

## **Justice for Children in Bangladesh: A Brief Commentary on the Children Act 2013**

**Justice Mohammad Imman Ali\***

### **Introduction**

In 2013 Bangladesh enacted new legislation for the benefit of its estimated 70 million children, repealing the Children Act, 1974. The preamble to the Children Act, 2013 ('the Act'), officially known as the Shishu Ain, 2013, states that it has been enacted for the purpose of implementing the United Nations Convention on the Rights of the Child (UNCRC), 1990. The Act received the assent of the President, and was published in the official Gazette on 20 June 2013. By a subsequent Gazette notification dated 18 August, 2013, the Act was made effective from 21 August, 2013. The new law reflects some of the provisions of the UNCRC. It also includes some provisions which appear to have been incorporated in response to directions of the Supreme Court as well as the requirements of other international instruments, such as the Beijing Rules.<sup>1</sup>

At the outset, it is to be noted that this is a special law, with overriding effect. Notwithstanding anything contained in any other existing law, the provisions of this Act shall prevail (Section 3). The law defines a child as anyone up to the age of 18 years (Section 4).

### **1. Probation Officer**

The provision for Probation Officers existed in the old law, but the new law deals with the appointment, responsibilities and duties of Probation Officers in greater detail. The Act provides that the Government shall appoint one or more Probation Officers in every district, upazila or metropolitan area and that, until such appointment, Probation Officers appointed under any other law shall continue to work as Probation Officers as if they had been appointed under the present law. Until the appointment of a Probation Officer, the Government may entrust Social Welfare Officers or any other officer of a similar rank working in the Department (i.e. the Department of Social Welfare or in any district or upazila under the Department) with the responsibilities of the Probation Officer. The 2013 Act gives details of the duties and responsibilities of a Probation Officer in Section 6, including what they must do when any child, either in contact or conflict with the law, is brought or otherwise comes to the police station. At the police stations: the Probation Officer has a duty to ascertain why the child has been brought to the police station, to meet the child and assure her/him that s/he will be provided with legal assistance, to communicate and co-ordinate with the police about the child's case or complaint, to trace the parents of the child concerned and to assist the police in communicating with them, to assess the possibility of bail for the child with the Child Affairs and Police Officers or, where applicable, to undertake a diversion process upon evaluating the background of the

---

\* Justice, Appellate Division of the Supreme Court of Bangladesh. This is an abridged version of the detailed article published in the Supreme Court website. Mr Justice Mohammad Iman Ali reflected on the Child Rights in Bangladesh in his Anwarul Azim Memorial Law Lecture organised by SCLS in July 2018.

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

concerned case and, where diversion is not possible or the child is not released on bail, to arrange placement of the child in a safe home before s/he is produced in Court.

At the children's court: the Probation Officer must remain present in the Children's Court during the trial; support the child as far as possible; hold a field inquiry and prepare an inquiry report taking into consideration the conditions of the child and his surroundings and submit such a report to the Court; ensure legal representation for the child, including provision of legal aid through the District Legal Aid Committee (DLAC); and communicate, when necessary, with non-government legal aid organizations in order to ensure legal representation for the child.

At ACDC: Where a child in conflict with the law is sent to a Child development center or Certified Institute, it is the duty of the Probation Officer to prepare and preserve a separate file for the child, to follow the procedure for alternative care as provided in Section 84 of the Act, to meet the child at regular intervals and to see her/him according to her/his desired time, to monitor or observe that the parents, extended family members,<sup>2</sup> or legal guardian properly comply with the conditions relating to the supervision of the child, to personally monitor whether or not the child is receiving formal and vocational education, to inform the Court of the child's behaviour, effectiveness/efficacy of the measures taken in respect of the child, and to submit the report called for by the Court at regular intervals, to provide advice to the child with a view to making her/him sociable as far as possible and to render overall support for that purpose.

The Probation Officer is to observe the conditions relating to diversion or alternative care and to carry out any other responsibilities that may be prescribed by Rules.<sup>3</sup>

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

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

A separate chapter in the 2013 Act is devoted to the establishment of Child Welfare Boards at national, district and upazila levels.

National Board: The National Board has the responsibility to monitor, coordinate, review and evaluate the activities of the CDCs, and of Certified Institutes.<sup>4</sup> It has a responsibility to provide guidelines regarding rehabilitation and reintegration into the family and social life of disadvantaged children and those children in contact or in conflict with the law and to advise those concerned regarding the development and implementation of plans with a view to realizing the welfare and development of children. The National Board also has

---

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

<sup>3</sup> Section 95 of the Act provides that the Government may make Rules for carrying out the purpose of the Act. Many of the newly introduced concepts require framing of Rules for their implementation.

