



# Juvenile Justice System Act 2018 and International Human Rights

PAPER

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The Committee on the Rights of the Child, in their Concluding Observations on Pakistan's 5th Periodic report on United Nations Conventions on the Rights of Child (UNCRC) in 2016, emphasized their concerns about the inadequate juvenile justice system in Pakistan. The Committee urged the Government of Pakistan to develop an appropriate age determination system for a child who committed a crime. The Observations call for reforms to be carried out on multiple fronts, including the detention of children in separate prisons from adult prisons, a review of the existing legislative framework, and the trial of children to be held exclusively in juvenile courts.<sup>1</sup>

In light of these observations, the Government of Pakistan undertook a landmark step to reform the juvenile justice system by enacting the Juvenile Justice System Act (JJSA), 2018. The Government of Pakistan received much appreciation for this legislation from different tiers, including government departments, civil society organizations, and social activists. Amidst this appreciation, a rational analysis of the law is necessary to understand whether the JJSA deserves applause and reflects a positive step toward reforming juvenile justice at the international level.

This article will answer this fundamental question by analyzing the Juvenile Justice System Act, 2018 (JJSA) in the context of the United Nations Conventions on the Rights of the Child (UNCRC), the UN Standard Minimum Rules for the Administration of the Juvenile Justice known as the Beijing Rules, and the Guidelines for the Prevention of Juvenile Delinquency referred to as the Riyadh Guidelines. Deriving the critical concerns of the Committee on Rights of the Child, the legal definition of a child, social diversion mechanism, right to legal assistance, institutional correctional services, and the child's best interest are the significant areas of discussion in this article.

## Definition of a Child

The definitional ambiguity of who is considered to be a child has persisted across Pakistan's domestic legislative framework for decades, leading to confusion. Different laws in Pakistan use different ages to define a child. Article 11(3) of the Constitution of Pakistan, 1973 states that no

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<sup>1</sup> United Nations Committee on the Rights of the Child, 'Concluding observations on the 5th periodic report of Pakistan' (10 December 1985) UN Doc CRC/C/PAK/CO/5

child below the age of fourteen should be engaged in child labor.<sup>2</sup> Furthermore, Article 25(A) of the Constitution states that every child between the ages 5 to 16 years has a right to free and compulsory education.<sup>3</sup>

The varying definitions of child within the Constitution constantly creates confusion while defining the ambit for juveniles. A juvenile according to the Dictionary of American Criminal Justice, Criminology and Criminal Law is, 'a person under statutorily specified age (usually between seventeen or eighteen years of age) who is potentially under the jurisdiction of the juvenile court.'

The Juvenile Justice System Act, 2018 settles the uncertainty and defines a child as, "*a person who has not attained the age of eighteen years.*"<sup>4</sup> The new definition of a child is in conformity with the United Nations Convention on the Rights of Child (UNCRC). Article 1 of the UNCRC defines a child as a person who has not attained the age of eighteen years and declares this age to be "old enough" for a person to be considered an adult.<sup>5</sup> Accordingly, the new law sets the parameters of a juvenile's age to below eighteen years.

## Social Diversion

The other important aspect of the juvenile justice reforms is a social diversion. A sizeable proportion of young offenders enter into the juvenile justice system each year in Pakistan. Their offenses emanate from poor parenting, poverty, discrimination, etc.<sup>6</sup> The nature of crimes committed by children primarily relate to non-violent or minor offenses.<sup>7</sup> The right approach to deal with such cases is a social diversion. It offers an alternate approach to processing cases or an overburdened court system.

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<sup>2</sup> Constitution of Pakistan, 1973, Article 11(3)

<sup>3</sup> Constitution of Pakistan, 1973, Article 25(A)

<sup>4</sup> Juvenile Justice System Act, 2018, ('JJSA') s 2(b)

<sup>5</sup> UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, ('UNCRC') Article 1

<sup>6</sup> K Skowrya and J. J. Coccozza 'A Blueprint for Change: Improving The System Response To Youth With Mental Health Needs Involved With The Juvenile Justice System' (2007) National Center for Mental Health and Juvenile Justice. [http://nijj.org/uploads/digital-library/resource\\_349.pdf](http://nijj.org/uploads/digital-library/resource_349.pdf).

<sup>7</sup> C Puzzanchera, Juvenile Arrests 2012 (2014) US Department of Justice Office of Juvenile Justice and Delinquency Prevention <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/248513.pdf>.

The concept of social diversion is complex. The more straightforward definition is that social diversion holds juvenile offenders accountable while shielding them from the adverse impacts of a traditional juvenile justice system. The formal route is crowded with negative consequences for the juvenile as children and adults are detained in the same prisons and this in turn leads to greater chances of recidivism<sup>8</sup>. The Juvenile Justice System Act, 2018 recognizes these factors and embeds a comprehensive social diversion mechanism. The idea behind social diversion is to redirect the offender from the juvenile justice system and imprisonment towards community service and other rehabilitative activities. Such methods uphold the child's liberty and have a better record of achieving successful outcomes of reintegrating the juvenile back into the society.

