
An Appraisal of Causes and Consequences of Juvenile Delinquency in Bangladesh: Search for a Durable Solution

Md. Aktarul Alam Chowdhury¹

Md. Hasnath Kabir Fahim²

Abstract

In today's global village juvenile delinquency is treated as one of the most ominous and touchy offences mischievous for the social order of a country. The trend of juvenile crimes is sharply rising in Bangladesh like many other countries of the world. Due to socio-economic circumstances like absence of proper guidance from family, poverty, situation of residential area, non-accomplishment of basic needs, misuse of social media and internet, both male and female teenagers are getting involved in various types of anti-social activities like ragging, carrying illegal arms and drugs, killing, sex offences, engaging in gangs, smuggling, criminalized politics and many other delinquent actions. These issues are of serious anxiety for the entire nation and immediate solution must be sought out to save youths of the country. This paper, however, tries to trace out the causes of offences committed by juveniles and challenges to eradicate them in the perspective of Bangladesh. To this end this article seeks to analyse the existing national juvenile justice system and their limitations regarding the treatment of juvenile offenders. Finally this study suggests to expand the reactive approach of treatment with special attention for the protection of the interest of the juveniles and to ensure youth-friendly environment in every stage of respective institutions.

Keywords: Juvenile Justice, Juvenile Delinquency, Separate Trial System, Reformatory Approach.

1. Introduction

Children are often considered as the most vital object of a nation and future citizens to lead the prosperity of a country. The fundamental unit of human civilization is family and the teaching of parents makes a perpetual impact in

¹ The author is presently working as an Assistant Professor at Department of Law of International Islamic University Chittagong (IIUC), Bangladesh. He completed his Graduation LL.B (Hon's) and Masters in Law (LL.M) from the University of Chittagong, Bangladesh. Later he has also achieved 2nd Masters in Intellectual Property Law from University of Turin, Italy under the prestigious scholarship awarded by WIPO Academy and University of Turin, Italy. His email address is aktarlawcu@gmail.com

² The author is an Advocate practising at District and Sessions Judge Court, Chittagong, Bangladesh. He completed LL.B (Hon's) & LL.M from IIUC obtaining first class first with distinction. His email address is fahim.law22@gmail.com

the mind of a child. Thorough care and realistic education by both parents play the utmost role to develop the physical and mental maturity of a child. Outside a family, the socio-economic and political situation of society makes impact on the nature and behaviour of its members, mostly on juveniles. These juveniles gradually develop, make own views, desire separate identity from parents and increase their ability to decide about social, political, cultural and sexual issues. These changes are said to be normal indeed but problem grows when juveniles greed delinquent tendencies and act against the laws and social norms of country.³ However, social system and norms vary from country to country and anti-social activities of a country may not have the same status in another country. There is an intimate connection between crime and age as criminality tops in adolescence and falls with age.⁴ An addiction to commit crime most often shakes the mind of Juveniles. One of the common disasters of society occurs when juveniles respond to social anomalies in ways not permitted by social norms and values.⁵ In general observation, juvenile is a child who has not yet attained the age of majority and cannot think rationally as well as fails to realize the consequences of his/her deed. Under the provisions of UNCRC, 'juvenile' refers to a person below the age of eighteen years. As per the legal concept, a juvenile becomes delinquent when he commits violation of penal laws of country. The Second United Nations Congress on the Prevention of Crime and Treatment of Offenders (1960) states, 'By juvenile delinquency should be understood the commission of an act which, if committed by an adult, would be considered a crime'. Juvenile delinquency indicates to a variety of misbehaviour of juveniles which are hazardous to society and some sort of penalty and reformative measures are there. At present the juveniles are not only confined in traditional offences like running away from school, telling lies, stealing stationeries but they are engaged in numerous suspicious activities which constitute serious violation of law and order of the country.⁶ Different types of offences such as kidnapping, gambling, drinking, theft, vagrancy, drug peddling, murder, teasing, smuggling and sexual harassment are often alleged to be committed by juveniles. These delinquencies by juveniles have got different patterns because some of these offences are committed by individual delinquent, some are by companionship and some are by situational delinquent.

Bangladesh is one of most densely populated countries of the world and it is a common scenery of the country that people continuously shift to urban from village due to industrialization, urbanization and numerous working opportunities. As a result the population in urban area is highly rising and these

³ Deepshikha Agarwal, 'Juvenile Delinquency in India- Latest Trends and Entailing Amendments in Juvenile Justice Act' (2018) 3(3) PEOPLE: International Journal of Social Sciences 1365-1383.

⁴ Rizvi Ahmad, *Theory and Practice of Criminology: Bangladesh Perspective* (2nd edn, University Publications Titu publication 2017) 188.

⁵ Farhana Helal Mehtab, 'Juvenile Justice System of USA and Bangladesh: A Comparative Study of Diversion and Alternative Measures and Hard Realities of Juvenile Justice System in Bangladesh' (2009) 12 The Dhaka University Journal of Law 54.

