlining its compliance with international child protection standards. The first report was submitted on April 25, 1994. Although the second report was due in 1997, it was submitted only in 2002. Pakistan later submitted its second and third reports jointly on September 28, 2009, a move acknowledged positively by the Committee. The fifth periodic report followed on May 23, 2014, sixteen months after the last submission, continuing Pakistan’s formal engagement with global child rights monitoring mechanisms.<sup>41</sup>

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<sup>40</sup> Iqbal, Khurshid. "Judging Juvenility: Determination of age of Juvenile Offenders under Pakistan's Juvenile Justice System." *Pakistan Journal of Criminology* 1, no. 3 (2009): 105-118.

<sup>41</sup> Rafique, Haroon, Rubeena Zakar, Muhammad Zakria Zakar, and Florian Fischer. "Institutional Barriers to the Implementation of Children’s Participation in Pakistan under United Nations

## 1.9 Death Penalty and Juvenile Rights under International Law

International human rights law strictly prohibits the imposition of the death penalty or life imprisonment without the possibility of release for individuals who were under the age of eighteen at the time of committing an offense. According to international conventions, particularly those to which Pakistan is a signatory, states are obligated to ensure the protection of minors from such extreme punishments.

Specifically, international legal frameworks affirm that:

(a) No child shall be subjected to torture, or to cruel, inhuman, or degrading treatment or punishment. Furthermore, capital punishment and life imprisonment without the possibility of parole must not be imposed on persons for offenses committed while they were under the age of eighteen.<sup>42</sup>

Executing minors is not only considered a breach of global human rights standards but also contradicts the universally accepted moral and legal progression regarding the treatment of children. The International Covenant on Civil and Political Rights (ICCPR) ratified by Pakistan in 2010 clearly addresses this issue in Article 6(5)<sup>43</sup>, which prohibits the execution of individuals for crimes committed before they turned eighteen.

In addition, the United Nations Committee on the Rights of the Child has consistently

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Convention on the Rights of the Child (UNCRC): Qualitative Study in Pakistan." (2024).

<sup>42</sup> Assembly, UN General. "Convention on the Rights of the Child." *United nations, treaty series* 1577, no. 3 (1989): 1-23. Accessed Jan 20, 2025. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

<sup>43</sup> United Nations General Assembly. *International Covenant on Civil and Political Rights*, Article 6(5), December 16, 1966. Accessed Jan 20, 2025. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>.

maintained that both the death penalty and life imprisonment without parole fundamentally violate the best interests of the child, a cornerstone of the Convention on the Rights of the Child (CRC).<sup>44</sup> These provisions are rooted in the belief that children, due to their developmental immaturity, should be treated with leniency and offered opportunities for rehabilitation, rather than subjected to irreversible and inhumane punishment.

### **1.10 Non-Custodial or Diversionary Measures in Juvenile Justice**

The central goal of non-custodial and diversionary approaches within juvenile justice systems is to protect children from the potentially damaging effects of formal criminal prosecution. Diversion involves steering juvenile offenders away from the conventional court system and instead guiding them toward community-based solutions aimed at rehabilitation and social reintegration.<sup>45</sup> As defined in the *Sage Dictionary of Criminology*, diversion is “the process of keeping offenders and other problem populations away from the institutional arrangements of criminal justice or welfare.”<sup>46</sup> This principle is rooted in the belief that subjecting children to rigid legal procedures can have adverse effects, potentially hindering their psychological development and social adjustment.

Diversionary interventions are usually applied in instances where a child acknowledges

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<sup>44</sup> Baig, Khurram, Mahrukh Tanveer, Ashna Rehman, and Muhammad Shahid. "Unpacking International Commitments: Assessing the Implementation of ICCPR, ICESCR, and the Convention Against Torture in Pakistan's Legal Framework." *Pakistan Journal of Criminal Justice* 4, no. 1 (2024): 01-14.

<sup>45</sup> Rodas, Ana, Melanie Simpson, Paddy Rawlinson, Ronald Kramer, Emma Ryan, Reece Walters, Emmeline Taylor et al. *Crime, deviance and society: An introduction to sociological criminology*. Cambridge University Press, 2020.

<sup>46</sup> Eugene McLaughlin and John Muncie, *The Sage Dictionary of Criminology*, 3rd ed. (London: SAGE Publications, 2013), 83.

involvement in an offense, particularly for minor infractions or first-time offenses. These interventions are not designed to punish but rather to educate and reform, employing tools such as restorative justice practices, counseling, vocational training, or community service. Such alternatives are known to reduce the stigma and long-term negative outcomes associated with incarceration.

Under Article 9 of Pakistan's Juvenile Justice System Act (JJSA) 2018, a framework for diversion is explicitly provided. This includes the formation of Juvenile Justice Committees, which are tasked with reviewing individual cases and recommending appropriate non-custodial actions.<sup>47</sup> However, the successful implementation of these measures depends significantly on factors such as institutional capacity, training of police and judicial personnel, and community-based support systems.

Juvenile justice specialists stress that diversion should not be mistaken for undue leniency. Instead, it represents a child rights-focused strategy, consistent with the best interests of the child principle emphasized in the Convention on the Rights of the Child (CRC) particularly Articles 37 and 40.<sup>48</sup> Properly executed, diversion programs serve a dual purpose: they safeguard children from incarceration while simultaneously ensuring accountability and promoting their reintegration into society as constructive individuals.

### **1.11 The Parole and Probation System in Relation to the JJSA, 2018**

Parole and probation are crucial components of the rehabilitative approach within

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<sup>47</sup> Government of Pakistan, *The Juvenile Justice System Act, 2018* (Islamabad: Ministry of Law and Justice, 2018), Article 9. Accessed Jan 20, 2025. <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/106379/130074/F1792601131/PAK106379.pdf>.

<sup>48</sup> United Nations General Assembly, *Convention on the Rights of the Child*, Articles 37–40, November 20, 1989. Accessed Jan 20, 2025. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

modern criminal justice systems, particularly in the context of juvenile justice. Both mechanisms offer alternatives to incarceration, emphasizing reform, reintegration, and supervision over punishment.

Probation allows an offender especially a juvenile to remain in the community under specified conditions and regular supervision, rather than serving time in a correctional facility. Parole, on the other hand, refers to the conditional release of a prisoner before the full term of the sentence is served, based on good behavior and the expectation of continued lawful conduct under supervision.

The Juvenile Justice System Act (JJSA) 2018 of Pakistan implicitly supports the philosophy underpinning probation and parole. Although the Act does not separately define "parole," its provisions strongly align with the objectives of both probation and parole in their rehabilitative and non-custodial focus. Article 4 of the JJSA declares that no child shall be subjected to any punishment that is cruel or degrading, thereby emphasizing the need for child-sensitive and community-based solutions.<sup>49</sup>

Further, Article 9 of the Act introduces the concept of diversion, which overlaps with probationary ideals by providing structured alternatives to formal judicial proceedings, especially for first-time or minor offenders.<sup>50</sup> Under this provision, a juvenile can be directed towards non-custodial programs, including rehabilitation, counseling, vocational training, or community service components traditionally associated with probationary systems.

Additionally, Section 18 of the Act allows courts to order conditional release on

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<sup>49</sup> Government of Pakistan, *Juvenile Justice System Act, 2018*, Article 4. Ministry of Law and Justice. Accessed Jan 20, 2025.

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/106379/130074/F1792601131/PAK106379.pdf>.

<sup>50</sup> Ibid., Article 9

probation, either under the supervision of a probation officer or any fit person, for a period not exceeding the remainder of the sentence.<sup>51</sup> This conditional release mechanism functions similarly to traditional probation and is guided by principles found in the Probation of Offenders Ordinance, 1960, which remains applicable in Pakistan.<sup>52</sup>

The integration of probation officers into the juvenile justice process is vital. According to the JJSA 2018, probation officers play a central role in both diversion and post-sentencing phases. They are involved in preparing social investigation reports, monitoring juvenile conduct, and supporting reintegration efforts—all of which are aligned with international standards such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).<sup>53</sup>

The parole and probation systems not only complement the goals of the JJSA 2018 but also serve as practical tools to implement its child-centered approach. By reducing reliance on incarceration, they promote restorative justice and uphold the rights and dignity of juveniles in conflict with the law.

### **1.12 Prior to trial Detention/Containment**

Pre-trial detention of juvenile offenders is widely discouraged under international juvenile justice norms. It should be used only as a measure of last resort and for the shortest duration possible. Both the Convention on the Rights of the Child (CRC) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) emphasize that children must not be deprived of liberty unless strictly

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<sup>51</sup> Ibid., Article 18

<sup>52</sup> Government of Pakistan, *The Probation of Offenders Ordinance, 1960*. Ministry of Law and Justice, Accessed Jan 20, 2025. <https://pakistancode.gov.pk/pdf/files/administrator0f8f5e5e34c429148bda2560e6a6888a.pdf>.

<sup>53</sup> United Nations General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*, A/RES/40/33, November 29, 1985. Accessed Jan 20, 2025. <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile>.

necessary, and even then, their liberty should be limited to the minimum degree required.<sup>54</sup> Depriving minors of their freedom, whether before or after trial, significantly hampers their psychological development and reintegration into society. Regrettably, in Pakistan, systemic issues such as law enforcement negligence, lack of training, insufficient resources, and overall institutional indifference lead to children being detained unnecessarily and for prolonged periods.<sup>55</sup> This contravenes the rehabilitative intent behind juvenile justice and violates the child's right to protection and dignity.

The Juvenile Justice System Ordinance (JJSO) 2000 and the Juvenile Justice System Act (JJSA) 2018 both provide clear procedures to facilitate the release of juveniles on bail or probation.<sup>56</sup> These laws aim to reduce the pre-trial detention of children and recommend non-custodial alternatives except in rare cases—such as when the child is involved in a serious offense or when detention is necessary for their protection.

However, poor implementation and slow prosecutorial processes frequently result in the failure of these protective mechanisms. Lethargy in investigation, habitual delays by prosecution, and the misuse of procedural tactics all contribute to extended periods of unjustified detention for juveniles.

Compounding these issues are the inhumane conditions of detention facilities, particularly in Borstal Institutions, which are meant for juveniles. These institutions suffer from overcrowding, poor sanitation, malnutrition, and inadequate hygiene and

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<sup>54</sup> United Nations General Assembly, *Convention on the Rights of the Child*, Articles 37 and 40, November 20, 1989. Accessed Jan 20, 2025. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

<sup>55</sup> UNICEF Pakistan, *Juvenile Justice in Pakistan: A Situational Analysis*, 2016. Accessed Jan 20, 2025. <https://www.unicef.org/pakistan/reports/juvenile-justice-pakistan>.

<sup>56</sup> Government of Pakistan, *Juvenile Justice System Act, 2018*, Ministry of Law and Justice. Accessed Jan 20, 2025. <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/106379/130074/F1792601131/PAK106379.pdf>.

health care. A report by the Society for the Protection of the Rights of the Child (SPARC) revealed that even the oldest Borstal Institute in Bahawalpur has deteriorating infrastructure, with substandard education and limited medical care.<sup>57</sup>

Moreover, children in such facilities often come into contact with hardened adult criminals and are exposed to physical and sexual abuse. This exposure greatly undermines rehabilitation efforts. Additionally, juvenile wards in general prisons face similar or worse conditions poor lighting, inadequate ventilation, extreme temperatures, and unclean drinking water are common.

A key element of any effective juvenile justice system is psychosocial support, which is mandated under international standards to ensure the mental health and well-being of children in conflict with the law.<sup>58</sup> However, Pakistan has failed to institutionalize such support mechanisms. The shortage of trained child protection officers and a general lack of awareness about juvenile rights further weaken rehabilitation and reintegration processes. Severely limited family contact and visitation opportunities in these facilities only intensify the emotional and social isolation of detained children.

Addressing these systemic challenges requires urgent reform, proper enforcement of existing juvenile laws, investment in infrastructure, staff training, and the establishment of psychosocial support networks for juveniles across all detention centers.

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<sup>57</sup> Society for the Protection of the Rights of the Child (SPARC), *Juvenile Justice and Borstal Institutions in Pakistan: A Research Report*, 2021. Accessed Jan 20, 2025. <https://sparcpk.org/reports>.

<sup>58</sup> United Nations General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)*, A/RES/40/33, November 29, 1985. Accessed Jan 26, 2025. <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile>.



### 1.13 Law enforcement and the treatment of minors in conflict with the law

Police play a central role in the criminal justice system as the first responders in cases involving legal violations. Their duties include upholding law and order, preventing crime, conducting investigations, and ensuring the safety and protection of all individuals including minors. In the context of juvenile justice, police officers are the first point of contact for children who come into conflict with the law. This initial interaction leaves a lasting impression on young minds and can profoundly shape their perception of justice, authority, and the law.

Despite this critical responsibility, the treatment of minors by law enforcement in Pakistan often fails to meet both national and international standards. Reports from human rights organizations consistently highlight that the police often handle juveniles in ways that are coercive, abusive, and degrading.<sup>59</sup> The United Nations Convention on the Rights of the Child (CRC), to which Pakistan is a signatory, obliges states to treat children in a manner consistent with their dignity and worth and to ensure their protection from all forms of abuse while in state custody.<sup>60</sup>

However, in practice, police officers in Pakistan especially those in lower ranks frequently lack specialized training in child rights and juvenile protection laws.<sup>61</sup> Many are unaware of the Juvenile Justice System Act (JJSA) 2018, which mandates child-sensitive procedures, including diversion, protection against abuse, and safeguards during investigation and detention.<sup>62</sup>

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<sup>59</sup> Human Rights Commission of Pakistan (HRCPP), *State of Human Rights in 2020*, Lahore: HRCPP, 2021. Accessed Jan 26, 2025. <https://hrcpp-web.org/hrcppweb/state-of-human-rights-in-2020/>.

<sup>60</sup> United Nations General Assembly, *Convention on the Rights of the Child*, November 20, 1989. Accessed Jan 26, 2025. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

<sup>61</sup> UNICEF Pakistan, *Training Manual on Child Protection for Police Officials*, 2016. Accessed Jan 26, 2025. <https://www.unicef.org/pakistan/media/646/file>.

<sup>62</sup> Government of Pakistan, *Juvenile Justice System Act, 2018*, Ministry of Law and Justice. Accessed Jan 26, 2025.

Diversion, a core principle of juvenile justice that allows children to avoid formal judicial proceedings and instead benefit from counseling, rehabilitation, or community-based solutions, is poorly understood and rarely implemented by police. Instead, cases are often escalated to the courts even when alternatives exist, leading to unnecessary criminalization of children.

More disturbingly, there are numerous accounts of police brutality against minors, including torture, sexual abuse, and illegal detention. These violations often occur in police stations and lock-ups where minors are unlawfully confined, coerced into confessions, or abused in attempts to extort information or money.<sup>63</sup> Both boys and girls, particularly street children and those from marginalized backgrounds, are highly vulnerable to such treatment. This constitutes a direct violation of both Pakistan's Constitution (Article 14 - human dignity and privacy) and international treaties such as the CRC and the UN Convention Against Torture (CAT).<sup>64</sup>

The absence of child protection units within police departments and a lack of oversight mechanisms perpetuates this abuse of power. Institutional reforms are urgently needed to establish child protection desks, enforce mandatory training for law enforcement personnel in child rights, and ensure accountability for misconduct. A rights-based and rehabilitative approach, rather than punitive policing, is essential for the humane and effective handling of juvenile offenders.

