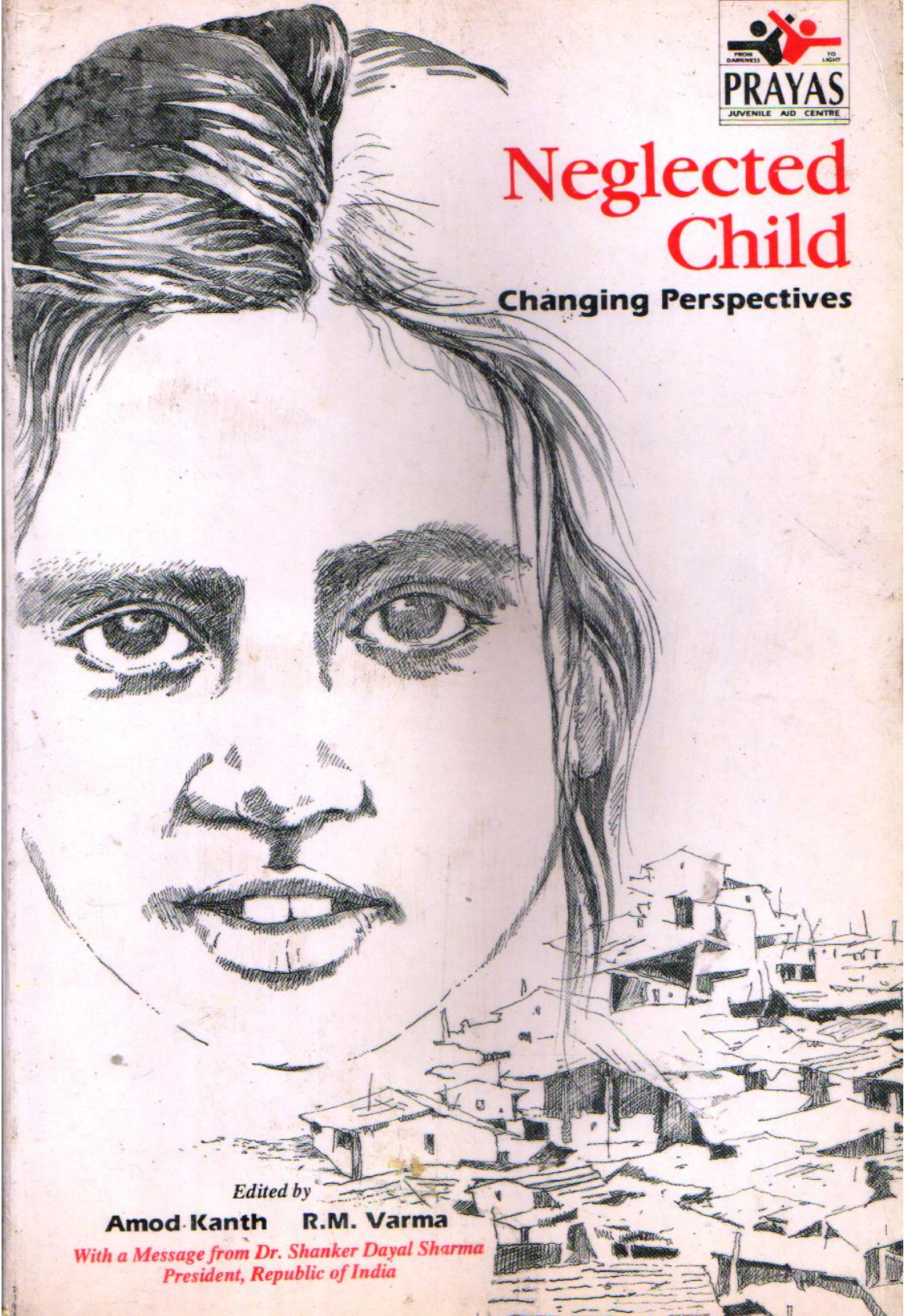




Neglected Child

Changing Perspectives



Edited by

Amod Kanth R.M. Varma

*With a Message from Dr. Shanker Dayal Sharma
President, Republic of India*

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PREFACE

On account of their mental attributes, i.e., other than those relating to bone and flesh and perhaps instinct, human beings comprise the most powerful species which tread this planet. Ironically, however, the human child is the most helpless among all the newly-born creatures, being unable to survive beyond a few hours unless carefully looked after. Even during the early years of its life, a child needs care and protection. In fact, the development of a child's personality depends heavily on the manner in which he/she is brought up during infancy.

It is also true that nature does not consciously distinguish between one child and another, though society does. Depending on the circumstances in which a child is born, such distinction, often in the form of discrimination, is apparently a part of the law of life, characterizing the transition of homo sapiens into social beings, in every society throughout the ages.

Clearly, children *per se* are not born 'neglected'. Nor are the compulsions into which they are placed of their own making. The barriers to the development of their personality and the resultant neglect, which they are subjected to, are, therefore, interwoven in the fabric of society in which they are born. Being products of societal neglect, it is the responsibility of society as a whole to identify and locate such disadvantaged children, ascertain their situational inadequacies and create conditions for their well-being so that they can realize their full potential.

