

CHAPTER – VII

EPILOGUE

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“Children, I think, all over India have the first claim on us, because they represent the India of tomorrow”.

.....Jawaharlal Nehru.

As rightly pointed out by Pandit Jawaharlal Nehru children undoubtedly are the citizens of tomorrow. They are the only ones who will carry forward our ideologies, philosophies, knowledge and cultural heritage. They are an important asset for the whole of mankind. If properly cared for and protected they can develop into healthy and useful members of the society. Children have and should always remain the object and care of protection not only in the family but in the society as well. A better state can be created if a child is given a proper and loving childhood. Thus, the state as a law - maker and the up holder of societal welfare should take all steps necessary for the proper growth and development of children. The objective of our constitution as spelled out in the preamble is social justice. Our Constitution promises to achieve this goal of social justice through fundamental rights and directive principles. Certain fundamental rights have also been guaranteed to children and the most important amongst them is the right to education.

Right to education has been dealt with in Articles 41 and 45 under Part IV of the Constitution. But after the 86th Amendment 2002, a new Article 21 - A has been inserted which deals with the right to education. Right to education has been made a fundamental right by virtue of Article 21-A. Insertion of the Article is a laudable effort on the part of the Parliament. Education undoubtedly forms an important part of any child's life because it brings excellence and enriches the mind and promotes human values. Education has always played an important part in developing self-confidence and self-

reliance. Nevertheless we cannot deny the fact that majority of our population still remains illiterate. The practice of dropping out from schools is still prevalent specially among girls. Also it would not be unfair to say that the education system in our country is not in a good shape. This would mainly be because of political will and lack of funds. Therefore, the government may find out methods to generate adequate funds. However, if funds are available then efforts must be made to see that their allocation and management is being properly made. At the same time in the field of education any sort of political influence and interference should be removed. The appointment of teachers should be fair and the pay of the school's teachers must be considerably increased while taking into account other incentives as well. It is also suggested that besides declaring that a child has a fundamental right to free education the Courts would have to display activism for the purpose of implementation of children's basic right to education. Proper care must be taken to ensure that children go to school regularly and take education of quality.

The first Central Legislation on Juvenile Justice was enacted in the year 1986 which provided for a uniform law on juvenile justice for the whole country. By the passing of this Act it was clear that after years of independence the children and their problems seemed to have received some attention both on the legislative and judicial fronts. It was realized that because of bad social environment, neglect by the parent and quite often abuse at the hands of adult criminals led to the child turning into a delinquent. Consequently differential treatment of young offenders appeared on the statute. A lot of differences existed between the Children Acts of various states and the infrastructure to be framed under the Act was also lacking. As a result the Supreme Court continuously tried for the devolution of human rights of the children who were subjected to jail sentence and incarcerated with adult criminals. This led to the enactment of the Juvenile Justice Act, 1986. However, The Juvenile Justice Act, 1986 was repealed by the enactment of the Juvenile Justice (Care and Protection of Children) Act in the year 2000. The fact that such a legislation is the first step in the right direction has to be appreciated but the mere passing of

such welfare legislation is not enough because it is really important that every law enacted and especially welfare legislation for the benefit of juveniles must be implemented in its true spirit for achieving the objective for which the legislation was passed. The Act of 2000 has provided separate provisions for dealing with juvenile in conflict with law and child in need of care and protection. Juveniles who come in conflict with law commit delinquent acts because of the various unwanted experiences that the juvenile has to go through. Different phases of abandonment, destitution, neglect, truancy, vagrancy, abuse or exploitation makes a child commit various kinds of offences. Since law alone cannot be expected to eradicate the problem of delinquency among juveniles, therefore, the problem has to be viewed from a larger perspective and measures need to be taken to improve the conditions of childhood and families. A change in the social and economic fonts cannot be brought an out though the legislation may strengthen the judiciary. Above all and most importantly the society should come together to deal with the problem of delinquency among juveniles. However, the identification and prevention of the emergence of delinquency at the pre-delinquency stage is even more important. For this the family can play a very important role. If any of the symptoms like disobedience, truancy, cruelty to animals, possession of articles that have not been purchased, untidy appearance, possession of weapons and proof of consumption of drugs or alcohol is present then it becomes a matter of concern. In such a situation it becomes imperative for the parents or other family members to give guidance and counselling. Home is the place where a child is not only provided with food, shelter, clothing and education but also love and affection by the parents and other family members. There should be free communication between the parents and the child so that the child is able to freely share their problems with the parents. But in reality it is often seen that the child fears the parents or one of the parents. Therefore, the parents have to make sure that while being strict with their children they should also make themselves accessible to their children. Apart from the family the role of teachers is also very important in preventing the problem of delinquency