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<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/106379/130074/F1792601131/PAK106379.pdf>.

<sup>63</sup> Society for the Protection of the Rights of the Child (SPARC), *Juvenile Justice in Pakistan: An Overview*, 2020. Accessed Jan 26, 2025. <https://sparcpk.org/reports>.

<sup>64</sup> United Nations General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, December 10, 1984. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>.

#### 1.14 Use of Fetters and Handcuffs on Juveniles in Custody

The practice of restraining children in custody through handcuffs, fetters, or chaining especially during court appearances or transfers constitutes a grave violation of both Pakistani law and international human rights standards. Despite clear legal prohibitions, reports indicate that juveniles in Pakistan are often handcuffed, sometimes even alongside adult offenders, under the pretext of security or prevention of escape. Such treatment not only undermines the dignity of the child but also contradicts the rehabilitative objectives of juvenile justice. The Juvenile Justice System Act (JJSA) 2018 explicitly prohibits the use of physical restraints on juvenile offenders. Section 16(2) of the Act states: “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.”<sup>65</sup> An exception is provided under specific circumstances: “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.”<sup>66</sup> Internationally, instruments such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)<sup>67</sup> emphasize that the use of restraints

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<sup>65</sup> Government of Pakistan. *Juvenile Justice System Act, 2018*. Ministry of Human Rights. Accessed Jan 26, 2025. <https://www.mohr.gov.pk/SiteImage/Misc/files/Juvenile%20Act%2C2018.pdf>.

<sup>66</sup> United Nations General Assembly. *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*. A/RES/40/33, November 29, 1985. Accessed Jan 26, 2025. <https://www.ohchr.org/en/instruments-mechanisms/instruments/united-nations-standard-minimum-rules-administration-juvenile>.

<sup>67</sup> United Nations General Assembly. *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)*. A/RES/45/113, December 14, 1990. Accessed Jan 26, 2025. [https://www.unodc.org/pdf/criminal\\_justice/United\\_Nations\\_Rules\\_for\\_the\\_Protection\\_of\\_Juveniles\\_Deprived\\_of\\_their\\_Liberty.pdf](https://www.unodc.org/pdf/criminal_justice/United_Nations_Rules_for_the_Protection_of_Juveniles_Deprived_of_their_Liberty.pdf).

should be exceptional, limited to situations where the juvenile poses an imminent threat to themselves or others, and should be applied for the shortest possible duration. These rules advocate for the treatment of juveniles in a manner that upholds their dignity and facilitates their reintegration into society. The continued misuse of restraints on juveniles in Pakistan reflects systemic issues within the law enforcement and judicial systems, including inadequate training, lack of oversight, and insufficient infrastructure. To align with both national legislation and international standards, it is imperative to implement comprehensive reforms that include the training of personnel, establishment of child-sensitive procedures, and strict enforcement of existing laws prohibiting the use of restraints on juveniles.

### **1.15 Jail Guidebook and Juvenile Offenders in Pakistan**

Pakistan's juvenile justice framework is governed by the Prisons Act of 1894 and the Pakistan Prison Rules of 1978, collectively referred to as the "Jail Manual." Despite their historical significance, these regulations are antiquated and often misaligned with contemporary standards for juvenile rehabilitation.

Pakistan Prison Rules specifically addresses juvenile and youthful offenders. It defines a "juvenile" as a male prisoner under the age of eighteen at the time of conviction and outlines procedures for their detention, including the recommendation for placement in Borstal Institutions or Reformatory Schools for sentences exceeding three months.<sup>68</sup>

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<sup>68</sup> Government of Pakistan, *Pakistan Prison Rules, 1978*, Chapter 12, "Juvenile and Youthful Offenders," accessed Jan 28, 2025, <https://punjablaws.punjab.gov.pk/uploads/articles/punjab-prisons-rules-1978-pdf2.pdf>

The implementation of these provisions is inconsistent, and juveniles are frequently subjected to the same treatment as adult inmates, contravening the intended rehabilitative approach. The Prisons Act of 1894,<sup>69</sup> enacted during British colonial rule, remains the foundational legal framework for prison administration in Pakistan. Its provisions, while comprehensive for their time, do not adequately address the unique needs of juvenile offenders. The Act lacks specific guidelines for the treatment, rehabilitation, and reintegration of juveniles, leading to their exposure to environments that may be detrimental to their development. Furthermore, the scarcity of dedicated juvenile facilities exacerbates the issue. Many juveniles are detained in general prisons, often alongside adult criminals, due to the limited number of Borstal Institutions and Juvenile Rehabilitation Centers. This practice not only violates national laws but also contravenes international standards set by the United Nations Convention on the Rights of the Child (UNCRC), which Pakistan has ratified. The UNCRC emphasizes the need for the separation of juvenile offenders from adults and advocates for their treatment in a manner that promotes their sense of dignity and worth. Pakistan's legal framework provides for the distinct treatment of juvenile offenders, the outdated nature of the governing laws and the lack of adequate facilities hinder their effective implementation. There is an urgent need to modernize the prison regulations and invest in specialized institutions to ensure that juvenile offenders are rehabilitated in environments conducive to their growth and reintegration into society.

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<sup>69</sup> Government of Pakistan, *The Prisons Act, 1894*, accessed Jan 28, 2025, <https://portal.mohr.gov.pk/wp-content/uploads/2021/03/Civil-Political-and-Economic-Rights-Punjab-Pakistan-The-Prisons-Act-1894.pdf>.

## 1.16 Challenges in Pakistan's Prosecution System Regarding Juvenile Justice

The prosecution system is a cornerstone of the criminal justice framework, tasked with ensuring the fair and impartial administration of justice. In Pakistan, the prosecution services have undergone significant reforms, notably with the enactment of the Police Order 2002,<sup>70</sup> which separated the prosecution from the police and placed it under the jurisdiction of the provincial governments. This structural change aimed to enhance the independence and effectiveness of the prosecution services. Despite these reforms, the prosecution system faces several challenges, particularly concerning juvenile justice. There is a notable lack of specialized public prosecutors trained to handle cases involving juvenile offenders. Consequently, juveniles are often prosecuted in the same manner as adults, without consideration for their age, psychological development, or the rehabilitative principles enshrined in the Juvenile Justice System Act (JJSA) 2018.<sup>71</sup> Furthermore, public prosecutors frequently lack awareness and understanding of both national and international legal frameworks pertaining to children's rights. This gap in knowledge impedes their ability to advocate effectively for the best interests of the child, as mandated by the United Nations Convention on the Rights of the Child (CRC), to which Pakistan is a signatory. The prosecution departments also suffer from inadequate infrastructure and insufficient personnel, leading to excessive workloads and diminished capacity to provide the necessary psychosocial support and counseling to juvenile offenders. This deficiency undermines the rehabilitative objectives of the juvenile justice system and hampers the reintegration of young offenders into society.<sup>72</sup> To address these

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<sup>70</sup> Government of Pakistan, *The Police Order, 2002*, accessed May 26, 2025, <https://punjabpolice.gov.pk/system/files/Police%20Order%202002%20updated%2010.05.2016.pdf>

<sup>71</sup> Uzma Ashiq, "Juvenile Justice System in Pakistan: A Critical Appraisal," *International Research Journal of Education and Innovation* 2, no. 1 (2022): 45–64, accessed May 26, 2025, <https://irjei.com/index.php/irjei/article/download/120/84/282>

<sup>72</sup> Syed Wajdan Rafay Bukhari et al., "Exploring the Functions and Role of Public Prosecutors in the Criminal Justice System of Pakistan: A Case Study of Punjab, Multan District," *Pakistan Journal of Law, Analysis and Wisdom* 3, no. 2 (February 2024): 141–159, Accessed May 26, 2025,

issues, it is imperative to invest in the capacity building of public prosecutors through specialized training programs focused on juvenile justice and children's rights. Additionally, enhancing inter-agency coordination and ensuring adequate resource allocation are crucial steps toward a more effective and child-sensitive prosecution system.

### **1.17 Conclusion**

In Pakistan's Juvenile Justice System has made progress through laws like the Juvenile Justice System Ordinance 2000 and the Juvenile Justice System Act 2018, aiming to protect and rehabilitate children who commit offences. However, there are still serious problems in how these laws are applied. One major issue is the lack of a single definition of "child" in Pakistan's legal system. Different laws use different age limits, which creates confusion in courts and in applying justice fairly. Although the minimum age for criminal responsibility was raised from 7 to 10 years, it is still lower than international standards, such as those recommended by the UN. Another challenge is proving the age of a child. Many children do not have birth certificates or school records, especially in rural areas, which leads to unfair treatment and wrong legal decisions. Courts also do not follow a clear and consistent method for deciding age. Despite Pakistan signing many international human rights treaties, including the CRC and ICCPR, the treatment of juvenile offenders often violates these agreements. Children are still handcuffed, held in bad conditions, and sometimes even kept with adult prisoners. This goes against the idea of protecting and rehabilitating minors. The JJSA 2018 introduced helpful ideas like

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[https://www.researchgate.net/publication/379236651\\_Exploring\\_the\\_Functions\\_and\\_Role\\_of\\_Public\\_Prosecutors\\_in\\_the\\_Criminal\\_Justice\\_System\\_of\\_Pakistan\\_A\\_Case\\_Study\\_of\\_Punjab\\_Multan\\_District](https://www.researchgate.net/publication/379236651_Exploring_the_Functions_and_Role_of_Public_Prosecutors_in_the_Criminal_Justice_System_of_Pakistan_A_Case_Study_of_Punjab_Multan_District)

diversion (avoiding court), probation, and parole, but they are rarely used because police and prosecutors lack training and awareness. Many children are unnecessarily sent through the formal court system instead of being offered community support or counseling. Also, old prison laws like the Prisons Act of 1894 are outdated. Juveniles are often placed in general prisons because there aren't enough proper youth centers (Borstal institutions), which harms their mental and emotional growth. Pakistan has passed important laws to protect children in the justice system, real change is still needed. To fix the system, the government must ensure clear definitions, fair age tests, better-trained staff, separate facilities for juveniles, and full use of rehabilitation options. Only then can we truly give children in conflict with the law a second chance. In this chapter we have studied JJS in the light of Pakistan legal system, as well as international law, in the next chapter we will study JJS in the light of Sharī'ah .



## CHAPTER NO: 2

### Juvenile Justice System; A study in the light of Sharī'ah

#### 2.1 Introduction

The administration of justice in Islamic Sharī'ah is fundamentally rooted in the divine guidance of the Qur'ān and Sunnah. It is a system that harmonizes legal obligations with individual capacity, thereby extending a special framework of leniency and mercy to children. In contrast to many modern penal systems, Islamic law does not treat children as miniature adults. Instead, it carefully distinguishes legal responsibility based on age, intellect ('aql), and the onset of puberty (bulūgh). This approach highlights the Qur'anic philosophy of accountability based on capability and awareness:

73 لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا ۚ لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا اكْتَسَبَتْ

"Allah does not obligate anyone beyond his capacity. For him is what he has earned, and on him what he has incurred <sup>74</sup>." Under Sharī'ah, criminal responsibility (taklīf) is linked not merely to age but to signs of physical and mental maturity. The Prophet Muḥammad ﷺ clearly stated:

عَنْ عَلِيٍّ رَضِيَ اللَّهُ عَنْهُ سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ عَنْ الصَّغِيرِ حَتَّى يَبْلُغَ  
وَعَنْ النَّائِمِ حَتَّى يَسْتَيْقِظَ وَعَنْ الْمُصَابِّ حَتَّى يُكْشَفَ عَنْهُ <sup>75</sup>

The pen is lifted from three: from a sleeping person until he awakes, from a child until he reaches puberty, and from the insane until he regains sanity <sup>76</sup>. This Hadith serves as

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<sup>73</sup> Al-Qur'ān, 2:286

<sup>74</sup> Mufti Muḥammad Taqī Uthmānī, *The Meaning of The Noble Qur'an*, 93.

<sup>75</sup> Aḥmad ibn Ḥanbal. Musnad al-Imām Aḥmad ibn Ḥanbal. Riyadh: Dār al-Salām, n.d., p 87, ḥadīth no. 940.

<sup>76</sup> Abū Dāwūd, *Sunan Abī Dāwūd*, ḥadīth no. 4403, in *Sunan Abi Dawud*, trans. Nasiruddin al-Khattab (Riyadh: Darussalam, 2008), vol. 4.

the foundational basis for exempting juveniles from ḥudūd (fixed) and qiṣās (retaliatory) punishments, although financial liabilities like ḍamān (compensation) may still apply depending on circumstances. Islamic jurists have thoroughly elaborated on the concepts of ahlīyyah (legal capacity) and taklīf, distinguishing between the ahlīyyat al-wujūb (capacity to acquire rights) and ahlīyyat al-adā' (capacity to perform duties).<sup>77</sup> A child may possess the former from birth but does not acquire the latter until reaching puberty<sup>78</sup>. This nuanced system preserves the balance between justice and mercy one of the maqāṣid al-sharī'ah (higher objectives of Islamic law).

Sharī'ah's compassionate legal approach finds strong resonance in Pakistan's statutory framework, particularly in the Juvenile Justice System Act 2018 (JJSA). This law adopts diversion, rehabilitation, and reintegration mechanisms, thus reflecting Islamic principles of mercy (raḥmah), reform (iṣlāḥ), and social harmony (sulḥ)<sup>79</sup>. Through a comparative lens, this chapter explores how Sharī'ah principles offer a coherent and ethically grounded framework for juvenile justice that prioritizes education, moral development, and community-based rehabilitation over punitive sanctions.

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<sup>77</sup> Alī ibn Muḥammad al-Jurjānī, *al-Ta'rifāt*, ed. Ibrahim al-Abyari (Beirut: Dar al-Kutub al-Ilmiyyah, 1985), 38.

<sup>78</sup> Ḥusayn Ḥāmid Ḥassān, *Nazariyyat al-Ahlīyyah fi al-Fiqh al-Islāmi* (Cairo: Maktabat Wahbah, 1993), 24–25.

<sup>79</sup> Government of Pakistan, *Juvenile Justice System Act 2018*, accessed March 28, 2025, <https://sja.gos.pk/assets/library/acts/jjsa2018.pdf>.

## 2.2 Puberty in Islamic Law

### Literal meaning (المعنى اللغوي)

In Islamic Law Puberty (البلوغ) means “Arriving and reaching a goal or an endpoint whether it is a place or a period or a thing”

"وبلغ الصبي: احتلم وأدرك وقت التكليف وكذلك بلغت الفتاة"<sup>80</sup>

Reached sexual maturity and found legal capacity, as well, the girl reached puberty.

### Terminological meaning (المعنى الاصطلاحي)

واصطلاحاً: "انتهاء حد الصغر في الإنسان، ليكون أهلاً للتكاليف الشرعية"

أو "هو قوة تحدث في الصبي، يخرج بها عن حالة الطفولية"<sup>81</sup>

Puberty (Al blugh) means, reaching the age of maturity in humans to become eligible for religious responsibilities.

Or

It is a power that occurs in a young boy, causing him to transition out of childhood.

