

Justice for Children in Bangladesh

Hon Justice M Imman Ali*

The Children Act 2013 – Brief Commentary

Introduction

Bangladesh has enacted new legislation for the benefit of its estimated 70 million children, repealing the Children Act of 1974. The preamble to the Children Act, 2013, (henceforth referred to as ‘the Act’), officially known as “Shishu Ain, 2013”, states that it has been enacted for the purpose of implementing the United Nations Convention on the Rights of the Child. The Act received assent of the President was published in the official Gazette on 20 June 2013. By a subsequent Gazette notification dated 18 August 2013 the Act was made effective from 21 August 2013.

The new provisions essentially reflect some of the provisions of the Convention on the Rights of the Child (CRC). In addition, it seems, some provisions have been incorporated in response to directions of the Supreme Court as well as the requirements of other international instruments, such as the Beijing Rules.¹

At the outset it is to be noted that this is a special law, with overriding effect. Section 3 of the Act provides that notwithstanding anything contained in any other existing law the provisions of this Act shall prevail.

A child is defined in section 4 and includes anyone up to the age of 18 years.

New provisions

1. Probation Officer²

The provision for Probation Officers existed in the old law but the new law deals with the appointment, and responsibilities and duties of Probation Officers more elaborately. The Act provides that the government shall appoint one or more

* Justice at the Appellate Division of the Supreme Court of Bangladesh. I acknowledge taking assistance from an unofficial translation of the Children Act 2013. I would like to thank UNICEF, Bangladesh for making a copy of the translation available for me. I would also like to thank Dr. Ridwanul Hoque for his comments on an earlier draft of this commentary. Usual caveat applies.

¹ The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules).

² See section 5 of the Act.

Probation Officers in every district, upazila or metropolitan area and that, until such appointments, Probation Officers appointed under any other law shall continue to work as Probation Officers under the Act of 2013 as if they were appointed under the present law. Until the appointment of a Probation Officer in any area the government may entrust any Social Welfare Officer or any other officer of similar rank working in the Department, i.e. the Department of Social Welfare or in a different district or upazila under the Department, with the responsibilities of the Probation Officer. The new Act gives details of the duties and responsibilities of a Probation Officer which are found in section 6, including what they must do when any child, either in contact or in conflict with the law is brought or otherwise comes to the police station. The Probation Officer is duty-bound to ascertain the reason for which the child is brought to the police station, to meet the child and assure him that he will be provided with all kinds of assistance, to communicate and co-ordinate with the police about the concerned 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 Police Officer or, where applicable, to undertake 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 he is produced in court.

It is also the duty of the Probation Officer to deal with children in contact or in conflict with the law who are brought before the Children's Court - to remain present in the court during the trial, and to give company to the child as far as possible, whenever necessary; to hold a field inquiry and to prepare an inquiry report taking into consideration the conditions of the child and his surroundings and to submit such report to the court; to ensure legal representation for the child including provision of legal aid through the District Legal Aid Committee; to communicate, when necessary, with non-government legal aid organizations in order to ensure legal representation for the child.

In any case where children in conflict with the law are sent to a Child Development Centre or any certified institute, it is the duty of the Probation Officer to prepare and preserve a separate file for each child, to follow the procedure for alternative care as

provided in section 84 of the Act, to meet the child at regular intervals and to see him according to his desired time, to monitor or observe that the parents, extended family members,³ or legal guardian properly comply with the conditions relating to the supervision of the child, to personally monitor whether or not the child is receiving formal and vocational education, to inform the court of the child's behaviour, effectiveness/efficacy of the measures taken in respect of the child, and to submit the report called for by the court at regular intervals, to provide advice to the child with a view to making him or her sociable as far as possible and to render overall support for that purpose.

In the case of children in contact or in conflict with the law, 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.⁴

Further duties of Probation Officers will be discussed below when dealing with newly enacted provisions relating to diversion, family group conferencing and alternative care systems.

2. Establishment of National, District and Upazila Child Welfare Boards

A separate chapter in the Act is devoted to the establishment of Child Welfare Boards at national, district and upazila levels. The National Board⁵ has the responsibility to monitor, coordinate, review and evaluate the activities of the Child Development Centres and of certified institutes. It has a responsibility to provide guidelines regarding rehabilitation and reintegration into family and social life of disadvantaged children and those children in contact or in conflict with the law and to advise those concerned regarding the development and implementation of plans with a view to realizing welfare and development of children. The National Board also has duty to ascertain the gender-disaggregated number of such children and to advise the

³ The definition of 'member of the extended family' provided in section 2(11) includes grandparents and uncles and aunts on both sides of the family, brother and his spouse, sister and her spouse and any family of such blood-related kin. The inclusion of this provision opens the door to the use of the concept of 'kinship care' where a member of the extended family or even distant relative is given the responsibility of caring for the child.

⁴ 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.

⁵ Section 7 of the Act.

government upon collecting data and information about their ways or standards of living, to determine in an appropriate case the mode of necessary diversion or alternative care and to assess the data and information of children under such process or care, to frame guidelines, and, if necessary, to make recommendations and provide instructions for the District and Upazila Boards, to call for reports from them on their activities from time to time and, for the purpose of coordinating their activities, if necessary, to arrange for inter-Board coordination meetings.

The Boards comprise high officials, including the Minister of Social Welfare as the Chairman of the National Board, two female Members of Parliament to be chosen by the Speaker - one each from the party in power and in the opposition, the Inspector General of Police or an officer of the rank not below a Deputy Inspector General of Police nominated by him, the Secretary of the Ministry of Social Welfare, officials from other ministries not below the rank of Joint Secretary, the Inspector General of Prisons and so on.⁶ The District Boards⁷ consist of sixteen categories of members, including the Deputy Commissioner and two local elites and two members of any voluntary organisations dealing with children related to be chosen by the Deputy Commissioner. The Upazila Board consists of the Upazila Nirbahi Officer as Chairman with nine other categories of members. The Speaker will nominate a Member of Parliament as Adviser for the District Board, giving priority to any female member. The female Vice Chairperson of the Upazila Parishod will be the Adviser for the Upazila Board.

The District Boards have the responsibility to visit the Child Development Centres or certified institutes within the district concerned or any other institute for children, if any, and to inspect the prisons and to supervise, coordinate, review and evaluate the activities undertaken by those institutes, to determine the method of alternative care for disadvantaged children and for children in contact with the law and, where applicable, to send them for alternative care, to assess information regarding the child while in care and to assess the data and information of the child under such care, to implement the direction given by the National Child Welfare Board, to approve the recommendations made by the Upazila Child Welfare Board and, if necessary, to

⁶ In total, there are 27 categories of representatives in these Boards.

⁷ Section 8 of the Act.

forward them to the National Child Welfare Board for approval, to call for report from the Upazila Child Welfare Boards on their activities and, if necessary, to arrange for inter-Board meetings for the coordination of their activities, to discuss on the information provided by the Child Development Centres, certified institutes or prisons, as the case may be, and to take necessary initiatives for the welfare of the children.

The Upazila Board's responsibilities are to supervise, coordinate, review and evaluate the activities undertaken by the certified institutes situated in the concerned upazila; to determine the method of alternative care for disadvantaged children and children in contact with the law, to send them for alternative care, where applicable, and to assess the data and information of the child under such care; to implement policies adopted and directions given, from time to time, by the National Child Welfare Board or the District Child Welfare Board, as the case may be, and to send report as called for; to undertake such responsibilities as may be prescribed by the Rules; and to adopt such other measures as would be necessary to discharge the aforesaid responsibilities and functions.⁸

The Child Welfare Board or the Probation Officer is mandated to determine the appropriate method of care for a child upon considering the child's best interest, as provided by section 86 of the Act.

The Boards are mandated to meet at regular intervals: every six months for the National, every four months for District and every three months for Upazila Boards.

Section 45 of the Act provides that the police officer who arrests a child shall inform the child's parents or, in their absence, foster carer or the legal guardian or members of his extended family, the Probation Officer, and, where necessary, the nearest Board, failing which he is to file an explanatory report in Court on the first day the child is produced there.

