

The State of Juvenile Justice System in Bangladesh: Time for Re-thinking

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1. Introduction

Juvenile justice is a key component of the child rights in the aspects of upholding their best interests. Children need to be treated separately from the adults in the matters of investigation, trial and correctional process.¹ It is regarded that throughout the process of justice for juveniles they must have the support of the state, family and the community in achieving their rights of protection and prevention.² But the children frequently face threats to their individual rights while entering the juvenile justice system, yet their plight is commonly ignored in Bangladesh. Since independence of Bangladesh in 1971, the first expression of concern about the protection of children came through *the Children Act 1974* along with *the Children Rules 1976* which had been promulgated before many international instruments on children's rights came into existence and had not been consistent with the international mandate set by those instruments. There was hardly any focus on remarkable judicial attention for juveniles before 1990.³

Despite the ratification of *the Convention on the Rights of the Child (CRC)*, 1989 in 1990,⁴ the government did not undertake any comprehensive review of its legislation regarding children until 2012. Due to insufficiency of juvenile courts in divisional levels in Bangladesh most of the time juveniles are treated under the ordinary courts along with adult criminals. As a result, children are sent to jails instead of their correctional institutions. Moreover, children who are arrested often face violence during the period of arrest and imprisonment. The provisions treat the children separately after arrest and submit separate charge-sheet and conduct separate trial which often are not maintained due to the avoidance of law and are accompanied by the improper attitude of the

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¹ Marilyn D, McShane and Frank P, Williams (eds.), *Encyclopedia of Juvenile Justice*, Sage Publication, London, 2003, p. 119.

² Khair, Sumaiya, "Juvenile Justice Administration and Correctional Services in Bangladesh: A Critical Review", *Journal of the Faculty of Law*, The Dhaka University Studies, Part-F Vol. 16, No.2, University of Dhaka, December, 2005, p. 2.

³ *Juvenile Justice in South Asia: Improving Protection for Children in Conflict with the Law*, UNICEF, 2006, p. 39.

⁴ *The Convention on the Rights of the Child (CRC)* adopted by the United Nations, General Assembly, 20 November 1989, The Convention came into force on 2 September 1990 in Bangladesh.

concerned authority.⁵ Consequently, juveniles are deprived of their right to return to normal life.

In this context, the government has enacted the new *Children Act 2013*⁶ on the basis of *CRC* which has repealed *the Children Act of 1974*⁷. In practice, due to lack of new Children Rules or guidelines and lack of coordination among concerned agencies; the mandates of *Children Act 2013* are not implemented yet. It is necessary to bring them back in society as decent law-abiding citizens through a specialized judicial process. This article assesses the existing laws along with the activities of concerned agencies and thereby offering some suggestions ponder the way-out for a comprehensive justice system for the children in Bangladesh.

2. Critical Review of Related Laws

2.1 Domestic Legal Measures

Since the independence of Bangladesh in 1971, protections are ensured for children by its Constitution.⁸ In particular, Articles 27, 28 and 31 of the Constitution lay down the general principles regarding the protection of children and others from all forms of discrimination.⁹ Thus, children have the right to be treated with human dignity in all situations including those which involve arrest, detention and trial for offences. Though *the Children Act, 1974*¹⁰ and *the Children Rules, 1976*¹¹ contained the seeds of the juvenile justice system¹² but in practice most of the provisions were not being implemented or applied and as a result children received the

⁵ Report of a Training Workshop on *Modern Trends of Juvenile Justice*, Juvenile Justice Roundtable, BRAC Centre for Development Management, Rajendrapur, Gazipur, April 2007.

⁶ *The Children Act, 2013* (Act No 26).

⁷ Now repealed by *the Children Act, 2013*. By a subsequent Gazette notification dated 18 August 2013 *the Children Act* was made effective from 21 August 2013.

⁸ *The Constitution of the People's Republic of Bangladesh, 1972*.

