Pakistan Journal of Criminology, Vol. 1(3) October 2009, pp 105-118.

Judging Juvenility: Determination of age of Juvenile Offenders under Pakistan's Juvenile Justice System

Dr Khurshid Iqbal[1]

Abstract

Determination of age of Juvenile Offenders is a crucial issue in Pakistan's Juvenile Justice System. This issue goes to the spirit of Pakistan's Juvenile Justice System Ordinance, 2000 (JJSO) as it is after the determination of his/her juvenility that an offender can avail the rights available to him/her and a Juvenile Court assumes its jurisdiction under the JJSO. The article argues that the JJSO and other relevant statutes in the field are inconsistent in determining age of Juvenile Offenders. Examining in details the case law since the introduction of the JJSO in the year 2000 till 2009, the article further argues that while the courts, too, have been giving conflicting judicial views, of late, the growing body of case law shows a visible tendency of the courts to settle the issue, which is of great significance. Equally important, however, is the role of the law-makers to set right the legislative inconsistencies to resolve the issue by amending and consolidating the law relating to juvenile justice system. The article concludes that Pakistan has both national and international obligation to make serious efforts in ensuring effective protection of human rights of the children in conflict with law.

Key words: Criminal justice, Juvenile justice, Juvenility, Pakistan

---

[1] MA, LLB (Peshawar, Pakistan); LLM (Hull, UK); PhD (Ulster, UK); Additional District & Sessions Judge; Visiting Lecturer, Law College, University of Peshawar. The views expressed in this article are those of the author's own and motivated by research interests only. I am thankful to Dr Niaz A Shah, Lecturer, Law School, University of Hull, UK; Jehanzeb Khan of Society for Protection of the Rights of the Child (SPARC), Peshawar; Wahid Anjum and Saifur Rahman, Advocates, DI Khan and Amir Abdur Rahman, Librarian, Peshawar High Court, DI Khan Bench, for supplying to me copies of the relevant court cases and other reading material. All errors are, however, mine.

Introduction

Pakistan introduced its Juvenile Justice System Ordinance (JJSO) in the year 2000. The main impetus behind this law is Pakistan's international obligation under the Convention on the Rights of Child (CRC), adopted by the United Nations (UN) in the year 1989.[2] The Reformatory Schools Act, 1897 appears to be the first example of a law relating to the rehabilitation of juvenile offenders. This law, which was promulgated during the British colonial time, empowered courts to direct youthful offenders sentenced to transportation or imprisonment, to reformatory schools.[3] Before the JJSO, there was no specific central law governing criminal trials of juvenile offenders. However, the provinces of Sindh and Punjab each have had one such law: the Sindh Children Act, 1955 and the Punjab Youthful Offenders Act, 1983, which created Juvenile Courts.[4]

The JJSO protects children involved in criminal litigation and in doing so, seeks to rehabilitate such children in society, reorganize juvenile courts and deal with matters connected therewith and incidental thereto.[5] The key features of the JJSO include the provision of legal assistance to the juvenile offenders[6] and establishment of separate juvenile courts.[7] The law requires that juvenile offenders shall be separately tried.[8] It prohibits publication of criminal proceedings against juvenile offenders and bars award of death penalty for and handcuffing of juvenile offenders.[9] In safeguarding the freedom and liberty of

---

[2] Convention on the Rights of Child (CRC) adopted by the United Nations (UN) on in 1989; came into force on September 02, 1990, after signed by the required number of states; ratified by Pakistan in November, 1990. As of December, 2008, the CRC has been ratified by 193 states except the United States (US) and Somalia.
[3] See the Reformatory Schools Act, 1897, Section 8.
[4] See the Sindh Children Act, 1955, Section 7 and the Punjab Youthful Offenders Act, 1983, Section 4. The former law, which replaced the Bombay Children Act, 1924, could not be formally enforced in 1955 as the Province of Sindh was made part of the West Pakistan (also called One Unit). The law was formally introduced in Hayderabad and Sukkur in 1974 and in Karachi in 1974. But it was repealed in 1974. The latter law, which replaced the Punjab Youthful Offenders Act, 1952 has not been formally notified to come into force except in the District of Sahiwal. For details see Anees Jilani, *Unheard Cries: Juvenile Justice System in Pakistan*, SPARC, Islamabad, 1999, pp 64-66.
[5] See The Juvenile Justice System Ordinance, 2000 (JJSO), Preamble.
[6] JJSO Ibid. Section 3.
[7] Ibid. Section 4.
[8] Ibid. Section 5.
[9] Ibid. Section 8.

