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# Treatment of Juvenile Delinquency under the Criminal Justice System in Bangladesh: An Overview

*Shibly Noman*<sup>1</sup>

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## Abstract

Several changes have been brought by the state in the criminal justice system to provide a better treatment for the juvenile delinquents in Bangladesh since 1973. The objective of this paper is to analyse and obtain an overview of the treatment system of juvenile delinquents under the criminal justice system in Bangladesh, framed on the standards of the International Laws provided by the Beijing Rules, the Riyadh Guidelines, and the UNCRC. Moreover, its objective is also to investigate the existing informal mechanisms for the treatment of juvenile delinquencies outside the formal criminal justice system. After conducting the study on several case references, books and journals it has been found that the reformation of the juvenile justice system was the high demand of the constituent courts, the law jurists, and law professionals. The study also found that the maximum aspects of the juvenile justice system have been reformed by the Children Act 2013. Although, there are several criminal laws to deal with the juveniles but this Act of 2013 is the comprehensive legislation that provides special, alternative and diversionary treatment system to deal with the juvenile delinquents. However, the juvenile justice system is still in its infancy to protect the legal interests of the juvenile delinquents because of the lack of coordination and motivation between the legislation and enforcing agents, minimal implementation of the legislation through poor justice administration system. Moreover, the absence of the modern children policy, governing rules, and a separate procedural law regarding the implementation of the Children Act has made the system slow and weak. This paper recommends providing necessary rules, a separate procedural law to implement the national laws according to the international standard of the juvenile justice system to build a strong juvenile justice system in Bangladesh.

**Keywords:** Treatment, Juvenile Delinquency, Juvenile Justice System, Alternative Judicial treatment.

## Introduction

The child<sup>2</sup> of today is the future of tomorrow. They are the backbone of the nation. Once they are lost, all the future is lost. So, it is very important that

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<sup>1</sup> The author is a Lecturer at Department of Law of City University, Dhaka, Bangladesh. He is also serving as Course Coordinator and Convener of Co-curricular Activities in the Department. He obtained his LL.B. (Hon's) and LL.M. from Stamford University. His email address is [theshibly@gmail.com](mailto:theshibly@gmail.com)

priority and importance should be given to the juvenile justice system and juvenile delinquency one of the major social crisis in Bangladesh.<sup>3</sup> The social structure and demand for social life in Bangladesh have failed the children to get a natural opportunity for their quality growth and natural development in life. As a result, near about 35,000- 45,000 children were reported to be involved with activities like caring deadly weapon, engaged in gangs in arms and drugs dealing in Bangladesh.<sup>4</sup> Later, it was reported that there were 40 million children in the Bangladesh between the age of 5-17 years, where around 44% of the street children were involved in drug dealing, 35% in picketing, 12% in mugging, 11% in human trafficking and 21% in other criminal activities and about 550,000 children are addicted to drugs.<sup>5</sup> Moreover juveniles are found involved with stealing, teasing, group violence, sex offences, homicide.<sup>6</sup> So, it has become very alarming to address the social crisis and ensure the safe and secure future of our future generation by providing the extra care and guidance from the adults so that the social darkness cannot grab them. It is imperative that priority and due importance should be given to meet the problems of juvenile delinquency and juvenile justice system because prevention is better than cure.<sup>7</sup> So it is important for the criminal justice system to protect human rights, demoralize the degrading punishment and make a way to the rehabilitation and reintegration to restore the juvenile delinquents to the normal life and develop them as the law-abiding citizen. The institutional authorities like law enforcing agency, court, and correctional institutions etc have the major role in dealing with juvenile delinquency in changing the society. The delinquents undergo four stages once they are caught by the police e.g. police arrest, prosecution, court hearing and correction.<sup>8</sup> However, article 28 of the constitution also encourages the state to make special provision in favor of the women or child or other backward section of citizens to provide a better treatment under the justice system. A series of recommendation made in the case of *The State v. The secretary, Ministry of Law, Justice and Parliamentary Affairs and others*;<sup>9</sup> case of *Raushan Mondal*<sup>10</sup> and in the case of *The State v. The secretary,*

<sup>2</sup> According to the section 4 of the Children Act 2013, any person under the age of 18 shall be considered as child as well as juvenile.

<sup>3</sup> Abdur Rahman Chowdhury, "Crime and Human Rights," *Democracy Rule of Law and Human Rights* (2nd edn, Dhaka University Prokashona Shangstha 2016) 61.

<sup>4</sup> Haradhan Kumar Mohajan, "Child Rights in Bangladesh" (March 2014) 2(1) *Journal of Social Welfare and Human Rights* 207 <[http://jswhr.com/journals/jswhr/Vol\\_2\\_No\\_1\\_March\\_2014/12.pdf](http://jswhr.com/journals/jswhr/Vol_2_No_1_March_2014/12.pdf)> accessed November 20, 2017.

<sup>5</sup> M. Jamil Khan and Md. Sanaul Islam Tipu, "Children's Involvement in Crime on the Rise" *Dhaka Tribune* (October 1, 2016) <<https://www.dhakatribune.com/bangladesh/2016/10/01/childrens-involvement-crime-rise/>> accessed January 20, 2018.

<sup>6</sup> Sakib Hasan, "Horrible Trend of Juvenile Delinquency" *The Independent* (October 7, 2017) <<http://www.theindependentbd.com/arcprint/details/117490/2017-10-07>> accessed January 1, 2018.

<sup>7</sup> Abdur Rahman Chowdhury, *ibid* 62.

<sup>8</sup> Nahid Ferdousi, "Best Practice in the Institutional Treatment of Juvenile Delinquents in Bangladesh: An Appraisal" (2014) 19 *The Chittagong University Journal of Law* 75.

<sup>9</sup> 15 MLR 59-83.

<sup>10</sup> [2007] 59 DLR 72(HCD).

*Ministry of Law, Justice and Parliamentary Affairs and others*<sup>11</sup>, where the Government was directed to make necessary reformation in the Children Act following the required standard provided by the UN Convention on the Rights of the children (CRC) 1989.<sup>12</sup> It was also directed to take adequate measures for imparting training to all concerned including the judges to ensure the implementation process of all the provisions of the CRC, which were beneficial to children and also to minimize the anomalous situations which arise when dealing with children. Accepting the recommendation of the law jurists and following the directions of the constituent courts, the Children Act in 2013 has been introduced in Bangladesh to cover all the aspects and ensure the protection of the children and provided a comprehensive legislation for the better treatment under the criminal justice system dealing with juvenile delinquency in Bangladesh. Besides, others laws regarding juvenile delinquency formed a treatment system under the criminal justice system to deal with the juvenile delinquents beyond the traditional legal procedures applied to the adults. It is recommended that the treatment of the juvenile delinquency and development of the criminal justice system must be considered as one of the target to be achieved for the better treatment system under the criminal; justice system in Bangladesh.

### **Objectives of the study**

The general objective of this paper is to analyse and obtain an overview of the treatment system of juvenile delinquents under the criminal justice system in Bangladesh. Besides, the specific objectives of this study are to investigate the existing informal mechanisms for the treatment of juvenile delinquencies outside the formal criminal justice system, explore the knowledge about the International Laws providing the international standard for the ideal juvenile justice system for all member states, explore the knowledge about the National Laws operating the juvenile justice system, and obtain an overview on the provisions regarding the current judicial treatment provided for the juvenile delinquency in Bangladesh.

