CHILD PROTECTION
AND
CONSTITUTIONALISM

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CHILD PROTECTION AND CONSTITUTIONALISM

It's an oft-repeated cliché, but true, that children are among the most vulnerable sections in any society. The same is not confined to any particular country, but is universal in its application. In addition to the above, children are also amongst the most precious assets of mankind. They represent the future and the future depends on the manner in which they are nurtured and provided with tools such as value-based education and an environment conducive to a healthy all-round growth, to take on the challenges of the future. Children represent almost 1/3rd of the world's population and unless they are provided such opportunities, their all-round growth will be retarded and the opportunity of making them grow into responsible citizens of tomorrow will slip out of the hands of the present generation.

The above sentiments are common to all countries, since the issues involved are common. There is no denying the fact that children are impressionable and till they attain physical and mental maturity, they are amenable to ideas which may change the direction of their lives. There is a world of difference between a human baby and a progeny of the animal kingdom. While the offspring of an animal is able to stand on its feet within hours of birth and is to some extent able to fend for itself, a human baby takes almost 2 to 3 years to reach such a stage. A child takes 18 years to develop into an adult. It is during this period of their growth that children
are the most vulnerable and if not properly protected and guided, can be 
exploited and criminalized by anti-social elements in the community for their 
own selfish benefit. In recent times, things have become even more grave, 
because of the amount of exposure to violence and sex, through the 
electronic and digital media, resulting in crimes which involve both.

**The United Nations Initiative**

Not all people, however, have been blind or insensitive to the needs of 
children and the need to create an environment in which they could develope 
into useful citizens of the world. The League of Nations issued the Geneva 
Declaration of the Rights of the Child in 1924. Though, little came out of the 
said Declaration, it did serve the purpose of drawing the attention of the 
world community to the plight of children placed in difficult circumstances on 
account of the First World War and its aftermath. Humanity had to wait till 
after the Second World War and the formation of the United Nations for a 
further Declaration following the shocking events which occurred during and 
even after the Second World War. The gross abuse and violation of human 
rights during the Second World War which caused the death of millions of 
people, including children, resulted in the formation of the United Nations in 
1945, when a large number of nations of the world united to ensure that 
such a holocaust was never repeated in the history of mankind. 10th 
December, 1948, witnessed the adoption and proclamation of the Universal
Declaration of Human Rights by the General Assembly of the United Nations,
the Preamble whereof bears repetition and is extracted hereinafter:

"PREAMBLE"

Whereas recognition of the inherent dignity and of the
equal and inalienable rights of all members of the human family
is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have
resulted in barbarous acts which have outraged the conscience
of mankind, and the advent of a world in which human beings
shall enjoy freedom of speech and belief and freedom from fear
and want has been proclaimed as the highest aspiration of the
common people,

Whereas it is essential, if man is not to be compelled to
have recourse, as a last resort, to rebellion against tyranny and
oppression, that human rights should be protected by the rule of
law,

Whereas it is essential to promote the development of
friendly relations between nations,

Whereas the peoples of the United Nations have in the
Charter reaffirmed their faith in fundamental human rights, in
the dignity and worth of the human person and in the equal
rights of men and women and have determined to promote
social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to
achieve, in co-operation with the United Nations, the promotion
of universal respect for and observance of human rights and
fundamental freedoms,

Whereas a common understanding of these rights and
freedoms is of the greatest importance for the full realization of
this pledge,

Now, Therefore the general assembly proclaims this
Universal Declaration of Human Rights as a common standard of
achievement for all peoples and all nations, to the end that
every individual and every organ of society, keeping this
Declaration constantly in mind, shall strive by teaching and
education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Articles 1 and 7 of the Declaration, which is comprised of 30 Articles, proclaim that all human beings are born free and equal in dignity and rights and are equal before the law and are also entitled without discrimination to equal protection of the law.

Article 25 specifically provides that motherhood and childhood would be entitled to special care and assistance and all children, whether born in or out of wedlock, would enjoy the same social protection. Article 26 provides that everyone has the right to education which would be free, at least in the elementary and fundamental stages, when such education would be compulsory.

