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Juvenile Justice Administration in Bangladesh: A Critical Analysis

Dr. Md. Hashibul Alam Prodhani*

Dr. Md. Ahsan Kabir**

1. Introduction

Juvenile justice system is not a new concept. It is a part of a criminal justice system. But unlike the criminal justice, juvenile justice looks to the criminal instead of crime. The word 'trial' used in the juvenile justice is also different in implication from that used in the criminal justice. In the latter case the word 'trial' is used in the sense to determine the guilt of a person, which is followed by punishment or acquittal. But in the former case it is used not to fix the punishment following the trial but to provide with their custody, protection and treatment. In the juvenile justice reintegration of the child into the society takes priority over determining the guilt of the child.

The main objectives of the juvenile justice administration are : to put due emphasis on the well being of the juvenile and to enable the juvenile offender to become a capable and productive citizen. The United Nations standard minimum rules for the administration of juvenile justice adopted in 1985 has spelt out two most important objectives of the juvenile justice under Rule V, which stated that-

- The first objective is the promotion of the well being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with family courts or administrative authorities but the well being of the juvenile should also be emphasized in legal systems that follow the criminal court model, thus contributing to avoidance of merely punitive sanctions.
- The second objective is 'the principle of proportionately: This principle is well known as an instrument for curbing punitive sanctions, mostly expressed in terms of deserts in relation to the gravity of the offence.

In the recent past, there has been an increase in awareness and concern of the government regarding the situation of juvenile in conflict with the law in Bangladesh. The Government also coordinated an effort of developing new rules and regulations for administration of justice recently. However, the juvenile justice system is not yet equipped to take the best interest of the child fully into account, in order to develop it into a constructive force in the society. The present article highlights a structure of juvenile administration of Bangladesh as well as on the situation of children and young persons in conflict with the law as well as on the situation of children and

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young persons in conflict with the law. This article also provides legal measures of national and international context concerning to the juvenile administration. The state of the correctional institutions and its role in case of juvenile offenders is also described. It also explores how the higher court came forward to protect the rights of juvenile delinquent by giving directions. Apart from these, this article forwards some recommendations for meaningful and effective Juvenile justice.

2. Definitions: 'child' and 'juvenile'

The United Nations Convention on the Rights of Child (UNCRC) covers all individuals below the age of 18 years as child unless under the law applicable to the child, majority is attained earlier.¹ From Bangladesh perspective, according to section 2(f) of the Children Act, 1974, child is defined as follows:

“Child means a person under the age of sixteen years and when used with reference to a child sent to certified institute or approved him or committed by a court or the custody of a relative or other fit person means that child during the whole period of his detention notwithstanding that he may have attained the age of sixteen years during that period.”

In Bangladesh, the current protections for children in conflict with the juvenile justice system do not extend to all children under the age of 18. Under the Children Act, 1974, “child” and “youthful offender” are defined as a person under the age of 16. Under this act, the consideration of age for child and juvenile is the same. Children between the ages of 16 and 18 are treated as adults in Bangladesh, which is contradictory to the definition of children provided by the UNCRC. As Bangladesh is a signatory country of United Nations Convention on the Rights of the Child (UNCRC), the matter of increasing the age for children up to 18 years as provided by the is under consideration by Bangladesh government. The women and children affairs ministry has drafted the National Child Policy-2010, setting the age limit for a child at 18. This draft was also published on the websites of the ministry and the related projects (www.mowca.gov.bd and www.mspvaw.org.bd) to elicit public opinion.²

3. Age of Criminal responsibility for Children

There is no clear international standard regarding the age at which criminal responsibility can be reasonably imputed to a juvenile. The CRC simply directs States Parties to establish “a minimum age below which children shall be presumed

¹ Art. 1, Convention on the Rights of the Child (CRC), 1989

² www.bdnews.com, 15 September, 2010.

not to have the capacity to infringe the penal law".³ It does not set any particular minimum age of criminal responsibility. Without fixing any particular minimum age, Beijing Rules also says that the age shall not be fixed at too low an age bearing in mind the fact of emotional, mental and intellectual maturity.⁴ As to the grounds for deciding the age, this at least provides some guidance which are the findings of medical and psychosocial research rather than tradition or public demand.⁵ It is astonishingly complicated to obtain clear data on the minimum age applied in each country. The Committee on the Rights of the Child continuously refers, in its concluding observations on State reports, to the interest of setting the highest possible minimum age. It has in particular criticized countries where the age is set at 10 or below. The United Nations Committee responsible for monitoring the compliance with the UNCRC has criticized jurisdictions in which the age is set at 10 or below. The official commentary to the Beijing Rules well explains the general philosophy behind this approach. The commentary says:

The minimum age of criminal responsibility differs widely owing to history and culture. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is too low or if there is no age limit at all, the notion of responsibility would become meaningless.⁶

In Bangladesh according to section 82 and section 83 of Penal Code 1860 amended in 2004, the minimum age of criminal responsibility is now nine years while criminal liability of children between the ages of nine and 12 is subject to judicial assessment of their capacity to understand the nature and consequences of their actions.⁷

³ Art. 40.3.a, Convention on the Rights of the Child (CRC), 1989.

⁴ Rule 4.1, United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules).

⁵ Innocenti Digest (UNICEF)- Juvenile Justice, *op.cit.*, p. 5.

