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Evaluating Juveniles Delinquency in Perspective of Socio-Economic Conditions of Pakistani Society

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Abstract

This article addresses the issue of rapid increase in the juvenile delinquency from the perspective of socio-economic conditions of Pakistani society. It explores that Pakistani society is facing many serious issues of its survival and increasing juvenile's delinquency is one of the most critical issues which may cause to destruct the future of its young generation. It is a socially inadequate behavior on the part of the individual to difficult a situations. It argues that due to explosive growth of population, increasing poverty, illiteracy, political instability, ignorance of the concerns of the young generation and maltreatment of the children at home and at schools caused to increase juvenile's delinquency. State seems indifferent of the socio-economic problems of its people. The measures taken by the state are inadequate and could not succeed to reduce juvenile delinquency in Pakistan. Poverty, explosive growth of population and illiteracy lead to moral decline and lack of concern of the parents and the teachers to the issues of their children. Juvenile's delinquency is a matter of great concern for parents and teachers who are foundational characters in the grooming of a child. It suggests that the issue of juvenile's delinquency should be taken seriously by the state and the law enforcing agencies and certain steps should be adopted to reduce the density of the issue. Moreover, theologians should provide accurate knowledge of Islamic teaching regarding the birth and training of the children that producing many children is recommended in Islam but proper training and education of the children is an obligation upon the parents.

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1.Introduction

It has long been a problem why some children commit crimes and not others, why some steal and not others, why some bunk off or why some cause to damage others. To address this issue, different theories have been emerged from time to time which led different states to carry out some widespread methodical investigations to resolve this issue and consequently, juvenile justice system has been established and is working throughout the world. Mean the time many other institutions like child welfare associations, NGOs, reformatory centers and penitentiary cells, and mental hygiene clinics have been involved in this attempt. Different methods are adopted to investigate the issue and to collect data regarding juvenile's criminal behavior to draw certain general conclusions and to recommend certain steps to carry them out. It is however, matter of deep concern that the issue is still in debate and could not be resolved rather increasing day by day.

Talking about Pakistani society, juvenile delinquency has increasing for last two decades and has reached its apex recently which may cause to destruct the whole social structure of the society if not taken seriously by all segments of the society, the legislature, law enforcing agencies, welfare institutions, school authorities, parents and above all the state which is considered like a mother of the whole nation and is responsible to provide necessities of life to its all citizen and to maintain law and order in the society. This article thus, explores the world history of Juvenile's delinquency and juvenile justice system. It also aims to throw light on the state legislation to control juvenile delinquency and to establish a juvenile justice system in Pakistan. Furthermore, it evaluates the contemporary situation of juvenile's delinquency in Pakistan and its causes and effects on Pakistani society. In the end there are some conclusions and recommendation to minimize juvenile delinquency in Pakistan and to reform juvenile justice system.

1.1. History of Juvenile Delinquency and Justice System

The term juvenile delinquency is a component of two words: The word juvenile means a young person (male and female) who is not yet an adult and the word delinquency leads bad or criminal behavior of a juvenile.[1] The legal scope of the term is very wide and can be interpreted in different meanings by different segment of society. To the police, the delinquents are under age criminals, to school authorities they are truant, smokers or noncompliance, to parents delinquents are ungovernable children, to store keepers they are gangs indulged in loitering etc. This term thus, may be defined technically, as emotionally disturbed behavior of a child, anti-social behavior or the behavior which the police of a particular community consider as deviant. In the language of the court the juvenile delinquents are under age counterparts to adult criminals [2].

The history of juvenile's crimes is as old as the history of adult's crimes. In perspective of the Qur'anic revelation the element of wrongdoing (shar/delinquency) has been infused in the human beings by Allah Almighty himself to distinguish good from bad and to reward those who follow the right path and ethical norms set out by Allah Almighty through Qur'anic revelation and to punish those who cause to disturb peace and tranquility of a society. It is stated in the Qur'an: "By Nafs (soul/person) and Him Who perfected him (person)

in proportion. Then, He infused him what is wrong and what is right. Indeed he succeeds who purifies his own self. And indeed he destructs who corrupt his own self” [3]. This verse leads that the human being is infact,being examined by the Creator of the universe to judge who can succeed to overcome the evil of his own self and who cannot. It also leads that man is ordered to try his level best to avoid evils and to adopt righteousness. It is this reason that Allah Almighty gave a complete code of ethical norms through revelation to establish a peaceful and just social order in the society and declared the parents, the teachers and the state responsible to train children in the light of these norms [4].

However, when the human beings threw out ethical norms by considering them indifferent of all types of bonds, the crimes increased and so is the case of juvenile delinquency which now has become a matter of debate among the philosophers, sociologists and reformers etc. In the west, before the last century, the children criminals were treated with adult criminals under the same provisions of the law and there was no exemption for children. Like adult criminals, they were assigned severe punishment and even death penalty for robbery, theft, cutting prohibited trees and for destructing buildings [5].The modern development of criminal justice system can be traced in the legal measures of 18th and 19th centuries. The public dissatisfaction with the practices of policing led the thinkers and philosophers to frame certain models to treat with the criminals. Different theories were presented and different measures were adopted to reform the contemporary criminal justice system. In 1744, the creation of “Bow Street Runners” in London offered a more coordinated and structured approach to policing. Investigation was declared as a key process and different theoretical and philosophical models were designed to control the crimes and to establish criminal justice system. It was argued that criminal justice should not be just a process in policing perspective rather it should operate in an informal way to achieve social discipline [6].

