

Juvenile Courts in Pakistan: Structure, Processes, and Issues¹

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Abstract

Juvenile justice is a matter of welfare and punishment between line departments in Pakistan. The juvenile courts operate under the Juvenile Justice System Ordinance, 2000. This paper discusses the issues in the juvenile justice system as perceived by judges in Pakistan. The paper is based on qualitative methodology whereby in-depth interviews were conducted with judges of the session courts and lower courts in Khyber Pakhtunkhwa province of Pakistan. Further, document analysis was also conducted to draw inferences from certain cases summaries. The major issues are suppression of facts by the police, age determination, prosecution's poor scrutiny of the facts, and a few others. The central theme is that there is no difference between a juvenile and adult with respect to courts' system and structure in Pakistan.

Keywords: Juvenile Courts, Pakistan, Age Determination, Prosecution, Police

Introduction

A juvenile court is a separate court that has the power to oversee criminal cases involving juveniles. The juvenile justice philosophy requires for juvenile cases to be proceeded in a separate court with different structure from the general criminal court. It also requires judges to be trained and educated, *inter alia*, other matters related to law and crime, child psychology, juvenility, delinquency, and child behaviour. In Pakistan, there is no difference between an adult criminal court and a juvenile court. The same criminal courts have been declared as adult criminal courts. This paper discusses the judicial system of Pakistan and the issues related to juvenile courts and juvenile cases.

It provides a brief history and philosophy of juvenile courts. Next, it discusses the structure of judiciary in Pakistan. Further, it presents some of the judicial statistics. Lastly, it discusses issues at various levels in juvenile cases.

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Philosophy and History of Juvenile Court

The idea of juvenile justice has gained momentum as a result of the concern for young offenders in Scandinavia, Australia, the US and the UK. Previously there was no distinction between an adult and a minor in common criminal law (Bilchik, 1999). The minor was a person at maximum of seven years. In some instances, however, it could be raised to twelve if the offender was lacking in mental and moral maturity (Bilchik, 1999). The definition still prevails in Pakistan and a few other countries.

The underlying philosophy of the criminal justice was punishment instead of reformation. The punishment had two purposes. On the one side, it was meant to stop the criminal from committing further offences (i.e. incapacitation). On the other, it was meant to perform a deterrent function to the potential criminals. It was a warning to other possible wrongdoers. According to Mack (1909; 2005: 61-67)

“The child was arrested, put into prison, indicted by the court, tried by a magistrate, under all the forms and technicalities of criminal law, with the aim of ascertaining whether it had done the specific act—nothing else—and if it had, then visiting the punishment of the state upon it. Both were treated alike. Both were huddled together.”

It resulted in negative consequences. Instead of rehabilitating and reforming the young offenders, the law and methods adopted for punishment permitted them to become outlaws and outcasts of the society. State attorneys did not bother to find out the history of the child, his environment, the circumstances in which the act was committed, and his association with other people. State did not ask about how the young person became criminal. State was interested but in one question: “Has he committed this crime?” it did not inquire, “What is the best thing to do for this lad?” State’s punishment was not meant for reformation but to inflict as much damage on the offender as he inflicted upon the society (Mack, 1909; 2005).

“...[the law] apportions the same species of punishment to the inexperienced child, whose mind requires training in the way he should be, and to the old and hardened offender(Adams, 1849:04).”

The philosophy changed from punishment to rehabilitating the child. This change from punishment to rehabilitation was a result of definition of child in Europe. The definition changed from ‘miniature adult’ (Beales, 1975:379-398) to person with less than fully developed moral and cognitive capacities (Bilchik, 1999). Studies found a significant correlation between delinquent behaviour and the

social environment in which the child lives (Dawson, 1896, 2012; Swift, 1898). Such studies promoted the idea that the delinquent children are not criminals to be punished rather they are at risk in need of care and protection (Williams, 1897; Morel, 1894). The underlying idea was the principle of *parens patriae* (Peterkin, 1897: 594-563). According to this philosophy, state is considered to act as a parent of any child who is in need of care and protection (Mack, 1909, 2005).

It is this thought—the thought that the child who has begun to go wrong is to be taken in hand by the state, not as an enemy but as a protector and guardian (Flexner, 1910)—which lead to the declaration of the Act under which the Juvenile Court of Cook County, Illinois, was opened in Chicago, on July 1st, 1899, the first juvenile court in the world (Mack, 1909, 2005). Some, however, claim that the 1st juvenile court in the world was established in Australia in 1895 (Wundersitz, 1994).