The neglected child, i.e., a child in need of care and protection, is not a phenomenon peculiar to India alone. The problem is global in nature with neglected children being a part of the scenario in poor and affluent societies alike. Today, neglected children can be found in villages and small towns, just as they are found in cities. In India as elsewhere, the magnitude of the problem is on the increase, slowly but surely, being particularly noticeable in the cities and metropolises.

Vis-a-vis the enormity and complexity of the problem, we realized that there was a dire necessity to pool the thinking of social work practitioners, scholars, administrators and planners to (1) gain greater insight into the problem and (2) evolve operational guidelines in developing programs in future for the welfare and development of neglected children. It was also felt that undertaking such an exercise could best be done in the form of a national level workshop. This Workshop, thus, represents an attempt to bring together, as many as possible, individuals and groups associated directly or indirectly with the planning and/or implementation of programs for the welfare and development of such children.

Bearing in mind the fact that, in the recent past, themes like 'Street and working Children', 'Child Labour', 'Children Under Especially Difficult Circumstances', etc., had been deliberated upon in a number of gatherings, it was decided to keep 'the neglected child' as the focus of the Workshop. It was done for the simple reason that this term encompasses the largest group of the disadvantaged children who need attention, care and protection. It includes 'destitute and abandoned children', 'exploited and abused children and various other categories of child labour in rural and urban areas, both in the unorganized as well as the organized sectors

The term 'neglected children' is legally defined, accepted and recognized under the Juvenile Justice Act, 1986. While the legal course of action by the Government and non-governmental organizations has been laid down, for some unexplained reasons, it has not been given the importance it deserves. It is indeed vexing to pinpoint the reasons due to which the scheme, as laid down under the Juvenile Justice Act and presumed to be a blueprint for the welfare of the neglected children, has fallen into utter neglect and disuse.

Of late, an important segment of neglected children inhabiting metropolitan cities, i.e., 'street children', has received some attention both from the government and the non-governmental agencies (NGOs). Consequently, a number of programs for their welfare are now afoot. The gallant efforts made by some social activists have also led to numerous enquiries into the lives of neglected children who are being forced to work as child labour in hazardous industries in different parts of the country.

As a result of these enquiries, legislative and welfare measures have been initiated. At the national level, however, all these exercises need to be reinforced to focus popular attention towards the problems of the neglected children, not only in metropolitan areas but also in the rural and semi-urban areas.

A need was also felt to define the term 'neglected child', to ascertain its scope and to prioritize different segments within the scope for developing appropriate programmes. This, it was felt, could help to demarcate the spheres of activities for the policy planners, administrators, NGOs, social workers, professionals from various disciplines and research scholars engaged in coping with this problem.

Besides attempting to conceptualize the term 'neglected child' in the Indian context, the Workshop has tried to work out strategies for their identification, care, welfare and rehabilitation. While suggesting measures to optimize community participation, the participants have highlighted the need to hone the legal machinery to realistically help children requiring immediate attention and intervention. The Workshop's deliberations also cover measures for net-working amongst various components of the Juvenile Justice system, government, NGOs and individual social workers and to evolve ways and means to mobilize existing resources within the community itself. In a nutshell, the objectives of the workshop are to assess the magnitude of the problem of neglected children, the causes thereof, the measures already underway and the steps needed to be taken to facilitate effective interventions by the government, NGOs and the community at large.

This report contains the proceedings of the workshop and articles contributed by the participants. It also includes some background material specially commissioned before and during the workshop. The rationale for its inclusion is that it provides a wealth of information which can help the reader to more effectively comprehend and conceptualize various issues related to the complex phenomenon of the neglected child.

We are specially thankful to UNICEF (India) and the Ministry of Welfare who not only financed but also actively participated in the workshop besides making this publication possible. We are, likewise, indebted to the Gram Niyojan Kendra, a NGO which participated in the proceedings and also partly financed the

workshop. We acknowledge with thanks the contribution of the PRAYAS collaborators, viz., the Delhi Police, Department of Social Work, University of Delhi, and the Shramik Vidyapeeth, Ministry of HRD, in organizing this Workshop. Our heartfelt appreciation is due to all the workshop personnel (sessions' secretaries, rapporteurs and secretarial and other assistants) who went beyond the call of duty and worked late hours in preparing this report. We wish to particularly thank Mr. L.K. Kathuria in the publication of this report.

In an undertaking of this magnitude, it is a Herculean task to be able to individually acknowledge the contributions of all those who make it possible. Therefore, we'd like to warmly thank them who, directly or indirectly, have contributed in the organization of this event.

We wish to place on record our deep appreciation of the Workshop participants who came from different parts of the country and braved Delhi's summer to join us in enriching the Workshop's deliberations. Their presence in the Workshop convinced us that we were heading in the right direction. It also reaffirmed our faith that we were not alone in attempting to develop measures for giving a better deal to the neglected child in India.

