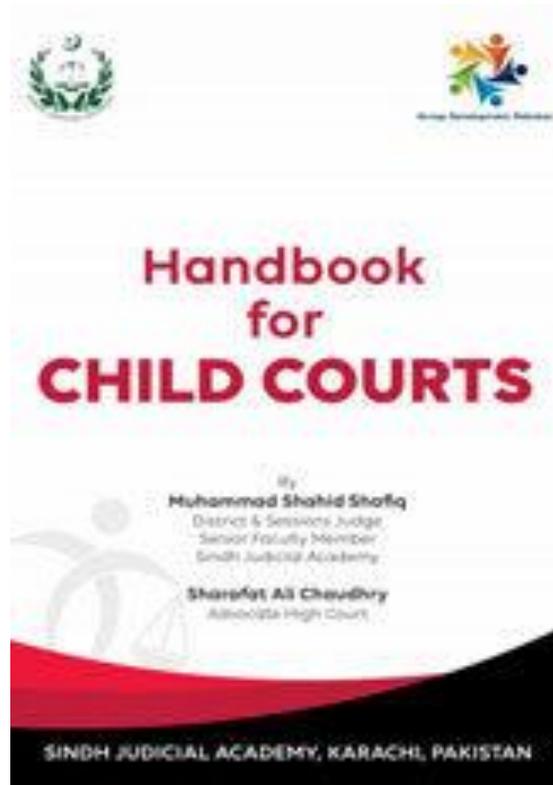


A Review of
HANDBOOK FOR CHILD COURTS

(Published by the Sindh Judicial Academy)



Reviewed by

Justice[®] Dr. Munir Ahmad Mughal

<http://ssrn.com/author=1697634>

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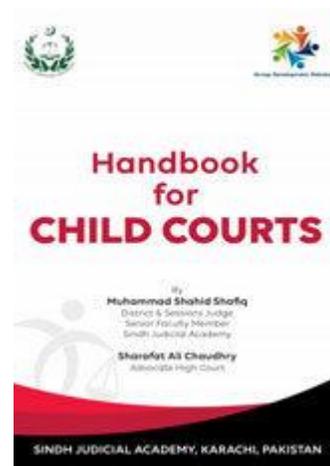
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Introduction:

a. About the book

Title: *Handbook for Child Courts*
Authors: Muhammad Shahid Shafiq
Sharafat Ali Chaudhry
Pages: *i + 99*
Year: 2021
Publishers: Sindh Judicial Academy, Karachi
Group Development Pakistan
Availability: <https://gdpakistan.org/resources/handbook-for-child-courts/>.



b. General

Pakistan is an Islamic Democratic Republic.¹ The Preamble of the Constitution of Pakistan 1973 gives this Constitution an Islamic Character. Some relevant parts of Preamble read as under:

¹ See Preamble to the Constitution of Pakistan 1973.

Wherein the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed;

Wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah;

Wherein adequate provision shall be made for the minorities freely to profess and practise their religions and develop their cultures;

Therein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality;

Wherein adequate provision shall be made to safeguard the legitimate interests of minorities and backward and depressed classes;

Article 1 reads:

Pakistan shall be a Federal Republic to be known as the Islamic Republic of Pakistan, hereinafter referred to as Pakistan.

Article 2 reads:

Islam shall be the State religion of Pakistan.

Article 2A reads:

The principles and provisions set out in the Objectives Resolution reproduced in the Annex are hereby made substantive part of the Constitution and shall have effect accordingly.

The Islamic character of the Constitution requires that the laws have to be enacted in Pakistan in accordance with the Injunctions of Islam as

enshrined in the Qur'an and Sunnah. Article 227 of the Constitution of Pakistan 1973 ensures two important steps to be taken by the State: One that an exercise has to be taken by the State to bring all the laws in conformity with Islamic injunctions, and two that the legislature will not enact any law which is repugnant to these Injunctions. So the responsibility of the State is affirmatory at one side and prohibitory at the other. The Constitution also protect fully the rights of minorities as well. For better understanding, relevant Article is reproduced as under:

Article 227. Provisions relating to the Holy Qur'an and Sunnah.

