

Juvenile Justice for the Best Interest of the Children in Bangladesh: A Legal Analysis

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Abstract

This paper attempts to analyze the legal mechanisms of juvenile justice in Bangladesh whether it complies with international standards and to what extent the national legislation protect children's wellbeing as a whole. Since independence of Bangladesh in 1971, the first expression of concern about the protection of children came through the Children Act 1974, the unique principle for children in relating to trial, custody, protection, punishment, treatment and reformation. Although Bangladesh entered the new phase of juvenile justice system by the Act, which is 38 years old does not reflect many principles of the Convention on the Rights of the Child (CRC) 1989. In 1990, after signing the CRC, the law and policy has not substantially been changed which ensures that juveniles are separated and treated differently from adults and to protect their best interest during all kinds of legal processes. In practice, often the Act is not being implemented and as a result children receive the same treatment as adults. Consequently, children suffer adversely from existing laws and practices. In this context, recently, the Children Act 2013 has enacted on the basis of the CRC that Bangladesh ratified 23 years ago; the second phase of the juvenile justice system would be started with the new Act, it is not implemented yet. Against this backdrop, the study assesses both legal development and practices of the juvenile justice system as well as for the best interest of the children in Bangladesh.

Keywords: Juvenile justice, children wellbeing, legal context, international standard, child-friendly justice

1. Introduction

Children under 18 years constitute 45% of the total population in Bangladesh (GOB, 2007). A large number of children live in conditions of deprivation which can easily lead them to crimes. Accordingly, juvenile delinquency¹ has emerged as a matter of serious concern with the rising number of children involved in unlawful activities² (Ferdousi, 2011). It has a direct impact on the wellbeing of the society and the nation as a whole (UNICEF, 2006). The global approach for prevention and protection of juvenile offenders through administration of justice has undergone vast transformations under the auspices of the United Nations with various international rule, convention and guidelines (Karzon, 2008). But different countries are having different juvenile justice³ process under their own legal systems. In Bangladesh, the justice system for the juveniles is governed by the Children Act 1974 and the Children Rules 1976. At the time of post-independence Bangladesh the Act and Rules were perceived to be in favour of children and progressive for that time and provides various safeguards affording child offender (Ali, 2010). But Act and the Rules accordingly have been enacted more than 38 and 35 years ago; before these laws many international conventions and instruments on children's rights came into existence. So these laws are not in conformity with the CRC and other United Nations Rules (Subhan, 2005). Still now these laws are the substantive law for juvenile justice in Bangladesh.

In accordance with the CRC⁴, the rules of the CRC have incorporated in various national plans and policies; there is no special juvenile justice policy with welfare, rehabilitation and reintegration (Chowdhury *et al.*, 2002). Additionally, there are many loopholes in the existing laws and policies itself regarding the definition of a child as well as the age limit (Ferdousi, 2009). Being a signatory country of the CRC, Bangladesh faces different drawbacks to ensure rights of children due to lack of effective laws and its apposite uses. Most of the children are arrested for breach of penal laws of the land or under suspicion of committing an offence (Khair, 2005). Hence, the various penal laws are often utilized to arrest children. However, juveniles accused of committing crimes, are dealt with special penal laws and the rights of juvenile delinquents with these has become unjust (Malik, 2007).

¹ 'Juvenile delinquency' is the term for offences and other infringements of law perpetrated by children below the age of adulthood.

² In Bangladesh, most of the children are involved in theft, robbery, drug carrying, hijacking, pick-pocketing, acid-throwing, rape, trafficking, indiscipline activities like fighting with friends, group killing etc. in an academic institutions and extortion.

³ 'Juvenile Justice' means access to justice by children under a specific age. The justice system will not only cover the treatment of the delinquent children but also address the root causes of the offences as well as implement appropriate measures to prevent unusual behaviour.

⁴ The Convention on the Rights of the Child (CRC) adopted by the United Nations, General Assembly, 20 November, 1989, The Convention came into force on 2 September, 1990 in Bangladesh.

In Bangladesh, the Ministry of Social Welfare (MoSW) plays the key role in maintaining the administration of juvenile justice. This Ministry is also responsible for providing correctional and welfare measures like probation, after care services etc. for juvenile delinquents (MoSW, 2008). In reality, the services of social case workers are inadequate in terms of identifying, counseling, and planning of rehabilitation in the correctional institutions. The system does not equip children with the necessary skills to take care of themselves after release. Moreover, the concerned departments are often not aware the content of the Children Act and case-laws (Ferdousi, 2011). Even when aware of the beneficial provisions for children, the lack of coordination between responsible professional groups results in poor service delivery and injustice for children (Ali, 2010). Thus, child-friendly justice system is mostly ignored in Bangladesh.