⁹ Article 27 of *the Constitution of Bangladesh, 1972* declares that all citizens are equal before law and are entitled to equal protection of law. So, children being the integral part of the citizens are no exception to the constitutional guarantee. Article 28 of the *Constitution* provides that (i) the state shall not discriminate against any citizen only on grounds of religion, race, caste, sex or place of birth, (ii) women shall have equal rights with men in all spheres of the state and public life, and (iii) no citizen shall only on grounds of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort or admission to any educational institution. Article 31 also guarantees everyone the right to life, liberty and freedom from arbitrary detention.

¹⁰ *The Children Act, 1974* (Act No. XXXIX of 1974).

¹¹ *The Children Rules, 1976* (Rules No. S.R.O.103-L76).

¹² These laws provide a wide scope for the custody, protection and treatment of the juvenile delinquents under the age of 16 years which was in conformity with the *CRC* and the other *UN rules, guidelines*.

same treatment as received by the adults. Apart from those, few provisions of several laws¹³ were incorporated to deal with the juvenile delinquents in Bangladesh. These provisions were scattered in various laws, which treated juveniles like adults. These penal laws did not provide for the best interest of the juveniles in a uniform way.¹⁴

The age of penal responsibility is most important factor to treat the children as a juvenile delinquent. *The Penal Code, 1860*¹⁵ deals with the presumption of innocence with respect to juveniles, subject to certain qualifications of age in sections 82 and 83. Section 82 provided that the children under the age of 7 years are immune from any trial for offence committed by them and subsequent punishment. According to section 83, an offence is not to be tried if done by a child above 7 years of age and under 12, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion. Once the child has attained the age of 12, he or she is fully responsible for his or her actions.¹⁶ Thereafter, in 2004, the government has amended the *Penal Code, 1860* and raised the minimum age of criminal responsibility of a child from 7 to 9 years.¹⁷

Some significant loopholes having been there in *the Children Act, 1974* and the other laws, the government amended *the Children Act 2013* and is aimed to protect the best interests of children during all kind of judicial processes related to them. In the *Act*, the age of the childhood has been increased from 16 to 18 years within which a delinquent will be treated as a juvenile. As a result of this development, children will have the opportunities to be treated fairly both under the national and international laws.

In addition, the *Act* has established specific duties for the new appointments and offices like separate children's court, child affairs police officer, national child welfare boards, child development centers, probation officers etc. However, the ultimate success of the *Act* will depend on the proper awareness and great amount of financial support as well as the promulgation of the Children Rules as soon as possible.

¹³ Such as, *the Special Powers Act 1974; the Anti-Terrorism Act 1992; the Arms Act 1878; the Explosive Substances Act 1908; the Women and Children Repression Prevention Act 2000; the Code of Criminal Procedure 1898 and the Metropolitan Police Ordinances*. Provisions regarding juveniles are spotted in various laws and unfortunately, most of these laws are non child-friendly in nature.

¹⁴ Subhan, K. M. "Juvenile Justice Administration in Bangladesh: Laws and their Implementation", *Judicial Training in the New Millennium: An Anatomy of BILIA Judicial Training with Difference*, Dhaka: Bangladesh Institute of Law and International Affairs BILIA 2005, 215.

¹⁵ *The Penal Code, 1860* (Act No. XLV of 1860).

¹⁶ *Introduction to a Juvenile Justice System Facilitator's Guide*, Module One, Department of Social Services, Ministry of Social Welfare, 2008, p. 3.

¹⁷ *The Penal Code (Amendment) Act, 2004* (Act No. XLV of 2004).

2.2 National Plans and Policies

In 1990, after signing the *CRC*, child development issue had been focused in plans and policies. The government, as a follow up to the *CRC*, had quickly formulated *the National Plan of Action (NPA) for Children*. *The First NPA (1997-2002)* had been recognized as a tool for establishing children's rights in Bangladesh. It provided the assessment and monitoring of the progress concerning the well-being and rights of children. Subsequently, *the National Children Policy* was drawn up by the Ministry of Women Affairs in 1994. The Ministry of Women Affairs was turned into Ministry of Women and Children Affairs (MoWCA) in 1994 and was assigned to monitor the status of the implementation of the *CRC* in Bangladesh.

