



## JUVENILE DELINQUENCY, AGE OF MAJORITY, AND PROTECTING JUVENILE RIGHTS IN PESHAWAR: A LEGAL ANALYSIS

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### Abstract

*This research article examines the issue of juvenile delinquency and the age of majority in Peshawar, Pakistan, in the context of pre- and post-conviction. The article begins with a discussion of juvenile delinquency and its various causes, as well as the correction methods currently in place. The article then moves on to examine the rights of children, both in Islamic law and Pakistani law, and highlights the conflicts that exist between these two legal systems. The article also discusses the Majority Act of 1875 and its impact on the age of majority in criminal cases. Additionally, the article sheds light on the role of reformatory schools in correcting juvenile delinquency and the conditions of juvenile jails in Pakistan. Finally, the article addresses the core issues faced by juveniles in the protection of their rights both pre- and post-conviction in Peshawar.*

**Keywords:** Juvenile delinquency, Age of majority, Juvenile rights, Peshawar, Islamic law, Pakistani law, Reformatory schools, Juvenile jails

### INTRODUCTION

The Juvenile delinquency has been topic of discussion among different scholars and academics since the last century with the awareness about rights of children as and when advocated by International Organizations. Children have been involved in commission of crimes because of many reasons some of which have been discussed in the chapter. The child delinquency has been defined by different scholars in different themes, some taking the nature while others taking the causes



of the juvenile offenders. Islam has recommended the violation of the rights of children as sinful and has made these offences against them punishable while it has also defined the minimum age of criminal liability for children. Peshawar has been taken as a case law in order to ascertain the issues faced by the juveniles from the registration of cases to the decision of the case as well as release of juveniles on parole etc. the chapter analyzes those issues in the light of available literature (Hilal, A. 2021).

## **JUVENILE DELINQUENCY**

It is the commission of offences which are committed by underage persons. A juvenile delinquent is a person who being underage commits an offence by violating the criminal substantive laws such as penal code and other laws like control of narcotics, antiterrorism etc. Teenagers could be vulnerable to making mistakes or committing offences as they are not usually in their control since they are still developing emotionally and intellectually. Juvenile delinquency can result from a range of factors, and teenagers can break the law for a variety of reasons. (Farrington, D. P. 1992). There are several schools of thought about the main causes of adolescent delinquency. However, it is undeniably true that kids who experience abandonment, abuse, or hardship are statistically more prone to enter a cycle of delinquency. It should be noted that delinquent behaviour is not restricted to the situations stated above; teenagers who have loving and respectable parents and suitable living arrangements can also engage in delinquent behaviour. Any behaviour that may constitute a crime if performed by an adult is referred to as juvenile delinquency. Child maltreatment is a terrible form of criminal behaviour. If a minor under the age of 18 commits delinquency, it may be regarded as a crime (Iqbal, K. 2009).

However, if an adult commits the same behaviour, it is not a criminal. Juvenile delinquency is the age at which any unlawful behaviour was committed. Seen between ages of 7 and 18, kids are in command of their own activities. According to British old legislation, child below seven years of age having not enough competent to distinguish between good and wrong, hence they do not have criminal intent. Between the ages of 7 and 18, a kid is considered a juvenile, and aberrant behaviour is considered juvenile delinquency. (Saqib et al., n.d.) The ages of the children are deemed liable for their delinquent conduct in various nations based on their sensitivity to the nature of actions and criminal legislation. It is normal for people to behave differently; there are numerous factors that influence how people of all ages behave and ultimately determine whether their conduct is asocial or social. The judicial system has formulated laws to punish and deter those who commit crimes—acts that are thought to be contrary to the society's present rules and regulations.

The term "juvenile delinquency" describes criminal offences perpetrated by a teenager who has not yet attained maturity. It's crucial to grasp the difference between the terms "delinquent" and "recidivist conduct," since the former refers to a young person who has deviated from accepted norms and the latter to a specific act of delinquency that violated the law. A youngster who destroys a school window or  fights with certain other teenagers is not immediately labelled as a delinquent unless a



string of similar offences are performed. Status crimes and felonies are the two main categories of juvenile criminality. Acts like violent assault, robbery, murder, arson, theft, and related drugs are illegal and will be regarded as offences whether they are done by a child or an adult. The criminal justice system focuses primarily on these actions, and prompt action is taken to stop them. When performed by an adult, status violations like leaving home, staying out late, smoking, and leaving work early, for example, would not be seen as crimes; yet, if committed by an adolescent, all of these actions would be seen as crimes by their very nature (Dore, C. L. 2007).

Children below the age of seven were not considered legally responsible for crimes under British common law. because it was believed that youngsters under the age of seven had the necessary criminal intent to be found guilty. Children under the age of seven were thought to lack the capacity to distinguish between good and wrong. According to Neil Postman (1982), children had control over their words by the time they were 7 years old, which is why authorities decided that this was the appropriate age for delinquent behaviour. Due to the fact that this legislation fell under the puritanical authority of the colonists of America, it was implemented in Massachusetts in 1646 and required deviant or perceived rebellious youngsters to submit to their parents' authority.

The term "juvenile delinquency" refers to behaviour that violates the criminal law and is engaged in by a young person who has not reached adulthood. Delinquent is the official term or label given to a person under the age of 18 who has strayed from social standards and is designated as a specific act of delinquent conduct that violates the penal law. Understanding this term and delinquent act is crucial. A youngster who destroys a school window or fights with other young people is not immediately labelled as a delinquent unless a string of similar offences are performed. Generally speaking, there are two categories of juvenile delinquency: Felony crimes and status offences. Acts including aggravated assault, robbery, murder, arson, theft, and related drugs are illegal and will be regarded as offences whether they are done by a child or an adult. The criminal justice system places a high priority on these actions, and prompt action is taken to stop them. Even if status breaches, such as running away from home, leaving home late at night, smoking, and quitting employment early, would not be deemed criminal crimes if performed by an adult, the same behaviours would be criminal in nature if committed by a teen.

