

LAW REFORM



Need for comprehensive legal reform to juvenile justice system

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JUVENILE delinquency is a serious issue of concern in Bangladesh as in many countries in the world. But the juvenile justice system in Bangladesh has not yet been developed. There was hardly any focus on remarkable judicial attention for juveniles before 1990. Though the Children Act, 1974 and the Children Rules, 1976 are considered as the basic law for juvenile justice, they are not comprehensive. From 1990, the Government has incorporated the rules of the Convention on the Rights of the Child (CRC), 1989 in various national policies, but the proper implementation has not yet been found. Positive legislation requiring fulfillment of physical, moral and intellectual development of children are absent in Bangladesh. After 41 years of liberation of Bangladesh, the law has not substantially changed to protect juveniles and prevent delinquency.

Due to insufficiency of juvenile courts in every division in Bangladesh most of the time juveniles are treated under the ordinary courts along with adult criminals. As a result, children are sent to jail instead of correctional institutions. From 2003, the High Court Division of the Supreme Court of Bangladesh issued a number of Suo Moto Orders with various directions to implement the provisions of the Children Act, 1974. To implement the Suo motu Order, National Task Force (NTF) were constituted at district and upazilla levels to study the problems of juveniles comprehensively but their recommendations remain generally unimplemented. The state of the juvenile justice system suffers enormously and does not conform to international standards of juvenile justice. There is no mechanism in the legal system of Bangladesh to incorporate directly the principles of international conventions and rules at national levels. Unfortunately, separation of judiciary in 2007 has not significantly changed the

realm of juvenile justice system in Bangladesh. Child-friendly justice system is mostly ignored. Consequently, juveniles are deprived of their right to return to normal life.

On Legal Framework

Since independence protections are ensured for children by the Constitution of Bangladesh. In particular, Article 27, 28 and 31 of the Constitution lays down the general principle regarding the protection of children and others from all forms of discrimination. Article 27 of the Constitution of Bangladesh declares that all citizens are equal before law and are entitled to equal protection of law. So, children are no exception of the constitutional guarantee. Article 28 of the Constitution provides that (i) the state shall not discriminate against any citizen only on grounds of religion, race, caste, sex or place of birth, (ii) women shall have equal rights with men in all spheres of the state and public life, and (iii) no citizen shall only on grounds of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort or admission to any educational institution. Article 31 also guarantees everyone the right to life, liberty and freedom from arbitrary detention.

The Children Act, 1974 and the Children Rules, 1976 contain the seeds of the juvenile justice system in Bangladesh. But till 1990, the Children Act, 1974 has not been fully implemented. Moreover, it is very important to remember that this Act has been passed 38 years ago. The major problem of the Children Act is that it does not prescribe a full-proof method of age determination, i.e., who is going to ascertain/identify the age of the child. The definition of child as offered by the Act is not consistent with the Convention on the Rights of the Child (CRC), 1989. According to the Act, age limit of



children is fixed in 16 years and CRC prescribed below 18 years. Moreover, the Children Act, 1974 does not clarify whether the juvenile court can try matters involving the Special Powers Act, 1974, the Anti Terrorism Act, 1992, the Arms Act, 1878, the Explosive Substances Act, 1908, the Nari O Shishu Nirjaton Doman Ain, 2000 (Women and Children Repression Prevention Act, 2000). Therefore, children committing offences under the above Acts are tried by the ordinary court. The ordinary courts can try child offender under these laws and has set different punishment and trial procedures without keeping in conformity with the Children Act, 1974. The Act has no prescribed definition of torture, cruel, degrading or inhuman punishment or treatment and fails to provide sanctions against those types of treatments while in institutional custody or care. The Act does not set time limits for the privilege of juvenile matter at different stages (remand, inquiry, investigation, framing of charge sheet, providing

bail, delivery of judgment, removal to certified home etc.) so as to ensure prompt delivery of justice. Although the Act makes special provisions for uncontrollable children, the mechanism of assessment of uncontrollable behaviour is absent. The Government may at any time, order the discharge of delinquent children from a correctional institution. But the meaning of the word 'any time' is not clear. There is also no specific procedure for releasing children from correctional institutions.