Juvenile justice system may be defined as a system which may control juvenile delinquency by way of rehabilitation and reformation rather than strict punishment [7]. In the history of the western legal system, the origin of the voice for juvenile justice system is found in the feminist movement for female’s rights [8]. The juvenile justice system is a part of the reforms and the developments

in recent years to distinguish juvenile delinquents from adult criminals. The Civil War of America resulted in the establishment of the industrial system and a class of helpless people. The young offenders were sent to adult jails, workhouses and penitentiaries and were treated badly which might turn them into hardened adult criminal because of ill and brutal treatment. It was in the late 18th century when the “Child Savor’s Movement” was started by the social activists and social reformers of America dominantly women started a series of protest to improve living condition of poor urban youngsters, orphans and to resolve the issues of child labor[9]. In Urban areas, social activists started to provide special facilities to the orphan children and juvenile delinquents. They sought to protect juvenile delinquents by declaring them separate from adult criminals. The social reformers established some institutions to safeguard the rights of the children and to provide them basic needs of life. For instance, the Society for the Prevention of Juvenile Delinquency was established which later founded “The New York House of Refuge” to provide separate centre for housing to juvenile delinquents in 1825 in the New York City. In the same manners, in 1855, in Chicago, “The Chicago Reform School” was opened to reform delinquents to help them in their rehabilitation and to motivate them to avoid crimes in their future lives. During this movement it was also felt that the children who committed or capable of committing a crime were being

processed through the adult criminal justice system. It was demanded by the child savers to set up a separate juvenile justice system aimed to rehabilitate young offenders than punishing them. It was argued that the young offenders if not treated with brutality but by way of reform or rehabilitation, there was some hope that they might reform and escape a life of crime. These and similar concerns led the judges of United States to treat the juvenile differently. In this way, the "Child Savor's Movement resulted in the creation of a separate juvenile justice system in America which began with the establishment of first juvenile court in Chicago (Illinois) in 1899 and spread from there to all western states [10].

In 1909, Justice Julian (one of the first judges of the juvenile court) described that the child who brought into the court should be informed that he had to face the power of the state and that he is the object of its care and concern. He should not seek any sympathy and intention of the judge and that the judges should not try to lose their judicial dignity while performing his study [11] During the early period of the 20th century (by 1905) there were only 31 States ratified this development by adopting juvenile's justice system and by enacting juvenile's court statutes to establish juvenile justice system. It was however, within 30 years by 1928 when the juvenile court movement spread throughout the world such as to Great Britain, Canada, Switzerland, Japan, Germany, Spain, Mexico, Australia, South Africa, Egypt, and India etc[12]. In United States, the juvenile courts were assigned the authority to "Waive Jurisdiction". Another development was that during the 1967, the Supreme Court of United States extended the doctrine of "Due Process Right" to the juveniles involved in court proceedings. The early juvenile courts shared with reform schools for rehabilitation of the juveniles. Moreover, in the United States, the situation was more advance and the reformers, philosophers and the judges showed their great concern to the issues of the juveniles and the procedure to resolve them [13]. There were however, two major issues regarding the juvenile justice as defining what crimes and what individuals are to be covered by juvenile justice system. What procedure to be used and what outcomes from it are to be hoped for versus the outcomes actually realized [14]. The other problem was of interpretation like one robbery may involve a juvenile's running into an old lady, grabbing her purse, and knocking her to the ground with the consequence of a broken hip and in a second robbery, a twelve years old may threaten an acquaintance with a fight unless the acquaintance turns over his forty cent lunch money. If both offenders are arrested, the consequences would be substantially different. The Supreme Court of United States focused to resolve the issues like if the goal of the juvenile justice system is rehabilitation, shouldn't a juvenile court judge have latitude to try different approaches and apply different standards to individual juveniles? Do rights to due process, in other words, put too many constraints on the ability of juvenile judges to address the unique problems and needs of individual offenders? Why or why not? [15]. Like other fields of law, there were two legal theories regarding delinquent justice: The Conservative theory of juvenile justice; and the liberal theory of juvenile justice. The conservative theory of juvenile justice is based on the assumption that lenient handling of delinquent may leads to high rates of crimes as in most of the cases, the delinquent will commit a crime with the belief that he can get away from serious punishment because of his/her age. On the other hand, the liberal theory contends that the most juveniles committed only minor offences so minors that if they committed by an adult may not be considered as an offence. Moreover, the juveniles often are illiterate or have poor economic background and if they come to the attention of the police and arrested they labeled delinquent by the police and other authorities in society and then treated as criminal. Moreover, if juveniles are treated like adult criminals or sent in the adult jails, it will escalate

their fall into full-blown criminality [16]. However, since the turn of the century, the issues of juvenile justice have been so significantly propelled before the legal philosophers, and academicians for consideration of research and administrative policies [17]. In the same manners, the term “Child abuse” has coined to recognize behavior towards children in the light of the social and cultural norms of a particular society as the punishments imposed upon the children just before 30-50 years ago are wholly unacceptable in the 21st century. Different acts have been recognized as permissible which were prohibited in the past. For example, 30 years ago, the punishment was given to those who used smoking in India but now it has been receded [18]. Different methods have been introduced to protect the rights of the children.