## 2.3 Criteria for puberty in Shari'ah

In the first of this chapter I mentions the definition of puberty; here, the aim is to discuss the standard of Islamic law for puberty. According to jurists, puberty may be in years or in signs.

Shari'ah does not focus on the age for puberty, but Islam relies on the signs of puberty. As soon as any sign of puberty arises, the boy or girl will be considered mature. Signs of puberty are different for both males and females; some of these are the following;

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<sup>80</sup> Al-Mawsū'ah al-Fiqhiyyah al-Kuwaytiyyah. Kuwait: *Ministry of Awqaf and Islamic Affairs*, 1984–2007, vol. 8, 186.

<sup>81</sup> Ibid.

## 2.4 Puberty signs, according to Fuqahā

### 2.4.1 Hanafi School

Puberty in males arises with four signs:

1. Wet dream احتلام
2. Ejaculation during a wet dream or by other means إنزال المنى باحتلام أو بغيره
3. Impregnation إحيال المرأة

This is not known until he has intercourse with her.

4. Hair growth إنبات الشعر

According to some jurists, pubic hair, moustache growth, and voice deepening are signs of puberty.

As for the females, puberty awakens them with two signs:

1. Menstruation الحيض
2. Pregnancy الحمل

And it is known that if she had intercourse or semen entered her vagina and pregnancy occurred, then she has reached puberty.<sup>82</sup>

### 2.4.2 Shaf'ī School

They said that puberty in males arises with insemination إماء, and minors have already completed nine years. If this is done before nine years, it will be because of a disease, which will not be a sign of puberty. This school of thought did not mention Impregnation because it is impossible before the semen comes. For females, the sign is menstruation at any stage of age, but it is essential to ensure that the blood coming down is menstrual blood and not bleeding due to illness.<sup>83</sup>

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<sup>82</sup> Al Marghīnānī, *Al Hidāyyah*, 6:451.

<sup>83</sup> Abdulrahman Al-Saadi, , *Puberty and Its Signs According to A Contemporary Islamic Jurisprudential-Legal View*. (Journal of AlMaarif University College, no. 32 (October 2021) P.6 <https://doi.org/10.51345/.v32i4.457.g253>).

### 2.4.3 Hanbali Schools

The common signs of puberty between males and females are:

1. Ejaculation while awake or asleep, through wet dreams or sexual intercourse.
2. Hair growth إنبات الشعر

The growth of coarse hair on the pubic إنبات شعر العانة الخشن that needs to be removed with a razor. As for الزغب (soft and smooth hair) It is not a sign of puberty because it may happen to children.

As for females, some other signs that are specific to her and not found in boys:

1. Menstruation الحيض
2. Pregnancy الحبل<sup>84</sup>

### 2.4.4 Maliki School

According to these jurists, the Signs of puberty are the following:

1. Ejaculation while awake or asleep, and this is common between boys and girls.
2. The growth of coarse hair on the pubic area إنبات شعر العانة الخشن

These jurists pointed out that if a minor boy or girl grows a beard or moustache, this is not a sign of puberty because a person may reach puberty before it grows.

3. Armpit plucking نتف الإبط
4. Changing the tip of the nose فرق أرنية الأنف
5. Voice Deeping غلط الصوت
6. Periods
7. Pregnancy

The last two are for girls.<sup>85</sup>

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<sup>84</sup> Ibid., 6.

<sup>85</sup> Ibid., 7.

## **2.5 Summary of signs of puberty according to jurists**

### **2.5.1 Common signs of puberty between males and females:**

1. Ejaculation (Agreed upon by jurists)
2. The growth of coarse hair on the pubic and armpit (Agreed upon by jurists and some of the Hanafi)
3. Armpit plucking (According to Maliki jurists)
4. Changing the tip of the nose (According to Maliki jurists)
5. Voice Deeping (According to Maliki jurists)

### **2.5.2 Signs of Puberty agreed upon by Jurists for Males and Females**

#### **The signs for males:**

1. Impregnation

#### **The signs for Females:**

1. Periods
2. Pregnancy<sup>86</sup>

## **2.6 Puberty in age, according to Fuqahā**

When none of the signs of puberty we mentioned appear, puberty for males and girls must be determined by age. According to Islamic jurists, puberty may occur at different stages of age. The famous jurist opinions are the following:

### **2.6.1 Hanafi School**

Hence, products of the Hanafi school of Islamic jurisprudence, which has the most extended history and is currently the most influential, as per the Hanafi law, the jurists have two opinions on determining the age of puberty:

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<sup>86</sup> Ibid., 8.

1. The age of puberty for both boys and girls is 15 years, and this is the Mufta Bihī opinion among them الرأي المفتى به.
2. Imam Abu Hanifa's opinion is that the age of puberty for boys is 18, and for girls is 17.

According to the Hanafi school, there is a presumption that girls do not reach puberty until the age of 9, and boys do not until the age of 12.<sup>87</sup>

### 2.6.2 Shaf'ī' School

The Shaf'ī' school assumes that maturity is attained at the age of fifteen years for both males and females<sup>88</sup>.

### 2.6.3 Hanbali Schools

Hanbali scholars hold the view that at 15 years old, both males and females are regarded as mature. This is also the opinion of Imām Awdhāī, Shaf'ī, Abu Yosuf, and Imām Muhammad. However, Dawood Zahrī said that there is no age limit for puberty, "البلوغ بالسن لا حد له"<sup>89</sup>

### 2.6.4 Maliki Schools

According to Maliki scholars, puberty determines the possibility of marriage, and the age of puberty is assumed to be 15 for boys and 9 for girls.<sup>90</sup>

### 2.6.5 Abu Dawood Az Zahri,

According to Abu Dawood Zahrī, there is no puberty without a sign of puberty, even though a male or female reaches 40 years old.<sup>91</sup>

<sup>87</sup> Abdulrahman Al-Saadi, *Puberty and Its Signs According to A Contemporary Islamic Jurisprudential-Legal View*. (Journal of AlMaarif University College, no. 32 (October 2021) P.11 <https://doi.org/10.51345/v32i4.457.g253>).

<sup>88</sup> Muḥammad Bin Idrīs Al Shāf'ī, *Kitāb ul Umm*, 28-30.

<sup>89</sup> Al-Saadi, *Puberty and Its Signs*, 32:11.

<sup>90</sup> Ibn 'Abd Al-Barr, *Al-Kāfi Fi Fiqh Ahl al-Madina* (Beirut: Dār al-Kutub al- 'Ilmiyyah, n.d.), 231.

<sup>91</sup> Ibid., 11.

## 2.7 Definition of a Child and Childhood in Sharī‘ah

Laterally, Altifal (Child) means (المولود ما دام ناعما و رخصا) “the infant (newly born child) as long as soft and too little”<sup>92</sup> and (المولود حتى البلوغ) “the newly born child till puberty”<sup>93</sup>.

According to

”الطفل: الصبي من حين يسقط من البطن إلى أن يحتلم”<sup>94</sup>

“The child: a boy from the time he is born until he reaches puberty.”

Its plural is (الأطفال) Alاتفāl. This word is used in the Holy Qur’ān in this meaning. Allahﷻ

Almighty said:

”وَإِذَا بَلَغَ الْأَطْفَالُ مِنْكُمُ الْحُلُمَ فَلْيَسْتَأْذِنُوا كَمَا اسْتَأْذَنَ الَّذِينَ مِنْ قَبْلِهِمْ ۚ كَذَلِكَ يُبَيِّنُ اللَّهُ لَكُمْ آيَاتِهِ ۗ وَاللَّهُ عَلِيمٌ حَكِيمٌ

95”

“When the children from among you reach puberty, they must seek permission, as those before them seek the permission. This is how Allahﷻ explains His verses to you. Allahﷻ is All-Knowing, All-wise”<sup>96</sup>

According to Islamic law, generally, the child is a person who has not attained puberty or the age of puberty.

## 2.8 Childhood

According to Islamic law, Childhood is a period in the age of a human being in which he or she is not obliged to follow any law and rules, even in the case of violation of any law he or she is not liable to punishment. This period starts from birth and remains until the age of puberty. A famous Islamic jurist Abū Hamid Imam Al Ghazali

<sup>92</sup> Husain Bin Muḥammad, Al Rāghib Al Asfahāni, *Mu‘jam Mufradāt e Alfāz Al Qur’ān*, (Beirut, Dar al-Fiker, 2006), 229

<sup>93</sup> Majma‘ al-Lughā al-‘Arabiyya. *Al-Mu‘jam al-Wasīṭ*. Cairo: Jamhūriyyat Miṣr al-‘Arabiyya, 2004, 580

<sup>94</sup> Mohammad ‘amīm Al-Iḥsān Al-Mujaddadī Al-Barkatī, *Al-Ta‘rīfāt Al-Fiqhiyya*: (Beirut-Lebnon, Dār Al-Kutub Al-‘Ilmiya: 2003), 136

<sup>95</sup> Al-Qur’ān 24:59

<sup>96</sup> Mufti Muḥammad Taqī Uthmāni, *The Meaning of The Noble Qur’an*, 657.



defined al Tufūla as “a phase of life of human being which starts from his creation as fetus then birth and remains up to his puberty”<sup>97</sup>. According to Islamic concepts, a human being is a result of intercourse between a male and a female, starting life as a fetus in the womb of his mother, then he or she starts the period of suckling, and after that, he or she becomes a child.<sup>98</sup>

### **Al Sabī**

According to Ibn e Manẓūr:

”الصبي منذ ولادته إلى أن يفطم”<sup>99</sup>

The boy from his birth until he is weaned.

## **2.9 Legal Capacity of a Child in Sharī‘ah**

The term Al Ahliyya (الأهلية) is used for legal capacity in Sharī‘ah. The literal meaning of the word *Ahliyya* is the ability (الصلاحية) and entitlement (الإستحقاق)<sup>100</sup> as Allah ﷻ Almighty said:

وَكَانُوا أَحَقُّ بِهَا وَأَهْلُهَا”<sup>101</sup>

“And they were much entitled to it and competent for it”.

*Ahliyya* is “the ability to acquire and exercise rights and to accept duties and perform them. This indicates two types of capacity: the first is based on the acceptance or acquisition of rights and the other on the performance of duties, which are named *Ahliyyat al- wujūb* (أهلية الوجوب) the capacity for the acquisition of rights and *Ahliyya tul Adā* (أهلية الأداء) the capacity for execution or performance of duties”.

<sup>97</sup> AlGhazālī, *Al-Munqaz Min Al-Zalāl* (Beirut, 1980), 89.

<sup>98</sup> Al-Qur’ān 4:1, 22:5, 31:13, 46:15

<sup>99</sup> Abū Alfadhāl, Muḥammad bin Mukarram, Ibne Manẓūr, *Lisān al- ‘Arab*, (Berout: Dar Sadar, 1414H),

<sup>100</sup> Dr. Muḥammad Mustafa Al-Zuhaylī, *Al- Wajīz fi Ūsūl al- Fiqh Al-Islāmī* (Dārul Khair, Beirut, 2006), 492

<sup>101</sup> Al-Qur’ān 48:26

Ali Bin Muḥammad As Sayyed As Sharīf Al Jurjāni defines “*Ahlīyya*”

”عبارة عن صلاحية الإنسان لوجوب الحقوق المشروعة له أو عليه”<sup>102</sup>

“It is a human being’s ability to have legitimate rights and duties”

Dr. Husain Hamid Hassān defines “*Ahlīyya*” is

”الصلاحية لثبوت الحقوق و استعمالها، و وجوب الإلتزامات و وفائها”<sup>103</sup>

“Capacity for the vindication of rights and their use, and the obligation of responsibilities and their performance”.

Al Zarqa describes “*Ahlīyya*” as “a description presumed in a person rendering such a person a possible candidate to receive a legislative injunction”.<sup>104</sup>

Al-Sabūni describes *Ahlīyya* as “the ability of a person to oblige, be obliged, and conduct one’s affairs by oneself”.<sup>105</sup>

El-Alami refers to it as “the fitness of a person to enter into an ignition that is to bind and to bound”<sup>106</sup>

So, “*Al ahlīyya*” refers to the power that qualifies individuals to secure and exercise rights and privileges while being culpable of depravity. Under the Sharī‘a, legal capacity involves privileges, duties, and responsibilities inherently enjoyed and exercised by an individual. Legal capacity covers not only the potential of an individual to acquire rights and obligations as called (*Ahlīyyat al- wujūb*) but also the capacity to exercise, execute, and perform such rights and duties as called in Arabic (*Ahlīyya tul Adā*).

Thus, a child (*Al tīfal*) and a minor (*Al sabī*) are generally assumed to possess the

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<sup>102</sup> Ali Bin Muḥammad Al Sayyed Al Sharīf Al Jurjāni, *Mu’jam al-Ta’arifaat*, Edited by Muḥammad Siddiq Al-Minshawi, (Dar ul Faḍīla, Cairo, Egypt), 36

<sup>103</sup> Dr. Husain Hamid Hassān, *Usūl lul Fiqh*, (Maktaba tul Jami’a, International Islamic University, Islamabad, 2003), 137-149

<sup>104</sup> Dr. Muḥammad Zia-U-Haqq, *Legal Status of Children In Islamic Law*, p.12

<sup>105</sup> Ibid., 12.

<sup>106</sup> Ibid., 12.

full capability (*Ahlīyyat al- wujūb*) for the acquisition. However, a child does not have the (*Ahlīyya tul Adā*) for performance until he or she reaches the age of actual or legal puberty. This is when a child is assumed to have fully developed their intellect (‘aql) and discretion (rushd).

An individual is said to have the capacity to act when fully developed intellectually and has the discretion (reason) to do so. Thus, an unborn child (*Janīn*) acquires some rights, like inheritance, legacy, and parentage, but cannot perform certain obligations. This is because the (*Janīn*) is still attached to the mother, and her personality is deficient.<sup>107</sup>

## 2.10 Ḍamān and Juvenile Liability in Sharī‘ah

In Islamic jurisprudence (*fiqh*), Ḍamān refers to the legal obligation to compensate for harm or loss caused unjustly to another's person or property. It is derived from the Qur'an, Sunnah, and juristic consensus (*ijmā‘*), and is often invoked in both civil and criminal contexts. According to the *Majallah al-Aḥkām al-‘Adliyya* (Ottoman Civil Code), Ḍamān is: "The giving of an equivalent to the thing if it was a fungible, or the giving of its value if it was a non-fungible object."<sup>108</sup> This rule applies to intentional and unintentional harm, underlining the seriousness with which Sharī‘ah treats the preservation of life and property.

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<sup>107</sup> Hassān, *Usūl lul Fiqh*, 137–149.

<sup>108</sup> Majallah al-Aḥkām al-‘Adliyya, Article 1226. Quoted in "The Islamic Law of Torts and Product Liability (An Analysis)," *Pakistan Journal of Islamic Research* 19, no. 1 (2023): 5. <https://pjir.bzu.edu.pk/website/journal/article/66e7e339a0088/file/66e7e3553d68a/download>.

## 2.11 Ḍamān and Juvenile Responsibility

In the case of juveniles, Islamic law recognizes different stages of mental development.

