

A Crucial Observation on Juvenile Delinquency: Bangladesh Perspectives

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Abstract

Children have been described as our future, our greatest resource, and our hope for a better tomorrow. In our society many people infuse fear in the mind of children. They represent violence, a segment of society lacking in self-control and devoid of ethics and morals. Their families fail to instill in them traditional values. They hardly have respect for others. Fear of crime, especially random violence perpetrated by young Bangladeshis, has become the greatest concern of the nation; we have been motivating a good number of people to change their lifestyle. Moreover, fear of crime has influenced politicians and laypersons to adopt the position of a conservative justice system, present system of dispensation of justice seeks to punish and deter. It aims at curtailing juvenile justice. Some social scientists think that the juveniles should be kept away from the courts where adults are put under trial. At present we are thinking of curtailing juvenile crime in various ways. There are effective ways for society to express its disliking for the transgressions of out of control youths. But treating juveniles as adults is not congenial at all. The criminal sanctioning of juvenile offenders is not a contemporary phenomenon. Juveniles have been punished as adult for centuries. Prior to the 17th century, for instance, children were seen as being different from adults only in their size. But later on conception changed. By the 18th century, English common law characterized those under the age of seven as being incapable of forming criminal intent. Between the ages of seven and 14 children were presumed to be without criminal intent unless it could be proved that they attained the age of discretion. That is, it is to be seen if they can distinguish between right and wrong. At age 14, they legally were considered adults, capable of forming criminal intent and therefore justly sentenced to serve time in jail and prison alongside other adults.

Introduction

The Juvenile Justice System all over the world has been undergoing changes. The changes are so revolutionary in nature and feature. The prime object of juvenile justice is to protect the children from recidivism and ensure their rehabilitation as well as smooth reintegration within the society. Moreover, a proper juvenile justice development programme is indispensable in the efforts to bring up the juveniles as worthy citizens of the countryⁱ. On the contrary, they are the future leaders of the nation. To lead the nation towards prosperity comprehensive child development programme is needed on a priority basis. Though it is codified in the constitution of Bangladesh under article 28(4), the state can make special provision for the progress of children.

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Aiming at child development, in 1974 the Children Act was enacted and in 1976 the Bangladesh Children Academy was established. Bangladesh is among the first few countries to sign the UN convention on the rights of child and has already taken steps to implement its provisions. It is a common phenomenon that a juvenile is a person who has not reached the age of majority and therefore, is deemed to have a special status. Juvenile are to be held to an alternative standard of behavior than are adults. Children are required to attend school from the age of 6 to 16; and are expected to obey their parents, they are forbidden to smoke cigarettes, to drink alcohol, or to drive motor vehicles; they may not marry without parental permission; they can not enter into business or financial contracts; and they are not permitted to vote, enter the military, or run away from school. Bangladesh has begun to experience the problems of weak juvenile justice system as a result of growing industrialization and urbanization, the phenomenon of delinquency is viewed by many sociologist and criminologist as a transitional phase through which the bulk population are passing from the status of peasant to that of industrial labour class. Moreover reformation theory is being growing adopted in the case of juvenile offenders. However, the prime objective of juvenile justice system is to protect the child from recidivism and ensure their rehabilitation as well as smooth reintegration within the societyⁱⁱ, In this context, Bangladesh has enacted the Children Act, 1974 and also ratified the Convention on the Rights of the Child (CRC) in 1990.

But if I analyse the concept of juvenile justice in the national legal context, there is a wide variation in the definitions of the term “child”. The Bengali word for “child” is ‘*shishu*’, though a *shishu* is only in the first stage of childhood in a Bangladeshi society; it does not indicate a knowing and responsible child but an innocent, protected and dependent one. A *shishu* is a child who does not understand the consequences of his activities. The word *shishu* does not refer only to the age or physical development of a childⁱⁱⁱ. It also refers to a Childs life circumstances. Analysis of the existing child legislation moreover, unfolds an interesting phenomenon that different words are used to denote the single English word ‘child’ as used in international Conventions. The term child in the legal context of Bangladesh refers to at least three categories, that of child, adolescent and young person. It makes things more complicated and confused as different legislations use these words to signify at times, different age groups.