It is however, surprising that despite these efforts, both the child abuse and juvenile delinquency have been increasing and it seems that child abuse has a strong relationship with the crimes of the children. At present throughout the world the juveniles commit a significant percentage of violent crime and serious property offenses. And it has become a threatening issue to the stability of a society. It is complex to design different models of reform to treat with the delinquents of different tempers. There are chronic offenders who are recidivists while others are less violent recidivist [19]. In the same manners, some children are capable of quick response to negativity and others relatively unresponsive. Moreover, juvenile also conceived delinquency from the behavior of adult criminals and broad range of irresponsible social behavior as well [20].

In Islamic legal system, the juvenile justice system was introduced by the Qur’anic revelation and successfully established by the Holy Prophet (pbuh) by considering children as great blessing of God and by declaring them exempted from the criminal liability until the age of maturity. The issue of criminal liability and crimes has been declared as an important subject of Islamic criminal justice system and a significant part its laws since the time of revelation. Islamic law of crimes is based on the principle of capacity (*Ahliyah*) of a person which is consisted of two elements, the puberty; and discretion and according to which a young person can be declared as a perfect being to perform his duties and to exercise corresponding rights and is subject to criminal liability as an adult if he acquired puberty and discretion. It is stated in the Qur’an with reference to submitting property to the orphan children: “And examine orphans (as regard their wisdom) until they reach the age of marriage; if then you find discretion and sound judgment in them hand over to them their properties [21]. In this way, the Qur’anic revelation provides a general principle of capacity (*Ahliyah*) in the light of puberty and discretion of each human being. The Muslim jurists are unanimously agreed that to declare a child/person subject to criminal liability, both puberty and discretion (*rushd*) are necessary components and issue of age limit to discriminate juvenile from adult criminal has been left at the discretion of the judge/state to prescribe in the light of the mental capability and socio-economic circumstances of the person concerned in the light of cultural norms of that society [22].

There are however, different juristic opinions about the age limit of a juvenile to declare him as adult. Some of them declare 15 years for girl and sixteen years for boy while other prescribed 18 years of age of a juvenile [23]. In the history of English common law, it was during the 18th century when the legal philosophers of the time started to discuss the issue of age of a criminal in perspective of infancy and adulthood. Different the legal philosophers have different views about the age limit of a juvenile. Blackstone (1723-1780) in his commentaries on the law of England discriminated those who could not commit crime and could not be accountable for their

crimes from those who could be declared as criminal if committed crimes. According to him “vicious will”/ intent and unlawful act were two elements necessary to declare a person a criminal and only infants under the age of seven could be declared as persons incapable of committing crimes those who could not be guilty of a felony or serious crime like murder, kidnapping or burglary. He then prescribed the age fourteen years for children and described that the child over fourteen years would be liable to be treated as an adult criminal if found guilty of a crime. The age between seven and fourteen would be a gray zone and a child at this stage would be treated like incapable of crime. If however, the child could understand the difference between right and wrong and consequences of his own action, he could be dealt as an adult criminal and could be assigned death penalty in a capital crime. In this way, Blackstone opined that the issue of age should be decided in the light of the maturity of mind of the juvenile under the maxim ‘*malitia suppletaetaten*’ which means malice provides age and commented that ‘one lad of eleven years old may have as much cunning as another of fourteen’ [24].

It leads that the issue of age limit to declare a child a juvenile or adult should be decided in the light of socio-economic and cultural condition of a particular society along with puberty and discretion or in the light of UNO treaties to create harmony with state legislation. However, the issue to decide how to distinguish juvenile from adult or at what stage a person can be treated as a juvenile or an adult has been considered the most complicated issue by the jurists of the modern legal systems. It is this reason that different countries have prescribed different age limits to declare a person an adult. For instance, different states of America have different age limits to declare a person as an adult such as the states of California, Columbia and Florida have prescribed 18 years age to declare a young person as an adult while Texas, Michigan and Georgia prescribed 17 years as maximum age for a juvenile and New York, North Carolina and Vermont have declared that maximum age for a juvenile is 16 years [25]. In the same manners, the trial methods of juvenile may be vary from country to country like in England and Wales there are three types of methods of juvenile trails namely trail by way of condemnation, trail in an ordinary magistrate court and trail in a juvenile court [26].

1.2. Juvenile Delinquency and State Legislation in Pakistan

Pakistan came into being in the name of Islam to administer justice in the light of the universal revealed principle of equality before law and to ensure protection of human rights of its citizens. The preamble of the Constitution states that the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam shall be fully observed [27]. It is consisted of many ethnic and religious groups and thus, considered as a multi-dimensional nation. The UNDP Report 2013 leads that the total population of Pakistan is about 193 million [28].

Talking about state legislation with respect to the juvenile delinquency and juvenile justice system, the provincial government of Sind can be declared as an innovator and it was during 1955 when Children’s Act 1955 was enacted by replacing ‘The Bombay Children’s Act 1924. However, ‘The Children’s Act 1955’ implemented in late after 19 years of its promulgation and made applicable first to Sukkur and Hyderabad divisions in 1974. This Act prescribed 15 years age as the maximum age for a child by defining a youthful offender as any person under 16 years and also provided that no person under sixteen years of age could be

sentenced to death, transportation or imprisonment. It also prohibited the joint investigation of a juvenile and an adult. It also empowered a police officer to release a child arrested on charge of non-bail able offence. Under this act, the powers of juvenile court were vested in the District Magistrate [29].