⁶ M.M. Aminul Islam, *The Administration of Juvenile Justice: International Standard, National Law and Practice*, Justice For Children, State of Juvenile Justice and violence against children in Bangladesh, Save the Children UK, Bangladesh Sisu Adhiker forum, retrieved on 12 June, 2008 at www.bsafchild.org/save/jjcsb.php.

⁷ Penal Code (Amendment) Act, 2004.

4. International Legal Framework for Juvenile Justice

Juvenile Justice has become an international issue with the United Nation Convention on the Rights of the Child (UNCRC) coming into force in 1990. From article 37 and 40 of CRC, it is very clear about the treatment of the children in conflict with the law and these article's procedures to be followed to deal with a juvenile to be deprived of liberty. According to article 37, State Parties shall ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment, and neither capital nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age. This article also states that no child shall be deprived of his or her liberty unlawfully or arbitrarily, and the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. According to article 40 (1), state parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for human rights and fundamental freedoms of others and which takes into account the child's assuming a constructive role in society. Sub-section (3) of article 40 provides that

states parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and in particular; a. the establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law; b. whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. Article 40(4) also provides an assortment of temperaments, such as care, guidance, and supervision orders; counseling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their comfort and appropriate both to their circumstances and the offence.

Apart from the CRC, there are three other important UN sponsored documents dealing explicitly with the standards and guidelines for the treatment of children and young people coming in conflict with the law. The first of these documents is the UN Standard Minimum Rules for the Administration of Juvenile Justice, known as the Beijing Rules which was adopted by General Assembly⁸, which in fact predates the CRC by five years. The other two documents were adopted in 1990. These are the UN Guidelines for the Prevention of Juvenile Delinquency, known as the Riyadh

⁸ Resolution 40/33/1985 of 29 November, 1985.

Guidelines that was adopted and proclaimed by General Assembly,⁹ and the UN Rules for the Protection of Juveniles Deprived of their Liberty, known as Havana Rules that was adopted by General Assembly.¹⁰ Besides these four international instruments on the Juvenile Justice, there are some additional documents, which are often referred to in any discussion on juvenile justice. These are: the Standard Minimum Rules for the Treatment of Prisoners-1955, and second, the Tokyo Rules on Non-Custodial Measures.

5. Importance of Juvenile Justice System

Juvenile Justice Administration means the manner in which police arrest or interrogates a youngster, the way that judges make decisions about guilt or sentencing, the educational, recreational, and safety conditions in detention facilities, the programs for rehabilitation and reintegration. In short, each component of the entire system must be constructed to prevent humiliation and avoidable suffering, on the one hand, and to promote the realization of the young person's human potential, on the other.¹¹ The essential element of a juvenile justice system is an approach that values each boy and girl who is in the justice system, and cares about how the experiences in the system will shape the life of each one of them.¹²

There are important reasons for a separate human rights treaty and different standards for young people under 18 years of age and minors in conflict with the law than for adults. All the reasons for special treatment rotate around the fact that children and adolescents are in a period of development. Moreover, it is the reality that large number of young person criminals is socio-economic victims rather than perpetrators of crime and that the processes of arrest, trial and custody often result in destroying childhood and the chance of rehabilitating these children and investing in their futures as useful citizens. States must respond to the criminal activity of minors, certainly, for the sake of society and for the sake of the offender. But in the pursuit of law enforcement, the State must always keep in mind two, mirror-image objectives:¹³

- Avoid treating a young person in a way that could harm healthy development;
- Ensure as much as possible that a young person is treated in a manner that will promote healthy development.

⁹ Resolution 45/112 of 14 December 1990.

¹⁰ Resolution 45/113 of 14 December 1990.

¹¹ M. Aminul Islam, *The Administration of Juvenile Justice: International Standard, National Law and Practice*, op.cit.

¹² M. Aminul Islam, op.cit.

¹³ Ibid.

These above objectives are two sides of the same coin. By avoiding mischief and by promoting healthy development, we respect the young person's human dignity in the here-and-now, and we maximize the future probability for rehabilitation and reintegration into society.¹⁴

6. Objectives of Juvenile Justice Administration in Bangladesh

To give due importance and attention on the welfare of the juveniles who come in conflict with the law and to ensure that these children are treated in a manner proportionate to their circumstances and nature of the offence are the main objectives of the Juvenile Justice Administration in Bangladesh.¹⁵ The laws of the country dealing with juvenile justice have duly reflected these two universal principles set by various international documents including the Convention on the Rights of the Child. According to the Children Act, 1974, all children coming in conflict with the law are entitled to special handling and must be dealt with in a conduct which is different from that of the adults.¹⁶ It provides for separate trial procedures in courts exclusively designed for the juveniles. The setting of the courts should be totally different from that of the adults. The law further provides that no juvenile could be tried with adults. Deprivation of liberty can be used merely as a measure of last option and for minimum possible period of time. Besides these, the act also ensures that no circumstances juveniles shall be allowed to associate with adult prisoners which in effect mean that juveniles cannot be sent to jail where they have a chance to correlate with the adult prisoners.¹⁷

In Bangladesh, death sentence, transportation and imprisonment of children are categorically prohibited by the law. Imprisonment is only allowed in exceptional circumstances as the last option. The juvenile justice system in Bangladesh also stipulates for custody, care, protection and treatment of the "delinquent" children aiming at their correction and development, by which they can be rectified and acquire capacities to lead a productive and normal social life.¹⁸

7. Juvenile Justice Administration in Bangladesh

A child or young person who is alleged to have committed an offence is termed as juvenile offender who, under respective legal system, may be dealt with for an

¹⁴ Ibid.