⁶ *ibid* (n 4).

people usually forget their previous norms, ethics and social customs. Like many other countries of the world juvenile delinquency has become a leading issue of concern for Bangladesh while many sociologist and criminologist believe that the rate of juvenile delinquency is increasing due to the result of growing urbanization and industrialization.⁷ Juveniles are deemed to be the most sensitive portion of every society as their reaction towards any social problem is very rapid. In Bangladesh juvenile is a person who attained the age of thirteen but yet to attain age of eighteen while the age of criminal responsibility under the Penal Code of Bangladesh is above the age of nine years.⁸ Several reports show that majority of the families impose over pressure and control on juveniles which lead them to get involved in many delinquent activities.⁹ These disorders throughout the society have increased the rate of juvenile delinquency as well as it is a serious threat for the future nation because juvenile delinquency is the root of adult criminology. The social structure of Bangladesh has become immensely unsuccessful in providing the juveniles a friendly environment and nature for their ultimate mental and physical growth. There are about 40 million children of age 5 to 17 years in Bangladesh and among them around 550,000 children are addicted to drugs, some of them are involved in picketing, mugging and human trafficking.¹⁰ Theft, teasing, sexual violence, homicide, gang formation other similar criminal activities are very common among the juveniles. Not only the juveniles from poor families but the juveniles of rich and aristocratic families are roughly getting involved in many criminal activities. In many cases it is found that some parents of both poor and rich families are often engaged with some sort of activities businesses which also induce their children to involve in crimes.

However, the Constitution of Bangladesh under its Article 28 braces up the state to initiate special arrangement in favor of women or child or citizens of backward section for ensuring a better treatment under the justice system. In the cases of *The State v The secretary, Ministry of law, Justice and Parliamentary Affairs and others*¹¹ as well as *The State v The secretary, Ministry of Law, Justice and Parliamentary Affairs and others*,¹² a number of recommendations were made directing the Government to bring essential reformation in the Children Act following the requisite standard guided by the UN Convention on the Rights of the Children (CRC) 1989. Keeping the

⁷ ibid

⁸ Tahsin Khan, 'Protecting the Rights of a Child Offender: The Bangladesh Perspective' (2017) 22(3) IOSR Journal of Humanities and Social Science 49.

⁹ Iqbal Ahmed Chowdhury, Mohammad Maniruzzaman Khan and Imtiaz Uddin, 'Causes and Consequences of Juvenile Delinquency in Bangladesh: A Sociological Analysis' (2012) 1(4) International Journal of Social Science Tomorrow 1-11.

¹⁰ Shibly Noman, 'Treatment of Juvenile Delinquency under the Criminal Justice System in Bangladesh: An Overview' (2018) 3(2) BiLD Law Journal 54.

¹¹ See for details 59 DLR 72, (2007).

¹² See for details 29 BLD 3, (2016).

international standard guided by UNCRC and following the recommendations of the apex court, the Children Act was enacted by the parliament in 2013 for ensuring adequate protection and proper treatment with juvenile delinquency under the criminal justice system of Bangladesh. The major role in fostering the administration of juvenile justice in Bangladesh is played by the Ministry of Social Welfare and responsible with duties of maintaining correctional and welfare methods such as probation etc for juvenile offenders. But unfortunately adequate means of identifying, counselling and planning of rehabilitation for juvenile delinquents are absent in reality and the current system has failed to equip juvenile delinquents with fundamental abilities to lead their normal life after release.¹³

Objectives

The general objective of this paper is to explore and overview the both formal and informal treatment mechanisms towards juvenile delinquents under the criminal justice system of Bangladesh. Moreover, this study aims to observe the reasons and current perspective of juvenile delinquency throughout the country as well as to trace out probable and immediate solution to reduce this anarchy of society. This paper also tries to identify the upcoming challenges to diminish the occurrence of juvenile delinquency in the country.

Methodology

This study is designed on information that is gathered from both primary and secondary sources of data. Primary data has been collected from several existing national and international legislations and case references. On the other hand, secondary data has been collected from the books, articles, journals, internet etc relating juvenile delinquency in Bangladesh. To this context both qualitative and descriptive method of study has been used in this article.

2. Meaning of Juvenile Delinquency

The term 'Delinquency' is evolved from the Latin word '*delinquare*' which means 'to omit'. This term was used by the Roman to refer to 'the failure of a person to perform the assigned task or duty'. William Coxson used the term 'delinquent' in 1484 to relate a person found guilty of customary offence. In 1605 this word was used by Shakespeare in his famous play Macbeth. In broad sense, delinquency refers to any form of misbehaviour or alteration from the conventional norm of behaves of society. In general it is quite difficult to bring out the precise definition of juvenile delinquency. The legal definition of juvenile delinquency does not often assist to realize the exact

¹³ Dr. Nahid Ferdousi, 'Juvenile Justice for the Best Interest of the Children in Bangladesh: A Legal Analysis' (2013) 18 Journal of Law, Policy and Globalization 22.

nature of delinquency and the status of juvenile offender as the criminal procedures depend upon different circumstances in the cases of juvenile delinquency.¹⁴ Another problem is that the legal definition differs from country to country and time to time. Sociologist Robert said ‘a child can be considered as delinquent only when it becomes necessary to take legal steps for the tendency of his anti-social behavior’. According to the definition of Criminologist Ferdinand ‘the failure of the children to show expected behavior to the society is called juvenile delinquency’. Dr. Sethna rightly said ‘juvenile delinquency involved wrong doing by a child or a young person who is under an age specified by the law of the place concerned’. In some particular cases juvenile delinquency refers to some non-criminal activities which are permitted if committed by an adult person like smoking or staying outside home at night but if such acts are done by a juvenile, it is treated as juvenile delinquency.¹⁵ In 1960 juvenile delinquency was discussed in the United Nations 2nd congress on Crime and Criminal Justice and it was concluded that ‘all the activities committed by children are delinquency which are violations of criminal law, inconsistent and not recognized by society’. Thus commission of any forbidden act by a juvenile is called juvenile delinquency and the juvenile found guilty of such offence is called juvenile delinquent.