The growing consciousness of the world community toward its children became further evident from the Declaration of the Rights of the Child which came to be proclaimed by the United Nations on 20th November, 1959, in the best interests of the child. The Declaration contained Ten Principles, all of which were designed to apply universally to all children without any discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or his family, to enjoy special protection and to be given opportunities and facilities by law and by other means to enable him to
develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.

After the adoption of the Declaration, the United Nations continued to consider with concern the growing problems relating to Juvenile delinquency. The year 1979 was observed by the United Nations as the International Year of the Child. Meetings were held in Caracas, Milan, Riyadh and Havana. Between 1985 and 1990, the United Nations adopted three major instruments relating to Juvenile Justice, namely,

(1) The United Nations Standard Minimum Rules for the Administration of Juvenile Justice, commonly known as the "Beijing Rules", adopted on 29th November, 1985,

(2) The United Nations Guidelines for the Prevention of Juvenile Delinquency, commonly known as the "Riyadh Guidelines", adopted in 1990, and


The three sets of Rules intended that social policies should be evolved and applied to prevent juvenile delinquency, to establish a juvenile justice system for juveniles in conflict with law, to safeguard fundamental rights and to establish methods for social re-integration of young people who had suffered incarceration in prison or other corrective institutions. The said Rules reiterated the principles adopted in greater detail and it was emphasized that a juvenile is a person who should be dealt with for an offence in a manner which is different from an adult.
The Beijing Rules were accepted as the first international legal instrument to lay out comprehensive norms in detail for the administration of juvenile justice with a child rights approach. The said Rules were framed and adopted by the General Assembly of the United Nations on 29th November, 1985, in response to the call made by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, convened in 1980. Since this is one of the most important international legal documents with regard to juveniles and the criminal justice system, the fundamental perspectives conceived in the said Rules are extracted hereinbelow:

1. Fundamental perspectives

1.1 Member States shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family.

1.2 Member States shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.

1.3 Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.

1.4 Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles,
thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

1.5 These Rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State.

1.6 Juvenile justice services shall be systematically developed and co-ordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches and attitudes."

The Beijing Rules indicated that efforts should be made by the member countries to establish within their own national jurisdiction, a set of laws and rules specially applicable to juvenile offenders and institutions and bodies entrusted with the administration of juvenile justice, designed :-

"(a) to meet the varying needs of juvenile offenders, while protecting their basic rights;
(b) to meet the needs of society; and
(c) to implement the Beijing Rules thoroughly and fairly."

It was further stated that the age of criminal responsibility in legal systems that recognize the concept of the age of criminal responsibility for juveniles should not be fixed at too low an age-level, keeping in mind the emotional, mental and intellectual maturity of children.

It was also indicated that the aim of the juvenile justice system was to ensure the well being of the juvenile and any reaction to juvenile offenders
should always be in proportion to the circumstances of both the offender and the offence.

The Beijing Rules are, in fact, a Code by themselves for dealing with juvenile offenders who are required to be treated differently from adults in respect of any offence committed by them.

Four years later, the United Nations adopted the Convention on the Rights of the Child vide the Resolution of the General Assembly No.44/25 dated 20th November, 1989, which came into force on 2nd September, 1990. Recognizing the earlier steps taken to safeguard the rights of children in general and juveniles in conflict with law and regarding the provisions of the Declaration with regard to social and legal principles relating to the protection and welfare of children, with special reference to foster placement and adoption nationally and internationally and noticing the Beijing Rules in regard to the administration of juvenile justice and recognizing further that, in all countries of the world, there are children living in exceptionally difficult conditions and that such children need special consideration and further recognizing the importance of international cooperation and the need for improving the living conditions of children in every country, the United Nations adopted the Convention on the Rights of Children on 20th November, 1989. Certain important decisions were incorporated in the Convention, such as Article 1, which attempted to bring about a uniformity in the description of a child in all countries.
Article 1 indicates that for the purpose of the 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. Almost all the Articles in the Declaration are child-centric, requiring that State parties should respect and ensure the rights contained in the Convention to each child within their jurisdiction, without discrimination of any kind. The State parties were called upon to take appropriate measures to ensure that the child was protected against all forms of discrimination or punishment on the basis of the status, activities, express opinions, or beliefs of the child’s parents, legal guardians or family members. The State parties were also directed to entertain all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the Convention.

