

Promoting Child Rights

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Child Act 2013: A milestone for protection of vulnerable children

Unlawful prosecution continues to haunt child offenders

JAMIL MAHMUD
THE Child Bill 2013, passed on June 16, 2013 by the National Parliament, was published through a gazette notification on June 20.
The new act is harmonised with the United Nations Convention on the Rights of the Child (CRC) and has referred to the CRC in the preamble and replaced the Child Act 1974.
The Child Act 2013 is drafted by the Ministry of Social Welfare and consists of 11 chapters and 100 sections.
The act recognises an individual [aged 18 or below] as a child, providing a universal and internationally recognised definition of a child.
"The passing of the act is a great milestone for children in Bangladesh," UNICEF Bangladesh Representative Pascal Villeneuve said in a statement.
The act has a provision for child victims and witnesses cementing legal instruments for their protection, including compensation for victims.
UNICEF formulated a framework of child-focused budget in partnership with the government and Policy Research Institute of Bangladesh, a think tank.



Finance Minister AMA Muhiib at an event recently said the government would consider a child-focused budget from next fiscal year to ensure equitable rights of children and spur inclusive growth.
For children in conflict with the law, the act reinforces the importance of diversion (alternative procedure and care) in the juvenile justice system. There is provision for separate juvenile courts.
It also includes the provision for Child Help Desks in the police stations and a designated skilled child-friendly officer.
Welcoming the act, Inspector General of Police Hassan Mahmood Khandker told The Daily Star the act would enhance police department's responsibilities to children.
He said the police department

have been mentioned in the act for abusing and involving children in illegal activities.
The act has given preference on family based alternatives for children without parental care and other vulnerable children.
Establishment of Child Welfare Board is a key in building the system from the national to the district and community level that has been provided in the act.
Child Act 2013 at a glance
• The new act abolishes the early Child Act 1974.
• The Child Act 2013 features 11

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cent of total children in the country are involved in different hazardous works.
"The confirmation that everyone under the age of 18 years is legally a child must stimulate action to ensure that existing laws on child labour and child marriage are strictly adhered to," said Save the Children Country Director Michael McGrath.
Different sentences including imprisonment and monetary penalty chapters and 100 sections.
• The act recognises some organisations and members and mentions about their responsibilities.
• **Probation Officer:** According to the act, the government will appoint one or more Probation Officer/s in the district, upazila and metropolitan areas.
• **Child Welfare Board:** A National Child Welfare Board will be formed. The minister of the Ministry of Social

ZYMA ISLAM
IN 1999, 15-year-old Roushan Mondal was handed down a death sentence for allegedly raping and strangling an eight year old girl.
In 2008, eight year old Arifa was locked up in Khulna district jail on the charge of having 20 phensidyl bottles strapped to her body which she was attempting to ferry from Sathira to Khulna.
In 2010, two boys and a girl aged 14, nine and seven respectively, were caught in Bhairab having three kilograms of cannabis taped to their bodies, and while the boys were kept in the juvenile ward, the girl had been locked up alongside adults.
In August 2010, a memo released by the prison directorate stated that 145 children were enclosed within 67 jails in the country – a clear defiance of the Children Act of 1974, which states that children cannot be kept in prison with adults under any circumstances.
The 2013 amendment of the act reiterates the same, only to encounter blank faces that cannot tell exactly how many children are in prison right now – that is – how many children are currently going through unlawful prosecution.
"The number stood at 64 last year, but no recent statistics exist, which means that we do not know how many children are currently being treated as adults," said Advocate Fahima Nasrin, former vice-president of Bangladesh National Women Lawyer's Association (BNWLA).
Some children stay in jails with their convicted mothers and sometimes lost children are also sent to jail for safe custody, said Shabnaaz Zahereen, Child Protection Specialist at UNICEF.
Despite repeated attempts to reach Inspector-General of Prisons, Brigadier Ashrafatul Islam Khan to comment on the number of children inside the jail, he never picked any of the calls made.
Fahima asserts that even the conditions

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inside the juvenile centres, dubbed "Child Development Centres" are deplorable, such that their aim of providing correctional development to reinstate the children into society is undermined.
"Abuse is rampant," she claims.
Former inspector-general of police Dr M Enamul Hoque states that keeping inmates in their mid-teens or late-teens together with children often results in bullying and sexual abuse of the latter.
Director Zulfikar Haidar explains, "Education is not made mandatory inside the centres because the children come from many different educational backgrounds – some have never been to school. We provide teachers qualified to teach up till eighth grade, but in case a child wants to study beyond that or wants to give a board exam we try to make an external arrangements. Vocational training is also available."
Haidar adds that they are going through a process to collaborate with Save the Children to improve the conditions of the Child

