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Research Monograph

On

“Criminological Dimensions of Juvenile Delinquency in Bangladesh: Causes, Prevention and Legal Responses”

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Letter of Transmittal

To

Professor Dr. A. S. M. Tariq Iqbal

Professor of Law & Dean

Faculty of Arts and Humanities

Sonargaon University

Subject: Submission of Research Monograph on “**Criminological Dimensions of Juvenile Delinquency in Bangladesh: Causes, Prevention and Legal Responses**”

Dear Sir,

This is a great pleasure to submit the Research Monograph on “**Criminological Dimensions of Juvenile Delinquency in Bangladesh: Causes, Prevention and Legal Responses**” as a partial requirement for the fulfillment of my LL.B course under the Department of Law of the Sonargaon University (SU).

I have given due efforts to make this Research Monograph as fruitful one and to make it as informative as possible. I hope that this paper will not be the formality of academic course completion rather it will be a source of information for other purpose on this topic.

Yours sincerely

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Declaration

I do hereby declare that the Research Monograph Title “**Criminological Dimensions of Juvenile Delinquency in Bangladesh: Causes, Prevention and Legal Responses**” prepared solely by me and which has been submitted to the department of Law, Sonargaon University (SU) for achieving the LL.B (Hon’s) Degree. This is an original work of mine. No part of this research, in any way or in form, has been submitted to any University or Institution for any Degree, Diploma or for other similar purposes.

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Supervisor Certificate

This is to certify that the work presented in this dissertation is based on the work, carried out by the author herself under my supervision in Department of Law, Sonargaon University (SU).

It is also certifying that the work presented here is original and suitable for submission as the style and contents, for fulfillment of LL.B. program.

.....
Professor Dr. A. S. M. Tariq Iqbal
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Acknowledgement

***In the name of Allah, the Beneficent, the Merciful".** Praise by Allah & thanks to Allah for patronizing me to finish this Research Monograph. I am very happy to finish it. It is a great Research of my life. It is a long cherished hope of my life to become a great lawyer. That's why I have admitted in the Department of Law in Sonargaon University (SU) to fulfill my dream. But through my whole study life in this field, I did not get much more opportunities to examine and show my knowledge and skill in this wide field. Lastly I have got a great chance to make my study meaningful when I got the chance to prepare a Research Monograph on **Criminological Dimensions of Juvenile Delinquency in Bangladesh: Causes, Prevention and Legal Responses.**

I acknowledge my grateful to respected course teacher **Professor Dr. A. S. M. Tariq Iqbal** for instructing me how to prepare a Research Monograph and his famous Books lectures on this subject help me to complete my task sincerely.

I am also thankful to my classmate as they help me to complete the Research Monograph. I am extremely paying my solitude to all the authors and writers whose works help me to draft this original Research Monograph.

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Thank you

Mehedi Hasan

ABSTRACT

Criminological Dimensions of Juvenile Delinquency in Bangladesh: Causes, Prevention and Legal Responses. Children are not born as delinquents. Most of the juvenile become delinquents due to the socio-legal circumstances prevail Bangladesh, not by their choice. Juvenile delinquency has emerged as a matter of serious concern in recent times with the rising number of children involved in unlawful activities. However, day by day the number of male and female delinquents is increasing and they are involved in different types of offences such as theft, hijacking, carrying illegal arms and drugs, and killing, trafficking, smuggling and fraudulent activities. They have become victims of various socio-economic circumstances like poverty, lack of guidance, extensive use of satellite channels, misuse of internet and peer pressure etc. This thesis explores the present trends and major socio-legal factors behind juvenile delinquency in Bangladesh.

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Chapter One

Introduction

1.1 Introduction

Juveniles are the most susceptible segment of society. They react sharply to any social problem. It is a problem that persists in our society and also all over the world to a perceptible degree. A child is born innocent and it nourished with tender case and attention he or she will be a person of statute and excellence. To understand the problem is real perspective it is necessary to understand the meaning of delinquency and its significance is the social background of our society.¹ On the other hand, noxious surroundings, neglect of basic needs bad company and other abuser and temptations would spoil the child and likely to turn him a delinquent.

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

To criminologist, juvenile delinquency encompasses all public wrongs committed by young people between the ages of 12 to 20. Sociologist view the concept more broadly, believing that it covers a multitude of different violation of legal and social norms, from minor offences to serious crime, committed by juveniles. In an attempt to explain the theoretical underpinnings of delinquency, sociologists associate the specifics of youth behavior with the

¹ Monjur Kader & Md. Muajjem Hussain, *Criminology*, 1st ed. (Dhaka: Eastern University Dept of Law, 2008), pp.121-22.

home, family, neighborhood, peers and many other variables that together or separately influence the formation of young people's social environment.

Statistical data in many country show that delinquency is largely a group phenomenon; between two-thirds and three-quarters of all juvenile offences are committed by members of various groups. Even those juveniles who commit offences alone are likely to be associated with groups. Some groups and subcultures tend to use violence as a means of solving interpersonal conflicts, and the atmosphere thus created is an important mediating factor contributing to delinquent or criminal behaviour. This might even be referred to as a subculture of violence, in which aggression is considered an acceptable and even preferable and courageous approach to problem-solving. Available data show that delinquency and crime have strong gender associations. Police record indicate that the crime rates of male juvenile and male young adult offenders are more than double those of young females, and conviction rates are six or seven times higher.

1.2 Objectives of the Study

Objectives of the study are as follows:

1. To have a clear understanding of the prevailing situation of children in conflict with the law and assess the recent progression and way forward in the children justice system of Bangladesh.
2. To investigate empirically to know the subject of delinquency which is social in origin, in nature and in consequence.
3. To find out the lack in this sector and try to find out some solution and ways to improve the scenery of juvenile delinquency.

1.3 Methodology of the study

The approach adopted to achieve the specific objectives of the present study has involved the use of different research methodologies in a series of discrete research undertakings. Initially, through exploratory investigation, a number of topics and general questions concerning the specific objective of the study have been identified and defined for systematic and comprehensive research. Thereafter, these topics and questions have been addressed by taking recourse to both primary and secondary data.

To explore the total features of juvenile delinquency and justice system is being analyzed in this paper on the basis of secondary data.

So far secondary data are concerned, a literature review of relevant studies, reports and other publications has been undertaken and the information and findings contained therein have been described, analyzed and evaluated.

1.4 Limitations of the study

- (I) The main constraint of the study is massive lacking information on this issues.
- (ii) Currently, national population data is not available for a range of key indicators for juvenile delinquency
- (iii) I can not directly interview the juvenile inmates.
- (iv) The major problem of the study was time limitation. For an analytical purpose adequate time is required. But I was not given adequate time to prepare such a indepth study.
- (v) Such a study was carried out by me for the first time. So inexperience is one of the main factors that constituted the limitation of the study.

Chapter Two

Concept of Juvenile Delinquency

2.1 Definition of juvenile: difference of ages

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

- a) According to section 2(f) *The Children Act* 1974 ‘child’ means a person under the age of sixteen years for the purpose of juvenile justice administration.
- b) According to section 1(3) *The Bengal Vagrancy Act*, 1943 ‘child’ means a person under the age of fourteen years.
- c) According to section 2(m) of the *Nari sishu Nirjaton Domon Ain* 2002, amended in 2003 ‘child’ means a person who has not exceed the age limit of 16 years.
- d) According to section 2(f) of the jail code, 1864, a ‘child’ means a person under the age of 16 years.