Articles 6, 7, 8 and 9 of the Convention set out certain important attributes of the juvenile justice system, which are essential in order to provide children with adequate opportunities for growth, both physical and mental, so that they could become useful members of society. Article 6 calls upon the State parties to recognize that every child has the inherent right to life and towards that end, the State parties were directed to ensure to the maximum extent possible, the survival and development of the child.

Articles 7 and 8 provide for registration of the birth of the child, immediately after birth, and declares that a child, from its very birth, would have a right to acquire a nationality and as far as possible, the right to grow
and be cared for by his or her parents. They further indicate that the State parties would respect the right of the child and preserve his or her identity, including nationality, name and family relations as recognized by law. In cases where a child is illegally deprived of some or all of the elements of his or her identity, the State would provide proper assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9 of the Convention creates an obligation on State parties to ensure that a child is not separated from his or her parents against their will, except where such separation is felt necessary for the best interests of the child.

Article 32, *inter alia*, calls upon State parties to recognize the rights of a child to be protected from economic exploitation, from performing any work that is likely to be hazardous, or to interfere with the child's education, or be harmful to the child's health, physical, mental, spiritual, moral or social development.

Article 33 provides that State 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 and to prevent the use of children in the illicit production and trafficking of such substances.
Articles 34, 35 and 36 contain the undertaking of the State parties to protect the child from all forms of sexual exploitation and sexual abuse and to take all appropriate steps to prevent the abduction, the sale of or trafficking in children for any purpose or in any form. In addition, State parties have been placed under an obligation to protect children against all other forms of exploitation, prejudicial to any aspect of the child’s welfare.

Article 37 is another important provision as far as children and the criminal justice system of a country is concerned, it provides as follows :-

"Article 37. States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) 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 action."

While Article 39 deals with measures to be taken by the States to promote physical and psychological recovery and social reintegration of a child victim of any kind of neglect, exploitation or abuse or any cruel, inhuman or degrading punishment, Article 40 provides some other basic Guidelines to be followed by State parties in dealing with children who may be in conflict with law.

The aforesaid Convention was ratified by India on 11th December, 1992 and sowed the seeds of the enactment by the Indian Parliament of the Juvenile Justice (Care and Protection of Children) Act, 2000.

In continuation of the desire to create a different justice delivery system for juveniles, the United Nations followed up the Convention of the Rights of the Child with the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which were adopted by the General Assembly on 14th December, 1990.

As in the case of the Beijing Rules, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, deals specially with juveniles and the criminal justice system applicable to them in contrast to the procedure applicable to adult offenders.
The said Rules were followed by another important milestone in the history of the development of laws relating to children, known as the "Riyadh Guidelines", which were adopted by the United Nations General Assembly on 14th December, 1990. The said Guidelines are also known as the United Nations Guidelines for the Prevention of Juvenile Delinquency. Taking into account all the previous Conventions and Rules framed by it, the United Nations framed the aforesaid Guidelines with the following objects in mind:

"FUNDAMENTAL PRINCIPLES"

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes.

2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.

3. For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control.

4. In the implementation of the present Guidelines, in accordance with national legal systems, the well-being of young persons from their early childhood should be the focus of any preventive programme.

5. The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:
a) The provision of opportunities, in particular educational opportunities, to meet the varying needs of young persons and to serve as a supportive framework for safeguarding the personal development of all young persons, particularly those who are demonstrably endangered or at social risk and are in need of special care and protection;

(b) Specialized philosophies and approaches for delinquency prevention, on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation, need and opportunity for, or conditions giving rise to, the commission of infractions;

(c) Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity;

(d) Safeguarding the well-being, development, rights and interests of all young persons;

(e) Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood;

(f) Awareness that, in the predominant opinion of experts, labelling a young person as "deviant", "delinquent" or "pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

6. Community-based services and programmes should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort."

In its scope, the Guidelines were intended to be interpreted and implemented within the broad framework of all the earlier Declarations, Conventions and Rules and other instruments and norms relating to the
rights, interests and well-being of all children and young persons. Once again, amongst the other issues, special emphasis was laid on the concept of family, education, community-based services and programmes and legislation and juvenile justice administration.