<sup>4</sup> Section 7.

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

The Board comprises high officials, including the Minister of Social Welfare as the Chairman of the National Board, two female Members of Parliament to be chosen by the Speaker - one each from the party in power and in the opposition, the Inspector General of Police or an officer of the rank not below a Deputy Inspector General of Police nominated by him, the Secretary of the Ministry of Social Welfare, officials from other ministries not below the rank of Joint Secretary, the Inspector General of Prisons and so on.<sup>5</sup>

District Boards: The District Boards<sup>6</sup> consist of sixteen categories of members, including the Deputy Commissioner and two local elites and two members of any voluntary organisations dealing with children, to be chosen by the Deputy Commissioner. The Speaker will nominate a Member of Parliament as Adviser for the District Board, giving priority to any female member.

The District Boards have the responsibility to visit CDCs and Certified Institutes within the district concerned or any other institute for children, if any, and to inspect prisons and supervise, coordinate, review and evaluate the activities undertaken by those institutes, to determine the method of alternative care for disadvantaged children and for children in contact with the law and, where applicable, to send them for alternative care, to assess information regarding the child while in care and to assess the data and information of the child under such care, to implement the directions given by the National Child Welfare Board, to approve the recommendations made by the Upazila Child Welfare Board and, if necessary, to forward them to the National Child Welfare Board for approval, to call for report from the Upazila Child Welfare Boards on their activities and, if necessary, to arrange for inter-Board meetings for the coordination of their activities, to discuss the information provided by the CDCs, Certified Institutes or prisons, as the case may be, and to take necessary initiatives for the welfare of children.

Upazila Boards: The Upazila Board consists of the Upazila Nirbahi Officer as Chairman with nine other categories of members. The female Vice Chairperson of the Upazila Parishad will be the Adviser for the Upazila Board.

The Upazila Board's responsibilities are to supervise, coordinate, review and evaluate the activities undertaken by the Certified Institutes situated in the concerned Upazila; to determine the method of alternative care for disadvantaged children and children in contact with the law, to send them for alternative care, where applicable, and to assess the data and information of the child under such care; to implement policies adopted and directions

---

<sup>5</sup> In total, there are 27 categories of representatives in these Boards.

<sup>6</sup> Section 8.

given, from time to time, by the National Child Welfare Board or the District Child Welfare Board, as the case may be, and to send reports as called for; to undertake such responsibilities as may be prescribed by the Rules; and to adopt such other measures as would be necessary to discharge their responsibilities and functions.<sup>7</sup>

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

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

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

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

### **3. Establishment of Children's Court and its functions**<sup>8</sup>

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

The 2013 Act provides that, for the purpose of the Act and for trial of offences thereunder, at least one Court is to be established in every district headquarter and in every metropolitan area, as the case may be, to be called a Children's Court. Pursuant to Section 16(1), the Ministry of Law and Justice, in consultation with the Supreme Court, is mandated to declare, by notification in the official Gazette, one or more Court of Additional Sessions Judge in a district or metropolitan area, as the case may be, as the Children's Court. If there is no Additional Sessions Judge in any district then the District and Sessions Judge shall discharge her on the responsibilities of a Children's Court in addition to her/his own responsibilities. Section 17 of the Act provides that in any case a

---

<sup>7</sup> Section 9.

<sup>8</sup> Section 16.

child in conflict with the law or a child in contact with the law under any law whatsoever, the Children's Court shall have the exclusive jurisdiction to try that case.<sup>9</sup>

Where a child is involved in any offence along with an adult, on the basis of the separate charge sheet as provided under Section 15, evidence will be taken in the case of the child separately from the evidence taken in the case of the adult, in a separate session on the same day. Such taking of evidence shall continue uninterruptedly on the following day(s) until the examinations are closed.<sup>10</sup> The Children's Court will hear both the case of the adult and the case of the child but at separate sittings on the same day and on every day thereafter until the trial is concluded. The Children's Court shall conduct its sessions in such place, day and manner as may be specified by Rules. Until such Rules are framed, the Judge of the Children's Court shall commence and conclude the sittings according to Section 17(2) upon determining the date, time and place of the trial. The sittings of the Children's Court shall be in a building or room separate from one where trial of adults take place and on a day and time other than the sittings of the regular Court. The sittings for the trials of children will take place in an ordinary room, without witness boxes and without podiums in red cloth.<sup>11</sup> (as is found in local conferences)

The Children's Court has the powers of a Court of Sessions under the Code of Criminal Procedure, 1898; powers of a Civil Court in respect of service of summons, summoning witness and ensuring the attendance of witnesses, production of documents or materials and receiving evidence on oath.<sup>12</sup>

In the Children's Court the arrangement, decoration and seating plan of the court room are to be prescribed by Rules, ensuring that during the proceedings the child's parents or, in their absence, the foster carer, guardian or member of the extended family and the Probation Officer and her lawyer shall, so far as possible, sit near him. The Court shall arrange for appropriate seating for the child and in case of a child with disabilities, where necessary, provide special seating. While the trial of a child is continuing, the lawyer, police or any other official present in Court shall not wear any professional or official uniform.<sup>13</sup>

---

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

<sup>10</sup> Section 17(2).