among juveniles. It is essential that the teacher gives equal attention to all categories of students i.e., average students, bright students or poor students. If only the average students are catered to and the brighter and poor students are not given adequate attention then there is every possibility of the students dropping out from school specially the poor students. These school drops outs consequently join gangs and this is for the majority of the times the first step towards delinquency. For this the sensitization of teachers may be carried out by providing effective training and orientation to the teachers. Workshops may be mandatorily carried out at schools for the teachers for this specific purpose. Though child psychology is a vast subject but if possible a part of child psychology may be included as a part of the curriculum in Teachers Training Programmes for example: – how to identify children facing problems be it mental or physical and how to deal with such children. This would go a long way in helping children come out of their shell and talk freely with the teachers specially those children who fear the parents. Another problem faced by children in today's age is lack of emotional support as a result of increase in nuclear families especially in urban areas. Since in most of the cases both parents are working and by the time they return home they are tired and not in a position to spend quality time with their children. Consequently, children of such parents feel neglected and not cared for. Specially when the child is facing problems at school or with his peers it is absolutely essential that the parents listen to their children's problems and try to solve them. However, in most of the cases this does not happen. And when this does not happen children go into depression and tries to look for support and comfort outside the family among their friends. Even where only one of the parent is working specially the father and the mother stays at home the children fail to get the love and support that they need because it is generally seen that even mothers have now a days found ways to keep themselves busy as a result of which children becomes neglected. Here the friend's of the child can play a very important role that is if the child is lucky enough to find good friends who can encourage and support the child. However, not everybody is lucky to get such friends. Sometimes children come

across friends who are into all kinds of unwanted activities. Once a child gets inducted into such groups it becomes difficult for the child to remove himself or herself because the child is already lacking support at home so when a child comes into contact with such groups they think they have friends to support them and listen to them and thus gets carried away and does whatever their friends want them to. If such children are not identified at an early time there is every possibility of such children committing delinquent acts. Hence it is very important for children to get emotional support they need from home and also to have good and proper friends.

The mass media can also contribute towards combating delinquency among juveniles. Though the role of the mass media has already been laid down under the Juvenile Justice (Care and Protection of Children) Act, 2000 by protecting the juvenile's right to privacy by restricting reportage in the media. The mass media can work on a planned campaign of self regulation and education which can encourage the young people of the society towards good behaviors.

The lawyers can also play a very important part though their role would be post – delinquency. The lawyers can familiarize themselves with juvenile jurisprudence and its essence so that whenever they get an opportunity they can provide representation on behalf of a juvenile because in order to assure justice to a juvenile it is essential to be represented by a lawyer because of their age and in the absence of lawyers juveniles are not able to meaningfully participate in their inquiry.

In the prevention of delinquency among juveniles the role of the Police cannot be avoided. The Police Officer is the first person with whom the juvenile in conflict with law comes in contact with. Every police contact with the juvenile in conflict with law has an influence on the juvenile. Therefore every Police Officer dealing with a juvenile in conflict with law has a responsibility to exercise understanding judgment while dealing with juveniles in conflict with law so that juveniles learn to trust the police and not develop a feeling of hostility especially against those people who are in authority. It is

important for the police personnel to have adequate knowledge of child behavior and a certain degree of skill needed to deal with problems of delinquency among the juveniles. For this it is imperative to provide adequate training and orientation to the Police Personnel. Though the Juvenile Justice (Care and Protection of Children) Act, 2000 has made provisions for the establishment of special Juvenile Police Unit it is essential that there has to be proper implementation of the laws or else it would only be limited to the statute book and the juveniles would be the ones to suffer. It has to be ensured that the Police Officer who is to be designated as the 'juvenile or the child welfare officer' and the special Juvenile Police Unit should be placed under the control and supervision of superior authority which the Act fails to mention. This is important because they are not accountable to any agency under the Act. Most of the time the said Police Officer and Unit are busy in criminal investigation and administration and they may not be able to give the required time in matters relating to juveniles. Hence it is important to place the special Juvenile Police Unit under the supervision of superior authority.

