**Bangladesh University of Business and Technology (BUBT)**

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**Research Monograph**

**On**

**"State of Juvenile Justice in the Administration of Reformatory Schools: A Critical Analysis in the Perspective of Bangladesh"**

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**19th March 2018**

**DECLARATION**

I Farita Rahman Nishu, do hereby declare that the monograph entitle **"State of Juvenile Justice in the Administration of Reformatory Schools: A Critical Analysis in the perspective of Bangladesh"** is the most outcome of the collection of information, inspection performed by me for the degree of Bachelor of Law (LL.B) under the supervision of Prof. Dr. M. Badaruddin, Dean, Faculty of Law, Bangladesh University of Business and Technology (BUBT)

I, also declare that, this thesis or no part thereof has been or is being submitted elsewhere for the award of any degree or examination in any other instated, and that all the sources I have used or quoted have been indicated and acknowledge as complete references.

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To

Prof. Dr. M. Badaruddin

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**Sub: Letter of Transmittal**

Dear Sir,

It is a gratification for me to have the opportunity to submit the research paper on the topic of **"State of Juvenile Justice in the Administration of Reformatory Schools: A Critical Analysis in the Perspective of Bangladesh"**, while doing this research paper, I have tried my level best to make this research paper to the required standard. I can hope that this paper will fulfill your expectation and also the demands of the course. I also hope that you would be kind enough to go through this Research paper for evaluation.

I am always available for any clarification of any part of this research paper at your convenience.

Sincerely Yours,

……………………………………………

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**CERTIFICATION**

This is hereby certifying that the dissertation entitled "State of Juvenile Justice in the Administration of Reformatory Schools: A Critical Analysis in the Perspective of Bangladesh" has been done by Farita Rahman Nishu, ID No. 10112105039, Intake- 13th, program LLB (Hon's), department of law and justice. The manuscript of the dissertation has been scrutinized and carefully checked by me. The entire dissertation is the candidate's own work and is a record of the bona fide work carried out successfully.

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……………………………………………………………

Farita Rahman Nishu

Date: 21st March, 2018

**ABBREVIATIONS**

**APJD** Assistance Plan for Juvenile Delinquency

**BSAF** Bangladesh Sishu Odhikar Forum (Bangladesh Child Rights Forum)

**BRPOWA** Bangladesh Retired Police Officers welfare Association

**CDC** Child Development Centre

**CRC** Convention on the Rights of the Child

**CRBA** Child Rights Based Approach

**FGC** Family Group Conference

**HCD** High Court Division

**HRW** Human Rights Watch

**ICCPR** International Covenant on Civil and Political Rights

**UNGO** International/Non-governmental Organisation

**JDL** Juveniles Deprived of their Liberty

**UNCRC** United Nations Convention on the Rights of the Child

**NCP** National Child Policy

**NHRC** National Human Rights Commission

**NICS** National Instituted for Correctional Services

**SC** Save the Children

**UN** United Nations

**UNICEF** United Nations Children's Fund

**YOM** Victim Offender Mediation

**TABLE OF CASES**

Bimal Das v. State, 46 (1994)1)1,R 460.

Bablu v. Slate, 1 (1981) DU), 454.

Green v. Johnson, AIR 1927 Lah 567

Legal Aid and Services Trust (BIAS?'} v. Bangladesh, 7 (2002) 85.

Shiplu and another v\_ Stale, 49 (1997) DLR, 53

State v. Deputy Commissioner Satkhira, 45 (1993) DI,R, 643

State v. Roushan Mondal, 59 (2007) DLR, 72.

Zillur Rahman v. State, 23 (2003) BLD, AD, 187

**TABLE OF CONTENTS**

**Chapter 1 INTRODUCTION**

1. 1 Introduction…………………………………………………………………………………………………………………………………1

1.2 Statement of problem………………………………………………………………………………………………………………… 2

1.3 Objectives of the study………………………………………………………………………………………………….….…………..2

1.4 Review of Literature……………………………………………………………………………………………………………………. 3

1.5 Justification of the study……………………………………………………………………………………………….……………….4

1.6 Research limitation……………………………………………………………………………………………………………………… 4

1.7 Research Methodology ………………………………………………………………………………………………….…………….5

1.8 Chapterisation of the study……………………………………………………………………………………………….…………..5

**Chapter 2 CONCEPT OF JUVENILE DELEQUENCY & JUVENILE JUSTICE SYSTEM**

2.1 Definitions of 'Juvenile' & 'Juvenile Delinquency'……………………………………………………………………………8

2.2 Juvenile Delinquency in Bangladesh……………………………………………………………………………………………….9

2.3 Causes of juvenile delinquency 11……………………………………………………………………………………….………..11

2.3.1 Social Transition…………………………………………………………………………………….…….………….….………11

2.3.2 Poverty……………………………………………………………………………………………………………………………….12

2.3.3 Problematic Family …………………………………………………………………………………………………………….12

2.3.4 Migration ……………………………………………………………………………………………………………………………13

2.3.5 Surrounding Environment and Company…………………………….……………………………………………...13

2.3.6 Action Movie………………………………………………………………………………….………………….………………..13

2.4 Current Trends of Delinquency………………………………………………………………….……………………………………15

2.5 When Children Contact with Law Come into…………………………………………..………………………………………16

2.6 Concept of Juvenile Justice …………………………………………………………………….………………………………………17

2.7 History ofiuvenile Justice System.. …………………………………………………….…………………………………………..18

2.7.1 International View……………………………………………………………………….………………………………………18

2.7.2 Domestic View…………………………………………………………….………………………………………………………19

2.8 Child rights-based juvenile justice system………………………….…………………………………………………………..20

2.9 Juvenile Justice Work…………………………………………………………………………….……………………………………… 23

**Chapter 3 ADMINISTRATION OF JUVENILE JUSTICE IN BANNGLADESH**

3.1 Age of Criminal Responsibility ……………………………………………………………………………………………………….25

3.2 Age Determination of Children ………………………………………………………………………………………………………25

3.3 Terms used in juvenile court ………………………………………………………………………………………………………….26

3.4 Establishment of Juvenile Court…………………………………………………………………………………………………… 26

3.5 Sitting of Juvenile Court ………………………………………………………………………………………………………………...27

3.6 Powers of Arrest and Arrest Procedures…………………………………………………………………………………………27

3.7 Bail and Pre-trial Detention ……………………………………………………………………………………………………………29

3.8 Juvenile Court and Trial Proceedings……………………………………………………………………………………………..30

3.9 Sentencing........................................................................................................................................31

3.10 What is Committal?........................................................................................................................32

3.11 Probation Service and Probation Officer for Specialized Assistance …………………………………………..32

3.12 Children in Jail Custody…………………………………………………………………………………………………………………33

**Chapter 4 JUVENILE JUSTICE SYSTEM OF INTERNATIONAL STANDARDS**

4.1 International legal framework for juvenile justice………………………………………………………………………………………………………………………………….……………….34

4.2 Definition of 'child'……………………………………………………………………………………………………….………………..35

4.3 Minimum age of penal responsibility …………………………………………………………………….……………………..36

4.4 Powers of Arrest and Arrest Procedures………………………………………………………………………….…………….37

4.4.1 CRC and UN Guidelines ……………………………………………………………………………………….……………37

4.4.2 Regional Assessment……………………………………………………………………………………………….……… 38

4.5 Rail and Pm-trial Detention…………………………………………………………………………………………….……………..39

4.5.1 CRC and UN Guidelines …………………………………………………………………………………….………………..39

4.5.2 Regional Assessment…………………………………………………………………………………….……………………40

4.6 Juvenile Courts and Trial Procedures………………………………………………………………………………….……….. 41

4.6.1 CRC and UN Guidelines………………………………………………………………………………………….….……… 41

4.6.2 Regional Assessment………………………………………………………………………………………………………… 41

4.7 Sentencing ………………………………………………………………………………………………………………………...…..………42

4.7.1 CRC and UN Guidelines……………………………………………………………………………………………..………..42

4.7.2 Regional Assessment …………………………………………………………………………………………………..…….43

4.8 Specialized institutes for children in conflict with the law ………………………………………………………..…..44

4.9 State Security / Antiterrorism Laws …………………………………………………………………………………………..…..45

**Chapter 5 JUDICIAL ACTIVISM FOR THE PROTECTION OF JUVENILE OFFENDER IN BANGLADESH**

5.1 Prohibition on Joint Trial………………………………………………………………………………………….……………………..46

5.2 Prohibition on Public………………………………………………………………………………………………….…………………..48

5.3 Determination of the Age of a Child…………………………………………………………………….………………….………49

5.4 Prohibition on making address, particulars etc………………………………………………….……………………………51

5.5 Look to the Offender not to the offence…………………………………………………………………………………………51

5.6 Restrictions on imposing punishment…………………………………………………………………………………………….52

5.7 Supremacy of the Children Act., 1974…………………………………………………………………………………………….54

**Chapter 6 REFORMATORY SCHOOL OR YOUTH DETENTION CENTER**

6.1 Youth detention center………………………………………………………………………………………………………………….58

6.2 Origin and History of Reformatory Center……………………………………………………………………………………..60

6.3 Services provided to youth…………………………………………………………………………………………………………….63

6.3.1 Mental Health…………………………………………………………………………………………………………………….63

6.3.2 Education……………………………………………………………………………………………………………………………64

6.3.3 Special education……………………………………………………………………………………………………………….64

6.4 Juvenile Delinquency Prevention programs ………………………………………………………………………………….66

6.4.1 Education.... ……………………………………………………………………………………………………………………….66

6.4.2 Recreation..............................................................................................................................66

6.4.3 Community Involvement………………………………………………………………………………………………………67

6.4.4 Prenatal and Infancy Home Visitation by Nurses………………………………………………………………….67

6.4.5 Parent-Child Interaction Training Program……………………………………………………………………………67

6.4.6 Bullying Prevention Program……………………………………………………………………….……………………….67

6.4.7 Prevention Programs within the Juvenile Justice System……………………………………………………..68

6.5 Concerns and criticism……………………………………………………………………………………………………………………68

6.6 Survey on Reformatory school Bangladesh …………………………………………………………………………………..69

**Chapter 7 CONCLUDING REMARKS**

7.1 Suggestions………………………………………………………………………………………………………………….…………………72

7.2 Conciusions…………………………………………………………………………………………………………………………………….73

**REFERENCE 75**

**Abstract**

This paper attempts to analyze the legal mechanisms of juvenile justice in Bangladesh whether it complies with international standards and to what extent' 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.