¹⁵ Juvenile Justice Administration and Correctional Services in Bangladesh, Justice for Children, State of Juvenile Justice and violence against children in Bangladesh, Save the Children UK, Bangladesh Sisu Adhiker forum, retrieved on 12 June, 2008 at www.bsafchild.org/save/jjacsb.php

¹⁶ Ibid.

¹⁷ Juvenile Justice Administration and Correctional Services in Bangladesh *op.cit.*

¹⁸ Ibid.

offence in a manner which is different from an adult.¹⁹ Like other countries, the Juvenile Justice Administration in Bangladesh has duly emphasized on legislation, norms and standards, procedures, mechanism, provisions, institutions and bodies especially applicable to the children up to the age of 16 years (Children Act, 1974), whether they are alleged offenders, victims, witnesses and are in need of special protection..²⁰

Over the few years, Bangladesh has faced the growing problem of juveniles who come into conflict with law within the criminal justice system; their treatment in custody has had a severe adverse impact on their lives. Despite the ratification of several multilateral human rights treaties, including the Convention on the Rights of the Child (CRC), and the enactment of the Child Rights Act, 1974 children who come into conflict in Bangladesh with the law face serious problems within the existing criminal justice system. In Bangladesh, law guarantees that juvenile will not be given death sentence, life sentence and long imprisonment;²¹ they will be protected from torture, ill treatment and abuse, separated from adults for trial, and given access to family members. This juvenile justice system is based on the need for proper care, guidance and protection.

Bangladesh juvenile justice system has been described as “insufficiently addressed” by the UN Committee on the Convention on the Rights of the Child. This covers all facets of juvenile justice: the legislation, procedures, provisions, institutions, and bodies focusing on the youth who come into conflict with the law. Bangladesh has not fully taken into account the principles of the CRC and international instruments on juvenile justice in reforming laws and the juvenile justice system. In Bangladesh the Children Act of 1974 is the principal law on children and it deals with both children in conflict with the law and children in need of protection. Often with a lack of differentiation between these two groups. Although there has been impetus for reform in recent years, Bangladesh has not established a comprehensive juvenile justice system that ensures children are separated and treated differently from adults at all stages of the criminal proceedings. For children in conflict with the law, rehabilitation instead of punishment is yet to become the main aim.

7.1 Domestic Legislative Measures of Juvenile Justice Administration

There are two exclusive Acts in Bangladesh to deal with the Administration of Juvenile Justice. These are: The Children Act, 1974 and the Probation of Offenders Ordinance, 1960 (amended in 1964). The Children Act consolidates with amendments all the previous laws relating to the trial, custody, protection and

¹⁹ Ibid.

²⁰ Ibid

²¹ Section 51 of the Children Act, 1974.

treatment of the children and punishment of youthful offenders by giving due emphasis on their well-being, proper treatment and providing opportunities for correction and development. The Probation of Offenders Act on the other hand provides granting of probation to an offender for first and minor offence for a period of 1-3 years with some conditions determined by the trying Court. Such probationer can also be an adult but the main emphasis is given on the juvenile and youthful offender. The probationer is placed under a probation officer attached to the trying court for supervision and correction keeping them in their homes and community. The different laws related to Juvenile Justice Administration and right to protection of juvenile offenders are mentioned as below:

- The Code of Criminal Procedure Code, 1898
- The Vagrancy Act, 1943
- The Probation of Offenders Ordinance 1960
- The Children Act 1974
- *Nari O Shisu Nirjatan Ain - 2000* (Suppression of Violence against Women and Children Act - 2000) amended in 2003
- Jail code

7.1.1 The Code of Criminal Procedure Code, 1898

The Code of Criminal Procedure Code was enacted in 1898 provided special issued treatment for juvenile offenders.²² The Code also provided for commitment of juvenile offenders up-to age of 15 years to reformatory schools.²³ The Code provided for probation of good conduct to offender up-to the age of 21.²⁴

7.1.2 The Children Act, 1974

The edifice of juvenile justice system is built on, firstly, the separate trial for children and secondly, the concept of isolation. There are two reasons behind the development of the juvenile justice system. One is the recognition that children are separate entities who cannot understand the consequence of the act committed due to immaturity and the other is prison condition. Children are often suffering neglect, abuse and violence when the police pick them up. Children might come into conflict with laws for multifaceted reasons. But when they are arrested they should be treated differently than the adults. They shall be treated in a manner consistent with the basic rights of the child, i.e., right to dignity, right not to be tortured, right to privacy. That's why a separate trial system becomes imminent, which will consider the age of the child and where the welfare and promotion of the child rights will get priority.

²² Section 29 B of the Code of Criminal Procedure, 1898.

²³ Ibid, Section 399.

²⁴ Ibid, Section 562.

Whether criminal charges they face, children should only be deprived of their liberty as a last resort and for the shortest possible time.

