

JUVENILE JUSTICE SYSTEM OF USA AND BANGLADESH: A COMPARATIVE STUDY OF DIVERSION AND ALTERNATIVE MEASURES AND HARD REALITIES OF JUVENILE JUSTICE SYSTEM IN BANGLADESH

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Introduction

When a new born is added as a member in a family requires proper attention and care. Meticulous care of both the parents contributes to the normal development of its physical and mental faculties. Upbringing of a child is so delicate a matter that it involves almost all the functional elements of a given social structure. Taking stimuli from family environment and social milieu a child gets prepared to take the challenge of human life.

Family is the fundamental unit of human civilization. A child is born in a family, and gets important lessons to which direction s/he will move his/her life to. Learning of values and formation of conscience do depend on family. The teaching of parents is inscribed indelibly into the mindset of a child. It is the sense of right and wrong, taught by parents, which guides an individual throughout his/her whole life. Education, next to the family, plays important role in molding up the behavior of a child. Educational system, if scientific and uniform will produce good citizens and efficient manpower.

Socio-economic and political condition of a society determine the livable environment of its members. A balanced society presupposes proper func-

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tioning of all its institutions- family, education, economy, religion and state. These institutions should be, so demands an ideal situation, able to fulfill all the basic needs of individuals and minimize conflicting demands of groups, which can ensure coherence of society. Increase of social mischief and vices indicates the dysfunction of the core institutions of a society. Particularly delinquency, in many of the cases, lies in the anomalies of social organization.

Juveniles are the most susceptible segment of society; they react sharply to any social problem. Scarcity of basic needs, lack of parental attention and any social crisis touch them so deeply that many of them cannot cope with the abnormal situation. They respond to social anomalies in ways not approved by social norms and law. Some of them even form gangs and commit crimes, both individually and collectively. Some of them choose an aerated life pattern and develop juvenile subculture to exhibit their resistance that injustice has been done to them. Juvenile delinquency cannot be considered by keeping it apart from social reality. Social malfunctioning causes increase of juvenile delinquency and emergence of juvenile subculture. If the dominant culture of a society fails to accommodate all the children sufficiently, the deprived young folk will stand up with their own sub-culture. Different countries have already experienced this reality. Juveniles' resistance through delinquency and aberrant life style reminds that social institutions need to be reorganized and cause of juveniles should be specially taken care of.

In this article the diversion and alternative measures of the juvenile justice systems of USA and Bangladesh have been discussed to get an idea about how it is functioning in a democratic country of heterogeneous culture like USA and in a developing country of monolithic culture like Bangladesh. Without putting a brief sketch of the juvenile justice systems of both the countries, the understanding, inevitably, will be obscure, for which an attempt has been made to give an overview of the systems. This article has made a comparative study of the diversion and alternative measures of both the countries to give an idea how the philosophy of juvenile justice system is working in a western and an eastern society. It also has revealed the differences of basic social organization, life style and culture of two so-

cieties. This article, at last, has delineated the hard realities of the juvenile justice system of Bangladesh as there is huge difference between text and practice.

1. Who Are Children?

Children are boys and girls who have not reached puberty, though some youth reach puberty earlier or later than expected. A youth is often defined as a child with reference to psychological or chronological age rather than biological. The legal definition of child is interchangeable with minor and may vary from country to country which depends on the cultural variation.¹ "There is no definitive definition of a child: the term has been used for persons under the age of 14, under the age of 16, and sometimes under the age of 18. Each case depends on its context and the wording of the statute governing it. For the purpose of the Children Act, 1989 (of UK) and the Family Law Act, 1996 (of UK), a child is a person under the age of 18."² In USA the qualifications which designate a child as juvenile under law vary from state to state. The juvenile justice system applies to anyone between the ages of seven and seventeen. Under the defense of infancy anyone below seven is not accountable for their actions.³

The United Nations Convention on the Rights of the Child (CRC) defines 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. In Bangladesh there are a number of laws which have defined a child. These laws are conflicting regarding the age of children. Some describe a child as a person below 12 years, others state below 14 years and some define them as a person below 18 years of age. But the Children Act, 1974 defines a child as a person under the age of 16 years. Under the Act child means a person under the age of 16 years, 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 rela-

¹ <http://www.answers.com/topic/child>, 10 November, 2008, 11.58 P.M.

² Oxford Dictionary of Law, Oxford University Press, Sixth Edition, 2006, p. 77.

³ http://en.wikipedia.org/wiki/American_juvenile_justice_system, 15 November, 2008, 1.30 A.M.

tive 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.⁴

2.1 Juvenile Justice System in U. S. A. : Children in Conflict with Law and Diversion

The 19th century was characterized by rapid social change and huge population growth. America started encountering variety people having different languages, customs and religions. Diverse condition and a life of anonymity created more opportunities for crime, which compelled the municipal governments to think of changes in the police departments. By 1870, all big cities had full time police departments. In early part of the 20th century, police departments established specialized units to deal with juveniles. With this specialization, female officers were given responsibility to look after “runaway, truant, and delinquent children, (and to) check on amusement parks, dance halls, and disorderly houses, and otherwise discourage youngsters from pursuing criminal careers”.⁵ Many big city police forces had created Juvenile Bureaus by 1924. This trend continued till some later decades because of increase in delinquent gang activity of juveniles.⁶

As an offshoot of social disorganization, the slum juveniles in down-town Chicago created a network of gangs with distinctive culture. The Wall Street crash and the depression of 1930s worsened the overall economic condition causing severe social disorganization in America. It also aggravated the situation of juvenile delinquency. Young folk of America developed a culture of criminal gang widening their criminal activities in different parts of the country. Economic deprivation, class oriented social struc-

⁴ Article 2 (f), The Children Act, 1974.

⁵ Fog Elson, Robert, *Big City Police*, Cambridge, Ma, Harvard University Press, 1977.

⁶ Regale, Robert M., and Hewitt, John D., *Delinquency in Society*, McGraw Hill Companies, Fourth Edition, 2000, pp. 362, 363.

ture and consumerist ethos caused increased rate of juvenile delinquency which has been continuing for decades.⁷

American police take into account three legal factors when arresting a child, these are:

(1) seriousness of the offence; (2) prior arrest record; and (3) presence of evidence. Seriousness of offence is very important factor to influence the decision of police officer to arrest a child. Juveniles committing more serious crimes are more likely to be arrested and referred to Juvenile Court by police. Robert Terry made a study on more than 9000 juvenile offences and found that seriousness of offence was the most significant factor to influence police decisions.⁸ Police action, to a great extent, is influenced by the prior arrest records of juveniles. Terry found that the number of previous arrests set the police to go for tougher action. First time offenders constituted 38 percent of all the juveniles arrested and only 7 percent of them are referred to the Juvenile Court. The juveniles with five or more previous arrests, at the other extreme, constituted 20 percent of juveniles arrested, but 66 percent of them are referred to the Juvenile Court. Juveniles are referred to Juvenile Court after repetition of delinquent acts.⁹ Evidence is said to be effected when a police officer witnesses an offence or any citizen gives testimony about the offence.¹⁰

Some extra legal factors, side by side with legal factors, also predominantly influence police decisions. Extra legal factors are those, which have little to do with the crime but influence the out come. In 1963 Howard Becker suggested that in police-citizen encounters, citizens who have some reluctant attitude to police are more likely to subject to rigorous police sanc-

⁷ Rahman, Sheikh Hafizur, "Juvenile Delinquency: An Inquiry into the Causes," Law and Our Rights Page, *The Daily Star*, August 10, 2003.

