

SENATE OF PAKISTAN HOUSE OF FEDERATION

Report No. 6 of the Committee



REPORT OF THE FUNCTIONAL COMMITTEE ON HUMAN RIGHTS ON “THE
JUVENILE JUSTICE SYSTEM (AMENDMENT) BILL, 2016”

PRESENTED BY
SENATOR NASREENJALIL
CHAIRPERSON

SENATE SECRETARIAT

Subject:- REPORT ON PRIVATE MEMBER BILL"THE JUVENILE JUSTICE SYSTEM (AMENDMENT) BILL, 2016"

I, Senator Nasreen Jalil, Chairperson Senate Functional Committee on Human Rights have honour to present, on behalf of the Committee, the report on the Private Member Bill "The Juvenile Justice System (Amendment) Bill, 2016" referred by the House during the sitting of the Senate held on 21st Nov, 2016.

2. Consideration of a Private Member Bill, "the Juvenile Justice System (amendment) Bill, 2016" referred by the House, in its sitting held on 21st Nov, 2016.

3. The composition of the Committee is as under:-

i.	Senator Nasreen Jalil	Chairperson
ii.	Senator Ms. Sitara Ayaz	Member
iii.	Senator Dr. Jehanzeb Jamaldini	Member
iv.	Senator Muhammad Mohsin Khan Leghari	Member
v.	Senator Mufti Abdul Sattar	Member
vi.	Senator Mir Kabir Ahmed Muhammad Shahi	Member
vii.	Senator Nisar Muhammad	Member
viii.	Senator Mrs. Sehar Kamran	Member
ix.	Senator Aitzaz Ahsan	Member
x.	Senator Farhatullah Babar	Member
xi.	Senator Zaheer ud Din Babar Awan	Member
xii.	Senator Ms. Samina Abid	Member

4. Accordingly, the issue was discussed in the meeting of the Functional Committee on Human Rights held on 2nd Dec, 2016. The following Members attended the meeting.

i.	Senator Nasreen Jalil	Chairperson
ii.	Senator Farhatullah Babar	Member
iii.	Senator Mufti Abdul Sattar	Member
iv.	Senator Sitara Ayaz	Member
v.	Senator Muhammad Mohsin Khan Leghari	Member
vi.	Senator Nisar Muhammad	Member
vii.	Senator Dr. Jehanzeb Jamaldini	Member
viii.	Senator Ms. Samina Abid	Member
ix.	Senator Muhammad Azam Khan Swati	Mover
x.	Senator Kamran Michael	Minister for Human Rights

5. The Committee thoroughly discussed the subject matter. The Committee was informed that Ministry of Human Rights has already proceeded to revise juvenile justice system in the country and in pursuance thereof, "The Juvenile Justice System Bill, 2016" has been drafted, revised and finalized. The Committee was informed that after vetting of the Ministry of Law and Justice, the said bill will be submitted for its enactment.

6. The representative from Ministry of Law highlighting the jurisdiction of Proposed Bill mentioned that "It shall be extended to the Islamabad Capital Territory" however, the Government bill will be extended to the whole of Pakistan. He further added that the proposed Government Bill is in the final stages and if any further input is required, the suggestions of Senator Muhammad Azam Swati could be incorporated. However, the Chairperson and the Member Committee applauded the efforts of Senator Swati for taking up highly important issues.

7. Keeping in view the above elaborated factual position, the Committee recommended that Senator Muhammad Azam Khan Swati should withdraw the proposed amendment, as the Government is intending to introduce a similar legislation. Senator Muhammad Azam Khan Swati graciously acceded to the recommendation of the Committee to withdraw the proposed amendment.

8. The Committee therefore recommended that the House may not pass "The Juvenile Justice System (Amendment) Bill, 2016".



(Malik Arshad Iqbal)
Secretary Committee



(Senator Nasreen Jalil)
Chairperson Committee

[TO BE INTRODUCED IN THE SENATE]

A

Bill

further to amend the Juvenile Justice System Ordinance, 2000, in its application to the Islamabad Capital Territory

WHEREAS it is expedient further to amend the Juvenile Justice System Ordinance, 2000 (Ordinance XXII of 2000), in its application to the Islamabad Capital Territory for the purposes hereinafter appearing;

1. Short title, extent and commencement.- (1) This Act may be called the Juvenile Justice System (Amendment) Act 2016.

(2) It shall extend to the Islamabad Capital Territory.