In Pakistan and worldwide, antisocial child and adolescent behaviour is considered criminal delinquency. Children and teens who participate in antisocial behaviour, for instance, violate society's core principles, rights, and laws; for instance, spreading lies is against the law, cheating is an infringement on one's property rights, and evading class is against school policy. Conduct that violates the law is considered to be part of a social pattern of juvenile delinquency. Industrialization, increasing urbanization, and existing working-class circumstances have all contributed to Pakistan's problem of juvenile delinquency and criminal inclinations. Social disparities have also emerged, such as divergent rates of urban and rural growth, unemployment rates, and In this situation, social reformists asked that the family, societal structures, and the government take a different posture and that immediate action be taken to address this unique social issue of the children's society (Dore, C.



L. 2007).

### **Juvenile inmates**

The concept of juvenile information is inextricably linked to "closeness'." Due to a few areas' apparent lack of effective record-keeping, situations such as young liable groups being viewed as adults, and the associated societal stigma, the reason why there are so many active condemned or condemned losers in Pakistani penal institutions is still unclear. It is challenging to get explicit data as per the provisions of Right to information due to lack of adequate record-keeping (RTI). According to actual information provided by Punjab's regulatory authority, there are currently 599 juvenile detainees, of which 529 are being tried and 70 are being sentenced. It is heartbreaking that 599 of these inmates are men, and the group doesn't share information about female juvenile offenders or kids housed in jails with their relatives. In Sindh, there are now 181 juvenile offenders housed in four provincial jails. 13 of these kids have been found guilty, and 168 of them are facing charges. Data on female minors incarcerated in Sindh jails are not accessible, as they are in Punjab. Khyber Pakhtunkhwa allegedly has 338 young offenders. Of those 338, 27 have been found guilty, and 311 are awaiting trial. No information is available on female juvenile detainees at KP. Speaking about Baluchistan, the official data indicates that there are 70 juvenile inmates. However, there are no numbers available on the number of people being charged and the number of people being sentenced. However, 4,000 juvenile prisoners were housed in various common jail institutions as of October 2017, according to Sardar Abdul Khetiran, a JUI-F common legislator from Baluchistan, and 99 percent of them were raped. They had nothing to say after learning about this enormous numerical difference, which Khetiran had authoritatively recorded and quoted. 1500 teenagers were detained in Pakistan in 2013, with 673 being held in the province of Punjab, Sindh having 262, KPK having held about five hundred, fifty five in Balochistan. Pakistan's then Chief Justice took *Suo Moto* notice of this probe in 2013 (Kupchik, A. 2007).

### **Obnoxious conduct of Juveniles**

Various ways in which torture is being committed under forces supervision, many of them do not get reported, is horrifyingly upsetting. At the young current school in Karachi, where 200 children were present, a clinical gathering discovered that nearly 60% of the children had experienced real torture, including over-the-top beating, electrical stager, giving, and cheera (obligated broadening isolated from the hands, frequently in combination with kicks to the genitalia). After their mother was apprehended by authorities while being held responsible for Zina, Raabia, 8, and her sister, 5, were specifically beaten, as was shown before dawn 2004. All five of Perveen's children were living with her family, and her significant other was also incarcerated for a holding-on-offence.. Despite this, nearly every one of the remaining 85,000 prisoners (compared to a 31,000) works even worse than the animals. Every jail in Pakistan is overcrowded, and every prisoner snoozes on the partitions. The majority of convicts are damaged individuals who frequently act inappropriately. Detainees who use the latrines, which are dirty and situated in a common cell, frequently suffer from skin diseases like



scabies (Lewis, D. O. 2004).

### **Correction of juvenile delinquency**

The two types of programmes listed below are effective in reducing juvenile delinquency: I Individual Program: Individual services for clients include counselling, psychotherapy, and professional development. (ii) Environmental programme: The Environmental Strategy seeks to ameliorate the socioeconomic conditions thought to contribute to crime. These two categories of preventative strategies are shown by the procedures that are used in crime prevention initiatives. In every nation that demonstrates a degree of commitment to children's rights agreed upon globally, the system of justice for treating and protecting juveniles is built based deeply rooted in the mechanism of guiding principles. A coherent plan for all these stakeholders may change the agencies' disorganized and unsuccessful attempts towards juvenile justice into organized and fruitful actions. Some of the key issues of particular concern in Pakistan's youth justice policy include the distribution of adequate funds, certain courts established solely for the juvenile offenders, forces for implementation for juveniles, improvements to custodial environments, the officers need to be trained, and certain institutions for the residence of juveniles need to be established, the creation of diversion services, and informal restorative justice activities. Since the CRC was ratified in the 1990s, it is now time for Pakistan to take significant steps toward creating a recognizable and long-lasting juvenile justice system and to put into place a comprehensive, efficient, and well-planned juvenile justice programme (Lewis, D. O. 2004).

### **Kinds of juvenile Offenders**

A juvenile offender is a male or female having not attained the legal liability age, which in most jurisdictions is eighteen years old, and who commits a crime that would be punishable under adult law. Repeat offenders and age-specific offenders are the two primary categories of juvenile offenders. Age-specific offenders are kids who have committed crimes that are unique to their age group, such as truancy or underage drinking. Repeat offenders are adolescents who have been adjudged delinquent or convicted of a crime in the past and have reoffended.

### **Causes**

Studies have demonstrated that a number of variables, such as socioeconomic status, the school to jail pipeline, biological and psychological traits, psychopathology, and family medical history, may contribute to juvenile delinquency.

Socioeconomics: It is undeniable that poverty and adolescent delinquency are related. According to studies, adolescents from lower-income homes are more likely than those from higher-income families to participate in criminal conduct. This is probably because lower-income families frequently reside in less safe communities with less possibilities for leisure and learning.



The so-called "school to jail pipeline" is another element that may contribute to adolescent misbehaviour. This issue happens when schools have unfriendly settings, are unduly punitive, and lack resources, forcing students—especially minorities—out of the classroom and into the criminal justice system.

Biological and personality aspects: According to some experts, biological and personality traits may contribute to adolescent misbehaviour. Teenagers who are impulsive or aggressive, for instance, may act out more frequently. Additionally, there is a connection between adolescent delinquency and mental health conditions including ADHD and bipolar illness.

