



The Children Act 2013:

A Commentary by Justice Imman Ali

Bangladesh Legal Aid and Services Trust

Penal Reform International



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Contents

<i>Acronyms</i>	3
Foreword	4
Preface	5
Justice for Children in Bangladesh: A Brief Commentary on the Children Act, 2013	12

List of Annexes

Annex A: Flow Chart illustrating a Child's Movement through the Juvenile Justice System	37
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ACRONYMS

ADR	Alternative Dispute Resolution
BLAST	Bangladesh Legal Aid and Services Trust
CAPO	Child Affairs Police Officer
CDC	Child Development Centre
DLAC	District Legal Aid Committee
PRI	Penal Reform International
UN	United Nations
UNCRC	United Nations Covention on the Rights of the Child, 1990

Foreword

For several years, Penal Reform International (PRI) and the Bangladesh Legal Aid and Services Trust (BLAST) have been collaborating towards enhancing access to justice for children in Bangladesh. In June 2013, when the new Children Act was passed in Bangladesh, both PRI and BLAST welcomed the law. PRI and BLAST are pleased to have the opportunity to publish a commentary on the Children Act 2013 by Mr. Justice M Imman Ali, Judge of the Appellate Division of the Supreme Court of Bangladesh and PRI Board Member.

Justice Ali has discussed and commented on the newly introduced concepts in the Children Act such as diversion, family conferencing, alternative care, and dispute resolution to be framed and adopted. He has commented that Rules under the Children Act 2013 urgently need to be framed and adopted to activate these processes. He has also discussed various aspects of the child justice system, and suggested how to make Bangladesh's child justice system effective. We hope that this report on the Children Act 2013 with the commentary from Justice Ali will provide food for thought for concerned officials, scholars, lawyers, and children's rights activists.

Dr Kamal Hossain

Chairman, Board and Trustee

BLAST

September 2014

Preface

The Children Act 2013 repeals the 1974 Children Act with the aim of bringing the country in line with provisions of international instruments such as the UNCRC, as well as decisions of the Bangladesh Supreme Court.

What are the Act's key provisions for children in conflict with the law?

Probation officers: While provision for Probation Officers existed in the 1974 legislation, this new legislation provides for their appointment, responsibilities and duties in relation to children in greater detail. For example, the Probation Officer must assist both the police and the child when a child is brought to the police station. Duties of Probation Officers will include tracing the parents of the child and assessing the possibility of bail or for diversion of the child from the criminal justice system. At the Children's Court, their duties include remaining present throughout the trial, preparing a social inquiry report and ensuring legal representation for the child.

Establishment of Child Welfare Boards (national, district, upazila level): At the national level, Child Welfare Boards must monitor, co-ordinate, review and evaluate the activities of institutions where children are deprived of their liberty, including providing guidance for rehabilitation and reintegration of children and collecting data on children in conflict with the law. However, district- and upazila-level Boards do not have any functions dealing directly with children in conflict with the law, despite having a mandate to inspect prisons, making their role in regard to these children unclear.

Child-specialised police desk: This provision allows for the appointment of a CAPO with responsibilities such as maintaining separate registers for cases involving children, informing Probation Officers of cases involving children, informing a child's parents or guardians, providing support for the child, assessing their physical health needs, ensuring a child's age is determined correctly, and taking diversionary measures and assessing the opportunity for bail.

Children's Court: Under the 1974 Act, two juvenile Courts were established. The new law requires that at least one 'Children's Court' be established or appointed in each district headquarter and metropolitan area, which has the exclusive jurisdiction to deal with children in conflict or contact with the law. Child-friendly procedures, such as requiring lawyers, police or officials not to wear any professional or official uniform, are also included. The Children's Court is responsible for assessment and determination of the age of the child.

Bail for children: Previous bail provisions in the Code of Criminal Procedure, 1898 are now incorporated under the new Children Act, providing that if the child is not diverted from the criminal justice system, the Court can release the child on bail with or without surety, whether or not the offence for which they are accused is bailable or non-bailable. Where a child is not given bail, the Court must give its reasons.

Diversion: The legislation allows for diversionary measures to be used for children in conflict with the law. Children may be diverted from the formal criminal justice system at any time after arrest and throughout the trial process, and are instead assigned to Probation Officers for

monitoring. One new aspect introduced in the Act is the use of family conferencing as a diversionary measure. It has also introduced Alternative Dispute Resolution (ADR) in cases of less serious offences.