children in conflict with law, the JJSO provides that keeping in view his/her welfare and safety, a child accused of an offence that is bailable, shall be immediately released on bail with or without sureties.[10] The law makes it mandatory for the authorities that in no case shall a child accused of such offences, be kept in a police station or jail. It also provides for the release of juvenile offenders on probation in case of conviction.[11]

Though the promulgation of the JJSO itself is a significant measure for the protection of the rights of juvenile offenders in Pakistan, but its implementation has been inadequate in many respects.[12] For example, the law has not been put into full operation in certain areas such as the Federally Administered Tribal Areas (FATA), despite the express provision of the law and its extension through a formal government notification. The death penalty is still awarded to juvenile offenders showing courts' lack of concern for the fact the same has been expressly outlawed. Similarly, juvenile offenders are still jointly tried with adult accused by the same court. The probation services are neither adequate nor efficient. Juvenile offenders are kept with adult accused in jails in poor and vulnerable conditions.

These and many other issues are significant, but the most crucial one is the determination of age of juvenile offenders. The reason is obvious. It is the issue of age that brings the criminal liability of a child within the competency of a juvenile court. If this issue is not resolved at proper time by the concern authorities with due care and diligence, a juvenile offender will run the risk of ending up in formal judicial system after arrest.[13] This important issue is the main focus of the present article. Part I briefly examines the relevant statutes and part II critically analyzes the case law pertaining to determination of age of the juvenile offenders vis-à-vis the JJSO, followed by conclusion of the discussion.

---

[10] Ibid. Section 10. An exception provided by the law is that if 'there is reason to believe that the release of the child shall bring him into association with any criminal or expose the child to any danger, in which he [she] shall be placed under the custody of a Probation Officer or a suitable person dealing with the welfare of the children if parents or guardian of the child is not present…'

[11] Ibid. Section 11.

[12] Amnesty International, 'Pakistan: Protection of juveniles in the criminal justice system remains inadequate'. Online. Available at http://www.amnesty.org/en/library/asset/ASA33/021/2005/en/24a9ffb0-d4b6-11dd-8a23-d58a49c0d652/asa330212005en.pdf (Last accessed Oct. 09, 2009).

[13] Society for the Protection of the Rights of Child (SPARC), *The State of Pakistan's Children*, Islamabad, SPARC, 2008, p 140.

I. The JJSO versus the Relevant Statues

The JJSO defines child as 'a person who at the time of commission of an offence has not attained the age of eighteen years.'[14] The same age has been fixed by the Majority Act, 1875 and the Zina Ordiance, 1979.[15] The Pakistan Penal Code (PPC), 1860, the principal body of law that defines offences, provides two general exceptions regarding juvenile offenders. First, the PPC determines the minimum age of criminal liability of a child at the age of 7.[16] Second, it sets the maximum upper age limit at the age of 12 provided the child accused of an offence has not attained sufficient maturity of understanding to judge the nature and consequences of his/her criminal act.[17] An act of a child of below 7 is undoubtedly covered by the first exception. The second exception makes it discretion of the court to evaluate maturity of a child accused, whose age is above 7 and under 12. Commentators argue that being extremely over-worked, Pakistani courts are 'unlikely to spend time in assessing the maturity of accused'.[18] This situation, it is argued, has certain implications. Firstly, the plea of lack of maturity needs to be specifically raised and proved.[19] Secondly, the court will presume that the accused had attained sufficient maturity.[20] Thirdly, the prosecution may not feel obliged to produce evidence on the question of maturity.[21] It may be added here that there are no worthwhile education and training opportunities for judges and lawyers, particularly in respect of the internationally accepted standards of the administration of juvenile justice system. Indeed, the assessment of sufficient maturity of an accused must be, in the first instance, assumed by the police investigation and prosecution as their bounden duty in order to ensure fair trial and protect other due process rights of the juvenile accused. A regular and effective follow up by the supervising authorities of the police, prosecution,