<sup>11</sup> Section 17(4).

<sup>12</sup> Section 18.

<sup>13</sup> Section 19(4).

The anomalies in the old law mentioned in the case of *The State v Md. Roushan Mondal*<sup>14</sup> have been cleared by the new law by providing specifically that the date of commission of the offence shall be the relevant date for determining the age of the child under the Act.<sup>15</sup> In other words, if the person who is alleged to have committed an offence is below 18 years of age on the date of occurrence, then the case will be dealt with under the provisions of the 2013 Act. It appears also that some of the recommendations made in the case of *The State v Secretary, Ministry of Law, Justice and Parliamentary Affairs*<sup>16</sup> have been taken into consideration, for example the provisions for legal aid, victim/witness protection and to a certain extent, exploitation of children by adult criminals for criminal activity.

As before, the Children's Court has been given the responsibility for assessment and determination of age of the child. When any child is brought before the Court, either as an accused or as a victim (but not as a witness), her/his age is liable to be determined upon enquiry and a hearing, if it appears to the Court that s/he is not a child.<sup>17</sup> While doing so, the Court is bound to take into consideration all evidence produced before it and shall declare the child's age upon recording its opinion. In order to determine the age of the child, the Court may call for relevant documents, registers, information or statements from any person or institute. It may also serve summons upon any person or officer or employee of any institute to produce a document, register, information or statement. The age thus determined will be deemed to be the true age of that person and an order or judgment of the Court shall not be invalidated by any subsequent proof that the age was incorrect.<sup>18</sup> However, where a child is declared by the Children's Court to be not a child and if subsequently it is proved by unquestionable documentary evidence that s/he is a child, then the Court may change its opinion with regard to the age of the child upon giving adequate reasons.<sup>19</sup>

#### **4. Participation of Child in Court proceedings**

In cognizance with Article 12 of the UNCRC, the Act provides that to participate in person at all stages of the trial shall be considered as a right of the child.<sup>20</sup> It is also provided that the presence of the child may be dispensed with at any stage during the trial if his presence is not necessary in her/his best interests, subject to her/his consent and the trial or proceeding shall continue in her/his absence. Provided that the presence of the child's parents or, in their absence, the foster carer, guardian or member of the extended family and also the Probation Officer and his lawyer shall be ensured. The steps taken during the proceedings and those to be taken shall be informed to the child. It is the duty of the lawyer engaged on behalf of the child and the Probation Officer to explain to the child in easy language any decision or order of the Court and also the nature and consequence of the proceedings.

In case of any carelessness, negligence and failure on the part of CAPO or concerned police officer or Probation Officer in discharging their responsibilities in filing and conducting

---

<sup>14</sup> 59 DLR (2006) 72.

<sup>15</sup> Section 20.

<sup>16</sup> 29 BLD (2009) (HCD) 656.

<sup>17</sup> Section 21.

<sup>18</sup> Section 21(4).

<sup>19</sup> Section 21(4).

<sup>20</sup> Section 22.

cases properly in accordance with the provision of this Act, the Children's Court shall immediately refer the matter, in the case of Probation Officer, to the Deputy Director of the District Social Services Office, and in the case of CAPO or concerned police officer, to the Superintendent of Police for taking appropriate legal action and the concerned authorities shall be bound to intimate the concerned Children's Court with a report relating to action taken by them.<sup>21</sup>

Details of who may be present during the sitting of a Children's Court are similar to the provisions of the Children Act, 1974. Section 23 details who may be present in Court, namely the child concerned, the parents or, in their absence, the foster carer, legal guardian, or, where applicable, member of the extended family, officers and employees of the Court, parties to the case or proceeding, CAPO, the concerned lawyer or any other person directly concerned with the case or proceeding including the Probation Officer and any person specially authorised by the Court to appear or remain present.<sup>22</sup> No other person will be allowed to remain in Court. The Court may direct the parents or, in their absence, the foster carer, legal guardian or, where applicable, member of the extended family to appear before the Court if they live within a reasonable distance from the Court.<sup>23</sup> If the said persons reside beyond a reasonable distance, the Court shall fix a reasonable time and direct them to appear before the Court at that time.