In 1995, the government established *the National Council for Children* which was the highest body to make the policies, ensure the enforcement of all laws relating to the interest of the child, work on enacting new laws and ensure the enforcement of the *CRC*. Thereafter, *the Second NPA (1997-2002)* started monitoring system concerning the implementation of *the Children Act, 1974*. An *Inter-ministerial Committee on Improving the Conditions of Children Confined in Jails* was established for the protection of children. The best interests of the child were given priority in the *Third NPA for Children (2005-2010)*. It recognized that all children, particularly those who are vulnerable, have the right to be protected from abuse, exploitation and violence.

In 2003, *National Task Force (NTF)* committee was set up for the proper enforcement of *Suo Moto* Order of High Court Division. But due to the lack of monitoring, lots of children are still locked away in many jails in our country. In 2011, the government approved *the National Children Policy, 2011* aiming to provide more facilities for children in Bangladesh. According to the policy, all up to 18 years of age are treated as children with their rights to be ensured indiscriminately.

Since 1991, children issues were incorporated into the national planning process. But juvenile protection issues are not properly addressed in these policies. Even there is no separate policy for juvenile welfare and rehabilitation. Thus, the state of the juvenile justice system suffers enormously and does not conform to international standards.

2.3 International Standards

The international instruments which have important bearing and significant relevance to the concept of juvenile justice administration are: *The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (The Beijing Rules)*; *The United Nations Convention on the Rights of the Child, 1989 (The CRC)*; *The United Nations Guidelines for the Prevention of Juvenile Delinquency, 1990 (The Riyadh Guidelines)*; *The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (JDL Rules)*; *Guidelines on Justice Matters involving Child Victims and Witnesses of Crime, 2005*; *General Comment No.10 Children's rights in juvenile justice, 2007*; *Guidelines for the Alternative Care of*

Children, 2009. But there is no mechanism in the legal system of Bangladesh to incorporate the principles of international conventions and rules at national levels. According to Article 145A of the Constitution, all ratified international treaties must be laid before Parliament by the President.¹⁸ To make the CRC effective, it has to be a part of the domestic law as well. However, the development of the children laws, international treaties, covenants and conventions have been considered in the case of *State vs. Md Roushan Mondal* in Bangladesh.¹⁹ After seven years of the case Bangladesh has reflected the CRC in the Children Act 2013 including child-friendly concepts and settings.

3. The Assessment of the Institutional Set-up of Juvenile Justice System

In the juvenile justice system, the major components are: the law enforcing agencies, courts and correctional institutions that deal with juvenile delinquents.²⁰ The essential element of a juvenile justice system is the attitude of the personnel of the concerned agencies towards the juvenile offenders.²¹ The process of juvenile justice not only includes the treatment, but also involves the major causes of the delinquent behaviours and the measures to prevent them.²² In practice, they do not provide adequate child-friendly services that reflect the juveniles' best interest. Moreover, the services are not consistent with the international rules and lack in the aspect of considering the child psychology.

3.1 Functions of Law Enforcing Agencies

The role of police officers is a vital factor for creating a child-friendly justice system. During the inquiry of a crime, the police officer decides that whom and when to arrest. The power of the police officer comes from law and it allows the police officers to proceed with arrest and most of the time, to carry out the investigation without any supervision of the judicial magistrate.²³ There are some limitations of the law enforcing agencies in the country. Majority of the children are arrested under special laws, such as *the Special Powers Act, 1974, the Arms Act, 1887, the Drugs Act, 1992* and section 54 of *the Code of Criminal Procedure, 1898* and section 86 of

¹⁸ *The Constitution of the People's Republic of Bangladesh, 1972*, Article 145A. This Article was inserted by the Second Proclamation (Fifteen Amendment) Order, 1978 (Second Proclamation Order No. IV of 1978).

¹⁹ 59 DLR 2007 72.

²⁰ Hoque, M Enamul., *Best Interest of the Children*, Academic Press and Publishers Library, Dhaka, 2009, p. 13.