Research Methodology

This study would be based among other, on primary sources such as books, articles, journals, case materials, Internet sources, so that the analysis is taken with a multiplinary approach by keeping the phase of justice method and socio-economic variables in consideration. Moreover, the study was designed to generate data with maximum reliability in the context of financial and other limitations such as time and administrative back up. Taking into consideration all these factors it was decided to interview all the delinquent inmates. These inmates were fair representation of delinquency of different districts of Bangladesh.

Moreover, combining both formal and informal methods of investigation, my field research was conducted over a period of couple of months. While quantitative data are necessary to determine the prevalence of a phenomenon, it is the qualitative study that reveals the complexities. The former is more external in nature while the latter is inclined towards the more internal aspects of a respondent’s life. As such, the polarisation between the two methods represents a false dichotomy

(Andrew 1991:43). McCracken (1988:18), similarly the qualitative and quantitative methods together provide the social science with bifocal lens. They involve different ways of seeing and observing different realities or different aspects of the reality.

Conceptualization of Juvenile Justice: The Bangladesh Case

Most of the research and writings on juvenile justice seem to devote very little attention to the conceptual or jurisprudential analysis of the subject. Rather, they are preoccupied with the operational issues of the juvenile justice. That is why leading American, British and even German books and monographs on the subject are so meticulous in describing the functioning of the institutions concerned with the apprehension, adjudication and custody of the Juveniles, and so sketchy in deliberations concerning the philosophy of their functioning. The only justification for the western juvenile justice literatures unconcern for the jurisprudential aspects is that these concepts have become so philosophical issues is just assumes there.

Wexler describe that “Law school teaches about rules, arguments and logic – but not the impact of the law on the emotional life or well-being of people,” Through research, he found that one could look at the law as a dynamic social force with consequences and behavioral impacts to get the real benefit of law^{iv}.

However, before the establishment of the juvenile justice system, courts and the judges treated juveniles as adults and in many instances, juvenile offenders received the same punishment as adults. There was only one system of justice in the United States, and all offenders were processed through it without regard to age. Under common law doctrine, the legal system of the American colonists brought from England, a juvenile age 7 or older could receive the same punishment as an adult and sometimes were rarely given to juveniles. The establishment of separate institutions to confine juvenile offenders separately from adults occurred in the early 1800s. In 1899, the first juvenile court was founded in Cook County, Illinois^v.

Why should there be a separate system of justice for juvenile offenders? Those who were concerned about the treatment of juveniles in the adult system argued that because juveniles are less mature than adults and have not developed the same level of intent as adults. In fact, because of their immaturity, it was believed that some juveniles could more easily be rehabilitated.

Based on assumption that juveniles are less mature than adults, incapable of the same level of intent as adults, and more easily rehabilitated, a separate system of justice was developed to deal exclusively with juveniles which is known as the juvenile justice system.

The juvenile justice system comprised of those system agencies whose primary duty is to manage juvenile offenders. Today in developed countries most major police department have officers whose sole responsibility is to deal with juvenile delinquency, in fact because of recent school shooting incidents, placing officers in schools has become even more common. In addition every state has separate places such as detention centres in order to confine juvenile apart from adults.

The juvenile justice system was founded on the belief of *parens patriae*, roughly translated into state as parent. The state acting through a juvenile court judge, can act in the role of parents are deemed incapable or unwilling to control their children. Therefore, the juvenile justice system was designed to do whatever is in the best interest of the juvenile just as apparent will. The juvenile justice system has evolved significantly from its origins. The earliest historical accounts in the Babylonian and Roman cultures show that those societies sought to keep their youth and children under control, forcing them to conform to the expectations and standards set by them.

The father exercised unlimited power over the family and children; he had the absolute authority to administer corporal punishment and could even sell his children as slaves.

But at the beginning of the 17th century the second idea of childhood emerged when it was perceived as miniature adult that could be groomed and trained in the course of its growing process. Teachers and moralists who were concerned by the neglect and abuse of childhood observed in a child, a miniature adulthood with all the inclinations towards evils and potential for a fallen human nature, unless its soft mind and soul were formed into righteous, god-fearing and law-abiding adults. Childhood, like gender, is a social artefact and the adult-dominated society has an overwhelming say in defining it, but that alone would not lead to disappearance of childhood^{vi}.