Family medical history is another factor that may contribute to juvenile misbehaviour. For instance, kids are more likely to act in a delinquent manner themselves if their parents or grandparents have a criminal justice history (Lewis, D. O. 2004).

## **FEDERATION AND THE RIGHTS OF CHILD**

Since it has come into existence, both the national as well as the provincial assemblies have the power and have legislative authority, like in any federalist state. Typically, provincial laws or rules execute and specify a broad legal requirement provided by federal legislation. The federating units in Pakistan have long been socially and progressively advanced that the federal government in several children's rights-related issues. It has been claimed by Zarina Jailani and Anis Jilani that the Punjab legislated law of 1952 and the similarly adopted law by Sindh had been earlier laws pertaining to children that aimed to include child-centered considerations. The rights of child in Pakistan must be promoted at the national tier and hence included into the national laws, even though the efforts of the federating units to enact specific legislative safeguards for children must be warmly encouraged. Provinces may undoubtedly have a significant impact on the advancement of children's rights, but this activity must be governed and regulated by federal law. Pakistan pledged to strengthen the rights of all children living on its soil by ratifying the Convention. Leaving it up to the provinces to disseminate and carry out children's rights leads to discrimination between children from various provinces and reduces the likelihood that these rights will be carried out successfully. Understanding how policies are carried out in Pakistan requires an understanding of the division that has taken place by the separation of executive from legislatures among the federating units and the state federation. This work allocation can both help and hinder a child's rights, depending on how it is seen. Unfortunately, it appears that the execution of child-centered policy has been more hampered than assisted by Pakistani federalism (Archard, D. 2012).

### **Age of majority**

Worldwide criminal justice systems, including Pakistan's, openly acknowledge this. The Juvenile Justice System Act, which was approved in 2018, grants particular safeguards to those who are below eighteen years in Pakistan. In Pakistan, juvenile justice handles offences committed by



minors. Pakistan has a seven-year-old minimum age for criminal culpability. A 2012 SPARC assessment estimated that there were 1500–2000 juveniles (children under the age of 18) detained in Pakistan. However, this number doesn't include the thousands of uncounted undertrials. According to Anees Jillani, one of the factors contributing to the high number of youngsters encountering legal issues is section 82 of the penal substantive law which is “Pakistan penal Code” seven-year-old age of criminal culpability (No XLV) In addition, it has been stated by section 83 of the same code that nothing done by a kid who is over seven but under the age of 12 years and having not developed the mental development to appreciate the nature and ramifications of his or her behaviour at that time constitutes a crime. The Juvenile Ordinance of 2000, which was passed by the administration of General Pervez Musharraf, has not yet been fully implemented, as per SPARC ( Society for the Protection of the Rights of Children ) (2001). The most deplorable circumstances were revealed by a study of young detainees housed in 51 jails throughout Pakistan's four regions. Rehabilitation centres were rare, and the penalties exceeded the level of responsibility and thus were heinous. Most of the juveniles who had been detained were determined waiting or expecting trial. Due to their inability to provide sureties due to their poverty, under-trial inmates were unable to be released on bond (Archard, D. 2012).

### **Child Defined**

In Islamic jurisprudence, the term "minor" is referred to as sab or saghr. The terms "sab" and "saghr" denote a young person, kid or minor, respectively. Connotation saghr shows antithesis of kabr, that is Arabic for "adult," "grown-up," or "old-aged." The phrase "majority" in a legal context refers to the specific period in life when a person possess the capacity to engage in unsure behaviours or at which point they will be held entirely accountable for their actions and inactions. All of this is covered under the concept of execution competence in Islamic law. Most legal experts believe that puberty is the only time at which this competence is developed. It indicates that up to puberty, a person is considered a minor under Islamic law.

The concept of "rushd," which stands for "aqal (intellect) and tamyz (discretion or good judgement)," states that puberty serves as the foundation for the age of majority. One who possesses rushd is regarded as significant. Rushd is related with puberty since there is no way to determine if a person has it or not. At this age, it is assumed that the person has the necessary maturity and comprehension. If the opposite is established, notwithstanding puberty, they will not be regarded as majors. An illustration of this is someone who is mad. Such a person is not seen as major in the sense of taking ownership of their actions, even after reaching puberty, because they lack rushd (Archard, D. 2012).

### **CHILD IN ISLAMIC LAW**

According to Islamic law, a person is considered to be in a minority when they are born and before they reach puberty. A person who reaches physical maturity at a young age may yet lack rushd,



thus they shouldn't be regarded as major. In Pakistan, girls often reach physical maturity at a young age. In this situation, the youngster shouldn't be regarded as significant since she could lack intellect and comprehension. It will be unfair to hold her accountable for her deeds and to impose obligations on her. When a person has hit puberty, it is considered the period of liability in terms of 'ibadat (religious obligations), while mu'mlat "civil transactions" requires, however, puberty should not only decide the question of liability rather it is the Rushad which bears the liability. Everyone has the full ability to exercise their rights and fulfil their obligations once they reach puberty. If there is no evidence as to the adolescence, scholars have set a certain age for that. Varied lawyers have different opinions on this age. Imam Abu Hanfah has the age as 17 years for a girl and 18 years for a female. Another belief says that a male will enter puberty when he becomes 19 years old. Two reports are connected to Mlik. When the evidence is not supported, the age has been set as 15 years, according to one account, and eighteen years old for both sexes, according to the second. Mlik based his interpretation of the following excerpt on that of 'Abdullah ibn 'Abbs: "And come not nigh to the orphan's property, except to improve it, until he attains the age of full strength..."<sup>1</sup>

The "age of complete vigour," according to Ibn 'Abbs, is eighteen years old. Since it is assumed that girls reach puberty earlier than boys do, Ab Hanfa establishes a lower age for females. Minority ends at the end of the fifteenth year, according to Ab Ysuf and Shaibn. Jurists from the Hanbali school and Imam Shafi has to concur. Assertions made by them have been based over a story where Ibni Umer said that the Prophet forbade him from taking part in jiidh at the age of fourteen in the battle of Uhad. However, the Prophet authorised him to participate Ghazwa Khandaq at the time of participation his age was 15 years. In this situation, Zhirs do not specify a certain age.

