Defining Child and the Status of Juvenile Justice & Child Protection Laws in India: The Journey of Prayas

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Thematic Background and Experience on the Ground

Any talk about child rights must obviously begin with the intrinsic meaning of what a childhood essentially is. The great poet of the 19th century William Wordsworth in his poem 'My heart leaps up' writes, 'The child is the father of man' -an interesting description which has been understood and interpreted differently by the future generations, mostly in imaginary terms. What the poet actually meant was that one should not let the child in him die even when one grows up. In the small poem he suggests that everyone should enjoy the view of a rainbow as much as a grown up as he did when he was a child.

Without getting into the poetic nuances, in legal terms we would rather tend to quote the 'MC Mehta Vs State of Tamil Nadu and Others (Judgement on 10/12/96: AIR 1997 SC 699)'- the historic judgment concerning children forced into economic activities and servitude as child labour deprived of their all basic rights including education, wherein it is contextually quoted:

"Child is the father of man. To enable fathering of a valiant and vibrant man, the child must be groomed well in the formative years of his life. He must receive education, acquire knowledge of man and materials and blossom in such an atmosphere that on reaching age, he is found to be a man with a mission, a man who matters so far as the society is concerned."

Obviously, when we are talking about 'Child Rights' we need a more precise and legal definition of the child and the child rights, which are acceptable universally. Child Rights in India, being distinct from the constitutionally mandated Fundamental rights, actually remained undefined under the law until the enactment of the Commission for Protection of Child Rights (CPCR) Act, 2005. CPCR Act clearly brought all the basic needs and rights of the children of all types enshrined as such within the 54 Articles of the United Nations Convention on Rights the Rights of the Child (UNCRC) broadly categorized as Rights to Survival, Protection, Development and Participation within the ambit of law.

Since, I had the opportunity to join, set up and develop the Delhi Commission for Protection of Child Rights (DCPCR), amongst the earliest Child Rights Commissions, as its Chairman (2008-11) with my background of dealing with the children in needs and the juveniles or children in conflict with law through Prayas and police for nearly 20 years by then, my understanding of the child rights got honed and embellished through thousands of cases that we handled. Prayas JAC (est.1988), which had brought me to chair the DCPCR, had been evolving as one of the major organisations for children and youth-a community-police experiment, later a collaborative partnership of Delhi Police, Delhi School of Social Work (Delhi University) and Shramik Vidyapeeth (Scheme of Ministry of HRD/Skill Development & Entrepreneurship, now Jan Shikshan Sansthan or JSS), becoming one the largest national level NGOs directly dealing with the CNCP (Children in Need of Care & Protection), CCil (Children or Juvenile in Conflict with Law), Child Labour, Homeless destitute and Out-of-school children.

This was the period (1986-2008) when major changes took place with regard to the Children in difficult circumstances, in disasters and crisis including different forms of Child abuses-physical, emotional, sexual, economic-besides majority of the CNCP children being in utter 'neglect' and the oppressive and exploitative conditions of the girl child. In 1986 onwards for a short while, when the young and restless Rajiv Gandhi was the Prime Minister, a lot of less-noticed developments were taking place in the social sector. This was not only the period when the 93rd and 94th Constitutional amendments took place to establish the grassroots non-political democratic bodies- Panchayati Raj Institutions (PRIs) and Urban Local Bodies (ULBs) were set up, but major policy documents and legislations were done for the children, youth and women. During the same period, through Prayas and other organizations in the voluntary sector and through my hardcore police assignments in Delhi and other parts of the country I had ample opportunities to participate in the evolutionary changes and implementation of the legislations concerning the CNCP and CCiL.

It was an opportunity for us as a voluntary organization to assist the formulation and implementation of the Children Act 1960-turned into Juvenile Justice Act 1986, later re-enacted as the Juvenile Justice (Care & Protection of Children) Act 2000 by Maneka Gandhi as the Social Justice Minister who took me in the drafting committee. Similarly, under the Narcotic Drugs & Psychotropic Substances (NDPS) Act enacted in 1986 we got passionately involved in the implementation along with my Crime Branch-Delhi Police team and the newly created national level body-Narcotic Control Bureau (NCB) led by the first DG (Director General) BV Kumar from Indian Revenue Service- supported by whom I had the occasion to lead the operations while also getting into prosecutions and rehabilitation programs of the affected children and youth.

During this period, most of the Social Sector national level policies were being recast and the legislations being initiated or re-formulated. In the Planning Commission, led by the Member Sayeeda Hamid alongside the Voluntary Action Cell several committees and working groups were getting deeper into the issues relating to the children in which we had ample opportunities to participate during deliberations, policies and legislative formulations. Uninterrupted by the changes in political leadership this process kept the pace and we participated in the National Child Labour Policy (1987) followed by the so-called National Study on Child Abuse (2005-2007) and finally the National Policy for Children (2013). During this period, there were practically no policy or legal changes besides the major schemes and programs of the concerned Union Ministries of Social Justice, HRD, WCD, Labour & Employment and the national level bodies in which we didn't have the opportunities to participate and contribute.