If childhood is a social construction then there are childhoods rather than a single, universal cross cultural phenomenon. This should lead us to accept the fact that the idea of childhood can be most meaningfully understood in a particular context along with order variables like class, caste, gender and culture.

The second and more profound implication of realizing childhood as a social artefact is that in the structuring and re-structuring of childhood by social institutions and practices need to be more carefully examined. The exiting construction of childhood is essentially a protectionist exercise.

Routinely, children find their daily lives shaped by statutes regulating the pacing and placing of their experience. Compulsory schooling, for example, restricts to their access to social space and gerontocratic prohibitions limit their political involvement, sexual activity, entertainment and consumption; children are further constrained not only by implicit socializing rules which work to set controls on behaviour and limits on the expression of unique intents but also by customary practices which, through the institution of childhood, articulate the rights and duties associated with being a child^{vii}.

Therefore, there is a greater need to take into account the part played by children themselves in the construction of their own social lives, the lives of others and societies in which they live.

Juvenile delinquency is a major concern in Bangladesh where the number of children involved in anti social activities appears to be on the rise. While it is important to ensure that delinquency is prevented through judicial measures, it is vital to secure the well-being and rights of all children who come into conflict with the law^{viii}. It is accepted that children who are criminally culpable under the states penal codes are in conflict with the law. Historically, children, largely regarded as miniature versions of adults, did not merit special attention corresponding to their special needs. Consequently, in matters of criminal justice, the violation of law was of greater significance than age or the immaturity of the offender.

In its broadest sense the notion of juvenile justice means access to justice by children under a specified age. The administration of justice for minors who are accused of or alleged as having breached the penal laws of the country essentially constitute the juvenile justice system. Justice, in the strict sense of the term, denotes the right of children to have the support at all levels, that is, of the state, the family and the community, in realizing their rights of survival, protection, development and participation^{ix}. Standards of international law embody two broad principles, which are of fundamental importance in the administration of juvenile justice. They are: The well being of children who come in conflict with the law must be ensured; The children who come in

conflict with the law must be treated in a manner commensurate to their circumstances and nature of the offence;

In other words, it is important to protect the human rights of children in a human and dignified manner in an effort to promote their reintegration and their assumption of constructive roles in society. Appropriate consideration has to be given before committing children to formal institutions; in this regard diversion from formal legal procedures is encouraged. While a separate justice system is advocated, effort must be aimed at expeditious disposal of cases.

In Bangladesh almost in every sphere the law is being used in an anti therapeutic way. Thus our legal system has failed to bring any correction among the offenders rather the legal system itself is creating a scope to create criminals. This is applicable more in case of the juvenile delinquents.

Law is being defined in our country in terms of sanction, which is something like defining health in terms of hospital and diseases. It proves that in our society law is always being used in anti therapeutic way. But the law in action and not law in paper properly mean law. In order to make law actionable the same need to be desirable and acceptable by the people. Thousands of law can be found in the archive for exhibition with hardly any accomplishment^x.

In Bangladesh almost the whole legal system has been structured on the basis of the old decaying rules introduced by the British in nineteenth century without further adjustment with the social needs. However in this write up I have made an attempt to focus on the applicability of the law in therapeutic way to ensure the juvenile justice in Bangladesh. In this paper I have also provided some directions to apply law in therapeutic way for the juvenile delinquents by bringing some moderation in the administration of juvenile justice in Bangladesh^{xi}.

Administration of Juvenile Justice System in Bangladesh

Juvenile justice is a term that refers to the formal system designed to deal with juvenile delinquents (those charged with less serious crimes, such as drug violations) as well as youthful offenders (those charged with more serious crimes, such as assault). The current system regarding the restoration of juvenile justice is intended to ensure the enjoyment of rights for juvenile has been found ineffective if we look at the past, comprehend the present, and anticipate the future. Thus, therapeutic jurisprudence may be an effective alternative to ensure the administration of juvenile justice. Because, "Therapeutic Jurisprudence (herein after mentioned as TJ) is very much connected with emotional and psychological periphery of human being, which professes to humanize, law and consider it as one of the healing arts". Law does have both therapeutic and anti therapeutic consequences. To reduce the anti therapeutic consequences and to extent the therapeutic consequence without subordinating due process and justice values we must start to apply the existing laws relating to juvenile justice^{xii}.