⁸ Terry, Robert, "Discrimination in the Handling of Juvenile Offenders by Social Cotrol Agencies." *Journal of Research in Crime and Delinquency*, 4: 218-230, 1967.

⁹ *Ibid.*

¹⁰ *Supra* note 6, pp. 369-371.

tions.¹¹ After an extensive study continued for nine months, Paladin and Briar found that very little information was available to police on the basis of which police had to decide how to handle juvenile suspects. Character cues emerging out of the interaction between the officer and the youth were the most important factors to be taken into account by the police. Among the cues the most important are juvenile's age, race, grooming, dress, group affiliation, and demeanor. In 50 to 60 percent of the cases police processed juvenile's demeanor played major role.¹² Paladin and Briar collected data of police juvenile meet and categorized juveniles as "cooperative" and "uncooperative." Out of 21 uncooperative juveniles 14 (66 percent) were arrested, while only 2 (4 percent) out of 45 cooperative juveniles were arrested.¹³

Criminologists after reviewing official police records and juvenile-police encounter, have drawn conflicting findings on the question whether race can influence police decisions Goldman pointed that among juvenile offenders 65 percent of African-Americans, and only 34 percent of Whites were referred to Juvenile Court. Ferdinand and Lutheran found that African-American male first offenders were sent to Juvenile Court more frequently than their White counterparts. Paladin and Briar discovered differential handling of African American and White juveniles, but considered this difference was not due to race, juveniles' demeanor constituted the cause of the difference. Black and Reiss also found discrimination in the treatment of White and African-American juveniles and showed that the difference of the complainant's preference, not race, was active behind this differential handling. Jeffery Fagan and his colleagues reported evidence of racial disparity at six points in the juvenile justice process.¹⁴ "The implications of these two studies are significant. Of special importance is the link between race and prior record. Prior record may be an artifact of police bias. If police are more likely to arrest youths of color in the first place,

¹¹ Becker, Howard, *Outsiders*, New York, The Free Press, 1964.

¹² Paladin, Irving, and Briar, Scott, "Police Encounters with Juveniles," *American Journal of Sociology*, 70: 206-214, 1964.

¹³ *Supra* note 6, p. 372.

¹⁴ *Ibid*, pp. 373-375.

then these youths are more likely to have a prior record. Once they have a prior record, they are more likely to receive a more severe disposition if they have another police contact.”¹⁵

Socio-economic status of juveniles plays a role in the criminal justice system in that juveniles coming from lower class have higher court referral rates than those from upper class. George Bovine concluded that lower class juveniles were more likely to repeat offending and they had a tendency to commit those offences which had high court referral rates.¹⁶ Cincture found that socio-economic status was a factor to influence police to refer juveniles to court. Juveniles of middle and upper class when come into contact with police, their family members take initiative to minimize their contact with law. In case of lower class juveniles, their parents seek the intervention of police and probation officer.¹⁷

How does police respond to offender's gender is enquired into by many criminologists. Their findings are not similar. Some found that police treatment to girls was lenient, while others conclusion went in the opposite direction. Some studies showed that police were more likely to arrest girls for sex offences. Delbert Elliot and Hardin reported that in minor offences girls were over represented and underrepresented for serious crimes. Lois Defer found that when the women behaved in a stereotypical way, police became a bit sympathetic to and reluctant to arrest them.¹⁸ Age of juvenile becomes another extra legal factor to be taken into consideration by police. Juveniles from 15 to 18 years age were referred to Juvenile

¹⁵ Farrell, Ronald and Swinger, Victoria Lynn, "Prior Offence as a Self-Fulfilling Prophecy," *Law and Society Review* 12: 437-453 (1978); Lisa, Allen and Tausig, Mike, "Theoretical Interpretations of Social Class and Racial Difference in Legal Decision-Making for Juveniles," *Sociological Quarterly* 20: 197-207 (1979).

¹⁶ Bovine, George, "Factors Related to Police Disposition of Juvenile Offenders," Paper presented at the annual meeting of the American Sociological Association, 1964.

¹⁷ Cincture, Aaron, *The Social Organization of Juvenile Justice*, John Wiley and Sons, New York 1976, p. 119.

¹⁸ *Supra* note 6, pp. 376, 377.

Court 46 percent of the time, while juveniles less than 10 years were referred 21 percent of the time.¹⁹

2.2 Police Diversion

Ambit of most state juvenile codes is so wide that almost every youth could be arrested at some point when problem behavior is detected; juveniles come into police contact. There are diversion programmers both before and after juvenile court encounter of juveniles, which has been designed to fulfill the purpose of juvenile justice system. Juvenile deviation is assumed to be a mistaken behavior, that's why they should be given an opportunity to rectify themselves. The rectification and rehabilitation purpose are fulfilled by diversion arrangements.

About 63 percent of the juveniles taken under the custody of police in 1937 were referred to the Juvenile Court. Approximately 26 percent juvenile cases were handled and settled within the departmental arrangement, they were, then, released.²⁰ About one third of the juvenile cases are, therefore, disposed of by police through their internal mechanism.

2.3 Diversion without Referral

This is a very important mechanism, which facilitates settlement of a juvenile case, even before the youth's exposure to the juvenile justice system. This diversion measure involves an informal adjustment, whereby the juvenile is warned, given counsel and then released. Through this way the juvenile is immediately diverted from the system, saving them from the hazard of facing formal procedure. When this option has been practiced in the field level, the possibility of youth's encounter with juvenile justice system is kept to a minimum.²¹

¹⁹ *Ibid*, p. 377.

²⁰ Federal Bureau of Investigation, *Crime in the United States 1997*, US Department of Justice, Washington, D C, 1998.

²¹ *Supra* note 6, p. 379.

2.4 Diversion with Referral

In a second type of diversion by police with referral, a juvenile is sent to a program administered by an agency having no connection with juvenile justice system. Submission of juveniles to diversion program is determined by departmental policy of police. Diversion with referral may be internal referral or external referral, under which juveniles are submitted under the custody of any social agency having community involvement.²²

An internal referral is an in-house diversion program, when a juvenile is transferred from one branch of police to another because of the latter's better skill to handle the case. A police officer administers such a program. A team of fulltime professional counselors volunteer to give counseling to deviated juveniles; work under the supervision of the officer. Initially the needs of the juveniles are determined through assessment, then specialized counseling and other services are given to the juveniles keeping in mind their needs and purpose of the program. There are a number of internal referral programs which include community volunteer programs, recreation programs and probation programs.²³

Under the community volunteer programs, individuals are recruited from within the community, who opt to give voluntary service to problem youths. Typically they serve as 'Big Brothers' or 'Big Sister' or they furnish educational tutoring or employment opportunities. Police officers have been given full responsibility of maintaining liaison with potential community members. Proper training is given to volunteers for equipping them fully so that they can give suitable counseling to deviated juveniles, thus, contribute to the development of adolescents and assist them to overcome their crisis. The community volunteer program has great utility in that they increase available resources at minimum cost and they give wide coverage to initial counseling and work.²⁴

²² *Ibid*, p. 379.

