



Justice for Juvenile Offenders: Laws and Practice in Pakistan

Submitted By:

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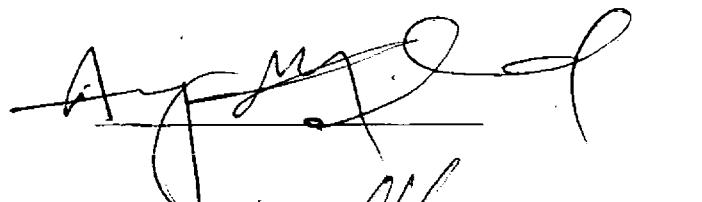
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FINAL APPROVAL

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Dedication

Dedicated to All Juveniles Offenders

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Table of Abbreviations

IPPC	International Penal and Penitentiary Congress
CrPC	Code of Criminal Procedure
CPC	Civil Procedure Code
CRC	Convention on the Rights of the Child
EPG	Eminent Persons Group
DSCs	Dispute Settlement Committees
FANA	Federally
FATA	Federally Administered Tribal Areas
HRC	Human Rights Committee
HRCP	Human Rights Commission of Pakistan
HRW	Human Rights Watch
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
JJSO	Juvenile Justice Ordinance
KP	Khyber Paktunkhwa
NARA	National Aliens' Registration Authority
NGO	Non Governmental Organizations
NHIP	National Health Insurance Program
NWFP	North Western Frontier Province
OAS	Organization of American States
OAU	Organization of African Unity
PBUH	Peace Be Upon Him
PPC	Pakistan Penal Code
PYOO	The Punjab Youthful Offenders Ordinance
RSA	Reformatory School Act
SEAD	South East Asia Declaration
UDHR	Universal Declaration on Human Rights
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
USA	United States of America
USSR	Union of Soviet Socialist Republics

ABSTRACT

The topic of this research work is "Justice for Juvenile Offenders: Laws and Practices in Pakistan". The research is an academic one therefore appreciates all the procedure, limitation, methodology and restrictions required for the academic research. The research contains codification, explanation and analysis along with appropriate case study. The work contains four chapters explaining different aspects of the research. The primary aim of this study is to make an attempt to highlight the humanistic issue with regard to the condition of the juveniles involved in criminality and their treatment in the administration of justice and during detainment in prisons.

The first chapter of the research is introductory in nature and mainly introduces the background, basic concepts, explanation of different phrases, and different approaches of juvenile justice. The chapter also gives a brief history of evolution of juvenile justice in the world in general and in Pakistan in particular.

The second chapter of the research focuses on International Laws and principals regarding juvenile justice. International Conventions have played an enormous role in the recognition of the problems faced by children, particularly the children who come in conflict with criminal justice system. It is because of these conventions that most of the rights of juvenile offenders are now being recognized and enforced. This second chapter provides a brief account of all major international conventions on juvenile justice and elaborates the principals and guidelines enshrined in them.

The third chapter of the research is about Pakistan's juvenile laws and practices. The chapter deals with the national legislations of Pakistan regulating the subject of juvenile

justice. The chapter also provides a basic structure of the juvenile justice system currently in practice in Pakistan.

The fourth chapter of the thesis is primarily focused on analysis of all this research work. This chapter points out the deficiencies and shortfalls of Pakistan's juvenile justice system, a summary of the whole thesis, findings of this research and recommendations.

CHAPTER I

JUVENILE JUSTICE; AN INTRODUCTION

1.1 Background

Juvenile Justice System is a concept of having a separate legal system to deal with the juvenile offenders. The human history is evident of great affection towards their young generations. During 16th century the western world made significant developments in legal and social fields, this was when the concept of juvenile justice was first introduced. It, however, remained an isolated subject and idea till recently when comity of nations under auspicious forum of United Nation realized this sensitive human issue and concluded a number of conventions and treaties on this matter. These conventions like Convention on the Right of Child, Riyadh Guideline and Beijing Rules etc. have become general standard of treatment for juvenile offenders for all states of the world.

In pursuance of these standards the Government of Pakistan introduced the Juvenile Justice System Ordinance, 2000¹ with an aim to deal with the protection of rights of the children involved in criminal litigation. Under the aforesaid Ordinance, an effort was made for rehabilitation and reformation of juveniles to enable them to live a proper life in society and brought up in the spirit of peace, dignity, tolerance, freedom, equality and

¹ Juvenile Justice Ordinance, 2000. (XXII of 2000).

solidarity as proclaimed by International Conventions. However, during the practical application of the Ordinance, it was realized that the said law and juvenile justice system still requires improvement by providing adequate measures in consonance with the international standards.

At the international arena a number of states through various conventions have recognized that the child by reason of his physical and mental immaturity needs special safeguards and care including appropriate legal protection before as well as after birth and that the treatment of a child who is in conflict with the law should primarily attempt the child's re-integration into society and encourage him or her to play a constructive role in that environment.

The traditional laws applicable to accused who are adult are not applicable in cases of children and special treatment is given throughout the world in case they are involved in criminal litigation. But in Pakistan, the recent reports by the reputed international organizations do not show the commendable state of affairs in Pakistan. In the past, Pakistan had some limited and locally or provincially applicable legislative documents the purpose whereof was to some extent, to provide for the reformation and rehabilitation to the accused in the process of judicial proceedings but it hardly provided any considerable sigh of relief for these children in the administration of justice. In the province of Sindh, the Sindh Children Act 1955 was enacted but its complete practical implementation remained questionable in the concerned circles. Similarly in the province of Punjab, there were two enactments passed in the year 1952 and 1983 but there was

complete lack of commitment to issue enabling notifications for its enforcement. So far as the Province of Khyber Pakhtunkhwa (KP) and Baluchistan are concerned, it is on record that no such law was even introduced by their respective Provincial Legislatures.

The juvenile justice laws, especially the Juvenile Justice Ordinance 2000, as enforced in Pakistan, show that the criminal system of the country is still devoid of such approach. The Pakistan juvenile justice system must provide for the application of such social policies which may help in preventing and protecting children from the commission of offences; the establishment of a progressive justice system for the children involved in crimes; and introduction and establishment of such measures to ensure the fundamental rights and social re-integration of children in the prison or other institutions. There is a need to raise awareness in the public regarding the rights of the children who come across law, and motivation of the legal circles and other segments of society to achieve the required objectives. The study of this work will focus on the proposed administrative, and Legislative measures to safeguard the rights of the juvenile particularly in criminal justice system as enforced in Pakistan.

1.1.1 Plight of Juvenile Offenders

Crimes committed by children are highlighted and attracts the attention of societies all around the globe. Yet what remains unnoticed and is not considered are the facts that why the children have come in conflict with law and what will happen to them after the law has declared them as offenders. If the circumstances under which offences are committed

are considered, then in most cases the juveniles don't even appear as offender. More over once admitted to criminal justice the treatment faced by a juvenile leaves him in a least justified position by implanting an unfair treatment on him in first place and by reducing his chances to become a useful person in the second place.

Many researches on criminal behavior have recognized that the offenders are not born but created by society.² Social conditions and family backgrounds compounded by inadequate parental love, supervision, abuse and parental alcohol and drug abuse contribute heavily toward the criminal tendencies in juveniles. Apart from these poor economic conditions, illiteracy and lack of awareness and counseling along with a hostile social behavior contribute toward changing juveniles into an offender. These above mentioned facts leave juveniles unprotected and vulnerable to criminal tendencies. Once children compelled by the above mentioned facts violate law they meet harsh response; they are taken and treated without any compassion and as criminals. And thus the juveniles become victim of double jeopardy. That is first they are not provided due care to develop a healthy social life and secondly when they fall victim to the circumstances surrounding them, they are not shown mercy and are treated harshly. This is what Inter American Court of Human Rights opinioned in street children case of 1990. The Court opinion was "... *First, such states do not prevent them from living in misery, thus depriving them of the minimum conditions for a dignified life and preventing them from the "full and harmonious development of their personality*". Second, they [such states] violate their physical, mental and moral integrity and even their lives. When the state apparatus has to intervene in offences committed by minors, it should make substantial

² Traey Wagener_Rizvi & Anees Jillani, *Waiting for Sunrise*, (Islamabad: SPARC, 2003), 1

efforts to guarantee their rehabilitation in order to “allow them to play a constructive and productive role in society”...”.³ Juveniles as more vulnerable group of the society and are thus facing double problems as they are not only being ignored and misused by society but they are also being forced to share the full burden of those acts for which they are not responsible in their full capacity.

1.1.2 Status of Juvenile Offenders in Pakistan

In Pakistan the divergence between criminal justice and international conventions for juveniles is more apparent.⁴ Pakistan has made least attempts to avoid detention of children or to divert them from prison to reformatory institution in case of an award of imprisonment. Where as detention, as a response, is considered as the most detested option in case of juvenile delinquencies under international standards yet in Pakistan it is the only treatment faced by juvenile offenders.⁵ Separate juvenile courts are non existent; children are judged by those who adjudge adult criminals: life imprisonment is awarded to juveniles;⁶ minimum age of criminal responsibility is seven years;⁷ National legislation like most countries is hardly adequate to produce a strong juvenile justice system. Moreover most of what Pakistan has as juvenile laws regulating juvenile justice remains uncooperative or is partially applied. The situation of juveniles in prison in Pakistan requires no less serious concern. Reformatory facilities are evidently lacking. A Borstal institute at Faisalabad and a facility with in Karachi Central jail are the only

³ Street Children Case, Inter American Court of Human Rights, para 191-197

⁴ Traey Wagener_Rizvi & Anees Jillani, *Waiting for Sunrise*, (Islamabad: SPARC, 2003), 18.

⁵ Anees Anees Jillani, *Cries Unheard*, (Islamabad: SPARC 1999) (Islamabad: SPARC 1999), 137.

⁶ Traey Wagener_Rizvi & Anees Jillani, *Waiting for Sunrise*, (Islamabad: SPARC, 2003), 15.

⁷ Section 82 & 83 Pakistan Penal Code. 1860

institutes imparting a reasonable reformatory and recreational training. Whereas juveniles are generally being kept in special cells in ordinary jails where the staff are not properly trained to handle juveniles and thus leaves them to constant abuse both by the jail staff and adult prisoners. Overall juvenile offenders are in a drastic situation in Pakistan. A proper juvenile justice system is non-existent and international standards are least followed. The situation in Pakistan thus requires a hasty and deliberate response.

1.2 Concept of Juvenile Justice

Juvenile offenders are treated discriminately in almost every society throughout the world. They along with adults are treated for like offences under same laws in same judicial system on equal footings where they are not even aware of the consequences of their acts.⁸ So it is very harsh to treat them in a singular judicial system and is rather an injustice to them. So the justice for Juvenile is that they are provided with a separate set of laws, procedure and judicial structure to treat them in such a way where their fundamental rights are protected before conviction or during trial and they are reintegrated in society after their conviction.

1.2.1 Defining Juvenile Justice

Juvenile literally means youth or child and the term juvenile justice as such stands for a fair and just treatment of juveniles who come in contact with law by violating it. Juvenile

⁸ Anees Jillani, *Cries Unheard*, (Islamabad: SPARC 1999), 22.

justice has been defined differently by various scholars. According to Anees Jillani, Juvenile justice means "*The legislations, standards, procedures, mechanisms and institutions, specifically applicable to children, both boys and girls under the age of 18, in conflict with the law*".⁹

Juvenile delinquencies are due to their vulnerability in society. Juveniles are forced to commit offences by certain conditions like breakdown of family, maltreatment, physical, sexual or psychological abuse, and dearth of economic and social protection. Under such circumstances most of the time juveniles are not even aware of what they are doing and what will be the consequences.¹⁰ The situation is further aggravated when, after commission of offence, the juveniles along with adult offenders are treated in same judicial system under same laws. Treating juveniles in such a manner reduces their probability of reintegration in society at any later stage which in itself is a great injustice. So when ever the term juvenile justice appears, it includes a separate treatment of juveniles apart from adult offenders and doing so is only possible when juveniles are treated under separate laws, procedure and judicial setup. This separate setup will ensure the protection of the rights of child after they have committed an offence and will also enhance the chance of reintegration of juvenile offenders in the society.

⁹ Tracey Wagener Rizvi & Anees Jillani, *Waiting for Sunrise*, (Islamabad: SPARC, 2003), 7.

¹⁰ Anees Jillani, *Cries Unheard*, (Islamabad: SPARC 1999), 8.

1.2.2 Phases of Juvenile Justice System

Juvenile justice operates through three clearly interlinked phases. These three are; Prevention, Repression and Rehabilitation.

Prevention: First sphere of operation for juvenile justice is to prevent juveniles from becoming criminals. For this purpose juvenile justice through proper social programs, developing public opinion and targeting high risk families, tries to avoid any criminal behavior in juveniles.¹¹

Repression: This is a more formal phase of juvenile justice. Once the juvenile come in conflict with law and are accused of an offence their arrest and trial are required to be judicially administered through specialized juvenile courts.¹²

Rehabilitation: Once the juveniles are sentenced; it is the overriding aim of juvenile justice that such sentences should be reformatory in nature. The juveniles are to be detained in such a manner that they are able to rehabilitate in society and are able to develop themselves as a useful individual of the society. This is what juvenile justice usually achieves by placing juveniles in rehabilitation centers and by their diversion to custodian sentencing options.¹³

¹¹ Traey Wagener, Rizvi & Anees Jillani, *Waiting for Sunrise*, (Islamabad: SPARC, 2003), 13.

¹² ibid

¹³ ibid

1.2.3 Particular Concern of Juvenile Justice

Juvenile Justice is particularly concerned with the welfare of juveniles and to do so it aims at eradication of all unfair treatment to juveniles and rather setting some sympathetic parameters for the treatment of juvenile offenders. To achieve the aim the juvenile justice is concerned with elimination of “status offences”; setting a reasonable age of criminal responsibility; providing a protective custody.

1.2.4 Age of Criminal Responsibility

A primary concern of juvenile justice is to settle a reasonable minimum age of criminal responsibility. Minimum age of criminal responsibility is the age below which children cannot be held responsible for their action. Standards laid down under international conventions like Convention on the Rights of the Child (CRC) and the Beijing Rules want States not to fix age of criminal responsibility too low and requires to settle the minimum age of criminal responsibility, “*bearing in mind the facts of emotional, mental and intellectual maturity.*”¹⁴

1.2.4.1 Elimination of Status Offence

Children in many countries are often penalized for status offences. These are the offences specifically related to the juveniles due to their proximity with age. Young children are

¹⁴Article 40(3(a)), United Nations Convention on The Rights of the Child

penalized for such acts when such acts are not an offence for an adult. Juvenile justice stands for elimination of such categories of offences. Riyadh Guidelines hold this concern of Juvenile Justice in following words, “*Legislation should be enacted to ensure that any conduct not considered an offence and not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.*”¹⁵

1.2.4.2 Liberty of Juveniles

According to international standards regulating juvenile justice, the juveniles are to remain free from any detention to any possible extent and if the detention of juvenile is necessary this should be for the minimum period of time. The main objective is to enable juveniles develop their personality positively.¹⁶

1.2.4.3 Prohibition of Certain Penalties

Another objective of the juvenile justice is to prohibit certain types of penalties. Punishments like death penalty, life imprisonment and torture or other cruel punishments are prohibited. This is because the main objective of juvenile justice is to provide an opportunity of rehabilitation for juveniles and any punishment which curtails this opportunity is prohibited.¹⁷

¹⁵ Article 56, United Nations Guidelines for the Prevention of Juvenile Delinquency, (Riyadh Guidelines).

¹⁶ Traey Wagener_Rizvi & Anees Jillani, *Waiting for Sunrise*, (Islamabad: SPARC, 2003), 16.

¹⁷ *ibid* 14.