Like many other developing countries, Bangladesh as a part of its international commitment to uphold the protection of child rights. In Asian countries, Malaysia adopted CRC in 1995 and began its child-friendly environment with the introduction of the Child Act 2001 and other relevant laws. Similarly India started progress of juvenile justice system with the Juvenile Justice (Care and Protection of Children) Act 2000. But after long period Bangladesh would start to protect best interest of the children in the juvenile justice system with the Children Act 2013. In fact, before signing the CRC, there was no legal and judicial attention¹ on children justice in Bangladesh. From 2003, High Court Division of the Supreme Court in Bangladesh gave attention on the juvenile case² and High Court Division instructed the government to take specific steps for system improvement as mandated by the Children Act, 1974 (Khan & Rahman, 2008). The judiciary in Bangladesh plays very important role and has passed many significant judgments in favor of child rights. In addition, government and non-government organizations are trying to reform the juvenile justice system by creating a common understanding and coordinating action among key actors (Ferdousi, 2010). Consequently, the Bangladesh government enacted the National Children Policy 2011 and has finalized the Children Act 2013³ on the basis of the CRC which are positive step to the protect best interest of child.

2. Legal History of Juvenile Justice System

It is important to understand the history of juvenile justice in order to contextualize current developments. Juvenile justice concept was first introduced with a separate juvenile court in the United States of America in 1899 more than 100 years ago (Marilyn D. & Frank P, 2003). Afterwards, twenty more states formed special courts for children between 1899 and 1909, and by 1945 every state formed some kind of juvenile court that embodied elements of positive schooling and rehabilitation process. Over the course of time, juvenile justice system has been introduced in almost all the countries of the civilized world (Siddique, 1997). The international attention about the protection of children came in 1923 through Geneva Declaration under the aegis of League of Nations. After the establishment of the UNO in 1945, children were included in the human rights agenda and various legal instruments for their protection. Gradually juvenile justice system was formulated throughout the world (Hoque, 2009).

In the long history of law and justice, juvenile justice is a relatively new development especially in developing countries. Bangladesh has a long history of enacting protective policies and laws for juveniles which is inherited from British rulers in Indian Sub-continent. In British period (1850-1947) there was no integrated approach to the welfare of children. Children were incidentally treated with both civil and criminal laws (Shah, 1987). The first law commission under the British rule was appointed in 1834 (Kulshreshtha, 1987). From that time, India had played an important role in the evolution of special laws for criminal justice and children justice. The first law on the welfare of children came in 1850 when the Apprentices Act was passed in India. The Act, however, did contain some provisions, wherein some principles and practices of future juvenile courts and institutions may be discerned (Siddique, 1997). Thereafter the age of criminal responsibility declared in the Indian Penal Code 1860 which provided a special consideration for children of immature understanding. It exempted children from all criminal convictions, who were between 7 to 12 years old, having less understanding of judging the nature and consequences of their behaviour.⁴

Welfare of the children approach has been started from this period, the report of the Indian Jail Committee, 1889 restated the need for separation and classification of delinquents according to their age and duration of sentence (Kumari, 2004). In 1894, the Prisons Act provided separate trial of children and adults. Similarly, the Code of Criminal Procedure enacted in 1898, contained provisions regarding the jurisdiction of criminal courts and

¹ The Children Act was enacted in 1974 and was enforced in 1976 only for Dhaka District and for other districts, it was enforced in 1980. So before 1980, there was no reported case on juvenile delinquents in the higher court. From 1980-1990, there was hardly any focus on the juvenile justice in judiciary of Bangladesh.

² The first major case on a juvenile delinquent was State vs. Deputy Commissioner, Satkhira, 45 DLR 1993 643.

³ See, Cabinet gives final approval to Children Act, 2013, Bangladesh Sangbad Sangstha, 25 February, 2013.

Available at: <http://www1.bssnews.net/newsDetails.php?cat=0&id=315573&date=2012-12-13>

⁴ See, the Apprentices Act, 1850, section 83.

custody of juvenile delinquents.¹ However, the most significant development in the history of juvenile justice system in British India was the Report of Indian Jail Committee 1919-1920. Before that, there was no uniformity in policy persuasion or in execution of acts in dealing with juvenile delinquents in all parts of India (Sarker, 2001). The Committee emphasized the separation of trial and treatment for minors and juvenile delinquents. It recommended the establishment of children court for hearing of all cases against children and youths. It also suggested children's release on probation of good conduct with or without supervision of a probation officer and also suggested provision of supervision after release (Shah, 1987).

Accordingly, the Indian Jail Committee made strong recommendations for framing of special legislations. The Madras Children Act 1920, the Bengal Children Act 1922 and the Bombay Children Act 1924 were passed. All these Acts followed the principal and practice methods of the Children Act of 1908 in England (Hossain, 2008). These Acts made provisions for juvenile courts, probation services, institutional treatment, place of detention and other relevant services congenial to the treatment of the delinquents. As a supplementary legislation during British regime, the Borstal School Act was passed in 1928. Borstal school first emerged in England for the reformation of juvenile delinquents. Afterwards, it spread to other developed and developing countries. The enactment of this legislation made an important beginning in the process of instituting separate procedures for the trial and rehabilitative dispositions of juvenile delinquents.