²³ *Ibid*, p. 379.

²⁴ *Ibid*, p. 380.

Recreation programs are generally called Police Athletic League (PAL) clubs. In almost all large and medium size cities police departments have developed these programs. The energy of delinquent youths is, through these programs, attempted to be transformed into socially approved activities. Through athletic activities juveniles will develop the spirit of sportsmanship, and will internalize the discipline and values of games and by applying those they will be law abiding citizens. This objective has been determined in the hope that improved health and attitude will encourage the derailed youths to have a new start.²⁵

Prohibition programs involve diversionary probation programs under which juveniles are set free on condition of good behavior. Under this arrangement the juvenile has to report to an officer at the police station or elsewhere on a regular basis. Police officer gives advice, encourages the juvenile or warns him/her, if the situation so demands. This program is coercive and threatens the juvenile to remove him/her from the diversion program and refer to the Juvenile Court, if s/he commits any offence at a later time.²⁶

2.5 External Referral

Under the external referral programs, community assistance is sought to treat delinquent youths. Local community agency resources are utilized to meet up the needs of deviated juveniles. In extreme cases, police department may, on the basis of a contract, submit a troubled youth to the authority of professional service agents like child psychologist or drug therapist. In selecting community service agency where a juvenile should be sent to, police departments take four elements into their account: (i) acceptability; (ii) suitability; (iii) availability; and (iv) accountability²⁷ (of community service agencies.)

²⁵ *Ibid*, pp. 380, 381

²⁶ *Ibid*, p. 381.

²⁷ Klein, Malcolm, "The Explosion in Police Diversion Programs," in Malcolm Klein, ed., *The Juvenile Justice System*, Beverly Hills, CA: Sage Publications, 1976.

3. Juvenile Corrections in U. S. A: Alternative Measures

Juveniles, who are adjudicated delinquent for the first time, are placed under various alternative measures. Currently, court has a number of options like probation, home confinement and electronic monitoring, the payment of fines or restitution, and short term placement in a boot camp. By these diversion measures opportunities are made available to juveniles for their rectification and rehabilitation.

Under probation an alleged or adjudicated juvenile offender is enlarged on condition of good behavior. His/her freedom is guaranteed as long as s/he avoids further misbehavior and obeys the conditions to the satisfaction of probation officer. Most states provide probation as a disposition alternative, and it is available for every juvenile offender irrespective of the offences committed by the juvenile. Among all the adjudicated delinquents, 60 percent are placed under probation.²⁸ The basic philosophy behind probation is smooth rehabilitation and reintegration of juveniles. They are placed under probation, instead of committing to institutions, in the hope that they will come to normal life. "Probation may be used at the "front end" of the juvenile justice system for first time, low risk offenders, or at the "back end" as an alternative to institutional confinement for more serious offenders."²⁹

Searching for alternatives of committing juveniles to jails or detention centers gave rise to various alternative arrangements. Home confinement, one of the various alternative measures, sometimes called house arrest or home detention, is a mechanism by which a juvenile is intensively monitored in his/her home. Juvenile court probation departments have been enjoined to administer home confinement programs, which are being implemented through daily contacts with the youth, parents, teachers and employers personally.³⁰

²⁸ *Juvenile Court Statistics, 1992*, US Department of Justice, Washington, D C, 1995, p. 14.

²⁹ *Supra* note 6, p. 427.

³⁰ Ball, Ronald, Huff, Ronald, and Lilly, Robert, *House Arrest and Correctional Policy: Doing at Home*, CA: Sage Publications, Newbury Park, 1988, pp. 46-47.

Electronic monitoring is a method through which a juvenile is monitored in his/her home through electrical devices, which is mainly of two types: active and passive. If the situation requires constant surveillance of the juvenile, active systems are used. There is a transmitter which must be worn by the youth on the ankle, neck or wrist, and which sends a constant signal to a receiver connected to the home telephone. The signal is then sent to a central computer, and after getting it, the computer processes the signal to match it preprogrammed patterns. In response to computer activated calls, the youth under the passive systems, has to send electronic signals through phone. This electronic monitoring has been severely criticized for violating privacy and creating 'Big Brotherly' atmosphere in the home putting parents in an ambivalent situation whether to sustain the charge of contempt of court or contribute to the delinquency of the minor, if they do not inform violations of the conditions of home detention.³¹

States are, increasingly, using restitution and payment of fines as disposition alternatives and as a condition of probation. An offender, in execution of restitution ordered by court, pays money or provides services to victims of the offence or to the community. The philosophy of restitution program is that youthful offenders are held liable for their delinquent behavior. A fine is an amount of cash money determined by the court and payable by the youth or his/her parents.³²

Juveniles' Boot Camp is of recent development, which origin can be traced from 1985. Juveniles, sent to boot camps, have to undergo a 90-120 days program. During this time they are kept in a military environment with "in-your-face" drill instructors. The program emphasizes on physical condition and subjects the juveniles to three to six hours of work detail each day. All the programs subsume some sort of education program, vocational education, training program and drug counseling. After finishing the boot camp program, the juveniles are provided with some form of after care or supervision.³³

³¹ *Supra* note 6, pp. 428, 429.

³² *Ibid*, p. 429.

³³ *Ibid*, pp. 430, 431.

4.1 Juvenile Delinquency and Juvenile Justice System in Bangladesh

As there is lack of reliable quantified data, it is difficult to assess the plight of juvenile delinquency in Bangladesh. The media reports, however, indicate the increase of reported cases. The police arrest an average of 3,709 children, including 11% female every year. From one figure, it is clear that juvenile delinquency has been on the rise as 333 children were arrested in 1997, compared to 44 in 1990.³⁴ In Dhaka, from August 1990 to December 1997, 2,359 children were reportedly locked in safe custody, 1,986 for vagrancy and 373 for being suspects.³⁵

The fact that juvenile delinquency is on the rise has been reinforced by the data, which reveals that 40 per cent of the arrested criminals in Dhaka city 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, who were associated with hijacking. Moreover, young offenders, committed robbery and extortion, were arrested. They were arrested with adult offenders. Arrested juveniles are members of organized criminal gangs.³⁶

The society of Bangladesh is passing a transition. From 1950s on, an agro-based village oriented society started to transform into an urban society causing the emergence of small individual families, in place of joint families. Urban life with its anonymity, complicity and material infrastructure offers more opportunity for criminal activities, which is responsible for high rate of criminality including extensive juvenile delinquency. Television programs having violence and obscenity impact negatively on the mindset of the young boys and girls. Children, who have service holder mother, cannot always get proper care and attention. In such cases normal mental development of children may suffer. All these social conditions contribute to increasing delinquency rate among the juveniles.

³⁴ Report of Bangladesh Retired Police Welfare Association.

³⁵ Abedin, Nurul, "Treatment and Rehabilitation of Juvenile Offenders in Bangladesh," (UNAFEI Conference, Incidence of Juvenile Delinquency in Dhaka), p. 4 [Data provided by law enforcement authorities.]

