BANGLADESH RESEARCH PUBLICATIONS JOURNAL
ISSN: 1998-2003, Volume: 4, Issue: 3, Page: 274-285, September - October, 2010

TREATMENT OF JUVENILE OFFENDERS: BANGLADESH PERSPECTIVE

Mohammad Bulbul Ahmed*[1] and Md. Raisul Islam[2]

Mohammad Bulbul Ahmed and Md. Raisul Islam. (2010). Treatment of Juvenile Offenders: Bangladesh perspective. Bangladesh Res. Pub. J. 4(3): 274-285. Retrieve from http://www.bdresearchpublications.com/admin/journal/upload/09177/09177.pdf

Abstract

Children have been described as our future, our greatest resource, and our hope for a better tomorrow. Particularly in our society many people infuse fear in the mind of children. They represent violence, a segment of society lacking in self-control and devoid of ethics and morals. Their families fail to instill in them traditional values. They hardly have respect for others. Fear of crime, especially random violence perpetrated by young Bangladeshis, has become the greatest concern of the nation; we have been motivating a good number of people to change their lifestyle. Moreover, fear of crime has influenced politicians and laypersons to adopt the position of a conservative justice system, present system of dispensation of justice seeks to punish and deter. It aims at curtailing juvenile justice. Some social scientists think that the juveniles should be kept away from the courts where adults are put under trial. At present we are thinking of curtailing juvenile crime in various ways. There are effective ways for society to express its disliking for the transgressions of out of control youths. But treating juveniles as adults is not congenial at all. The criminal sanctioning of juvenile offenders is not a contemporary phenomenon. Juveniles have been punished as an adult for centuries. Prior to 17th century, for instance, children were seen as being different from adults only in their size. But later on conception changed.

Key words: Juvenile justice, Adults, children.

Introduction

By the 18th century, English common law characterized those under the age of seven as being incapable of forming criminal intent. For an act to be considered criminal, there must be *actus reus*(the criminal act itself), *mens rea*(the intent to commit the criminal act), corpus *delecti*(the interaction between the act and the intent to commit it), Since youths were considered to be incapable of forming *mens rea*, they were legally unable to commit a crime or to be criminally sanctioned. Between the ages of seven and 14 children were presumed to be without criminal intent unless it could be proved that they attained the age of discretion. That is, it is to be seen if they can distinguish between right and wrong. At age 14, they legally were considered adults, capable of forming criminal intent and therefore justly sentenced to serve time in jail and prison alongside other adults.

By the 1800s, there was the belief that juvenile and adult offenders should be incarcerated separately. At that time, special correctional institutions for youthful offenders were established in the U.S.

It was not until 1899. Though, that the first juvenile court was established. This uniquely American institution was based on the idea that youthful offenders

***Corresponding Author,** Email: bulbullawcu@yahoo.com
1. Assistant Professor, Dept of Law & Justice, Bangladesh University of Business & Technology (BUBT)
2. Lecturer, Dept of Law & Justice, Bangladesh University of Business & Technology (BUBT)

should be treated differently than their adult counterparts. Instead of deciding guilt or innocence, the court would ascertain whether youths were in need of treatment. Under the driving philosophy of the new court, *parens patriae*, it would serve as the benevolent parent all knowing and all-loving, wanting only that which is in the best interest of children. Consequently, instead of harsh, punitive sanctions that sought to deter, the court would seek long-term behavioural change by providing the guidance youths so woefully lacked from their natural parents. Sentences were to be customized to meet the needs of each juvenile so as to optimise the rehabilitative effects of court intervention. For most juveniles, the *paren patriae* doctrine still serves as the foundation upon which their sentences are based. Such an orientation is not deemed appropriate, however, for those juveniles waived to criminal court. Provisions that allow juveniles to be waived are on the one hand, in contrast with the original intent and purpose of the juvenile justice system. On the other they are consistent with the manner in which youthful offenders were sanctioned in the past.

