

# **EFFECTIVENESS OF LEGAL AND INSTITUTIONAL FRAMEWORK FOR JUVENILE JUSTICE IN BANGLADESH: A CRITICAL ANALYSIS**

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## **INTRODUCTION**

In Bangladesh, every day many children get caught up in adult formal justice systems. They are arrested and detained by police, tried by magistrate and sent to institutions, including prisons, under systems of justice which in many cases are set up for adults. It is indeed necessary for the children to have an environment where their rights are ensured when they come in contact with law or conflict with law. In Bangladesh the issue of Juvenile Justice (JJ) is not viewed and maintained with due attention and importance for many reasons. It is urged that, in Bangladesh, not only the international standards and guidelines are not followed while enforcing the JJ procedure, the prevailing domestic laws and rules are also not followed in all cases. It is also said that there is hardly any or insufficient players that are separated and motivated properly to deal with JJ. Such a perception and enforcement strategy therefore needs to be examined more closely.

The present study is focused on the effectiveness of the legal and institutional framework for Juvenile Justice System (JJS) in Bangladesh. The legal framework, the institutional setup and the level of enforcement of the relevant laws and regulations is the main focus of the study.

### **Significance of the Study**

In Bangladesh, the estimated number of children of age 0-18 is approximately 61.3 million (UNICEF, 2010). Maximum efforts taken for the children remain limited to child's survival and development resulting comparatively less attention to child protection in general and JJS in particular.

Proper attention on whole of the JJ process is utmost important. Otherwise there remains a possibility of serious human rights violation and increasing vulnerability of children. Of all phases of JJ procedure, it is on arrest and immediately thereafter, while in police custody, that an accused juvenile is most likely to become the victim of torture and other forms of cruel treatment. Girls are especially vulnerable to sexual harassment and abuse on arrest and during interrogation.

The important law in JJS of Bangladesh is the Children Act 1974, which includes many punitive, preventive and at the same time innovative provisions. There are some provisions in the act that are inconformity and inadequate in context to some international instruments. But the important aspect is that the act has never been implemented properly since its promulgation.

Enforcement of the relevant laws and policies also deserve attention for an appropriate JJS. Approach and behavioural pattern of the law enforcing agencies are also pertinent to an effective JJS. “The police have wide discretionary powers to arrest children under a variety of laws. -- Girls who have been victims of abuse and exploitation are particularly vulnerable to detention on these grounds, and are often sent to jails due to lack of appropriate facilities” (WOAT, 2003)

It is needless to mention that, Bangladesh lacks a functioning JJS. The legislation covering JJ is inadequate, poorly enforced, and provides few alternatives to confinement for children in contact with the law. The principle of diversion is not yet recognized in legislation and legal practice. “A key limitation of the Bangladeshi system is that both child victims of crime, witnesses and children alleged of committing a crime are directed into the same system of child protection services. This means that children are often deprived of their liberty in the name of safe custody. Additionally, Government officials and justice system professionals, such as police, judiciary and probation officers have a lack of knowledge about juvenile justice and the rights of children who come into conflict with the law” (UNICEF, 2010)

On the other hand, although the Government of Bangladesh has ratified quite a good number of international conventions, protocols and declarations, yet some of the useful international instruments such as The UN Standard Minimum Rules for the Administration of Justice (Beijing Rules), The UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), and the UN Rules for the Protection of Juvenile Deprived of their Liberty (Havana Rules) not been implemented properly.

Considering the urgency of devoting attention on the issue and present level of attainment regarding JJS in Bangladesh it is indeed necessary to put more emphasis on the issue of JJS. And again it is required to inquire into the facts and reasons of not fulfilling the requirements of effective JJS and also to explore the ways and means to address the issue.

## **EXISTING LEGAL AND INSTITUTIONAL FRAMEWORK FOR JUVENILE JUSTICE**

### **National Legal Framework**

#### **The Constitution**

The Constitution of the Peoples Republic of Bangladesh, although being one of the best Constitutions in the world, does not include any direct article regarding JJ. However few articles indirectly describe the issue of child's rights, safety and protection. Article 17 says that the state shall adopt effective measure for the purpose of extending free and compulsory education to all children. Article 28(4) empowered the state to make special provision in favour of women and children (Govt., 2011). Besides, some other articles indirectly facilitate the process of children welfare.