³⁶ The Daily Sang bad, August 27, 2002.

Continuous famine in some remote village areas, unemployment, bringing down banks of rivers and increasing poverty caused large-scale migration of people from village to cities. The migrated people have taken shelter in slum areas, which does not provide all the facilities necessary for a normal life, compelling many children to involve in delinquent activities. Moreover, unemployment, poor economic condition, lack of parental control and scarce opportunity of education of slum children has pushed them towards criminal activities. In border areas hundred of juveniles are deployed to carry contraband items.

Variety of factors are, therefore, causing juvenile delinquency in Bangladesh, namely, those are: social transition, poverty, migration, broken family, surrounding environment, and lack of parental control. Many migrated young children are picked up by pick-pocket gangs, shop-keepers, hotel owners, pimps, and hooligans. Street children are exploited by elderly children, adults and others in position of authority. Another serious problem is the trafficking of children both within and outside the country. Moreover, the children of sex-workers, orphans, and others who are socially outcast are considered very vulnerable. The police frequently pick-up and bring such children to police stations, from where they are sent to either jail, juvenile development centers, or vagrant homes etc.³⁷

Bangladesh has established a juvenile justice system to deal with the juvenile delinquents as well as to provide some alternative ways of rectification who have committed some offence for the first time or who have somehow deviated from the normal course of life.

4.2 Youthful Offenders Detained in Development Centers

Available data indicates involvement of the children of both the lower and upper class families in criminal activities. A juvenile court receives two types of cases: (1) police case (GR case); and (2) guardian case. When children, under 16 years of age, commit crimes like hijacking, drug dealing, robbery and murder, and a case is filed against the youthful offender, it is

³⁷ Shahjahan, Lutfur Rahman and Khan, Saira Rahman, "Juvenile Justice", in Ruby Ghuznavi, Farah Ghuznavi and Saira Rahman Khan, eds., *Child Rights: Reality and Challenges*, A Study by Shishu adhikar Sangjog, The British Council, 2001, p. 123.

called police case. When any guardian files any case under section 33 of the Children Act for correcting their unruly children, it is called guardian case. The court, in a guardian case, after hearing the guardian, orders to keep the child in the development centre or put the child under the supervision of a probation officer.³⁸ The trials of crimes like rape, drug dealing, robbery, murder, and crimes relating to arms and explosives are not tried by juvenile courts. Metropolitan Magistrate's Court or Sessions Court conducts trial of serious crimes.³⁹

4.3 A Brief Sketch of the Juvenile Justice System in Bangladesh

The juvenile justice system in Bangladesh has its root in the laws enacted by the British rulers. The Bengal Code and Prisons Act, 1894 provided for separate trial for children and adults. The Reformatory Schools Act, 1897 gave 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 consolidated all the previous laws and it should be read together with the Children Rules, 1976. The Act and the Rules have developed a mechanism to protect the child's best interest during all kinds of legal processes.⁴⁰

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

³⁸ Akther, Masuma, Social Case Worker of Juvenile Development Centre, said about the different categories of youthful offenders in Rita Bhoumick, "Juvenile Crime Correction System in Bangladesh," Law and Our Rights Page, The Daily Star, October 8, 2005.

³⁹ Hairiness, Maleka, a First Class Magistrate of a Juvenile Court, described her experience in Rita Bhoumick, "Juvenile Correction System in Bangladesh," Law and Our Rights Page, The Daily Star, October 8, 2005.

⁴⁰ Khair, Sumaiya, "Juvenile Justice Administration and Correctional Services in Bangladesh: A Critical Review," *The Dhaka University Studies Part-F*, Volume 16, Number 2, December 2005, , p. 4.

components. The procedural aspect is supplemented by the provisions of the Code of Criminal Procedure. The Act, together with the Code, enjoins to follow special procedure by the juvenile courts and place the children to the care and protection of state facilities. The Criminal Procedure Code provides that, any offence, other than one punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the court is under the age of fifteen years, may be tried by a District Magistrate or the Chief Metropolitan Magistrate or by any Magistrate specifically empowered by the government to exercise to powers conferred by or under any law providing for the custody, trial or punishment of youthful offenders, by any Magistrate empowered by or under such law to exercise all or any of the powers conferred thereby.⁴¹ The substantive part of the Children Act states offences done to children and prescribes penalties for them.

The Children Act, 1974 provided for what types of protections are needed for the children who come in conflict with the law and also for those who are at social risk. According to the provisions of the Act, the juvenile courts must have due regard to the age and character of the child and other associated factors before passing any order. It provides for separate juvenile courts and strictly prohibits the joint trial of the youthful offenders with the adults, even when they jointly have committed the offence. The Act does not overlook the welfare of the helpless children and lays down what types of care and protection should be given to the 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.⁴² A brief outline of the existing juvenile justice system in Bangladesh has been given below.

4.3.1 Committing of Offence and Criminal Responsibility

As per section 82 of the Penal Code, the age of criminal responsibility in Bangladesh is above 9 years of age. But the Children Act defines a child as a

⁴¹ Section 29B, The Code of Criminal Procedure.

⁴² *Supra* note 40, p. 4.

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.

The Penal Code tells that a child below 9 years of age has no criminal responsibility and a child from 9-12 years will be criminally responsible, if s/he attains the maturity to differentiate between right and wrong. The implication of sections 82 and 83 of the Penal Code is that a child falling under 9-12 age group may be convicted of an offence, if s/he has sufficient maturity to understand the nature and consequences of the offence. Full criminal responsibility of a child, irrespective of maturity of understanding, starts after s/he attains the age of twelve years.⁴³

4.3.2 Arrest, Bail, Detention and Discharge

Where a person apparently under the age of sixteen years is arrested on a charge of non-boilable offence and cannot be brought forthwith before a Court, the officer-in-charge of the police station to which such person is brought may 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.⁴⁴ Where such a person is not released, 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 of 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.⁴⁵

⁴³ Haque, Zahirul, Penal Code, Fifth Edition, Anupam Gyan Bhandar, 2005, p.158.

⁴⁴ Section 48, The Children Act, 1974.

⁴⁵ Section 49, The Children Act, 1974.

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 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. A youthful offender sentenced to imprisonment shall not be allowed to associate with adult prisoners.⁴⁶

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 a certified institute for detention for a 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 18 years.⁴⁷

4.3.3 Powers, Functions and Procedure of the Juvenile Courts

The government may, by notification in the official Gazette, establish one or more juvenile courts for any local area.⁴⁸ The powers conferred on a juvenile court are also exercisable by

- (a) the High Court Division, (b) a Court of Session, (c) a Court of Additional Sessions Judge and of an Assistant Sessions Judge, (d) a Sub-Divisional Magistrate⁴⁹, and (e) a Magistrate of the first class.

⁴⁶ Section 50 and 51, The Children Act, 1974.

⁴⁷ Section 52, The Children Act, 1974.

⁴⁸ Section 3, The Children Act, 1974.

⁴⁹ Now the Assistant Sessions Judges are called Joint Sessions Judges. Though the Act uses the term Sub-Divisional Magistrate, but it is not in use. And after the separation of judiciary the First Class Magistrates are called Judicial Magistrates.