The present day controversy surrounding waivers appears to be consequence of at least two factors converging. First, the definitions of childhood and age-appropriate behaviour are in a state of flux. Young people are said to be more predisposed toward violence today than they were in the past. National crime data sources seem to support this notion. Violent juvenile crime has increased by nearly 70% since 1986. Moreover the violence perpetrated by juveniles is portrayed by the mass media as being more heinous than at any other time in history. People are fearful of falling victim to a generation that seemingly holds beliefs and values that diverge drastically from those of normative society.

Second, the get-tough approach to dealing with law violators as seen throughout the criminal justice system-increasingly is being applied to juvenile offenders as well. Although a conservative approach to juvenile crime is not new, it is in sharp contrast to the predominant way in which the juvenile justice system has responded to youthful offenders in the U.S. for nearly 100 years. While it is true that waivers have been in existence for more than 70 years, they are used more today than in past. This has drawn attention to how society's response to juvenile offenders is changing from primarily being oriented toward rehabilitation to increasingly becoming prone to subjecting juveniles to conservative criminal court practices.

Research methodology

This study would be based among other, on primary sources such as books, articles, journals, case materials, Internet sources, so that the analysis is taken with a multiplinary approach by keeping the phase of justice method and socio-economic variables in considerations,

Moreover, the study was so designed as to generate data with maximum reliability in the context of financial and other limitations such time and administrative back up. Taking into consideration all these factors it was decided to interview all the delinquent inmates. These inmates were fair representation of delinquency of different other districts of Bangladesh.

Moreover combining both formal and informal methods of investigation, my field research was conducted over a period of couple of months. While quantitative data are necessary to determine the prevalence of a phenomenon. It is the qualitative study that reveals the complexities. The former is more external in nature while the latter is inclined towards the more internal aspects of a respondent's life. As such, the polarisation between the two methods represents a false dichotomy (Andrew 1991:43). McCracken (1988:18) similarly observes that

qualitative and quantitative methods together provide the social science with bifocal tens.

Result and discussion

Using the most recent available data, the office of juvenile justice and delinquency prevention (JJDP) reports that, from 1985 to 1994 in America, the number of delinquency cases waived to criminal court rose from7200 to 12300, a 71% increase. Despite this growth, the percentage of cases waived to criminal court during this 10 year period remained relatively constant, ranging from a low of 1.2 % to a high of 1.5% of all formally handled delinquency cases.

Over this span, the types of offences waived to criminal court have changed considerably. While 54% of the cases waived in 1985 were for property crimes, the percentage dropped to 37% by 1994. Cases involving murder and personal injury rose from 33 to 44%. The percentage of drug offences, more than doubled, from five to 11%. Public order offences remained relatively constant-nine percent in1985 and eight percent in1994.

Moreover, the percentage of cases involving youthful offenders under the age of 16 increased from six to 12%. Males consistently have comprised the majority of cases waived to criminal court-95% in 1985 and 96% in 1994. Of the juveniles waived white, 42% black, and two percent of other racial and ethnic groups. By 1994, the percentage of white and black juvenile offenders became more similar and youths from other racial and ethnic groups increased to four percent.

Waiving juveniles to criminal court often is justified on the grounds that they are deserving of more punitive criminal court sanctions and that the get though approach to fighting crime will serve to deter future criminal conduct.

The methods by which the justice system respondents to unlawful conduct are not determined in a vacuum. They are a reflection of societal attitudes. In the past, waiving juveniles to criminal court was considered an option after all other avenues of treatment in the juvenile court had been explored. Today, the situation is drastically different. The conservative environment that currently exists not only makes it more acceptable, it is an expectation that judges and prosecutors will act decisively by waiving certain juveniles to criminal court. Hence waivers no longer are viewed as a last resort .in fact the use of waivers no has been expanded to include first time juvenile offenders. Waiving juveniles to criminal court is not the answer to the crime situation. At best, waivers are a short-term solution to a complex social condition that will not be simplified by transferring juveniles to the jurisdiction of the criminal court.

Nevertheless, it is unlikely that waivers will be repealed. Therefore, it is incumbent upon decision makers to make an informed, socially responsible use of waivers. In so doing, they would be restricted to those who pose the greatest risk to the safety and security of society-violent youth such as murders, rapists, and robbers who show no apparent promise for reformation. As for the others, juvenile court intervention holds the most promise for transforming troubled youths into productive, law-abiding adults. The OJJDP, based upon the results of numerous strategy for dealing with youthful offenders.