²¹ Chowdhury R. N., *Law Relating to Juvenile Justice in India*, Orient Publishing Company, New Delhi, 2009, p. 3.

²² Eldefonso, Edward and Coffey, Alan R., *Process and Impact of the Juvenile Justice System*, Glencoe Press, 1976, London, p.13.

²³ Huda, Muhammad Nurul, *Bangladesh Police: Issues and Challenges*, The University Press Limited, 2009, p. 27.

the Metropolitan Police Ordinances. Furthermore, many juveniles are picked up by the police officers from the street as suspects of various cases.

When juveniles are arrested by the police officers, often the ages of the juvenile delinquents are not mentioned in the First Information Report (FIR) or anywhere else in the case record. Often they do not maintain birth certificate and increase a child's age, as per their requirement, and send it to court with a forwarding letter. As per the children law a police officer must inform the probation officer and the child's parents or guardian immediately after arresting the child. This provision is rarely applied in practice. Most of them do not inform the probation officers to avoid extra hazard and responsibility.²⁴

In police custody, there is no separate cubicle for children. In most of the cases adults and children are detained together in the general lock-up, both in police station and jail, due to the absence of separate lock-ups. Often arrested juveniles are locked-up in police custody for a long time. In many cases, even physical abuse, force and torture are applied to the children during arrest and interrogation.²⁵ Also in practice, the courts often detain children prior to trial for minor offences, or set bail bond requirements that their guardian cannot afford to pay. There is no limitation on the duration of detention. So, the majority of the children who are detained awaiting trial are sent to the regular prisons.²⁶

3.2 Judicial Intervention and the Justice Process

Juvenile court is a key component of the juvenile justice system and is meant exclusively for the children.²⁷ But Juvenile justice did not attract legal attention until the early 1980s. The *Children Act* was passed in 1974 but the Act was enforced on 01 June 1980.²⁸ From 1980 to 1990, the people in general and the people in concern were adequately aware of the *Children Act*. After the enforcement of the said Act, the concept of trying them under a separate court was introduced. In 1993, the first major case involving juvenile delinquents was *State vs Deputy Commissioner*,

²⁴ Chowdhury, Afsan. *et al.*, "Our Daughters in Safe Custody", *Year Book on the State of Juvenile Justice and Violence against Children in Bangladesh*, Save the Children UK. Services Plus, Dhaka, 2002, p. 6.

²⁵ Ghuznavi, Ruby. *et al.*, *Child Rights: Reality and Challenges*, Shishu Adhikar Sangjog, Dhaka, 2001, p. 128.

²⁶ Hoque, M Enamul *et al.*, *Under-Aged Prison Inmates in Bangladesh: A sample situation of youthful offenders in greater Dhaka*, Action Aid Bangladesh and Retired Police Officers Welfare Association Bangladesh, 2008, p.11.

²⁷ Siddique, Ahmad, *Criminology: Problems and Perspectives*, Eastern Book Company, Lucknow, 1997, p. 240.

²⁸ Initially the *Children Act*, 1974 was enforced in the whole of the district Dhaka vide notification no.- 315- L/ 76 dated 11th September, 1976 which was subsequently extended throughout the country vide no S.R. no 127-L/E 9/80 dated on May 20, 1980.

Satkhira.²⁹ In 2003, for the first time, judicial intervention had been emphasized by the case and a *Suo Moto* Order was issued. Thereafter, a small number of cases involving juveniles were reported in the law reports. But often the verdicts were not executed properly by the subordinate ordinary courts due to insufficient implementation process.

It should be noted that before the separation of the judiciary, magistrates were responsible for trying the juvenile cases. At that time, magistrates who administered juvenile court had little knowledge about *the Children Act* and related laws. Most of them had no background of law education. So, a lot of juveniles suffered and were deprived of their rights. Since the separation of judiciary, judicial magistrates administered juvenile court in the country. As per the *Children Act, 1974*, three juvenile courts have been established in Tongi, Jessore and Konabari correctional institutions in the country. There was no juvenile court in any other district. Consequently, most of juvenile offenders tried with adult criminals through the ordinary courts. It needs to be mentioned here that government has decided to set up the “Children Court” in every district across the country in compliance with the newly enacted the Children Act 2013, said a notification issued by the Ministry of Law, Justice and Parliamentary Affairs dated 24 April 2014.³⁰ In practice it is not implemented accordingly.

