

Juvenile Justice Policy: Gaps Identification and Role of Key Stakeholders in Pakistan

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Abstract:

This article presents the situation of juvenile justice in Pakistan and the need for a comprehensive, meaningful and effective policy for addressing the problems associated with juvenile justice. As such there is no policy for juvenile justice in the country at the present. The only major law dealing with children in conflict with law is Juvenile Justice System Ordinance 2000. Owing to some practical difficulties the law is not implemented properly in the country. Pakistan has many good policies, may be on paper sometimes, like health policy, educational policy, labour policy, etc but we neither have a criminal justice policy nor a specific juvenile justice policy at national or provincial level. This paper explains how a juvenile justice policy should look like in the context of Pakistan.

Keywords:

Policy, Criminal Justice System, Juvenile Justice System, Juvenile Delinquency, Diversion, Restorative Justice, Police, Prosecution, Juvenile Courts, Borstal Institution.

Introduction

Crime and deviance are the undeniable characteristics of human society. No country in the world can claim to be free from such evils. When people start living together in a society, these and a wide range of other problems always emerge. In response to these problems society establishes formal and informal institutions in order to tackle with such problems. Criminal justice system is one of these institutions established by the state for social control, with the purpose of delivering justice to its citizens, by convicting and punishing those who violate the state laws, help them rehabilitate by stopping further criminal activities, and protection of the innocents from harms and threats by these criminals (Bohm & Halvey, 2005). According to *Sage Dictionary of Criminology* “[criminal justice is] the process through which the state responds to the behaviour that it deems unacceptable. [Further], the criminal justice is delivered through a series of stages: charge; prosecution; trial; sentence; appeal; punishment. These processes and the agencies which carry them out are referred to collectively as *criminal justice system*” (McLaughlin & Muncie, 2001). In the words of Chamelin, Fox, and Whisenand, “criminal justice system is an apparatus society use to enforce the standards of conduct necessary to protect individuals and the community” (Chamelin, Fox, & Whisenand, 1975).

Juvenile Justice: Concepts and Definitions

Modern societies have developed a separate system of justice for adult criminals and juvenile offenders. Juvenile justice system is basically a part of an overall criminal justice system specialized in dealing with children in conflict with law. It is one of the means to achieve justice for all juveniles. Before detailed discussion on juvenile justice in Pakistan, some frequently used terms in the juvenile justice literature are subsequently described for conceptual clarity and reference.

A juvenile, as defined in *Cambridge Advanced Learner's Dictionary*, is “a young person who is not old enough to be considered an adult.” In legal context a juvenile, is “someone who falls within an age range specified by the state law” (Elrod & Ryder, 2005). This legal age range varies the world over, from the lower limit of 7 to the upper limit of 18 years. According to Article 1 of the UN Convention on the Rights of Child (hereinafter CRC) and Section 2 (b) of the Juvenile Justice System Ordinance 2000 (hereinafter JJSO 2000), “a juvenile is any person below the age of 18 years.” The *Dictionary of American Criminal Justice, Criminology and Criminal Law* defines juvenile as, “a person under statutorily specified age (usually between seventeen or eighteen years of age) who is potentially under the jurisdiction of the juvenile court” (Falcon, 2005). It is also worth noting that the terms juvenile, child, adolescent and teenager are often used interchangeably in the juvenile justice system.

1. Juvenile Delinquency

The term juvenile delinquency is often used for a broad range of behaviours like noisy teenage gathering, truancy, shop-lifting, breaking and entering, and car lifting etc (Scott & Marshall, 2005). As defined by Merriam-Webster online dictionary, “[juvenile delinquency is] conduct by a juvenile characterized by antisocial behaviour that is beyond parental control and therefore subject to legal action.” The children or juveniles who come into contact with law are not termed criminals, in juvenile justice. Rather they are termed delinquents. Their unlawful acts are termed delinquency rather than crime.

2. Diversion

Diversion is an emerging concept in the criminal justice system. The term diversion is used to refer to various measures to 'divert' juvenile offenders from the *formal* criminal justice system. According to *Sage Dictionary of Criminology* “[diversion is] the process of keeping offenders and other problem populations away from the institutional arrangements of criminal justice or welfare” (McLaughlin & Muncie, 2001). It is based on the understanding that formal responses to juveniles who come into conflict with law do not always protect the best interests of children or the community and that it can do more harm than good

to certain juveniles. A juvenile may be diverted from the formal criminal justice system on admission of guilt, or if it is the first time offence, or the matter is a minor one (O'Connor & Carmeron, 2002).

3. Restorative Justice

Restorative justice is a wide subject and some of its concepts are akin to the Jirga system of the Pukhtoon culture or Panchayat in the Punjab or Sulh in the Arab world. It focuses on the relationships between crime victims, offenders and the community (McLaughlin & Muncie, 2001). Advocates of this restorative justice practices suggest that, once found guilty, the priority should not be to punish the offender but our priority should be to repair the harm done to the victim and ensure that the offender realizes the damage he has done to the victim and community (Johnstone, 2002). It is further argued that this goal can not be achieved through the formal criminal trial and judicial punishment. It needs something other than the formal criminal justice proceedings. Restorative justice practices are based on this theory. It is an ancient practice and has its roots in eastern societies, but the renewed attention to this practice in the west has started in the last few decades. The beginning of the contemporary restorative justice is traced to the Canadian experiments with victim-offender mediation in Elmira, Ontario in 1974 (Johnstone, 2002). This practice is still in its evolutionary process. Restorative justice processes include among other practices; victim-offender mediation, family group conferencing, community conferencing, restorative circles, circles of support and accountability, Victim Offender Reconciliation Programmes (VORPS), and punishment circles (Johnstone, 2002).