The Children Rules, 1976 are also restricted for the inmates of correctional institutions and thus fall far well short of international standards. Corporal punishment is officially sanctioned under the Children Rules, which permit 'canning not exceeding ten strips' as a punishment for violating anyone of the 30 stipulated rules of conduct. It clearly contradicts with the national and international laws.

Apart from the Act and Rules, other provisions of the Special Powers Act, 1974, the Arms Act, 1887, the Nari O Shishu Nirjaton

Doman Ain, 2000 (Women and Children Repression Prevention Act, 2000) etc. were passed which empowered the police to arrest delinquent on suspicion of anti-state activities as well as take measures to stop heinous offences against women and children. Similar to other penal laws six Metropolitan Police Ordinances such as the Dhaka Metropolitan Police Ordinance, 1976, the Chittagong Metropolitan Police Ordinance, 1978, the Khulna Metropolitan Police Ordinance, 1985, the Rajshahi Metropolitan Police Ordinance, 1992, the Sylhet Metropolitan Police Ordinance, 2006, and the Barisal Metropolitan Police Ordinance, 2006 for seven divisions prohibit juvenile offences. These Ordinances provide punishments for offences committed by the juvenile delinquents such as eve teasing, suspicious circumstances between sunset and sunrise etc. empowered the police officers to arrest without warrant.

However, these penal laws do not lead the best interest of the juveniles in a uniform way. Most of these laws on juveniles are derived from colonial period and a few passed after the independence of Bangladesh. Age of juveniles in different laws is a serious problem in Bangladesh. Different legislations provide different age limits of juveniles. Most of the laws related to children allow punishment of juvenile delinquents and non child-friendly. These laws are inconsistent with international laws and the Convention on the Rights of the Child (CRC), 1989. CRC clearly forbids torture, capital punishment and life imprisonment without the possibility of release for all persons below 18 years. Thus, Bangladesh still faces different drawbacks to ensure the rights of the juveniles due to lack of effective laws and its appropriate uses. (To be continued)

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GOVERNANCE UPDATE



Why Bangladesh has so far failed to establish an effective local government system?

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LOCAL government has long historical lineage in Bangladesh. To upholding the democratic spirit and practices and for ensure governance it is essential that local government system be strengthened as mandated through our Constitution. There are 2 articles in the Constitution of Bangladesh about Local Government. They are 59 and 60. Article 59 emphasized about necessity of local government and article 60 is about powers of local government bodies (Tax impose etc.). The articles are given below:

59. (1) Local government in every administrative unit of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law.

60. For the purpose of giving full effect to the provisions of article 59 Parliament shall, by law, confer powers on the local government bodies referred to in that article, including power to impose taxes for local purposes, to prepare their budgets and to maintain funds.

Local government issues also found its place in Article 9 and 10 of the Constitution. Article 9 of the previous constitution highlighted "Local body composed of elected representative... Special emphasis shall be given to peasants, workers and women" Article 11 emphasis on "Effective participation by the people through their elected representatives in administration at all levels shall be ensured".

Bangladesh has so far failed to establish an effective local government system for some common / major reasons. Here, I would like to share my views in brief:

Political: Political parties in our country never want empowerment of local government. They want to keep control on local government system. If we recall or memories we can see General Secretaries of ruling parties since 1991 have been conquering the Minister of the Ministry of Local Government (LGRD). Mr. Abdus Salam



