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Juvenile Delinquency in Bangladesh: Identifying the causes with prevention and rehabilitation

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Abstract. Juvenile Delinquency has grown to be one of the major discussing issues at present world. This study has attempted to focus on Juvenile Delinquency in Bangladesh. This study has also attempted to investigate the causes, prevention and rehabilitation of this Juvenile Delinquency. This study has been carrying out from June 2020 to January 2021. Using secondary data, this paper attempted to look at the reasons of Juvenile Delinquency and its impact on the society in Bangladesh. Several reports on Juvenile Delinquency, journals, articles, research papers were the sources of data. More than 5 Juvenile Delinquents were selected for collecting the supporting data through in-depth interview. As the study was qualitative based, the data were analyzed in descriptive and contextual methods. The findings of this study have revealed that there is a number of reasons of Juvenile Delinquency and this Juvenile Delinquency have a great impact on the causation of crime in a society at large of the country. Thus, this study has provided insightful information about the causes, prevention and treatment of Juvenile Delinquency in Bangladesh which might help the future researchers in the field of Juvenile Delinquency and its control to policy makers of this target group.

Keywords. Juvenile, Delinquency, Reasons, Prevention, Treatment, Cases, Bangladesh

Introduction

Children who come into conflict with the law (Juvenile Delinquents) are often from the most vulnerable and marginalized segments of society. All international instruments like, Convention on the Rights of the Child (CRC) and UN guidelines encourage good practice that aims to ensure the dignity of the child and processes that promote reintegration into the community. Children constitute nearly 50% (around 70 millions) of the population in Bangladesh. This basic fact underlines the importance of protecting the rights of our children. The Constitution of Bangladesh contains a specific chapter on human rights but not specifically on children's rights. It does however specifically make provision for more favorable provisions for women and children to have been acted by the legislator. The 1974 Children Act was an example of such a favorable provision as the main legislation relating to children, but repealing the Children Act 1974, recently on considering the demand of the day, the new Children Act 2013 (widely known as Shishu Ain-2013) has become the most pragmatic provision and effective law for establishing the rights of the children. In this paper I will try to find out the root causes of juvenile delinquency with prevention tools and how these delinquent activities of the youthful offender will be treated and will also discuss the rehabilitation process by judicial activism.

Delinquency

It was William Coxson who in 1484, used the term ‘delinquent’ to describe a person found guilty of customary offence. In simpler words it may be said that delinquency is a form of behavior or rather misbehavior or deviation from the generally accepted norms of conduct in the society. Oxford Advance Learner’s Dictionary has defined delinquency, bad or criminal behavior, usually of young people and increase in Juvenile delinquency.

Juvenile

Generally the term juvenile means a person who has not reached the age at which one should be treated as an adult by Law. Juvenile is a term connected with young people who are not yet adults and silly and more typical of a child than an adult. Juvenile delinquent means and includes a young person who is not yet adult and who is guilty of committing a crime

- The Penal Code: The age of criminal responsibility in Bangladesh is above nine (previously seven) years of age (S-82).
- Contract Act, 1872: Below the age of 18 years old one should be treated as minor or Child.
- The Employment of Children Act, 1938: Below the age of 15 years old one should be considered as child.
- The Vagrancy Act, 1943: One should be considered as child till the age of 14 years old.
- The Children Act, 2013 regarding on age of child has stated, “A child is defined in section 4 and includes anyone up to the age of 18 years”
- Convention on the Right of the Child (CRC): Below the age of 18 years old one should be treated as child (Article- 1) Article 1 provides: “A child means every human being below the age of eighteen, unless under the law applicable to the child, majority is attained earlier”.

Literature Review

Juvenile delinquency is said to be an antisocial behavior exhibited by minors. (Quay, 1987) In Bangladesh, it would deem a juvenile to be between the ages of nine and eighteen, whereas a few others think up to sixteen years of age as the maximum. Once crimes are committed by persons under these age range, they are usually tried as a juvenile and not as an adult, which creates much distinction from usual court proceedings.

Juvenile tried cases are arbitrated by judges in lieu of the normal trial by a judge of the peers. In addition, nothing like an adult case, juveniles are only supposed to commit “juvenile acts: instead of “crimes”. On the other hand, these distinctions may not be accepted and executed at present if it were not for the institution of juvenile courts.

