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CHILD PROTECTION AND JUVENILE JUSTICE: LEGAL ISSUES IN BANGLADESH AND MALAYSIA

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ABSTRACT

Child protection and juvenile justice are emerging issues and a major concern for nations across the globe. Considering the importance of child protection, different nations in the world have also given attention to reducing child delinquency by amending their laws on children. Bangladesh and Malaysia have ratified the UN Convention on the Rights of the Child (UNCRC) 1989 and incorporated its principles into their domestic legal framework for child-friendly care and protection of juvenile offenders. Since 2013, there have been many new concepts developed on this issue in the legal systems of both countries. The government of Bangladesh has enacted the Children Act 2013 by replacing the previous Children Act 1974. As a result, Bangladesh can now legally safeguard children's best interests more

effectively. The Malaysian government amended the Child Act 2001 and introduced the Child (Amendment) Act 2016 to protect children and establish institutional treatments for juvenile offenders. The government has also legislated the Sexual Offences Against Children Act 2017 to reduce delinquency. As a result, the child protection and justice systems in both countries have developed new dimensions, as well as preventing the abuse of the vulnerabilities of detained children during pandemic times. The present study analyses the major changes in the juvenile justice process in both countries, especially the protection of children as per the domestic legal framework and at the same time guided by international legal standards. The present study has a qualitative research design and uses content analysis to identify, analyze, and synthesize the content of child-related laws. The findings will be valuable to policymakers, as they point to the need to strengthen the existing legal framework for better child protection within the justice systems of both Bangladesh and Malaysia.

Keywords: Juvenile justice, child protection, legal system, policy.

INTRODUCTION

Millions of children worldwide, who are deprived of proper attention, can easily be led to unlawful activities and major crimes. Children in any nation are the most sensitive group of people who need special care, attention, and protection. The core objective of establishing a juvenile justice system is to ensure proper care, protection, rehabilitation, and reintegration. Some key considerations, such as adequate care, security, restoration, and reintegration into society, also need to be ensured to protect the welfare of children. Though the notion of a juvenile justice system was originally established in the United States and the European countries for protecting offenders who are children, countries all over the world are currently formulating laws inclined towards protecting the rights of children and juveniles (UNICEF, 2006). International instruments prescribed a specialized system framework, including justice and fairness for every child. Therefore, the issue of child-oriented justice has become a crucial matter for the Asian region as well. Many countries have already begun taking initiatives to address such primary issues. Most countries have multiple, differentiated procedures, particularly in cases involving

children. These efforts have strongly relied on the strength of merging international principles into the domestic legal system (Malik, 2007). In South Asia and the Southeast Asian regions, especially Bangladesh and Malaysia, considerable differences can be observed.

In 1990, Bangladesh ratified the UNCRC, whereas Malaysia only did so in 1995. Both countries have since reported dramatic successes in promoting children's development through the Children Act. In Bangladesh, there was a lack of opportunities to ensure child care, protection, and rehabilitation as per international norms for the protection of juveniles, beginning with the Children Act 1974 and the Children Rules 1976. Such acts and rules were established prior to the UNCRC. Nearly two decades after endorsing the UNCRC, Bangladesh finally repealed the 1974 Act and promulgated the Children Act 2013 (Act No. 26), particularly focusing on ensuring the provisions of the UNCRC. Basically, the law covers various aspects of separate juvenile justice systems, including child-friendly supportive units with personnel responsibilities.

Similarly, to ensure children's rights comprehensively, Malaysia amended the Child (Amendment) Act 2001 (known as Act 611), repealed the Internal Security Act 1960, and introduced the Sexual Offences Against Children Act 2017. Both countries have reformed previous laws on children to establish a separate child-friendly justice system (The Council of Europe, 2010) to secure protection for all children and meet their unique requirements. The continuous advancement of the laws on juvenile justice reflects a healthy environment to further safeguard, care for, and protect children. The present study explores the legal issues relating to child protection and fairness in dealing with children at risk in both countries.

LITERATURE REVIEW

To ensure the quality of the present study, an extensive review of books, articles, reports, and other publications, both on a national and international scale, has been conducted. This review aims to identify facts and knowledge gaps concerning the legal response to child protection and a balanced justice approach concerning child offenders in Bangladesh and Malaysia.

Scholars have examined the role of the juvenile justice system in child protection from multiple perspectives. According to Burhan and Muhammad Mahbubur (2008), in their book “Protection of Children in Conflict with the Law in Bangladesh”, there has always been the urgent need to gain a clear understanding of the current situation of children in a situation in conflict with the law and assess recent developments in the juvenile justice system. They found that the country’s juvenile justice concept lacked unity, resulting in children being governed by various diverse laws. Bangladesh seems to have overlooked critical aspects such as the distinctive needs, dignity, humane treatment, and other core elements essential for upholding children’s rights. Despite the alarming rate of juvenile delinquency, the justice system remains inadequate and understudied in the country.

In another book entitled “Towards a Justice Delivery System for Children in Bangladesh: A Guide and Case Law on Children in Conflict with the Law”, the author M. Imman (2010) explored the situation of child offenders within the evolving legal framework of Bangladesh. The objective was to identify the legal responses to child protection within the juvenile justice system and develop effective strategies in preventing juvenile crimes. Although many children were detained in various correctional centres and held in police custody, underage offenders received limited privileges concerning their custody, security, growth, and the continuation of educational support.