1.2.4.4 Protective Custody

Though detention of children in anyway is an undesirable act yet juvenile justice requires that the children exposed to criminals should be provided protective custody. Protective custody is keeping the children along with their mothers in prison and keeping them in detention centers so as to save them from adopting criminal behavior.¹⁸

1.3 Fundamentals of Juvenile Justice System

The complete laws and procedure to impart justice to juveniles is, as a whole, known as juvenile justice system. This whole system is established on certain fundamental elements which give it a distinctive and definitive shape. So a justice system required to be termed as juvenile justice system requires following fundamentals;¹⁹

- 1: Setting of a realistic minimum age of criminal responsibility based on internationally accepted standards.
- 2: Legislations specifically enacted to protect the rights of child.
- 3: Priority is given to the education and training of juveniles rather than punishing juveniles through detention and retribution.

¹⁸ Traey Wagener_Rizvi & Anees Jillani, *Waiting for Sunrise*, (Islamabad: SPARC, 2003), 12.

¹⁹ Ibid, 13.

4: A separate judicial system including specially trained judges, lawyers and police force for handling the juvenile offenders.

5: Separate detention facilities for children, including rehabilitation centers and a proper social coordination and follow up of juvenile offenders, once they are released.

1.4 Approaches to the Treatment of Juvenile Offenders

“*Societies have always punished wrong doers*”²⁰ and they punish the wrong doers even if they are not fully grown up. But punishment is always awarded with some positive aspects in mind like reduction of crime, marking unacceptable behavior etc. In case of juveniles the most important positive aspect considered when punishing is that they will be able to serve the society after their punishment. Recent developments in laws relating to human rights have also modified the outlook of punishment to a great extent. Approach or responses to juvenile offenders can be divided in two broad categories, first category simply defines the criminalization of any offence whereas other approach of prevention depends and considers on a more humane treatment of juvenile as only way of imparting justice to them. The two approaches are Criminalization and Prevention

²⁰ Anees Jillani, *Cries Unheard*, (Islamabad: SPARC 1999), 22.

1.4.1 Criminalization Approach

This approach considers criminalization of offences committed by juvenile. The approach mainly focuses on protection of society from any crime.²¹ At present there are six main theories which describe what is desirable or what should be done to juvenile offenders. The theories are rehabilitation; deterrence; incapacitation; denunciation; retribution; and restitution.

Rehabilitation:

The theory promotes the idea that a positive future behavior of an offender, through counseling and training, should be ensured. The supporters of this approach stress upon the reformation of juvenile offenders.

Deterrence:

Deterrence theory proposes punishment as appropriate response to any wrong doer. The only purpose of the theory, in mind of its supporters, is to protect the society effectively by threat of punishment and for this purpose the theory is not concerned with any lenient behavior in favor of juvenile offenders.

Incapacitation:

²¹ ibid

This theory provides the idea of imposing physical restrictions on any offender so as to prevent the offender from committing any further wrong. The theory in this way neither supports punishment nor it supports the idea of reformation it rather considers incapacitating the offender for committing the same offence again.

Denunciation:

Under the theory the offender should be sentenced to illustrate their unacceptable behavior by society. The theory takes offence as violating the moral and social boundaries of society and as thus punishment is condemnation of offence by society. So it is justified under the theory to punish in what ever means that satisfies the society.

Retribution:

The theory basically based on the vengeance asks for punishment of any unlawful action. The individual who has committed a crime should pay for it.

Restitution:

Another approach to deal with juvenile offenders is that of restitution. Restitution promotes to compensate victim by redressing the wrong done to him. The compensation is usually in financial terms or in form of services. This theory brings victim and offender

on same table and tries to resolve the matter to the satisfaction of victim. The theory however has only good practical applications in matters regarding property and lacks credibility in other offences.

Impact of Criminalization Approach:

The criminalization approach to an extent protects society more and has less concern for juveniles. This approach in many cases is used to justify detention, punishment and treatment of juveniles as ordinary criminals.

1.4.2 Constructive Approach

Though the attention given to juvenile offenders has a long history yet it was only in recent decades that the given attention has evolved into a separate approach considerably different from the criminalization approach. Originally based on the rehabilitation theory of criminal justice, the constructive approach focuses on the protection of juveniles by preventing them from becoming delinquent in first instance and tries to reintegrate and rehabilitate them once they have become delinquent in the second instance. For the purpose the approach is based on preventive and protective measures. Preventive measures like raising a favorable public opinion, providing financial security, providing proper counseling and securing social bonds around juveniles are taken to protect juvenile from becoming delinquent. Where as, reformatory and rehabilitating punishment by keeping juvenile offenders in reformatory schools like Borstal institutes and training

schools are recommended to ensure the reintegration of juvenile in society. Summarily this approach considers the welfare of society through a favorable treatment for juveniles.

1.5 Evolution of Juvenile Justice System

Since primitive times, the issue of Juvenile offenders was in existence though not expressly but in a somewhat implied form. The natural love for the children is preliminary to the concept of Juvenile Justice with the idea that the children should be dealt with more affection and kindness not only in other social aspects but also in circumstances when they are in conflict with the law.

1.5.1 Evolution of Juvenile Laws in Different Legal Systems

The seventeenth century witnessed the rising concerns for the child offenders in the Europe.²² The legal system of the ancient societies, as the history shows, had distinguished between adult and young or child criminals by the fact that some age limit was specified expressing the extent of mental maturity at the time of commission of crime. But despite the realization of such fact, or maintenance of this distinction, the adult and juvenile offenders were treated in the administration of Justice in a uniform process for centuries and the same penalties were inflicted upon the child offenders which were not in consonance with their physical and mental capacities.

²² Traey Wagener_Rizvi & Anees Jillani, *Waiting for Sunrise*, (Islamabad: SPARC, 2003), 20.

In the seventeenth century with the advent of prison system, the sentences of imprisonment were inflicted upon the child offenders for very minor offences and even death sentences were imposed upon them at par with the adult offenders. But the concern for juvenile justice was also developing and the establishment of a permanent asylum for homeless children by a Catholic organization in the year 1648 in Europe. This was the first step in the direction of establishing a juvenile justice system. In continuation of the progress, in the beginning of eighteenth century, the Pope Clement XI built asylums of similar nature by the name of Hospice di San Michele in Rome.²³

The movement for introduction of reforms for the welfare of children and the struggle of followers of rehabilitation theory led toward a separate judicial system; resulting into realization of separate judicial system to treat the child offenders differently as compared to adults. This trend had brought a shift from sentences of imprisonment to the treatment of children, despite the fact that side by side, the struggle of the followers of deterrent theory was continued demanding harsh penalties for unlawful acts of the children. The scholars in favor of rehabilitation supported the thinking that the children were victims rather than criminals.²⁴ The foremost aim of these scholars was that delinquency should be remedial, preventive and correctional rather than punitive.²⁵

This approach is termed as individualized Justice which emphasizes on an informal and non criminal procedure instead of legalistic and criminal procedure in dealing with children in conflict with law.

²³ Anees Jillani, *Cries Unheard*, (Islamabad: SPARC 1999), 32.

²⁴ ibid

²⁵ ibid, 33.

This approach prevents young offenders from coming in contact with the formal court system, and to cure them within the society or community without the imprisonment.²⁶

In New York, in the year 1825, the first juvenile institution, by the name of House of refuge' was established for the sole object to keep the child offenders separate from adult criminals.²⁷ The process continued and Chicago Reform School in the year 1855 was established with the aim to provide a reformatory place for juvenile offenders instead of penalizing them. After some period of time such institutions were setup through out other states of the United States of America.²⁸

At the end of nineteenth century, it was, however, realized that there should be some separate legal procedure for the juvenile offenders and for that reason special hearings were provided to children in the Court system of the State of Massachusetts in 1870 and 1880 and in New York in 1892. Observing these developments, some other state also adopted the idea of juvenile courts.²⁹

The Chicago Women's Club, working for the welfare of neglected children made repeated demands for enactment of separate law for the child offenders. The demand was accepted and resulted into enactment of Illinois Law of July; whereby the first juvenile court was established in the Chicago in 1899 by Julia Clifford Lathrop under the said

²⁶ ibid

²⁷ Alice Felt Taylor, *Freedom Ferment: Phases of American Social History to 1860*, (New York: Harper Torchbook, 1962), 23.

²⁸ Anees Jillani, *Cries Unheard*, (Islamabad: SPARC 1999), 35.

²⁹ ibid

Juvenile Court Law. The main objective of this law was to avoid infliction of those penalties upon juveniles which affected their physical and mental capabilities in the first instance and on the other hand it also realized the care and treatment instead of punitive measures.³⁰ The introduction of this Juvenile Court Law led to the introduction of new concepts of treatment of child offenders. In these new concepts the dependent status of the child was addressed and welfare of juveniles was given a primary importance. This law also held that if the parents are not in a position to provide appropriate guidance to their children then it should be the responsibility of the state to take care of juveniles. This was in fact the purpose for which special procedures and ways like the Juvenile Court Law were adopted to develop a whole system of the juvenile justice. Thus this concept of special treatment of children transformed into a socialized Juvenile Justice System with a rehabilitative approach and consequently provided the right to counsel, right to notice or right to fair legal procedure.

In the U.K it was also felt that a child in conflict with law should be rehabilitated with an appropriate education and training instead of punitive measures. In this direction, in the first instance, an institution was established for putting such concept into practice in Warwickshire in 1818, where imprisoned children were given training to work, on the farm in such a way so that they should be enabled to realize the usefulness of living with the family.

³⁰ Connie Foallett, Juvenile Justice in History, e.source http://www.conniewrite.com/?page_id=53 last visited 03-01-2009

In the Isle of Weight's Pankhurst Prison, a separate prison was set up for Juvenile prisoners of different ages between ten to eighteen years. However the disciplinary measures were so hard that it helped only to the extent of advancement of this process but lacked the merits of presenting an ideal position.³¹

The private charitable institutions set up about 33 reformatory schools during the period between 1849 and 1853 and an Act was passed by the legislature whereby the statutory Powers were conferred on the Courts to send the Juvenile to these schools for some specific short period of imprisonment. Later on these schools were supervised by the Home department. After some period of time the industrial schools looking after the orphan children or the children of prisoners were also given under the supervision of the Home office of England.³²

The early twentieth century had seen the establishment of a number of reformatory schools where the convicted Juveniles were accommodated and provided with the required education and training.³³ Many countries have fixed the age of juvenile offenders to be admitted in such reformatory institutions with some variations. The Paris Congress fixed the 18 years as the age limit for juvenile offenders to be admitted to reformatory and rehabilitatory institutions whereas the U.S.A fixed 30 years for the reformatory school.³⁴

³¹ Anees Jillani, *Cries Unheard*, (Islamabad: SPARC 1999), 37.

³² ibid

³³ Alberts. R. Roberts, *Juvenile Justice Source Book: Past, Present, Future*, (Oxford: Oxford University Press, 2004), 169. & also see <http://www.amnestyusa.org/document.php?id=D94FCE82406321E18025690000692DCA&lang=e>

³⁴ <http://www.answers.com/topic/reformatory> last visited 28-12--2009

1.5.1.1 Advent of Borstal Institutions

The dilemma of keeping the young juvenile offenders in the prison and the old juvenile prisoners in the reformatory school led the Prison Committee of the British Government in 1894 to segregate such offenders on age basis and keep them in two separate prisons at the village of Borstal on an experimental basis. This method was experimented with successful results and these prisons came to be known as Borstal system;³⁵

Consequent to the positive response, The Prevention of Crimes Act, 1902 was passed by the legislature whereby the legal status was granted to the Borstal institutions with provisions of special treatment for young offenders. A survey report produced in the year 1928 had provided an encouraging ratio of rehabilitation of Juvenile convicted children through these Borstal institutions.³⁶ In 1933, the Children and Young Persons Act was enacted replacing the former law, which emphasized the welfare of child, raising the age for juvenile to 17 years with the aim of proper training and schooling.³⁷

³⁵ <http://www.hrdc.net/sahrdc/hrfeatures/HRF142.htm> last visited 12-02-2009

³⁶ Andrew Rutherford, *Growing Out of Crime*, (Winchester: Waterside Press 2002), 53.

³⁷ *ibid*

1.5.2 Advent of Juvenile Justice in Pakistan

Pakistan, on independence, inherited juvenile laws of British implemented in subcontinent, along with other legislations. Since after independence though the priority of juvenile justice has remained low for legislators, yet some considerable steps have been taken by Pakistan to supplement its juvenile justice system. The juvenile justice system of Pakistan thus consists of both pre partition and post independent legal developments.

1.5.2.1 Advent of Juvenile Justice in Pre Independence Pakistan

Islamic laws enforced in Subcontinent during the reign of Mughal dynasty, were replaced, not at once but slowly and gradually. The caste system in the sub-continent, even at the initial period of British Rule, determined the status of the child in the society and his consequent social and legal rights. But the introduction of capitalistic theory of economic and social life, by the British, prompted rapid changes in the socio-legal structure of the society.

In the subcontinent, the British exercised judicial powers in the year 1698, when they got hold of three villages, given to them by the Mughal Emperor of that time on lease. The said judicial system was later on extended to other parts with the subjugation of remaining part of India. For the first of such occasion the British established courts formally in the present parts of Pakistan i.e. Punjab, N.W.F.P, Sindh and Baluchistan,

through legislative enactment and some time administrative or organizational processes, with least uniformity. The modern system of prison was introduced in the nineteenth century onward with the main aim of confining their political opponents which was also gradually used for keeping the real criminals. The purpose of the introduction of the prison system was to punish the criminals and there was no concept of reformation. However for the juvenile, the Apprentice Act was introduced in the year 1850, which included the provisions regarding the vocational training for the convicted juvenile from ten years to eighteen years age.³⁸

In the year 1865, in the undivided Punjab, the Punjab Courts Act (XIX of 1865) was enacted and enforced. Through this law the courts were established for the first time on the British pattern. But the considerable part of this judicial system was entrusted to the executive officers like Commissioners, Deputy Commissioners and Assistant Commissioners and was improved with further legislations. The Chief Court was also established by the Chief Court Act of 1866, which was later, on 1st April 1919 replaced by the High Court of Punjab.

The areas comprising of present province of Khyber Pakhtunkhwa of Pakistan were although part of the Punjab but were regulated by the Frontiers Crimes Regulation, 1871. On getting separate status of province by the name of N.W.F.P (now Khyber Pakhtunkhwa) on 9th November, 1901, the N.W.F.P law and Justice Regulation of 1901 came into force which was further amended by the N.W.F.P Courts Regulation of 1931.

³⁸ John Winterdyk, *Juvenile justice System: International Perspective*, (Toronto: Canadian Scholar Press Inc. 2002), 266.

These regulations dealt juvenile offender on same level along with adult offenders and no specific relief was provided to juvenile offenders in this part of the country. The said legal system was enforced in the N.W.F.P even after independence. The Frontier Crimes Regulation is still enforced in the Federally Administered Tribal Areas.

In 1876, the first Reformatory School Act was enacted; which was later on replaced by the Reformatory School Act of 1897. Under the said Acts discretionary powers were conferred on the courts to give custody of the convicted juveniles below fifteen years to a reformatory school for three to seven years and to allow the male child under the age of fourteen years to be released for some suitable service or employment.³⁹ In 1919-20, the Committee on Indian Jails in its report stressed for separate trial and treatment of Juvenile offenders and put forward the following recommendations;

- i. The committee defined the child uniformly through out India as a person under the age of 14 years and a young person between 14 and 16 years of age;.
- ii. it asked for the prohibition of imprisonment of the juvenile and young persons which are in judicial custody; under trial or stand convicted and also provided for the establishment of remand homes and in case establishment of such remand homes is impossible, then in the alternative it was mentioned that a suitable arrangement be made for such juvenile or young person;.

³⁹ James Vadackumchery, *The Police and Delinquency in India*, (New Delhi: Aph Publishing Corporations 1996). 82.

iii. it provided for the establishment of juvenile Courts with an informal and elastic procedure to avoid legal technicalities in view of special treatment of such children in the administration of justice.

These recommendations of the committee were acted upon and resulted in the legislative enactment of Madras Children Act, 1920. This Act not only defined the child strictly in accordance with the recommendations of the said committee but also provided for the establishment of certified schools for training the juvenile offenders.