3. Historical Background of Juvenile Justice System in Bangladesh

The aptitude of juvenile delinquency existed throughout the ages. Both the adult and juvenile were treated equally in case of conviction in early Europe. Under the doctrine of common law, the legal system of American colonists brought from Britain, a juvenile of 7 years or older would be subject to same penalty as an adult person.¹⁶ In Norway, for the offence of stealing adult might lose both hands and children may lose one hand as penalty. The first ever concept of juvenile justice along with separate court system was introduced in the United States of America in 1899. In 1923 first international attention regarding the safeguard of children was introduced by Geneva Declaration under the approval of League of Nations.¹⁷ Finally after the successful establishment of United Nations in 1945, the interest of children as human rights based agenda made its position in numerous international instruments.

Bangladesh has a long history of promulgating laws for juveniles which is adopted from British reign in Indian sub-continent. During the British period

¹⁴ Ahmad (n 4).

¹⁵ *ibid*

¹⁶ M. Bulbul Ahmed, ‘A Crucial Observation on Juvenile Delinquency: Bangladesh Perspective’ (2011) 5 ASA University Review 297-310.

¹⁷ Ferdousi (n 13).

there was no mobilized movement for the ensuring welfare of children.¹⁸ In 1850 for the first time in India Apprentice Act was passed highlighting on the ensuring the interest of children. However, in British India the milestone development in the long history of juvenile justice system was the Report of Indian Jail Committee 1919-2020.¹⁹ Separate trial system, establishment of children court and proper treatment mechanism for juvenile offenders were recommended by the committee and suggested precise probation system under the supervision of probation officer.²⁰ Accordingly the Madras Children Act, 1920, the Bengal Children Act, 1922 and the Bombay Children Act, 1924 were enacted.²¹ During the regime of Pakistan the Probation of Offenders Ordinance was passed in 1960 which provided provisions of probation service for juvenile delinquent.²²

In Bangladesh there is no separate law on juvenile justice. After the independence of Bangladesh, the Children Act, 1974 and the Children Rules, 1976 were passed which contracted all the past legal frameworks. These laws were passed before the commencement of many international instruments and failed to ensure the separate treatment mechanism for juvenile delinquents from adult criminals during legal proceedings. Reflecting the principles of the CRC 1989, the Government of Bangladesh newly enacted the Children Act, 2013 repealing the Children Act of 1974. Newly enacted Children Act, 2013 is the fundamental law dealing with children in need of safety and care as well as children in conflict with law and order of the country.²³ Currently there are three specialized juvenile courts along with three specialized correctional institutions for the rectification and rehabilitation established in the country for the juvenile offenders. These institutions are named as the Child Development Centres and among them two centres are for male juveniles located in Tongi and Jashore and another is in Konabari, Gazipur for female juveniles.

4. Causes behind Juvenile Delinquency in Bangladesh

Interdisciplinary observations uncover that there are different causes for juvenile delinquency. Non-fulfilment of basic needs, crime in residential area, lack of family control, internal conflict in family, negative impact of internet,

¹⁸ Khushboo Shah, 'What is an age? Consider the Neuroscience Dimension of Juvenile Law' (2017) 26 Southern California Interdisciplinary Law Journal 167.

¹⁹ Abdul Hakim Sarker, 'Juvenile Office in Dhaka City: A Socio-Economic Perspective' (1988) Institute for Social Welfare and Research, Dhaka University, Dhaka.

²⁰ Shah (n 18).

²¹ M. S. Hossain, 'Separate Treatment Measures for Juvenile Offenders in Indian sub-continent: A Brief Historical Description' (2008) Human Rights, Investment-Prosecution and Juvenile Treatment, Dhaka: Social Science Research Council, Ministry of Planning 121.

²² See (n 13) for details.

²³ Noman (n 10) 53-81.

involvement in child labor, absence of proper recreation etc are some of the fundamental causes of juvenile delinquency. Sociologists give emphasize on social causes while economists, biologists and psychiatrists give emphasize on economic, physiological and psychological causes. In general all these causes are responsible for juvenile delinquency.

