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Juvenile Justice System Ordinance, 2000

1ORDINANCE No. XXII OF 2000

[1st July, 2000]

An Ordinance to

WHEREAS it is expedient to provide for protection of children involved in criminal litigation, their rehabilitation in society, re-organization of juvenile courts and matters connected therewith and incidental thereto;

AND WHEREAS the National Assembly and the Senate stand suspended in pursuance of Proclamation of Emergency of the fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and Provisional Constitution Order No. 1 of I999,as well as Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:

1. Short title, extent and commencement. - (1) This Ordinance may be called the Juvenile Justice System Ordinance, 2000.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

1This Ordinance shall apply to F.a.t.a., adjoining to N.W.F.P. vide S.R.O. No. 928(1)/ 2004. dt. 6-11-2004.

2. Definitions. In this Ordinance, unless there is anything repugnant in the subject or context,-

(a) "borstal institution" means a place where child offenders may be detained and given education and training for their mental, moral and psychological development;

(b) "child" means a person who at the time of commission of an offence has not attained the age of eighteen years;

(c) "Code" means the Code of Criminal Procedure, 1898; (Act V of 1898)

(d) "guardian" means a parent or a person who has actual care of the child and includes such relative who is willing to bear the responsibility of the child;

(e) "juvenile court" means a court established under section 4;

(f) "offence" means an offence punishable under any law for the time being in force; and

(g) "Probation Officer" means a person appointed under the Probation of Offenders Ordinance, 1960 (XLV of 1960) or such person as the Provincial Government may appoint to perform the functions of Probation Officer under this Ordinance.

3. Legal assistance.- (1) Every child who is accused of the commission of an offence or is a

victim of an offence shall have the right of legal assistance at the expense of the State.

(2) A legal practitioner appointed by the State for providing legal assistance to a child accused of the commission of an offence, or victim of an offence, shall have at least five years standing at the Bar.

4. Juvenile Courts.- (1) The Provincial Government shall, in consultation with the Chief Justice of High Court, by notification in the official Gazette, establish one or more juvenile courts for any local area within its jurisdiction.

(2) The High Court may-

(a) confer powers of juvenile court on-

(i) Court of Sessions; or

(ii) Judicial Magistrate of the First Class; and

(b) appoint, from amongst practicing advocates having at least seven years standing at the Bar. Presiding Officers of Juvenile Courts with powers of a Judicial Magistrate of the First Class for the purposes of this Ordinance on such terms and conditions as the High Court may determine.

(3) The juvenile court shall have the exclusive jurisdiction to try cases in which a child is accused of commission of an offence.

(4) Subject to sub-section (3), on commencement of this Ordinance, all cases pending before a trial court in which a child is accused of an offence shall stand transferred to the juvenile court having jurisdiction.

(5) The juvenile court shall not, merely by reason of a change in its composition, or transfer of a case under sub-section (4), be bound to recall or rehear any witness who has given evidence and may act on the evidence already recorded.

(6) On taking cognizance of an offence, the juvenile court shall decide the case within four months.

5. No joint trial of a child and adult person.- (1) Notwithstanding anything contained in section 239 of the Code, or any other law for the time being in force, no child shall be charged with or tried for an offence together with an adult.

(2) If a child is charged with commission of an offence for which under section 239 of the Code, or any other law for the time being in force such child could be tried together with an adult, the Court taking cognizance of the offence shall direct separate trial of the child by the juvenile court.

6. A juvenile court.- (1) shall, unless provided otherwise in this Ordinance, follow the procedure provided for in the Code.

(2) A juvenile court shall not ordinarily take up any other case on a day when the case of a child accused is fixed for evidence on such day.

(3) No person shall he present at any sitting of a juvenile court except-

(a) members and officers of the juvenile court;

(b) parties to the case before the juvenile court and such other persons who are directly concerned with the proceedings including the. police officers;

(c) such other persons as the juvenile court directs to be present; and

(d) guardian of the child.

(4) At any stage during the course of the trial of a case under this Ordinance, the juvenile court may, in the interest of such child, decency or morality, direct any person to withdraw from court for such period as the court may direct.

(5) Where at any stage during the course of the trial of a case, the juvenile court is satisfied that the attendance of the child is not essential for the purposes of the trial, the juvenile court may dispense with the attendance and proceed with the trial of the case in absence of the child.

(6) When a child who has been brought before a juvenile court and is found to be suffering from serious illness, whether physical or mental, and requires treatment, the court shall send such child to a hospital or a medical institution where treatment shall be given to the child at the expense of the State.

7. Determination of age. 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.

8. Prohibition to publish proceedings of cases. Unless the juvenile court specifically authorizes, the court proceedings shall not be published in any newspaper, magazine or journal in any form which may disclose the name, address, school or any identification or particulars calculated to lead directly or indirectly to the identification of such child nor shall any picture of the child be published.