The grounds for such an institution were essentially because of the estimated opportunity contiguous cruel action, which may be experienced by juveniles when tried in the traditional judicial systems (Morphy, 1926). A juvenile court has one central goal which is to begin change among antisocial minors instead of imposing punishments (Morphy, 1926). This is also why they are only tried by judges as an alternative of their peers. Courts summon the principle of *parens patriae*, wherein the judges proceed as parents and guardians to young offenders (Morphy, 1926). The first juvenile court established was in USA it was 1899 in Cook County, Illinois (Clarke, 1961).

Juvenile courts make a distinction two major groups of youthful criminal, which are: (1) delinquent offender, and (2) status offender (Clarke, 1961). By definition, the former is a crime for adults that are under the federal state or local law while the latter is not considered a crime *per se* but only as illegal acts committed by juveniles. Status offenses can get the variety of defiance to parents, evading from home and/or school, and rendezvous in behaviors improper of minors, such as alcohol utilization and material exploitation.

The causes of such delinquent acts by juveniles have been the topic of most research regarding juvenile delinquency. It is believed that once these causes are understood and realized, there may be great chances that these acts can be prevented. According to Lening and Jianhong, of the various causes that were tallied, there are four major risk factors that contribute to the cause of juvenile delinquency (2007). The risk factors include: (1) family, (2) mental health, (3) individual personality, and (4) substance abuse. They have found out that, compared to the average minors, juveniles or those who may later possess the ability to commit juvenile acts are likely to be exposed to these risk factors at a greater percentage.

Of the four risk factors, the most influential must be the family since they are the first group in contact with these minors. Some juvenile acts are being committed as a result of the family related reasons: (1) lack of parental guidance, (2) neglect, and (3) presence of feud within the family. (Lening & Jianhong, 2007) Because parents have the innate responsibility to their children, some people believe that parents should also be held liable for any criminal acts committed by these minors. Parental responsibility laws states that parents should be knowledgeable on the actions of their children. Parents may also be charged if they have, in any way, contributed to the juvenile crimes of their offspring. Be that as it may, however, these laws still do not take into consideration the possibility that these minors may be accompanied instead by their guardians or foster parents, and as such should also be held responsible for their crimes.

Families, whether held responsible or not, do not all contribute to the delinquent behavior of juveniles. There were various theories proposed which were believed to persuade such delinquent acts. As early as the 1930s, Gordon has already introduced three general categories in which these theories fall. They are: (1) biological, (2) psychological, (3) sociological. (Gordon, 1939)

Gordon believed that juvenile actions or committing crimes are a result of one's individual preference and not at all related to one's genetic composition or natural physique. He argued that if this were the case, prisons will be full of a particular type of physique instead of being diverse. The same is true with getting involved in criminal acts. (Gordon, 1939) While Gordon believed in the psychological and sociological theory of juvenile delinquency, Musick (1995) expressed his belief in the biological theory, saying it provides the best insight into understanding juvenile delinquency. He claims that minors acquire certain biochemical and genetic factors making them predisposed to criminal and delinquent acts. Moreover, unlike Gordon, Musick observed that most criminals belong to a certain type of physical feature (Musick, 1995).

Even though Gordon's and Musick's observations are contradicting, it cannot be merely said that one of the two's claims are true while the other false by judgment and harmony of incident only. The reason these three categories were included is because all have, to a definite scope, the chance to manipulate a minor's behavior, may it be little or big. For example, families, if observed, can give to all three categories with changeable level, and either directly or indirectly. The greatest and most direct would be genetic.

Whereas it may be complex to establish accurately, science does rationalize the idea that there are a vast number of traits that can be passed down from parent to children. These embrace behavioral traits. An example of which is the way people typically recognize similarities among parents and children both in their physical look and their behaviors. This perception can be applied to the criminal behavior possibility.

Though, minors are not only uncovered to their familial genes. They are also able of announcement and social job. As such, sociological theories and the environment have as much control to minors as hereditary factors have. What is great is these two factors sometimes oppose each other. When this happens, the minor's capability of choice, as what Gordon claims, comes

into play. Preference, on the other hand, is such a huge liability to be anticipated of minors, particularly those who have instantly reached adolescence. It all circumvents once more to the parents and guardians accountable for these minors.