Conceptualization of Juvenile Justice: The Bangladesh Case

Most of the research and writings on juvenile justice the world over seem to devote very little attention to the conceptual or jurisprudential analysis of the subject. Rather, they are preoccupied with the operational issues of the juvenile justice. That is why leading American, British and even German books and monographs on the subject are so meticulous in describing the functioning of

the institutions concerned with the apprehension, adjudication and custody of the

Juveniles, and so sketchy in deliberations concerning the philosophy of their functioning. The only justification for the western juvenile justice literatures unconcern for the jurisprudential aspects is that these concepts have become so philosophical issues is just assumes there.

According to the philosophy of jurisprudence Law usually defined as the aggregation of some rules and regulations to create a scope to penalize the wrongdoer. But if we do consider the educational value of the Jurisprudence then we will find that Law is to be put in proper context by considering the needs of the society and by taking note of the advances in related and relevant disciplines. The modern jurist and philosopher defined the law as the use of social science to study the extent to which a legal rule or practice promotes the psychological and physical well-being of the people it affects.' However in the year of 1987 for the first time Professor David Wexler, and Professor Bruce Winick, introduce a new concept of jurisprudence known as therapeutic jurisprudence (thereafter referred as TJ) to explain and explore the application of law in a therapeutic way rather than in anti therapeutic way. They have defined TJ as: ''it is an interdisciplinary study, which is not a body of knowledge, but rather describes a method by which to analyze, learn about, and act out the law.

Wexler describe that Law school teaches about rules, arguments and logic – but not the impact of the law on the emotional life or well-being of people," Through research, he found that one could look at the law as a dynamic social force with consequences and behavioral impacts to get the real benefit of law.

However, before the establishment of the juvenile justice system, courts and the judges treated juveniles as adults and in many instances, juvenile offenders received the same punishment as adults. There was only one system of justice in the United States, and all offenders were processed through it without regard to age. Under common law doctrine, the legal system of the American colonists brought from England, a juvenile age 7 or older could receive the same punishment as an adult and sometimes were rarely given to juveniles. The establishment of separate institutions to confine juvenile offenders separately from adults occurred in the early 1800s. In 1899, the first juvenile court was founded in cook county, Illinois.

Why should there be a separate system of justice for juvenile offenders? Those who were concerned about the treatment of juveniles in the adult system argued that because juveniles are less mature than adults and have not developed the same level of intent as adults, why should be handled differently. In fact, because of their immaturity, it was believed that some juveniles could more easily be rehabilitated.

Based on assumption that juveniles are less mature than adults, incapable of the same level of intent as adults, and more easily rehabilitated, a separate system of justice was developed in the late 1800s to deal exclusively with juveniles. This system is known as the juvenile justice system.

The juvenile justice system comprised of those system agencies whose primary duty is to manage juvenile offenders. Today most major police department have officers whose sole responsibility is to deal with juvenile delinquency, in fact because of recent school shooting incidents, placing officers in schools has become even more common. In addition every state has separate places such as detention centres in order to confine juvenile apart from adults.

The juvenile justice system was founded on the belief of *parens patriae*, roughly translated in to state as parent. The state acting through a juvenile court judge, can act in the role of parents are deemed incapable or unwilling to control their children. Therefore, the juvenile justice system was designed to do whatever is in the best interest of the juvenile just as apparent will. The juvenile justice system has evolved significantly from its origins. The earliest historical accounts in the Babylonian and Roman cultures show that those societies sought to keep their youth and children under control, forcing them to conform to the expectations and standards set by them. The father exercised unlimited power over the family and children; he had the absolute authority to administer corporal punishment and could even sell his children as slaves. These early accounts are also supported by detailed study of the origins and evolution of the idea of childhood over centuries by Philippe Aires (Aires, Philippe, 1962).

According to Aires, the reasons for fertility and high infant mortality rates, which were largely responsible for not regarding children as being before they crossed infancy. Even thereafter, there was little worth for a child. It was recognized as a person, but merely as source of pleasure and joy.

