

Recognizing Invisible Structural Violence on Juveniles: A Case of Pakistan

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Abstract

This article draws on cases of abuse, torture and violence against children in the criminal justice system of Pakistan. These children are denied their fundamental right to justice by the invisible structure of violence. The article explores the links between the poverty, injustice and human rights violations by presenting extended case studies of two children under the age of 18 in Karachi and drawing upon a number of other cases of abuse reported in the media and NGO reports. It argues for a deeper understanding of the role of structural violence - ranging from colonial legacies and inadequate protections to institutionalised practices of torture and abuse - in perpetuating human rights violations of children in the criminal justice system of Pakistan.

Keywords: child rights, criminal justice system, human rights, juvenile justice, structural violence

1. Introduction

In Pakistan, in order to protect children (juveniles) in conflict with the law, in 2000, the Juvenile Justice System Ordinance (hereinafter the JJSO) was promulgated with overriding effect on all the laws and provisions related to the administration of the juvenile justice only. The JJSO is a national law provides protection to children less than 18 years of age in Pakistan. It provided protection to children in conflict with law from the time of arrest till its rehabilitation in society. It prohibits punishment of death, orders for labour during the time spent in any institution. It also prohibits the police and prison authorities from handcuffing the child, putting in fetters or giving any corporal punishment at any time while in custody, (Section 12 of the JJSO).

The JJSO provides for free legal aid at the expense of the state to children accused of an offence through panel of lawyers. The other main protection features of the JJSO are: Juveniles Courts to be set up; the Juvenile Courts shall have the exclusive jurisdiction to try cases in which a child is accused of commission of an offence; after taking cognizance of the offence, the Juvenile Court shall decide the case within four months; the Juvenile Court shall not ordinarily take up any other case on the day when the case of a child accused is fixed for evidence on the same day; people will be not present during the trial of the child in the Juvenile Court but except the relevant people; age of the accused will be determined if question arises; in bailable offences the child will be kept away from prison and the police station; the police can release the child on bail in bailable offence; the Juvenile Court shall release the child in bailable offences if the police has not released; the probation officer will be informed by the police; child will be released on probation or sent to borstal Institution (where he or she will be given education and training for their mental, moral and psychological development); no corporal punishment, labour in any detention facility and no death sentence for children under 18 years of age.

However, in practice, application of the law is miserably low, which had been highlighted by the the United Nations' Committee on the Rights of the Child which monitors implementation of the United Nations Convention on the Rights of the Child (CRC). Pakistan became party to the CRC, therefore obligatory on Pakistan to protect the rights of children. In 2009, the Committee issued the Concluding Observations and Recommendations against Pakistan's third and fourth period report, in which, it had shown serious concerns about poor implementation of the JJSO and said many authorities in charge of its implementation were unaware of the law. It added that there were high numbers of children in prisons detained in *extremely* poor conditions, often together with adult offenders, thus vulnerable to abuse and ill-treatment. It also said that juveniles were sentenced for very long imprisonment and high fines were imposed, (United Nations, 2009).

In the following, I will use the concept of structural violence to analyse the data I collected from interviews with the

ex-juveniles went through various pillars of the criminal justice system of Pakistan. The medical anthropologist Paul Farmer (2004) has used concept of structural violence- borrowed from Johan Galtung (1969)- and defines it "as those social structures – economic, political, legal, religious and cultural – that stop individuals, groups and societies from achieving their full potential. This violence is structural because it cannot be attributed to any one single actor" (Qureshi 2013: 210). Farmer (2004) has used this concept in the context of HIV and TB epidemics in Haiti. He argues that violation of human rights is "not a random in distribution or effect... [they are], rather symptoms of deeper pathologies of power and are linked intimately to the social conditions that so often determine who will suffer abuse and who be shielded from harm" (Semour, 2013: 74). It is "is exerted systematically...[and] is the natural expression of a political and economic order that seems as old as slavery", (Farmer, 2004: 317).

Philip Bourgois (2010) and Nancy Scheper-Hughes (2004) also bring the importance of the structural violence in understanding inequalities, exploitation and invisible forms of violence. Bourgois (2010) said that one cannot avoid interaction with violence because "it is central to the organization of power in everyday life and has been throughout history", (2010: 17). Bourgois claims that the bigger problem with the anthropology and other disciplines is, these have "failed to recognize the violence that generally overwhelms the people we study. Violence is spread unequally across the globe, and the ways it maintains exploitative power structures need to be documented and denounced", (2010: 17). For Scheper-Hughes' (2004: 13), "Violence cannot be understood in terms of physical force, assault, or the infliction of pain alone...there is also structural violence" (p. 13). Structural violence is violence but permissible and encouraged. It is "invisible social machinery of inequality that reproduces social relations of exclusion and marginalization via ideologies, stigmas, and dangerous discourses (such as "youth violence" itself) attendant to race, class, sex, and other invidious distinctions", (2004: 13). Scheper-Hughes' "reduction of structural violence as processes in the discursive and ideological terrain by which everyday violence is 'normalized' and 'naturalized' in public consciousness", (Qureshi, 2013: 210).

Structural violence effects the violation of "fundamental human rights of individuals and communities in a systematic way to deprive them from healthy, peaceful and dignified life as enshrined in the Universal Declaration of Human Rights", (Havidland, 2014: 670). Structural violence, as Bourgois argues, is "less clearly visible forms of coercion, fear, and subjugation through which violence deceptively and perniciously morphs over time and through history," (Bourgois 2010: 17). The purpose of this article is to render this invisible violence visible through life stories of the children I interviewed. However, I am aware that the deceptive forms of violence are greatly invisible to victims and also those who try to protect the victims, and sometimes these both are the same. When different forms of violence are not recognized, the policies and institutions –which politically impose sufferings on poor- are legalized and justified, (Bourgois, 2010).

