

Judicial Use of UNCRC in Protection of Child Rights in Bangladesh

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Abstract

Bangladesh legal system adheres to the dualistic legal tradition, that is, international law cannot be judicially enforced directly at domestic level. However, Bangladesh Supreme Court has utilized various international human rights instruments especially the UNCRC as an aid to the interpretation of the domestic laws related to the child rights. Through the interpretative use of the UNCRC, the Court has declared a set of principles: best interest of the child shall be considered; children's views must be heard and considered especially for determining their best interest; children shall not be subject to any corporal punishment, inhuman behavior and degrading treatment; and the child offenders should be ensured a flexible and fair justice system. The Court has ordered the concerned state agencies to follow these principles in dealing with the rights of the children concerning their custody, accommodation, education, trial, punishment and so on.

1. Introduction

Children, the greatest treasure of the country, should be provided with proper environment for blossoming to their full potentials.¹ In 1989, Bangladesh as one of the first signatories signed the United Nations Convention on the Rights of the Child (UNCRC) which incorporates the essential rights and their implementing mechanisms for overall development of the children. However, in many cases the concerned agencies of the state like Magistrate, prosecutor, police, probation officer etc. cannot properly deal with the children who come in contact or conflict with law. This mainly happens because either of their lack of awareness of the child rights or the non-existence of sufficient protection mechanisms for these rights. As a result, the rights of the children are violated frequently. In these situations, the Bangladesh Supreme Court (comprising High Court Division and Appellate Division) have most often interpreted the existing domestic laws relating to the children progressively with the aid of international instruments in order to ensure the basic rights of the children. Bangladesh

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generally follows the dualistic principle that the international instruments do not have enforceability unless incorporated into the domestic legal system. However, the Courts with their dynamic interpretative policies have most often utilized the provisions and principles of the UNCRC as a source of significant legal support in their progressive decisions for protecting the rights of the children who are the most vulnerable groups of the people. The objective of this study is to highlight how the Bangladesh Supreme Court has applied the provisions and principles of the UNCRC in relevant cases for protecting the fundamental human rights of the children. Prior to that, the project will briefly address what legal status international laws bear in Bangladesh and what rights relating to children the UNCRC contains in.

2. Methodology

This study is a qualitative research. This research work mainly relies on the case decisions of the Bangladesh Supreme Courts, the UNCRC and the Bangladesh Constitution. In addition, relevant statutes, law journals, legal articles, authoritative books, relevant theses and various reports have been utilized in conducting this research work. In brief, this study concerns about the judicial application of UNCRC instead of international law in general. Moreover, this work addresses about the judicial role of Bangladesh Supreme Court for the protection and promotion of the child rights other than the human rights in wider context.

3. Legal Status of International Law in Bangladesh

As a country with dualistic legal tradition, Bangladesh maintains a difference between national and international law. It is the traditional view that the provisions of international instruments like the UNCRC cannot be invoked by the domestic Courts unless these are incorporated with the corpus of the national law. However, this trend has started to change due to the progressive judicial interpretation of the Constitution and other relevant statutes with the aid of the international instruments. Bangladesh is constitutionally bound to respect international law including the UNCRC and the principles as embodied in the United Nations Charter.ⁱⁱ

Moreover, it is a growing practice in the contemporary world that the domestic Courts may apply the provisions and principles of international instruments in a disputed matter if relevant domestic laws are absent to solve it. Bangladesh Supreme Court has also encouragingly pronounced in an age-old case,ⁱⁱⁱ that the domestic Courts should not ignore the obligations of international laws; if there is absence of appropriate domestic law in a disputed matter, the Courts should take resort to the international instruments.^{iv} In a recent case,^v the Appellate Division has pragmatically held the principle that, unless contrary to the domestic laws, the beneficial provisions of international instruments may be referred to and implemented in appropriate cases. Moreover, the domestic Courts can utilize the Universal Declaration of Human Rights (UDHR) 1948 and its two covenants, that is, the International Covenant on Civil and Political Rights (ICCPR), 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 as an aid to the legal interpretation of the fundamental rights as enumerated in the Bangladesh Constitution.^{vi}