The District and Upazila Boards are linked with the Probation Officer who is mandated to assess any child that is placed before him upon keeping the child in certified institute or safe home and to regularly supply all information regarding the

⁸ Section 9 of the Act..

child to the concerned Child Welfare Board, with a copy to the Director General of the Department.

The Board or Probation Officer has power to determine the appropriate alternative care under section 86.

Where the Board feels that it is necessary to remove a child from the child's parents or, in their absence, foster carer or the legal guardian or members of his extended family or anyone else who is responsible for the child's care and control, then the Board may refer the matter to the Children's Court for taking steps.⁹

It appears that the District and Upazila Boards do not have any function in dealing directly with children in conflict with the law. It is only the National Board that has the mandate to issue guidelines, directives and to advise the government upon obtaining gender disaggregated data regarding disadvantaged children and those in contact or in conflict with the law. The National Board has only supervisory powers, while the District and Upazila Boards have more practical functions in respect of disadvantaged children and children in contact with the law, which starts after the children are sent to the child development centres or certified institutes. It is not clear what their function is in visiting prisons if they have no dealings with children in conflict with the law.

The Boards to be established under the Act deal primarily with children who are disadvantaged or in contact with the law (and their care). They have no function in adjudicating allegations against children in conflict with the law. Hence, there is no independent non-judicial forum as contemplated by the CRC to deal with children in conflict with the law.

3. Child Affairs Desk at the police station¹⁰

A new provision has been introduced in the law, giving the responsibility to the Ministry of Home Affairs for the establishment of a "Child Affairs Desk" headed by a "Child Affairs Police Officer"¹¹ (henceforth referred to as "CAPO"), not below the rank of Sub-Inspector. It is also provided that if there is a female Sub-Inspector

⁹ Section 94 of the Act.

¹⁰ Section 13, *ibid.*

¹¹ Section 14, *ibid.*

working in the concerned police station, she shall be given priority while assigning responsibilities of the Child Affairs Desk. The responsibilities and functions of the CAPO shall include, maintaining separate files and registers for the 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, foster carer or the guardian or members of his 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 his or her 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.¹²

The CAPO is to also observe whether the age of the child is being determined correctly, whether when determining the age the certificate of birth registration or other reliable documents¹³ which are relevant for the purpose are taken into consideration. In the absence of a birth certificate, a school certificate or the date of birth given at the time of admission in the school or other relevant document may be considered.¹⁴

Under the newly introduced concept of 'diversion' under section 48, it is the duty of the CAPO upon consulting with the Probation Officer regarding the allegation brought against the child, to take diversionary measures and assess the possibility of bail; to send a report to the Police Head Quarters containing all information concerning the case relating to the child and also to send a similar report to the Probation Officer and the District Legal Aid Committee.

Including a child in the same charge sheet as an adult offender is prohibited by section 15 of the Act. So, if an adult and a child are alleged to have committed an offence together, there will have to be separate charge sheets, one for the adult and one for the child. Consequently, there will be separate trials, one for the child and one for the adult. But according to section 17(2) of the Act, both the trials will take place in the Children's Court on the same day or date, one after the other.

¹² Specially trained police personnel was mandated in the Beijing Rules and establishment of special police cell was also recommended in the case of *the State v. Secretary, Ministry of Law, Justice and Parliamentary Affairs*, (2009) 59 BLD (HCD) 656.

¹³ Section 14(c) of the Act.

¹⁴ Section 44(4), *ibid*.

Other duties of the police and CAPO will be discussed later when dealing with provisions relating to diversion and alternative care.

4. Establishment of Children's Court and its functions¹⁵

The now repealed Children Act 1974 provided for the establishment of 'Juvenile Courts' to deal with children in conflict with the law (the so-called 'youthful offenders'). There were only two 'Juvenile Courts' established under the old law, but other regular courts were designated to function as Juvenile Courts when hearing cases involving 'youthful offenders'.

The new law provides that, for the purpose of the Act and for trial of offences thereunder, at least one court is to be established in every district headquarter and in every metropolitan area as the case may be. Such court shall be called "Children's Court". In pursuance to section 16(1), the Department of Law and Justice in consultation with the Supreme Court is mandated to declare, by notification in the official Gazette, one or more court of Additional Sessions Judge in a district or metropolitan area, as the case may be, as the Children's Court. If there is no Additional Sessions Judge in any district then the District and Sessions Judge shall discharge the responsibilities of a Children's Court in addition to his own responsibilities. Section 17 of the Act provides that in any case where a child in conflict with the law or a child in contact with the law is involved under any law whatsoever, the Children's Court shall have the exclusive jurisdiction to try that case.¹⁶

¹⁵ Section 16 of the Act

¹⁶ 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 will be tried in the Children's Court. However, under the the Nari O Shishu Nirjatan Daman Ain 2000 or the Acid Aporadh Daman Ain 2002, the Tribunals set up under those statutes retain jurisdiction to hear all matters under those laws and where any accused under those statutes is a child then that law provides 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 appear to exclude proceedings other than those in criminal matters.

Where a child is involved in any offence along with an adult, on the basis of the separate charge sheet as provided under Section 15, evidence will be taken in the case of the child separately from the evidence taken in the case of the adult, in a separate session on the same day and such taking of evidence will continue uninterruptedly on the following day(s) until the examinations are closed.¹⁷ 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 thereafter until the trial is concluded. The Children's Court shall conduct its sessions in such place, day and manner as may be specified by Rules. Provided that until such Rules are framed, the Judge of the Children's Court shall commence and conclude the sittings according to the section 17(2) upon determining the date, time and place of the trial. The sittings of the Children's Court shall be in a building or room separate from one where trial of adults take place and on a day and time other than the sittings of the regular court. And the sittings when the trial of a child takes place will be in an ordinary room without witness box and without podium surrounded by red cloth.¹⁸

The Children's Court has the powers of a Court of Sessions under the Code of Criminal Procedure; powers of a Civil Court in respect of service of summons, summoning witness and ensuring their attendance, production of documents or materials and receiving evidence on oath.¹⁹

In the Children's Court the arrangement, decoration and seating plan of the court room are to be prescribed by Rules, ensuring that during the proceedings the child's parents or, in their absence, foster carer or the guardian or members of his extended family and the Probation Officer and his lawyer shall so far as possible sit near him. The court shall arrange for appropriate seating for the child and in case of a challenged child, where necessary, provide special seating. While the trial of a child is continuing, the lawyer, police or any other official present in court shall not wear any professional or official uniform.²⁰

The anomalies in the old law mentioned in the *Roushan Mondal* case have been cleared by the new law by providing specific provision that the date of commission of

¹⁷ Section 17(2) of the Act.

¹⁸ Section 17(4), *ibid.*

¹⁹ Section 18, *ibid.*

²⁰ Section 19(4), *ibid.*

the offence shall be the relevant date for determining the age of the child under the Act.²¹ In other words, if the person who is alleged to have committed an offence is below 18 years of age on the date of occurrence, then the case will be dealt with under the provisions of this Act. It appears also that some of the recommendations made in the case of *The State v. Secretary, Ministry of Law, Justice and Parliamentary Affairs (2009)*²² have been taken into consideration, for example the provision of legal aid, victim/witness protection, to a certain extent exploitation of children by adult criminals for criminal activity etc.

As before, the Children's Court has been given the responsibility for assessment and determination of age of the child. When any child is brought before the court, either as an accused or as a victim (but not as a witness), his age is liable to be determined upon enquiry and a hearing, if it appears to the court that he is not a child.²³ While doing so, the court is bound to take into consideration all evidence produced before it and shall declare the age upon recording its opinion. In order to determine the age of the child, the court may call for relevant documents, registers, information or statements from any person or institute. It may also serve summons upon any person or officer or employee of any institute to produce a document, register, information or statement. The age thus determined will be deemed to be the true age of that person and an order or judgment of the court shall not be invalidated by any subsequent proof that the age was incorrect.²⁴ However, where a child is declared by the Children's Court to be not a child and if subsequently it is proved by unquestionable documentary evidence that he is a child, then the court may change its opinion with regard to the age of the child upon giving adequate reasons.²⁵

5. Participation of child in court proceedings

In consonance with article 12 of the Convention on the Rights of the Child (CRC), the Act provides that to participate in person at all stages of the trial shall be considered as a right of the child.²⁶ It is also provided that the presence of the child may be dispensed with at any stage during the trial if his presence is not necessary in his best

²¹ Section 20 of the Act

²² (2009) 29 BLD (HCD) 656.

