

Critical Analysis of the Juvenile Justice System in Pakistan: Challenges & Way Forward

Shahid Khan¹

Mr. Jehanzeb Khan Orakzai²

KJPP

Citation:

Khan, S. (2023). Critical analysis of the juvenile justice system in Pakistan: Challenges & way forward. Khyber Journal of Public Policy, 2(3), Autumn.

Article Info:

Received: 29/07/2023

Revised: 04/08/2023

Accepted: 20/08/2023


Published: 20/09/2023

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Abstract:

The juvenile justice system addresses the needs and legal issues of minors in conflict with the law. This paper critically examines the challenges and systemic deficiencies in Pakistan's juvenile justice system, highlighting issues such as the non-implementation of laws, discrimination, inadequate resources, and social inequalities. Despite the legislative frameworks provided by the Juvenile Justice System Act 2018 and international conventions like the UNCRC, practical enforcement remains inadequate. The study emphasizes the urgent need for enhanced legal awareness, improved resource allocation, better coordination, and effective monitoring mechanisms to address these challenges. Recommendations include increasing legal and public education, allocating resources for infrastructure and rehabilitation, and combating biases within the system. By addressing these issues, Pakistan can work towards a more equitable juvenile justice system that supports the rehabilitation and reintegration of young offenders into society.

Key words:

Juvenile justice system, Legal awareness, Discrimination, Rehabilitation, Resource allocation

¹ Currently posted as OSD E&AD.

² Faculty Advisor

Introduction

The term "juvenile justice system" refers to a system that deals with juveniles who come into contact with or are in conflict with state laws and societal standards. According to Abbas, Chughtai, and Hussain (2022), the criminal justice system's structure deals with offenses committed by minors between the ages of 10 and 18. The important feature of the juvenile justice system is the separate court proceedings for minor offenders compared to adults. The concept of the juvenile justice system is derived from the belief that the problem of juvenile delinquency cannot be treated in a traditional manner within the adult criminal justice system (Howell, 1980). It has now become a global issue that affects both industrialized and underdeveloped nations (Mallow, 2015).

A juvenile justice system creates a framework for the prevention and rehabilitation of juvenile offenders or delinquents and is dedicated to serving the needs of young people who have come into contact or are in conflict with the law. It consists of laws, regulations, rules, customs, personnel, institutions, and particular care for dealing with juvenile offenders (Abbas et al., 2022).

According to the report of the Society for the Protection of the Rights of the Child (SPARC), "The State of Pakistan's Children," there are between 1,500 and 2,000 juvenile offenders incarcerated in Pakistan. However, it was predicted that this number would be a little higher in March 2021. Ninety percent (90%) of these offenders are only awaiting trial. In Punjab jail, as of April 2021, there were 540 children, including adolescent girls, and more than 464 were still awaiting trial. Around 260 juveniles are detained in Sindh, 510 in Khyber Pakhtunkhwa (KP), and 55 in Baluchistan (Rafique, 2017).

Although there are other problems, such as a lack of funding, inadequate resources, a joint court system, inhumane conditions in detention facilities, abuse and exploitation at the hands of the police, and a poor prosecution system, the core problem is the non-implementation of laws and discrimination by the stakeholders (police, judiciary, prison authorities, and forensic experts) (Lotse, 2006).

The Act and policies are prerequisites and essential factors responsible for the implementation of the laws and acts formulated to achieve and accomplish the desired aims. The juvenile justice system is seen as being essential to the advancement of the rule of law and the general welfare of society by significant international organizations and institutions (Hoffman & Baerg, 2011).

The research will investigate a critical examination of the discrimination and non-implementation of legislation in Pakistan's juvenile justice system.

Furthermore, it will explain and elucidate the 2018 juvenile justice system legislation, the United Nations Convention on the Rights of the Child (UNCRC) spirit, and other international laws and regulations like the Beijing and Riyadh Rules (Shah, Balasingam, Salman, Dhanapal, & Ansari, 2020). A child in conflict with the law should have their reintegration into society and encouragement to play a positive role in society prioritized by this legislative framework. The foundation and spirit of these international conventions are sadly lacking in Pakistan.