The Proclamation of Independence of 10 April, 1971 which embodies the legal philosophy of Bangladesh Constitution, encourages the nation to comply with the norms and principles of international law.^{vii} Bangladesh is now an important actor in the international stage due to its geo-strategic importance, faster rising economy, and multi-dimensional role in regional and global level. Therefore, the domestic laws of Bangladesh should have consistency with the universal human rights principles as well as the principles of customary international law which have binding legal force on the municipal Courts of Bangladesh unless contrary to the domestic laws.^{viii}

As a sole and authentic interpreter of the domestic law, Bangladesh Supreme Court can develop the same by its progressive legal interpretation keeping consistency with the norms and principles of international law. This pragmatic legal interpretation is supported by the Constitutional fundamental principle of state policy on respecting international law-- which shall be a guide to the interpretation of the Constitution and other laws of Bangladesh.^{ix} Even the Court can determine and clarify the constitutional rights in the light of the international treaties and conventions. In *BJMAS v. Bangladesh*^x the High Court Division has uttered:

“The Court can look into these conventions and covenants as an aid to interpretation of the provisions [of] Part III, particularly to determine the rights implicit in the rights like the right to life and right to liberty, but not enumerated in the Constitution.”

Article 145A of the Bangladesh Constitution appears to cover the ‘treaties with foreign countries’, that is, bilateral treaties and not multilateral treaties with universal applications.^{xi} Some scholars hold the dynamic view that human rights instruments and the treaties of universal importance may be directly enforced by the legal system of Bangladesh.^{xii} However, Bangladesh being a developing nation may fall in trouble in implementing all the Court decisions arising from the direct enforcement of the provisions and principles of the universal treaties. One of the practical reasons behind this is the lack of sufficient financial resources in Bangladesh. Instead of adopting any revolutionary approach, the Courts should continue the gradual development of the Constitution and other laws by interpreting them keeping consonance with the international instruments. As exceptions, the Courts can utilize the beneficial provisions of the international instruments unless they are contrary to the domestic laws, or can apply the provisions of such instruments if there is no particular law on a disputed matter. Although the direct application of international instruments is rarely found in the decisions of Bangladesh Supreme Court, they are often utilised as an aid to the interpretation of the Constitution and other laws in many cases.

It is praiseworthy that the government has recently enacted the Children Act, 2013 considering the Supreme Court advice, amongst others, incorporating a good number of beneficial provisions of the UNCRC mainly for protecting the rights of the children.

4. Child Rights in UNCRC at a Glance

The UNCRC contains 54 Articles along with a preamble at the beginning.^{xiii} The preamble describes the philosophical statements behind the adoption of the Convention and these statements are based on a set of human rights principles concerning the children.^{xiv} The Convention treats a person below the age of 18 as a child who must not be subject to any

discrimination on any ground, and the matters affecting a child shall be decided in the light of his/her best interest or welfare.^{xv}The government has obligation to ensure an environment for protection and fulfillment of rights of the children and to ensure them a healthy life, a nationality and an identity.^{xvi}The children have right to live with their parents and the right of reunification and they must not be kidnapped for sale, prostitution and drug trade.^{xvii} They also have freedom of thought, conscience, religion, association and expression, and their views must be heard and considered in taking decisions affecting them, in addition to the right to privacy and access to helpful information and mass media.^{xviii}

The government must respect the parents' responsibility to bring up children who shall not be subjected to any form of violence but be entitled to special assistance and care including health care even if they are orphans, adoptee, refugee and disabled.^{xix}Children are also entitled to an adequate standard of living, social security, education and recreation, and the ethnic groups have the right to practice their own culture, language and religion.^{xx} The government shall protect the children from dangerous, harmful and exploitative work, drug abuse, abduction, sale, trafficking, and various forms of exploitation including sexual exploitation.^{xxi}The child offenders must be tried in a fair and flexible justice system where they will be separated from the adult offenders and shall not be punished in cruel manner and should not be awarded death sentence.^{xxii} The concerned governments must protect the children who are victims of war and armed conflict and rehabilitate them by providing special help for their reintegration into the society.^{xxiii} The government should inform the adults and children of the child rights which must be ensured at their maximum by the applicable laws.^{xxiv}In addition, the concerned governments and the international organizations like UNICEF shall take necessary implementing measures for protection of the child rights.^{xxv}