Juvenile delinquency is a major concern in Bangladesh where the number of children involved in anti social activities appears to be on the rise. While it is important to ensure that delinquency is prevented through judicial measures, it is vital to secure the well being and rights of all children who come into conflict with the law, it is accepted that children who are criminally culpable under the statutes of Penal Code are in conflict with the law. We can say that children, largely regarded as miniature versions of adults, did not merit special attention corresponding to their

special needs. Consequently, in matters of criminal justice, the violation of law was of greater significance than the age or the immaturity of the offender^{xiii}.

Changing public opinion and sustained efforts by different sections of the society have over the past century and a half, resulted in a criminal justice system with a more child-friendly orientation. The rationale was that children are not fully aware of the implications of their acts and therefore require greater sensitivity in their treatment. Difficulties arise when children's rights are compromised; there is reason for concern when children are not treated differently from adults when they come into contact with children's right that has frequently been a source of concern for the United Nations Committee on the rights of the child when reviewing state party reports¹. Moreover, Juvenile delinquency comprises cases of children alleged to have committed an offence that if committed by an adult would be a crime. Today we are faced with a situation where every day we observe children being engaged in criminal acts such as picketing, drug abuse, theft, murder and so on, and it is identified that the process of urbanization, migration from village to city, economic deprivation, unemployment, poverty, flimsy family ties, media influence and criminalized politics have made a fertile ground for increased rate of juvenile delinquency. Responding to the situation of the laws and regulation regarding the protection of children need to be formalized involving families, social workers and the law enforcement agencies in the process. So, necessary steps should be taken to reduce the rising rate of delinquency and a proper juvenile justice system safeguarding the rights of the juvenile should be established. Only with such a concerted effort we will be able to overcome this threat to our nation's future. The application of law in therapeutic nature regarding administration of juvenile justice is the only way out to stop the juvenile delinquency as well as to ensure the rights of the juveniles.

Actually we want to introduce the norms of the therapeutic approach i.e. the ultimate subject of which is to ensure social justice. Recently we observed that, in the area of juvenile justice, UNICEF has taken some initiatives relating to reduce incarceration while protecting children from violence, abuse and exploitation, in this connection. I realized that it promotes rehabilitation that involves families and communities as a safer, more appropriate and effective approach than punitive measures; moreover I already find out that our justice system is designed for adults which lack of the capacity to adequately address these issues and are more likely to harm than improve a child's chances for reintegration into society.

According to the articles 37 and 40 of the Convention on the Rights of the Child (1989), Children in conflict with the law have the right to treatment that promotes their sense of dignity and worth, takes into account their age and aims at their reintegration into society, In this regard TJ (therapeutic jurisprudence) will do the promotional works scrutinizing. Also placing children in conflict with the law in a closed facility should be a measure of last resort, to be avoided whenever possible, that is why the convention prohibits the imposition of the death penalty and sentences of life imprisonment for offences committed by persons under the age of 18^{xiv}.

We know that, before the establishment of juvenile justice system, courts and judges treated juveniles as adults and, in many instances, juvenile offenders received the same punishment as adults, and it is the absolute violation of human rights. The establishment of separate institutions to confine juvenile offenders separately from adults occurred in the early 1800s.

But the practical scenario is quite different. Actually the establishment of that system is inept to mitigate the problem. Thus Government can ensure the accommodation provided to children in alternative care and their supervision in such placements, enable them to be effectively protected against abuse by the application of juvenile justice in a therapeutic way. Therefore particular attention should be paid to the age, maturity and degree of vulnerability of each child in determining his/her living and sleeping arrangements. “Measures aimed at protecting children in care should not involve unreasonable constraints on their liberty and conduct in comparison with children of similar age in their community that TJ suggested for the correction of the juvenile delinquents.”

All alternative care settings should provide adequate protection to children from abduction, trafficking, sale and all other forms of exploitation by third parties. That means any consequent constraints on their liberty and conduct should be strictly prohibited/restricted to ensure their effective protection from such acts.

