

The Protection of the Rights of Children in Bangladesh: A Study from Law and Implementation Perspective

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Abstract: While discussing the protection of child rights, this piece of writing briefly introduces the national and international human rights law as well as its application for the protection of child rights in Bangladesh. There had been much discussion regarding the laws and policies to reduce the child rights violations in Bangladesh over the years. In spite of having a strong commitment in the Constitution as well as being a signatory State in almost all the international human rights instruments there are notable violations of child rights in Bangladesh as per the reports of various human rights organisations every year. The paper seeks to highlight a picture of the different ways of these violations. It also highlights the child justice system prevailing in Bangladesh. Lastly, the paper will suggest some recommendations for the better application and thus protection of child rights in Bangladesh.

Key Words: Child rights, International law, Violation, Protection, Government, Child justice.

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I. INTRODUCTION

Bangladesh is a densely populated country with populations about 160 million. About half of the populations of Bangladesh are under the age of 18 who are considered as children and more than 20 million of them are under the age of 5. About 73% of children live in the rural areas and 27% live in the urban areas. One third of these children continue to live below the international poverty line.¹ Therefore, rights of the children are a major concern in the human rights area of Bangladesh. A logical key to assume the future standard of a society is plausibly to assess the present treatment of children in that society. But, the violation of child rights is a common matter in Bangladesh. The children have basic rights to education, balance diet, health and nutrition, protection, participation, recreation, safe water, sanitation, and hygiene. Most of the children of Bangladesh are deprived of these basic rights. The Government of Bangladesh in alignment with different NGOs has been taking various steps for the protection of rights of children in Bangladesh. Besides, the Judiciary is playing a significant role to protect child rights through the application of national and international human rights law. An attempt has been made here to discuss the aspects of child rights to create a child friendly environment in Bangladesh.

II. DEFINITION OF CHILD

Children in Bangladesh are different in different laws.² Law makes a distinction between a child and an adult. This distinction is based primarily on the age of the child and the purpose of a particular law. The Children Act 2013 prescribes that a person is a child who is under 18 years of age³. The Majority Act of 1875 also describes a person to be a child below 18 years.⁴ The Prevention of Women and Child Repression Act 2000 regards a person not over 16 years of age as a child. The Orphanages and Widows' Homes Protection Act, 1944 gives a definition of a child. For this law child means a boy or girl who has not completed the age of 18 years.⁵ In defining child in addition to age, gender is also taken into consideration⁷. According to the Child Marriage Restraint Act 2017, a child is a person below the age of 21 in the case of a male while it is 18 for a

¹Haradhan Kumar Mohajan, *Child Rights in Bangladesh*, Journal of Social Welfare and Human Rights, March 2014, Vol. 2, No. 1, pp. 207-208

² Ibid, p. 210

³Section 4, The Children Act 2013

⁴Section 3, The Majority Act 1875

⁵Section 2 (c), The Orphanages and Widows' Homes Protection Act, 1944

female.⁶ Under Muslim law a child obtains majority when he attains puberty. A child is assumed to have attained puberty on the completion of 15 years.⁷ According to Hindu law, now in existence in Bangladesh a child attains majority after the completion of 15 years. The most agreed upon definition of a child based on age can be found in the United Nations Convention on the Rights of Children 1989. All persons below the age of 18 are unequivocally designated as children in the U.N. Convention of Children which is a 'Magna Carta' for the children.⁸

III. LAWS CONCERNING CHILD RIGHTS IN BANGLADESH

A significant number of laws in Bangladesh including the Constitution contain various provisions regarding the protection of child rights of which some are recently adopted and some are bit older. The Constitution of Bangladesh allows positive discrimination for the children by saying that, "Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens."⁹ The Children Act 2013¹⁰ which is the most important law for children contains various provisions concerning the child rights protection. The Penal Code 1860 as the most important penal laws of Bangladesh contains that "Nothing is an offence which is done by a child under nine years of age"¹¹ and "Nothing is an offence which is done by a child above nine years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion."¹² The Prevention of Women and Child Repression Act 2000¹³ as a specialized law for women and children contains various provisions regarding child trafficking, abduction, sexual assault, mutilation of children etc. along with some provisions as to trial and execution process under this Act. The Child Marriage Restraint Act 2017¹⁴ as the most recent one contains a number of provisions prohibiting the child marriage along with some protection, punishment and procedural mechanisms as regards child marriage. The Orphanages and Widows' Homes Protection Act, 1944 as a special law for the orphan children and widows also contains some provisions as to the management of orphanages along with some penal and procedural provisions for the purpose of welfare of the orphan children.