During the Pakistan regime (1947-1970), to provide probation service for delinquents, the Probation of Offenders Ordinance was enacted in 1960. The Act provided specific legal provisions of probation service for the first and petty offenders (Sadeque, 1997). After passing of the Ordinance, the Social Service Department had been administering the programme of probation along with its manifold services related to casework, group-work, community development and general welfare (Ferdousi, 2010). After the independence of Bangladesh 1971, the Children Act 1974 consolidated all the previous laws and it should be read together with the Children Rules 1976. However, it has been found that separate legislation was enacted for the protection of children starting from the colonial rule in India but it was not integrated and comprehensive (Nagpaul, 1994). Most of the laws were unsystematic approach to address the issue and similar to the criminal justice system. There was no specific law on juvenile protection but various provisions in different legislation existed to protect them.

3. Present Legal Framework of Juvenile Justice

3.1 Children Laws

The Children Act 1974 and the Children Rules 1976 were enacted to protect children from the consequences of their illegal activities. These laws contains various safeguards for delinquent children with special protection including prohibition of a joint trial with adults, informal trial conditions, bail in case of non-bailable offences, trial by a juvenile court etc. Due to pre-dating the CRC, these are only to a limited extent the best interests of the child. Indeed, the Act and Rules do not incorporate concepts and practices which prevail in other countries such as restorative justice, diversion, alternative measures on rehabilitation of the offender (Ali, 2010). However, the major problem of the Children Act is that it defines a child is any person who is under the age of 16 years while persons below 18 years of age are regarded as child under the CRC. This constitutes a difficult situation, as the Act seems to be in a dilemma as how to deal with children over 16 and below 18 years of age. The Act does not identify whose duty it is to ascertain the age of children. In addition, there is insufficient procedural direction in dispensing with various classifications of matters such as delinquency, uncontrollability, destitution etc. in order to ensure a non-adversarial process and environment in dealing with all categories of children (Ferdousi, 2010). There is no direction as to how the Act is to be applied to juveniles if a child is accused under penal laws. The ordinary courts can try child offender under these laws and has set different punishment and trial procedures without keeping in conformity with the Children Act (Ghuznavi *et al.*, 2001).

In the context of wellbeing the children, there is no definition of torture, cruel, degrading or inhuman, punishment or treatment and fails to provide sanctions against that type of treatment while in institutional custody or care. The Act does not contain any specific provision limiting the use of handcuffs in the arrest of a child. Besides, there is no statutory requirement that any sentence imposed on a child shall be proportionate to the gravity of the offence and to the circumstances and needs of the child. Therefore, children are often subjected to inhumane treatment (Ferdousi, 2012). As a result, the system fails to reinstate a sense of dignity within them or resort to non-judicial dispute resolution to avoid deprivation of liberty.

The Children Rules 1976 basically deals with the procedure of running, monitoring and supervising the activities of certified institutes where juvenile offenders are accommodated. It provides the treatment of inmates considering the wellbeing of children but it is not practiced in reality. Corporal punishment is officially

¹ The Code of Criminal Procedure 1898, (Act No. V of 1898), section 29(b). Section 29(b) was inserted by the Code of Criminal Procedure (Amendment) Act 1923 (Act No. XVIII of 1923), section 6. Later, section 29(b) of the Code of Criminal Procedure 1898 was deleted by section 78 of the Children Act 1974.

sanctioned as per the Rules which permit ‘canning not exceeding ten strips’ as a punishment for violating anyone of the 30 stipulated rules of conduct.¹ It clearly contradicts with the national and international laws.

Since there are some significant loopholes in the Children Act 1974 the government has taken initiatives to amend and make it up to date and approved the Children Act 2013.² Due to the differences in ages of children, they were denied fair justice. This discrepancy has been addressed in the Children Act 2013. In the Act, the age of the child has been increased from 16 to 18 years and child aged below nine cannot be arrested. If a child above nine is being arrested, law enforcers cannot apply handcuffs and rope around waist to the child. As well, the Act recognises some organisations and members and mentions about their responsibilities for protection of the best interest the children such as child-friendly police officer, probation officer, juvenile court, child welfare board. It has also been mentioned in Act that there would be a monitoring process for checking, whether the directed alternative measures have any positive impact on the child’s behavior. This Act encourages family based care and protection considering best interest of the child and meaningful child participation (Ferdousi, 2013).

3.2 Plans and Policies

Since the independence of Bangladesh, in the first two decades there was no enactment relating to child rights plans and policy. After signing CRC, from 1991 children issues have been incorporated in the national planning process (Rohfritsch *et al.*, 1994). From 1992 the government formulated five-year (1992-1997) National Plan of Action for Children (NPA) which provided the assessment and monitoring of progress of the well-being and rights of children. The Second National Plan for Children (1997 to 2002) clearly articulates the future policy directions for the survival, protection and development for children through implementation of sectoral and multi-sectoral programmes. Similarly, Third National Plan of Action for Children (2005-2010) to ensure fulfillment of the government commitments for the overall development of the children in accordance with the provisions of Constitution, CRC, the SAARC Decade of the Rights of Child and the National Children Policy 1994 (Huda 2008).