3.2.1 Juvenile Court in Correctional Institutions

The juvenile court plays a role of judicial measure and rehabilitation of juveniles. Prior to 2013 an offender below 16 years of age was allowed for trial under the juvenile court in Bangladesh. But the jurisdictions and power of the juvenile courts are alarmingly restricted. For this reason, these courts cannot consider the cases of juveniles who are convicted of serious offences; for example, the case of robbery, theft and murder etc. are under the jurisdiction of judges of the session courts. Judges of the juvenile courts usually conduct petty offences and guardian cases. They also conduct cases of those delinquents whose files are sent from the ordinary court to juvenile court of correctional institutions.

In addition, there is no full time judge in the juvenile courts located in the correctional institutions. The scheduled days for sittings of judges of juvenile courts are Monday and Wednesday. The timing of weekly sitting of juvenile court at correctional institutions is from 3 p.m. to 5 p.m., which is quite inadequate in comparison to the necessity. Moreover, often the judges in the juvenile courts do not appear regularly in correctional institutions.

²⁹ 45 DLR 1993 643; 14 BLD 1994 266.

³⁰ 24 April 2014, notification issued on Children Court. See more at:

<http://www.bdchronicle.com/detail/news/32/6352#sthash.trhltDTR.dpuf>

According to the Gazette Notification,³¹ the juvenile court situated in Tongi, Gazipur will cover Dhaka, Chittagong and Sylhet divisions for male child while the juvenile court situated in Pulerhat, Jessore will cover Khulna, Rajshahi and Barisal divisions for male child. So, the jurisdiction of juvenile court of Jessore covers 32 districts of Khulna, Rajshahi and Barisal Divisions, and juvenile court of Tongi covers 32 districts of Dhaka, Chittagong and Sylhet divisions. The Konabari juvenile court covers all divisions of Bangladesh for girl child. In fact, this is insufficient in comparison with the requirement.

3.2.2 The Environment of the Ordinary Courts

In 2007, after the separation of judiciary from executive an amendment was made to the effect that a Chief Judicial Magistrate and a Metropolitan Magistrate were empowered to exercise powers of a juvenile court instead of a Sub-Divisional Magistrate and a Magistrate of the First Class by Gazette Notification of the Ministry of Law, Justice and Parliamentary Affairs.³² However, except in the three juvenile courts, the homely atmosphere is absent in the ordinary courts. There is no facility of camera trial for the juveniles in the ordinary court. The trial of juveniles is usually conducted along with the adults and under *the Code of Criminal Procedure*. In ordinary courts children cases are not recorded under specific headings but are classified together with all other cases. The court room is usually overcrowded and the judgment is delivered under non child-friendly surroundings. The accused juveniles are herded together and detained in the court until their cases are heard. During trial period, proper meals are not provided and the sanitation facilities are inadequate.

Practically, the judges of the ordinary courts execute the trials of children as an additional responsibility or as a secondary duty. Beside their regular duty, it is their additional responsibility to hold trial of the juveniles separately. Often they cannot pay attention or hardly have any time for additional responsibilities. Having heard too many cases in a day, a judge is usually too exhausted to show any kind of extra skill and care in discharging his judicial duties for a juvenile's case. Consequently, juvenile offenders have to wait for their hearing and judgment for a long time.³³ Most of the times, juveniles are sentenced to imprisonment by ordinary courts.

3.2.3 Intervention of the Higher Court

In the first decade (1971-1980), juvenile cases were fully ignored by the higher court because *the Children Act, 1974* was not enforced in the whole

³¹ Gazette Notification dated 23rd June 1999, the memorandum previously issued by the Labour and Social Welfare Ministry (Memorandum no S. R. O 319. L/76/S-LV/E-16/76 dated 16th September 1976)

³² Gazette Notification vide No- justice-4/5C-1/2005/1242 dated 20.11.2007.