IV. INTERNATIONAL LAWS DEALING WITH CHILD RIGHTS PROTECTION

Children's rights protection movement was mainly started in the late nineteenth century when children were basically treated as quasi-property and economic assets in different countries of the world. The progressive movement in the United States promoted broad child reforms which include child welfare reforms, separate laws for child labour issues, compulsory education and a separate juvenile court system in spite of having the court's reluctance in these issues.¹⁵ However, "the growth of children's rights in international and transitional law has been identified as a striking change in the post-war legal landscape."¹⁶ The major global legal instruments on children's rights may be following:

A. Declaration of the Rights of the Child 1959¹⁷

The U.N. Declaration of the Rights of the Child (DRC) contains the rights which were basically in a League of Nations Declaration in 1924.¹⁸ The preamble of DRC goes saying that, children need "special safeguards and care, including appropriate legal protection, before as well as after birth". One of the key principles in the DRC is that a child is to enjoy "special protection" as well as "opportunities and facilities, by law and by other means," for healthy and normal physical, mental, moral, spiritual, and social development "in conditions of freedom and dignity." The "paramount consideration" in enacting laws for this purpose is "the best interests of the child,"¹⁹ a standard echoed throughout legal instruments on children's rights. The principles of DRC also state that, a child is entitled to a name and nationality; to adequate nutrition, housing, recreation, and

⁶ Section 2 (a), The Child Marriage Restraint Act 2017

⁷ A.A.A Fyzee, *Outlines of Mohammadan Law*, 4th ed. (Oxford University Press, 2005) p.153

⁸ Article 1, The United Nations Convention on the Rights of the Child 1989

⁹ Art. 28 (4), The Constitution of Bangladesh

¹⁰ The Act of 2013 has been passed in 2013 repealing the older Children Act 1974

¹¹ Section 82, The Penal Code 1860

¹² *Ibid*, Section 83

¹³ The Act of 2000 has been passed repealing the older Act 1995 and makes an amendment in 2003.

¹⁴ The Act of 2017 has been passed repealing the older Act 1929

¹⁵ Children's rights: International Laws, Law Library of Congress, available at <https://www.loc.gov/law/help/child-rights/international-law.php>, last visited on March 14, 2018

¹⁶ Stephen R. Arnott, *Family Law: Autonomy, Standing, and Children's Rights*, 33 William Mitchell Law Review 809 (2007). Arnott notes that "the very term 'children's rights' is both broad and loose," *id.* at 808

¹⁷ The U.N. Declaration of the Rights of the Child comprises a Preamble and ten principles. G.A. Res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354, For an online text of the Declaration, see the Office of the U.N. High Commissioner for Human Rights (UNHCHR) Web site, <http://www.unhcr.ch/html/menu3/b/25.htm> (last visited January 20, 2018) (unofficial source).

¹⁸ Children's rights: International Laws, *Supra* note 13

¹⁹ DRC, principle 2, *supra* note 15

medical services; to an education; and, for the handicapped, to “special treatment, education and care.”²⁰ Protection against neglect, cruelty and exploitation, trafficking, underage labour, and discrimination are also some principles of this Declaration.

B. Minimum Age Convention 1973²¹

The purpose of the Minimum Age Convention (MAC) is to set up a general instrument on the subject of the minimum age of employment in order to achieve the total abolition of child labor (Preamble). Thus, each State Party is to “pursue a national policy designed to ensure the effective abolition of child labor and to raise progressively the minimum age for admission to employment to a level consistent with the fullest physical and mental development of young persons”.²² State Parties must specify a minimum age for admission to employment or work, subject to certain exceptions set forth in the MAC. That minimum may not be less than the age of completion of compulsory schooling and, in any case, less than fifteen years, but it may initially be set at fourteen years if a state’s economy and educational facilities are insufficiently developed.²³ Exceptions to the age limits may also be permitted for light work or for such purposes as participation in artistic performances.²⁴ If the employment may be hazardous to a young person’s health, safety, or morals, the minimum age is generally not to be less than eighteen years.²⁵

C. Convention on the Rights of the Child 1989

The Convention on the Rights of the Child 1989 is the most prominent and comprehensive UN manifestation to advance the rights of the children.²⁶ Based purely on the number of substantive rights it sets forth, as distinct from implementation measures, it is the longest U.N. human rights treaty in force and unusual in that it not only addresses the granting and implementation of rights in peacetime, but also the treatment of children in situations of armed conflict.²⁷ The CRC is also significant because it enshrines, “for the first time in binding international law, the principles upon which adoption is based, viewed from the child’s perspective.”²⁸ The CRC is primarily concerned with four aspects of children’s rights (“the four ‘P’s’”): participation by children in decisions affecting them; protection of children against discrimination and all forms of neglect and exploitation; prevention of harm to them; and provision of assistance to children for their basic needs.²⁹ For the purposes of the CRC, a child is defined as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”³⁰.

