

Administration of Juvenile Justice System in Bangladesh

SABRINA SULTANA JESMIN

Apprentice Lawyer, Rajshahi Judge Court
Rajshahi, Bangladesh

Abstract:

Juvenile justice is the ground of criminal law that mainly related with certain age limit of children who belong to under adult period (18 years) to be held responsible for criminal activities. Juvenile delinquent or juvenile offenders are those who belong to above the age 10 years and under 18 years who commit minor crimes which may convert into grievous crime. For the betterment of juveniles, juvenile administration of justice is a must. In addition, a proper adolescent justice is inevitable in the efforts to cherish the juveniles as valued citizens of the nation. Generally, juvenile law is governed by statutory laws of a country. Juvenile justice includes conferences, seminars on justice for juvenile delinquents referred by the courts or police. It denotes care for youth offenders socially and in juvenile justice centres too. The main purpose of juvenile justice system is rehabilitation rather than punishment. Bangladesh is a densely populated country. Here, like other developing country, juvenile delinquency is a burning issue. In the constitution of Bangladesh, Article 28(4) is also deals with juvenile's fundamental rights surety. For ensuring juvenile justice it is a great step for Bangladesh. With the international conventions' direction and with the appropriate implementation of social needs juvenile justice can be done.

Key words: Juvenile, Justice, Administration, Shishu Ain-2013 (The Children Act-2013), Rehabilitation, Correctional Centre.

INTRODUCTION

Today's juvenile are the bright future of a society. Juvenile delinquency in a society then the nation has great risk to be destroyed. For this reason, in case of juvenile delinquency, juvenile justice administration is a must. In Bangladesh, Constitution of this country is a safeguard for the juveniles. This Constitution ensures fundamental rights from Article 26 to 47 including the rights to life, right to equal protection in the eye of law, right to personal liberty, protection against arbitrary arrest and speedy trial to freedom of speech etc. Even the Constitution ensures in Article 44 that if any fundamental right is violated then the aggrieved person can have the opportunity of writ¹. In general scenario, administration of juvenile justice system in Bangladesh is ensured by the Constitution of Bangladesh. For the betterment of child, there introduced new Act named Shishu Ain-2013 (Children Rights Act 2013). Before this Act, there was Children Act 1974 that is repealed by the Children Act 2013. Bangladesh is a member of United Nations (UN). So, in our country the Conventions related with the juveniles like the Convention of the Rights of the Children (CRC), 1989; UN Guidelines for the Protection of Juvenile Deprives of their Liberty, 1990; UN Guidelines for the prevention of Juvenile Delinquency, 1990 etc. are to be followed. Government is to be come forward to implement a well-balanced situation for the juveniles for bringing juvenile justice system here.

JUVENILE, JUVENILE DELINQUENT, AGE FOR JUVENILE'S CRIMINAL RESPONSIBILITY

Defining juvenile is hard most of the time. The reason behind it is age and nature of juvenile differs from statutory laws to statutory laws, country to country. Maximum country considers

1 Constitution of Bangladesh

less than 18 years old aged children as juvenile. International law also say about the age of minor is 18 years². Additionally, children above ten years and under eighteen years are juvenile also³. Bangladesh constitution says about protection of juveniles but not explains about juveniles properly.

Different Statutory laws of Bangladesh define juvenile from different views. According to section 82 of Penal Code, 1860; if a child commits whatever crime less than 9 years is not crime until it is committed within 9-12 years but maturity is to be considered⁴. In Beijing Rules, mental maturity, emotion etc. are the elements to determine the juvenile⁵. In Bangladesh, under the Railway Act 1890, section 130 and in Juvenile Smoking Act, section 3 age of juvenile is 16 years. In section 2(8) of the Labour Act 2006, 14 years old children are juveniles. There was the Children Act 1974 which is repealed by Shishu Ain, 2013 (The Children Act-2013). According to the section 4 of this Act, minors aged up to 18 years shall be treated as juvenile which decision has derived from the case *The State vs. Roushan Mondal @ Hashem*⁶ to determine the age of child in case of arrest, bail and detention. So, before ensuring juvenile justice, criminal responsibility of a youth should be determined. Though various laws have various directions regarding age but now The Children Act-2013 is to be followed.