#### **The Penal Code**

In The Penal Code 1860, there are a number of sections which include penal measures for offence done to child and also done by the children.

Section 82: Nothing is an offence which is done by a child under nine years old.

Section 83: Nothing is an offence which is done by a child above nine years of age and under 12, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

Section 89: Nothing which is done in good faith for the benefit of a person under 12 years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person: provided...(Govt., 1984).

#### **The Code of Criminal Procedure 1898**

The most important provision in the Code of Criminal Procedure 1898 (Cr. P.C) is the section 497 which provides that an accused under the age of sixteen years may be enlarged on bail even in the cases of non-bailable offences.

#### **The 6th Five Year Plan (SFYP) 2011-2015**

The SFYP carries the vision of protecting children from all forms of abuse, exploitation and violence. The Plan also proposed some actions for achieving

the strategic objectives in this regards, such as “Laws affecting children will be harmonized and enforced. Awareness amongst law enforcing officials and judicial officers and the development of a diversion scheme involving the courts , social workers and probation officers as an alternative to custodial sentences will be undertaken”(GED, 2011).

### **The Children Act 1974**

The Children Act 1974 was enacted to consolidate and amend the law relating to the custody, protection and treatment of children and trial and punishment of youthful offenders. The act is one of the most important and beneficial one which includes lot of unique, innovative, diversified and tailored provisions to address the hydra-headed necessities of children. Some of the important features of the act are provision of separate trial arrangement for children, withdrawal of persons from court, special consideration during passing order by the court, restriction on disclosure of identity of child, establishment and management of certified institutes and remand homes, appointment of Chief Inspector and Probation Officers (PO), measures for care and protection of destitute and neglected children, penal measures for- cruelty to child, employing child for begging, giving intoxicating liquor to child, allowing child to be in brothel, restriction on punishment of child, measures for detention etc. On the other hand, in exercise of the powers conferred by section 77 of the act, the government has made the Children Rules 1976 to facilitate the proper implementation of the act.

### **The Probation of Offenders Act 1964**

The act contains sections regarding Probation Officer (PO) and Probation Order. The provisions of the act are mainly to assist the first time offenders of particular offences issuing probation order for a certain period of time instead of imprisonment. For proper implementation of the act The Probation of Offenders Rules 1971 has been made. The act facilitates among others, the process of issuing Probation Order under the Children Act 1974.

### **The Nari O Shishu Nirjaton Domon Ain 2000**

The *Nari O Shishu Nirjaton Domon Ain 2000* meaning the ‘Suppression of Violence Against Children and Women Act 2000’ rightly focused the offences occurred against the women and child. This is an important act as it includes some provisions with major punishment for offence committed against child. Among others the offences are impairment of eyesight or hearing capacity of children by inflammable, corrosive or poisonous substances, trafficking in child,

engaging children in prostitution, kidnapping of child, selling and buying of children, detain children for ransom, rape, sexual harassment, dissection of limbs of children etc.

### **The Children Policy 2011 and the Youth Policy 2003**

The National Youth Policy 2003 firmly aimed at making an environment congenial to abstaining youths from offensive activities. In the Children Policy 2011, determination is expressed among others, to comply the provisions of the Children Act 1974 while addressing the issue of children in conflict with law, children in contact with law and children's right in judicial procedure. (Govt., 2011a).

**The Bengal Vagrancy Act, 1943:** A child, under this law, is anyone under the age of 14. Children who live on the streets with or without legitimate means of livelihood usually be picked up by the police under this law. Both boys and girls are vulnerable of being incarcerated on grounds of vagrancy. Young girls suspected of being involved in prostitution are sometimes picked up by the police and forwarded to the Magistrate's Courts, where they are declared vagrants and sent to one of the homes.