²³ Section 21 of the Act.

²⁴ Section 21(4), *ibid*.

²⁵ Section 21(4), *ibid*.

²⁶ Section 22, *ibid*

interest, subject to his consent and the trial or proceeding shall continue in his absence. Provided that the presence of the child's parents or, in their absence, foster carer or the guardian or members of his extended family and also the Probation Officer and his lawyer shall be ensured. The steps taken during the proceedings and those to be taken shall be informed to the child. It is the duty of the lawyer engaged on behalf of the child and the Probation Officer to explain to the child in easy language any decision or order of the court and also the nature and consequence of the proceedings.

In case of any carelessness, negligence and failure on the part of Child Affairs Police Officer or concerned police officer or Probation Officer in discharging their responsibilities in filing and conducting cases properly in accordance with the provision of this Act, the Children's Court shall immediately refer the matter, in the case of Probation Officer, to the Deputy Director of the District Social Services Office, and in the case of Child Affairs Police Officer or concerned police officer, to the Superintendent of Police for taking appropriate legal action and the concerned authorities shall be bound to intimate the concerned Children's Court with a report relating to action taken by them.²⁷

Details of who may be present during the sitting of a Children's Court are similar to the erstwhile provisions of the Children Act 1974. According to section 23, the following persons may be present in court, namely the child concerned, the parents or, in their absence, foster carer or legal guardian, or, where applicable, members of the extended family, officers and employees of the court, parties to the case or proceeding, CAPO, the concerned lawyer or any other person directly concerned with the case or proceeding including the Probation Officer and any person specially authorised by the court to appear or remain present.²⁸ No other person will be allowed to remain in court. The court may direct the parents or, in their absence, foster carer or legal guardian or, where applicable, members of the extended family to appear before the court if they live within a reasonable distance from the court.²⁹ If the said persons reside beyond a reasonable distance the court shall direct them to appear before the court, upon fixing a reasonable time.

²⁷ Section 22(5) of the Act.

²⁸ Section 23, *ibid.*

²⁹ Section 24, *ibid.*

If the court thinks it necessary for the best interest of the child, even those persons mentioned in section 23 other than the child concerned may be directed to leave the court and they will be obliged to do so.³⁰ Where a child is called as a witness in any case relating to any offence against decency or morality, the court may direct any person to be withdrawn from the court in the best interest of the child other than the engaged lawyer, Probation Officer or other court officers or employees.

Keeping the child in safe custody during the pendency of any trial shall be considered as a last resort and for the shortest possible period of time, and any child kept in safe custody shall be dealt with by way of diversion within the shortest possible time.³¹ If it is absolutely necessary to keep the child in safe custody then the Children's Court shall order the child to be sent to a certified institute situated within a reasonable distance. In that case it is a requirement that such a child shall be kept separately from the older children staying in that institute.

The new law mandates that the proceedings concerning children in contact with the law or in conflict with the law shall be conducted in easy language understandable by the child and that, where necessary, the court shall order the presence of an interpreter for the child, free of cost.³²

6. Bail of children in conflict with the law

Previously, child offenders could be granted bail by the Court under the proviso to section 497 of the Code of Criminal Procedure 1898. This provision is now incorporated in the new law, which provides that notwithstanding anything contained in any other law or the Code of Criminal Procedure, if the case of any child is not dealt with by way of diversion, the court may release the child on bail with or without surety, whether or not the offence alleged is bailable or non-bailable. Bail may be granted on the bond of the child concerned or of the child's parents or, in their absence, foster carer or the guardian or members of his extended family, Probation Officer or any institute or association whom the court considers appropriate, with or

³⁰ Section 25 of the Act.

³¹ Section 26, *ibid.*

³² Section 27, *ibid*

without surety. In cases where the child is not released on bail, the Children's Court must give its reasons for refusing bail.

7. Matters to be considered by the Children's Court in passing any order

With some important additions, the old section 15 has been re-enacted so that when passing any order under this Act the Children's Court shall consider the child's age and gender; physical and mental condition; qualification and level of education; social, cultural and ethnic background; family's financial condition; lifestyle of the child and his family; reasons for commission of the offence, information regarding gang formation and overall background and surrounding circumstances; the child's opinion; social enquiry report and other ancillary factors that are expedient or are required to be taken into consideration in the best interest of the child and his or her correction.

8. Social inquiry report

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

There is a prohibition on reporting any matters relating to any case or proceeding involving a child. In any case under trial before the Children's Court where a child is involved in the case or as a witness, no photograph or description of the child shall be published in any print or electronic media or through the internet which may directly or indirectly identify the child unless it is apparent to the court that such publicity will not be harmful for the interest of the child in which case the court may permit the publication of the child's photograph, description, news or report.³⁴

³³ Section 31 of the Act.

³⁴ Section 28, *ibid*.

9. Time frame for concluding trial

The new statute provides a timeframe within which to conclude the trial. Notwithstanding anything contained in the Code of Criminal Procedure or any other law for the time being in force, the Children's Court shall 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. From the commencement of trial in the Children's Court and until its conclusion the proceeding shall continue every day without break. If the trial is not concluded within the time specified or the extended time, the child shall be discharged if the allegation is of a minor offence and does not involve murder, rape, robbery, dacoity, drug-dealing or any other heinous or serious offence. But, where an adult is jointly involved with the child, the trial of the adult shall continue.³⁵

10. Order upon finding of guilt

i) Restriction regarding punishment

Much of the provisions of the previous Act of 1974 regarding orders that may be passed by the court on finding a child guilty of an offence have been retained in the newly enacted Act of 2013, with some new provisions added. It provides that, no child shall be sentenced to death, imprisonment for life or imprisonment.³⁶ But when a child is found to have committed an offence so serious in nature that in the opinion of the court the punishment provided by this law is not sufficient, or if the court is satisfied that the child is so unruly or of such depraved character that he cannot be sent to a certified institute, or that any other alternative methods in which he may be dealt with are not suitable in his case, then the court may sentence the child to imprisonment and send him to prison. However, the period of sentence may not exceed the maximum period to which the child could have been sentenced. He may be ordered to be detained in a certified institute instead of prison until he reaches the age of 18. When a child is sentenced to imprisonment, he or she shall not be allowed to associate with any adult in the prison.³⁷

ii) Order of detention by a Children's Court

³⁵ Section 32 of the Act

³⁶ Section 33(1), *ibid*

³⁷ Section 33, *ibid*.