Key accomplishments of the CRC have been described as five-fold. It creates new rights for children under international law that previously had not existed, such as the child’s right to preserve his or her identity (articles 7 and 8), the rights of vulnerable children like refugees to special protection (articles 20 and 22), and indigenous children’s right to practice their culture (articles 8 and 30). In some instances, this innovation takes the form of child-specific versions of existing rights, such as those in regard to freedom of expression (article 13) and the right to a fair trial (article 40).³¹ In addition, the CRC enshrines in a global treaty rights that hitherto had only been found in case law under regional human rights treaties (e.g., children’s right to be heard in proceedings that affect them) (article 12). The CRC also replaced non-binding recommendations with binding

²⁰ The 1924 Declaration stated children “must be the first to receive relief”; the DRC specifies more pragmatically that they are to be “among the first” to receive protection and relief (principle 8).

²¹ The Minimum Age Convention, comprising a Preamble and 18 articles, was adopted by the 58th Session of the General Conference of the International Labour Organisation on June 26, 1973, and entered into force on June 19, 1976; I.L.O. No. 138. For an online text, see the Office of the U.N. High Commissioner of Human Rights (OHCHR) Web site, <http://www2.ohchr.org/english/law/ageconvention.htm> (last visited January 14, 2018) (unofficial source).

²² Article 1, Minimum Age Convention, 1973

²³ Ibid, Article 2

²⁴ Ibid, Article 7 and 8

²⁵ Ibid, Article 3(1)

²⁶ The Convention on the Rights of the Child, with a Preamble and 54 articles, was adopted by the U.N. General Assembly on November 20, 1989, and entered into force on September 2, 1990. G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989); 28 I.L.M. 1448 (1989). For an online text, see the OHCHR Web site, <http://www.ohchr.org/english/law/crc.htm> (last visited July 23, 2017); it includes the 1995 amendment to article 43, paragraph 2 (G.A. Res. 50/155 (Dec. 21, 1995)), which entered into force on November 18, 2002. For the status of signatures, ratifications, and accessions, see the OHCHR Web site, <http://www.ohchr.org/english/bodies/ratification/11.htm>, last visited 28.11. 2017.

²⁷ Children’s Rights: International Laws, Law Library of Congress, available at <https://www.loc.gov/law/help/child-rights/international-law.php>, last visited March 14, 2018

²⁸ Geraldine Van Bueren, *The International Law on the Rights of the Child* at 16, (Dordrecht/Boston/London, Martinus Nijhoff Publishers, 1995. 35 International Studies in Human Rights).

²⁹ Ibid, p. 15, Van Bueren calls these “the four ‘P’s’”; other scholars refer to the Convention as being concerned with the three types of children’s rights, called the three ‘P’s’: provision, protection, and participation. See, for example, Jean Koh Peters, *How Children Are Heard in Child Protective Proceedings, in the United States and Around the World in 2005: Survey Findings, Initial Observations, and Areas for Further Study* [Special Issue on Legal Representation of Children], 6 Nevada Law Journal 971 (Spring 2006).

³⁰ Article 1, CRC

³¹ Supra note 25, p. 3

standards (e.g., safeguards in adoption procedures and with regard to the rights of disabled children) (articles 21 and 23). New obligations are imposed on States Parties in regard to the protection of children, in such areas as banning traditional practices prejudicial to children's health and offering rehabilitative measures for victims of neglect, abuse, and exploitation (articles 28(3) and 39). Finally, the CRC sets forth an express ground obligating States Parties not to discriminate against children's enjoyment of CRC rights.³² The right to participate in proceedings, it is argued, "together with the principles of non-discrimination in Article 2 and provision for the child's best interests in Article 3, form the guiding principles of the Convention, which reflect the vision of respect and autonomy which the drafters wished to create for all children."³³