Detention of children: The law allows for the detention of children in a Child Development Centre (CDC). Where a child is found guilty of an offence punishable with death or imprisonment for life, the Children's Court may sentence the child to detention for between three and ten years. If a child is found guilty of an offence not punishable with death or imprisonment for life s/he may be ordered to be detained in a CDC for up to 3 years. There are also certain circumstances where the Court, or the Government, may release a child from detention, for example, following a recommendation from the CDC.

Minimum age of criminal responsibility: The minimum age of criminal responsibility continues to be 9 years of age, which is below the minimum age of 12 years or higher recommended by the UNCRC.

Legal Representation: Under the Children Act 2013, no Court can proceed with a trial without legal representation on behalf of a child in contact or conflict with the law. The Act incorporates provision of legal aid to children.

Privacy: The Act also affirms that it is a punishable criminal offence if any information that directly or indirectly identifies a child involved in a trial is published in any print or electronic media or online.

What next?

The legislation must not be seen as an end in itself but the first step in a continuous process towards respect for children's rights and proper protection of children in conflict and contact with the law in Bangladesh. The challenge now is the effective implementation of the legal provisions.

Most immediately, this includes the appointment of CAPOs in police stations, establishing sufficient numbers of safe homes and certified institutions, setting up of Children's Courts, and framing of procedural Rules to ensure implementation of the Act. Rules are most urgently needed as without them many concepts introduced by the Act, such as diversion, family conferencing and ADR cannot be put into practice.

It is also important to train professionals in the children justice system so that proper implementation of the new law can be ensured. Many of the issues dealt with in the new statute are interlinked. Therefore, a holistic approach must be taken by all concerned to ensure that children in Bangladesh achieve fulfilment of their rights.

Justice for Children in Bangladesh:

A Brief Commentary on the Children Act 2013

Justice M 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.¹

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).

New provisions

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

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

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

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 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,² 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.³

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.⁴ 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

² 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.

³ 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.

⁴ Section 7.

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 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.⁵

District Boards: The District Boards⁶ 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 given, from time to time, by the National Child Welfare Board or the District Child Welfare Board, as the case may be, and to

⁵ In total, there are 27 categories of representatives in these Boards.

⁶ Section 8.

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.⁷

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.

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

The District and Upazila Boards are linked with the Probation Officer who is mandated to assess any child that is placed before her upon keeping the child in a Certified Institute or safe home and to regularly supply all information regarding the child to the concerned Child Welfare Board, with a copy to the Director General of the Department.

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

Where the Board feels that it is necessary to remove a child from the child's parents or, in their absence, foster carer, legal guardian or member of the extended family or anyone else who is responsible for the child's care and control, then the Board may refer the matter to the Children's Court for taking steps.⁸

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.

⁷ Section 9.

⁸ Section 94.

3. Child Affairs Desk at the police station⁹

A new provision has been introduced in the 2013 Act, giving the responsibility to the Ministry of Home Affairs for the establishment of a “Child Affairs Desk” headed by a “Child Affairs Police Officer”¹⁰ (CAPO), not below the rank of Sub-Inspector. It is also provided that if there is a female Sub-Inspector working in the concerned police station, she shall be given priority while assigning responsibilities of the Child Affairs Desk. The responsibilities and functions of CAPO’s are to maintain separate files and registers for cases involving children; where any child is brought to the police station, to inform the Probation Officer; to inform the child’s parents or, in their absence, their foster carer, guardian or member of the extended family and to notify them of the date for producing the child before the Court along with other details of the case; to provide immediate mental support for the child; to arrange for her/his first aid and, if necessary, to send the child to a clinic or hospital; to take necessary measures to meet the basic needs of the child.¹¹

The CAPO is to also observe whether the age of the child is being determined correctly and whether when determining the age the certificate of birth registration or other reliable documents¹² which are relevant for the purpose are taken into consideration. In the absence of a birth certificate, a school certificate or the date of birth given at the time of admission in school or other relevant document may be considered.¹³

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

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

⁹ Section 13.

¹⁰ Section 14 .

¹¹ The Beijing Rules mandate specially trained police personnel, The High Court Division recommended the establishment of a special police cell in the case of *State v. Secretary, Ministry of Law, Justice and Parliamentary Affairs*, 59 BLD (2009) (HCD) 656.