9. Probation Officer.- (1) The Probation Officer shall assist the juvenile court by making a report on the child's character, educational, social and moral background.

(2) Subject to sub-section (3) the report of the Probation Officer submitted to the juvenile court shall be treated as confidential.

(3) The juvenile court may, if it so thinks fit, communicate the substance of the report to the child or his guardian and, where anyone of them disputes the contents or views contained therein, the juvenile court may give such child or, as the case may be, guardian an opportunity of producing such evidence as may be relevant to the matter stated in the report.

10. Arrest and bail. - (1) Where a child is arrested for commission of an offence, the officer incharge of the police station in which the child is detained shall, as soon as may be inform-

(a) the guardian of the child, if he can be found, of such arrest and inform him of the time, date and name of the juvenile court before which the child shall be produced; and

(b) the concerned Probation Officer to enable him to obtain such information about the child and other material circumstances which may be of assistance to the juvenile court for making inquiry.

(2) Where a child accused of a non-bailable offence is arrested, he shall, without any delay and in no case later than twenty four hours from such arrest, be produced before the juvenile court.

(3) Without prejudice to the provisions of the Code, a child accused of a bailable offence shall, if already not released under section 496 of Code, be released by the juvenile court on bail, with or without surety, unless it appears that there are reasonable grounds for believing that the release of the child shall bring him into association with any criminal or expose the child to any danger, in which case, the child shall be placed under the custody of a Probation Officer or a suitable person or institution dealing with the welfare of the children if parent or guardian of the child is not present, but shall not under any circumstances be kept in a police station or jail in such cases.

(4) The juvenile court shall, in a case where a child is not granted bail under sub-section (3), direct for tracing the guardian of such child and where the guardian of the child is traced out, the juvenile court may immediately release the child on bail.

(5) Where a child under the age of fifteen years is arrested or detained for an offence which is punishable with imprisonment of less than ten years, shall be treated as if he was accused of commission of a bailable offence.

(6) No child under the age of fifteen years shall be arrested under any of the laws dealing with preventive detention or under the provisions of Chapter VIII of the Code.

(7) Notwithstanding anything contained in the Code and except where a juvenile court is of the opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf or in exercise of any right or privilege under any law for the time being in force, a child who, for commission of an offence, has been detained, shall be released on bail,-

(a) if, being accused of an offence punishable with death has been detained for such an offence for a continuous period exceeding one year and whose trial for such an offence has not concluded;

(b) if, being accused of any offence punishable for imprisonment for life has been detained for such an offence for a continuous period exceeding six months and whose trial for such offence has not concluded; or

(c) who, being accused of any offence not punishable with death, or imprisonment for life, has been detained for such an offence for a continuous period exceeding four months and whose trial for such an offence has not concluded:

Provided that where a child of the age of fifteen years or above is arrested, the Court may refuse to grant bail if there are reasonable grounds to believe that such child is involved in an offence which in its opinion is serious, heinous, gruesome, brutal, sensational in character or shocking to public morality or he is a previous convict of an offence punishable with death or imprisonment for life.

11. Release on probation. Where on conclusion of an inquiry or trial, the juvenile court finds that a child has committed an offence, then notwithstanding anything to the contrary contained in any law for the time being in force, the juvenile court may, if it thinks fit-

(a) direct the child offender to be released on probation for good conduct and place such child under the care of guardian or any suitable person executing a bond with or without surety as the court may require, for the good behavior and well-being of the child for any period not exceeding the period of imprisonment awarded to such child:

Provided that the child released on probation be produced before the juvenile court periodically on such dates and time as it may direct.

(b) make an order directing the child offender to be sent to a borstal institution until he attains the age of eighteen years or for the period of imprisonment whichever is earlier.

(c) reduce the period of imprisonment or probation in the case where the court is satisfied that further imprisonment or probation shall be unnecessary.

12. Orders that shall not be passed with respect to child. Notwithstanding anything to the contrary contained in any law for the time being in force no child shall-

(a) awarded punishment of death, or ordered to labour during the time spent in any borstal or such other institution; and

(b) Handcuffed, put in fetters or given any corporal punishment at any time while in custody:

Provided that where there is reasonable apprehension of the escape of the child from custody, he may be handcuffed.

13. Appeal, etc.- (1) A child convicted on a trial by a juvenile court, or any other person on his behalf, may within thirty days from the date of such order, prefer an appeal in accordance with

the provisions of the Code.

(2) The Provincial Government or any person aggrieved by an order of acquittal passed by a juvenile court, may, within thirty days, prefer an appeal against such order in accordance with the provisions of section 417 of the Code.

14. Ordinance not to derogate from other laws. The provisions of this Ordinance shall be in addition to, and not in derogation of, any other law for the time being in force.

15. Power to make rules. The Provincial Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.