Under the Juvenile Justice (Care and Protection of Children) Act, 2000 the state Government may establish a Juvenile Justice Board for the purpose of dealing with juveniles in conflict with law. The Board has been given wide powers to release the juveniles to home after advice or admonition or to participate in group counselling, community service, and order to fine, order to release on probation of good conduct and lastly send him to special home. Such vast powers without limitation are unreasonable and arbitrary. Therefore, the vast powers of the Juvenile Justice Board may be amended to effect that the child should be in correction homes only for a specific minimum period for the purpose of training and rehabilitation.

Further, the Board may set the juvenile free after the whole inquiry. However, this is against the main base of this law i.e. training, education and reformation. The goal of correction and reformation will not be achieved if the juvenile is released after inquiry proceedings without any kind of training and education. As a result the child fails to realize his own responsibilities towards

the society.

It is very important that in order to provide proper justice to the juvenile in conflict with law the members of the Juvenile Justice Board require special knowledge and training in child psychology or child welfare. The Juvenile Justice Act, 2000 contains provisions relating to this aspect but it may be mentioned that there is no provision in the Juvenile Justice Act, 2000 for the purpose of imparting necessary training to members of the Board apart from the Principal Magistrate to act under Criminal Procedure Code with respect to bail provisions therein. Therefore, training with respect to bail provision under Criminal Procedure Code, 1973 should be given to two social workers. The Juvenile Justice (Care and Protection of Children) Act, 2000 does not mention specially whether the two social workers who are members of the Board have got magisterial power other than the Principal Magistrate to deal individually with provision under the Criminal Procedure Code. Therefore, those two members should also be given the power of Judicial Magistrate, First Class. This will enable them to deal with contingencies that may arise under the Act. This will further ensure that the members of the Board are not handicapped in any way and consequently they will be able to fulfill the aims and objectives of the Act and provide necessary justice to the juvenile in conflict with law.

The Juvenile Justice (Care and Protection of Children) Act, 2000 provides that inquiry should be carried out as per trial in summons case. However, the procedure for disposal of cases under summons procedure is a complicated one. So to avoid the juvenile from facing the intricacies of legal procedure the juvenile should be tried under summary proceedings as well as the juvenile should be allowed to react freely and not keep quiet under stringent procedural hazards.

The Juvenile Justice (Care and Protection of Children) Act, 2000 has prescribed the different types of orders that the Board can pass if the Juvenile Conflict with law is found to have committed an offence. One such order speaks of directing a juvenile to pay fine if the juvenile is about 14 years of age and is earning money. Under the Indian Penal Code imposition of fine is a

punishment. If a juvenile is ordered to pay fine it may induce the juvenile to commit further offence. Therefore, keeping in mind the aim and objective of the Juvenile Justice (Care and Protection of Children) Act, 2000 which is a child friendly legislation the provision of imposing fine should be removed.

Children by their very nature are innocent and dependent which makes them vulnerable to all kinds of offences being committed against them. Trafficking of children for sexual purposes is one of the most heinous crimes that can be committed against children. One of the significant problems in India is child labour. Poverty is one of the major factors leading to child labour. Undoubtedly children earn less than adults but in poor families the earning of even one child is of greater benefit to the family. Education should be made accessible to all because it is either not affordable or is found to be inadequate. There should be improvement in the state of education in India. But by only providing education and strictly enforcing child labour laws cannot help eliminate child labour. Since poverty is a major determinant of child labour, therefore, the government has to make sure that the needs of the poor are addressed. The necessity for child labour has to be tackled and that is possible if poverty is addressed. If the need for child labour is removed the problem will diminish. Framing of governmental policies and effective implementation of these policies will help in the fight against child labour.

Another significant problem that needs to be addressed is trafficking of children for the purpose of prostitution. The following are some suggestive measures to address the problem –

1. At the local level and source areas government should generate compulsory high quality education, employment opportunities and income generation programme.
2. The Parents, teachers and the entire community should be sensitized regarding this issue.
3. Child sexual abuse and trafficking should be introduced as subjects in schools.

4. The NGO's can sensitize the community about trafficking so that members of the community can watch for any irregular movements leading to trafficking of children.
5. The media can create awareness by showing that trafficking is inappropriate and illegal with negative consequences.
6. Through radio and television publicity should be made relating to the legal and penal provisions against trafficking and the modes operandi of the traffickers.
7. Awareness should be generated among the children, parents and schools teachers.
8. For the purpose of law and law enforcement India should make a priority to ratify the Trafficking Protocol.
9. Though amendments have been proposed to the Immoral Traffic Prevention Act, 1956 by the Indian Legislators, but they have not yet been enacted as law. This should be done as early as possible.
10. Trafficking of boys for prostitution as an issue must be recognized by the government because generally exploitation of children is only taken as limited to girls. As a result, in spite of the existence of prostitution of boys there is very little or no awareness about this. So there should be legislation to protect boy children as well.