(1) All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions.

[Explanation:- In the application of this clause to the personal law of any Muslim sect, the expression "Quran and Sunnah" shall mean the Quran and Sunnah as interpreted by that sect.]

(2) Effect shall be given to the provisions of clause (1) only in the manner provided in this Part.

(3) Nothing in this Part shall affect the personal laws of non-Muslim citizens or their status as citizens.

Under the Chapter of Fundamental Rights² in the Constitution of Pakistan 1973, certain basic rights of children are given. It means that

² <http://www.pakistani.org/pakistan/constitution/part2.ch1.html>. Last accessed 8 May 2021.

these cannot be violated by the State nor the State can be allowed to let them violated by others. These are:

Article 11. Slavery, forced labour, etc. prohibited:

(3) No child below the age of fourteen years shall be engaged in any factory or mine or any other hazardous employment;

Article 25. Equality of citizens.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.;

Article 25A. Right to education:

The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law.;

Article 26. Non-discrimination in respect of access to public places.

(2) Nothing in clause (1) shall prevent the State from making any special provision for women and children.

Under the Chapter of Principles of Policy,³ certain policy guidelines have been enshrined for the organs of the State so that whenever policy is formulated by any of the State institutions, they have to keep in mind these principles. Relevant Articles of the Constitution from this Chapter are:

³ <http://www.pakistani.org/pakistan/constitution/part2.ch2.html>. Last accessed 8 May 2021.

Article 35. **Protection of family, etc.**

The State shall protect the marriage, the family, the mother and the child.

Article 37. **Promotion of social justice and eradication of social evils.**

(e) make provision for securing just and humane conditions of work, ensuring that children and women are not employed in vocations unsuited to their age or sex, and for maternity benefits for women in employment;

With respect to the administration of justice, Article 37(d) of the Constitution binds the State to 'ensure inexpensive and expeditious justice.'

Dr. Muhammad Munir, in his book *Rights of the Child in Islam: Theory, Mechanism, Practices and Convention on the Rights of the Child*, writes:⁴

"...child's education is linked to one of the fundamental objectives of Shari'ah, i.e., the protection and preservation of intellect. It is mandatory to educate the child and both the parents and the state must play their role. The state must provide for child's education and the parents have a duty under Islamic law not to

⁴ Dr. Muhammad Munir, *Rights of the Child in Islam: Theory, Mechanisms, Practices and Convention on the Rights of the Child*, Islamabad: Iqbal International Institute for Research and Dialogue, International Islamic University, 2017 (ISBN: 9697576084, 9789697576081).

I have reviewed this book, which is cited as: Mughal, Munir Ahmad, A Review of the Book 'Rights of the Child in Islam: Theory, Mechanism, Practices and Convention on the Rights of the Child by Dr. Muhammad Munir' (February 17, 2018). Available at SSRN: <https://ssrn.com/abstract=3125552> . Last accessed 8 May 2021.

neglect their child's education. State should make provision for compulsory education and should facilitate higher education. Moreover, it is obligatory for every child to learn the basic knowledge of Islamic law to know his religion and its rituals. However, knowledge in Islam is not limited to religious knowledge and it encompasses knowledge of other sciences. Some Muslim children must study other sciences necessary for the smooth running of this world otherwise they will be committing a sin...". (pp. 53-54)

Thus, we have to understand the child rights, liabilities, and duties as prescribed by the injunctions of Holy Qur'an and Sunnah of Prophet Muhammad (peace be upon him). Of course, the discourse of later Muslim jurists on development of law will also remain part of this exercise to keep abreast the developments in societies so that any fundamental changes in social norms, behaviours and conduct due to passing of time are kept within the bounds of Shari'ah. In Pakistan, the role of the Council of Islamic Ideology (as an advisory body), the Federal Shariat Court (as an adjudicatory body) and the Shariat Appellate Bench of the Supreme Court of Pakistan are of great importance. Any legislation may be tested by these institutions if it is in conformity with the Injunctions of Islam. This is special stream of administration of justice on the touchstone of the Islamic Injunctions. Under the general stream, the courts have powers under Article 199 and Article 184(3) of the Constitution of Pakistan to see if the fundamental rights of people are violated or otherwise. Apart from these, the ordinary judges of civil and criminal courts deal with matters under various laws. Criminal courts work under the Code of Criminal Procedure 1898 for administration of the Juvenile Justice System Act, 2018. Family Courts

look after the issues of child custody, maintenance, and guardianship of the minors, etc.