### **Methodology**

This study is depended on information that is obtained from primary and secondary sources of data. Primary data has been collected from the National Legislation i.e. the Children Act of 2013, the Code of Criminal Procedure 1898, the Penal Code 1860 etc and relevant judgments of the constituent courts of Bangladesh.

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<sup>11</sup> 29 BLD 656 (HCD).

<sup>12</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 Sept. 1990) 1577 UNTS 3 (CRC).

Besides, secondary data has been collected from the websites, books, commentary, newspaper journals, etc. relating to the juvenile delinquency in Bangladesh perspective. This paper is mainly based on the qualitative study for exploring relevant knowledge and to fulfil the objectives of this study.

### **Limitation of the Study**

In case of collecting data from secondary sources like books, websites, and journal, there are always some queries and confusion regarding the authentication of sources as the same data sometimes held by different references in different times and places. During this study same type of problem had been faced at the time of collecting data from different books, journals and web links etc. This was a basic and common limitation of this study.

The findings of the current study might not be used in case of representing the existing scenario regarding the implementation of the provisions of the new Children Act in reality as it was not conducted in any reliable scientific method on any specific area and time. It was a highlighted limitation for this study.

### **Significance of the Study**

This paper provides the information about the different significant aspects of the juvenile justice system operated by the National Legislation according to the standard of International Laws regarding the treatment of juvenile delinquency under the criminal justice system in Bangladesh. mechanism of ascertaining age, establishing separate juvenile courts, provide separate charge and trial system, specific provisions relating probation officer, child friendly police officer, alternative care, diversion methods, restriction on punishment and detention of child delinquents and other matter relating to the protection of the rights of the children in contact or conflict with the law are discussed in this article in the light of law provisions with famous case analysis which will be really helpful for the future study on juvenile justice system in Bangladesh.

### **Conceptual Framework**

#### **Concept of Juvenile and delinquency in Bangladesh**

In Bangladesh, it is assumed that the Juvenile is in the matured stages of the child who will be attended the maturity age soon. There are differences among

child, adolescent, and juvenile where a child is only the first stage of childhood and does not understand anything happening besides it.<sup>13</sup>

Ahmed also referred that nine years in case of female and twelve years in case of the male are called adolescent.<sup>14</sup> Thus, the juvenile who already attained the age of thirteen but yet to attain the age of eighteen is called the juvenile.

The Children Act of 2013 declares the age of a child is below 18 years<sup>15</sup> where about half of the population of this country are under the age of 18 who are considered as children.

### **Age of Criminal Responsibility of juvenile delinquents in Bangladesh**

The age of criminal responsibility of juvenile delinquents was not fixed before 2013. A juvenile is a child or young who under the respective legal systems should be dealt with for an offence in a manner which is different from that of an adult. Juvenile delinquency known as juvenile offending, or youth crime, is the subject of the participation in illegal behavior by juveniles.<sup>16</sup> Again, the age of the criminal liabilities of the children is not distinctively determined by different laws. The Penal Code of 1860 declares that nothing is an offence done by a child below the age of 9 years of age.<sup>17</sup> Furthermore, the code declares that nothing is done by a child of above 9 years and below 12 years, is an offence if he has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct of that occasion.<sup>18</sup> In the case of *State v. Secretary, Ministry of Home Affairs*,<sup>19</sup> the court declared that any police should not arrest a child below the age of nine years since that child would be immune from prosecution. For these solid reasons it can be said that the juvenile delinquent in Bangladesh is an offender of 12-16 year boy or girl in every case and where the child can understand the nature and consequences his/her act.

The Second United Nations Congress on the Prevention of Crime and Treatment of Offenders (1960)<sup>20</sup> states, "Juvenile delinquency should be

<sup>13</sup> Rizvi Ahmad, "Juvenile Delinquency and Justice System," *Theory and practice of criminology Bangladesh perspective* (2nd edn, Titu Publication 2017)162, 163.

<sup>14</sup> Md. Tajul Islam, "Juvenile Delinquency in Bangladesh: Identifying the Causes with Reference to Some Case Studies" (2015) 2 Law Journal Bangladesh <<http://www.lawjournalbd.com/2015/02/juvenile-delinquency-in-bangladesh-identifying-the-causes-with-reference-to-some-case-studies/>> accessed December 29, 2017.

<sup>15</sup> The Children Act, 2013(CA, 2013), s. 4.

<sup>16</sup> Ahmad (n 13) 163.

<sup>17</sup> The Penal Code of 1860(PC, 1860), s. 82.

<sup>18</sup> PC 1860,s 83.

<sup>19</sup> 16 MLR (HCD) 254.

<sup>20</sup> The United Nations Congress on Crime Prevention and Criminal Justice is a United Nations congress on crime and criminal justice, held every five years which is organized by the United Nations Office on Drugs and Crime (UNODC) with the aim of strengthening international cooperation against expanding crime.

understood by the commission of an act which, if committed by an adult, would be considered a crime.”

### **History of the juvenile justice system in Bangladesh**

The Juvenile Justice System was first introduced in Bangladesh by the British rulers. The concept of a separate trial for children and adults were first introduced in the Bengal Code and Prisons Act 1864. The Reformatory Schools Act 1897 provided a guideline for the reformation of juvenile delinquents. Later the Bengal Children Act 1922 provided the provisions that the trial of the juvenile must be dealt with by the juvenile court. Afterward, in independent Bangladesh, some Articles of the Constitution of the People's Republic of Bangladesh 1972 including some laws were made to deal with the issues about the juvenile delinquency.<sup>21</sup>

### **Treatment of juvenile delinquency under the criminal justice system in Bangladesh**

According to the Cambridge Dictionary, “Treatment” means the way to deal with or behave towards someone or the way something is considered and examined. In medical language, “Treatment” is the using any means or exercise to cure a person of an illness or injury. Again, treatment is a process of putting a special substance on something or putting it through a special process in order to change its condition. Here, treatment of juvenile delinquency under the criminal justice system means the institutional and non-institutional arrangements provided to the juvenile delinquents as an alternative system other than the formal criminal justice system of the adults with the opportunities of rehabilitation and reintegration in the society for purpose of changing his internal and external behaviours.

The criminal justice system is like the social institutions always concerned with prevention, investigation, prosecution and punishment of offenders and offences where the principal objective is to control crime, punish the offender, prevent crimes, protect innocents and maintain social unity and stability.<sup>22</sup> The concerned institutions and stakeholders have the duty to utilize all the remedial, educational, moral, religious and other forces and forms of assistances which are appropriate and available, and should seek to apply them according to the individual treatments needs to the juvenile delinquents other than the treatment provided by the traditional criminal justice system provided for the adult delinquency in Bangladesh.

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<sup>21</sup> Ahmad (n. 13) 186.

<sup>22</sup> H M Fazlul Bari, “An Appraisal of Sentences in Bangladesh: Between Conviction and Punishment” (2014) 14 Bangladesh Journal of Law 92.

