



Group Development Pakistan

Handbook for CHILD COURTS

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GLOSSARY

CR.P.C.	<i>Code of Criminal Procedure, 1898</i>
FIR	<i>First Information Report</i>
HRC	<i>Human Rights Council</i>
I.O.	<i>Investigation Officer</i>
JJC	<i>Juvenile Justice Committee</i>
JJSA	<i>Juvenile Justice System Act, 2018</i>
NJPMC	<i>National Judicial Policy Making Committee</i>
P.L.D.	<i>The All Pakistan Legal Decisions</i>
PPC	<i>Pakistan Penal Code, 1860</i>
SIR	<i>Social Investigation Report</i>
SJA	<i>Sindh Judicial Academy</i>
SHO	<i>Station House Officer</i>
SOPs	<i>Standard Operating Procedures</i>
UNCAT	<i>United Nations Convention Against Torture and Other Cruel, Inhuman and Degrading Punishment</i>
UNCRC	<i>United Nations Convention on the Rights of the Child</i>
UNHRC	<i>United Nations Human Rights Council</i>

MESSAGE OF THE DIRECTOR GENERAL OF THE SINDH JUDICIAL ACADEMY



The Sindh Judicial Academy is accountable for training and equipping justice actors with in-depth knowledge to respond effectively to the public's expectations in their respective institutions. Child-related laws and their implementation should be the priority of the provincial government. Accordingly, justice is to be ensured by the concerned

stakeholders in the true spirit of the legislation. Investigators, prosecutors, lawyers, and judges are vital stakeholders in the juvenile justice system. Since children are at stake, it is all the more critical to ensure quality and need-based professional capacity-development to justice actors to guarantee adequate institutional performance and fair child and gender-sensitive dispensation of justice. Overall, this will foster public trust in the institutions mandated to provide justice and strengthen the rule of law, social cohesion, peace, and stability.

This training module is designed to facilitate trainers and trainees, sensitize justice actors about national and international laws, and equip them with the most recent knowledge on child justice techniques while dealing with cases of children in conflict and contact with Pakistan's law. Copies of the module will also be distributed to District Court libraries so that District & Sessions Judges may assist their respective teams of judges and supporting staff for cases involving children in conflict with the law.

The Sindh Judicial Academy focuses on building professional competence and is dedicated to enhancing the trainees' technical and ethical standards for the country's best interest. The academy receives many requests for training from multiple stakeholders, including the Bar Associations. The Police and the prosecution department are facilitated most of the time. An attempt is also made to arrange programs for the District Bar Association members. Training programs on Child Rights have been planned for judges, prosecutors, and members of the Bar. Before conducting training, the academy undertakes a Training Need Assessment through multiple processes such as data analysis, examining judgments, and discussions with senior judges. It is expected that this module will enhance the trainees' professional competence and thereby improve child justice in Sindh and Pakistan. The Sindh Judicial Academy acknowledges Group Development Pakistan's efforts to conjoin in arranging training programs for judges and prosecutors. We would also like to convey our special thanks to Mr. Sharafat Ali Chaudhry, Advocate High Court, and a senior legal advisor from Group Development Pakistan, for contributing to the development of this handbook.

Justice Muhammad Ali Mazhar

Judge High Court of Sindh,
Acting Director-General,
Sindh Judicial Academy

INTRODUCTION

International Laws and International Human Rights Laws relating to children emphasize the need to promulgate national laws in line with the United Nations Conventions, Covenants, and other Declarations ratified by Pakistan. The Government of Pakistan has taken measures to enforce its international obligations enshrined in international treaties by enacting several laws. For the enforcement of child rights in Pakistan and justice with children in conflict with the law, the Juvenile Justice System Ordinance, 2000 was promulgated. Subsequently to the recommendations of the UN Committee on the Rights of the Child, the recommendations of the Committee on Civil and Political Rights, and following directions contained in the judgment of Lahore High Court (PLD 2005 Lahore), Pakistan improved its law for children in conflict with the law and enacted the Juvenile Justice System Act, 2018 (“**JJSA**”). The JJSA aims to align the juvenile justice system prevailing in Pakistan with international safeguarding standards. More precisely, the said Act also seeks to improve juveniles' criminal justice system by introducing the concept of disposal of cases through diversion. Additionally, the JJSA provides for the rehabilitation and social reintegration of juvenile offenders. The law requires establishing Juvenile Justice Committees, Observation Homes, and Juvenile Rehabilitation Centers that enable reformatory justice.

Moreover, the Constitution of Pakistan, 1973 has given special treatment for formulating laws and policies for children and women, as, Article 25(3) states: “Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.”

Recognizing the need to prioritize child rights, the Supreme Court of Pakistan decided to address the issue of defective implementation of the recent federal and provincial laws which focused on children's protection and care. These laws include the Juvenile Justice System Act, 2018. On 24th June 2019, the National Judicial Policy Making Committee (NJPMC) called for technical input from Group Development Pakistan (GDP), a local civil society organization, specialized in child rights, child justice, and child protection, to discuss how to improve child justice. As a result, the NJPMC took the following decisions:

- i. According to statutory requirements, in principle, the Juvenile and Child Protection Courts may be established in every district.
- ii. Given the paucity of Judicial Officers, in the first instance, the Child Courts may be established in the provincial headquarters and Islamabad as a pilot project
- iii. The High Courts will nominate Judicial Officers for training by the Group Development Pakistan.

Additionally, the Sindh High Court issued specific directions for enforcing the Juvenile Justice System Act, 2018. The Hon'ble High Court of Sindh, Karachi, through an order dated 02-12-2020 in CP No. D-5496 of 2020, titled Imkaan Welfare Society vs. the Province of Sindh, has directed relevant authorities to constitute a Juvenile Justice Committee in each district of the province to implement the Act fully.

Furthermore, series of training has been planned for judges and prosecutors here at the Sindh Judicial Academy ("SJA") where selected judicial officers and prosecutors will improve their knowledge and skills with regards to:

- The latest international legal framework on child rights, child justice, and child protection;
- The domestic legal framework for children in conflict and contact with the law, with a focus on the Juvenile Justice System Act, 2018, the Sindh Children Act, 1955, the Sindh Child Protection Authority Act, 2011, the Sindh Child Marriage Restraint Act, 2013 and various other criminal law amendments.
- The concept of childhood versus adulthood, juvenility, restorative versus punitive justice, age determination protocols, juvenile justice committees, diversion, observation homes, rehabilitation, reintegration;
- Child Sexual Abuse and Exploitation;
- Child and gender-sensitive SOPs at a pre-trial, trial, and post-trial level.

The Academy believes in soft and evidence-based reforms, and training on the subject of child rights will be a meaningful step towards reinforcing the Child Justice System in Pakistan.

Why this Handbook?

This Handbook is designed to assist Judicial Officers, Prosecutors, and Investigation Officers when dealing with cases of children in conflict and, to some extent, in contact with the law. This manual will enable judicial officers to increase their knowledge on the procedure for arrest, detention, bail, determination of age, and trial in juvenile courts designated explicitly by the Hon'ble Sindh High Court. The Juvenile Justice Committee is a new structure in Pakistan's criminal justice system; therefore, the manual discusses its role in detail in a cognitive manner. This handbook also presents the concept of diversion, its mechanism, and post-trial actions to be observed by

justice actors. Few orders and case diaries have been incorporated in this document to guide relevant stakeholders further. References to International Human Rights laws, rights of the child as provided under the Constitution of Pakistan, 1973, and National and Provincial laws have also been discussed briefly. Finally, some scenarios and practical exercises have been included in this handbook to ensure that the theoretical content is translated into tangible examples that practitioners can connect to.

PROCEDURE FOR ARREST AND AGE DETERMINATION PROTOCOL

The JJSA is a special Law and has therefore defined a specific arrest and detention procedure for children accused of an offense. Section 82 of the Pakistan Penal Code, 1860 states, *“Act of child under seven years of age. Nothing is an offence which is done by a child under [ten] years of age.”* Section 83 of the Pakistan Penal Code, 1860 states, *“Act of a child above seven and under twelve of immature understanding. Nothing is an offence which is done by a child above [ten] years of age and under [fourteen], who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.”*

At the time of arrest, the juvenile accused shall not be kept in a police station. The juvenile accused shall be sent to an observation home. The officer in charge of the police station or the investigation officer, as the case may be, shall follow the steps mentioned underneath:

As per section 5 (a) of the JJSA, 2018: *“The arrested juvenile shall be kept in an observation home, and the officer-in-charge of the police station shall, as soon as possible, inform the guardian of the juvenile, if he can be found, of such arrest and inform him of the time, date and name of the Juvenile Court before which the juvenile shall be produced.”* Additionally, section 5 (b) of the JJSA, 2018 provides that: *“The arrested juvenile shall be kept in an observation home and the officer-in-charge of the police station shall, as soon as possible, inform the concerned probation officer to enable him to obtain such information about the juvenile and other material circumstances which may be of assistance o the Juvenile Court for making inquiry.”*

- Section 2 of the Juvenile Justice System Act, 2018 (JJSA) defines the terms ‘Minor Offence’¹, ‘Major Offence’², and ‘Heinous Offence’³. Section 2(o) of JJSA, 2018 states: *“minor offence’ means an offence for which maximum punishment under the Pakistan Penal Code, 1860 (XIV of 1860) or any other law for the time being in force is imprisonment up to three years with or without fine”*. Section 2(m) of JJSA, 2018 states: *“major offence’ means an offence for which punishment under the Pakistan Penal Code, 1860 (Act XIV of 1860) or any other law for the time being in force is more than three years and up to seven years imprisonment with or without fine”*. Section 2(g) of JJSA, 2018 defines: *“heinous offence’ means an offence which is serious, gruesome, brutal, sensational in character or shocking to public morality and which is punishable under the Pakistan Penal Code, 1860 (Act XIV of 1860) or any other law for the time being*

¹ Section 2(o) of the Juvenile Justice System Act, 2018

² Section 2(m) of the Juvenile Justice System Act, 2018

³ Section 2(g) of the Juvenile Justice System Act, 2018

in force with death or imprisonment for life or imprisonment for more than seven years with or without fine”.

- As stated in section 6 of the JJSA, 2018: *“Notwithstanding anything contained in the Code, a juvenile accused of a bailable offence shall, if already not released under section 496 of the 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 such juvenile may bring him in association with criminals or expose him to any other danger. In this situation, the juvenile shall be placed under the custody of a suitable person or Juvenile Rehabilitation Centre under the supervision of probation officer; the juvenile shall not under any circumstances be kept in a police station under police custody or jail in such cases.”*
- Minor and Major offenses shall be considered bailable offenses. However, Sec 6 (4) of the JJSA states provides an exception. The said Section provides that: *“Where a juvenile of more than sixteen years of age is arrested or detained for a heinous offense, he may not be released on bail if the Juvenile Court is of the opinion that there are reasonable grounds to believe that such juvenile is involved in the commission of a heinous offence.”*

Therefore, while arresting the accused, the Investigation Officer should first ascertain the age of the accused. If the accused person is below 18 years, he/she would be considered a child, and the procedure of arrest, detention, bail, and trial is to be followed as per the JJSA. To this end, in the JJSA, the Investigation Officer has been authorized to determine the accused's age at an initial stage of the justice process based on any pertinent document which includes -

but is not limited to- birth or educational certificates. Section 496 of the Code of Criminal Procedure, 1898 provides that: *“When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer-in-charge of a police station or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided:*

Provided further that nothing in this section shall be deemed to affect the provisions of section 107, sub-section (4), or section 117, sub-section (3).”

Sub-section 3 of section 6 of the JJSA states, *“Where a juvenile is arrested or detained for the commission of a minor or major offense for the purposes of this Act, he shall be treated as if he was accused of commission of a bailable offence.”*

If the Investigation Officer does not determine the age of the accused for any reason, in that case, the Magistrate shall assess the age of the accused from his/her physical appearance and collect any pertinent documents from the accused regarding his/her age. The Hon’ble Supreme Court of Pakistan, in the case titled *Saleem Khan vs the State* held regarding the determination of age that: “Police were to determine the juvenility of the accused and thereafter the case was put up before the Juvenile Court for trial--- Determination of age of an accused who appeared or claimed to be a juvenile was, therefore, initially the statutory responsibility of the police--- In the absence of any inquiry by the police the determination of age and

juvenility of the accused could be determined by the court having taken cognizance of the matter. Determination of age by the court was also a statutory obligation. Any such determination of age by the court was a statutory requirement and formed part of the trial"⁴. Hence, under Section 8(1) of the JJSA, it becomes the police's statutory responsibility to determine an accused's age, who appears to be or claims to be a juvenile. To this end, available documents, including Birth Certificates, Educational Certificates, or any other pertinent document, may be used. In the absence of such documents, the police officer may seek the medical officer's opinion regarding such an accused person's age.

In case of non-availability of such documents, the accused shall be ordered to be examined by a Medico-Legal Officer. The court may refer the accused for an ossification test; however, it would be a last resort because "determination of age by a medical officer is always probable determination and one cannot say with certainty about the age of the person examined by the medical officer."⁵.