The United Nations Convention on the Rights of the Child (CRC) defined child as any person under the age of 18 years unless under the law applicable to the child, maturity is attained earlier. Bangladesh ratified the Convention on the Rights of the Child in November 1989.² In Bangladesh there are a number of laws which defined a child. These laws are conflicting regarding the age of children. Some described a child as a person below 12 years, others state below 14 years and some defined them as a person below 18 years of age. But The Children Act, 1974 defined a child as a person under the age of 16 years. Under the Act child means a person under the age of 16 years,

² Abu Noman Mohammad Atahar Ali and others, ‘Towards a Proper Juvenile Justice System in Bangladesh from a Cultured One: An Analytical Overture on Focusing Human Rights Perspective’, Mizanur Rahman, ed, *Human Rights: Sixty Years After UDHR* (Dhaka : Empowerment Though Law of the Common People & Palal Prokashon, 2008), pp. 245-46.

and when used with reference to a child sent to a certified institute or approved home or committed by a Court to 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 16 years during that period.

2.2 Meaning of juvenile delinquency

The term ‘delinquency’ has been derived from the Latin word *delinquare* which means ‘to omit’. The Romans used the term to refer to the failure of person to perform the assigned task or duty. In simpler words it may be said that delinquency is a form of behaviour or rather misbehaviour or deviation from the generally accepted norms of conduct in the society.³

However the penologists have interpreted the word ‘juvenile delinquency’ differently. Generally speaking, the term refers to a large variety of disapproved behaviours of children and adolescents which the society does not approved of, and for which some kind of admonishment, punishment or corrective measure is justified in the public interest. Thus the term has a very extensive meaning and includes rebellious and hostile behaviour Of children and their attitude of indifference towards society. Certain other acts such as begging, truancy, vagrancy, obscenity, loitering, pilfering, drinking, gambling, etc. which vicious person very often commit are also included within the meaning of the term juvenile delinquency.

In finding out a working definition, it should be remarked that juvenile delinquency is not mere legalistic concept as it is some times taken to be. It may be construed as a specific behavior pattern. It is only when this behavior pattern is of an aggressive nature and harmful to the public that the boy or girl concern come juvenile delinquency may be defined in simple words as antisocial tendencies in the young & youthful. It spells the loss of control of

³ Mohammad Afsaruddin, *Juvenile Delinquency in Bangladesh*, 1st ed; (Dhaka: Dhaka University publication, 1993).

family and society over a portion of the growing generation. An offender is considered juvenile or criminal on the basis of his age at the time of conviction not at the time of commission of offence.

“It is a phenomenon which has engaged the attention of society in particular the law since the birth of civilization.”

According to Burt, “a child is to be regarded as technically a delinquent when his anti-social tendencies appear so grave that becomes subject of official action. “Irrespective of legal definition, a child might be regarded as delinquent when his anti-social conduct inflicts suffering upon others or when his family finds him difficult to control.”⁴

In a broad generic sense, Juvenile delinquency refers to “ a variety of anti-social behaviour of a child and is defined some what differently by different societies, though a common cornering tendency may be noted in those forms, namely, socially unacceptable tendency of the child at any given time⁵. By Paul W. Tappan, Euphemistic terminology such as “heaving” instead of trial or instead of “sentence” should not conceal from us the fact that the nature of entire procedure may be little different from that of a criminal court.

2.3 Causes of juvenile delinquency

Juvenile delinquency has become a global phenomenon these days. Despite intensive rehabilitative measures and special procedure conducive to maladjustment of young minds. In extreme cases this may for tackling the problem of juvenile delinquency, there is a growing tendency among youngsters to be arrogant, violent and disobedient to law with the result there

⁴ N.V.Paranjape, *Criminology and penology*, 12th ed. (Allahabad: Central Law Publication, 2007), p.486.

⁵ *Ibid.*, p.487.

has been considerable rise in the incidence of juvenile delinquency. The main causes for this unprecedented increase in juvenile delinquency are as follows:

- (1) The industrial development and economic growth has resulted into urbanization which in turn has given rise to new problems such as housing, slum dwelling, overcrowding, lack of parental control and family disintegration and so on. The high cost of living in urban areas makes it necessary even for women to take up outdoor jobs for supporting their family financially, with the result their children are left neglected at home without any parental control. Moreover, temptation for modern luxuries of life lures young people to resort to wrongful means to satisfy their wants. All these factors cumulatively lead to an enormous increase in juvenile delinquency in urban areas. It has rightly been commented that today "there is no crime but there are only criminals in the modern sense of penology". It is, therefore, desired that the society be protected from offenders by eliminating situations which are conducive to delinquency.
- (2) Disintegration of family system and laxity in parental control over children is yet other cause of increase in juvenile delinquency. The British Home Secretary Mr. Butler once said that the natural consequences of broken homes are lack of parental control, absence of security and want of love and affection towards children, which are contributing factors for juvenile delinquency. Unprecedented increase in divorce cases and matrimonial disputes is yet another cause for disrupting family solidarity. Today, man's hold over his family is declining fast. Undue discrimination among children or step-motherly treatment also has an adverse psychological effect on youngsters. Once a child feels neglected, he is bound to go astray and this furnishes a soothing ground for juvenile delinquency.⁶

⁶ *Ibid.*, pp. 488-89.

- (3) The children, therefore, need affection, protection and guidance at home and have to be handled very carefully. Greater emphasis should be on preventing them from indulging into criminality rather than curing them after they have committed the offence.⁷ The parents and other elderly members of the family must provide adequate opportunities for their youngsters to develop their personality. This is possible through proper education and training and child care.
- (4) The rapidly changing patterns in modern living also make it difficult for children and adolescents to adjust themselves to new ways of life. They are confronted with the problem of culture conflict and are unable to differentiate between right and wrong. This may drive them to commit crime.⁸
- (5) Biological factors such as, early physiological maturity or low-intelligence, also account for delinquent behaviour among juveniles. The age of puberty among girls has gone down by three or four years on an average.⁹ Today girls attain puberty at the age of twelve or thirteen while they still remain mentally incapable of conceiving about the realities of life. In result, they fall an easy prey to sex involvements for momentary pleasure without, however, realizing the seriousness of the consequences of their act. It is, therefore, desired that the parents should explain to their children, particularly the girls, the possible consequences of prohibited sex-indulgences which might serve a timely warning to them. Special care should be taken to ensure effective protection to girls against prostitution and child pornography.¹⁰
- (6) Migration of deserted and destitute boys to slums brings them in contact with anti-social elements carrying on prostitution, smuggling of liquor or

⁷ *Ibid.*, p.90

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Ibid.*

- narcotic drugs and bootleggers.¹¹ Thus, they lend into the world of delinquency without knowing what they are doing is prohibited by law,
- (7) Poverty is yet another potential cause of juvenile delinquency. Failure of parents to provide necessities of life such as food and clothing etc. draws their children to delinquency in a quest for earning money by whatever means.¹² At times, even the parents connive at this for the sake of petty monetary gains.
- (8) Besides the aforesaid causes, illiteracy, child labour, squalor, etc., are also some of the contributing factors aggravating juvenile delinquency.¹³

2.4 Juvenile delinquency in Bangladesh

The number of juvenile delinquents is increasing in Bangladesh. The rate is alarming in Dhaka city. One responsible source of police claimed that, 40 percent of arrested criminals are juveniles. They are involved in theft, robbery, hijacking and extortion and they possess different types of deadly weapons including fire-arms. They are even involved in killing. In two months of 2002, the police arrested 40 young offenders, committed robbery and extortion, were arrested. They were arrested with adult offenders. Arrested juveniles are number of organized criminal gangs.¹⁴

Not only hijacking and extortion, juveniles are involved in killings. Shihab, student of Motijheel School and Amabar Shamsi, another school student of Dhaka city were killed by young offenders. After kidnapping some of his classmates killed Amabar Shamsi, a student of class eight.¹⁵

¹¹ *Ibid.*

¹² *Ibid.*, p.91.