## **Findings and Discussion**

This study has found that the juvenile delinquents are the subject of special treatment different from the adult delinquents under the criminal justice system in Bangladesh. The juvenile justice system of Bangladesh, framed on the standards of the International Laws provided by the Beijing Rules, the Riyadh Guidelines, and the UNCRC, formed the existing informal mechanisms for the treatment of juvenile delinquencies outside the formal criminal justice system. As a member of the international community, Bangladesh has adopted maximum provisions of the international laws relating juvenile delinquency. There are several criminal laws to deal with the juveniles but the Children Act 2013 is the comprehensive legislation that framed on the ideal standards of the Beijing Rules, the Riyadh Guidelines, and UNCRC to provide special, alternative and diversionary treatment system to deal with the juvenile delinquents. However, the juvenile justice system is still in its infancy to protect the legal interests of the juvenile delinquents because of the minimal use and implementation of the act through poor justice administration system. Moreover, the absence of the modern children policy, governing rules, and a separate procedural law regarding the implementation of the Children Act has made the system slow and weak.

### **Treatment under International legal framework applicable for the juvenile delinquents in Bangladesh**

Considering the frequent juvenile delinquency, a lot of international Rules, Convention and Guidelines designed for establishing an ideal model of the juvenile justice system for ensuring the legal rights of the children coming into contact or in conflict with the law. The United Nation has taken a number of initiatives for setting the standards for treatment of children who come into conflict with the law. They also set an idea of administration of juvenile justice. Such as:

**The Beijing Rules 1985**<sup>23</sup> clearly provide for a separate and specialized system of juvenile justice which does not encourage capital and corporal punishment for the children but guarantees the children right to participate in the legal proceedings and ensures their education and care during detention. These rules give directions to the courts to exercise its discretion in the best interest of the children.

**Riyadh Guidelines 1990-** The UN Guidelines give more emphasis on the integrated and comprehensive plan and effectiveness of institutional crime

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<sup>23</sup> The Beijing Rules is a resolution of the United Nations General Assembly regarding the treatment of juvenile prisoners and offenders in its member nations. It is also called the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

control agencies so that the juveniles will be prevented from committing the crime.

**The Convention on the Rights of the Child (UNCRC) 1989**<sup>24</sup> is a comprehensive international document, which set a standard for the state parties when the children come into conflict with the law. As per the Convention state parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment.<sup>25</sup>

The Convention requires the authorities, public or private social welfare institutions, Court of law, administrative authorities or legislative bodies taking actions against the children must ensure the best possible welfare of the children.<sup>26</sup>

Article 37 and 40 of the CRC make clear about the treatment of children in conflict with the law set elaborate procedures to be followed to deal with a juvenile. According to the article 37 of the CRC, state parties shall ensure that child under 18:

- i. Shall not be subject of torture or other cruel, inhuman, degrading treatment or neither capital nor life imprisonment punishment;
- ii. Shall not be deprived of his/her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment shall be in conformity with the law and humanity;
- iii. Shall be treated without humanity and the inherent dignity;
- iv. Shall not be jointly tried in any trial with adult and shall have the right to maintain contact with his/her family through correspondence and visits;
- v. Shall have the right to challenge the legality of the deprivation of his/her liberty before the Court or other components.

According to the article 40 of the UNCRC (1989), state parties shall ensure that no child shall be accused of having infringed the penal law by reason of acts or omissions. It also ensures that every such child has at least the following guarantees:

- i. To be presumed innocent until proven guilty according to the law;

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<sup>24</sup> This United Nations Convention on Rights of the Child (UNCRC) is a legally-binding international agreement setting out the civil, political, economic, social and cultural rights of every child, regardless of their race, religion or abilities. This obliges the member states to ensure a separate judicial treatment system for the juvenile delinquents with the options of the reformation and reintegration with the society.

<sup>25</sup> The UNCRC 1989(CRC 1989), Art-2.

<sup>26</sup> CRC 1989, Art -3.



- ii. To be informed promptly and directly through his/her parents or legal guardians and to have legal or other appropriate assistance in the preparation and presentation of his defence;
- iii. To have the matter determined without delay by fair hearing according to the law, in the presence of legal or other appropriate assistance for the best interest of the child;
- iv. Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses;
- v. If considered to have infringed the penal law, to have this decision reviewed by a higher impartial authority or judicial body according to law;
- vi. To have the free assistance of an interpreter if the child cannot understand or speak the language used;
- vii. To have his/her privacy fully respected at all stage of the proceedings.

In accordance with the said article, the state parties shall:

- ❖ promote the establishment of laws, procedures, authorities, and institutions specifically applicable to children alleged as having infringed the penal law;
- ❖ fix a standard of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
- ❖ ensure the availability of a variety of dispositions such as care, guidance, supervision orders, counselling, probation, foster care, education, vocational training programs and other alternatives to institutional care necessary to the children.

The condition of the treatment of juvenile delinquents under the criminal justice system is complex in its practical application. Because, the situation of Bangladesh concerning domestic application of international law is characterized by lack of case laws, vagueness of constitutional and statutory provisions and unwillingness of the stockholders of the constituent institutes to refer the global instruments.<sup>27</sup> However, the above mentioned standard minimum Rules, the Convention, the UN Guidelines provide the rights of the children, best possible welfare of the children, who come in conflict with the law and the administration of juvenile justice. They also persuade that the aim of the juvenile justice system should be to protect the rights of the children who come into conflict with the law and their reintegration into their societies. The international instruments require that the deprivation of liberty should be utilized as a last resort and there ought also to be sufficient alternative measures for the rehabilitation of the juveniles. In Bangladesh, maximum of

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<sup>27</sup> Amran Ahmed and Arif Hossain, "Human Rights Law: Implementation Mechanisms," *Governance and International Human Rights Law* (2016) 147.

these standard provided by the international legislations are adopted by Bangladesh to establish a child-friendly judicial system for the juvenile in Bangladesh. Following the Beijing Rules 1985, the UNCRC 1989 and the directions of the constituent courts Bangladesh has reserved the option of a separate and special system for the juveniles in the principal legislation i.e. the Penal Code 1860 and the Code of Criminal Procedure 1898 and reformed the Children Laws by introducing the Children Act 2013. Those standards also reflected in the National Children Policy 2011. However, the remaining part of the standards should be added to the laws for the better administrative treatments of juvenile under the justice system in Bangladesh.

### **Treatment under the National legal framework regarding the juvenile delinquents**

There are more than 32 children related laws in Bangladesh among which 8 laws are directly related to the children issues, juvenile delinquency, diversion measures, and the juvenile justice system. These law are – (1) The Penal Code, 1860; (2) The Child Marriage Restraint Act, 1929; (3) The Children (Pleading of Labour) act, 1933; (4) The Suppression of Immoral Traffic Act, 1933; (5) The Vagrancy Act, 1943; (6) The Compulsory Primary Education Act, 2013; (7) The Children Act, 2013 (8) The Constitution of the People's Republic of Bangladesh.<sup>28</sup> Besides these, there are more laws to cover the juvenile matters. The Court of Wards (Amendment) Act 2006; protect the property rights of the orphaned child until it attained the age of 18. The Anti-women and Children Oppression (Amendment) Act, 2003 provides the protection to the children less than 16 years of ages against all sorts of oppression. But, among all of these laws, the Children Act 2013 is the comprehensive legislation, which deals with child rights, delinquent and uncontrollable children, their correction, diversion and most importantly the friendly juvenile justice system different from the justice system regarding adults in Bangladesh.

