

Abstract

In this thesis I tried to focus on different significant aspects of the juvenile delinquency in Bangladesh. Juvenile delinquency is an inextricable problem for any human society. It is a problem that persists in our society and also all over the world to a perceptible degree. A child is born innocent and if nourished with tender care and attention he or she will be a person of stature and excellence. To understand the problem in real perspective it is necessary to understand the meaning of delinquency and its significance in the social background of our society. On the other hand, noxious surroundings, neglect of basic needs bad company and other abuse and temptations would spoil the child and likely to turn him a delinquent.

Chapter 1

1. INTRODUCTION

Juvenile delinquency refers to children who act against the law. Most legal systems prescribe specific procedures for dealing with juveniles, such as juvenile detention centers. There are a multitude of different theories on the causes of crime, most if not all of which can be applied to the causes of youth crime. Youth crime is a major issue and is an aspect of crime which receives great attention from the news media and politicians. Crime committed by young people has risen since the mid-twentieth century, as have most types of crime. The level and types of youth crime can be used by commentators as an indicator of the general state of morality and law and order in a country, and consequently youth crime can be the source of moral panics. Theories on the causes of youth crime can be viewed as particularly important within criminology. This is firstly because crime is committed disproportionately by those aged between fifteen and twenty-five. Secondly, by definition any theories on the causes of crime will focus on youth crime, as adult criminals will have likely started offending when they were young. Usually, a delinquent will do to someone else what has been done to them. A Juvenile Delinquent is one who repeatedly commits crime. These juvenile delinquents sometimes have mental disorders/behavioral issues such as post traumatic stress disorder or bipolar disorder, and are sometimes diagnosed with conduct disorder partially as a result of their delinquent behaviors.¹

Juvenile delinquent, a person who is under age (usually below 18), who is found to have committed a crime in states which have declared by law that a minor lacks responsibility and thus may not be sentenced as an adult. However, the legislatures of several states have reduced the age of criminal responsibility for serious crimes or for repeat offenders to as low as 14.²

1. Justice V.R Krishnan Eyre- [www.Answers.com], last visited at 17th march, 2010.
2. Nobel Laureate Gabriel Mistral-[www.The free dictionary.com], last visited at 17th march, 2010.

A juvenile delinquent is defined as a juvenile who has committed a delinquent act or is in need of care or supervision. A delinquent act is an act committed by a child that is designated a violation, misdemeanor, or felony offense under the law of a state or of another state if the act occurred in another state or under federal law or a violation of a municipal ordinance except violations of municipal curfew ordinances. The term usually does not include most traffic offenses committed by one 16 years of age or older. Juvenile delinquents are subject to state statutes, which vary by state, allowing for, among other things, taking the juvenile into custody, ordering restitution for offenses committed, and compliance with supervisory conditions.³

Juvenile delinquency is the broad-based term given to juveniles who commit crimes. Juveniles are defined as those people who haven't reached adulthood or the age of majority. What defines adulthood or the age of majority in a court system may be predetermined by law, especially for minor crimes. Major crimes may force the courts to decide to try a juvenile as an adult, a very important distinction, since sentencing can then mean not just spending adolescence, but a lifetime in prison. Delinquency can be defined as the committing of those things considered crimes by the state, although delinquent can also mean abandoned. Thus juvenile delinquency can cover anything from small crime — a student who cuts school repeatedly is.⁴

Juveniles are the most susceptible segment of society. They react sharply to any other social problem. Scarcity of basic needs, lack of parental attention and any social crisis touch them so deeply that many of them cannot cope with the abnormal situation. They respond to social anomalies in ways not approved by social norms and laws. Some of them even form gang and commit crime, both individually and collectively. Some of them choose an dangerous life pattern and develop juvenile subculture to exhibit their resistance that injustice has been done to them. Juvenile delinquency cannot be considered by keeping it apart from social reality. Social malfunctioning causes increase of juvenile delinquency and emergence of juvenile sub-culture, indicating that the children have been subjected to malnourishment. If the dominant culture of a society fails to accommodate all the children sufficiently, the deprived young folk will stand up with their own sub-culture.⁵

3. Radzinowicz and Joan King-[www.uslegal.com], last visited at 17th march, 2010.

4. [www.aboutjuviledelinquents.com], last visited at 18th march, 2010.

5. Sheikh Hafizur Rahman Karzon, (Dhaka : Palal Prokashoni p.2007), p. 362 *Theoretical and Applied Criminology*. p 362.Palal Prokashoni (first Edition)

Chapter 2

Nature of Juvenile Delinquency

2.1 Definition

The concept of “Juvenile delinquency” has been vaguely and imprecisely defined in many countries; a clear definition would be most useful in the formulation of workable programmes for the prevention of juvenile delinquency. In finding out a working definition, it should be remarked that juvenile delinquency is not mere legalistic concept as it is sometimes taken to be. It may be construed as a specific behavior pattern. It is only when this behavior pattern is of an aggressive nature and harmful to the public that the boy or girl concerned come juvenile delinquency may be defined in simple words as antisocial tendencies in the young & youthful. It spells the loss of control of family and society over a portion of the growing generation. An offender is considered juvenile or criminal on the basis of his age at the time of conviction not at the time of commission of offence.