Need for a Separate Juvenile Justice System

Why do we need a separate juvenile justice system? There is a group of criminologists who argue that a single consolidated system of justice dealing with both adults and juveniles is enough and that there is no need for a separate system of justice for juveniles. But most of the actors in criminal justice argue in favour of a separate system dealing exclusively with children. The following two paragraphs provide good arguments in favour of a separate juvenile justice system.

The basis for the juvenile justice system, separate from the adult criminal justice system, has been provided by social construction of the childhood (Jensen & Jorgen, 2006). At this stage (Childhood/Adolescence) the child's mental and physical faculties are not developed to the level of an adult. The child lacks the ability to realize what he/she exactly is doing and what will be the consequences of his/her actions (Junger-Tas, 2006). Therefore, he/she can not be held responsible for his/her actions unlike adults. On the basis of this notion children in conflict with law

are in need of nurturing and guidance to grow into responsible adults, and they deserve a chance to rectify their law violating actions (Jensen & Jorgen, 2006). This is one of the reasons, put forward by international jurists, policy makers and criminologists, for a specialized criminal justice system for juveniles.

Secondly, it has been found by the researches that in most of the juvenile cases they have been used by the adults (Pakistan: Denial of Basic Rights for Child Prisoners, 2003). The juveniles are unaware of the consequences of their act and therefore they less deserve to be blamed for an offence (Jensen & Jorgen, 2006). Therefore, a juvenile justice system separate from the adult criminal justice system is justifiable and the children below a certain age should be dealt with differently than the adult criminals.

Juvenile Justice System in Pakistan

Pakistan is a signatory to the CRC and other agreements. Article 3 (1) of the CRC states that:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

Article 4 states that:

“State Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, State Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.”

In the light of these international provisions it is the responsibility of the state to take specific measures to bring reforms in its laws, policies and institutions so that the best interests of the child are served. Prior to the JJSO 2000 only two provinces in Pakistan had juvenile laws: Sindh and the Punjab. The North West Frontier Province (hereinafter NWFP) and Balochistan had no such laws before the implementation of the JJSO 2000. Some of the other important laws dealing with juveniles in Pakistan are:

- Sindh Children Act, 1955;
- Punjab Children Ordinance, 1983;
- Punjab Youthful Offenders Ordinance, 1983;

- Sindh Borstal Schools Act, 1955;
- Punjab Borstal Act, 1926;
- Punjab Supervision & Control of Children Homes Act, 1976;
- Reformatory Schools Act, 1897;
- Juvenile Smoking Ordinance, 1959;
- Probation of Offenders Ordinance, 1960;
- Employment of Children Act, 1991; and
- Bonded Labour System (Abolition) Act, 1992.

The JJSO 2000 is the most recent law but since its inception, in some instances, it has remained ineffective. The reasons are manifold and complex. There are some practical difficulties in the JJSO 2000 and, generally, there is a lack of awareness among the concerned departments and institutions. Furthermore, all the components of the criminal justice system lack proper infrastructure. For example, Section 4 (1) of the JJSO 2000 demands separate courts for juveniles and Section 10 (3) prohibits to keep a child in a police station or jail, but to date we not only lack separate juvenile courts but also no rehabilitation/reformatory institutions and pre-trial detention centers like remand homes, in true sense.

The situation of juvenile justice in Pakistan is really deplorable. The spirit of the CRC and other international rules and guidelines, like the Riyadh Guidelines and the Beijing Rules, is that justice system dealing with child in conflict with law should focus primarily on *reintegration* of the child into society and encouraging him/her to play a constructive role in the society. But unfortunately the approach and spirit of these international rules and guideline is direly missing in Pakistan. The following presents a brief picture of juvenile justice in Pakistan.

First, the Minimum Age of Criminal Responsibility is one of the basic issues and sadly in Pakistan, it is one of the lowest in the world: seven years but can be raised up to 12 years if the child has not attained sufficient maturity or understanding to judge the nature and the consequences of his act [Section 82 of Pakistan Penal Code, 1860].

Second, there is a nominal structure dealing with children in conflict with law. In Pakistan, we have laws and departments regarding children in conflict with law but we lack a system and proper infrastructure. The country lacks specific institutional facilities, like there are only two Borstal institutions in the Punjab and a Sindh Industrial School in Sindh for juvenile accused of having infringed the penal law. The establishment of Borstal institution in Bannu district in the NWFP has been approved by the government but still it has not begun to function. It is important to mention here that the Borstal institutions of the Punjab province have failed to fulfill

the purpose of rehabilitation / reformation for the social reintegration of the child in conflict with law. The Borstal institutions are not run under the Borstal Act but are functioning under the jail manual. Furthermore, there is no psychotherapeutic treatment, and formal education of juveniles in Borstal institutions i.e two most important elements for the rehabilitation of juvenile delinquents practiced world over. That's why the Borstal institutions of Pakistan have failed to fulfill their purpose.