¹³ *Ibid.*

¹⁴ *The daily sangbad* (27 August 2002), p.8.

¹⁵ *Ibid.*

Highly placed source of police informed that, juveniles are extensively utilized in the drug business. Drug dealer's use the youngsters in carrying and selling drugs.¹⁶

2.5 Causes of juvenile delinquency in Bangladesh

Social transition, poverty, migration, broken family, surrounding environment, lack of parental control, impact of action movie are responsible for causing juvenile delinquency in Bangladesh. Many young children are migrating from village to Dhaka and other large cities because of domestic trouble, rural poverty, landlessness, and violence. They are picked up by pick-pocketed gangs, shop-keepers, hotel owners, pimps, and hooligans. Street children are exploited by elderly children, adults and others in position of authority. Another serious problem is the trafficking of children both within and outside the country. Moreover, the children of sex-workers, orphans, and others who are socially outcast are considered very vulnerable. The police frequently pick-up and bring such children to police stations, from where they are sent to either jail, juvenile development centre, or vagrant homes etc.¹⁷ Causes of juvenile delinquency are listed below:

Social transition

The growing industrialization and urbanization gave rise to the problem of juvenile delinquency in Bangladesh. Sociologists and criminologists consider delinquency as a result of transitional phase, a process through which majority population is transforming from peasants to industrial labour class. Mainly Bangladesh is still an agro-based country. Industrialization has not taken expected pace. In its transition from agriculture to industrialization,

¹⁶ *Ibid.*

¹⁷ Lutfur Rahman Shajahan and Saria Rahman Khan, 'Juvenile Justices', in Ruby Ghuznavi, Farah Ghuznavi and Saira Rahman Khan, eds, *Child Rights Reality and challenges* (Dhaka: British Council, 2001), p. 123.

Bangladeshi society is undergoing rapid social change. since the transition is not yet complete, since Bangladesh is pre-industrial, it is a mixed society, not completely traditional and not fully modern. An examination of the economic, political, and religious institutions reveals a conflict between traditional and modern values, neither of which dominates the lives of the people. This conflict has given rise to anomie and creates greater vulnerability to delinquent behaviour.¹⁸

Poverty

Many people of this country are very poor. They live below poverty line in terms of the true indicators of poverty. Around 65million out of 130 million people (with 54million in rural areas) of Bangladesh live in absolute poverty, and they are amongst the world's poorest. Bangladesh is the most densely populated country in the world with 900 people per km. Half of the population of Bangladesh are living in extreme poverty and are consuming less than the equivalent of 1,805 kilo calories per day. The human deprivation profile in Bangladesh is very high.¹⁹

Because of huge economic disparities large number of people in Bangladesh lives below minimum subsistence level. This economic `pressure compels many children to involve in delinquent activities. Many sociological studies show that the lower one's economic status, the greater he is vulnanerable to arrest and incarceration.' Living conditions in and around villages and cities were never very good. Rapid growth of population, a high rate of urbanization outpacing the development of resources and provision of facilities and services,

¹⁸ Mohammad Afsaruddin, *Juvenile Delinquency in Bangaldseh*, 1st ed. (Dhaka: Dhaka University Publication, 1993), pp 1,37.

¹⁹ Abul Barkat, 'Development- Freedom - Empowerment in the Context of Poverty and Deprivation in Bangladesh', in Executive Director Empowerment of Common People Through Law (ECLOP), ed, *Manual of Human Rights Summer School* (Dhaka: Empowerment of Common People Through Law, 2002), p.22.

has caused further deterioration. The bulk of the population is poor and can not own or rent minimum essential shelter or afford minimum amenities. The result is that we have overcrowding and slums in the cities and depressed living conditions in the rural areas. Absence of a proper approach to the problem of balanced growth of our urban and rural areas and a well defined policy for the location of industries and other economic activities has further aggravated the problems’’.²⁰

In many cases poverty constitutes the root cause of juvenile delinquency. Poor parents can not get their children educated and developed good educational or vocational career; rather they want their children to assist them in work field. Some times parents can not provide their children with all basic necessities. The poor children, therefore, start to do some activities for their existence. The children do not know which activities are lawful and which can provide their food and clothing. By taking advantage of poor economic condition the criminal gangs deploy poor children in criminal activities. Hundreds of children are engaged in pick pocketing and petty thievery. Poor children have been deployed in carrying phencydil, and other contraband drugs at the border areas.²¹

Usually the children coming from poor economic background are sent to development centers or jails.²²

Problematic family

Problematic family constitutes a principal cause for the deviation of the juveniles. Absence of father or mother due to death or divorce, lack of parental

²⁰ *Ibid.*, p.23.

²¹ Sheikh Hafizur Rahman Karzon, *Theoretical and Applied Criminology*, 1st ed. (Dhaka: Palal Prokasoni & Empowerment through Law of the Common People, 2008), p.371.

²² *Ibid.*, p.372

control, lack of home discipline, bad relation between father and mother, presence of criminal among the members of family are the principal indications of problematic family. Due to these problems the mental development of children remains incomplete, for which their behaviour become abnormal. The children of 8-14 age group take resort to crime when their parents fail to guide them properly. The parents and teachers should be more careful of the children so that they can not get any chance to commit crime. Children and adolescents tend to follow bad activities of others if their families and environments are not healthy.²³

If any juvenile first time commits any offence and his/her social condition is good, s/he is not kept in the development centre, rather kept in the family environment under the supervision of a probation officer. The child is released after one year, although law mentions a time frame of 1-3 years. An youthful offender is kept in the development centre if the family environment is not good. There s/he is detained from three months to one year.²⁴

Migration

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

²³ *The Daily Star* (8 October 2005), p.12.

²⁴ *Ibid.*, p.13.

Surrounding environment and company

Sometimes are juveniles become delinquent because of bad company and surrounding environment? Due to tender age they can not understand the far-reaching consequences of their activities. They can be trapped into surrounding environment of slum area, and smuggling zone. Because of evil company sometimes juveniles go to brothel, consume drugs, commit different kinds of criminal activities.²⁵

Action movie

Action movie and satellite have negative impact on the mind set of the young boys and girls. The violence and sex depicted in the movies incite juveniles to go brothel and to commit unauthorized activities.²⁶

²⁵ Monjur Kader & Md Muajjem Hussain, *Criminology*, 1st ed. (Dhaka: Eastern University Department of Law, 2008).

²⁶ Ibid.

