
PARTICIPANTS' PAPERS

JUVENILE JUSTICE IN BANGLADESH

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I. PUBLIC PARTICIPATION IN COMMUNITY CORRECTIONS

A. Introduction

Bangladesh is the most densely populated country in the world. We have about 150 million people in a 147,570 sq. kilometer area. There are over 68 million (six-crore eighty-lac) children below the age of 18 years in this country. Perhaps children are the most vital part of a nation. Today's children are tomorrow's civilians, leaders, professionals, workers, or possibly thieves, vagabonds or criminals of the highest category. Juveniles are our future citizens, and they will lead us in the various activities of our social as well as state life in the future. Bangladesh is a newly born state. We achieved sovereignty on 16 December 1971, so we have just passed 43 years of independence. As a newly born independent country we have a constitution and have many laws, acts, policies that can help us to run our lives smoothly and on the other hand it is our safeguard and as well as our rights. The Ministry of Social Welfare has announced the National Social Welfare Policy 2005 for the citizens of Bangladesh; in the policy, article 5.0 incorporated a clause where children in contact and conflict with the laws are given safeguards, that is *Correction and rehabilitation of the delinquents and offenders*. The Children Act 2013 is a unique law for the children, where the custody, care, trial and treatment of children and punishment of youthful offenders who might be in conflict with the law of the country. Probation is a lawful provision where adults and juvenile have the opportunity to correct his unlawful activities as a first offender and minor offence. In addition, there is a lawful option to receive conditional discharge where a person not proved to have been previously convicted is convicted of an offence punishable with imprisonment for not more than 2 years, having regard to age, character, antecedents, or physical or mental condition of the offender and nature of offence. The urban population of Bangladesh is rising fast and is currently in the early stages of its own urban transition. The experiences of Bangladesh's children are becoming increasingly urbanized, and it will change the negative dimensions of urbanization, especially for those children. In Bangladesh, we have not experienced any counter youth culture like Teds, Mods, Rock'n'Roll, Hippy or Punk of Britain or any young gang culture of the U.S.A. outraging moral and social concern. But the process of urbanization (which started from the 1960s), migration from village to city (which started at a large scale from the 1980s), vulnerable economic conditions and impact of globalization caused social transformation, though slow, of Bangladesh. The large joint families started to break into segments and single parent families gained prominence. Economic deprivation, unemployment, poverty, flimsy family ties, media influence and criminalized politics made a fertile ground for increased rate of juvenile delinquency. There are three correctional centres in Bangladesh for rectification and rehabilitation of juveniles: two (one is in Tongi, and other in Jessore) for male children, and one (it is in Konabari) for female children. Two categories of children are kept there. The first category constitutes uncontrollable children and those referred by parents and the second category comes to the correction centres after committing offences and being referred by courts.

B. Causes of Juvenile Delinquency

A considerable segment of people of this country are very poor. They live below the poverty line in terms of the true indicators of poverty. According to recent statistics, around 6.5 million people of Bangladesh are living below the poverty line. Due to poor economic conditions, parents cannot get their children to go to educational institutions and assist them in developing good educational or vocational careers. Parents want their children to assist them in field work instead of going to educational institutions. *Sometimes parents cannot provide their children with all basic necessities of human life, specifically food and clothing. Then the poor children set their legs out towards criminal activities.* The children do not

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know which activities are lawful and which are not. They require some work which can provide their food and clothing. Organized gangs deploy poor children in criminal activities by taking advantage of their vulnerable economic condition. Recent statistics show that a huge number of poor children (under 18 years of age) of Jessore and Khulna have been deployed in carrying Phensydil and other contraband drugs. Some poor children become members of pick pocket gangs and petty thievery. Problematic family is a crucial 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 relations between father and mother, and the presence of criminals among the members of family are the principal indications of a problematic family. Due to these problems the mental growth of a child takes an abnormal course. In slum areas, adult males and females get married several times. They have children of their first and second marriages. These children are not usually taken care of. These neglected children become notorious criminals of different organized gangs. The juveniles of a well-off family having a father residing abroad derails due to lack of the father's guidance. They get huge amounts of money from their father. Affluence and the father's absence makes the juvenile get involved with a vicious circle.