Third, there is no mechanism in the country for keeping the record of juveniles, who have been in conflict with law, awaiting trial, pending cases, in detention, in prisons, and juvenile probationers etc. There are no proper official statistics available on these variables. The concept of restorative justice is generally not put into practice by many. That's why there are no fruitful and well-received diversionary programmes for juvenile offenders. With regards to diversionary programmes, the probation is the only non-custodial punishment in the country but the lack of awareness about the system and its significance is obvious. The probation system is mostly less known to the key protagonists involved in the juvenile justice system (Pakistan: 3rd and 4th Periodic Report, 2009). Furthermore, the probation department is ill-staffed throughout the country. In 2008, there were only 58 probation officers and 14 parole officers for 113 districts of the country with only 133 juvenile probationers as reported in some government documents [unpublished].

Fourth, the 3rd and 4th periodic report to the UN Committee on the Rights of Child by Pakistan (hereinafter The Periodic Report) has not provided any verifiable, authentic, and reliable data regarding juvenile justice information indicators at the national level (Pakistan: 3rd and 4th Periodic Report, 2009). The report shows that, as on June 2007, there were total 91 prisons in the country keeping 2018 male and 3 female juvenile offenders. Out of these figures only 201 were convicted and the rest were under trial. That is to say 90% are under-trial juveniles. This shows a slow process of justice in the country.

Fifth, the national and international laws provide for free legal assistance to the juveniles but rarely a child is provided legal assistance. Only some civil society organizations (hereinafter CSOs) are providing legal assistance to juveniles in conflict with law but their efforts are still not enough to deal with the magnitude of the problem (Pakistan: 3rd and 4th Periodic Report, 2009, para 542-43).

Sixth, there is no published official data on juvenile justice indicators. Most of the data contained in the periodic report has been taken from the studies and small surveys conducted by CSOs and other organizations. To many, their reports are not reliable and lack proper presentation. Mostly their studies are not empirical and to rely on that information will present a picture of the situation which is not tangible.

Seventh, there is no authentic system of birth registration in the whole country. The birth registration rate in the country is only 29.5% as provided in the periodic report. In the absence of such a system it becomes very difficult to determine the exact age of a person accused of having infringed the penal law. This difficulty in age determination results in many mishaps to the child in conflict with law in the country.

Eighth, Section 4 (1) of the JJSO 2000 provides for the establishment of exclusive juvenile courts but the establishment of exclusive juvenile courts remained a challenge. In all the provinces of the country, the respective High Courts have conferred the powers of Juvenile Courts upon Courts of all the District and Sessions Judges or Civil Judges. For example in the NWFP, 146 Courts have been conferred upon the powers of Juvenile Courts. Similarly all other Provinces have conferred upon the powers of Juvenile Courts upon the Courts of all the District and Sessions Judges or Civil Judges (Pakistan: 3rd and 4th Periodic Report, 2009, para 544). Now the cases of juveniles in conflict with law are dealt by the district and session judges in Pakistan but owing to the burden and lack of facilities they often do not follow the procedures as laid down in the JJSO 2000.

The reason for the *ibid* mentioned difficulties lies in the absence of any comprehensive and well-thought juvenile justice policy within the national framework and in accordance with the international laws. So a policy for juvenile justice is required to regulate the activities of the various organs involved in criminal/juvenile justice administration and to provide guidelines so as to facilitate their functioning. It is important to know that a policy, in general, is “a principle that [people] believe in and that influences how [they] behave.” It is the guiding principles which influence the decisions taken by the authorities in the management of their affairs (Wehmeier, 2004). Likewise, a juvenile justice policy provides guidelines for all the components of the juvenile justice system, so that the decisions are taken in accordance with these guidelines or rules for the best interests of the child. The aim and objectives of the juvenile justice policy are to facilitate and enhance country level coordination amongst the actors of the juvenile justice system in accordance with the CRC and other relevant international norms and standards.

Juvenile Justice Policy and Role of Key Stakeholders

The above discussion fully substantiates that Pakistan needs a comprehensive juvenile justice policy, the blue print of which is provided in this paper. A policy in any discipline, department, institution, or organization is based on some guiding

principles which are “the underlying assumptions in a system of thoughts” (Police, 2008). Some of the guiding principles for a juvenile justice policy in Pakistan, which are considered necessary by the author, are given as:

- All children in conflict with law should be dealt with courtesy and mercifully [Article 37 (c) of the CRC].
- All children in conflict with law shall be treated equally and they shall not be discriminated on any ground [Article 2 (1) of the CRC].
- The best interest of the child shall be the primary consideration in all processes of juvenile justice administration [Article 3 of the CRC].
- All forms of abuse and violence shall be prohibited in all juvenile justice processes [Article 19 of the CRC, The Beijing Rule 17.3].
- Family and religion and other institutions shall be strengthened for the reintegration of the child and prevention of delinquency (Wilson & Howell, 2005).