Therefore, challenges and their impacts, along with remedial measures, would be analyzed for the best implementation through the stakeholders in Pakistan to rehabilitate, resocialize, and reintegrate juveniles in Pakistan.

Statement of the Problem

Although the Juvenile Justice System Act (JJSA) of 2018 provides a strong theoretical basis for dealing with juvenile offenders, it is ineffective without actual implementation. The system faces considerable obstacles, and the failure to enforce laws and discrimination cases limits its efficacy and fairness. These difficulties stem from a lack of coordination and monitoring systems, poor resource allocation, and a lack of legal understanding and expertise among participants. Moreover, social and economic disparities, gender bias, and ethnic or religious discrimination exacerbate the issue. As a consequence, the denial of rights, hindered rehabilitation, the perpetuation of social and economic inequalities, and eroded confidence in the legal system have emerged as pressing concerns. Resolving these problems is crucial for establishing a juvenile justice system that ensures the protection of rights and facilitates the rehabilitation, reintegration, and resocialization of young offenders in Pakistan, as guaranteed by Article 9 of the Constitution of Pakistan.

Research Methodology

The research was conducted by adopting qualitative data analysis, collecting data from primary and secondary sources to identify the factors responsible for the non-implementation and discrimination in the juvenile system of Pakistan. The research will analyze the data and put forward recommendations for policymakers.

Analysis and findings

It is important to critically assess the non-implementation of laws and discrimination in Pakistan's juvenile justice system. This policy paper applied a variety of analytical approaches, such as situational, legal, stakeholder, and

PESTLE analysis, in order to identify the issues and offer a way forward.

SITUATIONAL ANALYSIS

Statistics reveal that about 1,500 to 2,000 juvenile offenders are in Pakistani jails, with approximately 90% awaiting trial. In Punjab, 540 minors, including teenage girls, were detained by April 2021, with over 464 awaiting trial. In Sindh, around 260 minors are imprisoned, Khyber Pakhtunkhwa has 510, and Baluchistan has around 55 (Rafique, 2017).

According to Sajid (2009), Pakistan's 29.5% birth registration rate makes it challenging to determine the exact age of individuals accused of violating penal law. The state must take pertinent actions to amend laws, policies, and institutional frameworks accordingly. Before the promulgation of the Juvenile Justice System Ordinance (JJSO) 2000, only the provinces of Punjab and Sindh had juvenile laws, whereas Baluchistan and Khyber Pakhtunkhwa had none.

Over the past five decades, several national laws have been enacted to safeguard the rights of juveniles. The most recent law in Pakistan is the JJS Act 2018; however, due to implementation issues and general ignorance, it has not been successful. Additionally, there is inadequate infrastructure to deal with this specialized subject, such as separate courts for juveniles, rehabilitation institutions, and pre-trial detention centers.

The juvenile justice system in Pakistan falls short in fully safeguarding the human rights of juveniles. Although Pakistan has ratified international treaties like the UNCRC and the International Covenant on Civil and Political Rights (ICCPR), and enacted native legislation to protect the basic human rights of juvenile offenders and promote their reintegration into society, challenges still exist (Malik, 2019).

LEGAL ANALYSIS

Legal Framework

In Pakistan, the foundation of the juvenile justice system originated with laws introduced by colonial masters before the country gained independence in 1947. These laws, such as the Reformatory Schools Act 1897 and the Borstal School Act 1926, aimed to provide specialized institutional treatment for young offenders to facilitate their rehabilitation (Jabeen, 2013). The Constitution of Pakistan serves as the supreme law of the land, offering numerous guarantees and safeguards for children's rights.