It is worth noting a well-defined Child law has been promulgated in Bangladesh after few years of independence. The Child Act provides for the creation of specialized juvenile courts. The government has not constituted any juvenile courts to date, although it has been over 33 years since the commencement of the Child Act 1974. However, the government has made provisional arrangements until such courts are constituted. Juvenile benches of the District Courts are designed to hear all cases involving children in conflict with the law. This Act stated that notwithstanding anything contained in this code or any other law for the time being in force, no child should be charged with or tried for any offence together with an adult.²⁵ The main features of the Children Act, 1974 are discussed below—

a. Establishment of Juvenile Court: The Children Act imposes a duty on the government to establish one or more Juvenile Court in any local area as the government thinks fit by notification in the official gazette.²⁶ The Act also empowers the courts mentioned as below to exercise jurisdiction of the juvenile court:

- The High Court Division
- A Court of Session Judge,
- A Court of Additional Session Judge,
- A Court of an Assistant Session Judge
- A Sub-divisional Magistrate (not in force)
- A magistrate of the first class;
- And any other Magistrate specially empowered in this behalf.²⁷

A juvenile court will perform two main functions. Firstly, to try cases in which a child is charged with commission of an offence and secondly, to deal with and dispose of other cases under the Act.²⁸ It is to be mentioned that children may be brought before the juvenile court not only for trial but also for their protection, care and treatment. For example, when destitute children are brought before the court it may order, after reasonable satisfaction, the children to be sent to the approved home.²⁹

²⁵ The Children Act, 1974.

²⁶ Ibid, section 3.

²⁷ Ibid, section 4.

²⁸ The Children Act, 1974, Section 5.

²⁹ Ibid. Section 34 (4).

- b. Prohibition of Joint Trial:** The Act prohibits the trial of a child jointly with an adult. Section on the commission of an offence 239 of the Code of Criminal procedure 1898 provides for the joint trial in some circumstances where persons who are accused of commission of the same offence in the same transaction. But the Children Act 1974 is an exception of this section where a separate trial for the child is required though he commits an offence with an adult.³⁰ In other words where the child and an adult commit a crime jointly their trial will not be held jointly. A child will not be tried jointly with an adult.³¹
- c. Prohibition of Public Trial:** Section 9 and 10 of the Children Act 1974 reveals that except the members and officers of the court, parties to the proceedings, parents and guardians and such other person as the court thinks fit, no one will be allowed to be present in the trial of a child. This is an exception to the provisions of the Constitution as well as the international human rights instruments on public trial.
- d. Trial proceedings in Juvenile Court:** When hearing of cases involve an alleged offender under the age of 16, the Children Act calls for the designation of specialized Juvenile Courts, and requires courts of all levels to follow the special juvenile court procedure. During the hearing in juvenile cases, the court should sit in the different building or room from the ordinary court sitting, or on a different day or time of day.³² The court is closed to the public and media is prohibited from disclosing the child identity. Proceedings must be conducted in a simple manner as possible and in a home like atmosphere.³³ When children are brought before the court, they should not be under the close guard of a police officer but should be permitted to sit in the company of a relative or probation officer.³⁴ At any stage during hearing the case, the court may dispense with the attendance of the child and proceed without him/her, if the court is satisfied that child's attendance is not essential to the hearing.³⁵
- e. Bail and pre-trial detention:** Where a person apparently under the age of 16 years is arrested on a charge of non-bailable offence and cannot be brought forthwith before a court, the officer-in-charge of the police station may

³⁰ Ibid. section 6.

³¹ 49 DLR, HCD, p. 53.

³² The Children Act, 1974, Section 7 (2).

³³ The Children Rules, 1976, section 4.

³⁴ Ibid. section 4.

³⁵ The children Act, 1974, section 11.

release him/her on bail.³⁶ Where a person apparently under the age of sixteen years having been arrested is not released on bail, the officer-in-charge of the police station shall cause him/her to be detained in a remand home or a place of safety until he can be brought before a Court.³⁷ A court, on remanding for trial a child who is not released on bail, shall order him to be detained in a remand home or a place of safety.³⁸ Immediately after the arrest of a child, it shall be the duty of the police officer or any other person affecting the arrest to inform the Probation Officer of such arrest in order to enable the Probation Officer to proceed forthwith in obtaining information regarding the antecedents and family history and other material circumstances likely to assist the Court in making its order.³⁹ In the case of child arrest, the officer in charge of the police station to which he/she is brought shall immediately inform the parent or guardian of such arrest, and shall also cause them to be directed to attend the court before which the child will appear and specify the date of such appearance.⁴⁰

- f. **Sentencing by the Juvenile Court:** When making an order under the Act, the Court must take into consideration the following factors: the character and age of the child; the circumstances in which the child is living; the reports made by the probation officer; and such other matters required to be taken into consideration in the interests of the child.⁴¹ Under this Act, 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 nature or the child is so unruly or depraved that he can not be committed to a certified institute, the child can be sentenced to imprisonment.⁴² A youthful offender sentenced to imprisonment shall not be allowed to associate with the adult prisoners. A court may discharge any young offender after due admonition, release on probation of good conduct or commit a child to the care of a fit person executing a bond with or without sureties.⁴³
- g. **Reformative approach of the Court:** An important aspect of the Children Act 1974 is that it advocates for the reform of the child offenders. It provides

³⁶ Ibid, Section 48.

³⁷ The children Act, 1974, section 49.

³⁸ Ibid.

³⁹ Ibid. Section 50.

⁴⁰ Ibid. Section 13(2).

⁴¹ Ibid, Section 15.

⁴² Ibid. Section 51.