[14] JJSO, Section 2(b).
[15] See The Majority Act, 1875, Section 3 and The Offences of Zina (Enforcement of Hudood) Ordinance, 1979, Section 2(a).
[16] The Pakistan Penal Code (PPC), 1860, Section 82.
[17] Ibid. Section 83.
[18] Jilani, op. cit., p 63.
[19] Ibid.
[20] Ibid.
[21] Ibid. p 64. *Abdul Sattar* (1948) 50 CrLJ 336.

lawyers and judges will also prove a contributive factor in protecting the rights of a child accused. The Code of Criminal Procedure (CrPC), 1898—the main law governing the procedure of criminal trials—provides that a juvenile accused under 15 years may be tried by certain category of courts.[22]

The Sindh Children Act, 1955, does not define 'child'; it defines 'adult' as 'a person who is not a child.'[23] It defines 'youthful offender' as 'any child who has been found to have committed an offence.'[24] The Punjab Youthful Offenders Act, 1983, while defining 'child', determines the minimum age of criminal liability at 15 years.[25] But the law does not confer the privilege of being a child on one who is 'a pubert even though a child who has committed an offence' under the Hudood law.[26] There is sufficient confusion in the Sindh law as it does not specifically define child. The confusion appears to be confounded when it defines adult as a person who is not a child. The Punjab law may be given credit for two reasons: first, it provides specific definition of 'child' and second, it enhances the age of criminal liability. However, the words 'a pubert even though a child" appear to be self-contradictory. It, however, creates sufficient confusion by excluding what it terms "a pubert even though a child'.

A question arises how the courts resolve the issue of determination of age of juvenile accused. During the last about nine years of the enforcement of the JJSO, a considerable body of case law has developed. The next part examines case law in greater details.

II. An examination of case law

Since the introduction of the JJSO, the determination of age of a juvenile offender has been the subject of criminal litigation. The basic reason for this being the moot question in our criminal justice system, is the maintenance of poor birth record, particularly in the rural areas. The question gets further enmeshed if the child has not been admitted to school. Due to carelessness or unawareness of the schools' staff about the registration of correct age of

[22] The Code of Criminal Procedure, 1898, Section 29-B.
[23] The Sindh Children Act, 1955, Section 1(a).
[24] Ibid. Section 1(s).
[25] The Punjab Youthful Offenders Act, 1983, Section 2 (a).
[26] Ibid. Hudood—plural of Hadd (Arabic), means 'limit'—punishments for certain crimes fixed in the Holy Qur'an.

children, the documenting of correct age has been a vital issue, not only in the administration of criminal justice, but also, sometimes, for the purpose of employment. Perhaps the inefficiency of the national registration authorities also adds further complexities. Thus it appears that birth certificates, school leaving certificates and the national registration cards create considerable difficulties for the courts as to which of these documents should be relied upon. Under Section 7 of the JJSO, it is mandatory for the Juvenile Court to conduct an inquiry for the determination of age of the accused. While the said provision of the JJSO states that the inquiry shall include a medical report, a critical study of the case law would reflect that courts, sometimes, give preference to other documents (such as the birth certificate, the school leaving certificate, and national registration cards) over the medical report.

Issues in early case law (2001-03)

A careful study of the 2001 cases reveals that soon after the coming into force of the JJSO, which has got retrospective effect, in several cases applications were submitted to the courts for trial of the Juvenile Offenders by the Juvenile Courts. *Ahmad Ali v The State* may be called one of the earlier cases as it was decided on March 01, 2001. In this case, the Lahore High Court issued directions for the determination of age of the accused by a medical board and if the accused was found to be a minor, he shall be tried by the Juvenile Court under the JJSO.[27] *Ahamd Ali* was a simple case involving the transfer of a case to the Juvenile Court. A similar transfer application in *Muhammad Ishaque v Muhammad Nadeem and others*, came up before the Sindh High Court, for hearing, which was decided on March 26, 2001.[28] The Court ruled that the in the presence of birth certificate and certificate issued by the Educational Institution, the opinion of Police Surgeon and the Medical Board, was not necessary. Two other cases in point are *Muhammad Hanif v Muhammad Yaqub*[29] and *Hassan Zafar v The State*.[30] Both cases were decided by the Lahore High Court in the same month (i.e June, 2001), but by different Judges. In the former, preference was given to medical