In another study titled “The Children Act 2013: A Commentary” M. Imman (2013) described the effectiveness of the new Children Act of 2013 in the legal system of Bangladesh. The author assessed to what extent the Children Act 2013 safeguarded the best interests of children in the current juvenile justice system. The law has mandated that children be treated in a child-appropriate manner, with their best interests considered at every stage of the proceedings. However, the absence of children’s rules has hindered the proper functioning of the juvenile justice system in protecting children’s human rights. Often, children are incarcerated instead of being placed in correctional institutions, and there is a noticeable lack of alternative measures beyond punishment in the Bangladesh legal system. M. Imman (2013) has proposed principles such as community protection, accountability,

competency development, individualization, and balance, to establish a stable justice system.

Numerous studies have examined the implementation of provisions of the 2013 Act, such as the establishment of a child affairs police desk, a child welfare board, family conferencing, and diversion programs across Bangladesh. Their findings also reveal several problems in safeguarding children detained in correctional centers and courts, particularly due to inadequately designated officers, which significantly impacts compliance with international standards (Md Zakir, 2020). Given the child-oriented treatment approach and legal responses aimed at rehabilitating delinquent juveniles, such measures have become imperative in both countries. Some researchers recommend child-friendly correctional institutions and treatment programs for the protection and reintegration of juvenile delinquents. Family conferences and diversion measures within the juvenile justice process are also seen as potential solutions (M. Rezaul & Md. Anwarul, 2014).

Regarding the approach to protecting children within the Malaysian juvenile justice system, researchers have found conflicting results. In the study by Farah Nini (2009) titled “The UN Convention on the Rights of the Child and the Administration of Juvenile Justice: An Examination of the Legal Framework in Malaysia”, the author outlines the fundamental principles of protecting the legal rights of child offenders as outlined in Articles 37 and 40 of the CRC. These provisions are obligatory for all state parties and many scholars emphasize the importance of protecting children’s rights in the juvenile justice system. However, the effective implementation of these provisions relies on Malaysia’s ability to develop a child-appropriate legal framework that consistently considers the best interests of children throughout the proceedings.

Many researchers argue that the existing juvenile justice system cannot effectively address delinquency trends and advocate for an alternative approach instead of a punitive one. In Malaysia, the Child Act 2001 was amended to align with international legal standards for child protection, resulting in the Child Act 2016. This amendment has contributed to the endorsement of child protection and justice systems, particularly concerning social integration. The lack of diversion

measures within the juvenile justice system has been identified as a hindrance to child protection (Norshamimi & Aminuddin, 2022). Malaysia's diversion measures in the juvenile justice system have not yet met international standards, which could aid in preventing delinquency (Aminuddin, 2016).

Scholars have highlighted that traditional retributive mindsets among law enforcement officers and judicial officers can foster deviant attitudes among child offenders. In this context, they propose a child-friendly connection between procedural justice and a reduction of reoffending among children. Numerous examples illustrate that children's rights are in conflict with the law, but these have been disregarded by modern states; thus, emphasizing the need for collective attention from policymakers, media, elected politicians, practitioners, and citizens alike (Banks, 2007).

In sum, the present review has revealed that the legal frameworks in both countries are inadequate for protecting children adequately. Enforcement officers must ensure that children are treated with respect and that no harm is inflicted on them, and to safeguard the well-being of the children when they come into contact with law enforcement officers (Beijing High-Level Meeting, Malaysia, 2010). This study underscores the fundamental belief that every child within the juvenile justice system should be granted rights that distinguish them from adult offenders, and to ensure their entitlement to a fair trial. The researcher aims to address challenges and improvements in the procedures of the juvenile justice systems of Bangladesh and Malaysia from a comparative perspective.

METHODOLOGY

This study employs a qualitative research approach that relies on secondary data to draw a comparative analysis of child protection within the juvenile justice systems of Bangladesh and Malaysia. To optimize the depth of this qualitative investigation, an extensive collection of secondary sources has been utilized to gather pertinent data for the two-country case studies. The methodology involves the following two primary steps: first, source identification through a library-based research to assess both the primary and secondary materials, and the second step is to carry out a content analysis to

compare the legal framework that governs the juvenile justice systems in both countries, and the unique challenges confronting the said systems in these two countries.

The content analysis method has been used to critically review and analyze relevant policies, laws, rules, opinions, books, and other forms of written materials. This approach is rooted in secondary data analysis, and is focused on a comparative examination of child protection-related legal issues. In order to explore the differing gaps and strengths in the current legal procedures of Bangladesh and Malaysia, this study draws from government policies, pertinent legal cases, judicial statements relating to child protection in both nations, international conventions, and governmental statistical reports.

DISCUSSION

Legal Response to Child Protection in Juvenile Justice

Proclamation of the Children Act

Despite facing turbulent political shifts and administrative changes, Bangladesh has made significant strides in various sectors, including the juvenile justice system. Notably, Bangladesh signed and ratified the UNCRC (United Nations Convention on the Rights of the Child) in 1990, thus aligning itself with international child protection standards (Haradhan, 2014).

However, Bangladesh's perspective on child rights was limited in the past, particularly concerning aspects such as custody, security, growth, and educational support for underage offenders. The situation underwent a remarkable transformation following Bangladesh's association with the UNCRC. A pivotal moment in the country's juvenile justice system came with the replacement of the outdated Children Act 1974 with the Children Act 2013 (Act No. 26). This newer act introduces comprehensive safeguards for children, addressing their roles as victims, witnesses, and offenders within the legal system. Importantly, it places a strong emphasis on preserving a child's dignity while considering factors such as age, gender, incapacities, and maturity during legal proceedings. Presently,

various ministries are actively working on different laws related to victim and witness protection, children's rules, and children's policies to create a more proactive justice system. Nonetheless, the current legal framework of Bangladesh's juvenile system primarily relies on the following six laws: The Children Act 2013, the Probation of Offenders Ordinance 1960 (amended in 1964), the Code of Criminal Procedures of 1898, the Penal Code of 1860, the Women and Children Repression Prevention Act, 2000, and the Special Powers Act of 1974. In contrast to Bangladesh, Malaysia also embraced a new legal framework concerning children following its ratification of the UNCRC in 1995. Following the UNCRC guidelines on the juvenile justice system, Malaysia underwent significant legal reform. In August 2002, the Malaysian judicial body deactivated and revised the Child Act 2001, Act No. 611, which was activated in 2002 superseded the Juvenile Courts Act 1947, the Women and Young Girls Protection Act 1973, and the Child Protection Act 1991. This revamped act incorporates extensive provisions dedicated to child protection and specifically addresses issues related to the corporal punishment of children. The act also includes provisions for trial and hearing of various requests of juvenile justice, underscoring Malaysia's commitment to child protection.