⁴³ Ibid. section 53.

that the court will look to the offender not to the crime committed by him. That it will take into consideration the character, age, circumstances in which the child is living and such other matters as the court thinks fit before passing sentence. Unlike the criminal justice the court will not determine the guilt of a child based on the act alone. The Supreme Court also reaffirms this principle.⁴⁴

h. **Prohibition to publish particulars of a child:** It is noteworthy that the court shall always look to the well being of the child while he is going under trial. The Act also prohibits publication of particulars of a child in any newspaper, magazine for future well being of the child. Even the words 'conviction' and 'sentence' cannot be used in relation to a trial of a child or juvenile offender.⁴⁵

i. **Certified institutes and other institutions:** Section 19 of this Act states that the Government may establish and maintain training institute for the reception of children and youthful offenders. And the government may certify that any training institute, any industrial school, or other educational institution is fit for the reception of children or youthful offenders.

The Government may establish and maintain remand home for the purposes of detention, diagnosis and classification of children committed to custody by any Court or police.⁴⁶

7.1.3 The Probation of offenders Ordinance, 1960

The ordinance was promulgated by the President of Pakistan and applied in East Pakistan (now Bangladesh) under the Probation of Offenders (East Pakistan amendment) Act, 1964. In this Ordinance, neither there were provisions for the establishment of Juvenile courts nor to deal with the trial and rehabilitation efforts of the Juvenile offenders alone. It just laid down specific legal provisions for the special handling of the first and minor offenders by the judicial magistrates.⁴⁷

The court is empowered by section 4 of the Ordinance to conditionally discharge a first offender who is convicted of an offence punishable with imprisonment for not more than two years and who have committed the offence under extenuating circumstances. The Magistrate will consider the age, character, antecedents or

⁴⁴ State Vs. Deputy Commissioner, Satkhira, 45 DLR, HCD, p. 643.

⁴⁵ The Children Act, 1974, Section 17.

⁴⁶ Ibid, section 20.

⁴⁷ Mohammad Sadeque, *Juvenile Court for Bangladesh*, The Journal of the Institute of Bangladesh, Rajshahi University, Vol. iv, Annual 1979-80, December 1980, p. 49.

physical and mental conditions of the offender and also require the offender to enter into a bond with or without sureties while passing discharge orders.⁴⁸

7.1.4 The Vagrancy Act, 1943

In Bangladesh many child and juvenile is living as vagrant in the different part of the country, especially in the urban areas, for poverty and unemployment. They are also being used by the criminals to act different criminal activities. For avoiding criminal activities committed by vagrant juvenile, the Vagrancy Act, 1943 provides vagrant home, which is for the permanent detention of vagrants. According to section (2) of this act, "Vagrant" means a person found asking for alms in any public place in such condition or manner as makes it likely that such person exists by asking for alms but does not include a person collecting money or asking for food or gifts for a prescribed purpose. The Act also recognizes Vagrancy Advisory Board and appointment of Controller of Vagrancy and his assistants. For the purpose of the Chapter II of the Act, the government may empower of any magistrate of the First Class to act as special Magistrate. When a person is brought before a Special Magistrate under section 6 of the Vagrancy Act, such Special Magistrate shall make a summary inquiry in the prescribed manner into the circumstances and character of such person, and if he is satisfied that such person is a vagrant, he shall record a declaration to this effect and the provisions of this Act relating to vagrants shall thereupon apply to such person.⁴⁹ The procedure of sending to the vagrant home is detailed to the section 9 of the Act. In issuing any order to send vagrants to vagrant home, Controller shall ensure that the following classes of vagrants, namely, lepers, the insane or mentally deficient, those suffering from communicable diseases other than leprosy and children.⁵⁰ The Manager of a vagrants' home shall use his best endeavors to obtain outside the vagrants' home suitable employment for vagrants detained therein.⁵¹

7.1.5 *Nari O Shisu Nirjatan Daman Ain -2000* (Suppression of Violence against Women and Children Act – 2000)

The act provided provisions regarding the restriction of publication of the identity to the news media in case of women and child victims of the offence under this act, and allowing the provisions of Children Act, 1974 to the accused child for any offence under this act. It clearly laid down that if any woman and child is victimized by any offence mentioned in this act, in this regard any news or information or name or address relating to occurred offence or legal proceeding related to this will

⁴⁸ Ibid. pp. 49-50.

⁴⁹ Section 7 (1), The Vagrancy Act, 1943.

⁵⁰ Section 9 (4), The Vagrancy Act, 1943.

⁵¹ Section 17, The Vagrancy Act, 1943.

be published in a such way so that the identity of mentioned woman and child will not be disclosed.⁵² In case of infringing this provision, the responsible person and persons each shall be liable for two years conviction or fine of taka up to 1 lakh or both imprisonment and fine.⁵³ Sub section (7) of the section 20 of this act has also mentioned that if any child is accused for any offence under this act or considered as witness for that offence, in this situation the provisions of children Act, 1974 will be followed as far as possible. Sub section (8) of the above mentioned section of this act has clearly expressed that the Tribunal shall, in case of giving direction to keep any women and children in safe custody, take his or her opinion and consider for the protection of welfare and interest of such women and children.⁵⁴

7.1.6 Provisions of the Jail Code on Juvenile Offenders

Bengal Jail Code consists of the provisions of Prisons Act 1894, Prisoners Act 1900, Identification of Prisoners Act 1920, Rules made under Section 59 of the Prisons Act 1894 and Rules made under Section 60(a) of the said Act of 1894 for the superintendence and management of jails and subsidiary jails respectively.⁵⁵ This code also contains some rules which ensure the different rights of juvenile offender inside the jail.