Amod Kanth

R.M. Varma

NEGLECTED JUVENILE (OR NEGLECTED CHILDREN): NEED FOR A CONCEPT AND DEFINITION

Amod Kanth*

Since there is no clear definition of the term 'Neglected juvenile' or 'Neglected children' in a conceptual and National sense, one needs to fall back on the legal definition - as provided in the Juvenile Justice Act (JJ Act) of 1986. Dealing with the neglected juveniles, this social legislation was enacted to lay emphasis and to focus attention on children *found in situations of social maladjustments, delinquency or neglect*.

It aims at establishing a uniform Juvenile justice system throughout the country, covering various aspects of disadvantaged children under changing social, cultural and economic situations. The intervention of the State and the NGOs is intended and provided for under the Act in given situations of maladjustment, neglect and delinquency. It also seeks to develop appropriate linkages and coordination between the formal system of juvenile justice and The voluntary agencies engaged in the welfare of neglected or socially maladjusted children and to specifically define the areas of their responsibilities and roles,

The term 'neglected juvenile' can be used to simply connote a child or youth treated carelessly or without being bestowed due notice. The negligence could be on the part of those who are under social, moral or legal duty to exercise such care or protection of the juvenile.

The JJ Act defines the term juvenile as 'a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years' [Section 2(h)]. According to Section 2(l), a 'Neglected juvenile' is defined as a juvenile who (i) is found begging; or (ii) is found without having any home or settled place of abode and without any ostensible means of subsistence and is destitute; (iii) has a parent or guardian who is unfit or incapacitated to exercise control over the juvenile; or (iv) lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with any prostitute or any other person who leads an immoral, drunken or depraved life; (y) who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain. Section 2(e) defines a delinquent juvenile as "a juvenile who has been found to have committed an offence."

Clearly, the enactment is meant "to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters related to, and disposition of, delinquent juveniles," Distinguishing between *neglected and delinquents*, the latter are defined as 'those having committed an offence (this can be a sub-category of offenders among the neglected juveniles). In fact, a majority of delinquent juveniles will, by and large, are likely to fall in the overall group of the neglected juveniles.

In a limited sense, the term neglected juveniles may cover those who are not under proper care and protection, and hence, 'likely to be abused, exploited and

inducted into criminogenic life'. However, this is neither a completely legal nor a functional definition of the term.

Who are neglected children?

In order to identify the target groups who deserve statutory care and protection of the State, a need is felt to spell out the scope of the term neglected children. Need also exists to find a functional definition of the term neglected children in order to demarcate the areas of governmental and non-governmental activities vis-à-vis programmes for the care, protection and rehabilitation of these socially, economically and culturally disadvantaged groups,

Origins of neglected children

While rapid industrialization and urbanization have weakened the support system of the family and the community in the urban milieu, the situation continues to worsen on account of rural poverty and the resultant 'push, to the cities. Numerous factors like slums and overcrowding, growing conflicts and complexities in personal and community lives, disintegration of the family, stark poverty leading to child neglect, abandonment, destitution, abuse, exploitation, willing or forced child labour (especially in difficult situations like red light areas) and criminogenic surroundings significantly add to the population of neglected children in India.

These children can be grouped in various categories like abandoned and destitute children, street and working children and 'Children under Especially Difficult Circumstances' (CFDC), child labour in urban, rural and industrial sectors, etc. All the same, while neglected children can be seen aplenty in the urban milieu, they go almost unnoticed in small towns and villages. However, irrespective of where they are, the attention of governmental and non-governmental agencies to the problems of these children is conspicuous by its absence.

Estimates

For want of a conceptual or operational definition and with no serious attempt made to categorize distressed, 'disadvantaged or neglected children, nor any serious thought being given to find out the neglected children to be covered under the JJ Act, no estimates can be made. Attempts have, however, been made to find out the magnitude of the problem of child labour in India and an estimate of the street and working children the 1981 census put their number at 13.6 million which increased to 17.16 million in the National Sample Survey of the working children in India in 1983.

Some other studies, conducted by non-Governmental, agencies, show wide variations. The Operation Research Group (ORG) study, gave a figure of 44 million whereas 'The Balai data bank' created by social workers estimated the number to be 111 million. The 'Concerned for Working Children', Bangalore, reported that, 20% of the, GNP in India was contributed by, child labour.

Speaking Statewise, the largest number of child labour, in the country was found to be in Andhra Pradesh, Madhya Pradesh, Maharashtra, Uttar Pradesh, Karnataka, Bihar and Tamil Nadu, followed by others. Children have been reported to be engaged in the organized sector (mining, shipping, small scale

industries, workshops, etc.) as well as the unorganized sector (self-employment, agriculture & allied occupations and construction work).

As per the ORO report, children work on account of poverty, adult unemployment, parental pressure and irrelevant education which does not guarantee jobs. Employers prefer child labour because it is cheap, undefended, more willing to work and 'be disciplined' besides being easier to cheat by the former. Based on the findings of various studies, serious attempts have been made to improve the conditions of child labour at different places and efforts are on to bring about changes in policies and the law. In this context, it needs to be clarified whether the major part of, or, the entire child labour population (which is also in the category of working children), can be termed as neglected children.