In pursuance of this objective, in the year 1922, the Bengal Children Act was passed. There was nothing new in this Act and made only insignificant changes to the definition clause of the Madras Act, 1920. This Act replaced the name of certified schools as Industrial schools.⁴⁰

The province of Bombay enacted the Bombay Children Act 1924, enforced in the year 1936. Through this Act, three laws, already in vogue in the province, The Reformatory School Act, 1897 (Act No. VII of 1897), the Whipping Act, 1909 and the Criminal Justice Act, 1924 (Act No. VI of 1924) were amalgamated and were extended to Delhi in 1940. This Act for the first time abolished the death sentence and life imprisonment for juvenile below fifteen years of age. The Act clearly provided for non-imposition of penalties applicable to adults in recognition of juvenile justice system. The process of

⁴⁰ John Winterdyk, *Juvenile justice System: International Perspective*, (Toronto: Canadian Scholar Press Inc. 2002), 267.

detention was refined as harsh punishment and the provisions were included for the release of children on probation or detention in certified schools.⁴¹

1.5.2.2 Post Partition Developments

In 1952, the Punjab Youthful Offenders Act was passed which was the first law after independence relating to child's rights. Unfortunately the said law was not notified to be enforced and in 1983, the said law was repealed and substituted by the Punjab Youthful Offenders Ordinance, 1983. However, it is interesting to note that only the title of the Ordinance and its definition clause were notified for enforcement and the remaining part of the law shall come into force as and when specified. In the year 1997, it was enforced for the District of Sahiwal and later on the whole law enforced was in the year 2000.

Moreover in the province of Sindh; The Reformatory School Act 1897 was validated and enforced in Sindh on its separation from the province of Bombay presidency till it was replaced by the Sindh Children Act, 1955. The said Sindh Children Act, 1955 however could not be enforced in the province, until the said Act was extended to Hyderabad and Sukkur Divisions in October, 1974 and to Karachi Division in the year 1976.

The Pakistan Penal Code is the main law regarding description of crimes and their penalties. This code which was also inherited from pre-partition India sets the age of criminal responsibility at the age of seven years but the court was given the wide area of

⁴¹ ibid

discretion to judge the child's accountability between the ages of seven to twelve years for the formation of presumption regarding the maturity of understanding relating to commission of crimes. A person above the age of twelve years was treated as an adult under the code, until recently changed by the Juvenile Justice Ordinance, 2000 which raised the child's age up to eighteen years.

The latest and existing law on the subject is the Juvenile Justice Ordinance, 2000. The said Law remained as Draft law and was pending consideration before the standing committee of the Senate for a considerable period of time but could not be passed by the parliament as a separate law. On coming into power, the Military Government promulgated the said law through an ordinance which was later on saved by introduction of Article 270 AAA in the constitution. This ordinance to some extent provided for protection of the rights of children involved in criminal litigation. The Ordinance clearly stated that it would be in addition to the rights provided by any other law and not in derogation of other law. This law as compared to previous legal position of the country is to a great extent a comprehensive law, however, since the law is a dynamic subject and is to change itself with the requirements of present day time, therefore, is also not an exception, and still needs improvement.

CHAPTER II

Juvenile Justice And The International Law

2.1 Introduction

Many judicial systems in the recent history of the world were introduced by western empires, nation states and divine dictum but these systems hardly succeeded in attaining international consensus and yielding some universal standards. Similar is the case of the juvenile justice system; though many countries introduced laws specifically for the protection of juvenile yet all those laws remained within the national boundaries of most of the states for quite some period. However by the end of nineteenth century and the beginning of twentieth century states started to set some international principles for the protection of juveniles. International Congress of 1846 held in Frankfurt, Germany was the first attempt in this direction. This and many other conferences and conventions taken together yield standards which by now have become guiding principles for the whole world to follow. The conferences and conventions and standards laid down by them are;

2.1.1 The Penal and Penitentiary Congress

This International Congress held at Frankfurt, Germany, in 1846, was the first significant step in the direction of setting of an international standard for criminal Justice and

thereafter the International Congress on the Prevention and Repression of Crime took place in London in 1872, which succeeded in bringing together a considerable number of experts from various countries exchanging their knowledge and experiences to combat with the issues of piracy on the high seas, prisons, administration of justice, especially the treatment of juvenile offenders along with other allied matters.⁴²

The outcome of London conference was the formation of International Prison Commission with the objectives of introduction of penal reforms in the member countries and to hold international conferences along with collection of relevant data.⁴³

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The Commission held conferences at the interval of five years till 1935, and made alliance with the League of Nations. But after the end of the Second World War, the League of Nations came to an end and was replaced by the United Nation Organization (UNO) on April 25, 1945, at the San Francisco conference. While setting out the basic principles or rules for its governance, the control and prevention of crime was included in the U.N charter. The International Penal and Penitentiary Congress (IPPC) was refused to be affiliated with the new body and was later on through a resolution No. 415(V) of December, 1950, terminated and its functions were entrusted to the Economic and Social Council and on 13th August, 1953, the prevention of crime and treatment of offenders had been declared as the main functions of the UNO program.⁴⁴

⁴² Anees Jillani, *Cries Unheard*, (Islamabad: SPARC 1999), 190.

⁴³ <http://www.archive.un.org/unarms/doc/archivalcollection/ag> last visited 02-06-09

⁴⁴ <http://www.unodc.org/en/crime-congress-previous.html> last visited 08-06-09

In its first congress held in the same year at Geneva the main agenda of the meeting was the treatment of prisoners and Juvenile delinquency.

The issue of juvenile delinquency remained under consideration at various forums of the UNO. In the year 1955, the principle of separation of juvenile prisoners from the adults under the police custody and prisons after their conviction was incorporated. This principle has also been incorporated in the International Covenant on Civil and Political Rights, 1966 (ICCPR) having binding responsibility for the member states. This covenant has abolished death penalty for the Juvenile offenders below 18 years of age. The said covenant has also provided that the adjudicating procedure for the juvenile must be aimed to help the child in his rehabilitation in the society.⁴⁵

2.1.2 The Beijing Rules, 1985

The UN standard Minimum Rules for the Administration of Juvenile Justice of 1985, generally known as Beijing Rules are considered as the most important step in advancing the cause of juvenile. They provide for such conditions of juvenile in the presence whereof, juveniles may not come across the realm of crime, i.e. an environment free from delinquency involving the family, volunteers, community institutions, schools and other groups for the interest of the child. The applications of these rules are in addition to other international human rights standards.⁴⁶

The following basic principles may be evolved from these rules:

⁴⁵ <http://www.jstor.org/pss/2703488> last visited 02-06-09

⁴⁶ http://child-abuse.com/childhouse/childrens_rights/dci_be29.html last visited 02-06-09

1. No discrimination: These rules are presumed to be enforced, impartially, without any distinction of race, color, sex, language, religion, political or other opinion, origin, property or birth etc. The state parties were expected to initiate a set of laws and regulations, specifically for the juvenile offenders.⁴⁷

2. Non Fixation of Minimum Age: The facts of emotion, mental condition and intellectual maturity are considered as the basic factors for determining the criminal responsibility of the juvenile offenders.⁴⁸ Some scholars consider the non-fixation of age as non-suitable pitiable; however it seems that environmental as well as social and climatic conditions are considered conclusive for differing age responsibility.

3. Proportional reaction: The Rules intend to provide for such a Juvenile Justice System in each member country which contains sufficient scope for the exercise of discretion for the welfare of Juvenile in each stage of administration of juvenile justice, keeping in view the circumstances of the child in conflict with law and the offence.⁴⁹

4: Safeguard with regard to procedure: The Beijing Rules provide for a Juvenile Justice System where the basic procedural rights are guaranteed. These rights include the presumption of innocence; the right to know the charges; the right to remain silent during proceedings; the right to consult the lawyer; the right to cross examination of the witness;

⁴⁷ Rule 27, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985).

⁴⁸ Rule 4, Beijing Rules, 1985

⁴⁹ Rule 5(1), Beijing Rules, 1985

the right of the presence of guardian and the right to appeal to the higher court. The facility of privacy will be the valuable right of the juvenile and should not be violated at any stage of the proceedings. The Rules have stated that in case of investigation or prosecution at the time of any kind of apprehensions regarding the involvement of child in the crime, the parents or guardians should be immediately informed and the concerned competent authority should try to consider the issue of his/her release. The prosecution agency or other relevant authority may be authorized to dispose of the case at the initial stage without resort to the formal proceedings. Further more; the concerned agency entrusted with the preventions of juvenile crime should be specifically trained to deal with the juveniles.⁵⁰

5: Detention as a last resort: Under the Beijing Rules the detention of a juvenile involved in crime should be considered as a last resort and not as a formal and routine matter. The juvenile whose cases are pending trial may not be detained in prisons and the substitute methods be adopted by way of their surrendering to the family, educational institution or other kinds of supervision. In case of any mode of detention, the juvenile offenders should be extended all kinds of rights and guarantees provided by the U.N Minimum Rules for the treatment of prisoners. They should be kept separate from the adult prisoners during the pendency of their trial and an entitled to receive due care and assistance in accordance with their requirement; keeping in view the age, sex, personality or any other criteria.⁵¹

⁵⁰ Rule 7, Beijing Rules, 1985

⁵¹ Rule 13 & 17, Beijing Rules, 1985

6: Treatment during trial:⁵² The trial of the accused juvenile should be held in an atmosphere or environment wherein the aim of best interest of the child should be achieved, by giving full opportunity to express himself/herself by conducting the trial without any unnecessary delay, by giving right to engage the counsel of choice, to apply for a free legal aid, by allowing the parents/guardian to be present in the court subject to the best interest of the child. The court should pass Judgment keeping in view not only the gravity of the crime but the social requirements and the needs of the child. He/she should be provided opportunities for the building of his/her personality subject to reasonable checks, and the penalty of Capital Punishment should not be awarded nor they be subjected to corporal punishment.⁵³

The court should avoid in its discretion to resort to the formal punishment and instead issue supervisions order for care, sending to educational institution, participate in positive social groups, or releasing through probation and vocational training centers.⁵⁴

The foremost objectives of Juvenile offenders training should be protection, education and such skill learning that enable him/her to play a productive and constructive role in the society. The boarding of Juvenile should be separate from the adult either in the prison or an institution. The rules also give special attention towards the young female offenders for their needs and problems and by no means are discriminatory toward male offenders in the training or treatment.⁵⁵

⁵² Part II & III, Beijing Rules, 1985

⁵³ Anees Jillani, *Cries Unheard*, (Islamabad: SPARC 1999), 200.

⁵⁴ Ibid

⁵⁵ Ibid, 201.

The Beijing Rules also provide permanent research so that a basis could be prepared for the formulation of policy and planning. Efforts should be made to review the trends, and causes of juvenile crimes along with the present needs of Juvenile in custody. The research mechanism must be established to collect and assessment for introduction of reforms in the administration of Juvenile Justice.

2.1.3 Convention on the Rights of the Child, 1989

The Convention on the Rights of the Child has provided basic principles, regarding the treatment of children including those accused of offences. The best interest of the child is the basic idea or guideline for all kinds of legal systems relating to juvenile.⁵⁶ The main aim behind is to protect the rights of the children after their conviction and help them in re-integration in the society. The convention resolves to put prohibition on:⁵⁷

- i: Sentencing the Juveniles below 18 years of age to capital punishment i.e. death or life imprisonment, without having possibility of release,
- ii: To inflict inhuman, or cruel penalties or show degrading treatment, and
- iii: Arbitrary or unlawful detention.

⁵⁶ <http://www.unicef.org/crc> last visited 05-06-09

⁵⁷ Article 37 of Convention on the Rights of Child

The provision of the convention stipulates that the Juveniles conflict of their liberty only as a last resort and for a shortest possible period, secondly they should be imprisoned separately from the adult prisoners and be allowed to have contact with their families and get the required legal assistance. Thirdly the conduct of fair trial should be guaranteed.

The provisions of Articles 37 and 40 of the convention on the rights of child set out the fundamental principles and stresses much on the other standards mentioned in the Riyadh guidelines Beijing and Tokyo Rules Sub-Article 3 of Article 40 of the aforesaid convention it has clearly been contemplated that chamber countries shall enforce laws, and establish institutions or authorities which are specifically related to child offenders.⁵⁸ The convention is applicable to the children below the eighteen (18) years but exception has been provided for the national Laws to set the age of majority in accordance with their social environment and climatic conditions or mental maturity of Juvenile.⁵⁹

The Child's age of criminal responsibility: Since no international standard categorically embraces the minimum age below which the Juvenile can not be made responsible, therefore, the member countries have set such age variously. However the committee on the rights of the child had shown great concern on the prescription of Juvenile's age for criminal responsibility below 18 years.

The perusal of the convention reflects that it is not aimed for prevention but the implementation thereof is considered as to cover the said purpose. In the CRC, the

⁵⁸ Anees Jillani, *Cries Unheard*, (Islamabad: SPARC 1999) 218

⁵⁹ Article 1 of Convention on the Rights of Child

provisions have been included for the adequate standard of living and access to education which executes positive values, but these rights can be interpreted as preventive measures at primary level in the guidelines.⁶⁰ In the same manner, the provisions are devolving responsibility and obligation upon the parents as well as state respectively. With regard to welfare, protection and upbringing is a fundamental principle which find in both instruments as a secondary preventive measures. The convention promote the idea of non-recourse to Judicial proceedings and declare the basic aim as the re-integration of the Juvenile is presumed as prevention at the tertiary level as provided by the Riyadh Guidelines.⁶¹

The committee on the rights of the child with its office at Geneva monitors the performance of states with regard to their duties /responsibilities in the CRC. It has set forth the following four principles:⁶²

- (1) At the time of initiating any action with regard to children the primary consideration must be of best interest of the children.
- (2) The rights of the Juvenile's must be recognized without any discrimination of race, birth, sex or any other.
- (3) The right of the children that their view must be respected; and

⁶⁰ Anees Jillani, *Cries Unheard*, (Islamabad: SPARC 1999), 218

⁶¹ *ibid*

⁶² *ibid*

(4) Having fundamental right to life which include survival and development to the maximum extent possible.

2.1.4 The Riyadh Guidelines, 1990

The Guidelines for the prevention of Juvenile Delinquency and the standard for juvenile deprived of their liberty were adopted by the eight concourses held at Havana August 27 to September, 7, 1990. This congress passed comparatively more international standards as compared to the previous conventions.⁶³

At the time of passing these Guidelines by the General Assembly main concern was about the conditions and circumstances depriving the juvenile from the liberty throughout the world and the member countries were asked to apply these guidelines into their national laws, and policies and practices as well as to bring them before the relevant authorities.

The main aim of these guidelines is to take general measures for the promotion of Justice in the society at all level so that all persons may get legal opportunity for the development of personality and the economic condition. The children are more vulnerable to the crimes for their socio-economic conditions and should be provided appropriate assistance. Such schemes should be introduced to avoid the children to come

⁶³ <http://www.un.org/documents/ga/res/45/a45r112.htm> last visited 03-06-09

across with the formal judicial system. Some of the main principles of Riyadh Guidelines are as follows.

1: Prevention and Reintegration: The main aim of Juvenile Justice System is to prevent the children from committing the crime and in case of involvement of juvenile in the crime, their re-integration into the society. The Riyadh Guidelines stresses upon this basic principle. The Beijing Rules also provided for such positive measures involving all kinds of basic units in the society for the purpose of promoting the welfare of children with the view to prevent the children to be in conflict with the law.⁶⁴

2: Recommendations for States: Under the Riyadh Guidelines, the governments have been stressed to provide opportunities of public education to the all juvenile without any discrimination enabling them to learn the basic values of the society, of other countries as well as regard for fundamental human right. Further, the juvenile be assisted to develop his personality, and talent. States should develop the physical and mental capability of the young generation and to give encouragement to understand by forbearing the opponent view and opinion. They should be made familiar with their rights and duties under the national law as well as under the International Law.⁶⁵

3: Economic, Social and Cultural rights: The Guidelines are specially stressing upon the economic, social and cultural rights including food, dress or provision of medical facilities and education without any discrimination in every situation where the juvenile

⁶⁴ Part III, 9th Guideline United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines, 1990)

⁶⁵ Part IV (B) Guideline 20-31, Riyadh Guidelines, 1990

is involved. The adoption of lawful, social and human based values the juvenile will achieve natural behavioral attitude which are not inclined to criminality. The Guidelines demand such policies which help in the prevention of criminalization and consequent penalization for such act, which are less harmful. Attention was given in the guidelines on prevention policies and plan with the aim of socializing and integrating the Juvenile through family, education, institution or other vocational training.⁶⁶

4: Community Measures: The Guidelines demand for measure by the communities ensuring that the Juvenile have access to information and the media should avoid in telecasting programs showing drugs abuse and violence etc, or other such scenes for the children. The full time education is to be provided by the states where the parents are financially or otherwise incapable to do so. The states should enact specific laws to ensure the protection and promotion of children.⁶⁷ The harsh penalties be avoided in all respects at home school or other institution. The rules also provide for some institution which ensures the rights and interests of Juvenile.