In order to achieve the desired results of the policy in light of these guiding principles, an effective and target-oriented strategy is to be adopted. The rest of the text deals briefly with the strategies to be adopted in a proposed juvenile justice policy. Here it is worth mentioning that a strategy is “a detailed plan [of action] for achieving success in some situation” (Strategy, 2009).

As stated before, a juvenile justice system consists of police, probation, prosecution, courts, and the correctional institutions like prisons, borstal institutions, day care centers, remand homes etc. This section highlights some of their features and problems, and suggests recommendations for various components of the juvenile justice in Pakistan in the light of researches and international conventions and guidelines.

a. Role of Police

Police is the primary and first agency in any type of criminal justice system whether dealing with juveniles, adults, or women in conflict with law. Police is “the governmental department, bureau, or agency of a city, township, county, or state/nation charged with the responsibilities of maintaining public order, preserving the peace, providing emergency services, preventing crime, the detection of criminal activity, and the enforcement of the criminal law” (Falcon, 2005). Police are the first respondent to any encounter with the law-breakers in all criminal justice systems. The primary functions of the police are the prevention of crime and delinquency, detection and investigation of the cases, and prosecution of

the offenders. However, in Pakistan, the prosecution has been recently separated from the police and is now a separate department. The Police Order 2002 Articles 3, 4, 5 and numerous others describe these functions in detail and the range of duties for the police.

With reference to police role in juvenile justice in Pakistan, there is a general lack of specialized teams for juvenile delinquency, prevention and investigation in the police. The awareness regarding the rights of the child in conflict with law is very minimal, particularly at lower level amongst the police. Lack of trainings on national and international juvenile justice laws, is obvious, particularly on the JJSO 2000. Police department lacks computerized mechanism for keeping the record of all the juveniles in conflict with law. These, and some others, are the lacunae in the police department in Pakistan. However, there are some individual efforts to rectify the situation. For example, the NWFP Police has taken some new initiatives regarding children in conflict with law. The establishment of Police Child Protection Centre (PCPC) in Peshawar for diversion of juvenile offenders, new data-base system for juvenile offenders and victims, and the Police Child and Women Protection Committee (PCWPC), are a few of the such initiatives to mention here. Sindh Police have also taken a few good steps in this direction in collaboration with local NGOs. Moreover, the National Police Bureau of Pakistan is trying to synergize and organize all such efforts into a national policy. The establishment of a Juvenile Justice Working Group (JJWG) at provincial level with police in the leading role in the NWFP is also commendable.

In the context of the above presented situation analysis the following are a few policy recommendations for the police:

Firstly, the attitude of the police towards the juveniles in conflict with law is a very big problem. In a five days training, organized by Pakistan Society of Criminology (PSC), for educating and sensitizing the police station clerks, called Moharirs and Naib Moharirs, of the NWFP Police, it was observed that they have utter lack of awareness about national and international juvenile laws and the child rights. When asked “who has heard the name of JJSO or CRC?” only a few participants of the trainings—mostly from Peshawar district—raised their hands in affirmation (Events: NWFP Police Training on Data Collection on Crimes against Children and Juvenile Offenders, 2009). It gives an idea about the awfully low level of awareness regarding juvenile laws in the police station officials of the NWFP. The situation will not be different in other provinces as well. Therefore, awareness and sensitization in the police officials shall be given priority. The JJSO 2000 and other child related national and international laws should immediately be included in the syllabus of the Police Service of Pakistan (PSP) officers, upper courses and intermediate courses of the upper and lower subordinate officers at the police training institutions. Special trainings on national and international laws, such as

United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Rules), UN CRC, JJSO 2000 and the Rules formulated under the JJSO, should be a part of the capacity building and in-service/on-job police training.

Secondly, under Section 10 (3) of the JJSO 2000, a child in conflict with law cannot be kept at police stations nor he/she can be detained in jails. To the contrary in Pakistan due to lack of facilities, the children in conflict with law are kept at police stations before the disposal of their cases. In this regard it is recommended that the Police Station Officers must ensure to contact the Probation Officer(s) immediately on arrest of the juvenile, and give the juvenile under his custody, who can detain the child in conflict with law into any facility etc [Section 10.1. (b) of the JJSO 2000]. Astonishingly there is no pre-trial detention or remand home facility in Pakistan except Karachi (established under Sindh Children Act 1955), so where on earth the probation officer would keep the child in conflict with law if at all he is given the custody of such a child a legal gap in the implementation of the law?

Thirdly, to collect and analyze the cases of juvenile offenders and victims and find out the causative factors and devise ways and means to curtail the inhumane behaviour towards children, the establishment of a data-base at the Central Police Office (CPO) of all the provinces and at the regional level should be the top priority. The profile of children in conflict with law-by gender, age, offence category etc- be recorded separate from the adults' record.

Fourthly, juvenile delinquency, the world over, is considered to be the problem of urban centers. Therefore in big cities of the country, where the rate of juvenile delinquency is high, special police units for dealing with children in conflict with law can be created on priority basis [The Beijing Rule 12.1]. These police officers shall be trained properly and skillfully on the process of interacting and interviewing with a child while keeping in mind the needs, wishes and feelings of a child. A child shall be treated by a police officer in light of the internationally agreed guidelines.