On 21st July, 1997, the United Nations adopted yet another set of Guidelines, known as the United Nations Guidelines for Action on Children in the Criminal Justice System. Its aims and objects, *inter alia*, were to provide a framework to achieve the implementation of the Conventions on the Welfare of the Child and other related instruments and to facilitate the provisions of assistance to the State parties for the effective implementation thereof.

As part of the on-going process of revisiting the juvenile justice system in the light of the various Declarations, Conventions and Rules, the United Nations adopted the United Nations Guidelines on Justice Matters involving Child Victims and Witnesses of Crime, 2005. The objective of the said Guidelines, *inter alia*, was to provide a practical framework to assist in the review of national and domestic laws, procedures and practices so that these could ensure full respect for the rights of child victims and witnesses of crime and contribute to the implementation of the Convention on the Rights of the Child by parties to the Convention. The Guidelines were also intended to guide professionals and where appropriate, volunteers working with child victims and witnesses of crime in their day-to-day practice in the adult and
juvenile justice process at the national, regional and international levels, consistent with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. Many of the contents of the Guidelines are in pari materia with the earlier Conventions and Guidelines.

**The Indian Experience**

In tandem with the world-wide concern relating to the well-being of children and the recognition of children's rights, India also developed its own jurisprudence relating to such laws. Even prior to independence, there were different provisions in place in the country to look after the welfare of children and to treat them differently as compared to adults. With the adoption of the Constitution on 26th November, 1949, constitutional safeguards, as far as the weaker sections of society, including children, were provided for. Several rights have been guaranteed to children in the Constitution of India, such as equality before the law, free and compulsory primary education to the children of the age group of 6 to 14 years, prohibition of trafficking and forced labour of children and prohibition of employment of children below the age of 14 years in factories, mines or hazardous occupations. The Constitution enables the State Governments to make special provisions for children and Article 39 thereof directs that the policy of the State shall be such that their tender age is not abused. The Government is also committed to give children opportunities and facilities to
develop in a healthy atmosphere with required freedom and dignity and to ensure that their constitutional and legal rights are protected.

Even before the Constitution was adopted on 26th November, 1949, the Factories Act was enacted in 1948. The said Act contains a specific Chapter relating to employment of young persons, namely Chapter VII. Section 67 of the Act which is the first Section in Chapter VII provides that no child who has not completed his fourteenth year shall be required or allowed to work in any factory. Various other provisions have been included in the Chapter, including working hours for children above the age of 14 years, who are also required to carry on their persons certificates of fitness which have to be signed by the manager of the factory certifying that the child is fit for work in a factory. The Act provides that no child shall be employed or permitted to work in any factory:

(a) for more than four and a half hours in any day;
(b) during the night.

It has also been specified that no female shall be required or allowed to work in any factory except between 8 a.m. and 7 p.m. Various other provisions have been included in Chapter VII to ensure that even children above the age of 14 years, but below the age of 18 years and treated as adolescents, were duly protected against exploitation of their tender age. In 1986, the Child Labour (Prohibition and Regulation) Act was enacted. The object of enacting such Act was that although in various Acts employment of
children below 14 and 15 years in certain prohibited employments, have been prohibited, there is no procedure laid down in any law for deciding in which employments, occupations or processes the employment of children should be banned. The Act was enacted to prohibit engagement of children in certain mines and to regulate the conditions of work of children.

In order to prevent female foeticide, the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act was enacted in 1994 since pre-natal diagnostic centres had become centres of female foeticide. Such abuse of the techniques being against the female sex and affecting the dignity and status of women, the aforesaid Act was enacted to prohibit the misuse of pre-natal diagnostic techniques for determination of sex of a foetus, leading to female foeticide.