¹² Section 14(c).

¹³ Section 44(4).

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

4. Establishment of Children's Court and its functions¹⁴

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 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.¹⁵

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.¹⁶ 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

¹⁴ Section 16.

¹⁵ 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.

¹⁶ Section 17(2).

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.¹⁷ (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.¹⁸

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.¹⁹

The anomalies in the old law mentioned in the case of *The State v Md. Roushan Mondal*²⁰ 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.²¹ In other words, if the person who is alleged to have committed an offence is below 18 years of age on the date of occurrence, then the case will be dealt with under the provisions of 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*²² 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.²³ 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.²⁴ However, where a child is declared by the

¹⁷ Section 17(4).

¹⁸ Section 18.

¹⁹ Section 19(4).

²⁰ 59 DLR (2006) 72.

²¹ Section 20.

²² 29 BLD (2009) (HCD) 656.

²³ Section 21.

²⁴ Section 21(4)..

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.²⁵

5. 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.²⁶ It is also provided that the presence of the child may be dispensed with at any stage during the trial if his presence is not necessary in 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 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.²⁷

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.²⁸ 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.²⁹ 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

²⁵ Section 21(4)..

²⁶ Section 22.

²⁷ Section 22(5).

²⁸ Section 23.

²⁹ Section 24.

be obliged to do so.³⁰ Where a child is called as a witness in any case relating to any offence against decency or morality, the Court may direct any person to be withdrawn from the Court in the best 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.³¹ If it is absolutely necessary to keep the child in safe custody then the Children's Court shall order the child to be sent to a Certified Institute situated within a reasonable distance. In that case it is a requirement that such a child shall be kept separately from the older children staying in that Institute.

The 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.³²

6. Bail of children in conflict with the law

Before the 2013 Act, child offenders could be granted bail by the Court under the proviso to Section 497 of the Code of Criminal Procedure, 1898. This provision is now incorporated in the 2013 Act which provides that, notwithstanding anything contained in any other law or the Code of Criminal Procedure, 1898, if the case of any child is not dealt with by way of diversion, the Court may release the child on bail with or without surety, whether or not the offence alleged is bailable or non-bailable.³³

The Court may grant bail on the bond of the child concerned, their child's parents or, in their absence, the foster carer, guardian or members of her/his extended family, Probation Officer or any institute or association whom the Court considers appropriate, with or without surety. Where the Children's Court refuses to release children on bail, it must give its reasons for so doing.

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

With some important additions, the old Section 15 has been re-enacted. 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.

³⁰ Section 25.

³¹ Section 26.

³² Section 27.

³³ Section 52.

8. 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.³⁴ 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.³⁵

9. 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.³⁶

10. 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, imprisonment for life or imprisonment.³⁷ 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

³⁴ Section 31.

³⁵ Section 28.

³⁶ Section 32.

³⁷ Section 33(1).

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.³⁸

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.³⁹

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 18.⁴⁰ 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.⁴¹ A person so transferred shall be kept in a separate ward from convicted prisoners or other under-trial prisoners.⁴² 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.⁴³

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.⁴⁴ 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.⁴⁵ 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.⁴⁶ If it appears to the Court, upon receiving a report

³⁸ Section 33.

³⁹ Section 34.

⁴⁰ Section 34(2).

⁴¹ Section 34(3).

⁴² Section 34(4)..

⁴³ Section 34(5).

⁴⁴ Section 34(6).

⁴⁵ Section 34(7).

⁴⁶ Section 34(7).

from the Probation Officer or otherwise, that the child has 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.⁴⁷

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.⁴⁸

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.⁴⁹

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.⁵⁰

11. 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.⁵¹

12. Payment of compensation to a child victim

The 2013 Act introduces the concept of restorative justice. This provides for compensation to a child who is a victim of crime. According to Section 38 of the Act, the Court may order any person found guilty of an offence committed against a child victim to pay compensation to the child on an application by the child or the child’s parents or, in their absence, the foster carer,

⁴⁷ Section 34(8).

⁴⁸ Section 35.

⁴⁹ Section 35(2).

⁵⁰ Section 36.