Farmer (2004) argues that those anthropological inquiries look at the current events and the ethnographically visible but they conveniently ignore invisible, blind spots and the history behind the adverse events, which, therefore, results in compromise over the underlying or hidden forms of structural violence and abuse occurring invisibly, so therefore, the article begins with discussion on an environment of violence, abuse, brutality and injustice with children in the criminal justice system of Pakistan and will explore how children become victims of visible and invisible forms of structural violence in the criminal justice system of Pakistan and how the state institutions meant to serve public become atrocious towards young and minor children.

2. An Environment of Violence and Abuse

On February 12, 2012, a private TV channel aired a 14 years old boy was arrested by the police on charges of flying kite and produced him before the Judicial Magistrate in Gujranwala district. Student of class eight was shown handcuffed with criminals presented before Judicial Magistrate. The Court had sent him to prison. The boy cried before the Judge, ""Please give me pardon, I will not touch a kite, my annual paper is on tomorrow", (The News International, 2012: online). The boy was released on one rupee bond surety when the provincial law minister asked the District and Sessions Judge to release the boy on bail from the jail, (Rehman, 2012). The law minister intervened because the media had highlighted the case. The police could release the boy in the first place with and without surety at police station in accordance with Section 10 (3) of the JJSO and the Judge could release the boy upon his first appearance in the court in accordance with Section 10 (4) of the same law.

In 2010, the media had reported 78 cases of children including 8 females in contact and conflict with the law in Pakistan; of these 18 were below 7 years (below the age of criminal responsibility in Pakistani law). Of the total, 15 were implicated in false cases, two girls were raped by the police, four were kept in illegal detention and 22 were arrested and detained in minor bail-able offences but were not given bails. One 11 year old girl and four boys under 18 years were killed in fake encounters, (Khoso, 2011). In 2011, 50 police officials reported in child sexual abuse cases; and of these,

10 were reported from policemen's residential quarters, (Sahil, 2012). In 2012, 155 police officials were reported involved in child sexual abuse of children; of these cases, 13 cases were reported at police stations, (Sahil, 2013). In 2013, 19 police officials were reported sexually abusing children, 5 of these were sexually abused in police lock ups, (Sahil, 2014). In 2010, 338 people reported as victims of police encounters, it includes fake encounter of three students between 13 to 15 years of age in Khairpur Sindh, (HRCP, 2011). In 2011, 337 suspected people became victims of encounters, (HRCP, 2012). In 2012, 403 suspects were killed in encounters (HRCP, 2013).

A private TV channel showed the police officials in Hafizabad district of Punjab were flogging a 16 years old boy in public on charges of stealing mobile phone. The Deputy Superintendent Punjab Police shared that this kind of punishment in public creates "a fear of the police among the public, and believe me 80% of the crime is controlled in this way", (Khoso, 2011: 54).

This article turns to two cases of children, which in great way is the story of common or poor child or person in the country, but what all sufferings these children went through are not legalized,¹ however acceptable and justified in social discourse; it implies that torture is common and acceptable at all levels. In these cases, there will be seen visible 'adverse events' of police torture, degrading treatments in courtrooms and humiliation in prisons but there is something beyond this visible violence, which is mutually accepted by the victims and violators.

3. Methodology and Context

During my three years at the Society for the Protection of the Rights of the Child (SPARC)²- a non-governmental organization based in Islamabad, I had numerous opportunities to visits juvenile wards in adult and juvenile prisons, namely Borstal Institutions, Remand Home and Youthful Offender Industrial Schools (hereafter YOIS). I observed the juvenile prisoners being tortured, humiliated and degraded by wardens and fellow inmates. I listened to their tragic stories of what happened to them in the courtrooms- handcuffed with adults and dragged from one court to another court. As part of my work with SPARC, I used the case studies that I collected during these visits as reference points for a broader legal advocacy and demand for changes in the criminal justice system of Pakistan. Many of these cases were shared with the electronic and print media and published in the NGO's annual flagship report. Many of the children prisoners I met during my visits to YOIS, would be, what was termed as 'repeaters' i.e. they were released and re-incarcerated. However, I did not have the opportunity to meet them in their communities and to learn about their lives in communities after they had passed through different pillars of the criminal justice system. After leaving the NGO, I continued writing to defend their rights.

In May 2013, I decided to meet some of these children in their communities to better understand the entire cycle of violence- from arrest to rehabilitation in community. Contact details of these ex-juveniles were received from the prisons department Sindh. Only one person- elder brother of the ex-juvenile convict- from the given phone numbers received phone call. He asked to call him on the next day, but on the next day he regretted that his brother had gone to other province. All other phone numbers were not functional. For many days, the researcher searched for the whereabouts of these children in extremely poor localities in world's ninth largest city Karachi, which had estimated 23 million inhabitants.³ Only able to find some addresses but the families had moved to other places. Therefore, help was sought from the Reclamation and Probation Department (RPD) Sindh for interviewing children under its custody. It took two weeks to interview 34 children on probation in probation officers' offices in Karachi City Courts and Malir Court and each interview went for one hour and in some cases about two hours.⁴ Of these, I randomly picked only two cases⁵ to draw the relevant picture of the criminal justice system of Pakistan, and also have given references of some other related cases that were mishandled by the police and judiciary. These interviews were conducted with a promise with children and their family members that children's complete names would not be used.