Following this development in the US and Australia, the previous century saw the development of juvenile courts in most of the countries in the world (e.g. Finland 1940, Germany 1922, England and Wales 1933). However, in Pakistan, this couldn't gain momentum until 2000. Until the dawn of the present century, children were dealt with through the colonial law of 1898. Child was a person who was above 7 years of age and below 12 years of age. The child was tried in the same adult court. There was no separate judicial officer to deal with juveniles. It was Juvenile Justice System Ordinance, 2000 that established separate courts for juvenile offenders in Pakistan, though not on grounds but in legal documents. It would be prudent to discuss the existing structure courts and justice system of Pakistan. This will provide a context in which to understand juvenile courts and its issues.

Judicial System in Pakistan

The present judicial system in Pakistan is a legacy from the Colonial India with minor modifications after Independence in 1947. However, some (for example Faqir Hussain) deny this allegation and see the existing system as a mix of foreign-indigenous system (Hussain, 2011).

Structure of Judiciary

In practice, however, there are formal, informal and quasi-formal mechanisms of dispute resolution in Pakistan. The formal institutions are those established by the state to dispense justice. The informal mechanisms of dispute resolution, such as the *panchayat* and *jargah*, are cultural practices of dispute resolution.

In the Indian sub-continent, the informal mechanisms of dispute resolution have been functioning since unknown history. Koteliya was the first Hindu

philosopher and historian who mentioned of Gram-pareshad or (gram=village and Pareshad= council) about 5000 BC and these Gram-pareshads were the progenitors of modern Local government system with judicial powers to settle local disputes (Singh, 1998). In 3000 BC Megasthenes a Greek historian also wrote about the panchayat system in the sub-continent (Sastri, 1988).

The British colonials institutionalized the informal mechanism as Alternative Dispute Resolution (ADR) and established *Panchayats*, and *Jargah* Councils in colonial India. *Panchayats* system still officially prevails in much of the rural India as well as a system of disputes settlement in countries like Nepal and Bhutan. In 1959, with the introduction of Basic Democracies by General Ayub Khan, the *Panchayats*, however, were officially disbanded in Pakistan. Most of the functions of *Panchayat* were transferred to Chairman of the Union Council/District Council. Albeit, the Basic Democracies have been disbanded in 1970s, the Chairmen of that time are still known in their respective villages as *ChairmanSahib*. In rural parts of Pakistan, *Panchayats* and *Jargahs* are still functional as an informal mechanism of dispute resolution (even most of the business matters are resolved through *Jargah* in Khyber Pakhtunkhwa).

The *jargah* system of justice is still prevalent and officially recognized in the tribal areas of KPK (Barakatullah and Sajid, 2013:45-60) including about 90% Baluchistan. *Sardariand Waderofaisala* (decision by feudal/ Chieftain) institutions also exist in other parts of the country at the informal level (Khan, 2004).

Mostly, the juvenile offences that are not reported to the police are resolved through *jargah* or such other informal mechanisms. Usually, it is only in most extreme cases that the police register a First Information Report (FIR) against a juvenile. In most cases, the police itself resolve the case through the *jargah*.

The existing formal judicial structure in Pakistan and India was established by the British colonial administrators. First, it was introduced in Bengal where British first stepped for trade and later conquered it (Hussain, 2011). Afterwards, it spread to entire India. Pakistan's formal judiciary and criminal procedures code follow the colonial judiciary structure. Juvenile courts are no exception. As mentioned by Yasin and Banuri,

“The functions of the courts are limited to interpretation of law. Judicial power is a system of sovereign powers vested in the judiciary. The courts derive their authority from the Pakistan Penal Code (PPC) 1860 and the Code of Criminal Procedure (Cr. PC) 1898. The latter deals with practice and

procedures and supplements the former (Yasin and Buner, 2004:79)”.

The judiciary in Pakistan can be divided into two layers. First layer is that of superior judiciary while the second layer consists of lower or subordinate judiciary. The superior judiciary has the power to review all judicial decisions. It may be categorized as ‘appellate courts’. It consists of the High Courts in each province and a Supreme Court at Islamabad. High Courts are established in capital cities of respective provinces. The Supreme Court is established in Islamabad, the federal capital of Pakistan.