Due to poverty, loss of land by river erosion, and unemployment lots of people have been migrating from different parts of the country to Dhaka and other metropolitan cities. Large scale migration from village to city started from the 1980s. Many women of rural areas came to the city and started working in garment factories. This titanic migration had a degenerating affect on city life destroying the social equilibrium of Dhaka, Chittagong and some other metropolitan cities. The people coming from villages usually take shelter in slum areas, on the pavement and streets. They are deprived of basic necessities and basic amenities of life. Father and mother of the family go out of their abode at the very first hour of the day for earning money, leaving their children uncared for and uncontrolled. In this situation (popularly known as *tokai*), children are used by the politicians in their political activities, which include picketing and ransacking cars and shops. They are also utilized by the organized gangs in their criminal activities. Surrounding environment of slum area, smuggling zone and crime prone areas are very vulnerable for the juveniles. When residing in such areas juveniles come in contact with criminal patterns and learn criminal techniques, then they become notorious criminals. Action movies and obscene pictures have a negative impact on the mind set of the juveniles. The violence and sexuality visualized in the movies make the juvenile to go brothel and involve them with violent activities.

C. The Legal Response (National Legal Framework)

1. 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 juvenile justice. However, few articles indirectly describe the issue of child's rights, safety and protection. Article 15 reveals the fundamental responsibility of the state to ensure the right to social security, that is to say, to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans ... Article 17 says that the state shall adopt effective measures 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.

2. 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...

Section 90: A consent is not such a consent as is intended by any section of this Code, unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Section 305: If any person under 18 years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide shall be punished with death, or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Section 375: Offence of rape is committed when the women are under fourteen years of age even though she had consent (Govt., 1984).

3. The Code of Criminal Procedure 1898

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

4. The Children Act 2013

The Children Act 2013 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 which includes 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 a child, establishment and management of certified institutes and remand homes, appointment of Chief Inspector and POs, penal measures for cruelty to children. On the other hand, the government has made the Children Rules to facilitate the proper implementation of the act.

5. The Probation of Offenders Act 1964

The act contains sections regarding PO and Probation Orders. The provisions of the act are mainly to assist the first-time offenders of particular offences issuing probation orders for a certain period of time instead of imprisonment. For proper implementation of the act The Probation of Offenders Rules 1971 have been made. The act facilitates among others, the process of issuing Probation Orders under the Children Act 2013.

6. 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 on the offences against women and children. This is an important act as it includes some provisions with major punishment for offences committed against children. Among others, the offences are impairment of eyesight or hearing capacity of children by inflammable, corrosive or poisonous substances, trafficking in children, engaging children in prostitution, kidnapping of children, selling and buying of children, detaining children for ransom, rape, sexual harassment, dissection of limbs of children etc.

7. The Children Policy 2011 and the Youth Policy 2003

The National Youth Policy 2003 has been made to engage the youths in society and nation building activities. The policy also firmly aimed at making an environment congenial to abstaining youths from offensive activities. In the Children Policy 2011, determination is expressed among others, to apply the provisions of the Children Act 2013 while addressing the issue of children in conflict with law, children in contact with the law and children's rights in judicial procedure. The policy also contains the commitment of enactment of different acts, rules and guidelines to ensure the children rights.

D. The Role of the Court: Establishment of the Children's Court and its Functions

The Children Act 2013 provides that, for the purpose of the Act and for trial of offences thereunder, at least one court is to be established in every district headquarters and in every metropolitan area as the case may be. Such court shall be called "Children's Court". Pursuant to **section 16(1)**, the Department of Law and Justice in consultation with the Supreme Court is mandated to declare, by notification in the official Gazette, one or more court of Additional Sessions Judge in a district or metropolitan area, as the

case may be, as the Children's Court. If there is no Additional Sessions Judge in any district, then the District and Sessions Judge shall discharge the responsibilities of a Children's Court in addition to his own responsibilities.

1. Participation of Child in Court Proceedings

In consonance with article 12 of the Convention on the Rights of the Child (CRC), the Children Act 2013 Section 22 provides that to participate in person at all stages of the trial shall be considered as a right of the child. It is also provided that the presence of the child may be dispensed with at any stage during the trial if his presence is not necessary in his best interest, subject to his consent and the trial or proceeding shall continue in his absence. Provided that the presence of the child's parents or, in their absence, foster parent or the guardian or members of his extended family and also the Probation Officer and his lawyer shall be ensured. The child shall be informed of the steps taken during the proceedings and those to be taken. It is the duty of the lawyer engaged on behalf of the child and the Probation Officer to explain to the child in easy language any decision or order of the court and also the nature and consequence of the proceedings.