The Sharī‘ah defines:

**2.11.1 Ṣabī ghayr Mumayyiz** (non-discerning minor): below the age of discernment (typically under 7 years).

**2.11.2 Mumayyiz** (discerning minor): a child who can differentiate right from wrong, usually between 7 and puberty.

**2.11.4 Bāligh** (mature): upon reaching puberty

While a juvenile is not held criminally accountable (no ḥadd or qisās punishments apply), Islamic scholars agree that they can be held financially liable through the rule of Ḍamān in the event of property damage or harm to others even in accidental cases.<sup>109</sup> For example, if a discerning minor (mumayyiz) unintentionally destroys another's property, the compensation is due, but it is often paid from the minor's estate or by the guardian (e.g., parent), depending on the case and the school of thought.<sup>110</sup>

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<sup>109</sup> Mohammad Saiful Islam, "Criminal Accountability and Juvenile Offenders: A Study under Islamic Principles, International Law and the Children Act, 2013," *International Journal of Ethics in Social Sciences* 3, no. 2 (2015): 12. [https://papers.ssrn.com/sol3/Delivery.cfm/SSRN\\_ID3168425\\_code2954440.pdf?abstractid=3168425](https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3168425_code2954440.pdf?abstractid=3168425).

<sup>110</sup> Children's Criminal Responsibilities: Comparative Study in Islamic and Criminal Law," *Varia Justicia* 14, no. 2 (2018): 109. <https://www.researchgate.net/publication/330796208>.

### 2.11.5 Juristic Opinions:

Imam al-Kāsānī (Hanafī scholar) explains in *Badā'i' al-Ṣanā'i'*: “If a minor commits a harmful act that leads to destruction of property, the obligation of *damān* is established, even though criminal punishment is not.”<sup>111</sup> Imam al-Nawawī (Shāfi'ī) affirms in *Rawḍat al-Ṭālibīn*: “*Ḍamān* applies to minors because liability arises from the effect (i.e., the damage), not the intention behind the act.”<sup>112</sup> This reflects the foundational principle that in tortious matters (*madārif al-diyāt*), the law focuses on the harm rather than the moral culpability of the actor.

## 2.12 Diversionary Measures in Sharī'ah : Juvenile Justice and Liability

In Islamic law, diversionary measures (*al-tadābīr al-badīlah*) are non-punitive ways to deal with children who commit offenses. These are used instead of harsh punishments. They focus on helping the child learn and improve. This approach is based on key Sharī'ah values like mercy (*raḥmah*), reform (*iṣlāḥ*), and justice (*ʿadl*).

### 2.12.1 Definition and Concept in Sharī'ah

Islamic scholars differentiate between two key concepts:

*Ahliyyah* (legal capacity): the ability to be legally responsible.

*Taklīf* (moral responsibility): the religious duty upon a person.

A minor (child who has not reached puberty) is considered non-mukallaf, meaning they are not legally responsible for their actions in full. Therefore, minors are not subject to *ḥudūd* (fixed punishments) or *qisās* (retaliatory punishments) under Sharī'ah law. Instead, they are treated with care and given guidance.

“The pen is lifted from three: the one who sleeps until he awakens, the child until he

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<sup>111</sup> Al-Kāsānī, *Badā'i' al-Ṣanā'i' fī Tartīb al-Sharā'i'*, Vol. 7 (Beirut: Dār al-Kutub al-ʿIlmiyya, n.d.), 228.

<sup>112</sup> Al-Nawawī, *Rawḍat al-Ṭālibīn wa ʿUmdat al-Muḥtājīn*, Vol. 9 (Beirut: Dār al-Fikr, 1991), 46.

matures, and the insane until he becomes sane.” Abu Dawud, Hadith 4403<sup>113</sup>

This hadith makes it clear that minors are not to be punished like adults. But they can be corrected and guided using alternative methods.

### **2.12.2 Types of Diversionary Measures in Islamic Law**

#### **1. Ta’ dīb (Disciplinary Action)**

This refers to light punishment or advice given by a guardian, teacher, or authority to help the child improve. It could include counseling, warning, or moral teaching.

#### **2. Sulḥ (Amicable Settlement)**

If a juvenile causes harm or damage, Islamic law encourages the parties to settle the matter peacefully. This could involve apologies, returning property, or compensation (diyah).

#### **3. Rehabilitation and Moral Training**

Islamic schools (al-Madāris) historically focused on moral education for children. Rather than punishing them, they taught them good behavior, manners, and religious duties.<sup>114</sup>

### **2.12.3 Scholarly Explanations:**

#### **1. Imam Ibn Qayyim al-Jawziyyah**

He explains that the Prophet ﷺ did not punish minors with ḥudūd but used kindness, advice, and moral correction:

“The Prophet ﷺ never administered ḥadd punishment to children or the insane, but corrected them with gentleness and advice.”<sup>115</sup>

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<sup>113</sup> Abū Dāwūd, *Sunan Abī Dāwūd*, Hadith no. 4403. <https://sunnah.com/abudawud/43/3>

<sup>114</sup> Muhammad Hashim Kamali, *Sharī‘ah Law: An Introduction* (Oxford: Oneworld, 2008), 124–129.

<sup>115</sup> Ibn Qayyim al-Jawziyyah, *Turuq al-Ḥukmiyyah fī al-Siyāsah al-Shar‘iyyah*, (Cairo: Maktabah al-Qudsī, n.d.), 82–83.

## 2. Imam al-Ghazālī

He describes children as blank slates. If guided early, they can grow into good adults:

“Education and disciplined habit are essential for the child’s moral development, for the child’s soul is like a blank tablet ready to be written upon.”<sup>116</sup>

### 2.12.4 Contemporary Example (Pakistan’s JJSA 2018)

“The JJSA’s diversion mechanism is consistent with Sharī‘ah’s emphasis on rehabilitation over punishment. Juvenile Justice Committees adopt measures like restitution, apology, or social service, aligning with Islamic values of mercy and restorative justice.”<sup>117</sup>

### 2.12.5 Example from Islamic History

‘Umar ibn al-Khaṭṭāb, the second Caliph, was told that a boy had committed false accusation (qadhf). When he found that the boy had not yet reached puberty, he said:

“Since he had not matured, no punishment was applied.”<sup>118</sup>

This shows that even in early Islamic governance, children were not punished like adults, but instead given a chance to reform.

## 2.13 Liability for Diyat in Cases Involving Juvenile Offenders:

In Islamic criminal law, diyat serves as compensation to the victim or their heirs in cases of homicide or bodily harm<sup>119</sup>. When the offender is a juvenile, questions arise regarding who bears the financial responsibility for this compensation the responsibility

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<sup>116</sup> Al-Ghazālī, *Iḥyā’ ‘Ulūm al-Dīn*, Vol. 3 (Beirut: Dār al-Ma’rifah, 2005), 98.

<sup>117</sup> Malak Naeem Dilawar, "A Sharī‘ah Appraisal of Pakistan’s Juvenile Justice Act, 2018," *SSRN*, February 2024, <https://ssrn.com/abstract=4716168>.

<sup>118</sup> Ibn Qayyim al-Jawziyyah, *Zād al-Ma‘ād*, Vol. 5 (Beirut: Mu’assasat al-Risālah, 1990), 180.

<sup>119</sup> Ismail, Siti Zubaidah. "The modern interpretation of the Diyat formula for the quantum of damages: The case of homicide and personal injuries." *Arab Law Quarterly* 26, no. 3 (2012): 361-379.

for paying diyat (blood money) when the offender is a juvenile, focusing on the roles of the 'āqilah (male agnatic relatives) and the guardian<sup>120</sup>.

## **2.14 The Concept of 'Āqilah in Sharī'ah :**

The term 'āqilah refers to the male agnatic relatives of an offender who are collectively responsible for paying diyat in cases of unintentional homicide or bodily harm. This concept is rooted in the principles of mutual support and collective responsibility in Islamic society.

"An important aspect of the Islamic way of life is that individuals and collectivity provide help and support to each other. This aspect is particularly exemplified by the institution of 'Aqilah', which was established for sharing the burden of the payment of Diyat.<sup>121</sup>"

## **2.15 Different School Of Thoughts Regarding 'Āqilah:**

### **2.15.1 Ḥanafī School**

The Ḥanafī school holds that the 'āqilah is responsible for paying diyat in cases of unintentional homicide committed by a juvenile. The responsibility does not fall on the

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<sup>120</sup> Hossain, Mohammad Shahadat. "The Victim Compensation Scheme ('Aqilah) under Islamic Criminal Law and its Compatibility with the Criminal Justice System in Bangladesh: A Critical Study." *Journal Of Creative Writing* (ISSN-2410-6259) 5, no. 1 (2021).

<sup>121</sup> Munir, Bakht. "Islamic Injunctions on the Institutionalization of Aqilah: A Case Study of Vicarious Liability for Payment of Diyat." *Global Security & Strategic Studies Review* 5 (2020): 31-39.



guardian unless they are part of the 'āqilah. This perspective is supported by classical jurists al-Kāsānī, who stated:

"If a child commits a killing by mistake, the diyat is upon his 'āqilah, not upon him."<sup>122</sup>

### 2.15.2 Mālikī School

The Mālikī school concurs with the Ḥanafī position, emphasizing the role of the 'āqilah in such cases. The guardian is not held financially responsible unless they are part of the 'āqilah<sup>123</sup>.

### 2.15.3 Shāfi'ī School

The Shāfi'ī school also supports the responsibility of the 'āqilah in cases involving juveniles. According to Imam al-Shafi'ī, the 'āqilah consists of male agnatic relatives who would inherit from the offender. This view is elaborated in the following source:

"According to the Shāfi'ī school, the 'āqilah are the male agnatic relatives who would inherit from the offender, and they are responsible for the payment of diyat in cases of unintentional homicide."<sup>124</sup>

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<sup>122</sup> Al-Kāsānī, *Bada'i al-Sana'i fi Tartib al-Shara'i*, vol. 7, trans. as cited in Syed Khalid Rashid, *Muslim Law* (New Delhi: Eastern Book Company, 2004), 347.

<sup>123</sup> Schriber, Ari. "Judicial Practice as Islamic Law: The 'Amal of Fez in Post-Classical Mālikī Legal Tradition." *Asiatische Studien-Études Asiatiques* 78, no. 1 (2024): 173-217.

<sup>124</sup> Ismail, Siti Zubaidah. "The modern interpretation of the Diyat formula for the quantum of damages: The case of homicide and personal injuries." *Arab Law Quarterly* 26, no. 3 (2012): 361-379.

#### 2.15.4 Ḥanbalī School

The Ḥanbalī school aligns with the other Sunni schools, assigning the responsibility of paying diyat to the ‘āqilah in cases of unintentional homicide by juveniles<sup>125</sup>.

#### 2.16 Determination of Juvenile Age in Islamic Law:

Islamic law approaches the concept of juvenile age through the lens of puberty (bulūgh) and mental discernment (rushd), rather than a fixed chronological age. Adolescents in Sharī‘ah are considered individuals transitioning between childhood and legal responsibility, with criminal accountability linked to the onset of puberty and mental maturity. The Islamic juvenile justice system prioritizes rehabilitation over punishment and recognizes the individual’s cognitive and emotional development during this stage. The attainment of puberty is the primary determinant of legal accountability (taklīf) in Islamic jurisprudence. If signs of puberty are present, such as nocturnal emissions in boys or menstruation in girls, the individual is considered legally responsible regardless of age. In the absence of physical signs, classical jurists provided age estimates for legal majority. According to Abū Ḥanīfah, the age of legal adulthood is 18 lunar years for boys and 17 for girls, while other Ḥanafī scholars, including Abū Yūsuf and Muḥammad al-Shaybānī, placed it at 15 lunar years for both genders<sup>126</sup>. Imām Mālik has two narrations: one aligns with 15 years and another extends to 18. The Shāfi‘ī and Ḥanbalī schools also

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<sup>125</sup> Hoque Miah, Muhammed Ikramul. "Religion and civility: a study of Ibn al-Qayyim’s Aḥkām Ahl al-Dhimma and a comparative reading from the Ḥanbalī and Ḥanafī schools of law." PhD diss., University of Birmingham, 2020.

<sup>126</sup> Federal Territory Mufti Office. *Irsyad Al-Fatwa Series 230: The Age of Puberty According to 4 Mazhab*. Kuala Lumpur: Mufti Wilayah Persekutuan, 2017. Accessed Feb 27, 2025. <https://www.muftiwp.gov.my/en/artikel/irsyad-fatwa/irsyad-fatwa-umum-cat/2460-irsyad-al-fatwa-series-230-the-age-of-puberty-according-to-4-mazhab>.

regard 15 lunar years as the default age of majority if puberty signs are absent<sup>127</sup>. There is scholarly consensus that the earliest age at which puberty may be recognized through physical signs is 9 lunar years for girls and 12 for boys<sup>128</sup>. Puberty, once confirmed by such signs, establishes full legal responsibility. A child who exhibits signs of puberty before the presumed minimum age is treated as a legally responsible adult (mukallaf).

This legal status is based on the Qur’anic directive:

وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ وَلَا تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَن يَكْبَرُوا وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعْفِفْ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ<sup>129</sup>

"Test the orphans until they reach the marriageable age. Then, if you perceive in them proper understanding, hand their property over to them"<sup>130</sup>.

This verse highlights both physical maturity and mental soundness as prerequisites for entrusting individuals with legal responsibilities. The hadith of the Prophet ﷺ, narrated by ‘Abdullāh ibn ‘Umar, further clarifies that “the pen is lifted” (meaning one is not held accountable) for three people: a sleeping person until they awaken, a child until they reach puberty, and an insane person until they regain sanity<sup>131</sup>. Accordingly, criminal liability is only applicable to those who are sane and have reached the age of legal accountability. Those who are not legally responsible such as minors and the mentally ill are classified as ghayr-mukallaf and are exempt from religious and criminal liability. Legal responsibility in Islam is contingent upon three conditions: the prohibition of the act under Sharī‘ah, voluntary choice (ikhtiyār), and awareness of the

<sup>127</sup> IslamQA. "What Is the Age of Puberty in Islam for a Boy?" Fatwa No. 199322. Accessed Feb 27, 2025. <https://islamqa.info/en/answers/199322>.

<sup>128</sup> IslamQA. "Ruling on the Age of Puberty and Legal Accountability in Islam." Fatwa No. 204580. Accessed Jan 27, 2025. <https://islamqa.info/en/answers/204580>

<sup>129</sup> Al-Qur’ān 4:6

<sup>130</sup> Mufti Muhammad Taqī Uthmāni, *The Meanings of the Noble Qur’an* (Karachi: Maktaba Ma’arifur Qur’an, 2007), 146, Surah An-Nisā’, 4:6.

<sup>131</sup> Abū Dāwūd, Sulaymān ibn al-Ash’ath. *Sunan Abī Dāwūd*, Book 38, Hadith 4398. Translated by Nasiruddin al-Khattab. Riyadh: Dārussalām.

act's consequences (idrāk). If any of these elements are missing, liability does not arise. Thus, in Islamic law, age-based limits to criminal responsibility serve to protect individuals who lack the intellectual or physical capacity to be deemed fully accountable. Islamic law does not assign a universal age for criminal responsibility but rather considers puberty and mental capability. While various schools of thought offer differing views on the presumed age of maturity, all emphasize that accountability arises only with full cognitive and physical maturity. Adolescents, therefore, are given educational and moral guidance rather than punitive measures, in alignment with the broader objectives of Shari'ah : mercy, justice, and reform.