In light of two extended cases of two ex-juveniles, this article drew upon the concept of structural violence- as discussed above- to guide in explore invisible, blind spots and the history behind the adverse events with which children in the criminal justice system of Pakistan have to pass through often. In doing so, the article has learnt about the

¹ The law does not say for torturing children but there is no system that ensure protection of children in the criminal justice system of Pakistan

² I worked in SPARC in the position of Manager Juvenile Justice until February 2012

³ In search of these children, I was accompanied by a lawyer (Ghulam Madni Memon), who recently has been appointed a judicial officer in Karachi.

⁴ All children reported to be victims of mental torture and violence and 98 percent of these were victims of both severe physical and mental violence and torture.

⁵ Out of three cases of children with which I had spent more time in discussing their time in the criminal justice system of Pakistan.

underlying or hidden forms of structural violence and abuse occurring invisibly.

4. Findings

With regard to the above experiences of ex-juveniles, the study results were then categorized according to the study objectives such as the poor has no right to live, abused so that they should do not disobey, colonial legacy of violence and then and poverty deprives children to get justice.

4.1 Poor has no right to live

It was a small room with four chairs and a table, computer, printer and cupboard piled up with many files in it mostly with records of probation cases. A boy just 14 and an old man entered in the room, I was waiting for them. I stood and greeted them, told my name and said I have to come to meet with you and thank you for taking time to see me. I told them my reason of meeting with them. The old man, father of the boy- looking pale, thin and skinny, spoke slowly and humbly, "I had to go to the hospital but yesterday the probation officer had phoned me and said that a guest wanted to see my son. I have brought him here. After this we will go to the hospital, I am sick and not going to factory these days. I do not know what is in my liver. It is not making blood."

I did not interrupt the old man but he himself stopped talking and started staring at me and waiting for my response. I was speechless for his great favour for bring his son and meet me. It was extremely difficult but I did I ask him if he could allow me to speak with his son in his absence. He stood up and said "you can talk to him as much as you like, I am waiting outside under the tree in the court premises. He is a good boy. He has not done any wrong, and I do not know who has done wrong. He works with me in the garment factory. See his age [he looked at his son]. All children of his age are going to school, but he is helping me. He works with me in the factory, and sometimes go to school, I have talked with his teacher, who had allowed him, but said he should come at least once in a week. I am waiting outside, son. You can ask him what you want". He left the room.

As his father left the room, the boy felt more relaxed. I reintroduced myself to the young boy. I told him about my life, and my meetings with children in different detention places in different cities. I felt telling him about my life was useless but was a try to earn his trust. As I stopped talking, he started himself, "as my father said, I did no wrong but lost two years of education. They [the police] arrested me two times. Two years ago I was student of class six I am still in class six." I probed, can you share with me how, when and why the police arrested you.

He said "one day as I came out of my house [they lived in poor locality in the jurisdiction of Mochko area], my neighbourhood friend [not a class fellow], who was riding his brother's motorbike. He stopped motorbike in front of me, and asked me to go along with him for a piece of work in another nearby area."

Many times MA stopped talking and tried to recall the incident.⁶ I probed him time and again so that the story should go on in a flow but gave him time to think and speak. "I sat on the motorbike with my friend. As we had travelled some distance, the motorbike stopped, my friend said to me that the fuel (petrol) had finished in it, after a few minutes looking for help from other bikers, he ran to another motorbike standing by the side of the road, and started taking fuel (petrol) from it in a bottle which he had collected from the garbage. My friend did not realize that he was immediately caught by the owner of the motorbike and other people while taking petrol".

MA's friend tried to convince them that he only needed petrol and was not stealing that motorbike, but they did not care about his requests. They kept him slapping and hitting. They dragged him to the point where MA and the motorbike were standing. They were doing 'mob injustice' through mob violence. In the meantime, the police mobile reached and took both of them to the Mochko Police Station in Karachi. MA and his friend were kept for four days in the police lockup with the remand. But the JJSO asks the police to produce children less than 18 years of age before the Juvenile Court within 24 hours of their arrest (Section 10). This was case of illegal detention and torture. They were tortured by every single policeman working in that police station, perhaps, they were implementing Section 11 of the JJSO that asks the all officials in the criminal justice system of Pakistan to not inflict corporal punishment on children.

In the police lock up, there were starving; once in a day they were provided food. They were asked to clean the lock up; for hours they were asked to stand up on one leg or become *murga*; every night policemen beat them with sticks and slaps; after four days when parents came to meet them, they were not allowed to meet; they met them in the Court on the next day. For four days, the police did not inform their parents who kept searching for them, MA's friend managed to call his parents from a mobile of a detained person with them in the same lock up.

⁶ There were three boys with whom I spent more than 2 hours, MA was one of those.

When they were produced in the Court along with many other prisoners, the court was crowded with clients, lawyers, accused, victims and relatives of victims and accused. The Judge without looking at them gave three days remand of these boys in police custody. "My friend's lawyer said to the Judge that these were minors but the judge did not pay attention on his words". Both of them were implicated in a bailable offence. After passing of three days⁷, when these were again produced before the Court, the same judge was shocked and yelling at the police officials, and said to them that they did not inform him (to the judge) about the age of these boys. The judge did not do anything to the policemen nor did asked any single question what went wrong with them in the police lock up, but sent them to the YOIS Karachi. His friend was received at the YOIS because he looked healthy and young but MA was sent to the Remand Home because he looked miserably weak and just 10 year old boy. After 19 days spending at Remand Home, MA was released on bail when his mother sold her two gold bangles to pay the fees of the lawyer, which according to MA were only major asset left with her mother. The JJSO provides free legal aid at the expense of the state. After two months he and his friends were proved innocent in the case. He did not know on what grounds he was proved innocent.