[27] 2001 The Month Law Digest (MLD) [Lahore] 1191.
[28] 2001 MLD [Karachi]1561.
[29] 2001 Pakistan Criminal Law Journal (PCrLJ) [Lahore] 1939.
[30] 2001 The Yearly Law Reporter (YLR) [Lahore] 2060.

opinion over birth certificate. The reasons cited are firstly, no sanctity is attached to the entries in birth certificate and secondly, such birth certificate or school leaving certificate 'are easily available in this country'.[31] In the latter, preference was given to the entry of birth recorded in the school record at the time of admission of the offender into the school. The reasoning of the Court was: firstly, at the time of admission of a child to school 'there is no contemplation about any future criminality.'[32] Secondly, the medical opinion may be obtained for extraneous consideration and that such an opinion is based on mere approximation.[33] It is important to note that while interpreting the law contained in Section 7 of the JJSO, the Judges in both cases expressed their respective views on the intention of the legislature. In *Hassan Zafar* case, the Court thought that the

> [I]ntention of Legislature was clear that determination of age of a person accused in a case, merely on the basis of School Leaving Certificate or Birth Certificate is not safe, hence report from Medical Board should be obtained for the said purpose due to the reason that the Birth Certificate or School Leaving Certificate are easily available in this country.[34]

The *Muhammad Hanif* Court argued that the words 'shall include a medical report' used in Section 7 of the JJSO 'are enabling in nature.'[35] The word 'include used in the said provision is enumerative, which means that the medical examination is *a* mode of the inquiry into the juvenility of the offender. Thus one Court attached high sanctity to the medical opinion, while the other gave more weight to the relevant school record, particularly the record of entry of birth at the time of admission of the child.

Another important aspect discussed in *Hassan Zafar* is that the JJSO creates what the Court termed a feeble right. The Court has not elaborated this point. One glaring reason for this opinion seems to be that the plea of juvenility was set up by the offender. Hence, the onus lied on the offender to prove his juvenility. It may be argued that the language of Section 7 of the JJSO candidly provides that the Juvenile Court shall conduct inquiry only 'if

[31] 2001 PCrLJ 1939, op. cit. p 1943.
[32] 2001 YLR 2060, op. cit. p 2062.
[33] Ibid.
[34] 2001 PCrLJ 1939, op. cit. p 1943.
[35] 2001 YLR 2060, op. cit. p 2061.

a question arises as to' the juvenility of an offender. Thus an adverse plea may be raised by the prosecution, arguing that the offender is not a juvenile within the meaning of the said provision. However, if no plea is raised, a Juvenile Court will presume that the offender, in respect of whom a case is entrusted to it, is a juvenile. For this reason, the right of a Juvenile Offender under the JJSO may not be seen as a feeble right.

While disposing of the plea of juvenility, courts have also held that medical examination is not essential for determination of age of an offender. Hence, Section 7 of the JJSO needs not to be invoked in each and every case.[36] Where difference was found between the age of the offender assessed by a Medical Board and the entry made in the record of the Union Council, the Court believed in the opinion of the former, arguing that the entry in the latter record could be forged.[37] In a 2002 case, a Division Bench of the Supreme Court gave judicial credence to birth certificate.[38]

In the year 2002, a couple of other relevant issues also caught the attention of the courts. Firstly, the question pertaining to the determination of age may also be considered at a preliminary stage, such as the request of the offender for his/her release on bail.[39] Secondly, the courts emphasized on giving liberal interpretation to the provisions of the JJSO vis-à-vis the determination of age of the Juvenile Offenders. In one case, the Court underlined the importance of the JJSO in the following words:

> ---Preamble---Purpose and import---Liberal interpretation--- [JJSO], 2000, is aimed at extending protection to the children involved in criminal litigation and their rehabilitation in society---Ordinance in a way safeguards the human rights of a section of society who deserve reasonable concession because of their tender age and therefore, it is to be construed liberally in order to achieve the said object.[40]