³³ Hossian, Hameeda and Hossain, Sara (eds.), "Rights of Children", *Human Rights in Bangladesh 2006*, Ain O Salish Kendra, Dhaka, 2007, p. 195.

country. In the second decade (1981-1990) only three cases were reported.³⁴ It was due to the absence of proper awareness regarding the *Children Act* among the concerned authorities. After signing the *CRC* in 1990, from the next decade (1991 to 2000), juvenile justice issue was focused by the government and by the non-government organizations. Juvenile cases started to intervene in the higher court from that period. It is noticeable that during this time ten cases were reported in the higher court.³⁵ Thereafter, from 2001 to 2010, thirteen cases were reported.³⁶ So, it is evident that gradually the issues regarding juvenile justice are being emphasized in the country.

From 2003, the benches of the High Court Division issued some landmark judgments in which it declared that if the accused is a child under the *Children Act, 1974*, s/he must be tried in a juvenile court and not in any other court irrespective of the offence alleged.³⁷ These landmark judgments established the fact that no children should be tried in the ordinary court or in any special tribunal. The child must be tried separately in the juvenile court and not in the ordinary court. The verdict of the case of *Md. Nasir Ahmed vs The State*³⁸ is relevant in this context. The High Court Division held:

A child offender below 16 years of age shall be tried by juvenile court under *Children Act, 1974* and not by the ordinary court. In view of this position of law joint trial of a child offender with adult is not permissible. Conviction of a child offender in joint trial is not sustainable in law for want of jurisdiction.

³⁴ *Bablu vs The State* 1 BLD 1981 454, *Md. Nasir @ Nasir Ahmed vs State* 42 DLR 1990 89, *Kadu and others vs The State* 10 BLD 1990 236.

³⁵ *Sumati Begum vs Rafiqueullah* 44 DLR 1992 500, *State vs Deputy Commissioner Satkhira and others* 45 DLR 1993 643, *Bimal Das vs The State* 46 DLR 1994 460, *Baktear Hosain vs The State* 14 BLD 1994 381, *Forkan alias Farhad and another vs The State* 15 BLD 1995 163, *Abdul Munem Chowdhury @ Momen vs State* 47 DLR 1995 96, *Kashem alias Md Abul Kashem vs State* 47 DLR 1995 438, *Kawsarun Nessa and others vs State* 48 DLR 1996 196, *Saiful Islam vs State* 2 BLC 1997 297, *Hossain and others vs State and another* 50 DLR 1998 494, *Shamim(Md) vs The State* 5 MLR 2000 37.

³⁶ *Monir Hossain (Md) @ Monir Hossain vs State* 53 DLR 2001 411, *Munna and others vs State* 7 BLC 2002 409, *Anwarul Islam vs The State* 8 MLR 2003 18, *State vs Shukur Ali* 9 BLC 2004 238, *Bangladesh Legal Aid and Services Trust vs Bangladesh and others* 57 DLR 2005 11, *Ismail Howlader and other vs State* 58 DLR 2006 335, *Solaman vs State* 58 DLR 2006 429, *The State vs Md Roushan Mondal @ Hashem* 59 DLR 2007 72, *Raahamatullah (Md) vs State* 59 DLR 2007 520, *State vs Metropolitan Police Commissioner* 60 DLR 2008 660, *Fahima Nasrin vs Bangladesh* 61 DLR 2009 232, *State vs Md Fazlur Rahman Tonmoy* 61 DLR 2009 169, *Jaibar Ali Fakir vs State* 61 DLR 2009 208.

³⁷ *Suo Moto Order No.248, 2003*; 11 BLT 2003 HCD 281.

³⁸ 42 DLR 1990 89.

In juvenile justice matter, the first reported case of *the State vs Deputy Commissioner, Satkhira and others*,³⁹ it was held:

No child is to be charged with or tried for any offences together with an adult. The child must be tried in the juvenile court and not in the ordinary court. Only the adult can be committed to the Court of Session and the juvenile court will take cognizance of juvenile offenders.