Rule 962: A prisoner up to the age of 21 is considered a juvenile or adolescent. Under section 27 of the Act IX of 1894, male prisoners under the age of 21 shall be kept altogether separate from other prisoners, and, of the former, those who have not arrived at puberty shall be separated from others. This is appropriate both to convicted prisoners and to prisoners under trial. Therefore, in every jail in which male juvenile prisoners are detained, practice must be provided for separating those four classes. Arrangements must also be made to separate adolescents guilty of grave crime from other adolescents. Female adolescents may be kept in the female ward allotted to A class prisoners, but separation from adults should be arranged. Juvenile prisoners belonging to class B must be kept apart from other juvenile prisoners.

Rule 963: A "youthful offender" means any boy who has been convicted for any offence punishable with transportation or incarceration and who, at the time of such conviction, was under the age of fifteen years. Since the captivity of youthful offenders in a jail is in many ways intolerable, Superintendents should bring to

⁵² Sub-section (1) of section 14, Nari O Shisu Nirjatan Ain -2000 (Suppression of Violence against Women and Children Act - 2000).

⁵³ Sub-section (1) of section 14, *ibid*.

⁵⁴ Sub-section (1) of section of Section 20 inserted by the Section 10 of Nari O Shisu Nirjatan Daman (Amendment) Ain- 2003.

⁵⁵ Banglapedia, National Encyclopedia of Bangladesh, CD Edition, February 2006, Asiatic Society of Bangladesh.

notice, under section 10 of the Reformatory School Act (Act VIII of 1897) whenever a male prisoner under 15 years of age is admitted, whose incarceration in a reformatory has not been ordered, unless they are aware that the Magistrate of the district in which the prisoner was convicted has previously decided that the prisoner shall not be sent to as reformatory school.

Rule 965: In jails, there are separate wards for juvenile prisoners; such wards shall be fitted with cubicles for the separation of such prisoners at night. If there are not a sufficient number of cubicles for all, those who have arrived at the age of puberty should be kept in the cubicles in preference to those who have not. In jails where there is no separate juvenile ward, juvenile prisoners sentenced to a month's imprisonment or less, or whilst awaiting transfer, shall be confined at night in cubicles or separate sleeping places.

Rule 973: All juveniles who are undergoing sentence of a year or more shall be brought under instruction in reading, writing, and arithmetic. They shall be taught in the daytime for an hour in the morning and an hour in the afternoon.

7.2 Government Agencies Involved in Juvenile Justice Administration:

There are different agencies of the Government, which are responsible for juvenile justice administration in Bangladesh. Among these, the following agencies are mainly involved in this regard.

- Judiciary (Ministry of Law Justice and Parliamentary Affairs)
- Magistracy (Ministry of Establishment)
- Police (Ministry of Home)
- Department of Social Services (Ministry of Social Welfare)
- Prison Authority (Ministry of Home)
- Department of Women and Children Affairs (Ministry of Women and Children Affairs)⁵⁶

7.3 Correctional Institutions as a part of Juvenile Justice Administration

The government initiatives for meaningful and effective operation of the above Acts and ordinance have been intensified and taken with all seriousness in recent times. The government has so far established three Correctional Institutes, which have been renamed as Child Development Centre, under the provision of the Children Act, 1974, each of which is consisted of one Juvenile Court, one Remand Home and one Training Institute. These centers are:

⁵⁶ Justice For Children, State of Juvenil Justice and violence against children in Bangladesh, Save the Children UK, Bangladesh Sisu Adhiker forum, www.bsafchild.org/save/jjcsb.php.

- (i) Child Development Center for 200 boys at Tongi, Gazipur,
- (ii) Child Development Center for 150 girls at Konabari, Gazipur,
- (iii) Child Development Center for 150 boys at Jessore.

The above mentioned three Child Development Centers, which are mainly based on the coordination of three different programs: (1) Juvenile Court, (2) Remand Home and (3) Reformation, are now functioning in the country. They are believed to be particular agencies for taking care of children who come in conflict with the law. These are large institutional centers, and care for a mix children in pre-trial detention, child offenders under the age of 16 who have been sentenced by the courts, and children willingly admitted by their parents for being disobedient.⁵⁷ These centers offer general education up to primary level and some vocational training. Children are also entitled to participate in weekly cultural programs, sports and exercise. Each has at least one social case worker on staff to provide individual and group psychotherapy and to promote behavior development. The centers are housed on pretty large grounds with gardens and facilities for out door games.⁵⁸ However, in practice, many children are sent to ordinary prisons where they are imprisoned with adults. Although the stated objective of these centers is to promote the rehabilitation and reintegration of children, they have also lack facilities for correctional activities. The curriculum for the vocational training is not up-to-date, the instructors are not skilled enough, and the officials and employees lack skill to deal with the children who need special care and attention. There is a need to incorporate counseling; modern trades for the correction centers and arrangements of training for the correction centers officials and employees.⁵⁹ Recently, the government has put emphasis on introducing "Diversion" program as a practical and effective method for the correction of the juvenile offenders. The existing Correctional Institutes have already started implementing this program. Save the Children UK is also assisting the Department of Social Services (DSS), Ministry of Social Welfare, in executing this Diversion program. The Government has a plan to establish four new Child Development Centers at Rajshahi, Barisal, Chittagong and Sylhet in near future. A

⁵⁷ Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law, published by UNICEF, 2006, Nepal, p. 46.

⁵⁸ Ibid.