Furthermore, Malaysia demonstrated its commitment to child protection by amending the Act in 2016. These amendments were made in response to observations and recommendations from the UNCRC following Malaysia's initial report to the Committee in 2007. The 2016 Act represents a significant step forward in addressing the fundamental needs of juvenile offenders and modernizing the juvenile justice system in Malaysia (Norshamimi & Aminuddin, 2022).

Praiseworthy Child-Friendly Initiatives

The Bangladesh Children Act 2013 has successfully resolved the issue of age disparity within international standards, ensuring the establishment of a proper justice system for all juveniles under the age of 18 (Act 2013, sec 4). Prior to 2012, various laws in Bangladesh defined a child's age differently, leading to inconsistencies. These age limits varied from 12 to 18 years. However, the Children Act of 2013 addressed the critical issue of age uniformity. According to this Act, a child's minimum age for bearing criminal responsibility in Bangladesh

is set at 9 years old, with anyone up to the age of 18 defined as a child. The alignment with international standards, considering factors such as age, maturity, social conditions, and basic needs, ensures that every child enjoys exclusive rights to seek justice.

In contrast, the Malaysian Child Act of 2001 defines a person under the age of 18 as a child. Consequently, children are not only protected under the 2001 Act, but also entitled to international privileges. Furthermore, the 2016 Act in Malaysia provides comprehensive coverage of rights-based juvenile justice and introduces important amendments. One of the key areas amended is the introduction of new provisions related to the child registry system, community service orders, family-based care, and abolition of the whipping penalty. The child registry program aims to maintain records of individuals convicted of crimes against children, serving as extensive safety measures at every stage.

Additionally, the community service order under section 331 of the 2016 Act is a rehabilitation program designed for both juvenile offenders and adult offenders. In cases involving adult offenders, parents, and guardians may also be included if they have abused or neglected their children (Amended Act 2016, sec. 62). However, the most significant change is the elimination of the whipping penalty for juvenile offenders. While whipping as a form of punishment was applicable only for convictions of criminal offenses by children under the 2001 Act, this type of punishment has been completely prohibited by international instruments (Amended Act 2016, sec. 67 and the abolition of section 92 of the Child Act 2001).

Institutional Arrangements for the Protection of Children

The Bangladesh Children Act of 2013 places a strong emphasis on ensuring the safety, security, and well-being of children. Act 2013 introduces several distinctive features, including the appointment of Child Affairs Police Officers (CAPOs). Furthermore, the law includes restrictions on the arrest of children under age 9. Additionally, the use of handcuffs or ropes is strictly prohibited, even when detaining a child above age 9. According to section 10 of Act 2013, CAPOs serve as the primary authority responsible for processing any child involved in a legal situation. The designated CAPO is tasked with contacting Probation Officers (PO), notifying parents and family members, and

arranging for medical support when necessary. One of the crucial roles of CAPOs, in consultation with PO, is to identify suitable diversion programs for children seeking justice, in accordance with the guidelines established by the Children's Court (The Act 2013, sec. 52).

Furthermore, Section 5 of the 2013 Act provides for the appointment of the POs responsible for maintaining and safeguarding the personal files of children under their charge. The PO's responsibilities include ensuring proper follow-up procedures for alternative care whenever a child is placed under a legal charge and sent to the Child Development Center (CDC), or any recognized agency. The PO must also submit a social inquiry report within 21 days, as stipulated by the Children Rules (The Act 2013, sec. 31).

In Malaysia, the probation authority employs unique methods when dealing with children under the justice system. According to the Child Act 2001, POs play a crucial role in preparing informative probation reports (The Child Act 2001, sec. 87). These reports are compiled based on a copy of the charge and related documents. The probation reports include assessments of the child's general conduct, home environment, school reports, and medical history. It is the responsibility of the Juvenile court to obtain this report when issuing an order related to the child. The UNCRC mandates that State parties establish special procedures, structures, and jurisdictions for children facing legal charges, and Malaysia has responded by establishing relevant and qualified organizations and personnel to ensure the well-being of these children.

Formation of the Juvenile Court

Under the Bangladesh Children Act 1974, three juvenile courts were established, emphasizing the concept of child-friendly courts. Subsequently, The Children Act 2013 expanded this perspective by establishing a policy to have at least one juvenile court in every district headquarters and urban area (The Child Act 2001, sec. 19). The Act 2013 outlines the core principles of the juvenile justice process, emphasizing the need for a swift trial process that best serves the interests of children. It explicitly defines the roles and authorities of these separate juvenile courts in Bangladesh (The Act 2013, sec. 19(4)). Additionally, the juvenile court is granted jurisdiction to assess and determine the ages of any children accused of delinquency (The Act 2013, sec. 21). On April 24, 2014, the Ministry of Law,

Justice, and Parliamentary Affairs initiated government efforts to establish a district-wide juvenile court with alongside session judges. Subsequently, the Child Act of 2013 was amended in 2018 to further enhance the provision of juvenile tribunals at the district level. Currently, all tribunals that work toward preventing the repression of women and children also serve as juvenile tribunals for the trial proceedings of juvenile offenders.