On the other hand it is observed that all disciplinary measures and behaviour management constituting torture, cruel, inhuman or degrading treatment, closed or solitary confinement or any other section that may compromise the physical or mental health of the child must be strictly prohibited in conformity with international human rights law. However, it is very important that the use of force and restraints of whatever nature should be authorized only when strictly necessary for safeguarding his / her or others physical or psychological manner and with respect to the fundamental rights of the child. Restraint by means of drugs and medication should be based on therapeutic requirements and should never be employed without evaluation and prescription by a specialist^{xv}.

However, Bangladesh has the provisions in its domestic law on the administration of juvenile justice that is based on the best interest principle. In this regard TJ does have a scope to play a fundamental role in creating awareness program as a social-therapy.

Juvenile Justice Legislation and Procedure

In Bangladesh, the justice system for both children in conflict with the law and children in need of protection are governed by the Children Act, 1964 and the Children Rules 1976, although this legislation has been in place for almost 30 years, Bangladesh has yet to implement a fully comprehensive, separate system for children in conflict with the law.

Moreover, in recent years, there has been significant impetus to juvenile justice reform. “The government has appointed a high-level juvenile justice task force, and has identified priority areas for action. A new national social policy on models of care and protection for children in conflict with the law has been drafted to address both children in conflict with the law and children in children of protection”. Law means law in action and not law in paper only. In order to make law actionable the same need to be desirable and acceptable by the people. Thousands of law can be found in the archive for exhibition with hardly any accomplishment. There are certain provisions of law, which are futile because of its context. For example 35 of the provision of The *Children*

Act, 1974 permits the juvenile court in the trial of children and adolescents juveniles involved with begging is allowed to return home on being fined. Doubts have always been expressed about the justification of the fine in cases of juveniles since it is the concerned people not the delinquent child who is penalized under the mode of punishment.

Therefore, sometimes law, which is made for helping the vulnerable people, makes them even vulnerable by such law. This is the anti-therapeutic consequence of law. One thing that TJ supports is to find out those anti-therapeutic consequences of law and encourages people to think and study to spot the ways that can lessen that impact. TJ seeks to locate all those area of distress and encourages ingenious solution toning with the psychological and physical well being of the people it affects. The principles of therapeutic jurisprudence arise from respect for the individual and recommend the whole legal system to be supportive with those trends following the demand of the people it influences. In most of the countries the trial of juvenile offender is conducted in a special court presided by a special magistrate ‘usually a lady’? The practice of employing lady special magistrates to deal with the cases of juvenile offenders has gained favour for psychological reason. It is believed that children have less fear for women than men^{xvi}.

Moreover, women are temperamentally more suited to understand the problems of children and they easily win the confidence of juvenile delinquents by virtue of their tenderly attributes.

The most important thing is that the Children Act in Bangladesh restricts the punishment of juvenile offenders and prohibits death and life sentences for children. Never the less, the treatment of children by law enforcing agencies is far from humane. Interviews of children in the present study reveal that they have been subjected to various forms of maltreatment ranging from transportation to the police stations and jails in handcuffs to detention over 24 hours. Physical abuse and torture were also reported by the victim themselves. It includes ill treatment by adult offenders too who not only make children run errands for them but also to sexually molest them. Children who are currently in jail confirmed this. It appears that at this stage of a child the lack of legal representation and the protection of family, friends and social workers, is likely to be the most vulnerable. Children often have no idea why they have been picked up and incarcerated. As per law, during detention, no child shall be subjected to torture or other cruel, inhuman or degrading treatment. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults and shall be detained in a separate part of such institution where adult also live together. The child shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances. Juveniles under detention pending trial shall be entitled to all rights and guarantees of the standard rules for the treatment of prisoners adopted by the United Nations. While in custody, juvenile shall receive care, protection and all necessary individual assistance- social, educational, vocational, psychological, and medical and physical- that they may require in view of their age, sex and personality. An early research revealed that at least 30% of the children awaiting trial for petty offences like theft are not legally represented. A research of 2006, taking into consideration the case of 10 child offenders sentenced under penal provisions, which provide for sentences of death or life imprisonment^{xvii}. Thus, it is proved that to

ensure the application of law in therapeutic way the judges should also know the philosophy of therapeutic jurisprudence

There is a common phenomenon and little doubt that punishment of violators is an important purpose of the criminal justice process. It is also applicable in case of the legal system of Bangladesh. Thus, the punishment aspects of our crime control system are also designed to compel conformity by hurting violators. The application of punishment to law violators in proportion to the seriousness of their offences is the cornerstone of criminal codes and sentencing structures.