With these causes and theories in mind, many health professionals suggest that protective measures be imposed that deal with definite causes pertinent to the juvenile offender. For example, Bruggen (1977) proposed in his article that a juvenile offender must be in an environment with less probability of temptations related to imitating or committing violent and criminal behaviors. Gao (1986), on the other hand, stated that the most effective method tested was the mentorship and counseling of juvenile teenagers by former reformed juvenile teens to provide hands on advise and to relate more with the juvenile offenders. Another effective method (second) is by having collective passage events intended to enjoy teenagers and minors so they do not get a hold with crimes.

Objectives of this Study

The objective of this study were

1. To study several reports on the Juvenile Delinquency in Bangladesh
2. To find out the reasons and impact of Juvenile Delinquency
3. To know the treatment of Juvenile Delinquency

Methodology of this Study

This study attempted to find out the causes of Juvenile delinquency and its prevention and impacts on the society in Bangladesh. This study has been conducted from June 2020 to January 2021 in Kushtia district in Bangladesh. The study is not based on any statistical rigor as it is a popular article as it was based on existent knowledge. And for this, there was no separate structured/semi-structured questionnaire, there was no code book, and no instruction manual employed for the survey. Using secondary data, this paper attempted to explore the reasons of Juvenile delinquency and its prevention procedure by using the criminal Justice system tools in Bangladesh. Several reports on Juvenile delinquency, journals, articles, research papers were the sources of data. A number of youthful offenders were selected for collecting the supporting data through in-depth interview. Each interview was supposed to last for more than 40 minutes if needed. All interviews were guided through a question set. The question set was not structured questionnaire typically used in regular sample surveys. They were rather checklists of questions that would allow the interviewer to probe interviewees. Although the study has tried to perceive, understand, and catalog issues relevant to each interview regarding the use of data, there was a new line of questioning cropping up from interviewee responses to existing questions. And, several reports, journals, articles, research papers were the sources of secondary data of the study. As the study was qualitative based, the data were analyzed based on existent knowledge in a descriptive manner and contextual methods.

Causes and Conditions of Juvenile Delinquency

The causes of and conditions for juvenile crime are usually found at each level of the social structure, including society as a whole, social institutions, social groups and organizations, and interpersonal relations. Researchers have concluded that there is no single path to delinquency and note that the presence of several risk factors often increases a youth's chance of offending. Various researchers categorize risk factors in different ways. These groups of factors are given below in a chart:

Risk Factors	Causes
Individual Risk Factors	Other individual risk factors include—impulsive behavior, uncontrolled aggression, an inability to gratification, etc.
Social and Economic Risk Factors	Juvenile delinquency is driven by the negative consequences of social and economic development, in particular economic crises, political instability, and the weakening of major institutions (including the State, systems of public education and public assistance, and the family). Family characteristics such as poor parenting skills, family size, home discord, child maltreatment, and antisocial parents are risk factors linked to juvenile delinquency.
Natural risk factors	Due to flood, cyclone, earthquake, river erosion, draught, poverty lots of people are climate refugee.
Environmental effect or factors	Every child born needs proper care, control and up-bringing for development of inherent potentialities. Parental discipline and affection at home and at school at the instance of teachers shape the character traits of children who are, by and large, influenced by environmental factors and companies they keep.

Juvenile Delinquency Prevention through Justice System in Bangladesh

Once we know the root causes of juvenile delinquency and then readers will want to know how these youthful offenders should be stopped and what would be the preventive tools to control and mitigate the crime among the juvenile. Research on risk factors for delinquency has prompted discussion and investigation into influences that may provide a barrier between the presence of risk factors and the onset of delinquency. These safeguards are known as protective factors. There are some apparatus which has been established already in the Criminal Justice System as the most effective ways to prevent crime in the society among adolescence.

Criminal Justice system

The criminal justice system refers to the system used by the government to maintain social control, enforce laws, and administer justice. Criminal justice system is comprised of 1) Police, 2) Prosecution 3) Court and 4) Correction

Objectives of Criminal Justice Policy: Establishment of an effective criminal justice policy for a safer society to live in and maintaining an improved law and order.