In Malaysia, the concept of the individual juvenile court dates back to 1947. Since then, the establishment of special juvenile courts has been efficiently implemented through the 2001 Child Act. The Child Act 2001 outlines the requirements for creating the juvenile court. According to the law, the juvenile court consists of a magistrate, aided by two advisors nominated by the ministry from a board of qualified individuals residing in the state (The Child Act 2001, sec. 11(2)). The law provides infrastructure and comprehensive trial procedures for these designated juvenile courts, taking into account factors such as age, social circumstances, and maturity. Section 91 of the 2001 Act provides a record of authorizations, including admonishments and discharge orders for the care of a child by relatives. In cases where a discharge is considered, it may be contingent upon the offender entering into a bond of good behaviour. In criminal proceedings related to offenses committed by children, access to the juvenile court is restricted to prevent crowds of people from entering. Any leakage of information regarding the accused children is strongly advised to be kept out of the public domain. One notable commonality in the juvenile courts of both countries is the safeguards in place to protect the children's future, ensuring that they are not remanded in custody for an indefinite period (Muzaffar Syah, 2015).

Establishment of Certified Institutes for Child Development

Bangladesh has long-operated certified institutes for delinquent juveniles. It is important to note that these institutions are not jails; instead, they provide all the necessary facilities for the development of juveniles and are operated under the Ministry of Social Welfare. The Child Act 2013 introduced new provisions regarding the certification and operational procedures of Child Development Centers (CDC). As a result, these centers have been renamed correction institutes (The Act 2013, secs. 59–69). However, in cases where a child is found

guilty of a non-punishable offense that carries a sentence of death or imprisonment for life, they can be detained in a CDC for a maximum period of three years (The Act 2013, sec. 34). The Children Act 2013 also emphasizes the important role of probation officers in every juvenile case. This act mentions the duties, responsibilities, and duty stations for probation officers (The Act 2013, sec. 5). The responsibilities of a probation officer include initiating legal assistance, communicating with parents and family members, collaborating with Child Affairs Police Officers, organizing diversion activities, and ensuring suitable residence facilities in the Child Development Center. According to the new law, probation officers have significant roles during arrest, trial, and field inquiries in cases involving children. (The Act 2013, sec. 6). In cases involving alternative measures, they must follow procedures, and the officers are responsible for maintaining and safeguarding the personal files of individually detained children (The Act 2013, sec. 84).

In Malaysia, the government has established various types of certified institutions catering to both boys and girls, following the enactment of the 2001 Act. These institutions offer a range of reform programs for juvenile offenders. Notable examples include the Tunas Bakti Schools (STBs), the well-known Henry Gurney Schools, government-approved probation hostels, schools, and prisons. Many of these institutions are directly administered by the Social Welfare Department, while others fall under the purview of the Department of Prisons, as mandated by law. The nature and extent of services provided by these institutions depend on the severity of the offenses. Various types of treatment and rehabilitation services are available to help children reintegrate into society and lead normal, fulfilling lives. A child offender may be in rehabilitation for a maximum of three years, or the period can be extended until the individual reaches 21 years old (UNICEF, 2013).

Wellbeing of Offender Children

The Children Act 2013 in Bangladesh also includes provisions for the establishment of a child welfare board, with a primary focus on monitoring and evaluating the activities of development centers and certified institutes. Section 9 of Act 2013 designates the National Board as the apex body responsible for supporting, supervising, and coordinating district and/or city child welfare boards. The National Board comprises key stakeholders, including the Minister of Social Welfare, two female Members of Parliament (one from the

government and the other from the opposition), the Police Inspector General, and the Secretary of the Ministry of Social Welfare. This board is vested with the authority to formulate essential policies and guidelines. The implementation of these policies and guidelines falls within the purview of the district- and city-level boards. However, it is crucial to note that no board, whether at the national, district, or city level has any judicial function regarding children and youths who are in conflict with the law (Mia et al., 2022). The national-level board's role is primarily advisory and directive, whereas probation officers place a greater emphasis on safeguarding the best interests of children and strive to identify the most suitable alternative care options for juveniles (The Act 2013, sec. 9).

Similarly, in Malaysia, the 2016 Act (Act 2016, sec. 3) has introduced the provision for a National Council for Children. The primary objectives of the Council are to reduce child delinquency and develop appropriate programs to protect children's rights and dignity. Additionally, the Council has the authority to appoint two children to raise awareness about children's rights among educated individuals in society. Furthermore, the law incorporates an effective provision for child welfare teams, responsible for coordinating local-based services for families and children (Act 2016, 7A). The teams play a crucial role in providing support services at the local level when a child is found guilty of an offense.

Provisions for Imprisonment

In aligning with global norms, the Bangladesh Children Act 2013 introduces a more moderate punishment system for offender children. According to the new provisions in the Bangladesh Children Act 2013, no juvenile shall be sentenced to death or life imprisonment. This act also establishes limits on detaining children with adult prisoners and mandates their residence in development centers instead of adult jails until they reach the age of 18 (The Act 2013, sec. 33). Notably, the Children Act 2013 includes a provision that aligns with international standards by permitting the incarceration of children in extreme cases.

In Malaysia, the 2016 law has increased fines and introduced the possibility of prison sentences for offenses (The Act 2013, sec. 31). Furthermore, the 2016 Act abolished whipping as a form of

punishment, taking a step towards harmonization with international norms.