The historic National Study on Child Abuse, albeit the largest chapter of the UN's Global Study of Violence against Children was entrusted to Prayas (conducted by Prayas Institute of Juvenile Justice) and I had the privilege to act as the Team leader along with Ms. Loveleen Kacker IAS Jt. Secretary Ministry of Women and Child Development. Conducted in 13 States/UTs with nearly 18000 respondents the most startling findings of the Study, among many other follow-up actions, resulted into the much-awaited legislation i.e., Protection of Children against Sexual Offences (POCSO) Act 2012.

Prior to DCPCR, through intense and hardcore experience of Police as Deputy and Joint Commissioner of Police in the NCT Delhi districts and ranges, DIG in Mizoram, DGP in Goa & Arunachal, in the Ministry of Home Affairs and the CBI, conducting major projects on Drugs in Delhi with 5834 addicts and peddlers-mostly youth and children, on Study Leave (

supported by Action-Aid) working on the 140,000 homeless of Delhi, in other cities in India and the US-at least 25% being the CNCP Children, I had the official assignments to not only implement the basic laws, but to also help them evolve and get deeper into their socio-economic ramifications.

Definition of 'Child' in UNCRC and Various Legislations

Article 1 of the Convention on the United Nations Convention on Child Rights (UNCRC) 1989, says "child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." Although this most universally signed UN Instrument adopted on 20th November 1989 which was further adopted and ratified by India on 11th December 1992, accepts this definition of the Child, for reasons not so well explained, different ages are being assigned to childhood under different laws and for different purposes.

In full endorsement of the UNCRC fulfilling India's commitment towards this Instrument the 'Child', according to section 2(12) of The Juvenile Justice (Care and Protection of Children) Act 2000/2015-the basic law for the children in India, has been defined as a "person who has not completed eighteen years of age". In the post-Nirbhaya amended (sections 15/19/21) of the JJ Act 2015 a rider has been added according to which, if a child above 16 years commits a 'heinous offence' and it is found in the 'Preliminary assessment' carried out by the JJB (Juvenile Justice Board) having mental and physical capacity besides ability to understand the consequences of offence and the circumstances in which he allegedly committed the offence, the child may be tried by a Children's Court (or Sessions Court) as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).

Under section 21 of the JJ Act, however, such a 'Child in Conflict with Law' shall not be sentenced to death or life Imprisonment without the possibility of release under IPC (Indian Penal Code) or any other law in force. This change in law after marathon debates before the Verma Commission, Parliamentary Standing Committee, besides the historic Salil Bali and Subramanian Swamy Judgments in the Supreme Court in which the author had the opportunity to repeatedly appear and argue as an Intervenor, required to be clarified since, under the Law- as wrongly believed, the age of child has not been reduced to 16 and it remains 18.

Among other legal definitions of the child up to 18 years of age gets further subdivided in other basic laws, like the Indian Penal Code (IPC) itself. (Section 82) "Nothing is an offence which is done by a child under seven years of age." (Section 83) Nothing is an offence done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion".

For obvious reasons, the legal definitions of a child become crucial when applied differently under the JJ Act and the IPC. The two categories of Children being dealt with under the JJ Act i.e. 'Children in Need of Care and Protection' (CNCP) and 'Children in Conflict with Law' (CCiL), are dealt with differently with the children below seven years and between seven to twelve being completely or partly outside the purview of culpability. Generally, a "child" means a person who has not attained the age of 18 years and is not mature enough to understand what is right and wrong. In the modern era, the penal laws of most countries have adopted the principle of 'doli incapex', which means being incapable of having the intention that the act they are committing is a crime.

Recently, under the amended Child Labour Law a new dimension has been added by dividing the Childhood, carving the adolescent out of it giving the new definition in the light of the Children's Right to Free and Compulsory Education (RTE) Act, 2009. Section 2(ii) of The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (amended 2016) provides under Section 2 (2&1) "child means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act 2009-which-ever is more" "Adolescent means a person who has completed fourteenth year of age but has not completed eighteenth year". Until this definition of the 'adolescent' within the Child Labour Law, the adolescent was supposed to be up to 19 years within the programs of the Department/ Ministry of Youth Affairs. As mentioned earlier, under the various laws of India for different purposes, the child has been given varying definitions and ages, which need to be discussed.

Section 2(c) of 'The Plantations Labour Act, 1951' reads, "Child means a person who has not completed his fifteenth year." This Act had been formed for the welfare of persons who were engaged in plantation. Section 24 of the Act further categorized young children and states that "no child who has not completed his twelfth year shall be required or allowed to work in any plantation." Section 25 prohibits the engagement of 'child' in the plantation work except between the hours of 6 A.M. and 7 P.M.

Then we have the 'The Motor Transport Workers Act, 1961' that defines a child as "a person who has not completed his fifteenth year." Section 21 of the same Act prohibits the employment of a 'child' in motor transport undertaking. A regular driving license for four wheelers, however, can be obtained after 18 years of age under the Motor Vehicles Act.

The Child Marriage (Prohibition) Act, 2006 reads, "child means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age." Section 3 of the Act makes the child marriage 'avoidable' at the option of a person who was a child at the time of marriage.