But the beginning of the 17th century the second idea of childhood emerged when it was perceived as miniature adult who could be groomed and trained in the course of its growing process. According to Aires, teachers and moralists who were concerned by the neglect and abuse of childhood shaped this idea much more. These teachers and moralists saw in the child, a miniature adult with all the inclinations towards evils and potential for a fallen human nature, unless its malleable mind and soul were formed into righteous, god-fearing and law-abiding adults.

The moralist over tines of the second idea of childhood led to a strong reaction from the children and youth of the newly emerging capitalist classes in 18th century Europe. However, by the end of the century, with the establishment of the colleges with attached boarding houses, rules and strict discipline, the reaches and moralists had won the battle. This was the beginning of the idea of a socialized children and youth (Bernard. 1992). In this context Bernard's very first applied to the children of the emerging capitalists. It was only later used to become the basis of the juvenile justice system, when it would be applied to the children of the urban poor.

Current literature on the contemporary ideas of childhood is marked with an anxiety for the disappearance of childhood (postman, 1994). Neil postman, in his thesis paper, propounds the existence of a movement to recast the approach towards children on the lines of adult rights and entitlements. The evidence on the basis of which he arrives at this conclusion include the exclusion of debates relating to children and the coil-shouldering of children by attitudes to social institutions, lifestyles and moral and social values.

Contrary to postman's views, Freeman holds that childhood, like gender, is a social artefact and the adult-dominated society has an overwhelming say in defining it, but that alone would not lead to disappearance of childhood (Freeman.1996). Freeman proclaims, childhood has not disappeared and it will not do so. Prof. Freeman draws more useful social scientific conclusion from postman's analysis in the following conclusion. If childhood is a social construction then there are childhoods rather than a single, universal cross cultural phenomenon. This should lead us to accept fact that the idea of childhood can be most meaningfully understood in a particular context along with order variables like class, caste, gender and culture.

The second and more profound implication of realizing childhood as a social artefact is that in the structuring and re-structuring of childhood by social institutions and practices need to be more carefully examined. The exiting construction of childhood is essentially a protectionist exercise, as Junks observes:

Routinely, children find their daily lives shaped by statutes regulating the pacing and placing of their experience. Compulsory schooling, for example, restricts their access to social space and gerontocratic prohibitions limit their political involvement, sexual activity, entertainment and consumption; children are further constrained not only by implicit socializing rules which work to set controls on behaviour and limits on the expression of unique intents but also by customary practices which, through the institution of childhood, articulate the rights and duties associated with being a child.

Therefore, as opined by Prof. Freeman, there is a greater need to take into account the part played by children themselves in the construction of their own social lives, the lives of others and societies in which they live. James and Proud reminds us- that children should not be just passive subjects or social structural.

Juvenile delinquency is a major concern in Bangladesh where the number of children involved in anti social activities appears to be on the rise. While it is important to ensure that delinquency is prevented through judicial measures, it is vital to secure the well-being and rights of all children who come into conflict with the law. It is accepted that children who are criminally culpable under the states penal codes are in conflict with the law. Historically, children, largely regarded as miniature versions of adults, did not merit special attention corresponding to their special needs. Consequently, in matters of criminal justice, the violation of law was of greater significance than age or the immaturity of the offender.

Changing public opinion and sustained efforts by different sections of the civil society, have, over the past century and a half, resulted in a criminal justice system with a more child-friendly orientation. The rational was that children are not fully aware of the implications of their acts and therefore require greater sensitivity in their treatment. Difficulties arise when children's rights are not treated differently from adults when they come into contact with the law. This is one aspect of violation of children's rights that has frequently been a source of concern for the United Nations committee on the rights of the child when reviewing state party reports.