(3) It shall come into force at once.

2. Amendment of section 2, Ordinance XXII of 2000.- In the Juvenile Justice System Ordinance, 2002 (Ordinance XXII of 2000), hereinafter referred to as the said Ordinance, in section 2,-

(i) for paragraph (a), the following shall be substituted, namely:-

"(a) "Borstal institution" means any place or institution, established by the Government, not being a police lock up or jail, established separately, to take care of children who have committed an offence and to give them education and training for their mental, moral and psychological development;" and

(ii) after paragraph (c), the following new paragraph shall be inserted, namely:-

"(cc) "corporal punishment" means subjecting of a juvenile by any person to physical punishment that involves the deliberate infliction of pain as retribution for an offence or for the purpose of disciplining or reforming the juvenile;"

3. Amendment of section 4, Ordinance XXII of 2000.- In the said Ordinance, in section 4, in sub-section (3), for the words "The Juvenile Court" occurring in the beginning the words "Notwithstanding anything contained in any other law for the time being in force, the Juvenile Court" shall be substituted.

4. Amendment of section 8, Ordinance XXII of 2000.- In the said Ordinance, in section 8, after the words "or journal" the words "or transmitted through electronic means" shall be inserted.

5. Insertion of new sections 10A and 10B, Ordinance XXII of 2000.- In the said Ordinance, after section 10, the following new sections shall be inserted, namely:-

"10A. Investigation in Juvenile Cases- Notwithstanding anything contained in any other law for time being in force, the child accused of an offence shall be interrogated by a police officer not below the rank of Sub-Inspector of Police:

Provided that in such cases the officer conducting investigation shall be assisted by a psychiatrist/psychologist.

10B. Disposal of cases of Trivial Nature- (1) Notwithstanding anything contained in any other law for time being in force, where at any stage of proceedings, inquiry or trial, it appears that the offence in which child is involved is of a trivial nature or compoundable then the court may dispose of the case through amicable settlement with compensation or otherwise with the consent of the parties as the Court may deem fit.

(2) If a settlement is reached between the parties, the offence shall be deemed to have been compoundable in terms of compromise and the Court shall pass order accordingly."

6. Amendment of section 11, Ordinance XXII of 2000.- In the said Ordinance in section 11, in the existing proviso to paragraph (a), for the full stop "." occurring at the end a colon ":" shall be substituted and thereafter, the following second proviso shall be inserted, namely:-

"Provided further that no female child shall be placed under supervision of a male Probation Officer."

7. Insertion of sections 11A and 11B, Ordinance XXII of 2000.- In the said Ordinance, after section 11, the following new sections, shall be inserted, namely:-

"11A. Power to deal in other ways with juvenile offenders.- Notwithstanding anything contained in this Act or in any other law for the time being in force, the juvenile Court may, if it deems fit, instead of sentencing the child imprisonment or directing him to be detained in a Borstal Institution, order him to be discharged after due admonition.

11B. Removal of disqualification attached with conviction.- Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Ordinance, shall not suffer any disqualification, if any, attached with the conviction of offence under such law."

8. Insertion of section 13A, Ordinance XXII of 2000.- In the said Ordinance, after section 13, the following new section shall be inserted, namely:-

"13A. Prohibition of corporal punishment and punishment for violation.- (1) A juvenile who has committed an offence shall not be subjected to any corporal punishment.

(2) Whoever, having actual charge of, or control over a juvenile who has committed an offence, assaults, abuses, or subjects him to corporal punishment in a manner which is likely to cause such juvenile unnecessary mental or physical suffering, shall be punishable with imprisonment which may extend to five years but which shall not be less than three years and with fine which may extend to two hundred thousand rupees but which shall not be less than one hundred thousand rupees."

9. Substitution of section 14, Ordinance XXII of 2000.- In the said Ordinance, for section 14, the following shall be substituted, namely:-

"14. Ordinance to override other laws.- The provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force except provisions of such law which are more conducive for giving relief to the juvenile."