⁵⁹ M.M. Aminul Islam, *The Administration of Juvenile Justice: International Standard, National Law and Practice*, op.cit.

plan for strengthening and development of the programs of the existing centers is also under preparation.⁶⁰

7.4 Probation services and Juvenile Justice Administration

Department of Social Services runs 22 units of probation services in 22 greater districts. Besides, District Social Services Officer in 42 new districts, 400 Upazila Social Services Officers and 15 Urban Community Development Officers have also been appointed to act as Probation Officer in their respective jurisdiction in addition to their own duties. Probation Officers also work in Tongi, Jessore and Konabari Child Development Centers.⁶¹

8. Directives declared by Higher Court in regard to Juvenile Justice

Juvenile delinquency has become a global phenomenon these days. Despite intensive rehabilitative measures and special procedure for tackling the problem of juvenile delinquency, there is a growing tendency among youngsters to be arrogant, violent and disobedient to law with the result there has been considerable rise in the incidence of juvenile delinquency. The problem of juvenile delinquency is not as tense in our country as in the western world. This may be due to variations in living conditions such as greater family affiliation and parental control, stronghold of religious convictions and due regard for moral precepts in our society. This is not to suggest that the proportion of juvenile delinquency in Bangladesh is negligible. The impact of western civilization and temptation for luxuries and pompous life has greatly disturbed the modern Bangladeshi youth. Consequently, there has been a considerable growth in crimes committed by juvenile delinquent. According to the Children Act and also the Code of Criminal Procedure children can only be tried in the Juvenile Court and no joint trial can be held with the adults. But it has been observed children are usually tried in the ordinary criminal courts and often with the adults in case they are co-accused with adults.⁶² The law of the land clearly stipulates that children, when they are deprived of their liberty must be kept separate from the adults. In the absence of any better option, male children may be kept in the police station (if the best interest of the children so demands) provided there are separate arrangements for them. In no way girl children can be detained in the police station. The spirit of the Children Act 1974 dictates that no children should be in any sort of

⁶⁰ Juvenile Justice Administration and Correctional Services in Bangladesh, *op.cit.*

⁶¹ Ibid.

⁶² M.M. Aminul Islam, *The Administration of Juvenile Justice: International Standard, National Law and Practice, op.cit.*

detention, and if necessary for the best interest of the child that should also be as a measure of last resort and for shortest appropriate period of time. And during the detention they must be kept separate from the association of adults.⁶³ Nevertheless, in practice, the children are languishing inside the jail with adult prisoners without any trial for months after months. For improving the situation of juvenile justice administration and ensuring the rights of juvenile delinquent granted by laws, the Higher Court has played important role by issuing different directives in *BLAST and others vs. Bangladesh and others*.⁶⁴ After completing final hearing, on 3 August 2004, a High Court Division Bench consisted of Mr. Justice M.A. Matin and Mr. Justice Tariq Ul Hakim directed the respondents to comply with the following earlier directions declared in a *Sua Moto* Rule 248 of 2003 and report compliance within six months from date.

- (1) With utmost expedition by the juvenile courts and the law enforcing agencies concerned, trial, if any, of all juvenile accused to be completed. Prosecuting agencies and Legal Aid committees be directed to take urgent steps in this regard.
- (2) It is directed that the government does consider making prayers to the courts concerned for discharging the juvenile accused on appropriate cases taking into consideration of the provisions of sections 82 and 83 of the penal Code, 1860,. Order of discharge may also be required for pursuant to section 53 of the Children Act, 1974.
- (3) It is directed that the Government also does consider withdrawal of juvenile accused from the prosecution under section 494 of the Code of Criminal Procedure in appropriate cases, especially from the cases charged under ordinary penal laws.
- (4) The Local Legal Aid Committees formed by the Government be instructed to move the Courts for bail of the Juvenile accused.
- (5) Juvenile accused in jail must be kept apart from other prisoners.
- (6) Non-Official jail visitors should include human rights activists, specially the representatives of children organizations of the country.

⁶³ Ibid.

⁶⁴ Writ petition no. 7578/2003.

- (7) Juvenile accused are to be transferred to correction houses and other approved homes with utmost expedition.⁶⁵

9. Final remarks

Bangladesh has yet to implement a fully separate system of justice for children in conflict with law. Despite having a comprehensive international legal framework and in case of Bangladesh, an elaborate national framework, there exists a big gap between the laws and the reality in the ground. The Children's Act 1974 and The Children's Rules 1976 have been enacted especially for the protection of Children who come in conflict with the law. But in many cases these laws are ineffectively enforced in Bangladesh. There are allegations that homeless and street children are rounded up by the law enforcing agencies, often for a silly cause or without any causes. They are then kept with the adult criminals in jails without recourse to legal protection. Children are also subject to adult sentences, including life imprisonment, from as young as nine, and there are no juvenile protections for children between the ages of 16 and 18. In January 2000, there were four children under 15 years serving life sentences in Togni Correction Centre.⁶⁶ The Children Act specifies that children should be tried at juvenile courts and to be separated from adults at all times, but in practice, children are tried at regular courts together with adults and are sent to ordinary prisons where they are imprisoned with adults.⁶⁷ Children who are apprehended by police, brought to the vagrant or shelter homes, detained there for months together or maximum up to the age 18. The prevailing environment of these homes is not at all child-friendly. There are reports that children are behaved inhumanly in the vagrant homes and shelters. There are reports of sexual and physical abuse of children by the vagrant homes. Girls are particularly vulnerable to the sexual exploitation by the staff members of the shelter homes. Again when they are produced before the court, the hearing is brief and hastily dispensed with no legal representation of the victims or opportunity for expressing their views.⁶⁸

One of the major problems regarding to juvenile justice of Bangladesh is the lack of knowledge about child rights by those in charge of the justice system, such as police, judiciary, social welfare officers and probation officers. This results in many gross violations of basic child rights. For example, children are subject to frequent

⁶⁵ Blast Vs. Bangladesh, 57 DLR (2005) 13.