**Chapter 1**

**INTRODUCTION**

**1.1 Introduction**

Children are not smaller versions of adults but are completely different human beings with different sensibilities, requirements and necessities also led to the creation of a different model for treating them when they come into conflict with law or "committed crimes."

A juvenile is a part of the society in which he lives. Due to his immaturity, he is easily motivated by what he sees around him. It is his environment and social context that provokes his actions. In developing countries like Bangladesh juvenile delinquency increases due to persistent poverty, unemployment, inequalities and changing values etc. Many one has been written about victim children, and children in need of care and protection, but very little about juvenile offenders who are the truly neglected children. The state machinery hides them in institutions where no outsider is allowed to tread, and leaves to their own devise with scant being paid to their well-being and rehabilitation.

In every contemporary state, the legal term "juvenile delinquent" was established so that young law breakers could avoid the disgrace of being classified in legal records as criminals, where the main aim is to rehabilitate offenders. To use these theories into effect, the juvenile court system was constituted. Since its very commencement, the juvenile court philosophy has been founded on the lawful notion of parent's

1

patria. It signifies that the state measures launching into supplying a child with the attention that a competent parent would like to have offered.

State Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.2 The lawful system perfectly finds to deal with the children as individuals no answerable for their treatment in preference to as delinquents. The goal of the court finally is to bring away juveniles from the embarrassing situation of offence.

**1.2 Statement of Problem**

The problem of juvenile delinquency is becoming more complicated and universal, and crime prevention programmers are either unequipped to deal with the present realities or do not exist. Many developing countries have done little or nothing to deal with these problems, and international programmers are obviously insufficient. Developed countries are engaged in activities aimed at juvenile crime prevention, but the overall effect of these programmers is rather weak because the mechanisms in place are often inadequate to address the existing situation.

**1.3 Objectives of the Study**

The principal aim of this study is to identify and show the deficiencies of Juvenile Justice Administration of Reformatory School in Bangladesh. I have conducted this research keeping in mind, the main objectives namely:

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The Encyclopedia of Social Science, Vol. VII-VIII, p. 529. The Convention on the Rights of Child, Art. 40(3) adopted by General Assembly resolution 44/25 of November 1989, Entry into force 2 ,September 1990

2

1 To put due emphasis on the well-being of the juvenile.

2. To trace the origin and activity of reformatory school or youth detention centre.

3. To examine the role of the legislative organs of the governments in framing laws for the welfare of juvenile delinquents.

4. To evaluate the activities of the executive to enforce these laws.

5. To explore the preventive measures of the reformatory school or youth detention centre.

6. To find out the deficiencies of the prevailing laws regarding juvenile justice.

**1.4 Review of Literature**

In preparing the research I have collected the information from various journals, articles, books, reports and the newspapers as well.

In Juvenile Justice for the Best Interest of the Children: A Legal Analysis, by Dr. Nahid Ferdousi, University of Malaya, "International instruments was 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."

In Treatment of juvenile offenders: Bangladesh perspective, of Bangladesh Research publications journal, "Youths who have not responded to traditional juvenile court intervention efforts or have demonstrated unwillingness to abide by the rules of non secure community-based treatment efforts should be isolated in secure juvenile facilities for the protection of society."

In A Crucial Observation on Juvenile Delinquency: Bangladesh Perspectives, by Mohammad Bulbul Ahmed and Camellia Khan, "Juvenile justice is a term that refers to the formal system designed to deal with juvenile delinquents as well as youthful offenders."

3

In Juvenile Justice in South Asia: Improving Protection for children in Conflict with Law, Unicef (2006) discussed about the CRC and UN guidelines as well as regional assessment regarding juvenile justice legislation and procedures.

In Diversion and alternative sanctions in the juvenile justice system in Bangladesh: a child rights perspective, Khandaker Farzana Rahman, "Recently trends in juvenile justice have tended to shift towards a child-rights oriented approach. It emphasizes to dealing with a child delinquent in a very comprehensive manner with a prior attention on the basic principles and rights in UNCRC: right to a fair trial, interventions without judicial proceedings, determination of age, and prevention of offence."

**1.5 Justification of the Study**

Most of the literature that the author reviewed depicts the overall ineffectiveness of the present juvenile justice framework in Bangladesh. There has been an outcry on the need to bring the present system in compliance with international standards by international development organizations and the key local stakeholders dealing with juvenile justice in Bangladesh. The National Child Policy was consequently adopted. This climate offers opportunities for juvenile justice reform and makes my study relevant to future improvements of the juvenile justice administration of reformatory schools in Bangladesh.

In this connection this paper identifies potential reforms to make the juvenile justice administration more rights-focused, especially from the aspects of alternatives to detention and diversion. It explores whether directing children away from judicial Proceedings and towards community solutions would add value and assist the rights that children in conflict with the law in Bangladesh. Non-governmental agencies hence can use this study as an advocacy tool to step forward for a child friendly juvenile justice system.

**1.6 Research Limitation**

Due to lack of sufficient knowledge I have complete the research works properly. But there was a limitation of availability of sources of data and document. Most of the

**4**

authorities of this study was not liberated. As a result, they were not feeling the necessity and importance of this study. For this it faced a lot of problems to collect accurate data. The study in fact a part of our academic curriculum. For this tip, frame is limited. The study is also conducted on the basis of secondary data of the juvenile justice system in Bangladesh. So there is a limitation to presenting the originality of incident. The last one & the major limitation is timing limitation; the short period of time could give a limitation for research on deficit in juvenile justice administration of reformatory schools in Bangladesh.

**1.7 Research Methodology**

This study would be based on two sources of data collection Primary Sources & Secondary Sources.

**(i) Primary Sources:** I was visited relevant practical field & I personally take interview of concerned persons & made a survey on reformatory school in Bangladesh.

**(ii) Secondary Sources:** My work is also based on secondary data, such as books, articles, journals, case materials, Internet sources, newspaper, published reports so that the analysis is taken with a multiplinary approach by keeping the phase of justice method and socio- economic variables in considerations.

**1.8 Chapterisation of the Study** This dissertation has been divided into seven chapters to complete the research in a fitful and reasonable manner.

**First Chapter** is research proposal; it includes introduction, objectives of the study, statement of problem, review of literature, justification of the study, research limitation, research methodology and chapterisation of the study.

5

**Second Chapter** is Concept of juvenile delinquency and juvenile justice system. It includes definition of juvenile and juvenile delinquency, causes and currents trends of juvenile delinquency, definition and history of juvenile justice, juvenile justice work.

**Third Chapter** is Administration of juvenile justice in Bangladesh. It includes age determination and age of criminal responsibility, terms use in juvenile court, establishment and sitting of juvenile court, powers of arrest, bail, pre-trial and trial proceeding, sentencing and children in jail custody.

**Forth Chapter** is Juvenile justice system of international standards. It includes international legal framework for juvenile justice, minimum age of criminal responsibility international standards, powers of arrest, bail, pre-trial, trial proceeding and sentencing of international perspective, state security or antiterrorism laws.

**Fifth Chapter** is judicial activism for the protection of children in Bangladesh. It includes prohibition on joint trial and public trial, determination of age, prohibition on making address or publication relating to child offender, restriction on imposing punishment and supremacy of the Children Act.

**Sixth Chapter** is Reformatory school or youth detention center. It includes the concept and origin of youth detention center, services provided to youth, different prevention programmers, concerns and criticism, and Survey information on reformatory school.

**Seventh Chapter** is the last one. It contains the conclusion of the whole research work. It includes suggestions and conclusion.

6

**Chapter 2**

**CONCEPT OF JUVENILE DELEQUENCY & JUVENILE JUSTICE SYSTEM**

Juvenile are the most susceptible segment of society. They react sharply to any social problem. Scarcity of basic needs, lack of parental attention and any social crisis touch them so deeply that many of them cannot cope with the abnormal situation. They respond to social anomalies in ways approved by social norms and law. Some of them choose a life pattern and develop juvenile subculture to exhibit their resistance that injustice has been done to them.

Juvenile delinquency cannot be considered by keeping it apart from social reality. Social malfunctioning causes increase of juvenile delinquency and emergence of juvenile sub-culture, indicating that the children have been subjected to malnourishment. If the dominant culture of society fails to accommodate all the children sufficiently, the deprived young folk will stand up with their own sub-culture. Different countries have already experienced this reality. Juveniles' resistance through delinquency and aberrant life style reminds that social institutions need to be recognized and cause of juveniles should be specially taken care of.

To criminologist, juvenile delinquency encompasses all public wrongs committed by young people between the ages of 12 and 20. Sociologist view the concept more broadly, believing that it covers a multitude of different violations of legal and social norms, from minor offences to serious crimes, committed by juveniles. In an attempt

7

to explain the theoretical underpinnings of delinquency, sociologists associate the specifics of youth behavior with the home, family, neighborhood, peers and many other variables that together or separately influence the formation of young people's social environment.