5: Rules for the Protection of Juvenile and Fixation of Minimum Age: The Riyad Guidelines for the first time defined the juvenile as a person under the age of 18 years. Before these guidelines, no such age limit was fixed.⁶⁸

However, the age limit, for the offender children, for detention or deprivation of their liberty may be fixed below this limit of 18 years by each member state at its discretion.

⁶⁶ Part II & Part V, Riyad Guidelines, 1990

⁶⁷ Part IV (C) Guideline 32-39, Riyad Guidelines, 1990

⁶⁸ Part IV, Riyad Guidelines, 1990

The deprivation of liberty is stated to detain, by imprisonment or placement in the public or private custody under the Judicial or administrative order. In case of depriving them in compelling circumstances, the regard for human rights must be ensured.⁶⁹ During detention it should be ensured that the child is kept indulged in such meaningful activities which are useful for their health and self respect and inculcate in them a sense of responsibility, encouraging such attitudes and behaviors which assist them to develop their potential to become a sound member of the society.⁷⁰ These guidelines provide that the under trial children must be presumed as innocent and hence be treated as such and that detention during trial must be avoided as much as possible. Further the under trial children should be separated from the convicted children; should be provided with opportunities to pursue work for remuneration and continue education; should not be deprived of recreation or other such things in compatibility with the interest administration of Justice.⁷¹

6: The Conditions of Prison: Under these Guidelines, all reports relating to details of treatment of the juvenile should be confidential and on-admission a copy of the rules, providing for the rights and duties during detention be give to the Juvenile in a language better understood by him/her together with the address of the forum of receiving the complaints along with the agencies which provide legal assistance. In case of illiterate juvenile, the information is conveyed in such a manner enabling full comprehension. The facility of transport is also required at administration's expenses with complete ventilation.

⁶⁹ Part V Guideline 46, Riyadh Guidelines, 1990

⁷⁰ Part IV (C) Guideline 32-39, Riyadh Guidelines, 1990

⁷¹ Part V Guideline 47, Riyadh Guidelines, 1990

and light arrangement with no apprehension of subjection to hardship.⁷² The arbitrary transfer from one place to another should be avoided to all possible extent. The juvenile, at the first admission, be psychologically examined and a report of any specific factor, requiring special case be prepared. The main aim of separation of juvenile of each type should be the best interest of the child and protection of mental physical and moral integrity.⁷³ The Rules also contemplate the separation of juvenile from adults, and open detention facility with a minimum or no security and facilitating access and contact with the families by meaner of decentralization of facilities.⁷⁴

Further more any move or action showing humiliation or degradation either by recourse to force or instrument of restraint is prohibited unless other methods have been used and failed to bring fruitful results. No corporal punishment be inflicted upon neither juvenile nor such disciplinary measures be taken which are inhuman, cruel or may cause humiliation and degradation, or inculcate in them physical or mental problems. The penalty of reduction in the meal or prohibition on the meeting with family members should be avoided.

7: Physical Environment: The rules provide for such detention facilities which are useful for physical and social environment of the Juvenile with the aim of rehabilitative considerations by availability of complete opportunities for association with the same age

⁷² Part V Guideline 46, Riyadh Guidelines, 1990

⁷³ ibid

⁷⁴ ibid

children, sports, leisure activities, sleeping accommodation and other hygienic conditions including foods and clothing.⁷⁵

8: Education:⁷⁶ Under these rules, the school age children have the right to access to education suitable to his/her ability and needs enabling the respectable return to the society. Such education should be outside the detention facility in the community schools, if there is a possibility, with qualified teachers in the same pattern and system of the country, enabling the juvenile to continue study in the higher educational institutions.⁷⁷ Such institutions should have been adequately equipped with books for all kinds of recreation and periodical study. The arrangement of vocational training must be there which would be helpful as complementary in finding out suitable employment on return to the community. An equitable remuneration will be payable for the type of labor he performed.⁷⁸

The juvenile should have facility of leisure, physical exercise in open space for a reasonable time with adequate equipments.

In addition to the religious needs, proper care should be taken of medical facilities and illness must be detected and treated, and the family should be kept informed about the changes in the health. The Juvenile should be lefted on the death of the close family member for attended the funeral ceremony.

⁷⁵ Part V, Riyadh Guidelines, 1990

⁷⁶ Part IV (B) Guideline 20-31, Riyadh Guidelines, 1990

⁷⁷ Part IV (B) Guideline 21, Riyadh Guidelines, 1990

⁷⁸ ibid

The leave should also be granted to the Juvenile to see the ill relative and sit near with his bed.

9: Access to communication and information:⁷⁹ The juvenile should have adequate opportunities of communications with the outside world, which is an inalienable right of humanistic behavior and will be useful for the adjustment of Juvenile in the society on his/her return. The communication include meeting with family, friends and other persons of the community on frequent bases. The repeated leave should be granted to the Juvenile for attending vocational training institutes out side the detention place. The Juvenile is entitled to have opportunities of privacy, contact and communication with the family; should have access to the counsel; should have the right to communicate with any means i.e. telephone or other with the person of his choice; should have means of viewing correspondence and should have the right to be regularly informed of the world news through print media or through radio and television etc.

10: The rules contemplating Rehabilitation:⁸⁰ Considerable arrangement should be on the release of Juveniles from the detention venue to assist in the return to the community, family and education for which some useful courses may be conducted to this end. The sufficient residential and other facilities are provided along with such means which may help them in their reintegration in the society.

⁷⁹ Part IV (D) Guideline 40-44, Riyadh Guidelines, 1990

⁸⁰ Part IV, Riyadh Guidelines, 1990

2.1.5 The Tokyo Rules, 1990

The General Assembly on December 14, 1990, through resolution adopted the UN Standard Minimum Rules for non custodial Measures, generally known as Tokyo Rules.⁸¹ These rules intend for adoption of such measure providing for assistance of the non imprisoned juveniles, along with safeguards, to a minimum extent subject to alternative imprisonment. The Rules enhanced the role of the Community by involving it in the management of criminal Justice, with special attention towards the treatment of Juvenile offenders and the development of their sense of responsibility for the Community. The main principles laid down under Tokyo Rules are:..

1: Development of Non-custodial Measures:⁸² The Tokyo Rules stress upon the development of extra-imprisonment measures in the member countries by bringing amendments in the relevant legal system. These rules apply indiscriminately to all Juveniles and at all stages in the administration of criminal Justice. In the applications of the non-imprisoning or the non custodial measure the gravity of the offence, the personality, background, the aim of sentence, and the right of the victim are given consideration. Such measures must be adopted while dealing the Juvenile offender, without involving any kind of experimentation of his/her health or other such risk or injury endangering the physical and mental health. Moreover the Juvenile's personal rights of privacy should be respected and the personal record must be confidential for the

⁸¹ United Nations Standard Minimum Rules for Non Custodial Measure (Tokyo Rules) 1990, Adopted by Resolution no. 45/110 of 14 December 1990: <http://www.wwda.org.au/tokyo1.pdf> last visited 05-05-09

⁸² Rule 2, Tokyo Rules, 1990

society in general. The other related international standards would not be deemed to be excluded but are to be read in conjunction with these rules and are equally applicable.

2: Discharging Measures: Under the Tokyo Rules, the Juvenile offender may be discharged by the concerned authority or prosecution agencies dealing with the offence if it is considered appropriate and compatible with the relevant legal system, before the beginning of the trial, keeping in view the right of the victim, and the nature of crime.⁸³ The rules provide that the pre-trial detention should be considered as last resort in the proceedings, keeping in view the investigation of offence and protection of society and victim. The proceedings must be held in an environment of dignity in a humane manner in a least possible period.⁸⁴

The Judicial authority may take into consideration the inquiry report prepared by reliable agency containing relevant information about the Juvenile's psychological condition and the offence, based on facts with objective and independent view.⁸⁵ Before issuing any sentencing order regarding Juvenile, the rehabilitative aspects as well as the protection of social order and the right of the victim must be taken into account.⁸⁶ The sentencing Judgment may provide for the verbal warning, conditional release, monetary penalties like fine etc, compensation for the victims, release on parole, public service, confinement at the parent's house etc or any two or three combined penalties. In order to avoid institutionalization of offender and the re-integrative needs, the competent authority may

⁸³ Rule 5, Tokyo Rules, 1990

⁸⁴ Rule 6, Tokyo Rules, 1990

⁸⁵ Rule 7, Tokyo Rules, 1990

⁸⁶ Rule 8, Tokyo Rules, 1990

exercise any alternative after the sentence to release for work or educations, remission and pardon etc.⁸⁷

3: Supervision: Under the rules, in case some specific non-custodial measure requires supervision, then it should be held by a competent authority in accordance with the conditions provided by the law. The aim behind this supervision is to avoid repetition of such crimes by the Juvenile offender and to provide assistance in his re-integration into society. The supervision and treatment of offender are to be applicable to each individual separately with psychological and material assistance enabling to have strong links with the society.⁸⁸

The conditions of offenders for non-custodial measures should be few, precise and practicable to reduce the chances of offender's return to the world of crime, and to enhance the chance of integration into society.

4: Public Participations: The Tokyo Rules contemplates that the public participation should be encouraged in order to improve the relationship between the Juvenile's offender under going non-custodial measures and the family or community. In this respect the rules call for rendering assistance to the voluntary organizations by the governmental agencies as well as public sectors for conducting seminars or symposia to

⁸⁷ ibid, and Rule9, Tokyo Rules, 1990

⁸⁸ Rule 10, Tokyo Rules, 1990

raise awareness among the public for encouraging the general public regarding the non-custodial measures.⁸⁹

The rules also provide for the promotion of scientific co-operation between the member countries in the field of non-institutional treatment and for the technical assistance as well as exchange of information in respect of non-custodial measures in collaboration with the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the U.N Secretariat. The Rules stress upon the member states for comparative studies and to bring harmony in their legislative provisions for uniform expansion of non-institutional measures, as mentioned in the Model Treaty on the Transfer of supervision of offenders conditionally sentenced or conditionally released.⁹⁰

2.1.6 Evaluation of International Standards

Children are the most vulnerable group of the society and they are ill treated and discriminated more than any other group of the society. For this reason there is a growing concern about the wellbeing of children and most nations want some better standards for the children. This is why the number of conventions for the protection of child is growing steadily. All these international standards in general put some broad rules to be followed by states. They try to provide as much relaxation to juveniles as is possible. The international conventions encourage states to raise the minimum age of criminal responsibility to a more humane standard; they also put a restrain to imprisonment;

⁸⁹ Rule 17, Tokyo Rules, 1990

⁹⁰ Rule 23, Tokyo Rules, 1990

detention is allowed in a manner which promotes the rehabilitation of a child; capital punishment is required to be abolished for a child. These broad rules and principles are a source of guidance for states to uplift the condition of juvenile in general and juvenile offenders in specific.

2.2 Islamic Perspective and Juvenile Offenders

For all Muslims Islam and as such Shariah is the key in determining the governing principles of all aspects of life. As such Islam or Shariah also governs all responses to criminal behavior in a society. Shariah's general response to criminal behavior is the retributive and deterrence punishments.⁹¹ For the crimes which are directly and particularly affecting a person or family Islam proposes retribution and compensatory punishments. Whereas for the crimes which have serious affect on society Islam recommends severe punishment, to be executed in public, as deterrence. Islam proposes these punishments for two reasons, satisfying the victims and deterring any potential criminals in the society. Moreover punishment in Islam is not arbitrary in nature and is subject to some conditions. Before imposing any punishment Islam requires a harmonious and peaceful situation in Islamic state; a situation in which Islamic state provides all the necessary preconditions for the welfare of the society. If such preconditions are not present Islam abolishes or relaxes many punishments arising out of the absence of those preconditions. Furthermore Islam does not places criminal liability

⁹¹ Anees Jillani, *Cries Unheard*, (Islamabad: SPARC 1999), 61.

on every one.⁹² Under a said tradition of Prophet Muhammad (P.B.U.H) not every one is held responsible for his acts; a person is not responsible for his act which is committed during his sleep; a lunatic is not responsible for his actions and a minor is not to be held liable for his acts.⁹³

2.2.1 Liabilities in Islam

Islam has directly related legal liability of an act to the capacity to perform it. As such in Islam there are three types of capacities to perform an act for which a person is held liable. The capacities are; the capacity for khitab jina'I or capacity of a person to be criminally liable for his acts (criminal liability); capacity for khitab of ibadat or capacity for ibadat (liability for religious affairs); and capacity for khitab of muamalat or legal capacity for transactions (civil liability).⁹⁴

The liabilities are separated in these three types because all persons do not have the capacity for the mentioned three liabilities and only two of them i.e. civil and criminal liabilities are legally relevant. A major and sane, in Islam, has the capacity for all the three mentioned liabilities.⁹⁵ However when a person is deficient of any of the condition of majority or sanity he can lack any or all of the three types of capacities for liability. Like a person, in Islam, who is not a major, is not held responsible for criminal liability however he is to an extent responsible for civil liability.

⁹² Anees Jillani, *Cries Unheard*, (Islamabad: SPARC 1999), 61.

⁹³ Anees Jillani, *Cries Unheard*, (Islamabad: SPARC 1999), 62.

⁹⁴ Imran Ahsan Nayazee, "Islamic Law And The CRC", Islamabad Law Review vol.1,(2003), 114.

⁹⁵ *ibid*

2.2.1.1Criminal liability

A person as long as he has not attained puberty is not responsible for any criminal liability. The condition of puberty has nothing to do with mental maturity. Once the child attains puberty he is criminally liable for his acts. However it is sometimes extremely difficult to determine when a culprit has attained puberty so fixing an age for considering a person to become puberty is more convenient. There are two opinions in Islam on the age. One opinion holds any person up to the age of 15 as a child and as such not criminally liable for his acts. This opinion is currently being followed in Hudood laws in Pakistan's.⁹⁶

The second opinion is based on the views of Imam Abu Hanifa, the founder of Hanfi School of Thought. According to this opinion the age up to which a person is not liable for his criminal actions is 18 years for male and a17 years for female. This opinion is based on rational arguments. Saudi Arabia and Egypt have also fixed this age for criminal liability.⁹⁷

Both of the opinions are however in contrast to the age limit settled in Pakistan Penal Code. Pakistan Penal Code settles the minimum age of criminal responsibility as seven years and 12 years in case the child is not of mature understanding.⁹⁸ So it is worth to be

⁹⁶ ibid

⁹⁷ ibid

⁹⁸ Section 82 & 83, Code of Criminal Procedure 1908 of Pakistan (CrPC)

noted that both of these age limits as prescribed in CrPC are considerably low than Islamic standards.

2.2.1.2 Civil Liability

In case for a civil wrong a child is fully liable for his act, unlike criminal one. Though he cannot be prosecuted and punished for a criminal liability yet he has to pay fully all the compensations arising out of his wrong.⁹⁹

The position of child on civil and criminal liability is more evident from the criminal acts of *qisas* and *diyat*. In the said cases a child cannot be punished under criminal proceeding however he has to pay any compensation arising out of *qisas* or *diyat*.

Summarily stating it can be said that Islam has placed no criminal liability and as such no criminal punishment on a child; a child however is only held liable to financial compensation. The only issue which remains is the age at which a person is considered as a child; which according to majority jurist is 15 years and according to Abu Hanifa 18 and 17 years are the ages for male and female respectively.