Another enactment which deals with the criminal issues of juvenile is 'Hudood Ordinance 1979' (reviewed in 2002) which was promulgated during the regime of General Muhammad ZiaulHaq in his attempt to Islamize the existing Pakistani laws in the light of the traditional interpretation of the criminal law of Islam. This Ordinance however, defines a child in very ambiguous manners as a 'person who has not attained puberty' without conditioning it with discretion which leads that if a person attains puberty at the age of 10, 11 or 12 as normally occurs in Asian countries or at hot climate can be declared as an adult and can be sentenced to death which itself against the clear meaning of the Islamic concept of criminal liability and traditional interpretation. The traditional interpretation leads that a boy who reaches at the age of 18 and a girl who reaches at the age of 16 can be treated as an adult [30]. In 1983s the provincial government of Punjab enacted 'The Punjab Youth Offenders Ordinance 1983' which defined a child as anyone who was at 15 years of age or below at the time of commission of offence. In 1999 the government of Pakistan ratified the 'United Nations Convention on the Right of the Child' and consequently started to work on the reformation and rehabilitation of delinquents. At last, the 'Juvenile Justice System Ordinance 2000 (JJSO)' was promulgated by superseding 'Sind Children's Act 1955' and 'The Punjab Youth Offenders Ordinance 1983'.

The Juvenile Justice System Ordinance, 2000 (JJSO) was promulgated on 1 July 2000 to establish juvenile justice system in the light of the provision of United Nations Convention on the Right of the Child'. It defines the child as a person below 18 years of age. It provides for the establishment of special juvenile courts exclusively to try juveniles under special procedures suitable for children. It also regulates the issues regarding arrest of children by police as well as bail and probation. It also provides for the appointments of special panels of lawyers to assist children free of charge in court. The important provision is that this Ordinance prohibits the death penalty and the use of shackles and handcuffs for children. Section 7 of this ordinance however, which states that 'If a question arises as to whether a person before it is a child for the purposes of this Ordinance, the Juvenile Court shall record a finding after such inquiry which shall include a medical report for determination of the age of the child' leads ambiguity and gives wide discretionary powers to the judges. Another important statute is 'The Child Protection & Welfare Act 2010' which was enacted by provincial government of KPK. The Act contains a guideline to protect a child who is at risk and provides a procedure to treat a juvenile. Section 2 (e) states that a child in need of protection who is at risk includes an orphan, child with disabilities, child of migrant workers, child working and or living on the street, child in conflict with the law and child living in extreme poverty or is found begging'. In order to address needs of the child at risk, under the Act the child protection institutions, centers and commission have been set up which are being run by the officials trained in the field of the child protection. Further, The Peshawar Criminal Justice Coordination Committee on 12 October 2004 (World Mental Health Day) decided to fully implement the Mental Health Ordinance 2001 and directed police not to arrest or detain any mentally ill person, register any complaint against such a person and ensure that such a person was sent to a mental hospital for treatment[31].

1.3. Contemporary Condition of Juvenile Delinquency in Pakistan

The factors which operate to turn a child's behavior in one direction rather than another may be very obscure, many as yet are beyond the detection of expert sociologists, psychologists, physiologists and others. It often appears that quite different offenses are the results of the same group of causes, but further investigation shows that still Social and cultural Background [32]. In Pakistan however, the issue of juvenile delinquency is very tough and all the delinquents are dealt by the same process whether they commit minor offences or major offences. The juvenile delinquency has been increasing for the last two decades but is considered as one of the least problems of the society. The contemporary condition of the children is very poor. Explosive growth of the population and increasing poverty has made the children as most neglected segment of the society. The Population growth rate is about 1.49% (2014 est.) The 49% of the population is under the age of 18 while minors (10-18) are 22% but are given least attention by their holders by the parents, the teachers and the society. The most critical issue is that five out of seven children are denied the right of the identity by means of registration at birth and hence, are not even counted as citizens. The survey of UNDP shows that about 3 million Pakistani children are laborers and is increasing day by day (UNDP, Report 2013). It is our misfortune, that in a Muslim state like Pakistan, children are being exploited and abused while Islam has declared the children as the most venerable blessing of God. Talking about the juvenile justice system, it is reported that during 2004 about up to 10,000 juvenile offenders were under trial and about 2500 children were kept in different jails of Pakistan. The majority of the children committed minor offences but were being made to pay a heavy price [34].

A survey of juvenile prisoners lodged during 2011 in 51 jails in the four provinces of Pakistan exposed most degrading conditions. Hardly any facilities existed for rehabilitation and often the punishment was too severe for the crimes committed. Most of the incarcerated children were found to be under-trials. Under-trial prisoners failed to obtain release on bail as their poverty prevented them from furnishing sureties [35]. The current situation of juvenile delinquency is that almost 1500 - 2000 juveniles under the age of 18 were tried and imprisoned and were under trial during 2010-2011 while the number of thousands of under trials juveniles could not be assessed. However, the measures taken to alleviate the problems of juvenile are inadequate. There are numerous reasons behind the increasing ratio of juvenile delinquency and poor justice system in Pakistan. The most striking issue is explosive growth of population which made the whole social structure disturbed and leading to destruct it [36].