4.1 Social Factors

Juvenile delinquency is a social crux and usually juveniles gain much delinquent behaviour depending what upon what opportunities are obtainable in their society.²⁴ In this regard, proper care of parents towards children is the most essential element for their normal physical and mental growth. Family is the first and foremost place where the formation of personality starts growing. But in the families where there is lack of proper parental control over the children, there is possibility that children of that family may get involved in delinquent activities. A happy conjugal life of parents entirely influences the lifestyle and thinking of their children but the lack of harmony in the relationship of parents badly disturbs the mental stability of children and tends them to follow wrong paths. Insecurity within the family, misunderstanding, quarrel between siblings etc have adverse impact in the emotion of children as they often forget to show respect to the elders. Presently the rate of divorce is sharply rising in Bangladesh and this is another major cause of juvenile delinquency. Children of such broken family do not get the proper affection from their parents. Absences of mother or father due to divorce or death, misunderstanding among parents are remarkably indebted to juvenile delinquency. Some families are there having good number of children and if anyone of them face undue discrimination in respect of affection and opportunity, they subconsciously grow delinquent tendency. Companionship has strong influence on juveniles while violent companionship turns juveniles into juvenile delinquent.²⁵ Gradually these juveniles form gangs in the society and the extent of their delinquency gets more aggressive. Criminality of parents can be a significant reason of juvenile delinquency as some research reports show that where anyone of the parents is engaged in criminal activities, their children often become criminal.²⁶ Such criminal actions of parents indulge their children to commit crimes. Some juveniles also attain such delinquent habit by imitating some of their relatives who are criminals. The risk of being delinquent by the children of such family is very high as they become curious and thrilled by criminal deeds of relatives.

4.2 Economic Factors

One of the most important causes of juvenile delinquency is poverty. Bangladesh is yet a developing country and majority of the juveniles fail to

²⁴ Agarwal (n 3).

²⁵ Chowdhury, Khan and Uddin (n 9) 1-11.

²⁶ Ahmad (n 4).

achieve their basic needs from family and it leads them to pick wrong way and involve in delinquent activities. Children of poor families of Bangladesh often fail to achieve primary education and don't earn adequate knowledge to differentiate between right and wrong activities. As a result they choose illegal jobs to earn money and fulfil their basic needs. Child labor has been treated as a serious factor that operates juvenile delinquency. Almost majority of juvenile delinquents lead their life by hard working.²⁷ Many delinquents take part in killing operations, robbery and bank looting in exchange of money. Underworld godfathers are often alleged to use juveniles for fulfilling their criminal missions. These juveniles earn money by getting involved in smuggling, hijacking, pick pocketing and drug selling to fulfil their basic needs. Juveniles of rich family receive liberal amount of money which incites them to make wrongful use of that money. They get easily involved in gambling, visiting porn websites, political sabotage, buying illegal drugs and arms etc.

4.3 Biological and Environmental Factors

According to biological and physiological explanation people are influenced by their genetic makeup. Many vital hormonal changes take place inside the body of juveniles which are responsible for impassioned and disobedient behavior.²⁸ Some kind of illness and incomplete growth may also be liable for juvenile delinquency. Many medical explanations opine that the criminals bear different physiological characters from righteous people.²⁹ Environmental and ecological factors play momentous role in the growth and behavior of juveniles. For socialization the environment of slum area of Bangladesh is not at all suitable but such residential environment has bigger role for building up the attitude and mentality of juveniles. Existing environment of slum area never brings good lesson for juveniles and promotes them to become criminal gradually. Due to such nasty condition of residential area the number of female delinquents beside male is also alarmingly rising. It is well established that if the residential area is very effective for the development of socialization among the juveniles, the rate of juvenile delinquency automatically reduces.

4.4 Psychological Factors

It is often realized that teenagers are mostly guided by their emotion rather than logic. Such emotional behaviors are equally liable for occurrence of

²⁷ M. Tajul Islam, 'Juvenile Delinquency in Bangladesh: Identifying the Causes with Reference to Some case Studies' (2015) Law Journal Bangladesh <<http://www.lawjournalbd.com/2015/02/juvenile-delinquency-in-bangladesh-identifying-the-causes-with-reference-to-some-case-studies/>> accessed 6 January 2019.

²⁸ *ibid* (n 3).

²⁹ *ibid* (n 26).

juvenile offence. Before approaching towards any act the juveniles fail to judge the probable circumstances and upcoming result of that act. Some sociologist described that juveniles accomplish their desire by abnormal means when they fail to satisfy their fundamental needs.³⁰ Majority of the children in Bangladesh fail to get proper recreation from their home, educational institution and other social institutions. In such situation they do not get due support to grow up mentally which leads them to engage in various offences. In many families where both the parents are service holder outside home often fail to spend reasonable time with their growing children. These children spend lonely time in house which induces them to find their happiness outside home. Frequently spending time outside home and mixing with bad company increases the risk of deviation in the behavior of children as they do not hourly get their parents beside them to share their feelings. Furthermore, present world is the world of technology with both blessing and fatality for mankind. Juveniles in Bangladesh are seen to be always busy in using smart phones, watching action movies, chatting with friends through internet etc which deter them from learning some social values as well as continuous use of these technologies have severe negative impact on their brain functioning. Very few numbers of movies are now produced with good social lesson but mostly are full of action, fight, sensual and breath-taking scene and many other anti-social activities which make deep psychological knock on juveniles.