## **INTERNATIONAL LEGAL INSTRUMENTS**

### **The UNCRC**

The Government of Bangladesh has ratified without any reservation, the United Nations Convention on the Rights of Children (UNCRC) in 1991 and is trying to implement the articles through adopting various acts rules and programmes. The article 40 of the UNCRC describes as:

1. "State parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in the society.

2. To this end, and having regard to the relevant provisions of international instruments, states parties shall, in particular, ensure that (a) No child shall be alleged, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed, (b) Every child alleged as or accused of having

infringed the penal law has at least the guarantee of (i) to be presumed innocent until proven guilty according to law,(ii) to be informed promptly and directly of the charges against him or her, (iii) to have the matter determined without delay by a competent, independent, and impartial authority or judicial body in a fair hearing according to law,----

Furthermore, article 37 deals specifically with the issue of administration of JJ:

“State Party shall ensure that; (b) no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention, or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time. (UNICEF, 1990).

### **Other Instruments**

There are some international instruments that govern and guide for JJ and also non custodial measures. Some of these are (i) United Nations Standard Minimum Rules for the Administration of Juvenile Justice or usually called The Beijing Rules 1985 which was adopted by General Assembly Resolution 40/33/985 of 29 November. (ii) United Nations Guidelines for the Prevention of Juvenile Delinquency called The Riyadh Guidelines 1990, adopted and proclaimed by General Assembly Resolution 45/112 of 14 December 1990, (iii) United Nations Rules for the Protection of Juveniles Deprived of their Liberty, called The Havana Rules 1990 and adopted by General Assembly Resolution 45/113 of 14 December 1990, (iv) United Nations Standard Minimum Rules for Non-custodial Measures called The Tokyo Rules 1990 and was adopted by General Assembly Resolution 45/110 of 14 December 1990 and (v) the United Nations Guidelines for Action on Children in the Criminal Justice System 1997 (UNICEF, 2005).

## **INSTITUTIONAL FRAMEWORK**

### **Certified Institutions**

The *Kishore Unnayan Kendra (KUK)* meaning juvenile development centre are established for rectification and development of juveniles' character, to rehabilitate and re-integration of juveniles in the society through case work, guidance, counseling, education, training and diversion measures. There are three KUKs in the country. The oldest one KUK at *Tangi of Gazipur* District established in 1978 with a capacity of 200 boys. The other KUK for boys is at *Poolerhat of Jessore* District, established in 1992 with a capacity of 150 seats.

The only KUK for girls is at *Konabari of Gazipur* District, established in 1997 and the capacity is 150 seats (DSW, 2012). Each KUK is attached by a Juvenile Courts. Further information on the KUKs is given in Table 1.

<b>Table 1: Information on Kishor Unnayan Kendra (KUK)</b>				
Sl	Particulars	Tangi, Gazipur	Pulerhat Jessore	Konabari, Gazipur
1	Year of establishment	1978	1992	1997
2	Area in acre	3.71	5.22	1.5
3	No. of approved seats	200	150	150
4	No. of inmates (April 2012)	247	119	51
5	No. of rehabilitate child since establishment (up to April 2012)	11703	3098	458
6	No. of sanctioned post	67	49	49
7	Present manpower	48	33	33
<b>Source:</b> Department of Social Welfare (2012)				

From the table 1, it is seen that the KUKs are suffering from shortage of employees. An attempt has been taken to establish the 4<sup>th</sup> KUK in the country at *Joypurhat* District at an initial cost of BDT 28 crores. The Department of Social Welfare (DSW) also placed proposal to establish 4 more KUKs in four Divisions and to increase the accommodation capacity of *Tangi, Konabari and Pulerhat* KUK up to 400, 300 and 300 respectively.

### Juvenile Courts

Section 3 of the Children Act 1974 says “Notwithstanding anything contained in the Code, the Government may, by notification in the Official Gazette, establish one or more JCs for any area”. Until today three JCs have been established in *Tangi and Konabari* of Gazipur District and in *Jessore* District. The *Konabari* court is for girls and the rest two for the boys. In 1999 through a Gazette notification, the jurisdiction of the JCs has been defined. Three Divisions named Dhaka, Chittagong and *Sylhet* are brought under the jurisdiction of *Tongi* JC and other three Divisions i.e. *Barishal, Khulna and Rajshahi* are taken under the *Pulerhat (Jessore)* JC.