⁵¹ Section 37.

guardian or member of her/his extended family, Probation Officer, lawyer or public prosecutor in order to restore the child to her/his previous position. Also, the Court may order *suo motu* for compensation to be paid by the convict. The Court may order payment to be made at once or by instalments through the Court, and may direct that the money be used for the welfare of the child.⁵²

Where a person found guilty of committing any offence against a child is herself/himself a child, the Court may order compensation to be paid to the child victim by the parents or guardian of the child offender or by persons supervising the child or members of their extended family, if such persons can be traced and are financially solvent to pay the compensation and they had instigated the child to commit the offence through their neglect.⁵³ In order to pass such an order, the Court may direct the Probation Officer to collect necessary information. However, even if such persons as mentioned above are not in a position to pay the compensation, the Court may not send the child found guilty of committing the offence to prison.⁵⁴

13. Result of the trial and information about release

Within seven days of conclusion of the trial, the Court shall inform the result of the trial in writing to the child, her/his parents or, in their absence, foster carer, legal guardian, member of her/his extended family, the child's lawyer and the Probation Officer. If any child is released, the information shall be communicated directly, or through, the Department, Probation Officer or lawyer to the child, her/his parents or, in their absence, foster carer, legal guardian, or any member of their extended family. When a child is released under these provisions, and if a child in contact with the law is involved, the Children's Court shall communicate the information directly, or through, the Department, Probation Officer or lawyer to the child in contact with the law, the child's parents or, in their absence, foster carer, legal guardian, or any member of their extended family.⁵⁵

14. 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.⁵⁶

15. Applicability of the Code of Criminal Procedure, 1898

⁵² Section 38.

⁵³ Section 39.

⁵⁴ Section 39.

⁵⁵ Section 40.

⁵⁶ Section 41.

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 respect of any trial or proceeding of any case under this Act. All offences under this Act shall be cognizable.⁵⁷

16. Removal of disqualification upon conviction

Where any child is found guilty of any offence under this Act or any other law, Section 75 of the Penal Code 1860 and Section 565 of the Code of Criminal Procedure, 1898 shall not be applicable.⁵⁸ 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.⁵⁹

17. Arrest, investigation, diversion and bail

i) Arrest

The Act specifically provides that no child below the age of 9 years may be arrested under any circumstances.⁶⁰ This prohibition is made very clear in Section 44(2), which states that no child shall be arrested or detained under any law relating to preventive detention.

When a child is arrested, the police officer making such arrest shall immediately inform the CAPO the reason for the arrest, the place of arrest and details of the allegations against her/him. The arresting officer shall also determine the age and note the same in the records upon assessing any relevant documents including the child's birth certificate or, in the absence of such certificate, the school certificate or the date of birth given at the time of admission in the school. In the absence of any such evidence, if it appears to the police officer that the person arrested is a child, he shall be considered a child under the provision of this Act. The law mandates that no child shall be handcuffed or tied with a rope around his waist. If there is no safe place appropriate for the child in the concerned Police Station, steps must be taken for his custody in a safe home until he is produced before the Court. Further, when kept in a safe home the child shall not be kept in the company of adults or any convicted child offender or any child who has come into contact with the law.⁶¹

ii) Informing parents and Probation Officer

⁵⁷ Section 42.

⁵⁸ 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.

⁵⁹ Section 43.

⁶⁰ Section 44(1).

⁶¹ Section 44.

When a child is brought to the Police Station after arrest, the CAPO shall inform the parents or, in their absence, the foster carer, legal guardian or members of the extended family, the Probation Officer and, where necessary, the nearest Board. If it is not possible to inform these persons then the CAPO must submit a report before the Court on the first day of appearance, giving reasons for not doing so.⁶²

iii) Investigation

Where there are no specific provisions in the 2013 Act or its Rules regarding investigation, then the provisions of the Code of Criminal Procedure, 1898 shall be followed as far as possible.⁶³ The Act does not specify a time frame for the conclusion of investigation. The Rules to be framed may insert such a provision, otherwise Section 167(5) of the Code of Criminal Procedure, 1898 will apply. This empowers the 'Cognizance Magistrate' to release the accused on bail if the offence alleged is not punishable with death, imprisonment for life or imprisonment exceeding ten years and if the investigation cannot be concluded within 120 days from the date of receipt of the information relating to the commission of the offence. When the concerned offence is so punishable, the Sessions Judge may grant bail.

iv) Recording statement, warning and release

The CAPO shall record the statement of the child in the presence of her or his parents or, in their absence, her/his foster carer, legal guardian or member of their extended family, and the Probation Officer or the Social Worker.⁶⁴ The CAPO may release the child after giving a written or verbal warning in the presence of her/his parents or guardian. Such a warning shall not be held as a record against the child. The CAPO may also avail of diversionary measures in respect of the child.⁶⁵

v) Diversion

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

⁶² Section 45.