In recent years, there seems to have been a transformation of criminological views regarding somewhat sceptical question of criminal accountability. Modern critic attacks the traditional criminological view of the characteristic differences between the class of criminals and the class of non-criminals race upon erroneous assumption.

“The proponents of the new criminology attempt to explain criminality in terms of social conflict. Moreover, with the development of human psychology, recently new criminologist is given greater emphasis on the study of emotional aspect of the criminal behaviour. Thus, the theory of modern clinical school suggests that the criminals must not be punished rather they should be subjected to correctional methods, such as probations, parole, reformatories, open- air camps etc”¹. It means that the theme of modern school of criminology prefers for a correctional trend of reformation by applying law in a therapeutic nature.

By the name of the protection of the community physical custody of suspects as well as of offenders and to restrain them, subject to legislative and Court limitations and is somehow permitted. In fact a primary purpose of imprisonment is the restraint and incapacitation of offenders to protect the community. Actually this concept is nothing but the reflection of the preventive and deterrent theory of punishment. That is treated now a day as backdated theory.

Because, in our perception, restraint for community protection is not limited to imprisonment and other post conviction processes. It has presence from the very outset of the process. Police may arrest a suspect at gunpoint, handcuff his or her and keep on individual in close detention until a bail hearing. On the other hand, another suspect may be arrested without the use of any force.

The entire correctional process rests always on a balance between the needs and desire of the offenders and concerns for community protection, even in systems giving high priority to rehabilitative programs. People working in a criminal justice system must balance the needs and rights of the community against those offenders. In this regard if we do refer to the pure theory of law of Hens kelsen, we can see that a dynamic or basic norms system is one in which fresh norms are constantly being created on the authority of an original or basic norms which is named by him *grund norms*. Every legal act is related to the *grund norms*, so here we can easily acquaint the new concept of TJ in case of juvenile justice to ensure the administration of justice.

According to modern criminologists, the object of punishment is not to give any pain to the offender but to bring about moral reform in him. And application of law in therapeutic approach is the only way out to implement this new concept of punishment^{xviii}. The proponents of this

theory of punishment contend that by a sympathetic, tactful and the loving treatment of the offenders, a revolutionary change may be brought about in their character. Practically these kinds of alternative way of punishment should be provided for the juvenile delinquents suggested under the theory of therapeutic jurisprudence in order to create a scope to bring about the moral reform.

Juvenile Delinquency and Administration of Juvenile Justice: Bangladesh Perspective

Juvenile delinquency comprises cases of children alleged to have committed an offence that if committed by an adult would be a crime. Today we face a situation where every day children being engaged in criminal acts, such as picketing, drug abuse, thievery, murder and so on. The reasons identified that the process of urbanization, migration from village to city, economic deprivation, unemployment, poverty, flimsy family ties, media influence and criminalized politics of the society. Responding to the situation of the law and regulation regarding the protection of children need to be formalized involving families, social workers and the law enforcement agencies in the process. Only with such a concerted effort the society may be able to overcome this threat that endanger the future.

Children's Rights in Juvenile Law

“Article 37 and 40 of the Convention on the Rights of the Child (hereafter CRC) is the main focus of the information provided by the states parties. In this Regard the Committee on the Rights of the Child notes with appreciation the many efforts to establish an administration of juvenile justice in compliance with the CRC”. However, it is also clear that many states parties still have a long way to go in achieving full compliance with the CRC, e.g. in the areas of procedural rights, the development and implementation of measures for dealing with children is conflicting with the law. The committee is equally concerned about the lack of information on the measures that state parties have taken to prevent children from coming into conflict with the law this may be the result of a lack of a comprehensive policy for the field of juvenile justice. This may also explain why many states parties are providing only (very) limited statistical data on the treatment of children in conflict with the law. With the experience in reviewing the state parties' performances in the field of juvenile justice the committee wants to provide the states parties more elaborated guidance and recommendations for their efforts to establish an administration of juvenile justice in compliance with the CRC. This juvenile justice should promote *inter alia*, the use of alternative measures, such as, diversion and restorative justice^{xix}. It would provide state parties with possibilities to respond to children in conflict with the law in an effective manner serving not only the best interests of these children but also the short and long term interest of the whole society as the children of today is going to be the adult of future.