In *Shiplu and another vs State*,⁴⁰ the High Court Division held that a child will not be tried jointly with an adult. *Md Shamim vs The State*,⁴¹ was a case under the *Arms Act* which had culminated in conviction and sentence upon trial by the Special Tribunal. The High Court held:

A child below 16 years of age must be tried by the juvenile court under *the Children Act, 1974* and by no other court. When the accused is found by the court to be of 14 years of age the Special Tribunal had no jurisdiction to try the accused and convict him under *the Special Powers Act, 1974*. The trial is being illegal and without jurisdiction, the conviction and sentence is set aside with the direction for fresh trial by juvenile court.

In the case of *Bangladesh Legal Aid and Services Trust vs Bangladesh and others*,⁴² it was noted that children are entitled to be tried by the juvenile court and not to be tried jointly with adults.

Furthermore in *Ismail Howlader and others vs State*,⁴³ the High Court Division held:

Children Act requiring separate trial of a child is to ensure a special procedure and to secure certain legal rights for the accused child. An adult is not entitled to those rights and the adult accused in this case, has not been prejudiced because of the joint trial.

Thus, the High Court determined that a juvenile court has the executive jurisdiction over cases concerning children.

It is only in the case of *State vs Md. Roushan Mondal Alias Hashem*,⁴⁴ that the aspects of juvenile justice and role of the juvenile court have been clearly demarcated. The High Court Division held:

Juveniles charged with offences falling under special law will have to be dealt with by the juvenile court in accordance with provisions of *the Children Act*, which, in our view, is of universal application and approach, irrespective of the offence alleged.

In 2008, in the case of *State vs The Metropolitan Police Commissioner, Khulna and others*,⁴⁵ the High Court Division issued an important *Suo*

³⁹ 45 DLR 1993 643.

⁴⁰ 49 DLR 1997 53.

⁴¹ 19 BLD 1999 542; 5 MLR 2000 37.

⁴² 57 DLR 2005 11.

⁴³ 58 DLR 2006 335.

⁴⁴ 26 BLD 2006 549.

Moto Rule with some directions. In the *Suo Moto* Rule, the authorities concerned were directed to take appropriate steps for training up their officials on the compliance with the legal provisions relating to children.

In *Fahima Nasrin vs Government of Bangladesh and other*,⁴⁶ the High Court Division held:

Sentence passed by the judge of the juvenile court does not reflect a correct interpretation of the provisions of the Act and the sentence of imprisonment passed in respect of accused children is erroneous. Children are not liable to be sent to prison upon attaining the age of 18 years and the impugned order of the Ministry of Social Welfare is erroneous and without lawful authority.

Hence, when the directions of higher court are executed in the real sense of the term, there will bring an epoch making development in the juvenile justice system of the country.

3.3 Existing Services and Challenges for Correctional Institutions

Correctional institution is responsible for the delinquent child's counseling, rehabilitation, education, recreation, daily activities and reintegration. At present, there are three correctional institutions /Child Development Centers (CDCs) in Bangladesh for the rectification and rehabilitation of the juveniles. Two of them were established at Tongi in 1978 for 200 boys and Jessore in 1995 for 150 boys respectively and one was established at Konabari, Gazipur in 2003 for 150 girls. Each institution consists of one remand home, one juvenile court and one training institute. But they are yet to show any significant success on rehabilitation and social reintegration of the juveniles.

Presently, the CDCs face some administrative complexities which are considered to be the major constraints in the children justice system in Bangladesh. There is no sufficient financial support to provide correctional services as well as development for the delinquent children. The yearly financial plans regarding the inmates are very poor compared to the needs of the CDCs.⁴⁷ The condition of educational facilities is underprivileged in all CDCs. Though vocational training of inmates as may be suitable for their rehabilitation but those programs are not standardized. Even there is no follow-up mechanism after the release of the children from the CDCs. Thus, the roles of CDCs are not adequate for the prevention of delinquency as well as rehabilitation of delinquents.