Chapter Three

Criminological Dimensions of Juvenile Delinquency in Bangladesh

3.1 Juvenile justice system in Bangladesh

The Children Act, 1974 is the substantive law for juvenile offenders and their treatment. The law was made to consolidate and amend the laws relating to the custody, protection and treatment of children and trial and punishment of youthful offenders.

According to international save the children U.K.'S report in daily Prothom Alo on 4th January, 2003 that there are about 400 children in central jail. After this information High Court Division issues a suo-moto, order no-248/2003 on 9 April 2003 for the redemption of the Juvenile.²⁷

Order of High Court Division regarding this matter: The High Court Division of the Supreme Court of Bangladesh provides the following orders –

01. Juvenile justice administration shall be preceded by the juvenile court.
02. The Govt. wills application to the court for the acquitted of the children from the case.
03. The existence legal aid committee will arrange the bail.
04. No child shall be charged with or tried for, any offence together with an adult.
05. The children have to send to remand home on correction centre.

The juvenile justice system in Bangladesh has its root in the laws enacted by the British rulers. The Bengal Code and Prisons Act, required

²⁷ Shahdeen Malik, *The Children Act, 1974: A Critical Commentary*, (Dhaka: Save the Children UK, 2004).

separate trials for children and adults. The Reformatory schools Act, 1897 give guidelines for reformation. The Code of Criminal Procedure, 1898 requires that the trial of children must be dealt with by the juvenile courts. The Bengal children's Act, 1922 contained the same provision. These laws were related to the custody, protection, trial and treatment of children. The Children Act, 1974 were eventually consolidated to produce The Children Act 1974, to be read together with The Children Rules, 1976, a mechanism conceived to protect the child's best interest during all kinds of legal processes.

The Children Act 1974 contains both procedural as well as substantive components. The procedural component, supplemented by The Code of Criminal Procedure, 1898, sets out special procedures for juvenile courts and for committing children to the protection and care of state facilities. The substantive part, on the other hand, describes offences done to children and prescribes penalties for them.

The Children Act 1974 lays down protections for children in conflict with the law as well as those who are at social risks. The Act requires that Courts must have regard to the age and character of the child and other related factors before passing any order. It provides for separate juvenile courts and forbids the joint trial of child offenders with adults, even where the offence has been committed jointly. The Act also lays down measures for the care and protection of destitute and neglected children including children whose parents /guardians are either alcoholic or who habitually neglect, abuse or ill-treat children by engaging them in begging or other purposes.²⁸

3.2 Definition of child and age of criminal responsibility

The definition of children is not uniform in the laws of Bangladesh. Different laws have defined children in different ways. According to Majority Act of

²⁸ Borhan Uddin & Muhammad Mahbubur Rahman, *Protection of the Child in Conflict with the Law in Bangladesh*, 1st ed. (Dhaka: Save the Children UK, 2008), pp.27-28.

1875, person below the age of 18 years is minor; the Child Marriage Restraint Act of 1939, fixed marriage of a male below the age of 18 years as child marriage; National Children policy of 1994 describes a child up to 14 years and Labour Code of 2006 determines worker below the age of 14 years as child worker. But for the administration of juvenile justice the Children Act has defined a child as any person under the age of 16 years.²⁹ The United Nations Convention on the Rights of Children (CRC) to which Bangladesh is a party defines a child as any person under the age of 18 years. As per section 82 of the penal code, the age of criminal responsibility in Bangladesh is above seven years of age. But the Children Act defines a child as a person under the age of 16 years of age. Section 52 of the Act provides that, where a child is convicted of an offence punishable with death, transportation or imprisonment, the Court may, if it considers expedient so to deal with the child, order, him to be committed to certified institute for detention for period which shall be not less than two and not more than ten years, but not in any case extending beyond the time when the child will attain the age of eighteen years. Penal Code and the Children Act, are contradictory. The age of criminal responsibility is not clear from the above mentioned laws. The minimum age of criminal responsibility requires clarity.

Assuming above seven years as the age of criminal responsibility in Bangladesh the government functionaries are dispensing their activities. When any child of above seven years commits any punishable offence then they are arrested by the police. The police do not consider street children, child prostitute or delinquent juvenile as children and are treated them like adult offenders.

²⁹ Shahdeen Malik, *Ibid*.

3.3 Establishment of juvenile courts

The Children Act, 1974 stipulates that no child shall be charged with, or tried for, any offence together with an adult³⁰. According to this Act, the government may, by notification in the official gazette, establish one or more Juvenile Courts for any local area.³¹ Additionally, the powers conferred on a Juvenile Court can also be exercised by High Court Division or by a Court of Sessions or by a Court of an Additional Sessions Judge and of an Assistant Sessions Judge or by sub-Divisional Magistrate or by a Magistrate of the first class²⁸. However, a case exclusively triable by the court of sessions can not be tried by any other court, not even by the juvenile court, if that other court is subordinate to the court of sessions.³²

At present, there are three juvenile courts in our country. They are in Tongi, Jessore and Konabari KUK. The 1st meeting of NTF Dated November 30, 2003 decided that separate juvenile court with session's power be established in each district. Finally, establishment of 4 juvenile courts at 4 divisional cities was approved by the Secretaries Committee for Administrative Development. On August 20, 2006 the said proposal was sent to the monitoring cell, Cabinet Division for placing it before NICAR. In the interim, special magistrates have been designated to hear juvenile cases in all 64 districts.³³

3.4 Arrest, bail, detention and discharge

Where a person apparently under the age of sixteen 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 to which such person is brought may

³⁰ The Children Act, 1974, Section 6.

³¹ *Ibid.*, Section 3.

³² *Ibid.*, Section 4.

³³ *Ibid.*, Section 5(5).

release him on bail, if sufficient security is forthcoming, but shall not do so where the release of the person shall bring him into association with reputed criminal or expose him to moral danger or where his release would defeat the ends of justice.³⁴ Where such a person is not released under section 48, the officer-in-charge of the police station shall cause him to be detained in a

- (i) remand home or
- (ii) a place of safety until he can be brought before the court. A court, on remanding for a trial a child who is not released on bail, shall order him to be detained in (i) a remand home or (ii) a place of safety. [Section 49, the Children Act

Immediately after the arrest of a child, the officer-in-charge shall inform to the Probation Officer of such arrest to enable the said probation officer to proceed forthwith in the matter of the juvenile. No child shall be charged with, or tried for, any offence together with an adult. Police officer has to submit separate charge sheet and concerned magistrate has to conduct separate trial when a juvenile has been charged with any offence.³⁵

No child shall be sentenced to death, transportation or imprisonment. Provided that when a child is found to have committed an offence of so serious a nature that the court is of opinion that no punishment, which under the provisions of this Act it is authorized to inflict, is sufficient or when the court is satisfied that the child is of so unruly or of so depraved character that he cannot be committed to a certified institute and that none of the other methods in which the case may legally be dealt with suitable, the court may sentence the child to imprisonment or order him to be detained in such place and on such conditions as it thinks fit.

³⁴ The Children Act, 1974, Section 48.

³⁵ *Ibid.*, Section 50 and Section 51.