The Objectives of the Present General Concept of CRC

The committee wants to underscore that the CRC requires that states parties to develop and implement a comprehensive juvenile justice policy. This comprehensive approach should not be limited to the implementation of the specific provisions contained in article 37 and 40 CRC, but

should be all other relevant articles of the CRC, such as article 4 and 39. So it is believed that state parties should develop and implement a comprehensive juvenile justice policy to prevent and address juvenile delinquency based on and in compliance with the CRC, and to seek in this regard advice and support from the interagency panel on juvenile justice, with representatives of the UNICEF, NGOS, established by ECOSOC resolution 1997/30^{xx}. It should also provide state parties with guidance and recommendations for the content of this comprehensive juvenile justice policy, with special attention allowing for responses to juvenile delinquency without resorting to judicial procedures for the interpretation and implementation of all other provisions of CRC^{xxi}. Not only that but also to promote the integration in a national and comprehensive juvenile policy of other international standards. In particular the United Nation Standards, in particular the UN Minimum Rules for the Administration of juvenile justice(The Beijing Rules), the UN Rules for the Protection of Juveniles Deprived of their Liberty(Havana Rules), and the UN Guidelines for the prevention of juvenile Delinquency (The Riyadh Guidelines).

Juvenile Justice: the Leading Principles of a Comprehensive Policy

Before elaborating on the requirements of the CRC in more detail, the committee should first mention the leading principles of a comprehensive policy for juvenile justice. In the administration of juvenile justice states parties have to apply systematically the general principles contained in articles 2, 3, 6 and 12 of CRC, as well as the fundamental principles of juvenile justice enshrined in articles 37 and 40 of CRC. In my observations, state parties have to take all necessary measures to ensure that all children in conflict with the law are treated equally, particularly attention must be paid to *de facto* discrimination and disparities, which may be the result of a lack of a consistent policy and involve vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, children who are indigenous, tribal girl children, children with disabilities and children who are repeatedly in conflict with the law^{xxii}. In this regard, training of all professionals involved in the administration of juvenile justice is important. Many children in conflict with the law are further victims of discrimination, e.g. when they try to get access to the education or to the labour market. A necessary measure is to be taken to prevent such discrimination, *inter alia*, by providing (former) child offenders with appropriate support and assistance in their efforts to reintegrate in society . {Art 40(1) CRC}. It is quite common that criminal codes contain provisions criminalizing behavioural problems of children, such as, vagrancy, truancy, runaways and other acts, which often are the result of psychological or socio-economic problems. It is particularly a matter of concern that girls and street children are often the victim of this criminalization. These acts, also known as state offences, are not considered to be offence if committed by adults. On the other hand, in all decisions taken within the context of the administration of juvenile justice, the best interests of the child are to be a primary consideration. Children differ from adults in their physical and psychological developments, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment of children. The protection of the best interests of the child means, for instance, the traditional objectives of criminal justice (repression/retribution) must give away to rehabilitation