After 20 years of the Children Act, the first National Child Policy was formulated in 1994. But both the CRC and the Children Act 1974 are not reflected in this Policy. According to the Children Act 1974 a child remains a child up to the age of 16 while in the National Child Policy the age is 14 and in CRC the age of child is 18 years. Consequently, the government approved the National Child Policy 2011 aiming to provide more facilities for children in Bangladesh. According to the policy all up to 18 years of old will be treated as children and their rights were ensured indiscriminately. This contains specific provisions, Articles 4.2, 4.3 and 6.7 concerning protection of children from all kinds of violence, abuse and discrimination.

However, implementation and monitoring committees have been established to ensure coordination and monitoring of the plan of action in Bangladesh. An Inter-Ministerial Committee³ has been established for the protection of children. All of these initiatives would have a positive impact on the overall realization of the rights of the child and would reinforce national awareness. Simultaneously, in 2003 NTF⁴ committee was set up for the proper enforcement of Suo Moto Order of High Court Division (Khan & Rahman, 2008). All the concerned persons agreed on principle that no child should, thereafter, be sent to jail or police lock-up. More than thousand children, locked in jails, were to be transferred to the correctional institutions. But due to the lack of monitoring, lots of children are still locked away in many jails in our country (Hoque *et al.*, 2008).

It is clear that there are scattered plans and policies for the children and juvenile protection and welfare issues are not properly addressed in existing plans and policies. Thus, plans and policies related to juvenile justice system is inadequate to provide the desired relief to the children in Bangladesh. Lack of accountability and abuse of discretion and power deprived the juveniles of their rights. Besides, absence of a separate department of children affairs to deal with child related issues can be attributed to be one of the major constraints. Furthermore, actions to implement and realize all these policies are minimal.

3.3. International Standards

International instruments are meant to apply impartially without any distinction on account of race, color, nationality, political and religious belief, social group or other status. It is an accepted principle that international covenants, conventions treaties and other instruments signed by the State parties are not considered to be binding unless they are incorporated into the laws of the land (Khair & Khan 2000). Bangladesh has not yet incorporated all the provisions of the CRC into its domestic laws. There is no mechanism in the legal system of Bangladesh to incorporate directly the principles of international conventions and rules at national levels. Though the

¹ See the Children Rules 1976, Rules 23, 24.

² The Children Act 2013, Bill No.26/2013, Dated 30 April 2013.

³ The Inter-ministerial Committee on Improving the Conditions of Children Confined in Jails was formed in 2002 and gave several decisions and issued several directives for improvement of the present juvenile justice system in Bangladesh.

⁴ A National Task Force (NTF) was set up in 2003 to address the problems faced by juvenile offenders and constituted at district and upazilla levels to expedite release of children from jails and assist their social rehabilitation.

international conventions set certain responsibilities for the ratifying states, there is no formal obligation to implement the provisions of the conventions. In this context, the state parties should develop enabling mechanism for implementation of the international standards (Karzon, 2008). According to Article 145A of the Bangladesh Constitution,¹ all ratified international treaties must be laid before Parliament by the President. It does not appear that the convention was ever formally laid before it. As a first signatory country to the convention, Bangladesh is bound to reflect the CRC in our national laws from 1990. But it has been an up-hill battle.

Finally, the development of the children laws, international treaties, covenants and conventions have been considered in the case of *State vs. Md Roushan Mondal*² in Bangladesh. In *State vs. The Metropolitan Police Commissioner, Khulna and others*³ Justice M. Imman Ali issued an important Suo Moto Rule No. 04 of 2008, the applicability by courts of international instruments was considered. Taking support from a decision of the Indian Supreme Court, which in turn referred to an Australian decision, held that as signatories to the CRC, Bangladesh was under an obligation to take steps for implementing the provisions thereof.

4. Reality of Juvenile Justice System

4.1 The Legal Definition of Child

Determination of the age of children is a significant challenge in the legal system of Bangladesh. The definition of a child is not uniform in the laws of Bangladesh. Different legislations provide different age limits of the delinquents but all of them are within 12 to 18 years of age. The generic age of children in Bangladesh is 18 according to the Majority Act 1875. Under Muslim personal law, majority begins with puberty, which is presumed to begin at the age of 12 for girls and 15 for boys. It is mentioned here that religious law prevails over ordinary legislation in case of a conflict between the two laws. But in particular cases the Child Marriage Restraint Act 1929, as amended in 1984, prevails over religious law. This Act prohibits the marriage of girls under 18 and boys under 21. On the other hand, children under 14 are not allowed to work in factories under the Bangladesh Labour Code 2006. Section 2(f) of the Children Act 1974 provides that, child means a person under the age of 16 years. According to the CRC persons under 18 years of age are regarded as child. But the new Children Act 2013 ensures those below the age of 18 years would be regarded as children.