⁹⁹ Imran Ahsan Nayazee, "Islamic Law And The CRC", Islamabad Law Review vol.1,(2003), 116

2.2.2 Treatment of Juvenile Offender

Islam, when dealing with a child, always considers his best interest. This fact is evident from the two institutions of wilayah (parent's authority) and wisayah (guardianship). These institutions based on affection toward a child always look after a child and his best interests till he ceases to be a child. These institutions are meant to keep custody of child for his own welfare and wellbeing. Moreover Islam has also conferred some financial liberty on child. Unlike western law, a child under Islamic law can undertake all beneficial financial transactions for him.¹⁰⁰

Apart from this benevolent treatment to children, the most important benefit which they receive is exemption from all criminal liabilities. As noted by Mr. Imran Ahsan Nayazee this means that any sort of criminal punishment can not be inflicted upon a child.¹⁰¹ This position gives a child protection from any sort of detention, imprisonment, bodily punishment etc. only sort of punishment extended to a child is financial liability in which case a child is to compensate the victim only by monetary means.

The Islamic law in fact protects the child more strongly than any other law of the world. Even the most revered law (for protection of child) of Convention on the Rights of Child allows states to exert some criminal liability on child which is explicitly prohibited in Islamic law. Thus if the Islamic standards are followed the child gets an immunity from criminal liability and children have to face consequences which are civil in nature only.

¹⁰⁰ Imran Ahsan Nayazee, "Islamic Law And The CRC", Islamabad Law Review vol.1,(2003), 116

¹⁰¹ ibid, 114

Moreover Islam's also allows flexibility in defining the age of child. Majority jurists recommend a standard of 15 years as a person to be a child where as according to the opinion of Hanfi School of thought the age can be even 18 years for boys and 17 years for girls. This flexibility in Islam to determine who a child is allows states a relative flexibility in fixing the age of criminal responsibility according to their condition and circumstances.

CHAPTER III

JUVENILE JUSTICE SYSTEM IN PAKISTAN

3.1 National Legislation on Juvenile Justice

Pakistan got independence from British colonial rule nearly sixty three years ago like all other laws, it inherited some important pieces of legislation relating to juvenile justice, from the pre-partition India. Pakistan in realization of this important field of human rights made considerable developments by enacting various national legislations. The one of first such legislation is Pakistan Penal Code, 1860.

3.1.1 The Pakistan Penal Code, 1860 (No. XLV of 1860)

The crime and society co-exist and are interdependent phenomena. There can be no crime when there is no society. The codification of crimes is the modern day affair started from European countries and was adopted by the less developed countries like Pakistan. The Pakistan penal code contains all kinds of crime excluding those provided for under the special laws.

The Pakistan Penal Code (PPC) has included provisions, giving special treatment to juveniles by providing exemption to the age group of below seven years of any penalty

for any kind of crime. Under Section 82 of the PPC, it is clearly stated that nothing is an offence which is done by a child under seven years of age. The provisions of this section are attracted whether the offence is done under this Code or under any special or local law.¹⁰² A child below 7 years of age cannot be arrested under any law and can claim damages from the agency if they are arrested. This contemplates that non liability of the child for any crime is due to lack of their knowledge regarding the consequences of offence. The criminal liability age of seven years is being considered by the international human rights as non-reasonable and stresses to enhance the limit up to 12 years. However, the international conventions have left it to the concerned legal systems to decide it in the light of their own environment.

Section 83 of the PPC envisages that nothing is an offence which is done by a child above seven years and under twelve who has not attained sufficient understanding to judge the nature and consequences of his conduct. The provisions of this section state that when the juvenile offender is above seven years and below twelve years age.¹⁰³ Then the qualified exemption may be claimed. Complete criminal responsibility commences after the age of it twelve years has been crossed. However, the non-attaining of sufficient maturity or understanding must be established beyond doubt for claiming the benefit under these provisions. The Higher Courts in ascertaining as to whether the child under trial has attained sufficient maturity or understanding can consider the report of the Radiologist as evidence prove such fact.

¹⁰² "Nothing is an offence, which is done by a child under seven years of age" Section 82 of Pakistan Penal Code 1860

¹⁰³ "Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion." Section 83 of Pakistan Penal Code 1860

3.1.2 The Reformatory Schools Act, 1897 (No. VIII of 1897)

This Act was enforced in the pre-independence era with the aim of dealing with youthful offenders. This legislative enactment has been extended to the leased area and Federal areas of Baluchistan respectively through the British Baluchistan Laws Regulation 1913 and Leased Areas (Laws) Order, 1950.

The said legislation provide provisions for the establishment and maintenance of reformatory schools and with detail requisites of such schools like accommodation for separation of inmates during night time, along with sanitary, water supply, food clothing, bedding, industrial training and medical facilities.¹⁰⁴

Under the law, the youthful offender is defined as a boy who has been convicted of an offence punishable with transportation or life imprisonment and is under the age of 15 years.¹⁰⁵ The Act also provides for dealing with a juvenile offender after the trial is completed and the sentence is awarded. This Law has nothing to do with the treatment of juvenile offenders during the administration of justice.

¹⁰⁴ Section 5&6, The Reformatory Schools Act, 1897 (No. VIII of 1897)

¹⁰⁵ Section 4(a), The Reformatory Schools Act, 1897 (No. VIII of 1897)

3.1.3 Code of Criminal Procedure, 1898 (Act V of 1898)

The Code of Criminal Procedure, 1898 (Code) is designed to provide procedure for the administration of criminal justice and to further the fairness and impartiality in accordance with the established principles of natural justice for all persons including juveniles in conflict with law.

The Code provides special provisions to deal with the cases of juveniles in the administration of criminal justice considering it a sensitive humanistic issue. Under Section 29-B, the jurisdiction to try the juvenile for offences other than the crimes punishable by death or transportation of life, on the District Magistrate or the Magistrate specially empowered to exercise the power conferred by Section 8 of the Reformatory Schools Act, 1897 or any other law, where the said Act is inapplicable, providing for the custody, trial or punishment of Juvenile's by the court on which the law confer such powers.

The aforesaid provision of the Code reflects that especially some courts were specified to adjudicate the criminal matters committed by the juveniles to give them special treatment in the administration of criminal justice. But the aforesaid provisions do not mean that exclusive forum of Jurisdiction was created. In the provision of Code of Criminal Procedure, it has nowhere been mentioned regarding separate trial of the juvenile, specifically in a situation where the juvenile and the adult have been accused under the same offence.

3.1.4 The Punjab Borstal Act, 1926 (No. XI of 1926)

This Act was passed by the Punjab Legislative Council, received the assent of the Governor General on July 22, 1926 and enforced in the province after its publication on 27th August, 1926. The Act provided for the establishment and regulation of Borstal institutions in the Province of Punjab and the detention and training for the Juvenile offenders in these institutions. In the Act, the Borstal institution was defined as a place in which offenders may be detained under this Act and given such industrial training and other instructions and subjected to such disciplinary and moral influences which will be conducive to their reformation.¹⁰⁶

Under the provisions of the Act, any court of Session or other subordinate court while sentencing a person below the age of 21 years for any offence or if such a person is ordered to furnish security for good behavior and fails to do so, may make order for detention in the Borstal institution for a period not less than 2 years and not more than seven years.¹⁰⁷ The Act is exhaustive in its application regulating various subjects relating to such institutions, including its administrative and other activities. The Act if sincerely applied is useful to impart training and behavior to the young dwellers making them good citizen for the society. The Punjab Borstal Rules, 1932, were made in pursuance of the aforesaid Act which will forward the rehabilitative and re-integrative designs of the Act.

¹⁰⁶ Section 2(1), The Punjab Borstal Act, 1926 (No. XI)

¹⁰⁷ Section 5-8, The Punjab Borstal Act, 1926 (No. XI)

3.1.5 The Good Conduct Prisoners Probational Release Act, 1926 (Act No. X of 1926)

The captioned Act introduces a system of probation, wherein an attempt is made to provide the offender an opportunity towards reformation with the assistance of Community or probation officer to help him in the rehabilitation and re integration into society by inculcating habit of hard work and dignity.

Under the Act, the powers were conferred on the provincial government; to release a prisoner undergoing imprisonment on probation for his good conduct and behavior in the prison/Jail by placing him under the supervision of probationary officer, or an association or a person of same religion.¹⁰⁸ The system of probation on its application may be used for the juvenile offenders for their rehabilitation.

3.1.6 The Sindh Children Act, 1955 (No. XII of 1955)

The Sindh Children Act was passed in 1955 but enforcement of this law was made subject to the enabling notification of the Provincial Government, this though enabled executive to manipulate the law.¹⁰⁹ The Provincial Government gave deaf ear to this humanistic aspect and the residents of the Province remained deprived of the benefits till

¹⁰⁸ Section 2, The Good Conduct Prisoners Probational Release Act, 1926 (Act No. X of 1926)

¹⁰⁹ Section 2, Sindh Children Act, 1955(No. XII)

its application to Hyderabad Division on October, 1974 and thereafter its further extension to the Karachi Division in the year 1976.¹¹⁰

The Sindh Children Act provided for the establishment of Industrial schools, Certified Schools, Remand Homes, Societies, Associations and other such like institutions.¹¹¹ The provision of Section 125 of the Act confers power on the Provincial Government for the establishment and maintenance of industrial schools for the juvenile offenders. The provincial government was also empowered to declare any existing school as fit for detaining the youth offenders. The provisions of section 27 of the Act deal with the establishment of an association or society for the performance of responsibility to take care of those juveniles who were released from such institutions. Under Section 26 of the Act, the provincial government has got powers to declare by notification in the official gazette, any place as remand home for the Juvenile offenders. The Act also provided that the court may, upon an inquiry in this behalf, send those children to these institutions who though are not accused of any offence but are deprived of guardianship and are likely to associate with the immoral elements of the society. Which may in fact leave them vulnerable to the world of crimes also those children who are destitute and has no place of abode.¹¹²

The main aim enacting the Act is to discourage the confinement of youths in jails without exception and to provide that the rigorous imprisonment awarded to a child attaining the age of 16 years is to admit him to a Borstal Institution/ School. The Certified schools

¹¹⁰ Anees Jillani, *Cries Unheard*, (Islamabad: SPARC 1999), 66.

¹¹¹ Part iii, Section 25-27, Sindh Children Act, 1955 (No. XII).

¹¹² Section 40, Sindh Children Act, 1955 (No. XII).

were constituted, in pursuance of the provisions of the Act in 1995, by declaration of juvenile jail as certified school. Which were named as Youthful Offenders Industrial School through a notification.¹¹³ The management of certified school required the framing of separate rules but no such rules could be enacted and the school had to be governed under the Jail Manual, which was dealing with adult prisoners.¹¹⁴

Under Section 31 of the Sindh Children Act, it is stated that certification of a school can be withdrawn at any time by giving notice in writing if the provincial government is not satisfied with the conditions, rules and management of the concerned school. The government may instead of withdrawing the status of school, prohibit the admission of the youth offenders to the school for a specific period. Further before issuance of notice, the manager of the school must be given opportunity to show cause as to why the status of certification may not be withdrawn or the admission of further young offenders be stopped, as the case may be.¹¹⁵

Under Sections 32 and 33 of the Act, it is provided that manager of the certified school may also abandon their certification by giving six months notice in writing to the provincial government. After such notice no youthful offender shall be allowed in the school.

¹¹³ Section 5, Sindh Children Act, 1955 (No. XII).

¹¹⁴ Anees Jillani, *Cries Unheard*, (Islamabad: SPARC 1999), 148.

¹¹⁵ Anees Jillani, *Cries Unheard*, (Islamabad: SPARC 1999), 133.

3.1.7 The Sindh Borstal Schools Act, 1955 (No. X of 1955)

The Sindh Borstal schools Act is an important legislative document providing for the establishment of Borstal schools in the province of Sindh for Juvenile offenders of age group of 16-21 years (or 15-21 years where the Sindh Children Act is not applicable) with a view to put the offender in such an environment conducive for reformation leading towards the rehabilitation and re-integration into community. Under the Act, the court may in lieu of passing the sentence of imprisonment or on failure to furnish security, direct the detention age group mentioned above and the court considers it expedient that the offender should be detained in the Borstal school for providing such instructions and discipline which are conducive for his reformation.¹¹⁶

The Act also empowered the Inspector General of prisons to transfer a person, falling in same age group and undergoing imprisonment either on conviction or failure to give security if he is satisfied that the offender has a tendencies of bad habits, or criminal behavior to the Borstal school by an order in writing for the unexpired term of his imprisonment.¹¹⁷ The right granted to executive has indeed proven useful as “*In September 2000, more than 50 children were rescued from the Hyderabad prison alone who were regularly sexually abused by adult criminals, according to Sindh IG Prison's own admission.*”¹¹⁸ However this vesting of power in executive authority is an isolated example.

¹¹⁶ Section 6, The Sindh Borstal Schools Act, 1955 (No. X of 1955)

¹¹⁷ Section 11, The Sindh Borstal Schools Act, 1955 (No. X of 1955)

¹¹⁸ http://www.sparck.org/crs_juvenile_justice_1.php last visited 08-07-09

The Act has also conferred powers on the Inspector General of prisons to discharge the offender from the prison after six months of commencement of imprisonment period, if he is satisfied that there is reasonable probability that the offender is likely to mend his ways and will lead an industrious and discipline life through a license on certain conditions under the supervision of some government officer, religious institution or other responsible person.¹¹⁹ This law is an important legislation with the aim of protection of Juvenile offenders and to assist their in rehabilitation in the society.

3.1.8 The Punjab Youthful Offenders Ordinance, 1983 (No. XXIII of 1983)

The Punjab Youthful Offenders Ordinance, 1983, was promulgated by the Governor of Punjab on 14th December, 1983, saved under the Eighth Constitutional (Amendment) Act. The provisions of Section 1 and 2 of the Ordinance were enforced with immediate effect and the remaining provisions thereof were to come into effect by issuing notifications, from such date and for such areas clearly specified by such notification.

Under Section 2 of the Ordinance the child has been defined as “*a person who at the time of initiation of any proceeding against him under the Ordinance or at the time of arrest in connection with which any proceedings are initiated against him under the ordinance has not attained the age of 15 years and does not include a pubert even though a child who appears to have committed an offence which is punishable with Hadd under the Offences*

¹¹⁹ Section 12, The Sindh Borstal Schools Act, 1955 (No. X of 1955)

Against Property (Enforcement of Hudood) Ordinance, 1979; the offence of Zina (Enforcement of Hudood Ordinance) Ordinance, 1979; the Prohibition (Enforcement of Hudood) Order 1979; or (the Offence of Hadd) Ordinance, 1979".¹²⁰

The exception was added through amending ordinance titled, Punjab Youthful Offenders(Amendment) Ordinance 1984 (No. xxx of 1984) after the introduction of Hudood Laws where after the pubert child shall be treated like adult in the administrations of justice without getting special treatment of being juvenile offender.

The Ordinance has conferred powers on the government to establish one or two juvenile courts for any local area specified in the notification.¹²¹ Till the establishment of such juvenile, the High Court, Sessions Court, District Magistrate, sub-Divisional Magistrate, and Magistrate of the first class, were empowered to exercise such powers either in original or appellate and revisional jurisdiction.¹²²

The ordinance has also provided for the separate trial of the Juvenile and adult if they are jointly accused of an offence. The court trying the offence shall separate the case and send it two courts, selecting in two different buildings.

The Ordinance has taken due care of privacy of the Juvenile offender by providing that only the relevant persons to the trial shall be allowed and if the court deem it fit may give direction for the withdrawl of such person especially at the time when the Juvenile is

¹²⁰ Section 2(1(a)) The Punjab Youthful Offenders Ordinance, 1983 (No. XXIII)

¹²¹ Section 4, The Punjab Youthful Offenders Ordinance, 1983 (No. XXIII)

¹²² Section 5, The Punjab Youthful Offenders Ordinance, 1983 (No. XXIII)

going to be examined as witness.¹²³ The court is also empowered to dispense with the attendance of Juvenile during the course of trial if such presence is not considered essential for the proceedings of the court.