FEW CASE STUDIES TO DETERMINE THE CRIMINAL RESPONSIBILITY

Some case studies show that criminal responsibility of a child depends on age, maturity, emotion, circumstances etc. In the

²The United Nations Convention on the Rights of the Child (CRC),1989;
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

³ https://criminal-law.freeadvice.com/criminal-law/juvenile_law/juveniles.htm

⁴ https://criminal-law.freeadvice.com/criminal-law/juvenile_law/juveniles.htm

⁵ Rule 4.1, UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985(Beijing Rules)

⁶ 59 DLR 72

case of the *State vs. Roushan Mondal @ Hashem*,⁷ the High Court Division observed that if a child above 9 years and below 14 years old, is not enough mature to understand is exempted from criminal responsibility. Moreover, in case of justifying the juvenile's age, his ability to understand right or wrong etc. shall take into consideration. In *Nirbhaya* case, she was raped and the Court Observed that she was raped by a juvenile so the juvenile will be trialed by juvenile court.⁸ In the case of *Damini*, a gang raped girl in India, the High Court said that not the age but the capability of understanding an offence is to be regarded as matter of determining juvenile. In *Balu alias Bakhatavatchalu vs. State of Tamil Nadu*,⁹ the court said that on the date of committing offence, the age under 18 years will be treated as juvenile. In other many cases like *Pratap Singh vs. State of Jharkhand*,¹⁰; *Arnit Das vs. State of Bihar*¹¹; *Umesh Chandra vs. State of Rajastn*¹² etc. cases are remarkable for determining criminal responsibility of juveniles.

ADMINISTRATION OF JUVENILE JUSTICE IN BANGLADESH

Like a developing country, Bangladesh has juvenile delinquency problem is a curse. Children become delinquents through bad company, unwelcomed circumstances, family problems, social problems, economic imbalance etc. Administration of justice is not so easy task at all. After all, in Bangladesh, there is Shishu Ain-2013 (The Children Act-2013). In this regard, to ensure administration of juvenile justice, there are some vital steps and among them implementation of Children Act-2013 is important. It deals with juveniles arrest, bail, and detention matters. It says that the trial shall be

7 57 DLR 72

8 Times of India

9 AIR 2008 SC 1434

10 2004 (5) SCALE 617

11 AIR 2000 SC 2264

12 1982 (1) SCALE 335 (SC)

different from the adult. In arrest, to take in custody there shall not be any cruelty. In case of bail, he is entitled to get bail. For the protection of juveniles, probation officer shall play a great role. Bangladesh Govt. is trying to reduce it this crucial problem.

ARREST, BAIL, JUVENILE COURT, TRIAL, ALTERNATIVE CARE, REHABILITATION ETC. IN BANGLADESH

The police have power to arrest children under Shishu Ain, 2013 section 44 that says that children under 9 years are not allowed to be arrested. The juveniles are also allowed to get bail whether it is bailable offence or not under this act. Administration of juvenile justice begins with the establishment of juvenile courts. According to the Criminal Procedure, 1898; section 29B, a juvenile is to be tried separated from adults. Section 399 says that probation officer is to be served up to the age of 21 years old¹³. Under the Jail Code, 1894 and Prison Act, 1894 says that juvenile delinquents shall be separated from adults in jail. In the case of *Rajendra Cnhandra vs. Chandigarh Administration*, the court observed that juvenile shall be tried in the juvenile court¹⁴. The new Children Act, 2013 provides that, for trial of offences there under, at least one court is to be established in every district headquarter and in every metropolitan area as the case may be and shall be called Children Court. Under section 16(1), the Department of Law and Justice in consultation with the Supreme Court, by notification in the official Gazette, one or more court of Additional Sessions Judge in a district or metropolitan area, shall try the Children's Court¹⁵. The High Court Division, Session Court, Additional Session Court, Sub-division Magistrate, and First Class Magistrate are entitled to hear juvenile cases. Under section 17, in any case where a child

13 Criminal Procedure, 1898; section 29B and section 399

14 AIR 2000 SC 784

15 The Children Act, 2013, section 16.

in conflict with the law or a child in contact with the law is involved under any law whatsoever, the Children's Court shall have the exclusive jurisdiction to try that case. The Court shall follow camera trial and the public and the media is prohibited from disclosing the child's identity¹⁶. At time of trial, police, lawyer or any other official person have any professional dress and the environment should be favorable to the child. There shall be alternative care to develop a child's mentality economically, culturally, and with social manner and under section 85 of Shishu Ain, 2013. In this regard according to section 92 the assessment of child shall be done by probation officer¹⁷. In case of a child's care, parents shall get priority and if they are separated, not live with each other then the child will be sent to the institutional care for underprivileged children under section 85 of this act. And alternative treatment processes, procedures and related matters shall be determined by law according to the section 84 of that very act. The system of rehabilitation can be for short or long time process under the section 88 of this act.