However, under section 5 of the Children Act 1974 it is restricted for any other court other than the courts established under section 3 or courts mentioned under section 4 to try or deal or dispose any proceeding under the Children Act 1974.

### **Probation Officer**

POs act as per directions of the Children Act 1974 and the Probation of Offenders Act 1964. The administrative ministry for the POs is the Ministry of Social Welfare (MSW). There are 23 permanent sanction posts under revenue head and 22 temporary posts under year to year retention arrangement. Amongst them 5 posts in revenue head and 19 retention posts are vacant. Besides, 42 Social Welfare Officers in 42 districts are acting as a PO in addition to their own portfolios. Another 15 Social Welfare Officers in Divisional cities of Dhaka, Chittagong, Rajshahi and Khulna are also acting as PO in the respective divisional cities.

Ministry of Social Welfare (MoSW) sources say that an initiative has been taken to increase the number of sanction post up to 150 so that in each district, each KUK and other places PO may be posted permanently.

## **ANALYSIS AND FINDINGS ON LEGAL AND INSTITUTIONAL FRAMEWORK**

### **The National Legal Framework**

#### **Inconsistencies and Limitations**

Children are unable to protect themselves, safeguard their own interest and protest against evil action/doing. Considering the necessity of protection and development of the child, the Constitution of Bangladesh may have directive article(s) to preserve child rights and welfare.

The Children Act 1974 has been adopted in 1974 and has not been experienced any amendment or change in almost 38 years. Some of the sections of the act are close to being obsolete and some are not appropriate to the present days.

Starting with the Preamble of the Children Act 1974 it can be seen that the preamble itself is not suitable as it says, “Whereas it is expedient to consolidate and amend the law relating to the custody, protection and treatment of children and trial and punishment of youthful offenders ---”. As it is agreed and followed



by the national and international community on the issue that no child shall be sentenced to death, transportation or imprisonment or any other punishment. Even the Children Act 1974 section 51 says that “Notwithstanding anything to the contrary contained in any law, no child shall be sentenced to death, transportation or imprisonment... (Govt. 1974). Therefore the words ‘punishment of youthful offenders’ in Preamble should be dropped or changed.

Section 3 of the act describes the establishment of JC and authorized the government to establish one or more JC for any local area. The government established three JCs in the country by the authority given under this section. As discussed earlier, each JC has jurisdiction over three Administrative Divisions. Here ‘any local area’ *de facto* covered as many as three Administrative Divisions. The distance between the place of occurrence, KUKs and the place of trial is so large that it becomes difficult sometimes even impossible for the parties to attend the court proceedings. The provision of the act should be framed in such a way that each district should have at least one JC. The officials of DSW and NGO opined for JC in all the districts.

Sections 34 to 46 describe the penal provisions of offences in respect of children. Attention should be given on the magnitude of the penalty in these sections as in most of the sections the amount of fine ranges from taka one hundred to taka one thousand only. As for example, according to section 36 penalty for being drunk while in charge of child is taka one hundred which is quite insignificant to meet the purpose of penalizing the offender. Hence the amount of fine in these penal sections should be updated and increased.

According to the section 30, the government may appoint a Chief Inspector (CI) and such number of inspectors and Assistant Inspectors of Certified Institutes as it thinks fit to assist the Chief Inspector. To monitor and oversee the activities of CIs at least once in every six months as per section 29 of the act, the role of the Inspectors are certainly very important. But it is a fact that there has not been any appointed Inspector or the Chief Inspector for the CIs.

The Children Act 1974 does not contain any special provision limiting the use of physical force, restraints or hand cuffs in the arrest of a child, nor does it have any special provisions with respect to taking of statements or confessions from children. There is no provision, either in law or in practice for measures such as mandatory presence of a parent, PO, or lawyer that might protect children from abuse or intimidation. “Mechanisms to monitor and supervise police conduct are weak, and they are rarely held accountable for abuses” (UK 2003).