In its broadest sense the notion of juvenile justice means access to justice by children under a specified age. The administration of justice for minors who are accused of or alleged as having breached the penal laws of the country essentially constitute the juvenile justice system. Justice, in the strict sense of the term, denotes the right of children to have the support at all levels, that is, of the state, the family and the community, in realizing their rights of survival, protection, development and participation. Standards of international law embody two broad principles, which are of fundamental importance in the administration of juvenile justice. They are: The well being of children who come in conflict with the law must be ensured; The children who come in conflict with the law must be treated in a manner commensurate to their circumstances and nature of the offence;

In other words, it is important to protect the human rights of children in a human and dignified manner in an effort to promote their reintegration and their assumption of constructive roles in society. Appropriate consideration has to be given before committing children to formal institutions; in this regard diversion

from formal legal procedures is encouraged. While a separate justice system is advocated, effort must be aimed at expeditious disposal of cases.

In Bangladesh almost in every sphere the law is using in an anti therapeutic way. Thus our legal system has been failed to bring any correction among the offenders rather the legal system itself creating a scope to create criminals. This is applicable more in case of the juvenile delinquents.

Law is defining in our country in terms of sanction, which is something like defining health in terms of hospital and diseases. It proves that in our society law is always using in anti therapeutic way. But the law in action and not law in paper properly mean law. In order to make law actionable the same need to be desirable and acceptable by the people. Thousands of law can be found in the archive for exhibition with hardly any accomplishment.

There are certain provisions of law, which are futile because of its context. Especially in Bangladesh almost whole legal system has been structured on the basis of the old decaying rules introduced by the British in nineteen century without further adjustment with the social needs. However in this write up I have taken an attempt to focus on the applicability of the law in therapeutic way to ensure the juvenile justice in Bangladesh. In this paper I have also provided some directions to apply law in therapeutic way for the juvenile delinquents by bringing some moderation in the administration of juvenile justice in Bangladesh.

Strengthen the family unit

In addition, parents are primarily responsible for instilling in their children socially redeeming morals and values. Parenting classes may be necessary when mothers or fathers lack the skills, abilities, and maturity to socialize their offspring properly. When a functional family is nonexistent, a surrogate one should be established to fill that void in a child's upbringing.

Support core social institutions

Schools, religious institution, influence capable, productive, and responsible youths positively by schools, religious institutions, and community based organizations. Social institutions impart law-abiding beliefs and values and offer youths legitimate opportunities for economic gain.

Promote delinquency prevention

Communities must be proactive by responding to children who are at risk of committing delinquent acts. Although youths have a responsibility to live within the boundaries of the law, social institutions have a similar responsibility to engage youngsters in activities that encourage productive, law-abiding behaviour.

Encourage an effective and immediate justice system response to delinquency: when delinquency occurs, the justice system must respond immediately to prevent future such actions and suppress escalation in their seriousness. The justice system should act in concert with conventional social institutions to enlist the influences that the family and religious organizations, for instance, have on the lives of youths.

Identify and control those youths who already are serious offenders

Youths who have not responded to traditional juvenile court intervention efforts or have demonstrated unwillingness to abide by the rules of non secure community-based treatment efforts should be isolated in secure juvenile facilities for the protection of society.

Many people will resist the notion of instituting alternatives to criminal-to-criminal court waivers. A community response to juvenile crime requires the commitment of the entire society. Therefore, it needs more effort than simply waiving juveniles to criminal court. Nevertheless, it holds the promise of returning children to their natural and rightful position as our future, our greatest resource, and our hope for a better tomorrow.

Juvenile Justice Legislation and procedure

In Bangladesh, the justice system for both children in conflict with the law and children in need of protection are governed by the children Act, 1974 and the children rules, 1976, although this legislation has been in place for almost 30 years, Bangladesh has yet to implement a fully comprehensive, separates system for children in conflict with the law.

Moreover, in recent years, there has been significant impetus for juvenile justice reform. The government has appointed a high-level juvenile justice task force, and has identified priority areas for action. A new national social policy on models of care and protection for children in conflict with the law has been drafted to address both children in conflict with the law and children in children of protection. Law mean law in action and not law in paper properly. In order to make law actionable the same need to be desirable and acceptable by the people. Thousands of law can be found in the archive for exhibition with hardly any accomplishment. There are certain provisions of law, which are futile because of its context. For example 35 of the provision of The *Children Act 1974* permits the juvenile court in the trial of children and adolescents juveniles involved with begging is allowed to return home on being, fined. Doubts have always being expressed about the justification of the fine in cases of juveniles since it is the concern people not the delinquent child who is penalized under the mode of punishment.