The lower or subordinate judiciary functions at district level. The judiciary at district level has two forms:

1. Civil Courts; and
2. District and Session Courts.

Civil Courts are the lowest level courts in judicial hierarchy. Even within Civil Courts, there are further three classes namely (i) CC Class III (the junior-most with a limited jurisdiction); (ii) CC Class II (senior than Class III, but also with a limited jurisdiction); and (iii) CC Class I (senior-most in the CC category with unlimited jurisdiction). There are similar hierarchies in District and Session Courts.

The higher judiciary is constituted on the basis of Article 175 of the Constitution of Pakistan 1973. Some important and ideological cases are dealt with by The Federal *Shariat* Court, the Service/Administrative Tribunals, the Martial Law Courts, the Special Anti-Terrorist Courts and the Tax Tribunals (Yasin and Buner, 2004).

Until 1977, judicial and administrative powers were a joint function of District Commissioner. In a report of the Law Reforms Commission recommended the separation of administration from judiciary (Khan, 2004). However, this separation did not produced any commendable results (Ibid). The respective jurisdictions of judges are codified in Criminal Procedure Code. It is pertinent to note that the Civil Courts, Class III are meant essentially for training purposes.

A criminal case proceeds in linear form in Pakistan. Each stage is dependent upon previous stage. In criminal case, the progression of a case is as follows:

1. The FIR (First Information Report) is registered.
2. Police presents the *Challan* (charge sheet) in order for the trail to commence.
3. The judge reads the allegations against the accused.

4. Prosecution present evidence, which is cross-examined by the accused (defendant).
5. Accused present evidence, which is cross-examined by the prosecution.
6. Arguments are heard from both sides.
7. Judgment is pronounced.

It is important to note that generally, for the proceeding to get underway, the accused are required to be present in the court. The case is held up if one or more of the accused are missing, unless their case is separated from those present.

The most important part in criminal justice system is played by the lower judiciary i.e. District Courts, Session Courts, and Courts of Magistrate.

Analyzing the impacts of the criminal Justice system of the country, an official report on the crime situation in Pakistan is, the nature of the criminal justice system is comprehensible as;

“ The Criminal justice System of Pakistan has suffered a lot in the past and unfortunately people’s confidence has been on the lowest ebb due to hundreds and thousands of criminal cases stuck-up` at lower level and piled –up at higher level in form of appeals. Millions of people are running around criminal courts as accused prosecution/defense witnesses ... Not only the slow Police Investigations but also the delayed services of Courts summons, neglect of government prosecutors(and their assistants), absence of Police evidence and prosecution witness, abscondance of accused (on Court bails),delaying tactics of Courts clerks, uneven deals of defense counsels, absence of medico-legal expert and the neglect of the Magistrates are responsible for such delays(Aoulak, 1986: 22)”.

Issues Faced by Courts in Juvenile Cases in Khyber Pakhtunkhwa

The courts face numerous issues in juvenile cases including frequent miss representation of age in First Information Report (FIR), no information to parents or guardians by police (as required under JJSO section 10.1.a), no information to probation officer by the police (as required under JJSO section 10.1.b), no timely submission of *Chalan*(Charge sheet) by the police (as required by under section 5.A.x of the the National Judicial Policy 2009), issue of handcuffs (as prohibited under section 12.1 of JJSO 2000), issues related to granting bail, issues of juvenile detention, handling of cases of minor offence within the police station, legal aid and pro-bono lawyers, lapses in the *Chalan* by the police, role of prosecution

department, issues in joint trial, issues of separate trial, issue of separate courts, issues in *bakhshikhana*, and probation officer's unclear role.

Since there is no remand home in the entire country, one of the most widely used pretrial arrangements in Pakistan is bail. Bail is granted in almost all cases involving juveniles. Where bail is granted, the court may nevertheless impose specific conditions, such as residing at a particular address (usually the parental home), not associating with other known offenders, not contacting witnesses, and regularly reporting to the police station etc.

In cases, when bail is not granted, the juvenile is referred to the '*mundakhana*' an exclusive chamber for juvenile and young offenders within the prison proximity. Nevertheless, in Peshawar, the police established a Police Child Protection Center (PCPC) with the help of Ministry of Human Rights and Save the Children, Sweden (PSC, 2010). It worked as a remand facility for juvenile offenders as well as a missing children center for the entire province. Unfortunately, the center has been shut down after ¾ years due to lack of sustainability by the donors.

Some of the major issues in courts in Khyber Pakhtunkhwa are discussed as below.