As per section 52, a child convicted and ordered him to be committed to a CI for detention for a period not more than ten years but not exceeding the age of eighteen years. The officials of the KUKs opined that the Children Act 1974 should include directive as to what would happen if an inmate of KUK attains the age of eighteen.

One of the limitations of the act, as mentioned by the UNICEF representative, is that the act does not take into consideration of ensuring minimum care and protection, diversion and alternative justice system of children at institutions who are in contact or conflict with the law.

The Bengal Vagrancy Act 1943 is concerned with the maintenance of public order rather than the protection of the best interests of the child. Further, for children, it ought to be totally inapplicable, since children who live on alms or who have no homes and are found to be roaming around are to be taken care of under the Children Act, 1974 (section 32). Therefore (a) the law should be applied only for adults (over 18), (b) a normal trial process should be evolved based on social inquiry reports so as to ascertain vagrancy status, (c) the Children Act 1974 should be applied for children who are lost, who have been found begging or who are in moral danger instead of applying the Bengal Vagrancy Act 1943.

## **INTERNATIONAL LEGAL INSTRUMENTS**

### **Promoting Juvenile Welfare**

The general principles of the Beijing Rules refer to comprehensive social policy in general and aim at promoting juvenile welfare to the greatest possible extent, which will minimize the necessity of intervention by the JJS.

The rule 1.2 contains that “Member states shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when he or she is the most susceptible to deviant behavior, will foster a process of personal development and education that is as free from crime and delinquency as possible” (UNICEF, 2005). Rule 1.3 emphasizes for sufficient attention to mobilize all possible resources for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law.

The Beijing Rules expresses that the objective of training and treatment of juveniles placed in institution is to provide care, protection, education and vocational skills, and shall receive care, protection and all necessary assistance; social, educational, vocational, psychological, medical and physical that they may require because of their age, sex, personality and vulnerability.

However, in consistence to the rule 8 of the Beijing Rules and considering the probable adverse effect of the incidence of coming contact with law and conflict with law in future life of children, some legislations particularly, The Children Act 1974 and *The Nari O Shishu Nirjato Daman Ain 2000* provides adequately the provision of restriction on publishing the identification of the juvenile in media. There is also provision of camera trial under these laws not to publish or disclose the identity of victim or offender child.

### **The Diversion**

Diversion is the channeling of certain cases away from the criminal justice system, usually on certain conditions (UN 2006). The Beijing Rules also provides that in case of non-serious offences, application of community-based diversion with consent of juvenile, parents or guardian at any point of decision making by the police, the prosecution, courts, tribunals, boards or councils may be organised. The process of diversion is probably not reflected in any law or policy in Bangladesh and hence not being practiced by the concerned authorities.

### **Preventive Measures**

The Riyadh Guidelines mainly focuses on the developing non-criminogenic attitude and behavior of young persons by engaging themselves in law, socially useful activities and adopting a humanistic orientation towards society and outlook on life. The guidelines no. 1 and 3 reveal that a child centered orientation should be pursued and young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control (UNICEF, 2005).

The prevention measure is a long term full devoted effort. For a success, the comprehensive prevention plans should be instituted. It is needless to say that in Bangladesh a comprehensive programme is needed to take preventive measures through socialization and integration of them in the process.

### **Legal Framework and Enforcement**

The guidelines 52- 59 of the Riyadh Guidelines describe that government should enact and enforce specific and appropriate law and rules to promote and protect the child and to prevent victimization, abuse exploitation of children. An important direction of the Guidelines reveals that the government should ensure that no child should be subjected to harsh or degrading correction or punishment measures at home or school. Representative from stakeholder like STC strongly demanded to establish the office of a Child Ombudsman in Bangladesh.

The government adopted a legal framework that may be considered somehow acceptable although not updated as required. But enforcement weakness has nullified the good intension of adopting a legal framework.