V. VIOLATION OF BASIC RIGHTS OF CHILDREN IN BANGLADESH

Children have basic rights to education, balance diet, health and nutrition, protection, participation, recreation, safe water, sanitation and hygiene etc. Unfortunately, these rights of children are violated in Bangladesh. The rights of children are violated due to poverty, ignorance, lack of social consciousness and discrimination. The majority of children are deprived of food, shelter, adequate sanitation, information, and education.³⁴ However, the following violation of child rights may be termed as very common in Bangladesh:

i. Deprivation from the Right to Education

It goes without saying that primary education is the foundation of all levels of education system, in most of the cases stimulates the latent talent of the young minds to come out and patronize the immense potential among them. The Constitution of Bangladesh illustrates the provision of free and compulsory primary education for all eligible children.³⁵ Bangladesh has been making a steady progress to provide access to primary education for all children. Due to a number of initiatives taken by Government and NGOs, there has been an increment of 60.5 percent (in 1990) to 97.7 percent (in 2015) in the enrolment of children in all types of primary schools since 2008.³⁶

Bangladesh is one of the countries where the proportion of out-of-school children is alarmingly high (almost one in four) despite the fact that the GoB has adopted the Compulsory Primary Education Act in 1990, which made primary education free for all children in the following years. The latest available information from Bangladesh Primary Education Annual Sector Performance Report-2014 estimates that 23 percent of children aged 6–10 years are not going to school, and among those, about 2 million (11 percent) have never been to school, about 1.9 million (10 percent) entered school late, while about 0.4 million (2 percent) children dropped out of school.³⁷ Percentage of out of school children is high in the urban slum areas compared to the rural areas. A significant number of out of school children is migrated from rural areas to urban areas with their families for alternative livelihood opportunities, who end up in slums. As the opportunity of education in slum areas is very limited, these children remained out of school.³⁸

ii. Child Labour

Child labour remained a major concern with millions of children working in the formal and informal labour sectors of Bangladesh. Many children get forced out of school and get involved in labour work at an early age to help their families. These are the children that are denied the opportunity of acquiring the knowledge and skills needed for a lucrative future employment. As far as social and cultural context is concerned, child labor is accepted by the society as a whole due to ignorance. Employers also hire children because of their lower wage rate and higher obedience than adults.³⁹

According to the latest child labor survey conducted by the BBS in 2015 (the findings has been available in January 2016), there are 3.45 million working children (5-17 years) in Bangladesh, of which 2.10 million are considered as child laborers and among them 1.02 million are engaged in hazardous labor.⁴⁰

³² Van Bueren, *supra* note 13, p. 16; Ursula Kilkelly, *The Best of Both Worlds for Children's Rights? Interpreting the European Convention on Human Rights in the Light of the UN Convention on the Rights of the Child*, Human Rights Quarterly 311 (2001), available at http://muse.jhu.edu/journals/human_rights_quarterly/v023/23.2kilkelly.pdf

³³ Kilkelly, *supra* note 30.

³⁴ Haradhan Kumar Mohajan, *Child Rights in Bangladesh*, Journal of Social Welfare and Human Rights, March 2014, Vol. 2, No. 1, pp. 207-208

³⁵ Art. 17, The Constitution of Bangladesh

³⁶ A report prepared by EDUCO in April 2016 on 'Child rights situation analysis in Bangladesh, available at https://www.educo.org/Educo/media/Documentos/Paises/Child-Rights-Situation_Bangladesh_2016.pdf

³⁷ Bangladesh Institute of Development Studies (BIDS), Bangladesh Bureau of Statistics (BBS), and UNICEF (2014), *Out of School Children in Bangladesh*, Retrieved from http://www.unicef.org/bangladesh/Out-of-School_children_in_Bangladesh.pdf

³⁸ *Ibid*, Report of EDUCO

³⁹ *Ibid*

⁴⁰ Bangladesh Bureau of Statistics (BBS) (2015), *Child Labour Survey Bangladesh 2013*, Retrieved from <http://www.bbs.gov.bd/WebTestApplication/userfiles/Image/LatestReports/ChildLabourSurvey2013.pdf>

The issue of child labour has been incorporated in all major national development plans, including the Sixth Five Year Plan (2011-2015), the National Plan of Action to combat human trafficking (2012-2014), the National Child Labour Elimination Policy (NCLEP) 2010, the National Education Policy (2010), the National Plan of Action for Education for All (2003-2015), the National Skills Development Policy (2011), and the National Children Policy (2011). Although the ILO Convention and The Employment of Child Act 1938 prohibits employment of children under 15 and 16 years respectively, in reality much younger children are employed. Moreover, The Ministry of Labour and Employment has adopted the National Child Labour Elimination Policy, 2010 followed by a National Plan of Action that provides a framework to eliminate all forms of child labour by 2015. However, not a single strategic objective has been implemented as of today, the legal protections remain limited and the capacity to enforce child labour laws remains weak. In addition, adequate human and financial resources are yet to be allocated to implement activities set out in the National Plan of Action to implement NCLEP 2010. As a result, a large number of working children are exposed to abuse and economic exploitations. Besides, children in domestic work are not protected by the law of the country.