If the Court thinks it necessary for the best interests of the child, even those persons mentioned in Section 23, other than the child concerned, may be directed to leave the Court and they will be obliged to do so.<sup>24</sup> Where a child is called as a witness in any case relating to any offence against decency or morality, the Court may direct any person to be withdrawn from the Court in the best interests of the child other than the engaged lawyer, Probation Officer or other Court officers or employees.

Keeping the child in safe custody during the pendency of any trial shall be considered as a last resort and for the shortest possible period of time, and any child kept in safe custody shall be dealt with by way of diversion within the shortest possible time.<sup>25</sup> If it is absolutely necessary to keep the child in safe custody then the Children's Court shall order the child to be sent to a Certified Institute situated within a reasonable distance. In that case it is a requirement that such a child shall be kept separately from the older children staying in that Institute.

The 2013 law mandates that the proceedings concerning children in contact with the law or conflict with the law shall be conducted in easy language understandable by the child and that, where necessary, the Court shall order the presence of an interpreter for the child, free of cost.<sup>26</sup>

## **5. Matters to be considered by the Children's Court in passing any order**

---

<sup>21</sup> Section 22(5).

<sup>22</sup> Section 23

<sup>23</sup> Section 24

<sup>24</sup> Section 25

<sup>25</sup> Section 26.

<sup>26</sup> Section 27.

With some important additions, the old Section 15 has been re-enacted. Now, when passing any order under the 2013 Act, the Children's Court shall consider the child's age and gender; her/his physical and mental condition; her/his qualification and level of education; her/his social, cultural and ethnic background; the family's financial condition; the lifestyle of the child and her/his family; reasons for her/his commission of the offence, information regarding gang formation and overall background and surrounding circumstances; the child's opinion; a social enquiry report and other ancillary factors that are expedient or are required to be taken into consideration in the best interest of the child and her or his correction.

#### **6. Social inquiry report**

Within 21 days of production of the child before the Children's Court, the Probation Officer is mandated to submit before the Court a social inquiry report in the manner prescribed by the Rules. A copy of the same shall be submitted to the nearest Board and Department.<sup>27</sup> The matters to be included in the social welfare report are detailed in Section 31(2), and include a description of the child's family, social, cultural, financial, psychological, ethnic and educational background, the condition and locality in which s/he lives, and the circumstances under which the offence took place. The inquiry report shall be deemed to be confidential.

Reporting any matters relating to a case or proceeding involving a child is prohibited. In any case under trial before the Children's Court, where a child is an accused or a witness, no photograph or description of the child shall be published in any print or electronic media or through the internet which may directly or indirectly identify the child, unless it is apparent to the Court that such publicity will not be harmful to the interest of the child. In such cases, the Court may permit the publication of the child's photograph, description, news or report.<sup>28</sup>

#### **7. Time frame for concluding trial**

The new Act provides a timeframe within which to conclude the trial. Notwithstanding anything contained in the Code of Criminal Procedure, 1898 or any other law for the time being in force, the Children's Court is required to complete the trial within 360 days from the day of the child's first appearance before the Court. If for any acceptable or practical reason the trial cannot be concluded within the time mentioned, the Children's Court shall give reasons and extend the deadline by another 60 days. From the commencement of trial in the Children's Court and until its conclusion, the proceedings shall continue every day without break. If the trial is not concluded within the time specified or the extended time, the child shall be discharged if the allegations concern a minor offence and do not involve murder, rape, robbery, dacoity, drug-dealing or any other heinous or serious offence. Where an adult is jointly involved with the child, the trial of the adult shall continue.<sup>29</sup>

#### **8. Order upon finding of guilt**

##### **i) Restriction regarding punishment**

The 2013 Act retains many of the old provisions regarding orders on finding a child guilty of an offence, and supplements them. It provides that no child shall be sentenced to death,

---

<sup>27</sup> Section 31.

<sup>28</sup> Section 28.