Where a child is found guilty of an offence punishable with death or imprisonment for life the Children's Court may order the child to be detained in a Child Development Centre for a period not less than 3 and not more than 10 years. However, if a child is found guilty of an offence not punishable with death or imprisonment for life he may be ordered to be detained in a Child Development Centre for up to 3 years.³⁸

A child whose behaviour, character and personality has changed positively and who has not been charged with an offence of murder, rape, robbery, dacoity, drug-dealing or any other heinous or serious offences, then steps may be taken for his release as soon as he reaches the age of 18 and with that view recommendation may be sent to the government three months before he reaches 18.³⁹ Where the child is charged with an offence of murder, rape, dacoity, robbery or drug-dealing or any other serious offence then on his attaining the age of 18 if the case is still under trial or a child is already 18 he may be transferred by the Child Development Centre to the Central or District Jail subject to approval of the Children's Court.⁴⁰ A person so transferred shall be kept in a separate ward from convicted prisoners or other under-trial prisoners.⁴¹ If a child is above 18 by the time the trial finishes, the Children's Court shall send him directly to the Central or District Jail.⁴²

When the Children's Court thinks fit so to do, it may, instead of directing any child to be detained in a Child Development Centre, order him to be discharged after due warning or may order for his release on probation subject to good conduct.⁴³ Such probation may be supervised by a Probation Officer or a child may be committed to the care of the child's parents, or, in their absence, foster carer or the guardian or members of his extended family or any other fit person.⁴⁴ These persons may be given the custody of the child for up to 3 years on the condition that they shall be responsible for his good behaviour.⁴⁵ If it appears to the court, upon receiving a report from the Probation Officer or otherwise, that the child has not been of good behaviour

³⁸ Section 34 of the Act

³⁹ Section 34(2), *ibid.*

⁴⁰ Section 34(3), *ibid.*

⁴¹ Section 34(4), *ibid.*

⁴² Section 34(5), *ibid.*

⁴³ Section 34(6), *ibid.*

⁴⁴ Section 34(7), *ibid.*

⁴⁵ Section 34(7), *ibid.*

during the period of probation, the court may order the child to be detained in a certified institute for the unexpired period of probation.⁴⁶

iii) Periodic review and release

The court shall mention within every order that the order may be reviewed periodically and that it may review any order passed by it and may release the child with or without any condition.⁴⁷

The government may release any child from the Child Development Centre or certified institute with or without conditions upon consideration of any recommendation received under section 34(2) sent by any Child Development Centre or certified institute. Alternatively, the matter may be referred to the National Child Welfare Board for its recommendations on the concerned issues.⁴⁸

iv) Use of terminology when passing any order

Apart from the terminologies used in this Act, when passing any order the court may not use the terms “offender”, “convicted” or “sentenced” in relation to children. Instead, the terms “a person found guilty of an offence”, “a finding of guilt”, or “an order made upon such findings”, as the case may be, or such other synonyms as the court deems appropriate may be used.⁴⁹

11. Settlement of dispute

The new law introduces the provision for settlement of dispute where any child has committed any offence of lesser gravity. In such a case the court may direct the Probation Officer to take steps in order to settle the dispute between the victim and the child who has committed the offence. The Probation Officer, with the participation of appropriate persons from society shall determine the method of dealing with the matter according to the terms and conditions specified by the Children’s Court. The resolution process shall be concluded expeditiously and the result informed to the Children’s Court that will thereafter pass necessary order and send any necessary

⁴⁶ Section 34(8) of the Act

⁴⁷ Section 35, *ibid.*

⁴⁸ Section 35(2), *ibid.*

⁴⁹ Section 36, *ibid.*

directions to the Department, which shall take necessary action and send progress report to the court.⁵⁰

12. Payment of compensation to the victim child

The concept of restorative justice has been introduced by the new law which provides for compensation to the child who is a victim of crimes. According to section 38 of the Act, the court may order any person found guilty of an offence committed against a child victim to pay compensation to the child on an application by the child or the child's parents or, in their absence, foster carer or the guardian or members of his extended family, Probation Officer or, the lawyer or public prosecutor in order to restore the child to his or her previous position. Also, the court may *suo motu* order such compensation to be paid by the convict. The court may order the compensation to be paid at once or by instalment through the court, and may direct that the money be used for the welfare of the child.⁵¹

Where the person found guilty of committing any offence against a child is himself a child, the court may order compensation to be paid to the victim child by the parents or guardian of the child or by persons supervising the child or members of the extended family of the child found guilty of committing the offence if such persons can be traced out and they are financially solvent to pay the compensation and if such persons had instigated the child to commit the offence through their neglect.⁵² In order to pass any order this provision, the court may direct the Probation Officer to collect the necessary information. However, if such persons as mentioned above are not in a position to pay the compensation, the child found guilty of committing the offence may not be sent to prison for such reason.⁵³

13. Result of the trial and information about release

Within seven days of conclusion of the trial, the court shall inform the result of the trial in writing to the child, his parents or, in their absence, foster carer or legal guardian or member of his extended family, the child's lawyer and the Probation Officer. If any child is released, the information shall be communicated directly or

⁵⁰ Section 37 of the Act

⁵¹ Section 38, *ibid.*

⁵² Section 39, *ibid.*

⁵³ Section 39. *ibid.*

through the Department, Probation Officer or the lawyer to the child, his parents or, in their absence foster carer or legal guardian or member of his extended family. When a child is released under the aforementioned provisions, and if a child in contact with the law is involved, the Children's Court shall communicate the information directly or through the Department, Probation Officer or lawyer to the child in contact with the law, the child's parents or, in their absence, foster carer or legal guardian or member of his extended family.⁵⁴

14. Appeal and Revision

The provisions for appeal and revision have been re-enacted with necessary modification. Appeal from any order of the Children's Court lies before the High Court Division and may be preferred within 60 days from the date of the judgement of the Children's Court but the power of revision of the High Court Division shall not be affected. Any appeal or revision is to be disposed of within 60 days from the day it is filed.⁵⁵

15. Applicability of provisions of the Code of Criminal Procedure

Where any provision does not exist within this law or the Rules made under this law, the provisions of the Code of Criminal Procedure shall be followed as far as possible in respect of trial or proceeding of any case under this Act. All offences under this Act shall be cognizable.⁵⁶

16. Removal of disqualification upon conviction

Where any child is found guilty of any offence under this Act or any other law, section 75 of the Penal Code 1860 and section 565 of the Code of Criminal Procedure 1898 shall not be applicable⁵⁷ and such finding of guilt shall not cause him to be

⁵⁴ Section 40 of the Act

⁵⁵ Section 41, *ibid.*

⁵⁶ Section 42, *ibid.*

⁵⁷ Section 75 of the Penal Code and section 565 of the Code of Criminal Procedure relate to any person previously convicted of an offence of counterfeiting or possession of counterfeit currency or offences against property punishable with imprisonment for three years or more. If such person is again convicted of such an offence, he shall be subject for any such subsequent offence to imprisonment for life or for a term of imprisonment which may extend to ten years. These provisions for enhanced punishment for re-offenders shall not apply to a child who is found guilty of committing the same offence again.

disqualified when applying for employment in any government or non-government office or when contesting in any election.⁵⁸

17. Arrest, investigation, diversion and bail

i) Arrest

The Act specifically provides that no child below the age of 9 years may be arrested under any circumstances.⁵⁹ This prohibition is made very clear in section 44(2), which states that no child shall be arrested or detained under any law relating to preventive detention.

When a child is arrested, the police officer making such arrest shall immediately inform the CAPO the reason for the arrest, the place of arrest and details of the allegations against him. The arresting officer shall also determine the age and note the same in the records upon assessing any relevant documents including the child's birth certificate or, in the absence of such certificate, the school certificate or the date of birth given at the time of admission in the school. In the absence of any such evidence, if it appears to the police officer that the person arrested is a child, he shall be considered a child under the provision of this Act. The law mandates that no child shall be handcuffed or tied with a rope around his waist. If there is no safe place appropriate for the child in the concerned Police Station, steps must be taken for his custody in a safe home until he is produced before the court. Further, when kept in a safe home the child shall not be kept in the company of adults or any convicted child offender or any child who has come into contact with the law.⁶⁰

ii) Informing parents and Probation Officer

When a child is brought to the Police Station after arrest the CAPO shall inform the parents or, in their absence, foster carer or legal guardian or members of his extended family, the Probation Officer and, where necessary, the nearest Board about the arrest. If it is not possible to inform the aforementioned persons then the CAPO must submit a report before the court on the first day of his appearance, giving reasons for not doing so.⁶¹

⁵⁸ Section 43 of the Act.