With these basic understandings of the laws and their operation in Pakistan, we now look at the role of judicial academies in Pakistan.

With the advent and establishment of separate judicial academies in all the four provinces and the Federal Judicial Academy, Pakistan has, over the years, developed a full-fledged judicial education regime for judges, magistrates, law officers and court personnel all across Pakistan.⁵ These academies are primarily meant for providing opportunity to the judicial human resources to get judicial training and education for raising the quality of justice administered in courts.⁶ Apart from these institutions which work under the control and supervision of the chief justices and judges of Supreme Court and High Courts, there is one Shari`ah Academy⁷ of the International Islamic University, Islamabad that also has programs to train and educate judges and prosecutors with respect to Islamic *fiqh* and laws. In fact, this Academy is working for these purposes even prior to establishment of any judicial academy in Pakistan. We have also to note that the executive branch of government used to train judges before the advent of judicial academies. Hence, erstwhile National Institute of Public Administration (NIPA)⁸ used to undertake such trainings on request of High Courts.

⁵ Mughal, Munir Ahmad, *Legal and Judicial Education Reforms in Pakistan: Role of Legislature, Judiciary and Executive* (December 3, 2013). Lahore: Muneeb Book House, 2013 [ISBN: 978-969-9513-19-0], Available at SSRN: <https://ssrn.com/abstract=2362973> . Last accessed 12 April 2021.

⁶ Munir, Muhammad Amir, "Judicial Education in Pakistan" in the *CJEI Report 2009*. Available online at <http://cjei.org/publications/CJEI%20Report%20Summer%202009.pdf>. Last accessed 12 April 2021.

⁷ https://www.iiu.edu.pk/?page_id=107. Last accessed 10 May 2021.

⁸ Official website of the National School of Public Policy provides the following short history of NIPA:
"Former National Institute of Public Administration (NIPA) was established in MARCH 1961 under the West Pakistan Government Educational and Training Institutions Ordinance, 1960 and federalized in 1981.

Now, coming to the core work of judicial education, it is found that one of the common objectives mentioned in the statutes of the Federal,⁹ Sindh,¹⁰ Punjab,¹¹ KP,¹² and Balochistan¹³ judicial academies is that each of the five judicial academies has to publish books, journals, memoirs, research papers, and reports, etc. It is under this scheme that the judicial academies have taken the task of publishing bench books for judges and courts. We need to understand that the judicial education is not merely lecturing to judges and court staff. It is more than that. The *Handbook* under review is one of the efforts by the Sindh Judicial Academy in this regard.

Scheme of the Handbook:¹⁴

The *Handbook* is really handy in its contents. It consists of procedural law on juvenile justice (pp. 8 – 27); role of justice actors (pp. 28-38); role of juvenile justice system committee (pp. 39-40); post trial actions (reintegration and rehabilitation of a child in conflict with law) (p.41); exercises (pp. 42 – 63); international obligations (pp. 64 – 77); national

The first training course commenced the same year. NIPA was a Semi-autonomous organization under the administrative control of the Establishment Division Government of Pakistan, and was funded by the Federal Government. In 2005, NIPA under the NSPP Ordinance, was merged under new dispensation, National Management College, which merged former Pakistan Administrative College (PASC) and NIPA. The National Management College was structured to comprise two wings, i.e. the National Management Wing (NMW) and the Senior Management Wing (SMW). The National Management Wing was housed in the building of former PASC and the SMW in the NIPA building. BS- 19 mandatory course now called Senior Management Course is organized by SMW.”