These courts can try any case originally or on appeal or in revision.⁵⁰ A juvenile court can try all cases in which a child is charged with the commission of an offence and shall deal with and dispose of all other proceedings under this Act, but shall not have power to try any case in which an adult is charged with any offence mentioned in Part VI of this Act.⁵¹ No child shall be charged with, or tried for, any offence together with an adult. If a child is accused of an offence for which under section 239 of the Code of Criminal Procedure or any other law for the time being in force such child could have been tried together with an adult, the court taking cognizance of the offence shall direct separate trials of the child and the adult.⁵² In the trial of a case in which a child is charged with an offence a juvenile court, as far as may be practicable, sit in a building or room different from that in which the ordinary sittings of the court are held, or on different days or at different times from those at which the ordinary sittings of the court are held.⁵³ When a child is accused along with an offence and it appears to the court that the case is a fit one for committal to the Court of Sessions, such court shall after separating the case in respect of the child from that in respect of the adult direct that the adult alone be committed to the Court of Session for trial. The case in respect of the child then is transferred to a juvenile court.⁵⁴ No person shall be present at any sitting of a juvenile court except—(a) the members and officer of the court; (b) the parties to the case or proceeding before the court and other persons directly concerned in the case or proceeding including the police officers; (c) parents or guardians of the child; and (d) such other persons as the court specifically authorizes to be present. If at any stage during the hearing of a case or proceeding, the court considers it expedient in the interest of the child to direct any person, including the parent, guard-

⁵⁰ Section 4, The Children Act, 1974.

⁵¹ Section 5, The Children Act, 1974.

⁵² Section 6, The Children Act, 1974.

⁵³ Section 7, The Children Act, 1974.

⁵⁴ Section 8, The Children Act, 1974.

ian or the spouse of the child, or the child himself to withdraw, the court may give such direction and thereupon such person shall withdraw. The court can proceed on in the absence of a child if the court is satisfied that the attendance of a child is not essential for the purpose of the case or proceeding. When a child is summoned as a witness the court may direct any person as it thinks fit to withdraw.⁵⁵

4.3.4 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 to exercise its jurisdiction judiciously.

A court may, if it thinks fit, instead of directing any youthful offender to be detained in a certified institute, order him to be (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 behavior of the youthful offender for any period not exceeding three years and the court may also order that the youthful offender be placed under the supervision of a Probation Officer. If it appears to the court on receiving a report from the probation officer or otherwise that the youthful offender has not been of good behavior during the period of 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.⁵⁶

5.1 A Comparative Study of Diversion and Alternative Measures of the Juvenile Justice Systems of Bangladesh and USA

The purpose of juvenile justice system, as it differs from adult justice system, is not to penalize the children, but to give them an opportunity of

⁵⁵ Sections 9, 10, 11 and 12, The Children Act, 1974.

⁵⁶ Section 53, The Children Act, 1974.

rectification and provide suitable mechanism of their coming back to lawful course of life. This basic philosophy underlies both the juvenile justice systems of USA and Bangladesh. The life pattern of American citizens is heterogeneous whereas it is homogenous in Bangladesh as people of different countries have gathered in USA, who developed a cosmopolitan culture. The heterogeneity, culture conflict, racial discrimination and social disorganization of American society gave rise to more and more juvenile delinquency, which once became endemic, compelling the state and federal authority to establish a juvenile justice system. In course of time it has become very systematic, which now provides many diversion programs and alternatives for the children so that they will not be placed under any institution, like prison, development centers or any other institutional confinement.

The citizens of Bangladesh, unlike USA, belong to a monolithic culture having homogenous life style. From 1950s on, Bangladeshi society has been passing a transition as an agro-based rural society is slowly transforming into an industry-based urban society. Though the condition of juvenile delinquency in Bangladesh is not so acute like USA, but juvenile delinquency is increasing in Bangladesh, which made the policy makers to realize that a juvenile justice system will be required to fight the menace and which they did by enacting the Children Act, 1974. The Act provides a number of alternative measures, before trial and after conviction, to make the children able to exploit the full potentials of the diversion measures to rectify their mistakes. A comparative study of the diversion and alternative measures of the juvenile justice systems of Bangladesh and USA will reveal strength and weaknesses of the systems and outline the necessity whether Bangladeshi Juvenile Justice System needs to introduce more diversion and alternative measures. The study also unearth the American reality whether their system is sufficient to fight this monster or the elimination of juvenile delinquency requires sectoral reform of the basic social institutions of the society, or reform of the American society as a whole.

5.2 Arrest of Juveniles by the Police

American police take into account three legal factors when arresting a child, these are:

(i) seriousness of the offence; (ii) prior arrest record; and (iii) presence of evidence. Seriousness of offence is very important factor to influence the decision of police officer to arrest a child. Juveniles committing more serious crimes are more likely to be arrested and referred to Juvenile Court by police. Police action, to a great extent, is influenced by the prior arrest records of juveniles. Evidence is said to be effected when a police officer witnesses an offence or any citizen gives testimony about the offence. Some extra legal factors, side by side with legal factors, also predominantly influence police decisions. Character cues emerging out of the interaction between the police officer and the youth are the most important factors to be taken into account by the police. Among the cues the most important are juvenile's age, race, grooming, dress, group affiliation, and demeanor.

In Bangladesh police does not have modern record-preservation system, for which they have no way to know whether arrested juveniles have any prior record of arrest or conviction. Even during the time of arrest of any child police does this on their assumption as there is no system of maintaining the birth certificate of the Children. In most of the times police arrest many children as if they were adult. The police arrest many children under Section 54 of the Cr. P. C. on suspicion and many slum children or children of lower class (commonly known as tokay) are arrested during strike or political instability.

A comparative study of the arrest process of America and Bangladesh reveals that the police of Bangladesh should develop very sound system of arrest. Police must not arrest a child arbitrarily or on suspicion. The police can arrest a child when the offence is of very serious in nature. When police has no alternative than to arrest a child, then police can do so and must record the reasons for arresting the child.

5.3 Different Types of Diversion and Alternative Measures of USA and Bangladesh

The juvenile justice system of America has provided different types of diversion, namely, those are: police diversion, diversion without referral, diversion with referral and external referral. Ambit of most state juvenile codes is so wide that almost every youth could be arrested at some point

when problem behavior is detected. There are diversion programs both before and after juvenile court encounter of juveniles, which fulfills the rectification and rehabilitation purpose of the juveniles. The police of America settle one-third of the juvenile cases within their departmental arrangement and they are, then, released.

In USA diversion without referral is a very important mechanism, which facilitates settlement of a juvenile case, even before the youth's exposure to the juvenile justice system. This diversion measure involves an informal adjustment, whereby the juvenile is warned, given counsel and then released.

In Bangladesh the Children Act, 1974 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 to exercise its jurisdiction judiciously.

In USA under a diversion by police with referral, a juvenile is sent to a program administered by an agency having no connection with juvenile justice system. Submission of juveniles to diversion program is determined by departmental policy of police. Diversion with referral may be internal referral or external referral, under which juveniles are submitted under the custody of any social agency having community involvement.