Fifthly, there are reports on child sexual and physical abuse by the police authorities. This is something very discouraging on part of the protectors of people. For that reason, an independent and impartial investigation mechanism regarding reports of misconduct, brutality, and the denial of children's rights by the police should be established. There should be specialized units in the police who deal, particularly, with child sexual abuse and child trafficking.

Sixthly, but the most important is that the police officers should pay more emphasis on diversion of the juveniles in conflict with law from the formal justice system. In this regard the police officers can use warnings, fines, restitution, compensation, restorative justice practices, and other diversionary options.

Finally, for all these steps the police should be given special budget immediately, and the police themselves should allocate sufficient amount from its own budget for these direly needed initiatives in the best interests of the child.

b. Role of Prosecution

Prosecution is a liaison department between the police and the court. Prosecution plays a pivotal role in the administration of justice. According to *Black's Law Dictionary*, "Prosecution is a proceeding instituted and carried on by due process of law, before a competent tribunal (court), for the purpose of determining the guilt or innocence of a person charged with a crime" (Prosecution, 1999). A prosecutor or public prosecutor is an expert of the law to represent the state, in court proceedings, against the law breaker. Prosecution in Pakistan was a branch of police but it has recently been separated, with a view to achieving speedy justice process. It is now made an independent department after the promulgation of the Prosecution Ordinance of 2005. This department is highly developed in other countries, but in Pakistan it has not yet developed to that extent. In the area of juvenile justice the prosecution department has several gaps including lack of specialized prosecutors in children's issues, low interest and lack of concern in such cases, and the problem of prosecuting a child like the adult criminal.

The following steps are recommended for the role of prosecution department in a proposed juvenile justice policy:

First, special public prosecutors (PP) on juvenile justice are needed to be appointed at first in the big cities and later on at each district. For the existing prosecutors who are frequently dealing with juvenile cases special trainings should be arranged. These trainings should include, besides national and international laws, courses on psycho-social development of child, counseling of a child, proper production of juvenile offenders before the court and securing the rights of the juvenile offenders when they are in police/judicial custody etc.

Secondly, priority should be given to an appropriate conclusion of the case of juveniles through diversion by the prosecutor. The prosecutors should continuously explore the possibilities of alternatives to a court conviction as recommended by UN General Comment No. 10 Para 68.

Thirdly, Section 4(a) (ii) (2) of the Prosecution Ordinance 2005 states that the prosecutor on receipt of the final report (chalan) shall withhold the same for want of proper evidence and return it to the Investigation Officer with written direction to re-submit the report after removal of the deficiencies so identified by him. Generally, if a child's age can not be determined properly, the police officers put an ambiguous age on the age card (chalan). For example the age may be recorded as 'eighteen / nineteen'. Now it is the duty of the prosecutor under Section 4 of the

Prosecution Ordinance 2005 to ensure that the age is recorded properly and correctly. But sadly, the prosecutors, in general, do not perform this function. Therefore it is recommended that the prosecutors dealing with child cases must ensure proper recording of age in line with Section 7 of the JJSO 2000, in order to qualify child in conflict with law to the benefits of the JJSO 2000.i.e. it can be done through medical tests, if no other document is available. It is the prosecution department which has to make it certain and ensure that the investigations are properly and timely completed by the police in the stipulated time as required by the law under Section 173 of the Criminal Procedure Code of Pakistan (hereinafter Cr.P.C) by adopting due diligence in the recording of age the most important factor in dealing with child related cases. The District Public Prosecutors (DPP) should perform their duty of taking disciplinary actions against the Investigation Officers who prepare the final report (chalan) inefficiently, misrepresent the facts, and who do not exercise due diligence or honesty in conducting investigation etc [Section 5(d) of the Prosecution Ordinance 2005]. Strict departmental actions are also needed to be taken against the prosecutor who fails to put the Chalan (Final Report) in the court after the investigations are complete.

Finally, close liaison of prosecution with the police and probation be promoted.

c Role of Judiciary/Courts

Judiciary is the third pillar of the state which is responsible for its legal system and which consists of all the judges in the country's courts of law (Judiciary, 2009). Courts are one of the basic components in all justice systems. In fact when we think of the juvenile justice system, the first concept which strikes our mind is the exclusive juvenile court dealing only with the juveniles. The children in conflict with law, who are not diverted from the formal legal system at an early stage, are dealt with by the juvenile courts or by the criminal courts in case of non-existence of juvenile court. Juvenile Court is the heart of the juvenile justice process. It is an agency where the decisions made by all the other child related agencies are supported or altered. A juvenile court is the court responsible for holding hearings and making decisions regarding disposition of juveniles who have entered the juvenile justice process (Elrod & Ryder, 2005).

The courts in Pakistan are suffering from various problems. Section 4 of the JJSO 2000 provides for the establishment of separate juvenile courts by the Provincial Governments. This ordinance provides a good detail of the juvenile court proceedings but the establishment of exclusive juvenile courts has yet to be realized. Therefore, it is recommended that at least one *exclusive juvenile court* should be established immediately in each province.