4.2 Age of Criminal Responsibility

Age of criminal responsibility is most important factor to treat the children as a juvenile delinquent. The Penal Code 1860 deals with the presumption of innocence with respect to juveniles, subject to certain qualifications of age in sections 82 and 83. Section 82 provided that any children under the age of 7 years are immune from any trial for offence committed by them and subsequent punishment. According to section 83, an offence is not to be tried if done by a child above 7 years of age and under 12, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion. Once the child has attained the age of 12, he or she is fully responsible for his or her actions. Thereafter, in 2004, the government has amended the Penal Code 1860 and raised the minimum age of criminal responsibility of a child from 7 to 9 years. However, the Children Act 1974 sets the maximum age for juvenile as of 16 years. Therefore, a child from 9 to 16 years of age will be dealt with as a juvenile in Bangladesh which is not consistent with CRC (MoSW 2008).

4.3 Age Determination of Children

As soon as a child is arrested, alone or in a group, the police officers are under a legal obligation to provide her/him with a separate charge sheet⁴ and FIR.⁵ It is then determined whether s/he is to be submitted to a juvenile court or to a regular court. As per police orders, the investigating officer has to take necessary steps during preparation of FIR, forwarding report, and other related records and charge-sheet, mentioning the age of the arrested juvenile. But there is no mechanism in the Children Act which determines the age of a child. Consequently, police officers cannot ensure the actual age of children. Discretion is given to the judges when the child is brought before the court. It is a difficult discretion to use without expert opinion. A mandate and

¹ The Constitution of the People's Republic of Bangladesh 1972, Article 145A. This Article was inserted by the Second Proclamation (Fifteen Amendment) Order 1978 (Second Proclamation Order No. IV of 1978).

² 59 Dhaka Law Reports (DLR) 2007 72.

³ 60 Dhaka Law Reports (DLR) 2008 660.

⁴ Charge Sheet is a report submitted to the court, on the completion of an investigation, by the investigating officer, when the charges against the accused are found proved and the investigating officer proposes to proceed against the accused. It is submitted in a Government prescribed form.

⁵ FIR means First Information Report and it is a written or oral complaint to the officer-in-charge of a police station of any cognizable crime mentioned in the section 154 of the Code of Criminal Procedure, 1898. The FIR should contain information such as date and time of occurrence, name, address & cell phone number (if any) of the complainant, place of occurrence, description of the event/incident, mode of operation of the incident, description of the arms, knives or any others (as an evidence, if used any).

mechanism for determining age on arrest is ignored and subsequently juveniles are faced with unfavourable circumstances.

4.4 Arrest of Children

Clear directions are available in the Children Act 1974 regarding arrest of juvenile offenders. In practice these legal directives are not always being followed. Often children are deprived of their basic rights during the period of arrest and face abuse and maltreatment by the police officer which are violation of international standards (Workshop 2007). Further, police officers are empowered to arrest a person, if he is accused of a cognizable offence under the Code of Criminal Procedure 1898.¹ Police officers are also authorized under section 54 of the Code of Criminal Procedure 1898 to arrest criminals on the basis of 'reasonable suspicion' of involvement in crime. This section stipulated that any police officer may, without an order from a magistrate and without a warrant, arrest any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned. Majority of the children are arrested under the penal laws.² Sometimes police officers do not take into consideration the innocence of the accused juvenile. And they file false cases. As a result, juveniles are victimized (Chowdhury *et al.*, 2002).

4.5 Bail and Pre-trial Detention of Children

At the very first instance, the police officer dealing with the child has the responsibility to consider bail. If the offence alleged is bailable, then bail is to be granted as a right. Under section 48 of the Children Act 1974, the officer has to consider bail, even if the child is arrested for a non-bailable offence. According to this section, when a juvenile, apparently under the age of 16 years, is arrested on a charge of a non-bailable offence and cannot be brought before a court, the officer-in-charge of the police station may release him on bail, if sufficient security is ensured. But release should not be granted if the juvenile may bring danger and if her/his release would defeat the ends of justice. However, in practice this authority is rarely used, reportedly because police are unaware of the law, or do not have the resources to trace parents.

Further section 49(1) of the Act provides that where a juvenile, apparently under the age of 16 years, arrested and not released under section 48, the officer-in-charge of the police station shall detain him in a remand home or a place of safety until s/he can be brought before a court where the child can be detained in a remand home or a place of safety. But in reality, the courts often detain children prior to trial for minor offences, or set bail bond requirements that their guardian cannot afford to pay. Since there is no special considerations regarding bail for children and the requirements for granting bail are same as for the adults, most of the time parents fail to comply with it. Therefore, children placed in the detention without any record of their arrest.