Talukder (BNP), Mr. Zillur Rahman (Awami League), Mr. Abdul Mannan Bhuiyan (BNP) and Syed Ashraf Islam (Awami League) and certainly we can say next Minister of the LGRD Ministry will be the General Secretary either from BNP or Awami League if they will be in power. **Triangular conflict:** Triangular tension or conflicts among local MP, Upazila Parishad Chairman and UNO is a barrier for a successful local government system. The conflict between MPs and Upazila Chairman are mainly in respect of exercise of authority in the Upazila administration. It was aggravated as many media reports indicate. During formative phase, Mps were not inside the Upazila parishad. Now, under the relevant law, they have been made adviser. Similar provision has been kept in Zila parishad law. MPs have been designated as advisers to the parishads. They have thus

the legal rights to advise the parishads in respect of matters relating to the administration of parishads. Ideally it is left to the parishads to take their own decisions. In reality, this may not always be the case. If MP's advice is not accepted, conflicts arise. **Overlap:** There are different tiers in local government i.e. Zila Parishad, Upazila Parishad, Union Parishad, Pourashava etc. These tiers of local government create overlapping on different issues and there is lack of coordination too. There appears to be some overlapping of responsibilities between Union Parishad, Upazila and Pousrashava as well as Zilla Parishads. Necessity of number of tiers of Local Government is questioned. **Lack of knowledge:** There are lacks of knowledge about functions of concerned local government among public representatives i.e. Chairmen, Members. They do not

know properly about their roles and responsibilities, mandatory or optional functions of concerned local government institutions. Overwhelming majority of the chairmen and members of LG units lack knowledge and understanding of the operational procedures and functions of these bodies.

Dependency on central government: Our local government totally dependent on central government in terms of financing, decision etc. Local government cannot initiate any development project for concerned locality. Govt. allows only 3.9% of ADP for local government. There are mutual mistrust between Central and Local government. People become Centre oriented/ NGO dependent for service deliveries. Widen the scope central control / bureaucratization of development and governance also reason. It is surprising that, UPs locally cannot even buy whistles for guards as per their own choice! Whistles supply from center!

Insufficient fund: Income from taxes, rates and fees generally yield very little revenue. There are intention for not to increase tax if they will loss popularity! They have tendency that, if they will increase tax then people will not elect them in future. Therefore, there are failures of revenue collection for development activities etc. For example, Dhaka City Corporation did not increase any holding tax since about last 15/16 years!

Too many functions: There are mandatory and optional functions for all tiers of local government institutions. For example; for Zila Parishad there are 12 mandatory functions and 68 optional functions (Zila Parishad Ain 2000), in Union Parishad 10 compulsory functions and 38 optional functions. It is huge task considering the managerial capacity and resource potential. All the functions are not either realistic or duplication with others e.g. park maintenance, tree plantation in road side etc.

No Election: There was any election in Zila

Parishad level. Recently govt. appointed administrators for Zila Parishads based on political interest. This is not good for democracy as well as for local government.

Lack of human resources: There are lack of sufficient human resources. There are only 24 person designated for Union Parishad. They are : 1 Chairman, 12 members (including 3 female), 1 Secretary, 1 village police / dofadar and 9 Choukidar (guard) i.e. total 24 in numbers! These are very insufficient and their remuneration also very poor. There are also lacking of efficient and trained human resources. Elected female representatives are neglected in many occasions too.

Lack of Accountability and Transparency: There are lack of consultative planning processes, open budget hearings and meetings, and disclosure of LG information. Due to lack of awareness among general people there is no social audit system for measuring performance.

Absence of coordination with Govt. departments: Most of the cases there are no coordination with the representatives of different government departments like agriculture, health, education etc. The officials are not accountable to the local elected representatives along with their concerned departments. For instance, the Block Supervisors of the Agriculture Extension Department are reportable and accountable to the Upazilla Agriculture Officer but not to the Chairman of the respective Union Parishad.

A local government system as well as empowerment of local bodies is a must for ensuring good governance. In this regard the local government system should be strengthened up to the lower tier and the administration should be decentralized thoroughly. It is noted that, 4 'F' is important for strengthen the local government. These Fs are Functions, Freedom, Finances and Functionaries.

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