Therefore sometimes law, which is made for helping the vulnerable people, makes them even vulnerable by such law. This is the anti -therapeutic consequence of law. One thing that TJ supports is to find out those anti-therapeutic consequences of law and encourages people to think and study to spot the ways that can lessen that impact. TJ seeks to locate all those area of distress and encourages ingenious solution toning with the psychological and physical well being of the people it affects. The principles of Therapeutic jurisprudence arise from respect for the individual and recommend the whole legal system to be supportive with those trends following the demand of the people it influences. In most of the countries the trial of juvenile offender is conducted in a special court presided by a special magistrate 'usually a lady'. The practice of employing lady special magistrates to deal with the cases of juvenile offenders has gained favour for psychological reason. It is believed that children have less fear for women than men. Moreover women are temperamentally more suited to understand the problems of children and they easily win the confidence of juvenile delinquents by virtue of their tenderly attributes.

The most important thing is that the Children Act in Bangladesh restricts the punishment of juvenile offenders and prohibits death and life sentences for children. Never the less, the treatment of children by law enforcing agencies is far from humane. Interviews of children in the present study reveal that they have been subjected to various forms of maltreatment ranging from transportation to the police stations and jails in handcuffs to detention over 24 hours. Physical abuse and torture were also reported. It is clear from the responses of the children that it is on arrest and thereafter, in police custody, is an accused child most likely

to become a victim of torture and other forms of cruel treatment. This includes ill treatment by adult offenders who not only make children run errands for them but also to sexual molest them. Children who are currently in jail confirmed this. It appears that it is at this stage that a child, lacking legal representation and the protection of family, friends and social workers, is likely to be the most vulnerable. Children often have no idea why they have been picked up and incarcerated. There is a palpable air of distrust amongst adults with regard to children, which leads to their apprehension on the slightest of pretexts.

During detention, no child shall be subjected to torture or other cruel, inhuman or degrading treatment. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of person and in a manner which takes into account the needs of persons and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults and shall be detained in a separate part of an institution also holding adults unless it is considered in the Childs best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances. Juveniles under detention pending trial shall be entitled to all rights and guarantees of the standard minimum rules for the treatment of prisoners adopted by the United Nations. While in custody, juveniles shall receive care, protection and all necessary individual assistance- social, educational, vocational, psychological, and medical and physical- that they may require in view of their age, sex and personality. An early research revealed that at least 30% of the children awaiting trial for petty offences like theft are not legally represented. A research of 2006, taking into consideration the case of 10 child offenders sentenced under penal provisions, which provide for sentences of death or life imprisonment. He attitudes of judges reveal a general lack of sensitivity for children welfare. Thus it is proved that to ensure the application of law in therapeutic way judges should also know the philosophy of therapeutic jurisprudence

There is a common phenomenon &little doubt that punishment of violators is an important purpose of the criminal justice process. It is also applicable in case of the legal system of Bangladesh. According to our legal system law is defining in terms of sanction, which is like defining health in terms of hospital and diseases. It reflects the Austin's theory of law under his analytical school, which is being now treated as backdated theory.

Thus the punishment aspects of our crime control system are also designed to compel conformity by hurting violators. The application of punishment to law violators in proportion to the seriousness of their offences is the cornerstone of criminal codes and sentencing structures. Beyond this, however, the punitive theme runs through all the determinations of the criminal process. But in our perception, it is not the ultimate solution of the offences.

In recent years, there seems to have been a transformation of criminological views regarding somewhat sceptical question of criminal accountability's. Modern critic attacks the traditional criminological view on the ground that they're such for characteristic differences between the class of criminals and the class of non-criminals race upon erroneous assumption.

The proponents of the new criminology attempt to explain criminality in terms of social conflict. Moreover with the development of human psychology, recently new criminologist is given greater emphasis on the study of emotional aspect of the criminal behaviour. Thus the theory of modern clinical school suggests that the criminals must not be punished rather they should be subjected

to correctional methods such as probations, parole, reformatories, open- air camps etc. which somehow prove that the theme of modern school of criminology is asking for a correctional trend of reformation by applying law in a therapeutic nature.