⁶³ Section 46.

⁶⁴ 'Social Worker' is defined in Section 2(21) as a Social Worker under the Department, Union or Municipal, working under the Department, Khalamma (Aunt), or Boro Bhai (Older Brother) or any other employee of similar position, by whatever name called, who is tasked/concerned with the services of children.

⁶⁵ Section 47.

any of the conditions are breached, the Probation Officer shall immediately inform, in writing, the CAPO and, where appropriate, the Children's Court. The process and procedure of diversion is to be prescribed by Rules. The Social Welfare Department is mandated to adopt programmes for the implementation of diversionary measures.⁶⁶

vi) Family conference

Where diversionary measures are initiated, the Probation Officer may take steps for arranging a family conference in order to resolve the dispute on a priority basis. The persons taking part in the family conference shall adopt any programme for the best interest of the child and shall inform the same to the Children's Court and where appropriate the CAPO. In any special circumstances when a child is being referred for diversion, the Court or, where appropriate, the CAPO may specify the steps to be taken for family conference and the Probation Officer will organize the family conference accordingly. If the parents or, in their absence, the foster carer, legal guardian or member of the extended family are in breach of the conditions or fail to perform any condition of the decision of the family conference, the Probation Officer shall inform in writing the Children's Court or the CAPO, as the case may be. If no consensual decision is reached in the family conference then it shall be abandoned and the same will be intimated to the Court or the CAPO, in order to adopt different diversionary measures. The family conference shall be considered confidential and any discussion there shall not be evidence in any legal proceedings in any Court.⁶⁷

vii) Duration of diversion

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

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

Where it appears to the Children's Court or the CAPO on receiving a report from the Probation Officer or otherwise that the child, or the child's parents or, in their absence, the foster carer, legal guardian or member of the extended family are in breach of or have failed to comply with the diversionary order or the conditions thereof, the Children's Court or the CAPO may pass a similar order with new conditions. They may also issue a warrant of arrest for the child; send a written notice for her/his attendance in court or the police station; send the case file to the Public Prosecutor for initiating a trial; pass an order to send the child to a Certified Institute, or make any other order permissible under this law.⁶⁸

ix) Bail

After arrest, if a child is neither released nor referred to diversion nor immediately brought before any Court, the CAPO may release the child on bail with or without conditions or surety

⁶⁶ Section 48.

⁶⁷ Section 49.

⁶⁸ Section 51.

under the supervision of the child's parents or, in their absence, the foster carer, legal guardian or member of the extended family, or Probation Officer.⁶⁹ In granting bail the CAPO shall not consider whether the offence alleged is bailable or non-bailable.⁷⁰ The child shall not be released on bail if the offence alleged is serious or heinous or to be released on bail would be contrary to the best interest of the child or if there is apprehension that upon release on bail the child might come in contact with any notorious criminal or might be exposed to moral risk, or that the ends of justice will be hampered.⁷¹

Where the child is not released on bail, the CAPO shall take steps to produce the child before the nearest Children's Court within 24 hours.⁷² When the child is produced before the Children's Court, the Court shall either release her/him on bail or order his custody/detention in a safe home or a CDC.⁷³

x) Child in contact with the law

Where any person has reason to believe that a child has been the victim of a criminal offence or is a witness of such offence then he shall inform the CAPO, Probation Officer or Social Worker who shall make arrangements for the child's overall safety.⁷⁴ The law provides for dealing with any child in contact with the law at all stages of the judicial proceedings, with respect for the dignity of the child keeping in mind the age, gender, incapacities and maturity of the child.⁷⁵ The CAPO shall interview the child in contact with the law in a child-friendly environment. In the case of a female child, the interview shall be conducted by a female police officer in the presence of her parents or, in their absence, foster carer, legal guardian or member of the extended family, and the Probation Officer in whose presence the child feels comfortable and is willing to be interviewed by.⁷⁶

Considering the best interests of the child in contact with the law, the Children's Court may pass an order to ensure the safety and confidentiality of the child and to maintain secrecy of all information regarding the child so that her/his identity may not be disclosed, and to take steps to keep secret any photograph or description of the child and to keep the child behind a screen when giving evidence. The child's evidence may be received through previously recorded video recording and, in such a case, the recording must be made in the presence of the lawyer for the accused who will be given the opportunity to cross examine the child. Further, evidence is to be taken through a qualified and competent intermediary, by conducting a camera trial, or by video link, when available.⁷⁷

⁶⁹ Section 52(1).