Age determination and Juvenile

Age is one of the most important factors in juvenile justice system. No facility of juvenile justice can be awarded to anyone unless his age is proved to be as per the legal requirements. A normal offender is treated as juvenile only if it is proved that the accused has an age that is below 18 years. It may seem pretty obvious that whosoever is found to be below 18 years, shall be treated as juvenile and in the juvenile court. However, the field interviews revealed that it is this *age determination* that is one of the biggest issues facing the juvenile justice system.

First, in juvenile cases, it is essential to determine the exact age of a seemingly juvenile accused of an offence. The biggest problem in determination of age is that mostly the juveniles who come in contact with law are illiterate. Police may not be caring for the provision of the law that as long as the age of the accused is not determined to be above 18 years, he/she should not be hand-cuffed. No matter the importance of proper age determination, the police do not bother in doing so. As Judicial Magistrate Khorshid Gohar (not original name) revealed that;

“The first problem we faced with the hands of police is that the police keep this fact suppressed that the accused is a juvenile and he be treated on the bases of JJSO 200. They hide the fact that the accused is a juvenile and needs to be treated differently. The police submit the report and show

that Mr. so and so has been arrested under this and that law and permission may be granted for his remand etc. They treat him just like an adult criminal. This is the first problem we face, suppression of the fact by the police.”

This is not the impression of a single judge only. Invariably, all the judges at lower level have these observations. Likewise, Mansoor-ul-Islam (not original name) revealed that

“My experience is that police don’t exert much effort for the determination of the age of an accused juvenile. What is my opinion, I might be wrong from the police point of view, but my experience is that they intentionally write age more than 18 years even when they know that the age is 17 or 16 years or below. Mere pass bohot case asyayakarte the (many cases of such nature have come to me).”

The behaviour of police is explainable. When the police show the age above 18 years, they get the benefit to treat a juvenile as an adult offender. But when the police write the age less than 18 years (i.e. showing the accused as juvenile), in such a case, some benefits go to the accused child or minor. In such case, the police have to take some extra pain in handling the case. The police have to be careful about all the provisions of the law related to juvenile.

There is another side of this picture as well. The literacy level of the police investigation officers was found to be very low during field study. One investigation officer, an old one, was not even matriculate. In such a scenario, the knowledge and information of the police officers regarding the provisions of law is questionable. One reason the police do not exert much effort in age-determination is the lack of awareness and/or knowledge regarding legal provisions. A Magistrate Munawwar Ghufuran (not original name) stated that;

“....., when I would ask the Investigation Officers whether they studied the JJSO? They would reply that they didn’t read it. They would say, we don’t know its provisions “hamynahipataosmhkiya provisions hyn.” Most of the IOs said that to me.”

It is generally believed that the police in Pakistan are motivated to get every accused convicted. It is the effort of the police that no accused should get any form of relaxation (e.g. bail) from the court. The same mind-set goes in juvenile cases. In this regard, Magistrate Musawir Shah (not original name) stated;

“They [the police officers] write [the age] above 18 [years] because they know that when they write the age below 18

years, the court may grant bail to the accused. Their effort is not to let the Bail happen and to take the Remand of the accused and to treat him as an adult offender. They do not care about the psychological condition of the juvenile. Once he is handcuffed, the personality of the juvenile gets severely damaged (juboskohathkari lag gai, adults ketara treat kiagya tov personality tov damage ho gainaphir). This is a very big issue.”

Briefly, the first issue that the courts face is that the juveniles are brought to the court as adults. It is the job of the police to determine the proper age of the accused. However, the police, either due to lack of awareness or due to the notorious police culture, don't usually determine the proper age, or show it as adult.

The role of the prosecutors is not quite promising here. The police collects all the evidence and presents the case in the court through a Prosecutor (Assistant Public Prosecutor, APP or Public

Prosecutor, PP). Isn't it the duty of the prosecutorial officer to ensure that the facts have been properly collected by the police? This is a very strong question. When Magistrate Khorshid Gohar (not original name) was asked about this question he said;

“yes it is the duty of the prosecutor. However, I would say it is the negligence of the prosecutor. When I ask the prosecutor that the accused seems juvenile but it is shown as adult in the court, why is that so? Their response is that “we are overburdened.” Likewise, it is the mind-set of the prosecutors that if someone commits a crime, he/she is an adult. Or his physical makeup is that of an adult.”