It is noted that there are no limitations on the duration of detention. Often arrested juveniles are locked-up in police custody for a long time. The treatment of juveniles by police officers is far from humane due to non-awareness of the Children Act. But both the Constitution³ and the Code of Criminal Procedure⁴ require that persons arrested and detained in custody, be brought before a magistrate within 24 hours of arrest and that an order be obtained for their further detention. There are no limitations on the duration of pre-trial detention under the Children Act 1974 (Ferdousi, 2011), and children can languish for years waiting for their case to be determined by the courts. So, the majority of the children who are detained while awaiting trial are sent to regular prisons. Most of the time adults and children are detained together in the general lock-up, both in police station and jail, due to the absence of separate lock-ups. Often juveniles are also kept with adult criminals.

4.6 Probation Service

Probation service is very important for a fair juvenile justice system. It is a process of treatment prescribed by the court for a minor offence which granted to the children below 16 years of age under section 32(6), 33(2) and 53(1-b) of the Children Act 1974. The circumstances of the incident, nature of the offence, character of the offender are all taken into consideration when the court issues a probation order. The probation order is an order requiring the person to be under the supervision of a probation officer for a period not less than one year and not

¹ Cognizable offences are defined as those offences when police officer may arrest without a warrant under the Code of Criminal Procedure 1898. A few examples of cognizable offences are: murder, dacoity, robbery, theft, rape, attempt to commit suicide, wrongful confinement, assault, kidnapping, extortion, trespass and rioting etc.

² Such as the Special Powers Act 1974, the Anti-Terrorism Act 1992, the Arms Act 1878, the Explosive Substances Act 1908, the Women and Children Repression Prevention Act 2000, section 54 of the Code of Criminal Procedure and section 86 of the Metropolitan Police Ordinances, but the last two laws allow police officer to arrest any person on 'reasonable suspicion' without warrant.

³ Article 31 of the Constitution of the People's Republic of Bangladesh guarantees everyone the right to life, liberty and freedom from arbitrary detention. This provision specifically entitles a citizen to the right of protection by law and freedom from inhumane treatment.

⁴ The Code of Criminal Procedure 1898, section 60.

more than three years, as specified in the order.¹ Accordingly, the juvenile delinquent is kept under the supervision of a probation officer whose job is to guide the delinquent towards getting established in normal life. The benefit of probation is generally given to an offender by the court after social investigation to judge the suitability of the offender to be released on probation (Samad *et al.*, 2002). So, s/he may, after being released, have the probation benefit in the real sense (Bawa, 2008). But there is not enough resource for it to develop into a meaningful service; there is no clear understanding of their responsibilities, adequate training or orientation on how to fulfill these functions, and very little co-operation from the concerned persons (Ghuznavi *et al.*, 2001). Additionally, insufficient number of probation officer is prevalent in the country that worsens the problems in juvenile justice system. The Department of Social Service (DSS) under the ministry of Social Welfare has appointed permanent probation officers in 22 districts and in the remaining districts; the DSS has delegated the powers of a probation officer to all districts or upazilla welfare officers. In most of the districts, social welfare officer has to perform the job of the probation officer. So, juvenile justice process is delayed.

4.7 Services of Social Caseworker

Social case worker has an important role to play in correction and prevention of delinquent children. The function of the social case worker is to represent the court after the judge has made the decision (Rohfritsch *et al.*, 1994). The social case worker tries to use his knowledge and skills to help bring about desired changes and modifications in the behaviour of the offender who is in probation (Devasia & Devasia, 1992). The main role of social case workers is counseling and motivational for behavioural correction, psycho-social and human development, socialization and re-integration of the offenders. They mix very closely with the juveniles and collect personal, environmental and social information through interviews and observations and identify their problems that need to be addressed (Ferdousi, 2010). In reality, there are not sufficient social case workers for inmates of correctional institutions. Often they are overburdened and they cannot carry out their responsibilities properly. Additionally, most of them do not have special training on handling delinquent children and adequate knowledge of juvenile justice system. As a result, they cannot apply 'social psychotherapy' approach towards juvenile delinquents properly which is the basic philosophy of juvenile justice.

4.8 Correction and Reintegration

There are three correctional institutions (*Tongi, Jessore and Konabari*) in Bangladesh for rectification and rehabilitation of juveniles (MoSW, 2008). The main objectives of the correctional institutions are to provide care, protection, rehabilitation and reintegration of juvenile offenders through a process involving social work, motivation, counseling, education and trade training for skill development and self-employment (Hoque, 2009). But they are yet to show any significant success on rehabilitation and social reintegration of juveniles. There are no reintegration services of inmates to assist them in returning to society, family life, education or employment after release. Moreover, specialized treatments like drug rehabilitation, treatments for trauma, psychiatric treatments are not available and no initiatives are taken in procuring them as required by the CRC. Additionally, there is limited health and educational facilities, poorer diet menu available in the institution.