⁷⁰ Section 52(2).

⁷¹ Section 52(3).

⁷² Section 52(4).

⁷³ Section 52(5).

⁷⁴ Section 53.

⁷⁵ Section 54(1).

⁷⁶ Section 54(2).

⁷⁷ Section 54(3).

If the child declines to testify in the presence of the accused, or if it appears that the child will be prevented from telling the truth in front of the accused, then the accused shall be ordered to be removed from the Court under police escort. However, in such event the lawyer for the accused must be present in Court and must be given the opportunity to cross examine the child.⁷⁸ When examining a child in Court, recess may be allowed, and the schedule for examining the child shall be fixed keeping in mind the age and maturity of the child. Necessary security must be provided for the child as well as her/his guardian when the child gives evidence as a witness or as a victim. The Court may take any steps it deems fit for the purpose of ensuring the best interest of the child and the rights of the accused.

In the case of a child in contact with the law, the Court may pass an order for ADR to resolve the dispute, if the Court considers this to be in the best interests of the child.⁷⁹

18. 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 representation⁸⁰ 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.⁸¹ 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.⁸²

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

⁷⁸ Section 54(3)(c).

⁷⁹ Section 54(4).

⁸⁰ Section 55(1).

⁸¹ Section 55(3).

⁸² Section 56.

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.⁸³

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.⁸⁴

19. Establishment of Child Development Centres and Certified Institutes

i) Under auspices of the Government

The Government is mandated to establish and maintain necessary number of 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.⁸⁵ The Government may at any time certify any of its existing institutes or establishments as suitable for placement of children charged with any offence.⁸⁶ 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.⁸⁷ 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.⁸⁸

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.⁸⁹

⁸³ Section 57.

⁸⁴ Section 58.

⁸⁵ Section 59(1).

⁸⁶ Section 59(2).

⁸⁷ Section 60.

⁸⁸ Section 61.

⁸⁹ Section 62.

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. 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.⁹⁰

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.⁹¹

vi) Transfer among different Institutes

The Department for any particular reason may transfer any child from one Certified Institute to another.⁹² This may be done also on the orders of the Director General of the Department when any Institute loses its certified status.⁹³

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.⁹⁴

vii) Control of the custodian over the child

⁹⁰ Section 63.

⁹¹ Section 64.

⁹² Section 65.

⁹³ Section 66.

⁹⁴ Section 67.

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.⁹⁵

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.⁹⁶

20. Penalty for particular offences in respect of children

i) Penalty for cruelty to child

If any person with custody, charge or care of any child assaults, abuses, neglects, forsakes, abandons them as unprotected, uses them for personal service or exposes them in an obscene way and thereby causes unnecessary suffering or injury by which the child's sight or hearing is damaged or injury to any limb or organ or causing mental derailment, then he will be deemed to have committed an offence under this Act. The penalty is imprisonment for up to five years or a fine of up to one lakh taka or both.⁹⁷

ii) Penalty for engaging a child in begging

Any person who engages a child for the purpose of begging or causes any child to beg, or if any person having custody, charge or care of the child colludes with or encourages the engaging of a child for begging then s/he will be deemed to have committed an offence under this Act. The penalty is imprisonment for up to five years or fine of up to one lakh taka or both.⁹⁸

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

If anyone having responsibility of looking after a child is found drunk in a public place and is incapable for that reason to take care of the child then s/he shall be deemed to have committed an offence under this Act for which s/he shall be punishable with imprisonment for up to one year or fine of up to fifty thousand taka or both.⁹⁹

⁹⁵ Section 68.

⁹⁶ Section 69.

⁹⁷ Section 70.

⁹⁸ Section 71.

⁹⁹ Section 72.