**2.1 Definitions of 'Juvenile' & 'Juvenile Delinquency'**

The definition of a "child" is not uniform in laws of Bangladesh. Different laws have defined children in different ways. Here the age limit of the juvenile or child is given below under some statutes of Bangladesh:

• According to section 2(f) of The Children Act, 1974 'child' means a person under the age of sixteen years for the purpose of juvenile justice administration.

• According to section 1(3) of The Bengal Vagrancy Act, 1943 'child' means a person under the age of fourteen years.

• According to section 2(m) of Nari 0 Shishu Nirjaton Daman Ain, 2002 (amended 2003) 'child means a person who has not exceed the age limit of 16 years.

• According to section 2(f) of The Jail Code, 1864, 'child' means a person under the age of sixteen years.

• According to section 3 of The Majority Act, 1875, 'child' means a person under the age of eighteen years.

• According to section 2(a) of The Child Marriage Restraint Act, 1929, 'child' means a person who, if a male, is under twenty-one years of age, and if a female, is under eighteen years of age.

The definition of 'Juvenile delinquency' refers to antisocial or illegal behavior by children'. So, the juvenile delinquency is the term used for offence committed by children under a particular age limit. According to the Children Act, 1974, the age

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Hossain, -Mohammad Sajjad., Separate Treatment Measures for Juvenile offenders in Indian Sub-continent A Brief Historical Description, in the book of Human Rights, Investigation-Prosecution and Juvenile Treatment, Dhaka: Social Science Research Council, Ministry of Planning, 2008, at p. 117.

8

limit of children is 16 years in Bangladesh. But in United Nations Convention on the Rights of the Child (UNCRC), 1989 'juvenile' refers to a person under the age of 18 years. So, children laws and policies in Bangladesh are not consistent with UNCRC. The definition of a child or a juvenile 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.

Delinquency is a complicated as well as comprehensive term; it contains different shades of meaning. No identical concept is found about it. Different societies and different countries are having its different meanings. Again, the moral concept of delinquency is quite different from its legal concept. It also assumes different meanings in different social, cultural, religious and psychological perspectives. It is commonly used to indicate a crime committed by a juvenile. The nature and character of this crime are different in different societies. Different countries are having different age limits for delinquent persons under their own legal systems. The outlook of sociologists of different countries are also various as to the nature of the crime to be termed as delinquent activity. Delinquency includes anything done by a delinquent person in deviation of social and legal duty. So, 'Juvenile Delinquent' means 'a juvenile who has been found to have committed an offence.'

**2.2 Juvenile Delinquency in Bangladesh**

Juvenile Delinquency is one of the serious problems of mass society .it is almost an outcome of rapid urbanization and industrialization of modem times. This has almost become a universal problem in most of the industrialized countries including India & Bangladesh. Before proceeding further it is necessary to understand what Juvenile Delinquency is?

Delinquency is a kind of abnormality. When an individual deviates from the course of normal social life, his behavior is called Delinquency. When a juvenile, below an age specified under a statute exhibits behavior which may prove too dangerous to society or to himself be called a Juvenile Delinquency. The numbers of juvenile delinquents are increasing Bangladesh. The rate is alarming in Dhaka city. One responds source of police claimed that, 40 percent of the arrested criminals are juveniles. They are

9

involved in theft, robbery, hijacking and extortion and they possess different types of deadly weapons including fire arms. They are even involved in killing. Moreover, young offenders, committed robbery and extortion, were arrested. They were arrested with adult offenders. Not only hijacking and extortion, juveniles are involved in killing. Highly placed source of police informed that, juveniles are extensively utilized in the drug business. Drug dealers use the youngsters in carrying and selling drugs.

The Government of Bangladesh passed an Act in 1974• protecting the rights of child criminals. However, children are continuing to be imprisoned with adults and treated harshly by law enforcement establishments. World Vision has partnered with the Bangladesh Retired Police Officers Welfare Association to heighten awareness and protect the rights of juveniles who break the law. The police frequently pick-up and bring such children to police stations, from where they are sent to either jail, juvenile development centers, or vagrant homes etc. In Bangladesh that work together with the Bangladesh Retired Police Officers Welfare Association (BRPOWA) and World Vision to adopt appropriate measures for the rescue, eventual rehabilitation, trial, and correction of young children who have broken the law, have been arrested, and charged for committing various crimes. Since 1994, World Vision's partnership with the BRPOWA has established standards for the treatment of children who have been accused or convicted of committing a crime.

There are three correctional centers in Bangladesh for rectification and rehabilitation of juveniles. Two (one is in Tongi, and other in Jessore) for male child, and one (it is in Kunapara) for female child. Two categories of children are kept their first category constitutes of uncontrollable children and referred by parents and second category comes to the correction centre's after committing offences and referred by courts. In simple words, it can be said that Juvenile Delinquency is a type of abnormal or anti-social behavior by a juvenile who is below an age specified by statue. Each country has its own precise definition of the age range covered by the world juvenile.

• The Children Act, 1974, 21' June 1974, Act No. XXX1X of 19-4.

10

**2.3 Causes of Juvenile Delinquency**

Juvenile delinquency has become a global phenomenon these days. Despite of intensive rehabilitative measures and special procedure conductive to maladjustment of young minds. In extreme cases this may for tackling the problem of juvenile delinquency, there is a growing tendency among youngsters to be arrogant, violent and disobedient to law with the result there has been considerable rise in the incidence of juvenile delinquency. Poverty is major reason behind juvenile offence in the country, where 48 percent people live under poverty line. Social transition, poverty, migration, broken family, surrounding environment, lack of parental control, impact of action movie are responsible for causing juvenile delinquency in Bangladesh. Many young children are migrating from villages to Dhaka and other large cities because of domestic trouble, rural poverty, landlessness, and violence. They are picked up by pick-pocket gangs, shop-keepers, hotel owners, pimps, and hooligans. Street children are exploited by elderly children, adults and others in position of authority. Another serious problem is the trafficking of children both within and outside the country. Moreover, the children of sex-workers, orphans, and others who are socially outcast are considered very vulnerable. The police frequently pick-up and bring such children to police stations, from where they are sent to either jail, juvenile development centers, or vagrant homes etc.

Causes of juvenile delinquency are listed below:

**2.3.1 Social Transition**

The growing industrialization and urbanization gave rise to the problem of Juvenile Delinquency in Bangladesh. Sociologist and criminologists consider delinquency as a result of transforming from peasants to industrial labor class. Mainly Bangladesh is still an agro-based country. Industrialization has not taken expected pace In its

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Lutfer Rahman Shahjahan and Sara Rahman Khan, "Juvenile Justice", in Ruby Ghuznavi, Fara Ghuniavi and Saira Rahman Khan, eds., Child Rights: Reality and Challenge, A Study by Shishu adhikar Sangjog, The British Council, 2001, p.123.

11

transition from agriculture to industrialization, Bangladesh society is undergoing rapid social change. Since the transition not yet complete, since Bangladesh is pre-industrial, it is a mixed society, not completely traditional and not fully modern. An examination of the economic, political, and religious institutions reveals a conflict between traditional and modem values, neither of which dominates the lives of the people. conflict has given rise to anomie and creates greater vulnerability to delinquent behavior.

**2.3.2 Poverty**

Many people of this country are very poor. They live below poverty line in terms of the true indicators of poverty. Because of huge economic disparities a large number of people in Bangladesh live below minimum subsistence level. This pressure compels many children This economic to involve in delinquent activities.

In many cases poverty constitutes the root cause of juvenile delinquency. Poor parents cannot get their children educated and developed good education or vocational career rather they want their children to assist them in work field. Sometimes parents cannot provide their children with all basic necessities. The poor children, therefore, start to do some activities for their existence. The children do not which activities are lawful and which are not. By taking advantages of poor economic condition the criminal gangs deploy poor children in criminal activities. For example; they are engaged in pick pocketing and petty thievery.

2.3.3 Problematic Family

Problematic family constitutes a principle cause for the deviation of the juveniles. Absence of father or mother due to death or divorce, lack of parental control, lack of home discipline, bad relation between father and mother, presence of criminal among the members of family are the principle indications of problematic family. Due of

Mohmmad Afsaruddin, Juvenile Delinquency in Bangladesh, University of Dhaka

12

These problems the mental development of children remains incomplete, for which their behavior become abnormal. The children of 8-14 age of group take resort to crime when their parents fail to guide them property. Children adolescents tend to follow bad activities of others if their families and environments are not healthy.

**2.3.4 Migration**

People are migrating from villages to cities because of loss of land by river, and unemployment. They take shelter in slum areas, pavements and streets and remain deprived of basic necessities. Father and mother go out to earn their livelihood, leaving their children uncared and unattended. In this situation politicians used Children in dawn to dusk strike, and the children either picket or ransack cars or glasses of shops. Moreover, The criminal utilize children in pick-pocketing and petty thievery

**2.3.5 Surrounding Environment and Company**

Sometimes juveniles become delinquent because of bad company and surrounding environment. Due to tender age they cannot understand the far-reaching consequences of their activities. They can be trapped into surrounding environment of slum area, and smuggling zone. Because of evil company sometimes juveniles go to brothel, consume drugs, commits different kinds of criminal activities. .

**2.3.6 Action Movie**

Action movie and satellite have negative impact on the mindset of the young boys and girls. The violence and sex depicted in the movies incite juveniles to go brothel and to commit unauthorized activities. The causes of and conditions for juvenile crime are usually found at each level of the social structure, including society as a whole, social institutions, social groups and organizations, and interpersonal relations. There is no single cause or simple explanation for the development of delinquency behavior but there is different cause

13

Of juvenile delinquency. Juveniles choice of delinquent careers and the consequent Perpetuation of delinquency are fostered by a Wide range of factors, The most important of which are described below:

**Family aspect of Delinquency**

Under family influence, the study could be made the following subheads:

**(a).** **Broken family:** There are many reason of broken home. it may be due to divorce. Death of one parent, separation imprisonment of either father or mother.

