

THE JUVENILE JUSTICE SYSTEM ORDINANCE

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In the year 2000, the then President of Pakistan, Pervez Musharraf promulgated the Juvenile Justice System Ordinance. It was for the first time in Pakistan's history that a uniform system of laws relating to children involved in criminal litigation has been introduced.

Prior to the introduction of the Juvenile Justice System Ordinance 2000, several laws were prevalent in Pakistan that pertained to the rights and welfare of children. The difficulty has been that there was no law that had uniform applicability across the four provinces of Pakistan. The law which governed children in the Province of Sindh was (and still has applicability) the Sindh Children Act 1955; in the Province of Punjab, the Punjab Children Ordinance 1983 and the Punjab Youthful Offenders Ordinance 1983 provided a legal framework. Sadly, no laws existed in the Province of NWFP and Balochistan. One of the highlights of the JJCO 2000 is that it was made applicable to the whole of Pakistan.

2. SALIENT FEATURES OF THE ORDINANCE

The salient features of the JJCO are as follows:

Legal Assistance

Every child who is accused of the commission of an offence or is a victim of an offence shall have the right of legal assistance at the expense of the State.

Juvenile Courts

The Provincial Governments shall, in consultation with the Chief Justice of the High Court, by notification in the official Gazette, establish one or more juvenile courts for any local area within its jurisdiction. The High Court may confer powers of the juvenile court on the Court of Sessions or Judicial Magistrate of the First Class and appoint, from amongst practicing advocates having at least seven years standing at the Bar, Presiding Officers of Juvenile Courts with the powers of a Judicial Magistrate of the First Class for the purpose of this Ordinance, on such terms and conditions as the High Court may determine. The juvenile court shall have the exclusive jurisdiction to try cases in which a child is accused of commission of an offence. On commencement of this Ordinance, all cases pending before a trial court in which a child is accused of an offence shall stand

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transferred to the juvenile court having jurisdiction. On taking cognizance of an offence, the juvenile court shall decide the case within four months.

Joint Trials

No joint trial of a child and adult person,

Prohibition to public proceedings of cases

Unless the Juvenile Court specifically authorizes, the Court proceedings shall be published in any newspapers, magazine or journal in any form which may disclose the name, address, school or any identification or particulars calculated to lead directly or indirectly to the identification of such child nor shall any picture of the child be published.

Probation Officer

The Probation Officer shall assist the Juvenile Court by making a report on the child's character, educational, social and moral background. The Juvenile Court may, if so thinks fit, communicate the substance of the report to the child or his guardian and, where anyone of them disputes the contents or views contained therein, the Juvenile court may give such child or, as the case may be, guardian an opportunity of producing such evidence as may be relevant to the matter stated in the report.

Arrest and bail

Where a child is arrested for commission of an offence, the officer in-charge of the police station in which the child is detained shall, as soon as may be, inform:

- (a) the guardian of the child, if he can be found, of such arrest and inform him of the time, date and name of the Juvenile Court before which the child shall be produced; and
- (b) the concerned Probation Officer to enable him to obtain such information about the child and other material circumstances which may be of assistance to the juvenile Court for making inquiry.

Where a child accused of non-bail able offence is arrested, he shall, without any delay and in no case later than twenty-four hours from such arrest, be produced before the Juvenile Court.

Without prejudice to the provisions of the Code, a child accused of a bail able offence shall, if already not released under Section 496 of the Criminal Procedure Code, be released by the juvenile Court on bail, with or without surety, unless it appears that there are reasonable grounds for believing that the release of the child shall bring him into association with any criminal or expose the child to any danger, in which case, the child

shall be placed under the custody of a Probation officer or a suitable person or institution dealing with the welfare of the children if parents 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.

The Juvenile Court shall, in a case where a child is not grantee bail, direct for tracing the guardian of such child and where the guardian of the child is traced out, the juvenile Court may immediately release the child on bail.

Where a child under the age of fifteen years is arrested or detained for an offence which is punishable with the imprisonment of less than ten years, shall be treated as if he was accused of commission of a bailable offence.

No child under the age of fifteen years shall be arrested under any of the laws dealing with the previous detention or under the provisions of Chapter VII of the Criminal Procedure Code.