<sup>29</sup> Section 32.

imprisonment for life or imprisonment.<sup>30</sup> But when a child is found to have committed an offence so serious in nature that in the opinion of the Court the punishment provided by this law is not sufficient, or if the Court is satisfied that the child is so unruly or of such depraved character that s/he cannot be sent to a Certified Institute, or that any other alternative methods in which s/he may be dealt with are not suitable in her/his case, then the Court may sentence the child to imprisonment and send her/him to prison. However, the period of sentence may not exceed the maximum period to which the child could have been sentenced. The Court may order the child to be detained in a Certified Institute instead of prison until s/he reaches the age of 18. When a child is sentenced to imprisonment, s/he shall not be allowed to associate with any adult in the prison.<sup>31</sup>

#### **ii) Order of detention by a Children's Court**

Where the Children's Court find that a child is guilty of an offence punishable with death or imprisonment for life, it may order the child to be detained in a CDC for a period not less than three and not more than ten years. However, if it finds the child guilty of an offence not punishable with death or imprisonment for life it may order her/him to be detained in a CDC for up to three years.<sup>32</sup>

Where a child whose behaviour, character and personality has changed positively and who has not been charged with an offence of murder, rape, robbery, dacoity, drug-dealing or any other heinous or serious offences, steps may be taken for her/his release as soon as s/he reaches the age of 18 and with that view, a recommendation may be sent to the Government three months before s/he reaches 18.<sup>33</sup> Where the child is charged with an offence of murder, rape, dacoity, robbery or drug-dealing or any other serious offence then on her/his attaining the age of 18, if the case is still under trial or a child is already 18, s/he may be transferred by the CDC to the Central or District Jail subject to approval of the Children's Court.<sup>34</sup> A person so transferred shall be kept in a separate ward from convicted prisoners or other under-trial prisoners.<sup>35</sup> If a person is above 18 by the time the trial finishes, the Children's Court shall send her/him directly to the Central or District Jail.<sup>36</sup>

When the Children's Court thinks fit so to do, it may, instead of directing any child to be detained in a CDC, order her/him to be discharged after due warning or may order her/his release on probation subject to good conduct.<sup>37</sup> Such probation may be supervised by a Probation Officer. Alternatively, the child may be committed to the care of her/his parents, or, in their absence, to a foster carer, guardian or member of their extended family or any other fit person.<sup>38</sup> These persons may be given the custody of the child for up to three years on condition that they shall be responsible for her/his good behaviour.<sup>39</sup> If it appears to the Court, upon receiving a report from the Probation Officer or otherwise, that the child has

---

<sup>30</sup> Section 33(1).

<sup>31</sup> Section 33.

<sup>32</sup> Section 34.

<sup>33</sup> Section 34(2).

<sup>34</sup> Section 34(3).

<sup>35</sup> Section 34(4).

<sup>36</sup> Section 34(5).

<sup>37</sup> Section 34(6).

<sup>38</sup> Section 34(7).

<sup>39</sup> Section 34(7).

not been of good behaviour during the period of probation, the Court may order the child to be detained in a Certified Institute for the unexpired period of probation.<sup>40</sup>

### **iii) Periodic review and release**

The Court shall mention within every order that it may be reviewed periodically and the Court may release the child with or without any condition.<sup>41</sup>

The Government may release any child from a CDC or Certified Institute with or without conditions upon consideration of any recommendation received under Section 34(2) from any CDC or Certified Institute. Alternatively, the matter may be referred to the National Child Welfare Board for its recommendations on the concerned issues.<sup>42</sup>

### **iv) Use of terminology when passing any order**

Apart from the terminologies used in the Act, when passing any order the Court may not use the terms “offender”, “convicted” or “sentenced” in relation to children. Instead, the Court may use terms such as “a person found guilty of an offence”, “a finding of guilt”, or “an order made upon such findings”, as the case may be, or such other synonyms as the Court deems appropriate may be used.<sup>43</sup>

## **9. Settlement of disputes**

The 2013 Act introduces a provision for settlement of disputes where any child has committed an “offence of lesser gravity”. In such cases, the Court may direct the Probation Officer to take steps to settle the dispute between the victim and the child who has committed the offence. The Probation Officer, with the participation of appropriate persons from the community shall determine the method for dealing with the matter according to the terms and conditions specified by the Children’s Court. The settlement process shall be concluded expeditiously and the result informed to the Children’s Court. The Court will then pass necessary orders and send directions to the Department, which in turn shall take action and send a progress report to the Court.<sup>44</sup>

## **10. Appeal**

The 2013 Act has re-enacted the provisions for appeal and revision, with some modifications. Appeal against any order of the Children’s Court lies before the High Court Division and may be preferred within 60 days from the date of judgment of the Children’s Court. This does not affect the power of revision of the High Court Division. Any appeal or revision is to be disposed of within 60 days from the day it is filed.<sup>45</sup>

## **11. Applicability of the Code of Criminal Procedure, 1898**

Where any provision does not exist within the 2013 Act or the Rules made under it, the provisions of the Code of Criminal Procedure, 1898 shall be followed as far as possible in

---

<sup>40</sup> Section 34(8).