#### **1. Treatment of Juvenile Delinquency under the Bangladesh Constitution: the supreme law of the land**

The Constitution of the People's Republic of Bangladesh 1972 is the supreme law to govern the fundamental rights of the citizen of Bangladesh. The State has been directed to make special provisions in favor of women and children or other backward section of the citizens.<sup>29</sup> Besides, Article 31, 32 and 35 (3) of the Constitution has given the guarantees regarding the fundamental rights to life, personal liberty, equal protection of the law, protection against

<sup>28</sup> Sheikh Hafizur Rahman Karzon, "Juvenile delinquency and justice system," *Criminology, criminal justice victimology and restorative justice* (Hira publication 2016) 391.

<sup>29</sup> The Constitution of the People's Republic of Bangladesh 1972, Art 28 (4).

arbitrary arrest and to speedy and fair trial always applicable on all citizens including the juvenile.

## **2. Treatment of Juvenile Delinquency under the Code of Criminal Procedure: a separate trial system for juvenile**

### **A. Separate Trial System for the Juvenile Delinquents:**

The criminal Procedure code 1898 provides the provisions of a separate trial system for the juvenile. According to this section, the trial of the children must be dealt with by the juvenile courts separately from the adults. Moreover, if any offences other than one punishable with death or transportation for life committed by any person who at the date when appears or is brought before the court is under 15 years of age, may be tried by i) Chief Judicial Magistrate, ii) Chief Metropolitan Magistrate or iii) by any Magistrate specially empowered by the Government to exercise the powers conferred by any law providing for the custody, trial or punishment of juvenile or youthful offenders.<sup>30</sup>

It should be noted that the objective of section 29B was not to seize the jurisdiction of the Magistrate conferred by the section 28 and eighth column of the second schedule of Code of Criminal Procedure 1898. Its objective was to extend the jurisdiction of trying certain cases relating juvenile delinquency from the court of sessions to the Court of Magistrates.<sup>31</sup>

### **B. Lesser inflicting punishment than the adult delinquents**

Section 392 provides the treatment regarding the mode of inflicting punishment by whipping to the juvenile delinquent under the age of sixteen. Under subsection 2 provides that such punishment shall not exceed 30 strips, but the punishment for the juvenile offender, less than 16 years of age under this section; shall not be the subject of the criminal justice system.<sup>32</sup>

### **C. Confinement of juvenile offender in reformation system**

Section 399 deals with the confinement of juvenile offender in reformation system. This section provides that if any person under fifteen years of age is sentenced by any criminal court to imprisonment for any offence the court may direct that such person, instead of being imprisoned

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<sup>30</sup> The Criminal Procedure Code 1898(CrPC, 1898), s.29B.

<sup>31</sup> AIR 1936 All 675.

<sup>32</sup> CrPC 1898, s. 392.

in a criminal jail, shall be confined in any reformatory established by the Government as a fit place for confinement.<sup>33</sup>

#### **D. Releasing Juvenile Delinquents on Bail**

Section 497(1) provides the provisions when bail may be taken in case of non-bailable offence. It is provided in the section that the Court may direct that any person, if arrested or detained without warrant by an officer in charge of a police station, or appears or brought before a Court for being an accused of a non-bailable offence is under the age of sixteen years be released on bail unless the charge brought against him is punishable with death or life imprisonment.<sup>34</sup>

In the case of *Abdul Motaleb*,<sup>35</sup> it was observed that no person shall be released on bail unless fulfilling the condition of section 497 of the Code of Criminal Procedure 1989.

The High Court Division also directed in the case of *K.M Obaidur Rahman*,<sup>36</sup> that an accused might not be released on bail if the court had reasonable grounds to believe that the allegation of such offence which was punishable with the death penalty or imprisonment for life.

### **3. Treatment of Juvenile Delinquency under the Penal Code 1860: regarding juvenile criminal responsibility**

The Penal Code 1860 has fixed the age of criminal responsibility above 9 years of age to ensure protection to the children below 9 years of age from any judicial proceedings so that they may be exempted from criminal liability for any crime done by them. According to the Code of 1860, a child below the age of 9 years is protected from any action against his offence either committed or not.<sup>37</sup> Again, if a child between 9 years and 12 years of age is to be convicted of an offence, it must be proved that he has sufficient maturity of understanding to judge the nature and consequences of the act done.<sup>38</sup> This old provision was reflected in the judgment of the case of *Kalu alias Abdul Majid*,<sup>39</sup> where the court observed that nothing would be the offence if had done by a child above 7 and below 12 years. Later, the age of child fixed as above 9 years below 12 years.<sup>40</sup>

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<sup>33</sup> CrPC 1898, s. 399.

<sup>34</sup> CrPC 1898, S 497(1).

<sup>35</sup> 27 DLR 665.

<sup>36</sup> 10 BLD 9 (HCD) 137.

<sup>37</sup> The Penal Code 1860(PC 1860), s 82.

<sup>38</sup> PC 1860, s 83.

<sup>39</sup> 31 DLR(1979) 101.

<sup>40</sup> Substituted in penal code 1860 by the Amendment Act No. 24 of 2004.

In the case of *Md. Roushan Mondal*,<sup>41</sup> the Court directed that if a child above 9 years and below 14 years of age who was not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct would be exempted from criminal liability under the shade of section 83 of the Penal Code 1860.

#### **4. Treatment of Juvenile Delinquency under the Bengal Jail Code and Prison Act 1894: provided a separate jail system**

The Bengal Jail Code and Prison Act 1894 provided a separate jail system for the juvenile. This Act provided the provisions of the separation of children or juvenile offender from adults in jails. According to this Act, the prisoners who have not arrived at the age of puberty shall be separated from the adult prisoners in jail.<sup>42</sup>

#### **5. Treatment of Juvenile Delinquent under the vagrancy Act: providing a provision of vagrant child**

The Vagrancy Act 1943 provided provisions regarding the vagrant child who is found in public asking for alms or involved with anything defined under this act as vagrancy. The arrest of such children and the threat of its use to extort bribes from those children appear to be arbitrary under this act.

#### **6. Treatment of Juvenile Delinquents under the Children Act, 2013: principle legislation to deal with the children comes in contact or conflict with the law**

Bangladesh has enacted new legislation in 2013 for the benefit of the juvenile involved with delinquency, repealing the Children Act of 1974, for the purpose of implementing the United Nations Convention on the Rights of the Child. The new provisions essentially reflect some of the provisions of the Convention on the Rights of the Child (CRC). In addition, it seems, some provisions have been incorporated in response to directions of the Supreme Court as well as the requirements of other international instruments such as the Beijing Rules.<sup>43</sup> The legislation, procedures provisions, institutions and bodies focusing on the juvenile or children who come into conflict with the law. In Bangladesh, the children act of 2013 is the principal law on children and its deals with both children in conflict with law and children in need of protection, often with a lack of differentiation between these two groups. Bangladesh has tried to establish a comprehensive juvenile justice system that

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<sup>41</sup> [2007] 59 DLR (HCD) 72.

<sup>42</sup> The Bengal Jail Code and Prison Act 1894, s. 27(2)

<sup>43</sup> The Beijing Rules is a resolution of the United Nations General Assembly regarding the treatment of juvenile prisoners and offenders in its member nations. It is also called the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

ensures children are separated and treated differently from adults at all stages of criminal proceedings.