Source: <https://nspp.gov.pk/nim-lahore-about-us/>. Last accessed 10 May 2021.

⁹ https://www.fja.gov.pk/act/fja_act1997.pdf. Last accessed 12 April 2021.

¹⁰ http://sja.gos.pk/assets/SJA_ACT_1993.pdf. Last accessed 12 April 2021.

¹¹ <http://punjablaws.gov.pk/laws/494.html>. Last accessed 12 April 2021.

¹² <http://kpja.edu.pk/sites/default/files/kpk%20judicial%20Academy%20Act%202012.pdf>. Last accessed 12 April 2021.

¹³ <http://pabalochistan.gov.pk/pab/pab/tables/alldocuments/actdocx/2018-10-23%2014:22:07act182014.pdf>. Last accessed 12 April 2021.

¹⁴ This Handbook is accessible at <https://gdpakistan.org/wp-content/uploads/2021/03/Handbook%20for%20Child%20Courts.pdf>. Last accessed 10 May 2021.

laws for child protection (pp. 78-93); and, important case laws (pp.94-97).

Further, it has also a page to introduce its Team (p. 1) and a Glossary (p. 2) of terms for ready reference. Message of Hon'ble Mr. Justice Muhammad Ali Mazhar, the Acting Director-General of Sindh Judicial Academy is also an important starter for the reading and understanding of the *Handbook* and the objectives for which it was published (pp. 3-4).

Message of the Acting Director-General sets the tone of the *Handbook*. His lordship writes (p. 3):

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 and Sessions Judges may assist their respective teams of judges and supporting staff for cases involving children in conflict with the law.

About the Sindh Judicial Academy, his honor remarks (p. 4):

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.

How the Academy keeps its focus on training requirements is explained in the following words (p. 4):

Before conducting training, the Academy undertakes a Training Needs Assessment through multiple processes such as data analysis, examining judgments, and discussions with senior judges.

With these in mind, the SJA has taken the task to publish this *Handbook* with the technical assistance from the Group Development Pakistan, a local civil society organization. In its “Introduction”, the *Handbook* states that “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 (“JSA”).” (p. 4) For this new law, “series of training has been planned for judges and prosecutors...at the Sindh Judicial Academy” (p.6) with regard to the following (p.7):

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.”

Under the heading “Why this Handbook?”, it is described (p. 7):

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 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...”.

The Juvenile Justice System Act, 2018 has given a new concept of a Juvenile Justice Committee and hence the *Handbook* “discusses its role in detail in a cognitive manner” (p. 7). This law also prescribes that the investigation of a juvenile cannot be made by “a police officer,...below the rank of Sub-Inspector, under the Supervision of a superintendent of police / SDPO” (p. 16). Concept of team decision making is introduced by this law and thus “[t]he 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 Code of Criminal Procedure, 1898.¹⁵

The *Handbook* particularly gives focus to new areas of the law, particularly, the concept of social reintegration of a child in the society.

¹⁵ It seems that at p.16, some typographical error occurred to mention section 173 of the PPC instead of same section of the Code of Criminal Procedure 1898. Further, the quoted text at this page also seems inadvertently written. I hope that the compilers will look into this for necessary corrections at the earliest to avoid any confusion. (Reviewer).

Thus, it guides the legal actors, including judges, that the “rehabilitation of juvenile ... and their successful social reintegration into society should be among Diversion’s primary objectives.” Thus, to act upon it, the *Handbook* suggests that 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.” (p. 26)

The Handbook prescribes Standard Operating Procedures (SOPs) for the Advocates representing a juvenile (p. 28); police officers investigating the case (pp. 28-32); probation officers (pp. 32-33); social welfare officers (pp. 33-35); prosecutors (pp. 35-36); and the judicial officers (pp. 36-38). A comprehensive discussion has been made on the Juvenile Justice Committee (pp. 39-40).