Certified Schools, Approved homes Industrial schools or Educational Institution: Under the Ordinance, the government has to establish certified schools, industrial homes or educational institutions for the boarding of the Youthful offenders. The legislation has also provided for the establishment of association, society or other such institutions which are responsible to take care after the Juvenile offender is discharged from the Certified Schools or other homes etc.¹²⁴ The Order has also taken notice of the management of these institution, interval inspection of these institutions and provision of medical facilities to the Juvenile offenders there at. Exhaustive provisions have been enacted for the regularization of these institutions with harsh penalties for the offences committed with regard to these institutions for the persons abetting or assisting the Juvenile offenders to escape.¹²⁵

The Ordinance provides appellate forum of Lahore High Court for filing appeal against the decision of the Juvenile-Court of Magistrate and Session Court, and the Code of Criminal Procedure has been made applicable for such purpose

¹²³ Section 11, The Punjab Youthful Offenders Ordinance, 1983 (No. XXIII)

¹²⁴ Section 22, The Punjab Youthful Offenders Ordinance, 1983 (No. XXIII)

¹²⁵ Section 25-37, The Punjab Youthful Offenders Ordinance, 1983 (No. XXIII)

3.1.9 The Punjab Children Ordinance, 1983 (No. XXII of 1983)

The Punjab Children Ordinance, 1983 was promulgated on the same date of 14th December, 1983, along with the Punjab Youthful Ordinance, 1983. Both laws have some common provisions relating to juvenile institutions, with little changes.

However, this Ordinance has got unique feature, that it provides provisions regarding children who are homeless and destitute. Under these provisions the concerned police officer may bring before the appropriate Juvenile Court a child who is homeless wandering in the locality without means of subsistence or in a conditions which are not in conformity with child's welfare; the child is destitute and has started begging as profession, having no parent or guardian, or having them but are incapable to provide guardianship; the child is associating with criminals or prostitutes; the child is in the habit of frequently visiting residences used for the purpose of prosecution, gambling etc: and is likely to be exposed to criminal and immoral life, then the court may make orders, after satisfying itself about such circumstances, that the child be retained in the authorized homes or be entrusted to the care of a relative or other fit person.¹²⁶

This Ordinance has taken care of the children who have not come into conflict with law but may be considered as a precautionary measure to make such arrangement to cure the child before coming or indulging in the life of crime.

¹²⁶ Section 11, The Punjab Children Ordinance, 1983 (No. XXII)

3.1.10 The Probation of Offenders Ordinance, 1960 (No XLV 1960)

This piece of legislation intending to release convicted offenders on probation who for some extenuating circumstances come into conflict with law was passed on first November, 1960 and came into force on 1st July, 1961.

Under this legislative document it has been provided that a court may discharge the offender conditionally sentenced for not more than two years, keeping in view the age, character, antecedents, non convictions in the past or any other extenuating circumstances or release him/her on probation, convicted for certain offence, not punishable with death, on furnishing bail bond to the effect that the commission of offences shall not be repeated or any other condition which is deemed fit by the court.¹²⁷ The age is the foremost factor for considering the release of offender on probation. The provisions of this Ordinance are considered to be applicable in addition to other juvenile laws and not as derogatory.¹²⁸

3.1.11 Jail Manual (The Prison Rules, 1978)

The Prison Rules, 1978, in its chapter XII, has dealt the matter regarding the handling of juvenile or youthful offenders after their conviction by the courts. Under the Rules, the word juvenile is defined as a male prisoner under the age of 18 years of age at the time of conviction whereas the youthful offender is that male prisoner who is under the age of 15 years on his conviction. The word juvenile is broader in its context and includes the

¹²⁷ Section 4, The Probation of Offenders Ordinance, 1960 (No XLV 1960)

¹²⁸ Section 17, The Probation of Offenders Ordinance, 1960 (No XLV 1960)

youthful offender. Under the said Rules, the District Magistrate or the competent court on the recommendation of the concerned jail superintendent may direct for detention of the youthful offenders in the reformation schools, as provided by the provisions of Section 10 of the Reformatory Schools Act, 1879. Similarly it is also provided in these Rules, that the Court of Session or other subordinate court while convicting a person in any offence, under the age of 21 years, may instead of sending him to rigorous imprisonment should transfer such convicted person to the Borstal institution or reformatory school centre established under the law for the time being in force.. The Rules have clearly stated the criteria, giving priority to the juveniles younger in age for transfer or detention in the reformatory schools or Borstal institution, as the case may be, along with specification of period to be spent in the school or institution.

Over all facilities for the juveniles in the schools and institution have been provided with under the Rules specially with regard to education, training in the profession of choice and separation from the adult prisoners, in case of their detaining in the special ward of the jail.

3.1.13 The Juvenile Justice Ordinance, 2000. (XXII of 2000)

The latest legislation introduced by the Government of Pakistan for the protection and reformation of Juvenile offenders involved in criminal litigation is the Juvenile Justice Ordinance, 2000 (JJSO) . Under this legislative document concerted effort has been made to extend special care for the juveniles by providing liberal interpretation; this is to

achieve the object of suitable conditions and environment by providing the Juvenile offenders opportunities that enable them to live a disciplined and useful life in the society.¹²⁹

Under the Ordinance, the child has been defined as a person who at the time of commission of an offence has not attained the age of eighteen years.¹³⁰ The age limit was raised to eighteen years in order to make it in conformity with the international guidelines or conventions/standards and also to enhance the age of child/offender provided as fifteen and sixteen years under the provincial legislative documents of Sindh Children Act and Punjab Youthful Offenders Act, respectively. Keeping in view the human aspect, the provisions regarding legal assistance through an Advocate having legal practical experience of five years for defending the child during trial before the court on the expenses of the state, have been included in the statute.¹³¹

The Ordinance has provided for the establishment of Juvenile courts and the Provincial Governments were authorized to establish one or more Juvenile courts for any local area. In this respect, the consultation with the Chief Justice of the appropriate High Court was made mandatory. The High Courts of the Provinces were authorized to confer powers on the Sessions Court or Judicial Magistrate to exercise jurisdiction as Juvenile Courts. The High Court has also been empowered to appoint an Advocate having at least seven years practice at the Bar, as presiding officer of Juvenile Court with powers of Judicial Magistrate. The important characteristic of this statute is its provision of time limit of

¹²⁹ Traey Wagener_Rizvi & Anees Jillani, Waiting for Sunrise, (Islamabad: SPARC, 2003), 27.

¹³⁰ Section 2(b), Juvenile Justice Ordinance, 2000. (XXII of 2000)

¹³¹ Section 3, Juvenile Justice Ordinance, 2000. (XXII of 2000)

four months for the conclusion of the trial so that the child offender may be relieved of the stresses of longer trial period. In the child interests, the court was required to take up the case of child accused before any other case fixed on the same day.¹³²

An important feature of the statue is the provisions of separate trial of a child from the adult if the child and adult are both jointly charged for the same offence, notwithstanding the provisions of section 239 of the Code of Criminal Procedure, 1898.. But these provisions have found mention in the Provincial Legislation as discussed in the previous pages of this Chapter. The logic behind the separate trial is to save the accused juveniles from being affected by the adverse psychological and social environment of adult criminals.¹³³

In the interest of self respect decency and morality of the children, it has been provided that only concerned persons shall be allowed during the trial of the accused children and also dispense with the presence of juvenile accused if it is deemed appropriate in the circumstances of the case. Moreover, the publication of proceeding, which is against the interest of the juvenile, in the print or other media, is strictly prohibited. Under the ordinance, there will be a report by the probation officer for the assistance of Juvenile which shall be confidential for the strangers to the issue.¹³⁴ Where the child is arrested for the commission of offence, the concerned police have to immediately report the matter to the guardian and probation officer for preparation of report on the morality, education and social group for assisting the juvenile court. In case the offence for which the child is

¹³² Section 4, Juvenile Justice Ordinance, 2000. (XXII of 2000)

¹³³ Section 5, Juvenile Justice Ordinance, 2000. (XXII of 2000)

¹³⁴ Section 6, Juvenile Justice Ordinance, 2000. (XXII of 2000)

accused is bail able, he should be immediately produced before the juvenile court for releasing him/her on bail except in the circumstances where the court considers such release is adverse to the protection a child aged below fifteen years accused of an offence the penalty where for is provided up to ten years imprisonment may be released as if he was accused for bail able offence.¹³⁵ For providing more relief, the concession of bail is extended if there is a delay for more than one year or six months or four months charged for offences the penalty wherefore is provided as death, imprisonment for life as or less than both of these respectively. On the conclusion of the trial and inquiry, if the Juvenile court finds that the offence is committed, even then the court may release the child on probation, send to Borstal Institutions or reduce the period of imprisonment.¹³⁶

Apart from the raising of age limit from 15 years to eighteen years for a person to be treated as a juvenile the most important thing the Act has done is that it provides juvenile an exemption from death penalty.¹³⁷

However, the Ordinance was challenged in the Lahore High Court, Lahore Bench, in the case titled Farooq Ahmed Vs Federation of Pakistan [PLD 2005 Lahore, P.15] and was declared derogatory to the existing criminal justice system and was annulled. This decision, however, has been challenged before the Supreme Court. The Supreme Court suspended the decision of the High Court and the final decision is awaited.¹³⁸ Thus at present, the cases relating to juvenile offenders are being decided under JJSO, 2000.

¹³⁵ Section 10, Juvenile Justice Ordinance, 2000. (XXII of 2000)

¹³⁶ Section 11, Juvenile Justice Ordinance, 2000. (XXII of 2000)

¹³⁷ Section 12, Juvenile Justice Ordinance, 2000. (XXII of 2000)

¹³⁸ 2005 PLD Lahore 15

3.2 Juvenile Justice System of Pakistan

3.2.1 Definition of a Juvenile Offender

Juvenile was defined variably in different local legislation in Pakistan but since the commencement of JJSO, 2000 a juvenile is defined as "*A person who at the time of commission of offence has not attained the age of eighteen years*".¹³⁹ As a federal law this definition extends and overrides all definitions of juveniles provided in other local and provincial laws. However in case of Federal legislations as the JJSO, 2000 is a law which is not in derogation with other laws so it does not override the definitions of juvenile provided by other National legislations.¹⁴⁰ An example of this fact is that of Hudood Ordinances 1979; whereby a child is a person who has not attained puberty or is of eighteen years for male and seventeen years for female and this definition of juvenile exclusively applies on all persons coming in purview of this law.

Furthermore Pakistan, under its legal system has specified a certain minimum age of criminal responsibility and the minimum age fixed by Pakistan Penal Code, 1860 (No. XLV) is seven years.¹⁴¹ Below that age limit no act of a person is considered as an offence. Yet another provision of the penal laws confer discretion upon the court that if the judge feels the mental capabilities of the person above seven year but below twelve years are not sound then the court can relax the age of criminal responsibility to the limits

¹³⁹ Section 2(b), Juvenile Justice Ordinance, 2000. (XXII of 2000)

¹⁴⁰ Section 14, Juvenile Justice Ordinance, 2000. (XXII of 2000)

¹⁴¹ Section 82, Pakistan Penal Code 1860 (No. XLV)

of twelve years of age.¹⁴² Considering the both JJSO and Pakistan Penal Code it can be argued that for legal system a criminal between the age of 7 and 18 years is to be considered as a juvenile offender and between the age of 7 and 12 years the juvenile has the chance to get evasion from criminal liability completely. Where as an offender between the age of 7 and 18 years is to get all the relaxation awarded to juvenile offenders in Pakistan.

3.2.2 Juvenile Courts

No juvenile justice system can work without formation of separate courts for juveniles. Pakistan in its laws has given some attention to the issue. The federal legislation of juvenile Justice System Ordinance, 2000 has provided for a flexible judicial system for the trials of juvenile. The ordinance though originally empowers upon High Courts to try any case in which an accused is a juvenile. However it also confers discretionary powers upon High Courts to delegate their authority to lower courts. The high courts can empower Sessions courts and magistrate first class to act as juvenile courts and to try the cases involving a juvenile accused exclusively.¹⁴³ At present the power to act as a juvenile court has been respectively conferred by provincial High Courts on senior civil judges in Punjab; on District and session judges in NWFP; two additional district judges and judicial magistrates for Karachi division; and district and Sessions along with Additional Session Judges and judicial magistrates of the First Class in Baluchistan.¹⁴⁴

¹⁴² Section 83, Pakistan Penal Code 1860 (No. XLV)

¹⁴³ Section 4, Juvenile Justice Ordinance, 2000. (XXII of 2000)

¹⁴⁴ AMAL, Street Children and Juvenile Justice in Pakistan, during 2004 pg, 45

Apart from these established courts, High Court has been granted the power to establish special courts consisting of advocates with seven years experience at bar. Such court will have the power of the magistrate first class. Moreover provincial governments in consultation with the Chief Justice of High Court, have the power to establish one or more juvenile courts in a local area. Provincial Governments can establish any such court in their jurisdiction by a notification in official gazette.

Summarily, at present the courts with power to try juvenile offenders are; the four High Courts at provincial level with original jurisdictions; those session courts which have been vested with powers to try juvenile offenders, below High Courts at district level; the magistrates of first class which are empowered by High Court to try juvenile offenders, below session courts at district level; special courts consisting of practicing advocates with the power of magistrate first class; and any such court established by provincial government for a local area.¹⁴⁵

3.2.3 Trial of Juveniles

Trial of a juvenile is one of the most discriminating phases where, normally, juvenile offenders have to face uncompassionate and harsh treatment. They are taken and treated just like adult and habitual criminals. This sort of treatment leaves juvenile much vulnerable; they are dealt so harshly that it becomes almost impossible for them to rehabilitate in the society. Acknowledging this fact, Pakistan's juvenile justice system has

¹⁴⁵ Section 4, Juvenile Justice Ordinance, 2000. (XXII of 2000)

provided some relaxation and privileges to juvenile offender during the process of their trial for an offence. The trial of juvenile comes across with the following stages.

3.2.3.1 Arrest of Juvenile Offender

From the initiation of a case against a juvenile, up till its decision juveniles are facilitated to be free from arrest and detention through a process of relaxed provisions and relaxed bailing system.

A juvenile offender when arrested for a bail able offence should not be detained and be released immediately on bail. A juvenile offender below the age of fifteen also has the exemption from arrest in all such case where preventive detention is a penal provision.

Even when the arrest and custody of a juvenile is necessary and is non bail able he should be produced before a juvenile court within 24 hours of his arrest. The officer in charge of the arrest is bound to inform the guardian of the child, as soon as possible, about the time, date and name of juvenile court, which will try the case. Apart from that a juvenile offender cannot be handcuffed unless there is a great chance of his escape.

3.2.3.2 Bail Procedures

In order to avoid any unnecessary detention, juvenile offenders have received some special relaxations in bail matters.

Any juvenile offender who has committed a bail able offence, is to be allowed bail on arrest or on his first appearance in a juvenile court. Moreover bail becomes a right in cases where the trial of a juvenile is being delayed by 1 year, six month, and four month for offences punishable with death, life imprisonment and punishments less than life imprisonment or death respectively.

Apart from above relaxations if a juvenile, below the age of fifteen, commits a non bail able offence with punishment of less than ten years will be deemed as if he has committed a bail able offence.

3.2.3.3 Legal Assistance

In juvenile justice system of Pakistan state is bound to provide on its own expense all legal assistance required by a juvenile offender.

3.2.3.4 Procedure of Juvenile Court

Working and procedure of juvenile court has been specifically changed from criminal courts so as to accommodate a more relaxing and compassionate treatment to juvenile offenders. Certain procedural provisions are included in JJSO which extend protection to juvenile offenders from the evils of harsh procedures and modes applied during the course of a normal criminal trial. The relaxations in procedure awarded are that; to avoid the equal, uncompassionate treatment of a juvenile offender along with an adult criminal;

the joint trial of juvenile and an adult has been prohibited. A juvenile offender is to be tried under a separate hearing when a juvenile and adult are charged for the same offence.

In normal circumstance in order to avoid the influence and ill impression of other criminal trial and to give due care to the case of a juvenile offender, it is required by juvenile courts not to take up any other case along with a case involving a juvenile offender.