If the accused is below 18 years, his/her case should be sent to the district's designated Juvenile Court. Some Juvenile Courts have been set up at the sub-divisional level. After consulting the Hon'ble High Court of Sindh, the Government of Sindh has notified Juvenile Courts at the district level.

⁴ P L D 2020 Supreme Court 356

⁵ 2020 P Cr. L J 895

Notification NO. SOJI/9-2/2018 (Juvenile Courts), Dated 1-04-2019, reads as under:

GOVERNMENT OF SINDH
HOME DEPARTMENT
NOTIFICATION

NO. SOJI/9-2/2018 (Juvenile Courts): In exercise of the powers conferred under Section 4 of Juvenile Justice System Act, 2018 and in consultation with the Honorable High Court of Sindh (Vide letter No. Gaz/Estab. Juvenile Courts dated 30.11.2018), the Government of Sindh pleased to establish and designate all the Courts of District and Sessions Judges and Ist and IInd Additional District & Sessions Judges in all districts of Sindh, as Juvenile Courts under Juvenile Justice System Act, 2018.

Further, the following Judicial Magistrate in Sindh is also conferred with the said powers with the power under section 30 Cr.P.C. 1898:

- | | |
|--------------------------------|------------------------------|
| 1. Karachi (South) | Judicial Magistrate-I to IV |
| 2. Karachi (East) | Judicial Magistrate-I to IV |
| 3. Karachi (West) | Judicial Magistrate-I to IV |
| 4. Karachi (Central) | Judicial Magistrate-I to IV |
| 5. Malir Karachi | Judicial Magistrate-I to IV |
| 6. Hyderabad | Judicial Magistrate-I to III |
| 7. All over Districts in Sindh | Judicial Magistrate-I and II |

Moreover, all the Anti-Terrorism Courts in Sindh are also established & designated as Juvenile Courts under Section 4 of the Juvenile Justice System Act, 2018.

ABDUL KABIR KAZI
HOME SECRETARY, SINDH
Karachi dated the 1st April 2019

INVESTIGATION & TRIAL PROCEDURE

Handbook for **CHILD COURTS**

INVESTIGATION PROCEDURE

A senior Police Officer/SHO should assign the case of a juvenile accused to an officer trained on child-related laws, child justice, and child forensic communication. The JJSA was introduced in 2018; however, its implementation is still defective. The JJSA requires that a juvenile accused be interrogated by a police officer, not below the rank of Sub-Inspector, under the supervision of a superintendent of police/SDPO. The investigation officer designated for the investigation shall be assisted by a Probation Officer, or by a sociologist or a psychologist notified by the Government, to prepare a social investigation report, to be annexed with the report prepared under section 173 of the PPC, which states: “Preventing service of summons or other proceeding. Whoever in any manner intentionally prevents the serving on himself, or on other person, of any summons, notice or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice or order, or intentionally prevents the lawful affixing to any place of any such summons, notice or order, or intentionally removes any such summons, notice or order, from any place to which it is lawfully affixed, or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent as such public servant, to direct such proclamation to be made, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the summons, notice, order or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term

which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

Furthermore, for investigation, the juvenile accused shall not be kept in any police station; instead, he/she must be kept in some other child-friendly place such as an observation home or a juvenile rehabilitation center. Steps to be observed by an investigation officer are briefly discussed hereunder:

Step 1

Age Determination: Section 8 of the JJSA deals with the issue of age determination and states: *“Where a person alleged to have committed an offence physically appears or claims to be juvenile for the purpose of this Act, the officer-in-charge of the police station or the investigation officer shall make an inquiry to determine the age of such person on the basis of his birth certificate, educational certificates or any other pertinent documents.”*

If the Investigation Officer is provided with the necessary documents, he/she shall determine the age based on those documents and prepare a *HULIYA* FORM. In case of non-availability of the documents stated above, the matter must be immediately referred to the juvenile court. When applying under section 167 of the Cr.P.C. the I.O. should bring all the collected relevant documents to determine the accused person's age to the notice of a magistrate who shall record his/her findings.

Step 2

Bail Procedure: Section 6 of the JJSA explains the bail procedure. Section 6(3) of the JJSA provides that: “where a juvenile is arrested or detained for commission of a minor [punishable up to three years

imprisonment] or a major offence [punishable up to seven years] for the purposes of this Act, he shall be treated as if he was accused of commission of a bailable offence.” Hence, if a juvenile is accused of an offence punishable up to seven years, the grant of bail is not a concession; it instead becomes a statutory right.

Under Section 6(4) of the JJSA, there are exceptions to granting bail. Granting bail under this section becomes a discretionary relief and not a juvenile accused’s statutory right. Section 6(4) provides that “Where a juvenile of more than sixteen years of age is arrested or detained for a heinous offence, he may not be released on bail if the Juvenile Court is of the opinion that there are reasonable grounds to believe that such juvenile is involved in commission of a heinous offence.” Hence, there are two conditions when granting bail becomes a discretionary relief. The court may or may not grant bail to a juvenile accused if a) he/she is above the age of 16 years and b) if he/she is accused of a crime punishable for more than seven years of imprisonment.

Furthermore, under Section 6(5) of the JJSA, granting bail becomes a matter of statutory right if the juvenile’s trial has not been completed within six months and if such delay has not been caused by the juvenile accused. While explaining this Section, the Hon’ble Supreme Court of Pakistan held in judgment stated *supra* that “Section 6(5) of the Juvenile Act provides that the juvenile will be entitled to be released on bail if he has been detained for a continuous period exceeding six months while his trial has not been concluded, unless the delay has been occasioned by the act or omission of such a juvenile.”⁶ The Hon’ble Supreme Court further elaborated that while

⁶ P L D 2020 Supreme Court 356

counting the delay in completing the trial, the time spent by the court for the age determination, shall also be considered: “the determination of age by the court is also a statutory obligation, hence the time spent in obtaining the said finding or declaration by the court cannot possibly be termed as the delay caused in the trial by the accused, so as to deprive him of his right to bail on the ground of statutory delay. Any such determination of age by the court is a statutory requirement and forms part of the trial.”⁷

Step 3

Diversion: Section 9 of the JJSA talks about diversion. The said provision provides that: *“With the consent of a juvenile or his guardian, as the case may be, the complaint against a juvenile relating to offences as specified in sub-section (6) shall be referred to the Juvenile Justice Committee for the disposal of the same through diversion.”* Sub-section (6) of section 9 of the JJSA, states: *“Diversion shall be exercised in the prescribed manner in cases- (a) where a juvenile is accused of commission of minor offences; and (b) where a juvenile is accused of commission of major offences and the age of the juvenile is not more than sixteen years at the time of commission of offence.”*

A juvenile below the age of 16 years, who is accused of a minor or major offence, shall immediately be referred to a Juvenile Justice Committee for an amicable settlement between the parties. The Investigation Officer shall refer the case to the Juvenile Justice Committee (JJC) as provided under section 9 of the JJSA. Once the case is directed to a JJC, the Investigation Officer shall wait for one month⁸ for the Committee to share its decision and, after that,

⁷ Ibid

⁸ Section 10(4)(a) of the Juvenile Justice System Act, 2018

proceed with the matter as ordered by the Committee⁹. If the case is not disposed of by the JJC, the I.O. shall reinitiate the investigation and collect the necessary evidence. If a child is between 16 to 18 years of age and booked in a minor offense, his/her case shall be referred to the JJC for an amicable settlement. It is important to note that Diversion may be exercised at any stage of the case, and the case may be referred either by the Police, the Prosecution, or by the Juvenile Court to the Juvenile Justice Committee for its disposal.

Step 4

Legal Assistance: Section 3 of the JJSA states: *“Every juvenile or child who is victim of an offence shall have the right of legal assistance at the expense of the State.”* Sub-section (2) of section 3 of the JJSA states, *“A juvenile shall be informed about his rights available under the law by a legal practitioner within twenty-four hours of taking him into custody.”* Sub-section (3) of section 3 of the JJSA provides: *“A legal practitioner appointed by the Government or by the Juvenile Court for providing legal assistance to a child victim of an offence or a juvenile shall have at least seven years standing at the Bar.”*

Step 5

Custody: Section 5 of the JJSA states: *“Arrest of a juvenile.- The arrested juvenile shall be kept in an observation home, and the officer-in-charge of the police station shall, as soon as possible,- (a) inform the guardian of the juvenile, if he can be found, of such arrest and inform him of the time, date and name of the Juvenile Court before which the juvenile shall be produced”.* Section 5 (b) of the JJSA, 2018 provides that: *“The arrested juvenile shall be kept in an observation home and the officer-in-charge of the police station shall, as soon as possible, inform*

⁹ Section 9(4) of the Juvenile Justice System Act, 2018

the concerned probation officer to enable him to obtain such information about the juvenile and other material circumstances which may be of assistance to the Juvenile Court for making inquiry.” If observation homes could not be set up, the accused juvenile may be placed in any other relevant institution certified by the government.

Step 6

Submission of Police Report: Section 16 (2) of the JJSA provides that: *“Orders that shall not be passed with respect to a juvenile.- (1) No person who was a juvenile offender at the time of commission of a offence shall be awarded punishment of death. (2) No juvenile offender shall be committed to prison, ordered to labour, put in fetters, handcuffed, or given any corporal punishment at any time while in custody: provided that if there is reasonable apprehension of the escape of the juvenile offender from custody who is more than sixteen years of age and involved in heinous offences or he is previously convicted of an offence punishable with imprisonment for life, for reasons to be recorded, he may be handcuffed or put into a solitary confinement in a Juvenile Rehabilitation Centre or observation home for a period not exceeding twenty-four hours.”*

The JJSA in its section 12, provides that *“Trial of Juvenile with adult person.- (1) Notwithstanding anything contained in section 239 of the Code or any other law for the time being in force and subject to the provisions of sub-sections (2) and (3), no juvenile may be charged with and tried for an offence together with an adult. (2) A juvenile may be charged with and tried together with an adult by the Juvenile Court if the Court is satisfied that it is in the interest of justice to hold a joint trial. (3) In case of joint trial, the Juvenile Court may dispense with the physical; presence of the juvenile before it without any application in this regard and juvenile may be allowed to join the court proceedings through audio-*

visual technology link." A police officer should try to investigate while in plain cloth. After completing his/her investigation, if the Investigation Officer reaches the conclusion that the juvenile accused has committed an offense, he/she should submit a charge sheet in the Juvenile Court. If there is more than one accused and if one of the accused is an adult, the I.O. should conduct a separate investigation related to the alleged role played by the juvenile accused in the alleged crime. The I.O. should then submit a separate charge sheet against each accused and present separate investigation files. Initially, both the accused should be presented before the Juvenile Court to uphold the child's best interest. The juvenile court would decide¹⁰ to either commence the trial of both accused or refer the adult accused's case to an ordinary court.

Step 7

Seeking Guidance: In case of any difficulty, seek guidance from a senior officer who has previously dealt with juvenile cases or read this handbook for assistance.

¹⁰ Section 12 of the Juvenile Justice System Act, 2018

TRIAL PROCEDURE

Step 1

Legal Aid and Supply of Documents: Supply a copy of the documents to the accused on the first date when he/she appears in court. In few districts, a special infrastructure has been made available to juvenile courts: those juvenile courts look different from ordinary courts; they are child-friendly and are a reminder for any judicial officer to provide a child and gender-sensitive atmosphere. Those special juvenile courts have also been equipped with a video link to allow in-camera trials. The juvenile court must ensure that the child accused or the victim is legally represented; if not, the court shall make the necessary arrangements to provide the child with legal assistance from any available resources accessible under the law. A few areas and venues for providing legal aid will also be discussed later in this manual.

Step 2

Framing of Charges: Once the police report under Section 173 of Cr.P.C. is submitted, the Juvenile Court, in session trial if form opinion, may frame the charges against the juvenile accused at the earliest. Referral of accused for diversion may be made at any stage of trial in certain circumstances as provided in subsection (2) of section 9. To avoid any possible delay, if a co-accused has absconded, his trial may be separated on the same date of hearing on which the charges are framed. Section 4(8) of the JJSA provides that *“on taking cognizance of an offence, the Juvenile Court shall decide the case within six months.”* If case of the juvenile is not disposed of in six-month, “the Juvenile Court shall seek extension from the High Court” (e.g. High Court of Sindh) explaining the reason for not being

able for decide the case within prescribed time limit. Alternatively, in case of delay in conclusion of trial, the complaint or the accused are also entitled to file application before the High Court to see direction the conclusion of trial at the earliest.¹¹ If there is more than one accused in a crime and one of them is an adult, the court shall decide whether they should be tried jointly or separately. However, the juvenile accused shall never be sent to another court than a juvenile court established under the JJSA.