The Juvenile Justice System Ordinance of 2000

The Juvenile Justice System Ordinance of 2000 was adopted to develop a fair, centralized, and standardized system to deal with juvenile offenders. This

legislation substantially complies with globally accepted guidelines and methods for addressing the needs of young people engaged in criminal activity. The adoption of the Juvenile Justice System Ordinance marked a significant turning point in Pakistan's attempts to protect and advance the welfare of young offenders. The main goal of this ordinance was to create a comprehensive legislative framework that prioritized juvenile offenders' rehabilitation and effective reintegration into society while attending to their basic needs. To achieve this, the law established specialized juvenile courts, which were crucial in managing cases involving young criminals.

The Juvenile Justice Act, 2018

The Juvenile Justice System Ordinance 2000 failed to adequately protect child delinquents, subjecting them to harsh and outdated punishments, as seen in the case of Sher Ali in 2001 and Mohammad Nadeem's excessive prison sentence. The slow implementation of JJSO 2000 resulted in significant and irreversible harm to the concept of a juvenile justice system, with many children suffering cruel penalties. To address these issues, the Juvenile Justice System Act 2018 was passed, aiming to establish specific measures for the legal protection of child offenders and ensure the new law supersedes conflicting legislation.

However, despite the enactment of JJSA 2018, minors in Pakistan continue to experience discrimination and violence within police stations and prisons. In addition to police custodial deaths, questions have been raised regarding the implementation of JJSA 2018. The law stipulates that arrested children should be kept in observation homes instead of police stations and that their parents, guardians, and probation officers should be informed of the arrest (Iftikhar, 2019). The Priyantha case serves as an example of the juvenile justice system's functioning, with separate trials held for juvenile and non-juvenile accused individuals in accordance with JJSA 2018.

In Pakistan, a lack of clear legislative guidelines and implementation of the convention against torture results in minor offenders being subjected to abuse, murder in custody, and rape during investigation by police and incarceration. A notable local incident in Peshawar, involving the death of a 14-year-old boy, highlights the need to review the circumstances under section 176 of "The Code of Criminal Procedure (CRPC)" 1898 to determine the true cause of his death while in police custody.

Although JJSA 2018 allows for the establishment of observation homes separate from police stations, juvenile prisoners in Pakistan still face an outdated and unjust penal system. Children's innocence and naivety are further corrupted in adult jails, where they are influenced to become hardened criminals. The inadequate juvenile justice system in Pakistan is a primary source of this problem, with only two borstal facilities for

approximately 1,400 juvenile prisoners, including 20% girls. Furthermore, 90% of them are awaiting trial, and in some cases, they wait until adulthood, after which they receive life sentences and are executed without being given the opportunity for rehabilitation.

Stakeholder Analysis

Many stakeholders are involved in the implementation of the juvenile justice system in the country to ensure the rights of juveniles on one hand and commitment to international agreements on the other. Important stakeholders include police, probation, prosecution, courts, and correctional institutions.

Police System

In any criminal justice system, the police are the most important and first agency. Pakistan's police department lacks trained staff to deal with juvenile case investigations, prevention, awareness, training on juvenile justice laws, and an online data system for juveniles in conflict with the law. The Police Child and Women Protection Committee (PCWPC), a new database system for young offenders and victims, and the development of the Police Child Protection Centre (PCPC) in Peshawar are just a few examples of individual efforts being made to improve the problem. The formation of a Juvenile Justice Working Group (JJWG) at the provincial level, with police playing the major role in KP, is one of several initiatives being coordinated and organized by Pakistan's National Police Bureau. A lack of clear legislation in Pakistan's implementation of the convention against torture results in minor offenders being subjected to abuse, murder in custody, and rape during police investigations and incarceration.

Prosecution System

The Prosecution Ordinance, 2005 in Pakistan has made it an autonomous department and separated it from the police. The prosecutors are tasked with defending the stand of the police in the court of law, but a lack of coordination, low interest, and lack of specialized prosecutors often add to the miseries of juveniles.