Many reasons for child labor were identified in different times. The key reasons for child labor are— financial hardships, lack of literacy and awareness in parents about child labor, price hike of daily commodities and unaffordable educational expenditure of children. Sometimes, parents are compelled to make their children engage in work for earning purposes to meet the family expenditure. Majority of the working children and their parents are not aware about the existing laws and policies related to child labour. They believe that there is no law in the country to prevent and eliminate child labour.

iii. Child Kidnapping, Trafficking, Missing

Trafficking in children and women includes all acts involved in the capture, acquisition, recruitment and their transportation within and across national borders with the intent to sell, exchange or use for illegal purposes such as prostitution, servitude in the guise of marriage, bonded labour or sale of human organs by means of violence or threat of violence.

As per the report of Bangladesh Shishu Adhikar Forum (BSAF) in 2016, a total 183 children were kidnapped among which 153 were rescued alive and 24 kidnapping attempt were prevented by the law enforcement agencies.⁴¹ A total 133 children were missing in 2016, among them 47 children found dead after missing.⁴²

Although total number of trafficked children is unknown, 60 children were rescued after being trafficked as per newspaper report.⁴³ According to “Trafficking in Persons Report- 2016” by the US department of State, Bangladesh does not fully comply with the minimum standards for the elimination of trafficking. Bangladesh has been ranked as tier-2 country in 2016 meaning it has failed to meet the minimum standards of combating human trafficking.⁴⁴

iv. Sexual Abuse and Exploitation

Child sexual abuse has been addressed in Bangladesh since the early 1990s.⁴⁵ Sexual abuse of children is not an isolated phenomenon; rather it is going hand in hand with other forms of exploitation. It can, therefore be viewed that sexual exploitation of children does not limit itself only in sexuality, rather it involves other abuse including the misuse of economic power and social standing.⁴⁶

According to newspaper reports, total 686 children were subjected to different types of sexual violence in 2016. In 2015, a total 727 children were victim of such violence.⁴⁷ A total number of 446 children were raped in 2016 with an average 37 child rapes per month which is not a tolerable rate.⁴⁸ Rape, sexual harassment and other forms of violence against girl children occurred regularly despite laws offer different level of protection.⁴⁹

v. Child Marriage

Child marriage is another form of sexual abuse and exploitation in Bangladesh.⁵⁰ Despite laws making it illegal, many girls are being married off by their parents at the tender age. The detrimental effect that these

⁴¹ State of Child Rights in Bangladesh in 2016, report prepared by Bangladesh Shishu Adhikar Forum (BSAF), retrieved from <http://bsafchild.net/wp-content/uploads/2017/06/State-of-Child-Rights-in-Bangladesh-2016.pdf>

⁴² Ibid

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Cath Slugget, Mapping of Psychosocial Support for Girls and Boys Affcted by Child Sexual Abuse in Four Countries in South and Central Asia, Afganistan, Bangladesh, Nepal and Pakistan, 3rd ed., Save the Children Sweden, Kathmandu, 2005, p. 19

⁴⁶Shahana Sultana Shammi, Protection of Children Rights in Bangladesh: A Study from Implementation Problems, The Northern University Journal of Law, Volume II (2011), p. 121

⁴⁷ Report of BSAF in 2016, *Supra note 40*

⁴⁸ Ibid

⁴⁹ Ibid

⁵⁰ Ibid

child-marriages have on the life and development of the girl child, who at this age, is physically and psychologically ill prepared for various kinds of obligations and strains that she is made to undergo after marriage, is unthinkable. In the absence of education, income generating skills, self-confidence and maturity, she is totally dependent on the mercy of her husband and in-laws who tend to exploit and ill-treat her. In Bangladesh, as a whole, the incidence of child marriage is difficult to measure for a number of reasons including the fact that the age of a girl is not accurately known and when it is known, manipulation for various purposes is common.⁵¹

vi. Violence by Acid Throwing

Acid attacks, in which acid is thrown at the face or body of a girl, are a very common and particularly devastating form of violence. It is committed both within and outside the family. The majority of survivors are girls or young women. Many below the age of 18 years who rejected sexual advances and marriage proposals. Although there is no accurate statistic, still evidence indicates an increase in the number of incidents.⁵²