It is our concern to protect the community due to our collective philosophy. By the name of the protection of the community authorities are permitted to take physical custody of suspects as well as of offenders and to restrain them, subject to legislative and court limitations and controls. The ultimate power of restraint is symbolized by the maximum-security incarceration of convicted felons. In fact a primary purpose of imprisonment is the restraint and incapacitation of offenders to protect the community. Actually this concept is nothing but the reflection of the preventive and deterrent theory of punishment. Which are treated now a day as backdated theory.

Because in our perception, restraint for community protection is not limited to imprisonment and other post conviction processes. It is always present from the very outset of the process. True, Police may arrest one suspect at gunpoint, handcuff his or her and hold individual in close detention until a bail hearing. On the other hand another suspect may be arrested without the use of any force. Often high bail and always preventive detention reflect the community protection function. It may also be seen at the charging decision.

In addition, community protection is a consideration in plea negotiation. Thus sentencing alternative directly reflects this function, and it is a major factor in determining probation conditions, prison program and housing assignment, selection for parole, and the parole revocation. The enter correctional process rests always on a balance between the needs and desire of the offenders and concerns for community protection, even in systems giving high priority to rehabilitative programs. People working in a criminal justice system must balance the needs and rights of the community against those offenders. In this regard if we do refer the pure theory of law of Hens kelsen, we have seen that according to his theory a dynamic or basic norms system is one in which fresh norms are constantly being created on the authority of an original or basic norms which is named by him ***Grund norms***. Every legal act is related to the *grund norms*, so here we can easily acquainted the new concept TJ in case of juvenile justice to ensure the administration of justice.

According to new criminologists, the object of punishment is not to give any pain to him but to bring about the moral reform of the offender. And application of law in therapeutic approach is the only way out to implement this new concept of punishment. The proponents of this theory of punishment contend that by a sympathetic, tactful and the loving treatment of the offenders, a revolutionary change may be brought about in their characters. Practically these kinds of alternative way of punishment should be provided for the juvenile delinquents suggested under the theory of therapeutic jurisprudence in order to create a scope to bring about the moral reform. But our legal system is providing such kind of punishment for the juvenile delinquents and which reflects that here law is strictly divorced from justice because we are applying the law in an anti therapeutic way.

Concluding Remark

In Bangladesh, we have seen that the Children Act, 1974 and the Children Rules, 1976, govern the justice system for both children in conflict with the law and children in need of protection. It is a matter of fact that this legislation has been in place for almost 30 years; Bangladesh has yet to implement a fully

comprehensive, separate system for juvenile justice reform children in conflict with the law. In recent years there has been significant impetus for juvenile justice reform. The government has appointed a high level Juvenile Justice task Force, and has identified priority areas for action. A new national social policy on models of care and protection for children in contact with the law has been drafted to address both children in conflict with the law and children in need of protection. In 2004, Bangladesh raised the minimum age of criminal responsibility from seven years of age to nine. Criminal liability of children between the ages of nine and 12 is subject to judicial assessment of their capacity to understand the nature and consequences of their actions. While this amendment has made a modest improvement, the minimum age is still far below international standards. Another concern is that the current protection for child offenders does not extend to all children under the age of 18. Under the Children Act, Child and youthful offender are defined as a person under the age of 16. Children between the ages of 16 and 18 are treated as adults. On the other hand, the police have wide discretionary powers to arrest children under a variety of laws. The Children Act, the Vagrancy Act 1943, and the suppression of Violence Against Women and Children Act, 2000 give police the authority to take children into custody on vary broad grounds, including for prostitution, begging, being in the company of a reputed criminal or prostitute, being likely to fall into bad association or be exposed to moral danger, or being a victim of crime. Both children who have committed crimes and children in need of protection are processed through the police station and subject to involuntary detention in a remand home or other places of safety. Girls who have been victims of abuse and exploitation are particularly vulnerable to detention on these grounds, and are often sent to adults jails due to lack of appropriate facilities. If we analyse the article 54 of the code of criminal procedure, 1898 and the Dhaka Metropolitan Police Ordinance-such Act allow police to arrest any one on the grounds of reasonable suspicion that the person has been involved in a criminal act. This broad discretionary power are reportedly used by the police during regular raids to round up street children and girls suspected of prostitution, to clean the streets before *hartals* or VIP visits or to extract money from those who are arrested. Street children are especially vulnerable to arrest under these laws, either on suspicion to for having engaged in criminal activity. They are often targeted by adult criminal elements, and are easily lured with small amounts of money to engage in drug and arms carrying and bomb throwing during political agitation. Since police performance is evaluated on the basis of the number of arrests made, there is an incentive for police to make easy arrests under these broad powers. In some cases, after a period spent is the police lock-up, the child is handed over to his/her parents in exchange of money. It's a patient fact that the Children Act 1974 does not contain any special provisions limiting the use of Physical force, restraints or handcuffs in the arrest of a child, nor does it have any special provisions with respect to the taking of statements or confessions from Children. However in Bangladesh especially to make certain the juvenile justice application of Children Act in therapeutic way should be ensured without further delay. First-rate thing is that to apply the law in therapeutic way for the children in conflict with laws it is not necessary to bring any vital change in the existing legal system. The existing correctional institution should be reformed also to make sure the application of law in therapeutic way. Some informal mechanism like mediation, counselling should also be introduced. The positive side is that there has been growing interest in promoting these informal mechanisms both to introduce a more restorative approach to conflict resolution, and also to reduce strain on the formal system.