After 6 months of his release, MA was again arrested and charged by the same police officials under the same Section 381-A⁸ of the PPC. On that day, he was with his father in Sadar town (the area where his father worked at a furniture shop). His father asked him to go home along with his uncle; on the way, the policemen from the same (Machko) police station stopped them, they asked his uncle that he was wanted in a case, so that he should go with them. "My uncle and I were shocked to listen about policemen's statement, but we were helpless. I knew my uncle was a good person; he hardly went outside after returning from his work. He lived with us and was not married. He had never a bad company. Police said he was wanted in a robbery case."

But the policemen said to MA that he could leave for home from the police station. When MA reached the police station, one of the police officers (Assistant Sub-Inspector, Mr Humayoon) recognized him and said that he was arrested as a thief sometimes ago. "When the police officer said I was thief, I started shivering because I knew they were going to put me in lock up, it was a bad place, only beatings and beatings. They put me in the lock up along with my uncle and many other adult accused." The police charged MA under section 381-A different from a case of his uncle. They kept MA in the lock up for 7 days without the remand, and then they got three days remand from the judge. This time again the judge (he was not the same judge) did not take notice of his age and the type of offence for which he was accused, and there was also no lawyer to speak for him.

I (the researcher) asked him, were you able to say to judge that you were beaten by the police. "No, both times I did not say anything to the judge and both times, the policemen had threatened to beat us more if said anything wrong in the court. We were silent". He added, "We were dragged from one court to another court with adult prisoners".

I said you were a child, even than the police did not care about you. He replied, "For the first time, the police did not ask me for money but the second time they wanted us to produce money. They were greedy. My uncle and I kept telling them many times, we are extremely poor but they did not care about it. They always replied poor has no right to live, so give money and go". *Poor has not right to live*, a common phrase that echoes in every part of the country.

For MA, these days were real hell in the police lock up. He was slapped, kicked, hit by sticks and humiliated with dirty words. After spending three more days in the same lock up, MA was sent to the Remand Home. He was forced to confess guilt before the judge, after two months upon confessing guilty before the judge, he was released on probation. This time he confessed because he learnt it from other boy inmates in the Remand Home that upon confession, the judge releases on probation.

MA showed anger against the police. He said "I wanted to be a policeman but I hate the police. They tortured me all times and handcuffed me all times and produced me along with adult detainees in the court but they removed handcuffs before talking to the judge. They lied to the judge and judge never listened to me". First time he was released he did not know why he was released, he knew he was innocent but he did not know how his innocence was proven in the court but the second time he had confessed and was released on probation.

For MA life in the Remand Home was horrible thing, there was only a mental torture in that place. He added, "There were younger boys than me, but really involved in murders and snatching motorbikes and mobile phones."

⁷ MA was not clear, whether they were remanded for three or five days.

⁸ Theft of a car or other motor vehicles

4.2 Abused so that they should do not disobey

On the next day of interview with MA, NS (17 years old)⁹ entered alone in the probationer officer's room. I stood and greeted him, and went ahead telling him about my purpose to meet him. In the meantime, the probation officer entered the room, and started telling me about NS. "He is good boy, punctual and caring. I do not think that this kind of boy deserves the treatment the police and judiciary have given him." The Officer kept a hand on NS shoulder and said to him, "Do not hide anything, and openly tell our guest about everything that the police, judges and wardens did to you". He passed smile and left the room.

NS was still silent I asked you did not bring you father. "My father died when I was five years old, he was a drug addict. One day he was found dead in a deserted place by the police in Karachi city. My mother is a nurse in a government hospital, after my father's death she married another man- auto *Rikshwa*¹⁰driver". NS's mother lived a hard life; she had to give time to her two children from the first husband and two children from second husband; also to the hospital. But, according to NS, her mother did not give him a proper time. That is why he had joined company of bad boys. They lived in a two-room rented flat in an old apartment in an extremely poor locality.

NS shared that "one day my mother's blood pressure shoot up. I took her to a nearby clinic. On the way back, we saw people were fighting in our neighbourhood: my mother jumped in the fight and tried to resolve the matter but in the meantime, the police came and also took everyone to the police station". The police released NS' mother at the same time, but detained NS in the lock up. According to NS, he kept asking the police about his innocence, and said that he was not involved into that brawl, but the police kept asking him to provide them money, when he did not provide since he could not afford it, he was implicated in a false case of theft of motorcycle (under Section 381-A of the PPC)¹¹. it is a bialable offence.

NS was tortured for three days in the lock up and his mother was insulted when she came to see him in the police station. On fourth day, NS was produced before the Judicial Magistrate in City Courts Karachi. The Magistrate gave NS into police custody for four days remand. There was no lawyer for him, and the judge did not ask him about his innocence. According to NS, he was again tortured by the police and demanded for bribe. On fifth day, the police produced him before the Judicial Magistrate, and then he was sent to the YOIS Karachi.