An internal referral is an in-house diversion program, when a juvenile is transferred from one branch of police to another because of the latter's better skill to handle the case. A police officer administers such a program. A team of fulltime professional counselors volunteer to give counseling to deviated juveniles; work under the supervision of the officer.

Under the external referral programs, community assistance is sought to treat delinquent youths. Local community agency resources are utilized to meet up the needs of deviated juveniles. In extreme cases, police department may, on the basis of a contract, submit a troubled youth to the authority of professional service agents like child psychologist or drug therapist.

Juveniles, who are adjudicated delinquent for the first time, are placed under various alternative measures in USA. Currently, court has a number of options like probation, home confinement and electronic monitoring, the payment of fines or restitution, and short term placement in a boot camp. By these diversion measures opportunities are made available to juveniles for their rectification and rehabilitation.

In Bangladesh a juvenile court may, if it thinks fit, instead of directing any youthful offender to be detained in a certified institute, order him to be (a) discharged after due admonition, or (b) released on probation of good conduct and committed to the care of his parents or guardian or other adult relative or other fit person. The court may also order that the youthful offender be placed under the supervision of a Probation Officer. If it appears to the court on receiving a report from the probation officer that the youthful offender has not been of good behavior, it may order the youthful offender to be detained in a certified institute for the unexpired period of probation.

A comparison of the diversion and alternative measures of USA and Bangladesh reveals that America has a wide number of diversion and alternative measures. These are different mechanisms to keep the juveniles in the outside world so that they will not encounter juvenile court or they will not be put under any official institution, like Juvenile Correctional Center or Juvenile Development Center or prison in extreme cases. The total picture of juvenile delinquency, juvenile justice system, diversion and alternative measures of America expresses the fact that the basic institutions of American society are not functioning as expected. The juvenile justice system of Bangladesh as provided by the Children Act, 1974 has provided alternative measures after arrest and conviction of the juveniles, which is very positive feature of the system. But the police, probation officers, and judges, unfortunately, cannot exploit full potentials of the system. These alternative measures, if properly utilized, will yield good results in the rectification and rehabilitation of derailed children.

5.4 Involvement of Community

One very illuminating feature of the juvenile justice system of USA is that it has different programs to involve the willing community members. Un-

der the community volunteer programs, individuals are recruited from within the community, who opt to give voluntary service to problem youths. Typically they serve as 'Big Brothers' or 'Big Sister' or they furnish educational tutoring or employment opportunities. Police officers have been given full responsibility of maintaining liaison with potential community members. The community volunteer program has great utility in that they increase available resources at minimum cost and they give wide coverage to initial counseling and work.

The juvenile justice system of Bangladesh does not have any mechanism to involve the community members under whose custody deviated juveniles could be placed. It is not unlikely that many community members are willing to take the custody of juveniles, who any how have committed some offence or have done something which is volatile of the social norms. If the juvenile justice system takes the help of community, it can ensure the rectification and rehabilitation of juveniles at a minimum cost on the one hand, and community members can get an opportunity to promote the cause of children on the other.

6.1 Hard Realities of Juvenile Justice System in Bangladesh

Alleged youthful offenders are brought to the police station and then taken to the magistrate's court after arrest. They are either sent to the development centre, remand and vagrant homes, shelters or jails from the police station or magistrate's court. Police frequently abuse their power given by section 54 of the Criminal Procedure Code, under which they can arrest any person without warrant on mere suspicion. 7 percent of the total children arrested under section 54 of the Cr. P. C. had been detained in Dhaka Central Jail for more than two years. Police arrested them on the ground of mere suspicion.⁵⁷

6.2 Difference between Text and Practice

The purpose of juvenile justice system is not to penalize the juveniles, but to make them understand their mistakes and afford them an opportunity

⁵⁷ Hassan, Fatima Rashid, *Justice for Children: The Reality in Bangladesh*, Save the Children Fund, 1999.

to rectify themselves. Any confinement or detention in a remand home, place of safety or development centre is a major barrier for the rectification of juveniles. Because detention within an institute creates guilty feelings among the juveniles and people also treat them as offender. Considering this attitude of society, the Children Act, 1974 gives power to the officer-in-charge of the police stations to forward the juveniles on bail and to the magistrates to order the juveniles to be released on probation of good conduct and committed to the care of the parents or any other relative even after the conviction of the juveniles. But many of the magistrates do not know the provisions of alternative measures, or who know is not sufficiently motivated to enlarge the children under these measures. Many of the parents and guardians of the children are reluctant to take the responsibility of their unruly children. The alternative measures, therefore, remain largely unexhausted. Deprivation of liberty of juveniles by sending them to the development centers should be the last resort and should be used in the rarest of the rare cases. But deprivation of liberty is extensively used which is frustrating the purpose of juvenile justice.

The provisions to treat the children separately after arrest, to submit separate charge-sheet and to conduct separate trial in a homely atmosphere are not maintained due to ignorance of law, proper motivation and an attitude to avoid extra burden by the police officers and magistrates.

6.3 Children in Contact with the Police, Courts, Detention Centers and Probation Officers

In general, the attitude and behavior of law enforcement officials towards children leave very less to be described, particularly it is true in case of police personnel, who have no accountability of their conduct, and are sometimes accused of torture, maltreatment and sexual abuse. Though they are the highly educated mass of the country, but the magistrates are not sufficiently sensitized to deal the issues of children. They do not give much attention to children's issues and very often children are detained for very minor offences. Moreover, court proceedings are delayed and the judges and magistrates are overburdened. Probation officers, in fact social welfare officers, who have been given the additional task of supervising the activi-

ties of children placed on probation, are not sufficiently trained and the courts hardly use their services.⁵⁸

The Committee on the Rights of the Child (CRC), in its Concluding Observations on the State Party Report of Bangladesh, made some recommendations, which it put in the following language:

With regard the administration of juvenile justice, the Committee recommends that legal reform be pursued in connection with the very young age of criminal responsibility (7 years), the lack of adequate protection for children aged 16-18, ground for arrest and detention of children that can include prostitution, vagrancy or uncontrollable behavior, the possibility of imposing heavy sentences on children and the solitary confinement and ill-treatment of children by the police. In this reform the State Party should take fully into account the provisions of the Convention, in particular articles 37, 39 and 40, as well as other relevant international standards in this area.⁵⁹

The actors of the criminal justice system, particularly the police and judicial officers, very often ignore the provisions of the Children Act, 1974. In the absence of separate lock-ups adult and children are kept together in police stations. Moreover, children are even sometimes handcuffed. In the absence of proof of age, police very often in their records show that the age of the arrested children is more than 16, in order to avoid the procedure provided by the Children Act, thus do not comply with the necessity to give separate charge-sheet for the children, who have very little opportunity to get legal protection. For example, families of children, after arrest, are not informed and the children are not produced before a magistrate within 24 hours.⁶⁰

The efficiency of police personnel is measured by the number of arrests made by them. It is often easiest for police officers, needless to say, to arrest children. The top-level police officers are trained and somehow sensi-

⁵⁸ *Supra* note 37, p. 126.

⁵⁹ Quoted in *supra* note 37, p. 126.