4.5 Cultural Factors

The prosperity in the field of industrialization helps to strengthen the economy of a country. But the running industrialization and urbanization are repeatedly breaking the joint families and reducing family influence over the children. Many families are continuously migrating to urban area for want of service and education but making it over crowded. In some regions of Bangladesh river erosion has become a major problem. Residents of those areas are losing their homeland and coming to urban areas in search of accommodation and job. The cost of living as well as slum dwellers are uniformly rising. Poverty, illiteracy and unemployment have added more sufferings to these people. At the end the children of these families having no other occupation get involved in massacre, smoking, drug business, prostitution, snatching and many other delinquent acts and even some politicians also use these juveniles to sustain their dominance within their locality.³¹ Some unjust cultures from neighbouring countries have exceedingly intruded and diminishing the local cultures.

³⁰ ibid

³¹ ibid

5. Incidents and Cases of Juvenile Delinquency in Bangladesh

Throughout ages Bangladesh has witnessed many horrible occurrences of juvenile delinquency. One of those is the murder of both the parents by Oishee whose age was nearly 19 years. She brutally killed both her parents while they were sleeping in their house. Oishee had been suffering from depression since many years. Once she was a topper in school but later was equally addicted to drugs and had bad companies. After killing of her parents Oishee confessed her offence and described that her parents never tried to understand her emotions and failed to fulfil her basic needs. She never received proper recreation from her family and was often subject to severe punishment. The incident took place in 2013. Oishee used sleeping pill in coffee which was served to her parents. When they were asleep she firstly killed her father and then her mother. Her aggression towards her mother was very horrible as she made around eleven wounds on her mother's body. When her younger brother found their parents dead, Oishee lied to her brother and house mate. She left home in next morning with jewellerys. Some friends of Oishee were alleged to induce her in commission of this murder case. Oishee was sentenced to death penalty and later High Court Division commuted her sentence to life imprisonment. Another notable incident took place in 2018 at Chattogram when a girl named Tasfia was murdered who was a student of nine standards of Sunshine Grammar School and College. She was a girl of 16 years who went on a date with her boyfriend Adnan. On that day she did not return home and on next day her dead body was found at the Naval Road area. Tasfia and Adnan first became friends on social media. Later on their friendship turned into amour. She went out to meet her boyfriend at a restaurant without informing her parents. Her father claimed that the murder was pre-planned by her boyfriend. Her father added that several gangs of juveniles in the urban areas of Chattogram are engaged in many anti-social activities. The case is still pending before the court.

6. International Instruments towards Juvenile Delinquency

The problem of juvenile delinquency around the world is not a new issue but frequently taking more aggressive form. Considering the ongoing situation many international conventions, rules and guidelines were made for ensuring the legal rights of children getting involved in conflict with law. Notable numbers of initiatives are taken by the United Nations for setting the standard of treatment for these delinquent children such as the UN Convention on the Rights of the Child, the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules³²), the UN Guidelines for the Prevention of

³² 'Beijing rule' is a UN General Assembly Resolution on the treatment of juvenile prisoners and offender of its member states which is called United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

Juvenile Delinquency (Riyadh Guidelines³³), the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), Guidelines for Action on Children in the Criminal Justice System and many more.

6.1 The UN Convention on the Rights of the Child (UNCRC) 1989

The UNCRC Convention is the comprehensive international instrument which provides a standard for the state parties while children engages in any criminal activities as well as requires state parties to take every necessary approach for the safeguard of children against any severe and degrading punishment or discrimination. The Convention also contains directions towards public and private social welfare bodies, court and any other relevant administrative authorities to ensure proper welfare means for the enhancing the rights of children. CRC describes that state parties shall ensure that a child under age of 18 years shall not face any punishment in the form of torture, cruel and inhuman treatment or imprisonment and shall not be deprived of liberty arbitrarily.³⁴ Such a child shall also not be tried jointly with adults and must be given adequate scope to maintain contact with family. Under the aforesaid article, if any child under 18 is deprived of his liberty then he will have the right to challenge such deprivation in the court of law. The Convention on the Rights of Child says that any child during trial shall be deemed to be innocent until proven guilty and has the right to take legal assistance from parents. A child shall not be compelled to confess guilt and if he/she fails to understand the language of court, an interpreter to be appointed. The Convention guarantees the child's right to privacy during the whole stage of proceedings. With conformity with the direction of the Convention the state party must enact laws, make regulations and establish courts for the separate trial system applicable to the children alleged to be delinquent. The state party also bears a duty to fix a minimum age below which a child shall not be presumed to have the ability to commit any violation of penal laws.³⁵ There shall be availability of adequate means of care, guidance, probation, vocational training program, counselling, foster care and other relevant institutions necessary for the welfare of children.³⁶

6.2 Beijing Rules 1985

Provisions of separate and specialized system of juvenile justice are highly emphasized by the Beijing Rules of 1985 and discouraged capital as well as corporal penalty for the children. These rules ensure the education and care

³³ 'Riyadh Guidelines', Adopted and proclaimed by General Assembly resolution 45/112 of 14 December complementing the Standard Minimum Rules for the Administration of Juvenile Justice adopted in 1985, paving a positive and pro-active approach to prevent the rise of crime in the youth.

³⁴ The UN Convention on the Rights of the Child (UNCRC), 1577 UNTS 3(CRC), adopted 20 November 1989, entered into force 2 September 1990.