Section 2(d) of The Protection of Children from Sexual Offences (POCSO) Act, 2012 states that, "child means any person below the age of eighteen years." Given this definition of a child aligned with the JJ Act and Child Marriage (Prohibition) Act, Section 375 (D-Exceptions Sixthly) IPC which defines the heinous offence of rape makes the sexual intercourse an offence "with or without her consent, when she is under sixteen years of age"; further exception "Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape." Thus, in respect of a child irrespective of the age marital rape is permitted within the larger exception that runs contrary to the POCSO.

So the question, 'Who is a Child?' gets differently answered in India alongside the child rights being concomitant with the definition of childhood, which are often contradictory- at times posing legal issues which remain unresolved. As a practitioner-in my capacities as a senior police officer leading two State police forces, operating in the CBI (the apex federal investigating agency of India 'Central Bureau of Investigation'), as the Chairman of Child Rights Commission and in myriad times working with Children while working with or without the law enforcement agencies, I have faced endless situations that had no fixed legal answers.

Child and Adolescent Labour (Prohibition & Regulation) Act 2016, as above, Prohibits the engagement of children in all occupations and processes; prohibits the engagement of

adolescents in ‘hazardous occupations and processes’-earlier 16 and 18 of them within the Schedule of the Child Labour (Prohibition & Regulation) Act 1986. Now since ‘adolescent’ means a person who has completed his fourteenth year of age but has not completed his eighteenth year despite clear acceptance of 18 years as the age of childhood through ratification and acceptance of UNCRC age, an attempt has been made under this amended law to create a division depriving the child above 14 years several rights, including the right to free and compulsory education.

For the Right to Free and Compulsory Education ‘a “Child” means a person who is above six years of age and has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education (RTE) Act, 2009, whichever is more.’ This definition deprives not only the children above 14 years of age but also those who are less than 6 years of age.

To compensate for this gap within the law the children between 6 and 14 years are being covered under the programs of ECCE (Early Childhood Care & Education) primarily through Anganwadis in the rural areas. The National Education Policy (NEP 2020) in which we attempted to present our case for these age-wise deprived children and CNCP children, has made some provisions for the ECCE and the SEDGs (Socio-Economically Deprived Groups) whose numbers as out-of-school-children have been accepted as 32 million.

Under Immoral Trafficking (Prohibition) Act 1956 is the Child under 16 years and Minor – under 18 years. The Child Marriage (Prohibition) Act 2006 defines a Male Child as being under 21 years and a Female Child as being under 18.

We need to go back into the history, the Juvenile delinquency or the Juvenile Justice System (JJ System within the JJ Act 2000/2020) in India, which is now the omnibus enactment for the children of all types who require the protection of their rights within the law. It can be traced back to a differential legal process, which goes back to the Reformatory School Act 1876, wherein the deviant youth or child could be reformed or brought to book. Like most of the modern justice systems in India, which originate from the Anglo- Saxon or western legal traditions, the JJ system is also a borrowed legal system-somewhat alien and still misunderstood (Prayas 2013a).

Under this system and age-old traditions in the western juvenile justice system as well, the Child stood in adversarial relationship with the legal authorities, mostly being treated as an offender or someone doing something wrong (Prayas 2013b, Jaswal 2020). The legally defined concept of a ‘neglected child’ or a ‘child in need of care and protection’ alongside a ‘delinquent’ or a ‘child in conflict with law’ was developed much later, both in the western/British and Indian laws relating to children.

Prayas, Police and the evolution of Juvenile Justice and Child Protection Laws

Prayas Juvenile Aid Centre which was set up by us in June 1988 (Registered as a Society in 1989) after a devastating fire in Jahangir Puri in New Delhi left hundreds of Jhuggis (hutments) devastated and children orphaned while I was serving as the Deputy Commissioner of Police (Crimes & Railways) in Delhi Police during 1985-90. I was taken to this slum cluster through a morning call by the super-active Lieutenant Governor of Delhi Retd. Air Marshal HL Kapoor, who could feel my heart at the sight of the fire-ravaged rag-

pickers settlement, agreed to allot one LIG (Low Income Group) 25-yard flat which became the first Centre of Prayas.

This was the period when as the DCP In-charge of the Missing Persons Squad (MPS) of the Delhi Police, we faced a peculiar problem of finding numerous missing and family-separated children without any place to keep, the government juvenile and children's homes being unsuitable for their temporary custodial care. One night, surprisingly, on my night rounds I found a dozen kids packed in the Police Lock-up of the New Delhi Railway Station. It was an illegal custody since these children had committed no offence, and even if they had committed any offence the law (JJ Act) prohibited the children to be kept in a lock-up or hand-cuffed (Prayas 2013c, Prayas 2013d).

About this time, in order to understand how best the police and the Social Welfare Department could deal with such children, I visited Bombay Police, which operated a unit called Juvenile Aid Police Unit (JAPU) and the Children's Aid Society-run *Umarkhari* government Juvenile/children homes. The projects appeared to be useful and in accordance with the law, but we thought of going beyond these institutions and decided to create a voluntary organization and registered a Society headed by the humane Police Commissioner Raja Vijay Karan, myself being the founder General Secretary with some other interested and compassionate junior police officers, women and men, as 'Founding Members' under the Societies Registration Act 1860. In a way, Prayas was a by-product of our appropriately perceived legal duties to take the juvenile or the child in need into our protective care within a comprehensive view along with other stakeholders of the JJ System to help in fulfilling his/her basic needs and rights broadly covered within the UNCRC as rights of survival, protection, development and participation.