⁵⁹ Section 44(1), *ibid.*

⁶⁰ Section 44, *ibid.*

⁶¹ Section 45, *ibid.*

iii) Investigation

Where there are no specific provisions in this Act or Rules thereunder regarding investigation, then the provisions of the Code of Criminal Procedure shall be followed as far as possible.⁶² No time frame has been specified in the Act for the conclusion of investigation. The Rules to be framed may insert such a provision, otherwise section 167(5) of the Code of Criminal Procedure will apply which empowers the ‘cognizance magistrate’ to release the accused on bail if the offence alleged is not punishable with death, imprisonment for life or imprisonment exceeding 10 years if the investigation cannot be concluded within 120 days from the date of receipt of the information relating to the commission of the offence. When the concerned offence is so punishable, the Sessions Judge may grant bail.

iv) Recording statement, warning and release

The CAPO shall record the statement of the child in the presence of his or her the parents or, in their absence, foster carer or legal guardian or members of his extended family, as the case may be, and the Probation Officer or the Social Worker.⁶³ The CAPO may release the child after giving a written or verbal warning in the presence of his parents or guardian, etc. Such warning shall not be held as a record against the child. He may also avail diversionary measures in respect of the child.⁶⁴

iv) Diversion

Instead of proceeding against a child under the formal justice system, diversionary measures may be applied for a child in conflict with the law at any time after his arrest and during any stage of the trial upon consideration of his familial, social, cultural, financial, ethnic, psychological and educational background. The diversionary measures may be chosen instead of the formal trial procedure and the case may be sent to the Probation Officer for such purpose. If the case is so sent to him, it shall be the duty of the Probation Officer to see that the parents or, in their absence, foster carer or legal guardian or members of his extended family, are complying with the conditions of the diversionary measures and shall inform the CAPO and the

⁶² Section 46 of the Act

⁶³ ‘Social Worker’ is defined in section 2(21), according to which Social Worker means a Social Worker under the Department or the Union or Municipal Social Worker working under the Department or Aunty (Khalamma), or Senior (Boro Bhaia) or any other employee of similar position, by whatever name called, who is tasked/concerned with the services of children.

⁶⁴ Section 47 of the Act.

Children's Court accordingly. In the event that any of the conditions are breached, the Probation Officer shall immediately inform the CAPO and, where appropriate, the Children's Court in writing. The process and procedure of diversion shall be prescribed by Rules. The Social Welfare Department is mandated to adopt programmes for the implementation of diversionary measures.⁶⁵

v) Family conference

Where diversionary measures are initiated the Probation Officer may take steps for arranging a family conference in order to resolve the dispute on a priority basis. The persons taking part in the family conference shall adopt any programme for the best interest of the child and shall inform the same to the Children's Court and where appropriate the CAPO. In any special circumstances when a child is being referred for diversion the court or where appropriate the CAPO may specify the steps to be taken for family conference and the Probation Officer will organize the family conference accordingly. If the parents or, in their absence, foster carer or legal guardian or members of his extended family are in breach of the conditions or fail to perform any condition of the decision of the family conference, the Probation Officer shall inform in writing the Children's Court or the CAPO, as the case may be, if no consensual decision is reached in the family conference then it shall be abandoned and the same will be intimated to the court or the CAPO in order to adopt different diversionary measures. The family conference shall be considered confidential and any discussion therein shall not be evidence in any legal proceeding in any court.⁶⁶

vi) Duration of diversion

Diversion must be initiated and completed within the time fixed by the Children's Court or the CAPO.

vii) Breach of conditions of the diversion or failure to comply with order of diversion

Where it appears to the Children's Court or the CAPO upon receiving a report from the Probation Officer or otherwise that the child, or the child's parents or, in their absence, foster carer or legal guardian or members of his extended family are in breach of or have failed to comply with the diversionary order or the conditions

⁶⁵ Section 48 of the Act

⁶⁶ Section 49, *ibid.*

thereof, the Children's Court or the CAPO may pass a similar order with new conditions; may issue a warrant of arrest for the child; send a written notice for his attendance in court or the police station; send the case file to the Public Prosecutor for initiating the trial proceeding; pass an order to send the child to a certified institute, or any other order permissible under this law.⁶⁷

viii) Bail etc.

After arrest, if a child is not released nor referred to diversion nor brought before any court immediately, the CAPO may release the child on bail with or without conditions or surety under the supervision of the child's parents or, in their absence, foster carer or legal guardian or members of his extended family, or probation officer.⁶⁸ In granting bail the CAPO shall not consider whether the offence alleged is bailable or non-bailable.⁶⁹ The child shall not be released on bail if the offence alleged is serious or heinous or to be released on bail would be contrary to the best interest of the child or if there is apprehension that upon release on bail the child might come in contact with any notorious criminal or might be exposed to moral risk, or that the ends of justice will be hampered.⁷⁰

Where the child is not released on bail, the CAPO shall take steps to produce the child before the nearest Children's Court within 24 hours.⁷¹ When the child is produced before the Children's Court, the court shall either release him on bail or order for his custody/detention in a safe home or a Child Development Centre.⁷²

ix) Child in contact with the law

Where any person has reason to believe that a child has been the victim of a criminal offence or is a witness of such offence then he shall inform the CAPO, Probation Officer or Social Worker who shall make arrangements for the child's overall safety.⁷³ The law provides for dealing with any child in contact with the law at all stages of the judicial proceedings, with respect for the dignity of the child keeping in mind the age,

⁶⁷ Section 51 of the Act

⁶⁸ Section 52(1), *ibid.*

⁶⁹ Section 52(2), *ibid.*

⁷⁰ Section 52(3), *ibid.*

⁷¹ Section 52(4), *ibid.*

⁷² Section 52(5), *ibid.*

⁷³ Section 53, *ibid.*

gender, incapacities and maturity of the child.⁷⁴ The CAPO shall interview the child in contact with the law in a child-friendly environment. In the case of a female child, the interview shall be conducted by a female police officer in the presence of her parents or, in their absence, foster carer or legal guardian or member of her extended family, and the Probation Officer in whose presence the child feels comfortable and is willing to be interviewed.⁷⁵

Considering the best interest of the child in contact with the law the Children's Court may pass an order to ensure the safety and confidentiality of the child and to maintain secrecy of all information regarding the child in contact with the law so that the child's identity may not be disclosed, and to take steps to keep secret any photograph or description of the child and to keep the child behind a screen when giving evidence. The child's evidence may be received through previously recorded video recording and, in such a case, the recording must be made in the presence of the lawyer for the accused who will be given the opportunity to cross examine the child. Further, evidence is to be taken through a qualified and competent intermediary, by conducting a camera trial, or by video linkage, when available.⁷⁶

If the child declines to testify in the presence of the accused or if it appears that the child will be prevented from telling the truth in front of the accused then the accused shall be ordered to be removed from the court under police escort. However, in such event the advocate on behalf of the accused must be present in court and must be given the opportunity to cross examine the child.⁷⁷ When examining a child in court, recess may be allowed, and the schedule for examining the child shall be fixed keeping in mind the age and maturity of the child. Necessary security must be provided for the child as well as his guardian when the child gives evidence as a witness or as a victim. The court may take any steps it deems fit for the purpose of ensuring the best interest of the child and the rights of the accused.

⁷⁴ Section 54(1) of the Act

⁷⁵ Section 54(2), *ibid.*

⁷⁶ Section 54(3), *ibid.*

⁷⁷ Section 54(3)(c), *ibid.*

In the case of a child in contact with the law, the court may pass an order to resolve the dispute in an alternative method to be determined by the court considering the best interest of the child.⁷⁸

18. Legal representation

In line with Articles 37 and 40 of the CRC, provisions are incorporated in the Act with regard to legal aid and assistance for the child. No court shall proceed with the trial of any case without legal representation on behalf of a child in conflict or in contact with the law.⁷⁹ The child must be given the opportunity to instruct his representative in his own language, if necessary with the help of an interpreter. If the parents or, in their absence, foster carer or legal guardian or members of the extended family of a child do not appoint a representative for the child or if such person is not available, or if no sufficient fund is available to engage a lawyer, then the Children's Court shall appoint a lawyer from amongst the panel of advocates of the District Legal Aid Committee or of the Supreme Court to conduct the case.⁸⁰ The lawyer so appointed must be present at every hearing of the case, and, if for any reason he is unable to conduct the case, he shall inform the matter in writing to the Court through the child's parents or, in their absence, foster carer or legal guardian or members of his extended family, or Probation Officer and the court shall adjourn the hearing of the case until another lawyer is engaged. According to the proviso to section 56(2), the District Legal Aid Committee shall not in any event take more than 30 days to appoint a new lawyer. Where the parents or, in their absence, foster carer or legal guardian or members of his extended family appoint any lawyer, such lawyer must be present at all hearings of the case. Provided that the concerned lawyer may for reasonable cause remain absent from the hearing with the permission of the Children's Court.⁸¹

If the lawyer engaged as representative for the child is repeatedly absent from the court without reasonable excuse or, where his negligence in conduct of the case is apparent, the Children's Court may release him from the duty of conducting the case

⁷⁸ Section 54(4) of the Act.