LIST OF SHELTER FOR CHILDREN TOGETHER WITH WOMEN AND TRAINING INSTITUTE

There are some Government and Non-Government centers for the protection of needy women among them are divorced, poor, tortured wives, very helpless women etc. and for also the juveniles who are sometimes misguided by society or other factors and become delinquent. In case of Government the Department of Social Services under the ministry of Social Welfare Government of the People's Republic of Bangladesh plays vital role. Under the section 59 of Children Act, 2013 says, a juvenile whether he is convicted or not is entitled to get

16 The Children Act , 2013, s.22

17 The Children Act section 85 and 92

shelter under Government supervision¹⁸. According to the section 85 of the Children Act,2013; there shall be institutional care for underprivileged children such as- 1) Government child family; 2) Chotamani home; 3) Training and rehabilitation center for underprivileged children; 4)Government shelters; and 5) Determined by the government and other institutions. In case of non-government organization filling all the conditions given by govt. can work in this purpose¹⁹. In this purpose there are some Non-Government (NGO) Centers for women and children there are some organizations such as:

- ❖ Bangladesh Legal Aid And Services Trust (BLAST)
- ❖ Bangladesh National Women Lawyers Associations (BNWLA)
- ❖ BRAC
- ❖ Ain O shalish Kendra (ASK)
- ❖ Action Aid, Bangladesh
- ❖ Center for Rural Child Development
- ❖ Asar Alo Mohila Unnoyon Sangstha
- ❖ Unnayan Shahojogy Team (UST)
- ❖ Bangladesh ShishuAdhikar Forum (BSAF)
- ❖ Manabik Sahajya Sangstha
- ❖ ASA etc.

To make the helpless women and juvenile delinquents there are some institutions which help them to lead a new life with dignity. Some of the training Institutes for the Juvenile are-

- ❖ Juvenile Development center
- ❖ Rehabilitation and Vocational Training Center (RVTC)
- ❖ Department of Youth Development
- ❖ Juvenile Administration Training Institute (JATI)
- ❖ Kishor/KishoriUnnayan Kendra

18 Children Act, 2013, section 59

19 The Children Act , 2013. section 60

STEPS FOR BETTER ADMINISTRATION OF JUVENILE JUSTICE IN BANGLADESH

In Bangladesh, for reducing juvenile delinquency, there are really ways but most of the time it is hampered not to follow directions properly. Most of the time, it is seen that the children who are delinquents are kept with adult criminals. They are tortured often. The environment is sometimes against a juvenile's proper development. So, for a better juvenile justice, Bangladesh should follow international rules and regulations too. Some international conventions like UN Standard Minimum Rules for the Protection of Juvenile, 1985; Convention of the Rights of the Children (CRC), 1989; United Nations Guidelines for the Protection of Juvenile Deprived of their Liberty 1990, United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)1990 etc. are to be followed. These Guidelines show the ways to establish a real juvenile justice system. Concepts of these conventions are to developing respect in various community and cultures which are valuable for our society. From these rules it is clear that effective educational process, developing youngling personality, emotional support and of course avoidance of corporal punishment. A juvenile delinquent can be reformed with proper care and right guideline. In Bangladesh, most of the time juvenile delinquents are neglected after coming back from rehabilitation that must be avoided. Often, a minor becomes more dangerous when he comeback from jail mixing with the adult criminals. So, social members should be come forward to welcome them. They should give proper care. Another vital problem here is the number of rehabilitation or correctional centre are poor in proportionate with the delinquents. Adequate care and proper direction must be followed. In case of taking care regarding juveniles, a female juvenile is to give very sincere attention. In case of male juvenile, they should be kept under great care. The juveniles

are to give technical knowledge, good facilities to make them recover from their past life for a forward bright future. Social people should be aware about juvenile's rights and give their extending hand for a good social balance. The most important thing is that parents here should be very cautious about their children, give attention with juvenile's mentality and pave the way to go ahead very easily with full excitement when they comeback from correctional centre. Emotional and mental supports are vital needs for juveniles and to implement proper administration of justice here.

CONCLUSION

Statutory Laws have defined the juvenile to protect them from any kind of haphazard situation to lead a beautiful life. Sometimes unknowingly a child may commit dangerous delinquency. The statutory laws have just helped to identify the age limit but this is not mandatorily obeyed when it is seen that the child is out of his maturity to understand the matter which is right or which is right. To protect the juveniles, good instruction of the statutory laws should be govern very strictly. And training institutions and the shelters quality must be increased with the need of time of this new era. Juveniles have right to get help from the society so that they could not be a member as a juvenile delinquent. To protect them at first, society has to have concern about them. The govt. should take necessary steps with a view to make juveniles as very important citizens of a country. For this the Conventions related with this regard should be followed strictly.

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