Step 3

Social Investigation Report of a Child Accused: The juvenile's circumstances and his/her previous conduct must be investigated by the social welfare officer in a report. That information is essential to help the court assess the evidence, understand the facts related to the case and eventually dispense fair, impartial, and child-sensitive justice. Section 7 of the JJSA states: *"A juvenile shall be interrogated by a police officer not below the rank of Sub Inspector under supervision of Superintendent of Police or SDPO. (2) the investigation officer designated under sub-section (1) shall be assisted by a probation officer or by. A social welfare officer notified by the Government to prepare social investigation report to be annexed with the report prepared under section 173 of the Code."*

Step 4

Recording of Evidence submitted by the Prosecutor: It is necessary for the court that, at the time of recording evidence, the child's legal advocate be in court and that he/she may be given full opportunity to cross-examine the witnesses. At the time of recording the evidence, it may be ensured that any person, other than the

¹¹ Section 4(9) of JJSA

parties to the case, has been requested to leave the courtroom. Section 11(3) of the JJSA provides that: *“At any stage of proceedings, the Juvenile Court may in the best interest of a juvenile’s decency or morality, direct any person to withdraw from Court for such period as the Court may direct.”* These powers may be exercised when a joint trial has been ordered. The juvenile accused may be asked to join the trial through audio-video linkage. The Juvenile court should be conscious and vigilant during the examination of witnesses and must exercise its powers as provided under article 161 of the Qanun-e-Shahadat¹², 1984.

Step 5

Recording the Statement of an Accused: The Court must collect all necessary evidence from the accused while recording his statement under section 342 Cr.P.C. This would help the accused to respond to every piece of evidence and bring his/her point of view regarding the allegation leveled against him/her. This would help fulfill the criteria of a fair trial.

Step 6

Recording the Defense Evidence: The accused should be at liberty to produce both oral and documentary evidence that he/she possesses and intends to bring to the knowledge of the court.

Step 7

Judgment: The judgment should be given in an open court. The probation officer's social investigation report is to be given due consideration while reaching a decision. In case the Court finds in its final judgment that the juvenile accused has been in conflict with the

¹² Text of Article 161 of QS

law, and then he or she is a first offender, then the principle of sentencing and alternative to detention in the judicial lock-up may be preferred.

Step 8

Social Reintegration in the Society: It should be ensured that after the disposal of a case through diversion, the child should not be isolated from the society, stigmatized. Article 12 of the Nelson Mandela Rules requires resorting to non-custodial measures as alternatives to pre-trial detention and imprisonment and supporting rehabilitation and social reintegration programs. A juvenile may face significant social adaptation issues, including family and community stigmatization and ostracism, and difficulties returning to non-formal or formal education or building/rebuild his/her personal and social capital. Unless they receive tailor-made help to face these issues, they risk getting caught up in a vicious cycle of failed social integration, reoffending, reconviction, and social rejection. The rehabilitation of juvenile offenders and their successful social reintegration into society should be among Diversion's primary objectives. For social reintegration, aftercare programs delivered upon release or non-custodial, community-based programs may be developed and monitored. The Juvenile Court may enforce such programs through the Probation Officer. The Probation Officer may be required by the court to submit periodic reports regarding the rehabilitation and social reintegration of a juvenile.

Standard Operating Procedures

Handbook for **CHILD COURTS**

ROLE OF JUSTICE ACTORS**The role of the Advocate to inform the accused juvenile about his/her rights**

1. The juvenile accused should be aware and well-informed about his/her legal rights. A lawyer appointed by the Juvenile Court shall inform the accused of all his/her available rights immediately after his/her arrest.
2. The juvenile accused has a right to legal assistance at the State's expense,. An experienced lawyer is to be provided by the court if the juvenile accused is not legally represented.
3. As soon as the juvenile accused is arrested, the designated advocate shall ensure that the investigation officer informs the Juvenile's parents or guardian(s) about such arrest. The Advocate must ensure that the Juvenile is not to be detained with adults in any circumstances and that he/she may be detained only in an 'observation home.'
4. The juvenile should not be handcuffed or fettered while detained or brought to court.
5. The juvenile is informed that if he/she is a first offender and if found guilty, he/she would be offered diversion options.
6. The juvenile is assisted by the Social Welfare Officer and Probation Officer who must contribute to his/her mental development and enable him/her to survive.

SOPs to be followed by the police officer when a child is a victim

1. Deal with the child in plain clothes and not in a police uniform.
2. Keep the victim away from the accused and take him/her for medical examination, if it is required.

3. Do not keep the victim in a Police Station overnight under any circumstance;
4. Arrange an interpreter, if needed.
5. Record the child victim's statement "verbatim," do not change or interpret his/her words.
6. While recording the victim's statement, the investigation officer shall ensure that the victim is made comfortable before recording it.
7. The victim's statement may be recorded at the victim's residence or any other place where the victim can make his/her statement freely and without fear.
8. The victim's statement may be recorded in the form of questions and answers. When the victim is of tender age and cannot describe/give details of the offensive act, any gesture, drawing made by the child victim should also be taken into consideration and documented by the concerned police officer.
9. Lodge/Register the First Information Report (FIR) promptly.¹³
10. In case of sexual abuse and physical injury, the police officer shall promptly secure articles for the forensic examination. Clothing and all other necessary items to be examined by the forensic examiner shall be sent to him/her on a priority basis, and a report shall be collected as quickly as possible.
11. The investigation officer shall ensure that the child victim should not come in contact with the accused. When in Court, the officer may ensure that the offender does not communicate with the victim or intimidate him/her in any way. In camera-trials or usage of screens are recommended to avoid secondary victimization and keep the victim away from the accused.

¹³154 Code of Criminal Procedure, 1908

12. Keep the identity of the victim confidential.
13. Request the Court to appoint a legal practitioner having at least seven years of standing at the Bar to provide legal assistance to a child victim, if so required¹⁴.

SOPs for a police officer if the child is an accused

1. Immediately inform the juvenile's parents or guardian(s) and the Probation Officer about the juvenile's arrest.¹⁵
2. Produce the juvenile before the Magistrate within 24 hours.¹⁶
3. The juvenile is to be medically examined if so needed.
4. The juvenile in Police custody should not be handcuffed, chained, or fettered.¹⁷
5. Prepare a separate challan and present the child's custody in the Juvenile Court through the prosecutor if the co-accused is an adult.¹⁸
6. The juvenile should never be compelled to confess his/her guilt, and he/she should be interviewed only in a child-friendly environment or a child-friendly corner in the police station.¹⁹
7. A Police Officer should not detain/keep the child with an adult accused during the investigation process.
8. The privacy of the juvenile has to be fully respected. The concerned SHO must ensure that no harm is caused to a child in conflict with the law and protect the juvenile accused from exposure, publicity, or labelling.²⁰

¹⁴ Sec. 3(3) Juvenile Justice System Act, 2018

¹⁵ Sec. 5 (a) Juvenile Justice System Act, 2018

¹⁶ Sec. 61 Cr.P.C.

¹⁷ Sec. 16 (2) Juvenile Justice System Act, 2018

¹⁸ Sec. 10 Sindh Children Act, 1955

¹⁹ 163 Cr.P.C.

²⁰ Sec. 13 Juvenile Justice System Act, 2018

9. A juvenile accused should be promptly and directly informed of the charges levelled against him/her through his/her parents or legal guardian(s). In case a formal FIR is registered, then a copy of this FIR should be made available to the juvenile and/or to his/her parents or guardian(s) and Probation Officer at the earliest. This will enable the juvenile to explain the circumstances which resulted in him/her coming into potential conflict with the law.²¹
10. The investigation of a case involving a female juvenile accused shall be handed over to a lady officer, not below the rank of sub-inspector, appropriately trained to deal with child-related cases.
11. A female juvenile shall only be kept in a Juvenile Rehabilitation Centre established or certified exclusively for female inmates.²²
12. No female juvenile accused shall, under any circumstance, be apprehended or investigated by a male police officer or released on probation under the supervision of a male officer.²³
13. The Investigation Officer shall initiate an inquiry to determine the age of the juvenile offender based on:
 - a. Birth Certificate
 - b. Education Certificate
 - c. Any other pertinent document

²¹Sec. 5 of Juvenile Justice System Act, 2018

²²Sec. 167 (5) Cr.P.C. & Sec. 17 (2) Juvenile Justice System Act, 2018.

²³Sec. 17 (1) Juvenile Justice System Act, 2018

In case of no documentary evidence to inform the concerned magistrate, the age may be determined through a medical examination²⁴

SOPs for the Probation Officer

1. Assist the Investigation Officer during the investigation.²⁵
2. Prepare a Social Investigation Report (SIR) and maintain a proper record of the children in conflict with the law, if possible, in a database designed for the purpose.²⁶
3. Ensure that probationers observe the terms and conditions of the probation order.²⁷
4. Coordinate with the juveniles released on probation and refer them to the Social Welfare Department or any other organization for their rehabilitation, as and if required.
5. Identify the juveniles who immediately need rehabilitation services and submit the report to the Director Rehabilitation.
6. Submit the probationers' conduct reports periodically before the trial court or on a date fixed by the court.
7. Coordinate and assist the investigation agencies and the trial Courts.
8. Identify Civil Society Organizations involved in upgrading the Juvenile Justice System and introduce their expertise to all the relevant stakeholders.
9. Take steps to mediate and assist in bringing the complainant and the accused to a compromise, as per law, and in a manner that fulfills the justice requirements.²⁸

²⁴Sec. 8 (1) Juvenile Justice System Act, 2018

²⁵Sec 7(2) Juvenile Justice System Act, 2018

²⁶Sec. 14 Juvenile Justice System Act, 2018

²⁷Sec 13 Juvenile Justice System Act, 2018

²⁸ Sec (14) (e) Juvenile Justice System Act, 2018

10. Obtain information regarding the juvenile's antecedents, family history, or any other information to assist the Court immediately after his/her arrest.²⁹
11. Act as a member of the Juvenile Justice Committee³⁰ and perform the following functions, namely:
 - a. Dispose of the case within one month.
 - b. Monitor observation homes and Juvenile rehabilitation centers and direct officers in charge to take measures for the Juvenile's welfare and social reintegration under his/her supervision.³¹

SOPs for the Social Welfare Officer

1. Assist the investigation officer during the investigation.³²
2. Maintain a proper record of the juvenile.³³
3. Maintain proper record of detained juveniles in the Social Welfare Department's rehabilitation centers or in any institution such as Child Protection Authority to enable them to access education – such as technical and vocational training- and psychological support services.³⁴
4. Maintain a proper record of juveniles in a database, or a file, specially designed for this purpose, and prepare a report regarding their social behavior.³⁵
5. Arrange & supervise access to psycho-social support services for the juveniles in the police custody or observation homes or rehabilitation centers.

²⁹Sec (66) Sindh Children Act, 1955 & Sec. 5(b) of Juvenile Justice System Act, 2018

³⁰Sec. 10(2)(d) Juvenile Justice System Act, 2018

³¹Sec 10(4)(a)(b) Juvenile Justice System Act, 2018

³²Sec 7(2) Juvenile Justice System Act, 2018

³³ S.14 Juvenile Justice System Act.2018

³⁴ Sec. 10 (4) (b) Juvenile Justice System Act, 2018

S.20 Sindh Child Protection Authority Act, 2011

6. Identify the juveniles who immediately need rehabilitation services and submit a report to the Director Rehabilitation and the Secretary, Social Welfare Department.³⁶
7. To rehabilitate juveniles, the District Welfare Officer may coordinate and meet with the District & Sessions Judge bi-monthly to discuss issues relating to children in conflict with the law, facilitated by the Social Welfare Department.³⁷
8. Coordinate with and assist all relevant stakeholders, especially the investigation agencies and trial courts.³⁸
9. Identify Non-Government Organizations having the mandate to support the juvenile justice system and introduce their expertise to all relevant stakeholders.³⁹
10. Invite all stakeholders relevant to the juvenile justice system for consultation and improve laws and policies relating to children.⁴⁰
11. Arrange awareness programs on child-related issues for the general public.⁴¹
12. The I.O. who investigates a juvenile's case shall be assisted by the probation officer or by the social welfare officer notified by the government. He or she shall prepare a Social Investigation Report to be submitted to the Juvenile Court⁴² which shall be kept confidential by the Court.
13. After releasing a child, if the court thinks that the release may bring him/her in association with criminals or expose him/her

³⁶S.17(i) Sindh Child Protection Authority Act, 2011

³⁷S.10 (1 a) (b) Sindh Child Protection Authority Act, 2011

³⁸S.10(1(a) Sindh Child Protection Authority Act, 2011

³⁹S.10 (I(f) Sindh Child Protection Authority Act, 2011

⁴⁰S.10(I)(N) Sindh Child Protection Authority Act, 2011

⁴¹S.15(N) National Commission on Rights of Child Act, 2015

⁴²Sec. 7 (2) Juvenile Justice System Act, 2018

to any harm, the juvenile shall be handed over to the custody of a probation officer.⁴³

SOPs for the Prosecutors

1. Scrutinize the final report/challan and suggest the court separate the case of the juvenile from the case of an adult accused at the initial stage.
2. If the Court is satisfied that it is in the interest of justice, the juvenile may be tried together with an adult by the Juvenile Court⁴⁴ and request the Court to dispense with the attendance of the juvenile accused.
3. Assist the Court in determining the age of the juvenile.
4. Make sure that the juvenile accused has legal assistance. In case the juvenile is not legally represented, suggest the Court provide legal assistance to the juvenile accused via the District Legal Empowerment Committee.⁴⁵
5. Make sure that the Probation Officer has submitted the juvenile's Social Investigation Report immediately after the completion of the investigation⁴⁶.
6. Collect past criminal record of a juvenile accused and produce it before the Court before the final verdict and if he/she is a first offender, inform the Court.
7. Assist the Court in disposing of the bail matter on a priority basis and dealing with the juvenile accused's case within the period of six months.⁴⁷

⁴³Sec. 6 Juvenile Justice System Act, 2018

⁴⁴ Sec. 12 (2) Juvenile Justice System Act, 2018

⁴⁵Sec. 3 (1 & 2) Juvenile Justice System Act, 2018

⁴⁶Sec. 14 (1) Juvenile Justice System Act, 2018

⁴⁷Sec. 4 (8) Juvenile Justice System Act, 2018

8. Ensure that each juvenile is housed/detained at a proper safety place: observation homes and rehabilitation centers.⁴⁸
9. Maintain a proper record of the juveniles provided with psychological support services through the Social Welfare Officer or a Psychologist/Therapist.
10. Identify cases where on completion of the trial, diversion is possible and bring this to the juvenile court's notice.⁴⁹
11. Assist the Court and the investigation agencies in observing the provisions of laws relating to children.
12. Act as a liaison officer between the police and the judiciary.