If the judges have to dispose off the cases of the children in conflict with law, they must be trained in dealing with children. Therefore specialized courses on juvenile justice should be included for judges in curriculum in the judicial training institutes. Training should be imparted to all lower-courts judges in national and international laws regarding children in conflict with law.

Most often the juveniles in prisons are detained for longer due to non-completion of investigation in such cases. Therefore, the court must ensure that the police have submitted the Final Report (Chalan) within fourteen days as required by the law under Section 173 of Cr.P.C, for an early trial.

Age assessment of the juvenile in conflict with law is a very big problem in Pakistan. Generally there is a very low tendency in masses about birth registration of their children, and education too. Therefore age determination of the children who have no official documents regarding age, becomes a big problem. In such cases the police officers often use their personal judgment by examining the physical appearance of the offender. Although it is the duty of the prosecutors to make it certain that the exact age of the child in conflict with law has been written on the age card (chalan), but whenever the prosecutors fail to do so the court must ensure the proper age assessment in order for child in conflict with law to qualify to the benefits of the JJSO 2000.

If a child found guilty of the alleged offence(s), the court should look for the alternatives to institutional care and deprivation of liberty, to assure that deprivation of liberty be used only “as a measure of last resort and for the shortest possible period of time” [Article 37 (b) of the CRC, & The Beijing Rule 13.1]. Preference should be given by the judges to measures like fines, restitution and compensation, probation, and community services, and group counseling activities etc [The Beijing Rule 18.1].

d. Role of Probation

Imprisonment is not the only way to respond to the criminals. There are various alternative methods to imprisonment including probation which is arguably one of the most progressive contributions to modern criminal policy (Qureshi, 1999). It is a very important agency in juvenile justice system. Those offenders who, according to the court, are likely to be reformed, and who are not dangerous to society, are not sentenced to imprisonment and are kept on probation under the supervision of the state-probation officer. Probation is “a period of time when a criminal must behave well and not commit any more crimes in order to avoid being sent to prison” (Probation, 2009). As defined by Elrod and Ryder, it is the supervised release of an individual by a court (Elrod & Ryder, 2005). Islamic philosophy of crime does not

profess hating the criminal rather it professes hating the crime and reforming the criminal (Tahir-Ul-Qadri, 2006). Similarly, the probation system is based on the philosophy of “eradicating the crime not the criminal.” Probation department in Pakistan performs its functions under The Good Conduct Prisoner's Probation Release Act 1926, Probation of Offenders Ordinance 1960, JJSO 2000, and the rules formulated under various laws. Section 10 (3) of the JJSO 2000 provides for all those juveniles who can not be released on bail by the court “should be placed under the custody of a Probation Officer or suitable person or institution dealing with the welfare of the children if parent or guardian of the child is not present, but shall not under any circumstances be kept in a police station or jail in such cases” (Pakistan: 3rd and 4th Periodic Report, 2009, Para. 537). According to the periodic report on the CRC submitted by Pakistan, “there is lack of awareness about the [probation] system and its significance. Police, prison officials and even in the ranks of lower judiciary there is lack of awareness concerning probation system.”

The following presents a few recommendations which the policy makers must take into account for a specific role of probation in a proposed juvenile justice policy.

Firstly, the periodic report Para 539, points out that there is a lack of probation officers and that many districts are still without probation officer. Therefore the number of probation officers should be immediately increased. At least three probation officers should be posted in each district. The female probation officers are only a few in a country of 170 million people, which must be taken into account at once.

Secondly, the probation officers complain that their present scale has failed to give them due respect and that it should be raised at least to grade 17. Service conditions shall be made more attractive and rewarding to attract the most competent persons to this department.

Thirdly, diversion is the key element of juvenile justice system. “It avoids child getting criminal record and being labeled at an early age, and avoids being stigmatized and minimizes the deprivation of liberty” (UNODC, 2006). The concept of diversion should be promoted at all levels in the juvenile justice process, right from the initial contact of a child with the police. It is the probation officers who perform key role in diversion programmes-such as close supervision, community services. It has been noted that most often the child diverted to community services is kept as a servant in residences of the officers. This form of service is included in the category of “child labour”, and it is a labour without any fruit. This practice needs to be abandoned at once and other community services should be sought while keeping in view the inherent dignity of the child.

Fourthly, to lower the burden on the courts, where appropriate, the probation officers should be empowered to dispose off juvenile cases at their discretion before lodging of report with the police and institution of trial.

Finally, more Borstal institutions should be established under the probation department and they should be run under the Borstal Act instead of Jail Manual.

e. Role of Institutional Treatment

According to the Section 10 (3) of the JJSO 2000 all juveniles which the court can not release on bail because of various reasons “should be placed under the custody of a Probation Officer or suitable person or institution dealing with the welfare of the children if parent or guardian of the child is not present, but shall not under any circumstances be kept in a police station or jail in such cases.” To the contrary the juvenile delinquents, as a general practice, are either kept in police stations or sent to jail-where they are kept in the so called *Munda Khana* or *Juvenile Section*-as there is no remand home in any province except the Sindh province, which is in fact clear violation of the JJSO 2000, Juvenile Justice Rules, and the CRC (Ratified by Pakistan in 1990).