Poverty is that critical issue which led the people to kill each other for their survival. Economy of Pakistan is considered as under developing and almost 50% of the population is living below the poverty line i.e., without or less than 1.5 US\$ (175 Rs) per day. [37] This 50% of the population is suffering from its survival and every morning the father/ mother thinks from where he/she can earn to feed his children? Other 50% is also facing many economic problems and find it difficult to resolve all economic issues within their earnings. For instance, service sector accounts for 58.1% of GDP and the average salary of this sector is about Rs. 16256 [38]. This leads that almost all the citizens are suffering from lack of money to fulfill their basic necessities of life like food, clothing and housing etc., the fulfillment of which should be on behalf of the state [39]. This issue has converted each home into a battle field, a place of maltreatment and fighting and generated many other issues. Consequently, habitat at home painful particularly, for the children. It is matter of great concern that in Muslim

Family Law, family comes into existence after the bond of marriage between male and female and is considered as the basic unit due to which the society forms and becomes prosperous. A strong family institution leads to a solid society and results in a positive outlook for the whole society. Muslim Family Law requires that the family should be based on religious norms, ethical values, respect, love and co-operation and should be able to cope with human development and progress of its society[40].

Illiteracy of parents is also a major issue and the state definition of an educated person is very strange. In the light of the state definition of educated person 'any person who can read and write' although he never attended any school or passed any class is literate, even then the literacy rate is only 50%. The poor condition of education can be judged by the fact that only 16% male and 9% female succeed to get secondary level education. There is no minimum age for marriage and among the people of 15-50 years of age 98% male are married while female ratio of same age is 95% [41].

The other issue is the misunderstanding and misinterpretation of the religious norms of Islam by its holders regarding family issues like responsibilities of husband, status of wife and treatment with children. The moral decline, the loss of modesty, harsh attitude of husband towards his wife and children, lack of concern to their problems, illiteracy of wives are great causes to put the children into delinquency. In majority of the cases, the children become fed up of the environment at home and tried to escape. Further, fathers pay less intention to the studies and company of his children. Majority of wives are illiterate or have minimum education (Only 9% of female get secondary level education) and do not know how to keep watch the activities of the children rather they do not have courage to admonish their own boys being afraid of rudeness as the children treat their mothers like what they observe from their fathers. Looking at the environment of schools and colleges, the level of discipline is very weak rather ceased to exist. Children frequently bunk their schools and colleges and spend their time in illicit activities. School administration considers it sufficient to advice teachers to be strict to their students but the system to inform the parents about the progress, activities, and company of their children is totally absent throughout the country. In each section of each class the strength of the students is intolerable and makes the teacher annoyed rather push him to abuse and beat the students severely over petty issues which is itself a great cause to create delinquency in a student. Majority of our teachers does not have proper training to treat the children and does not know what delinquency is or how to treat a delinquent if found?

Lack of the state concern towards the issue of juvenile delinquency and in adequate measures by the state and legislature has made the juvenile delinquency a threatening issue for Pakistani society. The most ambiguous problem for the legislature is to define who is a Juvenile and that at what age a child should be declared as a juvenile and should not be considered an adult. It is this reason that in different statutes we find different definition of a child. For instance, article 11 (3) of the Constitution of Pakistan 1973 states that no child below the age of fourteen shall be engaged in any factory or mine or any hazardous employment. It leads that a child above fourteen years is a mature person and can be treated like an adult. However, after insertion of clause 'A' in article 25, the age of a child has been increased up to sixteen years which states that the state shall provide free and compulsory education to all children of the **age of five to sixteen years**' without amendment in article 11 (3). In this way, the Constitution of Pakistan 1973 itself has created an anomaly to define a child. Some other statutes like section 3 (2) of 'The Majority Act 1875 states that every person domiciled in Pakistan shall be

deemed to have attained his majority when he shall have completed his age of 18 years and not before and the same is mentioned in Section 3 (1) of the Guard and Ward Act 1890 which defines a minor in the wording that 'minor means a person who under the provision of Majority Act 1875 is to be deemed not to have attained his majority'. The wording of the provisions is clear in its scope and leads that until a person complete his age of 18 years cannot be declared a major/ adult. In the same manners, Section 4 of 'The National Registration Act 1973' states that 'every citizen in or out of Pakistan who has attained the age of 18 years shall get himself registered' which leads that the age of maturity both for male and female is equal and is 18 years but an earlier statutes 'The Child Marriage Restraint Act 1929 and amended in 1981 section 2 of which states that child means a person who if a male is under eighteen years of age and if female is under sixteen years of age'.

In this way, there is a serious anomaly in the wording of the provisions of different statues regarding the maximum age of a child. The most critical provision regarding criminal liability in Pakistan is section 82&83 of the Pakistan Penal Code 1980'. Section 82 states that nothing is an offence which is done by a child under seven years of age' while section 83 determines that the age of trial of a child is 12 years with the condition that he must not attained sufficient maturity to understand the nature of his conduct'.