3.5 Alternative measures

The Children Act provides for a number of alternative measures in stead of confining a juvenile in the remand home, or place of safety or in a development centre. At the first instance an officer-in-charge of a police station can release a juvenile on bail. The Act also gives responsibility on the court and it has A court may, if it thinks fit, instead of directing any youthful offender to be detained in a certified institute under section 52 order him to be (a) discharged after due admonition, or (b) released on probation of good conduct and committed to the care of his parent or guardian or other adult relative or other fit person on such parent, guardian, relative or person executing a bond, with or without sureties, as the court may require, to be responsible for the good behaviour 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.³⁶ 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 behaviour during the period of his 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

3.6 Trial procedure of juvenile delinquent

Children Act forbids joint trial of a juvenile and adult. Where any criminal court found any juvenile charged for any offence with adult person, it shall try the juvenile separately. Though under section 239 of Criminal Procedure Code joint charge of the persons accused in the same transaction is allowed, section 6 of Children Act shall be an exception in this regard. If any court fails to comply with this section and tries any juvenile along with adult person, it shall be violation of Children Act and also beyond his jurisdiction. In *shiplu and*

³⁶ The Children Act, 1974, Section 52.

*another vs .state*³⁷, High Court Division declared the judgment of lower court void on this ground. In a case where at the time of commission of the offence a person was child but at the time of trial he exceeds 16 years of age, trial along with adult shall be void. Though Children Act is silent in this matter, the issue is settled by the high Court Division in *Bimal Das v State*³⁸ where Court observed:

“----- the age referred to in the section relates to the age when he is charged with or tried for and not to the age when the offence has been committed.”

In the trial of a case in which a child is charged with an offence, court shall sit in a building, or a room different from that in which the ordinary sittings of the Court are held, or on different days, or at different times from those at which the ordinary setting of the Court are held³⁹. The purpose of this type of informal setting of trial is to keep the youthful offender away from the environment of a court which might have a negative impression on him.

Criminal Procedure Code declares criminal court as open court.⁴⁰ But this rule is being relaxed for the juvenile Court. The trial of juveniles shall be held in camera. Only people directly involved in the case and the officers of the Court can be present during the trial. The Court may also ask people not involved in the case to withdraw.⁴¹

³⁷ 49 DLR HCD, 53 as cited from ‘*Criminology*’ by Monjur Kader & Muajjem Hussain (Dhaka: Eastern University Dept of Law, 2008), p.136.

³⁸ 46 DLR HCD, 460 as cited from, *Ibid*, p.137.

³⁹ The Children Act, 1974, Section 7

⁴⁰ The Code of Criminal Procedure, 1898, Section 352.

⁴¹ The Children Act, 1974, Section 9

3.7 Punishment of juvenile delinquent

According to the Children 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. A youthful offender sentenced to imprisonment shall not be allowed to associate with the adult prisoners.

The following factors have to be taken into consideration by the court while passing any order under the Children Act.⁴²

- 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 the⁴³Interests of the child.

When a child is found to have committed any offence terms ‘conviction’ or ‘sentenced’ can not be used. The fact that a child has been found guilty shall not operate as a disqualification for any office, employment or election under any law.⁴⁴ 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.⁴⁵

3.8 Probation and rehabilitation

Juvenile Court may appoint probation officers from among suitable persons in the district, if there is no Probation officer in its area and may appoint

⁴² *Ibid.*, Section 57.

⁴³ *Ibid.*, Section.15.

⁴⁴ *Ibid.*, Section 70.

⁴⁵ *Ibid.*, Section 53.

Probation officer for a particular juvenile. The duties of probation officer shall be supervised by the Juvenile Court and where no court exists, the Court of sessions.

Duties of the Probation Officer include: visits or receive visits from the child at reasonable intervals; see that the conditions of bond are fulfilled; report to the Court as to the behavior of the child; advise, assist and be friend the child and, where necessary, endeavor to find him suitable employment; and perform any other duty which may be prescribed.⁴⁶

⁴⁶ The Convention on the Rights of the Child, 1989, Article 40 (3) (a).

Chapter Four

Juvenile Justice System of International Standards

4.1 International legal framework for juvenile justice

Juvenile justice has become an international issue with the UNCRC coming into force in 1990. Justice system for juvenile delinquency is a complex process having various dimensions. A brief outline of the existing juvenile justice system in an international system has been given below.

4.2 Minimum age of penal responsibility: international standards

The Convention on the Rights the Child, 1989, which calls for nations to establish a minimum age “below which children shall be presumed not to have the capacity to infringe the penal law”⁴⁷, does not set any specific age. The *Beijing Rules* state that “in those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity”⁴⁸. The commentary of this provision clarifies that the minimum age of penal responsibility differs widely owing to history and culture, but if the age is too low or if there no lower age limit at all, the nation of responsibility would become meaningless.⁴⁹ Thus it is evident that international standards do not prescribe a particular age, but require the governments to take account of children’s physical and mental maturity and their need for special care in establishing a minimum age.⁵⁰

⁴⁷ The Convention on the Rights of the Child, 1989, Article 40 (3) (a).

⁴⁸ The Beijing Rules, 1985, Rule 4.1.

⁴⁹ *Ibid.*

⁵⁰ The Beijing Rules, 1985, Rule 10.3.

In international arena, efforts are yet be made to agree on a reasonable lowest limit that can universally be applicable as minimum age of penal responsibility. In different countries, the minimum age of penal responsibility differs widely owing to history and culture. However, the UN committee on the Rights of the Child, which monitors countries implementation of the CRC, has recommended that the age be guided by the best interests of the children and criticized jurisdiction in which the age is set at 10 or below.⁵¹

4.3 Arrest, bail & detention pending trial: international standards

A child comes into in conflict with law as soon she/ he is arrested. After the arrest, the question of bail or detention pending trial comes into play. Guidelines of the international standards as to arrest, bail and detention pending trial of children conflict with law can be outlined as follows:

- Contracts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well- being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the cases. Arrest and detention pending trial shall not be unlawful or arbitrary and should only be used as a measure of last resort and for the shortest possible period of time.⁴⁶ Upon the arrest, every child in conflict with the law shall be informed promptly and directly of the charges against him or her.⁵² Moreover, his or her parents or guardian shall be immediately notified of such apprehension, and where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter.⁵³

⁵¹ The Convention on the Rights of the Child, 1989, Article 37 (b). .

⁵² *Ibid* , Article 40 (2) (b) (ii)

⁵³ The Beijing Rules, 1985, Rule 10.1

- Laws, procedures, authorities and institutions should be established to promote pre-trial diversion.⁵⁴ Thereafter, whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.⁵⁵
- During detention, no child be subjected to torture or other cruel, inhuman or degrading treatment or punishment⁵⁶. Every child deprived of liberty shall treat with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.⁵⁷ In particular, every child deprived of liberty shall be separate institution or in a separate part of an institution also holding adults⁵⁸ unless it is considered in the child's best interest not to do so⁵⁹ and shall have the right to maintain contact with his or her family through correspondence and visits, save the exceptional circumstances.⁶⁰ Juveniles under detention pending trial shall entitled to all rights and guarantees of the *standard Minimum Rules for the treatment of prisoners* adopted by the United Nations.⁶¹ While in custody, juveniles shall receive care, protection and all necessary individual assistance - social educational vocational, psychological medical and physical-that they may require in view of there age, sex and personality.⁶² More importantly, even child deprived of liberty shall have the right to prompt access to legal and other appropriate assistance.⁶³ She /he shall have a right to communicate regularly with

⁵⁴ The Convention on the Rights of the Child, 1989, Article 40(3) (b).