The hearing of a case involving a juvenile offender is to be carried out in presence of restricted audience. This is to preserve the dignity of juvenile offender. Moreover when the presence of juvenile offender is not necessary court is authorized to proceed with the case in absence of juvenile offender.

3.2.3.5 Punishments Prohibited for Juvenile Offenders

In respect of offences committed, juvenile offenders have protection from certain punishments. The most important protection awarded to a juvenile is that of protection from death sentence. No person below the age of 18 years is to be awarded death sentence. The juvenile are also protected from any punishment pertaining to labor during the period of their stay at reformatory institutions like Borstal Institutions Certified Schools etc.

Apart from protection from certain punishments for offences, juvenile have also secured privilege of milder punishments in case they break the discipline of the institution where they are detained after punishment.

3.2.4 Institutionalization of Juvenile Offenders

Once a juvenile is awarded the punishment of imprisonment such imprisonment is institutionalized under the juvenile justice system of Pakistan. Institutionalization means placing juveniles in Industrial houses, Borstal Institutions etc. for the period of their sentence or till they achieve the age of 18 years (which ever is earlier). For this purpose the juvenile justice system of Pakistan provides for the formation of five different types of institutions for juveniles. These are Reform Schools, Industrial and Certified Schools, Remand Homes and Borstal Institutions.¹⁴⁶

The Borstal Institution declared also as juvenile jail at Bahawalpur along with juvenile wards of Jails at Lahore and Rawalpindi; Youthful Offenders Industrial School, Remand Home for temporary detainment of juvenile offenders at Karachi, along with juvenile wards in the jails in Sindh are examples of the institutions created for reformatory purpose.¹⁴⁷

¹⁴⁶ <http://www.hrw.org/reports/1999/pakistan2/Pakistan-04.htm> last visited 09-04-2008 and

¹⁴⁷ ibid

3.2.4.1 Treatment of Institutionalized Juvenile Offenders

Once juveniles are admitted in a Borstal institution or industrial school they receive a completely different treatment from the treatment extended to the offenders imprisoned in regular jails. The juvenile offenders are institutionalized not with the intention to detain them as some dangerous criminal but with a desire to ensure their rehabilitation and positive upbringing. So that once released from the institution juvenile offenders are able to adjust and work properly in the society.

The Borstal institutions or Industrial schools etc. (institutions established for juvenile offenders) have a well defined and satisfactory manual to ensure the positive upbringing of juvenile offenders. The treatments extended to juvenile offenders include; non stigmatization or harsh punishment be awarded to juvenile offenders; a well equipped facility of health and medical care along with proper hygiene condition;¹⁴⁸ proper attention to develop conduct and moral attitudes by religious instructions and proper supervision; spacious playground to develop and promote skills and talents of juvenile along with physical and psychological; and arrangement for imparting technical training chosen by the juvenile offender so as to enable him earn an honest living after his release.

¹⁴⁸ Rule 14, Punjab Borstal Rules

3.3 Overview of Juvenile Justice System of Pakistan

An overview of the juvenile laws of Pakistan reveals that Pakistan has developed basic framework of a judicial system for juveniles. This system covers all the necessary aspects of a juvenile justice system. The age up to which a person is considered juvenile is clearly defined. Separate courts with distinct procedure in contrast to normal criminal justice system, is also there for juvenile offenders. Juvenile offenders have also been able to procure protection from death sentence. Moreover the juvenile offenders are not to be placed in ordinary prisons; Pakistan has established Borstal Institutions, Certified Schools, Industrial Homes etc for keeping juvenile offenders. These institutions do serve the need of protecting a juvenile from further criminal activities and enhance the chance of rehabilitation and reintegration of juvenile offenders; which is the core of juvenile justice system. So in an overview it can be said that Pakistan has a developed juvenile justice system though this system might not appear to be functional and according to international standards.

CHAPTER IV

Conclusion and Suggestions

4.1 Critical Appraisal of Juvenile Justice System of Pakistan

Juvenile Justice System has been developed by the countries all over the world with the sole compassionate consideration of protecting and rehabilitating young children who come in conflict with law. Many countries give juvenile justice top priorities as they in real care for their youth and intend to protect them. However there are also countries which follow juvenile justice as only a current trend and as such place it low in their priority list. Pakistan appears to be one of those countries.

Pakistan is an Islamic country and is party and signatory to many world conventions for the protection of juveniles. However in reality Pakistan is neither giving juveniles the immunity from criminal responsibility as Islam does nor Pakistan is following international standards in order to establish a rehabilitatory approach towards it's children who come in conflict with law. Pakistan may claim that it has been working for the welfare of juvenile offenders by emphasizing the legislations enacted by the state and may blame lack of finance, lack of expertise, improper social conditions, un willingness of public to participate, and other socio economic problems for all short falls. However the truth is that Pakistan has never been willing to give a high priority to its juvenile justice and as such has never mobilized and allocated even the available resources for

development of juvenile justice system. Legislations have been enacted in Pakistan occasionally but no coordinated and organized efforts have been made. Even those enacted legislations have been never implemented in letter and spirit. This is evident from the fact that even at present no local legislation and exclusive detaining institution, regarding juvenile offender is present in two of the four provinces of Pakistan. Apart from that Pakistan has also never carried out an extensive awareness and training campaign in order to create a foothold for juvenile justice system; though Pakistan could have arranged any such effort by requesting finance and expertise from those countries, non government organizations and United Nations bodies which at present are carrying out isolated efforts to improve juvenile justice system in Pakistan.

Some of the reason forwarded by Government of Pakistan for an improper implementation of juvenile justice system like lack of resources, public perceptions of crime and criminals and overlapping systems might be true. But in reality the problems behind shortfalls in juvenile justice of Pakistan are not those excuse claimed by government but the reasons are; the lack of political will and low priority assigned to juvenile justice. These two reasons in truth are behind all other laxities. Pakistan can easily enhance the performance and results of its juvenile justice system with little effort. By facilitating the awareness programs of international organizations and local NGOs Pakistan can easily raise public awareness and perceptions about juvenile offenders. By training it's judicial and policing staff with the readily available help of many international organizations it can improve its procedures administered in juvenile justice system and institutionalization of juvenile justice system. And at least Pakistan could

have used its already traditionally available non judicial forums (like panchayat and jirga system) for reconciliation between victim and juvenile offenders; for the purpose of keeping juvenile offenders away from criminal judicial system. As these system are successfully being employed by Scotland, Australia and New Zealand.

It thus summarily can be said that the juvenile justice system of Pakistan is facing problems and shortfalls because of the non readiness of government of Pakistan; lack of political will to promote and hence resulting low priority assigned to Juvenile Justice System of Pakistan. This in result is greatly hampering the growth of juvenile justice in Pakistan and is damaging for the youth and as such future of Pakistan. This issue of development and proper implementation of juvenile justice thus requires immediate attention of state authorities and should be catered as an issue of high priority.

4.2 Short Falls in Juvenile Justice System of Pakistan

Pakistan, in year 2000, consolidated its previous juvenile legislation by introducing Juvenile Justice System Ordinance, 2000. Under this ordinance a definite juvenile justice system with its entire requisite was enforced. Prior to JJSO though some juvenile laws existed but they were restricted to local jurisdictions; were limited in their scope; and had no impact on at the state level. Considering this fact it can be said that Pakistan had no well organized juvenile justice system prior to JJSO. JJSO, as such, all of a sudden introduced a juvenile justice system in Pakistan. Moreover this law was introduced through an ordinance and even later on was not subjected to any debate by Parliament of

Pakistan. Hence this, JJSO, cannot be considered a legislation covering all necessary aspects of juvenile justice and Pakistan's social and legal needs. This might be a reason behind the fact that situation of juvenile offenders has least improved practically in Pakistan and its juvenile justice system is still criticized for being inefficient as well as deficient as compared to local needs and international standards.

4.2.1 Judicial Apprehension on Juvenile Justice System of Pakistan

Juvenile Justice System as established by JJSO was challenged in 2002 by Farooq Ahmed through a Writ Petition in Lahore High Court. In its decision, the High Court rejected JJSO altogether and declared it null and void. The High Court in its detailed judgment highly criticized the provisions of JJSO and pointed out many of its controversies and deficiencies.

One of the issues was that the JJSO simply defines any person below the age of eighteen as a child and as such, in contrast of adult criminals, considers him entitled to certain relaxations. The High court took the fixing of eighteen years age as an arbitrary act and highly criticized it. In its argument the learned Court stated that the juvenile or child has been well defined in previous local legislation. Code of Criminal Procedure, 1898 (CrPC) and Hudood laws have defined the age of child to be 7-12 and puberty or 18 years respectively;¹⁴⁹ moreover, under section 29(a) CrPC and Punjab Youth Full Offender

¹⁴⁹ The Cr.PC under Section 82, absolutely protects a person below seven years from any criminal responsibility and under Section 83 gives a conditional protection to a person below the age of 12 years subject to his attaining of mental understanding. Where as the Offence of Zina (Enforcement of Hudood)

Act, 1983; and a person is to be treated as juvenile if he is below the age of fifteen years. According to the High Court these laws have well settled the criteria of juvenile and the definition or criterion of a juvenile given under JJSO is merely arbitrary and whimsical i.e. not based on any social or legal need of our society.¹⁵⁰

The concept of separate courts was also highly criticized by the learned court. Accepting the opinion of Mr. Manzoor Ahmad Malik Advocate as *amicus curiae*, the Court noted that the idea of separate trial of juvenile and adult for involvement in same offence is duplicity of effort for prosecution. It was also pointed out that there is "*an inherent risk of conflicting judgments being rendered by a juvenile court and an ordinary court*",¹⁵¹ in case of separate trials in separate courts. The Court also recognized the fact that normally ordinary courts are functioning as juvenile courts and usually same evidence is taken for deciding the case of juvenile and adult offender. This fact nullifies the very idea and reason behind the separate court and separate trial.¹⁵²

The Court also admitted the arguments that the abolition of death penalty for the offenders below 18 years is also reciprocal to the denial of right of life to victims as granted by Article 9 of the Constitution of Islamic Republic of Pakistan. This is because due to abolition of death penalty for juvenile offenders, people are using their young ones to settle their debts with their enemies by murdering them.¹⁵³

Ordinance 1979 section 2(a), describes a person to be adult when he is of 18 years(male) and 17 years(female) or pubert.

¹⁵⁰ 2005 PLD Lahore 46, para 11.

¹⁵¹ 2005 PLD Lahore 44 para 9

¹⁵² 2005 PLD Lahore 44 para 9

¹⁵³ 2005 PLD Lahore 41 para 4

The court also accepted pointed inconsistencies brought in by JJSO in juvenile justice system of Pakistan. The fact is that special courts like Anti-Terrorism Court, Banking Court etc. have been conferred exclusive jurisdiction to try certain type of offences, whereas Juvenile Courts grant the exclusive right to try any case in which the offender is a juvenile;¹⁵⁴ whether the court had the jurisdiction to try that offence or not. The fact leads to a situation where “*An offender cannot be tried by a court having no jurisdiction to try the relevant offence and conversely an offence cannot be tried by a court having no jurisdiction over the offender!*”¹⁵⁵ So in a case where juvenile offender is involved in an offence falling in the jurisdiction of a special court which court then will have jurisdiction! The special court i.e. Banking Court, Anti-Terrorism court etc or the Juvenile Court as established under the JJSO.

4.2.2 Human Rights Watch Reports on Grievances being Faced by Juvenile Offenders

Pakistan is one of those states which are always on top of the list for both their inadequate laws and their inefficient implementation of those laws. By developing juvenile justice system, Pakistan has extended some privileges and rights to juvenile offenders but they all seem to be mere paper work when it comes to the application of those rights. A juvenile justice system is presumed to protect juvenile offender, from the commission of the offence till the end of the sentence, in a way under which the

¹⁵⁴ Section 4(3), Juvenile Justice Ordinance, 2000. (XXII of 2000)

¹⁵⁵ 2005 PLD Lahore 51 para 13

rehabilitation and re integration of the juvenile offender in the society is possible. On the contrary a look on the ground realities and factual position in Pakistan it becomes quite apparent that juvenile laws are not being applied or are being derogated. From the very first phase when the juvenile offender commits an offence and is admitted in judicial system of Pakistan, he becomes a victim rather than an offender. As reports of Human Rights Commission, from Pakistan suggest that from the police custody to the procedure in court and up till the completion of the sentence, juvenile offenders, in violation of the spirit of juvenile justice, are being treated harshly and unsympathetically.

First step after registration of a crime is to conduct an inquiry of the offence and arrest the offender. Juveniles, from this very step face harsh and unsympathetic treatments. The investigation report (Challan) after the registration of an offence is supposed to be submitted by police in fourteen days to start a trial against an offender. However police routinely fails to submit an investigation report for the reasons of inefficiency, lack of integrity in adequate number of investigation officers and delay in obtaining expert opinion particularly of medical/forensic experts¹⁵⁶. This results in a prolonged police custody and delay in adjudication of trials of juvenile. Furthermore the treatment received by juvenile offenders in police custody during the period of investigation is also disturbing and is somewhat cruel and inhumane Human Rights Commission Pakistan. (HRCP) has quoted the cases of Ghulam Rabbani, a 13 year old boy of Mansehra (Khyber Pakhtunkhwa) who was arrested by police for the offence of theft. On the evening of every day of his arrest he was brought to the hospital in critical condition where

¹⁵⁶ Pakistan Law Commission, Report on the Criminal Justice System, 1997, "Government of Pakistan Islamabad, 1997, 22-23.

he later on died. Police claimed the death as a suicide however the medical report and evidence of an inmate, Sajid, revealed the death to be the result of torture.¹⁵⁷ Though later on a case was of murder was registered against the responsible policeman yet it reveals the fact that whatever legal protection has been extended toward juvenile offenders is deficient and is unable to protect him on the very start of proceeding against him.¹⁵⁸

After submission of Challan the trial against juvenile offender starts. Juvenile Justice System of Pakistan provides for many relaxations and loosens up most of the tough procedures of Criminal Justice System for juvenile offenders. Free legal support, separate courts flexible bail system, speedy and closed door trials, facilities of probation and parole and certain punishment have been brought to an end for the benefit of juveniles. However none of the facilities extended to juveniles under juveniles justice system are practiced in real sense.

Though government provides free attorneys to contest on behalf of juvenile offenders but the payment for such cases is so low that no senior or competent attorney is willing to contest.¹⁵⁹ The law though also provides for separate courts for juvenile offenders but due to lack of resources the courts of criminal justice system are usually empowered to act as juvenile courts. The criminal courts however are already overburdened to such an extent

¹⁵⁷ Anees Jillani, *Cries Unheard*, (Islamabad: SPARC 1999), 72.

¹⁵⁸ By recent decision however Pakistan Law Commission has decided only to allow a Scale 17 or above police officer to carry out investigation in the case of a juvenile. 06-12-09 Sunday Dawn. This will hopefully reduce the problems faced by juveniles during investigation process.

¹⁵⁹ Human Rights Watch, *Prison Bound: The Denial of Juvenile Justice in Pakistan*, 1 November 1999, available at: <http://www.unhcr.org/refworld/docid/45d303fa2.html> [accessed 6 July 2009]

that they are not able to hear the cases of juvenile offenders properly and the result is frequent adjournments along with the negation of the idea behind the concept of separate courts. Juvenile Justice System has also provided for a flexible bail system for juvenile offenders. This was done in order to keep juveniles away from detention as much as possible. The facts though show a different scenario; HRCP noted the view of Mr. Athar Jamal, an advocate from Bahawalpur (Punjab). The advocate has pointed out that almost 90% of the juveniles arrested are from poor families and as such are unable to submit surety bonds even if they are awarded bails.¹⁶⁰ One such quoted case is that of Sher Ali, a nine year old boy, who was arrested for possession of drugs. The boy was initially denied bail and was sent to Rawalpindi Central Prison. After a period of three months a High Court Judge on his visit to Central Jail granted Sher Ali a bail but even after that Sher Ali stayed in prison for the reason of unavailability of 5000 Rs. set as surety for his bail.¹⁶¹ This situation prevails even today and nullifies any benefits of a flexible bail system for juvenile offenders. The juvenile justice system of Pakistan has also provided for a parole and probation system to minimize detention of juveniles. Release on probation or parole under the Probation system is highly dependent on the report submitted by probation officers. Probation officers on the other hand are a scarcely available as Mr. Athar Jamal, an advocate who has represented children at Bahawalpur for several years, said not to have encountered a single probation officer.¹⁶² Moreover the level of interest given to probation and parole can well be calculated from the fact that the probation officers are mainly low ranking officers. These low ranking officers are usually busy with many other

¹⁶⁰ibid

¹⁶¹ Human Rights Watch, *Prison Bound: The Denial of Juvenile Justice in Pakistan*, 1 November 1999, available at: <http://www.unhcr.org/refworld/docid/45d303fa2.html> [accessed 6 July 2009]

¹⁶² ibid

sorts of duties and usually treat probation officer duty as a low priority duty.¹⁶³ These reservations made by HRCP do briefly reveal what the probation system of Pakistan is; how it is functioning and what it can achieve. Simply it can be said that probation system legislated for the purpose of reducing the detention of juvenile offenders is nothing more than an unheartly attempt for improvement of a complex issue.