“It is a phenomenon which has engaged the attention of society in particular the law since the birth of civilization.”⁶ According to Burt, “a child is to be regarded as technically a delinquent when his anti-social tendencies appear so grave that becomes subject of official action.

“Irrespective of legal definition, a child might be regarded as delinquent when his anti-social conduct inflicts suffering upon others or when his family finds him difficult to control.”⁷

In a broad generic sense, Juvenile delinquency refers to “ a variety of anti-social behavior of a child and is defined somewhat differently by different societies, though a common cornering tendency may be noted in those forms, namely, socially unacceptable tendency of the child at any given time.”

By Paul W. Tappan, Euphemistic terminology such as “heaving” instead of trial or instead of “sentence” should not conceal from us the fact that the nature of entire procedure may be little different from that of a criminal court.

6. Pearce. [www.legal-explanations.com], last visited at 18th March, 2010

7. Ruth shines cavern. [www.allacademic.com], last visited at 18th March, 2010

2.2 Causes of Juvenile Delinquency

Juvenile delinquency has become a global phenomenon these days. Despite intensive rehabilitative measures and special procedure for tackling the problem of juvenile delinquency, there is a growing tendency among youngsters to be arrogant, violent and disobedient to law with the result there has been considerable rise in the incidence of juvenile delinquency. The main causes for this unprecedented increase in juvenile delinquency are as follows:

2.2.1 Social Transition: The growing industrialization and urbanization gave rise to the problem of juvenile delinquency in Bangladesh. Sociologists and Criminologists consider delinquency as a result of transitional phase, a process through which majority population is transforming from peasants to industrial labor class. Mainly Bangladesh is still an agro-based country. Industrialization has not taken expected pace. In its transition from agriculture to industrialization, Bangladeshi society is undergoing rapid social change. Since the transition is not yet complete, since Bangladesh is pre-industrial, it is a mixed society, not completely traditional and not fully modern. An examination of the economic, political, and religious institutions reveals a conflict between traditional and modern values, neither of which dominates the lives of the people. This conflict has given rise to anomie and creates greater vulnerability to delinquent behavior.⁸

2.2.2 Poverty: The majority populations of Bangladesh are very poor. They live below poverty line in terms of the true indicators of poverty. Around 65 million out of 130 million people (with 54 million in rural areas) of Bangladesh live in absolute poverty, and they are amongst the world's poorest. Bangladesh is the most densely populated country in the world with 900 people per km. half of the population of Bangladesh are living in extreme poverty and are consuming less than equivalent of 1, 805 kilo calories per day. The human deprivation profile in Bangladesh is very high.⁹

8. Mohammad Afsaruddin, *Juvenile Delinquency in Bangladesh*, (Dhaka: University of Dhaka, 1993), pp. 137.

9. Abul Barkat, "Development-freedom-Empowerment in the context of poverty and Deprivation in Bangladesh."

Because of huge economic disparities large numbers of people in Bangladesh live below minimum subsistence level. This economic pressure compels many children to involve in delinquent activities. Many sociological studies show that the lower one's economic status, the greater he is vulnerable to arrest and incarceration. "Living conditions in and around villages and cities were never very good. Rapid growth of population, a high rate of urbanization outpacing the development of resources and provision of facilities and services, has caused further deterioration. The bulk of the population is poor and cannot own or rent minimum essential shelter or afford minimum amenities. The result is that we have overcrowding and slums in the cities and depressed living conditions in the rural areas. Absence of a proper approach to the problem of balanced growth of our urban and rural areas and a well defined policy for the location of industries and other economic activities has further aggravated the problems." In many cases poverty constitutes the root cause of juvenile delinquency. Poor parents cannot get their children educated and developed good educational or vocational career, rather they want their children to assist them in work field. Sometimes parents cannot provide their children with all basic necessities. The poor children, therefore, start to do some activities for their existence. The children do not know which activities are lawful and which are not. They require some work, which can provide their food and clothing. By taking advantage of poor economic condition the criminal gangs deploy poor children in criminal activities. Hundreds of children are engaged in pick pocketing and petty thievery. Poor children have been deployed in carrying phencydil, and other contraband drugs at the border areas.¹⁰

Usually the children coming from poor economic background are sent to development centers¹¹ or jail.

10. Three first class magistrates of Jessore and Khulna in an interview with the author told that in Khulna and Jessore hundreds of children carry drugs contraband items.

11. There are three juvenile correction centers in Bangladesh. Two for boys, one in Tongi of Dhaka District and another in Pulerhat of Jessore District. One for girls, in Kunapara of Kishorgonj. All these correction centers have newly been named as development centers.