- Evolve criminal justice system to meet the need of changing situation and circumstances.
- To fasten together the various aspects of criminal justice system to address the requirement of offenders, victims, wider community, politicians and in a humane way.

Juvenile Justice System

Juvenile justice system, part of Criminal Justice System, means access to justice by children under a specified age. The administrations of justice for minors who are accused have or alleged as to have breached the penal laws of the country essentially constitute the juvenile justice

system. Now the Juvenile Justice system is governed by the newly enacted law named as The Children Act 2013 widely known as Shisu Ain 2013.

- Major International Instruments Dealing with Children in Conflict with the Law:
- Convention on the Rights of the Child (CRC):

The CRC is the first legally binding international instrument to incorporate the full range of human rights — civil, cultural, economic, political and social rights. It defines ‘children’ as all people under the age of 18.

In light of the binding legal obligation that the CRC imposes and the absence of comprehensive legislative reform being undertaken by the Government of Bangladesh, the question arises whether the CRC can be relied upon in Court. The applicability of international instruments when dealing with cases in our Courts was considered in the decision of *The State vs. Metropolitan Police Commissioner*.

In this regard it was held as follows- “Bangladesh was one of the first signatories to the Convention and is bound to take steps for implementing the provisions thereof. Being signatory we cannot ignore, rather we should, so far as possible, implement the aims and goals of the UNCR. The matter of international covenants, conventions and their incorporation into national laws was considered in a decision of the Indian Supreme Court.

Establishment of Children’s Court and its functions:

The now repealed Children Act 1974 provided for the establishment of ‘Juvenile Courts’ to deal with children in conflict with the law (the so-called ‘youthful offenders’). There were only two ‘Juvenile Courts’ established under the old law, but other regular courts were designated to function as Juvenile Courts when hearing cases involving ‘youthful offenders’. The new law provides that, for the purpose of the Act and for trial of offences there under, at least one court is to be established in every district headquarter and in every metropolitan area as the case may be. Such court shall be called “Children’s Court”. In pursuance to section 16(1), the Department of Law and Justice in consultation with the Supreme Court is mandated to declare, by notification in the official Gazette, one or more court of Additional Sessions Judge in a district or metropolitan area, as the case may be, as the Children’s Court. If there is no Additional Sessions Judge in any district then the District and Sessions Judge shall discharge the responsibilities of a Children’s Court in addition to his own responsibilities. Section 17 of the Act provides that in any case where a child in conflict with the law or a child in contact with the law is involved under any law whatsoever, the Children’s Court shall have the exclusive jurisdiction to try that case.

Arrest of a Child:

When a child is arrested on a charge of non-bail able offence and cannot be brought forthwith before a court, the officer-in-charge of the police station may release him/her on bail unless such release of the child is likely to ‘bring him into association with any reputed criminal’ or ‘expose him to moral danger’ or ‘defeat the ends of justice’.

The Act 2013 specifically provides that no child below the age of 9 years may be arrested under any circumstances.[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.

In addition, there are constitutional safeguards regarding the liberty of the person as enshrined in Article 33 of the Constitution, which are often overlooked. Article 33(1) provides as follows:

“33(1) No person who is arrested shall be detained in custody without being informed, as soon as may be of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.”

In general the neglect or failure of the Police to apply the provisions of the Constitution or the Children Act does not come to the Courts. However, it may be pointed out that the provisions mandating duties upon the Police are most relevant for the purpose of ensuring justice for children who come into contact with the law.

It was observed in the case of *The State vs. Metropolitan Police Commissioner*, 60 DLR 660 as follows: “The police, it appears, acted in violation of the provisions of the Act. At least, there appears to be no indication that they were aware of the above-noted provisions of law or made any attempt to comply with the requirements. The police station is two kilometers from the place of occurrence. But there is nothing to suggest that they made any attempt to locate the parents of the girl or any other relatives. No attempt was made to appoint a probation officer, which is the requirement of section 50.....”

As stated earlier, cases relating to the procedures to be followed by the Police and at the initial stage of the trial are very rare.

The Metropolitan Police Commissioner [case provided an opportunity for the Court to issue a number of directions in this regard.