The growing phenomenon of 'Street children' is drawing public attention worldwide. Unlike the problem of 'neglected children' in India, as understood under the law, the identity of street children has been more clearly focused upon by the UNICEF. Consequently, the NGOs and social workers worldwide, including India, have accepted and targeted them for their activities. The UNICEF documents describe street children as those who work in the streets of urban areas. They have been categorized as:

1. Children on the street in regular contact with their families;
2. Children on the street who treat the street as their place of shelter and livelihood, having occasional contacts with their families; and
3. Children living on the street, completely on their own with practically no contact with the family.

As a group, street children are not considered identical to (i) working children (although some of them may be living on the streets), (ii) destitute and abandoned children, who may spend sometime on the streets and (iii) children who live with their families on the street pavements, having characteristics similar to those of the street children. Street children, as a separate category of the street and working children, may be easily identified and spotted in the form of individuals and groups on the streets, market places, commercial centers, railway stations, bus stations, parks and public places, tourist and entertainment centers - *having the common problems of street existence.*

Most of these categories of children, variedly called abandoned, exploited, abused, neglected, street and working children, child labour, etc., may ultimately be covered in the overall population of neglected juveniles or neglected children in order to find a comprehensive legal and functional target group. Such a clarification can also help to delineate the respective responsibilities and the roles to be played by the state agencies, various segments of the juvenile justice system and the non-governmental agencies for the identification, care, protection, rehabilitation and over-all well being of these disadvantaged groups.

Conceptual clarity and a functional definition is also helpful to the Policy planners, administrators, social workers and nongovernmental organizations (NGOs), academicians and research workers in performing their tasks. Above all, a focused legal and conceptual definition of neglected children can provide all these functionaries the much needed impetus which has been wanting since the enactment of the JJ Act.

J.J. Act, the Blue-print for Juvenile Justice:

While this Act may not resolve all the problems relating to the juveniles in difficult circumstances, it is, nevertheless, a sincere attempt to prepare "a blue-print for corrective action underlying the approach to the erstwhile Children's Act, bringing it in line with the principles of fair, equitable and just treatment of neglected or delinquent juveniles." Besides law enforcement, it also attempts to mobilize human and material resources in the public and voluntary sectors. It provides a differential approach towards the neglected and the delinquent 'juvenile, defines the role of the family and the community, proposes "diverse programs such- as adoption, foster-care, sponsorship, etc., and attempts to inter-link and coordinate the efforts made by the Government and the NGOS,"

Cognizance of neglected child under the Law

Under the law, cognizance of a neglected child can be taken by a police officer or by any other person or organization authorized for the purpose, including social workers and voluntary organizations. There is a conscious attempt to reduce the 'police and prison contact' of the juvenile to the minimum. The lawmakers intended the NGOs and social workers to intervene and participate effectively in the task of overall identification, care, protection, treatment, development and rehabilitation of the neglected children. Whereas the major part of this work is being done by NGOs, the awareness and worth of the role meant to be played by them, within the legal framework, is not there.

Fit Person and Fit Institution

The JJ Act also defines the terms "fit person" or "fit institution" as, any person or institution (not a police station or jail) found fit by the competent authority to receive and take care of a juvenile entrusted to his or its case and protection on terms and conditions specified by the competent authority (The 'competent authority' being a Juvenile Justice Board in respect of the neglected juvenile and juvenile Court in respect of the delinquent juvenile). Neglected and delinquent juveniles can also be placed under the care and protection of any "parent, guardian or other fit person or fit institution" for being properly looked after.

Need for a Differential Approach

On account of his involvement with crime, the formal system of (police, court and correctional institutions cannot be completely eliminated in case of the delinquent child. However, it is quite possible to handle the problem of the neglected child through the informal system of social control of the family and the community. It is possible for the social workers and NGOs to look after neglected children on their own with help and support from the governmental agencies within the given infrastructure.

The Legal Infrastructure for Neglected Children

The JJ Act lists four types of institutions; viz., Juvenile Homes, Observation Homes, Special Schools and After Care Institutions. We are primarily concerned with the Observation Homes and the Juvenile Homes, which relate to the care and protection of the neglected Juveniles, as against Special Homes and After care institutions, which are meant for the delinquent juveniles - although neglected children may also be kept in an After Care Institution. Observation Homes are for the temporary reception of the juveniles, both neglected and

delinquent, during the pendency of any enquiry regarding them under the Act, The total capacity of these institutions under the JJ Act is extremely limited in the country, being able to later to only 31480 boys and 6625 girls. In Assam and Manipur, voluntary organizations (25 & 2 respectively) have been recognized as Juvenile Homes.

Section 9 defines a Juvenile Home as "an institution established or certified by the State Govt. The State Government may either establish and maintain such juvenile homes for the reception of the juveniles or may certify any institution as a fit institution for such reception, Through the juvenile home, the neglected child is provided with "accommodation, maintenance and facilities for education, vocational training and rehabilitation." It also facilitates "the development of his character and abilities to give him necessary training for protecting himself against moral danger or exploitation." The intended function of a Juvenile home is primarily preventive in character as against the special schools for delinquents which are reformative.