SOPs for Judicial Officers

1. If a Judge, after he/she has taken cognizance of any offence, finds that an accused brought before him/her is a juvenile, he/she shall immediately transfer his/her case to the Juvenile Court for further proceedings.⁵⁰
2. The Juvenile Court to decide the case within the prescribed time limit of six months.⁵¹
3. An Application for extension of time may be filed before the High Court by the Judge of the Juvenile Court if the matter could not be decided within the prescribed time limit: it shall also mention reasons for such extension thereof.⁵²
4. Closely monitor and supervise the investigation process while acting as an Area Magistrate.
5. A Judge of a Juvenile Court, where a juvenile is involved in a bailable offence, and has not been released under section

⁴⁸Sec. 5 (1) Juvenile Justice System Act, 2018

⁴⁹Sec. 9 Juvenile Justice System Act, 2018

⁵⁰Sec. 4(7) Juvenile Justice System Act, 2018

⁵¹Sec. 4(8) Juvenile Justice System Act, 2018

⁵²Sec 4(9) Juvenile Justice System Act, 2018

496 of the Cr.P.C. and provided there are grounds for believing that the release of the juvenile may bring him/her in association with criminals, shall, unless he/she is sixteen years of age or, detained in a heinous offence, release the juvenile on bail, with or without sureties. He/she and shall also ensure that:

- a. The juvenile is kept in the custody of a suitable person; or
 - b. The juvenile's custody is handed over to the Juvenile Rehabilitation Centre under the supervision of a probation officer; or
 - c. Direct the police officer to trace out the juvenile's guardian/parents and handover the custody to him/her/them; and
 - d. The juvenile shall not, under any circumstance, be kept in police custody or prison.
6. Use the services of all relevant stakeholders for quick dispensation of the juvenile accused's justice and well-being as provided under the national/local laws and global treaties/policies ratified by the Government of Pakistan. Keep a copy of the SOPs of other stakeholders and ensure that each actor performs his/her duties effectively.
7. Release the juvenile on bail where the trial delay is not associated with any act or omission from the juvenile accused.
8. Direct any case or trial, pending before it, be referred to the JJC.⁵³

⁵³Sec 9 Juvenile Justice System Act, 2018

9. If disputed by any party, decide the issue of age on a priority basis. The magistrate/court may itself initiate the process of age determination by adopting appropriate methods, which may include collection and examination of the following records:⁵⁴
 - a. NADRA records such as Form “B,” Child Registration Certificate, CNIC.
 - b. School registration certificate, school leaving certificate, school admission form, board enrolment form/card.
 - c. Permanent residence certificate, domicile.
 - d. Medical examination report.
 - e. Any other pertinent document
10. Maintain a proper record of children in conflict with the law (if possible, in a database specially designed for the purpose) and call for reports from the probation officer regarding the juvenile’s social circumstances and educational status.
11. Use and share the report with other concerned stakeholders, if needed, during investigation or trial.
12. Direct the probation officer to submit a probation report in the prescribed manner.⁵⁵
13. When deciding for the detention of a juvenile convict, write an order directing the juvenile offender to be sent to a Juvenile Rehabilitation Centre until he/she attains the age of eighteen years or until the completion of the period imprisonment.⁵⁶

⁵⁴ Sec. 10 (I) (K), Sindh Child Protection Authority Act, 2011 and Sec. 8 Juvenile Justice System Act, 2018

⁵⁵ Sec. 15 (d) Juvenile Justice System Act, 2018

⁵⁶ Sec. 15 (e) Juvenile Justice System Act, 2018

ROLE OF THE JUVENILE JUSTICE SYSTEM COMMITTEE

JUVENILE JUSTICE COMMITTEE

The JJSA introduced the Juvenile Justice Committee (JJC) for cases of children in conflict with the law, which are to be disposed of through diversion. The JJC's functioning and the concept of diversion are described under section 9 of the JJSA. Subsection (1) of the Section provides that:

“With the consent of a juvenile or his guardian as the case may be, the complaint against the juvenile relating to offences as specified in subsection (6) shall be referred to the Juvenile Justice Committee for disposal of the same through diversion.”

The cases that can be referred to the JJC include those related to juveniles who are up to 16 years of age and who are in conflict with the law for a minor or major offence. A juvenile above the age of 16 who is in conflict with the law for a minor offence shall also be referred for diversion to the JJC. The JJC is headed by a Judicial Magistrate who has powers conferred under section 30 of the Cr.P.C. The JJC further consists of a District Public Prosecutor, a member from the Bar having at least 7 years standing at the Bar, and a serving Probation Officer/Social Welfare Officer.

A juvenile accused can be referred to the JJC with the consent of the juvenile or/and his/her guardian(s). The JJC shall decide, manage and oversee the diversion process. Diversion may happen at any stage of the trial or investigation. The modes of diversion may include but are not limited to:

- a.** Restitution of moveable property;
- b.** Reparation of the damage caused;
- c.** Written or oral apology;

- d.** Participation in community services;
- e.** Payments of fine and costs of the proceedings;
- f.** Placement in a Juvenile Rehabilitation Centre; and
- g.** Written and oral reprimand.⁵⁷

Cases sent for diversion should be disposed of in one month from the date of referral with the aggrieved party's consent. The JJC can also inspect observation homes and rehabilitation centres to oversee the diversion process's execution and, if need be, issue directions for the juvenile's welfare.⁵⁸

The JJSA prohibits the disclosure of the juvenile's identity. The printing and publishing of the name or any matter which discloses the juvenile's identity is punishable under the JJSA, with imprisonment for a maximum term of three years and fine.

⁵⁷Sec. 9 Diversion Juvenile Justice System Act, 2018

⁵⁸Sec. 10 Juvenile Justice System Act, 2018

POST-TRIAL ACTIONS (REINTEGRATION AND REHABILITATION OF A CHILD IN CONFLICT WITH THE LAW)

A case involving a child in conflict with the law is considered “disposed of” when a juvenile court announces its judgment. However, the role of the juvenile court does not necessarily end there. One of the primary duties of a juvenile court is to ensure the reformation of a child who is in conflict with the law. Hence, after the case has been disposed of either by way of diversion or by way of a judgment, the juvenile court may monitor the juvenile’s reformatory process and ask the concerned probation officer to submit a report regarding the juvenile’s progress on a monthly or quarterly basis.

A judge presiding over a child court may also decide to pay regular visits to rehabilitation centers or places where juveniles are taken care of to ensure that they are treated following the principles of the JJSA and the court decisions.

EXERCISES

Exercise 01

Given Facts: This is the first date of hearing in court after submitting a charge sheet. The child accused is facing trial for an offence punishable with up to 5 years of imprisonment. The child accused is produced in front of a Juvenile Court. The prosecutor is also present in the juvenile court, whereas the defense lawyer could not be engaged by the child accused, given his poor financial condition.

Required: How would the Juvenile Court proceed?

Response: Accused could not engage an advocate; therefore, the prosecutor and the court shall make efforts to provide him legal aid by obtaining it from the head of the District Legal Empowerment Funds, which the District & Sessions Judge maintains. Section 3 of the Juvenile Justice System Act, 2018 states that if a juvenile does not have an advocate, the court shall provide him/her with legal assistance at the State's expense. The accused shall apply, and it will be referred to the District & Sessions Judge, who is the head of the District Legal Empowerment Committee. The law and Justice Commission of Pakistan has provided sufficient funds to each District & Sessions Judge under the head of "Legal Aid." The accused will be provided legal aid via the services of an advocate having at least seven years of standing at the bar.

In addition to the above, the court of Magistrate shall supply documents to the accused as provided under section 241-A of the Cr.P.C.

The format of the application for providing legal assistance may be as under:

IN THE COURT OF II JUDICIAL MAGISTRATE, MALIR KARACHI

Criminal Case No. 73 of 2020

The State Versus Inayatullah & others

Application for Legal Aids

It is respectfully submitted that I am an accused in the case mentioned above. The complainant has filed a false case against me. I work as a laborer and live in poor financial conditions, and I cannot pay the professional fee of an advocate. Therefore, it is requested to the Hon'ble Chairman, District Legal Empowerment Committee, to appoint an experienced advocate and the State to pay his/her professional fee so that I may be legally represented in the juvenile court. A copy of my school certificate/guardian's CNIC is attached for your kind perusal.

Prayer is made in the interest of justice.

Dated: 16-03-2012

**Inayatullah
(Accused)**

The court, upon receiving the application above, may pass the following order:

16-03-2020 “The accused, namely, Inayatullah⁵⁹, moved an application to be provided with legal aid at the State’s expense as he cannot engage an advocate due to his poor financial conditions.

His application is forwarded to the Hon’ble District & Sessions Judge, who is also the Chairman of the District Legal Empowerment Committee, for his/her consideration so that the legal assistance expenses may be covered.

**-sd-
(Judge)”**

The juvenile court shall write the following case diary after supplying the relevant documents to the accused:

“16-03-2020

Case called. The accused is present on bail. Learned DDP is present. The matter was fixed for supplying copies provided to the accused in compliance with Section 241-A Cr.P.C. and acknowledgment of receipt is marked as Ex.1. Accused could not engage an advocate, and he applied for the appointment of an advocate at the State’s expense on the ground of his poor financial conditions. The application is forwarded to the Hon’ble District & Sessions Judge, who is also the Chairman of the District Legal Empowerment Committee, for

⁵⁹ This name is just an example and does not represent any real juvenile accused.

consideration. The office is directed to keep in contact with the office of the Hon'ble Chairman so that appointment of an advocate may be made timely. The file of the absconding accused is separated. The case is adjourned to 24-03-2020 for framing charges or otherwise. Accused to attend court on the next date of hearing.

-sd-
(Judge)"

Magistrate is advised to read section 241-A of Cr.P.C. The Court of Magistrate, while supplying documents to the accused, shall prepare a receipt which may be as under:

IN THE COURT OF II JUDICIAL MAGISTRATE, MALIR KARACHI.

Criminal Case No. 73 of 2020

The State Versus Inayatullah & others

RECEIPT OF SUPPLY OF COPIES

Following documents were supplied in the case mentioned above:

- 1) Statements recorded under sections 161 & 164 Cr.P.C.
- 2) Inspection Report/Memo of place of incident
- 3) Audio/Video recording of evidence if any

-sd-
(Signature of Accused)

-sd-
(Judge)

Note: The Court of Magistrate while accepting the challan should ensure that the prosecution has provided set/s of documents to the accused and that its legible copies are in the court file. It should also be kept in mind that the case is to be disposed of within 6 six months from the date of institution of the case, and therefore, a short date

is to be given to the accused. Article 10-A of the Constitution of Pakistan guarantees a fair trial. In the case of a juvenile, the fair trial demands that the juvenile's trial be completed timely within the statutory time limit.

SELECTED LEGAL PROVISIONS

Code of Criminal Procedure, 1898

In Magisterial Court, before the commencement of a trial, statement of witnesses and documents relating to evidence collected against the accused is provided to him/her, as provided under section 241-A Cr.P.C. which reads as under:

241-A- Supply of statements and documents to the accused:

(1) In all cases instituted upon police report, except those tried summarily or punishable with fine or imprisonment not exceeding six months, copies of statements of all witnesses recorded under sections 161 and 164 and of the inspection note recorded by an investigation officer on his first visit to the place of occurrence, shall be supplied free of cost to the accused not less than seven days before the commencement of the trial;

Provided that if any part of a statement recorded under section 161 is such that its disclosure to the accused would be inexpedient in the public interest such part of the statement shall be excluded from copy of the statement furnished to the accused.