VI. JUSTICE DELIVERY SYSTEM FOR CHILDREN IN BANGLADESH

There are a number of national legal instruments for dealing with the child justice system in Bangladesh. Among all the laws, the Children Act 2013 is the principle and most effective law for child justice in Bangladesh. The Act contains various provisions for the protection of child rights through the justice system which are enumerated as follows:

i. Appointment of Probation Officer

The Act provides for the appointment of one or more probation officer in every district, upazilla or metropolitan area with a number of duties and responsibilities when any child is brought or otherwise comes to the police station. The probation officer will meet the child and assure her/him that s/he will be provided with legal assistance, to communicate and co-ordinate with the police about the child's case or complaint, to trace the parents of the child concerned and to assist the police in communicating with them, to assess the possibility of bail for the child with the Child Affairs and Police Officers or, where applicable, to undertake a diversion process upon evaluating the background of the concerned case and, where diversion is not possible or the child is not released on bail, to arrange placement of the child in a safe home before s/he is produced in Court.⁵³ The Probation Officer must remain present in the Children's Court during the trial and support the child as far as possible.⁵⁴ The Probation Officer is to observe the conditions relating to diversion or alternative care and to carry out any other responsibilities that may be prescribed by Rules.⁵⁵

ii. Child Affairs Desk at the Police Station⁵⁶

The Act provides the responsibility to the Ministry of Home Affairs to establish of a "Child Affairs Desk" headed by a "Child Affairs Police Officer"⁵⁷ (CAPO), not below the rank of Sub-Inspector. It is also provided that if there is a female Sub-Inspector working in the concerned police station, she shall be given priority while assigning responsibilities of the Child Affairs Desk. The responsibilities and functions of CAPO's are to maintain separate files and registers for cases involving children; where any child is brought to the police station, to inform the Probation Officer; to inform the child's parents or, in their absence, their foster carer, guardian or member of the extended family and to notify them of the date for producing the child before the Court along with other details of the case; to provide immediate mental support for the child; to arrange for her/his first aid and, if necessary, to send the child to a clinic or hospital; to take necessary measures to meet the basic needs of the child.⁵⁸

iii. Establishment of Children's Court and its Functions

The 2013 Act provides for the establishment of at least one court in every district headquarter, and in every metropolitan area to be called a Children's Court for the trial of children.⁵⁹ The Ministry of Law and

⁵¹ Ishrat Shamim, 'Violence Against Children', in Ruby Ghuznavi, Farah Ghuznavi and Saira Rahman Khan, eds., *Child Rights: Reality and Challenges*, Shishu Adhikar Sangjog, Dhaka, 2001, pp. 102-3

⁵² *Ibid.*, p. 101

⁵³ Justice Imman Ali, *Justice for Children in Bangladesh: A Brief Commentary on the Children Act 2013*, Bangladesh Legal Aid and Services Trust (BLAST), and Penal Reform International (PRI), 2013

⁵⁴ *Ibid.*

⁵⁵ Section 95 of the Act provides that the Government may make Rules for carrying out the purpose of the Act. Many of the newly introduced concepts require framing of Rules for their implementation.

⁵⁶ Section 13 of the Children Act, 2013

⁵⁷ Section 14

⁵⁸ The High Court Division of the Supreme Court of Bangladesh recommended the establishment of a special police cell in the case of *State v. Secretary, Ministry of Law, Justice and Parliamentary Affairs*, 59 BLD (2009) (HCD) 656.

⁵⁹ Section 16

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 her on the responsibilities of a Children's Court in addition to her/his own responsibilities. Section 17 of the Act provides that in any case a child in conflict with the law or a child in contact with the law under any law whatsoever, the Children's Court shall have the exclusive jurisdiction to try that case.⁶⁰

When a child is involved in any offence along with adult, evidence will be taken in the case of a child separately from the evidence taken in the case of an adult, in separate session on the same day. The Children's court will hear both the case of the adult and the case of the child but at separate sittings on the same day and on every day until the trial is concluded. Moreover, the Act also provides more child-friendly procedures, such as requiring lawyers, police or officials not to wear any professional or official uniform. The Children's Court is responsible for assessment and determination of the age of the child.⁶¹

iv. Bail, Detention and Conviction of Children

Under the 2013 Act the Court can release the child on bail with or without surety, whether or not the offence for which they are accused is bailable or non-bailable. Where a child is not given bail, the Court must give its reasons.⁶² In terms of the detention of a child, the law allows for the detention of children in a Child Development Centre (CDC).⁶³ Regarding conviction, where a child is found guilty of an offence punishable with death or imprisonment for life, the Children's Court may sentence the child to detention for between three and ten years. If a child is found guilty of an offence not punishable with death or imprisonment for life s/he may be ordered to be detained in a CDC for up to 3 years. There are also certain circumstances where the Court, or the Government, may release a child from detention, for example, following a recommendation from the CDC.