Realizing that several rights which had been guaranteed to children in the Constitution were being violated and/or observed in the breach, the Government of India enacted the Commissions for Protection of Child Rights Act, 2005, under which the National Commission for Protection of Child Rights was constituted. The enactment of the aforesaid Act was also actuated by the adoption by the United Nations of the Convention on the Rights of the Child in 1989, which was ratified by the Government of India on 11th December, 1992. It provides for a National Commission as well as State Commissions for protection of child rights and to make provision for Children’s Courts.
Another landmark legislation was the Prohibition of Child Marriage Act, 2006, which repealed the Child Marriage Restraint Act, 1929. While the 1929 Act provided for punishment for male adults marrying a child and parents or guardians concerned in the child marriage, it did not seek to indicate as to whether such a marriage would be void in law. The 2006 Act filled up the lacuna and Section 3 thereof provides that every child marriage, whether solemnized before or after the commencement of the Act, would be voidable at the option of the contracting party who was a child at the time of marriage. The Act also provides for punishment for male adults marrying a child and also those who take part in performance of such marriages, including the parents. Section 12 makes it clear that marriage of a minor child would be void where a child being a minor is taken or enticed out of the keeping of the lawful guardian; or by force compelled or by any deceitful means induced to go from any place; or is sold for the purpose of marriage; and made to go through a form of marriage; or if the minor is married after which the minor is sold or trafficked or used for immoral purposes.

Perhaps one of the more important social legislations is the Right of Children to Free and Compulsory Education Act, 2009. While Article 45 of the Constitution, which is not a fundamental right, but a directive principle of State Policy provided that the State would endeavour to provide early childhood care and education to all children between the age of 6 and 14 years, the same was included within the Fundamental Rights Chapter as
Article 21A thereof by the Eighty Sixth Constitution (Amendment) Act. The same was a result of certain judicial pronouncements and under the Act all children between the age of 6 to 14 years have a fundamental right to free and compulsory education which the State is under an obligation to provide.

Possibly, the last in the series of legislations resorted to by the Government to give effect to the provisions of the Constitution is the Protection of Children from Sexual Offences Act, 2012. With the growth of sexual offences against minor girl children, it was felt that such offences were not adequately addressed by the existing laws. Accordingly, the Act was enacted to provide for protection of children from offences of sexual assault, sexual harassment and pornography, with due regard to powers of the State Government to make special provisions for children in accordance with Article 15(3) of the Constitution, as also Article 39, which, inter alia, provides that the State shall, in particular, direct its policy towards securing that the tender age children are not abused in their childhood and used or exploited and they are given facilities to develop in healthy manner and in conditions of freedom of dignity.

If one were to compare the provisions of the Universal Declaration of Human Rights, 1948, with the provisions of the Constitution of India, it will be seen that most of the Articles in the Declaration are common in nature and find place either in Part III or Part IV of the Constitution, which deal with Fundamental Rights and the Directive Principles of State policy.
Article 14 of the Constitution deals with equality before the law and provides that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. A specific provision has been included in Clause (3), which is women and child specific, since it provides that nothing in the Article would prevent the State from making any special provision for women and children. Under the said Article various legislations have been enacted by Parliament to the advantage of women and children. Article 17 provides for the abolition of untouchability. Article 21 provides that no person shall be deprived of his life or personal liberty, except according to the procedure established by law. The said Article has been interpreted by the Supreme Court of India and the High Courts to include various facets of life, which include the different rights enjoyed by children. Article 21A is once again child specific and makes provision for the State to provide free and compulsory education to all children of the age of six to fourteen years. Article 23 prohibits trafficking of human beings and forced labour, to which children are often subjected. In fact, Article 24 supplements the provision by prohibiting the employment of children below the age of 14 years in any factory or mine or in any other hazardous employment.

These rights are contained in Part III of the Constitution which deals with the fundamental rights of citizens of India.
Part IV of the Constitution, which deals with the Directive Principles of State Policy and provides the principles which are fundamental to the governance of the country, contains Article 39, which has been referred to hereinafter.