Legal, Procedure for Action in Respect of Neglected Juveniles

- (1) If any police officer, or any other person or organization authorized by the State Government, is of the opinion that a child is apparently a neglected juvenile, such police officer or other person or organization may take charge of that person for bringing him before the Board.
- (2) When information is given to an officer-in-charge of a police station about any neglected juvenile, found within the limits of such station, he shall enter in a book (Daily Diary), to be kept for the purpose, the substance of such information and take such action thereon as he deems fit and if such officer does not propose to take charge of the juvenile, he shall forward a copy of the entry made to the Board.
- (3) Every juvenile thus taken charge of is brought before the Board without any loss of time, within a period of twenty-four hours of such charge taken, excluding the time necessary for the journey, from the place where the juvenile had been taken charge of.
- (4) Every juvenile taken charge of, unless he is kept with his parent or guardian, is to be sent to an Observation Home (but not to a police station or jail) until he is brought before a Board.

The above makes it clear that a neglected child can be dealt with by any person or organization authorized by the State besides the Police Officer, Unfortunately, however, in practice, neglected children are neither picked up nor produced before a Juvenile Board by individual social workers nor NGOS. Purely for the welfare of and in the interest of the child, the law enjoins the handling and interaction of the child mostly with the family or social workers and least with the police. It also sets out legal and moral obligation upon the State and NGOs to take cognizance of neglected children and expects them to take their charge, at least in order to get an enquiry conducted by the Board regarding the circumstances of negligence.

In respect of the neglected juvenile having parents, a special procedure has been laid down (Section 14). According to it, the police officer or the authorized person or the organization is expected to make a report to the Board for initiating an enquiry regarding the juvenile. The Board, in turn, is duty-bound to call upon the

parent or the guardian of the juvenile to show cause why the child should not be dealt with as a neglected juvenile and be removed from the custody of the parent or the guardian and sent to an Observation Home or a place of safety.

Commencing with the examination of the Police Officer/authorized person or NGOs, who produced the juvenile or made the report, the law (Section 15) provides for statutory enquiry by the Juvenile Board regarding neglected children. Once satisfied on the basis of enquiry that a child is a neglected juvenile, the Board may direct the transfer of the neglected child to the juvenile home until such time he ceases to be a juvenile. However, during the pendency of the statutory enquiry, the juvenile shall ordinarily be sent to an Observation Home or a place of safety unless kept with his parent or guardian. The parent or guardian may be considered to be *fit person* by the Board when capable of exercising proper care and control over the juvenile.

The Board can place the juvenile under the care of parents or guardian or any other fit person who is supposed to execute a bond, with or without surety, to be responsible for the good behaviour and well being of the juvenile, On the breach of any condition imposed in respect of the child's custody, the Board may always transfer the juvenile to a Juvenile Home. In respect of an uncontrollable juvenile (Section 17), i.e., a juvenile on whom a parent or guardian are unable to exercise proper care and protection, the Board is empowered to send him to a Juvenile Home, Observation Home or to any other place of safety.

Circumstances to be taken into consideration by the Juvenile Justice Board and the Juvenile Court (Section 33)

Under the law, the following circumstances are required to be considered:

- (a) age of the juvenile;
- (b) state of physical and mental health of the juvenile;
- (c) circumstances in which the juvenile was and is living;
- (d) reports made by the Probation Officer;
- (e) religious persuasion of the juvenile;
- (f) such other circumstances as may, in the opinion of the competent authority, require to be taken into consideration in the interest of the welfare of the juvenile.

The above mentioned conditions apply in respect of both neglected and delinquent juveniles.

Presumption and Determination of Age of the Juvenile (Section 32)

The competent authority (Juvenile Court or Juvenile Justice Board) is expected to make due enquiry regarding the age to determine whether a person brought before it is a juvenile or not.

With this object, the authority is expected collect evidence. However, the law provides that *any order of the competent authority does not become invalid merely because of a subsequent proof on the consideration of age*, i.e., a person is not found to be a juvenile. Similarly, certain discretion is given to the police officer (Sheela Bhalla Vs. Thakur Bhagwan Das, 1965 (2) Cr. L.J. 407; AIR 1965 Pun. 384) both under the Children's Act as well Juvenile Justice Act. It is the

conscience of the police officer which is to be satisfied "that the child is a neglected child and needs protection."

Perception of the NGOs

From the experience of social workers and NGOs working in the field, particularly with street and working children and destitutes, hundreds of stories are afloat regarding atrocities by the police on the neglected children under the present juvenile justice system. For an average NGO or social worker, the police, Juvenile Home, Observation Home and the After care, institutions, created under the children's Act or the Juvenile Justice Act, all operate Against the interest of the children. Instances are cited where the neglected, street and working children, attempting to eke out a livelihood for themselves and there families, are 'arrested' and placed in custody by the police.

It is almost universally believed that the, Juvenile Homes, Observation Homes and other governmental institutions are nothing more than a form of legal custody, more in the nature of lock ups and prisons, These institutions are also believed to cause undue, often inhuman, harassments to these helpless youngsters, The legal process of the so-called juvenile justice administration places these neglected children alongside the delinquents and hardened criminals in police stations and homes. Ultimately, they end up becoming criminals.