2.2.3. Problematic Family: Problematic family constitutes a principal cause for the deviation of the juveniles. Absence of father or mother due to death or divorce, lack of parental control, lack of home discipline, bad relation between father and mother, presence of criminal among the members of family are the principal indications problematic family. Due to these problems the mental development of children remains incomplete, for which their behavior become abnormal. The children of 8-14 age group take resort to crime when their parents fail to guide them properly. The parents and teachers should be more careful of the children so that they cannot get any chance to commit crime. Children and adolescents tend to follow bad activities of others if their families and environments are not healthy.¹²

If any juvenile first time commits any offence and his/her social condition is good, he/she is not kept in the development centre, rather kept in the family environment under the supervision of a probation officer. The child is released after one year, although law mentions a time frame of 1-3 years. An youthful offender is kept in the development centre if the family environment is not good. Those he/she is detained from three months to one year.¹³

12. Dr. M. Mahmudur Rahman, Professor, Department of Clinical Psychology, University of Dhaka, expressed his views in Rita Bhoumick, "*Juvenile Crime Correction System in Bangladesh*," Law and Our Rights page, *The Daily Star*, October 8, 2005.

13. Maleka Khairunnesa, a first class magistrate of Juvenile Court, described her experience in Rita Bhoumick, "*Juvenile Crime Correction System in Bangladesh*," Law and Our Rights page, *The Daily Star*, October 8, 2005.

- 2.2.4. Migration:** Migration of deserted and destitute boys to slums brings them in contact with anti-social elements carrying on prostitution, smuggling of liquor or narcotic drugs and bootleggers. Thus, they lend into the world of delinquency without knowing what they are doing is prohibited by law.
- 2.2.5. Surrounding Environment and Company:** sometimes juveniles become delinquent because of bad company and surrounding environment. Due to tender age they cannot the far-reaching consequences of their activities. They can be trapped into surrounding environment of slum area, and smuggling zone. Because of evil company sometimes juveniles go to brothel, consume drugs, and commit different kinds of criminal activities.
- 2.2.6. Action Movie:** Action movie and satellite have negative impact on the mind set of the young boys and girls. The violence and sex depicted in the movies incite juveniles to go brothel and to commit unauthorized activities.
- 2.2.7.** Besides the aforesaid causes, illiteracy, child labor, etc., are also some of the contributing factors of aggravating juvenile delinquency.

Chapter 3

3.1 Juvenile Justice in U.K.

While handling the problem of juvenile delinquency, the English criminal justice administrators have preferred to deal with it outside the framework of criminal law.

An industrial school was set up for homeless, destitute and delinquent children, A social activist, Miss Marry Carpenter did a pioneering work in this field and as a result of her persistent efforts legislation was enacted which received approval of House of Lords in 1847. She started a Ragged Industrial School in Bristol. Later, another Day Industrial School was started at Aberdeen.

In 1838, Park Hurst prison was set up for the treatment of juvenile offenders. Soon after, the British Parliament enacted the Summary Jurisdiction Act, 1879, which provided that a child below the age of seven (rise to eight by the statute subsequently) is incapable of committing a crime and, therefore, cannot be convicted.

Juvenile Courts were first established in England under the Children Act, 1908. These courts differed from ordinary courts in as much as they were less public, less formal, and less formidable.¹⁵ The prime duty of these courts was to afford proper care and protection to the child or young offender and take necessary steps for removing him from undesirable surroundings and ensure that proper arrangements were made for his education and training. In addition to criminal jurisdiction, the Children and Young Offenders Act, 1933, also conferred civil powers to juvenile court in certain important matters. The Act provided that any child and young person. Who committed a crime, should be summarily tried by a juvenile court.

The trial of children and adolescents by a juvenile court could result into two consequences, namely –

- (I) He could either be allowed to return to his home on being discharged, fined or on an undertaking of attendance at the Attendance Centre, Doubts have always been expressed about the justification for imposition of fine in cases of juveniles since it is the parents and not the delinquent child who are penalized under this maid of punishment. There seems no justification in punishing the parents unless, of course, there is a failure to exercise due of are of the child on their part.

- (ii) Another mode of treatment of young offender was to remove him from his home to a correctional institution or a Brutal.

3.2 Juvenile Justice in U.S.A.

The working of a Juvenile Court in USA is relatively simple and more or less informal. As first, the police take custody of the juvenile offender. The police officer has the discretion either to keep the child in custody or to immediately release him, admonish him/her or to do both, and allow parents to take the custody of the child. Next, the police contact the juvenile court for notification if parents and the person notified by the Court assume responsibility of custody of the delinquent. The police also interrogate the offender and take his finger prints or photographs. These records provide important clues for tracing the juvenile.

The Court while trying the juvenile gives a hearing to probation officer who appraises it about the antecedents of the delinquent. The juvenile having been placed under probation officer's protective care, it is for the latter to find a suitable home, school or employment for the child. In case the child violates any of the conditions of probation, he is sent to a 'Certified School' or to Children. Home by an order of the Court. The age limit for juvenile trial is seventeen years.

3.3 Juvenile Justice in India

Like any other country, India also seeks to tackle the problem of juvenile delinquency on the basis of three fundamental assumptions: –

- (I) Young offenders should not be tried, they should rather be reformed;
- (ii) They should not be punished but be reformed; and
- (iii) exclusion of delinquents; i.e. children in conflict with law from the ambit of court and stress on their non-penal treatment through community based social control agencies such as Juvenile Justice Board Observation Homes, Special Homes etc.