These are presumptions by the prosecutors. The job of the prosecutor is to ensure all the facts are correct. They are not supposed to presume things of their own. If the accused seems adult, then they have to attach a proof with the final report to the court. The prosecutors have to ensure and verify the facts. They make haste and in the haste the prosecutors also make mistakes in the cases. Mansoor-ul-Islam (not original name) said;

“Justice hurried is justice buried.”

Besides the prosecutors, usually the courts also seem to ignore this fact. If the family of the juvenile does not make efforts for his juvenility (very simply to bribe the Police to write a favorable FIR) the judges also ignore it because of caseloads. The police and prosecutor both put their burden over the court's shoulders. This

situation is comprehensible when a Chief Justice of the country, Saeeduzzaman Siddiqui, says that:

“ I should sate that the performance of Judiciary in Pakistan might not be ideal. I know there are complaints against Courts, particularly the delays caused in disposal of cases. But we have to understand the fact that the Courts, particularly subordinate Courts, have to operate under dismal conditions((Siddiqui, 2000:61).

Prosecution services are an integral component of the juvenile justice system. Whatever evidence is brought by the police, its quality is assessed by the Prosecution. The loopholes in a particular case are found out by the Prosecution. The legal gaps in a particular case are identified by the Prosecution. On the basis of that vital evidence, the prosecution can send the file back to the investigation officers. It has a key role.

Now, what happens is that when the files go to the court, the court refers back the case and orders to complete this and that things in the case. Why should the entire burden be on the court? If we can do all this before a case goes to the court, it would be the proper due diligence. The work of prosecution is to evaluate the evidence provided by the police. If the prosecution found that there is a flaw, for example the age as 17/18, it should not go to the court.

However, the prosecution is not aware of its due role (Mirza, 2010). The prosecutors are not trained in that. They are not properly aware what they should be doing? What is their job? Mirza (2010:1-14) stated;

“Before 2005, Prosecution department was part of the Police in Pakistan. It is still being run on the same system without any improvement. They couldn't come out of their old jacket yet. Now they are independent but they don't know how to go about. The rules have been formulated...But they haven't got training as an independent prosecutor. Therefore they are not able to assert themselves in proper and effective way”.

Police use significant discretionary powers in determining age. It is evident from the following case study which was reported in PSC (2009) unpublished training manual;

“On July 4, 2006 a juvenile named Jan Muhammad (at the time of arrest he showed his name to be Zahid Gul) was arrested by the Police team of Police Station BhanaManri, Peshawar for selling narcotics. He was charged with under Arms Ordinance, 1965 (Section 13) and Control of Narcotic Substance Act (CNSA,1997, Section 9).

Finding that the accused lied to the police by giving fake name, the police further charged him with Pakistan Penal Code Section 419 and 420 (Fraud and forgery). With these charges, the accused was presented before the Judicial Magistrate, as an adult offender. In the FIR and Chalan, the police never mentioned the age of the juvenile. The police used the term "Jawan-ul-umarlarka" (a male youth) in FIR and Case Diary. However, in the arrest card, the age of 18/19 years was written by the police.

All these documents went through the prosecution officer. However, the court pointed out that the accused is a juvenile and its proper age must be determined. Once the court order that and the juvenile appealed for a bail, a separate case was launched against the accused showing him a juvenile. In the process, the juvenile denied all the charges and claimed a trial. In the trial process, the juvenile was proven guilty. Finally, the case was concluded on July 17, 2009, i.e. three (3) years after the initiation of the case'.

Jan Muhammad's case speaks volumes for the juvenile justice system in Pakistan. The following conclusions can be drawn from this case:

1. Juvenile accused are presented as adults in the court.
2. The Police have no soft corner for juvenility of an offender.
3. SHO does not point out the lacunae in the *Chalan* of his Investigation Officer.
4. The Prosecution presents the police information to the court without questioning.
5. Both the police and the prosecution put their burden upon the shoulders of the court.
6. A normal case, e.g. of narcotics, takes more than three (3) years in the courts to get concluded.
7. Juvenile offenders deny charges against them even when all the evidences are against them.

Issues related to granting Bail

It is usually not very difficult to obtain a bail from the court. In juvenile cases, the law states that every crime that has a penalty of 10 years or less, is bail able if committed by a juvenile. When a juvenile's case is presented before the court, shown as adult, the court is in no position to grant bail unless and until the

age is properly determined to be lower than 18 years. Khorshid Gohar (not original name) worried that

“The main issue in bail to a juvenile is that, until the age of the offender is determined, the bail will remain a controversial issue.”