Pakistan Society of Criminology (PSC) has recently conducted a research study on selected prisons of the NWFP (Report on Gaps in Existing System of Jails, 2009) under Juvenile Justice Reforms Project (JJRP) by the UNICEF. Its findings and observations include:

- overcrowding in jails-which has also been noted by Amnesty International's research report on Pakistan 2003 (Pakistan: Denial of Basic Rights for Child Prisoners, 2003);
- no separate places for juveniles and likely indoctrination by radical inmates;
- no separate sector inspector or officials entitled to handle juvenile inmates;
- lack of recreational facilities for juveniles, and no separate transport facility for under-trial juveniles;
- no proper record of juvenile offenders;
- no formal education provisions for juvenile offenders;
- no separate interview facilities for juvenile offenders; and
- lack of medical facilities for juvenile offenders.

These are very deplorable and serious problems seen and noticed in the central and district jails of the NWFP. The situation is almost the same in all prisons throughout the county. The recommendations of PSC report regarding the prisons provide a very good source for policy consideration. In the light of aforementioned findings and observations, the following are a few recommendations for future juvenile justice policy:

First, at least one Borstal institution, or similar institutions with all necessary facilities should be established in all the provinces. After the establishment of the Borstal institutions the children detained in prisons should be immediately transferred to them. The supervision of Borstal institution should be transferred to the probation department. It is not a prison rather it is a rehabilitation institution and rehabilitation is neither the responsibility of prison department nor they are trained for this purpose.

Secondly, Section 10 (3) of the JJSO 2000 prohibits keeping a juvenile in a jail or prison. Similarly, the Beijing Rules 26.3 states that “juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.” The placement of children in adult prisons or jails compromises the children's basic safety, well-being, and their future ability to remain free of crime and to reintegrate (General Comment No. 10, 2007, Para. 85). Therefore, every child deprived of liberty should be separated from adult criminals.

Thirdly, the present staff in prisons is trained to deal with adult criminals and their approach to juvenile is also like that of adult criminals. Therefore, there should be special staff in the rehabilitation/reformation institutions, for dealing with juvenile inmates. These officials must be especially trained in dealing with juveniles such as interviewing the juvenile, taking case history, and counseling etc. Similarly, separate places for interviewing the juvenile offenders should be created which are designed keeping in view the juvenile needs. We need separate juvenile facilities which are in no way part of a prison or under the prison department.

Fourthly, recreation plays a key role in child physical and psychological development and there are no such facilities in jails as observed by PSC study (Report on Gaps in Existing System of Jails, 2009). Therefore, wherever possible in jails, some sort of recreational facilities should be created for juveniles such as indoor and out-door games.

Fifthly, infants and children accompanying the under trial or convicted mothers need special attention. The prison rules do not provide for any special provision for such children and infants. At least proper nutrition should be given to such infants and children for their physical development. The jail and prison system has a weak health and medical facility for juveniles. It is recommended that the medical history and periodic medical reports should be kept in the juvenile file for the record.

Sixthly, as exclusive juvenile courts are missing in the country, so until the creation of exclusive juvenile courts, the proceedings of juvenile offenders should take place within the jails for early disposition.

Finally, the juvenile and child soldiers need special attention. They should be kept separate from non-soldier offenders. Psychologists of high reputation should

be hired for their psychological treatment and de-radicalization and de-indoctrination, which has become a serious challenge for our law-enforcement agencies and government officials after the war on terror and military operations in some parts of the country.

f. Role of Associated Agencies

The police, probation, prosecution, courts, and correctional institutions are the primary components of the juvenile justice system. But juvenile justice policy must take into account the various secondary components and associated agencies of the juvenile justice system as well. The Social Welfare Department should be utilized to a greater extent for devising diversionary programmes. The Ministry of Human Rights, CSOs, media, Law Department and other agencies associated with criminal justice, rehabilitation, and social services, should be given due attention and specific role in policy making.

Conclusion

A juvenile justice system is based on the guiding principles of juvenile justice policy in any country which is the reflection of the level of commitment of a country towards internationally agreed children rights. The uncoordinated and fruitless efforts of the agencies related to juvenile justice can be converted into synchronized and fruit bearing efforts through a comprehensive policy for all these agencies. Allocation of sufficient funds, establishment of exclusive juvenile courts, police juvenile units, improvement in prison conditions, training of the probation officers, establishment of Borstal institutions, devising diversionary programmes and informal restorative justice practices are a few key points of special concern in a juvenile justice policy in Pakistan. The ratification of the CRC has taken place in the 90s and now it is the right time for Pakistan to take concrete steps towards the establishment of a viable and visible juvenile justice system, and announce a comprehensive, well-thought and cost-effective juvenile justice policy.