### **2.17 The Juvenile Issue (Age Assessment)**

In every juvenile justice system, the question of whether an individual is a juvenile or not is relevant. Islam's legal system uses puberty as a clearcut means of determining juvenility. However, this has turned into a complicated problem in the modern world because most children reach puberty at relatively young ages for a variety of reasons, but they are deemed medically and psychologically incapable of understanding the nature of their actions. As a result, age determination becomes crucial since without it, children involved in the legal system cannot be separated from adults until and until their age is ascertained.<sup>132</sup>

Documentary evidence, such as computerized national identity cards, Form Bs, birth registration forms, school entry and departure certificates, etc., are accepted as an

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<sup>132</sup> Kenny, Mary Anne, and Maryanne Loughry. "Addressing the limitations of age determination for unaccompanied minors: A way forward." *Children and Youth Services Review* 92 (2018): 15-21.

objective method of determining age in Pakistan. If these records are missing, the court may decide to send such minors who seem less than eighteen years old for a medical examination in order to establish their age. When determining a juvenile's age, the medical board's decision is considered a subjective evaluation. Regretfully, if the minor does not raise the plea of age, he is considered an adult and is prosecuted through the conventional criminal justice system.

## **2.18 Conclusion:**

The exploration of juvenile justice in light of Sharī'ah principles and modern legal frameworks, particularly the Juvenile Justice System Act 2018, reveals a profound and humane approach rooted in Islamic jurisprudence. Sharī'ah offers a system that not only acknowledges the biological and psychological development of children but also prioritizes mercy (rahmah), moral reform (iṣlāḥ), and justice ('adl) over mere retribution. The determination of criminal liability in Islamic law hinges not on arbitrary age thresholds but on puberty (bulūgh) and mental discernment (rushd), which ensures that only those who possess the capacity for legal and moral accountability (taklīf) are subject to punitive measures.

Each of the four Sunni schools of jurisprudence Ḥanafī, Mālikī, Shāfi'ī, and Ḥanbalī agrees that children below the age of maturity are exempt from ḥudūd and qiṣās, though they may incur civil liability (damān) in specific contexts. The concept of 'āqilah serves as a collective financial safety net, particularly in cases where a juvenile unintentionally causes harm, and this framework aligns closely with the notion of restorative justice endorsed by the JJSA 2018.

Furthermore, the chapter has clarified that while Sharī'ah does not provide a fixed

universal age for puberty, juristic consensus supports contextual assessment using both physiological signs and reasonable age presumptions. This approach is echoed in Pakistan's juvenile justice system, which recognizes the need for age verification through medical or documentary means to prevent the wrongful prosecution of minors as adults.

Ultimately, Sharī'ah envisions a juvenile justice system that upholds the dignity of the child, emphasizes educational and rehabilitative measures over punishment, and aligns harmoniously with modern restorative practices. The Islamic framework ensures that a child is not merely treated as a miniature adult but as an evolving individual whose intellectual and moral development must be nurtured and protected. This convergence between classical Islamic thought and contemporary legal protections forms a compelling basis for a just, compassionate, and reform-oriented juvenile justice system in Muslim societies today.

## Chapter 3

### A Comparative study of Juvenile Justice System Act 2018:

#### 3.1 Introduction

In an Islamic Republic such as Pakistan, legal enactments must ultimately be judged not only by their conformity with international standards but also by their alignment with the Sharī‘ah, the supreme law as defined in Articles 227 to 230 of the Constitution of Pakistan 1973. The enactment of the Juvenile Justice System Act (JJSA) in 2018 marked a substantial legislative step toward addressing the rights of juveniles. While the Act incorporates elements of international legal instruments, such as the United Nations Convention on the Rights of the Child (CRC)<sup>133</sup>, it remains a subject of debate whether the provisions of JJSA 2018 fully conform to Islamic principles of justice. This chapter undertakes a critical comparative analysis of Pakistan’s legal treatment of juveniles under the JJSA 2018 and the Islamic legal framework, focusing on convergence and divergence in conceptual and procedural terms.

Sharī‘ah enshrines a justice system deeply rooted in mercy (rahmah), equity (‘adl), and reform (iṣlāḥ), especially in matters involving children. Islamic law does not view children as miniature adults; rather, it upholds a highly nuanced framework for determining criminal responsibility, based primarily on the attainment of puberty (bulūgh) and mental discernment (tamyīz)<sup>134</sup>. The Qur’ān explicitly lays down that

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<sup>133</sup> Hoffman, Simon, and Rebecca Thorburn Stern. "Incorporation of the UN Convention on the Rights of the Child in National Law." *The International Journal of Children's Rights* 28, no. 1 (2020): 133-156.

<sup>134</sup> Amatullah, Muna Faiza, Moh Abdul Kholiq Hasan, and Andri Nirwana AN. "The Renewal of the Minimum Age of Children for Criminal Responsibility: A Comparative Study of Positive Law and Islamic Criminal Law." In *International Conference on Islamic Studies (ICIS 2022)*, pp. 128-138.

“Allah does not burden a soul beyond that it can bear,”<sup>135</sup> indicating a legal and moral system sensitive to the capacities of individuals. A ḥadīth of the Prophet Muhammad (PBUH) clarifies that legal accountability is lifted from children until they reach puberty, the insane until they recover, and those asleep until they awaken.<sup>136</sup>

In contrast, Pakistani statutes, though increasingly progressive, are often inconsistent in defining the age of criminal responsibility. For example, Section 82 of the Pakistan Penal Code (PPC) 1860 absolves children under ten from criminal liability,<sup>137</sup> whereas the JJSA 2018 defines a juvenile as any person under eighteen years of age.<sup>138</sup> This discrepancy raises important questions about whether Pakistan's legal framework is truly in alignment with Islamic teachings or merely a hybridized adoption of international norms.

The core aim of this chapter is to identify and analyze these intersections and divergences between Sharīʿah and the JJSA 2018. Through an issue-by-issue comparative lens covering definitions, criminal responsibility, judicial procedure, rehabilitation mechanisms, and diversionary practices this research seeks to ascertain whether Pakistan's juvenile justice system lives up to its constitutional mandate to be in conformity with Islamic injunctions.

This comparative exercise is vital not only for academic enrichment but also for legal reform. If inconsistencies exist between statutory and Sharīʿah norms, legal reform becomes not only advisable but constitutionally obligatory. As Sharīʿah aims at maqāṣid (higher objectives) such as justice, protection of human dignity, and social reform, any

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Atlantis Press, 2022.

<sup>135</sup> Al-Qurʿan, 2:28

<sup>136</sup> Abū Dāwūd Sulaymān ibn al-Ashʿath, *Sunan Abī Dāwūd*, Hadith no. 4403.

<sup>137</sup> Pakistan Penal Code, Act XLV of 1860, § 82.

<sup>138</sup> Juvenile Justice System Act, No. XXII of 2018, § 2(b), [http://www.na.gov.pk/uploads/documents/1530084128\\_591.pdf](http://www.na.gov.pk/uploads/documents/1530084128_591.pdf).



deviation in the legal process affecting vulnerable juveniles must be examined rigorously. The findings of this chapter will guide the concluding section of the thesis in recommending reforms to ensure that Pakistan's juvenile justice system evolves toward greater consistency with the ethical and legal norms of Islam.

### 3.2 Concept and Status of Juveniles: Legal vs Shari'ah Perspective

The concept of "juvenile" is foundational to any justice system addressing minors in conflict with the law. However, the divergence in defining juvenility between the Pakistani legal framework and Islamic Shari'ah has resulted in inconsistencies in legal practice and enforcement. In Pakistan, the Juvenile Justice System Act 2018 (JJSA) defines a juvenile as "a person who has not attained the age of eighteen years at the time of commission of the offence."<sup>139</sup> This age-based definition reflects Pakistan's commitments under international legal instruments, especially the United Nations Convention on the Rights of the Child (CRC), which categorizes individuals under eighteen as children.<sup>140</sup> In contrast, Shari'ah does not adhere to a fixed numerical age to define childhood or majority. Instead, it links legal responsibility to the attainment of bulūgh (puberty) and tamayiz (discernment). A juvenile in Islamic law is referred to as ṣabī (الصبي), who is exempt from legal accountability until he or she reaches the age of maturity. The Prophet Muḥammad ﷺ clarified this exemption in the ḥadīth:

عَنْ عَلِيٍّ، رَضِيَ اللَّهُ عَنْهُ، سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ

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<sup>139</sup> Juvenile Justice System Act, No. XXII of 2018, § 2(b), [http://www.na.gov.pk/uploads/documents/1530084128\\_591.pdf](http://www.na.gov.pk/uploads/documents/1530084128_591.pdf).

<sup>140</sup> United Nations, *Convention on the Rights of the Child*, 1989, Article 1, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

"رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الصَّبِيِّ حَتَّى يَحْتَلِمَ، وَعَنِ الْمَجْنُونِ حَتَّى يَعْقَلَ."

"The pen (of accountability) is lifted from three: the sleeper until he wakes, the child until he reaches puberty, and the insane until he regains sanity."<sup>141</sup>

This narration, coupled with Qur'anic directives, establishes that children are not held accountable until they acquire full mental and physical capacity. The Qur'ān states:

"لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا أُكْتَسَبَتْ"<sup>142</sup>

"Allah does not burden a soul beyond its capacity. It will have [the consequence of] what [good] it has gained, and it will bear [the consequence of] what [evil] it has earned."<sup>143</sup> In Islamic law, puberty marks the transition to legal and moral responsibility. The signs of puberty (‘alāmāt al-bulūgh) are both physical and physiological and are well-documented in classical fiqh. According to the Ḥanafī school, the appearance of any one of the following signs qualifies a person as bāligh: occurrence of wet dreams, growth of coarse pubic hair, menstruation in girls, or pregnancy. If none of these signs appear, the age of 15 is considered the cut-off for maturity.<sup>144</sup>

On the other hand, modern Pakistani legal instruments employ a singular, uniform age (18) for criminal responsibility under the JJSA, while other laws such as the Pakistan Penal Code (PPC) remain inconsistent. For example, Section 82 of the PPC exonerates children under 10 from criminal liability, while Section 83 provides a vague qualification for those between 10 and 14 based on mental maturity.<sup>145</sup> The Child Marriage Restraint Act 1929 defines a child as a female under sixteen and a male under

<sup>141</sup> Abū Dāwūd Sulaymān ibn al-Ash‘ath, *Sunan Abī Dāwūd*, Hadith no. 4403.

<sup>142</sup> Al-Qur’an 2:286.

<sup>143</sup> Mufti Muḥammad Taqī Uthmānī, *The Meaning of The Noble Qur’an*, 93

<sup>144</sup> Al Marghīnānī, *Al Hidāyyah*, 6:451.

<sup>145</sup> Pakistan Penal Code, Act XLV of 1860, §§ 82–83, <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>.

eighteen, further adding to the definitional conflict.<sup>146</sup>

This disparity between fixed age-based definitions in statutory law and the maturity based criteria in Sharī‘ah creates ambiguity in criminal proceedings. Courts frequently struggle to determine juvenility in the absence of accurate documentation, particularly in rural areas, leading to arbitrary or inconsistent judgments.<sup>147</sup>

Therefore, it becomes crucial to reconcile these approaches. From a Sharī‘ah perspective, justice is not merely procedural but ethical and spiritual. It prioritizes fairness based on capacity and knowledge. The Qur’ān instructs:

"وَلَا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ إِنَّ السَّمْعَ وَالْبَصَرَ وَالْفُؤَادَ كُلُّ أُولَٰئِكَ كَانَ عَنْهُ مَسْئُولٌ"<sup>148</sup>

"Do not pursue that of which you have no knowledge. Indeed, the hearing, the sight and the heart about all those [one] will be questioned."<sup>149</sup> Hence, the emphasis in Sharī‘ah on mental discernment and physical maturity before attributing criminal liability is an embodiment of this divine principle. A comparative framework must, therefore, consider this ethical dimension while addressing legal definitions, especially in a state constitutionally bound to uphold Islamic injunctions.

### 3.3 Age of Criminal Responsibility:

The age of criminal responsibility is a crucial indicator of how a legal system conceptualizes moral and legal accountability. It determines when a person can be held liable for a criminal act, thereby exposing them to judicial proceedings and potential

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<sup>146</sup> Child Marriage Restraint Act, 1929, § 2, as amended in 1981.

<sup>147</sup> Kupchik, Aaron. *Judging juveniles: Prosecuting adolescents in adult and juvenile courts*. Vol. 5. NYU Press, 2006.

<sup>148</sup> Al-Qur’ān 17:36.

<sup>149</sup> Mufti Muḥammad Taqī Uthmānī, *The Meaning of The Noble Qur’an*, 522

penalties. The divergence between the age-based standard adopted by Pakistani statutory law and the maturity-based approach in Sharī‘ah is one of the most significant points of contrast in the juvenile justice discourse.

Under Pakistani law, Section 82 of the Pakistan Penal Code (PPC) 1860 provides that no act by a child under the age of ten shall be considered an offence.<sup>150</sup> Section 83 of the same code states that a child above ten but under fourteen may be exempt from criminal responsibility if, at the time of committing the act, the child lacks sufficient maturity to understand its nature and consequences.<sup>151</sup> This creates a tiered system: complete immunity for children under ten, and conditional liability for those between ten and fourteen, based on mental maturity. However, the Juvenile Justice System Act (JJSA) 2018 broadly defines a “juvenile” as any person below eighteen,<sup>152</sup> introducing ambiguity between general criminal law and juvenile-specific statutes.

In contrast, Sharī‘ah does not recognize fixed numerical thresholds for criminal liability. Rather, criminal responsibility taklīf (التكليف) is closely tied to bulūgh (puberty) and ‘aql (mental discernment). A person becomes legally accountable upon reaching these twin thresholds. The Prophet Muḥammad ﷺ made this clear in the ḥadīth:

"رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الصَّبِيِّ حَتَّى يَحْتَلِمَ، وَعَنِ الْمَجْنُونِ حَتَّى يَعْقِلَ".

"The pen (of accountability) has been lifted from three: from the sleeper until he awakens, from the child until he reaches puberty, and from the insane until he becomes sane."<sup>153</sup>

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<sup>150</sup> Pakistan Penal Code, Act XLV of 1860, § 82, <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>.

<sup>151</sup> Ibid., § 83.

<sup>152</sup> Juvenile Justice System Act, No. XXII of 2018, § 2(b), [http://www.na.gov.pk/uploads/documents/1530084128\\_591.pdf](http://www.na.gov.pk/uploads/documents/1530084128_591.pdf).

<sup>153</sup> Abū Dāwūd Sulaymān ibn al-Ash‘ath, *Sunan Abī Dāwūd*, Hadith no. 4403.

This ḥadīth outlines the fundamental principle that criminal liability is contingent not on a specific age, but on the individual's capacity for understanding and judgment.

The Qur'ān reinforces this ethical framework of liability. It states:

"لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا"<sup>154</sup>

"Allah does not burden a soul beyond its capacity."<sup>155</sup>

This verse has been interpreted by Islamic scholars as a principle of legal and moral equity punishment or obligation is imposed only when one has the capacity to bear it, which excludes children who have not reached mental and physical maturity.