### 6.1 Separate Court for the Juvenile Delinquents

In the case of *Bangladesh Aid and service Trust*,<sup>44</sup> the learned court observed that children entitled to the trial before the Juvenile Court should not be tried jointly with the adults. Later, it was observed in the case of *Minnat Ali*<sup>45</sup> that no court should be tried any case where any children were involved and only the competent Juvenile Court established under the Children Act 2013 will be tried the case of juvenile delinquents. According to the children act 2013 and also the code of criminal procedure, 1898 children can only be tried in the juvenile courts and no joint trial can be held with the adult.

Section 16 of the Act empowers the Government to establish juvenile courts and in absence of juvenile court, the following court shall be empowered to work as juvenile court:

- i. High Court Division.
- ii. Sessions Court.
- iii. Additional Sessions Court.

Again, the Juvenile court shall have the following powers:<sup>46</sup>

- i. It shall have the power to try any case in which a child is charged with the commission of an offence.
- ii. It shall deal with or dispose of any other proceedings under this act.

So, a separate court system for the juvenile delinquents has been formed under the criminal justice system in Bangladesh. There are some basic differences between the ordinary criminal court and the juvenile court<sup>47</sup> as follows:

- i. There are two parties in the trial of Criminal Court; on the other hand, there is one party in the hearing of the Juvenile Court;
- ii. Purpose of the trial of Criminal Court is to determine whether the accused committed the crime. On the other hand, the purpose of hearing of Juvenile Court to determine whether the youth is delinquent and the general condition and the character of the youth;
- iii. Limited procedure are maintained in Criminal Court for securing information regarding the character of the accused, on the other hand in

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<sup>44</sup> 57 DLR [2005] 11.

<sup>45</sup> 22 BIT [2014] HCD 314.

<sup>46</sup> CA 2013, s. 17.

<sup>47</sup> Ahmad (n 13) 200.

Juvenile Court an elaborate procedure are maintained for securing information regarding the character of the accused juvenile;

- iv. in ordinary criminal court the correctional methods in a specific case determined not by the needs of the particular individual by the possibilities of using such methods within the same works of specific deterrence and deference, on the other hand such information is the basis on which the decision is made by the Juvenile Court.

## **6.2 Providing a mechanism to ascertain the age of the juvenile delinquents**

In the previous law, there was no specific mechanism for determining the age of juvenile delinquents. Now the Children act 2013 provides the definition<sup>48</sup> in compliance to the UNCRC, 1989 to fulfil the demands of time for the benefit of the children conflict in the law.

In the case of *Roushan Mondal*,<sup>49</sup> it was decided that the date of committing the offence would be considered as the relevant date of cause of action as well as for the determination of the age of the accused which has been subsequently adopted in section 20 of the Children Act 2013. Later, some necessary directions found in the case of *Mehedy Hasan*.<sup>50</sup> In this case the court directed that the ascertaining the age of a child is a mandatory and the age of the offender to be determined at the earlier date by the court if the person brought before it is a child and no doctor, medical expert and radiological or bone ossification report would be required to do so.

Section 44 has provided the minimum standard of determining the age. According to this section, if any child is arrested, the arresting police officer shall determine the age by checking birth certificate, school certificate, document submitted for the admission in school or other documents relating date of birth for the purpose of the case and immediately inform the Child Affairs Police Officer about the detail reasons of such arrest.

## **6.3 Liberal procedures relating Arrest, Detention, Bail, and Discharge of Juvenile delinquents**

Appellate Division of the Supreme Court of Bangladesh declared any arrest of a child less than 9 years of age under any circumstances, or even to detain under any law for preventive detention as illegal.<sup>51</sup>

<sup>48</sup> According to the section 4 of the Children Act 2013 and the Article 1 of the UNCRC define a child as any human being under the age of eighteen, unless the age of majority is attained earlier under national legislation.

<sup>49</sup> [2007] 59 DLR (HCD) 72.

<sup>50</sup> [2014] 66 DLR AD 111.

<sup>51</sup> [2016] 8 SCOB AD 83.

The Act 2013 has specifically prohibited the arrest below the age of 9 years under any circumstances.<sup>52</sup> Again, section 44(2) provides that no child shall be arrested or detained under any law relating to preventive detention. If it is established by the police that an offender is a child who is nine years or above or is between nine and twelve years and has the capacity to understand the nature and consequences its actions, the police, if it has reasonable doubt that the child has committed or is involved in the offence, may arrest the child. The Children Act sets out the appropriate procedures that need to be followed after the arrest of the child. The Act does not contain all relevant pre-arrest procedural safeguards. Thus, the Children Act is silent on a number of issues which are recognized internationally to be guaranteed for all persons and for which the CRC makes special provision.

In the case of *Metropolitan Police Commissioner, Khulna*,<sup>53</sup> the concern court observed that, if a child is arrested, he should be released on bail and may be detained only as a last resort, the parents must be informed about the arrest without delay about such arrest and a probation officer must be appointed immediately to ensure that the child is released to a favorable environment. If the child is detained, the police and the court must ensure that the child will be held in a remand centre or other place of safety.

According to the Code of Criminal Procedure (1898), the child offenders could be granted bail by the Court.<sup>54</sup> The section 52 of the Children Act, 2013 has incorporated this provision and provides that notwithstanding anything contained in any other law or the Code of Criminal Procedure, if the case of any child is not dealt with by way of diversion, the court may release the child on bail with or without surety. Bail may be granted on the bond of the child troubled or of the child's parents, the other guardian or family members, or probation Officer or any institute or association whom the court thinks fit, with or without surety. In cases where the child is not released on bail, the Children's Court must give its reasons for refusing bail.

#### **6.4 Separate Charge Sheet and Trial Procedure for Juvenile Delinquents with different court**

It was observed in the case of *State v. Md. Akabbar Hossain*,<sup>55</sup> that, no child shall be charged with, or tried for any offence together with the adult. The same demand had found in the observation by the court in the case *Bangladesh Aid and service Trust v. Bangladesh and others*.<sup>56</sup> In this case environment, it was directed that if children are entailed to the trial before the

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<sup>52</sup> CA 2013, s 43.

<sup>53</sup> [2008] 60 DLR 660.

<sup>54</sup> CrPC 1898, s 497.

<sup>55</sup> [2014] 19 BLC 762 HCD.

<sup>56</sup> [2005] 57 DLR 11.



juvenile courts according to the section of 53 of the Children Act of 1974<sup>57</sup> then they must not be tried jointly with the adults. Subsequently, it was observed by the High Court Division in the case of *Md. Akabbar Hossain*,<sup>58</sup> that no child should be charged with, or tried for any offence together with an adult. The Appellate Division of the Supreme Court of Bangladesh also nourished about the separate trial procedure in the case of *Bangladesh & others v. Blast & others*,<sup>59</sup> regarding the Article 10 and 14(4) of the International Covenant on Civil and Political Rights of 1966, General Assembly resolution 2200A (XXI) of 1966. The Convention paying attention in the Article 10 that the accused juvenile should be separated from the adult and brought as speedily as possible for adjudication and be accorded treatment appropriate to their age and legal status. It also provided in the Article 14 (4) of the Convention that the age and rehabilitation should be considered in the case of juvenile or child below 18 years. The procedure and mode of a trial are laid down in 17-30 to set the juvenile justice system totally different from the usual criminal justice system. Section 17(2) of the Act forbids the joint trial of a juvenile and an adult where any criminal court found any juvenile charged for any offence with the adult person. Again, though under the section 239 of the Code of Criminal Procedure the joint charge of the persons accused in the same transaction is allowed, section 15 of the Children Act 2013 provides the exception in this regards. If any court fails to comply with this section and tries any juvenile along with adult person, it shall be the violation of Children Act and also beyond his jurisdiction.