Puberty has a specific age since male and female get discretion and understanding at this point. Only in the absence of evidence of puberty will the law give effect to this assumption. The youngster will be regarded as major if the first indications of puberty appear before reaching the specified age. It is generally agreed that the minimum age at which legal capacity is achieved is when evidence providing whether a human being male or female has attained the age, notwithstanding the jurists' differing viewpoints about the age of majority. A majority cannot be reached before this age. Regarding the age of puberty, the majority of schools discriminate against boys and girls, typically setting an early age for girls. The age of majority for managing ownership as well as the majority age for other reasons are two different things in Islamic law. Yet another thing which is considered in all circumstances is the Puberty, with the exception of assets administration, as was previously stated. The majority age is also the age of discretion or good judgement when it comes to property management. According to the Hanaf, puberty and school discretion usually go hand in hand, and when a child reaches puberty, he or she also has the authority to control their property. However, this assumption may be refuted. If good judgement is not immediately apparent, Ab Hanfah believes that a person should not be given property until they are twenty-five years old. Other schools hold that when such discretion is not being got by person despite having reached a certain age, they are assumed

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<sup>1</sup> Q 6:152.



to be discreet at the age of 18, unless the opposite can be proven. If there is a disagreement about a kid's age, the court may seek assistance or order the police officials in order to get the real position of a person having attained the age and whether the same being female, shall be accompanied by a female constable directed by the court. As long as the kid has achieved the minimal age of majority, it is appropriate for the kid or his legal appointee to acknowledge onset of puberty. It has not been specified by Quraan and Sunnah as to which age that can be regarded the legal age in the absence of evidence of puberty, there are differences of opinion among jurists about this issue (Fitriah, S. 2021).

## CHILD IN PAKISTANI LAW

The majority rule, predicated on reaching puberty, is regarded as being an unreliable standard. Girls often reach puberty at a younger age, which is discriminatory, particularly in terms of criminal liability. The age of criminal and civil liability having been fixed at 18 years has been consistent with other Majority laws by majority of Islamic nations in similarity to this, would be rooted in certain fuqah's beliefs. Until the opposite is demonstrated, it is assumed that a person has gained good judgement at the age of eighteen. The Pakistan Penal Code's Sections 82 and 83 define culpability in terms of age of a person. Prior to amendment in criminal law, it was asserted that persons under 7 years of age were not legally responsible for any crimes they may have committed, but children among 7 and 12 of age could be held accountable if the court found that the child had reached a sufficient level of maturity to understand and weigh the seriousness of the consequences of their actions. The definition of "sufficient maturity" is ambiguous, and the legislation contains no instructions on how to make this assessment. It grants judges broad latitude and allows for arbitrary judgements on their behalf. This clause violates Islamic law as well since a kid under the age of majority (*sab mumayyaz*) is only permitted to engage in financial transactions and is not responsible for any criminal offences until they reach adulthood.

In the light of the legal maxim of *doli incapax*, that pertains to assumption that minors are considered guiltless, considered to be incapable of harming others below a specific age, is the foundation for exceptions contained in the Pakistan Penal code. This clause also goes against the CRC's directives, which call for the criminal responsibility age to be set at a fair level. In order to bring the framework in accordance with the Convention on the rights of child, it has been reiterated time and again, the criminal liability needed to be brought down. A kid is deemed liable for criminal acts in Islamic law and is thought to have reached puberty at the age of fifteen, according to the majority of jurists. Sections 82 and 83 of the Pakistan Penal Code 1860 were amended in 2016 as a result of a decision made by the legislature to raise the age of criminal liability. It was the amendment in the penal law that set the age of criminal liability at 10 years to minimum age. The court will determine whether or not the offender should be charged with a crime based on the offender's maturity level between the ages of ten and fourteen. Everyone is liable for all of their illegal acts after the age of fourteen. According to the other provision of the penal law, the age for male has been set at fourteen and sixteen for a female child when it comes to the crime of abduction. According to Pakistani law, there is a distinction between a kid who is *sab mumayyaz* (having choice) and a child who is *sab ghair*



mumayyaz when it comes to the the child's age for general criminal responsibility (below the age of discretion). Hudood Ordinances which are considered as similar laws that runs alongside the Pakistan Penal Code. There are no age restrictions under this law. The terms "man" and "woman" are used in the Ordinance without being defined. According to the Pakistan Penal Code, a "woman" has been defined female human ad could be any age, including children. A "man" is a male human with no limitation on age.. The Hudood Ordinances of 1979 define a kid as a someone who has not reached puberty. Pakistan passed the Juvenile Justice System Ordinance in 2000. (JJSO). As both laws are federal, neither supersedes the other despite the fact that the JJSO and the Pakistan Penal Code have differing definitions of a juvenile (Munir, M. 2014).

Zina Ordinance as promulgated in the year 1979, declared in Section 3 that this Ordinance would take precedence over all other laws. The section was repealed on the introduction of women protection ordinance later with some other legislation. The ordinance on the offence against properties Section 3 further declares that for the duration of its enforcement, this Ordinance supersedes all other laws. However, this legislation has not changed and is still in effect when it comes to crimes against property.