<sup>41</sup> Section 35.

<sup>42</sup> Section 35(2).

<sup>43</sup> Section 36.

<sup>44</sup> Section 37.

<sup>45</sup> Section 41.

respect of any trial or proceeding of any case under this Act. All offences under this Act shall be cognizable.<sup>46</sup>

### **12. Removal of disqualification upon conviction**

Where any child is found guilty of any offence under this Act or any other law, Section 75 of the Penal Code 1860 and Section 565 of the Code of Criminal Procedure, 1898 shall not be applicable.<sup>47</sup> Any such finding of guilt shall not cause the child to be disqualified when applying for employment in any Government or non-government office or when contesting in any election.<sup>48</sup>

### **13. Legal Representation**

In line with Articles 37 and 40 of the UNCRC, the Act includes provisions regarding legal aid and assistance for children. No Court shall proceed with the trial of a child in conflict or in contact with the law if they do not have legal representation.<sup>49</sup> The child must be given the opportunity to instruct her/his representative in his own language, if necessary with the help of an interpreter. If the parents or, in their absence, foster carer, legal guardian or member of the extended family of a child do not appoint a representative for the child or if such person is not available, or if no sufficient fund is available to engage a lawyer, then the Children's Court shall appoint a lawyer from amongst the Panel of lawyers of the District Legal Aid Committee or of the Supreme Court to conduct the case.<sup>50</sup> The lawyer so appointed must be present at every hearing of the case, and, if for any reason s/he is unable to conduct the case, s/he shall inform the Court in writing through the child's parents or, in their absence, foster carer, legal guardian or member of the extended family, and Probation Officer and the Court shall adjourn the hearing of the case until another lawyer is engaged. According to the proviso to Section 56(2), the DLAC shall not in any event take more than 30 days to appoint a new lawyer. Where the parents or, in their absence, foster carer, legal guardian or member of the extended family appoint any lawyer, such lawyer must be present at all hearings of the case. However, the concerned lawyer may remain absent from the hearing for reasonable cause with the permission of the Children's Court.<sup>51</sup>

If the lawyer representative for the child is repeatedly absent from the Court without reasonable excuse or, where her/his negligence in conduct of the case is apparent, the Children's Court may release them from the duty of conducting the case and may treat such behaviour as misconduct and report her/him to the Chairman of the DLAC and, as the case may, be to the Bar Council and the concerned Bar Association. The Court shall direct the concerned authorities to report within 30 days as to what action was taken.<sup>52</sup>

---

<sup>46</sup> Section 42.

<sup>47</sup> Section 75 of the Penal Code and Section 565 of the Code of Criminal Procedure, 1898 relate to any person previously convicted of an offence of counterfeiting or possession of counterfeit currency or offences against property punishable with imprisonment for three years or more. If such a person is again convicted of such an offence, s/he shall be subject for any such subsequent offence to imprisonment for life or for a term of imprisonment which may extend to ten years. These provisions for enhanced punishment for re-offenders shall not apply to a child who is found guilty of committing the same offence again.

<sup>48</sup> Section 43.

<sup>49</sup> Section 55(1).

<sup>50</sup> Section 55(3).

<sup>51</sup> Section 56.

<sup>52</sup> Section 57.

If at any stage of the trial it appears that the child in contact or in conflict with the law is susceptible to harm or injury then the supervising authority may take steps to prevent direct contact of the concerned child with the accused persons; to provide security for the child through the police or other agency and to keep the child's whereabouts secret; to apply to the Court or to the police for provision of adequate security for the concerned child and, if necessary, for the members of the child's family at all stages.<sup>53</sup>

#### **14. Establishment of Child Development Centres and Certified Institutes**

##### **i) Under auspices of the Government**

The Government is mandated to establish and maintain necessary number of CDCs based on gender disaggregation for the accommodation, reformation and development of children who are ordered to be detained and those who are undergoing trial.<sup>54</sup> The Government may at any time certify any of its existing institutes or establishments as suitable for placement of children charged with any offence.<sup>55</sup> The Government may frame Rules or, from time to time, issue circulars/notifications/orders in connection with the accommodation, reformation, development and maintenance of children residing in the institutes newly established under Section 59(1) as well as in those existing establishments certified under Section 59(2).

