

## Law and Our Rights

## Justice for Children

## Keeping the Noose a Little Loose

by Abul Hasnat Monjurul Kabir and Zakia Afrin

*The event was significant because this was the first time the issue of juvenile justice was addressed in a national forum. With the increase of juvenile crime throughout the world and also in Bangladesh, the topic has caught global attention and many countries have started reviewing their legal systems to plan and introduce innovations which focus on the welfare of the child and takes into consideration the best interest of the child as called for by the UN Convention of the Rights of the Child (CRC). The Convention was ratified by Bangladesh on August 3, 1990 and since its coming into force from the following year on September 2, it has imposed a treaty obligation on Bangladesh to abide by the principles and do the needful to maintain its goals nationally and internationally.*

lighted in her paper the practical difficulties in implementing the Children Act, 1974. Extracts from her paper, *Juvenile Justice, Rights of the Child, the Law and Reality* are presented below:

#### Legislation Concerning Juvenile Justice (THE LAWS): Perspective Bangladesh

Bangladesh inherited a rudimentary form of juvenile justice from the colonial laws, namely the Code of Criminal Procedure (Sec. 29B) which provided for trial of children in juvenile courts. Concepts of reformation were reflected by the Reformatory Schools Act, 1897. Separation of children from adults in jails was provided for in Bengal Jail Code and Prisons Act of 1894. The Bengal Children's Act 1922 provided for separate trial of children and adults.

All these provisions were reflected in the present legislation relating to juvenile justice, namely, Children Act, 1974. This legislation was enacted to consolidate and amend the law relating to the custody, protection and treatment of children and trial and punishment of youthful offenders. This is to be read together with the Children Rules, 1976. This law covers broadly provisions and protective measures both for children in conflict with the law and children under social risks.

The Children Act constitutes both procedural and substantive components; the procedural component lays down the special procedures for juvenile courts which is also complemented by the general criminal procedural law i.e., the Code of Criminal Procedure 1898. This component lays down the procedure for committing children in social risks to avail state facilities for their care and protection.

The offences for which a child may be tried are embodied in other substantive penal laws of the country, namely, The Pe-

nal Code, The Special Powers Act, The Arms Act, The Bengal Vagrancy Act, The Explosive Substance Act, etc.

The substantive part (Part VI) of the Children Act describes offences done to children and prescribes penalties for them. The prosecution of these offences, however, are not administered in juvenile courts and the special procedures are not applicable to these trials. Children, if present in the trial are present as witnesses.

Victimized children, however, may be brought to the Juvenile Court if they fall into the categories mentioned in Section 32 of the Act (destitute, neglected, in moral danger etc.). There is no substantive law on uncontrollable behaviour (delinquency law or truancy law).

Juvenile Courts, one or more, may be established by notification in the official gazette, for any local area. There are at present two such courts in Tongi and in Jessore presided by a Magistrate of the First Class. The Jessore Court has not yet started functioning. Where there are no permanent courts, the High Court Division, a Court of Sessions including an Asstt. Sessions Judge, and a Magistrate of the 1st Class can exercise power of a Juvenile Court under the Act, whether trying any case originally on appeal or in revision.

Children may not be tried together with an adult. The case of a juvenile offender to be separated and transferred to the Juvenile Court or the court empowered to exercise the powers of a Juvenile Court. Sitings etc. of Juvenile Courts are to be different from sittings, days and times of ordinary courts. The procedure is to be informal, and trial to be private (camera trial). Words like conviction, sentencing etc. are not to be used. No reports can be made about the proceedings with photograph disclosing directly or indirectly the identity of the child. The child will not be sub-

ject to any disqualification attached to conviction.

Victimized children may also be sent to juvenile courts and the provisions of camera trial also will apply to them. Children awaiting trials may be put in remand homes specially constructed for them and after hearing, as the case may be, to approved homes, certified institutions established or licensed by the government. The purposes of these institutions would be to care and correct the inmates as the situation demands.

No child is to be sentenced to death, transportation or imprisonment (jail) unless the court is of the opinion that the crime committed is of so serious nature or the child is so unruly or depraved that he cannot be committed to a certified institution. A child so imprisoned will not be allowed to associate with adult prisoners. In each case, the age and character of child and circumstances in which child is living, reports of probation officer and any matter which needs to be taken into consideration in the interest of the child is to be taken into regard in passing any order.

A court may discharge a child after due admonition, release on probation of good conduct or commit a child to the care of fit person executing a bond with or without sureties, a parent may also be fined.