Although the Majority Act of 1975 established a basic rule stating and considering any human being below eighteen years as a minor, several laws now in effect in Pakistan have issues with how children are defined and how minimum ages are set for certain activities. The minimal age of criminal culpability is seven years old, according to Penal Code Section 82. According to Section 83, children having attained 7 years but are less than 12 years of age may only engage in criminal activity after they have "attained sufficient maturity of understanding to judge of the nature and consequences of his behaviour." Any human beings below the age of 18 are considered as minors offender, are additionally guaranteed special protection by the Juvenile Justice System Ordinance 2000. There is no set legal age for consent to sexual activity in Pakistan because extramarital sex is not permitted. According to the Child Marriage Restraint Act of 1929, a man should have attained the age of eighteen years, and a woman must be at least 16 years old. Marriage is punished by fine and jail for anyone under certain years, although the legislation does not void the union. As a result, it is usual in Pakistan for a male parent or guardian to marry off their underage kid without getting their permission. A girl will be regarded as legally wedded and able to engage in sexual activity after she has been pledged in marriage and the act has been recorded. Pakistani law does not consider marital rape of a child under 12 to be a crime.<sup>2</sup> A kid is defined as a human being below 15 years under the Children (Pledging of Labour) Act, 1933, and any agreement to pledge a child's labour is void. By forbidding the occupation of kids who are underage in any hazardous occupation, Article 11 sub article 3 of the Constitution lowered this time restriction. The Employment of Children Act, 1991 tries to control the working conditions for children under the age of 14 and prohibits their employment in hazardous jobs while adhering to the Constitution's definition of employment of children (Munir, M. 2014).

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<sup>2</sup> Marital rape is recognised when the girl wife is under 12 years, in which case section 376 of the Penal Code provides imprisonment for maximum 2 years and fine.



## **CHILD IN CONFLICT**

Various enactments in the country have covered the areas where children have been in conflict to the grunts of legislation. The Convention's Articles 37 and 40 provide the fundamental norms for treating children who are in legal trouble internationally. The Committee has said that the juvenile justice policies and procedures of the United Nations could be viewed in order to better frame the application the rules mentioned above. The "UN protection of juvenile deprived of their liberty, rules for prevention of juvenile delinquency, and the UN Standard Minimum Rules for such Management of Juvenile Justice (Beijing Rules) are these provisions (Riyadh Guidelines)". As stated by Human Rights Watch, juvenile justice "is built on the adjudication of children's cases with a view to their rehabilitation and early reintegration into their communities". It comprises distinct custody engagements for child, the factual to legal representation, the prompt handling different situations and the available remedies instead of punishment options like probationary release or awareness and educational programmes. The Treaty forbids the use of the torture, death penalty, or any other cruel, inhumane, or degrading punishment or treatment. Human Rights Watch declared in 1999 that Pakistan's juvenile justice system fell well short of the standards set out by international agreements. According to "Prison Bound: The Denial of Juvenile Justice", an organisation working in human rights, kids are routinely subjected to physical torture, are given harsh punishments (including the death penalty), are housed in dormitory-style barracks, frequently share overcrowded cells with adults, are denied access to adequate education and training opportunities, and are victims of hard discipline. In Pakistan, juvenile justice has long remained contentious human right problem. The greatest helpless sufferers of the delayed as well as ineffective legal system have been children. It is believed that there are 4.000 kids behind bars worldwide. Approximately 92 children were held in the southwest Baluchistan province in 2001, Sindh has seen above six hundred, Khyber Pakhtunkhwa has seen about seven hundred, the province of Punjab has seen about twenty five hundred as per information from the Society for the Protection of the Rights of the Child "SPARC". The Pakistan Criminal Procedure Code, and other federal and provincial legislative documents all addressed protecting children who were in legal trouble until the year 2000. The two provincial law texts substantially followed the Convention's provisions for young offenders, although the two federal codes did not. Unfortunately, these provincial regulations continued to be ineffectively and partly administered, as Anees Jilliani and Zarina Jilliani emphasise (Munir, M. 2014).

## **EVILS IN PAKISTANI LAWS**

The concept of a kid under Pakistani law is inconsistent, and the highest age restriction varies depending on the objective, falling between twelve and eighteen years old. The inconsistent way in which child has been defined in Pakistani legislation has drawn the attention of UNCRC. For at least one category or branch of law to be applied in Pakistan, the definition of a child must be consistent. For example, the age of majority must be reasonable and uniform throughout all criminal laws. The UNCRC "United nations Committee on the Rights of Child" also brought up Pakistan's extremely young legal age as a concern. There is a perplexing difference as a result of these conflicting



definitions of the kid since the piece of legislation is capricious as well has changed effect in changed circumstances. In the lack of evidence of puberty, neither the Qur'an nor the Hadith provide an age that may be used as the age of majority. If there is no evidence of puberty, Muslim jurist set a certain maximum age of liability. Varied lawyers have different opinions on this age. As per the view of Imam Hanifa the same is 18 years in case of male and 17 years in case of female.

According to Ibn Malik, the puberty age has been set as 18 years for both males and females in the absence of evidence of puberty. The Act of 1875's definition of a kid is consistent with Mlik's viewpoint and, to a lesser extent, Ab Hanfah's viewpoint as well as the Convention on the Rights of Child. Consistency might be brought when the age is set as eighteen years, which would be in accordance with the views of many of fuqahs (jurists). As earlier mentioned, the age of majority needs to be raised to 15 years. The CRC is being implemented in the country by NCCWD. A study of national law led to the passage of 2000, that has defined a juvenile as a person under the age of eighteen and forbids the execution of minors and the use of the whip. The Ordinance outlines provisions for juvenile court establishment and juvenile delinquent rehabilitation. This law is applicable to all provinces, however it was held by the Lahore High court in 2004 that the Ordinance violates the Constitution.<sup>3</sup>

The Act of 2018 has defined "observation home" as a location in which a minor may be provisionally held following a capture or while on being in jail, but it has also left several glaring points unresolved. These concerns involve things like: Who will provide and oversee this observational home? If so, would it be a separate location or a certain area inside the observation home, Anything and which kind of equipment might be connected to this location? Up till now, no observation home has been established, no province has constructed an observation home; instead, the children involved in the offences have been captured and incarcerated altogether as various adult criminals. In a similar vein, the government has not yet informed youth rehabilitation facilities (Sadruddin, M. M. (2011).