Beginning with a small centre in the sprawling slum-resettlement of Jahangirpuri in 1988 as a Juvenile Aid Centre project of Delhi Police, soon joined by the prestigious Delhi School of Social Work (Delhi University) and Shramik Vidyapeeth (Ministry of Social Justice), right from the beginning we had our concepts clear about the child rights and the evolving juvenile justice system within its enlarged meaning. As we were deeply concerned about the fate of these children in crisis ravaged by the fire and joining thousands of other orphaned, street and working children of the big city, we decided to protect them and take them within our wings.

Since its very inception, in Prayas we believed that the 'needs and rights of children are synonymous' and there was no distinction between the two. Our vision of a child rights and child protection of a voluntary organization to be run along with Delhi police and other stakeholders was very much strengthened and amplified by the UNCRC and the recently enacted Juvenile Justice Act 1986- in both of which we had ample opportunity to participate as practitioners and in policy formulations.

It is this basic premise that set the agenda for Prayas way back in 1988/89 now functioning in various roles of service providers, educators, researchers, as a Resource Centre and the apex body of the Organization through the Prayas Institute of Juvenile Justice (PIJJ) at Tughlakabad Institutional Area in Delhi. It is this think tank that sets the rules and policies for its various branches spread across 10 States/UTs in India, which includes, NCT Delhi, Bihar, Gujarat, Jharkhand, Rajasthan, Haryana, Arunachal Pradesh, Assam, Kashmir and Andaman & Nicobar Islands.

We, at Prayas, have always felt that the term Juvenile Justice is a misnomer because it is meant more to punish the Juvenile, which until recently included all types of children, than to protect him. In fact, the very expression 'juvenile' which means a child offender is alien to this country or to the Indian languages which still translates this word as a young boy and girl, in Hindi and other Indian languages. We would rather be more comfortable with words like 'Kishor' or 'Kishori', 'Balak' or 'Balika' (Prayas2013c) that carry an inherent sense of innocence of the child, much like Wordsworth would have liked. Perhaps, it is in fitness of this Indian tradition that the highly progressive law in India, 'the Juvenile Justice (Care & Protection of Children) Act, 2000' covers two categories of children i.e. 'children in need of care & protection' and 'juveniles (now called Children) in conflict with law'.

For some unexplained inherent guilt complex even the more liberal and educated among us tend to react more to news of a single child offender than those where he is subjected to abuse by employers, *dhaba* (an eatery) owners and even parents. It is a given fact that today children are being trafficked more by their parents than agents.

Maybe the Western definition of juvenile is a result of the white man's burden that is born with a guilt complex because his ancestor Adam committed the original sin by biting into an Apple. Or it could be a reflection of the Great Depression of the nineteenth century when Charles Darwin proved that he had descended from the monkeys. But why should Indians be afflicted by that legacy when we have been celebrating the childhood of our mythological heroes Lord Krishna and Ram through such beautiful poetry written on them. We still tend to debate one act of aberration of a child in the country endlessly in our drawing rooms and market places as if our own child would do the same given a chance.

This is not only endangering our value system but painting all children (40 per cent in all) as criminals even though all data available shows that while constituting nearly 40% of the population the children involved in criminal offences are less than 2 percent of the total crimes committed in the country (Prayas 2018, BS 2020, NCPCR 2020). About 40000 to 45000 juvenile offenders (committing less than 35000 crimes as against 6 to 6.5 million overall crimes) annually on NCRB (National Crime Records Bureau) do not pose such a threat to over 1.4 billion population in India, as the juvenile offenders of USA to their country, who commit 400 times more crimes in the country with 1/4th of India's population.

This has resulted in even the literate and highly educated amongst them equating the JJ system with the Criminal Justice System (CJS) to deal with juvenile delinquents who are viewed as a threat for the society. It is being completely forgotten that between the child and the law there can be multiple relationships (Prayas 2013a).

For a civilized society and considering the provisions of India's constitution, child-friendly laws, policies and traditions and also our international commitments towards the UN Convention on the Rights of the Child, the first requirement of the law should be to protect and reform the child and not to punish. A child, in any case, interfaces with the law more as a victim of crime (Nearly 150000 crimes against children annually-NCRB), of abuse and exploitation, than under adversarial circumstances or as an offender (Desai 2020). A child victim has to be given a special treatment like the one already provided under the Commission for Protection of Child Rights Act, 2009 which also constitutes the Children's Courts.

We have found that such attitudinal changes and appreciation about the actual treatment of children under the laws came slowly. My own legal exercise of setting up the country's first-

ever Children's Courts in the judicial districts of NCT Delhi through Delhi High Court in my capacity as the Chairman of DCPCR was an experience by itself. Today, the Children's Court which was for the first time introduced within the CPCR Act 2005 is being brought into several enactments concerning the victims of crimes and also those in need and juveniles or children in conflict with law.

Under the JJ Act, 2000, all categories of 'Children in Need of Care & Protection' should be looked after by broadly fulfilling their basic needs and rights for survival, protection, development and participation. Such children, who are estimated to be 30-35 million in the country, could be found without home, family and settled life, street and working children, endangered for a variety of reasons, mentally or physically challenged, abused, trafficked, in drugs, crimes and conflict situations etc. Most appropriately, the Indian law-makers appreciated such needs and made the provisions under the JJ system besides the various laws concerning child protection and child rights.