(2) In all cases instituted upon a complaint in writing, the complainant shall;

(a) State in the petition of complaint the substance of the accusation, the names of his witnesses, and the gist of the evidence which he is likely to adduce at the trial; and

(b) Within three days of the order of the Court under section 204 for issue of process to the accused, file in the Court for supply to the accused, as many copies of the complaint and any other document which it has filed with his complaint as the number of the accused.

Provided that the provisions of this subsection shall not apply in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties.

The Juvenile Justice System Act, 2018

Section 3. Legal assistance. - (1) Every juvenile or a child who is victim of an offence shall have the right to legal assistance at the expense of the State.

(2) A juvenile shall be informed about his rights available under the law by a legal practitioner within twenty-four hours of taking him into custody.

(3) A legal practitioner appointed by the Government or by the Juvenile Court for providing legal assistance to a child victim of an offence or a juvenile shall have at least seven years standing at the Bar.

The Pakistan Bar Council Free Legal Aid Rules, 1999

Section 7. Pakistan Bar Council District Free Legal Aid Committee:

(a) In each District of a Province there shall be constituted a District Committee to be known as the Pakistan Bar Council District Free Legal Aid Committee for the District concerned and consist of:

- (i) Not more than one member of the Provincial Bar Council from the District concerned to be nominated by the Provincial Bar Council.
- (ii) President and Secretary of the District Bar Association, respectively, by virtue of office.

(b) The District Committee shall provide free legal aid to a deserving person or a litigant in any Court or Tribunal or before any authority or court functioning at the District level.

(c) The term of office of each member of the Committee shall be co-extensive with the term of office of such member by virtue of which he is on the Committee and in case of fresh elections for the said post or in case of resignation from the said post or from the Membership of the Committee or in case the Member is unable to or incapable of performing his duties of such office or membership of the Committee, the seat shall be deemed to have fallen vacant and the vacancy shall be filled in by reference to the relevant provisions of Para 7(a) above.

(d) The Member of Provincial Bar Council of the District concerned as nominated, shall be the Chairman of the District Committee whereas the Secretary of the concerned District Bar Association shall be the Secretary of the District Committee. In case of non-availability of Member of the Provincial Bar Council from the District concerned, the President of the District Bar Association will act as Chairman of the Committee.

Explanation:

(a) For Karachi, all the Districts of Karachi Division shall be deemed to be one District for the purposes of these Rules, and the President and Secretary of Karachi Bar Association shall be the Member and the Secretary of the District Committee for Karachi.

(ii) If there are more than one Secretary of any District Bar Association, the Senior Secretary shall be deemed to be the Secretary for the purpose of these Rules.

The decision of the Committee shall be taken by majority, and one third of the members of the Committee shall form the quorum. In case of urgency, the Chairman of District Committee will, however, be authorized to take a decision on receipt of an application subject to approval of the Committee in its next meeting.

Section 8. Application for Free Legal Aid and their disposal:

- (a) Any person desirous of free legal aid shall submit an application on the prescribed form to the appropriate Committee or Chairman/Member of the appropriate Committee so authorized and sub application shall be supported by an affidavit of the applicant and accompanied by the judgments/orders and other necessary documents providing him cause of action for or against the suit, appeal or proceedings in a court of law.
- (b) The application shall be decided by the respective or its Chairman/Member in the manner stated herein above as soon as possible and each Committee or its Chairman/Member shall be free to grant free legal aid.
- (c) The free legal aid for professional fees will only be granted in case no Advocate is available to take up or conduct the case free of charge.
- (d) Each Committee shall maintain the following panels of lawyers practicing within the area of its operation:
 - (i) Lawyers voluntarily prepared to take up/conduct cases without charging any fee.
 - (ii) Lawyers prepared to take up/conduct cases on charging the fee or part thereof as set out in the schedule.
- (e) A Committee may request any advocate to conduct one case in a year free of charge.
- (f) Each Member of Pakistan Bar Council and Provincial Bar Councils may conduct at least one case in a year that may be assigned to him by a Free Legal Aid Committee.

District Legal Empowerment Committee (Constitution & Functions) Rules, 2011

Section 7. Procedure for Grant of Legal Aid. – (i) Any deserving litigant shall submit requests in writing on a plain paper, addressed to the Chairperson or in a manner prescribed by the Committee. The application must clearly contain the request for payment as prescribed by Rule 5. (ii) to plead his case before the Court. The applications must be accompanied by National Identity Card or any other document which proves identity.

(ii) The Superintendent District Jail may also forward applications of the under trial or convicted prisoners, or any person confined in jail in relation to civil proceedings after necessary verification that the applicant is a deserving litigant.

(iii) The Committee may also consider cases referred by any Court for provision of legal aid to the person whose case is pending before such Court.

(iv) Office of the Chairperson shall register the applications in the relevant register with brief particulars and by assigning Diary No. The applications so registered shall be placed before the Chairperson who if thinks appropriate may refer the same to any other person for verification and report qua financial position of the applicant.

(v) The application shall be examined by the Committee in its monthly or special meeting, as the case may be, which shall determine the eligibility or otherwise of applicant for grant of legal aid, the manner, nature, and extent of such aid: Provided that a person shall not be entitled to legal aid, for whom an advocate or public prosecutor or government pleader has already been appointed in the same case, under any other law for the time being in force.

(vi) The decision of the Committee shall be final; however, this shall not debar the applicant litigant to apply again after furnishing sufficient proof that his financial condition has been weakened to bear the expenses of litigation.

Exercise 02

Given Facts: The accused attended the court on 24.03.2020 when documents were supplied to him. The DLEC has appointed an advocate for the accused upon his request. The advocate is present in court with the accused.

Required: What should be the proceeding to be conducted on the second date of hearing, and what would be the role of the defense advocate, prosecutor, and judge during such proceeding? Explain by referring to accused's rights.

Responses: On the last date of hearing, documents were supplied to the accused as provided under section 241-A Cr.P.C. Today charge will be framed against the accused under section 242 Cr.P.C. The court will go through the documents available in the police file and shall prepare a charge sheet which shall reflect all the allegations in a concise and detailed manner; the charge sheet should also include the date, time and place of occurrence, and the way the accused committed the alleged offence. The Court shall inform the accused about the offense and its jurisdiction. After framing charges, the plea will be recorded immediately. The accused will be asked whether he admits or not the alleged offence, and the judge will write his answer. After recording the plea, the accused's signature will be obtained on the receipt, and the Magistrate shall sign it. It is pertinent to mention that the prosecutor may assist the court while the charge is framed, and he/she may suggest the addition or deletion of any offence. The defense advocate may also help the Court in framing the charge.

Reproduce section 242 Cr.P.C. and 227.

Relevant Laws:

Section 227 of Cr.P.C.. Court may alter charge.- (1) Any Court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

Section 242 of Cr.P.C. Charge to be framed. When the accused appears or is brought before the Magistrate, a formal charge shall be framed relating to the offence of which he is accused and he shall be asked whether he admits that he has committed the offence with which he is charged.

The Court shall **write the case** diary, which may read as under:

Case diary

Case called. Accused is present on bail. Prosecutor and Defense Counsel are present. Charge is framed against the accused at Exhibit 2, and plea is recorded at Exhibit 3. As accused did not plead guilty, the matter is fixed for recording prosecution evidence. The office is directed to issue summons to prosecution witnesses and ask process server to produce case property. Accused to attend court on next date. Case is adjourned to 01-02-2019.

Exercise 03

Given Facts: The case is fixed in court for recording evidence of prosecution witnesses. Summonses were issued against the witnesses, but nobody attended, and the Court repeated the process.

Required: What would be the action of the court under the circumstances? Write the diary.

Response: The Court shall examine the process server's report, and if needed, he/she will call the process server to explain why the witnesses could not be served. While examining the information, the Court shall note the date of issuance of summons, date of service, the person who received the summons, etc. and accordingly issue direction to the concerned officer

The court shall repeat the process and write the following **case diary**:

Case called. Accused is present on bail. Advocate for the accused and prosecutor are present. Witnesses could not be served, and therefore the case is adjourned with direction to the office for issuance of fresh summons against the witnesses. Put off to 09-02-2019.

Relevant Laws:

Article 132 of QSO. Examination-in-chief, etc.__ (1) The examination of a witness by the party who calls him shall be called his examination-in-chief.

(2) The examination of a witness by the adverse party shall be called his cross-examination.

(3) The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.

Article 136 of QSO. Leading questions. Any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question.

Article 137 of QSO. When leading questions must not be asked.

(1) Leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief, or in a reexamination, except with the permission of the Court.

(2) The Court shall permit leading questions as to matters which are introductory or undisputed, or which have, in its opinion, been already sufficiently proved.

Exercise 04

Given Facts: Two witnesses have attended the Juvenile Court. The accused's advocate appointed at the state's expense is present. Witnesses are examined, and the defense advocate cross-examined them.

Required:

- i. What would be responsibility of the Court, prosecutor and defense advocate on the date of hearing and during the examination of the witnesses?
- ii. Write an appropriate case diary. Also, record the statement of one of the prosecution witnesses in a question-answer format.

Responses: The court shall ensure that the accused and his advocate are present in court and, in their presence, shall direct the prosecution to examine the witnesses. The Court shall give the opportunity to every relevant stakeholder to take part in the process and play its crucial role. The prosecutor should be allowed to put questions to the witness in sequence so that all relevant oral and documentary evidence may come on record. However, it should be ensured that the prosecutor does not ask leading questions to the witness during the examination-in-chief. However, leading question may be asked about admitted and essential facts. Evidence of one of the witness is recorded as under:

Q. When did you reach the police station?

A. I reached police station on 10.2.2020.

Q. What did you do at the Police Station?

A. I lodged a report against the accused.

Q. Where is the report?

A. I produce it as Exhibit 4.

Q. When did the police officer inspect the place of incident?

A. He inspected the place of incident on the day of the registration of FIR.

Q. Where did the incident take place?

A. It is located at Street 33, Block 7, Gulshan-e-Iqbal.

Q. What happened on the place of incident?

A. The police officer inspected the place of incident and took few photographs?

Q. Where are those photographs?

A. I produce the photographs as Exhibit 5, 6 and 7.

Q. What else did the police officer do at the place of incident?

A. He prepared a memo.

Q. Who signed the memo?

A. One police officer and the other was a shopkeeper.

Note: The purpose of mentioning these questions is to give an idea to the judges, prosecutors or advocates that during the examination-in-chief 'W' type of questions are put to witnesses and leading questions are to be avoided.

The Court shall write the following **case diary**:

"Case called. Accused is present on bail. Defense advocate and prosecutor are also present. Two witnesses have been served, and they are examined at Exhibits 4 & 10. Defense Advocate cross-examined them. Witnesses produced documents at Exhibits 5, 6, 7, 8,9 & 11. Office to issue summons against remaining. Process server to produce case

property on the date of hearing. Case is adjourned to 18-02-2020 for recording evidence of remaining witnesses.

**-sd-
(Judge)”**

Exercise 05

Given Facts: The Investigation Officer produces the accused in the Juvenile Court immediately after his arrest, and an application is submitted, praying therein to grant 04 days police custody remand on the ground of recovery of theft articles: camera and gold articles. The accused's father prays for grant of bail on the basis of tender age of the accused (16 Years), whereas the complainant and the Investigation Officer claim the age of the accused to be 19 years, and such fact has been recorded in the *Huliya* Form.

Required: You are a Magistrate and have received the application. What would be your role in such circumstances?

Responses: The accused is about 16 years old, as his father has submitted his birth certificate and a 'B' form. He is named and booked in a crime that is punishable for up to 3 years. His case falls within the ambit of section 6(3) and section 9 of the JJSA. The accused will be granted bail under section 496 Cr.P.C. read with section 6(3) of the JJSA, and therefore remand in police custody shall not be granted. The accused will also be referred to the JJC.

Exercise: A juvenile accused of a bailable offence is not released by the juvenile court on the ground that there are reasonable grounds for believing that the release of such juvenile may bring him in association with criminals or expose him to any other danger. The Investigation Officer could not trace the accused's parents despite specific directions from the court. The Juvenile Court ordered to place the juvenile in a Juvenile Rehabilitation Centre under a probation officer's supervision. The advocate representing the juvenile is aggrieved with the juvenile court's order and intends to file an appeal.

Required:

- i. How do you assess the order of the juvenile court?
- ii. What would be the expected order of the appellant court?

Responses:

- i. The order is fine and cogent reasons have been given by the Court while refusing bail in a bailable offence.
- ii. It would remain intact in an appeal as it is in the largest interest of the child not to release him.

Exercise: An accused person, named in a murder case, who physically appears to be a juvenile is brought before a Court under section 167 of the Code of Criminal Procedure, 1908, the Court on the first date of hearing, remanded him to a judicial lockup on the ground that he appears to be a juvenile and therefore cannot be remanded in police custody.