Pakistan's juvenile laws also provide for institutionalization of juveniles, that is to keep juvenile offenders at such institutions and places where they develop to be a good citizen after their release. However the practical reality behind this rehabilitation and reintegration can be noticed from Neelofar Shahnawaz's¹⁶⁴ observations of her first visit to juvenile jail in Karachi, after her appointment as juvenile magistrate. She Observed "*The first time I visited, the conditions were horrible. There were no fans, water, or pots. The children had scabies and kidney problems, and there were many cases of tuberculosis, and blood in urine.*"¹⁶⁵

These words of Neelofar Shahnawaz, however represent only one aspect of the life of institutionalized juveniles. apart from non suitable living and health conditions, institutionalized Juveniles are also being ill treated and ignored in all other aspects of institutionalization which are good and moral education, good training, entertainment and recreational facilities etc.¹⁶⁶ In short it can be said that institutionalization of juveniles is

¹⁶³ ibid

¹⁶⁴ Neelofar Shahnawaz was appointed as Juvenile Magistrate for Karachi in December 1993.

¹⁶⁵ Human Rights Watch, *Prison Bound: The Denial of Juvenile Justice in Pakistan*, 1 November 1999, available at: <http://www.unhcr.org/refworld/docid/45d303fa2.html> [accessed 6 July 2009]

¹⁶⁶ Traey Wagener_Rizvi & Anees Jillani, *Waiting for Sunrise*, (Islamabad: SPARC, 2003), 38.

rather a sort of punitive measure in Pakistan than a rehabilitatory one.¹⁶⁷ This fact just makes one thing clear and that is that Pakistan is ignoring the very essence of juvenile justice.

4.3 Summary

The existence of vulnerability of Child group of humanity in the society is beyond any shadow of doubt. Considerable efforts were directed by the international communities at various levels to cope with the complex problems in this regard with the main objectives that the Juveniles coming into conflict with the Law should be provided all basic human rights leading towards their treatment instead of resort to penalization with consequent results of reintegration and rehabilitation back into society. In the context of Pakistan, being developing country such problems is manifold due to adverse socio-economic and political conditions. But such adversities are not the only reasons behind the unimproved and poor situation regarding the advancement of interest of child/ Juvenile in the Legal system and administration of Justice in Pakistan in the same pace with other civilized states. The international standards are set by the Riyadh guidelines; the Beijing Rules, the Tokyo Rules, and the most prominent one that is convention on the Rights of the child (CRC). These international standards provide instructions to the states that the national legal system should evolve a comprehensive strategy for the protection of Juveniles with the following objectives.

¹⁶⁷Tracey Wagener_Rizvi & Anees Jillani, *Waiting for Sunrise*, (Islamabad: SPARC, 2003), 39.

The best interest of the child: The main aim of the aforementioned guidelines is that the legal and Judicial system of the state should be designed in such a way that fulfills the requirements of taking care of best interest of the child by non-discrimination on the basis of race birth language or sex; Keeping in view the child, age and related circumstances; and giving due importance to the juvenile, dignity and self respect.

Rehabilitation and Reintegration: The international guidelines provide for the adoption of such legal and judicious system to help the juveniles in conflict with law for his/her rehabilitation and reintegration into society. In other words the constructive community based solution should be given much importance and the formal court system be avoided.

Fundamental Legal aid: The guidelines postulate that the juvenile accused of any offence should be entitled to all kinds of inherent legal rights. He should be provided opportunities to be represented by a legal counsel and get all forms of assistance for defense before the Juvenile Courts.

Detention as a last resort: The guidelines stress that efforts should be made to avoid the detention, arrest and imprisonment of a child in conflict with law or judicial system. Such measures must be taken as a last resort when other options like probation or parole etc failed. The best interests of the child should be safeguarded through substitute Judicial as well as institutional proceedings.

Separation from adults on detention: The international standards stress upon the segregation of juvenile offenders from the adults and for provisions of reasonable opportunities to liaison with their families. The Juveniles should be dealt with due consideration of their age factor. Such segregation is intended to save the child offenders from the effects of habitual adult criminals.

Prohibition of Capital punishment or Cruelty: The international guidelines support the non-infliction of capital punishments of death or imprisonment for life without there being a possibility of release. These standards prohibit the inhuman or degrading treatment to the child offenders and emphasized on complete care should be observed to have due regard for their dignity and self respect.

The Establishment of separate judicial system and institutions: The standards underline the establishment of Juvenile Justice System and institutions with experienced and trained officers/employees having objectives of rehabilitation of child offenders. In this regard the Juveniles must have rights to timely access to legal assistance and opportunities of complete privacy enabling the child in conflict with law for defending before the court and remain in the institution without having a sense of dealing with indignity and degrading treatment.

In contrast to international approaches for the rights of juvenile offenders Pakistan has had no comprehensive judicial system for Juvenile offenders. Though a number of legislation are there to protect certain rights of juvenile, but they fall short of developing

a complete separate judicial system for Juveniles. Despite being member of the United Nation, Pakistan hardly taken any step towards implementation of models presented by the Tokyo Rules, Beijing Rules or Riyadh Guidelines as the models set by these standards are not presumed to be judicially noticeable. No doubt Pakistan is a developing country and its financial resources do not allow for the extra ordinary measures but the enhancement of minimum age below for the criminal responsibility and the abolishing death penalty never called for any financial involvement or implication. The death penalty is dispensed with by the JJSO but the age of criminal responsibility still remains the minimum of seven years set by section 82 of the Pakistan Penal Code. The socio-economic aspects play an important role in involving the juveniles in criminality but this aspect was absent for consideration by the judicial system and the JJSO too did little to redress the situation. The basic principles enunciated by the standards regarding permission to Juvenile's for contacting their families , separate venue or prison for the child offenders, to be treated with dignity and prohibition of cruel treatment were continuously violated resulting into furtherance from the rehabilitative objectives. No proper care for solving the problems of detained children was taken or considered. Perhaps for the reason that the children of upper class hardly come across with the violation of law being for better socially or educationally placed and even if such situation ever happened, they hardly reach to formal court system and are freed out of political pressure; There is no non-formal Judicial system leading to constructive approach that avoid the child offenders from facing the adverse effects of the existing complex legal system. In some countries, the Juvenile offenders are given warning by the police in consultation with the family for less serious or minor offences. In some cases,

minor in nature the Juvenile admits offences, and in response on the basis of report/assessment by the social worker, the Juvenile has to enter into a course of group life skills programs along with apologizing to the victim. In Scotland the system of child hearing is in practice, where some members of the community after discussion with the family of the Juvenile, teachers, victims, and other related social figures give decision which aim at child's welfare. Such like process is developed in New Zealand and Australia, where under mediation conference is constituted for referring the Juvenile criminals. This conference is usually comprised of offender, family victim, social worker and law enforcing Agencies. The mediation conference tries to reach a consensual agreement leading to child's treatment. In Pakistan, in some rural areas similar non-formal institutions like 'Jirga' in Khyber Pakhtunkhwa and Baluchistan and Panchayat in Punjab and Sind provinces are working. These institutions decide disputes among the community members and some time the criminal acts committed by child offenders, but the state is hardly interested in human rights activities relatives to children, and this subject therefore is still far from state recognition.

The principles set by the International standards are exhaustive, clear and well explained. The objectives behind these standards can easily be achieved by consistent and sincere efforts in this regard, which will provide considerable improvement in the Juvenile Justice System of Pakistan.

4.4 Findings

The research under thesis high light certain finding regarding the treatment of Juvenile in Pakistan in the administration of Justice and the condition of detention facilities, assisting in their re-integration and rehabilitation in the society, these can be summed up as follow.

1. Pakistan enjoys an important and significant position among the comity of nations and is signatory to the various conventions relating to child rights specially the United Nation Declaration of the Rights of Children, 1959 and United Nations Convention on the Rights of the Child, 1989; however, Pakistan has partially fulfilled its obligations.
2. The legislations in Pakistan on the subject of Juvenile are inconsistent and does not form a uniform legal frame work.
3. The rehabilitative approaches include victim participation in the Juvenile Justice system, lack in the legislative scheme of Pakistan.
4. The detention facilities like Borstal institution, industrial homes or certified school or Remand homes have not been established all over Pakistan. The existing detention institutions lack standard facilities.
5. The existing legislation is not being implemented to the possible extent due to lack of interest by the state.

6. The legislation presently enforced in Pakistan has not been extended in its application to other parts like Federally Administered Tribal Areas (FATA), Provincially Administered Tribal Areas (PATA), Gilgit and Baltistan etc.
7. The free legal assistance is not provided to the Juvenile offenders during the trial of their cases before the Juvenile Courts.
8. There is complete absence of practice of non-custodial measures for avoiding adverse psychological effects on Juvenile offenders.

4.5 Recommendations

There is no disagreement on the fact that the introduction of latest legislation in the form of Juvenile Justice System Ordinance, 2000, improved the Juvenile Justice System to some extent but the objectives set by the International standards are still far from achievement . However, these objectives and aims are not impossible, if sincere efforts are initiated for bringing the required changes in the system. These initiatives may involve the following measures:-

1. A commission may be constituted to initiate concerted efforts to review the existing laws relating to Juveniles and wherever required introduce amendments therein or enact

new laws in order to bring the legal and judicial system of Pakistan in line with the international standards documents/instruments.

2. Necessary steps should be taken to review the provision of sections 82 and 83 of the Pakistan Penal Code, 1860 to extend the minimum age of criminal responsibility to at least 14 years.

3. Exclusively separate judicial system for juvenile offenders should be established and all the concerned Judicial and executive functionaries involved in the process should be trained to highest possible standards. Moreover, it should be arranged that such functionaries visit the place of detention of Juvenile offenders to make them conscious of their over all conditions.

4. The juvenile courts exclusively separate from the courts trying the cases of the adult need to be established through out Pakistan.

5. These provisions of law should be amended which provide for corporal punishment and death penalty.

6. The minimum age limit of Criminal responsibility may be enhanced from seven years to suitable position for bringing the law dealing with Juvenile in conformity with the international standards.

7. Separate detention institutions for juvenile offenders should be established, having standard facilities leading towards rehabilitative objectives at the Tehsil level or at least District level.

8. The ignorance of juvenile laws is hampering the implementation of Juvenile Justice System. Public awareness programs through media and education should be introduced to make general public realize the rights of Juvenile's offenders under the present juvenile laws.

9. To achieve the object of restorative justice as practiced by most states in dealing with the juvenile offenders a conciliatory council should be established at Union Council level to reconcile all compoundable offences between the victim and juvenile offenders and in this respect it is also recommended that relative measures be taken to bring amendment to make most of offences compoundable for juveniles.

10. Establishing the offices of Ombudsmen for the children at the Federal and Provincial level in order to strengthen the monitoring system especially to check the treatment with juvenile offenders during pretrial and post trial custody.

Reference and Bibliography

- **National & International Legislation**
- Constitution of Islamic Republic of Pakistan of 1973
- The Reformatory school Act, 1897 (Act No. VII of 1897)
- Sind Children Act, 1955
- Code of Criminal Procedure, 1898 (Act V of 1898)
- The Pakistan Penal Code
- The Punjab Youthful Offenders Ordinance, 1983
- 3.1.5 The Punjab Children Ordinance, 1983
- The Reformatory schools Act, 1897 (No. VIII of 1897)
- The Probation of Offenders Ordinance, 1960 (No XLV 1960)
- Jail Manual (The Prison Rules, 1978)
- The Punjab Borstal Act, 1926
- The Good Conduct Prisoners Probational Release Act, 1926 (Act No. X of 1926)
- The Sind Children Act (NO. XII of 1955)
- The Sind Borstal Schools Act, 1955 (No. X of 1955)
- Juvenile Justice Ordinance, 2000. (XXII of 2000)
- Bombay Children Act 1924
- Bengal Children Act 1922
- The Beijing Rules 1985
- The Riyadh Guidelines 1990

- The Tokyo Rules 1990
- Convention on the Rights of the Child

Books, Journals & Published Articles

- Alice Felt Taylor, Freedom Ferment: Phases of American Social History to 1860, (New York: Harper Torchbook) 1962
- Alberts. R. Roberts, Juvenile Justice Source Book: Past, Present, Future, (Oxford: Oxford University Press) 2004
- Andrew Rutherford, Growing Out of Crime, (Winchester: Waterside Press) 2002
- John Winterdyk, Juvenile justice System: International Perspective, (Toronto: Canadian Scholar Press Inc.) 2002
- James Vadackumchery, The Police and Delinquency in India, (New Delhi: Aph Publishing Corporations) 1996
- W.E. Cavenagh, “Juvenile Courts, the Child and the Law”, Made and printed in Great Britain by Richard Clay (The Chaucer Press) Ltd, Bungay, Suffolk, Set in Monotype Baskerville, 1967.
- By Irving J. Sloan, J.D, “Youth and the Law” United States of America, Oceana Publications, INC, Dobbs Ferry, New York, 1981.
- By Alfred J. Khan, “A Court For Children”, New York, Columbia University Press, 1953.
- Lyle W. Shannon, “Changing Patterns of Delinquency and Crime”, Westview Press Boulder. San Francisco. Oxford, United States of America, 1991.
- Victor L. Streib, “Juvenile Justice in America”, Port Washington,

New York, London, National University Publications, 1978.

- Aaron V. Cicourel, "The Social Organization of Juvenile Justice", New York, London, John Wiley & Sons, Inc, 1968.
- Lionel Roser, Matrimonial offences, London, Oyes Publishing Limited, London, 1975.
- Nigel Morland, An outline of several Criminality Hart Publishing company, New York city, 1967.
- Fredrick B. Sursmarn, Law of Juvenile Delinquency, Oceara Publications, 1950.
- G.I. Giardini, The parole Process, Charles C Thowas Publication, USA, 1959.
- Stanton Wheder, Controlling Delinquents, John Welley as som, New York, 1968.
- Ejaz Ahmad, Sexual offences, Law Book Mart, Lucknow, 1963.
- W.G CARSON and Paul wiles, Marten Robertson & Company Ltd Glasgow, 1971.
- Carl A Bersani, the Macmillan Company Collier- Macmillan Ltd, London.
- W.L HERBERT and F.V Javivis, Dealing With Delinquents, Emerson Books INC, New York.
- Ronald Steel, New light on Juvenile Delinquency, the H.W Wilson company New York, 1967.
- Harris B. Peck M.D and Virginia Bell Smith, Family service Association of America New York, 1957.
- John A.F WATSON, British Juvenile Courts, 1948.
- George N Thompson. M.D FACP, the Psychopathic Delinquent and

criminal Charles C Thomas, Publisher USA, 1953.

E References

- <http://www.archive.org/stream/reportoninternat00inte0fcanadianlibrary>
- [http://openlibrary.org/b/OL7245327M/Report on the International Penitentiary Congress of London held July 3-13 1872](http://openlibrary.org/b/OL7245327M/Report_on_the_International_Penitentiary_Congress_of_London_held_July_3-13_1872) web address of open library
- <http://www.un.org/documents/ga/res/45/a45r112.htm> un documents
- <http://www.wwda.org/wisconsin> work force development association