**(b).** **Immoral home:** The children of home where there is sexual relation or drinking is not considered bad or beating children etc, Is a common feature and there is no good treatment with children also, become easily the prey of crime

**(c). Parental rejection of the children:** If a child does not get love and affection of parents, or is not taken care of properly , or where there is lack of vigilance over the child, that Child easily adopts the criminal activities to produce high mental tension.

**(d). Over busy parents:** If the parents are over busy, they are not able to look after the child properly with the result that the children as they wish and becomes delinquent.

**(e). Economic condition of the family:** There is more incidences in the children of too reach people. Sometimes on the other hand, the children of too reach people also become criminal because they get more money than required.

**Physical and Biological Factor**

Due to infirmity and poverty people do not get the respect in society with the result that they become criminals. In order to compensate that handicap ness they indulge in criminal activities. There are many reasons for juvenile delinquency of girls. They suffer from sexual desire from childhood they become overdeveloped in body, and they indulge in sexual offences. They try to compensate that infirmity by doing anti-social activities.

14

**Psychological factor**

Along with physical factors, psychological factors are also important in juvenile's delinquency. Many crimes are committed due to mental deficiency. In prostitution many girls of lower mentally developed are found.

**2.4 Current Trends of Juvenile Delinquency**

The present situation with regard to juvenile crime and delinquency can be characterized by following basic facts and trends:

• There has been an observed increase in violent and aggravated crimes among youth.

• the number of drug-related crimes is growing.

• The process of globalization and greater mobility of large population groups have led to an increase in criminal activity associated with intolerance towards members of other cultures.

• The difficulties encountered by immigrants and their descendents in certain countries are sometimes related to the high levels of group crime deriving from the activities of ethnically based delinquent group.

• in many cases juvenile crimes are linked to less obvious sources of motivation; various action may reflects, for example, the standards of particular subcultures, teachings or traditions deriving from religious radicalism, or the compulsion to use of violence as a means of contracting gender identity.

• Children and adolescent in difficult circumstances constitute ready reserve for organized crimes, participation in armed conflicts, human and drug trafficking, and sexual exploitation.

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15

• The disintegration of families, poverty, and the death of parents in armed conflict or from HIV / AIDS has led to the forced independence of many young people around the world.

**2.5 Children Come into Contact with Law**

Children come into contact with law under various situations.

**Firstly,** in districts beside border areas, like Jessore, Satkhira, Khulna, Comilla, Meherpoor, the children are used for carrying illegal drugs and prohibited products. After arrested by the police they come into contact with law.

**Secondly,** police arrests child roaming in the street under the provisions of the Vagrancy Act, 1943 or the Code of Criminal Procedure.

**Thirdly,** lost children, who cannot tell their address or whereabouts of their parents, come into contact with law.

**Fourthly,** children come into contact with law when declared 'uncontrollable' by the parents/guardians or the police under the Children Act, 1974.

**Fifthly,** slum children, whose parents cannot afford them to go educational institutions, are arrested by the police as precautionary measures before strikes under section 54 of the Code of Criminal Procedure. Sometimes these children are used by the politicians for picketing during strikes and are arrested by the police.

**Sixthy,** after committing offences under the Penal Code or the Children Act. 1974, children come into contact with law.

**Seventhly,** girls are arrested on suspicion of engaging in prostitution and therefore come into contact with law.

**Eighthly,** victims of trafficking come into contact with law when they are rescued by the police.

16

**Ninthly,** girls who run away come into contact with law after cheated by their boyfriends.

**2.6 Concept of Juvenile Justice**

Juvenile Justice is about not only the treatment of children in conflict with the law, but also about the root cause of offending behavior and measures to prevent such behavior. Work in the field of Juvenile Justice therefore has two major strands: Prevention and Protection.

* **Prevention**: This work aims to ensure the children do not come into contract with the formal Criminal Justice system. The cause of children offending are wide ranging are complex, and include poverty, broken homes, lack of education and employment opportunities, Peer Pressure and lack of parental guidance. These causes need to be tackled with a range of social and economic intervention, including programs for education, poverty reduction, skills development, parent counseling and job creation.
* **Protection:** At the same time, measures are needed to protect children who are already in conflict with the law, in order to deter them from re-offending and to promote their rehabilitation and smooth their reintegration back into society. Programmers and Projects that focus of the following features which are: Advocating for law reform, to ensure that national legislation conforms with international standards and guidelines on Juvenile Justice issues for key members of government, criminal justice agencies and civil society, Diversion Project that aim to keep children away from the formal criminal justice system by resolving conflicts within the community.

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M. Enamul Hogue, Under-Aged prison Inmates in Bangladesh: A Simple Situation of Offenders in Greater Dhaka. (Dhaka: Save the Children UK. 2008), p.12.

17

**2.7 History of Juvenile Justice System**

**2.7.1 International View**

The official start of Juvenile Justice of occurred in Chicago. U.S.A. In 1899 with the founding of the first Juvenile Court. There after within 20 years Juvenile Coon was replicated throughout Europe. The first expression of international concern about the situation of children came in 1923 through "Declaration Geneva" under the ages of League of Nations. In 1948 General Assembly of the United Nation as adopted a new instrument named "Declaration of the Rights of the Child". Containing ten basic principles of child welfare and protection." In international arena the focus on children was sharpened in 1979 when Poland placed a formal proposal and general assembly unanimously adopted the convention of the right of the child on 1989.



Figure 1: A juvenile court proceeding in 1910. Judges often conducted hearings informally and privately in their chambers in the first juvenile courts.

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M. Enamul Hogue, Under-Aged prison Inmates in Bangladesh: A Simple Situation of Offenders in Greater Dhaka. (Dhaka: Save the Children UK. 2008), p.7.

18

The CRC is the first legally binding international instrument to incorporate the full rim, of human right civil, cultural, economic, political and social rights. It was designed to look at children as entire human being and because -Umbrella Rights" Article 37 and 40 qualified by Article 3 state that in all actions whether undertaken by public or private social welfare Institutions, courts of law, Administrative Authorities of Legislative Bodies, the Best interest of the child shall be Primary Consideration:"

**2.7.2 Domestic View**

The edifice of Juvenile Justice system in Bangladesh is founded on the Children Act, 1974 which has replaced the Reformatory . School Act, 1897 and the Bengal Children Act, 1922 together with 29B and 399 of the Code of Criminal Procedure (Cr.P.C) Chronologically the children Act Precedes The Convention On The Rights of The Child 1989".

Bangladesh is one of the first countries to sign and ratify the United Nations Convention on the Rights of the Child (UNCRC). Since the ratification some significant strides have been made towards its implementation. However it is a long way to attain the desire goal. In Bangladesh, laws regarding children rights and protection are not contained in our statute rather they are present in various laws and statutes e.g. The Constitution, the Penal Code and the Children Act, 1974.

The Children Act, which actually predates the UNCRC by 15 years categorically, Prohibits death sentence and life imprisonment against a child can only be given in very special circumstances. Generally, a certified institution has been recommended for detention of youth. Children arc also protected by this law from abusive parent and guardians. Victimized child may be committed to certified institute or approved Shelter Homes.

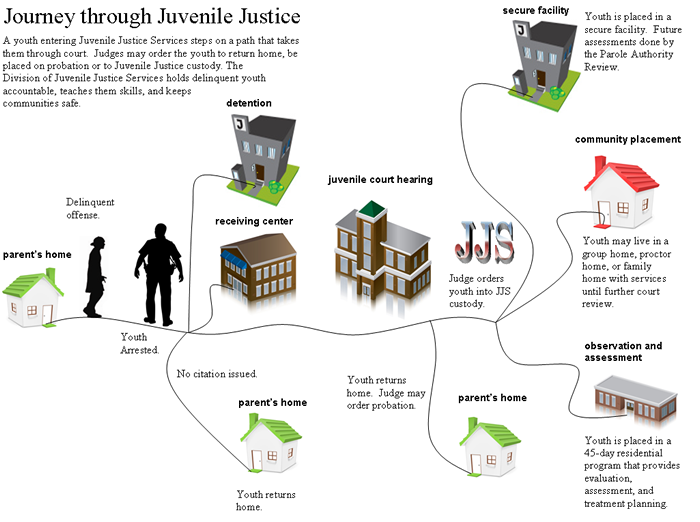
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**2.8 Child Rights-Based Juvenile Justice System**

Recently vends in juvenile justice have tended to shift towards a child-rights oriented approach. It emphasizes to dealing with a child delinquent in a very comprehensive manner with a prior attention on the basic principles(non-discrimination, best interest, and participation) and rights in UNCRC: right to a fair trial. interventions without judicial proceedings, determination of age, prevention of offending. The goal of such holistic approach is to assist the child in accessing to justice. and obtaining remedy. Article 37 and 40 of the Convention on the Rights of the Child (hereafter CRC) is the main focus of the information provided by the states panics. In this Regard the Committee on the Rights of the Child notes with appreciation the many efforts to establish an administration of juvenile justice in compliance with the CRC.

**Figure 2: Child rights-based juvenile justice system**

Rights oriented juvenile justice system



'Diversion And Alternative Sanctions In The Juvenile Justice System in Bangladesh : A Child Right Perspective', International Instituted of Social Study. p.12

20

In this context, the rationale of realizing a child rights juvenile justice is to provide a specialized mechanism and treatment with a view to facilitating their human dignity and integrity. A rights-based juvenile justice system aims to "discover the masons for offending behavior to identify and address the needs of the child and to provide effective reintegration activities in onion to prevent re-offending". Moreover the child rights based juvenile justice seeks to advance the capacity and responsiveness of the relevant authorities (Save the Children, 2002:28) and services like a child-oriented judicial system and probation service. well equipped correctional centers, as well as to bring changes in attitudes, practices, and values in the society by the sensitization and training of different sections The procedures under a child rights-based approach recognize the damage to the victim as well, should make the juvenile offender understand that the deed was not acceptable and seek to promote correction. reformation, rehabilitation and re-integration of the child.