According to the Ḥanafī school, if the physical signs of puberty are absent, the age of criminal responsibility is presumed to begin at fifteen for both boys and girls.<sup>156</sup> The Shāfi'ī, Mālikī, and Ḥanbalī schools also adopt fifteen as the default threshold but allow for earlier maturity if signs such as menstruation, nocturnal emission, or physical development are present.<sup>157</sup> In some interpretations, the age of discernment (tamyīz) usually at seven is considered relevant for assigning civil liability (e.g., compensation or training), but not criminal culpability in terms of ḥudūd or qiṣāṣ punishments.<sup>158</sup>

This approach creates a flexible framework that accommodates natural developmental variations among children. Unlike the rigid application of a statutory age, the Sharī'ah-based standard insists on assessing the mental, physical, and emotional preparedness of the child. Such an individualized assessment better aligns with the Qur'ānic mandate for justice:

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<sup>154</sup> Al-Qur'an 2:286.

<sup>155</sup> Mufti Muḥammad Taqī Uthmānī, *The Meaning of The Noble Qur'an* 93

<sup>156</sup> Muḥammad ibn Maḥmūd al-Asrūshnī al-Ḥanafī, *Jāmi' Ahkām al-Ṣiḡhār*.

<sup>157</sup> Wabbah al-Zuḥaylī, *al-Fiqh al-Islāmī wa Adillatuhu*, vol. 6 (Damascus: Dār al-Fikr, 1985), 122.

<sup>158</sup> Ibn Qudāmah, *al-Mughnī*, vol. 9 (Beirut: Dār al-Fikr, n.d.), 94–95.

"إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ"<sup>159</sup>

"Indeed, Allah commands justice and excellence"<sup>160</sup>

In practice, the Pakistani legal system's fixed age threshold at eighteen, as enforced under the JJSA 2018, may thus conflict with the Sharī'ah position that assigns criminal responsibility upon the actual attainment of puberty, not merely chronological age. For example, a fifteen-year-old who has reached puberty may be held morally responsible under Islamic law, while under Pakistani law, the same individual would still be treated as a child regardless of his or her maturity. This misalignment has practical implications for the prosecution of juveniles, especially in serious offences. Furthermore, the JJSA permits flexibility in sentencing and emphasizes rehabilitation, it does not provide mechanisms to account for early or delayed physical maturity. In contrast, Sharī'ah allows for nuanced classification, distinguishing between ṣabī ghayr mumayyiz (non-discerning minor), ṣabī mumayyiz (discerning minor), and bāligh (mature), with each stage bearing different legal consequences.<sup>161</sup> This structure ensures that justice is delivered in proportion to an individual's capacity, not merely their age in years.

### 3.4 Juvenile Courts and Judicial Proceedings: Sharī'ah vs JJSA

The establishment of juvenile courts under the Juvenile Justice System Act (JJSA) 2018 marks a significant step toward specialized judicial treatment of minors in Pakistan. Section 4 of the JJSA mandates the creation of exclusive juvenile courts to hear cases involving children in conflict with the law, aiming to shield minors from the adversarial

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<sup>159</sup> Al-Qur'ān 16:90.

<sup>160</sup> Mufti Muḥammad Taqī Uthmānī, *The Meaning of The Noble Qur'an* 505.

<sup>161</sup> Abū Ḥāmid al-Ghazālī, *Iḥyā' 'Ulūm al-Dīn*, vol. 3 (Cairo: Dār al-Ma'ārif, n.d.), 110.

environment of regular criminal courts.<sup>162</sup> These courts are designed to ensure that proceedings are child-sensitive, emphasize rehabilitation over punishment, and apply procedural protections to avoid further trauma. However, the procedural orientation of these courts is largely based on Western legal models and international standards such as the United Nations Convention on the Rights of the Child (CRC).<sup>163</sup>

From the perspective of Sharī‘ah, the adjudication of cases involving minors is fundamentally different in nature, scope, and methodology. Islamic legal theory does not provide for a separate “juvenile court system” per se, but it does mandate distinct judicial treatment for minors based on their capacity (ahlīyyah) and legal responsibility (taklīf). The hadith of Prophet PBUH clearly indicates that a child is not subject to legal accountability until he or she reaches puberty: “The pen is lifted from three: from the sleeping person until he awakens, from the child until he reaches puberty, and from the insane until he regains sanity.”<sup>164</sup> According to the concept of al-tafrīq bayna al-mukallaf wa ghayrihi (distinguishing between the legally responsible and the non-responsible) governs judicial proceedings. Children who are ṣabī ghayr mumayyiz (non-discerning minors) are not held accountable in any form. Those who are mumayyiz (discerning minors) may be subject to training, admonition, or compensation (ḍamān) but not ḥudūd or qīṣāṣ punishments.<sup>165</sup> In Sharī‘ah, the role of the qāḍī (judge) is not just to administer justice mechanically but to ensure ethical and spiritual fairness (‘adl) in each case. The Qur’an commands:

"يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوِّمِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّهِ"<sup>166</sup>

<sup>162</sup> Juvenile Justice System Act, No. XXII of 2018, § 4, [http://www.na.gov.pk/uploads/documents/1530084128\\_591.pdf](http://www.na.gov.pk/uploads/documents/1530084128_591.pdf).

<sup>163</sup> United Nations, *Convention on the Rights of the Child*, 1989, Articles 40 and 12, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.

<sup>164</sup> Abū Dāwūd Sulaymān ibn al-Ash‘ath, *Sunan Abī Dāwūd*, Hadith no. 4403.

<sup>165</sup> Ibn Qudāmah, *al-Mughnī*, vol. 9 (Beirut: Dār al-Fikr, n.d.), 92–94.

<sup>166</sup> Al-Qur’ān 4:135

“O you who believe! Be persistently standing firm in justice, witnesses for Allah”<sup>167</sup> Sharī‘ah thus emphasizes tailored judicial responses based on the offender’s condition. This is why Islamic courts historically considered the personal maturity (rushd) and character (khuluq) of the offender before issuing a ruling. Procedural fairness also included provisions such as informal hearings, community arbitration (ṣulḥ), and moral correction instead of incarceration. While JJSA attempts to mirror some of these Islamic values through diversion and child-friendly trials, its proceedings remain bound by rigid procedural codes. In practice, many juvenile courts in Pakistan suffer from a lack of trained judges, failure to apply diversion, and insensitivity toward the mental and emotional needs of juveniles.<sup>168</sup> The use of fetters, delays in trials, and failure to separate juveniles from adult offenders are common issues that run contrary to both JJSA mandates and Sharī‘ah principles.<sup>169</sup> Another key concern is the absence of spiritual rehabilitation in JJSA judicial processes. While Sharī‘ah aims at reform (iṣlāḥ) not only of actions but also of the soul (nafs), the JJSA primarily focuses on secular reform through counseling or vocational training. In Sharī‘ah, moral instruction (tarbiyyah) is considered integral to juvenile correction, as the Prophet ﷺ instructed:

"مُرُوا أَوْلَادَكُمْ بِالصَّلَاةِ وَهُمْ أَبْنَاءُ سَبْعِ سِنِينَ، وَاصْرِبُوهُمْ عَلَيْهَا وَهُمْ أَبْنَاءُ عَشْرِ"

“Command your children to perform prayer when they are seven years old, and discipline them for it when they are ten”<sup>170</sup> This directive reflects that moral responsibility is cultivated gradually and judicial procedures for minors must serve this objective, not merely act as a substitute for adult courts. Therefore, although Pakistan’s

<sup>167</sup> Mufti Muḥammad Taqī Uthmānī, *The Meaning of The Noble Qur’an* 181.

<sup>168</sup> Society for the Protection of the Rights of the Child (SPARC), *State of Pakistan’s Children Report 2022*, <https://www.sparcpk.org/publications/SOC2022.pdf>.

<sup>169</sup> Human Rights Commission of Pakistan (HRCP), *Juvenile Justice in Pakistan: Implementation Gaps and Challenges*, 2021, <https://hrcp-web.org/hrcpweb/juvenile-justice-in-pakistan>.

<sup>170</sup> Abū Dāwūd, *Sunan Abī Dāwūd*, Hadith no. 495.



juvenile courts represent a progressive legal step, they require substantial Islamic reform to fulfill their constitutionally mandated alignment with Sharī'ah. Procedural innovations such as moral mentorship, restorative justice, and involvement of community elders may bridge this gap and bring the legal process in harmony with Islamic ideals of justice, mercy, and personal reform.

### **3.5 Treatment of Juveniles in Custody: Islamic and Legal Perspectives**

The treatment of juveniles in custody reflects the ethical foundation of a legal system. In Pakistan, the Juvenile Justice System Act (JJSA) 2018 lays down protective standards for the custodial treatment of minors. Section 16(2) of the JJSA explicitly prohibits the use of fetters, handcuffs, corporal punishment, or imprisonment for juvenile offenders, except in limited circumstances involving serious offenses.<sup>171</sup> The aim is to uphold the dignity and rehabilitative potential of children rather than subject them to punitive degradation. However, despite this legal framework, on-ground practices often fall short. Reports of juveniles being handcuffed, detained with adults, denied bail, or held in unsanitary facilities remain widespread across Pakistan.<sup>172</sup> From the standpoint of Islamic law, such treatment is categorically inconsistent with the foundational principles of justice, mercy (rahmah), and human dignity (karāmah). Islam regards children as inherently innocent and treats their transgressions as the result of ignorance or immaturity rather than as moral failings. The Qur'ān declares:

"وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ"<sup>173</sup>

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<sup>171</sup> Juvenile Justice System Act, No. XXII of 2018, § 16(2), [http://www.na.gov.pk/uploads/documents/1530084128\\_591.pdf](http://www.na.gov.pk/uploads/documents/1530084128_591.pdf).

<sup>172</sup> Human Rights Commission of Pakistan (HRCP), *Juvenile Justice in Pakistan: Implementation Gaps and Challenges*, 2021, <https://hrcp-web.org/hrcpweb/juvenile-justice-in-pakistan>.

<sup>173</sup> Al-Qur'ān 17:70.

“And indeed, We have honored the children of Adam”<sup>174</sup> This divine honor extends to all human beings regardless of age, but is particularly emphasized in the case of vulnerable groups such as children.

The Prophet Muḥammad ﷺ exemplified this in his dealings with youth. Never did he resort to physical punishment for mistakes committed by children. His servant Anas ibn Mālīk (رضي الله عنه) narrated:

"خَدَمْتُ النَّبِيَّ ﷺ عَشْرَ سِنِينَ، فَمَا قَالَ لِي أُفٍّ قَطُّ، وَمَا قَالَ لِي لَشَيْءٍ فَعَلْتُهُ لَمْ فَعَلْتُهُ، وَلَا لَشَيْءٍ لَمْ أَفْعَلْهُ إِلَّا فَعَلْتُ كَذَا .

"

“I served the Prophet ﷺ for ten years, and he never said to me ‘Uff,’ nor did he ever say to me concerning anything I had done: ‘Why did you do that?’ Nor for anything I had left undone: ‘Why did you not do that?’”<sup>175</sup>

This prophetic precedent underscores the principle that children, by their nature, are prone to mistakes and should be nurtured with compassion and understanding rather than subjected to humiliation or violence. Moreover, Sharī‘ah strictly forbids cruel or degrading treatment, especially against those not legally accountable. A child who has not reached taklīf (legal responsibility) is not to be punished in a retributive manner. Even where discipline is permitted in cases of intentional harm, it must be non-abusive, educational, and proportionate. Scholars such as Imām al Ghazālī emphasize moral instruction (tarbiyyah) and reform (iṣlāḥ) over punitive responses.<sup>176</sup> Despite this, in Pakistan’s custodial settings, children are often subjected to inhumane conditions. Many are detained in adult prisons or juvenile institutions that lack adequate food, clean water,

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<sup>174</sup> Mufti Muḥammad Taqī Uthmānī, *The Meaning of The Noble Qur’an* 528.

<sup>175</sup> Imam Muḥammad ibn Ismāil al-Bukharī, Saḥīḥ al-Bukharī, Hadith 6038, Grade: Saḥīḥ (authentic).

<sup>176</sup> Abū Ḥāmid al-Ghazālī, *Iḥyā’ ‘Ulūm al-Dīn*, vol. 3 (Cairo: Dār al-Ma‘ārif, n.d.), 122–124.

healthcare, or educational opportunities.<sup>177</sup> In Borstal institutions, facilities meant for juveniles, overcrowding and abuse are frequently reported. Children also encounter police brutality, verbal abuse, and even physical assault during interrogation and transfer. These practices are starkly at odds with both Sharī‘ah and statutory protections.

Section 10 of the JJSA provides for the release of juveniles on bail, yet enforcement is weak.<sup>178</sup> The Act mandates the creation of rehabilitation centers and observation homes for children, but the limited number and poor condition of such centers undermine the rehabilitative goals of the legislation. Sharī‘ah not only opposes such treatment but obligates the Muslim community (including the state) to protect the weak and ensure justice even for offenders. The Qur’ān orders:

"وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ"<sup>179</sup>

“And when you judge between people, judge with justice”<sup>180</sup>

To judge with justice is not limited to the courtroom verdict but extends to the entire legal process, including arrest, detention, and correction. Justice requires that the environment in which children are held must foster reform, not compound trauma. The JJSA 2018 contains protective mechanisms theoretically aligned with Sharī‘ah, its implementation is gravely lacking. Islamic law offers a more holistic framework one that sees the juvenile not merely as an offender to be processed but as a soul to be reformed, a child to be protected, and a member of society to be rehabilitated. Realizing this vision requires not only legal reforms but a transformation in the ethos of law enforcement, judiciary, and society.

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<sup>177</sup> Society for the Protection of the Rights of the Child (SPARC), *State of Pakistan’s Children Report 2022*, <https://www.sparcpk.org/publications/SOC2022.pdf>.

<sup>178</sup> JJSA 2018, § 10.

<sup>179</sup> Al-Qur’ān 4:58

<sup>180</sup> Mufti Muḥammad Taqī Uthmānī, *The Meaning of The Noble Qur’an* 161

### 3.6 Punishment vs Rehabilitation in Light of Sharī'ah and JJSA

One of the central themes in juvenile justice policy is the balance between punishment and rehabilitation. While modern criminal justice systems have increasingly leaned toward rehabilitation for minors, Pakistan's Juvenile Justice System Act (JJSA) 2018 attempts to formalize this balance through structured provisions. However, a deeper examination reveals that the Islamic Sharī'ah had long recognized the importance of rehabilitation over punishment for children in conflict with the law. The emphasis in Sharī'ah on mercy (rahmah), reform (iṣlāḥ), and individual moral development (tarbiyyah) suggests that punitive approaches are not only discouraged but, in most juvenile cases, rendered inapplicable. Under the JJSA 2018, rehabilitation is explicitly recognized as a legal principle. Section 3(b) emphasizes that "no child shall be subjected to corporal punishment or other degrading treatment," while Section 9 provides for diversion, i.e., alternative measures to formal criminal prosecution.<sup>181</sup> Diversion can include counseling, probation, community service, or referral to rehabilitation centers.<sup>182</sup> The focus here is to re-integrate the juvenile into society without stigmatization or unnecessary penal exposure. This legislative approach resonates with several Sharī'ah-based concepts, particularly the Qur'anic mandate of reform over retribution:

"وَمَنْ تَابَ وَاصْلَحَ فَإِنَّ اللَّهَ يَتُوبُ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ رَحِيمٌ"<sup>183</sup>

"And whoever repents and reforms, indeed, Allah will turn to him in forgiveness. Indeed,

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<sup>181</sup> Juvenile Justice System Act, No. XXII of 2018, §§ 3(b), 9, [http://www.na.gov.pk/uploads/documents/1530084128\\_591.pdf](http://www.na.gov.pk/uploads/documents/1530084128_591.pdf).