In the YOIS, he spent 17 days where, according to him, he learnt how to become a good thief, pick pocketer and mobile snatcher. According to NS, most of the inmates had easy access to cigarettes and *naswar*¹² and sometimes, *hashish*. It was expensive for his mother to meet him in the YOIS. She paid bribe to prison staff then was able to meet with NS only once. "There were dirty beds to sleep on, and most of the boys had skin diseases in prison which they caught in prison" shared NS.

His mother paid 10000 rupees to a lawyer for providing legal support to his NS, where as Section 3 of the JJSO provides for free legal aid on the expenses of the state and the judge had to make sure NS had legal support, which, according to NS, the judge did not care about. After 17 days, the Magistrate released him on probation. NS had confessed that he had committed a crime of stealing a motorbike. He confessed to get himself released on probation or get minimum conviction of 6 months. According to NS, if he had not confessed guilty, his case would have been tried for about a year, therefore; "most of the boys in the YOIS are asked by senior boys to confess for the offences so that they should be released early". And, probation was one of the options for the Magistrate. According to NS, his lawyer had also advised him to confess so that the lawyer could plead for his release on probation.

NS once in a month paid visit to the Probation Officer's office in the City Courts Karachi. He always appeared before the probation officer, marked his attendance and left for home. It was his sixth visit to the probation office. According to NS, after release he started driving auto *Rikshaw*; he made about 10000 rupees per month to support his mother to meet both ends.

After the release from YOIS, he spent a whole month at home, did not come out. His friends and community people considered him a theft. According to him, the only fault was he used to have drugs and alcohol before going to the prison but he did not commit any offence in his life, also was not involved into that brawl between in people in the neighbourhood wherefrom he was picked up by the police. He started taking these things because he was not taken care by his family. He quit school in fifth grade, and never returned to it. He had no engagement and no care from home,

⁹ The researcher met with N.S. in the office of Probation officer in City Court Karachi; he had come to make his monthly attendance before the Officer.

¹⁰ A three-wheeled passenger cart

¹¹ Which carried punishment with imprisonment for a term which may extend to seven years

¹² A type of moist and powdered stuff

therefore, he become victim of friends and adults who used drugs and alcohol but yet he had done no wrong so that the police could arrest him. "I used to have drugs but I was not involved in any crime". But after the release he had never touched these things.

According to him, for boys in the YOIS, theft was nothing, they always said to each other that one should come to jail for crimes like murder and rape. When had entered the YOIS, he was slapped by other boys, and was asked to carry his sleepers in his hands. "It was normal to behave like this. It was only that I had also slapped a new boy as he had entered in the ward. That boy was crying". According to NS this kind of environment is deliberately made by prison authorities, "so that no boy should disobeys to prison authorities".

For NS going to juveniles' prison was a turning point in his life. He had not become what the society and state's institutions wanted him to be- a criminal- for which he got training in the police lock up and juvenile's prison. "I feel sad to remember days in prison but feel glad that I have not become bad person as the police and people in prison have taught and treated me", shared NS.

4.3 Poverty deprives children to get justice

Naveed and Ali (2012) used human development and capability approach, drew picture of poverty in Pakistan as a result of 'multiple deprivations of fundamental human capabilities', faced by poor at the same time. They suggest that 'income or consumption' is merely one kind of deprivations, which do not help to gauge the level of 'poverty experienced by the poor'. They adopted four dimensional approach to assess the poverty, which are; education, health, living conditions and asset ownership. They found that one third of households in Pakistan are under the multidimensional poverty line and 21 percent of extremely poor. They calculated that about 58.7 million people in Pakistan were deprived of their fundamental rights. Kathleen Ho (2007) by using the theory of structural violence suggests that structural inequalities, as highlighted by Naveed and Ali (2012), deny people from their basic human rights which basically constitute a structural violation of human rights. Ho claims that "when agency is constrained to the extent that fundamental human needs cannot be attained, structural violence becomes a structural violation of human rights," (2007: 1).

Ho establishes that legal rights are those rights which are given in the international human rights law (such as the CRC, and also right given in the JJSO). Violence occurs when these human rights are not recognized or realized. In other words, the absence of human rights practice means violence is present. Ho illuminates that structural causes are real cause of 'constrained agency', while structural violence shows "the casual relationship between power differentials in structures and its effect on individual agency and, when applied to human rights, illuminates structural causes of human rights violations. It is the effect of structures on agency that results in the gap between *de jure* [rights in the law] and *de facto* [in practice] rights", (2007:10). Ho maintains that poverty is made of a systematic and structural denial of fundamental rights, when these are denied to individuals, which results "in agency constrained to the extent that individuals are unable or lack the 'capability' to meet their basic needs. The denial of one freedom amplifies or multiplies the denial of other freedoms, rendering the poor disproportionately vulnerable to a whole array of violations. Poverty not only means lack of money; it means a concomitant impairment of access to adequate healthcare, water, shelter, etc" (2007: 10), as similarly Naveed and Ali (2012) have provided that poverty in Pakistan is not because of one reasons but it is layered with many reasons. In the same way, if NS, MA and thousands of other children and adults but belonging to poor class were unable to get legal aid the state funded because they were poor, if they were unable to get legal aid, they were suffering in jails for months and years, unless they confess the guilt.

On the other hand, cases of NS, MA, three students killed in encounter and many other children offer a stark reality of social and legal oppression embedded together, which, inevitably, have to be faced by marginalized children and other groups, since the police cannot reach the real culprits or gangs, therefore filling up files and lockups illegally with innocent people has become routine matter as torturing prisoners in prisons and providing no justice by courts have become matters of daily life.