Despite some limitations of child rights-based approach, yet Arts (2006:10) argues, "The CRC is particularly useful in supplying the main ingredients of a child rights-based framework within which any form of concrete action related to children should take place". Children Rights Based Approach (CRBA) brings together good practice in a wide range of areas of child rights and development: child's physical and emotional development, child's education and health, and child's family life. A 'Table Leg Test' (figure 2) on a child rights-based approach depicts how the CRC principles i.e. best interests of the child, non-discrimination, participation and implementation (including of economic, social and cultural rights) underpin the ultimate goals of the CRC and how a lack of any of them frustrates the whole process.

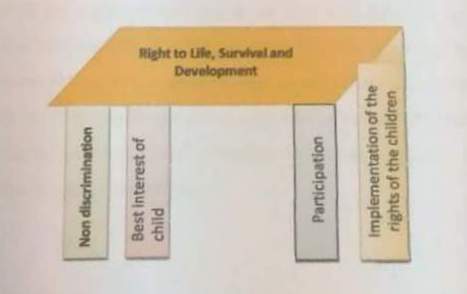
Rights-based juvenile justice stands on the CRC principles of non- discrimination, best interests and participation of the child together with CRC articles 37 and 40. In implementing the CRC, states parties in first place, shall take all necessary measures to ensure that all children in conflict with the law are treated in an equal manner.

21

Discriminatory victimization in society affecting farmer child offenders trying to get education or work should be combated (UNICEF, 2007:604). Thus, states would supply appropriate support with reintegration and public campaigns emphasizing their right to assume a useful role in society. Simultaneously, states shall also ensure that children in conflict with the law exercise freedom of expression and have the right to be heard in all judicial and administrative proceedings affecting them (article 12(2), UNCRC). In accordance with CRC provision. Thus, within a juvenile justice system, children need to be treated with humanity and their best interest must be taken care of.

**Figure 3: A Table Leg Test to introduce child rights based approach**

**Child rights based Approach The Table Leg Test**

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**If any of the legs Is massing, the situation or proposed system is not stable**

Source: Wernham (2004:21)

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The best interests of the child must be a primary consideration throughout the process. For example, for a child offender under 18 years-old, restorative justice objectives are fruitful reactions as the child gets opportunities to correct himself. With reference to the right to life, survival and maximum development in article 6, CRC, different sentencing options like, arrest, detention and imprisonment must be used only as a measure of last resort and for the shortest appropriate time as they have very negative consequences for a child's harmonious development and seriously hamper his/her reintegration.

Government has indeed three 'level of obligations' (Marks and Clapham, 2004:101) under a child rights-based juvenile justice to implement the rights enunciated in CRC including the special provision (article 37 and 40) for the children delinquents. At the outset, it will respect the rights of child delinquent by refraining from interfering with the enjoyment of relevant rights. The government will protect the right of the child offender in the next stage by enacting and reforming laws that create mechanisms to prevent violation of the rights of children in conflict with the law. In my view this should include the introduction of different child-friendly sanctions prioritizing the rehabilitation process for the child offender, e.g. placing them in a community setting and keeping them away from direct contact with law enforcing agencies. And finally it will fulfill the rights of the youthful offenders by taking budgetary, administrative and other measures to realize their rights.

**2.9 Juvenile Justice Work**

The goal of Juvenile Justice Work is the establishment of a fair and humane system of justice for children which is based on the rights of the child, applies the principles of restorative justice. Puts the best interests of the child first, Focuses on Prevention as Primary objective, Makes custody a sanction of last resort and for the shortest Possible Period of time while talking into account the effects on the victim and community.

23

**Chapter 3**

**ADMINISTRATION OF JUVENILE JUSTICE IN BANNGLADESH**

Juvenile justice is a term that refers to the formal system designed to deal with juvenile delinquents as well as youthful offenders. The process of arrest, trial and sentencing can be immensely frightening and damaging for a child. International rules guidelines promote and outline alternatives to intimidating formal court procedures, including the use of diversion. However, where cases involving young offenders do come to trial, the court system needs procedures that protect the best interests of the child. For example: informing parents and family at point of first contract with the formal system, ensuring regular and free access to legal aid and legal representation, ensuring that children are supported throughout their court attendance by an appropriately trained and impartial person, ensuring that language used in court is understandable to the child judicial hearings which include specially trained lawyers and judges.

The court should be able to turn to a range of legislated options that are in the best interests of the child. It should also be able to use bail and or some other measure in order to ensure children are not remanded in custody.

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Mabel Wong and Nikhil Roy, Under-Aged prison Inmates in Bangladesh: A Simple Situation of Youthful offenders in Greater Dhaka, (Dhaka: Save the Children UK, 2008), p. 78.

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**3.1 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.

**3.2 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 sheet and FIR. 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 Ad 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 mechanism for determining age on arrest is ignored and subsequently juveniles are faced with unfavorable circumstances.

25

**3.3 Terms Used in Juvenile Cour**

Different teens are used when dealing with juveniles as compared to adults. The following is a comparison of the terms:

|  |  |
| --- | --- |
| **Adult** | **Juvenile** |
| Crime | Delinquent Act |
| Arrest | Custody |
| Charge | Petition |
| Not Guilty Plea | Denial |
| Trial | Hearing |
| Verdict Of Guilty | Delinquent |
| Verdict Of Not Guilty | Not Delinquents |
| Sentence | Disposition |

**3.4 Establishment of Juvenile Court**

The Children Act, 1974 presents that any case in which a child is charged with the commission of an offence should be tried in a juvenile court. The government may establish one or more such courts in the country besides when a juvenile court established in a local area the High Court Division, a Court of Session, a Court of an Additional Sessions Judge and of an Assistant Sessions Judge, a Sub-Divisional Magistrate and a Magistrate of the first class shall have the power to try any cases as Juvenile Court. Thus though the Act provides for establishment of Juvenile Courts it also suggest ways for implementing the law if separate court is not possible to establish.

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Shandeen Malik, The Children Act,1974, 4th ed. ( Dhaka University Publication.2010), p.13. The Children Act, 1974. s .3. lbi4 Ss.4 and 5.

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In Bangladesh. there are only three Juvenile Courts in Tongi, Jessore and Konabari correctional institutes. And there is no Juvenile Court either in Khulna or Barisal or other district headquarters and there are few Courts are exercising the power of a Juvenile Court though it is possible for all the courts to act as a Juvenile Court without any Gazette Notification. The magistrates of these courts are not well aware of juvenile justice. The magistrates have a tendency to follow the Code of Criminal procedure rather than the procedure laid down in the Children Act. 1974.

**3.5 Sitting of Juvenile Court**

Juvenile Court should hold its siftings at least once in a week or as often as may be necessary and the Court should as far as may be practicable sit in a building or room different from that in which the ordinary sittings of the Court are held, or on different days or at different times from those at which the ordinary sittings of the court are held.

Most often, The Juvenile Court in Jessore correctional institute sits in the official chamber of the concerned Magistrate. But in Khulna and Barisial there are no such arrangements. The arrangement in Dhaka Metropolitan Magistrate Office is more pitiable. The children informed that they can not avail of proper legal aid, the magistrate does not talk with them in the court-room. They exclaimed had they not been in this institute, their case would have disposed of speedily.

**3.6 Powers of Arrest and Arrest Procedures**

The Police have wide discretionary powers to arrest children under a variety of laws. The Children Act, 1974. the Vagrancy Act, 1943 and the Suppression of Violence against Women and Children Act. 2000 give police the authority to take children into custody on very broad grounds, including for prostitution, begging, being in the company of a "reputed criminal or prostitute", being "like to fall into bad association

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Ibid s. 4. Ibid s. 7 and the Children Rules, 1976, Rule 3

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Or to be exposed to moral danger", or being a victim of crime.'' Both children who have committed crimes and children in need of protection are processed through n police station and subject to involuntary detention in a remand home or other "place of safety" Section 54 of the Code of Criminal Procedure. 1898 and the Dhaka metropolitan Police Ordinance allow police to arrest anyone on the grounds of reasonable suspicion" that the person has been involved in a criminal act.

**Figure 4: Police's action against a child in Dhaka**

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Source: http://www.dcmocraticunderground.com/discuss/duboard.php?az=view\_all&address=389x866 6000

The Children Act, 1974 dogs not contain any special provisions limiting the use of physical force, restraints or handcuffs in the arrest of a child, nor does it have any special provisions with respect to the taking of statements or confessions from children. When a child has been arrested, the police are required to immediately notify both the probation officer and the child's parents or guardian. However, in practice this is generally not done, often because the police do not have time or resources to trace parents.

Children subject to arrest must be brought before the Court within 24 hours. Although the Children Act, 1974 states that children may be kept in custody at the police station

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Only if arrangements are available to keep them separate from adults, in practice children are often mixed with adults in police luck-ups. Police contend that, in the absence of adequate facilities they are compelled to detain children in the jails with adults until they are brought to Court.

**3.7 Bail and Pre-trial Detention**

Under the Children Act, the officer-in-charge of a police station has the authority to release a child on bail, even for a non bail able offence. This provision potentially gives broad scope for the police to prevent children from being unnecessarily detained in police lock-ups. However, in practice this authority is rarely used, reportedly because police are unaware of the lass, or do not have the resources to trace parents. When a child who has been arrested is brought before the Court, the Court may release the child on bail or order him/her to be detained in a remand home or place of safety.