<sup>182</sup> United Nations Office on Drugs and Crime (UNODC), *Handbook on Restorative Justice Programmes*, 2nd ed. (Vienna: UNODC, 2020), [https://www.unodc.org/documents/justice-and-prison-reform/20-01146\\_Handbook\\_on\\_Restorative\\_Justice\\_Programmes.pdf](https://www.unodc.org/documents/justice-and-prison-reform/20-01146_Handbook_on_Restorative_Justice_Programmes.pdf).

<sup>183</sup> Al-Qur'ān 5:39.

Allah is Most Forgiving, Most Merciful.”<sup>184</sup>

when a child commits a grave act, punishment under ḥudūd or qīṣāṣ is not applied until taklīf is established.<sup>185</sup> The principle of non-liability until puberty is not merely procedural but reflects a broader divine philosophy of gradual moral development. The Prophet ﷺ modeled this in his educational and disciplinary methods. He never prescribed harsh punishment for children, but rather instructed their correction through moral teaching:

“Command your children to perform prayer when they are seven years old, and discipline them for it when they are ten”<sup>186</sup> The context of this Hadith indicates that even discipline is progressive, educational, and limited to religious duties, not criminal offenses. Sharī‘ah also encourages ta’dīb (constructive discipline) rather than ‘uqūbah (punishment) for minors.<sup>187</sup> The goal is to morally educate rather than to criminally penalize. According to classical jurists, the objective of ‘uqūbah in adult criminal law is to deter crime and preserve public order, while for minors the objective of ta’dīb is iṣlāḥ internal moral reform.

Furthermore, rehabilitation in Islamic tradition is not merely legal but spiritual. The term iṣlāḥ itself is rooted in the Qur’an’s recurring theme of personal and social rectification. Offenders especially juveniles are seen as moral agents capable of growth and forgiveness. This deeply humanistic view surpasses the purely secular model offered by the JJSA 2018, which often limits rehabilitation to social work and vocational training. Although the JJSA incorporates provisions for probation and social reintegration, its

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<sup>184</sup> Mufti Muḥammad Taqī Uthmānī, *The Meaning of The Noble Qur’an* 206

<sup>185</sup> Ibn Qudāmah, *al-Mughnī*, vol. 9 (Beirut: Dār al-Fikr, n.d.), 93–94.

<sup>186</sup> Abū Dāwūd, *Sunan Abī Dāwūd*, Hadith no. 495.

<sup>187</sup> Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuhu*, vol. 6 (Damascus: Dār al-Fikr, 1985), 170.

implementation is hampered by the lack of trained professionals, inadequate funding, and societal stigmas.<sup>188</sup> Sharī‘ah, on the other hand, embeds rehabilitation within a broader communal responsibility. Family, community elders, and religious scholars are seen as crucial actors in the moral guidance of youth. The Prophet ﷺ said:

"كُلُّكُمْ رَاعٍ وَكُلُّكُمْ مَسْئُولٌ عَنْ رَعِيَّتِهِ"<sup>189</sup>

“Each of you is a shepherd, and each of you is responsible for his flock”

Thus, the Islamic concept of justice incorporates rehabilitation not as an institutional function alone, but as a communal and familial obligation to protect and correct the young. The JJSA 2018 reflects some rehabilitative principles, it lacks the spiritual and communal depth found in the Sharī‘ah model. A holistic Islamic juvenile justice system would integrate legal, moral, and spiritual rehabilitation, guided by Qur’anic values and Prophetic practice. It would treat the juvenile not merely as an offender, but as a member of society undergoing reform, development, and moral awakening.

### 3.7 Parole, Probation, and Diversionary Measures: A Comparative View

Juvenile justice systems increasingly favor non-custodial measures such as parole, probation, and diversion over traditional incarceration, particularly in cases involving first-time or low risk juvenile offenders. The Juvenile Justice System Act (JJSA) 2018 reflects this global trend by embedding restorative and rehabilitative measures that allow juvenile offenders to remain within the community under supervision rather than in confinement. While these measures may appear as modern innovations, they resonate strongly with Sharī‘ah, which has long embraced non-punitive strategies rooted in mercy

<sup>188</sup> Human Rights Commission of Pakistan (HRCP), *Juvenile Justice in Pakistan: Implementation Gaps and Challenges*, 2021, <https://hrcp-web.org/hrcpweb/juvenile-justice-in-pakistan>.

<sup>189</sup> Imam Muḥammad ibn Ismail al-Bukharī, *Saḥīḥ al-Bukharī*, Hadith 893, Grade: Saḥīḥ (authentic).

(*rahmah*), community reconciliation (*ṣulḥ*), and reform (*iṣlāḥ*). Under the JJSA 2018, Section 9 introduces the mechanism of diversion, which enables juvenile justice committees to refer cases away from formal judicial processes.<sup>190</sup> This allows for alternative resolutions such as counseling, restitution, community service, or reconciliation with the victim. Probation is addressed under Section 18, allowing a juvenile to be released under supervision by a probation officer or a fit guardian, subject to conditions determined by the court.<sup>191</sup> Parole, though not directly named in JJSA, is conceptually incorporated within conditional release practices already recognized under Pakistan's Probation of Offenders Ordinance 1960.<sup>192</sup> These provisions aim to protect children from the adverse psychological impact of incarceration and reintegrate them into society with dignity.

Shari'ah jurisprudence similarly supports non-custodial and corrective approaches for juvenile offenders. Islam emphasizes tarbiyyah (moral training) and ta'dīb (discipline) over punitive measures. A juvenile offender, being exempt from full criminal liability (*taklīf*), is not subjected to ḥudūd or qisās punishments, but may be guided through educational, financial, or reconciliatory remedies.<sup>193</sup> This aligns with the Prophet ﷺ's practice of resolving disputes and mistakes committed by youth through advice and correction rather than punishment. For instance, the Prophet ﷺ once corrected a young boy gently during a meal:

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<sup>190</sup> Juvenile Justice System Act, No. XXII of 2018, § 9, [http://www.na.gov.pk/uploads/documents/1530084128\\_591.pdf](http://www.na.gov.pk/uploads/documents/1530084128_591.pdf).

<sup>191</sup> Ibid., § 18.

<sup>192</sup> Probation of Offenders Ordinance, 1960, §§ 4–5, <http://nasirlawsite.com/laws/proo.htm>.

<sup>193</sup> Ibn Qudāmah, *al-Mughnī*, vol. 9 (Beirut: Dār al-Fikr, n.d.), 95–97.

"يَا غُلَامُ، سَمِ اللَّهَ، وَكُلْ بِيَمِينِكَ، وَكُلْ مِمَّا يَلِيكَ"<sup>194</sup>

“O young boy, say the name of Allah, eat with your right hand, and eat  
from what is in front of you.”

This illustrates the Islamic method of constructive guidance rather than punitive reprimand. Furthermore, Sharī‘ah endorses restorative justice through ṣulḥ (amicable settlement) and ‘afw (forgiveness), particularly where harm can be reconciled without retribution. The Qur’an states:

"فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ"<sup>195</sup>

“But if someone pardons and reconciles, his reward is with Allah”<sup>196</sup> Such concepts are deeply compatible with JJSA’s goal of diversion, which avoids stigmatization and promotes healing between victim and offender.

The Islamic legal doctrine of damān (financial compensation) also reflects a diversionary principle. If a juvenile causes unintentional harm, they may be exempt from moral blame but still bear material responsibility, often fulfilled by the guardian.<sup>197</sup> This reflects accountability without criminalization, prioritizing reparation over punishment. Another example of diversion in Sharī‘ah is the practice of al-ta’zīr, where the judge exercises discretionary authority to assign a suitable non-ḥadd penalty based on the child’s age, intention, and future potential.<sup>198</sup> This judicial flexibility mirrors the discretion afforded to juvenile justice committees and probation officers under JJSA 2018. However, implementation gaps remain in Pakistan. Although the JJSA legally

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<sup>194</sup> Imam Muḥammad ibn Ismail al-Bukharī, Saḥīḥ al-Bukharī, Hadith 5376, Grade: Saḥīḥ (authentic).

<sup>195</sup> Al-Qur’ān 42:40

<sup>196</sup> Mufti Muḥammad Taqī Uthmānī, *The Meaning of The Noble Qur’an* 898.

<sup>197</sup> Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuhu*, vol. 6 (Damascus: Dār al-Fikr, 1985), 145–147.

<sup>198</sup> Al-Nawawī, *al-Majmū‘ Sharḥ al-Muhadhdhab*, vol. 20 (Beirut: Dār al-Fikr, n.d.), 83.



provides for diversion, probation, and conditional release, the mechanisms are rarely operationalized. This is due to a lack of trained personnel, inadequate infrastructure, and low public awareness.<sup>199</sup> In contrast, Sharī'ah envisions community and familial involvement in the correction of youth, making moral development a shared societal duty rather than the exclusive task of state institutions. Parole, probation, and diversion are not foreign to Islamic tradition but deeply rooted in its compassionate and reform-oriented ethos. JJSA 2018's alignment with these principles is commendable, yet its practical execution falls short. By integrating Sharī'ah's ethical framework with statutory provisions, Pakistan can establish a truly restorative juvenile justice system that not only reforms but spiritually rehabilitates its youth.

### **3.8 Ḍamān and Juvenile Financial Liability: Sharī'ah vs Legal Perspective**

Juveniles are generally exempt from criminal responsibility under both the JJSA 2018 and Sharī'ah, the question of financial liability particularly in cases involving damage to life or property raises complex jurisprudential issues. In Islamic law, this responsibility is addressed through the concept of Ḍamān (الضمان), meaning "obligation to compensate" or "indemnify" for wrongful harm, regardless of the age or mental capacity of the perpetrator. The Juvenile Justice System Act (JJSA) 2018 does not explicitly detail juvenile financial liability, nor does it offer mechanisms to compensate victims harmed by minors. Its primary emphasis remains on diversion, probation, and rehabilitation. However, Pakistani courts may apply general civil law principles, and in

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<sup>199</sup> Ahmad, Imtiaz, Abdul Waheed, and Muhammad Danyal Khan. "Advancing Human Rights Through Parliamentary Mechanisms: A Five-Year Institutional Review Of The Senate Of Pakistan (2020-2025)." *Annual Methodological Archive Research Review* 3, no. 5 (2025): 390-398.

some cases, the Guardians and Wards Act or Qanun-e-Shahadat Order may determine guardian responsibility in tortious matters. Yet this framework lacks the moral clarity and systematic doctrine of ḍamān as elaborated in classical Islamic jurisprudence. In contrast, Sharī‘ah provides a well-defined structure. Islamic scholars agree that while minors are not morally liable for criminal acts, they can be held financially liable for unintentional harm, either from their own property (if available) or through their guardians. The Qur’an states:

"وَمَنْ قَتَلَ مُؤْمِنًا خَطَاً فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَةٌ مُسَلَّمَةٌ إِلَىٰ أَهْلِهِ إِلَّا أَنْ يَصَدَّقُوا"<sup>200</sup>

“And whoever kills a believer by mistake, then (the penalty) is the freeing of a believing slave and a compensation payment (diyyah) handed over to his family, unless they forgo (the compensation).”<sup>201</sup>

This verse, translated by Mufti Taqi Usmani, reflects that financial compensation (diyyah) is mandatory even in cases of unintentional harm. It also implies that culpability is not solely moral, but includes the material consequences of an act.

In fiqh, the Ḥanafī and Shāfi‘ī schools maintain that if a mumayyiz (discerning minor) causes harm even unintentionally he is subject to ḍamān, although not to criminal punishment (ḥudūd or ta‘zīr).<sup>202</sup> The amount is usually payable by the child’s estate or the guardian, depending on circumstances. Imam al-Kāsānī states:

“Ḍamān is due when harm results, not when moral blame is confirmed. Even a child or insane person, if they damage property or cause death, is subject to compensation.”<sup>203</sup>

This principle is rooted in the Sharī‘ah’s prioritization of victim rights. While the offender’s age shields him from retributive penalties, the victim’s loss must still be

<sup>200</sup> Al-Qur’ān 4:92

<sup>201</sup> Mufti Muḥammad Taqī Usmānī, trans., *The Meaning of the Noble Qur’an*: (Karachi: Maktaba Ma‘āriful Qur’an, 2007).170

<sup>202</sup> Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuhu*, vol. 6 (Damascus: Dār al-Fikr, 1985), 105–107.

<sup>203</sup> Al-Kāsānī, *Badā’i‘ al-Ṣanā’i‘ fī Tartīb al-Sharā’i‘*, vol. 7 (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1982), 235.

addressed. This restorative focus is absent in many statutory systems, including Pakistan's, where victims of juvenile offenses may receive no remedy.

For instance, in cases where a juvenile causes damage to property, Islamic law does not impose imprisonment but mandates material compensation. Such a framework promotes both accountability and reform. The Prophet ﷺ is reported to have said:

"لَا ضَرَرَ وَلَا ضِرَارَ"<sup>204</sup>

“There should be neither harming nor reciprocating harm.”

This maxim forms the basis for many rules in Islamic tort law, including *ḍamān*, and implies that all harm intentional or not should be addressed equitably.

In contrast, the JJSA 2018, despite its progressive framework, does not operationalize such moral and financial accountability for harm caused by juveniles. While it rightly protects children from incarceration and stigmatization, it offers no structured process for victim restitution, leaving a major ethical and jurisprudential gap.

Moreover, the concept of *ḍamān* in Sharī‘ah is inherently flexible. In cases where neither the child nor guardian can pay, the state (*bayt al-māl*) may bear the responsibility. This reveals a compassionate and socially responsible mechanism that aligns with Islamic values of justice and communal care.

"إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ"<sup>205</sup>.

“Surely, Allah commands justice and the doing of good”<sup>206</sup>

This Qur’anic directive, by Mufti Taqi Usmani, forms the foundation of Sharī‘ah’s approach to justice: balanced between the rights of the victim and the reform of the offender. The principle of *ḍamān* offers a nuanced alternative to retributive or purely

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<sup>204</sup> Ibn Mājah, *Sunan Ibn Mājah*, Hadith no. 2340

<sup>205</sup> *Qur’an*, 16:90

<sup>206</sup> Mufti Muḥammad Taqī Uthmānī, trans., *The Noble Qur’an*, 505

rehabilitative models. It upholds the dignity of the offender while protecting the rights of the victim. While Pakistan's juvenile justice framework protects minors from prosecution<sup>207</sup>, it needs reform to incorporate Islamic notions of restorative financial justice. By embedding ḍamān within juvenile legislation, the legal system can achieve a more comprehensive, faith-aligned model of juvenile accountability.