Besides, certain special provisions also exist in the Indian Penal Code and the Code of Criminal Procedure, 1973 in relation to the young and juvenile offenders which provide for their special treatment and procedure. They are as follows:—

- (1) Sections 82; and S 3 of the Indian Penal Code contain elaborate provisions regarding the extent of criminal liability of children belonging to different age groups. A child below the age of seven is deli incased, that is, incapable of committing a crime.

- (2) Section 27 of the Code of Criminal Procedure, 1973 further suggests that a lenient treatment to juveniles has already received statutory recognition in the Indian law. The section provides that if a person below sixteen years of age commits an offence other than the one punishable with death or imprisonment for life, he should be awarded a lenient punishment depending on his previous history, character and circumstances which led him to commit the crime. His sentence can further by commuted for good behavior during the term of his imprisonment.

Chapter 4

JUVENILE JUSTICE ADMINISTRATION AND CORRECTIONAL SERVICES IN BANGLADESH: A CRITICAL REVIEW

It is accepted that children who are criminally culpable under the State's penal code are in conflict with the Law. Historically, in matters of criminal justice, the violation of law was of greater significance than the age or the immaturity of the offender. This stemmed from the ideology those children, who were regarded as miniature adults at that time, did not merit special treatment. However, over the past century and a half changing perceptions and sustained efforts by specific groups within the civil society, have led to the development of a criminal justice system with a more child-friendly orientation. The rationale was that since children are not fully aware of the implications of their acts they are required, to be treated with sensitivity and care.¹⁴

The administration of justice for minors who are accused of, or alleged as having breached the penal laws of the country essentially constitutes the juvenile justice system. Juvenile justice, in the strict sense of the term, denotes the right of children to have the support at all levels, i.e., the State, the family and the community, in realizing their rights of survival, protection, development and participation. The present exercise is an attempt at reviewing the administration of juvenile justice in Bangladesh and assessing the impact of correctional services on juveniles and children.

4.1 Administration of Juvenile Justice:

4.1.1 International Perspectives:

The international approach to administration of juvenile justice recognizes the necessity to have the rights of children redefined and developed in concrete ways simply because they are a special category of human beings. Accordingly, the United Nations have taken significant steps that have contributed to the development of standards for treatment of children who come into conflict with the law. The initiatives are described below in brief for an understanding and appreciation of the standard setting role of the United Nations:

14. Khair, Sumaiya, "Street Children in Conflict with the Law. The Bangladesh Experience", Asia-Pacific Journal on Human Rights and Law, Vol.2., No. 1, 2001, Kluwer Law International, pp-55-76, 56.

4.1.2 Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) 1985

The Beijing Rules provide minimum conditions for the treatment of juveniles who come into conflict with law. The Rules explicitly provide for a separate and specialized system of juvenile justice and underscore that detention of children should be used as a last resort and that too, for the shortest possible time. The Rules discourage capital and corporal Punishment for children. Under the Rules children should be allowed to participate in the legal proceedings. Moreover, care and education of children must be ensured during the period of detention. At all stages of the proceedings discretion should be exercised in the best interests of the child.

In terms of treatment the Rules require that children should be treated fairly and humanely. Measures adopted should be proportionate to the nature of the offender and the offence. The Beijing Rules however, refrain from prescribing approaches beyond setting forth the basic principles of proportionality and the limited use of deprivation of liberty, a shortcoming that has been resolved substantially by the Convention on the Rights of the Child.

4.1.3 The Convention on the Rights of the Child 1959

The Convention on the Rights of the Child (CRC) 1989 in Articles 37 and 40 spell out the rights of children in conflict with the law and ensure basic guarantees and legal and other assistance for their defense. Article 37 of the CRC ensures that no child shall be subjected to arbitrary arrest detention, torture or other cruel, inhuman and degrading treatment including capital punishment and life sentence. The arrest or detention of a child must be in conformity with law during which the child shall be treated with humanity and dignity.

Many of the essential principles of the 1985 Beijing Rules find expression in Article 40 of the CRC and lend them a binding effect. Article 40 of the CRC provides that every child alleged as, accused of, or recognized as having violated the penal law must be treated in a manner consistent with the child's human rights, fundamental freedoms, sense of worth and dignity. Regard must be had to the age of the child and the need to promote its reintegration into society- Accordingly, A child must be presumed innocent until proven guilty, be informed of charges promptly and cannot be compelled to give testimony or confess to guilt and must have access to legal representation. Articles 37 and 40 are qualified by Article 3 of the CRC which states that in all actions, whether undertaken by public or private social welfare institutions,

courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

The Convention on the Rights of the Child is complemented by two other major documents, which set standards and guidelines for the protection of children in conflict with the law:

4.1.4 UN Guidelines for the Protection of Juveniles Deprived of their Liberty 1990

These Guidelines apply to all institutions, which detain any person under the age of 18 years. These include institutions for health, welfare or juvenile justice. The Guidelines advocate the least possible use of deprivation of liberty and discourages detention in prisons and other closed institutions. Moreover, the Guidelines advise that children, when detained, should be kept separate from adults in order to protect them from negative influences. Rather, facilities must promote health of juveniles and instill in them self respect and a sense of responsibility to enable them to make a smooth return to society. Access to parents during the period of detention is essential.