5. Judicial Use of UNCRC in Bangladesh:

The most recent jurisprudence on the domestic use of international law is that the Court can profitably implement and refer to the beneficial provisions of international instruments including the UNCRC for the protection of human rights.^{xxvi}Both Divisions of the Bangladesh Supreme Court have used the UNCRC in analyzing and clarifying the domestic laws related to children who come into contact with the existing legal system. These include issues relating to child offender, the age at which a person can be treated as a child, child workers, corporal punishment, applicability of international instruments, among many other things.^{xxvii}The following part of this study will focus on how the superior Courts in Bangladesh apply the relevant provisions and principles of the UNCRC in protecting various rights of the children.

5.1 Protecting Best Interest of Children:

Before the enactment of the Children Act 2013, the Courts would especially follow the Children Act 1974 for protecting the rights of the children. Moreover, Article 28(4) of the Bangladesh Constitution allows special laws to be made for the betterment of the backward section of the people including children. While interpreting the Constitutional and statutory provisions relating to the welfare of the children, the Supreme Court has mainly considered the beneficial provisions of the UNCRC.

In *State v. The Metropolitan Police Commissioner, Khulna and Others*^{xxviii}, the High Court Division has widely used the provisions of the UNCRC in interpreting the statutory provisions concerning the bail and custody of the child offenders. The Court has remarked that although the domestic laws have not embodied the beneficial provisions of the UNCRC, they are not inconsistent with our domestic laws except Article 21 on adoption. They may, therefore, be taken into account for ensuring best interest of the child.^{xxix} Considering the preamble of the CRC, the Court has viewed that the children should grow up in a family environment, in an atmosphere of happiness, love and understanding for the good and harmonious development of their personality.^{xxx} In other words, the children should be kept with their parents for maintaining their best interest. If any child is to be away from his or her parents due to any cogent reasons, the state shall arrange alternative arrangements.^{xxxi} The Court has expressed this view having resort to Article 20 (1) of the UNCRC that states that a child must be provided with special protection and assistance by the state if his best interest or welfare is frustrated due to the absence of family environment for him.^{xxxii}

In another case, *The State v. Secretary, Ministry of Law, Justice and Parliamentary Affairs and Others*^{xxxiii} the High Court Division has stated that the beneficial provisions of the international instruments especially the UNCRC are not in conflict with our domestic laws and therefore, they should be implemented for the benefit and greater interest of the children.^{xxxiv} The Court has directly considered the Article 3 of the UNCRC and ordered that “in all matters where a child is an accused, victim and witness, the best interest of the child shall be a primary consideration”. The Court has stated that, due to the mandate of Article 3 of the UNCRC, best interest of the children shall be primary consideration even if the children are accused of serious offences. The Court notes:

“We note that when it comes to children committing more serious crimes, they are tried effectively as adults and the best interest of child takes back-stage as a mere slogan. This is in spite of the clear mandate in Article 3 of the [UN] CRC for state parties to ensure that in all actions concerning children taken by institutions, including Courts of law, the best interest of the child shall be a primary consideration. The age old attitude of demonizing children who commit serious crimes is to be deplored. Courts should at all times consider the reasons behind the deviant behavior of the child and after taking into account all the attending facts and circumstances, decide what treatment would be in the best interest of the child.”^{xxxv}

The Court has advised the government to amend the Children Act, 1974 or enacting new laws in order to give effect to the provisions of the UNCRC so that the welfare of the children are better protected and ensured.

5.2 No Corporal Punishment on Children:

Corporal punishment had been widely treated as a traditional form of disciplinary action on the children at many schools in Bangladesh. However, this practice is a violation of fundamental rights of children as Article 35(5) of the Bangladesh Constitution provides that “no person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment.”^{xxxvi} As there has been no administrative measures against this long inhuman

practice, Bangladesh Supreme Court has ordered the relevant government agencies to adopt necessary measures for preventing this illegal practice at schools all over the country.^{xxxvii} The Court has considered the relevant provisions of the UNCRC in protecting the physical integrity and human dignity of the children.