⁵⁵ The Beijing Rules, 1985, Rule 13.2.

⁵⁶ The Convention on the Rights of the Child, 1989, Article 37 (a).

⁵⁷ *Ibid* , Article 40 (1)

⁵⁸ The Beijing Rules, 1985, Rule 13.4.

⁵⁹ The Convention on the Rights of the Child, 1989, Article 37 (c).

⁶⁰ *Ibid* , Article 37 (c)

⁶¹ The Beijing Rules, 1985, Rule 13.3.

⁶² *Ibid* , Rule 13.5

⁶³ *Ibid*

his/her legal advisers and the privacy & confidentiality of such communication must be ensured.⁶⁴

4.4 Trial procedure: international standards

International standards require that a child conflict with the law shall neither be tried with adult nor like adult. Therefore, trial of such child shall be separated and distinct. Trial of an accused always demands due process of law so that the accused not unjustly prejudiced. This standard of protection is comprises some additional requirements when the accused is a child. Guidelines of the international standards as to trial of children in conflict with the law can be outlined as follows:

- Every child in conflict with the law should have the guarantee to have the matter determined without delay by a competent, independent and impartial authority or judicial body.⁶⁵
- The procedure of trial of the children in conflict with the law shall be such as will take account of their age and the desirability of promoting their rehabilitation.⁶⁶ Every child in conflict with the law should be provided the opportunity to be heard⁶⁷ and the proceedings shall be conducive to the interests of the child concerned and shall be conducted in an atmosphere of understanding, which shall allow her or him to participate therein and to express herself or herself freely.⁶⁸
- The procedure for trial should follow the due process of law. The child concerned should have the guarantee to be presumed innocent until proven guilty according to law⁶⁹ and be dealt with according to the

⁶⁴ The Convention on the Rights of the Child, 1989, Article 40 (2) (b) (iii).

⁶⁵ *Ibid* , Article 40 (2) (b) (ii)

⁶⁶ *Ibid* , Article 14 (4)

⁶⁷ The Convention on the Rights of the Child, 1989, Article 12 (2)

⁶⁸ The Beijing Rules, 1985, Rule14.2

⁶⁹ The Convention on the Rights of the Child, 1989, Article 40 (2)(b)

principles of a fair and just trial.⁷⁰ The right of a child in conflict with the law to remain silent and the right to confront and cross-examine witnesses should also be guaranteed.⁷¹ She/he should also be protected against *post facto* penal law and against forced confession.⁷²

- Every child in conflict with the law has the right to have the trial conducted in the presence and participation of his or her parents or legal guardians.⁷³ Additionally, the court may also require such attendance or participation.⁶⁹ However, the parents or the guardian may be denied participation if there are reasons to assume that such exclusion is necessary in the best interest of the child.⁷⁴ Moreover, every child in conflict with the law should also have the right to apply for free legal aid where there is provision for such aid in the country concerned.⁷⁵
- So far trial is concerned; children in conflict with the law are particularly susceptible to stigmatization.⁷⁶ This is why international standards require that every such child should have his or her privacy fully respected at all stages of the proceedings.⁷⁷ The Beijing Rules stress the importance of the protection of the right to privacy and confidentiality of proceedings against a child. To quote the Beijing Rules: “The juvenile’s right to privacy shall be respected at all stages in order to avoid harm being to caused to her or him by undue publicity or by the process of labeling.”⁷⁸ In further states: “in principle, no information that may lead to the identification of a juvenile offender shall be published.”⁷⁹ These principles are further elaborate as follows: “Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such

⁷⁰ The Beijing Rules, 1985, Rule 14.1

⁷¹ The Beijing Rules, 1985, Rule 7.1.

⁷² The Convention on the Rights of the Child, 1989, Article 40 (2) (a).

⁷³ *Ibid*, Article 40 (2)(b) (ii).

⁷⁴ The Beijing Rules, 1985, Rule 15.2.

⁷⁵ The Convention on the Rights of the Child, 1989, Article 40 (2) (b) (ii).

⁷⁶ The Beijing Rules, 1985, Rule 15.1

⁷⁷ The Convention on the Rights of the Child, 1989, Article 40 (2) (b) (vii).

⁷⁸ The Beijing Rules, 1985, Rule 8.1.

⁷⁹ *Ibid*, Rule 8.2.

records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons”⁸⁰ and “Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.”⁸¹

4.5 Punishment: international standards

Strict punitive approach to deal with the children in conflict with the law is not appropriate. International standards require that a range of non-custodial sentencing options be present in the statute books and used by the judiciary to ensure the proper administration of juvenile in any country.⁸² Details about the international standards on punishment of children in conflict with the law are as follows:

- The Convention on the Rights of Child, 1989, demands that a variety of sentencing options, such as care, guidance and supervision orders, counseling, probation, foster care, education and vocational training programmes and other alternative to institutional care should be available to ensure that juveniles are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and to the offence.⁸³ The *Beijing Rules* provided that a large variety of disposition measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible.⁸⁴ These disposition measures include (1) care, guidance and supervision orders, (2) provision, (3) community service orders, (4) financial penalties, compensation and restitution, (5) intermediate treatment and other treatment orders, (6) orders to participate in group counseling and other

⁸⁰ The Beijing Rules, 1985, Rule 21.1

⁸¹ *Ibid*, Rule 21.2

⁸² Roy, Nikhil & Wong, Mabel, *Juvenile Justice. Modern Concepts of Working with children in Conflict with Law* (Dhaka: Save the Children UK, 2004), p.79.

⁸³ The Convention on the Rights of the Child, 1989, Article 40 (4).

⁸⁴ The Beijing Rules, 1985, Rule 18.1

activities (7) orders concerning foster care, living communities and (8) other educational settings.⁸⁵

- International standards accept that in certain cases deprivation of liberty may be required as a measure of ‘last resort’ and for the shortest possible period of time’ to deal with the children in conflict with the law.⁸⁶ The ‘last resort’ principles as applied to sentencing means that deprivation of liberty must not be imposed unless the objectives of the measure – principality rehabilitation in the case of children – could not, in the opinion of the judge be achieved in a non-custodial setting.⁸⁷ More particularly, deprivation of personal liberty shall not be imposed, as prescribed by the Beijing Rules, unless the child is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offence and unless there is no other appropriate response.⁸⁸ Similarly, the ‘shortest possible time’ should generally be interpreted as the period within which that custodial treatment may be expected to secure the rehabilitation of the child concerned.⁸⁹
- International standards prohibited capital punishment,⁹⁰ life imprisonment without the possibility of release and corporal punishment⁹¹ for the children in conflict with law.
- Social enquiry reports should be requested in the case of all but minor offences, prior to sentencing.⁹²
- Any sentence imposed should be proportionate not only to the gravity of the offence, but also to the circumstances and needs of the child concerned.⁹³

⁸⁵ The Beijing Rules, 1985, Rule 18.1.