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

If any person gives a child any intoxicating liquor or medicine on account of illness or emergency without consulting a qualified doctor then s/he will be deemed to have committed an offence under this Act for which s/he shall be punishable with imprisonment for up to three years or fine of up to one lakh taka or both.¹⁰⁰

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

If anyone takes or causes a child to enter a place where liquor or dangerous medicines are sold or if the owner or person responsible for such a place permits a child to enter that place then that person shall be deemed to have committed an offence under this Act. The penalty is imprisonment for up to three years or a fine of up to one lakh taka or both.¹⁰¹

vi) Penalty for inciting a child to bet or borrow

Anyone who by words, in writing, by sign language or by any other means incites a child to make a bet or wager or enter into or take any share or interest in any betting or wagering transaction, or incites a child to borrow money, shall be deemed to have committed an offence under this Act. The penalty is imprisonment for up to two years or a fine of up to fifty thousand taka or both.¹⁰²

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

Anyone taking an article on pledge from a child, whether offered on behalf of the child or someone else, shall be deemed to have committed an offence under this Act. The penalty is imprisonment for up to one year or a fine of up to twenty-five thousand taka or both.¹⁰³

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

No child over the age of four years shall be allowed or permitted to reside in or frequent a brothel.¹⁰⁴ But if a child exceeds the age of four years the concerned authority, upon considering her/him as a disadvantaged child, shall send the child to the Department or its nearest office to take necessary action as appropriate.¹⁰⁵ Anyone who contravenes Section 77(1) shall be deemed to have committed an offence under this Act. The penalty is f imprisonment for up to two years or a fine of up to fifty thousand taka or both.¹⁰⁶

¹⁰⁰ Section 73.

¹⁰¹ Section 74.

¹⁰² Section 75.

¹⁰³ Section 76.

¹⁰⁴ Section 77(1).

¹⁰⁵ Sections 84 & 85.

¹⁰⁶ Section 77(2).

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

Anyone having actual charge or control of any child who leads that child on an immoral path or induces or encourages the child for prostitution or causes or encourages her to have sexual intercourse with any person other than her husband, shall be deemed to have committed an offence under the Act for which he shall be punishable with imprisonment for up to five years or fine of up to one lac taka or both.¹⁰⁷

If it is apparent to the Court upon complaint from any person that a child is being led on an immoral path whether within the knowledge of the child's parents or, in their absence, of the foster carer, legal guardian or members of their extended family, or is exposed to the risk of engaging in prostitution then the Court may direct the parents or, in their absence, foster carer, legal guardian or member of the extended family to enter into a recognizance to exercise due care and supervision in respect of the child.¹⁰⁸

A person shall be deemed to have led or encouraged a child to immoral activities or prostitution if s/he knowingly allows a child to live with or be employed by any prostitute or person of known immoral character.¹⁰⁹

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

Anyone causing any child to carry or transport fire arms or illegal or banned articles will be deemed to have committed an offence under the Act. The penalty is imprisonment for up to three years or fine of up to one lakh taka or both.

Any person, whether supervising or having charge of a child or not, who engages a child in terrorist activities under Section 6 of the Anti-Terrorism Act 2009 shall her/himself be deemed to have committed such terrorist activity and shall be punishable for such offence.¹¹⁰

xi) Penalty for exploitation of child

If any person entrusted by the Children's Court with custody or care of a child or with the duty of bringing up a child, or any other person, keeps any child ostensibly for the purpose of employment as a servant or for employment in any factory or establishment under the Bangladesh Labour Act, 2006 but in fact exploits the child for his own purpose, or confines the child or lives off the child's earning, then such act shall be deemed to be an offence under this law. The penalty is imprisonment for up to two years or a fine of up to fifty thousand taka or both.

¹⁰⁷ Section 78(1).

¹⁰⁸ Section 78(2).

¹⁰⁹ Section 78.

¹¹⁰ Section 79.