With extreme poverty, torture and abuse in the hands of protectors, long legal battles and absence of justice -it symbolizes that- the hidden powers have engaged poor masses into their own matters so that no one finds spare time to challenge the hegemony and absolute corrupt power. It connotes that 'intimate violence' by the institutions in the criminal justice system is invisible but has been legitimized, (Bourgois, 2010) and seen as normal matter of life, even in many cases during torture in police custody deaths of accused occur, or they are killed in the field in the name of encounter, and in many instances, "appears to be the exclusive fault of individuals who are sociopathic, criminal, or, at best, irresponsible or organically sick", (Bourgois, 2010: 18).

The most strikingly aspect of structural violence is its symbolic form developed by Pierre Bourdieu (2000 and 2001). In this form of violence, the vulnerable groups blame themselves for the violence inflicted on them by the

institutions, (Bourgois, 2010). As MA had said, for the first time, he went to prison because he was punished by God because he had bad company of friends. MA blamed him-self. This is not his misrecognition of the violence and injustice he had faced but also general public believes in it, things done with them are because God has desired so.

In other words, in tracing the roots of structural violence in the criminal justice system and its associated aids (police, judiciary, prisons- according to Bourgois these are 'identified institutions'), there is found an obvious link between the state and the poor. The state is run by the oppressors at the brunt of sufferings of helpless people; if poor people do not suffer and are not engaged in matters at lower scale (in other words, if poor individuals' agency is not constrained as Ho (2007) has highlighted, then they would approach the state for their rights at higher level. This is a deliberate effort to engaged masses in their own problems, and not enabling them to understand the intent of - in Farmer's words- "architects of structural violence", (2004: 308). Torturing, abusing and violating children and other marginalized people's rights is mundane affair, and it makes no difference for the state and its apparatuses if millions of poor are suffering in police lockup, in prisons and judiciary, and they are implicated in false cases. Every year, NGOs keep publishing reports on the massive explicit violations of human rights, child rights, women rights in the criminal justice system of Pakistan but it is ignored, whereas the scale of implicit violence, as Bourgois (2010) said, is so huge and infinite. This categorically implies that structural violence is systematically fabricated in the structure even if its scale is so high but no one raise fingers on it and on the role of the state, if that is the case in visible forms of structural violence then there will be no to pay attention on invisible forms of violence.

4.4 Colonial legacy of violence and then

It is observed that most of the monographs on the criminal justice system offer the idea of reforming the criminal justice system in Pakistan because it is colonial legacy and incompatible with the existing social, economic, political and legal needs of society. These focuses mainly on issues like the police is facing new challenges, courts are overburdened and prisons are overcrowded, (Fasihuddin, 2013) but it is rare to see these debating or arguing about the genesis of structural violence in the criminal justice system that Pakistan owned from colonial times and also from the discursive practices of the state that continue to perpetuate the culture of violence within the criminal justice system and beyond.

In the criminal justice system of Pakistan, police, judiciary, prosecution, prison and probation are important pillars, which yet follow the colonial system and similar structure of work. Manzoor et al. (2014) offer accounts about problems faced by police in Pakistan. They provide historical perspective and claim that the police system in Pakistan (one of the major reasons) was based on outdated legal and institutional framework which was devised for nineteenth century Indian subcontinent to facilitate an outsider or colonizer to rule the masses. In 1861, the main objective of the police organization was designed which was "to maintain the stability of the Raj" (2014: 37). In old times and now the role of police in poor rural areas in Pakistan is worth seeing because the police work under the landed elites. Since the police is "the often the only tangible manifestation of state authority in such remote areas. However, the influence of larger landowners over police stations is also well recognized, whereby these landowners can often exert control over poor farmers by having them implicated in false cases, or preventing the police from officially registering their complaints", (Ali 2015: 82).

Every year, the HRCP provides hundreds of reported cases of individuals including children and women, who are tortured by the police and also were abused by the judiciary. Therefore, police brutality and torture in Pakistan is not a secret (but there are few who talk about the systematic structural abuse done by the judiciary as an institution) that follows the colonial oppressive style of work. There is a common perception that Pakistani police is not only corrupt but anti to justice. Pakistani police use all kinds of methods to torture and degrade humans which include "beating with batons and whips, burning with cigarettes, whipping the soles of feet, prolonged isolation, electric shock, denial of food or sleep, hanging upside down, and forced spreading of the legs with bar fetters", (USA: online). This police system and structure, Manzoor et al. (2014: 58) claimed, "was the legacy of the British that Pakistan got from its inception".

In theory, the police is seen as gatekeeper in the criminal justice system and the judiciary is responsible to ensure that gatekeeper may not deviate from its role but in practice these do not work in the interests of poor public, therefore, judiciary let the police to do what it likes and additionally put more burden on the person caught by the police.