Required: How do you assess the order of the juvenile court?

Exercise: A Juvenile Justice Committee with a juvenile's consent received a case from a police officer for disposal of the case through diversion. The juvenile court issued a notice to the I.O. as he failed to submit the Charge Sheet within 14 days.

Required: What would be your response to the show cause issued on account of not submitting the charge sheet against the accused within 14 days as provided under section 173 of the Code of Criminal Procedure, 1898?

Exercise: A Juvenile Justice Committee, with the consent of a juvenile, about 17 years of age, named in a crime punishable up to 5 years, received a case from a police officer for disposal through diversion. The committee decided the matter with the consent of the

complainant. Accordingly, it informed the I.O. that the accused had tendered a written apology to the complainant and also paid a fine and the costs of the proceedings.

Required: How do you assess the order of the Juvenile Justice Committee?

Exercise: The Juvenile Justice Committee received a case from a prosecutor for disposal through diversion. The Committee returned the case on the plea that it should be sent through the juvenile court.

Required: How do you assess the order of the Juvenile Justice Committee?

Exercise: A juvenile is charged with and tried together with an adult by the Juvenile Court. A witness is examined in the court, and the advocates representing the accused are cross-examined the witness. The Juvenile Court dispenses with the juvenile's physical presence without any application in this regard, and the juvenile is allowed to join the Court proceedings through an audio-visual technology link.

Required: How do you assess the order of the Juvenile Court?

Exercise: Juvenile Court has asked the probation officer to submit a report for any evidence that the juvenile actually committed the offence and assess the possibility of sending the juvenile to a Juvenile Rehabilitation Centre or release him on probation.

Required: How do you assess the order of the Juvenile Court?

Exercise: On receipt of a report from a probation officer about the juvenile's character, educational, social, and moral background and on the conclusion of an inquiry and investigation, the Juvenile Court, keeping in view the best interest of the child, passed an order for

releasing the juvenile offender after the victim/complainant pardoned him.

Required: How do you assess the order of the Juvenile Court?

Exercise: On receipt of a report from the probation officer about the juvenile's character, educational, social, and moral background and on the conclusion of an inquiry and investigation, the Juvenile Court, keeping in view the best interest of the child, refused to release the juvenile offender even after the victim/ complainant pardoned.

Required: How do you assess the order of the Juvenile Court? S15

Exercise: A Juvenile Court has appointed a legal practitioner to provide legal assistance with 5 years of standing at the Bar.

Required: How do you assess the order of the Juvenile Court?

INTERNATIONAL LAW

Handbook for **CHILD COURTS**

INTERNATIONAL OBLIGATIONS**INTERNATIONAL LAW**

International law comprises legal obligations to which states have consented to regulate the interactions between them. In the narrowest sense, international law is applicable between “states,” a term used in international law to connote countries or nation-states rather than non-state actors.

“International agreements go by several names, such as ‘charter,’ ‘convention,’ ‘covenant,’ ‘pact,’ ‘protocol,’ ‘statute,’ and ‘treaty.’ ‘Convention’ typically refers to an agreement among many countries, while ‘charter’ or ‘statute’ is often used for the founding document of an institution, and ‘protocol’ for an agreement supplemental to a principal treaty.” “Treaties” are agreements governed by international law and can be “bilateral” (between two states), “multilateral” (between multiple States), or “universal” (treaties to which all States have consented). International agreements are binding on their States Parties.

All rights proclaimed in the UDHR, save the right to marry under Article 16, apply equally to children as to adults. Article 25(2) provides that, “Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.” Moreover, under article 26, everyone shall have a right to free elementary education.

United Nations Convention on the Rights of the Child (UNCRC) and its Optional Protocol on Sale of Children, Child Prostitution and Child Pornography

In 1989, the United Nations adopted the Convention on the Rights of the Child (UNCRC), which addresses the civil, political, economic,

social, health, and cultural rights of those under 18 years of age, recognizing the rights that other international conventions and declarations grant to adults. The UNCRC is the most significant of all international instruments addressing children's rights, including juvenile justice and child sexual abuse, and has four core principles – non-discrimination; devotion to the best interest of the child; the right to life, survival, and development; and respect for the views of the child.

The Convention sets out these rights in 54 articles and three Optional Protocols. One Optional Protocol restricts the involvement of children in military conflicts. Another relates to communications of the Committee on the Rights of the Child and the Optional Protocol on Sale of Children, Child Prostitution, and Child Pornography; it commits national governments that are signatories to the Convention to protect and ensure children's rights and holds the governments accountable before the international community. States Parties are obligated to develop policies and undertake all actions considering the best interest of the child.

Article 19 of the UNCRC protects children from all forms of abuse, neglect, and exploitation by parents and others and obligates states to establish prevention and treatment programs. Article 24 promotes high standards of health and access to health care services and requires effective and appropriate measures to abolish traditional practices prejudicial to children's health. Examples of traditional practices in Pakistan that could be considered prejudicial to children's health include child marriage, giving girls to settle disputes and *bacha bazi*. Article 34 specifically requires states to protect children from sexual exploitation and abuse, including prostitution and involvement in pornography. Article 35 obligates states to

prevent the abduction, sale, and trafficking of children. Article 39 directs States Parties to take all appropriate measures to promote the physical and psychological recovery and social reintegration of child victims of neglect, exploitation, and abuse.

Article 37 focuses on the detention and punishment of juveniles and prohibits the torture or other cruel, inhuman or degrading treatment or punishment of a child and imposition of the death penalty or life imprisonment without the possibility of release for anyone under the age of 18. It further provides that children should have access to legal and other services/assistance and the right to challenge the legality of any deprivation of their liberty before a court or other competent, independent, and impartial authority.

Article 40(1) focuses on juvenile justice and particularly the idea that every child accused of a crime deserves to be treated with dignity and respect. It emphasizes that the justice system's treatment of a child accused should consider the child's age/development and promote his/her constructive re-integration into society while also reinforcing his/her respect for the freedoms and human rights of others. The article then lists the guarantees that States Parties shall afford a child accused, such as a presumption of innocence until proven guilty, the right to be informed and made to understand the charges against them, and an opportunity to examine or have examined adverse witnesses.

Article 40 further encourages States Parties to promote the establishment of laws, procedures, institutions, and authorities that apply to children accused of having infringed the penal law, including establishing a minimum age below which children shall be presumed not to have the capacity to infringe the penal law. Finally, article 40 highlights alternative measures to deal with children in conflict with

the law without a judicial process.

Pakistan signed and ratified the UNCRC in 1990. It signed the First Optional Protocol in 2001 and ratified it in 2016. It signed the Second Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography in 2001, ratifying it in 2011.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children

The Convention against Transnational Organized Crime (the Palermo Convention), which falls under the UN Office's jurisdiction on Drugs and Crime, is supplemented by three protocols. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, has particular relevance for the justice system response to child exploitation and trafficking.

Article 3 of the Protocol defines trafficking in persons that also specifically addresses when the victim is a child. Pakistan is not a state party to the Convention against Transnational Organized Crime.

Worst Forms of Child Labour Convention (No. 182)

The General Conference of the International Labour Organization (ILO) adopted its Worst Forms of Child Labour Convention, otherwise known as Convention No. 182, on June 17, 1999. Convention No. 182 requires ILO members who ratify the Convention to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor as a matter of urgency.' Pakistan ratified Convention No. 182 on the Worst Forms of Child Labour on October 11, 2001.

Minimum Age Convention, 1973 (No. 138)

Under Article 1 of the Convention, "Each Member for which this

Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labor and progressively raise the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.”

Article 2(1) of the Convention states that each ratifying State shall specify a minimum age for employment or work admission. Article 2(3) states that the age of entry should not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years. Article 2(4) allows “a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, where such exist, [to] initially specify a minimum age of 14 years.” Article 2(5) provides, however, that States which specify the age of 14 must give the reason for doing so in a report on the application of this Convention. Article 3 sets 18 years as the minimum age for work that is likely to jeopardize young persons' health, safety,, or morals. Pakistan ratified this Convention on 06 July 2006.

International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) is an international human rights treaty adopted by the United Nations (UN) in 1966. It is one of the two treaties that give legal force to the Universal Declaration of Human Rights. The other is the International Covenant on Economic, Social, and Cultural Rights (ICESCR) described below.

The ICCPR commits States Parties to protect and respect the civil and political rights of individuals. These rights are fundamental to the

enjoyment of a broad range of human rights. Each Article to the Covenant relates to a specific right. The specific rights implicated in the justice system responses to child sexual abuse, exploitation, or trafficking would relate to those identified as freedom from slavery or forced labor, fair and equitable treatment by the judicial process, freedom of expression (e.g., victims having a voice in their cases), the rights of children, and equality and non-discrimination. Pakistan signed the ICCPR in 2008 and ratified it in 2010. It is not a signatory to either Optional Protocol.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

The International Covenant on Economic, Social, and Cultural Rights (ICESCR) came into force in January 1976 and is the second treaty to give legal force to the Universal Declaration of Human Rights. It is the international instrument dealing with the protection of what is generally called “social rights,” as distinguished from “civil and political rights.” Pakistan signed the ICESCR in 2004 and ratified it in 2008.

Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

Often described as the international “Bill of Rights” for women, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) was adopted by the United Nations in 1979 and came into force in 1981. It comprehensively addresses women’s rights within political, civil, cultural, economic, and social life. The CEDAW is monitored by the CEDAW Committee established through the Convention.

CEDAW is based on three core principles – equality, nondiscrimination, and the obligations of the State.

Pakistan acceded to CEDAW in 1996 with the declaration that “The accession by [the] government of the Islamic Republic of Pakistan to the [said Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan” and the reservation that: “The Government of the Islamic Republic of Pakistan declares that it does not consider itself bound by paragraph 1 of article 29 of the Convention.”

Article 18 (2) states, “Children with disabilities shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents.” Because children with disabilities are often abused at a higher rate than their peers, this article can be useful in the determination of age in a child sexual abuse proceeding. Pakistan signed the CRPD in 2008 and ratified it in 2011. Pakistan has not submitted any report on the CRPD to the UN.

South Asian Association for Regional Cooperation (SAARC) Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia

Opened for signature on 5 January 2002, the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia aims to unite the States Parties to facilitate and help in the development and protection of the full potential of the South Asian child and establish appropriate regional arrangements to assist the Member States, including Pakistan, in facilitating, fulfilling and protecting the rights of the child. The Convention reaffirms the UN Convention on the Rights of the Child and obligates States Parties to uphold the child's best interest as a principle of paramount importance.

SAARC Convention on Preventing and Combatting Trafficking in Women and Children for Prostitution

The SAARC Convention on Preventing and Combatting Trafficking in Women and Children for Prostitution is intended to “promote cooperation amongst the Member States so that they may effectively deal with the various aspects of prevention, interdiction, and suppression of trafficking in women and children; the repatriation and rehabilitation to victims of trafficking and prevent the use of women and children in international prostitution networks, particularly where the countries of the SAARC region are the countries of origin, transit, and destination.” Pakistan was one of the original signatories to both SAARC Conventions. Pakistan has also ratified the SAARC Convention on Preventing and Combatting Trafficking in Women and Children for Prostitution.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")

The Standard Minimum Rules for the Administration of Juvenile Justice was a resolution adopted by the United Nations in November 1985⁶⁰.

The resolution focuses on the treatment of juvenile prisoners and offenders in UN member nations. The rules outlined in this agreement represent the minimum conditions accepted internationally to treat young people/children in conflict with the law. The rules reflect the spirit of juvenile justice and outline principles and practices for administering juvenile justice in member nations. In the Beijing Rules, the objectives of juvenile justice include promoting children’s welfare and guarantees that decisions in cases of juveniles

⁶⁰ <https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>

will be proportional to the child's circumstances and seriousness of his/her crime. The rules go through the different juvenile justice stages, from arrest and investigation to the trial and prosecution to post-trial measures. The rules highlight that putting a child in prison should be the last resort possible and needs to be for the shortest time possible.

Important topics on juvenile justice that these rules address and highlight include:

- Age of criminal responsibility
- Rights of juveniles
- Scope for discretion in the Judicial Process
- Investigation and prosecution
- Diversion
- Adjudication and disposition
- Disposition measures
- Least possible use of institutionalization
- Non-institutional treatment and institutional treatment

UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power

The Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power was a resolution adopted by the United Nations in November 1985⁶¹. The Declaration identifies victims of crime as those “who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that violate criminal laws operative within the Member

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<https://www.ohchr.org/EN/ProfessionalInterest/Pages/VictimsOfCrimeAndAbuseOfPower.asp> x⁶¹

States, including those laws proscribing criminal abuse of power.”

United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (commonly known as the United Nations Convention against Torture (UNCAT)) aims to prevent torture and other cruel or inhuman acts, or degrading treatment or punishment around the world. The Convention defines torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” (Article 1). The Convention can be applied in the context of child sexual abuse prosecutions involving accused juvenile defendants. Pakistan signed the UNCAT in 2008 and ratified it in 2010.