A juvenile criminal older than sixteen years old may not be granted bail by a court which can take cognizance of the case if he is accused of committing a terrible crime. There is significant concern about the misuse of this unusual alleviation in light of the society's varied sociocultural standards. Similar to this, the elimination of the death penalty, restrictions on incarceration, prohibitions on chaining or getting them handcuffed, as well as establishment of a specific diversionary procedure for the resolution involving child cases and many situations that might call into question the Act's very validity. The JJSA's directive to create unique courts as well committees in order to strive for better management of justice, consisting mainly of child court and committee, is one of its distinctive aspects. Such a committee has not yet been established by the provincial governments. However, the Punjab Government Home Department Secretary recently received a communication from the High court in which they have been requesting the creation of committee

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<sup>3</sup> Faruq Ahmqd *versus* Federal Govt, reported as 2005 PLD 15 Lah.



for disposal of child cases. Except for Lahore, special child court was not created in Pakistan but now the strife of different provinces has made this happen in the recent years. Similarly, the norms of conduct for carrying out the duties under the JJSA have not yet been established.

The JJSA's preamble lays forth its goals, including providing a system of juvenile-only criminal justice and a means for their social reintegration. According to UNCRC Article 40.4, juvenile offenders must be given access to suitable educational and vocational programmes so that they might have the chance to become contributing members of society. But like the ordinance of 2000, the new also lacks resolve this new Act is silent about the steps that may be taken to help reintegrate young offenders who have been incarcerated or released from rehabilitation facilities into society as productive members. Subject to the requirements of the Constitution, notwithstanding the newly promulgated law eliminates the disentitlements associated with a juvenile sentenced to punishment under the relevant statute (Sadruddin, M. M. (2011).

## **CRIMINAL RESPONSIBILITY**

Pakistan has set the legal capacity of a person at seven years<sup>4</sup> but can be elevated to the age of 12 if the youngster lacks the mental ability to grasp the nature and repercussions of his actions. The uncertainty of the "sufficient maturity of understanding" standard and the court's arbitrary discretion in determining a child's criminal culpability between the ages of 7 and 12 worry OMCT. OMCT thinks that in order to more effectively adhere to international norms, the legal age of majority should be increased. The system of law that recognize the idea that minimum age limit for child offenders, the start of such age "must not be placed at too low an age level, taking into account the realities of emotional, mental, and intellectual development," according to Articles 4.1 of Beijing Rules. It is being asserted upon that the age for legal responsibility varies significantly due to history and society, if it is being restricted to lower age periods or in case no such limits are being imposed upon them, the concept of responsibility will lose all significance. As a result, OMCT believes that setting the legal capacity for involvement in many cases at 7 years old is inappropriate. The juvenile justice system would significantly benefit from the Convention's articles dealing with defining of legal capacity of minors (Khan, A. S., Bibi, A., Khan, A., & Ahmad, I. 2023).

The Breastfeeding Ordinance 2000, the Compulsory Education Act 1995 (Punjab Province), whipping Abolition law promulgated in the 1996, as well as Human trafficking ordinance are some of the additional laws that were passed so that the legislation in Pakistan could be brought into compliance rights of child convention. To put the Convention into effect, several legislation were passed. The year 2006 saw changes in the provisions affecting women and therefore, modified the Hudood Ordinance by outlawing and making illegal the practise of vani. Vani weddings are forbidden by the section 310 of General Penal law. The least that could be awarded under the section as sentence for this crime is three years in jail and the maximum sentence is ten years. Some attempts have been

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<sup>4</sup> As contained in the Penal Code.



strived for by Pakistan to align its laws in accordance with rights of child convention, however in actuality, implementation of the law have always been a problem at large. Child marriage is still a problem since the JJSO isn't completely implemented. Juvenile cannot be accountable for qisas, ta'zir or hadd as was previously stated. A youngster cannot be disciplined either criminally or disciplinarily. A youngster may have civic duty even when they have no legal obligation. A kid is responsible for making reparations (damn) from its property if it damages someone else's life or property. The need of puberty and sanity is not a requirement for payment of compensation. The victim must wait until the kid reaches adulthood before claiming their entitlement to compensation, unless the minor possesses property from which compensation might be awarded (Khan, A. S., Bibi, A., Khan, A., & Ahmad, I. 2023).

In certain cases, the legally appointed guardians could be held vicariously liable for losses brought on by their carelessness, initiative, appreciation, or if they have provided the youngster access to any property having not obtained the consent of owners. The idea of the potential for destruction serves as the foundation for this rule. This ability exists in everyone, regardless of intelligence or age. A minor has the potential to acquire property rights, and as a result, he also has the responsibility to make restitution if he causes the loss of property. With the exception of certain Mlik jurists, who believe in the incapacity and therefore, never liable until they have reached a certain age in order to recompense for harm he has caused, all lawyers concur on this premise (Khan, A., Javed, K., Khan, A. S., & Rizwi, A. 2022).

## **MAJORITY ACT 1875 AND ISLAMIC LAW**

Both sexes must be 18 years old to become a citizen of Pakistan. According to Section 3 of the Majority Act of 1875, a person is deemed major after completing 18 years. However, the ability must be assessed in accordance with the minor's personal law in the case of adoption, divorce and dower. The Act elevates the minimum age for when a kid is considered competent of managing their property to twenty-one. The day the kid was born will be counted as a whole day for determining their age. Upon reaching the age of 18 or 21 as the case may be, whichever comes first, he or she will be regarded as major. Islamic law stipulates two unique ages for managing property, getting married, and for all other reasons, as was previously described. The Majority Act accommodates this technique. With two unique ages of majority, the Majority Act complies with Islamic law. Legal age or capacity for managing assets or lands in cases when guardians represent the minors, the age has been set at 21, however for those for whom a custodian has not been appointed by the court, age of majority will be eighteen years. The legal age and the capacity of minors are attained at the same time in case of latter. If both parties are Muslims, provisions of the Shariat Act are applicable when there exists issues as to the minority of a child and the same are being regulated by the personal law of the persons they belong to. In event where there is a conflict among these two, the majority takes priority in the cases Majority Acts because the Act also states that it is "subject to the terms of any legislative for the time being in force." Apparently, there are two laws governing the majority age: Muslim Personal Law and The Majority Act 1875. The rule is that statute law will take precedence over



Muhammadan law when they both address the same matter and are consistent with Qur'anic and Sunni teachings. As was previously stated, the majority is being regulated for persons on the basis of their personal law, it is the personal law which takes precedence in all matters of dower, divorce and other personal law situations and issues. A person does not require a next friend to file a lawsuit on their behalf if they are a major under their personal law but a minor under the Majority Act and need to appear in court for a matter involving marriage, dower, divorce, or adoption. According to Pakistani courts, such individuals have the right to file a lawsuit without the assistance of a friend. Due to the child's new power to seek redress in court, this reading of the clause is in the child's best interests (Ali, S. S. 2006).