Osama Siddique (2013) claims that judicial system in Pakistan is "slow, expensive, vulnerable to exploitation and misuse, coercive, unintelligible to the majority due to its complexity". Siddique further adds from the literature that Pakistan's judiciary system is regarded by the public as "weak, poorly administered, under-funded, insufficiently transparent, low in morale and burdened by exceedingly slow court proceedings" (p.20). Siddique claims that in colonial era English was language of elites and courts, so is the case now in Pakistan, resultant a majority of clients, parties, victims, winners and losers and offenders, which do not understand the language because they did not get opportunities to get education in English. "Consequently, they have little or no comprehension of Pakistani laws and legal procedures in

Pakistani courtroom dramas...they only have the benefit of looking at the judges' and lawyers' gestures and expressions, in order to decipher the unfolding stories that directly and indirectly impact and transform their lives", (2013: 9). Less privileged and vulnerable public (or groups), have little faith in Pakistan's legal and judicial system, not merely because of corruption but also because of courts [the government] are not serious to deal with thousands of cases. If courts and police are free from masses, then these might catch the real culprits (the nexus). The extent of pendency of cases in lower and higher courts is huge. In 2009, in Pakistan total 1.7 million cases were pending in lower and higher judiciary; of which 138945 cases were in higher courts and the Supreme Court, and 1565926 cases were pending in lower courts, (Siddique, 2013). In 2013, the number of pending cases was the same, (Khatak, 2015).

Khurshid Iqbal (2009: 226) points that for a long time judiciary has faced problems with regard to its independence and inadequate funds. Since colonial era, the lower judiciary has not been working independently of the executives. "The foremost problem of the lower judiciary in Pakistan is its bureaucratic foundation, rooted in the colonial legacy of the past. After independence, the same system prevailed. The Judiciary separated from executive in 1996." This separation makes no difference while the two are still working on their colonial style and patterns to deliver injustice to poor masses, and still inflicting harm on them.

If the police and judiciary did nothing with the public, then they would surely see the extreme violence in prisons because it is also following the colonial working style. Pakistan's legal structure related to the establishment, administration of prisons, incarceration, disciplinary measures was based on various colonial time's statutes. The Prisoners Act of 1894 used as primary legislative tool to govern the prisons system, which is a corrupt and dysfunctional that has affected the rule of law in the country. The report adds that this system has failed to "prevent or prosecute crime, and protects the powerful while victimizing the underprivileged", (ICG, 2011: i). There is a Chapter 12 in the Prison Rules 1978 (also known as Pakistan Prison Rules), which provides guideline to administrate "juvenile and youthful offenders" affairs, where the chapters offers good provisions for dealing with children but at the same time these Rules give reflection of colonial type of and suggest for the harsh disciplinary measures, (HRW, 1999).

HRCP- an influential human rights watch group in Pakistan- in its annual reports (State of Human Rights in 2012 and State of Human Rights in 2014) portrays abysmal conditions of detention facilities across the country, and grieved that prisons were mere cages for humans. It reported that overcrowding was mainly result of majority of prisoners cases were not heard or preceeded in the court, (HRCP, 2012). "A clear majority of the prison population in the country comprised under-trial prisoners, who were confined without a sentence often for years," (HRCP, 2014: 60).

5. Discussion

These series of adverse events of violence, abuse and torture on NS and MA in the criminal justice system of Pakistan are self explanatory about their human rights violations of children. Both boys were denied access to justice; and denial or no access to justice are abject manifestation of structural violence that systematically robs people's fundamental rights. There was no one to speak for their rights. These were treated quite opposite to the JJSO- a law that provides procedural guidelines to all pillars in the criminal justice system of Pakistan for dealing with children in conflict with the law. In the Committee on the Rights of the Child's soft language, NS, MA and many other millions of children in Pakistan were not vulnerable to abuse and ill-treatment but they were really abused and ill-treated.

NS comparatively looked strong and careless about what violence was inflicted on him, but MA was crying at the end when he completed his ordeal of horrible experiences in the criminal justice system. His tears were complaining about the inbuilt injustice and structural violence for poor people and their children as Reiman and Leighton (2012) has rightly stated that the rich get richer and the poor get prison. They illuminated (mainly in America's case, which is so advance and developed in the field of human rights and justice as compared to developing countries like Pakistan) the criminal justice system is biased against poor people. Similarly, that If MA was a son of rich person he would have not become a victim of abuse and violence. NS and MA were not the only children in Pakistan but a vast majority of population in Pakistan is deprived of their all fundamental rights and also right to justice. These two boys' sorrowful stories were clichés in the iceberg. Irony is, almost all children found in police stations and detention centers belong to extremely poor working class, to the extent that majority cannot afford legal aid, (SPARC, 2012). Implicating children and other innocent people in false cases is common in Pakistan. For police officials it is matter of their performance. The mounting pressure on them from their high ups, compel them to implicate those on whom (on poor) they have access. They implicate the disadvantaged children in crimes done by others, (Khoso, 2011).

These visible and invisible adverse events of violence, torture, abuse and misuse of power against children and common person in the criminal justice system of Pakistan is a matter of routine or normal thing since these events are deeply rooted in historical, political economy and broad geographical context (as envisaged by Farmer, 2004). In order to

understand miseries embedded in adverse events of abuse, violence and torture on children and general public have to be explained from historical and political economy point of view, since details on powerful present day actors are not sufficient to "see how inequality is structured and legitimized" (Farmer 2004: 309). The history of torturing and abusing children and misusing authority are 'greatly' (not totally) linked with the colonial legacy in the subcontinent. This represents a state of mind (history of inflicting torture on young boys and general public) that prevailed in the region for a long time. Structural violence, is therefore, rooted in colonial and post-colonial history, modes of governance and the state machinery.