The other issue is that in Pakistan juvenile justice system is very poor and slow. The juvenile are proceeding by the courts without caring for the provisions of the Juvenile Justice System Ordinance, 2000 (JJSO). While preceding a juvenile and despite the promulgation of the JJSO the rights of young people accused of criminal offences continue to be denied which caused to create a great hurdle in the way of the protection of the life and future of a juvenile. Moreover, the juvenile justice system has been left at the mercy and discretion of the judges rather than interpretive principle. For instance, in a case (on 6 December 2004), the Lahore High Court revoked the JJSO with effect for the whole country (PLD, LHR, 2005). In another case, during court proceeding, the judge asked the juvenile to translate the words "wohjatahai" (he is going) into English. The boy translated as "he is go", the judge was reported as commenting: "He is go and you will go to jail". The HRCP commented "it was not clear what weighed more on the judge's mind – the nature of the crime or the accused's deficiency in English. Nor was any comment on the boy's teachers reported" [40]. Likewise, despite the fact that there is a ban on imposing death penalty on juvenile in the juvenile justice System Ordinance 2000, in February 2001, a delinquent under the age of 17 ordered to be sentenced with death for murder in Sheikhpura, Punjab[42].

The JJS Ordinance is only enforced in selected parts of the country leaving the criminal justice system in other areas without any child rights protection. It is a bitter fact that in Pakistani jails there is a great number of children in very poor conditions. In many of the cases, the juvenile are detained with adult offenders in a cell and thus vulnerable to abuse and maltreated. They may be held in the same court where, and on the same days when, adults are tried, heard by the same judges and in the same adult environment without sufficient regard to their specific needs as children. As noted in the Lahore High Court judgment, in cases where juveniles and adults are tried separately for the same offence, evidence gathered in one trial is often unlawfully transferred to the other. Trials of juveniles are also usually not concluded within four months, as required in section 4(6) of the JJSO. The lack of access to free legal assistance coupled with the inability of many children and their families to pay lawyers' fees has also contributed to juveniles not being able to avail of bail provisions. Throughout the country, only two, three juvenile courts have been established by the provincial governments. To continue

working, the provincial high courts have conferred the powers of juvenile courts on district and sessions courts.[43] Another flaw of Juvenile justice system in Pakistan is that over 80% of juveniles who charged with bail able offences remain in prison due to a lack of or inadequate legal assistance. The courts do not allow bail without surety by ignoring the socio-economic background of the juvenile and all children who cannot produce bail are sent to prison, rather than into appropriate institutions or the care of probation officers. It is reported that about 1400 children are detained in various jails and detention centers of Pakistan for different serious and minor charge but this figure does not include children being detained by the paramilitary forces. In prisons they are treated badly, tortured and abused both by adult prisoner and by police [44]. There are however, NGOs and some private organizations which try to raise voice for the protection of the rights of children and provide free legal aids to the delinquents. Although JJS Ordinance 2000 prohibits death penalty yet juvenile are being sentenced to death and executed. The cases of juveniles are largely at the discretion of judges who do not always apply the relevant laws because of lack of knowledge [45].

It is due to these and similar reasons that a huge number of juveniles are spending their youth in illicit activities and are abusing by different segments of the society but find no proper justice and speedy trial. It is reported in the light of report drafted during 2012 that average eight children a day are abused daily by their relatives, friends and care takers. 71% of the children who suffered abuse are girls. The age group most vulnerable to sexual abuse among girls and boys is 11 to 15 years [46]. It is also reported that among street children one and half million have suffered sexual abuse almost 90% of street children [47]. It is also reported that the victim children and their families suffered through the criminal justice system whereas there are no programs, policies or systems in place to help victims of abuse seeking justice [48].

2. Conclusions and Recommendations

This article thus, concludes that juvenile delinquency is one of the hot issues of Pakistan but is being neglected by all segments of society. It is also concluded that due to illiteracy of parents, poor economic conditions, inadequate discipline at schools, lack of ethical and religious norms and above all state negligence caused to increase child delinquency in Pakistan.

It is also concluded that the state legislation could not achieve its goal and failed to protect the children. The concerned Acts define a juvenile in ambiguous wording like “under 15, under 16 and under 18 yrs” etc. The children are deprived of their basic rights.

It is also concluded that the process of juvenile justice system in Pakistan is very slow rather ceased to exist. The juvenile courts are few in number and could not succeed rehabilitation and reformation of the delinquents who are being abused by their fellows and administrative bodies. The issue thus demands intensive care of all segments of society, the parents, the teachers, the reformers the police and the state.

This article thus, suggests that to reduce delinquency in Pakistan reforms should be started from grass root levels. In perspective of the teachings of the last Prophet (pbuh) who declared the lap of the mother as foundational institution of a child, it is suggested that female should be provided facilities to get education and

skills to be confident and be aware of their rights. Only an educated and confident female can become a good mother and foundational institution of her children. Husbands should recognize that their wives are human beings like them and are not inferior to them.

It is also suggested that wrong impression of theological norms should be discarded among the Muslims. Fathers should have awareness that producing many children is recommended by the Prophet (pbuh) but training of the children to make them perfect human beings, good Muslims and contributive citizens is an obligation upon him. It is also necessary that fathers should not be dour-faced, stern-looking and hard-task masters to their children. The Holy Prophet (pbuh) once said: 'The best legacy a father can leave for his children comprise proper training and good education' [49]. The parents will be answerable before Allah Almighty regarding training and education of their children.