Judiciary/Courts

The concept of juvenile court is central to dealing with case hearings and providing justice to juveniles. The courts in Pakistan face various issues like a huge number of cases, lack of mechanisms regarding the prioritization of various types of cases, and the absence of specialized courts for juveniles.

Probation System

Probation is an alternative method to imprisonment, where a probationer is required to act properly and refrain from indulging in unlawful acts to prevent going to jail. The probation system and its importance are not widely understood, providing an opportunity for other stakeholders to exploit juveniles in various forms.

Associated Agencies

The primary components of the juvenile justice system are the police, probation, prosecution, courts, and correctional institutions. However, secondary components and associated agencies must also be taken into account, such as the Social Welfare Department. Parents, teachers, and the state should all be concerned about juvenile delinquency. Since having numerous children is encouraged in Islam, good child rearing and education are the responsibility of the parents. Theologians should give precise information about Islamic doctrine regarding childbirth and education.

International Best Practices

International best practices in the juvenile justice system aim to ensure fair treatment and rehabilitation of young offenders. These practices are based on international agreements, guidelines, and conventions that prioritize children's rights and welfare. The Beijing and Tokyo Rules emphasize preventing unwarranted detention and providing educational opportunities, while the UNCRC emphasizes diversion, rehabilitation, and reintegration programs. These best practices encourage restorative justice strategies, community involvement, and age- and culturally-appropriate therapy throughout the judicial process.

PESTLE Analysis

Political Factors

Lack of political will to prioritize the implementation and reform of the juvenile justice system.

Political instability and changes in government may hinder the consistent enforcement of laws and policies.

Influence of powerful interest groups that may undermine efforts to address discrimination in the system.

Economic Factors

Limited financial resources allocated to the juvenile justice system, leading to inadequate infrastructure, training, and staff.

Socioeconomic disparities contribute to discrimination, as marginalized groups may struggle to access legal representation.

Social Factors

Prevalence of cultural and societal norms that perpetuate discrimination against certain groups, such as gender or religious minorities.

Lack of awareness and understanding among the general public about the rights of juveniles and the importance of their rehabilitation.

Technological Factors

Limited use of modern technology in the juvenile justice system, leading to inefficiencies in handling cases and monitoring progress.

Inadequate information systems and databases that hinder data collection and analysis for evidence-based decision-making.

Environmental Factors

Poor conditions in detention centers and lack of access to basic amenities, which can negatively impact the physical and mental well-being of juveniles.

Environmental challenges, such as natural disasters or conflict, may exacerbate the vulnerabilities of juveniles in the justice system.

Legal Factors

Inconsistent implementation and enforcement of laws and regulations related to juvenile justice.

Laws and policies may not adequately address discrimination or protect the rights of juveniles, leaving room for biased decision-making.

Overall, these factors contribute to the non-implementation of juvenile laws in Pakistan. Addressing these issues requires a comprehensive approach that combines political commitment, allocation of resources, public awareness campaigns, technological advancements, and legal reforms.

CHALLENGES

The policy paper addresses difficulties and problems identified during the analytical process, including:

Discrimination

Discrimination refers to the treatment of juvenile offenders based on social, economic, or geographical backgrounds, affecting access to legal counsel, education, and rehabilitation facilities. This prejudice hinders the system's ability to provide equitable protection and support for juvenile offenders.

Social and Economic Inequalities

Social and economic disparities in the juvenile justice system cause unequal access to legal counsel and rehabilitative resources, disproportionately harming marginalized adolescents. These discrepancies can prolong criminal cycles and reduce rehabilitation prospects, affecting their likelihood of reintegration into society.

Gender Bias

Gender bias in juvenile justice refers to the unfair treatment of boys and girls based on gender, resulting in distinct punishment and rehabilitation outcomes. This bias can exacerbate unequal treatment and reinforce stereotypes.