In *BLAST and another v. Secretary, Ministry of Education, and others*^{xxxviii}, the High Court Division has pragmatically utilized the Article 37 of the UNCRC, which states that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.” The Court is of the view that corporal punishment is liable for hampering children’s well-being and causing serious physical and mental effects as well as causing truancy and dropping out of school.

The Court has also taken into consideration Article 28 (2) of the UNCRC which incorporates that the “states parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.” Apart from the basic provisions of the UNCRC, the Court has utilized the General Comment No. 8 on UNCRC which urges the state parties to arrange quick measures for prohibition and elimination of all physical punishment and all other cruel and degrading forms of punishment of children. It also suggests for legislative and awareness raising and educational measures.

In another case,^{xxxix} the High Court Division has stated that separating a seven years old female child from the bosom of her mother is tantamount to cruel and inhuman treatment which is against the Article 27 of the UNCRC as well the Article 35(5) of the Bangladesh Constitution.

5.3 Safe Environment and Special Protection for Children

Children, by nature, are vulnerable and sensitive groups in every society as the mind of a child is “immature, impressionable and malleable”^{xl}. Therefore, they are entitled to special attention and care.^{xli} In *State v. Md. Roushan Mondol @ Hashem*,^{xlii} the High Court Division has dynamically considered the Preamble of the UNCRC in holding the opinion that the children need special care and attention, and this view has been emphatically recognized by some core human rights instruments.^{xliii}

The High Court Division has considered the aims of the UNCRC that has recognized that the children are vulnerable and need protection.^{xliv} In *The State v. the Metropolitan Police Commissioner, Khulna and others*,^{xlv} the Court has taken cognizance of the preamble and provisions of the UNCRC in having the view that the children should be brought up in a family environment and if necessary, be provided with special care and protection. Regarding this matter, the Court has cited,

“It is stated in the preamble of the UNCRC that the child for the good and harmonious development of his or her personality should grow up in a family environment, in an atmosphere of happiness, love and understanding. It is also stated in the UNCRC, quoting from the Declaration of Rights of the Child, ‘the child by reason of his physical and mental immaturity needs special safeguards and care including appropriate legal protection before as well as after birth.’”

In order to emphasize on the safe environment of the children, the High Court Division has taken into consideration the preamble and the relevant basic provisions of the UNCRC, which provide *inter alia*, that the children should be provided with necessary protection and assistance.^{xlvi} Children are to work in hazardous and risky environment in many places in Bangladesh and this picture was described and legally analysed in a famous case.^{xlvii} In such circumstances and conditions, the Court is of the view that the children who are growing up in hostile and unfriendly surroundings need special care and assistance.^{xlviii} This view has been expressed having regard to the preamble of the UNCRC which states, *inter alia*,

“Recognising that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration.”

The Court has viewed that the child offenders shall be separated from the adult offenders so that they cannot absorb wrong things in their young and fertile minds from their association with the adult criminals. To support this view, the Court has utilized the preamble and other provisions of the UNCRC besides other international instruments.^{xlix}

5.4 Fair and Flexible Justice System for Children

Mahatma Ghandi says, “A nation’s greatness is measured by how it treats its weakest members.”¹ In similar tone it is said, “a moral test of a government is how it treats those who are at the dawn of life, the children;...”ⁱⁱ However, a good number of anomalies are found in Bangladesh legal system when dealing with cases where an offender and/or the victim are children.ⁱⁱⁱ In this situation, Bangladesh Supreme Court has progressively interpreted the existing domestic laws relating to the pre-trial, trial and post-trial procedures of the cases involving children. In so-doing the Court sometimes has taken support of the provisions of the international instruments especially the UNCRC.

In Bangladesh, there are several statutes where a ‘child’ has been defined with different age limits. In a recent case,ⁱⁱⁱⁱ the High Court Division has considered the Article 1 of the UNCRC in determining the age-limit of a child in Bangladesh in order to end the anomalous situations which arise when dealing with children.^{lv} The Court has stated, “in particular, in order to avoid further complications in the proper applications of the existing laws, prompt action must be taken to ensure that the definition of ‘child’ is uniformly fixed in all statutes as anyone below the age of 18 years”.