4.1.5 UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) 1990

The Riyadh Guidelines emphasizes on the need for integrated and comprehensive plans for preventing crimes by children and young people. They advocate for formal mechanisms of crime control as a last resort. The Guidelines also underline the need for having due regard to the human rights and fundamental freedoms of children, particularly of those who are at 'social risk', such as children who are homeless, destitute, abused and so on. Accordingly, laws and procedures should promote, protect and uphold children's rights. The Guidelines further recommend that children should be encouraged to participate in policy formulation and implementation of prevention programmers as active and equal partners.

An examination of the international standards on the administration of juvenile justice reveals two broad principles that are of particular significance to children in conflict with the law. Firstly, that the well being of children who come in conflict with the law must be ensured and secondly, 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, the rights of children in conflict with the law must be protected in ways that will facilitate their reintegration into their societies and assumption of responsibilities therein. Therefore, it is essential to weigh the considerations

adequately before committing children to formal institutions. In this context, diversion from formal legal procedures is always an acceptable alternative.

Endorsement of international standards, however, does not automatically guarantee their practical enforcement in domestic context of states-While international standards are meant to apply objectively, they essentially lack binding force. Therefore, while international Conventions may engender certain responsibilities for ratifying states, they carry no formal obligations in terms of practical implementation. In the circumstances, it is crucial to develop enabling mechanisms within the domestic legal system for utilization of international standards in realistic ways.

4.1.6 Administration of Juvenile Justice in Bangladesh

The legal provisions relating to the administration of juvenile justice in Bangladesh have their roots in colonial laws. The Bengal Code and Prisons Act of 1894 required separate trials for children and adults. Guidelines for reformation were contained in the Reformatory Schools Act 1897. The Code of Criminal Procedure of 1898 provides for the trial of children in juvenile courts, which was also later recommended by The Bengal Children's Act 1922. These various laws and provisions relating to custody, protection, trial and treatment of children were eventually consolidated to produce The Children Act 1974, to be read together with The Children Rules '1976, a mechanism conceived to protect the child's best interest during all kinds of legal processes.

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

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

4.1.7 Delineating the Age of Criminal Responsibility

There is often no uniform standard regarding the age at which a person is necessarily considered a child. This is primarily because the age premise is likely to vary across cultures, values and social systems. Article I of The Convention on the Rights of the Child denotes that a child is a person under the age of 18 years unless, under the law applicable to the child, majority is attained earlier. In other words, the Convention permits member states to set the age of majority in conformity with national laws. This creates problems when, as is the case in Bangladesh, states have domestic legislation's that define a child varyingly to suit specific contexts.

Having said that, it is difficult to find a clear-cut definition of a child in international standards as well. Whereas The Convention on the Rights of the Child regards all persons under the age of 18 years as children, none of the Rules and Guidelines relating to administration of juvenile justice., i.e., The Beijing Rules, the UN Rules for the Protection of Juveniles Deprived of their Liberty or The Riyadh Guidelines (as discussed later) contains any explicit indication as to who is a child. Rather, the Guidelines often use the terms 'child' and 'young person' in tandem and apply the term 'juvenile' to signify the form of justice system or the type of delinquency.¹⁵ It appears therefore, that in the context of juvenile justice "it is the manner in which a child is treated for an offence which dictates whether a child is also a juvenile".¹⁶

Just as the age of a child is a controversial issue, the age of criminal responsibility, though seemingly straightforward and elementary as a concept, presents concrete problems in the administration of juvenile justice. While there is no distinct international standard on the subject, the CRC and the Beijing Rules enjoin State Parties to establish a minimum age below which children will be presumed as not having the capacity to infringe the penal law. In so doing, the beginning of the age should not be set too low, having due regard to the child's emotional, mental and intellectual maturity.

15. Juvenile Justice, UNICEF Innocent Digest No. 3, 1997, p.4.

16. Van Beuren, Geraldine, *The International Law on the Rights of the Child*, Save the Children, Martinus Nijhoff Publishers, Dordrecht et al., 1995, p.171.

The penal law in Bangladesh reflects these considerations to a certain extent. The Penal Code of 1860, which sets the age of criminal responsibility states that nothing is an offence, which is done by person under the age of 9 years (Section 82)¹⁷ and that full criminal responsibility commences only after the age of 12 years. Section 83 of The Penal Code provide that an act of a child above 9 years and below 12 years, who has not attained sufficient maturity of understanding to judge the nature and the consequences of his conduct, is no offence. It follows therefore, those children under 9 years lack the capacity for crime and incur liability after the age of 12 years; in between these two ages, criminal responsibility depends on the state of mind. It is to be noted that apart from The Penal Code, immunity of children below 9 years of age from criminal responsibility also extends to offences under any other special or local law of Bangladesh.

The Children Act 1974 which is the principal law relating to the administration of juvenile justice states that a child means a person under the age of 16 years, and a youthful offender means a child who has been found to have committed an offence.¹⁸ When used with reference to a child sent to a certified home or committed by Court to the custody of a relative or other fit person means that child during the whole period of his detention notwithstanding that he may have attained the age of 16 years during this period.¹⁹ In other words, a child who is below 16 years at the time of his committal will still be considered a child until the end of his detention period even if he reaches the age of 16 years during this period.