#### The Existing Situation in Juvenile Justice (The Reality)

At present the juvenile justice system needs the coordination of four Ministries which provide the core services. The Home Ministry has the charge of the police force, the jail administration, the Cabinet and Establishment Ministry in charge of the lower criminal justice system or the Magistracy. The other levels of judiciary both criminal and civil are in the responsibility of the Ministry of Law, Justice and Parliamentary Affairs. The juvenile court, the remand home

and the correctional centre, the certified homes and approved homes, the service of probation are under the Social Welfare Ministry. A First Class Magistrate (Special Magistrate) in the Vagrants Court in Mirpur constituted under the Vagrancy Act 1943 is also under this Ministry although the Magistrate is appointed by the Cabinet and Establishment Ministry.

#### The Paradox

At any given time, the average percentage of police cases found in Tongi is between 35 per cent and 40 per cent. In January 1994, 170 seats were filled with 123 guardian cases and 47 police cases (Rohfrith & Sattar, 1994). During this time the Retired Police Welfare Association through its Assistance Plan for Juvenile Delinquents project were involved in assisting apprehended children to the Tongi facilities from various thanas and jails. However, in 1996, a study carried out by Ain O Shalish Kendra (Hasan, 1996) revealed that the Tongi facilities had 190 places filled with only 39 police referred cases and 151 guardian cases.

It would be unrealistic to assume that the numbers of cases in Tongi reflect a downward trend in criminality in children. Why then is the number of police referred cases so disproportionate? A realistic assumption perhaps would be that less and less cases are tried as children's cases.

The assumption may be supported by two reported cases: Md Nasir Ali vs State, 42 DLR 1990, 89 in which the trial of a child convicted of murdering his father was vitiated for want of jurisdiction due to not being held in accordance with the Children's Act. Until the disposal of the appeal, Nasir had spent 12 years in jail. The other case is the celebrated State vs DC Sathkha, 45 DLR 1993 where the High Court suo moti moved to release Nazrul Islam, detained for 12 years in jail for various irregularities related to



12 cases against him. Nazrul was only 11 when he went to jail. The cases were declared void from the very beginning for not being held according to law with regard to the trial of juveniles as prescribed in the Children's Act 1974.

Many of the children staying in Tongi were not tried or convicted by Juvenile Courts (Rohfrith & Sattar). Applying the ratio decidendi of the above two cases, all their trials will be vitiated if appealed to the High Court. By this time they will already have spent several years in jail and in the Correctional Home. The reluctance of all enforcing agencies to apply this law seriously needs to be probed.

Although the Convention does not recognize the right of an accused child to be tried by a juvenile court, it places emphasis on the child's right to be tried under special procedures.

#### Points to Ponder

Ms Sattar's paper concluded with the causes of non-implementation of the laws in much details which put emphasis on improving not only the specialized trainings for professionals in this area, but also the general attitudes of the people, who regard children as instruments for achieving their own selfish ends. Concentration of the government, she suggested, should not be on reformation but prevention of children falling into the hands of exploitative people and situations. The present reformatory facilities need to be reevaluated and pragmatic need assessment made before planning expensive constructions or amending existing legislation. She also cautioned the use of

various laws to the detriment of the rights of the children, namely, the Vagrants Act 1943, Section 54 of the Code of Criminal Procedure and the Special Powers Act 1974 and Sec 290 of the Penal Code.

Mr Shahidullah Khan, Special Superintendent of Police (CID), Dhaka also admitted that the police were not well-informed about the provisions of the Children Act which is taught with very little importance as a 'minor' act. He mentioned that the coordination with the probation officer is very difficult as there is only one in each district and he too often on deputation to other responsibilities. He opined that creating a separate Bureau for Juvenile Justice with a complete group of assisting personnel with related agencies may solve the problem.

Mr Liaquat Ali Khan, IG (Prison) in Charge admitted that the facilities for children in jail are inadequate. Only 300 seats are reserved for children throughout the country. Convicted children receive state facilities and are separated at night from adult prisoners, but children who are under trial are not entitled to such facilities and hence are subjected to a difficult situation. There are vocational training programmes, exercise and education programmes inside the jails for children, he mentioned. The new Kasimpur Jail, he assured, would have better facilities for women and girl children. However, he did not clarify if children kept in safe custody along with jail inmates would have separate and better provisions in the future. He admitted that

the jail staff do not have any orientation on the handling and treatment of young offenders.