STATEMENT OF OBJECTS AND REASONS

The international instrument which provides for the rights of the child is the Convention on Rights of Child, 1989. The Convention provides that a child due to his mental and physical immaturity, needs special safeguards and care, including appropriate legal protection. The Convention also safeguards the rights of a child who has committed an offence and strives to give such a child an opportunity to rehabilitate and become a useful citizen. Pakistan has ratified the Convention on Rights of Child, thus it is incumbent on the State to implement the provisions as provided in this Convention. The Juvenile Justice System in Pakistan is far from perfect. To provide for the rights of juvenile offenders, the Juvenile Justice System Ordinance was promulgated in 2000. However, due to various ambiguous and insufficient provisions of this law, the rights juvenile offenders are often ignored and they are maltreated by the law-enforcement authorities. This Bill strives to remove the lacunas and loopholes of Juvenile Justice System Ordinance, 2000. It is also one of the objects of the Bill to harmonize the law on juvenile justice with the International Convention.

SENATOR MOHAMMAD AZAM KHAN SWATI
Member-In-Charge

SENATE SECRETARIAT

Subject:- MINUTES OF THE MEETING OF SENATE FUNCTIONAL COMMITTEE ON HUMAN RIGHTS

A meeting of the Senate Functional Committee on Human Rights was held under the Chairpersonship of Senator Nasreen Jalil on 2nd Dec, 2016 at 10:30 A.M. in Old Pips Hall, Parliament Lodges, Islamabad.

2. The following Members of the Committee attended the meeting:-

i.	Senator Nasreen Jalil	Chairperson
ii.	Senator Farhatullah Babar	Member
iii.	Senator Mufti Abdul Sattar	Member
iv.	Senator Sitara Ayaz	Member
v.	Senator Muhammad Mohsin Khan Leghari	Member
vi.	Senator Nisar Muhammad	Member
vii.	Senator Dr. Jehanzeb Jamaldini	Member
viii.	Senator Ms. Samina Abid	Member
ix.	Senator Muhammad Azam Khan Swati	Mover
x.	Senator Kamran Michael	Minister for Human Rights

3. The agenda before the Committee was as under:-

- i. Consideration of a Private Member Bill, "the Juvenile Justice System (amendment) Bill, 2016" referred by the House, in its sitting held on 21st Nov, 2016. (Copy Encl)
- ii. Consideration of, "the Hindu Marriage Bill, 2016" referred by the House, in its sitting held on 23rd Nov, 2016. (Copy Encl)
- iii. Implementation status of the recommendations made in the previous meeting held on 27th Oct, 2016.
- iv. Implementation status of the recommendation made in the meeting held at Karachi, on 22nd Sep, 2016, regarding over 300 missing persons and the action taken in this regard.
- v. The Chairman National Commission for Human Rights to submit the proposed amendments regarding procedural changes to check the Misuse of Blasphemy law in Pakistan.
- vi. Compliance Report on the following by the Ministry of Human Rights:-
 - a. Mr. Rashid Rehman Advocate, Multan's case.
 - b. Complaint of a woman from Balochistan about missing of her two children.
 - c. Missing person in UAE.
- vii. Any other agenda item with permission of the Chair.

4. The meeting commenced with the recitation of the Holy Quran. The Chairperson Committee, Senator Nasreen Jalil welcomed all the Members Committee, Mr. Kamran Michael, Minister for Human Rights, Chairman, National Commission for Human Rights and other officers and officials from Ministry of Human Rights and Law And Justice who attended the meeting.

5. Coming to agenda item No. 1, Senator Muhammad Azam Khan Swati, briefed the Committee that Juvenile Justice System Ordinance, 2000, was promulgated in 2000, but due to various ambiguous and insufficient provisions of law the juvenile offenders are often ignored and they are maltreated by law-enforcement authorities. This Bill strives to remove the lacunas and loopholes of the said ordinance. However, the Committee was informed that the Government intending to introduce a similar legislation for the protection of juvenile, and the said legislation is at its final stages to be presented in the Upper House. Therefore, the Committee requested the Mover, Senator Muhammad Azam Khan Swati, to hold up the matter so that the legislation could not collapse, and then if there is any deficiency it could be checked.

