

CHAPTER – I

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A very important segment of a society are its children. They are the greatest gift that has been bestowed upon humanity. They are the pillars on which the foundation of tomorrow is laid. They are useful human resources that can lead to the progress and development of a country. As rightly pointed out by Rabindra Nath Tagore:¹

“A nation’s children are its supremely important asset and the nation future lies in their proper development. An investment in future. A healthy and educated child of today is the active and intelligent citizen of tomorrow”.

Therefore, an important duty on the part of the state is to provide proper care and protection to children because the future of a nation depends on the physical and mental well – being of the children. Hence, in this context it may be mentioned that the idea of social justice became a political doctrine of all the states and it was incorporated in their constitutions particularly of those states that became independent after the Second World War. In the last century there was a phenomenal change towards the social welfare state at the global level. Our Indian Constitution is no exception to it. The establishment of the United Nations and the subsequent enactment of human rights instrument in particular the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and The Covenant on Economic, Social and Cultural Rights. The aim of all such instruments also include to provide juvenile justice. The relevant provisions in such international instruments and its relationship with our municipal laws have

1. Quoted in, Paramjeet Singh, *Juvenile Deviations and protection in the context of the Juvenile Justice Act, 1986*, 26 Civil and military Journal (1990) 35.

been discussed in the foregoing pages. In the year 1960 our Parliament enacted The Children Act and other state enactment were also there. However, there was lack of uniformity in its provisions and in the infrastructure for their enforcement. Therefore, the net outcome of the legislation providing for juvenile justice was not very much satisfactory. Ultimately with a view to provide for uniformity and to create its own and independent institutions the Juvenile Justice Act was enacted in the year 1986. This Act was the first central legislation on Juvenile Justice for the whole country. This Act was supposedly enacted in pursuance of the Beijing Rules. However, the enactment of the first Uniform law on juvenile justice did not bring about any drastic improvement in the treatment of juveniles. At the same time the density of the world opinion was on rise and that subsequently resulted into the Convention on the Rights of the Child, 1989. India being a party to this Convention gave serious thought to accommodate the global principles and thereby enacted the Juvenile Justice (Care and Protection of Children) Act in the year 2000 which repealed the Juvenile Justice Act, 1986. The phenomenal growth as to the development of the legal provisions as well as the sincerity of efforts made to make them a reality are the subject – matter of discussion in this research.

The preamble spells out the social justice as the objective of our Constitution and promises to achieve the goal through fundamental rights and directive principles. Therefore, the main issues involved herein are how far the juvenile justice is part of the wide spectrum of social justice, what are the fundamental rights in particular that are attracted in the matter of juveniles and how far the state has been successful in assuring the equality, liberty and dignity to the weaker sections in general and to the poor children in particular these are the subject – matter of the present study. The fundamental rights to equality, life and liberty have been granted to all persons. Whether this assurance is sufficient enough to protect the rights of children or is there a special need to enact special Laws for juveniles providing for special treatment to them and making differential treatment to children with a view to better

protect their rights and interests? Moreover, if law is enacted especially for the children its enforcement independently and connecting its provisions with relevant fundamental rights are another area of study. The right against exploitation has been specifically guaranteed for the protection of weaker sections which has been specifically guaranteed for the protection of weaker sections which may be equally invoked in the matter of juvenile justice. The judiciary in such a situation has liberally construed the respective fundamental rights by enforcing it even against the private act and this trend has at times imposed some burden upon the privileged classes. The relevant judicial decisions have been discussed at the opposite places in the present work.

The social and economic rights mainly find place in the directive principles of state policy in part IV of our Constitution. A number of provisions may be invoked for providing juvenile justice. At the dawn of our constitution it was thought not possible to enforce the provisions of the socio – economic capacity and development of the state. It provided for the protection of tender age of children, childhood and youth against exploitation etc. It also imposes a duty upon the state to look after the child. It further prohibits employment and misuse of children for immoral purposes. The free and compulsory education to all children has also been provided. However, the question is what has been the fate and achievement of the state in fulfilling its obligations in respect of the aforesaid provisions? The answer of this and related issues may be found in this work.

The most important matter in respect of juveniles which have attracted attention is the administration of criminal justice. This aspect may be broadly divided into two category – first – the offences committed by juveniles and second - the offences committed against juveniles. In view of the constitutional imperative the juvenile offenders cannot be treated on the equal footings by applying the general norms and procedures of the criminal justice, therefore, the juvenile offenders requires special and separate treatment in different aspects of criminal justice. This issue involves many questions, for example –

determination of age of juvenile and the relevant date for this purpose, liberalization of bail provisions and the custody of juvenile prisoners, prevention of their sexual abuse, humane treatment inside the prison walls and overall change in the altitude of the Court and the Police. Also what measures can be taken to prevent delinquent acts among juveniles? A humble attempt has been made to discuss all the above issues and other related matters in the present study. Throughout the country the state of affairs inside prisons is very much unsatisfactory and distorting and it is most surprising that when the plight of prison inmates is brought to focus before the judiciary the state agencies come forward to cover up the wrongs done and even the flagrant violation of the fundamental laws. Such a situation came up before the Supreme Court when it issued general direction to all the district judges throughout the country to report on the status of juvenile prisoners through the Register of respective High Courts. The Supreme Court had to pass successive orders in this matter mainly due to the delay in compliance with its earlier directions by authorities including lower judiciary. The above judicial decision and the subsequent developments have been analyzed in order to evolve a future course of action.