Ethnic and Religious Bias

Ethnic and religious bias in juvenile justice refers to the unfair treatment and disproportionate impact on young people from specific ethnic or religious backgrounds, potentially compromising justice and equality.

Lack of Legal Awareness

The lack of legal knowledge among juveniles exposes them to exploitation and unfair treatment. Increasing adolescents' understanding of the law can help safeguard their rights and prevent exploitation.

Inadequate Infrastructure

Inadequate infrastructure in the juvenile justice system hinders essential care, rehabilitation, and education for young offenders, jeopardizing their smooth reintegration into society. Improving facilities and resources is crucial for a more effective and humane system.

Resource Allocation

Resource allocation is crucial for securing financing for rehabilitation programs, mental health services, and educational opportunities within juvenile justice, promoting reintegration and reducing recidivism rates.

Weak Coordination

Ineffective coordination in juvenile justice leads to fragmented efforts, uneven interventions, and inadequate rehabilitation and well-being assistance.

Monitoring Mechanisms

Monitoring systems in juvenile justice are essential for ensuring legal compliance, protecting rights, and promoting rehabilitation initiatives.

Legislative and Institutional Gaps

Legislative and institutional gaps in juvenile justice lead to unequal treatment and limited rehabilitation access for young offenders. Addressing these gaps is crucial for a fair and effective system that prioritizes well-being and successful reintegration.

Conclusion

To conclude, it is evident that Pakistan's juvenile justice system highlights the pressing challenges arising from the non-implementation of laws and instances of discrimination. The examination has identified several contributing factors, including limited legal awareness, insufficient resource allocation, coordination deficiencies, and social inequalities. Discrimination based on various factors further compounds the difficulties faced by juvenile offenders.

Addressing these challenges is vital to establishing an equitable and effective juvenile justice system in Pakistan. The recommendations presented offer a roadmap for tackling the identified issues. Strengthening legal awareness, improving resource allocation, establishing coordination mechanisms, and combating discrimination are key areas requiring attention. Additionally, enhancing monitoring and evaluation processes, promoting restorative justice approaches, and engaging civil society and non-governmental organizations can contribute to positive systemic reforms.

The successful implementation of these recommendations requires collaborative efforts from relevant stakeholders, including governmental entities, law enforcement agencies, the judiciary, social welfare departments, civil society organizations, and the wider community. Adequate resource provision, capacity-building initiatives, and policy reforms are essential elements of this process.

By addressing the challenges related to the non-implementation of laws and discrimination, Pakistan can foster a juvenile justice system that upholds the rights of young offenders, ensures their rehabilitation, and facilitates their reintegration into society. Ultimately, a reformed juvenile justice system will promote a more just and inclusive society, enabling every young person to fulfill their potential.

Recommendations/Way Forward

Children are the most important element in every society and the foundation upon which any nation's future is built. They are regarded as the most

essential and valuable asset in every community. Based on the analysis carried out, the following recommendations are proposed to maximize the effective utilization of the Benazir Income Support Programme and alleviate poverty in the country:

Legal Awareness and Capacity Building

Efforts should be made to enhance legal awareness among stakeholders, including law enforcement officials, judges, lawyers, social workers, and the public. Training programs and workshops can be conducted to ensure a better understanding of the juvenile justice system and its principles.

Resource Allocation and Infrastructure

Adequate resources should be allocated to the juvenile justice system, including funding for rehabilitation programs, staff training, and infrastructure development. This will help improve the quality of services provided to young offenders and ensure their proper rehabilitation.

Coordination and Monitoring Mechanisms

Strong coordination and monitoring mechanisms should be established to ensure the effective implementation of the Juvenile Justice System Act. This can involve creating specialized bodies or committees responsible for overseeing the functioning of the system and addressing any issues that arise.

Addressing Social and Economic Disparities

Efforts should be made to address social and economic disparities that contribute to the challenges in the juvenile justice system. This can include providing equal access to education, healthcare, and social services, as well as addressing poverty and inequality.