Apparently, the spirit behind the so-called blue *print of Juvenile justice* is missing in its implementation. The human and material resources of the individuals and NGOs, working in the field, have not been channelized for optimum results. Numerous social workers and agencies are doing a commendable job albeit without proper linkages or coordination, working for their own identified target groups like street and working children, child labour, children under especially difficult conditions, etc., most of which overlap each other.

There, is a wide gap between the components of the Juvenile Justice system, namely, the Police, Juvenile Board, the Court and the Homes on the one hand, and the JJ system, social workers and organizations on the other. Since no serious attempt has been made to enforce the provisions of the law to secure the services of social workers and NGOs for the purpose of juvenile justice, the hiatus has been widening. The impasse has reached such dimensions that the very purpose of the JJ Act is being questioned due to the almost non- application of the enshrined objects, namely, "care, protection, treatment, development and rehabilitation of neglected children", by the social workers and NGOs.

As laid down in the Act, bridging this gap is possible through development of "appropriate linkages and coordination between the formal system of juvenile justice, voluntary agencies and workers engaged in the welfare of the neglected and the socially maladjusted children". It is also to be appreciated that the Act provides for *fit person and fit institution*, which means any person or institution (not being the police station or a jail) found fit to receive and take care of juveniles entrusted to his/its care and protection on the terms and conditions specified by the competent authority.

Police And Neglected Children

The problem arises when the police decides to act under the provisions of the JJ Act. Under deal conditions, the police officers are told that prevention of crime is one of their basic duties and there is no better way than to prevent the neglected, misguided children from growing into hardened criminals. The policeman on the beat is left to identify the neglected juveniles found n situations of social maladjustment, neglect and delinquency. Policeman on duty in red light areas, shopping centers, places of amusement and entertainment, railway stations, bus stations, shops, dhabas and road crossings, attempt to identify neglected juvenile and take actions against them. This action includes a narration in the Daily Diary of the police Station, report to the police control room and the missing persons squad in respect of the missing, search for parents, medical check up and, ultimately production before the Juvenile Welfare Board within 24 hours. The legal definition of the neglected juvenile being fairly wide in its scope, and the official pressure to take charge of such children, leads the policeman on the beat to act, Such action by the Police sets a legal process in motion wherein a neglected child almost becomes the victim of the juvenile justice system which, under the best of conditions, is considered mechanical and prone to be unjust.

Juveniles Victimized and/or Caused to Beg

A police officer is supposed to act when he finds any person:

- (a) "having actual charge of or control over the juvenile, assaults, abandons, exposes or willfully neglects the juveniles or causes or procures him to be assaulted, abandoned, exposed or neglected in any manner likely to cause such juvenile unnecessary mental or physical suffering (Sec. 41);
- (b) gives the juvenile intoxicating liquor or narcotic drug and psychotropic substance (Sec. 43);
- (c) ostensibly procures him for the purpose of employment or withholds his earnings or uses his earnings for his own purpose (See. 44)".

Further, when it comes to the notice of a police officer that any person has employed or is using a juvenile for the purpose of begging or causes him to beg, he may register a case u/s 42 of the Juvenile Justice Act and arrest the offender acting u/s 436 of Cr. P. C. He may take the juvenile into custody and send him to an Observation Home as a neglected juvenile.

It needs to be appreciated that the above mentioned provisions of law are extremely essential to act in the interest of the neglected juveniles and to give them protection against abuse, exploitation and to prevent their falling into the organized rackets of drug traffickers and gangsters. For proper care and protection of the neglected juveniles, there is need for perfect coordination and understanding amongst the three segments of the Juvenile Justice system, namely, Police Board/Court and Homes and between these segments and the social workers and NGOs.

Need to Define the Target Groups

The overall scenario does reflect a growing awareness of this problem. Governmental and voluntary organizations, spirited individuals and social workers are Contributing towards welfare of the children under difficult circumstances. There are different names for the different target groups being focused upon by different agencies and organizations. The governmental polices and programs for these children are based on demands from different

organizations and agencies - the group having drawn the major attention being the street and working children. The so-called neglected children', under the legal definition of 'neglected juveniles', are being partly looked after by agencies under the Juvenile Justice system while the social workers and NGOs are almost out of the system. The question being asked here is: Whether all these target groups ultimately fall in the broad category of *neglected children* - towards whom the State and the society have moral and legal obligations to fulfill?

RESCUE OPERATION FOR THE NEGLECTED CHILDREN IN THE RED LIGHT AREA OF G.B. ROAD, DELHI: THE UNANSWERED QUESTIONS

Amod K. Kanth*

A Delhi based advocate appeared before the Commissioner, Delhi Police, in March, 1990, and requested him to initiate legal action under the Juvenile Justice Act, 1986, to rescue the neglected juveniles kept in the red light area of G.B. Road. He referred to the Criminal Writ Petition No. 421/1989, pending with the Supreme Court of India, in which it had been urged that the children of the prostitutes and other children in brothels should be brought to the State Protective Homes for care and protection and for the provision of facilities to grow up as good citizens. The Supreme Court had set up a committee to enquire into the living conditions of the children of the prostitutes and also issued notices to all State and Union Territory Governments to find out what action, if any, had been taken in respect of such children by them.