The social diversion mechanism proposed in JJSA is in line with Rule 11 of the Beijing Rules, 1995. The Rule states that law enforcement agencies should give consideration, where appropriate, to dealing with juvenile offenders without resorting to formal judicial proceedings against them.<sup>9</sup> Similarly, Section 9(6) of JJSA provides that the competent authority dealing with juvenile cases may exercise social diversion when a juvenile younger than sixteen commits a minor or major crime.<sup>10</sup> Furthermore, keeping in view the child's best interest (Article 3 of UNCRC), consent of the juvenile and/or his guardian is mandatory, following which the case is referred to the Juvenile Justice Committee (JJC). The JJC, as stated in Section 10 of JJSA, is to be constituted in consultation with a sessions judge and comprises of serving judicial magistrate, district public prosecutor, member of a local bar with seven years of experience, and serving probation or social welfare officer.<sup>11</sup>

## Institutional Correctional Services

Housing juveniles in remand homes or rehabilitation centers does not fulfill the juvenile reforms' purpose. The Riyadh Guidelines call for a comprehensive rehabilitation plan, including training the

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<sup>8</sup> Uberto Gatti, Richard E. Tremblay, and Frank Vitaro 'Iatrogenic Effect of Juvenile Justice' (2009) 50(8) *Journal of Child Psychology and Psychiatry* 991-998.

See also: Anthony Petrosino, Carolyn Turpin-Petrosino, Meghan E. Hollis-Peel, and Julia G. Lavenberg. 'Scared Straight and Other Juvenile Awareness Programs For Preventing Juvenile Delinquency: A Systematic Review' (2013) 9(1) *Campbell Systematic Reviews*.

<sup>9</sup> United Nations Standard Minimum Rules for The Administration of Juvenile Justice (10 December 1985) UN Doc A/RES/40/33 ('Beijing Rules'), Rule 11

<sup>10</sup> JJSA, s 9(6)

<sup>11</sup> JJSA, s 10(1)

relevant duty bearers to respond to the particular needs of the young offenders.<sup>12</sup> The JJSA takes it further and equips Juvenile Rehabilitation Centers with trained social work professionals.<sup>13</sup> Establishing observation homes or juvenile rehabilitation centers are significant components of social diversion. It empowers the Government to establish educational institutions and it also provides certification of institutions managed by non-government organizations for this purpose. In compliance with Rule 13 of the Beijing Rules, JJSA ensures an appropriate standard of services to monitor and evaluate the performance of such institutes through the Juvenile Justice Committee or any other authorized person.<sup>14</sup>

## Right to Legal Assistance

The JJSA protects the right to legal assistance at the expense of the state.<sup>15</sup> The legal practitioner must inform the juvenile about their rights enshrined in the law. This provision of the JJSA is complementary to Rule 15 of the Beijing Rules, which protects the parent/guardian's right to participate in the proceeding on the condition that it does not compromise the child's best interest. In addition, the competent authority leading the case should provide the juvenile with free assistance of an interpreter if they cannot understand or speak the language used in the proceedings. Furthermore, the law protects the juvenile's right to privacy at all stages of the proceedings.

## Juvenile Courts

The provision about the establishment of juvenile courts within three months of the enactment of JJSA and giving exclusive jurisdiction to the juvenile courts to try juvenile cases reflects the seriousness of reforming the juvenile justice system in Pakistan.<sup>16</sup> The Juvenile Court shall have exclusive jurisdiction to try cases on commission of an offense by a child.

## Development of the Juveniles

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<sup>12</sup> United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990 (28 March 1991) UN Doc A/RES/45/112 ('Riyadh Guidelines')

<sup>13</sup> JJSA, s 20

<sup>14</sup> JJSA, s 22.

<sup>15</sup> JJSA, s 3

<sup>16</sup> JJSA, s 4

Considering the specific requirements for young offenders, Rule 17.1(b) of the Beijing Rules encourages the use of alternatives to institutionalizing juveniles.<sup>17</sup> In the same spirit, Section 46 of the Riyadh Guidelines emphasizes that the institutionalization of young offenders should be a last resort, giving the best interest of the child paramount importance.<sup>18</sup> The Riyadh Guidelines also explicitly call for the provision of opportunity for education to the young offenders, as stated in Section 47 of the guidelines.<sup>19</sup> In the Juvenile Rehabilitation Centers, JJSA ensures the provision of educational, vocational, or technical training for their mental, moral and psychological development. Article 5(2) of the JJSA bars arresting a juvenile under any of the laws dealing with preventive detention or under the provisions of Chapter VIII of the Pakistan Penal Code, 1860.<sup>20</sup>