In *The State v. Ministry of Law, Justice and Parliamentary Affairs and others*^{lv} the High Court Division has actively considered the Article 37(d) of the UNCRC which provides, “Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a Court or other competent, independent and impartial authority, and to a prompt decision on any such decision.” Taking into account this provision of the UNCRC, the Court is of the view that, since the ordinary criminal courts are busy in adjudicating the regular criminal cases, there must be a Special Court for proper administration of justice for children until juvenile Courts are set up in each district. Hence, the Court has recommended that “one Court in each district must be designated as being a Court dedicated to hear cases involving child offenders so that children’s cases can be heard and disposed of on priority basis.”^{lvi}

Regarding legal representation, the Court has considered the Article 40 (2)(b)(ii) of the UNCRC and stated that children must be provided with legal aid in all cases so that no children remain unrepresented.^{lvii} The Court has applied Article 33 of the UNCRC in directing the concerned authorities that the use of children in carrying illegal drugs and arms or any other harmful activity must be treated as a criminal offence to be tried under the Children Act.^{lviii}

In *State v. Md. RoushanMondol @ Hashem*,^{lix} the Court has considered the provisions of the UNCRC and its aims and goals in deciding that under normal circumstances, the under-trial children should be kept in the custody of their parents for the sake of their best interest. Again in another case,^{lx} the Court has held that, the underlying theme of the relevant international instruments including the UNCRC is that the under-trial-children shall be enlarged on bail and be detained only as a last resort. Despite there is no prohibition in any statute in Bangladesh to pass death sentence on any minor accused, the High Court Division has pragmatically applied, *inter alia*, the relevant provisions of the UNCRC in deciding that an accused below the age of 18 years should not be awarded any death sentence.^{lxi}

In *State v. Deputy Commissioner, Satkhira*^{lxii}, the High Court Division referred to the provisions of the UDHR and the UNCRC while interpreting the minor victim's constitutional and statutory rights to be freed from custody and torture.^{lxiii}

5.6 Relevance of Child's Views and Preferences

Children also have sharp and inherent senses which should not be always overlooked rather be perceived in order to determine the best welfare of the children. If they are capable of understanding their betterment, they must be allowed to express their views which shall be considered according to their age and maturity. In *Anika Ali v. RezwanulAhsan*,^{lxiv} a recent land mark case, the Appellate Division of the Supreme Court of Bangladesh pragmatically utilized Article 12(1) of the UNCRC which states:

“States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”^{lxv}.

In this case, the Court has taken cognizance of the principle that the children must have legal opportunities at national level to express their views in judicial and administrative proceedings affecting the children. Regarding this, the Court has considered the Article 12(2) of the UNCRC which provides:

“[...] the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law”.^{lxvi}

In the *Anika Ali Case*,^{lxvii} the apex Court of the country has interpreted the provisions of section 17(3) of the Guardians and Wards Act, 1890 that mainly deals with the custody of children. The Court is of the view that the custody of a child who is victim of turbulent or broken down marriage should be determined carefully; otherwise a wrong decision as to his/her custody may bring out a traumatic situation that may cause irreparable psychological

damage in his/her life. In this context, the Court has held that a Judge should take into consideration the views of the concerned child so as to determine the best interest or welfare of the child.^{lxviii} In arriving at this decision, the Court has strongly relied on the provisions of the Article 12^{lxix} as well as the Article 3(1)^{lxx} of the UNCRC. The Court has also advised the lower Court Judges that while deciding the custody of a child, the Judge also ought to consider, *inter alia*, the provisions of Article 9(1) of the UNCRC. Article 9(1) provides:

“States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child....”