Likewise, at schools and colleges teachers should perform their function as a sacred task by considering it the profession of all the messengers of God. It is necessary that the teachers should behave with the students in civilized manners rather than abusing and beating them. Children should be engaged in creative activities through a disciplined and civilized system of education. Professional child care workers and trainees should be appointed at schools and colleges to treat the delinquents.

It is also suggested that the prime concern of the state should be to protect its young generation to secure its future and to enable it to hold Pakistan. Basic rights of the children such as maintenance and education should be provided by the state as this principle was established by our rightly guided Caliph Hadrat Umar and becomes binding to follow in the light of the contemporary development of the western world. To control unrestricted birth of the children, the act of marriage should be conditioned with both the age limit of 21 years and capacity (job/profession) of maintenance of male by way of legislation.

The age of a juvenile should not be less than 18 years to create harmony b/w state legislation and UNO treaties. The juvenile justice system should be based on speedy trial by way of rehabilitation and reformation of the delinquents so, that they may perform positive role in the development of society. Each provincial government should set up separate juvenile courts in each district and rehabilitation centers should be set up at each *tehsil*. The provincial governments should not ignore that it is long before on September 2001, when the Supreme Court of Pakistan directed the provincial governments to set up juvenile courts within six months.

It is also suggested that trained probation officers should be inducted in these centers under Article 9 of the JJSO 2000 which provides that probation officers would assist the juvenile court by making a confidential report on the social and economic background and character of the child if the child offender released on probation under provisions of the Probation of Offenders Ordinance, 1960. Lastly, the problems of delinquency can only be reduced if all segments of the society consider it a serious issue and contribute to lessen it. Moreover, theologians are also responsible to provide accurate knowledge of Islamic teaching to make clear whether the number of the children is important or their proper education and training?

References

- [1] Diana Lea. Ed. *Oxford Advanced Learner's Dictionary*, 8th ed. India: Oxford University Press, 2010. Pp.832, 401.
- [2] Practrick R. Anderson & Donald j. NewMan, *Introduction to Criminal Justice*. USA: Mcgraw-Hill, Inc.,1993.pp.424-425.
- [3] The Qur'an. Chapter, 91.Verses,7-10
- [4]Allamah 'Allal, Al- Fasi. *Maqasidal-Shari'ah al-Islamiyyah wa Makarimiha*. Beirut: Dar al-Gharb al- Islami, 1993. P.43.
- [5] Faust &Brantingham. *Juvenile Justice Philosophy: Readings, Cases, and Comments*. New York: West Publishing Co.,1979. P.10.
- [6] Stephen Tong, Robin P. Bryant and Miranda A. H. Horvath.*Understanding Criminal Investigation*. West Sussex, UK: John Wiley and Sons Ltd., 2009. pp.1 & 72.
- [7] Anthony, M. Platt. *The Child Savers*. Chicago: University of Chicago Press, 1969.p.45.
- [8] Faust &Brantingham. *Juvenile Justice Philosophy: Readings, Cases, and Comments*. P.10.
- [9] See, Anthony, *The Child Savers*. P. 46.
- [10] Steven L. Schlossman. *Love and the American Delinquent: The Theory and Practice of Progressive Juvenile Justice, 1825-1920*. Chicago: University of Chicago Press, 1977. p.240.
- [11] See for detail, Julian Mack. "The Juvenile Court," *Harvard Law Review*, vol. 23 (1909), p.120.
- [12] Faust and Brantingham. *Juvenile Justice Philosophy*. P.11.
- [13]Practrick, and Donald. *Introduction to Criminal Justice* .pp.422-423.
- [14] Practrick and Donald. *Introduction to Criminal Justice*, p.424.
- [15] See, H. Ted, Rubin. *Juvenile Justice: Policy, Practice and Law*. USA: Newbery Award Records, Inc.,1985. P.IX.
- [16] Samuel Walkers. *Sense and Non-Sense about Crime: A Policy Guide*. Pacific Grove, CA: Brooks/Cole, 1989. Pp.56-58; Hewrbert L. Packer, *The Limits of the Criminal Sanction*. Stanford: Stanford University Press, 1968. Pp.33-34.