Development Centres.
The newly amended law raises the bar of exemption from normal judicial processes to 18 years of age, from its previous age limit of 16.
Fahima Nasrin justifies that internationally, an individual at 18 is considered prone to immature, careless or irresponsible behaviour.
However, a loophole in the system that does not mandate medical tests to be done by the police in the preliminary stage to determine the age of the arrestee, means that teenagers are often passed off as being over eighteen years of age, stated Director of BNWLA Towhida Khondoker.
"If the judge has the discretion to be doubtful of the proclaimed age, only then does he give the directive to conduct a medical test to determine the age," added Towhida.
Both the previous law and the amended law require that a probation officer assist and advise the police in the correct handling of juvenile cases which decrees ensuring that the arrestee is not maltreated or abused and is given a fair trial.
Probation officers are also supposed to make sure the child is with his/her parents or legal guardians throughout the judicial process.
"Never have I seen a probation officer appears in any case. NGOs act in their replacement," claimed Fahima.
She maintains that there are only 22 probation officers for handling all the juvenile crimes, although an ongoing process of appointing more is slowly on the way.
Although the total number of juvenile cases currently pending or undergoing trial could not be found, Zulfikar Haidar claims that the trial of many of the 510 juvenile inmates within the three detainment centres in Tongi, Konabari and Jessore are yet in a state of limbo.
"Many of those children waiting for the hearing will cross 18 years of age because of the dawdling of the judicial system, and they then be prosecuted as adults for a crime they committed as a minor. This is against the law," said Fahima Nasrin.
While the 2013 directive restates the 1974 requirement that a fair trial for a minor entails ensuring an environment which does not make the detainee to be "made to feel like a criminal", but Fahima Nasrin says even the juvenile courts fails to follow the orders.
"The trial is supposed to be held sans the regular courtroom setting. Even the attire worn by the judge, the lawyers and the police are meant to be casual. The language used to address the detainee is to be such that the child in no way feels that he or she is a criminal. Once they feel that they belong to the same category as hardened criminals, it will affect their self-image and it will become difficult to correct them," she adds.
"The deputy commissioner (prosecution) of Dhaka claims that he had sometimes had to produce minors in adult courts as well.
"There are only three juvenile courts for all the cases, thus under certain circumstances this exception is made. We really must have more juvenile courts" he said.
A taskforce formed under the Ministry of Law and Ministry of Social Welfare, with support from UNICEF, exists to making sure children do not end up in jails, and for deciding the fate of children serving time in the Child Development Centres.
A credit on their part has been in bringing down the number of children in prisons from 1,200 in 2003, to less than a hundred in 2012.
"However, most of the children who get engaged in crime do so because they are deprived of their basic rights to education, sustenance, guardianship and shelter, and the amended law is a reflection of the fact that many children are growing up victims to their social circumstances," said Fahima Nasrin.
If all children could be given a healthy environment to grow up in, juvenile crime would go down, she added.

The Act is silent on banning children in politics

PANKAJ KARMAKAR
ALTHOUGH rampant use of children in violent political activities has become a common phenomenon in Bangladesh, there is no particular provision in the recently passed Child Act-2013 prohibiting use of children in politics.
The section No. 79 of the act prohibits use of children in carrying firearms or illegal materials or using them in violence or criminal activities.
The perpetrator, who will use children in these activities, will be punished with maximum three years of imprisonment or maximum Tk 1 lakh fine or both.
But no provision can be found regarding prohibition of children in political activities like using them in processions, rallies or any other activity that may put children in hazardous situations.
During last few months, it was noticed that children were used as human shield keeping them in front of the procession or different violent

activities to avert police action.
Moreover, many children died in clashes between Jamaat-Shibir men and law enforcers.
For example, Asgar Ali Limon aged around 14 was killed in Chhainawabganj on April 24; Sazzad Hossain aged around 17 killed in Cox's Bazar and Rubel aged around 13 in Thakurgaon on February 28; Shahidul Islam aged around 15 at Satkania on March 2; Akmal Hossain aged around 14 in Rangpur on March 2; Rafiqul Islam aged around 12 in Rajshahi on March 3 and Mahfuz Hossain aged around 15 in Sirajganj on March 4, according to newspaper reports.
National Human Rights Commission (NHRC) Full Time Member Kazi Rezaul Hoque said they proposed to incorporate a separate provision specifically prohibiting use of child in politics.
"But I do not know why the provision has been dropped from the act," he wondered.
However, Social Welfare Secretary Suraiya Begum said there is a provision in the act that prohibits using of children in any sorts of 'unethical' activities.
This provision will cover the area of using children in politics, she added.
Talking to The Daily Star, Shabnaaz Zahereen, Child Protection Specialist of UNICEF, Bangladesh, said there should be separate provisions specifically prohibiting use of children from politics to check abuse of them for political purpose.
It is usually observed that children are used as human shield keeping them in front of the procession or different violent activities to avert police action.