⁶⁰ *Supra* note 35.

tized towards child issues, but sufficient training is not given to the junior officers, who come in direct contact with the children. The participatory research conducted by the street children identified torture by police as the worst problem faced by children everyday.⁶¹

The police officers have been given ample opportunity to abuse power as they can proceed with arrest and investigation without supervision from a magistrate. Under section 54 of the Code of Criminal Procedure, any police officer can arrest any person on a reasonable suspicion without warrant. Taking advantage of extensive power of arrest and investigation without any supervising authority, police has been identified as a money-making enterprise, which is masterminded by an officer-in-charge of a police station.⁶²

What procedure has to be followed when arresting a child, unfortunately, is not mentioned in the Children Act, 1974. The procedure, therefore, used for arresting adults is also followed to arrest a child. Sections 6, 7 and 8 of the Children Act provide for the separation of children from adults at two stages of the juvenile justice system, namely, when the trial is conducted and subsequently when the juvenile is incarcerated. Though there is clear provision that if a child is not released after arrest, s/he shall be detained in a remand home or place of safety until s/he will be brought before a juvenile court. But, children, after arrest, are detained in police stations and cells of prisons with adult prisoners. When a child, whether alone or in group, is arrested, the police is under an obligation to record separate First Information Report (FIR) and give separate Charge-Sheet for the child.⁶³ Here police, in the absence of child registration, faces a hurdle to determine the age of the arrested child. The determination of the age of a child largely depends on the discretion of the police and after the determination of age; a child is submitted to the authority of a juvenile court.

⁶¹ *Supra* note 37, p. 128.

⁶² *Ibid.*

⁶³ *Ibid.*

The police are law-bound to report the arrest of a child to the Probation Officer in order to verify the appropriate information. The police officers, unfortunately, do not comply with the whole procedure of the Children Act because of varied reasons, as I) it involves extra work; ii) carrying a child to the juvenile court requires a vehicle and two escorts which is almost impossible in most of the time; iii) the police officers cannot submit separate FIR, and Charge-Sheet to avoid extra effort when a child is accused with an adult; and iv) the arrested children, who are poor in most of the cases, cannot bribe the police officers. Confessional statement, often extracted under violence and duress, is written down by the investigating officer and hardly read out to the child, who, in most of the cases, cannot read or write. Moreover, the cops, very often, determine the fate of a child as a police officer takes decision under which law the child should be charged, even before the child is brought before a magistrate.⁶⁴

6.4 Obligations of Law Enforcing Agents and Reality

Police working in the field level do not know the basic provisions of the Children Act, 1974. Sometimes though police know the law, but cannot maintain the provisions of law properly. In some cases police do not write down the age of juveniles correctly in order to avoid extra duty. Police working in the field level are always handling adult criminals of different ages, so their attitude and behavior is arrogant and harsh. This police often maltreat juveniles. Lack of sufficient training and motivation can be identified as responsible for non-sensitization of police.

Sometimes police find out the NGO activists and hand over the juvenile to them or seek their assistance in solving the problem of the juvenile. After arrest of juveniles, police do not inform probation officer because of (i) ignorance; and (ii) sometimes due to avoid extra duty. Sometimes due to the status conflict between police officer and probation officer, the juveniles remain uncared.

Police of the lower echelon, who are working in the field level, are not properly sensitized due to (i) ignorance of law; (ii) sufficient training; and

⁶⁴ *Ibid*, p. 129.

(iii) motivation. But police officers of ASP rank or higher level seems to be responsible and some officers supervise the treatment of juveniles, though that is not enough. There are hundreds of juveniles carrying contraband goods in the districts beside the border. Police should arrest them to curb criminality, but they cannot do so to avoid extra duty. By taking advantage of the situation criminal gangs are employing more juveniles in smuggling and other criminal activities.

6.5 Existing Practices

The provisions of law concerning children are not implemented due to lack of infra-structural facilities. In police stations and jails there is no separate place for the juveniles, so they are kept with the adult offenders and under trial prisoners. It has negative impact on the juveniles and they are getting their first lesson of criminality from adult offenders when residing with them in police stations and jails.

Police cannot discharge their duty properly in juvenile cases because it requires submission of separate FIR and Charge-Sheet, which creates extra pressure on investigating officers as they work 14-18 hours a day for keeping different functions of law and order. There is no system of medical test to determine the age of juveniles, so the magistrates and police officers have to apply their common sense. Place of safety is not safe for the children; rather the place is unhealthy and inhumane.

First class magistrates are part time judge of the juvenile court. They, therefore, cannot concentrate on the trial. Concluding trial without calling any report from the probation officer can be cited as evidence of lack of concentration on the part of the magistrates. Separate judge should be appointed to ensure justice properly. Sometimes injustice is done in the preliminary stage of a trial due to business of magistrates. Magistrates told that they have to release some juveniles due to lack of evidence. Moreover, there is no co-ordination of the process starting from the arrest of the juveniles till the conclusion of trial. There should be co-ordination or supervisory committee in every district to monitor the whole process. There is no person to make the follow up report after the release of the juveniles.

Juveniles in the development center are not sufficiently provided with all the necessary facilities because of the corruption of the officials.

6.6 Overuse of Deprivation of Liberty

Under the procedure established by the Children Act, a juvenile is arrested by a police officer after committing an offence. The officer-in charge of a police station has been given the power of releasing a juvenile on bail or shall cause him to be detained in a remand home or place of safety until he can be brought before a court. A court, on remanding for trial of a child who is not released on bail, shall order him to be detained in a remand home or a place of safety. The police officer should inform to the probation officer immediately after arrest. After investigation, the case will be forwarded to the juvenile court. In case a child is convicted the court may order him to be committed to a certified institute. This provision is not mandatory because the court can, instead of directing any youthful offender to be detained in a certified institute, order the juvenile to be discharged after due admonition, or released on probation of good conduct and committed to the care of his parent or guardian or other adult relative.⁶⁵

The Act enjoins the actors of the justice system to treat the juvenile delinquents separately from the adult offenders. After committing an offence an adult offender is punished with death, imprisonment, fine or forfeiture of property. But when a juvenile commits any offence, s/he should not be punished but given an opportunity to realize his/her mistake and rectify accordingly. Confinement within a certified institute or remand home or place of safety creates guilty feelings in the juveniles. It also creates wrong impression in the outside people about those juveniles. The Children Act, therefore, provides for some measures so that juveniles cannot be deprived of liberty at the first instance. Deprivation of liberty by sending juveniles to a certified institute is the last resort under the Act. After arrest an officer-in-charge can enlarge a juvenile on bail. After conviction the court can instead of sending the juveniles to certified institute, order the juvenile be

⁶⁵ Section 48, 49 and 53, The Children Act, 1974.

released on probation of good conduct and committed to the care of his parent or guardian.