The modern concept of custody and other matters regarding children mandatorily upholds the principle that the children should be allowed to express their views on the matters affecting them.^{lxxi} Keeping in mind the beneficial provisions of the UNCRC, the Court has agreed with a trial Court decision of giving a male child of eight years into his mother’s custody upon consideration of the child’s preference.^{lxxii}

6. Conclusion

In a good number of cases, the Bangladesh Supreme Court has dynamically interpreted the Constitutional provisions and other laws related to children with an active aid of the provisions and principles of the UNCRC for the purpose of child rights protection. The Court has directed the concerned state agencies and the Courts at District level to consider the best interest of the children when dealing with the child matters. It has directed that the Children at school shall not be subject to any corporal punishment, inhuman behavior and degrading treatment from the teachers. The Court has also ordered that the child offenders should be kept separate from the adult offenders, granted bail, kept in family environment and advised not to award them death sentence if found guilty. Children must be allowed to express their views which shall be heard and considered in taking decisions affecting them. Taking into consideration of the relevant provisions of the UNCRC, the Court has declared these principles and guidelines to be followed while adjudicating and dealing with the child matters relating to their custody, accommodation, education, trial and punishment.

Since Bangladesh is one of the first signatories to the Convention, both Divisions of the Supreme Court has taken this matter seriously and decided many cases related to child matters in the light of the spirit and principles of the UNCRC. As a result of this judicial dynamism, the government felt it necessary to enact the Children Act 2013 incorporating a good number of the principles and mechanisms of the UNCRC.

References:

- ⁱ The honourable Prime Minister of Bangladesh expresses in her message on the preparation of the National Plan of Action (NPA) for Children (2005-2010).
- ⁱⁱ See details article 25 of the Bangladesh Constitution.
- ⁱⁱⁱ *Hussein Mohammad Ershad v. Bangladesh and Others* 21 (2001) BLD (AD) 69.
- ^{iv} *Ibid*, Per Bimalendu Bikash Roy Chowdhury, J. at p. 69, para 2.
- ^v *Anika Ali v Rezwanaul Ahsan* 17 (2012) MLR (AD) 49.
- ^{vi} Islam, M., (2012) *Constitutional Law of Bangladesh*, 3rd revised ed., Dhaka, at p.127.
- ^{vii} Karzon, S.H.R, and Faruk, A. A., “Status of International Law under the Constitution of Bangladesh”, 3:1(1999), *Bangladesh Journal of Law*, pp. 23-47 at p. 27.
- ^{viii} *Bangladesh v. Unimarine S.A Panama* 29 (1977) DLR (HCD) p.252 ; See details, *Bangladesh and others v. Sombon Asavhan* 32 (1980) DLR (HCD) 198 ; *Saiful Islam Didar v. Government of Bangladesh and others*, 50 (1998) DLR (HCD) 318; *M. Saleem Ullah v Bangladesh* 47 (1995) DLR (HCD) p. 218.
- ^{ix} See, Article 8(2) read with Article 25 of Bangladesh Constitution.
- ^x 61(2009) DLR (HCD) p.384.
- ^{xi} *Supra* note 7 at p.46.
- ^{xii} *Ibid*.
- ^{xiii} For a lucid commentary on the child rights in the context of domestic and international law especially, the UNCRC, See Ali, M, I., (2010) “*Towards A Justice Delivery system For Children in Bangladesh*”, UNICEF Bangladesh, Dhaka.
- ^{xiv} See details, the preamble of the UNCRC, 1989.
- ^{xv} See details Articles 1,2 and 3 of the UNCRC, 1989.
- ^{xvi} See details, Articles 4,5,6,7 and 8 of the CRC, 1989.
- ^{xvii} See details, Articles 9, 10 and 11 of the CRC, 1989.
- ^{xviii} See details, Articles 12---17 of the CRC, 1989.
- ^{xix} See details, Articles 18-- 25 of the CRC, 1989.
- ^{xx} See details, Articles 26--31 of the CRC, 1989.
- ^{xxi} See details, Articles 32—36 of the CRC, 1989.
- ^{xxii} See details, Article 37 and 40 of the CRC, 1989.
- ^{xxiii} See details, Article 38 and 39 of the CRC, 1989
- ^{xxiv} See details, Articles 41 and 42 of the CRC, 1989
- ^{xxv} See details, Article 43—54 of the CRC, 1989.
- ^{xxvi} See, *Anika Ali v Rezwanaul Ahsan* 17 (2012) MLR (AD) 49.
- ^{xxvii} Iman, N., (2012) *Justice For Children in Bangladesh* , Dhaka, at p. 9.
- ^{xxviii} 60 DLR (HCD), 660.