2. Arrest, Investigation, Diversion and Bail

No children below the age of 9 years may be arrested under any circumstances. If necessary to arrest, they will send to safe custody or alternative care according to the Children Act 2013. This provision is now incorporated in the Children Act 2013, which provides that notwithstanding anything contained in any other law or the Code of Criminal Procedure, if the case of any child is not dealt with by way of diversion, the court may release the child on bail with or without surety, whether or not the offence alleged is bailable or non-bailable. Instead of formal trial or any stage of trial the court shall decide on diversion.

3. Social Inquiry Report

This is another elaborated provision of the previous law relating to a report to be produced before the Court by the Probation Officer. Within 21 days of production of the child before the Children's Court the Probation Officer is mandated to submit before the court a social inquiry report in the manner prescribed by Rules and a copy of the same shall be submitted to the nearest Board and Department 33. The matters to be included in the social welfare report are detailed in section 31(2), and include a description of the child's family, social, cultural, financial, psychological, ethnic and educational background and also regarding the condition and locality in which the child lives, as well as the circumstances under which the offence took place. The enquiry report shall be deemed to be confidential.

There is a prohibition on reporting any matters relating to any case or proceeding involving a child. In any case under trial before the Children's Court where a child is involved in the case or as a witness, no photograph or description of the child shall be published in any print or electronic media or through the internet which may directly or indirectly identify the child unless it is apparent to the court that such publicity will not be harmful to the interest of the child in which case the court may permit the publication of the child's photograph, description, news or report.

E. Institutional Correction Process in Bangladesh

The offender treatment process is not so effective in Bangladesh. The juvenile correction process run through the Ministry of Social Welfare and the adult prisoner jail authority try to make them free from contaminating other heinous offenders or criminals. That means they are trying to categorize the offenders according to their behaviour, the nature of the crime and psychological condition. On the other hand, every jail authority has taken vocational training programmes for woman prisoners, who can easily participate in training like sewing, stitching, handicraft making and others kinds of vocational training for them. Every male prisoner can participate in various type of vocational training and other training activities. Our Jail authority is trying to ensure vocational programmes for every prisoner. But these types of programmes have not been available for all prisoners. Our corrections programme for the prisoners has not been introduced earlier in Bangladesh and it depends on court or administrative support for crime prevention. According to the Probation of Offenders Act, 1964 and Probation Rules 1971, first offenders and minor offences should be considered for bail at any time during trial. So it is remarkable for justice.

On the other hand, Juvenile Delinquency and correctional programme has its individual specialty in

Bangladesh. The Ministry of Social Welfare has been running three juvenile development centres for below 18 age prisoners. One is for girls and two for boys. According to the Children Act 2013, the children who are in contact and conflict with the laws have special treatment for them including arrest, detention, prosecution, correction in every stage.

After arrest they will go to the Juvenile Development Centre, not to jail. Juvenile Development Centres have various programmes for their physical, psychological, educational or intellectual and vocational knowledge development.

The three centres are:

- (i) Juvenile Development Centre, Tongi, Gazipur for boys.
- (ii) Juvenile Development Centre, Konabari, Gazipur for girls.
- (iii) Juvenile Development Centre, Jessore for boys.

In the Juvenile Development Centres there are primary schools, big playgrounds, and health check facilities, vocational training for rehabilitation and counselling facilities for juvenile delinquents. The only objective of the Juvenile Development Centre is to create a congenial atmosphere and give them all dimensions of protection, survival and development of the children who are in contact with the laws. The Government has given due attention to consider the special needs of the juvenile offenders in terms of ethics and human rights. A Juvenile Development Centre extends its every effort to eliminate the adverse effects which make children delinquent through recognized methods of correction.

After release from juvenile development centres, they go to their family/extended family or community and they lead their lives normally. This offender is treated as a responsible member of the society. We try to engage them in vocational work for their survival if they have vocational training in juvenile development centres. Sometimes it should be self-employment by their own arrangement or with the help of government officials. In our experience, juveniles are always going through our correctional process and they develop themselves. So, the institutional correctional process is going smoothly and successfully.

F. Probation Services for Social Reintegration

Probation is a type of suspended sentence, a release of the offenders without imprisonment. It is a non-institutionalized method of psycho-social treatment of the criminal defendant buttressed with legal restrictions implying careful study and supervision by a probation officer. Juvenile justice procedure has been introduced in the Children Act 2013 or Probation of Offenders Act 1964.