Moreover, children are frequently abused or ill-treated in CDCs. Often they protest against the unfriendly attitude of the authority and staffs and elope from CDCs. For example, on 12 February and 4 May in the year of 2014 the inmates in Tongi CDC and Jessore CDC protested the torture by

⁴⁵ 60 DLR 2008 660.

⁴⁶ 61 DLR 2009 232.

⁴⁷ The monthly allotted budget for each inmates of CDC is Tk. 2000 only. With this minute budget inmates do not get proper foods, clothes, toiletries, medicine, books, training instruments etc.

their supervisor.⁴⁸After the horrific incident, the High Court division of Bangladesh formed a committee to probe into the allegations of abuse and mismanagement at the correction centres.⁴⁹ In fact, it is the sign of non-systematic situation of CDCs.

4. Comprehensive Reforms of the Juvenile Justice System

The following suggestions are made to improve the child-friendly justice system in Bangladesh.

a) Legislative and Judicial Reforms

- The Children Rules should be formulated as per the section 100 of the Children Act 2013
- The Age of criminal responsibility should be increased (from 9 to 12 years) as per the recommendation of the committee of CRC.
- Separate children/juvenile courts with wide jurisdiction should be established in different buildings away from the criminal courts in district levels.
- The trial and punishment of juveniles with adults should be strictly prohibited.
- Alternative measures should be introduced instead of punishment.

b) Improvement of Law Enforcing Agencies

- The child affairs desks should be setup and child-friendly police officers should be appointed in each police station in the country.
- Separate register books should be opened in every police station where police officers would correctly record the age and biographical data of the children.
- The prosecution process for the release of the innocent delinquents should be established.
- Juvenile bail system should be enacted in juvenile justice system.
- Separate prison cubicles should be provided for children in police stations.
- The quality and quantity of the logistic support for transferring children from police stations to other places should be ameliorated.

c) Modernization of Correctional Institutions

- Sufficient number of certified institutes with standard budget should be established in district levels.
- Adequate number of probation officers with handsome salary should be appointed permanently in local level for speeding up the probation system.
- The quality of technical and education of the institution's inmates should be ensured.

⁴⁸ The Daily Star, *Torture on the young: correctional centres need corrective steps: Body to probe correction centre's misconduct*, 16 February 2014, p. 6.

⁴⁹ The Daily Prothom Alo, *"Probe juvenile protest: High Court"*, 14 February, 2013.

- Relationship with business organizations and juvenile development programs should be established in order to initiate more pragmatic steps for community-based reintegration services

d) Strengthening of Monitoring System

- Supervisory or monitoring committees should be established in district and sub-district levels for preserving the yearly juvenile justice records.
- Independent mechanisms to monitor child detention centers by establishing national child welfare boards should be developed.
- A strategy should be developed to ensure effective co-ordination among the major components who are working with the juvenile justice system.

e) Enhancement of Advocacy and Awareness

- Series of trainings on child psychology and justice system should be provided to the concerned agencies who directly deal with juvenile delinquents.
- Media should focus on the impacts or consequences of children's getting involved in criminal activities and should also create awareness among the concerned agencies as well as the family members and community in this regard.
- Birth registration practice must be ensured by the media as a most effective system for the verification of age of a child.

5. Conclusion

It is a universal truth that owing to physical frailty and mental immaturity, the rights and interests of the children demand special attention for protection from the sharp claws of maljudgment and misuse. The governments on behalf of the States exercise their authorities concerning the protection of child interests. The *CRC* and other international instruments provide a comprehensive set of legal framework to protect the rights of children within the justice delivery mechanism. In Bangladesh after 24 years of ratification, the government baring on the *CRC*, has enacted *the Children Act 2013*. The government should take necessary measures in accordance with the *Act* for ensuring special protection, care and development of offender children. It is also important to train up the people concerned in the juvenile justice system so that the proper implementation of the *Act* can be ensured. Many of the aspects dealt with in the *Act* are inter-linked. Therefore, a holistic approach must be followed by all concerned that the children of Bangladesh achieve the fulfilment of their rights.