On the second day Mr Mirza Assaduzzaman Al-Farooq, former Law Secretary, explained the law making process which reconfirmed that despite the creation of the Law Commission, a process of public participation in the pre-law making stage is yet to be evolved. Dr Mizanur Rahman, Associate Professor, Department of Law, D.U. spoke on the different processes of juvenile justice and admitted that the subject has been neglected in all professional curricula including that of the Dhaka University law curricula. The second session was addressed by Mr Dan O'Donnell, who spoke on the recent reforms on juvenile justice in Vietnam and the Philippines. Mr Manabendra Mandal, Executive Director of Socio-Legal Aid Research & Training shared experiences on the administration of juvenile justice in India with special references to the Juvenile Justice Act 1986. The provision of a non-judicial board for hearing issues of non-criminal cases was positively appreciated. Ms Tapashti Bandyopadhyay from Vivekananda Education Society, India shared experiences on police sensitization on child rights issues with an enthralling demonstration. The hardest of the jobs, it appeared, may be tackled with the right approach.

The workshop concluded with 60 recommendations, many of which pertinent to the revision of the law and its application. For the year 1997, the Law Ministry committed itself to a humble and non-ambitious beginning, firstly to review, on the basis of the recommendations of the Workshop, three very important laws: The Children Act, The Bengal Vagrancy Act, and the Birth and Death Registration Act. Besides that a thorough need assessment project is to be undertaken to procure exact data and details of the condition of detained children for further interventions. A separate facility for girls in custody may also be in the pipeline. The most important plan is to develop a core training curricula to be utilized for all professional training programmes with modification in the near future. Immediately a directory in Bangladesh of existing facilities for shelter provided by government and non-government agencies will be commissioned and supplied to all police stations, courts and relevant offices. A lot will remain to be done to provide justice to children but it is a good start.

Abul Hasnat Monjurul Kabir (Kallol), a researcher, is a student of Law, University of Dhaka. He is the Joint Secretary of Law Review.

Zakia Afrin, a freelance writer is a student of Law, University of Dhaka. She is an Assistant Secretary of Law Review.

## The Daily Star Entertainment Guide

## Monday 6th January

(All programmes are in local time. There may be changes in the programmes.)

## BTV

3:00 Opening announcement  
Al-Quran Programme summary  
3:10 News in Bangla 3:15 Patriotic song 3:20 Recitation from the Bible 3:25 Cartoon Film: The Lone Ranger 3:50 Rerelease of selected programmes  
4:45 Educational programme  
5:00 News in Bangla 5:25 Dolan Champa 5:50 Sports programme 6:30 Anu Paramanu  
6:50 Open University 7:00 The News 7:25 Band show 8:00 News in Bangla 8:45 Package Drama 10:00 News in English 10:30 Janamat 10:50 Comedy series: Seemfield 11:30 News in Bangla 11:35 Tuesday's programme 11:40 Close down

## BBC

7:00 BBC Newsroom inc. World Business Report/Asia Today/24 Hours 10:00 BBC World Headlines 10:05 The Money Programme 11:00 BBC Newsday 2:00 BBC World News 2:15 The Money Programme 3:00

BBC World News 3:30 Time Out: Top Gear 4:00 BBC News Desk 6:00 BBC World Headlines 6:05 World Focus: Assignment 7:00 BBC World News 7:15 World Business Report 7:30 BBC Newshour Asia & Pacific 8:30 Time Out: Film '96 9:00 BBC World News 9:15 World Focus: The Money Programme 10:00 BBC World News 10:00 Time Out: The Clothes Show 11:00 BBC World News 11:30 Time Out: Tomorrow's World 12:00 The World Today 2:00 BBC World Headlines 2:05 World Focus: The Money Programme 2:45 Building Sights 3:00 BBC World News 3:30 Time Out: Holiday 4:00 BBC World Report inc. World Business Report/24 Hours

## CHANNEL V

6:00am Frame by Frame 7:00 Rewind VJ Sophia 8:00 Frame by Frame 9:00 Jump Start VJ Alessandria 10:00 Frame by Frame 11:00 The Vibe VJ Luke 12:00 Rewind VJ Sophia 1:00 Frame by Frame 2:30 First Day First Show 3:00 Sansui Mangla Hai 4:00 Planet



Chicago Hope on Star Plus tonight at 10:30 pm

Ruby 4:30 Big Bang VJ Alessandria 5:30 Big Bang 6:00 Rewind VJ Sophia 7:00 By Demand VJ Trey 8:00 Planet Ruby 9:00 BPL Oye! 10:00 First Day First Show 10:30 Launch Pad VJ Samira 11:00 The Ride 11:30 Over The Edge 12:00 Big Bang VJ Alessandria 1:00 Haysah 2:00 Frame by Frame 3:30 Big Bang VJ Alessandria 4:30 Asian top 20 VJ Trey