---

[36] *Muhammad Akram v Muhammad Haleem*, 2002 PCrLJ 633 [Lahore]; *Muhammad Hayat v Muhammad Iqbal*, 2002 PCrLJ 1237 [Lahore].
[37] *Gohar Abbas v The State*, 2002 YLR 637 [Lahore].
[38] See, e.g., *Muhammad Ishaq v Muhammad Nadeem and another*, 2002 Supreme Court Monthly Review (SCMR) 440.
[39] See *Afsar Zamin v The State*, Pakistan Legal Decisions (PLD) 2002 Karachi 18; See also 2002 MLD 1817 [Karachi]; 2002 YLR 170 [Lahore].
[40] Ibid. p 20.

This view suggests that the right of the juvenile offenders is not feeble as discussed in the case of *Hasan Zafar*, above. This issue will be further discussed below. While the question of determination of age continued to occupy the attention of the courts in the year 2003, two more questions emerged during that year. First, whether the collection of medical evidence is mandatory? Second, at which stage, the question of juvenility has to be raised? Regarding the first question, it was held that the collection of medical evidence is mandatory.[41] In one case, the Court, however, cautioned that it is not necessary to solely rely on the medical evidence.[42] In reply to the second question, the Court opined in the case of *Mustafa Tariq v Pervaiz Ahmad and others*[43] that the plea of juvenility could be raised at any stage. This view does not seem to have been endorsed in the case of *Muhammad Rashad and 2 others v The State*, holding that less than 18 years age of an offender (sentenced to death) mentioned in his statement recorded under Section 342 CrPC, is not a conclusive proof. The rationale for this view obviously is that the said statement is not recorded on oath. Conversely, it may be argued that such statement does form part of the evidence. Indeed, the court is bound to specifically ask the accused if he/she is willing to produce evidence in defence and/or record his/her statement on oath. Another justification is that the issue of minority was not agitated at the early stage of the trial. The plea was, however, raised at the hearing of the first appeal before the High Court, which was rejected. This ruling is in contradiction with the verdict delivered in *Mustafa Tariq*, referred to above, in which the Court held that the plea of juvenility could be raised at any stage. The consideration of age at the first appellate level might have saved the alleged juvenile offender from capital punishment, which has been banned by the JJSO. Hence, the JJSO was not liberally interpreted by the Court as held in *Afsar Zamin*, examined above.

It is established from the above discussion that during the early years of the enforcement of the JJSO, the most important question faced by the courts was the conflict between medical evidence and birth certificate as well School Leaving Certificate. As seen above, the courts generally remained divided on this vital point. However, it is worth appreciation that the courts laid stressed on liberal interpretation of the JJSO. The case law

[41] *Muhammad Afzal v the State*, 2003 YLR 1983 [Lahore]; *Muhammad Nadeem v The State and another*, 2003 YLR 321 [Lahore]; *Ashraf Javed v The State*, 2003 YLR 1377 [Lahore].
[42] Ibid. 2003 YLR 321 [Lahore].
[43] *Mustafa Tariq v Pervaiz Ahmad and others*, 2003 MLD 431 [Lahore].

since 2004 shows that guidelines are being set up by the superior courts for the guidance of the lower courts, which are discussed in the next section.

Guidelines of the superior courts (2004 and afterwards)

An important case is that of *Sultan Ahmad v Additional Sessions Judge-I, Mianwali*.[44] The significance of this case lies in the fact that the Supreme Court interpreted the phrase 'if a question arises' and the word 'inquiry' used in Section 7 of the JJSO. The trial Court and the first appellate Court relied on School Leaving Certificate, birth certificate and the police record, and refused the prayer for the medical examination of the offender. The genuineness of the School Leaving Certificate and birth certificate were seriously challenged.

The Court argued the phrase 'if a question arises' is different from a phrase 'if a question is raised'. The Court was pleased to observe:

> The word 'ARISE' mean 'TO RISE UP' while the word 'RAISE' means to 'indicates TO CAUSE TO RISE'. 'ARISES' thus involves someone else causing it to rise. Therefore, what is meant by the said provisions of the said section is not that the Courts are required to wait to undertake an inquiry to determine the age of an accused person till such a question is raised before them.