Diversion Program for Minor Offenders

With the adoption of diversion in Bangladesh, the Act of 2013 represents an initiative to replace the Children's Act of 1974. Its primary objective is to establish an updated and reformed child justice system that incorporates a modern diversion program, family conferencing, restorative justice, alternative dispute resolution (ADR), and social involvement (The Act 2013, sec. 48). Section 37 of Act 2013, PO, CAPO, and the Department of Social Service (DSS) are the relevant authorities responsible for implementing diversion activities, including family conferencing. An important feature of the 2013 Act is the application of restorative justice to address compensation and restitution in a children's court. Section 54(4) grants the Children's Court the option of utilizing the ADR method, referring cases to the ADR body when necessary and appropriate. It is crucial to note that the confidentiality of the diversion activities, family meetings, and ADR must be maintained, and the outcomes of these processes cannot be presented as legal evidence in court.

However, the 2016 Act in Malaysia has not extensively incorporated diversionary measures into its legislative framework. The Malaysian juvenile justice system lacks comprehensiveness as it does not address ADR issues, and the minimum age of criminal responsibility remains at 10 years old. Children below the age of 10 are completely exempt from any criminal liability in Malaysian law. Furthermore, there is no provision in Malaysian law for organizing diversion programs, whether by the police, the prosecutor, or the court (Mustaffa et al., 2020).

Bangladesh and Malaysia in Comparison

When comparing the two countries, it becomes evident that Bangladesh, upon introducing the 2013 law, incorporated many modern concepts, including considerations of the maturity or age of legal accountability for lawbreakers, redirection strategies, and various assessments aimed at the rehabilitation of underage perpetrators (Ali, 2010). Malaysia, however, has made strides with the 2001 Act and the 2016 Act, which ensures equal access to specialized justice for children in various

settings. However, both countries face challenges in providing satisfactory community-based treatment options for underage perpetrators due to the limited choices in institutional arrangements. While Malaysia has already improved its organizational and individual bodies, Bangladesh is still in the process of strengthening them.

PROTECTION OF JUSTICE-INVOLVED CHILDREN DURING THE TIME OF COVID-19

The recent COVID-19 pandemic has created a new crisis for people worldwide, prompting the urgent need for strategic plans to regulate laws and society in this newly endangered world. Indeed, the pandemic has presented unprecedented challenges to the overall justice system and in particular, the juvenile justice system. Among the most affected are arrested offender children, detained children, and those in pre-trial detention. In this new context, core judicial activities and legal aid services have been severely disrupted (UNICEF, 2020).

Currently, thousands of children are detained in various parts of the world, and these detained children are at critical risk of contracting COVID-19. The pandemic has compelled most countries to either close courts completely or reduce and adjust their regular operations (Save the Children, 2019). This slowdown in daily operations has led to increased backlogs and complications in legal proceedings and executions. Children at risk in detention centers are particularly affected by these changes. Due to the limited court activities, pre-trial detainees or imprisoned juveniles eligible for early release may find themselves in prolonged detention without access to justice. It is a reality that physical court functions are disrupted due to the rapid spread of COVID-19, preventing detained children from having timely court hearings (UNDP, 2020). However, as an emergency measure, many countries have turned to videoconferencing within functioning courts. Thus, the COVID-19 pandemic has created a unique situation for juvenile justice policy and practice worldwide (International Commission of Jurists, Switzerland, 2020).

Movement for Justice-Involved Children in Bangladesh

As special measures are in place to control COVID-19, children awaiting justice in Bangladesh face dire conditions. Ensuring the

protection, safety, and well-being of offender children has become a significant challenge at present (The Alliance, 2021). Overcrowded detention centers and the three Child Development Centers (CDCs) in Tongi, Jessore, and Konabari, Bangladesh, pose a substantial risk of rapid COVID-19 transmission. Negligence, abuse, and gender-based violence are common occurrences in these facilities, with the COVID-19 pandemic exacerbating these issues. Moreover, limited access to nutrition, healthcare, and hygiene further escalates the risk of illnesses such as COVID-19 (UNICEF Bangladesh, 2020).

It is encouraging to note that during the COVID-19 pandemic, all stakeholders involved in juvenile justice are making every effort to ensure the safety of offender children, their families, staff, and communities. UNICEF has recommended that member nations and other detention authorities take immediate steps, such as releasing all offender children to reunite with their families or implementing other suitable measures tailored to children's needs (UNICEF, 2020). Indeed, releasing children with safety measures is the most appropriate solution for safeguarding detained children during any pandemic like COVID-19. The Bangladeshi government has also adopted this approach for the best well-being of detained children. The relevant authorities, particularly the Social Services Department under the Ministry of Social Welfare, have provided all necessary support in this regard. Upon release, the young offenders were instructed to adhere to their parents' guidelines and to lead decent and respectable lives (Iftikhar Ahmed, 2020).

The recent COVID-19 pandemic has dealt a severe blow to the judiciary and offender children. Bangladesh's higher and lower courts have remained closed since the nationwide lockdown began on March 25, 2020 (UNICEF, 2020). COVID-19 has undeniably overwhelmed the already burdened judiciary, particularly affecting offender children waiting for bail hearings. However, the Bangladesh government took swift action by promulgating an ordinance to establish Virtual Children's Courts, which commenced operations on May 12, 2020 (The Ordinance of Virtual Courts, Bangladesh, 2020). UNICEF Bangladesh provided technical and logistical support for the launch of the Virtual Children's Court by deploying additional welfare workers and strengthened aftercare services for offenders and their families. It was aimed at reducing the risk of repeat cases (UNICEF, 2020).

