

**ORDER SHEET
HIGH COURT OF SINDH, KARACHI**

C.P. No.D-5496 of 2020

Date	Order with signature of Judge
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Present

**Mr. Justice Muhammad Ali Mazhar.
Mr. Justice Arshad Hussain Khan.**

Imkaan Welfare OrganisationPetitioner

Versus

Province of Sindh & anotherRespondents

Date of hearing 02.12.2020

Mr. Yahya Iqbal advocate for the petitioner.

Mr. Shehriyar Mehar, AAG.

Babar Qadeer, Additional Home Secretary, Home Department, Government of Sindh.

Muhammad Ali Mazhar, J: The petitioner has precisely approached this court for the implementation of Section 9 & 10 of the Juvenile Justice System Act, 2018. For the ease of reference, Section 9 & 10 of the Act are reproduced as under:-

“9. Disposal of cases through diversion.---(1) With the consent of a juvenile or his guardian, as the case may be, the complaint against a juvenile relating to offences as specified in subsection (6) shall be referred to the Juvenile Justice Committee for disposal of the same through diversion.

(2) The diversion can be exercised at any stage during the course of investigation by the police and during trial by the prosecution and the Court in the prescribed manner.

(3) Where a case is referred to the Juvenile Justice Committee by the police, the submission of report of police officer required under section 173 of the Code shall be postponed till the final order of the Committee.

(4) The Juvenile Justice Committee shall dispose of a case, with consent of the person against whom the offence was committed, by resorting to different modes of diversion including,-

- (a) restitution of movable property;**
- (b) reparation of the damage caused;**
- (c) written or oral apology;**

- (d) participation in community service;**
- (e) payments of fine and costs of the proceedings;**
- (f) placement in Juvenile Rehabilitation Centre; and**
- (g) written and oral reprimand:**

Provided that where the complainant is a state functionary and the offence has not been committed against a private person, the Juvenile Justice Committee may dispose of the case through diversion with consent of the concerned public prosecutor.

(5) For the purposes of diversion, all offences either minor or major shall be compoundable.

(6) Diversion shall be exercised in the prescribed manner in cases,-

(a) where a juvenile is accused of commission of minor offences; and

(b) where a juvenile is accused of commission of major offences and the age of the juvenile is not more than sixteen years at the time of commission of offence.

10. Juvenile Justice Committee.---(1) On commencement of this Act but not later than three months, the Government in consultation with the concerned Sessions Judge shall establish the Juvenile Justice Committee for each sessions division.

(2) The Juvenile Justice Committee shall consist of four members with following composition, namely:-

(a) serving Judicial Magistrate with powers under section 30 of the Code, who shall also head the Committee;

(b) district Public Prosecutor;

(c) member of local Bar having at least seven years standing at the Bar, appointed by the concerned Sessions Judge for period of two years;

(d) serving probation officer or social welfare officer not below the rank of an officer in BPS-17.

(3) The place of sitting of the Juvenile Justice Committee may preferably be in the same premises where the Juvenile Court holds sitting.

(4) The Juvenile Justice Committee shall perform following functions, namely:-

(a) dispose of the cases through diversion upon referral from the police, prosecution or the Juvenile Court, as the case may be, within a period of one month from the date of the referral;

(b) inspect the observation homes and Juvenile Rehabilitation Centres and may give directions to the officer-in-charge of such places for the measures to be taken for welfare and social re-integration of the juvenile kept under their supervision; and

(c) such other functions as may be prescribed.

(5) For the administration and functioning of the Juvenile Justice Committee, provision of staff shall be within the powers of the Sessions Judge of respective district.”

2. Section 9 basically germane to disposal of cases through diversion, whereas, according to Section 2 clause (d) diversion

means an alternative process of determining the responsibility and treatment of a juvenile on the basis of his social, cultural, economic, psychological and educational background without resorting to formal judicial proceedings. In fact, in order to exercise power for disposal of cases through diversion under Section 9, the complaint against a juvenile relating to offences as specified under sub-section (6) shall be referred to Juvenile Justice Committee for disposal through diversion. It is further provided under same section that diversion can be exercised at any stage during the course of investigation by the police and during trial by the prosecution and the Court in the prescribed manner. In order to dispose of cases through diversion, the Juvenile Justice Committee was required to be established with the consultation of learned District & Sessions Judge for each sessions' division.

3. Learned counsel for the petitioner argued that unless the Juvenile Justice Committee is established under Section 10, the proper implementation of the disposal of juvenile cases through diversion would not be possible.

4. On last date of hearing we asked learned AAG to call Additional Secretary, Home Department to assist this court. Today, learned AAG and Additional Secretary, Home Department are present and submitted copy of notifications which shows that out of 29 districts, in 26 districts the Juvenile Justice Committees have been established and the notifications have been issued, however, Additional Secretary,

Home Department further submits that in three districts i.e. Korangi, Sujawal and Khairpur the Juvenile Justice Committee is to be established and they are waiting for the nomination through learned District & Sessions Judges. At this juncture, learned counsel for the petitioner has shown his anxiety that though the committees have been constituted but they are not performing their duties diligently in accordance with sub-section (4) of Section 10 of the Juvenile Justice System Act, 2018. The functions of the Juvenile Justice Committee provided under sub-section (4) of Section 10 are reproduced as under:-

“10. Juvenile Justice Committee.---(1).....

(2) -----

(a) -----

(b) -----;

(c) -----;

(d) -----.

(3) -----.

(4) The Juvenile Justice Committee shall perform following functions, namely:-

(a) dispose of the cases through diversion upon referral from the police prosecution or the Juvenile Court, as the case may be, within a period of one month from the date of the referral;

(b) inspect the observation homes and Juvenile Rehabilitation Centres and may give directions to the officer-in-charge of such places for the measures to be taken for welfare and social re-integration of the juvenile kept under their supervision; and

(c) such other functions as may be prescribed.

(5) -----.”

5. There is no cavil to the proposition that once the Law has been promulgated this should be implemented in its letter and spirit and now the Sindh Government has also established the Juvenile Justice Committee for each district separately except three districts, therefore, it is the

responsibility of every learned District & Sessions Judge in his district to ensure the due compliance of the law and make some mechanism for their district so that the Juvenile Justice Committee meetings should be held regularly for the purpose of disposal of the cases through diversion as provided under the law.

6. In the wake of above discussion, this petition is disposed of with the directions to all learned District & Sessions Judges to ensure the due compliance of the law and ensure that the Juvenile Justice Committee constituted by the Government of Sindh with their concurrence shall perform their duties diligently and the committee members will also submit the compliance report on regularly basis to their learned District & Sessions Judges. The learned Registrar of this Court may circulate copy of this order to all learned District & Sessions Judges of the Province of Sindh for compliance.

JUDGE

JUDGE