6. Conclusion

The approach of structural violence has helped to trace roots of human rights abuse, violence and subjugation in colonial legacy and beyond which prevails in the form of laws and functions of the criminal justice system of Pakistan. This legacy is haunting merely to marginalized, whereas the rich goes away from the accountability and justice. It has gone beyond a step ahead in discovering the abject forms of structural violence that does not spare minor children to be victims of it. It indicates, perhaps, the structural violence, does not care about the age and innocence but it does care about the vested interests. This article clearly infers that structural factors in the criminal justice system perpetuate the cycle of visible and invisible forms of violence for children who are trapped in this system and that these have long lasting impact for their families and their own adult lives.

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References

- Ali, S. M. (2015). *Development, Poverty and Power in Pakistan: The Impact of State and Donor Interventions on Farmers*. Contemporary South Asian Series: Routledge
- Bourgois, P. (2010). Recognizing Invisible Violence: A Thirty-Year Ethnographic Retrospective. In Barbara Rylko-Bauer, Linda Whiteford, and Paul Farmer (ed.). *Global Health in Times of Violence*, pp. 17-40. Santa Fe, NM: School for Advanced Research Press.
- Farmer, P. (2004). An Anthropology of Structural Violence. *Current Anthropology* 45 (3): 305-325.
- Fasihuddin. (2013). Criminology and criminal Justice System of Pakistan. In Jianhong Liu, Bill Heberton, Susyan Jou (ed.). *Handbook of Asian Criminology*, 247-281. New York: Springer New York
- Galtung, J. (1969). Violence, Peace, and Peace Research. *Journal of Peace Research* 6 (3): 167-191.
- Haviland, W. A., Prins, H. E. L., McBride, B., & Walrath, D. (2014). *Anthropology: The Human Challenged*, Fourteenth Edition. Wadsworth, CENGAGE Learning: The United States
- Ho, K. (2007). Structural Violence as a Human Rights Violation. *Essex Human rights Review*. 4(2): 1-17.
- HRCP. (2011). *State of Human Rights in Pakistan in 2012*. Karachi: Human Rights Commission of Pakistan
- HRCP. (2012). *State of Human Rights in Pakistan in 2012*. Karachi: Human Rights Commission of Pakistan
- HRCP. (2013). *State of Human Rights in Pakistan in 2012*. Karachi: Human Rights Commission of Pakistan
- HRCP. (2014). *State of Human Rights in Pakistan in 2013*. Karachi: Human Rights Commission of Pakistan.
- HRW. (1999). *Prison Bound: The Denial of Juvenile Justice In Pakistan* (online) <http://www.hrw.org/reports/2000/pakistan/pakio09-02.htm> [12 March 2015].
- ICG. (2011). *Reforming Pakistan's Prison System: Asia Report N°212 – 12 October 2011* (online). <http://www.crisisgroup.org/-/media/Files/asia/south-asia/pakistan/212%20-%20Reforming%20Pakistans%20Prison%20System.pdf> [21 March 2015].
- Iqbal, K. (2009). *The Right to Development in International Law: The Case of Pakistan*. Abingdon: Routledge.
- Khatak, I. (2015). 1.7m cases pending with SC, lower courts, NA told (online). <http://nation.com.pk/national/15-Jan-2015/1-7m-cases-pending-with-sc-lower-courts-na-told> [20 March 2015].
- Khoso, A. (2011). The JJSO: Caught in the Quagmire of Non-Implementation. In Zarina Jilani (ed.). *The State of Pakistan's Children 2010*. Islamabad: SPARC.
- SPARC. (2012). *The State of Pakistan's Children 2011*. Islamabad: SPARC.
- Manzoor, S., Manzoor, A., & Manzoor, A. (2014). *Police in Pakistan*. U.S.: Lulu publications
- Qureshi, A. (2013). Structural violence and the state: HIV and labour migration from Pakistan to the Persian Gulf. *Anthropology & Medicine*, 20:3, 209-220
- Rehman, A. (2012). One rupee well spent. *Dawn* (Online). <http://www.dawn.com/news/695357/one-rupee-well-spent> [10 March 2015].
- Sahil. (2012). *Cruel Numbers 2011: A compilation of statistics on child sexual abuse of reported cases in Pakistan*. Islamabad: Sahil.

- Sahil. (2014). *Cruel Numbers 2013: A compilation of statistics on child sexual abuse of reported cases in Pakistan*. Islamabad: Sahil.
- Sahil. (2013). *Cruel Numbers 2012: A compilation of statistics on child sexual abuse of reported cases in Pakistan*. Islamabad: Sahil
- Scheper-Hughes, N. (2004). *Dangerous and Endangered Youth: Social Structures and Determinants of Violence*. *Annals of the New York Academy of Sciences* 1036 (1): 13–46.
- Semour, N. (2013). *Strange Natures: Futurity, Empathy, and the Queer Ecological Imagination*. The University of Illinois. USA.
- Siddique, O. (2013). *Pakistan's Experience with Formal Law: An Alien Justice*. Cambridge: Cambridge University Press.
- Teenager arrested on kite flying charges. (2012). *The News International*. (online). <http://www.thenews.com.pk/article-34979-Teenager-arrested-on-kite-flying-charges> [26 March 2015].
- Naveed, A. & Ali, N. (2012). *Cluster Deprivation: District Profile of Poverty in Pakistan*. Islamabad: SDPI.
- United Nations. (2009). *Convention on the Rights of the Child: Concluding Observations: Pakistan, 15 October 2009, CRC/C/PAK/CO/3-4* (online). <http://www.refworld.org/docid/4ae9a11c0.html> [20 March 2015].
- USA. (undated). (2015). *Report on International Prison Conditions* (online). <http://www.state.gov/documents/organization/210160.pdf> [30 March 2015].