Unfortunately, the police investigation officers revealed that sometime age determination takes about a month. Similarly, it was revealed that the doctors are usually not free. They have to constitute a board for this purpose. Only the constitution of the board takes about a week. When they finally give the report back to the court, it takes 15 or 20 days. Moreover, it was also told that the X-ray etc. costs about Rs. 3000/- on a single case. But not a single penny is paid to them for the said purpose. (It is strange that the police hospital is a public hospital, there are an ‘A’ category hospital at each district headquarters with all facilities of X-rays and laboratories, a medical board under the supervision of a Medical Superintendent, mostly a specialist in his field etc. then how a test cost money and how the constitution of a medical board takes weeks ? Every Medical Superintendent as well as Senior Medical officer of a DHQ public hospital is authorized to issue such a certificate determining the age of an accused). Such tactics are tactics to mend illegal money.

In case of delay in age determination by the medical report, the juvenile suffers and his status remains unclear at the mercy of the police. The courts are not sure whether to grant or not to grant bail and send the accused on judicial remand instead. Puzzled by this, Magistrate Jamal-ud-Din (not original name) added

“The time taken during age determination (at least initial two days) that time is very painful for the institutions. Nobody knows where to keep the juvenile (juvenile korakhnakaha per hy, q k abi age determine nahihui).”

There is no institution in the entire Khyber Pakhtunkhwa province to keep the child in during this period. So the juvenile lives with the police officer for as long as the age is not determined. In Peshawar, a Police Child Protection Center (PCPC) was established in 2009. It had a child friendly environment and was meant to be a remand home for the children. However, this was closed down in 2012 owing to issues such as sustainability and donors’ stingy attitude.

Legal Aid to the Juvenile and the Courts

In July 2012, the UN Commission on Crime Prevention and Criminal Justice passed a resolution approving draft Principles and Guidelines on Access to Legal Aid in Criminal Justice System. This resolution paves way for the adoption of a series of standards in the UN General Assembly to ensure access to legal aid

for all those who come into contact with the criminal justice system, including children. The draft Principles and Guidelines include the following points that are relevant to children:

- Children should have access to legal aid under the same or more lenient conditions as adults;
- Legal aid provided to children should be prioritized within the best interests of the child; accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children; and
- States should ensure special measures for children to promote children's effective access to justice and to prevent stigmatization and other adverse effects as a result of being involved in the criminal justice system (SPARC, 2013).

Moreover, at national level, the JJSO 2000 grants every child whether accused or a victim of an offence, with the right to legal assistance (Section 3). Furthermore, it obligates the State to appoint a legal practitioner for the child at the State's expense. For this purpose Session Judges have been empowered under the provincial Juvenile Justice System Rules to constitute panels of lawyers to provide legal assistance to juvenile offenders.

One of the biggest problems facing the courts in juvenile cases is that most often the juveniles who are produced before the court, they do not have any lawyer. In such a case, the judges look for *pro-bono* lawyers. In *Pro-bono* cases, the lawyers do not charge any fee from the client. Amir Munir, a Research Officer at Lahore High Court, confessed in the interview that

“But the issue in pro-bono cases is that it is usually requested by the court, therefore, the lawyers do not take serious interest in these cases.”

Besides the state, it is usually believed by many that the children's rights are protected by the NGOs in Pakistan and Khyber Pakhtunkhwa as well. The name of SPARC and SAHIL NGOs are commonly there in discussions over child rights or juvenile justice. When the issue of free legal aid comes in front, the NGOs claim to provide free legal aid to as much juveniles as they can. In a report of 2013, the SPARC NGO claimed to have provided free legal aid to 2590 juveniles over the past seven years i.e. since 2006 (SPARC, 2013). The Courts speak of a different picture, however. Judge Amir Munir informed,

“When I was in Islamabad, seven police stations were under my jurisdiction. Unfortunately, during my three years period there, no NGO representatives visit my court in any of the

juvenile case, except one or two that I don't remember. (mh ne nahidekha k kesibachy k pichy koi NGO aee ho)"

He continued,

"I am sorry to say that but this is reality. I attended many seminars by the NGOs, without naming any one. I have been in their seminars but I didn't see their appearance in the courts. May be they are working in another way but not in the court."

Issues in Juvenile Trials

Once the *Chalan* is presented before the court either in time or not, the biggest issue is that of a joint trial.