### **6.5 Bar on the punishment of Juvenile Delinquents under the Children Act, 2013**

In the case of *Mehedy Hasan @ Modern (Md) v. State*,<sup>60</sup> it is recommended that if a child offender or juvenile delinquents must be dealt with in accordance with the provision of the Act, no matter how serious or heinous the offence might be. Section 33(1) and 34 provides in the Act that no child shall be sentenced to death, transportation, or imprisonment unless the court is of the opinion that the crime committed is of so serious in nature or the child is so unruly or depraved that he cannot be committed to the certified instituted, the child can be sentenced to imprisonment that may extend from 3 years to 10 years. Again, a youthful offender sentenced to imprisonment shall not be allowed to associate with adult prisoners.<sup>61</sup>

The following factors those have to be taken into consideration by the court while passing any order under the Children Act:<sup>62</sup>

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<sup>57</sup> Repealed by the Children Act 2013.

<sup>58</sup> [2005] 57 DLR 11.

<sup>59</sup> [2016] 8 SCOB 83 AD.

<sup>60</sup> [2014] 66 DLR AD 111.

<sup>61</sup> The Children Act 2013(CA 2013), s 33(2).

<sup>62</sup> CA 2013, s. 30.

- i. The character and age of the child.
- ii. The circumstances in which the child is living.
- iii. The report made by the probation officer.
- iv. Such other matters required to be taken into consideration in the interest of the child.

Section 43 provides that when a child is found to have committed any offence terms 'conviction' or 'sentence' cannot be used. The fact is that if a child has been found guilty shall not operate as a disqualification for any office, employment or election under any law. Besides, the convicted juvenile has the right to file appeal or revision within 60 working days from the date of conviction.<sup>63</sup> Again, that the court may discharge any young offender after due admission, release on probation of good conduct or commit a child to the care of a fit person executing a bond with or without sureties.<sup>64</sup> For the protection of the beautiful future, the criminal justice system is liberal in awarding punishment to the juvenile delinquents who is on or below the tender-age. Here, justice will be met if the court considers the mitigating factors before awarding punishment and sentences the accused person of tender age with liberal or lesser punishment i.e. life imprisonment and fine in place of the death sentence.<sup>65</sup>

### **6.6 Probation, Diversion, and Rehabilitation for the juvenile delinquents: Special alternative treatment under the justice system**

The state providing a special alternative treatment system under the criminal justice system where the Government or even the Juvenile Court may appoint probation officer from among suitable person in the district, if there no probation officer in that area and may appoint a probation officer for a particular juvenile.<sup>66</sup> The duties of a probation officer shall be supervised by the juvenile court and where no court exists, the court of Sessions. The duties of a probation officer include:<sup>67</sup>

- i. Visiting or receive a visit from the child at reasonable intervals;
- ii. See that the conditions of bond are fulfilled;
- iii. Report to the court as to the behavior of the child;
- iv. Advice, assist and befriend the child and where necessary endeavor to find him suitable employment;
- v. Perform any other duty which may be prescribed by the law.

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<sup>63</sup> CA 2013, s. 41.

<sup>64</sup> CA 2013, ss. 34 and 35.

<sup>65</sup> [2015] 4 SCOB 171 [HCD].

<sup>66</sup> CA 2013, s. 5.

<sup>67</sup> CA 2013, s. 6.

The case of *State v. Metropolitan Police Commissioner, Khulna, and Others* (660)<sup>68</sup> gave directions about the diversionary measures. As per the direction the state had to make provision for the diversion of child offenders to be placed in the environment where the child might have been guided in more favorable touch with a family either with relatives or foster family etc. beyond the formal placement in jail custody or government certified correctional institution (safe home). This present act provided with a diversionary measure for the child in conflict with the law to give a better justice regarding the juvenile offenders which is provided instead of any legal proceeding against a child under the complex formal justice system<sup>69</sup> (Ali, 2013, p.21).

The Children Act provides for a number of alternative measures instead of confining juvenile in the remand home; place of safety or in development centre. At the first instance, the officer of the police station can release a juvenile on bail. The Act also gives responsibility on the Court and it has exercised its jurisdiction judiciously. A Court may, if it thinks fit, instead of directing any youthful offender to be detained in a certified institute, order him to be (i) discharge after due admonition; (ii) released on probation of good conduct and committed to the care of his parent, guardian or other adult relative or any other fit person on such parent, guardian, relative or a person executing a bond with or without sureties, as the Court may require to be responsible for the good behavior of the youthful offender for any period not exceeding three years and the Court may also order that the youthful offender be placed under the supervision of a probation officer. If it appears to the Court on receiving a report from the probation officer or otherwise that the youthful offender has not been of good behavior during the period of probation, it may, after making such inquiry as it deems fit, order the youthful offender to be detained in a certified institute for the unexpired period of probation.<sup>70</sup>

## **6.7 Child Affairs Desk and Child Affairs Police Officer (CAPO): Child-Friendly Police officer in every police station**

In the case of the *State v. Secretary, Ministry of Law, Justice and Parliamentary affairs*,<sup>71</sup> the High Court Division recommended to establish special police cell and appoint Child Affairs Police Officer in every police station. Section 13 of this act of 2013 provides a provision of Child Affairs Desk for every police station to deal the matters regarding the child who is accused, arrested or taken into the station for suspecting of infringing any provision of law. This desk shall be headed by the Child Affairs Police Officer (CAPO), not below the rank of Sub-inspector (SI), has the duties to maintain

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<sup>68</sup> [2008] 60 DLR 660.

<sup>69</sup> Imman Ali, "The Children Act 2013: A Commentary by Justice Imman Ali," (2013) BLAST and PRI 21.

<sup>70</sup> The Children Act 2013, ss. 48 and 84.

<sup>71</sup> 29 BLD 656 (HCD).

separate files and registers for the cases involving children, inform the Probation Officer, parents or guardian of the concerned child to meet the basic needs, determine age, maintain birth certificate and school records of that child, take diversionary measure and assess the option relating to bail and submit separate Charge Sheet to the concern court.

### **6.8 Child Welfare Boards for integration and rehabilitation of the Juvenile Delinquents**

The Children Act 2013 provides that there will be Child Welfare Boards in District and Upazila including at national level to formulate policy, strategy and implementation plan for integration and rehabilitation of the Juvenile Delinquents. Section 7 of the act entrusted the responsibility on the Board to monitor, coordinate, review and evaluate the activities of the Child Development Centers (CDC) and of certified institutions, provide guidelines regarding rehabilitation and reintegration into family and social life of disadvantaged children and those children in contact or in conflict with law, advice regarding the development and implementation of plans regarding those children.