**Figure 5: Children treated with adults in police unit in Bangladesh**

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Source: UNICEF (2010:3)

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Ibid s.48.

Ibid s.49.

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The children Act, 1974 does not contain any special considerations for the granting of hail to children. There are no limitations on the duration of pre-trial detention, and children can languish for years waiting for their case to be determined by the Courts. Many are eventually found not guilty by the Courts due to lack of evidence.

Children who are subject to pre-trial detention may be sent to one of the three specialized Remand Homes (two for boys at Tongi and Jessor, and one for girls at Konabari).

**3.8 Juvenile Court and Trial Proceedings**

The Children Act, 1974 calls for the designation of juvenile Courts, specialize Juvenile Courts, and requires courts of all levels to follow the special court procedures when hearing cases involving an alleged offender under the age of 16. When hearing juvenile cases, the Court should sit in a different building or room from the ordinary court sitting, or on a different day or time of day. The Court is closed to the public, and the media is prohibited from disclosing the child's identify. Proceedings must be conducted in as simple a manner as possible and in a "home-like atmosphere". When being brought before the Court, children should not be under the close guard of a police officer, but should be permitted to sit in the company of a relative or probation officer. The child's parents or guardian have the right to be present, and may be required by the Court to attend. Most of the magistrates dealing with children delinquency are unaware of the provisions of the Children Act 1974 and they did not receive special training on children law and even when they are aware there is still the tendency to approach cases involving children like ordinary criminal matters. Magistrates do not communicate directly with the child, and it has been noted that children exhibit a greater deal of fear in court and sometimes cry. When being transported from the police station to the court, children are packed into ill ventilated prison vans together with adults. While waiting for their cases to be heard.

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Children are kept in the court custody cell, sometimes for five or six hours, along with adults. There continue to be incidents of children being bought into courts in handcuffs.

**3.9 Sentencing**

When making an order under the Act, the Conn must take into consideration t he character and age of the child. The circumstances in which the child is living and the report from a Probation Officer as to the child's background and family history. While probation officers may be instructed by the court to prepare a social inquiry report, in practice these are rarely requested. Upon finding a child under the age of 16 guilty of an offence, the Court may impose one of the following dispositions which are: Admonishment and discharge, Release on probation in the care of a Parent or other fit person, and under the supervision of a Probation Officer for a period of up three years. Commitment to a certified institution (now a Child Development centre) for a minimum of two years and maximum of ten years, but not extending beyond the age of 18 years. If the offence is serious in nature of the child is “of so unruly or depraved of character" that he/she cannot be placed in a certified institution, the child can be imprisoned for up to the maximum time stipulated for that offence the Penal Code. Children between the ages of 16 and 18 are not covered by the Act, and are therefore subject to adult sentences. While the Act states that no child shall be subject to the death penalty. this applies only to children under the age of 16, not 18, as explicitly required by Article 37 (a) of the CRC. The Children Act, 1974 provides limited scope for non-custodial dispositions. Sentences are often quite severe and disproportionately heavy, and there are no special protections at all for children between the ages of 16 and 18.

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Ibid, s, 15.

Ibid, s, 20.

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**3.10 Concept of Committal**

The court may order a children in respect of whom an offence is to be committed to a certified institute or an approved home or may be committed to the cart of his parent, or guardian, or a relative or other fit person and the court which makes an order committing a child to the care of his parent, guardian or other fit person may in addition, order that he be placed under supervision.

Though it is necessary that the juvenile offenders or victimized children should as far as possible be kept within the society and among community. The above provision are not exercised accordingly. There is no category to distinguish and determine whom to be let out in community and whom to be kept inside the correctional institute.

**3.11 Probation Service and Probation Officer for Specialized Assistance**

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 Juvenile Court may appoint Probation Officers from among suitable persons in the district, if there is no Probation Officer in its area and may appoint a Probation Officer for a particular juvenile. Duties of the Probation officer include: To visit or receive visits from the child at reasonable intervals, to scrutinize that the conditions of bond are fulfilled, to report the court as to the behavior of the child, to advise, assist and befriend the child and when necessary Endeavour to find suitable employment and perform any other duty which may be prescribed. Probation officer may be appointed under the Social Service Department and their number is very few. In most of the district Social Welfare Officer has to perform the job of probation Officer.

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Ibid, s, 58.

Ibid, s, 59.

Ibid, s, 31.

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**3.12 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 National Task Force Meeting (NTF) meeting date on 5 July 2006, 819 children were detained in jail countrywide. There were 471 male children and 40 female children in the jail (NTF: 2006). According to news report," 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 Cade, 1860

• 136 male and 11 female under the Code of Criminal Procedure, 1898

• 95 male and two female under the Special Powers Act, 1974

• 51 male under the Arms Act, 1878

• 98 male and 4 female under the Narcotics Control Act, 1990

• 43 male and one female under the Speedy Trial Act.

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7th National Task Force Meeting, 5 July 2006 The New Age, 25 May 2008

33

**Chapter 4**

**JUVENILE JUSTICE SYSTEM OF INTERNATIONAL STANDARDS**

Juvenile justice has become an international issue with the UNCRC coming into force in 1990. Justice system for juvenile delinquency is a complex process having various dimensions. 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.

**4.1 International Legal Framework for Juvenile Justice**

There are a series of international instruments in relation to dealing with children in trouble with the law. The Convention on the Rights of Child spells out a comprehensive set of rights for protection of children in a juvenile justice system. The dominant feature is that the state is obliged to protect the rights of the child in all categories of informal or formal justice to promote the best interests of child. The CRC Committee stated that to advance the notion of best interest of child, states parties shall develop and implement a comprehensive juvenile justice policy to shield child rights from exploitation as well as to prevent and address juvenile delinquency based on and in compliance with CRC.

34

In addition to the CRC, there is also international soft law in favors of child rights-oriented juvenile justice. It consists of non-binding but authoritative declarations or guidelines including United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)1985, UN Rules for the protection of Juveniles deprived of Liberty (Riyadh Principles)1990, Standard Minimum Rules for the treatment of Prisoners of 1955, and UN Standard Minimum Rules for Non-Custodial Measures of 1999(Tokyo Rules).

These international guidelines also impose soft legal obligations upon states come up with a child-led juvenile justice system. Beijing Rule 1(4) notes that "juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time. contributing to the protection of the young and the maintenance of a peaceful order in society.

**4.2 Definition of 'Child'**

Most likely a child is an individual who is not an adult. CRC defines a child as "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier". The Convention explicitly specifies the upper age limit for childhood as 18 years, but leaves room for the state parties that majority may be attained earlier under domestic laws applicable to the child.

However the definition of child in article 1, CRC is also evidenced by reservations and recognitions of state parties on the beginning and ending of childhood. For instance, Argentina lodged a declaration on ratification that article I ought to be interpreted to the effect that a child means every human being from the moment of conception'. On the other hand, similarly different contemplations administer the end of childhood, for instance, in the USA and in France, children who are 16 years old can be emancipated as adults with parental consent whereas Japan wished to see a

………………………………………………………… Article 1 Bueren, 1998, 34

35

Higher age for the beginning of adulthood as this would be consistent with their domestic legislation. Though the international community could not reach a universal definition of child or childhood. CRC state parties are obliged to go with the text of convention. Bangladesh, as a party of CRC recently adopted NCP and declared any person below 18 years of age as a child notwithstanding any different age is contained elsewhere.

**4.3 Minimum Age of Penal Responsibility**

The convention on the Rights the Child, 1989. which calls for the nations to establish a minimum age "below which children shall be presumed not to have the capacity to infringe the penal law', does not set any specific age. The Beijing Rules state that, "In those legal systems recognizing the concept of the age of criminal responsibility for the juveniles, the beginning of that age shall not be fixed at too low an age level hearing in the mind the facts of emotional, mental and intellectual maturity''. The commentary of this provision clarifies that the minimum age of penal responsibility differs widely owing to history and culture, but if the age is too low or if there no longer age limit at all, the nation of responsibility would become meaningless. Thus it is evident that internationals standards do not prescribe a particular age, but require the Governments to take account of children's physical and mental maturity and their need for special care in establishing a minimum age.

In international arena. efforts are yet be made to agree on a reasonable lowest limit that can universally be applicable as minimum age of penal responsibility. In different countries, the minimum age of penal responsibility differs widely owing to history and culture. However, the UN committee on the rights of the child, which monitors countries implementation of the CRC, has recommended that the age be guided by the

…………………………………………………………………. Ibid, 37 Ministry of Women and Child Affairs, policy 2: 2011 The Convention on the Rights of the Child. 1989, Article 40 (3)(a). The Beijing Rules, 1989. Rule 4.1. Ibid Ibid, Rule 10.3.

36

Best interest of the children and criticized jurisdiction in which the age is set at 10 of below.

**4.4 Powers of Arrest and Arrest Procedure**

**4.4.1 CRC and UN Guidelines**

The CRC states that the arrest and detention of a child must be in conformity with the law, and should be used only as a measure of last resort. Children have the right to be informed promptly of the charges against them, and to have the assistance of their parents and a legal representative at all stages of the proceedings. They must not be subject to torture or other cruel, inhuman or degrading treatment or punishment and their right not to be compelled to give testimony or to confess guilt must be guaranteed.

The Beijing Rules state that, when a juvenile is arrested or detained, his or her parents must be notified immediately, or within the shortest possible period of time. In addition, any contacts between law enforcement agencies and a juvenile must be managed in such a way as to respect the legal status of the juvenile, promote his or her well-being and avoid harm to the juvenile. Specifically, police must not use harsh. abusive or obscene language or physical violence in their dealings with children. In order to best fulfill their functions, police officers who frequently or exclusively deal with juveniles must he specially instructed and trained. In large cities, special police units should be established for that purpose.