### **Detention**

The CRC and the Beijing Rules state that the arrest and detention of a child must be in conformity with the law and should be used only as a last resort and for the shortest possible period of time. Likewise, the first Rule of the Havana Rules clearly described that the JJS should uphold the rights, safety and promotes the physical mental well-being of juveniles and also pointed that imprisonment should be used as a last resort. Rule 29 says, “In all detention facilities juveniles should be separated from adults, unless they are members of the same family”. (UNICEF, 2005).

The Beijing Rules also expresses that the law enforcing agencies should respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to him. It also describes that the police personnel who frequently or exclusively deal with juvenile or are primarily engaged in the prevention of juvenile crime should be specially trained and motivated.

The present scenario of JJS in Bangladesh is far away from the provisions depicted in the paras above. One important issue is the separation of juveniles from the adult. Section 6 of Children Act 1974 also clearly pointed out that the juveniles and the adults cannot be tried jointly and placed in same accommodation. But the concern authority has, sometimes, nothing to do but to keep the juveniles with the adults in the same jail or remand home. In many police stations there is no arrangement to keep the juveniles separate from the adults. Opinions have received from the KII that during detention juveniles and adults should be kept separately in remand home, jail and other places.

### **Non-custodial Measures**

The Tokyo Rules provides a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to punishment. It is applicable to all persons subject to prosecution, trial, or the execution of a sentence at all stages of the administration of criminal justice.

Bangladesh has very limited facilities of non-custodial alternatives, limited uninterrupted congenial law and order situation, very immature governance style and some other limitations. The institutional alternatives are very few and the

informal alternatives are very weak and not trustworthy. Therefore it requires continuous review and analysis to implement this.

## **ANALYSIS AND FINDINGS ON INSTITUTIONAL FRAMEWORK**

### **Juvenile Courts and *KUKs***

In the whole process of JJS all the parties concerned are so inter connected that absence or non-functioning of any party will jeopardize the process. The JC, as the most important component of JJS should set up and function properly throughout the country. Before 2007, the then magistrates, now called the executive magistrates used to preside over the courts as per sections 6-25, 190-192, 200-205 of Criminal Procedure Code 1898. In this study it is found that after shifting of magistracy from administrative service to judicial service the situation has not been improved so far.

In all 64 districts separate and full time designated JC is yet to introduced. All the affairs of juvenile delinquency and juvenile justice still lie on the shoulders of three JCs in the country. It is physically quite impossible to run a court whose jurisdiction extends up to even few hundred kilometers in several districts. For geographical location all the formalities related to filing, investigation and trial procedure cannot be done properly. The court parties i.e. the prosecution, the defense, the lawyers, the witnesses, POs and other stakeholders cannot move to the court from their residences. The KII from the DSW, STC opined for establishment of JC and *KUK* in all the districts. However, UNICEF representative suggested that shortage of *KUK* may be minimized by way of stopping the inflow of inmates in the *KUK* through adoption of diversion policies.

In the case of “State -Versus- Secretary, Ministry of Law, Justice & Parliamentary Affairs and others, 29 BLD 656” the Hon’ble High Court Division directed to establish child-specific courts in every district which will be dedicated to cases relating to children. As a result the then Chief Justice was pleased to issue a Circular on 23 December 2010 with a direction to all District and Sessions Judges and Metropolitan Sessions Judges to earmark one court at every level, to expeditiously hear and dispose of cases involving juvenile offenders. In para 17 of the same case it was also directed as, “The Government must provide sufficient number of places of safety, at least one in every district, so that such a place of safety is easily accessible from any part of the country.” But the verdict of the court is yet to materialized. An important proposal given by the representative of UNICEF is to consider assigning temporarily, the Village Courts to act as JC in rural area.

The officials of DSW claimed that the physical infrastructure and facilities of the *KUKs* like accommodation, sports, cultural, vocational training etc are not sufficient. There is provision for education up to primary level. As the inmates stay there up to eighteen years of their age as per provision of the Children Act they suggested that education facility up to secondary level should be started in the *KUKs*.