A significant amendment was effected in the Constitution by the 42nd Amendment Act, 1976, to include Article 39A providing for equal justice and free legal aid. Since the said Article is important for the deliberation on juveniles and the criminal justice system, it is extracted hereinafter:

"39A. Equal justice and free legal aid.--The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

The above Article led to the enactment by Parliament of the Legal Services Authorities Act, 1987, *inter alia*, for providing free legal aid to certain sections of society. Section 12 of the said Act sets out the criteria for providing free legal services. Clause (c) thereof provides that a woman or a child would be entitled to free legal aid in order to file or defend a case. Clauses (b) and (g) provide for such free legal services to a victim of trafficking in human beings or beggars and persons in custody, including custody in a protective home within the meaning of Clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956, or in Juvenile Homes within the definition of "juvenile" under the Juvenile Justice Act, 1986.
The National Legal Services Authority (NALSA) was constituted under the Legal Services Authorities Act, 1987, and was entrusted with the responsibility of providing for legal aid throughout the country to such sections of society not having access to justice on account of economic or other disabilities. The Act also provides for State and District Legal Services Authorities which are responsible for providing justice for all. Legal Aid Centres have been set up all over the country which are manned by Para Legal Volunteers recruited by the State and District Legal Services Authorities and are paid a stipend for their work.

After the promulgation of the Declaration of Rights in 1959, the Indian Parliament enacted the Children Act, 1960, wherein in the Statement of Objects and Reasons, it has been indicated as follows:

"Children are the most vulnerable group in any population and in need of the greatest social care. On account of their vulnerability and dependence they can be exploited, ill-treated and directed into undesirable channels by anti-social elements in the community. The State has the duty of according proper care and protection to children at all times, as it is on their physical and mental well being that the future of the nation depends. With increased industrialization and urbanization, the State needs to be even more vigilant in this respect."

It has to be kept in mind that children often become delinquent by force of circumstances and not by choice. By improving the unfavourable environment and giving suitable training, it is possible to reform a child's anti-social attitudes and to mould him into a responsible citizen. It is with
such objective in mind that following the initiative taken by the United Nations and the promulgation of the Beijing Rules on 29th November, 1985, that the Indian Parliament enacted the Juvenile Justice Act, 1986, to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication and disposition of certain matters relating to delinquent juveniles. The said Act was periodically reviewed and subsequently in the light of the various Conventions and Rules adopted by the United Nations, a need was felt for greater attention to be paid to children “in conflict with law” and those “in need of care and protection”. This resulted in the repeal of the Juvenile Justice Act, 1986, and the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Before proceeding further to consider the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, hereinafter referred to as the “Juvenile Justice Act, 2000” as amended in 2006 and the Rules framed thereunder in 2007, it may be noticed that Section 82 of the Indian Penal Code, which governs the major criminal offences under the law, specifically provides that nothing is an offence which is done by a child under 7 years of age. Section 83 of the Code further emphasizes that nothing is an offence which is done by a child above 7 years of age and under 12 years, but has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct when the offence is committed.
Having regard to the various provisions of the Constitution of India and the various Conventions adopted by the United Nations in the best interests of the child and the Convention on the Rights of the Child, along with the Beijing Rules and the Rules for the Protection of Juveniles Deprived of Their Liberty, 1990, known as the Havana Rules, and all other relevant instruments, the Indian Parliament enacted the above Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment, by catering to their development needs and by adopting a child-friendly approach in the adjudication and dispensation of matters in the best interests of children and for their ultimate rehabilitation.

As has been indicated earlier, the Juvenile Justice (Care and Protection of Children) Act, 2000, is a complete code in itself in dealing with juveniles and their transgressions of the law and also such juveniles who are in need of care and protection. Children in India constitute about one-third of the whole population consisting of about 1.2 billion people. Out of the said number of children in India, a large number are those who are in difficult circumstances which often lead them into acts of criminality, of which drug abuse and addiction, is a major problem. The above Act was enacted with the hope that the children who had been led astray would be restored to mainstream society so as to make them useful citizens of tomorrow. The Scheme of the above Act is restorative and not retributive. Its main intention
is to restore to society children who had been in conflict with law, without the impact of their previous actions.

Lack of infrastructure has to be addressed. However, in order to have a sound system of rehabilitation, it is extremely necessary to have a sound infrastructure and to ensure that After Care Homes, Shelter Homes and Drop in Centres are in place in sufficient numbers to make the rehabilitation process workable. More often than not, a child in conflict with law, after completing the sentence awarded to him, becomes a child in need of care and protection. If at that point of time, a helping hand is not extended to such children, they are prone to become children in conflict with law once again.