Recommendations

1. Trial, if any, of all juvenile accused to be completed with utmost expedition by the juvenile courts and the concerned law enforcing agencies. Prosecution agencies and Legal Aid Committees are directed to take immediate steps in the matter.
2. Juvenile accused in jail must be kept apart from other prisoners.
3. Non-official jail visitors should include Human Rights Activists, specially the representatives of children organisations of the country.
4. Juvenile accused is to be transferred to correction houses and other approved Homes with utmost expedition.

When these directions are executed in the real sense of the term, there will be a materialistic development in the juvenile justice system in Bangladesh.

Reference

Ahmed, Bulbul "The Juvenile Justice System in Bangladesh" Khoshroz Kitab Mahal Publication, Chapter-2, (Page-5-30)

Children in prison keep increasing flouting High Court verdict, the Daily New Age, APRIL 9, (2001)

Abdul Munem Chowdhury @ Momen vs State; 47 DLR (AD)(1995-1996) 15 BLD

Akter, Farida (2000) Research Report on Violence with or Around Children, Save the Children UK, Dhaka.

Alder, Christine and Polk, Kenneth (2004) strategic plan for Reform of the Juvenile Justice System.

Amnesty International (1998) children in south Asia- Securing their rights, London

Analysis provided to the study by the Global School –Based Health Survey: the world health Organization, Annie E Casey Foundation, "Juvenile Justice at a Crossroads", Advocacy, 2003, 5(1).

Aparajeyo Bangladesh and Child Hope UK, Institutional Responses to Children in Conflict/ Contact with the Law in Bangladesh: Draft Report on Model Leading to Best Practices, 2005.

Bryan A. Garner, Eighteen Ed (2004) Blacks Law Dictionary

Glaser Bill (2003) therapeutic Jurisprudence: an Ethical Paradigm for therapists in Sex Offender Treatment Programs, Western Criminology Review 4(2), pp 143-154.

Government of the Peoples Republic of Bangladesh, National Plan of Action for Children 2005-2010.

Khair Sumaiya(1998) Exploring Root Causes of Juvenile Crime in Bangladesh: A study, UNICEF.

King SM Michael S. (2003) Applying Therapeutic Jurisprudence in Regional Areas-The Western Australian Experience, Murdoch University Electronic Journal of Law, Volume 10, and Number 2.

Malik Shadeen (2007) Impact of State Intervention on Children in Conflict with the Law, Save the Children UK, Dhaka.

Paranjape. N.V. (1999) Criminology and Penology. 10th edition, Central Law Publications, Allahbad

Implementation of UNCRC In Bangladesh 1996-2000(Alternative report submitted to the UN Committee on the rights of the Child, 34th Session, September-October, 2003)