Reference was made to Section 2(L) of the Juvenile Justice Act which defines the term 'neglected juvenile', i.e., a girl below the age of 18 years and a boy below the age of 16 years, as those who may be found begging, without having any home or settled place or abode, or without any ostensible means of subsistence, with parents or guardians unable to exercise control over them'. A neglected juvenile is also defined as a child "who lives in a brothel with a prostitute or frequently goes to any place used for the purpose of prostitution, or associates with a prostitute or any other person who leads an immoral, drunken or depraved life, or who is being or is likely to be abused or exploited for immoral and illegal purposes and for unconscionable gain."

The request made by the advocate (Vishaljeet Vs. Govt. of India) invoked the legal provisions under which the Police was under legal obligation to take charge of the neglected juveniles in the red light area and produce them before the Juvenile Welfare Board for statutory inquiry, J/s 15 of the Act. According to law, "a police officer, a person or an organisation" authorised by the State Govt. may take charge of such children and produce them before the court. The Board is also legally bound to make enquiries regarding these children and may, meanwhile, send them to the Observation Home or place them in the custody of the parent or guardian or any other 'fit person' or 'fit institution'.

In this case, the Supreme Court later ruled that the children of the red light area will be considered to be neglected children even though they may be living with their parents or guardians. Besides the law, which makes an exception in case of such children, non-governmental organisations (NGOs) also prefer to categorize these children in a rare group of children under especially difficult circumstances".

In pursuance of the request made to the Commissioner of Police and under the provisions of law, the Crime Branch of the Delhi Police decided to act. It first

conducted a survey of the notorious red light area, situated in the congested walled city of Delhi, known as G.B. Road or Swami Shradha Nand Marg. The survey revealed that hundreds of such 'neglected juveniles' were living in utterly deprived and immoral conditions in the red light area. These children were suspected to have been kidnapped, forcibly brought there or drifted to the vice dens on account of poverty. They were found being abused and exploited for immoral and illegal purposes and for unconscionable gains.

The problem was also discussed with the Chairman, Juvenile Justice Board, and preparations made for a large scale 'rescue operation'. The rescue team comprised nine Inspectors, 42 lady Police Officers and men under the supervision of an Asstt. Commissioners of Police and a lawyer. The team also included some social workers who were already engaged in the welfare of the prostitutes and their children and other neglected juveniles. Due to prior and open preparations, some members of the media, including a team of the popular video magazine, News Track, also joined the operation.

On 15th March, 1990, at about 8.00 a.m., the team, which had the initiative of the social workers, visited and checked all the Kothas of G.B. Road and found hundreds of children kept there. Most of them were found asleep even after 8.00 a.m. in the morning since they had obviously participated in the previous night's life. The police and the social workers took charge of 111 children, including 79 girls and 33 boys, who appeared to be juveniles. As per prior arrangements, preparations were made to produce these children before the Juvenile Justice Board. For the purpose of identification, their names, parentages and addresses were written and their statements were also briefly recorded in the presence of social workers.

Since a majority of these children were also suspected to have been sexually assaulted and abused (some of them might have already contacted sexually transmitted diseases or AIDS), an official request was also made to the Medical Superintendent of the local J.P.N. Hospital to examine these children and ascertain (i) their age (ii) whether they had been sexually abused or assaulted and (iii) if they suffered from STD or AIDS. On account of the large number of children, the Medical Superintendent expressed his inability to arrange for medical examination on the same day and asked the Crime Branch to send them in batches. (dates fixed) Board constituted.

Conducted by the Crime Branch of Delhi Police, the 'Rescue Operation' met with stiff resistance from the prostitutes, pimps, procurers and their supporters. While giving it wide coverage, the media sharply projected the idea that the police had acted in haste and against the interests of the mothers of the children. The prostitutes made an emotional appeal that an attempt was made by the police to snatch their children away from them. The Police, On their part, claimed that they had taken due care, operating with Lady Police Officers, social workers and also permitting anyone claiming to be parent or guardian to meet the children.

In an extremely emotionally charged atmosphere, these children were produced before the Chairman, Juvenile Justice Board, who, on being satisfied that they were neglected juveniles, remanded them to the Observation Home till 30th

March, 1990. A request for the medical examination and the statutory enquiry regarding the circumstances and living conditions of these children were also positively considered by the Board.

The intense debates in the media and the demonstrations held by the inmates of the red light area, however, did not permit the legal course to be followed and to be brought to its logical conclusion, i.e., finding the truth about the origins and real living conditions of these neglected juveniles. Neither the statutory enquiry could be conducted nor did the opportunity avail of to subject these children to medical examination in order to identify their ages and to detect and treat the cases of sexual abuse, STD and AIDS infections.

The children, therefore, had to be hastily handed over to the pimps and prostitutes of the red light area, who claimed to be their guardians and parents. The only enquiry which remained on record was the initial statement of the children taken by the Lady Police Officers in the presence of social workers. This revealed that only in 17 cases out of 111, the parental claims were supported by the children in their statements. It is not known until date how and under what circumstances the remaining 94 children were brought to the red light area.