Emergency measures, such as the virtual courts, have significantly assisted children in avoiding the potential risks of COVID-19 infection by expediting their releases. One of the primary goals of the Virtual Children's Court is to reduce the number of detained children to ensure that detention centers can adhere to proper health guidelines. Bangladesh has embraced digital platforms to fulfill its responsibilities, as it seeks to align with other nations that have already taken advantage of these platforms (Ahmed Shafquat, 2020).

It has been reported that the Virtual Children's Court has temporarily released more than five hundred detained children from detention centers. It is also worth noting that the majority of children detained were detained for minor offenses. Under normal circumstances, these cases would take approximately a year to resolve. Currently, around 23,000 pending cases involving children have contributed to overcrowding in detention centers (The Daily Star, 2020). Therefore, the application of the Virtual Children's Court marked a significant milestone for the juvenile justice system of Bangladesh.

Child Rights-Based Initiatives in Malaysia

In Malaysia, the COVID-19 pandemic has had a significant impact on many children, particularly those deprived of their liberty. During this period, detained children faced greater vulnerability in terms of psychological, physical, and mental health (The Alliance & UNICEF, 2020). To address these challenges, the Malaysian government has implemented emergency measures to protect children's rights amid the unpredicted COVID-19 pandemic. Authorities have refrained from imprisoning individuals for violating the country's movement control orders due to concerns that it would overload prisons and hinder social distancing, thus potentially exacerbating the spread of COVID-19 (Ahmad et al., 2023).

While it is imperative to isolate individuals who test positive for the coronavirus or display COVID-19 symptoms, to prevent transmission to non-infected individuals, such measures are not typically associated with the Malaysian court system. However, the government could explore the establishment of additional detention centers to alleviate prison overcrowding. Creating these additional facilities can contribute to the protection of detainees, prison staff, and the surrounding community (UNICEF Malaysia, 2021).

While Malaysia has embraced digital platforms, it has also allowed High Courts and Subordinate Courts to physically address urgent matters while strictly adhering to social distancing protocols. Despite a decade of continuous support from the Malaysian Government's ICT Department for court functions through e-filing and e-review processes, physical court proceedings remain available. In fact, courts in Malaysia are not categorized as 'essential services'. Consequently, the Prevention of Infectious Diseases Act (1988) enables preventive actions to be implemented in order to control the spread of COVID-19. This has led to the development of comprehensive standard operating procedures within court administration duties.

Moreover, Malaysian courts have taken the stance that online or remote hearings, while practical, may raise concerns about ensuring natural justice and a fair trial. Instead, they view virtual children's courts as a shift in location from physical children's courts, rather than a fundamental change in the principles of justice (M Imman, 2020).

DRAWBACKS OF THE JUVENILE JUSTICE SYSTEM

Outlook for Bangladesh

Challenges in the Implementation of Children's Law

While it is true that many national and international bodies, such as the UN, UNESCO, and the EU, have provided assistance and recognition for the Children Act 2013, there are still some challenges in its execution. Implementing initiatives like the Child Affairs Police Desk, Child Welfare Board, Family Conferencing, and many diversion programs is essential and logical; however, their successful execution requires significant effort. Although the Act of 2013 introduces several significant innovations, such as special judicial proceedings and the introduction of ADR and diversion tasks for the well-being of child offenders, there is a lack of proper policies and regulations at the grassroots level.

One significant challenge lies in the persistence of traditional retributive mind-sets among public officials. The legal framework in Bangladesh has its roots in British colonial laws, which prioritized control and punishment over reintegration and engagement. As a result, the Children Act 2013 places more emphasis on legal

proceedings and is less concerned with modern engagement activities. While the Act introduces new legal tools and techniques, concerns persist regarding their execution within the colonial legacy of judicial administration. Thus, the expected modernization of juvenile justice may face considerable obstacles due to the long-standing traditions of the judicial system in Bangladesh.

Limited Child-Oriented, Specialized Services

Despite the notable improvements brought about by the Children Act of 2013, there remain numerous other opportunities for growth, including the establishment of a child-focused specialized judicial unit. Additionally, structural and resource constraints have hindered the ability of the court system and law enforcement organizations to adequately safeguard children's interests. Regardless of the statutory requirement for one child court in each district, Bangladesh currently only has three child courts (M. Rezaul & Anwarul Islam, 2014). However, additional session judge courts have been granted the authority to act as child courts through gazette notification from the Ministry of Law, Justice, and Parliamentary Affairs (Government Official Gazette Notifications, 2014).

While an additional session judge court can adjudicate child offenders, there is realistically a pressing need for a dedicated court in this modern era. This is due to the heavy caseloads of additional session judge courts and the imperative of ensuring fair justice for all youth (Md Zakir, 2020). Furthermore, it is also important to note that the 2013 Act was amended in 2018 to expand the establishment of Children's Courts. The amended 2018 Act includes provisions for creating children's tribunals in each district. Presently, all tribunals to prevent the repression of women and children also function as children's tribunals for trial procedures of juvenile offenders.

Shortage of Rehabilitation Centers and Diversion Programs

Despite the acknowledgment of the Children Act 2013, concerns persist regarding the implementation of provisions related to rehabilitation centers and diversion programs. Establishing a child affairs police desk, a child welfare board, family conferencing, and diversion programs nationwide is a challenging endeavor. As of now, only three specialized institutes have been designated as child

correction centers across the country under the 1974 Act. Despite the enactment of the 2013 Act, no Child Development Center has been established. Additionally, child rights at different levels are inadequately protected. The conditions in the CDCs of Bangladesh remain poor, and correctional facilities, including communal, educational, specialized training, emotional, medical, and manual plans and strategies are not up to international standards. The lack of designated officers poses a significant obstacle to meeting these standards.