⁶⁶ Bangladesh Sishu Audhikar Forum (BSAF) Alternative Report, 2001-2006, pp. 30- 49.

⁶⁷ Juvenile Justice in Bangladesh published by UNICEF, retrieved on 12 September 2008 at http://www.unicef.org/bangladesh/Juvenile_Justice.pdf

⁶⁸ Bangladesh Sishu Audhikar Forum (BSAF) Alternative Report, 2001-2006, pp. 30- 49.

deprivation of their liberty over so-called "status offences" such as vagrancy, begging, smoking, dropping out school or alcohol use. In many cases, the most fundamental principles of due process are violated. Arrest, detention and sentencing are often arbitrary and sometimes even illegal. Physical abuse, force and torture are applied during arrest and interrogation. There is also limited knowledge of international standards for dealing with children at all phases of the system, which obviously seriously affects the treatment of the children in conflict with the law. The means may in justice system are simply unaware of the non-denial freedom measures which should be applied to the children in conflict with the law.

Since 2003, there has been significant momentum building for juvenile justice reform, and there is a clear commitment to change at the highest levels. Numerous initiatives have been taken to improve police and court practices, and to improve non-custodial alternatives. However, many of these initiatives have been conducted in isolation, within geographically restricted areas and with limited strategic focus. The National Task Force has developed a list of priority issues to be addressed in the juvenile justice system, but there is no clear action oriented program.⁶⁹ For effective and foreseeing juvenile justice system, the following recommendations are recommended for consideration:

- To develop a strategic plan of action in regards to comprehensive juvenile justice reform. Through a consultative process, the National Task force (NTF) should develop a detailed, strategic reform plan which will set main strategies and concrete activities for integrated and sustainable juvenile justice system.
- As the Children Act, 1974, is outdated and in many respects fails to fully reflect the principles of the CRC and UN guidelines, it is urgently necessity to make reform in the existing child Act with a concrete approach to children in conflict with law.
- Clear definition between children in conflict with law and children in need of protection in legislation, policies, guidelines and institutional care should be made.
- Reserving arrest and court proceedings for children who commit serious crimes, promoting diversion and restorative justice approaches to resolving

⁶⁹ Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law, published by UNICEF, 2006, Nepal, p. 51.

minor crimes outside the formal system through police cautioning, mediation or referral to a community based diversion program.

- Stopping arbitrary arrests of children by repealing the Vagrancy Act, 1943, and curtailing power of police to arrest children on 'suspicion', and to apprehend children who are in need of protection.
- Interventions to support street children, child victims of commercial sexual exploitation and other child victims should be conducted primarily by child welfare officers, not the police.
- Immediate steps should be taken to stop the practice of detaining child inside the jails with adult prisoners.
- In larger cities, specialized juvenile police units should be created to handle children in conflict with the law.
- The number of Child Development Centers with the facilities of Juvenile Court, Remand Home and Correction should immediately be increased in the different parts of the country.
- Separate Juvenile court should be established in every district.
- Priority should be given on developing non-custodial alternatives, both pre-trial and as sentencing option.
- Sufficient probation officers should be appointed to give proper attention to juvenile delinquents.
- A permanent structured system for coordination between law enforcement and civil society should be integrated into the core juvenile justice system.
- Cooperation among Ministry of Law, Justice and Parliamentary Affairs and other actors will be strengthened.
- Several workshops and special training program should be arranged with government officials such as police, magistrates, judges, probation officers and social workers, and key stakeholders on the modern trends of juvenile justice as well as child rights.
- Lawyers have to be trained to provide free legal representation to children in conflict with the law thus contributing to the promotion and protection of their rights.
- Pilot interventions on diversion programs and alternative non-denial freedom measures should be taken.

- Awareness raising campaigns should be conducted to realize the issue of juvenile justice and protect the rights of children in conflict with the law.

Bangladesh has no comprehensive juvenile justice system for dealing with children in conflict with law. For effective implementation of Juvenile Justice in Bangladesh the sincerity and sensitivity of the concerned actors and the practitioners involved in it are essential. The Government has made efforts to put juvenile justice issues on the agenda but much more still needs to be done. The need for comprehensive legal reform is crucial because the Children Act is outdated and in many respects fails to fully reflect the principles of the CRC and UN guidelines. More modern approaches to juvenile justice based on non-denial freedom measures and restorative justice should be in place. Since children are the bearer of future society, juvenile justice system should be one of the priorities for the government to ensure real justice and prosperous future for the juvenile delinquent. There have been active public debates on realization of social justice for children and it is no doubt there is an overwhelming task ahead on child protection and juvenile justice in Bangladesh. Nevertheless, we are confident that the Government of Bangladesh in partnership with the vibrant civil society will demonstrate political determination in creating responsive juvenile justice administration and take a proactive role in advocating for a comprehensive juvenile justice reform.