In the matter of fair trial many principles as essential requirements of reasonable, just and fair procedure has been evolved by the judiciary in recent times. At different stages of the trial procedure the free legal aid was thus included within the requirement of speedy trial. However, in spite of the Constitutional mandate followed by the statutory provisions providing for legal assistance in particular to children the reality is somewhat different. Such issues were brought before the judiciary and it was considered that the law like juvenile justice cannot be administered effectively by the traditional minds. This aspect brings us to many issues, for example - whether the powers conferred on the Juvenile Justice Board is unreasonable and arbitrary? Whether other than the Principal Magistrate the two social workers who are members of the Board have got Magisterial powers individually to deal with provision under Criminal Procedure Code, 1973? Whether the Judges and other agencies

involved with juvenile justice require any physical training? Whether the members of the Juvenile Justice Boards require special knowledge of child psychology? Another question that may arise is as to whether the provision under the Juvenile Justice (Care and Protection of Children) Act, 2000 relating to inquiry that should be conducted as per trial in summons case is a proper one or not? The answer of these questions may be found in the present study.

The penology and sentencing laws adopted a liberal attitude towards juveniles and the reformatory theory of punishment prevailed. In this respect the punishment and conviction of juvenile after he is adjudged guilty require special treatment. This aspect brings forth various issues for consideration for example – whether the application of reformatory theory would absolve a juvenile from conviction? It also involves the issue of imposition of severe penalty upon the juveniles. It further involves a question as to whether the imposition of fine on the juvenile is in consonance with juvenile jurisprudence. The recent trend that is operative in the area of juvenile justice has been discussed.

Children are vulnerable, immature and dependent. This allows them to be subjected to various offences that are committed against them, for example – trafficking for the purpose of prostitution and child labour. The present work analyses the provisions made in this respect and their efficacy. The other area which attracted the attention of the law makers has been the care and protection of child in need of care and protection. In all developing countries including ours it has proved to be a major problem that a large number of children lack attention and care which may be due to multifarious reasons which most of the time includes the neglect and carelessness of the parents and other family members as well as of the society. The law has imposed mandatory obligations on the guardians as well as upon the society. But in reality such norms are seldom adhered to. One of the root causes of such neglect is poverty and consequently this leads to innumerable problems such as child labour, abuse of children for various purposes,

abandonment and neglect and drug abuse or trafficking. The Juvenile Justice (Care and Protection of Children) Act, 2000 has made provisions to protect children. The analysis of such provisions and their efficacy may be found in the present study.

Over and above the welfare of juveniles and rehabilitation thereof have been the prime concern of the state. With a view to give effect to this objective the Act establishes a number of institutions like Children's homes, shelter homes, special homes and observation homes. However, the fact remains that such an enormous job cannot be performed by the state agencies alone and hence it requires the cooperation of all the members of the society and in particular the active involvement of non – government organizations working in the respective areas and the co-ordination of all such efforts together. A question that may arise in this context is how safe are the children who are required to stay in such institutions? There is every possibility of such children being subjected to all forms of abuse and torture. The present work concentrates upon the legal provisions in the respect and tries to assess how far the aforesaid provisions have been visualized. Further, for the purpose of rehabilitation and social reintegration of the child provisions have been incorporated for giving the child in adoption, foster – care or providing sponsorship to the child or sending the child to an after – care organization. In this context the question that comes up for consideration is whether adoption and foster – care is really the safest option to provide care and protection to an abandoned or surrendered child? The analysis of provisions in this respect and their efficiency may be found in the present study.

Now coming to the framework of the study it has been divided into seven chapters. Chapter one is introductory and chapter two mainly discusses the steps taken at the international level for the protection of the children. Chapter three mainly brings out the constitutional provisions along with the national policy for children, the history of child legislation in India, the legislative enactments and also the provisions under secular laws.

The administration of criminal justice in respect of juveniles covering areas like offences against juveniles, offences against juveniles, offences by juveniles, bail and custody, trial procedure, punishment and conviction are the subject matters of study in chapter four. Chapter five takes in the problem of child in need of care and protection and also deals with the establishment of authorities and institutions like children's homes; shelter homes etc. chapter six discusses the rehabilitation and social reintegration of the child through the process of adoption, foster care, sponsorship and aftercare organizations. The net result of the present study and recommendations have been discussed in the last chapter.