The law also prescribes provisions related to probation officers (The Act 2013, sec. 5). These officers are responsible for maintaining personal files for individual children within the child development centers, following procedures for the alternative care of offender children (The Act 2013, sec. 84) and submitting social inquiry reports about offender children to the court as prescribed by the children's rules (The Act 2013, sec. 31). However, the main issue arises from the absence of available children's rules and the lack of updated probation offender legislations in the country.

The reality of implementing laws and the codified law itself differs because there is a lack of implementation rules, guidelines, and provisions for diversion activities and alternative mechanisms in the Children Act 2013. Three child courts designated for juvenile offenders are realistically insufficient to treat children differently from adults at the various stages of criminal proceedings.

To reduce the number of detained juveniles, a child affairs police desk should be established at every police station nationwide. Such desks can alleviate pressure on court adjudication. Many divisional police stations have already set up these desks, but to maximize benefits for children, institutions must collaborate to enhance options for alternative care and diversions. Bangladesh needs to proactively establish necessary children's rules that conform to international guidelines (Nahid Ferdousi, 2015).

Although the Children Act 2013 prohibits death sentences and life imprisonment for children aged 9 to 18, this provision is not present in the 1974 Act (The Act 2013, sec. 33). However, there is an ambiguity when the court hears cases involving children charged under the following three acts: the Women and Children Repression Prevention Act, 2000; the Acid Violation Prevention Act, 2002; and the Children Act, 2013. The High Court Division had ordered clarification on

this ambiguity on August 14, 2016. Consequently, the Secretaries to the Law and Justice, along with the divisions of Legislative and Parliamentary Affairs under the Ministry of Law, and the Ministry of Social Welfare, are to be held responsible for resolving this ambiguity. Unfortunately, children often become victims of the ambiguity of different laws (The Daily Star, 2018). Despite having a reformed juvenile judicial system, children continue to suffer due to the poor implementation mechanisms of the relevant authorities.

Malaysian Context

Prolonged Child Protection and Welfare System in the Malaysian Context

In Malaysia, the recent changes to juvenile justice law introduced through the 2016 Act have incorporated many modern concepts, such as child registry, community service orders, family-based care, and child welfare teams. However, the law has not yet introduced provisions for diversion. Establishing a strong connection between the concepts of diversion and rights-based juvenile justice is crucial to ensure the survival and development of children. It also plays a vital role in reintegrating juvenile offenders into the community, fostering their morale, self-respect, and honour. Therefore, it is essential to include diversion provisions in alignment with the needs of children in the country (Human Rights Commission of Malaysia, 2014).

Regarding child protection, the child welfare teams are supposed to be composed of seven individuals who are experts on the protection and rehabilitation of children (The Act 2016, sec. 7A 2-4). However, establishing these teams effectively necessitates adequate state resources and specific detailed mechanisms, which have not yet been put in place (Andrews, 2018).

Undefined Power of the National Council for Children

The powers of the National Council of Children remain undefined. Furthermore, while the introduction of community service orders is a commendable initiative for ensuring the security and rights of children at home, there is a pressing need for appropriate levels of support and well-defined mechanisms to monitor case facts and children's needs. These mechanisms are important as they are necessary to ensure the effective implementation of this provision. Probation officers often

face overwhelming workloads in fulfilling community service orders as required by the law.

In terms of the participation of children in the National Council for Children, the law mandates the involvement of two children, but specific methods for selecting these children to represent the diverse socio-economic backgrounds and ethno-religious multiplicities among Malaysian children have yet to be established (Rosli et al., 2019). Additionally, the membership of the Council concerning the well-being and growth of children is unclear, as outlined in Section 4(1)(s) of the 2016 Act. Section 4A (1), grants powers to the Minister, but these powers are not precisely defined, potentially allowing for unrestricted authority that could override the representation of children.

Long-term Child Detention in the Pre-Trial Stage

In Malaysia, a significant issue within the juvenile justice system is the delay in disposing of cases involving child offenders, which results in prolonged detention during the pre-trial stage. Studies conducted in Malaysia have indicated that approximately 80 percent of children in the pre-trial stage between 2006 and 2009 were held in detention centers and prisons. Criticism has been directed at the operations of the Malaysian juvenile justice system for failing to establish dedicated detention centers for child offenders during criminal proceedings.

Limited Scope for Alternative Mechanisms

Furthermore, the Malaysian juvenile justice system lacks significant opportunities for alternative mechanisms, such as diversion, mediation, group conferences, and others, to complement formal proceedings (Aminuddin, 2016). The presence of these alternative diversion programs can have a positive impact on motivating children toward rehabilitation and reintegration into society.

In summary, there exists a notable gap between the law and its execution in both countries, which hinders the well-being of children. Even after seven years, Bangladesh has not yet formulated the Act 2013 rules. To truly protect children's rights and ensure their well-being in the justice process, modern techniques for reinsertion, rehabilitation, and guidance should be introduced with the children entitled to child-friendly support from the state, family, and community.

THE WAY FORWARD

Guidelines for Improved Juvenile Justice in Bangladesh

There are numerous opportunities for the development of a more improved juvenile justice system in Bangladesh. The government can proactively initiate the creation of Children's Rules, addressing non-custodial authorization. These rules can align with international standards such as the General Comment of the Committee regarding the Rights of the Child 2007 and the Council of Europe Guidelines. While the Act 2013 introduced several new concepts like redirection, meeting with next of kin, supervision, conflict resolution, and more, these concepts need proper implementation through Children's Rules. Additionally, establishing station desks exclusively dedicated to child affairs at police stations and independent national child welfare boards can further enhance the juvenile justice system.