Notwithstanding anything contained in the Criminal Procedure Code and except where a Juvenile Court is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf or in exercise of any right or privilege under any law for the time being in force, a child who, for commission of an offence, has been detained, shall be released on bail:

- (a) If, being accused of an offence punishable with death has been detained for such offence for a continuous period exceeding one year and whose trial for such an offence has not concluded.
- (b) If, being accused of any offence punishable for improvement for life has been detained for such an offence for a continuous period exceeding six months and whose trial for such offence has not concluded; or
- (c) Who, being accused of any offence not punishable with death, or imprisonment for life, has been detained for such an offence for a continuous period exceeding four months and whose trial for such an offence has not concluded.

Release on Probation

Where on conclusion of an inquiry or trial, the Juvenile Court finds that a child has committed an offence, then notwithstanding anything to the contrary contained in any law for the time being in force, the Juvenile Court may, if it thinks fit:

- (a) Direct the child offender to be released on probation for good conduct and place such child under the case of guardian or any suitable person executing a bond with or without surety as the court may require, for the good behavior and wellbeing of the child

for any period not exceeding the period of imprisonment awarded to such child:

Provided that the child released on probation be produced before the Juvenile Court periodically on such dates and time as it may direct.

- (b) Make an order directing the child offender to be sent to a borstal institution until he attains the age of eighteen years or for the period of imprisonment whichever is earlier.
- (c) Reduce the period of imprisonment or probation in the case where the Court is satisfied that further imprisonment or probation shall be unnecessary.

Orders that shall not be passed with respect to a child

Notwithstanding anything to the contrary contained in any law for the time being in force no child shall be: -

- (a) Awarded punishment of death, or ordered to labor during the time spent in any borstal or such other institution; and
- (b) Handcuffed, put in fetters or given any corporal punishment at any time which is custody;

Provided that where there is reasonable apprehension of the escape of the child from custody, he may be handcuffed.

Appeal

A child convicted on a trial by a Juvenile Court, or any other person on his behalf, may, within thirty days from the date of such order, prefer an appeal in accordance with the provisions of the Code.

The Provisional Government or any person aggrieved by an order or acquittal passed by a Juvenile Court, may within thirty days prefer an appeal against such order in accordance with the provisions of section 417 of the Code.

3. LACUNAS IN THE ORDINANCE

The Ordinance does not provide for establishment of industrial schools, certified schools, remand homes and other institution, societies and voluntary association who need to be admitted in such institutions for various reasons. No measure for the care and protection of destitute and neglected children are indicated in the Ordinance. There is no mention of special offences in respect of children as required under Part VI of the Sindh Children

Act, 1955, neither are there are any provisions for detention of children and youthful offenders and for maintenance and treatment of committed children.

4. OTHER LAWS THAT IMPACT CHILDREN

- Sindh Children Act, 1955
- Punjab Children Ordinance, 1983
- Punjab Youthful Offenders Ordinance, 1983
- Sindh Borstal Schools Act, 1955
- Punjab Borstal Act, 1926
- Punjab Borstal Rules, 1932
- Punjab Supervision & Control of Children Homes Act, 1976
- Female Infanticide Prevention Act, 1870
- Reformatory School Act, 1897
- W.P Juvenile Smoking Ordinance, 1959
- Probation of Offenders Ordinance, 1960
- Employment of Children Act 1991
- Employment of Children Rules, 1995
- Children (Pledging of Labour)Act, 1933
- Factories Act. 1934
- Mines Act, 1923
- Bonded Labour System (Abolition) Act, 1992
- Bonded Labour System(Abolition)Rules, 1995
- Workers Children Education Ordinance, 1972
- Child Marriage Restraint Act, 1929
- W.P. Control of Orphanages Act, 1958
- W.P. Control of Orphanages Rules, 1958
- Sindh Orphanage (Supervision and Control) Act, 1976
- N.W.F.P Orphanage (Supervision and Control) Act, 1976
- N.W.F.P Employment of Children Rules, 1996
- Voluntary Social Welfare Agencies
- (Regulation And Control)Ordinance, 1961
- Voluntary Social Welfare Agencies
- (Regulation And Contr.ol) Rules 1962