References

- Bohm, R. M., & Halvey, K. N. (2005). *Introduction to Criminal Justice* (4th Ed.). New York: McGraw-Hill Companies.
- Chamelin, N. C., Fox, B. V., & Whisenand, M. P. (1975). *Introduction to Criminal Justice*. New Jersey: Prentice-Hall.
- Elrod, P., & Ryder, S. (2005). *Juvenile Justice: A Social, Historical, & Legal Perspective* (2nd Ed.). Sundbury, Massachusetts: Jones and Bratlett Publishers.

- Events: NWFP Police Training on Data Collection on Crimes against Children and Juvenile Offenders.* (2009). Retrieved 09 22, 2009, from Pakistan Society of Criminology: <http://www.pakistansocietyofcriminology.com/events.php>
- Falcon, D. N. (2005). *Dictionary of American Criminal Justice, Criminology, and Criminal Law* (1st Ed.). New York: Pearson Prentice Hall's.
- Government of Pakistan.* (2009). *Third and fourth periodic reports of State parties due in 2007.* Retrieved 21 09, 2009 from <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.PAK.Q.3-4.pdf>
- Jensen, E. L., & Jorgen, J. (2006). Conclusion: Themes, Trend, & Challenges. In F. L. Felstiner, & F. Johannes (Eds.), *Juvenile Law Violators, Human Rights, & The Development of New Juvenile Justice System.* Portland, USA: Hart Publishing.
- Johnstone, G. (2002). *Restorative Justice: Ideas, Values, Debates.* Cullompton, UK: Willan Publishing.
- Judiciary.* (2009). Retrieved 09 22, 2009, from Cambridge Advanced Learner's online Dictionary: <http://dictionary.cambridge.org/define/asp?key=43032&dict=CALD>
- Junger-Tas, J. (2006). Trends in International Juvenile Justice: What Conclusions can be Drawn. In J. Junger-Tas, & S. H. Decker (Eds.), *International Handbook of Juvenile Justice.* Dordrecht: Springer.
- juvenile.* (2009). Retrieved 09 07, 2009, from Merriam-Webster Online Dictionary: <http://www.merriam-webster.com/dictionary/juvenile>
- Juvenile Justice.* (2008). (SPARC) Retrieved 09 21, 2009, from Society for the Protection of the Rights of the Child (SPARC): http://www.sparcpk.org/crs_juvenile_justice.php
- McLaughlin, E., & Muncie, J. (2001). *The Sage Dictionary of Criminology.* (E. McLaughlin, & J. Muncie, Eds.) London: Sage Publications.
- O'Connor, I., & Carmeron, M. (2002). Juvenile Justice in Australia. In A. Graycar, & P. Grabosky, *The Cambridge Handbook of Australian Criminology.* Cambridge: Cambridge University Press.
- Pakistan: Denial of Basic Rights for Child Prisoners.* (2003). Retrieved 09 03, 2009, from Amnesty International USA: <http://www.amnestyusa.org/document.php?id=ENGASA33021005&lang=e>
- Police.* (2008). Redmond, USA: Microsoft Encarta Dictionary 2008 [DVD].
- Probation.* (2009). Retrieved 09 06, 2009, from Cambridge Advanced Learner's online Dictionary: <http://dictionary.cambridge.org/define/asp?key=63048&dict=CALD>
- Prosecution.* (1999). *Black's Law Dictionary, 7th.* St.Paul: West Group.
- Qureshi, H. A. (1999). Pakistan. In *Adult Probation Profiles of Asia.* Tokyo: UNAFEI.

- Report on Gaps in Existing System of Jails*. (2009). Pakistan Society of Criminology. Peshawar: Unpublished.
- Scott, J., & Marshall, G. (2005). *Oxford Dictionary of Sociology*. New York: Oxford University Press.
- Strategy*. (2009). Retrieved 09 21, 2009, from Cambridge Advanced Learner's Dictionary:
<http://dictionary.cambridge.org/define.asp?key=78677&dict=CALD>
- Tahir-ul-Qadri. *Crime, Confession, and Rehabilitation [Urdu]* Lahore: Minhaj-ul-Quran Publications.
- Tahir-ul-Qadri. (2006). *Islamic Philosophy of Imprisonment and Prisons [Urdu]*. Lahore: Minhaj-ul-Quran Publications.
- The Juvenile Justice System Ordinance 2000.
- The Police Order 2002.
- The Prosecution Ordinance 2005.
- United Nations Convention on the Rights of the Child (CRC) 1989.
- UN Committee on CRC. (2007). *General Comment No. 10*. United Nations. Retrieved 17 09, 2009 from
<http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>
- United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) 1990.
- United Nations Standard Minimum Rules for The Administraion of Juveile Justice (The Beijing Rules) 1985.
- UNODC. (2006). *Cross-Cutting Issues: Juvenile Justice: Criminal Jusice Assessment Toolkit*. New York: Retrieved 17 06, 2009 from
http://www.unodc.org/pdf/criminal_justice/06-55616_ebook.pdf
- Wehmeier, S. (Ed.). (2004). *Oxford Advanced Learner's Dictionary of Current English*. Oxford University Press.
- Wilson, J. J., & Howell, J. C. (2005). Comprehensive Strategy for Serious, Voilent, & Chronic Juvenile Offenders. In D. L. Parry, *Essential Readings in Juvenile Justice*. New Jersey: Pearson Prentice Hall.