Conclusively, the Juvenile Justice System Act, 2018 is a landmark legislation that has reformed Pakistan's grossly inadequate juvenile justice system while catering to a child's best interest. The law broadly complies with international human rights law and best practices, of which a key feature is binding the government to establish juvenile courts three months after enactment of the law. Furthermore, the definition of a child complies with UNCRC's definition of a child. The idea for Juvenile Rehabilitation Centers seems to be multi-layered; it provides an extensive structure for inmates' socio-cultural and moral development and a service structure for female juveniles. The legislation is a first step towards reforming the juvenile justice system in Pakistan. The last challenge is the implementation of the law in letter and spirit. Below are a few recommendations to improve the juvenile justice system in the general and practical enforcement of the JJSA.

Keeping in view the international standards on juvenile justice and mapping out the existing system as detailed above, the following are recommended:

a. Fulfillment of Survival Rights

Right to life and basic necessities is a fundamental right enshrined in UNCRC.<sup>21</sup> Apart from reforming criminal legislation, Government of Pakistan should integrate social safety programmes (EHSAAS, Pakistan Baitul Mall, etc.) with families of the juvenile as well as those

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<sup>17</sup> Beijing Rules, Rule 17.1(b)

<sup>18</sup> Riyadh Guidelines, s 46.

<sup>19</sup> Ibid, s 47.

<sup>20</sup> JJSA, s 5(2).

<sup>21</sup> UNCRC, Article 6



families where children are likely to engage in offences due to nonfulfillment of their basic needs.<sup>22</sup>

b. Effective implementation of Juvenile Justice Law

The legislation passed in recent years is theoretically comprehensive and complies with internationally recognized standards; however, the same cannot be said regarding its implementation. It requires a collaborative, coordinated, and integrated effort by the Government, law enforcement agencies, civil society, and the community. The practical implementation of the social diversion mechanism mainly depends on the support of Civil Society Organizations, and therefore Government must explore potential private-public partnerships. The Ministry of Interior and Provincial Prisons Departments should encourage implementation and, in coordination with the Ministry of Human Rights, it should plan out the reintegration and rehabilitation of the juveniles.

c. Promotion of Recreational and Sports Activities

Pakistan has witnessed terrorism for the last two decades, which devastated the country's economy and disturbed the social structure. Cultural festivals, sports events, and religious gatherings halted, and people could not access basic recreational facilities via Sports Departments and district governments. This disengagement has possibly contributed to the extremism that has surfaced in society. Therefore, restoring recreational facilities to allow children a healthy outlet and diverting them from extremism is imperative.<sup>23</sup>

d. Media Advocacy

Media is one of the essential instruments for creating awareness among the masses. Productive media use through air-time allocation for public good under Corporate Social Responsibility will be an appreciable step. Pakistan Electronic Media Regulatory Authority (PEMRA) may request relevant Ministries to provide them with educational information that

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<sup>22</sup> Ibid, Article 20

<sup>23</sup> Riyadh Guidelines, s 33; see also UNCRC Article 31

can be used to raise awareness through media telecast. In addition to the preceding educational, informational, and persuasive messages regarding the Juvenile Justice System, positive parenting and the promotion of recreational activities may also be televised.<sup>24</sup>

e. Expansion of Existing Institutional Structure for Juveniles

The Government may increase the number of juvenile courts in all provinces with exclusive jurisdiction over children under eighteen.<sup>25</sup> Furthermore, the Government may also establish Borstal institutions at the division level to cater to the needs of specialized services for juveniles. Besides, detaining children may only be used as a last resort and should be for the shortest possible time.<sup>26</sup> In addition, the Government needs to expand and strengthen the diversion services for juveniles by assigning community services or placement under the care, supervision, or guardianship of a family member or probation officer. The capacity building of the officers dealing with the children will also improve the situation.<sup>27</sup> For that particular area, the expertise of the Ministry of Human Rights can be better utilized.

f. Evidence-based Juvenile Justice Reforms

In order to promote, encourage and initiate research as a basis for effective planning and policy formulation significant efforts are required.<sup>28</sup> The research will be instrumental for informed juvenile justice policies to keep abreast of advances in knowledge and practices. Legislation and policies should reference evidence-based research; therefore, the Government must engage academia and civil society organizations to conduct extensive research on juvenile justice reforms.

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<sup>24</sup> Riyadh Guidelines, s 42

<sup>25</sup> Beijing Rules, Rule 5

<sup>26</sup> Riyadh Guidelines, s 46

<sup>27</sup> Beijing Rules, Rule 32

<sup>28</sup> Ibid, Rule 30; see also Riyadh Guidelines, s 9(a)