Under this category, correctional services are mainly provided through the Probation of Offenders Ordinance 1960, amendment as Act in 1964. The Act provides granting probation under section 05 for not less than *one* year and not more than *three* years with some conditions determined by the trial court. Under this Ordinance and Act, probation is granted to the juveniles generally to the first and minor offenders irrespective of age, character, antecedent or physical or mental condition of the offenders. Therefore, probation services ensure social correction or social reintegration arrangement for the first and minor offences of the offenders. Juvenile delinquents or offenders will be corrected by social correction in the probation system and supervised by a probation officer. Two basic duties of the probation officer are: (i) Pre-sentence investigation (ii) Correctional treatment of offenders in the community. Therefore, probation is a period of treatment, where a probationer can prove him or herself as a perfect member of the society.

In Bangladesh, the Department of Social Services appointed probation officers in 64 districts. Besides this, Social services officers 487 Upazila Social Services officer and 85 Urban Community Development Officers (UCD) including 8 of Dhaka city area have also been appointed to perform as a probation officer in their respective jurisdictions in addition to their regular duties. As a result, the probation services network seems to be very sound and rigorous in Bangladesh.

An individualized, community-based treatment programme has its own specialization that is we can use the family as an institution, Religion, educational institution, society and community. It is a natural institution which we can use for correctional programme. In order to provide necessary services to correct,

protect and safeguard the rights, interests and the welfare of the children in Bangladesh, the Department of Social Services (DSS) started implementing correctional services initially in the form of probation and after care services. Since then the Department of Social Services has been implementing correctional services particularly for the juveniles in the country. Correctional services are divided into two broad categories. These are (1) Community-based and (2) Institutional-based Correctional Services.

II. CONCLUSION

Juveniles are the future of any society. They require special care and attention in all aspects. Due to various causes of juvenile delinquency, some of the juveniles respond to social malfunctioning and other anomalies against the social norms and values. Therefore, it is required to establish more child friendly social institutions and also special attention being given to promote the juveniles.

III. REFERENCES

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Report on Probation from July 2015 to April 2016

| Division | Probation Cases (Running) | Probation Cases (April 2016) | Total Cases | Release & Discharge | Remaining Probation cases | Total Release or Discharge | Total Probation Cases | Home Visits |
|------------|---------------------------|------------------------------|-------------|---------------------|---------------------------|----------------------------|-----------------------|-------------|
| Dhaka | 48 | 01 | 49 | 37 | 4 | 37 | 43 | 52 |
| Rajshahi | 04 | 00 | 04 | 00 | 04 | 07 | 11 | 20 |
| Rangpur | 20 | 00 | 20 | 07 | 13 | 12 | 25 | 27 |
| Chittagonj | 26 | 00 | 26 | 01 | 25 | 07 | 32 | 36 |
| Khulna | 28 | 01 | 29 | 01 | 28 | 10 | 38 | 31 |
| Barishal | 40 | 05 | 45 | 03 | 42 | 84 | 126 | 18 |
| Sylhet | 54 | 04 | 58 | 17 | 41 | 23 | 64 | 11 |
| Total | 210 | 11 | 221 | 29 | 192 | 157 | 349 | 176 |

Data source: monthly report of DDS

Report on Arrest, Detention and Release of Children in April 2016

| Division | Number of Children in Jail | | | Release and Reintegration on the Supervision of District Taskforce Committee | | | Number children from Police Station, Court and Jail (March 2016) | | | |
|------------|----------------------------|----------------|-------|--|----------------|-------|--|-------|-----------|-------|
| | Under 16 years | 16 to 18 years | Total | Release | Re-integration | Total | Vagrants Home | J D C | Safe home | Total |
| Dhaka | 08 | 01 | 09 | 04 | 01 | 05 | | | | |
| Rajshahi | 15 | 00 | 15 | 31 | 00 | 31 | | | | |
| Rangpur | 00 | 00 | 00 | 02 | 00 | 02 | | | | |
| Chittagonj | 02 | 02 | 04 | 03 | 00 | 03 | | | | |
| Khulna | 00 | 00 | 00 | 10 | 08 | 18 | | | | |
| Barishal | 00 | 00 | 00 | 08 | 00 | 08 | | | | |
| Sylhet | 00 | 00 | 00 | 03 | 06 | 09 | | | | |
| Total | 25 | 03 | 28 | 61 | 15 | 76 | | | | |

Data source: monthly report of DDS

Conclusion: The situation of frustrated juveniles and their anti-social activities have already aggravated and increased alarmingly in the country. This has called the immediate attention of sociologists, psychologists, social workers and the correctional personnel and public leaders as well. The Government of Bangladesh has also put due emphasis on the issue and has prioritized to take effective measures to streamline the Juvenile Justice Administration in the country.