…………………………………………………………………………………………….. The Convention on The Rights of the Child. 1989, Article 37 (b) Ibid Articles 39 and 40(2) UN Standard Minimum Rules for the Administration of Juvenile Justice, Articles 10 and 12

37

**4.4.2 Regional Assessment**

To date, three countries in the region - India, Nepal and Maldives - have established or are in the process of establishing, Specialized juvenile police units. Comprehensive child friendly police protocols are in the process of being developed in Nepal, Sri Lanka and in some states of India. The Maldives and most Indian states require that police wear plain clothes when dealing with children. None of the countries offer alternatives to formal arrest as a means of initiating proceedings against a child, or require that arrest he used only as a measure of last resort. In most of the region, police have broad powers to arrest or apprehend children on a variety of grounds, including for status offences such as vagrancy (Pakistan. Nepal, Sri Lanka, Bangladesh), for public nuisance (Nepal), for being "incorrigible" or exposed to moral danger (Sri Lanka, Bangladesh, Nepal, Pakistan), for prostitution (Bangladesh, Sri Lanka, Nepal), and "on suspicion" (Bangladesh, Bhutan). Street children and child sex workers are particularly vulnerable to arbitrary arrest under these provisions.

Restrictions are placed on the use of handcuffs against children in Afghanistan, India, Nepal, Pakistan and Bhutan (for children under 13 only), But in some countries are reportedly not always followed in practice. No countries has explicit restrictions on the use of physical force in the arrest of children, and throughout the region there are continued reports of police corruption, illegal arrest, forced confessions and physical abuse of children during arrest or while in police custody, particularly in Pakistan, Bangladesh, India, Nepal and Sri Lanka. In all countries except Maldives, Children cannot be held in police custody for more than 24 hours before they are brought before the Court. Maldives permits police custody of children for up to seven days to

…………………………………………………………………………. Bangladesh Children Act, Vagrancy Act, 1943, Code of Criminal procedure, Article 54, and Suppression of Violence against Women Act, 2000: Pakistan Punjabi Youthful Offenders Act, 1952 and Sindh Children's Act, 1955; Nepal Public Offences and Punishment Act, 2000: Sri Lanka Children and Young Person's Ordinance, 1936 and Vagrants Ordinance, 1841; Bhutan Code of Civil and Criminal Procedure

Nepal Juvenile In Detention Police Custody Monitoring Report, UNICEF 2005: Pakistan Situational Analysis of Juveniles in Jail, NCCWD, 2001: India Juvenile Justice System and the Rights of the Child, Prayers Institute, 2003

38

facilitate investigations or prevent re-offending. Afghanistan, Sri Lanka and Bangladesh explicitly require that, while a child is in police custody, he/she must be detained separately from adults. In India, children may not be detained in a police station at all, and must be taken immediately to an Observation home.

**4.5 Bail and Pre-trial Detention**

**4.5.1 CRC and UN Guidelines**

The CRC states that detention pending trial shall only be used as a measure of last resort and for the shortest possible period of time. The Beijing Rules states that whenever possible, alternatives such as close supervision, placement with a family or in an educational or home setting should be used. In addition, the JDLs state that juveniles detained under arrest or awaiting trial are presumed innocent and must be treated as such. Detention before trial must only be used in exceptional circumstances, and all efforts should be made to impose alternative measures. When detention is used, courts and investigators must give the highest priority to expediting the process to ensure the shortest possible period of detention. Juvenile detained at the pre-trial stage must be separated from convicted juveniles, and should have opportunities to pursue work and to continue their education or training.

……………………………………………………………………….. Maldives Law on the Protection of the Rights of the Child and Rules Relating to the Conduct of Judicial Proceedings (No. 6). Ministry of Justice, 2003, as amended. Afghanistan Juvenile Code 2005, s,12. Bangladesh Children Act, 1974 s, 1, Sri Lanka and Young Persons Ordinance. 1936, s, 13 India Juvenile Justice (Care and Protection) Act 2000, Ss 10, 12, 13 Convention on the Rights of the Child, Article 37 UN Standard Minimum Rules for the Administration of Juvenile Justice, Article 13 UN Rules for the Protection of Children Deprived of their Liberty, Articles 17 and 18

39

**4.5.2 Regional Assessment**

The police have the authority to immediately release children on bail into the custody of their parents in Afghanistan, Bangladesh, India, and Sri Lanka. These provisions have the potential to greatly reduce the number of children help in police lock-ups, but are reportedly rarely used. A major obstacle, particularly in urban areas, is locating the child's parents. In all countries, the Court has the authority to release a child on bail or into the Care of his/ her parents pending the completion of the case. In Afghanistan, Nepal, India, Pakistan and Sri Lanka, children can also be released into the care of some other fit person or organization. No country in the region has an explicit requirement that pre-trial detention be used as a measure of last resort, in Afghanistan, India, Maldives, and Pakistan, the presumption is in favor of bail, but the grounds for refusal are quite broad, including that the child, if released, would be exposed to moral danger or have comet with known criminals (India, Pakistan); That the "truth is not forthcoming from the child" (Maldives), and for all children charged with felonies (Afghanistan). Monetary bonds am still regularly required to guarantee a child's release in Bangladesh, India, Nepal, Pakistan, Sri Lanka, and are often set beyond the means of many families. As a result, street children and children from disadvantaged families are at greater risk of pre-trial detention not because of the seriousness of the offence they committed, but because their parents cannot be located, cannot afford to pay for their release, or have been deemed unfit by the courts or probation officers. In Bangladesh and Sri Lanka, child victims of crime are also subject to pre-trial detention in closed facilities, including adult prisons, to preserve their evidence.

……………………………………………………………………………. Afghanistan Juvenile Code 2005, s, 11; Bangladesh Children Act, 1974, s, 48; India Juvenile Justice (Care and protection) Act, 2000, s, 12; Sri Lanka Children and Young Persons Ordinance, 1936, s, 1 Afghanistan Juvenile Code 2005, s, 20; Bangladesh Children Act, 1974, s, 49; India juvenile Justice (Care and Protection) Act 2000, s, 12; Maldives Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003, d, 289(4) and (5), as amended; Nepal Children's Act, 1992, s. 50; Pakistan Juvenile Justice Systems Ordinance 2000, s, 10; Sri Lanka Children and Young Persons Ordinance, 1936, s.14

40

**4.6 Juvenile Courts and Trial Procedures**

**4.6.1 CRC and UN Guidelines**

The CRC states that children alleged or accused of a law violation have the right to have the matter determined without delay by a competent, independent and impartial authority in a lair hearing. Throughout the proceedings, children have the right to have a Parent present, and to have appropriate legal or other children assistance. In addition children must be provided the opportunity to express their views and to be heard in any judicial or administrative proceedings affecting them. The Beijing Rules state that proceedings must be conducive to the best interests of the juvenile and shall he conducted in an atmosphere of understanding, which shall allow the juvenile to participate fully and to express herself or himself freely. In addition, both the CRC and the Beijing Rules require that juveniles right to privacy be respected at all stages of the criminal proceedings in order to avoid harm being caused to them through publicity or by the process of labeling. No information that may lead to the identification of a juvenile shall be published.

**4.6.2 Regional Assessment**

With the exception of Bhutan, juvenile justice legislation in all countries requires that fully separate juvenile courts be established (Afghanistan, India, Maldives), or provides the option of separate courts or designating specialized children's magistrates (Bangladesh, Nepal, Pakistan, Sri Lanka). Afghanistan also has specialized juvenile prosecutors. In India and Nepal, children's cases are to be heard by a panel that includes both a magistrate and social workers).

……………………………………………………………………………………… Convention on the Rights of the Child, Articles 12 mid 40 Ibid, Article 15 CRC Article 40(2); Beijing Rules Article 8 Afghanistan Juvenile Code 2005, s, 9; Bangladesh Children Act, 1974, s, 3 and 4; India Juvenile Justice (Care and Protection) Act 2000, s, 4 and 29; Maldives Law on the Protection of the Rights of the Child and Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003, as amended, s, 289(7), (10) (12); Nepal Children's Act, 1992, s, 52; Pakistan Juvenile Justice Systems Ordinance 2000. s, 4; Sri Lanka Children and Young Persons Ordinance, 1936, s,2

41

No country has introduced comprehensive child-sensitive rules of court; however legislation generally includes some provision to reduce the formality and intimidation of the courtroom. Legislation in Pakistan, Bangladesh, and Sri Lanka requires that children's cases be scheduled separately from adults. In all countries, Juvenile proceedings should be closed to the public, and the publication of the child's name is prohibited. Parents are entitled to attend proceedings in all countries, and can be required by the court to be present in Afghanistan, Bangladesh, India, Sri Lanka and Maldives. However, no country explicitly recognizes children's right to express their views in the proceedings, and legal provisions in Afghanistan, Bangladesh, India, and Pakistan permitting the court to dispense with the child's attendance violates both the right to participate and the right to due process. In Bhutan, guilty pleas are entered by child's parent, rather than the child him/herself. In Nepal, the majority of juvenile offences are sanctioned by district administrators, rather than the courts, with no process.

**4.7 Sentencing**

**4. 7. 1 CRC and UN Guidelines**

The CRC states that deprivation of liberty shall be used only as a measure of last resort, for the shortest appropriate period. A variety of sentencing options, such as care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programmes and other alternatives to institutional care should be available to ensure that juveniles are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and to the offence. Neither capital punishment nor life imprisonment without the possibility of release shall be imposed on children under the age of 18

The Beijing Rules require that any reaction to juvenile offenders must be in proportion to the circumstances of both the offenders and the offence. Before

………………………………………………………………………………………… Articles : 37 and 40

42

imposing a sentence on a juvenile, the background and circumstances in which the juvenile is living and the conditions under which the crime has been committed must he properly investigated. The sentence imposed should be proportionate not only to the gravity of the offence, but also the circumstances and needs of the juvenile. Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response. A wide variety of dispositions should be available, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Furthermore, in order to promote minimum use of detention, appropriate institutions should be appointed to implement alternatives, and volunteers, local institutions and other community resources should be called upon to contribute to the effective rehabilitation of juveniles in a community setting.