But Rule 31 of the UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990 ensures that "the right to facilities and services of children that meet all requirements of health and human dignity". Rule 32 requires that these facilities take into account- "the need of the juvenile for privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities". Further, Rule 81 requires that the personnel of juvenile detention facilities "should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counselors, social case workers, psychiatrists and psychologists". In practice, there is no follow-up mechanism after the release of the juveniles from the institution and has no statistic on how many of the released delinquents been reintegrated into society in Bangladesh.

4.9 The Juvenile Court

According to section 3 of the Children Act of 1974, the first juvenile court was established at *Tongi* correctional institution in 1978 for male child. Thereafter, in 1995 juvenile courts for male child at *Jessore* and in 2002 one for girl child at *Konabari* has been established. So, there are only three juvenile courts for the whole country which is not adequate. It can be said that until 1995, there was only one juvenile court for male child. Similarly, until 2002, there was no such court for girl child in Bangladesh. Except for the three juvenile courts, there is no separate juvenile court which ensures that juveniles are separated and treated differently from adults at all stages of the criminal proceedings. In addition, some limitations of juvenile courts such as inadequate sitting, limited jurisdiction insufficient probation officers eventually delay the legal process.

Furthermore, the juvenile courts cannot take into consideration the cases of children who are convicted of serious offences under section 5(3) of the Children Act. For example, the case of robbery, theft and murder etc. are under the jurisdiction of judges of the session courts and it is not under the jurisdiction of judges of the juvenile

¹ The Probation of Offenders Ordinance, 1960, section 10 (1).

courts in correctional institutions. Judges of the juvenile courts usually conduct petty offences and guardian cases. They also conduct cases of those delinquents whose files are sent from the ordinary court to juvenile court. It cannot grant bail to arrested children in criminal cases. As a result, the children are deprived of required rights and facilities and due to lack of regular disposal of cases, the number of under trial offenders are increasing day by day.

4.10 The Ordinary Court

According to section 4 of the Children Act 1974, ordinary courts are also responsible to protect juveniles. The section includes (a) the High Court Division; (b) a Court of Session; (c) a Court of an Additional Session Judge and of an Assistant Session Judge; (d) a Sub-Divisional Magistrate; and (e) a Magistrate of the first class. In 2007, after the separation of judiciary from executive an amendment was made to the effect that a Chief Judicial Magistrate and a Metropolitan Magistrate was empowered to exercise powers of a juvenile court instead of a Sub-Divisional Magistrate and a Magistrate of the First Class by Gazette Notification of the Ministry of Law, Justice and Parliamentary Affairs.¹ Resultantly, working as a juvenile court, becomes their optional work and the trial of the juvenile is conducted frequently in ordinary courts (Rahman 2007). But as of today no ordinary court has been set-up exclusively as juvenile court and the homely atmosphere as described in the Children Rules 1976 are still absent in the ordinary courts (Hoque *et al.*, 2008).

The ordinary court is wide and elaborate that cannot afford close observation towards juvenile delinquents regarding their trial, correction and rehabilitation is not smooth and complete. It takes decision on the basis of the police report and not on the basis of the report given by the probation officers, violating the child protection approach indicated by the Children Act 1974. There is no camera trial for the juveniles in the ordinary court. The trial of juveniles is usually conducted along with adults and the Code of Criminal Procedure is followed in ordinary courts. The most commonly applied laws against children are the Special Powers Act 1974, for gang, rape and murder etc. the Anti-Terrorist Act 1992 for teasing girl, snatching, hijacking and the Arms Act 1878 for illegal possession of arms. This special law provides for speedier and summary trial by session courts. Hence, the whole atmosphere of the ordinary court is far from being homely during the hearing as prescribed in the Children Act 1974.

4.11 Sentencing

Section 37 (c) of the CRC states ‘every child, deprived of liberty, shall be treated with humanity and with respect for the inherent dignity of the person and in a manner which takes into account the needs of persons of his or her age. In particular, every child, deprived of liberty shall have the right to maintain contact with his or her family through correspondence and visits, except for exceptional circumstances.’ But most of the times, juveniles have been sentenced to ‘imprisonment’ by ordinary courts in Bangladesh. The Children Act 1974 categorically prohibits death sentence, transportation or imprisonment of children.² Imprisonment is allowed only in exceptional circumstances as the last resort. But children are often sentenced to imprisonment although this sanction should not only be used as a ‘last resort’ but also for the shortest possible period of time (Chowdhury *et al.*, 2001). The juveniles often carry out lifetime sentences. The High Court stated that “no child is to be charged together with or tried for any offence together with an adult. In the case of *Munna vs State*,³ in the criminal appeal the provisions of the Children Act, 1974 including sections 51 and 52 were considered. According to sections 4 and 7 of the Children Act session judge and additional session judge exercised the power of juvenile court. In *Fahima Nasrin vs Government of Bangladesh and other*,⁴ the High Court Division held:

“Sentence passed by the judge of the juvenile court does not reflect a correct interpretation of the provisions of the Act and the sentence of imprisonment passed in respect of accused children erroneous. Children is not liable to be sent to prison upon attaining the age of 18 years and impugned order of the Ministry of Social Welfare is erroneous and without lawful authority.”