Chicago Hope 11:30 The Bold & The Beautiful 12:00 Santa Barbara 1:00 The X Files 2:00 Star Trek 3:00 Quincy 4:00 The Oprah Winfrey Show 5:00 Barnaby Jones

## STAR SPORTS

6:00am Asia Sport Show 6:30 Calvert Centenary Expedition 7:30 India Tour Of South Africa India v S Africa 2nd Test Match Day 4 H/L 8:30 Singapore Trishaw Grand Prix 9:30 1996 Omega Tour Hugo Boss Four-somes H/Ls 10:30 Supercross From Geneva 11:30 NBA Game Of The Week New York @ Atlanta 1:30 India Tour Of South Africa India v S Africa 2nd Test Match Day 5 From Cape Town, South Africa 9:30 Trans World Sport 10:30 TBC 11:00 HK To Beijing Rally 12:00 US PGA Tour Senior PGA Lexus Challenge Fm USA 1:00 India Tour Of South Africa India v S Africa 2nd Test Match Day 5 H/L 2:30 Championship Boxing 4:00 Thai Kickboxing Highlights 5:00 Water-sports World.

## STAR PLUS

6:00am Home and Away 6:30 The Sullivan 7:00 Aerobics Oz Style 7:30 Star News 8:00 Sky News 8:30 Star News 9:00 Sky News 9:30 Aerobics Oz Style 10:00 Nathalie Dupree Cooks 10:30 Videofashion 11:00 Kate & Allie 11:30 The Oprah Winfrey Show 12:30 Dynasty 1:30 Santa Barbara 2:30 The Bold & The Beautiful 3:00 Lifetime 3:30 Bunyard 4:00 Home and Away 4:30 Lost in Space 5:30 Adventures of Black Beauty 6:00 Kate & Allie 6:30 Nathalie Dupree Cooks 7:00 The Armut India Show 7:30 Star News (Hindi) 8:00 Small Wonder 8:30 The Bold and the Beautiful 9:00 Imthian 9:30 Star News 10:00 Yes Minister 10:30

## STAR MOVIES

7:30 Comedy: Making Mr Right 15 (Arabic Subtitles) 9:30 Comedy: Heavenly Pursuits 15 (Arabic Subtitles) 11:30 Classic A Matter Of Life And Death PG (Hindi Subtitles) 1:30 Comedy: Honeymoon In Vegas 15 (Hindi Subtitles) 3:30 Classic: The Malta Story 12 (Hindi Subtitles) 5:30 Family: The Swans G (Hindi Subtitles) 6:30 Family: Hans And The Silver Skates PG (Hindi Subtitles) 7:30 Film Fiction: Gulliver's Travels G 9:00 Deccan Dream 9:30 This Week That Year 10:00 Comedy: Just One Of The Girls 15 (Hindi Subtitles) 11:30 A Match Made In Hell: The Last Seduction 18 (Arabic Subtitles) 1:30 Future Shock: A Boy And His Dog 15 (Arabic Subtitles) 3:30 After Dark: Delta Heat 18 (Arabic Subtitles) 5:30 Adventure: Final Judgement 15 (Arabic Subtitles)

## ZEE TV

5:30 Surtal 6:00 News 6:30 Jagran 7:00 ZED 8:30 Dream Merchants 9:00 Hum Zameen 9:30 Gaane Anjana 10:00 Sailaab 10:30 Positive Health Show 11:00 Daak Ghar Apna Ghar 11:30 Nirma Aahav/Teer Kamaan 12:00 Suno Suno Tring Tring 12:30 Celeste 1:00 ZED 1:30 Asian Sky Show 2:00 Hum Paanch 2:30 Tara 3:00 Raahat 3:30 Mere Ghar Ana Zindagi 4:00 Pakeezah 4:30 Lujat Khana Khazana 5:00 ZED 5:30 Akbar Birbal 6:00 Cartoon 6:30 Love Stories 7:00 ZED 7:30 Raahat 8:00 V3/Zara Si Jhalak 8:30 TVS Sa Re Ga Ma Jhalak 9:30 Campus 10:00 Parivartan 10:30 News 11:00 Daraar 11:30 Close Up Antakshari 12:00 Parivartan 12:30 Andaz 1:00 9 Malabar Hill 1:30 Raahat 2:00 Commander 4:00 Daigh 10:35 English Film: Goolf Troop 10:55 Milli Naghma 11:00 Khabrain 11:10 The