iv. Time frame for concluding Trial

The Act of 2013 provides a timeframe within which to conclude the trial. Notwithstanding anything contained in the Code of Criminal Procedure, 1898 or any other law for the time being in force, the Children's Court is required to complete the trial within 360 days from the day of the child's first appearance before the Court. If for any acceptable or practical reason the trial cannot be concluded within the time mentioned, the Children's Court shall give reasons and extend the deadline by another 60 days.⁶⁴

VII. PROTECTING CHILD RIGHTS THROUGH THE APPLICATION OF INTERNATIONAL LAWS IN BANGLADESH

There are a number of International laws dealing with child rights protection which has already been discussed above. As a signatory State to most of the international human rights instruments Bangladesh has the obligation to provide justice for children. Among all other international laws, the Convention on the Rights of the Child (UNCRC) is considered to be the most comprehensive document related to the rights of the children.

As a country with dualistic legal tradition Bangladesh maintains a difference between national and international law. It is the traditional view that the provisions of international instruments like the UNCRC cannot be invoked by the domestic Courts unless these are incorporated with the corpus of the national law. However, this trend has started to change due to the progressive judicial interpretation of the Constitution and other relevant statutes with the aid of the international instruments. Bangladesh is constitutionally bound to respect international law including the UNCRC and the principles as embodied in the United Nations Charter.⁶⁵

⁶⁰ According to section 2(4) of the Act, a child in contact with the law includes a child who is a victim of or a witness to an offence under any existing law, and all cases involving such a child are triable in the Children's Court. However, under the the Nari O Shishu Nirjatan Daman Ain, 2000 (Women and Children Repression Prevention Act 2000) and the Acid Aporadh Daman Ain, 2002 (Acid Crime Prevention act), the Tribunals set up under those statutes retain jurisdiction to hear all matters under those laws. Where any accused under those statutes is a child then those laws provide that s/he will be tried in the relevant Tribunal in accordance with the provisions of the Children Act, 1974. However, those provisions have not been repealed or amended by the Children Act, 2013. Arguably, children involved in matrimonial proceedings, where matters of their guardianship, custody, parental access, maintenance etc. are in issue, are also children in contact with the law. Where parents are separated and the place of residence of the child has to be decided, then Article 9 of the CRC applies. Article 12 provides that the child shall be provided the opportunity to be heard in any judicial and administrative proceedings. This would include proceedings in the Family Court. The definition of the child in contact with the law in Section 2(4) read with Sections 17 and 22 of the Act appears to exclude proceedings other than those in criminal matters.

⁶¹ Justice Imman Ali, Justice for Children in Bangladesh: A Brief Commentary on the Children Act 2013, Bangladesh Legal Aid and Services Trust (BLAST), and Penal Reform International (PRI), 2013

⁶² Section 29 of the Children Act 2013

⁶³ Section 34 of the Children Act 2013

⁶⁴ Section 32 of the Children Act 2013

⁶⁵ Abul Hasnat and Md Iqbal Mahmud Fahim, *Judicial Use of UNCRC in Protection of Child Rights in Bangladesh*, World Vision Research Journal Vol. 8, No. 1, 2014

Besides the Supreme Court of Bangladesh has utilized various international human rights instruments especially the UNCRC as an aid to the interpretation of the domestic laws related to the child rights. Through the interpretative use of the UNCRC, the Court has declared a set of principles: best interest of the child shall be considered; children's views must be heard and considered especially for determining their best interest; children shall not be subject to any corporal punishment, inhuman behavior and degrading treatment; and the child offenders should be ensured a flexible and fair justice system. The Court has ordered the concerned state agencies to follow these principles in dealing with the rights of the children concerning their custody, accommodation, education, trial, punishment and so on.⁶⁶