**4.7.2 Regional Assessment**

All countries in the region have some form of special sentencing requirements for children who have been convicted of an offence. Each requires that a child's background and circumstances be taken into consideration when deciding the penalty to be imposed. In all countries except Afghanistan, Bhutan, and Nepal, probation officers assist the courts by providing background reports on the child. However, Courts do not consistently request these reports, and probation officers throughout the region generally lack the skills and resources to conduct comprehensive assessments. In Sri Lanka, delays in the preparation of social reports contribute significantly to

……………………………………………………………………………….. Articles 16, 17 and 18 Afghanistan Juvenile Code 2005, s, 7,8,35-40; Bhutan Civil and Criminal Procedure Code, s, 213 and Penal Code, 2004; Bangladesh Children Act, 1974, s, 51-55; India Juvenile Justice(Care and Protection) Act 2000, s, 15; Maldives Law on the Protection of the Rights of the Child and Rules Relating to the Conduct of Judicial Proceedings (No. 6), Ministry of Justice, 2003, as amended, s, 289 (3), (15), (18) (20); Nepal Children's Act 1992, s, 12; Pakistan Juvenile Justice Systems Ordinance 2000

43

Children's extended pre-trial detention. India's strategy for overcoming this problem is to permit volunteers, generally social workers attached to NGOs, to prepare reports. In Afghanistan, Nepal and Bhutan, children's sentences are a fixed percentage of the adult penalty for the specific crime. In Sri Lanka, Bangladesh, India and Pakistan, the length of time a child is committed to an institution is not proportionate to the offence or for the shortest appropriate period. Instead, legislation either stipulates a specific term that is applied to all children subject to a custody order (three years in Sri Lanka, minimum two years and maximum 10 in Bangladesh), or imposes a presumption in favor of institutionalization until the child turns eighteen (India, Pakistan). When applied to minor crimes, these terms are well in excessive of what the offence warrants, and harsher than what an adult would have received for the same crime. For example, while petty theft would rarely result in a prison term for an adult, in India a seven year-old who commits theft can be subject to deprivation of liberty for 11 years.

**4.8 Specialized Institutes for Children in Conflict with the Law**

The CRC in article 40(3) requires the parties to promote the establishment of special procedures, authorities or institutions which would be child friendly and child sensitive. The CRC Committee in (paragraphs 92 and 94) of General Comment 10 stated that "a comprehensive juvenile justice system further requires the establishment of specialized units within the police, the judiciary, the court system, the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child". The establishment of specialized child friendly institutions, for instance, child ombudsman, juvenile police unit, is to foster the rehabilitation process and nourish child's development.

44

**4.9 State Security / Antiterrorism Laws**

Nepal and Pakistan currently have antiterrorism legislation in place that overrides all protections provided in juvenile justice legislation. In Nepal, children suspected of Maoist affiliation may be detained by police suspected of or armed forces for up to one Year without charge, trial or judicial oversight. In Pakistan, police have wide-ranging powers to arrest suspected terrorists, who are tried by special courts without the procedural protections of juvenile justice legislation. India and Sri Lanka have recently repealed similar legislation.

………………………………………………………………………………………… Nepal Terrorist and Disruptive Activities. (Control and Punishment) Ordinance; Pakistan Anti-Terrorism Act, 2002, 64 India Prevention of Terrorism Act; Sri Lanka Prevention of terrorism Act 1979

45

**Chapter 5**

**JUDICIAL ACTIVISM FOR THE PROTECTION OF JUVENILE OFFENDERS IN BANGLADESH**

**5.1 Prohibition on Joint Trial**

Despite the authority for joint trial in some circumstances where persons who are accused of commission of the same offence in the same transaction the Children Act prohibits the proceedings of a child together with an adult. Therefore, the Act is an exception where a separate judicial proceeding for a child offender is required though he/she commits an act, which is criminal by nature, with an adult. In other words though a child have committed an act of criminal nature jointly their trial will not be held together as required by the Code of Criminal Procedure, 1989, A child will not face a judicial proceeding jointly with an adult.

The issue of joint trial of a child with an adult has been decided in a number of cases. For example, in Shiplu and another v. State, Shiplu, a boy below 16 years of age was tried with his mother for the killing of Rachana Begum under section 302/34 of the Penal Code, 1860. They were convicted by the trial court and sentenced to imprisonment for life and to pay a fine of Tk.5000, in default, suffer simple imprisonment for one year more.

…………………………………………………………………………………. Code of Crirninal Procedure, 1989, s 239 Children Act, 1974, s, 6. 49 (1997) DLR, 53.

46

In the appeal, preferred by Shiplu, the conviction of the trial court was invoked by appellant's advocate, to be set aside for two reasons. First, Shiplu was a child at the time of the trial and secondly, trial of Shiplu was not taken place in a juvenile court.

The first question that was raised by the appellant's advocate is that appellant Shiplu was a child at the time of trial. Therefore his conviction is in contravention with section 6 of the Children Act which prohibits joint trial of a child offender with an adult. In addition, the appellant's lawyer argued before the court that it was the duty of the trial court to make an inquiry as to the age of the appellant Shiplu which was not done by the trial court at the time of trial. Therefore, the trial of appellant Shiplu, jointly with an adult, suffers from want of jurisdiction.

It is noted that according to section 6 of the Children Act joint vial of a child with an adult is prohibited. Therefore, the appellate court accepted the disposition of the appellant's lawyer and issued an order that the conviction, as given by the trial court, would be set aside. It also condemned the trial court for not having taken into consideration the provisions of the Children Act while dealing with a child. The court observed:

Having considering this question in the light of the evidences on record, we held that the trial court failed to apply its judicial mind as to the age of the appellant Shiplu, who appears to be below the age of 16 years at the time of trial. This makes the order of conviction and sentence passed by the trial court upon appellant Shiplu illegal and the impugned judgment and order are liable to be set aside for want of jurisdiction.

There is no doubt that the ultimate aim of the Act is to prevent any exposure of the child offender and therefore it envisages for a separate trial and prohibits joint trial of a child offender with an adult.

………………………………………………………………………………………….. 49 DLR, Ibid p.55.

47

**5.2 Prohibition on Public Trial**

Public judicial proceeding of a child offender is prohibited under the juvenile justice system drawing by the Children Act. According to sections 9 and 10 of the Act except members and officers of the court, parties of the proceedings, parents or guardians of the child and such other persons as the court thinks fit, no one will be allowed to present during the proceeding of a juvenile Court. This is, one might say, an exception to the constitutional guarantee that the trial of a person shall be held in the open court. It is also a deviation from international norms and procedure of the criminal trial.

Article 35 (3) of the Constitution of Bangladesh provides that "every person accused of a criminal offence shall have the right to a speedy and public trial". Here the word public means the court will be accessible to the entire person generally at the time of trial. Besides, the two most international human rights instrument; The Universal Declaration of Human Rights, 1948 and the Covenant on Civil and Political Rights, 1966 reaffirm the principle of open judicial proceedings as of an accused person. This deviation from public and open judicial proceedings its guaranteed by the constitution, in the case of a child offender, means that the juvenile trial is an exceptional criminal proceeding. In this proceeding the objective of the court is not to punish a child accused of commission of an act of criminal nature. The court will not allow the harmful exposure of the accused child either.

It is noteworthy that the Children Act provides for not only life separate trial procedure of a child offender but also it advocates for a separate court room, separate court building etc. This protection is to ensure the well being of the child offender and obviously for reintegration of the child in the society. Thus a judicial proceeding

………………………………………………………………………………… State v. Roushan Mondal, 59 (2007) DLR, 72.

48

Under the Children Act is not a proceeding to resolve disputes between parties but a proceeding to provide for custody, protection and treatment of children.

**5.3 Determination of the Age of a Child**

Different laws in Bangladesh provide with different definition of a child on the basis of the age limit. A child, according to the Children Act, is a person below 16 years of age. There is a widespread allegation that police never mention correctly the age of child offender in the charge sheet. Two things, (a) absence of birth registration and (b) negligence on the part of the police to inquire into the date of birth properly sometimes create a hardship for the court to determine who is a child. Moreover, police always try to present a child as an adult before the court in order to avoid some corresponding afterwards. Therefore, determination of age of a child by the court becomes a custom in our Administration of justice system and the court solely depends on the visual discretionary power.

On the other hand there is a judicial debate on which date, the date of commission of the offence or the date of trial/charge sheet will be relevant to determine the age of a child. In the Zillur Rahman v. State the Appellant Division took the elate of framing of the charge or holding the trial as the elegant date to determine whether the accused is a child or an adult. The sorts facts of this case was lat the accused convict field a leave to appeal petition against the judgment and order passed by a vision bench of the High Court Division. Zillur Rahman was charged under section 302 of the Penal Code, 1860 and was sentenced to suffer imprisonment for life and to pay a fine of Tk. 5000 if in default to suffer rigorous imprisonment for further six months. The learned advocate for the petitioner advanced only one point, while moving leave to appeal petitioner before the court, at the time of commission of the alleged offence

………………………………………………………………………………………… Shadeen Malik, The Children Act, 1974: A critical commentary, 1st ed, (Dhaka: Save the Children UK, 2004), p, 73 23 (2003) BLD, AD, 187

49