Laws till date failed to protect children from prostitution



ZYMA ISLAM
I have been a sex worker since the age of seven, said Hena, current secretary-general of Duroj Nari Sangha, an advocacy group of sex-workers struggling to establish rights for those in this profession.
"After my parents died, I was left hapless. A neighbour brought me to Dhaka luring me with the promise of a job but sold me to a brothel instead."
A few years down the line, Hena was picked up from the streets by the police while out about on her business, and transferred to a vagrant centre in Kashempur.
"I escaped from there as soon as possible. The place was scary for a little girl – rampant with drugs and physical and sexual abuse. I joined the little urchins on the street in selling flowers and ragpicking – and on the streets, it becomes inevitable for a girl to become a sex worker. Hunger forces you to do it," described Hena.
"All of this happened when Ershad was the President," said Hena who could not tell in figures how many years ago that was, "but the scenario really has not changed. There are still

Although the children act clearly outlaws sex work below the age of 18, the victims think that no law will be able to keep children out of sex work until their basic rights are fulfilled.

plenty of children in this profession." Sometimes, the children get raped over and over, and finally join the profession, said Hena.
"I never understood the kinds of diseases I was getting exposed to as a result, and neither do these children," she said.
Although the children act clearly outlaws sex work below the age of 18, Hena laughed it off, saying that no law will be able to keep children out of sex work until their basic rights are given to them.
Joya Sikder, president of the Sex Workers Network of Bangladesh stated that kids in the streets enter sex work as

Law enforcers largely unaware about child-friendly policing

STAFF CORRESPONDENT
THOUGH many a thing have transformed or improved over the last four decades, the juvenile justice system of Bangladesh felt little of the wind of change. Children who have had the misfortune of being in police custody still remain traumatized for life.
"I still have nightmares about the police sub-inspector who made me pee in an electrified bucket for two days," said Fahad (not his real name), a car mechanic of a Shajahanpur garage.
Fahad was arrested for suspected arms hauling in 2008 when he was 14. He was acquitted of the charge after three years of appearing before the court for hearing of his case. But by then he was deeply traumatised for life by the experience of being in police remand for five days.
"During the first two days, four policemen took turns to torture me. The first pinched and pulled my fingers with pliers. But then my parents gave the policeman about Tk 25,000 and they didn't touch me for the next three days," recounted Fahad.
However, asked to comment on what the police do when they come across a child in conflict with the law, officer-in-charge of Kafur police station Kazi Wazed Ali said, children are never handcuffed or kept in the custody area in police station.
Explaining the current system, officer-in-charge of Kafur police station Kazi Wazed Ali said, "When we come across a child in conflict with the law we inform the probation officer of social welfare officer." But the reality is that nights of juveniles being handcuffed in the custody area of police stations are too common in the country.
Like Fahad, another 15 years old boy named Smaran (not his real name) of Shajahanpur, said he was arrested from his home at the dead of the night last month. After receiving regular beatings at Shajahanpur police station he was sent to central jail where he spent 10 days with much older men.
Regarding child-friendly attitude, the police of Bangladesh are not well-informed about their code of conduct. Inspector Mostafa Kamal, Women and Children Repression Prevention Cell at the police headquarters, said that with help of UNICEF, home minis-



Police generally claim that children are never handcuffed or kept in the custody area in police station. But sights of juveniles being kept in the custody area of police stations are too common in the country.

Corporal punishment in educational institutions missing in Child Act 2013



PANKAJ KARMAKAR
WITH incidents of corporal punishment on children recurring across the country, the government has incorporated a new provision prohibiting any sort of physical torture on children in the Child Act-2013.
But the act does not have any particular provision prohibiting corporal punishment in educational institutions.
The section No. 70 of the act prohibited hit, abuse, torture or negligence to children for preventing physical harm. If any person commits the 'offence', s/he will be awarded up to five years imprisonment or Tk 1 lakh fine or both, according to the provision.
National Human Rights Commission (NHRC) Full Time Member Kazi Rezaul Hoque said while drafting the act, they proposed to incorporate a separate provision particularly prohibiting corporal punishment in education institutions.
But the provision has been missed finally for unknown reason, he added.
Social Welfare Secretary Suraiya Begum, however, said there is separate policy of Education Ministry prohibiting corporal punishment in educational institutions.
"That is why, we have not incorporated the provision in the child act," she added.
Despite government's instructions and vigorous campaigns of rights activists and media, incidents of corporal punishment on children are recurring at different educational institutions across the country.
Some recent examples of corporal punishment include – at least 60 children injured in caning at a primary school in Sirajganj on June 10, a child was tortured by teachers at a madrasa at Jamalpur on June 16 and hand of child was broken by teacher at Joypurhat on May 2.
The Education Ministry on August, 2010 issued a circular prohibiting all sorts of corporal punishment on students. On April, 2011 the ministry issued another circular saying that it has formulated a policy to end corporal punishment.
Besides, the Directorate of Secondary and Higher Education (DSHE) has already developed a manual to train and sensitize school teachers on the issue. But the training is yet to start, as the ministry has not printed the copy of manual.
Talking to The Daily Star, Shabnaaz Zahereen, Child Protection Specialist of UNICEF, Bangladesh, said, "The government is formulating rules to implement the act. In those rules, a particular provision may be incorporated prohibiting corporal punishment in educational institutions."