³⁵ Khan (n 8) 47-54.

³⁶ Noman (n 10) 53-81.

mechanism for the children under detention during trial procedures. Directions to the court are also made by these rules to exercise its discretion for the best interest of children. Beijing Rules of 1985 have discussed that the minimum age of aggregating criminal responsibility must not be fixed at too low age level and state must take initiatives for conserving the privacy of the child offenders by keeping all the relating records confidential. Establishment of special police cell is encouraged by the Rule 12 of Beijing Rules.³⁷

6.3 Riyadh Guidelines 1990

The UN guidelines give more importance on the extensive plan and effectiveness of institutional crime regulating agencies so that prevention of juveniles from committing crime will be more possible. Similarly Riyadh Guidelines also impose restriction on cruel and degrading punishment upon juvenile delinquents.³⁸

6.4 Havana Rules 1990

Havana Rules impose strict restriction to keep all the records confidential relating the trial of child offenders. Imposing any capital punishment on child offenders in the form of cruelty or inhumanity is totally barred. Havana Rules require the state government to formulate and supervise reasonable number of Child Development Centres for the reformation, training and accommodation of child offenders as well as to sustain a minimum standard of care in such development institutions.

7. National Legal Response to Repress Juvenile Delinquency

There are good numbers of legislations relating to children but the Children Act, 2013 is the comprehensive law in Bangladesh dealing with child rights, delinquent children, their correction mechanism and separate justice system from adult offenders. Apart from this, the Constitution of Bangladesh, the Penal Code, 1860, the Compulsory Primary Education Act, 2013, the Vagrancy Act, 1943, the National Children Policy, 2011, the Prevention of Violence against Women and Children Oppression Act, 2000 including some other laws are related to the Juvenile matters within Bangladesh.

7.1 Constitutional Mandate

In Bangladesh the supreme law to govern the fundamental rights of the entire citizen is the Constitution of the People's Republic of Bangladesh. Article 28 has empowered the state to bring special provisions in favour of women and children. Besides, Article 15 describes about the fundamental responsibility of

³⁷ *ibid* (n 33).

³⁸ *ibid*

the state to safeguard the right to social security. Accordingly Article 31, 32 and 35(3) have guaranteed the fundamental rights of protection of law against arbitrary arrest, right to life, right of equal protection of law and right to speedy and fair trial equally applicable for both adult and juvenile.

7.2 Treatment under the Children Act, 2013

The Government of Bangladesh has enacted the Children Act, 2013 which is a substantive law as well as the principal law dealing with the protection of children and children in conflict with law. This Act has repealed the previous Children Act of 1974. The Children Act, 2013 is also known as ‘Shishu Ain, 2013’ which comprises of 100 sections. The preamble of the Act reveals that this Act has been enacted with the aim of implementing the United Nations Convention on the Rights of the Child. The Children Act, 2013 has mentioned that a child means a person of 18 years or below the age of 18 years. One or more Probation Officers in the district, upazila and metropolitan areas shall be appointed by the government under this Act. Formation of a National Child Welfare Board under the supervision of the Ministry of Social welfare is also recommended.

For the purpose of the Children Act, 2013 at least one court shall be established in every district headquarter and metropolitan area which will be known as ‘Children’s Court’. The Government of Bangladesh is empowered to establish juvenile courts under the Children Act, 2013 and in absence of juvenile court the High Court Division or Sessions Court or Additional Sessions Court will be empowered to act as juvenile court. The juvenile court shall have the jurisdiction to try a case in which a child is alleged to commit any offence and dispose of any such case following the proceedings of the Act. The room or building of the juvenile court shall be a separate one from the regular courts of adult. During the trial stage of any juvenile offender the court shall consider his/her age, character, socio-cultural background and living circumstances.³⁹

The Children Act, 2013 states that the Ministry of Home Affairs shall take proper initiative to establish of a ‘Child Affairs Desk’ at every police station headed by a ‘Child Affairs Police Officer (CAPO)’ who will not be below the rank of Sub-Inspector (SI). Under this Act if any police officer arrests a child, then his age must be determined by birth certificate, school certificate or any other information relating birth date of the child. The arresting police officer must inform the Child Affairs Police Officer (CAPO) immediately about the reason, place and details of such arrest of child. No arrested child shall be handcuffed or tied with rope around his waist and must be kept in safe and appropriate place in police station or in a safe place separated from adult offenders.⁴⁰ It is declared by the Appellate Division of the Supreme Court of

³⁹ *ibid*

⁴⁰ *ibid* (n 26).

Bangladesh that arrest or preventive detention of any child under the age of 9 years in any circumstance is illegal.⁴¹ The Children Act has also strictly prohibited the arrest of any person under the age of 9 years. After the arrest of any child, the CAPO must inform the parents or in their absence, the legal guardian or member of his/her family or foster care or probation officer where necessary. If informing any one of these persons is not possible then on the first day of appearance before the court CAPO must submit a report with reasons for his failure to do so. The Children Act, 2013 provides essential procedures to be followed after the arrest of any child and where the Act is silent, the rules of the Code of criminal Procedure, 1898 will be applied.