Bail of the Arrested Child:

After arrest, if a child is not released nor referred to diversion nor brought before any court immediately, the CAPO may release the child on bail with or without conditions or surety under the supervision of the child’s parents or, in their absence, foster carer or legal guardian or members of his extended family, or probation officer. In granting bail the CAPO shall not consider whether the offence alleged is bailable or non-bailable. 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. When the child is produced before the Children’s Court, the court shall either release him on bail or order for his custody/detention in a safe home or a Child Development Centre.

In the case of **The State v. Secretary, Ministry of Home Affairs and others**, [Suo Motu Rule No.1 of 2010] the High Court Division pointed out an internal circular issued by the Inspector General of Police with regard to bail of child offenders. In that case various aspects of justice in respect of children in conflict with the law at the initial stages of the process were considered.

It was observed as follows: “There is nothing on record to suggest that the OC was at all aware of the need to inform the Probation Officer, as required by section 50 of the Act. It is also clear that the OC was oblivious of the provisions of section 52 of the Act to consider bail of the children. Evidently he is also ignorant of the Police Order No.1 of 1987 published on the order of the Inspector General of Police on 2.2.87 and circulated for implementation to all D.I.G of police and Police Superintendents.

There is nothing to suggest that the matter of bail or custody at the Kishore Unnayan Kendro, Tongi was at all considered by the OC (Officer in charge). As the children were not granted bail then they ought to have been kept in a place of safety in accordance with section 2 (j) of the Act. In the absence of any explanation we can only presume that the children were kept overnight in the police station.”

It is clear that the police authorities were aware about the legal provisions as long ago as 1987, but the failure to implement the provisions persists in the police stations, even after 23 years of that circular. Clearly there is a need for proper training of the police officers. Furthermore, it may be noted that the grounds for refusing bail are very broad and do not promote the minimum use of detention.

Separate Trial of Children:

Whenever a child in conflict with the law is brought before any court and it appears to the Court that he is a child, the Court shall make an inquiry as to the age of that person. No child shall be charged with, or tried for any offence together with an adult. If a child is accused along with an adult of having committed an offence, the case shall be separated and transferred to the Juvenile Court or the Court empowered to exercise the powers of a Juvenile Court. The Children Act 2013 and the Children Rules 1976 set out the procedural rules that need to be followed by the juvenile Court, any other Court acting as a juvenile Court under section 4 of the Act or the Court of Session in the case of trial of a child in conflict with the law. In addition, the Constitution provides various safeguards some of which have been discussed already in previous chapters which are also fully applicable to children. Finally, the ICCPR in general and the CRC in particular as binding instruments to Bangladesh through ratification, contain various due process guarantees that are meant to ensure that children alleged or accused of having infringed the law receive a fair trial and treatment.

No matter what offence is alleged, irrespective of seriousness of the act, a juvenile is to be tried separately from adults in accordance with provisions of the Children Act.” Not only that after investigation separate report either charge sheet or final report be submitted separately as the some provision has been incorporated in the newly enacted Children Act 2013.

Mandatory holding of separate trial: In the case of Ismail Howlader and others vs. The State the High Court Division observed as follows:

“The record of the lower Court reveals that the investigating officer in his police report dated 09-08-1993 has specifically stated that accused Waliur Rahman was 11.5 years old at the time of submission of the said report.

Sitting of the Court:

In the trial of a case in which a child is charged with an offence the Court shall sit in a building, or a room different from that in which the ordinary sittings of the Court are held, or on different days, or at different times from those at which the ordinary sitting of the Court are held.

The procedures and mode of trial laid down in sections 17 to 30 set the children’s justice system totally apart from the conventional criminal justice system. In a way these sections indicate and reinforce the mandate of the international instruments to treat children differently and to shield them from the rigors of the conventional criminal justice system.

It was observed in *BLAST vs Bangladesh* as follows: “9. (...) So, the provisions of the Children Act, 2013 have provided different processes and modes of arrest, detention and trial of the Juvenile Offenders below the age of 16 years.”

Child-friendly Environment of the Court, The hearing of all cases and proceeding shall be conducted in as simple a manner as possible without observing any formality and care shall be taken to ensure that the child against whom the case or proceeding has been instituted feels home-like atmosphere, during the hearing.