### **Police and Policing**

Police are usually the first point of contact within the formal JJS for children coming into conflict with the law. The action taken by the arresting police officer and any other police officers involved has the potential to change the child's life in a positive direction, but this will depend on the attitudes, beliefs, skills and facilities of the officers handling the case. It is in these situations where police will need to have the necessary knowledge and skills to negotiate and mediate in order to ensure that the child's rights are upheld and that opportunities for diversion or non-custodial options are explored.

“Children are generally treated the same as adult, and there have been numerous reported cases of children being subjected to violence and abusive treatment by police. Girls are particularly vulnerable to physical and sexual abuse at the hands of police” (UNICEF, 2002). While talking to the officials of *KUK* and *STC*, they opined that the police have no clear idea on the provisions of Children Act 1974 and matters related to JJ. They argued for proper training for the police personnel for knowledge on JJ and attitudinal changes.

Being asked in separate groups, the boys and girls of the *KUKs* expressed that in some cases after arrest police kept them more than 24 hours before sending to the court. In case of boys police use the handcuff during arrest and taking them to court. In some cases police demanded money as conveyance and food cost during movement to *JCs* although it has been paid them by the *KUK* authorities. Under the Children Act 1974, police acts as prosecuting officer in *JC*. It is argued that the police usually cannot allocate sufficient time, are not acquainted with the relevant laws and rules, and importantly not sensitized to the child rights. Considering the vulnerability of juveniles, KII of UNICEF suggested formation of special trained prosecuting agencies consist of advocates, social workers to deal with JJ.

Based on the opinion of the inmates of *KUKs* and the views of the KIIs, it reveals that the service of police is insufficient in two aspects; the absence of adequate service and the lack of proper attitude towards child welfare. In the context of police and the juvenile, there are several key points that need to be addressed:



- a. The special police unit particularly for juvenile should be established.
- b. Awareness has to be created among police personnel of their role and responsibilities.
- c. Training needs to be provided to ensure that police are familiar with the national legislations & international standards.

### **Probation Officer and Lawyer**

On the other hand the section 31 authorizes the government to appoint a PO in each district. The responsibility of the PO as mentioned in the Children Act 1974 and also in the Probation of Offenders Act 1964 is very important (Govt., 1967). But there are 22 designated POs working in 22 districts. Besides, 3 POs are presently working in three *KUKs*. Therefore, rest 42 districts have no designated PO. The Social Welfare Officers, entrusted with additional charge of PO is unable to make time to perform their additional responsibility as PO. During discussion KIIs from DSW and STC suggested appointment of sufficient PO, proper training and adequate budget, logistic facilities for smooth functioning of the POs.

The representatives of STC and legal experts opined that the children are vulnerable as they cannot protest against, protect themselves and are fond of imitation. On the other hand in absence of a sensitized strong network of POs and police officers, there is a need of legal experts to plead in the JC in favour of juveniles. This can be done by formation of an association like ‘Bangladesh National Child Lawyers Association (BNCLA)’ same as Bangladesh National Women Lawyers Association (BNWLA) or a pool of legal experts under the DSW.

### **Facilities for Juvenile Girls**

The juvenile girls have additional difficulties in remand home, CIs and even in case of providing non-custodial options. Considering the fact it can be opined that facilities for a full range of community penalties should be available to girls which involve:

- a. Ensuring that no single girl is kept alone with a group of boys.
- b. Developing proper non-custodial centers for girls where these do not exist.
- c. Sensitizing personnel engaged in custody of the non-custodial arrangement.
- d. Targeting practical, educational and health needs.



In Bangladesh usually non custodial measures are not adopted as a means of alternative to jail, or CI. There is only one certified institution (*KUK*) for girl juveniles at *Konabari of Gazipur* District with accommodation capacity of 150. This study finds that, it is impossible to send all the girls in the KUK from all parts of the country.