^{xxix} Ibid, para 29.

^{xxx} Supra note 27 at p. 92.

^{xxxi} Ibid at p.92.

^{xxxii} 60 DLR (HCD), 660.

^{xxxiii} 29 BLD (HCD) 656. See also, Fahima Nasrin v. Bangladesh 63 (HCD) DLR 95.

^{xxxiv} Ibid at para 24.

^{xxxv} Ibid at para 40.

^{xxxvi} See also, Article 5 of the Universal Declaration of Human Rights 1948.

^{xxxvii} See details, Bangladesh Legal Aid Services Trust (BLAST) and another v. Secretary, Ministry of Education, and others, 31 BLD (HCD) 201.

^{xxxviii} Ibid.

^{xxxix} State v. Ministry of Law, Justice and Parliamentary Affairs and others, 29 BLD (HCD) 656, para. 42.

^{xl} Iman, N., (2012) “*Justice For Children in Bangladesh: An Analysis of Recent Cases (Appendixes)*”, Dhaka, at p. 128.

^{xli} See details the Universal Declaration of Human Rights 1948.

^{xlii} 59 DLR (HCD) 72.

^{xliii} The relevant part of the Preamble of the UNCRC provides: “Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in Article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of the children.” The Children Act, 1974 also incorporates specific beneficial provisions that aim at giving special treatment for children. See Ali, M, I (2010) “*Towards A Justice Delivery system For Children in Bangladesh*”, UNICEF Bangladesh, Dhaka.

^{xliv} Supra note 43 at p. 129.

^{xliv} 60 DLR (HCD) 660.

^{xlvi} The State v. Md. Roushan Mondal @ Hashem 59 DLR (HCD) 72.

^{xlvii} ASK and another v. Bangladesh represented by the Secretary, Ministry of Labour and Manpower, and others 63 BLD (HCD) 95.

^{xlviii} Supra note 40 at p. 129.

^{xlix} See Ibid pp. 128-129.

^l Supra note 27 at p.vi.

^{li} Commented by Hubert Humphrey who was former Vice President of the United States, See *ibid*.

^{lii} See, State v. Ministry of Law, Justice and Parliamentary Affairs and others, 29 BLD (HCD) 656.

^{liii} The State v. Ministry of Law, Justice and Parliamentary Affairs and others, 29 BLD (HCD) 656, para 27.

^{liv} Article 1 of the UNCRC says, “For the purposes of the present Convention, a child means every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.”

^{lv} 29 BLD (HCD) 656.

^{lvi} Ibid at para 28.

^{lvii} Article 40 (2)(b)(ii) of the UNCRC provides, “ To be informed promptly and directly of the charges against him or her, and , if appropriate , through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence.”

^{lviii} Supra note 54. Article 33 of the UNCRC states: “States parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties and to prevent the use of children in the illicit production and trafficking of such substances.”

^{lix} 59 DLR (HCD) 72.

^{lx} State v. Metropolitan Police Commissioner, 60 DLR (HCD) 660.

^{lxi} The State v. Ministry of Law, Justice and Parliamentary Affairs and others 29 BLD (HCD) 656, paras.43 & 44.

^{lxii} 45 DLR (HCD) 643.

^{lxiii} Alam S., (2007) *Enforcement of International Human Rights law in Domestic Courts*, Dhaka at p.112.

^{lxiv} 17 MLR (AD) 49.

^{lxv} Ibid, para 15.

^{lxvi} Ibid.

^{lxvii} 17 MLR (AD) 49.

^{lxviii} Ibid, para 13.

^{lix} Article 12 inserts: 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

^{lxx} Article 3(1) states, ”In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

^{lxxi} Supra note 70 at p. 56.

^{lxxii} Ibid at p.57. See also, Abu Baker Siddique v. SMA Bakar, 38 DLR (AD) 106.