##### **ii) Certified Institutes established by private initiative**

The Government may, by notification in official Gazette, permit any person, institution or organization to establish and maintain as provided by Rules any Certified Institute subject to fulfilling prescribed conditions.<sup>56</sup> Running any institute without lawful certification will incur a penalty for the owner, manager or officer of up to five months' imprisonment or a fine of fifty thousand taka.<sup>57</sup>

##### **iii) Informing the Department about the children residing in a Certified Institute**

All Government and private establishments mentioned above shall supply information to the Department of Social Welfare within the fifteenth day of every month, including the name, gender, age, reasons for the child's presence in the institute and the date of her/his admission there.<sup>58</sup>

##### **iv) Minimum standards of care**

The Government, by issuing an office order and directive, shall determine the minimum standards for proper care of children in Certified Institutes. Children staying in Institutes shall be categorized into different classes and kept separate according to the seriousness of their offence and their ages. Children above nine shall not be kept with children aged ten, and children above ten shall not be kept with children above twelve in the same room and on the same floor. Further, in the case of children aged twelve and above, care must be taken in relation to their accommodation. As far as possible they should be accommodated in separate rooms keeping in mind the gravity of their offence and their physical growth and strength. No child below the age of nine years shall be kept in a Certified Institute.

---

<sup>53</sup> Section 58.

<sup>54</sup> Section 59(1).

<sup>55</sup> Section 59(2).

<sup>56</sup> Section 60.

<sup>57</sup> Section 61.

<sup>58</sup> Section 62.

However, if a child below the age of nine without any carer is found anywhere, that child must be sent to the Department or its nearest office. The Department shall notify the relevant Board and, upon considering the child as a disadvantaged child, shall take appropriate steps in accordance with Sections 84 and 85 of the Act.

The Certified Institutes are mandated to protect the best interest of every child staying there and to ensure their proper behaviour and appropriate education, including vocational training.<sup>59</sup>

**v) Inspection of Certified Institutes by the Government or its representatives**

The Government or a representative empowered by it and the Director General of the Department or any other person or organisation authorised by them in this capacity may inspect any Certified Institute for the purpose of collecting information for any official or special purpose and may on the basis of such information advise the Government.<sup>60</sup>

**vi) Transfer among different Institutes**

The Department for any particular reason may transfer any child from one Certified Institute to another.<sup>61</sup> This may be done also on the orders of the Director General of the Department when any Institute loses its certified status.<sup>62</sup>

The certified status of any Certified Institute may be withdrawn if it fails to maintain the minimum standards determined by the Government upon giving notice. Before serving such notice, the manager of the concerned Certified Institute must be given a reasonable opportunity to show cause as to why the certificate shall not be withdrawn.<sup>63</sup>

**vii) Control of the custodian over the child**

When a child is sent to a Certified Institute or handed over to any person, that Institute or person shall act as the child's parent and shall be responsible to ensure her/his safety, care and development, they shall keep the child in their custody for the period specified by the Children's Court or by the Board or any other Court, even though the child's parents or any other person may claim her/his custody.<sup>64</sup>

**viii) Procedure relating to an escaping child**

A child who escapes from custody of any Certified Institute or person may be arrested by the police without warrant and returned to the Institute or the person without registering any offence or without filing any separate case against the child. The escape or abscondence shall not be treated as an offence.<sup>65</sup>

**15. Alternative Care**

**i) Care within the family or the community**

---

<sup>59</sup> Section 63.

<sup>60</sup> Section 64.

<sup>61</sup> Section 65.

<sup>62</sup> Section 66.

<sup>63</sup> Section 67.

<sup>64</sup> Section 68.

<sup>65</sup> Section 69.

The 2013 Act incorporates a provision for alternative care for the benefit of disadvantaged children and children in contact with the law. Alternative care may be arranged in order to ensure the overall welfare and the best interest of disadvantaged children and children in contact with the law who need special protection, nursing and care and whose development needs to be ensured, upon consideration of their familial, social, cultural, financial, ethnic, psychological and educational background. The Act requires that the full assessment report of a child prepared under Section 92 be considered before sending her/him to alternative care.

When deciding on the means and methods of alternative care, reintegration of a child with her/his parents shall be considered on a priority basis, but if the parents are divorced or separated the child will be reintegrated with one or other of the parents upon taking into account the child's opinion. Further, before prioritizing the opinion of the child, the characteristics of the parents and the reason for the separation between them shall be considered. Where it is not possible to reintegrate the child with the parents, the child may be reintegrated with the extended family or, in the absence of parents, with the guardian, person supervising the child or any fit person, as community-based integration. If it is not possible to integrate the child with any such person mentioned above then the child shall be sent to any institute mentioned in Section 85.