⁷⁹ Section 55(1), *ibid.*

⁸⁰ Section 55(3), *ibid.*

⁸¹ Section 56, *ibid.*

and may treat his behaviour as misconduct and report him to the Chairman of the District Legal Aid Committee and, as the case may, be to the Bar Council and the concerned Bar Association. The court shall direct the concerned authorities to report within 30 days as to what action was taken.⁸²

If at any stage of the trial it appears that the child in contact or in conflict with the law is susceptible to harm or injury then the supervising authority may take steps to prevent direct contact of the concerned child with the accused persons; to provide security for the child through the police or other agency and to keep the child's whereabouts secret; to apply to the court or to the police for provision of adequate security for the concerned child and, if necessary, for the members of the child's family at all stages.⁸³

19. Establishment of Child Development Centres and certified institutes

i) Under auspices of the Government

The government is mandated to establish and maintain necessary number of Child Development Centres based on gender disaggregation for the accommodation, reformation and development of children who are ordered to be detained and those who are undergoing trial.⁸⁴ The government may at any time certify any of its existing institutes or establishments as suitable for placement of children charged with any offence.⁸⁵ The government may frame Rules or, from time to time, issue circulars/notifications/orders in connection with the accommodation, reformation, development and maintenance of children residing in the institutes newly established under section 59(1) as well as in those existing establishments certified under section 59(2).

ii) Certified institutes established by private initiative

The government may, by notification in official Gazette, permit any person, institution or organization to establish and maintain in the method provided by Rules any certified institute subject to fulfilling prescribed conditions.⁸⁶ Running any

⁸² Section 57 of the Act

⁸³ Section 58, *ibid.*

⁸⁴ Section 59(1), *ibid.*

⁸⁵ Section 59(2), *ibid.*

⁸⁶ Section 60, *ibid.*

institute without lawful certification will incur penalty for the owner, manager or officer of up to five months' imprisonment or a fine of fifty thousand taka.⁸⁷

iii) Informing the Department about the children residing in a certified institute

All government and private establishments mentioned above shall supply information to the Department of Social Welfare within 15th day of every month, including name, gender, age, reasons for the child's presence in the institute and the date of his admission there.⁸⁸

iv) Minimum standards of care

The Government by issuing office order and directive shall determine the minimum standards for proper care of the children staying in the certified institutes. Children staying in the institute shall be categorized into different classes and kept separate according to the seriousness of their offence and taking into consideration their age. It is specifically provided that children above 9 shall not be kept with children aged 10, and children above 10 shall not be kept with children above 12 in the same room and on the same floor. Further, in the case of children aged 12 and above, care must be taken in relation to their accommodation and as far as possible they should be accommodated in separate rooms keeping in mind the gravity of their offence, their physical growth and strength, etc. It is reiterated that no child below the age of 9 years shall be kept in a certified institute. However, if a child below the age of 9 without any carer is found anywhere, that child must be sent to the Department or its nearest office. The Department shall notify the relevant Board and, upon considering the child as a disadvantaged child, shall take appropriate steps in accordance with sections 84 and 85 of the Act.

The certified institutes are mandated to protect the best interest of every child staying there and to ensure their proper behaviour and appropriate education including vocational training.⁸⁹

v) Inspection of certified institutes by the Government or its representatives

⁸⁷ Section 61 of the Act

⁸⁸ Section 62, *ibid.*

⁸⁹ Section 63, *ibid.*

The government or a representative empowered by it and the Director General of the Department or any other person or organisation authorised by him in this behalf may inspect any certified institute for the purpose of collecting information for any official or special purpose, and may on the basis of such information advise the government.⁹⁰

vi) Transfer among different institutes

The Department for any particular reason may transfer any child from one certified institute to another.⁹¹ This may be done also on the orders of the Director General of the Department when any institute loses its certified status.⁹²

The certified status of any certified institute may be withdrawn if it fails to maintain the minimum standards determined by the government upon giving notice. The law requires that before serving such notice, the manager of the concerned certified institute be given a reasonable opportunity to show cause as to why the certificate of that institute shall not be withdrawn.⁹³

vii) Control of the custodian over the child

When a child is sent to a certified institute or handed over to any person, that institute or person shall act as the child's parent and shall be responsible to ensure his safety, care and development, and shall keep the child in his custody for the period specified by the Children's Court or by the Board or any other court even though the child's parents or any other person may claim his custody.⁹⁴

viii) Procedure relating to the escaping child

A child who escapes from custody of any certified institute or person may be arrested by the police without warrant and returned to the institute or the person without registering any offence or without filing any separate case against the child. The escape or abscondence shall not be treated as an offence.⁹⁵

20. Penalty for particular offences in respect of children

i) Penalty for cruelty to child

⁹⁰ Section 64 of the Act

⁹¹ Section 65, *ibid.*

⁹² Section 66 *ibid.*

⁹³ Section 67, *ibid.*

⁹⁴ Section 68, *ibid.*

⁹⁵ Section 69, *ibid.*

If any person having custody, charge or care of any child assaults, abuses, neglects, forsakes, abandons unprotected, uses for personal service or exposes in an obscene way and thereby causes unnecessary suffering or injury by which the child's sight or hearing is damaged or injury to any limb or organ or causing mental derailment, then he will be deemed to have committed an offence under this Act for which he shall be punishable with imprisonment for up to five years or fine of up to one lac (one hundred thousand) taka or both.⁹⁶

ii) Penalty for engaging a child in begging

Any person who engages a child for the purpose of begging or causes any child to beg or if any person having custody, charge or care of the child colludes with or encourages the engaging of a child for begging then he will be deemed to have committed an offence under this Act for which he shall be punishable with imprisonment for up to five years or fine of up to one lac taka or both.⁹⁷

iii) Penalty for being drunk while in charge of a child

If anyone having the responsibility of looking after a child is found drunk in a public place and if he is incapable for that reason to take care of the child then he shall be deemed to have committed an offence under this Act for which he shall be punishable with imprisonment for up to one year or fine of up to fifty thousand taka or both.⁹⁸

iv) Penalty for giving intoxicating liquor or harmful medicine to a child

If any person gives to a child any intoxicating liquor or medicine on account of illness or emergency without consulting a qualified doctor then he will be deemed to have committed an offence under this Act for which he shall be punishable with imprisonment for up to three years or fine of up to one lac taka or both.⁹⁹

v) Penalty for permitting a child to enter places where liquor or dangerous drugs are sold

If anyone takes a child to a place where liquor or dangerous medicines are sold or if the owner or person responsible for such a place permits a child to enter that place or if anyone causes the child to enter that place then that person shall be deemed to have