Another area that requires attention is the problem of children who are neglected or child in need of care and protection. Under the Juvenile Justice (Care and Protection of Children) Act, 2000 has defined 'child in need of care of protection' to include various categories of children. One of those categories includes those who are likely to be abused, tortured or exploited for the purpose of sexual abuse. Sexual abuse of children undoubtedly hampers the overall development of children who are the promising future citizen of tomorrow. Every effort must be made to ensure that children are protected from all kinds of abuses for their whole some development. However, there is no single legislation to address the problem of sexual abuse of children. Existing laws do not contain definition of 'child sexual abuse'. The Indian Penal Code, 1860

deals with three types of sexual offences ie rape, unnatural offences and outraging modesty. Therefore, the Indian Penal Code, 1860 does not deal with various kinds of sexual abuses of children like inappropriate touching, fondling, indecent exposure of children, child pornography etc. The Immoral Traffic (Prevention) Act, 1956 on the other hand only aims at the prevention of sexual offences for commercial purposes. Whereas the Juvenile Justice (Care and Protection of Children) Act, 2000 only emphasizes on providing care and protection to children who are being abused are likely to be abused for sexual purpose. Therefore, in these circumstances a separate and specific legislation may be enacted for curbing the menace of child sexual abuse. In this context, it may also be mentioned that the Protection of Children from Sexual Offences Bill, 2011 was introduced in the Rajya Sabha. The law will cover all new aspects of sexual offences against children that has not been covered by any other law. As and when this Bill will be passed it will bring hope and justice to children who are victims of sexual abuse and who have so far been denied justice. Hence, this is a very laudable effort on the part of the government.

Under the scheme of the Juvenile Justice (Care and Protection of Children) Act, 2000 provisions have been made for the establishment of separate committal institutions. These institutions work for the protection, rehabilitation and treatment of both child in need of care and protection and juvenile in conflict with the law. But unfortunately these juvenile correctional institutions that are places established for care, constructive discipline and general upliftment of children is most of the times limited only to theory because in reality the children live in deplorable conditions in these institutions. The children living in these institutions are always looking for opportunities to run away from these institutions because of lack of planned and organized daily routines. Another serious problem that children face in these institutions is abuse and most of time sexual abuse. Therefore, in order to deal with such problems necessary provisions may be made in the Act or Rules giving power to the Juvenile Justice Board to visit special homes once in a month for the purpose of supervising the juveniles and ensuring that they are being cared for

and imparted training for their reintegration in the society. Provisions should also be made for the establishment of a Juvenile Cell in each district that may consist of collector, chief Judicial Magistrate and Superintendent of Police of District to visit the Special Homes in order to ensure that for the purpose of fulfilling the objective of juvenile justice statute the juveniles are being sensitized to inculcate in them social values that would help in their reintegration into the society. Further, for various reasons there is a lack of qualified trainees in juvenile institutions. Whereas the capable and trained ones would not be willing to work if proper remuneration is not given. So proper remuneration along with other incentives may be given consideration for the proper and effective functioning of these juvenile institutions. Also in order to maintain transparency in the functioning of these institutions it should be made mandatory that all homes should be made open to visitors, social workers etc. though it may be mentioned here that the Juvenile Justice (Care and Protection and Children) Act, 2000 has made provision for the appointment of inspection committees for the children's homes and not in respect of other homes. Therefore, for this reason these homes should be open for visit.