⁸⁶ The Convention on the Rights of the Child, 1989, Article 37 (b). The Beijing Rules, 1985, Rule 17.1 (b) and 19.1

⁸⁷ Borhan Uddin & Muhammad Mahbubur Rahman, *Ibid.*, p.93

⁸⁸ The Beijing Rules, 1985, Rule 17.1

⁸⁹ Borhan Uddin & Muhammad Mahbubur Rahman, *Ibid.*, p.93

⁹⁰ The Convention on the Rights of the Child, 1989, Article 37 (a).

⁹¹ *Ibid.*, Article 37 (a).

⁹² The Beijing Rules, 1985, Rule 17.3

Chapter Five

Major Drawbacks in Juvenile Justice System in Bangladesh

5.1 General discussion:

Bangladesh has no comprehensive juvenile justice system for dealing with children conflict with the law. Government has made efforts to put juvenile justice issues on the agenda but much more still needs to be done. One of the major problems 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 deprivation of their liberty over so called ‘status offences’ such as vagrancy, begging, smoking, dropping, out of school or alcohol use. In many cases, the most fundamental principles of due process are violated.⁹⁴ Arrest, detention, and sentencing are often arbitrary and sometimes even illegal. Physical abuse, force and torture are applied during arrest and interrogation. Children are frequently sexually abused. Detained children often found below the age of criminal responsibility and kept with adult prisoners from whom they may suffer abuse and be exposed to negative social learning. 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. Bangladesh’s 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, provision, institutions, and bodies focusing on youth who come into conflict with the law. In Bangladesh the children Act of 1974⁹⁵ is the principal law on children and it deals with both children in the conflict with the

⁹³ *Ibid*, Rule 17.1

⁹⁴ Sheikh Hafizur Rahman Karzon, *Ibid.*, 1st ed. (Dahka: Palal Prokashoni & Empowerment through Law of the Common People, 2008).

⁹⁵ Shahdeen Malik, *Ibid*.

law and children in need 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. So now we would like to mention the lackings which are present in our existing laws, find out the drawbacks in our juvenile justice system.

5.2 Problem of determine the juvenile and impose criminal responsibility

The definition of children is not uniform in the laws of Bangladesh. Different laws have defined children in different ways. There has no mention specific age who is child. So it is impossible to determine the juvenile. In criminal responsibility according to section 82 of the penal code, the age of criminal responsibility in Bangladesh is above seven years of age. But children Act define a child as a person under the age of 16 years of age. So there is no unique age to determine of criminal responsibility.

5.3 Joint trial

According to the Children Act, 1974 and also the Code of Criminal Procedure 1898 children can only be tried in the juvenile court⁹⁶ and no joint trial can be held with the adults.⁹⁷ Their trial shall be held in camera i.e. only people directly involved in the case and the officers of the court can be present during the trial. But this provisions regarding trial are not followed by any court of Bangladesh and it has been observed that children are usually tried in the ordinary criminal courts and often with the adults in case they are co-accused with adults. The issue of joint trial of a child with an adult has been decided in

⁹⁶ Monjur Kader & Md Muajjem Hussain, *Ibid.*, p.134.

⁹⁷ The Children Act, 1974, Section 6.

a number of cases. For example in *Shiplu and another vs state*.⁹⁸ Inadequate legal aid: Most of the children who come in conflict with the law and ultimately end up in jails come from very poor families. They often do not have the ability to engage lawyers for their defense. But the basic principle of criminal justice system is that everybody should have the right to defend himself or herself in the court of law. The legal system of Bangladesh is extremely inadequate in this regard. Though Bangladesh is fully of excellent lawyers they do not serve the cases of the children. Even the poor lawyers do not want to defend the children because the families of them can not provide the expenses of the lawyers. So from the above scenario it becomes clear that the main problem is our legal system which is not giving ample support to juvenile delinquent. Though there is a fund for giving legal assistant or aid but this fund is not properly used.

5.4 Adverse court environment

The court environment where the offence of any child will be tried should be children friendly. In the children development centers there are separate courts for children which are in comparison to other criminal courts more favorable for children. But very few cases are tried by the criminal courts where no special procedure is followed which are mentioned in the children Act of 1974 not even the care is taken for any child. So either the criminal court environment should be changed or the trial should be held in these separate courts which are made especially for juveniles.

5.5 Lack of facilities in juvenile correctional centers

In Bangladesh at present there are three juvenile correction centers in the country with remand home facilities. Two for boys –one is *Tongi*. Dhaka and

⁹⁸ *Shiplu vs State*, 49(1997) DLR. HCD.p.53 as cited from '*Criminology*' by Monjur Kader & Md. Muajjem Hussain (Dhaka: Eastern University Dept of Law, 2008), p.136.

one in Jessore. There is only one correctional centers for girls in *konabari* of Gazipur district. But these correctional centers are remand as children development centers. They are supposed to be specialized agencies for taking care of children who come in conflict with the law. But they are now full with guardian referred cases. They 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. In a recent newspaper report the dangerous scenario of the Juvenile Development Centers has been published. One 10years old boy was found killed in the Juvenile Development Center with his throat slit and another one reportedly died in a clash between prisoners .⁹⁹ The Government should take initiative to address this kind of serious problems inside the correctional centers and it should be taken care of with strict decisions. Besides that there is a need to incorporate counseling; modern trades for the correction centers and arrangements of training for the correction centers officials and employees.

5.6 Breaking of the chain of juvenile justice system

The first step of juvenile justice starts after the arrest of any juvenile and by giving the information to any probation officer. But always it is not possible for the police officers to find out the family members of the child as they are busy otherwise. Similarly it is not possible for all the probation officers to go to every police station everyday to know whether there is any juvenile arrested at that day or not. So what can be done here is at least once in every week the probation officers can go to the police stations for getting the news of any child or juvenile. For this matter more probation officers should be appointed by the social Welfare Department as the number of the probation officer is not sufficient. The probation officers also can not perform their duty for lack of

⁹⁹ Abu Noman Mohammad Atahar Ali and others, *Ibid.*, p.251.

information. If this provision of the children Act can be implemented properly then justice can be more effectively ensured.

5.7 Lacking of the Children Act, 1974

The main objective of the Children Act 1974 is that the children will never go to the jail in any circumstance. The principle of diversion, the corner stone of the international standards on juvenile justice, is not yet recognized by Bengali legislation and legal practice. Besides that many of the hallmarks of the juvenile justice legislation like mediation, restorative justice, and explicit preference for community based rehabilitation, community and NGO's involvement, clear protection between child offenders and children in need of protection are lacking.¹⁰⁰ The children Act does not contain any special provisions limiting the use of physical force nor does it has any special provisions in respect to the taking of statements or confession from children. There is no provision either in law or in practice for measures to protect children from abuse and intimidation during police questioning and interrogation. We should try to incorporate these provisions in our present legislations. The Children Act relies heavily on institutionalization of children and deprivation of liberty, is generally seen by the police and judiciary as the only possible way to rehabilitate or “correct” children.

¹⁰⁰ Shahdeen Malik, *Ibid*.

Chapter Six

Recommendations and Conclusion

Government and non-government agencies both, during the recent years, have clearly demonstrated firm commitment to improve the juvenile justice system. The momentum created to date should be translated into sustainable and systematic changes to the children justice system of the country. Now would mention to some suggestion and Recommendations to improve the juvenile justice system.