Combating Gender Bias and Discrimination

Gender bias and discrimination, along with ethnic and religious discrimination, should be actively addressed within the juvenile justice system. Training programs can be implemented to sensitize stakeholders about the importance of treating young offenders without bias and ensuring their rights are protected regardless of their gender, ethnicity, or religion.

Rehabilitation and Reintegration Programs

Effective rehabilitation and reintegration programs should be developed to help young offenders reintegrate into society. These programs can include educational opportunities, vocational training, counseling services, and support for their families.

Social and Economic Disparities

Discrimination based on social and economic factors is a significant challenge within the juvenile justice system. Juvenile offenders from marginalized communities, economically disadvantaged backgrounds, and minority groups often experience unequal treatment and outcomes, perpetuating existing disparities.

Gender Bias

Gender bias and discrimination persist within the juvenile justice system, particularly affecting female juvenile offenders. Cultural norms, limited access to resources, and societal perceptions create additional challenges for them. Gender-sensitive approaches are essential to addressing these disparities.

Ethnic and Religious Bias

Discrimination based on ethnicity and religion exacerbates challenges within the juvenile justice system. Bias against certain ethnic or religious groups can result in differential treatment, erode trust in the system, and perpetuate cycles of discrimination.

Legislative

A discrepancy exists between the existence of laws designed to protect juvenile offenders' rights, such as the Juvenile Justice System Act 2018 (JJSA 2018), and their actual implementation. Despite the enactment of JJSA 2018, effective enforcement and adherence to its provisions are lacking, highlighting a failure to translate legislative intent into practical action.

Institutional

Various institutions involved in the juvenile justice system, including law enforcement agencies, the judiciary, and correctional institutions, exhibit gaps in practices and capacities. These gaps manifest as discriminatory treatment, inadequate personnel training, resource deficiencies, and overcrowded facilities. Failing to bridge these gaps hinders the proper functioning of the juvenile justice system and perpetuates discrimination against juvenile offenders.

References

1. Abbas, H. G., Chughtai, A. M., & Hussain, K. (2022). Juvenile justice system in Pakistan: A critical appraisal. **International Research Journal of Education and Innovation, 3*(1), 76-92.*
2. Hoffman, S., & Baergg, C. (2011). **Juvenile justice in Ghana: A study to assess the status of juvenile justice in Ghana**. Commonwealth Human Rights Initiative.
3. Howell, J. C. (1980). **Juvenile justice: Before and after the onset of delinquency**. United States Discussion Paper for the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.
4. Iftikhar, K. (2019). Does a juvenile get a better law this time? A comparative review of the new and old juvenile laws of Pakistan. **LUMS LJ, 6*, 102.*
5. Jabeen, T. (2013). Pakistan's child protection legislative and policy frameworks: A critical review. **Pakistan Journal of Criminology, 5*(2), 159.*
6. Lotse, C. (2006). **Juvenile justice in South Asia: Improving protection for children in conflict with the law**. Kathmandu, Nepal: The United Nations Children's Fund (UNICEF), Regional Office for South Asia.
7. Malik, W. A. (2019). The juvenile justice system and the right to dignity of juvenile offenders in Pakistan. **PLR, 10*, 141.*
8. Mallow, M. S. (2015). Juvenile delinquency in Malaysia: Current issues and promising approaches. Paper presented at the 2nd International Conference on Education and Social Sciences (INTCESS '15).
9. Rafique, A. (2017). Report on juvenile delinquency in Pakistan. **Daily Times**.
10. Sajid, I. A. (2009). Juvenile justice policy: Gaps identification and role of key stakeholders in Pakistan. **Pakistan Journal of Criminology, 1*(3), 119-138.*
11. Shah, S. A., Balasingam, U., Salman, N. W., Dhanapal, S., & Ansari, K. M. (2020). Restorative juvenile justice system in Pakistan: An overview. **International Journal of Criminal Justice Sciences, 15*(2), 266-282.*