⁹⁶ Section 70 of the Act

⁹⁷ Section 71, *ibid.*

⁹⁸ Section 72, *ibid.*

⁹⁹ Section 73, *ibid.*

committed an offence under this Act for which he shall be punishable with imprisonment for up to three years or fine of up to one lac taka or both.¹⁰⁰

vi) Penalty for inciting a child to bet or borrow

Anyone who verbally, in writing, by sign language or by any other means incites a child to make a bet or wager or enter into or take any share or interest in any betting or wagering transaction or incites a child to borrow money, he shall be deemed to have committed an offence under this Act for which he shall be punishable with imprisonment for up to two years or fine of up to fifty thousand taka or both.¹⁰¹

vii) Penalty for taking on pledge or buying articles from the child

Anyone taking an article on pledge from a child, whether offered on behalf of the child or someone else shall be deemed to have committed an offence under this Act for which he shall be punishable with imprisonment for up to one year or fine of up to twenty-five thousand taka or both.¹⁰²

viii) Penalty for allowing a child to be in a brothel

Section 77(1) provides that no child over the age of four years shall be allowed or permitted to reside in or frequent a brothel. Provided that when a child exceeds the age of four years the concerned authority, upon considering him as a disadvantaged child, shall send the child to the Department or its nearest office to take necessary action as appropriate under sections 84 and 85 of the Act. Anyone who contravenes section 77(1) shall be deemed to have committed an offence under this Act for which he shall be punishable with imprisonment for up to two years or fine of up to fifty thousand taka or both.¹⁰³

ix) Penalty for leading or encouraging a child to immoral activity

Anyone having actual charge or control of any child who leads that child on an immoral path or induces or encourages the child for prostitution or causes or encourages her to have sexual intercourse with any person other than her husband, shall be deemed to have committed an offence under the Act for which he shall be

¹⁰⁰ Section 74 of the Act

¹⁰¹ Section 75, *ibid.*

¹⁰² Section 76, *ibid.*

¹⁰³ Section 77(2), *ibid.*

punishable with imprisonment for up to five years or fine of up to one lac taka or both.¹⁰⁴

If it is apparent to the court upon complaint from any person that a child is being led on an immoral path whether within the knowledge of the child's parents or, in their absence, foster carer or legal guardian or members of his extended family, or is exposed to the risk of engaging in prostitution then the court may under section 78(2) direct the parents or, in their absence, foster carer or the legal guardian or members of his extended family to enter into a recognizance to exercise due care and supervision in respect of the child.¹⁰⁵

The explanation to the section 78 provides that a person shall be deemed to have led or encouraged a child to immoral activities or prostitution if he or she knowingly allows a child to live with or be employed by any prostitute or person of known immoral character.

x) Penalty for using a child for carrying fire arms or illegal banned articles and for committing terrorist activities

Anyone causing any child to carry or transport fire arms or illegal or banned articles will be deemed to have committed an offence under the Act for which he shall be punishable with imprisonment for up to three years or fine of up to one lac taka or both.

Any person, whether it is the person supervising the child or having charge of a child or not, who engages the child in terrorist activities under section 6 of the Anti-Terrorism Act 2009 (Act 16 of 2009) shall himself be deemed to have committed such terrorist activity and shall be punishable for such offence in the same way.¹⁰⁶

xi) Penalty for exploitation of child

If any person entrusted by the Children's Court with custody or care of a child or with the duty of upbringing a child or any other person keeps any child ostensibly for the purpose of employment as a servant or for employment in any factory or establishment under the Bangladesh Labour Act, 2006 but in fact exploits the child for

¹⁰⁴ Section 78(1) of the Act

¹⁰⁵ Section 78(2), *ibid.*

¹⁰⁶ Section 79, *ibid.*

his own purpose, or confines the child or lives of the child's earning, then such act shall be deemed to be an offence under this law for which he shall be punishable with imprisonment for up to two years or a fine of up to fifty thousand taka or both.

In the same way if such person in fact leads such child to a dishonest path or prostitution or immoral activity then he shall be deemed to have committed an offence under this Act for which he shall be punishable with imprisonment for up to five years or fine of up to one lac taka or both.

Any person who enjoys the gain made as a result of exploitation or employment of a child or uses the child for immoral entertainment shall be liable as an abettor of the offence.¹⁰⁷

xii) Penalty for publishing confidential information by news media

Section 81 provides that no report, photograph or information relating to the trial or proceeding under this Act shall be published in any print or electronic media or any medium of internet which is against the interest of the child and which may identify the child directly or indirectly. Breach of this section will be deemed to be an offence under this Act for which the offender shall be punishable with imprisonment for up to one year or fine of up to fifty thousand taka or both.¹⁰⁸

If the provision is breached by any company, association, entity or establishment then the registration of such establishment may be suspended for a period of up to two months and additionally it may be fined up to two lac taka.¹⁰⁹

xiii) Penalty for abetting the escape of a child

Anyone who knowingly, directly or indirectly assists or entices a child to escape from a certified institute, safe home or from the custody of any person with the responsibility under alternative care or harbours or conceals after the escape or prevents the return of such escaped child will be deemed to have committed an offence under this Act for which he shall be punishable with imprisonment for up to one year or fine of up to fifty thousand taka or both.¹¹⁰

¹⁰⁷ Section 80 of the Act.

¹⁰⁸ Section 81(2), *ibid.*

¹⁰⁹ Section 81(3) *ibid.*

¹¹⁰ Section 82, *ibid.*

21. Compensation for giving false information

With slight modification, the provision for compensation to a child victim of false information has been incorporated. If anyone gives false information about a child in the proceeding of any case in any court which is false, vexatious or frivolous then the court, subject to inquiry, upon giving reasons may order payment of any amount of compensation exceeding twenty-five thousand taka in favour of the person against whom the information was given, and in default of payment of compensation the person providing such false information may be punished with simple imprisonment for up to six months. Proviso to section 83 provides that before passing any order of compensation a notice is to be served upon him to show cause why he should not be ordered to pay compensation and the cause shown by him shall be taken into consideration.¹¹¹

22. Alternative care

i) Care within the family or the community

The provision of alternative care has been incorporated in the new law for the benefit of disadvantaged children and children in contact with the law. Alternative care may be arranged in order to ensure the overall welfare and the best interest of disadvantaged children and children in contact with the law who need special protection, nursing and care and whose development is needed to be ensured, upon consideration of their familial, social, cultural, financial, ethnic, psychological and educational background. It is a requirement of the law that full assessment report of a child prepared under section 92 must be considered before sending him to alternative care.

When deciding on means and method of alternative care, reintegration of the child with his parents shall be considered on a priority basis, but, if the parents are divorced or separated, the child will be reintegrated with one or other of the parents upon taking into account the child's opinion. Further, before prioritizing the opinion of the child, the characteristics of the parents and the reason for the separation between them shall be considered. Where it is not possible to reintegrate the child with the parents, the child may be reintegrated with the extended family or, in the absence of the

¹¹¹ Section 83 of the Act.

parents, with the guardian, person supervising the child or any fit person as community based integration. If it is not possible to integrate the child to any person mentioned above then the child shall be sent to any institute mentioned in section 85.

If it becomes apparent that the parents may engage the child in any immoral or illegal activities, then, until there is a change in circumstances of the parents, the child may be placed in an institute in accordance with section 85. In such circumstances the government shall take steps for rehabilitation of the concerned parents with a view to reintegrating the child with them.¹¹²

ii) Institutional care for disadvantaged children

For those children who cannot be provided parental or non-institutional care, the Department shall provide institutional care in any government children home, Chotomoni Nibash, Centre for Training and Rehabilitation of Disadvantaged Children, government shelter home and/or any other institute as may be determined by the government.¹¹³

iii) Determiner of alternative care

The Child Welfare Board or the Probation Officer shall determine the most suitable alternative care for the child, taking into consideration the best interest of the child.¹¹⁴

iv) Establishment of alternative care system by the Department

The Department shall make the following arrangements for setting up alternative care system under this law-

- (a) Programme for counselling or providing financial or other support for the parents or guardian or person supervising the child or members of the child's extended family.
- (b) Providing counselling and taking necessary steps for training on provision of stipend, determining need of livelihood and reintegration with parents.
- (c) Setting up monitoring system for implementing the above provisions.

¹¹² Section 84 of the Act

¹¹³ Section 85, *ibid.*

¹¹⁴ Section 86, *ibid.*

- (d) Undertaking any other relevant step for the purpose of carrying out the objectives of the Act.

v) Duration of alternative care and follow up

In order to protect the best interest of the child the duration of alternative care may be short term or long term.