### 3.9 Conclusion

The comparative analysis of Pakistan's Juvenile Justice System Act (JJSA) 2018 and Sharī'ah principles demonstrates a meaningful intersection of rehabilitative justice, child protection, and moral responsibility but also reveals considerable areas of divergence that call for reform. While the JJSA represents a significant step toward aligning Pakistan's juvenile justice framework with global norms, particularly the United Nations Convention on the Rights of the Child (CRC), its implementation and philosophical underpinnings remain largely rooted in Western legal traditions. This becomes problematic in a country constitutionally mandated to ensure all laws conform to Islamic injunctions, as articulated in Articles 227 to 230 of the Constitution of Pakistan 1973.<sup>208</sup>

Sharī'ah offers a comprehensive, ethically driven, and spiritually grounded model for juvenile justice. It upholds principles of mercy (raḥmah), reform (iṣlāḥ), and justice ('adl), emphasizing the role of personal capacity (taklīf) and moral discernment (tamyīz) over arbitrary age based thresholds. Unlike statutory models that impose a uniform age of criminal responsibility eighteen in the JJSA Islamic jurisprudence considers an

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<sup>207</sup> Abbas, Hafiz Ghulam, Anser Mahmood Chughtai, and Khalid Hussain. "Juvenile justice system in Pakistan: A critical appraisal." *International Research Journal of Education and Innovation* 3, no. 1 (2022): 76-92.

<sup>208</sup> Constitution of the Islamic Republic of Pakistan, 1973, Articles 227–230.

individual's physical and cognitive maturity, recognizing puberty (bulūgh) as the legal onset of accountability, unless indicators suggest otherwise.<sup>209</sup> This flexible standard is better suited to Pakistan's diverse socio-cultural and biological landscape, where documentation of age is often unreliable.

Moreover, while the JJSA commendably mandates separate juvenile courts, diversionary procedures, and the prohibition of corporal punishment, its reliance on formal legal procedures often overlooks the spiritual and communal aspects that Sharī'ah integrates into the process of moral reform. The prophetic model emphasized personal mentorship, moral education (tarbiyyah), and familial involvement.<sup>210</sup> For example, the Prophet Muḥammad ﷺ instructed that children should be taught prayer from the age of seven and disciplined with compassion by ten (Abū Dāwūd, 495). This gradual and formative approach is reflected nowhere in the procedural rigidity of modern legal systems, which lack mechanisms for such spiritual correction. The treatment of juveniles in custody under the JJSA, though safeguarded by statutory provisions, remains poor in practice. Reports of abuse, negligence, and procedural delays are widespread.<sup>211</sup> These realities starkly contrast the Islamic vision of human dignity (karāmah) and child protection exemplified in the Prophet's practice, where even a child's mistake was met with patience and care. The Sharī'ah not only protects minors from retributive punishment but also requires state institutions and society to act as custodians of juvenile welfare and moral development. Sharī'ah's doctrine of ḍamān offers a restorative justice framework by holding juveniles financially liable for

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<sup>209</sup> Al-Kāsānī, *Badā'i' al-Ṣanā'i'*, vol. 7; Imām Nawawī, *al-Majmū'*, vol. 5.

<sup>210</sup> Imam Muḥammad ibn Ismail al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, Vol. 3, Hadith 893, Grade: Ṣaḥīḥ (authentic).

<sup>211</sup> Dickens, Jonathan. "Child neglect and the law: Catapults, thresholds and delay." *Child Abuse Review: Journal of the British Association for the Study and Prevention of Child Abuse and Neglect* 16, no. 2 (2007): 77-92.

unintentional harm, without attributing moral culpability. This nuanced system, based on compensatory justice rather than punitive incarceration, bridges the rights of victims and the reform needs of juvenile offenders.<sup>212</sup> The JJSA lacks such a mechanism, leaving victims of juvenile acts of harm without structured restitution and juveniles without opportunities for reconciliatory growth. Embedding ḍamān principles into Pakistan’s legal code would resolve this ethical and jurisprudential void.

Similarly, parole, probation, and diversionary measures under the JJSA are underutilized despite being critical tools for reintegration. Sharī‘ah traditions support such measures through judicial discretion (ta‘zīr), community reconciliation (ṣulḥ), and financial restitution (ḍamān), often facilitated by families or elders.<sup>213</sup> These practices underscore Islam’s broader ethos of collective moral responsibility, as stated by the Prophet ﷺ: *“Each of you is a shepherd, and each of you is responsible for his flock”* (al-Bukhārī, 893). A justice system in Pakistan, therefore, cannot ignore the communal, familial, and spiritual dimensions that are indispensable for authentic rehabilitation. The JJSA 2018 lays the foundation for a child-sensitive legal framework, it falls short of fulfilling the constitutional and ethical mandate to conform with Islamic principles. Key gaps persist in definitions of criminal responsibility, judicial discretion, custodial care, financial liability, and spiritual rehabilitation. Islamic law, by contrast, presents a multidimensional justice model, where legal rulings are closely aligned with human dignity, moral development, and communal accountability. To achieve harmony between statutory and Islamic legal norms, legal reform must go beyond procedural alignment and embrace the deeper maqāṣid al-Sharī‘ah (higher objectives of Islamic law): justice, mercy, dignity, and reform. Such reforms would not only fulfill Pakistan’s

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<sup>212</sup> Muḥammad Taqī ‘Uthmānī, *Takmilah Faṭḥ al-Mulhim bi-Sharḥ Ṣaḥīḥ Muslim*, vol. 3 (Karachi: Maktabah Dār al-‘Ulūm, 2006).

<sup>213</sup> Ibn Qudāmah al-Maqdisī, *al-Mughnī*, vol. 10 (Cairo: Maktabat al-Qāhirah, n.d.).

constitutional obligation but also ensure that juvenile justice becomes a means of nurturing, rather than punishing, its most vulnerable citizens.

## Chapter 4

### Conclusion and Recommendation

#### 4.1 Conclusion

The comparative and doctrinal analysis of Pakistan's Juvenile Justice System Act (JJSA) 2018 in light of Sharī'ah principles reveals both progress and persistent shortcomings. While the JJSA represents a substantial advancement toward aligning the country's juvenile justice framework with international standards such as the United Nations Convention on the Rights of the Child, its theoretical foundations and implementation mechanisms remain deeply influenced by Western legal models. This approach falls short of fulfilling Pakistan's constitutional mandate under Articles 227 to 230 of the Constitution, which requires all laws to conform to Islamic injunctions. Islamic law provides a morally grounded, developmentally appropriate, and spiritually enriched framework for juvenile justice. Sharī'ah places central importance on mercy (raḥmah), reform (iṣlāḥ), and justice ('adl), linking criminal responsibility not to rigid age thresholds but to biological and cognitive maturity (puberty (bulūgh) and mental discernment (rushd)). The classical jurisprudence of the four Sunni schools consistently exempts minors from ḥudūd and qiṣās, though they may bear civil liability (ḍamān), particularly through collective compensation mechanisms such as 'āqilah. This model prioritizes restorative justice and moral development over punitive incarceration.

While the JJSA formally incorporates child-sensitive practices such as diversion, separate juvenile courts, and prohibitions on corporal punishment, these provisions are inconsistently applied. In practice, juvenile offenders in Pakistan are frequently subject to mistreatment, prolonged detention, and custodial abuse conditions that contradict both



Islamic ideals of human dignity (karāmah) and the rehabilitative vision of the JJSA. Moreover, the statutory reliance on documentary age verification is problematic in a country where many children lack birth records. Sharī'ah's flexible approach using physiological signs and contextual indicators offers a more just and culturally compatible alternative.

Furthermore, the current juvenile justice system lacks integration of essential Sharī'ah mechanisms such as ḍamān (financial restitution), sulḥ (community reconciliation), and tarbiyyah (moral education). The Prophet Muḥammad ﷺ emphasized the gradual development of moral responsibility, instructing the teaching of prayer at seven and discipline with compassion at ten. His model was centered on mentorship, spiritual growth, and familial involvement elements absent from the procedural rigidity of modern legal systems.

Though the JJSA introduces measures like parole and probation, they remain underutilized due to a lack of training, institutional inertia, and insufficient infrastructure, such as Borstal institutions. Sharī'ah traditions of judicial discretion (ta'zīr) and community involvement in reconciliation underscore the need for a more integrated, multidimensional approach to juvenile rehabilitation. Pakistan has made notable strides in codifying protections for juveniles, the existing legal framework remains incomplete without substantive incorporation of Islamic jurisprudential values. A truly effective and ethical juvenile justice system must reflect not only international obligations but also the maqāṣid al-sharī'ah the higher objectives of Islamic law: the preservation of life, intellect, dignity, and moral order. Such alignment will not only fulfill constitutional and religious duties but also nurture juvenile offenders into morally conscious and socially responsible individuals. Through systemic reform, educational investment, and spiritual integration, Pakistan can establish a justice system that

corrects, heals, and uplifts rather than merely punishes.

## **4.2 Recommendations**

Based on the preceding analysis, the following Sharīʿah-aligned and legally sound recommendations are proposed for reform of the JJSA 2018:

### **1. Recalibration of Criminal Responsibility Criteria**

Replace the fixed age threshold with a tiered system incorporating the concept of bulūgh and tamyīz, as practiced in Islamic law. A medical board, alongside religious scholars, may assess signs of puberty and discernment where documentation is unavailable.

### **2. Codification of Ḍamān for Juvenile Civil Liability**

Introduce legislative clauses that establish financial compensation (ḍamān) for harm caused by juveniles, in line with Islamic principles of civil redress.

### **3. Mandatory Training in Sharīʿah and Child Rights**

Judges, prosecutors, and police officers should undergo compulsory training in both Sharīʿah principles and international juvenile justice standards. This dual perspective can foster procedural justice and empathetic handling.

#### **4. Infrastructure Reform for Diversion and Rehabilitation**

Invest in specialized facilities Juvenile Rehabilitation Centers (JRCs) equipped with vocational training, psychological support, and religious education. Diversion mechanisms must be prioritized for first-time or non-violent offenders.

#### **5. Independent Oversight Mechanisms**

Establish independent Juvenile Rights Ombuds offices in each province with authority to monitor conditions in juvenile detention centers and enforce JJSA provisions.

#### **6. Repeal of Obsolete Legal Overlaps**

Harmonize conflicting statutory definitions of “child” across federal and provincial laws such as the Child Marriage Restraint Act 1929 and the Zina Ordinance 1979 and JJSA provisions, guided by Sharī‘ah norms.

## **7. Integration of Maqāṣid al-Sharī‘ah in Policy Design**

Law makers should incorporate maqāṣid (higher objectives of Sharī‘ah) such as protection of life (ḥifẓ al-nafs), intellect (ḥifẓ al-‘aql), and dignity (ḥifẓ al-‘ird) into juvenile justice frameworks. This will foster policies grounded in Islamic legal theory rather than mere procedural compliance.

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## APPENDIX 1: List of Qurānic Verses

Sr. No	Verses	Page.No
1	يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَايُ قَوْمٍ عَلَىٰ ءَلَا تَعْدِلُوا ءَعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ	1
2	وَالسَّمَاءَ رَفَعَهَا وَوَضَعَ الْمِيزَانَ	5
3	لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا ءَلَهَا مَا كَسَبَتْ وَعَلَيْهَا مَا اكْتَسَبَتْ	43
4	وَإِذَا بَلَغَ الْأَطْفَالُ مِنْكُمُ الْحُلُمَ فَلْيَسْتَأْذِنُوا كَمَا اسْتَأْذَنَ الَّذِينَ مِنَ الَّذِينَ مِنْ قَبْلِهِمْ ؕ كَذَٰلِكَ يُبَيِّنُ اللَّهُ لَكُمُ ءَايَاتِهِ ۖ وَاللَّهُ عَلِيمٌ حَكِيمٌ	50
5	وَكَانُوا أَحَقُّ بِهَا وَأَهْلَهَا	51
6	وَابْتَغُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ ءَانَسْتُمْ مِنْهُمْ رُشْدًا فَادْفَعُوا إِلَيْهِمْ ءَمْوَالَهُمْ وَلَا تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَنْ يَكْبَرُوا وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعْفِفْ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ ءَمْوَالَهُمْ	61
7	وَلَا تَقْفُ مَا لَيْسَ لَكَ بِهِ عِلْمٌ ؕ إِنَّ السَّمْعَ وَالْبَصَرَ وَالْفُؤَادَ كُلُّ أُوْلَٰئِكَ كَانَ عَنْهُ مَسْئُولًا	69
8	إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ	72
9	وَلَقَدْ كَرَّمْنَا بَنِي ءَادَمَ	75
10	وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ	77
11	وَمَنْ تَابَ وَأَصْلَحَ فَإِنَّ اللَّهَ يَتُوبُ عَلَيْهِ إِنَّ اللَّهَ عَفُورٌ رَحِيمٌ	78
12	فَمَنْ عَفَا وَأَصْلَحَ فَأَجْرُهُ عَلَى اللَّهِ	82
13	وَمَنْ قَتَلَ مُؤْمِنًا خَطًا فَتَحْرِيرُ رَقَبَةٍ مُؤْمِنَةٍ وَدِيَّةٌ مُسْلِمَةٌ إِلَىٰ أَهْلِهِ إِلَّا أَنْ يَصَدَّقُوا	84

## APPENDIX 2: LIST OF AHĀDĪTH

S. NO	AHĀDĪTH	P. NO
1	عَنْ ابْنِ عَبَّاسٍ، عَنِ النَّبِيِّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - قَالَ " إِنَّ اللَّهَ وَضَعَ عَنْ أُمَّتِي الْخَطَأَ وَالنِّسْيَانَ وَمَا اسْتَكْبَرُوا عَلَيْهِ	2
2	خَدِمْتُ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَشْرَ سِنِينَ، فَمَا قَالَ لِي: أَفَ قَطُّ، وَلَا قَالَ لِي لَشَيْءٍ: لِمَ فَعَلْتَ كَذَا؟ وَلَا لَشَيْءٍ تَرَكْتَهُ: أَلَا فَعَلْتَ كَذَا؟ الرَّاوي : أَنَسُ بْنُ مَالِكٍ	5
3	عَنْ عَلِيٍّ، رَضِيَ اللَّهُ عَنْهُ سَمِعْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَقُولُ رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ عَنِ الصَّغِيرِ حَتَّى يَبْلُغَ وَعَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ وَعَنِ الْمُصَابِّ حَتَّى يُكْشَفَ عَنْهُ	43
4	رُفِعَ الْقَلَمُ عَنْ ثَلَاثَةٍ: عَنِ النَّائِمِ حَتَّى يَسْتَيْقِظَ، وَعَنِ الصَّغِيرِ حَتَّى يَحْتَلِمَ، وَعَنِ الْمَجْنُونِ حَتَّى يَعْوَلَ	68
5	مُرُوا أَوْلَادَكُمْ بِالصَّلَاةِ وَهُمْ أَبْنَاءُ سَبْعِ سِنِينَ، وَاضْرِبُوهُمْ عَلَيْهَا وَهُمْ أَبْنَاءُ عَشْرِ	74
6	كُلُّكُمْ رَاعٍ وَكُلُّكُمْ مَسْئُولٌ عَنْ رَعِيَّتِهِ	80
7	يَا غُلَامُ، سَمِ اللَّهَ، وَكُلْ بِيَمِينِكَ، وَكُلْ مِمَّا يَلِيكَ	82
8	لَا ضَرَرَ وَلَا ضِرَارَ	85