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

Any person who enjoys gains made as a result of exploitation or employment of a child or who uses the child for immoral entertainment, shall be liable as an abettor of this offence.¹¹¹

xii) Penalty for publishing confidential information by news media

No report, photograph or information relating to the trial or proceeding under this Act shall be published in any print, electronic media, or the internet which is against the interest of the child and which may identify the child directly or indirectly. Breach of this section will be deemed to be an offence under this Act for which the offender shall be punishable with imprisonment for up to one year or fine of up to fifty thousand taka or both.¹¹²

If a company, association, entity or establishment commits the offence then its registration may be suspended for up to two months and additionally it may be fined up to two lakh taka.¹¹³

xiii) Penalty for abetting the escape of a child

Anyone who knowingly, directly or indirectly assists or entices a child to escape from a Certified Institute, safe home or from the custody of any person with responsibility for alternative care, or harbours or conceals the child after the escape, or prevents the return of such escaped child, will be deemed to have committed an offence under this Act. The penalty is imprisonment for up to one year or fine of up to fifty thousand taka or both.¹¹⁴

21. Compensation for giving false information

The 2013 Act incorporates and modifies the provision for compensation to a child victim of false information. If anyone gives false information about a child in any proceeding in any Court which is false, vexatious or frivolous then the Court, subject to inquiry, upon giving reasons, may order payment of any amount of compensation exceeding twenty-five thousand taka in favour of the person against whom the information was given. In default of payment of compensation, the person providing such false information may be punished with simple imprisonment for up to six months. Proviso to Before passing any order of compensation, a notice shall be served on the person concerned to show cause why he should not be ordered to pay compensation and the cause shown by her/him shall be taken into consideration.¹¹⁵

22. Alternative care

¹¹¹ Section 80.

¹¹² Section 81(2).

¹¹³ Section 81(3).

¹¹⁴ Section 82.

¹¹⁵ Section 83.

i) Care within the family or the community

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.¹¹⁶ In such circumstances, the Government shall take steps for rehabilitation of the concerned parents with a view to reintegrating the child with them.¹¹⁷

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.¹¹⁸

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.¹¹⁹

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:

¹¹⁶ Section 85.

¹¹⁷ Section 84.

¹¹⁸ Section 85.

¹¹⁹ Section 86.

- (a) 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.
- (b) Providing counselling and taking necessary steps for training on provision of a stipend, determining livelihood needs and reintegration with parents.
- (c) Setting up a monitoring system for implementing the above provisions.
- (d) 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.¹²⁰

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

¹²⁰ Section 89.

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 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.¹²¹

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.¹²²

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.¹²³

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.¹²⁴

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.

¹²¹ Section 90.

¹²² Section 91.

¹²³ Section 92.

¹²⁴ Section 93.

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 responsible to monitor whether the care order is being followed correctly, and to submit a quarterly report before the Court.¹²⁵

23. Rule-making power of the Government and miscellaneous

The Government has power to make Rules for fulfilling the purpose of this Act and to notify the same in the official Gazette.¹²⁶ The Government is also mandated to take all necessary measures for effective implementation of this Act and to issue directives in this regard.¹²⁷ Where there is any ambiguity in relation to the implementation of the Act, the Government may issue a clarification by notification in the official Gazette, subject to being consistent with the provisions of the Act.¹²⁸

If any act done in good faith under this Act or Rules detrimentally affects anyone, such person may not bring any civil or criminal or any other legal proceeding against the person concerned.¹²⁹

An authentic English translation of the text of this Act may be published by notification in the official Gazette. However, in the event of any conflict between the Bengali and English versions, the Bengali version shall prevail.¹³⁰

The savings clauses in view of the repeal of the earlier law appear in Section 100. As soon as the Act comes into force the Children Act, 1974 shall stand repealed.¹³¹ In spite of the repeal of the 1974 Act, anything done or any action taken under the repealed Act shall be deemed to have been done or taken under this Act. Section 100 further provides that, actions remaining incomplete when the 2013 Act comes into force, so far as possible, shall be concluded in accordance with provisions of the 2013 Act.

Children in Certified Institutes or remand homes in connection with under-trial cases shall continue as before in accordance with the provisions of the 2013 Act. Cases which remain

¹²⁵ Section 94.

¹²⁶ Section 95.

¹²⁷ Section 96.

¹²⁸ Section 97.

¹²⁹ Section 98.

¹³⁰ Section 99.

¹³¹ Section 100(1).

pending in the Juvenile Court shall be disposed of by the Children's Court as if the 1974 Act was not repealed.

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

Any children disobedient towards their parents who are kept in the CDC or Certified Institute shall be returned to their parents or guardian immediately after the expiry of the period for which they were detained.¹³²

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*.¹³³ 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.

¹³² Section 100(2).

¹³³ See note 21, above.