Unless the age of a child is ascertained properly there is every possibility of misapplication of laws and missed mini strait on of justice. The virtual absence of birth registration in Bangladesh raises serious difficulties in computing the correct age of a child in Bangladesh. This problem is of particular significance where children are brought before the courts and the magistrates have to rely on information furnished by the police who, in the majority of cases, misrepresent the age of the apprehended child. Although there are provisions in the law that requires a medical examination to ascertain the age of the child this is hardly conducted in routine time. Consequently, the child remains in custody like an adult until the conclusion of the medical verification.²⁰

17. The age of criminal responsibility has been increased from 7 years to 9 years on the 8th of November 2005 by the Penal Code (Amendment) Act, 2004.

18. Section 2(f)(n), The Children Act 1974.

19. Section 2(f), *ibid*.

20. Khair, Sumaiya, 2001, *op.cit*. p.61.

4.1.8 Setting the Law into Motion: Procedural Aspects

Although The Children Act 1974 and The Children Rules 1976 are premised on the best interests of children who come in conflict with the law and who are destitute, their enforcement in practical terms is rather ineffective and often detrimental to the children. Children traverse through different stages in the criminal justice system from the moment they come into contact with the law. This section attempts to examine the procedural aspects of the juvenile justice system and explore the implications they have for children who come under its jurisdiction.

4.1.9 Arrest and Remand

Generally, a child may be arrested for breaching the penal laws of the land or under suspicion of committing an offence. However, there are other laws, such as The Bengal Vagrancy Act 1943, Section 54 of The Criminal Procedure Code, The Special Powers Act 1974, The Arms Act 1878, that are often utilized to arrest children. Children also fall prey to police raids in the wake of political unrest or criminal hunts. Policemen on the beat identify vagrant children and pick them up from the streets, railway and bus stations, shopping centers, parks and so on. . The recognition of status offences, as where a child runs away from home! or is deemed disobedient or destitute, also presents a paradox. The practice of taking vagrant and street children into custody essentially criminalizes acts which are otherwise not offences in the strict sense of the term.

Consequently, a neglected and homeless child becomes the victim of a legal system, which, under the best of conditions, tends to be unjust. Although the right to be heard is fundamental in the human rights discourse the child arrested under The Vagrancy Act 1943 is devoid of this right, either directly or through appropriate representation in judicial proceedings. The child's right to privacy is virtually non-existent; during the process. The right not to be deprived of liberty and only to be detained in conformity with law is also not ensured under The Vagrancy Act 1943. This is evident from the fact that children arrested under this Act are often detained for unspecified periods in prisons. Thus, while The Vagrancy Act 1943 concentrates on maintaining public order, it overlooks children's interests by ignoring their special needs.

Section 54 of The Criminal Procedure Code 1896 is yet another device that i serves to oppress, amongst others, children. The police are empowered under this section to arrest any person on mere suspicion without a ' warrant of arrest. It is common for law enforcing agencies to indiscriminately arrest and incarcerate street children under the cover of this law on the slightest of pretexts. Apart from Section 54 of The Criminal Procedure Code, children's rights and freedom are also compromised by The Special Powers Act 1974. Which empowers the police to arrest people on suspicion of anti-state activities? The Special Powers Act 1974 is frequently used to pick up children who, either happen to be loitering on the streets, or are engaged in political agitation by political parties during political demonstrations and hurtles (strikes). Street children in such situations, become victims of circumstances and have their rights seriously jeopardized. Children arrested under The Arms Act 1873 for possessing and carrying illegal arms is another instance of victimization of children by adults and an insensitive legal system.

When it comes to arresting girls the scenario is even more perplexing. Girl children reportedly make up a much less percentage of juvenile offenders. It is not be so much that girls breach the law less but more, that, the specific! Ties of their con tact with the law are not adequately addressed. Classic examples are prostitution and rape where it is more common for girls to be arrested rather than the perpetrators. In other words, girls come into conflict with the law more as victims of prostitution and sexual offences, even if they have actually breached other penal Saws, Since there are no separate provisions for housing girl offenders, they are customarily branded as prostitutes and victims of rape in order to acquire for them a place in shelter homes.

Normally, a child may be arrested without a warrant for a cognizable offence²¹ under The Criminal Procedure Code 1896 but s/he cannot be detained in custody for more than 24 hours. Moreover, if a child under 16 has been charged with a non-bilabial offence, the officer in charge of the police station may release her/him on bail and arrange for the child to be placed in a remand home or a safe place until s/he is brought before the court.²²

21. Cognizable offence means an offence for which a police officer may in accordance with the second schedule or under any law for the time being in force. Arrest without & warrant. See Section -4(f) of The Code of Criminal Procedure, 1889.

22. *The Children Act, 1974, Section 48 and 49.*

There is virtually no separation between inmates who are here for correction and those who live here in remand. The resultant is a free mixing between boys with perpetrating and non-perpetrating nature. The consequence is pernicious as children with less or occasional criminal are compelled to mix with the more hardened types." The current situation raises serious questions about the places of safety ordained by law.