Further, for the purpose of rehabilitation and integration provision has been made for giving the child in adoption, foster care or providing sponsorship or sending the child to an after care adoption. Adoption is a very appropriate process of providing orphan, abandoned, or surrendered child with the love and care of adoptive parents. The recognition of adoption of orphan, abandoned and surrendered child by people irrespective of their religious status by the Juvenile Justice (Care and Protection and Children) Act, 2000 is a significant effort on the part of the legislature. However, the Act does not mention how an adopted child will inherit properties of adoptive father or mother. Therefore, in this respect necessary provision has to be made to ensure the future of an adopted child. Also, the Act provides for adoption by any person irrespective of his or her marital status, but in the case of adoption by a married couple the Act does not say whether the consent of the other spouse is essential or not? The Act also does not say anything about the age difference between

the adoptee and the adoptive parents in case they are of the opposite sex. The age difference is a very important for the purpose of preventing child abuse. There should also be a monitoring agency that would make regular inspections to the new homes of the adopted child to ensure that the child is being treated properly, cared for and protected by the adoptive parents. This would help in ensuring that the child is not being exploited in any ways. Keeping all this in mind appropriate amendments should be made in the Juvenile Justice (Care and Protection and Children) Act, 2000.

It may also be mentioned that apart from the various steps taken nationally for the purpose of dealing with the problem of juveniles, internationally also steps have been taken to deal with the various problems relating to children. The realization that children in themselves are a group and they need to be treated separately and they need special care and protection resulted in international recognition and acceptance of the fact that the children need special care and protection. Therefore, the protection of child was given prime importance and independent conventions on the subject were prepared. Like all other nations India also adopted the rights of the child in its constitution. Some of the important human rights either have been incorporated in our laws through judicial interpretation or have been incorporated by legislative enactments. Therefore, so far as the judiciary is concerned the Supreme Court has been the champion of human rights of the child. It has played an important role in securing for them and putting on solid foundation several important basic rights including right not to be sent to jail, right to be tried by the Judge who has special knowledge and training for dealing with cases against children, right to free legal aid and right to be defended by a legal practitioner of his choice, right to speedy trial and right to bail etc. However, the apex Court shall have to be more active as regards the right of the child. It is also unfortunate that on many occasions the directives of the court are not taken seriously by the government departments or the authorities concerned eg – one can still find juveniles in conflict with law behind bars in flagrant violation of the highest courts directives. In many cases the parents and

guardians are ignorant of the rights of the child and their own duties towards them, therefore they need to be educated on this count.

Lastly, some suggestive measures have been given for the prevention of delinquency among juveniles: -

1. Juvenile misconduct must be treated as unacceptable and should be immediately confronted by the family, neighbours, teachers or friends so as to prevent delinquency.
2. Children should be taught discipline along with modesty, respect for others and to be obedient to authority. If all these are lacking then there is risk of being exposed to all kinds of deviant behavior.
3. Delinquency prevention programmes must be properly planned and coordinated.
4. The government must take all steps to provide facilities specially educational facilities to the juveniles released from institutions. In this respect the government may also consider giving reservations in government jobs for these juveniles and also make provision for financial support for self employment. This would help in the juvenile's social rehabilitation and reintegration into the society.
5. Certain categories of cinema that depict violence, rape, robbery and theft should be strictly censored so that the innocent minds of children are not exploited.
6. In schools Counseling Centers must be established so that early detection and cure of troubled children can be made.
7. Departments of Social Welfare and Social Defence must support the voluntary agencies who must be encouraged to undertake preventive and curative measures.
8. In order to avoid reintroduction into delinquency the Psychologist in Social Welfare Department and the after – care organization must ensure regular follow – up after the delinquent is released from Special Homes.

9. In the curriculum for training/Refresher courses for Magistrates, Court staff and Police Personnel Juvenile Justice should be adopted as one of the subjects.
10. In the Police and Jail Manuals adequate provisions regarding juvenile in conflict with law should be made.
11. Apart from the voluntary organizations the *Panchyats* should also come forward and take up the responsibility of providing care and protection to children in need of care and protection. Facilities for education should also be provided.

In conclusion it may be submitted that the Juvenile Justice (Care and Protection and Children) Act, 2000 is a noble piece of legislation wherein with some minor changes the scheme and special features of the Juvenile Justice Act, 1986 has been adopted. The change of law as it appears from the Preamble of the Act was mainly due to international opinion and for other reasons. However, the juveniles were not looking for a change of legislation that has brought about only change of certain terminology relating to juveniles institutions. Justice is what the juveniles in our Country need. Law is there justice is the demand. An enactment cannot be successful unless there is a suitable mechanism for implementation of the objectives of the enactment. Therefore, if we are to at all stand at the international level and if we are to rise at the national level every effort must be made to provide logistic support by the state for the effective implementation of the law. Hence, in spite of the existing drawbacks it is hoped and expected that the state agencies and voluntary agencies will unite together in their efforts to bring justice to children so that every child can turn into respectful, law abiding and responsible citizen.