If it becomes apparent that the parents may engage a child in any immoral or illegal activities, then, until there is a change in their circumstances, the child may be placed in an institute.<sup>66</sup> In such circumstances, the Government shall take steps for rehabilitation of the concerned parents with a view to reintegrating the child with them.<sup>67</sup>

#### **ii) Institutional care for disadvantaged children**

For those children who cannot be provided parental or non-institutional care, the Department shall provide institutional care in any Government children home, *Chotomoni Nibash*, Centre for Training and Rehabilitation of Disadvantaged Children, Government shelter home and/or any other institute as may be determined by the Government.<sup>68</sup>

#### **iii) Determining alternative care**

The Child Welfare Board or the Probation Officer shall determine the most suitable alternative care for the child, taking into consideration the best interests of the child.<sup>69</sup>

#### **iv) Establishment of alternative care system by the Department**

The Department shall make the following arrangements for setting up an alternative care system under this Act:

Setting up a programme for counselling or providing financial or other support for the parents/ guardian/ person supervising the child/ members of the child's extended family.

Providing counselling and taking necessary steps for training on provision of a stipend, determining livelihood needs and reintegration with parents.

---

<sup>66</sup> Section 85.

<sup>67</sup> Section 84.

<sup>68</sup> Section 85.

<sup>69</sup> Section 86.

Setting up a monitoring system for implementing the above provisions.

Undertaking any other relevant steps for the purpose of carrying out the objectives of the Act.

**v) Duration of alternative care and follow up**

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

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

**vi) Disadvantaged children**

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

The Government may take necessary measures in accordance with the procedure specified by Rules for the purpose of ensuring special protection, care and development of disadvantaged children.<sup>70</sup>

**vii) Forwarding a child by any person or organisation**

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

The Department or its office upon receiving any disadvantaged child, or child in contact or conflict with the law, or information concerning such child, shall record the information in the form prescribed by Rules. They shall send the child in contact or conflict with the law

---

<sup>70</sup> Section 89.

or the information, as the case may be, to the CAPO and in the case of a disadvantaged child shall make appropriate arrangement according to Sections 84 and 85 of the Act as appropriate.<sup>71</sup>

**viii) Forwarding of the child by police officer**

Whenever any Police officer receives a disadvantaged child or a child in contact or conflict with the law, or information about such a child, s/he shall send the child to the CAPO of the concerned police station, who will deal with the child in accordance with provisions of this Act. In the case of a disadvantaged child, s/he will send the child to the Department or its nearest office to take steps in accordance with Sections 84 and 85 of the Act.<sup>72</sup>

**ix) Assessment of child**

The Probation Officer or Social Worker upon receiving a child under this Act shall keep the child in an institute mentioned in Section 85 or in any other safe home. They shall assess the child in accordance with the Rules, and shall take necessary measures under this Act in order to ensure her/his overall development. The Probation Officer or the Social Worker also has a duty to inquire about the actual condition of the child and to trace the parents or guardian, person supervising the child, legal guardian or members of the extended family.<sup>73</sup>

**x) Information to be submitted to Board**

In order to ensure the best interests of the child, the Probation Officer shall forward all the information kept and received by her/him to the relevant Child Welfare Board through its Member Secretary, and shall also send a copy to the Director General of the Department. The District or Upazila Child Welfare Board shall review the information received and shall make recommendations to the concerned authority for the overall welfare of the child.<sup>74</sup>

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

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

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

---

<sup>71</sup> Section 90.

<sup>72</sup> Section 91.

<sup>73</sup> Section 92.

<sup>74</sup> Section 93.

responsible to monitor whether the care order is being followed correctly, and to submit a quarterly report before the Court.<sup>75</sup>

### **Conclusion**

The Children Act, 2013 finally saw the light of day after a gestation period of about seven years from the recommendation for the new law made by the High Court Division in the case of *Roushan Mondal*.<sup>76</sup> Many aspects of children's vulnerability, such as the rights of children in jail with their mothers, or of children whose parent/s or guardian is sentenced to a term of imprisonment, children used in criminal activities such as breaking into property for facilitating the entry of adult criminals for the purpose of theft or dacoity or the consequence of using children as pick-pockets or hijackers, enticing children into taking part in political demonstrations and picketing and acts of vandalism etc. children involved in civil proceedings could be covered by new legislation, which would be beneficial to the children of this country.

At present the most important matters for the Government to address in order to activate the 2013 Act are: setting up the Child Affairs Desks, appointing CAPOs in police stations, establishing a sufficient-numbers of safe homes and Certified Institutes, publishing a Gazette notification setting up the Children's Courts, and framing Rules.

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

It is the failure of parents, society and the State that leads to the vulnerable situation in which children find themselves. The child justice system and the actors within that system would be failing in their duty towards children unless proper implementation of the law is ensured to guarantee child rights.

---

<sup>75</sup> Section 94.

<sup>76</sup> See note 15, above