The Act has forbidden the joint trial of juvenile offenders with adults. In the case where a child took part in commission of offence with adult, separate charge sheet shall be submitted for child offenders.⁴² Section 52 of the Children Act indicates that keeping other laws aside, if the case of any child does not deal with by way of diversion, the child may be released on bail with or without surety. A child offender shall have the right to be presented by legal counsels and if his/her guardians fail to afford a legal counsel, they will receive all sort of assistance from legal aid. The Children Act also forbids public trial of any child offenders and publication of any public report disclosing the identity of the child concerned is strictly prohibited. No sentence of death penalty, transportation or imprisonment shall be passed against a juvenile offender unless the learned court finds that he/she has committed very serious crime or the nature of the juvenile is very unruly or wicked that he/she cannot be committed to the certified institution. Such delinquent juvenile can be sentenced with imprisonment that may extend from 3 to 10 years. The Children Act, 2013 enumerates other alternative approach instead of detaining juvenile offenders in prison. Under the Act the Government or the juvenile court may appoint probation officer for particular juvenile and duties of such probation officer will be supervised by the juvenile court. If the court is satisfied the juvenile offender may be discharged after admonition, released on probation under the care of parents or any other responsible authority. The court after such release of child offenders shall receive regular report about the behavioural and mental condition of the child. It is necessary to note that section 37 of the Act describes that the probation officer will take initiatives to settle the dispute between the victim and the juvenile offender.

7.3 Trial Procedures under the Code of Criminal Procedure, 1898

In Bangladesh, provisions regarding separate trial system for the juvenile delinquents are provided by the Code of Criminal Procedure (Cr.PC), 1898.

⁴¹ *ibid* (n 23).

⁴² *ibid* (n 26).

This law bars the joint trial system of juvenile and adult offenders.⁴³ Section 392 says about the method of inflicting penalty by whipping to the juvenile offender below the age of sixteen years and such whipping shall not exceed thirty strips. Provision relating to the confinement of juvenile delinquent in reformation system is found in Section 399. If anyone below the age of fifteen years of age is sentenced to imprisonment, the court may order to confine such offender in reformatory centre instead of being imprisoned. Under Section 497(1) any person under the age of sixteen years being an accused of a non-bailable offence may be released on bail unless the charge brought against him is punishable with death or life imprisonment.

7.4 Juvenile Delinquency in Penal Code, 1860

The age of criminal responsibility has been fixed by the Penal Code, 1860 of Bangladesh. This Code says that anything done by a child below nine years old is not an offence. It is also mentioned that if a child between nine years to twelve years of age is to be convicted of an offence, it must be ascertained that he has full maturity to realize the nature and consequences of the act committed.

7.5 Provisions of Vagrancy Act, 1943

The Vagrancy Act ensures the rights of vagrant child asking for alms and living upon the help of others. The arrest and detention of such children as well as threat to these children to extort bribe is also arbitrary under this Act.

7.6 Correctional Measures under the Probation of Offenders Act, 1964

Probation is basically a form of suspension of sentence and exemption of offenders from imprisonment. Probation mechanism for juvenile delinquent is governed by the Probation of Offenders Act, 1964 beside the Children Act, 2013. Under this Act juveniles who are first and minor offenders enjoy probation irrespective of age, behavioral and mental condition. These juvenile delinquents will receive social education as correctional system under the supervision of probation officers.

8. Deficiency in Present Juvenile Justice System to deal with Juvenile Delinquency

The age of criminal responsibility is the utmost vital factor to consider a child as a juvenile delinquent. In the legal system of Bangladesh determination of the age of children is always a challenge. The definition of a child under the laws of Bangladesh is not precise and specific. Different laws show different

⁴³ *ibid* (n 10).

age limit for the delinquents.⁴⁴ It is very unfortunate that there is no specific method in the Children Act, 2013 or in any other regulations to determine the age of children of a disadvantaged class like street children, poor and orphan children who were never admitted in school and have no birth certificate. It is very much impossible to understand the age of such juveniles and often reported that these children are kept in prison with adult as their age could not be determined. These juveniles often face torture and harassment by adult criminal and get negative lesson.

The government of Bangladesh has also failed to take any pre-preventive measures to diminish the trend of juvenile delinquency. There is huge lacking in the training system of public officers regarding juvenile justice system. Lack of separate prison for juvenile delinquent, faulty reporting system, no precise system of monitoring, corruption of police department, non-establishment of child help desk in police station have added more agony in the juvenile justice system. As a result juvenile delinquents are continuously being deprived of care and their chance of being reform is not growing. Sufficient number of children court with extended jurisdiction has not yet established.⁴⁵ Absence of child-friendly environment in court room, treating like adults during trial, same lockup for both adult and juvenile, non-arrangement of camera trial etc have made the condition of child offenders miserable.