UN Human Rights Council

The UN Human Rights Council, which replaced the Commission on Human Rights in 2006, is an inter-governmental body within the United Nations system made up of 47 States responsible for promoting and protecting all human rights around the globe. The Human Rights Council is what is known in the UN system as a “Charter body” (as opposed to a “treaty body”) because it gets its mandate from the UN Charter rather than a specific human rights treaty.

The Human Rights Council presides over the so-called Universal Periodic Review (UPR), a unique process that involves a review of all UN Member States' human rights records. The UPR is a State-driven process, under the Human Rights Council's auspices, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and fulfill their human rights obligations. As one of the main features of the Council, the UPR is designed to ensure equal treatment for every country when their human rights situations are assessed. This mechanism aims to improve the human rights situation in all countries and address human rights violations wherever they occur. Pakistan underwent its last Universal Periodic Review in 2017.

SIGNIFICANCE OF INTERNATIONAL LAW IN THE DOMESTIC LEGAL FRAMEWORK

International law is unfortunately often viewed as a foreign agenda to the domestic system, representing foreign or external influence to be dealt with only in a limited and evasive capacity.

But now, in Pakistan, the superior courts are continuously using international law to dispense justice; reliance is made on Pakistan's international commitments, treaties, and conventions in various cases. Articles 189, 201, and 203 GG of the Constitution of Pakistan seem to have adopted the doctrine of precedent. According to Article 189, "any decision of the Supreme Court shall, to the extent that it decides, a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan." According to Article 201, "subject to Article 189, any decision of a High Court shall apply to the extent it decides a question of law or is based upon or enunciates a principle of law, be binding on all courts subordinates to it". Thus, the Supreme Court decisions are binding upon all courts in Pakistan;

the Federal Shariat Court's decisions are binding upon the High Court, and the Courts subordinate to the High Courts and decisions of High Courts are binding upon all courts subordinate to the High Court.

The Constitution of Pakistan, in the chapter of fundamental rights, protects the rights of an individual. Most countries have agreed on the rights listed in the United Nations Declaration of Human Rights. The same is also further protected by many international laws, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC), and many others.

NATIONAL LAWS FOR CHILD PROTECTION

Handbook for **CHILD COURTS**

National laws for child protection**National laws against Child Sexual Abuse**

Child sexual abuse harms a child mentally, physically, and emotionally. Pakistan Penal Code 1860 (PPC), a comprehensive code to deal with crimes, defines sexual abuse in terms of fondling, stroking, caressing, exhibitionism, or voyeurism that has yet to be comprehensively explained to avoid complications in prosecution.

It is the basic principle of the criminal justice system that an offence must be proved beyond reasonable doubt'. The accused is entitled to reap the benefits of the doubt. If there is a lack of evidence or the evidence is not enough to prove the allegations, the courts of competent jurisdiction always grant the accused the "benefit of the doubt." The compromise among the parties often results in hostile witnesses, which ultimately leads to the accused's acquittal. The criminal amendment "The Criminal Law (Second Amendment) Act, 2016" has made some positive changes in this regard, including raising the minimum age of criminal responsibility and defining and penalizing child pornography, child abuse, and child sexual abuse.

In Pakistan, there are different laws that protect children from various forms of abuse and exploitation. We will take a look at all these below:

Clauses such as Article 11 of the Constitution of Pakistan prohibit all forms of slavery, forced labor, human trafficking, employment of children younger than 14 years, and work of children in hazardous places.

Article 25 states that all citizens are entitled to equal protection of the law and empowers the State to make special provisions to

protect women and children. Article 25(1) of the Constitution states that: “all citizens are equal before the law and entitled to equal protection of the law.”

Article 25(3) elaborates on positive discrimination for women and children. It states that: “Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.” Article 25-A provides that the State shall provide free and compulsory education to all children of five to sixteen years, meaning that the minimum age of employment should be at least 16 years. Article 35 provides that the State shall protect the family and the child.

Pakistan Penal Code, 1860

292A. Exposure to seduction. Whoever seduces a child by any means whatsoever with an intent to involve him in any sexual activity or exposes him to obscene and sexually explicit material, document, a film, video, or a computer-generated image or attempts to do the act mentioned above shall be punished with imprisonment of either description for a term which shall not be less than one year and may extend up to seven years or with fine which shall not be less than one hundred thousand rupees and may extend up to five hundred thousand rupees, or with both.

292B. Child pornography. (1) Whoever takes, permits to be taken, with or without the consent of the child or with or without the consent of his parents or guardian, any photograph, film, video, picture or representation, portrait, or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of obscene or sexually explicit conduct, where—

- a) the production of such visual depiction involves the use of a

minor boy or girl engaging in obscene or sexually explicit conduct;

- b)** such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in obscene or sexually explicit conduct; or
- c)** such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in obscene or sexually explicit conduct; is said to have committed an offence of child pornography.

(2) The preparation, possession or distribution of any data store on a computer disk or any other modern gadget, shall also be an offence under this section. The law not only criminalizes the production of child pornographic material by using any method but also criminalizes the mere possession of child pornographic material.

292C. Punishment for child pornography. Whoever commits an offence of child pornography shall be punished with imprisonment of either description for a term which shall not be less than fourteen years and may extend up to twenty years and with fine which shall not be less than one million rupees.

354. Assault or criminal force to woman with intent to outrage her modesty. Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

354. Assault of a woman

Section 354 of the Pakistan Penal Code (PPC) protects a woman against indecent assault as well as safeguards public morality and decent behavior. This section punishes an assault, or use of criminal force, on any woman with the intention or knowledge that the woman's modesty will be outraged. In the PPC there is no specific definition of a male child or female child. The word 'woman' denotes a female human being of any age. Indeed, a girl aged six years has been held by Courts in Pakistan to be a 'woman' for the purpose of Sections 354 and 354-A.

354A. Assault or use of criminal force to woman and stripping her of her clothes

Whoever assaults or uses criminal force to any woman and strips her of her clothes and, in that condition, exposes her to the public view, shall be punished with death or with imprisonment for life, and shall also be liable to fine.

The scope of the section 354-A, however, is limited as there must be two conditions; firstly stripping off the clothes and secondly the person should be exposed to the public view.

365B. Kidnapping, abducting or inducing woman to compel for marriage etc.

Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to

marry any person against her will, or in order that she may be forced, or seduced to illicit intercourse, knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment for life, and shall also be liable to fine; and whoever by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punished as aforesaid.

366A. Procurement of minor girl

Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit inter-course with another person shall be punishable with imprisonment, which may extend to ten years and shall also be liable to fine.

This section specifically states that the age of minority will continue until the girl reaches 18 years of age and any person procuring such a minor will be punished as per this section.

366B. Importation of girl from foreign country

Whoever imports into Pakistan from any country outside Pakistan any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

This section protects girls under 21 years of age and treats them as victims of trafficking when they are brought to Pakistan from another country.

377. Unnatural offences

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which shall not be less than two years nor more than ten years, and shall also be liable to fine.

377A. Child sexual abuse

Whoever employs, uses, forces, persuades, induces, entices, or coerces any person to engage in, or assist any other person to engage in fondling, stroking, caressing, exhibitionism, voyeurism or any obscene or sexually explicit conduct or simulation of such conduct either independently or in conjunction with other acts, with or without consent where age of person is less than eighteen years, is said to commit the offence of sexual abuse.

377B. Punishment for sexual abuse

Whoever commits the offence of sexual abuse shall be punished with imprisonment of either description for a term which shall not be less than fourteen years and may extend up to twenty years and with fine which shall not be less than one million rupees.

Despite these amendments, the legal interpretation and understanding of trial courts may remain in question as the terms used in the new sections have not been defined, which will create challenges for the prosecution during the trial stage. But at least now the different forms of sexual abuse like fondling, stroking, caressing, exhibitionism, voyeurism or any obscene or sexually explicit conduct or simulation of such conduct are part of the penal code.

498B. Prohibition of forced marriage

Whoever coerces or in any manner whatsoever compels a woman to

enter into marriage shall be punished with imprisonment of either description for a term, which may extend to seven years or for a term which shall not be less than three years and shall also be liable to fine of five hundred thousand rupees.

Provided that in the case of a female child as defined in the Child Marriage Restraint Act, 1929 (XIX of 1929), or a non-Muslim woman, the accused shall be punished with imprisonment of either description for a term which may extend to ten years but shall not be less than five years and shall also be liable for a fine which may extend to one million rupees.

Rape:

The definition of rape, as per Section 375 of the PPC covers both an adult woman and a girl- child/minor. Section 375 of the PPC uses the expression “sexual intercourse” but the expression intercourse has not been defined in the PPC.

A man is said to commit rape who has sexual intercourse with a woman under circumstances falling under any of the five following descriptions,

- (i) against her will;
- (ii) without her consent;
- (iii) with her consent, when the consent has been obtained by putting her in fear of death or of hurt;
- (iv) with her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married; or
- (v) with or without her consent when she is under sixteen years of age.

376. Punishment for Rape

(1) Whoever commits rape shall be punished with death or imprisonment of either description for a term which shall not be less than ten years or more than twenty-five years and shall also be liable to fine.

(1A) Whoever commits an offence punishable under sub-section (1) or sub-section (2) or section 377 or section 377B and in the course of such commission causes any hurt punishable as an offence under section 333, section 335, clauses (iv), (v) and (vi) of sub-section (3) of section 337, section 337C, clauses (v) and (vi) of section 337F shall be punished by death or imprisonment for life and a fine.

(2) When rape is committed by two or more persons in furtherance of a common intention of all, each of such persons shall be punished with death or imprisonment for life.

(3) Whoever commits rape of a minor or a person with mental or physical disability shall be punished with death or imprisonment for life and a fine.

(4) Whoever being a public servant including a police officer, medical officer or jailor, taking advantage of his official position, commits rape shall be punished with death or imprisonment for life and fine.

Prevention of Electronic Crimes Act, 2016:

Section 22- Child Pornography

Whoever intentionally produces, offers or makes available, distributes or transmits through an information system or procures for himself or for another person or without lawful justification

possesses material in an information system, that visually depicts --

- (a) a minor engaged in sexually explicit conduct;
- (b) a person appearing to be a minor engaged in sexually explicit conduct; or
- (c) realistic images representing a minor engaged in sexually explicit conduct; or
- (d) discloses the identity of the minor,

shall be punished with imprisonment for a term which may extend to seven years, or with fine which may extend to five million rupees or with both.

(2) Any aggrieved person or his guardian, where such person is a minor, may apply to the Authority for removal, destruction of or blocking access to such information referred to in sub-section (1) and the Authority, on receipt of such application, shall forthwith pass such orders as deemed reasonable in the circumstances, including an order for removal, destruction, preventing transmission of or blocking access to such information and the Authority may also direct any of its licensees to secure such information including traffic data.

The Federal Investigation Agency (FIA) has the jurisdiction to lodge a First Information Report (F.I.R.) and investigate when an accused is charged under the Prevention of Electronic Crimes Act, 2016 (PECA). The major difference between section 19A PECA and section 292B PPC is that, under 292B mere possession is an offence, but under 19A PECA a person will only be punished if it is proved that child pornographic material was kept

intentionally and without any lawful justification or reasons. Secondly, section 19A PECA empowers the FIA to remove/destroy such material from any platform on request of the child or his guardian.

Sindh Child Protection Authority Act, 2011

In 2011, the Sindh Government promulgated the Sindh Child Protection Authority Act. This law primarily calls for the establishment of an authority to deal with children in need of special protection. Section 15 links the Police with Child Protection Units at the District level to provide assistance, and section 15(3)A provides that a station house official shall provide appropriate police assistance to the child protection officer whenever required.

Child Marriages

In 2014, the Sindh Assembly promulgated the Sindh Child Marriages Restraint Act, 2013, against child marriages in the province. It makes the offence of child marriage cognizable, non-bailable and non-compoundable. The law intends to protect the rights of children according to the commitment Pakistan has made by ratifying the United Nations Convention on the Rights of the Child. It was a good effort but it remains silent about the rehabilitation and recovery mechanisms for those who have already fallen victim to this endemic issue.

Other National laws to protect Children

The Juvenile Justice System Act, 2018 (Main Law for Juvenile Justice in Pakistan)

The first law regarding Juvenile Justice was introduced in 2000, which had problems of enforceability, practicality and was considered vague in nature. It was turned down once by the Lahore High Court

(Farooq Ahmad Vs. The State: 2015 Lahore), but the Federal Government appealed in the Supreme Court and got the decision stayed. In May 2018, the Juvenile Justice System Act, 2018 was passed and assented by the president and the bill became a law in Pakistan.

National Commission on the Rights of Child Act, 2017

In September 2017, the National Commission on the Rights of the Child Act, 2017 was passed, with an aim to protect child rights in Pakistan.