The Probation Officer shall periodically review the care arrangement taking into consideration the opinion of the child and his family. As part of this review the Probation Officer shall regularly observe the child's alternative care informing the District or Upazila Child Welfare Board or the Department as appropriate. Based on his review, the Probation Officer shall recommend to the Department to consider adopting any other mode of care for the child under this Act.

vi) Disadvantaged children

A child will be considered as disadvantaged where either or both of her or his parents are dead, or who is without any legal guardian, or who is without any home or means of livelihood, or who is engaged in begging or in any activity against the interest of the child, or who is dependent on parents who are in prison or who is living in a prison with the mother undergoing imprisonment, or who is a victim of sexual assault or harassment, or who is staying with the person who is a prostitute or engaged in anti-social or anti-State activities, or who is disabled, or who has behavioural disorder caused by drugs or any other reason, who has fallen into bad company or may face moral degradation or is under the risk of entering into the criminal world, or who is living in a slum, or who is homeless and living in the street, or who is effeminate (hijra), or who is a gipsy or Harijan (low caste Hindu), or who is infected or affected with HIV AIDS or who is considered by the Children's Court or the Board to be in need of special protection, care and development.

The government may take necessary measures in accordance with the procedure specified by Rules for the purpose of ensuring special protection, care and development of disadvantaged children.¹¹⁵

¹¹⁵ Section 89 of the Act.

vii) Forwarding of the child by any person or organisation etc.

Any person or organisation coming across a child in contact with the law or in conflict with the law or coming across any information about such child shall send the child or the information to the nearest Police Station, Probation Officer or Social Worker or to the Department or its nearest office. The Probation Officer or Social Worker upon receiving such a child or upon receiving information about such a child shall record the information in the form prescribed by Rules and, in case of a child in contact with or in conflict with the law, send the child or information about the child to the CAPO and in case of a disadvantaged child, send the child or the information to the Department or its nearest office.

The Department or its office upon receiving any disadvantaged child or child in contact or in conflict with the law or information concerning such child shall record the information in the form prescribed by Rules and send the child in contact with or in conflict with the law or the information, as the case may be, to the CAPO and in the case of a disadvantaged child shall make appropriate arrangement according to sections 84 and 85 of the Act as appropriate.¹¹⁶

viii) Forwarding of the child by police officer

Whenever any Police officer receives a disadvantaged child or a child in contact or in conflict with the law or information about such a child, he shall send the child to the Child Affairs Police Officer of the concerned police station, who will deal with the child in accordance with provisions of this Act and, in the case of a disadvantaged child, he will send the child to the Department or its nearest office to take steps in accordance with sections 84 and 85 of the Act.¹¹⁷

ix) Assessment of child

The Probation Officer or Social Worker upon receiving a child under this Act shall keep the child in an institute mentioned in section 85 or in any other safe home, shall assess him in accordance with the Rules, and shall take necessary measures under this Act in order to ensure his overall development. It is also the duty of the Probation Officer or the Social Worker to inquire about the actual condition of the child and also

¹¹⁶ Section 90 of the Act

¹¹⁷ Section 91, *ibid.*

to trace out the parents or guardian or person supervising the child or legal guardian or members of his extended family.¹¹⁸

x) Information to be submitted to Board

In order to ensure the best interest of the child the Probation Officer shall forward all the information kept and received by him to the relevant Child Welfare Board through its Member Secretary and shall also send a copy to the Director General of the Department.

The District or Upazila Child Welfare Board shall review the information received and shall make recommendations to the concerned authority for the overall welfare of the child.¹¹⁹

xi) Sending of the matter to the Children's Court by the Board

If the Board is satisfied that, for the child's best interest any child is required to be removed from the child's parents or, in their absence, foster carer or legal guardian or members of his extended family, or anyone else in whose custody the child has been kept, then the Board may refer the matter to the Children's Court for taking necessary measures.

When the Children's Court receives the matter and if the child is produced before the Court, the Court shall examine the information and, upon noting a summary and if it is felt necessary to inquire into the matter further, shall fix the date for hearing on the issue. On the date fixed for inquiry the Court shall hear and receive evidence for and against, which shall be recorded and pursuant to the Rules shall decide on the measures and shall for the time felt appropriate keep the child in alternative care. The Court shall direct the Probation Officer to execute such undertaking as it deems appropriate, with or without surety, for ensuring the welfare of the child and upon the condition of providing him with the opportunity of leading an honest and industrious life. The court will bestow on the Probation Officer the responsibility to monitor whether the care order is being followed correctly, and to submit a quarterly report before the court.¹²⁰

¹¹⁸ Section 92 of the Act

¹¹⁹ Section 93, *ibid.*

¹²⁰ Section 94, *ibid.*

23. Rule-making power of the government and miscellaneous

The government has power to make Rules for fulfilling the purpose of this Act and notify the same in the official Gazette.¹²¹ The Government is also mandated to take all necessary measures for the effective implementation of this Act and is authorised also to issue directives in this regard.¹²² Where there is any ambiguity in relation to the implementation of the provisions of the Act, the government may issue clarification by notification in the official Gazette subject to its being consistent with the provisions of the Act.¹²³

If any act which is done in good faith under this Act or Rules detrimentally affects anyone, such person may not bring any civil or criminal or any other legal proceeding against the person concerned.¹²⁴

An authentic English translation of the text of this Act may be published by notification in the official Gazette. However, in the event of any conflict between the Bengali and English versions, the Bengali version shall prevail.¹²⁵

The savings clauses in view of the repeal of the earlier law appear in section 100. As soon as the Act comes into force the Children Act 1974 (Act XXXIX of 1974) shall stand repealed.¹²⁶ In spite of the repeal of the Act of 1974, anything done or any action taken under the repealed Act shall be deemed to have been done or taken under this Act. Section 100 further provides that, actions remaining incomplete when this Act of 2013 comes into force, so far as possible, shall be concluded in accordance with provisions of the present Act.

Children in certified institutes or remand homes in connection with under-trial cases shall continue as before in accordance with provisions of this Act. And, those cases which remain pending in the Juvenile Court shall be disposed of by the Children's Court as if that Act (the Children Act 1974) was not repealed.

¹²¹ Section 95 of the Act

¹²² Section 96, *ibid.*

¹²³ Section 97, *ibid.*

¹²⁴ Section 98, *ibid.*

¹²⁵ Section 99, *ibid.*

¹²⁶ Section 100(1), *ibid.*

All institutes including the Child Development Centres or homes shall continue to operate in such a way as if they were established or certified under this Act.

Any children disobedient towards their parents who are kept in the Child Development Centre or certified institute shall be returned to their parents or guardian immediately after the expiry of the period for which they were detained.¹²⁷

Conclusion

The Children Act 2013 finally saw the light of day after a gestation period of about seven years from the recommendation for the new law made by the High Court Division in the case of *Roushan Mondal*.¹²⁸ Many aspects of children's vulnerability such as rights of children in jail with their mothers, rights of children whose parent(s) or guardian is sentenced to a term of imprisonment, children who are used in criminal activities such as breaking into property for facilitating the entry of adult criminals for the purpose of theft or dacoity or the consequence of using children as pick-pockets or hijackers, enticing children into taking part in political demonstrations and picketing and acts of vandalism etc. children involved in civil proceedings could be covered by new legislation, which would be beneficial to the children of this country.

At present the most important matters for the government are: setting up the Child Affairs Desks and the appointment of Child Affairs Police Officers in the police stations, establishing sufficient numbers of safe homes and certified institutes, Gazette notification setting up the Children's Courts and framing of Rules.

Rules are most urgently needed, as without them many of the new concepts, such as diversion, family conferencing, alternative care, dispute resolution etc. cannot be put into practice. It is important also to train up the persons concerned in the children justice system so that proper implementation of the new law can be ensured. Many of the aspects dealt with in the new statute are inter-linked. Therefore, a holistic approach must be taken by all concerned to ensure that the children of this country achieve fulfilment of their rights.

¹²⁷ Section 100(2) of the Act

¹²⁸ See note 10 above.

It is the failure of the parents, society and the State that leads to the vulnerable situation in which children find themselves. The children justice system and the actors within that system would be failing in their duty towards the children if proper implementation of the law is not ensured in order to guarantee their rights.