Perhaps, the civil society of India, even today, is not averse to giving all support, love and affection, even legal protection to the children in need, as mentioned above (Prayas 2013a; Prayas 2013b). However, the current crisis of faith in the law originates from the treatment being given to the juvenile delinquent or the 'juvenile in conflict with law [sec. 2(l) of JJ Act, 2000]', which describes such a child 'who is alleged to have committed an offence and has not completed 18 year of age as on the date of commission of such an offence'.

There was an intense debate on this issue in the aftermath of the December-16, 2012 Delhi gang-rape case when the entire media, started describing the juvenile - one of the six accused in the crime as the most 'brutal' amongst them and there were mobs roaming the streets who would have literally lynched anyone who said anything to the contrary. This hate movement led to a nationwide demand for reducing the age of juveniles from 18 to 16. The sagacity of Justice J. S. Verma Commission that brought about major changes to the laws for sexual offenses against women through the Criminal Law Amendment Act 2013 must be lauded as it did not favour lowering the age of juveniles even during the most surcharged post-Nirbhaya atmosphere.

In this background, it is required that the common man understands the legal processes which are prevalent today, broadly described as the Juvenile Justice System as provided under the changing provisions of the JJ Act. As mentioned, the JJ System/Act had evolved for nearly 150 years in India to culminate into the national level Children's Act 1960, which was subjected to major changes under the Juvenile Justice Act 1986 and finally re-enacted to become the JJ (Care & Protection of Children) Act 2000 with substantial amendments in 2006/15/20. This comprehensive Act creates a complete system of law and justice, which practically substitutes the Criminal Justice System and the apparatus to cater to different categories of children and to serve their best interest.

There are basically two types of Competent Authorities, namely Juvenile Justice Board and Child Welfare Committee, under the JJ Act meant for the two types of Children, namely, Juvenile or Child in Conflict with Law (CCiL) and Child in Need of Care and Protection (CNCP) dealt with under this separate system of law and justice. The Juvenile Justice Board, equal to a Criminal Courts and served by a Judge or Principal Magistrate and two social workers, undertakes the Inquiry and proceedings to pass one of the seven orders, called 'dispositions' – the last one (Sec. 15(g) & 16 of JJ Act) providing for detention of three years to juvenile, which may go upto 21 years of age.

The Child Welfare Committee (CWC) or a bench of 6 professionals and social workers having magisterial powers that enables them to summon persons and documents and conduct wide-ranging inquiries almost on any issues concerning the CNCPs; and pass appropriate orders and give directions for their care, protection, welfare, development, rehabilitation and social reintegration. The CWC (and JJBs) are fully responsible and empowered to look after, facilitate and give orders about the CNCP (& CCiL) within the Institutional Care i.e. maintained under the Child Care Institutions (CCIs). Along with other stakeholders, beyond Institutional care the CWCs and JJBs have very important roles to play in the process of social reintegration provided through the non-institutional care systems under the JJ Act and Rules for Adoptions, Foster Care, Sponsorships and After care programs. The law provides for other subsystems and stakeholders like, Special Juvenile Police Unit (SJPU), Juvenile/Child Welfare Police Officer, District Child Protection Unit (DCPU), Child Helpline (1098), Juvenile's & Children's Homes & Shelters and Places of Safety etc.

In recent memory no other individual received so much media hype as the juvenile involved in the Nirbhaya case (the name also given by a media channel to the paramedic who was gang raped and killed) which later was accepted by the government and a fund instituted in her name. Among other major impacts created by this case including some basic changes in the law regarding the sexual crimes against women and giving the much-awaited legal definition and penal provisions for 'Human Trafficking', there was an upheaval in the juvenile justice law on account of the involvement of a juvenile in this crime.

From our personal knowledge of this case, since the juvenile offender was being proceeded against by the JJB within the premises of the Prayas-run Observation Home for Boys at Feroz Shah Kotla, we are aware that the minor involved in the case came from a very impoverished background and his nature of involvement in the crime was not such as portrayed by the media. As a child, he had to leave his home at the age of 10 and he kept drifting as a street and working child struggling and earning for survival until the fateful evening when the real 'brutal' gang-leader Ram Singh, the driver of the bus who owed him Rs.8000, involved him in the ghastly crime which converted him into one of country's most hated villains.

Even though the law reducing the age was changed later on, he managed to escape a jail term after completing his three year term in a reform home because law cannot be applied with retrospective effect. On the day he was going to be released almost the entire all-knowing media was baying for his blood and some loud mouth channel editors even asking the President of India not to let him go free! The media also joined the common men on the street in making fun of the legal provision of giving him a token sum of money by the government for him to settle down to peaceful existence.

In a major drift in his case we would also like to point out that the anger against the offender was given a communal angle when a national newspaper carried a report that the much reformed boy was reading the Namaz five times a day in the reform home. And yet neither the Editor of the paper, nor the Courts nor the Juvenile Justice Board took any action against the newspaper, which had violated all norms of reporting by disclosing the religion of the minor.