Under JJSO 2000 (Section 5), there cannot be a joint trial of an adult and juvenile. If all the accused in the *Chalan* are juveniles then there is no big problem for the judge. He has to keep in view JJSO, Cr. PC and Probation Ordinance and decide the case. If the case is not serious, the judge can go to admonition, discharge, whether to try or not to try the case. This is what the judge will do in court. Khorshid Gohar (not original name) declared;

"If there is only juvenile in the case, then the process is a bit easy. Now the situation number two. Chalan is in front of the court. There is one juvenile accused and one adult accused. In such situation, law is not clear. Law bilkol clear nahihyes per (Law is totally not clear). This is one of the biggest problems we face in the courts."

Law only states to conduct separate trial. Now separate trial has its own issues. How will a separate trial be conducted?

For a juvenile, the police have to record the evidence against him. The same evidence has to be recorded separately for the major accused. Mansoor-ul-Islam (not original name) argued;

"There is a significant chance that the evidence produced in separate cases might not match-up each other. A witness has to be presented in one case and he has to be presented in another case as well. Let suppose the witness lapses on either of the sides, either in juvenile case or adult case, and the judge states that I am acquitting the major accused but convicting the juvenile, (wouldn't it be a conflict). For example, if we look at the statements and evidence in juvenile case, we come to conclusion that the juvenile should be acquitted and the adult should be convicted. But when we look at the evidence of adult, we come to conclusion that the

adult should be acquitted and the juvenile should be convicted. This is a very important issue.”

To this researcher's knowledge, there is no comprehensive research on this specific issue nor is there any such training programme in the judicial academies.

“I also didn't see any training programme in the judicial academy over this matter”, Mansoor-ul-Islam said.

Separate Courts

Besides separate trial, the most highlighted and burning issue in juvenile justice is the issue of separate juvenile court. As such there is not a single exclusive juvenile court in the country. This is a very right of juveniles under the JJSO which is a requirement of fair trial that they must have a separate juvenile court. By fair trial we mean the things that are mentioned in the law shall be done in accordance with the law and in a way that the law has specified. Then it can be said that it's a fair trial. If the law states to conduct a separate trial of the juvenile and the state conduct it jointly, it means the state is not conducting a fair trial and the right of a juvenile is compromised. Khorshid Gohar (not original name) admitted;

“The law requires separate courts but till day I know we don't have any such courts. The prevalent practice is that we declared every magisterial court and even Anti-Terrorism Courts (ATC) as a juvenile court. If you have provided a special provision for some powers and then you delegate those powers to the same people, in such a case the purpose of the law is defeated.”

Keeping in view the financial condition of the country, it can be argued that declaring magisterial courts as juvenile courts is advantageous in some respects. Mansoor-ul-Islam (not original name) hypothesized;

“One advantage of this practice is that if you want to take the work of a juvenile judge from any judge, the judge already has those powers. (e.g. I am a juvenile judge as well being a magistrate). Giving juvenile and adult both cases to a judge is infringing the rights of the juveniles in my opinion. Other trials are also affected because of this.”

However, why there is no exclusive court for the juvenile offenders despite its legal provision? According to one judge, there are administrative issues. First, an inadequate number of judges is required. A Session Judge cannot spare his magistrates for only a few juveniles *“There is a very low frequency of juveniles in*

a district (juveniles her district mhbohotkamhotyhyn)” (as there is a very low frequency of juvenile cases in the courts compared to adults).

For example if there are only 10 cases of juveniles in a district and a judge can handle 1000 cases in a year. It would be unfair to spare that judge for only 10 cases. The low rate of juvenile cases in districts cannot be considered a reason for non-appointment of judges.

Misuse of JJSO Provisions

The juvenile laws are frequently misused. Here, three cases from Supreme Court of Pakistan and Lahore High Court are produced as an evidence.

In *Faisal Aleem vs the State*, the Supreme Court of Pakistan dismissed the appeal of Faisal Aleem against the capital punishment awarded by the Trial Court on 20-10-2003. In the Trial Court record, his age was mentioned 22 years at the time of occurrence. It was subsequently converted to 20 years by interpolation. The responsibility, however, could not be fixed that by whom this interpolation was made. It is pertinent to note that the issue of age was never raised in Trial Court by the accused. The decision took place on 20-10-2003 (i.e. after JJSO 2000 was introduced).