Immediately after the arrest of a child, it shall be the duty of the police officer effecting the arrest to inform the Probation Officer of such arrest in order to enable the Probation Officer to proceed to obtain necessary information about the child's family and other material circumstances likely to assist the Court in making its order.²³ At the same time the officer in charge of the police station to which the arrested child is brought shall inform the parents/guardian of the arrest, if found, and specifying the date, direct them to attend the court before which the child will appear.²⁴

The situation on the ground is, however, quite different. Charge sheets are virtually non-existent and children arrested and detained are not shown the grounds for arrest nor are their parents duly informed. The police allege that it is frequently difficult to trace parents and in the absence of adequate facilities they are compelled to detain children in jails until they are brought before the Magistrate. Consequently, children are interned with adult criminals who collude with the police officials to abuse and mistreat the children. Although The Bengal Jail Code under Section 499 expressly provides that none shall be admitted into any jail without a writ, warrant or order signed by a competent authority, the reality is quite different as children are frequently locked up with adult criminals without proper authorization.

It is during arrest and interrogation that children are more likely to suffer police brutality as is evident from a number of studies in the area. Children are allegedly 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 are also reported. The practice of placing girl children who are victims of rape or trafficking in the so-called safe custody increases their vulnerability to victimization and abuse by the police and other inmates.

23. Section, 50, *ibid*.

24. Section 13(1), *ibid*.

Chapter 5

The Ideas to prevent Juvenile Delinquency

5.1 Education

Model programs have assisted families and children by providing them with information. Some programs inform parents on how to raise healthy children; some teach children about the effects of drugs, gangs, sex, and weapons; and others aim to express to youth the innate worth they and all others have. All of these programs provide youths with the awareness that their actions have consequences. This is particularly important in an era where youth are barraged with sexual and violent images. Educational programs have the underlying intent of encouraging hope and opening up opportunities for young people.

5.2 Recreation

One of the immediate benefits of recreational activities is that they fill unsupervised after-school hours. The Department of Education has reported that youths are most likely to commit crimes between 2 p.m. and 8 p.m., with crime rates peaking at 3 p.m. Recreation programs allow youths to connect with other adults and children in the community. Such positive friendships may assist children in later years. Youth programs are designed to fit the personalities and skills of different children and may include sports, dancing, music, rock climbing, drama, karate, bowling, art, and other activities.

5.3 Community Involvement

Girl scouts, boy scouts, church youth groups, and volunteer groups all involve youth within a community. Involvement in community groups provide youth with an opportunity to interact in a safe social environment.

5.4 Prenatal and Infancy Home Visitation by Nurses

Nurses involved in the “Prenatal and Infancy Home Visitation by Nurses” program pay visits to low income, single mothers between their third trimester and the second year of their child’s life. During these visits, nurses focus on the health of the mother and child, the support relationships in the mother’s life, and the enrollment of the mother and child in Health and Human Services programs. A 15-year follow-up study

found that mothers and children involved in the program had had a 79 percent lower child abuse rate, a 56 percent lower child runaway rate, and a 56 percent lower child arrest rate. Maternal behavior problems also dropped significantly in the studied group.

5.5 Parent-Child Interaction Training Program

The “Parent-Child Integration Training Program” takes parents and children approximately 12 weeks to complete. It is designed to teach parenting skills to parents of children age’s two to seven who exhibit major behavioral problems. The program places parents and children in interactive situations. A therapist guides the parents, educating them on how best to respond to their child’s behavior, whether positive or negative. The program has been shown to reduce hyperactivity, attention deficit, aggression, and anxious behavior in children.

5.6 Bullying Prevention Program

The Bullying Prevention Program is put into place in elementary and junior high school settings. An anonymous student questionnaire fills teachers and administrators in as to who is doing the bullying, which kids are most frequently victimized, and where bullying occurs on campus. Once teachers and administrators have learned about how and where bullying occurs at their school, they set up class rules and facilitate discussions that address the problem. Individual bullies and victims receive independent counseling. The program succeeds in creating a safer, less hostile environment for students at minimal cost.

5.7 Prevention Programs within the Juvenile Justice System

A youth entering the Juvenile Justice System has the opportunity to receive intervention assistance from the state. In the care of the state, a youth may receive drug rehabilitation assistance, counseling, and educational opportunities. The success of the Juvenile Justice System is measured by how well it prepares youth to re-enter the community without committing further crimes. Optimally, all juvenile detention facilities would catch youths up on their education, provide them with job training, give them the experience of living in a safe, stable environment, and provide them with assistance to break harmful habits.

5.8 The Nebraska Correctional Youth Facility

The Nebraska Correctional Youth Facility (NCYF) is an example of a successful juvenile detention facility that gears its programs toward restoring delinquent youth. The facility holds young adult violent offenders and juvenile delinquents who have been tried in adult court for committing violent crimes. The youngest inmates are 15 and the oldest are 21. NCYF is a “maximum security institution” that was designed to separate young violent offenders from adult offenders, and to assist young inmates by providing them with the help they need to change their behavior.