### **Diversion Measures**

For JJ diversion is one of the key elements of a sound system. It avoids the child getting a criminal records and being branded at an early age, it avoids children being stigmatized or contaminated through contact with criminal processes, it minimize the deprivation of their liberty and possible contact with more hardened offenders. Through diversion the child may learn valuable lessons from programmes, and acquire social responsibility through the performance of community service or by making amends to the victim, all of which can help to reduce re-offending. Therefore it is indeed necessary to arrange an institutional arrangement for diversion measures.

### **RECOMMENDATIONS**

Considering the necessity, resource constraint and capability of state the recommendations derived based on previous discussion and analysis, are furnished in two groups: short term and long term.

#### **Short term Recommendations**

a. The Children Act 1974 may immediately be amended, making it updated and more effective to JJ, keeping conformity with international standard as far as possible on the following aspects:

- (i) To overcome the difficulties and inconveniences arising due to only three JCs throughout the country, provision should be made in section 3 of the Children Act 1974 to set up at least one JC in each district.
- (ii) With a view to make the penal measures appropriate and consistence to time the penal measures as included in section 34 to 46 of the Children Act 1974 should be reviewed and updated in accordance with the present value of money.
- (iii) To reduce the extent of vulnerability of boys and girls, instead of applying the Vagrancy Act 1943 the Children Act 1974 should be applied for children who are lost, who have been found begging or who are in moral danger.

- (iv) For smooth service rendering to the juveniles as mentioned in the Children Act 1974 and the Probation of Offenders Act 1964, sufficient number of PO should be appointed as per section 31 of the Children Act. On the other hand Chief Inspector and Inspectors should be appointed to monitor and oversee the activities of the Certified Institutes.
  - (v) Consideration of ensuring minimum care and protection, diversion (for the first time offender) and alternative justice system of children at institution who are in contact or conflict with law should be incorporated in the act.
  - (vi) New provision should be included to limit the use of physical force, restraint using of hand cuffs during arrest of a child. Besides, provision may be included in section 52 of the Children Act 1974 as what measures should be taken when the detainee in the CI attains at the age of eighteen years.
- b) The accommodation, education, cultural, sports, vocational, recreational and other associate facilities of the *KUK* should be improved up to a minimum level and make more child friendly.
  - c) Specifically for girl juveniles more non-custodial centers may be set up. Wherever they are kept, they should be kept in groups as far as possible, kept away from boys, male police or any other male persons.
  - d) The special police unit particularly for juvenile should be established. Awareness has to be created among police personnel of their role and responsibilities in dealing with children. Training needs to be provided to ensure that police are familiar with the national legislations, UNCRC, international standards.

### **Long term Recommendations**

- (a) Efforts may be taken to develop non-criminogenic attitude and behavior of children by engaging them in socially useful activities and adopting a humanistic orientation towards society and outlook on life.
- (b) As per proposal of DSW, at least 4 more *KUKs* each one in Chittagong, Barishal, Sylhet and Rangpur Division should be established to reduce the difficulties arises due to distance amongst JC, *KUK* and the place of occurrence. Until establishment of the *KUKs*, special arrangement may be made temporary to use the Government Child Homes as *KUK*.

(c) To address the juvenile delinquency issue, emphasize should be given to mobilize all possible resources for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law.

(d) The Government and NGOs may take joint effort to train and motivate the stakeholders like police, PO and *KUK* officials, to make alternative opportunities for reintegration and employment of juveniles and also to take care and motivate the inmates of the *KUKs*.

## **CONCLUSION**

The juveniles of Bangladesh are deprived of proper protection of law and usually harassed in the criminal justice proceedings. The effort of keeping the juveniles out of the formal criminal justice system is also a part of JJS. It is needless to say that an effective legal and institutional framework is indeed necessary for the children who have already come in contact with law and also in conflict with the law. The Children Act 1974, the prime law in JJS should be amended and updated to cope up with the international standard as far as possible. Another important aspect is to create an appropriate institutional set up to enforce the laws, rules and policies properly.

For the betterment of the society there is no alternative but to devote all possible efforts for the well-being of the juveniles. It is hoped that, the policy makers, the academicians, the civil society and the executives will put their all efforts for an effective JJS in Bangladesh.

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