In the Supreme Court, Faisal Aleem took the plea that at time of his crime, 11-2-1995, the accused was below 18 years of age. His defence counsel produced School Leaving Certificate, Birth Certificate, and Registration Form issued by DG Registrations, Ministry of Interior, showing his date of birth as 6-4-1977. According to these documents, the accused was of 17 years, 9 months and 5 days at the time when the crime occurred.

However, the Supreme Court found his documents to be unreasonable and incorrect. The Supreme Court found that his another brother was born on 4-1-1978, i.e. about 8 months younger than him, while another brother was born in the same year on 2-11-1978.

In *Sultan Ahmed vs Additional Session Judge-I*, the Supreme Court remanded the matter to the Trial Court for a fresh decision. Sultan Ahmed seriously questioned the claim of minority by the complainant through documentary evidence. In this case, Tahir Hasan Khan was the accused with the murder of Fahim. Fahim was murdered by inflicting knife blows on him on 1-08-2002. After the submission of Challan in the Trial Court and after Tahir Hassan Khan was summoned to face the trial, he submitted an application before the Trial judge on 16-11-2002 claiming that he was a ‘Child’ in terms of JJSO 200 and praying consequently that he be tried as such.

Sultan Ahmed, complainant, who is the father of Fahim deceased, submitted a reply stating that the said application of the accused was based on incorrect and forged documents. The accused initially placed reliance on a School Leaving Certificate wherein his date of birth had been mentioned as 14-12-1986 where after he produced a copy of his birth entry issued by Union Council wherein his date of birth had been recorded as 27-12-1984. According to both the records, he falls below 18 years (the legal definition of a 'child'). Still both the certificates were disclosing contradictory dates of birth. Upon further investigation, it was found that the father of Tahir Hasan Khan accused was a High School teacher while his uncle was District Education Officer. His father and uncle used their influence to produce false school leaving certificate. Thus it was disclosed that the documents produced were dubious and fictitious.

In *Muhammad Azam vs Muhammad Ikram*, the Lahore High Court found that the accused Muhammad Ikram has produced forged documents to claim himself a 'child' within the meaning of JJSO 2000. A Medical Board was called upon which found him to be of 20 years at the time of occurrence. When the court itself summoned the records, it found that the birth record of Muhammad Ikram in Column Nos.9,10 and 11 on the same page are with a different handwriting and of recent origin. The court found that there was no mention of the informer of the birth. Another unusual feature found by the court was that the pages were loose and not in the binding of the main register whereas other pages were duly bound up. Similarly, the record of the *Nikahnama* produced as an evidence of the marriage of Muhammad Ikram's parents, was not found anywhere in the registers. The court decided that the case be decided in ordinary courts.

The above case studies show that forgeries and producing fake documents is common to avail facilities of JJSO.

Conclusion

Based on the above discussions, it can be established that Police suppress the fact that the accused is a juvenile. First reason for not determining proper age is lack of awareness and knowledge by the police. The police culture is not to let any accused get any form of relaxation from the court (e.g. bail). Police and Prosecutors make haste and in the haste they ignore many facts, e.g. proper age determination and showing juvenile as adult.

Prosecution is unaware of its due role. It is still under the influence of the police. It lets the lacunae unresolved. Police do not submit *Chalan* on time. It may be a delaying tactic by the police or administrative lacuna. It is generally believed that from the police's perspective, at least at the police station level, the accused is a criminal. Both Courts and the police ignore about the handcuffs of a juvenile.

The major issue in granting bail is the determination of age. Unless the age is determined, bail cannot be granted. *Nobody knows where to keep the juvenile.* Age determination takes a very long period in common cases. Solution is CJCC (see below). If age is properly determined, the issue of bail is resolved immediately.

Usually the juveniles don't have a lawyer. The Pro-Bono lawyers don't take interest in the case. There is no or very low presence of NGOs in the courts for juvenile cases.

Juvenile accused are presented as adults in the court. The Police have no soft corner for juvenility of an offender. SHO does not point out the lacunae in the *Chalan* of his Investigation Officer. The Prosecution presents the police information to the court without questioning. Both the police and the prosecution put their burden on the shoulders of the court. A normal case, e.g. of narcotics, takes more than three (3) years in the courts to get concluded. Juvenile offenders deny charges against them even when all the evidence are against them. Law is not clear on matters related to joint trial. No one is clear on the issue of separate trial. There is no juvenile court. Magisterial courts and ATC courts have been declared as juvenile courts as well. The abuse of JJSO provisions is common.

In final analysis, there is no difference in juvenile an adult courts' system and structure in Pakistan.

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