### **CHOOSING AGE OF MAJORITY**

As stated in the case of Mohammad Fayaz versus the federation, the Federal Shariat Court was asked if setting a certain age for majority is against Islamic edicts. The petitioner contested the Act on the basis of its provisions contained in section 3 on the grounds which it states had violated Islamic tenets. The petitioner argued that section 3's requirement that a father support his child until he is 18 violates Islamic law since the child may have reached puberty considerably sooner. The petitioner's claims were not supported by any verses from Quraan or Sunna, according to the court. It was held by the Court that the mere presence of bodily signs of adolescence are insufficient having failed to establish that somebody has reached adulthood. "Ages in obtaining physical adolescence would differ from region to region and from person to person, and no specific criteria could be provided to exactly define who entered puberty and on which day," the court stated while defending the establishment of a fixed age by legislation. Due to this, even eminent Muslim scholars had differing views on the subject of puberty age and were not all in agreement. For legislative purposes, a defined age limit must be established so that the parties to court cases in that regard may easily be found to adhere to it without engaging in additional disputes and problems around the timing of puberty. It was not pronounced by the Court that provisions of the law were in conflict with the Qur'an and Sunnah because they believed that it was impossible to use the criterion of puberty as the age of majority (Ali, S. S. 2006).

### **PROOF OF MAJORITY IN CRIMINAL CASES**

Competing court rulings have been made where there are conflicting age evidence. A birth certificate is only conclusive evidence if it contains all of the subject's information. The Lahore High Court noted in the case of Mohammad Nawaaz Khan versus Government in 1960 that just on the basis of birth document and the mere fact, that father name and name of child are contained in it does not equip him with conclusive evidence of adulthood. A certificate granted by a school cannot be said to be a sufficient proof of age since close relatives regularly offer inaccurate material about their child's age and typically give a lower age to benefit him or her in the future when applying for government employment. The accused in Farooq Ahmed v. the State in 2005 asserted his juvenile status and requested a medical examination as per section seven of the ordinance of 2000 to establish



his age. The Lahore High Court ruled that no requirement of the certificate provided by a medical practitioner is necessary to ascertain age of wrongdoer when the school record indicates that they were not a minor. The court in this instance found the student's academic record to be compelling evidence of age. It was ruled by Lahore High Court in the case of Mohammad Anwer etc versus the federation in 1976 stating no birth document takes precedence in matters involving the age of a minor as a sufficient evidence. In contrast, the Peshawar High Court ruled in Iftikhar vs the State in 1972 that a radiologist's testimony is more reliable than a student's transcript. In Muhammad Sharif vs Chief Secretary, Pakistan supreme court has held in 2011 asserting birth date listed on a transcript of matriculate as well as in national identification card serves as irrefutable evidence of an individual's age. It would appear that a birth records and student records are only recognised as decisive evidence if they clearly state the child's age; otherwise, a medical expert would be consulted to make the age determination (Ali, S. S. 2006).

## **REFORMATORY SCHOOLS AND THEIR ROLE**

Despite their being laws pertaining to them, the concepts of Borstal incarceration, certified schools and reformation centers are yet to be inked with implementation and thus fulfilled. Only four facilities in Pakistan are dedicated to serving juvenile offenders: In Haiderabad and Karachi, the juvenile reformation as well as industrialized schools, as well as certain rehabilitation and kids goals inn Bhawalpur and Fasalabad. The amenities serve solely for minors. Women adolescent criminals are housed among female convicts who are adults. Furthermore, there is no facility for keeping them apart in any prison in Pakistan. In Baluchistan and NWFP, there is no law governing the establishment of Borstal Institutions. (*Aziz and Khan 2008*).

## **CONDITIONS OF JUVENILE JAILS IN PAKISTAN**

According to lists that were directly received from the jails officials including those from IG prisons, close to 80 out of 153 juvenile offenders who were found guilty were given harsh jail sentences in Sindh, Khyber Pakhtunkhwa and Punjab. It is unknown which sort of sentence was imposed on the seventeen juvenile offenders found guilty in Baluchistan, also that minor offenders are jailed who are detained in Sindh, Punjab and Khyber Pakhtunkhwa. Most of the kids are accused of misdemeanor crimes such small thefts, drug trafficking, stealing cell phones, one-wheeling, flying kites, abduction, rape, and murder. These young criminals, who are made to serve lengthy sentences or, for that matter, brief ones, are subjected to harsh and inhumane treatment by jail officials, older inmates, and members of society once they are released. These youngsters lack access to essential rights including health care, education, recreation, security, safety and dignity as well as respect behind the prison's gates.

## **ISSUES WITH PROTECTION OF JUVENILES; PRE AND POST-CONVICTION IN PESHAWAR**



The Khyber Pakhtunkhwa as well as Balochistan have not yet established a JRC (per JJSA 2018) or a functional Borstal Institution (per JJSO 2000). However, there is a pressing need for an impartial inspection and review of a once effective juvenile detention facility in Khyber Pakhtunkhwa's Haripur. In the Haripur prison, juvenile boys were once held separately from adult male inmates and received both academic and practical instruction, most notably computer training. The lads received a sizable donation of desktop and laptop computers from a small group of donors and rights activists as part of a private campaign. 33 It was once a well-run organisation, but now it has to be revisited to assess its current functioning state. (*JJSO.Pdf*, n.d.) Perhaps it might serve as a workable, repeatable model for other juvenile detention facilities and rehabilitation facilities, first in the province of Khyber Pakhtunkhwa and later throughout Pakistan. In order to ensure that children's rights are not being violated while they are being held captive and to hold the responsible authorities accountable if they are, monitoring of institutions, centres, and jails where children are being held is required by Pakistan's national and international obligations. It is plainly evident that there are not enough resources, staff who are not trained, or facilities, as well as a lack of the ideas of child rights, child protection, child care, and child rehabilitation.