The Juvenile Justice (Care and Protection of Children) Act, 2000, is in tune with the various Declarations and Conventions adopted by the United Nations and Section 18 thereof specifically prohibits a joint trial of a juvenile and a person who is not a juvenile and even in matters of sentencing, a juvenile can be punished only in the manner indicated in Section 15 of the Act. Section 16 provides that notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death or imprisonment for any term which may extend to imprisonment for life and, no matter how grave the offence, the maximum period of punishment which can be awarded to a child is three years, to be imposed in the manner indicated in Section 15.
Observations:

It will, therefore, be seen that following the lead given by the United Nations, India has, in comparison to other countries, witnessed the most significant developments in the branch of juvenile law and the juvenile justice system introduced by the Children Act, 1960, followed by the Juvenile Justice Act, 1986, and the Juvenile Justice (Care and Protection of Children) Act, 2000. Furthermore, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Rules framed thereunder have been implemented and institutionalized by the setting up of regular Juvenile Justice Boards and Child Welfare Committees contemplated under the latter Act. The mandate in the Act is for the setting up of Juvenile Justice Boards along with Child Welfare Committees in all the districts in the country. It has been possible to set up such Boards all over the country, to deal exclusively with offences committed by children who are treated as a totally different class. In fact, Section 18 of the aforesaid Act expressly prohibits the joint trial of a juvenile with a person who is not a juvenile. India has taken the entire problem of juvenile delinquency very seriously, on account of its vast population and the fact that it is the largest democracy in the world.

The Juvenile Justice Boards in India are required to be made up of a serving Metropolitan Magistrate or a Judicial Magistrate of the First Class and two social workers, of whom at least one has to be a woman, forming a Bench with all the powers of a Magistrate, with the Judicial Magistrate
functioning as the Principal Magistrate. A specific provision has been made that the Magistrate, who is to be appointed as a Principal Magistrate of the Board, should have special knowledge and training in child psychology and child welfare. The two social workers, of whom at least one is to be a woman, has to be appointed by the State Government, which is also required to provide training and orientation in child psychology, child welfare, child rights, national and international standards of juvenile justice to all Members of the Board. Among the functions of the Board is included the adjudication and disposal of cases of juveniles in conflict with law, taking cognizance of crimes committed under Sections 23 to 28 of the Act; issuing monitoring instructions for juveniles in conflict with law and to deal with non-compliance on the part of the Government functionaries or functionaries of voluntary organizations, with a view to improving the functioning of the Boards.

Similarly, a Child Welfare Committee, which is to take care of counselling and placing children for adoption and foster care, is to be comprised of a Chairperson and four other members of whom at least one is required to be a woman. The appointments of the Chairperson and the other members are to be made by the State Government on the recommendation of a Selection Committee set up for the purpose. What is of some significance is that those who are ultimately associated with the welfare of children, including juveniles in conflict with law, are themselves required to go through an orientation process which includes the knowledge of child psychology, child welfare, child rights, national and international standards.
What is also significant is that the Child Welfare Committee which is to be composed of persons who are lay persons with some knowledge of law and criminality, are vested with the powers of the Magistrate. It may be said that the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006, and the Rules framed thereunder, are a perfect blend of the Universal Declaration of Human Rights and the subsequent United Nations Declaration on the Rights of the Child followed by the Beijing Rules, the Riyadh Guidelines and the Havana Rules. The said Act has incorporated almost all the positive steps required to be taken to ensure and provide effective protection and assistance to children, both in conflict with law and in need of care and protection. As it happens quite often, a child who is in conflict with law, may be an orphan without any family or home and he may be a street child with nowhere to go but back to his familiar haunts, once he undergoes the punishment awarded to him. If such a child, who then becomes a child in need of care and protection, is not provided with such protection, he would go back to his old activities and return as a child in conflict with law. A lot of stress has, therefore, been given on the rehabilitation of such children and as indicated earlier, forms the second part of the Juvenile Justice (Care and Protection of Children) Act, 2000. As indicated hereinabove, the Act has been divided into two specific areas, one involving children in conflict with law and the other involving children in need of care and protection, for which separate provisions have been made. One of the more important functions entrusted to a Child Welfare Committee is
contained in Section 41 of the Act which provides for adoption of children in addition to the provisions of the Hindu Adoption and Maintenance Act, 1955.