Underscoring the dispensation of justice as the obligation of courts, it was further ruled:

> It would be horrendous to visualize 'CHILD' or a 'MINOR' being hanged only because the question of his minority has not been raised before the relevant Court. It is the function of the Court that no illegality is permitted to occur and no injustice is allowed to creep into its decisions.

The Court was further pleased to set out the following guidelines about 'inquiry':

[44] PLD 2004 Supreme Court (SC) 758.

> [A]n inquiry is a judicial proceeding in which evidence could be legally taken. Therefore, whenever a Court is confronted with the question of the age of an accused person, it is incumbent upon it to hold an inquiry and the learned Presiding Officers should always feel free to requisition the original record; to summon and examine the author and the custodians of such record and documents to determine the genuineness of the same; to summon persons, if need be, who on account of some special knowledge, could depose about the age of the concerned accused person and to take such other and further steps which could help the Court in reaching a just conclusion about the said matter…the issue of age of an accused person at a trial which could result in a punishment of death, was by now of vital significance and the learned Presiding Officers should never hasten to decide the said issue in summary or in a slipshod manner.

The Court also ruled that medical examination is a must in determining the age of an offender and strong reasons must exist for not doing so. Lastly, the Court directed that the examination of an offender by the plea of juvenility should be raised "at the earliest possible opportunity and preferably during the course of investigation so that the Investigation Officer could collect evidence…"

Another leading case is *Babar Ali v The State* decided by the Lahore High Court.[45] In this case the question of juvenility was extensively discussed and new means of solution were explored by resorting to what the Court called 'judicial engineering'. The Court issued the following guidelines to the police investigators and subordinate judiciary:[46]

> First, soon after the arrest of a young person on a criminal accusation, 'the arresting police officer must make a tentative assessment as to whether the arrested young person is a 'child' for the purpose of the [JJSO]. 2000 or not and, thus, can he[/she] be handcuffed, etc. or not.
>
> Second, the concerned police officer should inquire from the accused about his/her age and 'also make an appropriate inquiry' to find out whether the arrested young

[45] PLD 2007 Lahore 650.
[46] Ibid. pp 676-678.

person is a child under the JJSO. In doing so, the concerned police investigator 'should collect or consult all possible material'. Such material may include the record of hospital, the record pertaining to entry of birth maintained at the relevant Union Council, the record of educational institution, the record maintained by the National Database Registering Authority (NADRA), Electoral Roll and the marriage (*Nikah*) Registrar and a medical opinion about his/her age, if necessary.

Third, the concerned police officer should record his tentative opinion about the age of the young accused person in his report under Section 173, CrPC, to be forwarded to the concerned Magistrate.

Fourth, the police report under Section 173 CrPC must mention the plea of juvenility if set up by the young accused person and the material collected for the tentative assessment of age.

Fifth, on receipt of a report under Section 173 CrPC, a Magistrate 'must examine the entire record of the investigation, make his[/her] own assessment' of the material relevant to the question of juvenility. If the Magistrate finds the inquiry deficient, then he/she may hold an inquiry of his/her own to assess the age of the young accused person. If the Magistrate finds the young accused person as a juvenile within the meaning of the JJSO, then if he/she is not empowered as a Juvenile Court, shall take cognizance of the offence and forward the case to the concerned Juvenile Court.

Sixth, if the question of juvenility is raised before a competent Juvenile Court, such Court must decide that question according to the provisions of Section 7 of the JJSO.

Seven, if the question of juvenility is raised before an ordinary court, to which a case has been sent for trial, the ordinary Court shall decide the issue 'under subsection (2) of section 5 of the [JJSO], 2000 through an inquiry akin to that contemplated by section 7 of the said Ordinance.

Eight, 'all Magistrates and trial courts must pay special attention to the age of the accused person before them and must record his age in the relevant record, charge-sheets and final judgments as the matter of age is important to issues pertaining to the forum of trial, sentence and custody, etc.'