Proper and adequate legislative framework is essential for the purpose of juvenile justice system. To ensure proper justice the following legal reforms are needed.¹⁰¹

- The application of the Children Act, 1974 and the Children Rules, 1976 should be extended to the children between sixteen to eighteen. To that effect, necessary amendment to the Children Act, 1974 should be made to consider everyone below the age of eighteen as ‘child’.
- Contacts between the law enforcement agencies and a child offender should be managed in such a way as to respect the legal status of the children, promote the well being of the children and avoid harm to her or him. Accordingly use of the handcuffs in the arrest of a child should be strictly prohibited by law.
- Every child who is accused of commission of an offence should be entitled to have the right of the legal assistance at the expense of the state.
- Arrest of a child on suspicion should be strictly regulated by law leaving the least minimum discretion on the part of the law enforcing agencies.

¹⁰¹ N.V. Paranjape, *Criminology and penology*, 12th ed. (Allahabad: Central Law Publication, 2007).

- Arrest of child under the preventive law should statutory be prohibited.
- Possibility of a child being subject to adult punishment should be ruled out by legislative intervention. It is therefore recommended that even if a child is subjected to punishment, the quantum of punishment be not more than one third of adult punishment.
- Provision of corporal punishment contained in the Children Rules should be repealed.
- Any child detained in any KUK should not be sent to jail to undergo the term of detention or imprisonment remaining due and be allowed to be kept in the KUK concerned even after attaining the age of 18 years.
- Where detention is unavoidable, greater contract between a child and his family is expected in the child's best interest. As such, restrictive provisions of the *Children Rules* regarding family contract should be amended to make it compatible with the international standards.¹⁰²

The children who are in need of protection should be separated from the children in conflict with the law. The children who are in need of protection like vagrants are arrested by the police officers and sent to the correctional centers or shelter home sometimes they come into the direct contact with the children who are there because of committing any offence. This contact can deteriorate the whole scenario.¹⁰³

¹⁰² Borhan Uddin & Muhammad Mahbubur Rahman, pp. 131-133.

¹⁰³ Abu Noman Mohammad Atahar Ali and others, *Ibid.*, pp. 251-52.

6.9 Conclusion

It reveals from this forgoing study that adequate provisions have been developed for the protection and uphold the rights, justice and dignity of the juvenile in Bangladesh. It is a matter of sorrow that the objectives are often unclear or weakened by partial and inexpedient implementation. In order to proper implementation, we need to systemize and meticulous examination of our legislations and institution regarding juvenile delinquency. Indeed, not only the legislations will be only solution but also polices of the democratic political government would be sine quo non of the development of juvenile delinquency justice system in Bangladesh.¹⁰⁴ There is a lack of knowledge about the objectives of the juvenile justice jurisprudence among the persons dealing with the administration of justice system especially in the lower judiciary. Even the judges of the lower judiciary failed to take into account the objective of the *Children Act, 1974* which is enacted to realize the objectives of the juvenile justice jurisprudence. On the other hand our highest judicial body, the Supreme Court, is highly sensitized over the protection and promotion of the objectives of the juvenile justice jurisprudence. There are a host of judicial decisions where the highest court directed that the provision of the *Children Act, 1974* must be followed meticulously while dealing with a child offender. That a child offender must get different treatment from not only the court but also from all concerned authorities of the administration of justice. Though there few cases where some benches. Of the highest court did not take into account the provisions of the *Children Act, 1974* it does not diluted the very objectives of the Act. The highest courts in Bangladesh are also found enthusiastic to give effect the provisions of the *Children Act, 1974* in order to ensure the proper protection of the child while he/she is under its custody. Therefore it would not

¹⁰⁴ *Ibid*, p. 254.

be an exaggeration to say that the activism of the highest court to realize the aims of the *Children Act*, 1974 deserves application.¹⁰⁵

Apart from the legislations and polices, the mindset and approach of the members of the bar and bench, the legislature and the law enforcing agencies in Bangladesh, need to change in interpreting and executing laws of the juvenile matters properly. As juvenile is a part and parcel of the human family the interest of this society should get topmost priority by the government of the People's Republic of Bangladesh, keeping the constitutional commitment in mind that Bangladesh'----- shall be a democracy in which fundamental human rights and respect for the dignity and worth of the human person shall be guaranteed.¹⁰⁶

¹⁰⁵ Anisur Rahman, 'Towards a Proper Juvenile Justice System in Bangladesh from a Cluttered one: An Analytical Overture on Focusing Human Rights Perspective', in Mizanur Rahman, ed, *Human Rights: Sixty years After UDHR* (Dhaka: Empowerment through Law of the Common People & Palal Prokasoni, 2008), p. 240.

¹⁰⁶ Abu Noman Mohammad Atahar Ali and others , *Ibid.*, pp. 254-55.

Bibliography

Books

1. Mohammad Afsaruddin, *Juvenile Delinquency in Bangladesh*, 1st ed; (Dhaka: Dhaka University publication, 1993).
2. Monjur Kader & Md Muajjem Hussain, *Criminology*, 1st ed. (Dhaka: Eastern University Department of Law, 2008).
3. Sheikh Hafizur Rahman Karzon, *Theoretical and Applied Criminology*, 1st ed. (Dahka: Palal Prokashoni & Empowerment through Law of the Common People, 2008).
4. Shahdeen Malik, *The Children Act, 1974: A Critical Commentary*, (Dhaka: Save the Children UK, 2004).
5. N.V. Paranjape, *Criminology and penology*, 12th ed. (Allahabad: Central Law Publication, 2007).
6. Borhan Uddin & Muhammad Mahbubur Rahman, *Protection of Child in Conflict With the Law in Bangladesh*, 1st ed. (Dhaka: Save the Children UK, 2008).

Articles

1. Anisur Rahman, 'Development of juvenile justice system: From welfare to rights', in Salimullah Khan, ed, *Stamford Journal of Law Vol-1:1* (Dhaka: Stamford University, 2008).
2. Anisur Rahman, 'Realization of the Rights of a Child Offender Judicial activism in Bangladesh', in Mizanur Rahman, ed, *Human Rights :Sixty years After UDHR* (Dhaka: Empowerment through Law of the Common People & Palal Prokasoni, 2008).

3. Abu Noman Mohammad Atahar Ali, Zafrin Andaleeb & Abu Saleh Md. Tofazzel Haque, 'Towards a Proper Juvenile Justice System in Bangladesh from a Cluttered One: An Analytical Overture on Focusing Human Rights Perspective', in Mizanur Rahman, ed, *Human Rights :Sixty years After UDHR* (Dhaka: Empowerment through Law of the Common People & Palal Prokasoni, 2008).

Cases cited

1. *Shiplu and another Vs State*, 49 (1997) DLR HCD, p.53.
2. *Bimal Das Vs State*, 46 (1994) DLR HCD, p. 460.

Statutes

1. *The Children Act, 1974* [Act No. XXXIX of 1974].
2. *The Children Rules, 1976*.
3. *Nari- O- Shishu Nirjatan Domon Ain, 2000* [Act No .VIII of 2000].
4. *The Penal Code, 1860* [Act No. XLV of 1860].
5. *The Penal Code (Amendment) Act, 2004* [Act No. XLV of 2004].
6. *Convention on the Rights of the Child, 1989*.
7. *United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules)*.
8. *The Code of Criminal Procedure, 1898* [Act No.V of 1898].