Some relevant part of the judgement says, and we quote:

"There is little doubt that the incident, which occurred on the night of 16th December, 2012, was not only gruesome, but almost maniacal in its content, wherein one juvenile, whose role is yet to be established, was involved, but such an incident, in comparison to the vast number of crimes occurring in India, makes it an aberration rather than the Rule. If what has come out from the reports of the Crimes Record Bureau is true, then the number of crimes committed by juveniles comes to about 2% of the country's crime rate.

The learned ASG (Sr. Adv. Siddharth Luthra) along with Mr. Asthana (Haq) and Mr. Kanth (Prayas) took us through the history of the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the Rules subsequently framed there under in 2007. There is a definite thought process, which went into the enactment of the aforesaid Act. In order to appreciate the submissions made on behalf of the respective parties in regard to the enactment of the aforesaid Act and the Rules, it may be appropriate to explore the background of the laws relating to child protection in India and in the rest of the world.

It cannot be questioned that children are amongst the most vulnerable sections in any society. They represent almost one-third of the world's population, and unless they are provided with proper opportunities, the opportunity of making them grow into responsible citizens of tomorrow will slip out of the hands of the present generation. International community has been alive to the problem for a long time. As the aftermath of the First World War, the League of Nations issued the Geneva Declaration of the Rights of the Child in 1924. Following the gross abuse and violence of human rights during the Second World War, which caused the death of millions of people, including children, the United Nations had been formed in 1945 and on 10th December, 1948 adopted and proclaimed the Universal Declaration of Human Rights."

The next year there was another case called Dr. Subramanian Swamy and Others. Vs Raju, where after the intervention of Prayas the Supreme Court again ruled against lowering the age of juveniles.

The act - lowering culpable age from 18 years to 16 years - was passed in the winter session by the Rajya Sabha and received presidential assent on 31 December 2015. It repealed the Juvenile Justice Act 2000 despite our serious oppositions and the reasoned appreciation by the Justice Verma Committee and the Parliamentary Standing Committee and the two historic judgements of the Supreme Court in which our contentions were fully accepted.

- Under Section 15 of the new law, special provisions have been made to tackle child offenders in the age group of 16-18 years who commit heinous crimes.
- The Juvenile Justice Board is given the option to transfer cases of heinous offences by such children to a children's court (court of sessions) after conducting 'preliminary assessment'.
- The Act provides for placing such offender children in a 'place of safety' both during and after the trial till they attain the age of 21, after which his/her evaluation shall be conducted by the children's court.
- After the evaluation, the child is either released on probation and if not reformed, he/she will be sent to a jail for the remaining term.
- Some other key provisions include new definitions such as orphaned, abandoned and surrendered children; petty, serious and heinous offences committed by children;

clarity in powers, function and responsibilities of the Juvenile Justice Board and Child Welfare Committee.

- For streamlined and more effective adoption procedures for orphaned, abandoned and surrendered children, the existing Central Adoption Resource Authority (CARA) has been given statutory body status.
- Several rehabilitation and social reintegration measures have been provided for children in conflict with law.

Role of Prayas in the re-enactment of Juvenile Justice Act 2015

Prayas was invited by the Parliament Standing Committee on Human Resource Development (Rajya Sabha Secretariat) which was examining the Juvenile Justice (Care and Protection of Children) Bill 2014 to hear its views on the Bill on 2nd January, 2015. Representing Prayas JAC which was invited by the Standing Committee, we spoke out strongly in favour of retaining the age to 18 and almost all the MPs from different political parties agreed that we had made a convincing point..

Armed with documents and figures he expressed strong reservations on the proposal to reduce the age of Juveniles from 18 to 16 years before the Standing Committee Members, chaired by Dr. Satyanarain Jatiya. Prayas strongly put forward its case that some of the proposals of the Bill were entirely based on misdirected and ill-informed public opinion about Juvenile Crimes in the country. We also apprised the committee of the contribution of Prayas in drafting of the Juvenile Justice Act 2000/2006. He also told the Hon'ble members that the Child Rights and Juvenile Justice Practitioners and Stakeholders were unanimously against any major changes in law, particularly in respect of reducing the age of juveniles in India.

Parents and teachers play a significant role in nurturing the mind of a child. Instead of labeling them as "criminals" or "delinquents"- steps need to be taken to give them a scope of rectification and it would be better if the errors in their lives (involving social and psychological) are brought to their notice. The problem of child crime like many other social evils is linked with the imperfections and maladjustment of our society. The idea is gradually gaining wider acceptance that juvenile delinquents need the sympathy and understanding of our society and not the heavy hand of the law.

Yet another major contribution of Prayas in the policy domain and law-making was its landmark Study on Child Abuse in 2005-7 on behalf of the Ministry of Women and Child Development, being Indian chapter of the UN Study of the Global Violence Against Children.

National Study on Child Abuse & POCSO

The National Study on Child Abuse was primarily to assess the situation of child abuse, in the light of the National Charter for Children and the various national and international commitments including the UN Instruments. Entirely conducted by Prayas (Prayas Institute of Juvenile Justice) and supported by the Ministry of Women and Child Development, Unicef and partly Save the Children, the startling findings of the Study resulted into the formulation of the POCSO (Protection of Children Against Sexual Offences) Act 2012.