Generally, in our jurisprudence of criminal law, the role of a presiding judge of a trial of an ordinary accused ends once a final judgment is announced. The court then becomes *functus officio* (with certain exceptions)¹⁶, however, “the role of the juvenile court does not necessarily ends there. One of the primary duties of a juvenile court is to ensure the reformation of a child...” and the court “may monitor the juvenile’s reformation process and ask the ...probation officer to submit a report regarding the juvenile’s progress on a monthly or quarterly basis. (p.41)

It would be pertinent to mention that these concepts of juvenile rehabilitation, re-integration, probation, team decision making and alike are now being studied under the topic of “Therapeutic

¹⁶ For example, under section 401(2) of the Code of Criminal Procedure, 1898, government may consult a sentencing judge if it wants to suspend or remit a sentence imposed on an accused.

Jurisprudence” or TJ.¹⁷ It has been developed by Professor David B Wexler¹⁸ of University of Arizona and University of Puerto Rico. TJ is to study the ‘healing capacity of law’, which becomes most relevant in our context. An ethic of care is required by wearing TJ lens to administer soft side of the law for those who are less than 18 years of age. In Pakistan, we have a number of therapeutic courts.¹⁹ Likewise, there are many TJ oriented laws²⁰ but the need of the time is to apply them on litigants therapeutically.²¹ We call it ‘Therapeutic Design of Law’ and ‘Therapeutic Application of Law’.²² There is some local literature developed on TJ by myself and my sons.²³ Readers of juvenile law will find that relevant as well.

For any handbook or benchbook to be in true spirit as a tool for judges, lawyers and prosecutors, discussion through practical exercises is must. The *Handbook* in hand is a good example in this regard as it has spared reasonable pages to this aspect. There are number of exercises

¹⁷ See generally <https://mainstreamtj.com/>. Last accessed 10 May 2021.

¹⁸ https://www.researchgate.net/publication/228244466_Therapeutic_Jurisprudence_An_Overview. Last accessed 10 May 2021.

¹⁹ Mughal, Munir Ahmad and Munir, Muhammad Amir, Therapeutic Courts in Pakistan: An Overview of Problem Solving Courts (May 26, 2020). Available at SSRN: <https://ssrn.com/abstract=3610842>. Last accessed 10 May 2021.

²⁰ For example, the family laws. See generally, Munir, Muhammad Amir, Domestic Violence and the Pakistan Family Courts Act 1964 in Perspectives of Therapeutic Jurisprudence (2006). *Pakistan Law Journal*, p. 228, 2006, Available at SSRN: <https://ssrn.com/abstract=1951090>, and Munir, Muhammad Amir, Family Courts in Pakistan in Search of ‘Better Remedies’ for Women and Children (September 1, 2006). *Lawasia Journal*, pp. 191-226, 2006, Available at SSRN: <https://ssrn.com/abstract=1922837>. Last accessed 10 May 2021.

²¹ Munir, Muhammad Amir, The TJ Elements in Juvenile Justice System of Pakistan: Problems for a Juvenile Court to Act Therapeutically (July 1, 2005). University of Arizona Law School, 2005, Available at SSRN: <https://ssrn.com/abstract=2097297>. Last accessed 10 May 2021.

²² Munir, Muhammad Amir. (2018) Judging in a Therapeutic Way: TJ Audit of Juvenile, Probation and Criminal Procedure Law in Pakistan with Reference to Therapeutic Design and Therapeutic Application of Law. In: Sourdin T., Zariski A. (eds) *The Responsive Judge. Ius Gentium: Comparative Perspectives on Law and Justice*, vol 67. Springer, Singapore. https://doi.org/10.1007/978-981-13-1023-2_9. Last accessed 10 May 2021.

²³ Muhammad Ahmad Munir, “Therapeutic Jurisprudence in Pakistan: Juvenile Delinquency & the Role of the Defense Lawyer” in Reinhardt and Cannon (eds.) *Transforming Legal Processes in Court and Beyond*, Melbourne: Australian Institute of Judicial Administration, 2007, pp. 85-106. See <https://aija.org.au/wp-content/uploads/2017/10/Transforming-the-Legal-Process-in-Court-and-Beyond-2007.pdf>. Last accessed 10 May 2021.

available wherein some practical examples are quoted and thereafter it has been suggested that how to pass an order in any such given situation. Relevant laws are also quoted to support the answers. It is hoped that the judges and lawyers will benefit a lot out of these examples (pp. 42-63).