All inmates are required to participate in the educational opportunities provided by the facility. They are required to meet standards that are set forth by the prison on a person-by-person basis. Each inmate has the opportunity to earn a GED and to take community college level courses. The parents of inmates may follow their child’s progress through communication with staff. While at NCYF, inmates are given the opportunity to work as teacher assistants, gardeners, recreational leaders, and kitchen staff. The facility’s recreation program also provides an array of activities, from basketball leagues to ping-pong tournaments. An annual 10k is held, in which the inmates race with staff members. NCYF monitors the health of its occupants, in part, by providing drug rehabilitation counseling and by performing weekly drug tests.

A program unique to NCYF is “Project HEART.” Prisoners who have met specified behavioral and educational requirements may train a pet dog. The dogs, deemed unfit for adoption because of behavioral problems, are given a home in the prison yard. A qualified inmate may be given a dog to take care of for a period of time. He (NCYF only holds male inmates) may bring the dog with him to his classes and activities. He is ultimately responsible for teaching the dog. After a period of training, the dogs receive “Good Canine Citizen Awards” and are set up for adoption through the Nebraska Humane Society. Inmates whose dogs are placed with a family, are given the opportunity to talk to the family, via phone, and give them tips on how the dog has been trained.

As a measure of the success it has experienced in rehabilitating violent offenders, NCYF received a 99.7 percent initial accreditation in August of 2000 from the American Correctional Association (ACA), formerly the National Prison Association.

5.9 Ending Repeat Offenses

Once out of detention, youths face the challenge of readjusting to “free” life. For many, youth detainment places a halt in a pattern of destructive behavior. Once out of prison, the youth must create a pattern of life separate from criminal activity. To assist in this process, courts have attempted to implement helpful social services for former inmates and their families. Some of these are job placement; school follow-up, extended counseling, and extended drug rehab. The Functional Family Therapy (FFT) program assists youth on parole by helping them and their families communicate in more effective, positive ways.

5.10 Functional Family Therapy (FFT)

The Functional Family Therapy program helps adolescents on probation – and their families. A family therapist works with the family and helps individual family members see how they can positively motivate change in their home. The program works in three phases. During the first phase, the therapist attempts to break down resistance to therapy and encourages the family to believe that negative communication and interaction patterns can be changed. In the second phase, family members are taught new ways to approach day-to-day situations; they are shown how to change their behaviors and responses to situations. During the third phase, family members are encouraged to move new relational skills into other social situations (school, or the workplace, for instance). FFT reduces recidivism rates and juvenile delinquency at a low cost. Twelve FFT sessions cost approximately one-sixth the cost of detaining a youth for one month. Another positive effect of the program is that the siblings of the youth on parole are less likely to commit crimes because of the help their family has received.

5.11 Scare Tactics

Currently, Americans are steering away from this tactic, as it has proven rather ineffective, but during the 1990s it was a technique that politicians and the greater community put much confidence in. Slogans such as “get tough on crime” and “adult time for adult crime” spoke to the common-sense core of many people who worried about rising juvenile crime rates. The basic ideology centered on the idea that crime rates were high because youth were not afraid of facing juvenile detention. General

opinion held that the system had become too soft; the threat of confinement was not deterring youth from criminal activity.

Several major shifts occurred during this time:

- Juvenile courts gave increased jurisdiction to adult, criminal courts. Courts authorized easier transfers of juveniles into the adult criminal court and, in some states, waived their authority over specified crimes.
- Youths were sent to adult prisons in increased numbers. Younger offenders were sent to adult prisons as states tightened their definition of who was a child, and more court decisions placed youth in adult confinement.
- Youths were issued longer prison sentences in the adult system than they would have been given in the juvenile justice system. Most of those sentenced, however, were not required to serve the full length of their prison terms.

The harsher penalties that came with the era of hard-time scare tactics were intended to lower crime rates and to express to youth that crime would not be tolerated. These penalties, however, did not achieve their intended effects. The approach was grounded in the idea that youth could be managed through fear. But fear was not a forceful impetus to motivate youth toward positive behavior. No direct correlation was witnessed between harsher sentencing and fewer first-time arrests, and youth that had been placed in the adult system actually had a higher recidivism rate than similar juveniles placed in juvenile detention facilities.

5.12 “Juvenile Boot Camp” and “Scared Straight”

In the years that “get tough on crime” policies were being established, various new programs were also attempted. One such program, Juvenile Boot Camp, received high publicity but had little success. “At risk” youth were placed into intense, structured, severe environments that were modeled after military boot camps. The Juvenile Boot Camps were intended to teach youth about structure and discipline but their success rates, which were measured based on their ability to prevent kids from committing future crimes, were low. For some youth, the programs were actually counter-productive. Another program, “Scared Straight,” brought parole/probation youth into interactions with adult prisoners through meetings or short-term incarcerations. The program was designed to make young offenders frightened of the violent adult prison system. According to the Surgeon General at the time, the program was not effective.²⁵

25. www.lawyershop.com

Chapter 6

Conclusion

A child is born innocent and if nursed with tender care and attention, he or she will blossom with faculties physical, mental, moral and spiritual into a person of excellence. On the other hand neglect of basic needs, bad company and other abuses and temptations would spoil the child and likely to turn him a delinquent.

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

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