6. Discussing the agenda item No. II, the Committee discussed the matter at length and the Bill was also read. While going through the Bill, Senator Mufti Abdul Sattar raised the matter that the age for Hindu's Marriage is 18 years, this should be diminished. Mr. Kamran Michael, Minister for Human Rights, cleared that this act is meant for Hindu's so we have to legislate according to their believes. On a query regarding non-conversion of religion with regard to the Bill, the Committee was informed that the Supreme Court of Pakistan set aside a petition regarding imposing ban on the change of religion before 18 years of age, on the ground that changing religion is a basic human rights so it couldn't be abide by age. He further assured that this Bill is only meant for Hindu's so by changing religion s/he would not come under the jurisdiction of this Bill. Hence, the 18 years restriction for marriage would only be for Hindu's, therefore, conversion to any religion is not restricted.

7. The Hindu Marriage Bill was read and considered thoroughly and Members asked for clarity of several clauses. The Committee noticed that the Form A (Marriage Registration Form) mentioned in the Bill is not annexed. The Committee showed their concern that the form should be annexed enabling the Committee to go through the form. On other hand the Committee also pointed 15 days time for registration of marriage. The Committee asked for the fate of marriage/couple, if the marriage couldn't be registered within 15 days, whether the marriage

becomes void or otherwise. The query couldn't be answered. However, the Committee recommended to increase the time period to at least 30 days for registration of marriage. The Committee vowed that in the next meeting the Hindu Members from the Senate as well as the Assembly would be asked to attend the meeting in order to deliberate upon the Hindu Marriage Bill. The Committee further recommended that time period should be fixed for drafting initial rules, so that legislation could be fruitful.

8. Coming to agenda item no. iii, i.e. implementation status of the recommendations of the previous meeting. The Committee was informed that the recommendations relates to Ministry of Interior, Ministry of Defence, Home Department Government of Sindh. J.S Ministry of Human Rights informed that letters were sent to Home Department Government of Sindh but reply is still awaited. The Committee took strong note and said that Sindh Government's attitude towards parliamentary bodies is not good. The Committee was of the view that the Sindh Government was also reluctant to cooperate in the cases of missing persons in Karachi and didn't give a reasonable / comprehensive briefing on the matter. The Members urged the Chairperson to move a privilege motion in the House on behalf of the Committee against Government of Sindh for not paying due heed to the Upper House's Committee. However, the Chairperson Committee, Senator Nasreen Jalil, said that he matter would be deferred for the next meeting and if Government of Sindh wouldn't respond than a privilege motion should be moved against them.

9. Discussing the agenda item no. IV. Chairman National Commission for Human Rights, Justice (R) Ali Raza Chauhan, submitted the report regarding procedural changes to check/control the Misuse of Blasphemy law in Pakistan. The Committee appreciated the efforts and Senator Mufti Abdul Sattar, was of the view that Blasphemy law was made after much deliberation it should not be amended nor its procedure of implementation. He further said that blasphemy law is not the only law which is misused there are many illicit cases in the court for murder, rape, robbery etc, therefore, it shouldn't be amended. He added that the blasphemy law has no lacuna; hence, the implementing authorities should be bound to check the proper implementation. The Committee decided to further deliberate upon the issue. Senator Farhatullah Babar, said that in 1992 a Parliamentary Committee under the Chairmanship of Senator Raja Muhammad Zafar-ul-Haq made some concrete recommendations after discussing blasphemy

law. The Committee decided to deliberate upon the said report and then would again take up the matter in the next meeting.

10. Agenda item No. 5 was deferred for the next meeting due to Jumma Prayer.

11. After detailed discussion and deliberation the Committee recommended as follows:-

- i. The Committee requested the Mover, Senator Muhammad Azam Khan Swati, to hold up the Juvenile Justice System Amendment Bill, as the Government is also going to introduce a same legislation.
- ii. With regard to Hindu Marriage Bill, the Committee recommended to increase the time period for registration of Hindu's marriage to at least 30 days.
- iii. The Committee decided to call the Hindu Community representatives from both Houses for further deliberation on Hindu Marriage Bill.
- iv. The Committee decided to deliberate upon the report of the Parliamentary Committee under the Chairmanship of Senator Raja Muhammad Zafar-ul-Haq, which made some recommendations for blasphemy law.

12. The meeting ended with a vote of thanks to and from the Chair.



(Malik Arshad Iqbal)
Secretary Committee



(Senator Nasreen Jalil)
Chairperson Committee