Chapter on International Law discusses its significance in domestic legal framework in terms that “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 (p. 74). This chapter will definitely help all the stakeholders to sensitize themselves on use of these important legal sources while dispensing juvenile justice in their own capacity and as per the relevance. Internationalizing the judicial decisions, as and when relevant, will definitely improve the quality of justice administered in our courts.

There is a chapter on national laws dealing with children who are in conflict with law. This chapter will help readers of this bench book to have an overall picture of criminal law where a child may be facing one or the other offence at trial. It can be handy for judges to see what is relevant for any trial in this regard.

Finally, superior court judgments from Pakistani jurisdiction discuss those cases where the Supreme Court of Pakistan or High Courts have decided an issue with respect to juvenile justice and has also given reference to relevant international treatise or conventions. This is a quality addition to this benchbook. (pp. 94-97)

Something about the authors:

The *Handbook* is compiled by two distinguished legal personalities.

Mr. **Muhammad Shahid Shafiq** is a District and Sessions Judge in Sindh and is working as the Senior Faculty Member of the Sindh Judicial Academy. As per the *Handbook*, he has “conducted several research studies” and also travelled to a number of foreign countries to “observe their judicial system and attempted to adopt their good practices in Pakistan”. (p. 98)

Mr. **Sharafat Ali Chaudhry** is an Advocate of the High Court and a Member of the ICT Child Protection Advisory Board, Ministry of Human Rights. “He has been member of the Law Review Committee on child rights constituted by the Supreme Court of Pakistan...” Further, he has “drafted several federal and provincial laws relating to ... child rights...”. “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’” (p. 99).

Conclusion:

The *Handbook* is an important document which is made available by the Sindh Judicial Academy and Group Development Pakistan for the judges, lawyers, prosecutors, probation, reclamation and police officers working in the Province of Sindh. However, keeping in view its contents and the fact that the juvenile law is a federal legislation, it will be equally relevant for all-across Pakistan. As it is available online free of cost, the justice sector human resource must consult it as and when required. Of course, with due consideration to the rights of SJA and GDP, other judicial academies may also develop their own versions of

this *Handbook* to suit their local and regional needs. I am sure that the publishers will be happy to cooperate in this regard.

Overall, the language, style and contents of the *Handbook* are praiseworthy. It also shows that the leadership being provided to the Sindh Judicial Academy by Hon'ble Mr. Justice Muhammad Ali Mazhar, as its Acting Director-General, is commendable. Authors also deserve special appreciation in this regard. Sindh Judicial Academy has created an example for other judicial academies to work on developing bench-books for judges and court staff on various topics so that quality of justice administered in courts is improved. As per my opening paragraphs of this review, I would like to recommend a chapter on Islamic guidance on children rights may be added in this *Handbook*. This will significantly improve the value of this judicial education tool to make it more relevant and exactly within the line of Pakistani constitutionalism.

A cursory view of the websites of the judicial academies in Pakistan shows that they have done some work towards preparing bench-books in the past. However, I would recommend that a national seminar may be organized jointly by the federal and provincial judicial academies of Pakistan on the topic of developing quality bench-books where they can share their experience with each other on this important dimension of judicial education.²⁴ This seminar may be attended by faculties of all the judicial academies working in the country as also by the external

²⁴ An earlier conference paper titled "Design and content of Bench-books: Issues and challenges" is relevant which was presented by Mr. Justice Shabbir Ahmad, the then Acting Director-General of Sindh Judicial Academy at the "National Conference of Judicial Academies: Key Issues and Challenges in Judicial Education (24 October 2014)". This Conference was organized by the Punjab Judicial Academy. Its *Report* is available online at <http://www.pja.gov.pk/system/files/Full%20Conference%20Report.pdf>. Last accessed 10 May 2021.

sources relevant to the topic. Sharia Academy may also be made part of this exercise.

I conclude.

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