

Realising the postulates of justice for minors

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The draft bill prepared by the Federal Ministry for Law and Justice concerning the juvenile justice system (JJS) has already passed through a couple of reviews. The new law will repeal and replace the Juvenile Justice Systems Ordinance 2000, in order to give effect to the orders of the Lahore High Court in 2005 that required bridging of gaps in the existing law. The draft bill is expected to be introduced in parliament soon after the cabinet's vetting. The bill presents several qualities of a modern-day law. The treasury will find it easy to defend the principles and measures that it encapsulates compared to the difficult time the Punjab government had defending the women's protection bill. The preamble of the new JJS bill makes "reintegration into society" of

juvenile offenders its object, in the manner that it serves the “best interest of the child”.

To achieve these ends, the bill incorporates measures such as the release of juvenile offenders on “probation” and “diversion” of cases, instead of the usual trial prescribed in the Criminal Procedure Code of Pakistan. The probation arrangement will make it possible for children who are in conflict with the law to not be remanded to any form of detention until they are convicted or in the event that their detention becomes extremely necessary due to circumstances of the case, something that will be ascertained in coordination with the forums and individuals involved.

Earlier, a federal law passed for protection of children from abuse in March 2016 had raised the age of criminal liability to 10 years from seven. The proposed law also complies with the international age standard hence everyone below 18 would be a child in the eyes of the law. The terminology has been changed from “borstal institution” to “protection centre”. This includes vocational and reformatory institutions run by the government and NGOs. Measures have been incorporated to ensure that these institutions work under proper checks and balances. A special juvenile court is to be set up under the law and will have a wide range of powers, enabling it to deal with cases on compassionate grounds while the court can record reasons behind its considerations. The court will be provided with a wide range of administrative and professional assistances. Besides probation officers at the district level, there will be a juvenile justice committee composed of four members, including a first class magistrate in service, a member of a bar with standing, an officer of the social welfare department and a representative of a civil society organisation having competence in child rights. The handcuffing of children in custody will only be allowed in exceptional cases while the use of fetters, corporal and capital punishment will not be allowed at all. In a nutshell, besides a compassionate posture for children in conflict with the law, the draft bill incorporates an approach that enables different institutions to

complement each other. The different stakeholders will have to work in conjunction with one another.

The JJS bill should be passed without further delay. However, there are two more issues that need to be addressed so that the legislation can bring about the desired outcome. Firstly, the legislation must go parallel with a social consciousness that blends into at least a working consensus on the particular values of common good that the specific legislation seeks to uphold. In this case, it will mean a societal resolve that children, especially when they face exceptional circumstances, shall receive extra care of the state and society. Secondly, the known contradictions in the justice system need to be removed to prevent miscarriages of justice. For instance, the legislation in the past 25 years tended to enhance penalties to the maximum. Capital punishment is awardable for 27 types of crimes today. Even specific laws aimed at eradicating honour killings have failed to deliver because of the loophole provided by the Qisas and Diyat Ordinance. In essence, the approach in Diyat conflicts with the concept of the death penalty serving as an exemplary or a mandatory punishment. Hence, the legal system has maintained two opposing principles of criminal justice, which have caused confusion about the principles that our law wishes to uphold, thus contributing to failures in the justice system. The legislation in process should also help society internalise the values upheld in our laws. After all, extending the benefits of this legislation to the whole of society, besides the immediate concern of justice for minors, is an absolute imperative.

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