### **6.9 Settlements of Disputes between the juvenile and the victim**

Section 37 of the new Act provides that if any child has committed an offence of lesser gravity the probation officer will take necessary steps as per the direction of the court to settle the a dispute between the victim and the child who has committed the offence and the court passes orders thereto.<sup>72</sup>

### **6.10 Steps taken for strengthening the treatment system of juvenile delinquents under the non-judicial procedure in Bangladesh**

The Government of Bangladesh has passed a number of laws and undertakes initiatives for meaning effective operation which has been intensified and taking with all seriousness concerning the children. The National Children Policy (NCP), 2011 is the second national policy concerning the children in Bangladesh. Section 2 of the NCP 2011 defines the child as the person under the age of 18. Besides, legislation has also defined the child less than 18 years of age, e.g. Domestic Violence act 2011, Prevention of Trafficking Act 2011, and Vagrancy Act, 2011. Through the policy 2011, the State ensures that all necessary steps will be taken to protect children from all forms of violence, begging or physical, mental or sexual torture. This NCP 2011 has given priority to all types of children including child laborer and ensured their rights of getting suitable working environment, financial progress, educational and recreation facilities with incentive caring.<sup>73</sup>

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<sup>72</sup> Ali, 2013, p.19.

<sup>73</sup> Najrana Imaan, "Justice for Children in Bangladesh: An Analysis of Recent Cases" (December 2012) Save the Children Bangladesh 5.

According to the children Act 2013 the Government declares its followings mandate to do:

- ❖ Establishing of Juvenile development centres and certified institution for the accommodation, reformation and development purposes.<sup>74</sup>
- ❖ Permit any person, institution or organization to fulfil the above purposes.<sup>75</sup>
- ❖ All government and private establishments shall supply information to the Department of Social Welfare within 15th day of every month.<sup>76</sup>
- ❖ The government or a representative empowered by it and the Director General of the Department or any other person or organization authorized by him in this behalf may inspect any certified institute for the purpose of collecting information for any official or special purpose, and may on the basis of such information advise the government.<sup>77</sup>
- ❖ When a child is sent to a certified institute or handed over to any person, that institute or person shall act as the child's parent and shall be responsible to ensure his safety, care and development, and shall keep the child in his custody for the period specified by the Children's Court or by the Board or any other court even though the child's parents or any other person may claim his custody.<sup>78</sup>
- ❖ Government shall monitor the certified institutes those are mandated to protect the best interest of every child staying there and to ensure their proper behaviour and appropriate education including vocational training.<sup>79</sup>

The Beijing Rules 1985 clearly provide for a separate and specialized system of juvenile justice which guarantees the children right to get their education and care during detention. Riyadh Guidelines 1990 give more emphasis on the integrated and comprehensive plan and effectiveness of institutional crime control agencies so that the juveniles will be prevented from committing the crime. Again, the Convention on the Rights of the Child (UNCRC) 1989 set a standard for the state parties so that the states ensure the availability of a variety of dispositions such as care, guidance, supervision orders, counselling, probation, foster care, education, vocational training programs and other alternatives to institutional care necessary to the juvenile<sup>80</sup> for the best possible welfare of them.

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<sup>74</sup> Children Act 2013(CA 2013), s 59(1) (2).

<sup>75</sup> CA 2013, s: 60.

<sup>76</sup> CA 2013, s: 62.

<sup>77</sup> CA 2013, s: 64.

<sup>78</sup> CA 2013, s: 68.

<sup>79</sup> CA 2013, s: 63.

<sup>80</sup> CRC 1898, art 40.

So, the government has established three correctional institutes according to the provisions of the International Conventions and the Children Act 2013, each of which is consisted of a juvenile Court, remand home and training institute namely:<sup>81</sup>

- a) National Correctional Institute for boys at Tongi, Gazipur.
- b) National Correctional Institute for girls at Konabari, Gazipur.
- c) Correctional Institute for boys at Jessore.

Another correctional institute having similar program component is going to be established at kashimpur, Gazipur. Necessary facilities of the existing two unite located at Tongi and Jessore will also be increased for the accommodation of additional 350 inmates.

These institutes deal with the following programs:

**Vocational Training Program for the juveniles:** The purpose of the vocational training program of correctional institutes is to make them skilled so that after their release they can employ them in professional aspects. The institutes have the following program:<sup>82</sup>

| Name of the Correctional Institutions | National Correctional Institutes for boys, Tongi, Gazipur  | Correctional Institutes for boys, Jessore  | National Correctional Institutes for girls, Konabare, Gazipur  |
|---------------------------------------|--|--|--|
| Training Works                        | <ul style="list-style-type: none"> <li>• Tailoring and Industrial Sewing</li> <li>• Automobile and welding</li> <li>• Electrical wiring</li> <li>• Wood works</li> </ul> | <ul style="list-style-type: none"> <li>• Automobile and welding</li> <li>• Electrical wiring</li> <li>• Electronics</li> </ul> | <ul style="list-style-type: none"> <li>• Tailoring and Industrial Sewing</li> <li>• Embroidery</li> <li>• Electronics and poultry</li> </ul> |

### **Educational Program for the moral and inner quality development of juvenile delinquents:**

Primary Education is compulsory, facilities for further education inside the centre are also provided to the concerned children. Religious education for the moral development of children is also provided there.<sup>83</sup>

### **Counselling for Correction and Rehabilitation of juvenile delinquents:**

Counselling and motivation for behavioral correction, psycho-social, human

<sup>81</sup> Monjur Kader and M. Muajjem Hussain, "Juvenile Delinquency," *Criminology* (4th edn, Books 4 U 2017) 177.

<sup>82</sup> *Ibid* 178.

<sup>83</sup> *Ibid* 178.

development, socialization and re-integration of the inmates are done by social caseworkers and probation officers through the following methods;<sup>84</sup>

- i. Individual casework
- ii. Group works and focus group discussions
- iii. Motivation
- iv. Parental guidance
- v. Follow up

Recreational Activities for mental and physical development of juvenile delinquents:

Games (indoor and outdoor), Sports and physical exercise are daily events. The recreational activities are also provided regularly.

## **7. Limitation of the existing juvenile justice System in providing better treatment to the juvenile delinquents in Bangladesh**

During conducting the study several legislations, case references, books, journals, newspapers, websites regarding juvenile delinquency have been reviewed with personal observation on the matter of juvenile delinquency and found the following aspects which may be identified as limitations of the juvenile justice system in Bangladesh:

- i. No specific mechanism is found in any legislation regarding determination of the age of children of a disadvantaged group like street children, poor children and orphan children who do not go to school or have no birth certificate.<sup>85</sup> So, it is tough to determine the age of the juvenile offender who is from those disadvantaged group.
- ii. The government has not taken any pre-preventive project-based strategy to reduce the trends of juvenile delinquency.<sup>86</sup>
- iii. Lack of adequate training of the public officers, poor reporting system, separate lockup arrangement for the child, mechanism of monitoring and supervising the police conduct and child help desk in the police station are the causes that depriving the juvenile from getting special care and treatment from law enforcing agencies.
- iv. An insufficient number of children courts, limited jurisdiction, conducting the procedure without camera trial, treated like adults by the courts, absence of child-friendly environment, unwillingness or negligence in the implementation of the law<sup>87</sup> etc made the justice system more complex

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<sup>84</sup> *Ibid*, 179.

<sup>85</sup> See section 20 and 21 of the children Act 2013.

<sup>86</sup> There is no such program taken by the government to prevent or reduce the trends of juvenile delinquency in Bangladesh.