However, none of the systems relating to juvenile justice and juvenile criminality can work, unless those who are responsible for their welfare and punishment, are suitably sensitized to think and apply themselves in a manner different from the procedure adopted for adults. That is why such a great deal of importance has been given in regard to the selection of people who are to man the Juvenile Justice Boards and the Child Welfare Committees and the insistence that they should have special knowledge in child psychology and errant behaviour on the part of a child. Those who are involved in the criminal justice system, as far as juveniles are concerned, have to change their mindset and descend to the level of a child, in order to effectively give effect to the intentions of the law makers in enacting laws and rules for children. They would also be required to have the ability to deal with a child who may have gone astray for a variety of reasons, basically connected with marginalization, both socially and economically. The philosophy behind the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000, is in keeping with the international trend of thinking that children below the age of 18 years can still be brought back into the mainstream of society, otherwise such children could not only become a liability, but a distinct threat to society and the order of society in the future.
Having had the opportunity of visiting several Children’s Homes and Observation Homes, both as a Judge and also as the Executive Chairman of the National Legal Services Authority, constituted under the Legal Services Authorities Act, 1987, I have met and interacted with children from different backgrounds in different States and almost as a matter of course, the majority of such children, who are in conflict with law or are in need of care and protection, come from extremely impoverished circumstances. Without adequate social back-up, they are drawn into drug addiction, drug peddling and crimes such as snatching and theft and if they are not taken in hand immediately, they constitute a potential threat to society and social order. Contemplate a situation ten years hence when children, including children coming from the above backgrounds, will either be involved in the governance of the country or be engaged in other fields of activities. It will then be too late to take remedial measures.

During my visit to Children’s Homes and Observation Homes and my interaction with the occupants thereof, I have noticed certain problem areas in regard to the functioning of the Juvenile Justice System in India that are required to be addressed immediately, if the system is to function meaningfully. They comprise the following:

(i) The need for a change of mindset amongst those who are involved in the implementation of the Juvenile Justice System;

(ii) Sensitisation of people in general;
(iii) The need to instill a sense of commitment and compassion in people involved in the working of the Juvenile Justice System;

(iv) The failure to establish different kinds of Homes contemplated under the Juvenile Justice (Care and Protection of Children) Act, 2000;

(v) The delay in establishing Special Juvenile Police Units for handling juveniles;

(vi) The lack of training for Probation Officers who are responsible, to a large extent, for the guidance and welfare of juveniles in conflict with law;

(vii) Making appointments of persons within the system who are not only sensitive, but committed to the welfare and best interests of the child;

(viii) The need to provide adequate rehabilitation measures by imparting not only traditional forms of education, but also giving training in some useful trade, to enable a child to acquire skills for a vocation in life;

(ix) Preventing trafficking, sexual exploitation of girl children and child labour;

(x) Providing proper health care systems and de-addiction centres, to help children recover from drug abuse and drug addiction;

(xi) The need to provide Family support;
(xii) The need to ensure that proceedings before the Juvenile Justice Boards and Child Welfare Committees are completed within the time specified under the Juvenile Justice (Care and Protection of Children) Act, 2000;

(xiii) The need for an efficient system for adoption and foster care;

(xiv) The need to provide meaningful legal aid; and

(xv) The need to put in place an effective monitoring system to monitor enquiries and proceedings relating to juveniles.

In my view, the above problems need to be addressed, if we are to have a Juvenile Justice System which is effective and addresses the various problems relating to children.

It is, therefore, necessary for the world community to shake itself out of its apathy, sit up and take a positive attitude in effecting a change in the mindset of both adults and juveniles, which combined with a right kind of education, can help reduce the incidence of crimes that are committed by juveniles and also help in their restitution and rehabilitation in becoming useful members of society.

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