2018 saw SPARC reach out to young offenders housed at Peshawar's Central Jail in Khyber Pakhtunkhwa. The initiative aims to enhance both the restorative justice system and the prison environments for juvenile offenders.

The following elements were included in this project:

- 1) creation and distribution of resource materials on the roles and responsibilities of stakeholders working to enhance the juvenile justice system (JJS); building of a cohort of committed stakeholders eager to work towards enhancing the restorative justice system;
- 2) increased access to 120–125 adolescent detainees' requirements for sports, leisure, and health;
- 3) As an enhancement to its current work, SPARC held non-formal education (NFE) sessions with groups of 120–125 male adolescent inmates. The NFE sessions were mostly held in the morning and covered the recognition of the alphabets in Urdu and English, the fundamentals of numeracy and mathematical calculations, word construction, sentence formation, as well as general knowledge information and questions;
- 4) To raise knowledge of personal hygiene and health, interpersonal interactions, the value of identifying and expressing one's thoughts, bolstering one's self-esteem, and other topics with 125 jailed male juvenile offenders, a teacher conducted Life Skills-Based Education (LSBE) sessions. These programmes aimed to foster self-awareness and civic responsibility among young offenders. It is evident from the discussion that the province has clearly failed to implement the law in its real spirit rather the same has been restricted to lip service by politicians. Every minor or child who is charged with a crime has the right to legal representation at the state's cost; within 24 hours of being



taken into custody, a minor must be told by a lawyer of the legal rights that are available to him or her. The same statute mandates that a lawyer chosen by the state or by the juvenile court give a juvenile offender legal help. The conclusion of this debate is that the above incidence, together with other cases, show a lack of understanding of the law to treat a kid in accordance with the applicable laws. This further supports the absence of adequate supervision, inspection, and training, as well as the disregard for the law and policy. The Juvenile Justice System Ordinance of Pakistan (2000) does not offer juvenile offenders—those who were under the age of 18 at the time the offence was committed—enough protection. Numerous others have experienced physical and lethal punishment, including Muhammad Afzal, who was 16 years old when he was given the death penalty, on March he had participated in an unsuccessful armed robbery. Shoaib Sarwar, a second prisoner who received a death sentence for a murder that occurred in 1998 while he was reportedly 17 years old, was scheduled to be hung on September 18, 2014. According to his relatives, he was attempting to shield his sister and her friends from harassment in the neighbourhood. The son of a police inspector was shot dead as the altercation got violent. At the last minute, the execution of Sarwar was postponed. It has been postponed one more till February 3, 2015.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), which acknowledge the role of NGOs in reducing the effects of juvenile delinquency, state that "Genuine consideration may be given to positive measures that include the full utilisation of every single conceivable asset, including the family, volunteers and other group gatherings, as well as schools and other group establishments, to promote the welfare of the adolescent (The United Nations, 1986). Children are unlawfully detained and held in adult prisons with inadequate conditions for days for minor offences. In prisons, they interact with dangerous offenders like militants, jihadis, and terrorists.

After being freed from prison, they start committing crimes again and become into career criminals. It is particularly challenging to separate juvenile offenders from adult offenders since there are no juvenile jails available (International Crises Group, 2011). According to Hassan (2014), the Prisons Act (1894) mandates that convicts be categorised based on their age, sex, and physical condition. In the jails, the regular criminals, terrorists, and political prisoners should be segregated. The financial situation, nature of crime, and education of the convicts should all be taken into account when classifying them. According to a Legal Aid Office investigation, the most dangerous offenders, juveniles, convicted criminals, and convicts awaiting trial are all housed together in prisons. They went to 17 jails, and of them, they discovered that adolescents are held with inmates in 5 separate jails. One of the inmates told the LAO that the jail officers would provide everything you wanted in the prisons, including beer, women, and narcotics. Juveniles who are in trouble with the law and commit crimes while under the age of 18 should be protected by the Juvenile Justice System Ordinance. Furthermore, the Ordinance, which prohibits the application of any statute to the PATA or the FATA without the president of Pakistan's approval, does not yet apply to these tribal regions. In jurisdictions not covered by JJSO, children over 7 who do any illegal conduct when the court decides that these youngsters realise the consequences of their acts can be held criminally liable. According



to Pakistan's penal code, the minimum age for prosecution of any criminal act is 7 years. Additionally, JJSO provides for bail. According to (Kazmi et al. (2013), court proceedings in Pakistan frequently get disorganised and are unjustifiably prolonged. Although juvenile offenders' trials are heard in separate courts in documentation, this does not really occur because procedural delays, backlogs in the courts, and judges' and police's failure to give juvenile trials priority. The truth is that the entire legal system is founded on a poor institution, which has spillover effects in particular departments (i.e., juvenile cases are frequently delayed owing to the lack of special juvenile courts). A child detained must appear in court within 14 days after their detention, according to the legislation (Ali, S. S. 2006).

## **CONCLUSION**

In conclusion, this research article has explored the issue of juvenile delinquency and the age of majority in the context of pre- and post-conviction in Peshawar, Pakistan. The article has highlighted the complexities of balancing the rights of juveniles with the need for corrective measures in cases of delinquent behavior. The examination of Islamic law and Pakistani law in relation to juveniles has shed light on the conflicts that exist and the need for a harmonized approach to protecting the rights of juveniles. The conditions of juvenile jails and the role of reformatory schools have been analyzed and the need for improvement in these areas has been emphasized.

Future research should focus on developing a comprehensive legal framework that balances the rights of juveniles with the need for correction and rehabilitation. A comparative study of the approaches adopted by other countries in dealing with juvenile delinquency and the age of majority would be useful in devising a more effective system in Pakistan. Additionally, further research should be conducted to examine the conditions of juvenile jails and the rehabilitation programs provided in these institutions.

In summary, the protection of the rights of juveniles must be a priority in any legal system. It is imperative that future research focuses on developing a balanced and harmonized approach to dealing with juvenile delinquency and the age of majority in Peshawar, Pakistan.



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