<sup>87</sup> Nahid Ferdousi, "Best Practice in the Institutional Treatment of Juvenile Delinquents in Bangladesh: An Appraisal" (2014) 19 The Chittagong University Journal of Law 80.

and ineffective for providing a better judicial treatment to the juvenile delinquents.

- v. Inadequate Child Development Center (CDC), shortage of human resource, budget,<sup>88</sup> and other support of CDCs are the limitations in rendering better treatment system for the quality development and rehabilitation of the juvenile delinquents and their reintegration into family and social life.
- vi. There are lacks of facilities like lack of sufficient vocational training, lack of skilled trainer, officials made the correctional method system weaker.
- vii. There is no specific rule and up-to-date policy that providing the appropriate mechanisms for the implementation of the legislation in Bangladesh. Many concepts like the diversion, family conference, alternative care and ADR etc cannot be implemented in reality in absent of the rules.
- viii. There is no course as a part of study for the school level or any special course in any university or training institutions regarding the juveniles and juvenile delinquency. This is creating a huge knowledge gap between the ordinary people and the concerned entities of the justice system practicing in Bangladesh.
- ix. There is no separate Code of Criminal Procedure and Penal law made only for the juvenile justice system.<sup>89</sup>
- x. There is no Child Rights Commission has been established for lack of motivation and coordination between the laws and the involved institutes have made the whole implementation system slow and weak.
- xi. Detained juvenile are often found below the age of criminal responsibility or found as a victim of circumstance caused by unfairness.
- xii. It is reported that juvenile are found kept with adult prisoners from whom they may suffer abuse and be exposed to negative learning.
- xiii. There is also limited knowledge of international standards for dealing with children at all phases of the system, which seriously affects the treatment of the juvenile delinquents.
- xiv. There is no Child Rights Commission has been established in Bangladesh to monitor and protect the juvenile rights.

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<sup>88</sup> Ferdousi, *ibid* 81.

<sup>89</sup> Bangladesh government has not yet passed any special and separate Code of Criminal Procedure and Penal Law for establishing a separate and special justice system for the juvenile delinquents.



## **Recommendation and Conclusion**

Bangladesh has tried to establish a comprehensive Juvenile Justice system to providing the best treatment to the juvenile delinquents under the shade of juvenile justice system. The Government has made efforts to put juvenile justice on agenda but much more initiatives need to be done. One of the major problems is the lack of knowledge about child rights by those in charge of or involved with the justice system, such as the police, judiciary, social welfare officers and probation officers. This results in many unpleasant violations of basic child rights. In many cases, the most fundamental principles of due process are violated. Arrest, detention and even sentencing are often arbitrary and sometimes even illegal. Physical abuse, force, and torture are applied during arrest and interrogation. Female's children are frequently sexually abused. Detained children are often found below the age of criminal responsibility and kept with adult prisoners from whom they may suffer abuse and be exposed to negative learning. There is also limited knowledge of international standards for dealing with children at all phases of the system, which seriously affects the treatment of the children in conflict with the law. However, theoretically, the treatment of the juvenile justice system of Bangladesh should be formed with a non-traditional criminal justice system which is the combination of the non-formal attributes with formal regulations and procedures to deal with the juvenile delinquents or child in conflict with the law. Hence, for the better and effective treatment for the juvenile delinquents the followings might be recommended for the future actions in Bangladesh:

- i. There should be a pre-preventive government strategy program to keep the juveniles outside of the social evils like corruption and crimes.
- ii. The mechanism of ascertaining the age of a juvenile should be more specific unless any juvenile may be punished as the adult in absence of the required mechanism.
- iii. Sufficient number of Juvenile Courts with specific and complete jurisdiction, conducting the procedure with camera trial, separate judicial treatment different from the procedures applicable for the adults, and accountability in the implementation of the law etc must be ensured to make the justice system more reliable and effective for providing a better judicial treatment to the juvenile delinquents.
- iv. Government and non- government institutions must jointly coordinate with the procedural and non-procedural aspects of the juvenile justice system to ensure effective implementation of the legal provisions.
- v. Appointment of the CAPO in all the police station must be ensured to fulfil the objectives of the concerned Act.
- vi. Adequate training of the public officers, poor reporting system, separate lockup arrangement for the child, mechanism of monitoring and

supervising the police conduct and child help desk in the police station should be ensured to provide the juvenile delinquents special care and treatment by law enforcing agencies.

- vii. Required numbers of Safe Home and certified institution must be established for the placement of most of the juvenile delinquents. With the establishment of adequate number of Child Development Center (CDC), removing the shortage of human resource, budget, and other support of CDCs better treatment system may be ensured under the criminal justice system for the rehabilitation of the juvenile delinquents and their reintegration into family and social life
- viii. Proper treatment and mechanism provided by this state must be ensured for the benefit of those children.
- ix. The government should ensure the better arrangement to provide regular training and practical knowledge to increase the competency of the concerned professionals involved in the children justice system.
- x. All the matters relating Juvenile delinquency should be introduced into any special course or included in the course curriculum of the educational institutes to increase the sincerity of the students, teachers and guardians on this matter.
- xi. More study and more research should be encouraged to detect the problems of the treatment of juvenile delinquents under the criminal justice system which might be helpful for the legislature for the future amendment.
- xii. Necessary rules and policy are urgently needed to be introduced for the implementation of the national and the international legislation regarding juvenile delinquency. Many concepts like a diversion, family conference, alternative care and ADR etc cannot be implemented in reality unless the necessary rules and policy regarding these matters have been passed.
- xiii. The government should ensure the necessary arrangements to keep any juvenile offender separated from the adult prisoners from whom they may suffer abuse and be exposed to negative learning.
- xiv. An independent and active Child Rights Commission should be established to ensure, protect the rights and interests of the juvenile coming into contact or in conflict with law
- xv. The knowledge of the national laws and the international standards should be implemented for the better treatment to the juvenile delinquents at all phases of the system, which seriously affects the treatment of the juvenile delinquents.

However, considering the limitations, the criminal justice system has provided a comprehensive and unique treatment system for the juvenile delinquents in Bangladesh. The juvenile justice system has been reformed by adapting

alternative diversionary measures instead of the traditional complex justice system to protect the best interest of the children coming into contact or in conflict with the law. Here the system is a part of a traditional criminal justice system which consists of regulations and procedures to deal with a child in conflict with the law. The truth should be remembered that children, who becomes or comes into conflict with the law, do not do so of their own volition. A little circumspection would be revealing that they come into contact with the law due to actions or failure of adults around them<sup>90</sup>. Hence, the parents, society and the state need to be more concerned to take care of them with due responsibilities. In *Fahima Nasri v. Bangladesh*,<sup>91</sup> the court observed that the children (juveniles) are to be treated for their behavior rather than punished it and if their behavior of a juvenile delinquents has improved sufficiently to be released for the integration with the society. Mere enactment of laws is not sufficient; rather their enforcement and implementation by the government organs is also important<sup>92</sup> for creating a better juvenile justice system and for the better treatment of juvenile delinquents. Many significant provisions and mechanisms is provided which impossible to implement fruitfully in Bangladesh unless it is practiced effectively by the Government, concerned family members, the community and all other stakeholders indeed.

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<sup>90</sup> *The State v. Secretary, Ministry of Law, Justice and Parliamentary Affairs & others*, 30 BLD369 (HCD).

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