- [17] See, Ted Rubin. *Juvenile Justice: Policy, Practice and Law*. P. X.
- [18] Janet, Kay. *Teacher's Guide to Protect Children*. India: Brigbasi Art press Ltd, 2005. pp. 4-6.
- [19] Rubin. *Juvenile Justice: Policy, Practice, and Law*. P.8.
- [20] Howard E. Barbaree, and L.William, Marshall. *The Juvenile Sex Offender*. .New York: The Guilford Press,2001. P.85.
- [21] The Qur'an.Chapter,4.Verse,6.
- [22] Muhammad bin Sahl, Al-Sarakhsi. *Usul al-Sarakhsi* . Cairo: Dar Al-Kutub al-Arabi, 1967. Vol. 2 .pp.230-33.
- [23]Muḥammad bin Ahamd bin Rashid al-Qurṭabi, Abu Walid. *Bidayah al-MujtahidwaNihayah al-Muqtaṣid*. Lahore: Qadhafi Street, 1994.vol.2, pp.144-45.
- [24] William Blackstone. *Commentaries on the Law of England*, Thomas M .Cooley. Chicago: Callaghan, 1899. vol.1, p.1230.
- [25] Ted Rubin. *Juvenile Justice Policy, Practice, and Law*. P. 9.
- [26] Christopher, J. Emmins. *A Practical Approach to Sentencing*. London: Financial Training Publishing Ltd., 1985. P. 7.
- [27] See, The Constitution of Pakistan 1973. Art. 2-A.
- [28] UNDP, United Nations Development Program Pakistan. Annual Report (2013). Available at www.pk.undp.org
- [29] See, The Sind Children's Act 1955 (Pakistan).
- [30] `Ubaydullah bin Mas`ud, Sadr al-Shari`ah,, al-Hanafi. *Sharah al-Tawdih `ala al-Tanqih*. Cairo: al-Matba`ah al-Khariyyah, n. d.p. 419; Amir `Ali, Sayyad, *Fatawa `Alamgri*. Luck now, 1932.Vol.1.p.45.
- [31] Report. Amnesty International (2005): the State of World's Human Rights. Available at <http://files.amnesty.org/>
- [32] K. M. Banham Bridges. "Factors Contributing to Juvenile Delinquency," *Journal of Criminal Law and Criminology*, Volume 17, Issue 4 (February,1927).

[33] ZarinaJillani, Maheen Shaiq, Zohair Waheed and Hamza Hasan. Eds. Report: *The State of Pakistan's Children, 2011* (Islamabad: Society for the Protection of the Rights of the Child. ISBN 9789698616274.Pp..119–127. Available at www.sparc.org [4-12-14].

[34] Report (2005), Prepared by SPARK, Strategic Promotion of Ageing Research Capacity. Available at www.sparc.ac.uk. Last visited on Wed,04 March,2015.

[35] M.A. Malik, and Riaz Ahmad Shirazi. “An Analytical Review of Juvenile Delinquents In Jails Of Sindh Province: Some Problems And Suggestions to Over Com”, *Indus Journal of Management & Social Sciences*, 4(1):43-54 (Spring 2010). Available at <http://ideas.repec.org/s/iij/journl.html>

[36] Naseem, Razi. “Family Planning as National Policy: An Analysis From the Perspective of Shari’ah”, *Pakistan Journal of Islamic Research*, Vol. 12, Dec.2013,ISSN:2070-0326.Multan: Islamic Research centre, 2014. Pp.1-13.

[37] Report, Economic Survey of Pakistan (2012-13). Presented by Mr. Ishaq Dar, the Finance Minister to the government of Pakistan, p. iv. http://www.finance.gov.pk/survey_1213 [4-12-14].

[38] See, Report, (2012-13), Economic Survey of Pakistan, p.v.

[39] See, Allamah Shibli, Nau’mani. *Al-Farooq*. Lahore: Maktabah Rehmaniyah, 1978.p. 134.

[40] Naseem, Razi. “Importance and Objectives of Marriage in Islam: An Analysis of Pakistani NikahNamah in the Light of the Provisions of the Qur’an and Sunnah”, *Journal of Asian and Development Studies*, Vol.2, Issue 3, ISSN 2304-375X (September, 2013). pp.113-124.

[41] National Institute of Population Studies. Report (2013). Islamabad, Pakistan. pp.5-12. [4-12-14].

[42] Human Rights Commission of Pakistan. Report, 2004. Available at <http://www.dawn.com/news/381844/hrcp-paints-dismal-picture-of-human-rights-situation-in-2004>.Feb,02, 2005. 12:00 am. [3-12-14].

[43]Amnesty International. Amnesty International Report (25 May,2005)–Pakistan. Available at: <http://www.refworld.org/docid/429b27f120.html> [accessed 29 December 2014]

[44]Amnesty International. Amnesty International Report 2013.Pakistan: Protection of Juveniles in the Criminal Justice System remains inadequate, *Amnesty International, International Secretariat, 1 Easton Street, WC1X 0DW, London, United Kingdom*, [4-12-14]. Available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/PK/AI_PAK_UPR_S2_2008anx_asa330212005.pdf

[45]Abdullah Khoso. “Access to Justice for Children” *Institute for Social Justice (ISJ) Pakistan*, Report (2013),Submitted with the High Commissioner for Human Rights, Pakistan. Available at www.isj.org.pk/wp.../2013

[46] See, Report (2005-Pakistan. Amnesty International.p.12.

[47] News Published in Express Tribune. Available at <http://tribune.com.pk/story/520476/sexual-abuse-protection-to-vulnerable-children-stressed/>

[48] News Published in Express Tribune, September,6 ,2014. Available at blogs.tribune.com.pk. Last visited on Wed,04 march,2015.

[49]Report (2008, 2009, 2010 and 2010); Cruel Numbers. A Report Prepared by Sahil. Islamabad, Pakistan. Friday, March 30, 2012. P.5 [4-12-14] Available at: http://abdulhumanrights.blogspot.com/2012_03_01_archive.html

[50] Ali bin Sultan, Muhammad Abu Al-Hasan, al-Mala al-Haravi, al-Qari. *Mirqah al-Mafatih SharahMishkat al-Masabih*.Beirut: Dar al-Fikr, 2002, vol. 2,p.144.