Mode of trial

The Children Rules, 1976 in Rule 4 set out the mode of trial that needs to be followed. As highlighted above, these rules give details of the procedures that set the juvenile justice trial apart from the adult criminal justice trial. Though the government by gazette new children act promulgated but still no rules has been prepared as such the Children rule 1976 is still effective as it was earlier.

Attendance of Persons in Court Proceedings:

According to section 23, the following persons may be present in court, namely the child concerned, the parents or, in their absence, foster career or legal guardian, or, where applicable,

members of the extended family, officers and employees of the court, parties to the case or proceeding, CAPO, the concerned lawyer or any other person directly concerned with the case or proceeding including the Probation Officer and any person specially authorized by the court to appear or remain present.

Operation of the Children Act 1974 is still remaining same for the cases which were lodged before the court or police station. But after enactment of the Children Act 2013 all cases about juvenile delinquent will be tried under or by the provision of the present Children act.

On the road to Reform Juvenile Delinquents and their Rehabilitation in Bangladesh:

Following initiatives could be incorporated for mitigating and rehabilitating the juvenile delinquency in Bangladesh. For this reasons the government should have taken some initiatives and these are given below;

- Policy Initiative,
- Legal Initiative,
- Administrative Initiative,
- Social Initiative

Policy Initiative:

- Include Restorative Justice Model in Juvenile correction,
- Establishment of Independent Child Rights Commission,
- Adopting and Implementing Prevention Strategy,
- Prioritizing the Development of Non-Custodial Alternatives,
- Development of National Data Bank and Children Justice Indicators in Line with International Standards,
- Undertaking Research on the Children Justice System,
- Create more big and Smaller Rehabilitative Institutions,

Social Initiatives:

- Increase more educational programs
- More cultural movement to involve juveniles,
- Awareness building program for juvenile delinquents

Legal Initiative:

To create a pro-juvenile justice model for juvenile in Bangladesh, the following critical issues should amend or incorporate in the Children Act and the Rule. First it should be extended to the children from sixteen to eighteen and necessary amendment should be made to consider everyone below the age of eighteen as 'child'. The minimum age of penal responsibility is to be raised from nine to twelve. Section 100 further provides that, actions remaining incomplete when this Act of 2013 comes into force, so far as possible, shall be concluded in accordance with provisions of the present Act. Children in certified institutes or remand homes in connection with under-trial cases shall continue as before in accordance with provisions of this Act. And, those cases which remain pending in the Juvenile Court shall be disposed of by the Children's Court as if that Act (the Children Act 1974) was not repealed.

Administrative Initiative:

The government should prepare a yearly progress report on the situation of the children justice system of the country. Adequate number of remand homes and places of safety in the vicinity of police stations should be constructed. On receiving a child in conflict with the law, the KUK authority should be supplied with the report from the probation officer. Where the

authorities of the KUKs come to a finding that a child has been reformed and may be released, implementation of the decision to release the child should be expedited.

Conclusion:

Children are the future of the nation. If they go into astray then the society in future extinguished. From the paths of becoming delinquency of the juvenile should have been found out at first. Thereafter the laws and policies in practice at this moment in our society are not adequately conceived and updated to create child friendly society of international standard. Many children remain outside the protective caring and become vulnerable to different forms of abuses. They, in no way, should be treated as criminals. Government, NGOs, social organizations, religious institutions, schools etc. should take up initiatives to address the social menace to a desired end.

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- b) 2. Oxford Advance Learner's Dictionary, page no. 404
- c) 3. Oxford Advance Learner's Dictionary, page no. 840
- d) 4. Section 82 of The Penal Code-1860
- e) 5. Section 4 of the Children Act 2013
- f) 6. State vs. Metropolitan Police Commissioner, 60 DLR 660
- g) 7. Section 16 of the Children Act 2013
- h) 8. Section 43 of the Children Act 2013
- i) 9. 60 DLR 660
- j) 10. Section 51 Section 52(1), 52(2), 52(3), 52(4),52(5), 53 of the Act.
- k) 11. Unreported judgment dated 01.03.2010.
- l) 12. See in particular Article 14 of the ICCPR and Article 40(2) of the CRC.
- m) 13. Article 40 (1) of the CRC & Article 14 (1) of the ICCPR
- n) 14. 58 DLR 335
- o) 15. See Roushan Mondal op cit
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