The Basic Issues

The Rescue Operation to remove these neglected children, i.e., the children of the prostitutes and others, who were apparently being groomed for becoming pimps, prostitutes or procurers, in the red light area, raises certain fundamental questions which are as follows:

1. Whether these children fall in the category of neglected juveniles? Yes.
2. Whether this category of neglected juveniles may be considered to be children under "especially difficult circumstances" and required to be rescued since they were under grave physical and mental danger?
3. Whether the State, social workers and the NGOs have any legal or moral responsibility in respect of these children?
4. Do we allow these children to remain under the depraved conditions of the brothel houses since the Juvenile Homes are not considered to be safe and healthy?

These issues were raised in another Supreme Court Writ Petition (Civil) No. 824 of 1989 (Gaurav Jain Vs. Union of India and others). The 'News Track' which happened to accompany the rescue team, had video filmed the operation and taken the photographs of the children. Although, they were fully conscious of the social service intent of the police in this exercise, at some stage, they decided to sensationalise and encash upon the event. The Delhi Police decided to stop the 'News Track' from publishing the photographs and thus disclosing the identity of these children which, u/s 36 of the Juvenile Justice Act, is strictly prohibited.

A petition was also filed with the Chairman, Central Board of Film Certification, against the publisher of the 'News Track', requesting the Board to enforce the legal provision prohibiting the disclosure of name, address and other particulars

that could "lead to the identification of the juvenile", and publication of "any picture of such juvenile."

The Board of Film Certification (The Censor Board) acceded to the request of the enforcement agency in the larger interest of the neglected juveniles. This was, however, challenged by the 'News Track' in the Supreme Court of India and the matter was taken up with reference to the case, Gaurav Jain Vs. Union of India, since the Supreme Court had already appointed a committee to go into the problems relating to such children. The Convenor of this Committee also filed an application to the Court with similar request. As a result, ultimately, the court ordered that neither the "face nor the body nor any limb of the aforesaid persons shall be shown in the news media/magazine and any other particular which may lead to establish their identity will be disclosed therein."

The issue of the neglected children of the red light area being picked up by the police was also pondered over by the Delhi High Court (Criminal Writ Petition No. 146/90) on a petition filed by the Lawyers Forum for Civil Liberties and others. Justices Malik Sharifudin and M.L. Chawla ruled, "Without going into the maintainability of the writ petition, we may point out that the Juvenile Justice Act has evolved a scheme for dealing with neglected children. The idea is to rehabilitate such children including those neglected by their parents. The scheme of the Act will go into all aspects of the matter and find out if the child is really neglected and how it shall deal with them. The action taken in the present case is in accordance with the procedure."

During litigation in the Supreme Court of India and the Delhi High Court, the correctness and the legality of the operation was subjected to thorough scrutiny. It was established that the State as well as other organisations duly authorised are responsible for the care, protection, treatment, development and rehabilitation of such children and, the parents and guardians of the children in red light area were very much within the purview of Section 2(L)(IV and V) of the Juvenile Justice Act. The erroneous conclusion drawn that these children were not juveniles could not be established since they were neither subjected to the medical examination in the local hospital (as proposed), nor the statutory enquiry conducted u/s 15 of the Juvenile Justice Act.

It has been held (Sheela Bhalla Vs. Thakur Bhagwan Das, 1965(2), Cr.L.J. 407 AIR 1965 Pun 384) that "it is the conscience of the Police Officer which is to be satisfied". In the said rescue operation, the Lady Police Officers, who were accompanied by social workers and a lawyer, were apparently satisfied. The age of the children in the red light area could not be determined merely on "facial examination" without conducting the medical examination since facial examination could be deceptive (Gopinath Ghosh Vs. State of West Bengal, 1984 Cr.L.J. 168) to determine the age. The evidence was supposed to be properly recorded. Under any circumstances, the Juvenile Justice Board was supposed to make enquiries. As required u/s 33 of the Juvenile Justice Act, the circumstances relating to (a) age of the juvenile, (b) the state of physical and mental health and (c) circumstances in which the juvenile was living in the (brothel houses or in the company of the pimps and prostitutes also needed to be gone into.

Unanswered Legal and Moral Issues

As a result of the rescue operation of the neglected children in the red light area of Delhi and the consequent legal battle, the law is well established. It is confirmed that the children in the red light areas are neglected children under especially difficult situations. The State and the 'individuals and organizations duly authorised' by the State (NGOs) have a special responsibility towards the 'care, protection, treatment, development and rehabilitation of such children. Unlike many other categories of neglected children, these children are decidedly under grave threat to their lives, physical and mental health.

The Juvenile Justice Board of Delhi did not appreciate the action taken by the Delhi Police. By and large, the media and the social workers also did not approve of the police initiative. It needs to be found out whether this provision of the law will remain a dead letter as far as the three segments of the juvenile justice system, i.e., the police, the Board and the Homes, are concerned. If it is not police, who, then among the NGOs and the social workers will take the initiative to rescue, protect and rehabilitate these children?