## PTV

8:00am Tilawat Aur Tarjuma-Khabrain 8:45 Abb Pata Challa 9:05 Khat Farmaish 9:20 Sargam Sargam 9:45 Ilaai-Bill-Ghiza Pakistan 10:05 Shab Daigh 10:35 English Film: Goolf Troop 10:55 Milli Naghma 11:00 Khabrain 11:10 The

Saint (Roger Moor) 12:00 Shama (Drama Serial) 12:55pm Quraan-e-Hakem 1:02 Bismillah 1:15 Anqaar (Drama Serial) 2:00 Shehrad (Drama Serial) 2:50 The Face Of Cultural 3:15 Roushni 3:30 Paimaney 4:00 Ghardani 4:35 Biology for 10th/ Geography/ Chemistry 5:55 Inter College Quiz 6:25 Aliou Courses 7:00 Taruman (Drama Serial) 7:45 English News 8:00 Potluck 8:20 Ali Baba 8:45 Tum Se Kahani (The Serial) 9:00 Break For Headline News 10:00 Khabrain & Commercial News 11:15 Classics Drama Serial: Jangile 12:20 Special: TBA 1:00 Khas Khas Khabrain/ Close down

## DD 7

10:30 Jamadin 10:35 Educ Prog 11:00 Nazrulgeet 11:15 Folk Songs 12:30 Monorama Cabin 1:00 Janani 1:30 Trishna 2:30 Ali Chandeel Ki Anandey 3:00 Bahari (Serial) 3:30 Bangla Cinemar Romantic Juti 5:05 Nepal Programme 5:30 News 5:35 Dosh Bidesher Khela 6:00 Palli Katha 6:30 Batayan (Drama Serial) 6:55 Bhangran (Serial) 7:30 Bangla Sambad 7:55 Dinindan 8:00 Gan Sudhu Gan 9:00 Janani 9:30 Monorama Cabin 10:00 Bengali Movie Club Film Show: 1:00 Closed

## SONY ET

8:30am Yaadon Ki Baarat 9:00 The Three Stooges 9:30 Dennis The Menace 10:00 I Dream Of Jeannie 10:30 Surf-Wheel Of Fortune (Game Show) 11:00 Faasle (Serial) 11:30 Civil Lines (Serial) 12:00 Jadugar 12:30 Cover Story-Hostel (Serial) 1:00 Jane Kaha Mera Jigar Gaya Ji 1:30 The Young And The Restless (Eng. Serial) 2:30 Cine Maitree-Hindi Feature Film 5:30 The Three Stooges 6:00 Dennis The Menace 6:30 Yaadon Ki Baarat 7:00 Premier 7:30 I Dream Of Jeannie 8:00 Surf-Wheel Of Fortune 8:30 5 Star Xpressit 9:00 Jevan Mirtu

(Serial) 9:30 Yeh Sadi Nahi Ho Sakti (Serial) 10:00 Chamaktar (Drama Serial) 10:30 Ghaav 11:00 The Young And The Restless 12:30 O'Maria (Serial) 1:00 Pehli Mulakat 1:30 Surf-Wheel Of Fortune 2:00 Premier

## EL TV

12:30 Dance Dance 1:30 Ched Chad 2:30 Hanste Hanste 3:30 Aaya Sawan 4:30 Rekha Special 5:30 Dance Dance 6:30 Ched Chad 7:30 Hanste Hanste 8:30 Aaya Sawan 9:30 Rekha Special 10:30 Intezar 11:00 Teni Bhi Chup Meri Bhi Chup 11:30 Vipul Ka Amar Prem 12:00

Manoranjan 12:30 Song Yatra 1:00 Special: Naam Gum Jayega 1:30 Rishley 2:00 Shammii Kapoor 3:00 Shatranj Balwant Bhawan 4:30 Boroplus The real Court Down 5:00 Aalash 5:30 Dard-E-Il 6:30 Its My Choice 7:00 Tarannum 7:30 Nukkad 8:00 Navras 8:20 Kinetic Pride Haseen Pal 8:30 Sorry Mery Lory 10:00 Zandu Balm Dance Mania 10:30 Karz 11:00 Snowcem Kal Bhi Aai Bhi 11:30 Stand By 11:40 Yeh Duniya Gazab Ki 12:00 Hollywood Se Bollywood 12:30 Jeena Isi Ka Naam Hai 1:00 Kinetic Pride Haseen Pal 1:15 Filmi Chait

## Garfield®



## by Jim Davis



## IAN FLEMING'S



## James Bond



## DRAWN BY JOHN McLUSKY



The Oprah Winfrey Show on Star Plus today at 11:30 am