and restorative justice objectives in dealing with child offenders. This can be done in concern with attention to effective public safety^{xxiii}. The inherent right of every child should guide and inspire states parties in the development of effective policies and programmes for the prevention of juvenile delinquency, because it goes without saying that delinquency has a negative impact on the child's development. Furthermore, this basic right should result in a policy of responding to juvenile delinquency in ways that support the child's development. The death penalty and a life sentence without parole are explicitly prohibited in article 37(a) of CRC. The use of deprivation of liberty has negative consequences for the Child's harmonious development and seriously hampers his/her reintegration in society. In this regard, article 37(b) CRC explicitly provides that deprivation of liberty, including arrest, detention and imprisonment, should be used only as a measure of last resort and for the shortest appropriate period of time, so that the child right to development is fully respected and ensured. The CRC provides a set of fundamental principles for the treatment to be accorded to the children in conflict with the law: treatment that is consistent with the Child's sense of dignity and worth. This principle reflects the fundamental human rights in Art: 1 of the UDHR that all human beings are born free and equal in dignity and rights. This inherent right to dignity and worth, to which the preamble of the CRC makes explicit reference, has to be respected and protected throughout the entire process of dealing with the child, from the first contact with the law enforcement agencies all the way through to the implementation of all measures for dealing with the child; treatment that takes into account the child's age and promotes the child's reintegration and the child's assuming a constructive role in society, in this regard therapeutic jurisprudence would play a very significant role. This principle must be applied, observed and respected throughout the entire process of dealing with the child, from the first contact with law enforcement agencies all the way through to the implementation of all measures for dealing with the child. This principle requires that all professionals involved in the administration of juvenile justice be knowledgeable about child development, the dynamic and continuing growth of children, what is appropriate to their well-being and the pervasive forms of violence against children.

Concluding Remarks

In Bangladesh, we have seen that the Children Act, 1974 and the Children Rules, 1976 govern the justice system for both children in conflict with the law and children in need of protection. It is a matter of fact that this legislation has been in place for almost 30 years; Bangladesh has yet to implement a fully comprehensive, separate system for juvenile justice to reform children in conflict with the law. In recent years there has been significant impetus for juvenile justice reform. The government has appointed a high level Juvenile Justice Task Force, and has identified priority areas for action. A new national social policy on models of care and protection for children in contact with the law has been drafted to address both children in conflict with the law and children in need of protection. In 2004, Bangladesh raised the minimum age of criminal responsibility from seven years of age to nine. Criminal liability of children between the ages of nine and 12 is subject to judicial assessment of their capacity to understand the nature and consequences of their actions. While this amendment has made a modest improvement, the minimum age is still far below international standards. Another concern is that the current

protection for child offenders does not extend to all children under the age of 18. Under the Children Act, Child and youthful offender are defined as a person under the age of 16. Children between the ages of 16 and 18 are treated as adults. On the other hand, the police have wide discretionary powers to arrest children under a variety of laws. The Children Act, the Vagrancy Act, 1943 and the suppression of Violence Against Women and Children Act, 2000 give police the authority to take children into custody on very broad grounds, including prostitution, begging, to be in the company of a reputed criminal or prostitute, or fall into bad association or be exposed to moral danger, or being a victim of crime. Both children who have committed crimes and children in need of protection are processed through the police station and subject to involuntary detention in a remand home or other places of safety. Girls who have been victims of abuse and exploitation are particularly vulnerable to detention on these grounds, and are often sent to adult's jails due to lack of appropriate facilities. If we analyse the article 54 of the code of criminal procedure, 1898 and the Dhaka Metropolitan Police Ordinance-such Act allow police to arrest any one on the grounds of reasonable suspicion that the person has been involved in a criminal act. This broad discretionary power are reportedly used by the police during regular raids to round up street children and girls suspected of prostitution, to clean the streets before *hartals* or VIP visits or to extract money from those who are arrested. Street children are especially vulnerable to arrest under these laws, either on suspicion for having engaged in criminal activity^{xxiv}. They are often targeted by adult criminal elements, and are easily lured with small amounts of money to engage in drug and arms carrying and bomb throwing during political agitation. Since police performance is evaluated on the basis of the number of arrests made, the incentive for police is to make easy arrests under these broad powers. In some cases, after a period spent in the police lock-up, the child is handed over to his/her parents in exchange of money. It is not one of the limitations of the Children Act, 1974 that it does not contain any special provisions limiting the use of physical force, restraints or handcuffs in the arrest of a child, nor does it have any special provisions with respect to the taking of statements or confessions from children. However, in Bangladesh especially to ensure juvenile justice application of Children Act in therapeutic way should be ensured without further delay. First thing is that to apply the law in therapeutic way for the children in conflict with laws it is not necessary to bring any vital change in the existing legal system. The existing correctional institution should be reformed also to make sure the application of law in therapeutic way. Some informal mechanism like mediation, counselling should also be introduced. The positive side is that there has been growing interest in promoting these informal mechanisms both to introduce a more restorative approach to conflict resolution, and also to reduce strain on the formal system

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