Adequate numbers of Child Development Centers have not come into existence and shortage of budget and man power still remains. Vocational training institutions are equally short with their numbers and trainers as well. Proper education and awareness based on juvenile delinquency in primary, secondary and graduation level is absent and thus it has created big knowledge gap among children about good and bad deeds. There is not even any direct article regarding juvenile justice in the Constitution of Bangladesh as well as no separate procedural law and penal law made exclusively for juvenile justice system. No separate Child Rights Commission has also been formed and ADR in cases of juvenile delinquency becomes very rare due to absence of such welfare institutions.⁴⁶

9. Recommendation

Juvenile justice system of Bangladesh has been formed by adopting alternative diversionary mechanism instead of customary and complicated justice system to safeguard the best interest of the juveniles coming in conflict with law. Mere promulgation of laws will not bring success but their precise and reasonable implementation is necessary. Many considerable arrangements

⁴⁴ Ferdousi (n 13) 22-32.

⁴⁵ *ibid* (n 10).

⁴⁶ *ibid*

are not possible to implement in Bangladesh unless it is practically cultivated by Government, family members, community members and other stakeholders indeed. Thus, for ensuring the fruitful treatment of the juvenile delinquents, following recommendations can be made to deal with the issue of juvenile delinquency in Bangladesh:

- ❖ The Government shall take effective pre-preventive measures to deter the juveniles from commission of any type of anti-social activities. In this regard Joint co-ordination of Government and NGOs may take a pivotal role to deal with the aspects of juvenile justice within procedural and non-procedural approach.
- ❖ Adequate number of juvenile courts with precise jurisdiction must be established. These courts must be totally separated from traditional criminal courts engulfing flexible and child-friendly trial system.
- ❖ In addition, establishment of 'Child Affairs Desk' at every police station headed by a Child Affairs Police Officer (CAPO) must be ensured. (CAPO) must be well trained up particularly on the matters relating to lockup, monitoring and supervision of adolescents.
- ❖ To deal with the administration of juvenile justice more efficiently, professional training and courses must be arranged for personnel such as judicial officers, lawyers, police officers and probation officers.
- ❖ Mechanism to ascertain the age of juvenile delinquent must be introduced in more specific and practical way to avoid the possibility to treat him/her like adult criminal in trial proceedings.
- ❖ Sufficient number of child friendly institutions with all facilities such as food, medical care, educational and training management should be formed. Proper health care and social education shall be maintained for those juveniles victim of neglect and violence.
- ❖ Proper monitoring system must be ensured by setting up a special cell in the Department of Social Service under the Ministry of Social Welfare. In the Divisional Headquarters, some branch offices may also be opened.
- ❖ Complications to access to court such as court fees and lawyer fees have to be removed. The National Welfare Boards should be placed to take all possible steps to facilitate the juvenile offenders and his/her family to seek assistance of court free from any tangled issues.
- ❖ In the cases of juvenile delinquency, ADR mechanism in the form of mediation, diversion or arbitration should be encouraged. All the procedural information of court proceedings should be informed to the concerned juvenile and family.

- ❖ Study program on issues regarding the proper behavior, juvenile delinquency and punishment must be taught in educational institutions to breed awareness among children about juvenile delinquency.
- ❖ An active and factual Child Rights Commission should be embedded to protect the rights and interest of the children in conflict with law.
- ❖ Social awareness must be made about the negative effect of social media, pornography, internet and adverse foreign culture upon the lenient mentality of the children. Criminal politicians those are inducing juveniles must be socially boycotted.
- ❖ Lastly not least the family, society and the state need to be more conscious and concerned about the learning and daily deeds of the juveniles. Family should deal with the juvenile delinquents with positive and reformatory approach rather than dogmatic and punitive tactics.

10. Conclusion

Juvenile delinquency and social disorder related to this is a common panorama in many countries of today's materialistic world. However, this problem is more formidable in the developing countries and Bangladesh is not free from this most momentous social anxiety of current time. In the society of rapid pace of globalization and industrialization, the control of parents and elders that was previously effective to deter juveniles from getting involved in criminal activities has become faint. In this fast changing world of science and technology people have changes their lifestyle a lot. The basic socialization that worked through groups like family, peer groups, ties of neighborhood, close kin circles is gradually becoming abortive in the societies of Bangladesh. Juveniles face negative effect by these changes of society and led them to become a criminal. Due to poverty, absence of parental affection, conflict within families, lack of basic needs and criminalization of politics etc are the considerable factors behind the alarming rate of juvenile delinquency in Bangladesh is rising alarmingly. They are getting involved in drug and arms business, sexual offences, kidnapping, murder, bombing and many other anti-social activities. The Children Act, 2013 of Bangladesh can be considered as a progressive step by the Government of Bangladesh to establish comprehensive juvenile justice system to keep pace with changing trends in juvenile crimes. But existing legal frameworks and practices do not entirely comply with the standards of international instruments and there remains a gap in implementation to defend the best interest of the children. The lack of knowledge and absence of institutional development towards the rights of the children by those dealing with justice system such as judiciary, police and probation officers are still remaining. Arrest, detention and trial procedures for juvenile offenders are still not suitable. It is now a must for the Government to train up these personalities concerned in criminal justice system so that worthy

implementation of the law can be ensured. More effective and least time consuming more juvenile courts should be established in every district. The civil society as well as the institutional management system shall be accompanied with constructive social policy for the preclusion of juvenile delinquency with emphasis on free learning and employment. Furthermore, the juvenile system of Bangladesh should be shaped with a non-traditional criminal justice system which will be the conjunction of the non-formal attributes with formal procedures and system to deal with juveniles in conflict with law.

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