VIII. RECOMMENDATIONS

I. To Government:

1. A separate directorate for children in Bangladesh that is under process should be expedited as well as ensures that adequate human, technical and financial resources are allocated to the directorate.
2. Government should also set up a separate commission namely 'National Child Rights Commission' or establish an office of 'Child Ombudsman' for proper monitoring and realizations of child rights in Bangladesh.
3. Formulating Rules for the full implication and implementation of Children Act-2013 is crucial.
4. Bangladesh needs to give a prioritized focus in improving the governance, implementation of social safety nets and law & order to ensure child safety & security and ending violence against children.
5. Child marriage Restraint Act requires strict enforcement and monitoring by local police and administration that the special provision for girls marriage before 18, is not used in general cases.
6. Child domestic work is a wide spread problem in conducting national survey on child labour in domestic work and formulation a Law for the implication of Domestic Worker Protection and Welfare Policy- 2015 is necessary to improve the situation of child labour in domestic work.
7. Hazardous job list of child labour declared in 2013 should be reviewed by government and should include the child domestic labour into the hazardous job list.
8. The number of government safe homes need to be increased for the rehabilitation of the street children as well as providing vocational and sports training to these street/abandoned children is essential so that they can become self-dependent and contribute to the country.
9. Strict actions and measures should be taken by the government to control child pornography, child trafficking and child prostitution.
10. Strict monitoring mechanism by government is needed to stop corporal punishments at educational institutions.
11. Speedy trial and execution of the verdict of the child murder cases is recommended by child rights specialists for reducing child murder in Bangladesh. Child Rights experts also suggested death punishment of the rapists to decrease child sexual abuse in Bangladesh.
12. Bangladesh government should consider the issue of withdrawal of reservations to the UNCRC, particularly Article 21 on child adoption.
13. In recent years, child murder and torture by families marked a tremendous rise. Families should not neglect if any inharmonious attitudes like depression anxiety, grief and drug addiction is seen among family members, in that case taking mental treatment and consultation under specialized doctor is a must.

II. To Parents and Families

1. Families have to be more awake about protecting children from sexual abuse and exploitation by pedophiles and perverts.
2. Awareness and consciousness of parents is very crucial for protecting children from unnatural deaths by road accidents, drowning, lightning strikes and other accidental deaths like: falling from tree, falling from roof and other accidental deaths while playing.
3. Families should give special care, attention and support to adolescents for reducing fatal decisions or suicide.

III. To Media

- News media should consider reporting more details of child victim of abuse and exploitation include reporting of age, sex and follow-up of the incidents focusing to the violation of the UNCRC.

⁶⁶ Ibid

IX. CONCLUSION

Bangladesh has achieved substantial social gains and notable economic performance in the recent days. But its future is not yet secured as the children of this country is still in a depriving condition. Sexual abuse, torture, fatalities are still on the rise which needs to be tackled to ensure healthy and prosperous generation to get a bright future for this country.⁶⁷ The government is yet to take effective steps to come to an end to child murder, sexual abuse and threats against minors and girls, child marriage, corporal punishment and prevent injury, road accidents, drowning, suicide etc.⁶⁸ Therefore, government needs to adopt an inclusive approach to eradicate violence and discrimination against marginalized and disadvantaged children and ensure the implementation of all commitments. And Bangladesh has reiterated this responsibility under the apex law of the country i.e. the Constitution, under a variety of relevant laws and through its international human rights obligations.

Children are the future of the nation and it is imperative to ensure their progress and development. Although it will take years for reformation, amendment and a distinctive change in society, but all stake-holders like the government bodies, the non-government organizations, human rights organization and the community, have a responsibility to protect the children from being exposed to unacceptable conditions. Moreover, families have to ensure adequate adult supervision as well as work for creating an abuse free environment within the society where the best interest of the children can be reflected. Over and above, the rights of children must be protected addressing the child to name as 'today' rather than 'tomorrow'. If so, priority as to children rights seems to be ensured and along with the protection all founded.

Md Sadekul Islam. "The Protection of the Rights of Children in Bangladesh: A Study from Law and Implementation Perspective." IOSR Journal of Humanities and Social Science (IOSR-JHSS). vol. 24 no. 09, 2019, pp. 09-17.

⁶⁷ Bangladesh Shishu Adhikar Forum (BSAF), *State of Child Rights in Bangladesh 2017*, Available at <http://bsafchild.net/wp-content/uploads/2018/05/State-of-Child-Rights-in-Bangladesh-2017.pdf>

⁶⁸ Bangladesh Shishu Adhikar Forum (BSAF), *State of Child Rights in Bangladesh 2016*, Available at <http://bsafchild.net/wp-content/uploads/2017/06/State-of-Child-Rights-in-Bangladesh-2016.pdf>