Prior to the project being launched, a series of meetings of the Core Research Team was held in the Unicef, Department of Women and Child Development and Prayas Head Office to discuss the objectives, methodology, expected outcome, duration and other details. The Study was conducted in 13 States/UTs of India in the respective zones arranged in

descending order of literacy and one State was selected from the upper quartile and one from the lower quartile from each zone. Literacy was taken as an indicator, as it was expected that higher the level of literacy, lesser would be the chances of child abuse.

The categories of respondents identified for the study included street children, working children, children in schools, children in institutional care and children in family groups not attending school. The study was formally launched on 1st September 2005. A series of meetings took place to finalize the information schedule for the three categories of respondents, in which experts from various disciplines were made to participate.

Major Findings of the Study:

It clearly emerged that across different kinds of abuse, it is young children, in the 5-12-year group, who are most at risk of abuse and exploitation.

Physical Abuse

1. Two out of every three children were physically abused.
2. Out of 69% children physically abused in 13 sample states, 54.68% were boys.
3. Over 50% of children in all the 13 sample states were being subjected to one or the other form of physical abuse.
4. Out of those children physically abused in family situations, 88.6% were physically abused by parents.
5. 65% of school going children reported facing corporal punishment i.e. two out of three children were victims of corporal punishment.
6. 62% of corporal punishment was in government and municipal schools.
7. The State of Andhra Pradesh, Assam, Bihar and Delhi have almost consistently reported higher rates of abuse in all forms as compared to other states.
8. Most children did not report the matter to anyone.
9. 50.2% of children worked seven days a week.

Sexual Abuse

1. 53.22% children reported having faced one or more forms of sexual abuse.
2. Andhra Pradesh, Assam, Bihar and Delhi reported the highest percentage of sexual abuse among both boys and girls.
3. 21.90% child respondents reported facing severe forms of sexual abuse and 50.76% other forms of sexual abuse.
4. Out of the child respondents, 5.69% reported being sexually assaulted.
5. Children in Assam, Andhra Pradesh, Bihar and Delhi reported the highest incidence of sexual assault.
6. Children on street, children at work and children in institutional care reported the highest incidence of sexual assault.
7. 50% abuses are persons known to the child or in a position of trust and responsibility.
8. Most children did not report the matter to anyone.

Emotional Abuse and Girl Child Neglect

1. Every second child reported facing emotional abuse.
2. Equal percentage of both girls and boys reported facing emotional abuse.

3. In 83% of the cases parents were the abusers.
4. 48.4% of girls wished they were boys.

The Study (WCD 2014, Prayas 2013a) report stated that the gravity of the situation demanded that the issue of child abuse be placed on the national agenda. The Ministry on its part had taken measures such as the enabling legislation to establish the National and State Commissions for Protection of Rights of the Child, the Integrated Child Protection Scheme, the draft Offenses against Children Bill etc. These were a few important steps to ensure protection of children of the country. But clearly, this would not be enough, the government, civil society and communities need to complement each other and work towards creating a protective environment for children. The momentum gained was needed to enhance further discussion on the issue amongst all stakeholders and be translated into a movement to ensure protection of children of this country.

As mentioned, this study directly led to the enactment of the gender-neutral POCSO 2012 which created a self-contained law in respect of all forms of sexual abuse of the child below 18 years enlarged the scope and provisions that covered sexual harassment and pornographic abuse to aggravated forms of sexual assault. The cascading effect of this Study and enactment was such that when we presented our views before Justice Verma Commission most of the provisions safeguarding the women against sexual violence crimes were actually taken from the POCSO. The POCSO 2012 and the post-Nirbhaya Criminal Law Amendment Act 2013 changed the complete profile of the legal treatment of sexual crimes in India. If the law-makers had also accepted the suggestions made by us to keep even the sexual crimes against the adults gender-neutral-the way it was under the POCSO, part of the aberration regarding the later reading down of the Section 377 IPC on the 'unnatural sex' could be taken care of.

Childline-Prayas Project

Following marathon discussions within the Ministry of Social Justice (Ministry of Women and Child Development was yet to be created), NHRC and other national level bodies, the first Childline (1098) was started as a collaborative Project on 2nd October 1998, and it was inaugurated at Prayas Children's Home by the then Union Minister for Social Justice and Empowerment, Ms. Maneka Gandhi, the preparatory activities having started long back. Among a series of meetings held by the Ministry, the crucial one was conducted by the Joint Secretary Mr. Anand Bordia to orient the Delhi NGOs about the Childline (1098) Project. We organized and led the meetings of the Children's NGOs and finally the five organizations, Prayas, Don Bosco Ashalayam, Delhi Brotherhood Society, Salaam Baalak Trust and Butterflies, were selected to run this powerful project in Delhi. In times to come, like the CWCs, the Childlines which find mention in the JJ Act 2000-now being run in almost all districts of the country, became the gateway for the majority of programs to protect the CNCPs.

Like Delhi, Prayas Childline was set up by the then Minister for Social Justice Ms. Meira Kumar in my presence in Andaman & Nicobar Islands with a missionary zeal on Jan 5, 2005 when it was practically wiped out by the Tsunami. It focused on two major areas, to start with, Car Nicobar and Campbell Bay.