The Commission shall perform the following important functions:

- Examine existing or proposed legislation and administrative instruments, examine international instruments and undertake periodical review of existing policies and programs on child rights;
- Liaise with provincial commissions set up under provincial laws and other concerned provincial organizations;
- Review law or policy, or practice, currently in force for the protection of child rights and recommend measures for their effective implementation;
- Inquire into violation of child rights and recommend to the relevant agency or department the initiation of proceedings in such cases;
- Sponsor, steer, encourage research and maintain a database relating to children;
- Provide knowledge and awareness for national policy and strategic action for its remedy; spread awareness and promote dialogue on child rights;
- Advise the Federal Government to sign, ratify or accede to any such proposed international treaty, protocol, etc;
- Inquire into complaints of violations of child rights that

may call for information or reports from the Federal Government, civil society organizations and autonomous or concerned bodies and in this regard the Commission shall have the powers vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908) for enforcing the attendance of any person and compelling the production of documents.

The Prevention of Trafficking in Persons Act, 2018

The purpose of this act was to combat trafficking in persons, especially women and children. The law has also penalized the abetment and criminal conspiracy in relation to trafficking crimes. The best part of this legislation is it does not put criminal liability on the victim or his or her parents or guardians. It has empowered the police to recognize the issue and investigate under this act when the issue is internal trafficking.

Important Points of Consideration in Case of Sexual Assault, Sodomy and Rape.

Criminal Law (Amendment Offences Relating to Rape) Act, 2016 has obligated and made special provision for the investigation officers, prosecutors and courts

- A public servant who fails to carry out proper investigation or fails to pursue the case in Court shall be punished with imprisonment of 3 years or a fine or both.
- Whosoever hampers or misleads, jeopardizes or defeats any investigation, inquiry or prosecution or issues a false or defective report shall be imprisoned for up to 3 years or a fine or both.
- Disclosure of the identity of a victim of rape is also prohibited u/s 376A. Similarly, disclosure of the identity

of a victim of an offence falling under sections 354A, 376, 376A, 377 or 377B PPC is also prohibited.

- A medical examination by a registered medical practitioner employed in a hospital run by the Government, may be imposed on an arrested person accused of an offence of rape, unnatural offence or sexual abuse under section 376, section 377 and section 337. In the case of a female victim, the medical examination shall be performed by a female registered medical practitioner, with the victim's consent.
- It is compulsory for an investigating officer to record the victim's statement (Section 336B, section 354, section 354A, section 376 or section 509 of PPC) in the presence of a female police officer, a victims' female family member, or any other person with the victim's consent.
- It is also compulsory for the Police to record a FIR of such offence in the presence of a female police officer. A distressed victim's statement shall be recorded at her residence/complainant residence or at a convenient place of her choice.
- Free legal aid will be offered to the victims with the assistance of Provincial Bar Councils.
- DNA should be collected from persons accused of offences under sections 376, 377 and 377B PPC and from victims with the consent of the victim or his or her guardian. It is the duty of the investigating officer to send the samples of the DNA to a forensic laboratory as soon as possible.

-The Court is bound to conclude the trial of an offence related to rape in three months. Appeals shall be decided in 6 months as per section 417(5) Cr.P.C.

-Trials for offences under sections 354A, 376, 376A, 377 or 377B PPC shall be conducted in camera. The Court may use video links or screens for the protection of the victims and the witnesses.

Immediate response (within 72 hours) · Victim of sexual abuse should be examined within 72 hours by an experienced medical professional.

Following guidelines should be practiced for the medical examination.

- Ask the victim not to go to the washroom, and if she has to go, then she should not wash or clean the vaginal area.
- Ask the victim about the full account of the incident and try to get any biological material from any area where biological evidence may be present.
- Ask the victim if the offender placed his mouth on different areas of her body. If those areas are not yet washed, collect the swabs from those areas and pack them separately.
- Ask the victim, did the offender use tissue/cloth or anything else to clean himself. If yes, collect that.
- Collect at least 2-3 vaginal swabs (internal and external) and also the clothes and bed sheet of victim.
- Ask the victim if the offender raped her in anal area; if yes then collect 1-2 anal swabs.
- If accused is in custody, ask him did he wash himself. If

not, then get his penile swab.

- If the victim has bleeding from her vaginal area during the examination, try to avoid too much coating of blood on the swab. Take the swab by keeping in view presence of seminal material on the swab and not the blood of the victim.
- Ask the victim, does she already know the suspect. If yes, what is the relationship?

Protect yourself from contaminating the evidence material by wearing neat gloves, face masks and disposable caps.

Items to be collected •

- 2-3 Vaginal swabs.
- 2-3 Rectal/anal swabs in case of anal sex.
- 2-3 Oral swabs in case of oral sex.
- Clothes of victim and bed sheets.
- Swabs from kissing area.
- Buccal swabs of victim.
- Buccal swabs of the suspect(s).
- Documents including request letter, FIR copy, Medico-Legal Certificate copy, Road certificate (chain of custody), answers of questions asked from the victim, covering letter with complete description of items sent, any other supporting document etc.
- Photograph of the suspect(s) / victim(s) taken at the time of sample collection. Note: Buccal swabs of the suspect(s) / victim(s) will be collected by the agency.

Packing: Dry swabs at room temperature and pack them in a paper/manila envelope made from thick paper and label it with

case number (FIR and MLC NO.), victim's name, signature and seal.

VICTIM-CENTRIC INVESTIGATIONS PRACTICES FOR CHILD (SEXUAL) ABUSE

Child abuse, especially child sexual abuse (CSA), occurs in various forms and at multiple levels. It robs children of their childhood, physical, mental and emotional health, education, and negatively impacts future livelihood opportunities.⁶² In an analysis of 200 letters that the non-governmental organization (NGO) Rozan received from survivors of child sexual abuse in Pakistan, they found that children were especially likely to experience feeling of guilt, depression, fear, lack of confidence, and guilty feelings about masturbation.⁶³ At the same time, crimes against children are often shrouded in silence, either due to traditional tacit cultural approval, or due to being a taboo topic associated with “shame” and “dishonor”.⁶⁴ The taboo nature of the crime allows perpetrators to continue to abuse children with impunity, without fear of legal repercussions.⁶⁵

IMPORTANT CASE LAWS

Superior Courts judgments on International Laws

International Law and International Human Rights Laws have been discussed by the Superior Courts of Pakistan holding that Pakistan being signatory of an International Law is under obligation to observe and implement its principles. Few judgments are referred to hereunder:

It was stated that it is the duty of the State to be conscious and vigilant of such rights on behalf of all citizens whose rights it is obligated to protect under the Constitution and its international commitments. ***National Commission on Status of Women Chairperson etc. V/S Government of Pakistan 2019 PLJ SC 150***

The Court relied upon the Convention on the Rights of Persons with Disabilities (CRPD). Rights of persons with disabilities are provided in the CRPD, to which Pakistan is a signatory. ***Asfandiyar Khan Tareen, etc. V/S Govt. of Punjab 2018 PLJ Lahore 508***

The Lahore High Court relied on the CRPD --International Law-- Charter of United Nations recognizes inherent dignity and worth and equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in world—The Universal Declaration of Human Rights and International Covenants on Human Rights have proclaimed and agreed that everyone is entitled to all rights and freedoms set forth therein, without distinction of any kind—The Convention reaffirms universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for persons with disabilities to be guaranteed their full enjoyment

without discrimination—***Asghar Leghari V/S Federation (2018 PLJ Lahore 481)***

The Court discussed and allowed the writ petition in favor of the petitioner in a detailed order. He relied on the Universal Declaration of Human Rights and the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. ***Ameen Masih V/S Federation of Pakistan, etc. (2017 PLJ Lahore 875)***

On the point of supplying documents, the Honourable Supreme Court and the superior courts have guided from time to time and a few case laws are discussed here. It is a settled principle of law that the accused has a right to obtain the copies of section 161, Cr.P.C. statements, and such right is enshrined in section 265-C, Cr.P.C. The purpose of providing these statements is to enable the accused to contradict the witness(es) with his/their statement(s). There is also no cavil to the fact that provisions of section 537, Cr.P.C. are mandatory in nature and High Court cannot interfere without coming to the conclusion that there has been substantial error or failure of justice, due to any irregularity, during course of the trial. If, it is assumed, for the sake of argument, that copies of the statements under section 161, Cr.P.C. were not provided to the appellants, even then we have to determine whether any failure of justice has occasioned and whether any prejudice has been caused to the accused/appellants ***Soobo Vs. The State (2016 P Cr. L J 290 Sindh)***

The object of section 265-C of the Cr.P.C. appears to be to meet the vacuum created by the abolition of commitment proceedings and to make available to the accused all the available evidence, which the prosecution have for the unfolding of the true case before the Court. The purpose is that the accused can know before he is sent up to

stand trial in a charge punishable with death or imprisonment for life as to what evidence he would have to meet at the trial in order to take up a proper defence plea. The interval of seven days emerged under section 265-C of the Cr.P.C. is also significant, because it is meant to give the accused sufficient time to study the allegations against him and to prepare his plea in defence. ***Abdul Jabbar Vs. The State (2011 YLR 2169 Quetta)***

The learned trial court is directed to supply the copies of CD and USB to the applicant in compliance of provisions of section 265-C Criminal Procedure Code. ***Sikander Ali Lashari Vs. The State and another (2016 YLR 62 Sindh)***

It is simpliciter revealed from section 265-C of C.P.C., that an accused must be supplied the copies of all documents prior to commencement of the trial and framing the charge. The proposition would not change even if the accused has himself conceded to the omission to apply with the provision of section 265-C vitiates the whole trial. ***Nadeem Ahmed Khan & others Vs. The State (2007 P Cr. L J 233 Karachi)***

The statements recorded under section 161 of the Cr.P.C. are not privileged even if recorded in the body of the case diaries. Those are public documents within the meaning of Article 49 of the Qannun-e-Shahadat, 1984 and are per se relevant under its Article 49. Moreover, the privilege stated in section 172 of the Cr.P.C. is not of absolute nature.

In the nutshell, we hold that statements of all witnesses recorded under section 161 of the Cr.P.C. by an Investigating Officer shall be made available to an accused person as of right in seven days before the commencement of the trial. Resultantly this petition is accepted, order dated 25-04-2002 passed by the trial Court is set aside with a

direction to the trial Court to supply to the petitioners copies of statements of all witnesses, whether cited or not, as envisaged by section 265-C(1), Cr.P.C.. ***Muhammad Riaz & others Vs. The State (PLD 2003 Lahore 290)***

The Lahore High Court in the case reported as Ajeet Sindh v. The State (PLD 1982 Lahore 10), relying upon the cases reported as V.M. Abdul Rehman v. King Emperor AIR (1927 PC 44) and Emperor v. Mustaffajooosb (AIR 1947 Bom. 325) has gone to the extent of saying that “prejudice to the accused is to be inferred from every breach of the provisions of law given for the protection or benefit of the accused. The provisions would not change even if the accused had himself consented to such breach. On otherwise principles omission to comply with the provisions of section 265-C must be treated to have vitiated the conviction where the procedure adopted is illegal, the consent or waiver on the part of the accused cannot cure the defect under section 537, Cr. P.C even through no prejudice is caused to him. ***Hakam Deen Vs. The State through Advocate-General and 15 others (2005 YLR 2032 Supreme Court Azad Jammu and Kashmir)***

It is a statutory right of an accused under Section 265-C to be provided the statements of all witnesses recorded under sections 161 and 164, Cr.P.C and omission to comply with the said provisions of law, would vitiate the whole trial and that being so because the accused without having recourse to the record, would not be in a position to set up his defense. ***Muhammad Tariq & others Vs. The State (2017 YLR 1999 Lahore Multan Bench)***

About Authors

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Muhammad Shahid Shafiq, District & Sessions Judge, is a Senior Faculty Member of the Sindh Judicial Academy. He started his career in 1993 as a Civil Judge & Judicial Magistrate. He has also worked for the High Court of Sindh as a Research Officer and Additional Registrar. He was nominated as Secretary Rules Committee and Member

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He has organized a number of conferences and training programs for justice sector stakeholders. He has presided District Courts, Banking Courts and Anti-Terrorism Courts. He drafted a law on 'Illegal Dispossession from Land'.

Mr. Shafiq has conducted several research studies, in particular on Rent Laws, Prison Law and Alternative Dispute Resolution. He has travelled to Nepal, Dubai, Australia, Switzerland and the United States of America and during his visits, got the opportunity to observe their judicial system and attempted to adopt their good practices in Pakistan.

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He has been member of the Law Review Committee on child rights constituted by the Supreme Court of Pakistan and member of the Alternate Dispute Resolution Committee, Lahore High Court. He is a former legal consultant for the Ministry of Human Rights and Ministry of Law and Justice.

Mr. Chaudhry has drafted several federal and provincial laws relating to women and child rights including the Criminal Law (Second Amendment) Act, 2016, the Balochistan Child Protection Act, 2016, the Hindu Marriage Act, 2017, the ICT Child Protection Act, 2018, the Juvenile Justice System Act, 2018 and rules framed under these laws. He has been intensively involved in the training of judicial officers, prosecutors and lawyers on juvenile justice, child protection and gender sensitive prosecution. He is the author of a book "Law and Development".



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