4.12 Alternative Measures

There is a need for alternative measures than punishment in Bangladesh. Juvenile court cannot take alternative preventive measures during any stages of the formal judicial system. So, there is absence of positive impact on the child’s behaviour by alternative measures. Article 40 of CRC provides “State shall seek to promote the establishment of measures for dealing with children in conflict with the law without restoring to judicial

¹ Gazette Notification vide No- justice-4/5C-1/2005/1242 Dated 20.11.2007.

² Section 51 of the Children Act 1974 imposes restrictions on the conviction and sentence of a child offender. Under this section, it is permissible to impose a prison sentence on a child under 16 in exceptional circumstances, namely when a child is found to have committed an offence of such seriousness that the court takes the view that no punishment authorized under the Act is sufficient; or when the court is satisfied that the child is of “so unruly or of so depraved character” that he cannot be committed to a certified institute and none of the other available methods for dealing with the case is suitable.

³ 7 BLC 2002 409.

⁴ 61 DLR 2009 232.

proceeding, provided that human rights and legal safeguards are fully respected.” The same pronouncement exists in the Beijing Rules as “The police, the prosecution or other agencies dealing with juvenile areas shall be empowered to dispose of such cases, at their discretion without recourse to formal hearings. Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile or her/his parents or guardians provided that such decision to refer a case shall be subject to review by a competent authority, upon application.”

However the principle of diversion which is the corner stone of the international standards on juvenile justice is not yet recognized by Bangladesh legal system. There is a lack of alternative measure instead of punishment like verbal or written plea for mercy; conditional or non-conditional formal warning; supervision as directed by juvenile court or police officer; order for good behaviour, etc. to the formal justice system. It is considered as alternative to formal adjudication which may involve a restorative justice component, i.e., compatible with the rights of the child. Some important alternative measures for juvenile offenders have incorporated in the Children Act 2013.

4.13 Children in Jail Custody

Jail is hardly a place where a child should be kept. But a large number of children are illegally detained in different jails in violation of the Children Act of 1974 and the CRC. As per the report of NTF meeting date on 5 July 2006, 819 children (below 16: 317 and below 18: 502) were detained in jail countrywide. There were 471 male children and 40 female children in the jail (NTF 2006).¹ According to news report,² 380 accused juveniles are languishing in jails despite repeated High Court orders, not to keep juveniles in prisons, while three juvenile correctional institutions remain practically deserted with only 282 inmates against the capacity of 700. Furthermore, the report of the Save the Children UK in 2007 a total of 1,532 children were sent to jails in Bangladesh. Of them, 617 male and 24 female were detained under the Penal Code, 136 male and 11 female under the Code of Criminal Procedure, 95 male and two female under the Special Powers Act, 51 male under the Arms Act, 98 male and 4 female under the Narcotics Control Act, 43 male and one female under the Speedy Trial Act. Thus, juveniles are often sent to jail which is absolutely prohibited by the law. But due to lack of coordination among major components of the justice system, children are not kept in the correctional institutions properly and sent to jail. As a result, they are exposed to serious contamination by adult prisoners of all types in jails (Hoque, 2008).

5. Summary and Conclusion: The Way Ahead

The above analysis demonstrates that existing legislation and practices do not fully comply with international standards and that there remains a significant gap between the law and its implementation to protect the best interest of the children. Since the independence of Bangladesh, in the first two decades there was no enactment relating to juvenile justice. There has been no comprehensive review of the juvenile related laws in the last four decades. Consequently, children are not tried in separate juvenile courts; confidentiality is not maintained and the social enquiry reports of probation officers and alternative measures are seldom considered fairly. However, the Children Act 2013 is a milestone which would be protect to the best interest of the children in Bangladesh. Apart from this, a separate policy for wellbeing of juveniles should be formulated and established a child-friendly justice system which recognizes the child as subject to fundamental rights and freedoms and ensures that all actions concerning the child are to be done for her/his best interest. As well as, proper mechanism should be created to assess the needs and requirements of the juveniles and it should be reviewed regularly. Accordingly, to make juvenile justice more effective and least time consuming more juvenile courts should be established in each division. It should be clearly ensured that any offence committed by a juvenile defined under any law whether special or general shall be tried by juvenile courts. Bail should be considered as a matter of course and detention-confinement should ensue only as the exception in unavoidable scenarios. There is also need for larger involvement of informal system and community-based welfare agencies in the care, protection, treatment, development and rehabilitation of juveniles. In this perspective, government should put more emphasis of useful and attractive beneficial long-term schemes for juveniles so that they feel motivated to join main stream of the society and regain their self-confidence Every effort must be made at all stages for reintegration of the child within the family and so as to enable her /him to assume a constructive role in society where they can enjoy their basic human rights.

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