The areas hardest hit by the Tsunami were the southeastern coast and the Andaman & Nicobar Islands .In Andaman, Prayas Childline is working as an urban model and entrusted

with the responsibility of running both the Collaborative and Support Organization in the Childline Structure. The collaborative organization covered the district of South Andaman having the municipal area of Port Blair and 2 Tehsils namely Ferarganj and South Andaman and 66 Gram Panchayat Areas. We went around the badly hit islands and brought to Port Blair a large of children who were orphaned during the Tsunami and created massive camp for them where I worked along with the government departments and social workers, including a senior journalist, an officer of the Air India and a Prayas co-worker who had accompanied me to the Andmans soon after the Tsunami.

The crucial role of the Childlines was appreciated by all concerned in the care, protection and rehabilitation of the disaster-affected children. In subsequent years, Prayas was entrusted with four other Childlines in the far-flung districts of Bihar and at the Delhi Railway Station. Childlines (1098) aim at reaching out to the most marginalized children between the age group of 0-18 years, and provide interventions of shelter, medical, repatriations, rescue, death related, abandoned children, runaway children, Children in need of urgent medical assistance sponsorships and emotional support and guidance the list goes on.

The objective of the Childline is to reach out to every child in need of care & protection by responding to emergencies on 1098 and to ensure access of technology to the most marginalized in urban as well as rural areas & connectivity of 1098 through government telephone exchanges as well as private exchanges. The project also works together with the allied system to create child friendly systems. The project not only provides a platform of networking amongst organizations but also provides linkages to support systems, which facilitate the rehabilitation of children in need of care & protection. Over the years, the Childlines, which now operate in over 650 districts and 144 Railway Stations, have become the nodal points for a large number of children's programs within the JJ Act and other laws like, POCSO and the Child & Adolescent (Prohibition & Regulation) Act 1986/2016. The childlines becoming the gateways for child protection in the country, the majority of child labour rescue operations are now being carried out by the stakeholders, particularly the District Level Task Forces led by the SDM (Sub-Divisional Magistrate) and joined by the Police, Labour department, CWC, NGOs and others.

In the context of sexual abuse and crimes against children (and women-which followed legislation on the same lines), yet another major milestone for Delhi Police, Delhi Commission for Women, the Central Social Welfare Board (an autonomous body of the Ministry of Social Justice) and Prayas was the setting up of the first Rape Crisis Intervention Centre (CIC) in India in 2000. Ms. Maneka Gandhi, then minister for Social Welfare launched this Centre in South Delhi while I was the Joint Commissioner of Police. The CICs was soon replicated in the nine districts of Delhi, and it has been functioning ever-since as a joint program to provide medical, legal and psychological support to minor victims of sexual assaults.

It was the first time when it became mandatory for police to have counselors from the NGOs whenever a victim of sexual assault came to lodge a complaint. Developed as a national program under the Ministry of Women and Child Development (MWCD) and funded under the 'Nirbhaya Fund', today similar are functioning in more than 300 districts as 'One Stop Centres' to provide relief and support to the victims of sexual assault. Besides providing relief to thousands of sexual assault victims studies conducted by the Prayas Institute of Juvenile Justice on the basis of case studies collected by Prayas has helped the Ministry of Women and Child Development formulate its policies on issues of women and this was acknowledged by the Minister in 2017 when she released a study prepared by Prayas in

New Delhi. Starting from the POCSO to deal with all forms sexual abuse and crimes against children being extended to the woman including the girl child within the evolving laws relating to sexual crimes, there is a sea-change in laws and processes.

Laws are continuously evolving and being formulated and amended by law-makers, legal luminaries, practitioners, policy makers and the activists through persistent demands and the felt needs , agitations, debates and discussions; but, it is being increasingly felt that the implementation of social legislation is the biggest challenge. In the realm of children and women, perhaps, we have witnessed and participated in more legislation than any other domain of the social sector. Under the law, the child and her/his rights appear to be well-protected, but the ground situation is far from satisfactory. There is absolutely no dearth of legislative framework or willingness to provide protective cover to the estimated 35 million CNCP/CCiI children, 20 million orphans or children without parental or family support and the 32 million out-of-school SEDGs, what is lacking on the ground are the implementation of laws, appropriate schemes/programs with funds, and, most importantly, the stakeholders' and civil society participation.

The way forward

Within the parameters of both the SDGs -2015-2030 (Sustainable Development Goals) and the HDIs (Human Development Indicators) and being in the midst of the much talked-about India's Presidency of the G-20 which is primarily the the most important global forum for the socioeconomic issues, the status of the children vis-a-vis our laws and policies concerning them have to be under close scrutiny. Just crossing the mid-term review of the SDGs wherein our ranking is 121, while in HDIs we are at the 132 position, the country has a long way to go in respect of our legal, constitutional and the UN commitments towards the children.

Being the 5th largest and one of the world's fastest growing economies India has no dearth of resources and the legislative framework which is very much in place for the fulfillment of the children's rights and the needs for protection, care, development, welfare and socioeconomic empowerment of the deprived, abused, marginalized and exploited children. There is an urgent need to fulfill our commitments by providing resources and by associating the government and other stakeholders-the most prominent being the Civil Society Organizations (CSOs) for the children who give us the 'First Call'.

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