Presently, Bangladesh relies on the district courts to represent children's court functions due to the absence of separate children's courts. To ensure child-oriented and friendly approaches in various aspects of the justice process, including arrest, investigation, prosecution, charge sheets, probation reports, rehabilitation, and after-care services, the establishment of dedicated children's courts is essential. These courts should facilitate child-friendly inquiry, prosecution, and the involvement of probation officers and welfare workers to ensure that children receive the best possible services from the relevant agencies (Mia et al., 2022).

Approaches for Ensuring Child Protection in Malaysia

Malaysia has taken steps to specialize in an independent children's court system under the 2001 Act while adhering to international mandates. Bangladesh can also benefit from establishing dedicated child courts at all district levels, similar to the ones in Malaysia, rather than relying solely on a separate wing of the session court. To maximize the functions of the juvenile justice system, it is crucial to establish a significant number of certified institutes and child courts in Bangladesh. Similarly, the 2016 Act in Malaysia has integrated new child-friendly approaches to ensure comprehensive juvenile protection. In contrast, Bangladesh currently has only three Child Development Centers nationwide. Therefore, it should consider adopting various types of institutes which are currently in use in

Malaysia, including probation hostels and boarding schools equipped with basic facilities.

To improve child well-being, the probation service should be adequately staffed with probation officers at all levels. The government should take responsibility for the Children's Tribunal, Youngster and Well-Being Boards, Child Development Centers, and diversion programs. Child Development Centers can also organize workshops or training programs to promote positive parenting styles and encourage parents to be actively engaged with their children.

Introducing alternative plans, such as probation, provisional discharges, deferred sentencing, community or social welfare services, compensation, and restitution, is crucial. Modern rehabilitation programs like guided living can be implemented for children dealing with trauma, psychological challenges, substance abuse, or other issues. These modern approaches can assist affected children in reintegrating into society by addressing their delinquent behaviours. Malaysian juvenile justice should continue developing and implementing such comprehensive systems as alternative measures. Furthermore, probation, community service orders, and deferred sentences should only be used as a last resort.

Modification of the Legal Provisions in Bangladesh

In alignment with international standards, it is imperative to reconsider, and in some cases completely abolish penalties such as life imprisonment, indefinite detentions, and long-term sentences for juvenile offenders. To effectively handle cases involving youth and child suspects, it is recommended that specialized police teams should be established in major cities. Furthermore, ensuring maximum involvement of probation officers is essential, allowing them to be assigned at the time of detention to assist in providing necessary support or establishing suitable conditions for custody. Every child not only possesses the right to be treated with compassion, but should also receive compassion and dignity. These principles should be upheld not only within the juvenile justice system, but also within families, schools, and communities. These environments should actively contribute to the rehabilitation and reintegration of formerly delinquent juveniles (Md. Ahsan, 2020).

Incorporating Diversion Mechanisms in Malaysia

There is an urgent need for the current Malaysian juvenile justice system to incorporate alternative methods alongside its existing formal procedures. The adoption of diversion programs can prove to be a valuable alternative. Across the international spectrum, different nations have implemented various diversion programs tailored to their domestic customs and specific requirements. These may encompass a wide range of diversification initiatives, including police-based diversion, community outreach counseling services, probation diversion, reprimands, cautions, and many more. Given that the concept of diversion programs is relatively new in Malaysia, a comprehensive approach is necessary for its successful introduction (Norshamimi & Aminuddin, 2022).

It is high time for the Malaysian government to establish a dedicated board responsible for overseeing all juvenile diversion activities. The government should create the essential legal framework to establish a well-structured administrative and organizational system. Once established, this board can plan and implement suitable diversion programs, equipping juveniles with knowledge through various methods such as training, counseling, victim-offender mediation, intervention, restitution, compensation, and more (Aminuddin, 2016).

Furthermore, there should be readily available alternative facilities and programs for those children who come into contact with the criminal justice system. Changing the behaviour and lifestyle of juvenile offenders requires the support and guidance of their parents and peers. A robust educational system can play a pivotal role in addressing these issues. Education can instill values and raise awareness about social norms and customs, which can ultimately benefit the entire nation.

Individuals directly involved in providing services to child offenders play a critical role in child care and protection. In the discharge of their duties, they should collaborate effectively with their colleagues, both senior and junior, and other professionals, all the while prioritizing the well-being of the children under their care. This ethical responsibility should be upheld diligently, and they should also remain vigilant against any abuse of power (Islam & Sikder, 2014).

CONCLUSION

The primary purpose of a juvenile justice system is to prevent recidivism and successfully reintegrate offenders back into society.

While it is a state obligation to ensure easy access to justice for all children, fulfilling the obligation must take on forms of tangible and formalized structures. The justice system must always prioritize the well-being of any child charged as a young offender.

In Malaysia, the overall juvenile justice system operates according to criminal procedures, which are more formal and inherently involve elements of proving someone guilty. This process is not appropriate for juveniles. To date, Bangladesh has failed in its efforts to establish a fully functional, dedicated juvenile court, which is essential for the long-term professional development of judges handling criminal involving juveniles.

However, both Bangladesh and Malaysia have the potential to implement measures addressing the root causes of juvenile crimes more effectively. Bangladesh should establish a completely separate juvenile justice system. In contrast, Malaysia has made significant progress by updating its laws on children and incorporating many new and modern legal concepts. Although the pandemic presents significant challenges for juvenile justice, both nations have introduced new policies dedicated to protecting and promoting the best interests of children in their respective countries.

Bangladesh needs to identify and then rectify the shortcomings of its laws on children promptly. The current reality emphasizes a broader commitment required to keep juveniles out of the formal justice system in both countries. As such policymakers, legislators, academics, and civil society should collectively strive for an effective juvenile justice system within their respective countries.

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