Nine, an adverse inference may be drawn in case the plea of juvenility is raised at a belated stage of the judicial proceedings.

Recent case law shows that the verdicts laid down in *Sultan Ahamd* and *Babar Ali* have proved greatly helpful to the courts dealing with the issue of juvenility. For example, in a 2008 case—*Atta Muhammad v Muhammad Umer Farooq and another*,[47] among others, both the above cases were relied upon. However, it appears that in some cases the above guidelines do not seem to have been followed, particularly by the trial courts. In an appeal against the conviction of a juvenile accused, the Chief Justice of the Federal Shariat Court observed that once it was brought into the notice of the trial court that the appellants were juvenile, he should have been separately tried under the JJSO.[48] Taking rather serious note of the fact, the Court further observed that the conviction of the appellants to rigorous imprisonment amounted to violation Section 12 of the JJSO, which prohibits the award of corporal punishment. The Court also expressed it view that the juvenile convicts 'must have suffered great deal of hardship and torture till such time bails was granted to them…'

A more recent example is *Niaz Muhammad v Umar Ali*[49] in which the Court rejected the plea of juvenility for the reason that the same was raised at—belated stage—the time when the final arguments were heard. The High Court did not agree with the contention that the case should be remanded to the trial Court for determination of the age of the convicted child by a medical board. This case has attracted criticism from child rights activist. It is argued that the issue of juvenility was raised on several occasions before the trial as well as the appellate court, but no inquiry was conducted under Section 7 of the JJSO.[50] Although the decision appears to be a departure from early rulings, for example, *Mustafa Zafar*, but it seems to be in line with the recent judicial dicta expressed by the Supreme Court in *Sultan Ahamd* and the Lahore High Court in *Babar Ali*, examined in detail above. However, these rulings have not been referred in the judgment, which means that these were not produced before the Court. One may argue that one of the principles laid down in *Sultan Ahamd*—the Court itself has to resolve the issue of juvenility and not to wait till the plea is raised by parties—was ignored in this case. But, on balance, however, one cannot help appreciate that the Supreme Court has also finally decided that the plea of juvenility must be raised at the

[47] 2008 PCrLJ 1542 [Lahore].
[48] *Muhammad Noman and another v The State*, 2008 PCrLJ 1439 [Federal Shariat Court].
[49] 2009 PCrLJ 191 [Peshawar].
[50] SPARC, *The State of Pakistan's Children*, 2008, op. cit., p 154.

earliest possible opportunity. It may be argued that the legal advisor of the juvenile offender, too, was under a legal duty to have raised the plea in the first instance and in the event of its dismissal, to have resorted to the higher courts for their relief.

Critics further argue that the case was not decided within four months period provided under subsection 6 of Section 4 of the JJSO. There is enough force in this argument for as the trial was concluded after one year and two months and the appeal was decided after two years and seven months.[51] Thus the offender remained for about four year in incarceration, when the proceedings against him were pending.

Conclusion

The article has argued that determination of age of juvenile offenders is the most crucial issue pertaining to an efficient juvenile justice system in Pakistan. Different laws provide different age limit for criminal liability. This inconsistency has rendered children, a disadvantaged group, susceptible to discrimination and unfair treatment. In order to fulfill its national obligation under the constitution as well as international obligations under the CRC, the State should consolidate juvenile laws and adopt uniform legislation, compatible with international standards.

The article has established that during the early years of its enforcement, the JJSO received conflicting interpretation from courts. However, the superior courts have set out comprehensive guidelines for police investigators and trial judges. This trend is very significant as it can help the police to efficiently investigate and the trial courts to easily adjudicate the issue of juvenility and thereby ensure that the rights of the children in conflict with law are, duly protected. The guidelines issued by the superior courts have been followed but only in few cases. The mainstreaming of the guidelines in police investigation process and the practice of subordinate courts through workshops of judges, investigators, prosecutors, local lawyers and probation officer, may prove helpful in the determination of age of the child accused. One must appreciate that beyond this spectrum, due attention may also be given to the process of marriage and birth registration. It is also highly desirable to

[51] Ibid. p 155.

ensure effective implementation of the laws relating to such registrations, coupled with adoption of new legislation, where the need be.