Under the Children Act deprivation of liberty is the last resort, but it is extensively used by the magistrates, police officers and parents. Lack of motivation, ignorance of law, unavailability of parents or guardians and reluctance of parents are responsible for overuse of deprivation of liberty of juveniles. Most of the officers-in-charge of police stations do not know their power of enlarging juveniles on bail. After commission of an offence juveniles are treated by the police officers like adult offenders. The ignorant police officers also fear of releasing juvenile offenders due to the apprehension of losing job. After conviction the magistrates cannot take the trouble of finding out the parents or other relatives to utilize the option of releasing juveniles on probation of good conduct. Without exhausting the option provided by the law, the magistrates, usually, order the juveniles to be committed to certified institute. Sometimes the magistrates cannot call the report of probation officer.⁶⁶

In police cases other options are not utilized mainly due to lack of motivation, ignorance of law and to avoid extra duty. But in cases referred by parents there is no other alternative option available. The uncontrollable juveniles are referred by parents and kept in the development centre. The confinement in development centre sometimes cast bad impact on the mindset of juveniles. So, instead of rectification, the impact of development centre makes the juveniles more delinquent in their behavior.

7.1 Some Outline and Possible Interventions

For proper functioning of the juvenile justice system, co-ordination between magistrates, police officers and probation officers is required. Or a monitoring committee needs to be formed to supervise the functioning of

⁶⁶ Sheikh Hafizur Rahman, Assistant Professor, Law Department, Dhaka University, has interviewed a number of police officers, magistrates, probation officers and development centre officials to find out the problems of existing juvenile justice system. The interviewees have identified the drawbacks of the existing system. The findings of Rahman has been used in this article with his permission from his unpublished works.

the juvenile justice system. This can be instrumental to remove lapses of juvenile justice system operating in Bangladesh. Community service may be introduced for finding a better solution of the juvenile problem. The probation officer should classify the juveniles on the basis of the nature and gravity of offences and decide who will be sent to development centre and who will be sent back to society/community under his/her supervision. There should be package programmed for children who come in contact with law. After arrest the juveniles should be handed over to the full-fledged probation officer who will identify the problems and causes of deviation of the juveniles and then provide juveniles with suitable arrangements.

After arrest or conviction the children need to be kept in the 'starker shish Paribas' or orphanage.⁶⁷ It does not require any financial involvement on the part of the government, only security needs to be ensured so that the juveniles cannot flee. Sufficient number of workshops and training programmers need to be organized to motivate and develop humanitarian attitude among the magistrates, police officers, probation officers and officials of prison and correction institutions. The professional groups like journalists, advocates and social workers should aware the people of the issues concerning juveniles. Awareness of people and continuous media report can be operated as safeguard of the juveniles so that they cannot be maltreated in any stage after arrest. Some shelter homes, correction centers and rehabilitative institutions may be constructed by NGOs and private persons to promote welfare activities of juveniles. Co-ordination between GO and NGOs will further promote the cause of juveniles.

In the field level, police may be divided into two categories (i) one will be appointed to maintain law and order; and (ii) other will be appointed to investigate the criminal cases. In the second category there should be another sub-category who will be specifically appointed to investigate the

⁶⁷ Mr. Shafiul Alam, a Deputy Commissioner, rescued many juveniles from the curse of prison. He suggested to keep the juveniles in 'sarkari sishu paribar' or orphanage.

cases of juveniles. The police of this sub-category can be recruited from law, sociology and social welfare background.

The rate of juvenile crime varies from district to district. Districts having high juvenile crime rate must be separated from the districts where juvenile crime rate is low. Separate juvenile court and development center need to be established in the juvenile crime prone districts.

7.2 The List of Key Issues to Ponder

Police stations or jails are not good places for juveniles, because: (i) the adult offenders can infiltrate criminal tendency into the juveniles; and (ii) confinement in the prison can create guilty feeling in the juveniles. Police stations or jails cannot be used as 'place of safety.' Government should construct sufficient numbers of 'places of safety' in all the districts of Bangladesh. So long 'places of safety' will not be constructed, juveniles can be kept in the 'sarkari sishu paribar' or orphanage or any other private institutions.

Government and NGOs should organize workshops and training programmers for magistrates, police officers, probation officers and officials of the prison institutions to make them aware of the laws relating to the children and sensitize all the professional groups. Probation officers with clearly defined duties should be appointed and they should be given satisfactory amount of salary and logistic support.

Initially separate court and development center may be established in all the divisional headquarters. In the second phase separate courts and development centers should be established in those districts where the rate of juvenile delinquency is high.

As a regimented force, field-level police are very arrogant and crude. Proper measures need to be taken to sensitize police through internal and external mechanism so that they cannot maltreat juveniles.

There should be sufficient arrangements for rehabilitating the juveniles when they are under probation and after completion of their sentence.

Conclusion

Children are the most potential and sensitive part of a society, whose proper nourishment, if we assume the least, inextricably related to the future of a country. They require differential treatment. Their cause should be specially taken care of. Juvenile delinquency and violence against child are indication that social organization is not running in the right direction. Because of their susceptibility children respond to social malfunctioning in ways not approved by social norms and penal laws. Their reaction gives rise to juvenile sub-cultures, which take place through their strange dress-up, abnormal behavior, and even through individual gang delinquency. Their resistance to the dominant culture indicates the necessity of reorganizing the social institutions and spatial attention being given to promote the cause of juveniles.

In the U.S.A. most of the states have developed both diversion with referral and diversion without referral, under which a juvenile is diverted from the justice system immediately after his/her contact with police. Diversion with referral is a system whereby a juvenile is submitted to the custody of any *community member, or any police officer or any community service agency* on condition of good behavior. The purpose of this diversion measures is to give problem youths an opportunity so that they can understand their faults and can transform themselves into law-abiding citizens.

In Bangladesh a police officer can release a juvenile on bail after arrest. This power has not been given to a police officer if any adult is arrested. Careful attitude of the police officers in arresting a child and set him/her free on bail after arrest and inform the matter to a probation officer will be conducive for the children as they will get an opportunity of coming back to lawful life by remaining in the free society. Given the susceptibility of the children, Bangladesh government should establish, I suggest, a separate department of cops comprised of the female police to deal with the problems of the juveniles.

Even after conviction of a child, a juvenile court may instead of directing any youthful offender to be detained in a certified institute, order him to be (a) discharged after due admonition, or (b) released on probation of

good conduct and committed to the care of his/her parents or guardian or other adult relative or other fit person. The court may also order that the youthful offender be placed under the supervision of a Probation Officer. The juvenile justice system of Bangladesh keeps the avenue open for the children to reside in the free society under the supervision of guardians or probation officer even after conviction. All the actors of the juvenile justice system, unfortunately, are not aware of these alternative measures, which full exploitation will bring positive change in the deteriorating juvenile problem.

Bangladesh lags far behind of involving the members of community in taking the responsibility of deviated children, who if are guided properly and get due care and attention, will grow as lawful citizens of the country. I strongly recommend that appropriate measures will be taken for reaching community service at the disposal of the vulnerable children. If the community is involved, the community members will take extra care to fight the juvenile issues. It will, also, ensure the re-integration of the children who have committed some wrong.

The difference between children law and practice indicates that mere enactment of laws is not sufficed. Proper implementation of law, effective training, motivation, and commitment of all the actors, involvement of community and total mobilization of social forces are key to keep the problem at a minimum, thus ushering the hope of establishing an egalitarian society where children's causes will be fully guaranteed. This is the final argument of this article.