CHAPTER VII

SPECIAL CARE OF HANDICAPPED CHILD

Many of the rights granted to the normal child are meaningless for a child who on account of some handicap physical, mental or social, cannot utilise those rights. Right to equality becomes a theoretical concept for him as he is unequal either in his physique, mental efficiency or socio-economic status. His human needs are common but his needs arising out of his abnormality or handicap are different and vary with the nature of deficiency. It is to meet justice to such child that principle Five of the Declaration directs that

'The child, who is physically, mentally or socially handicapped, shall be given the special treatment, education and care required by his particular condition'.

The National Policy for children commits to meet the special needs of three categories of handicapped children visualised under the Declaration, through the following measures:

(a) Facilities shall be provided for special treatment, education, rehabilitation and care of children who are physically handicapped, emotionally disturbed or mentally retarded.\(^1\)

(b) Children who are socially handicapped, who have become delinquent or have been forced to take to begging or are otherwise in distress, shall be provided facilities for education, training and rehabilitation and will be helped to become useful citizens.\(^2\)

Before we discuss the special legal protection available to all categories of handicapped children, certain preliminary observations must be made. First, there is no law exclusively dealing with the handicapped children. Certain laws which cover certain specific aspect of handicap e.g. the Lunacy Act, 1912, The Lepers Act, 1898 etc. are common to the adult and the child handicaps. There are certain laws of general application which reflect upon some aspect of handicap but are not much relevant.

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1. Policy and Measures, 3(xi).
2. Emphasis writer's; Policy and Measures, 3(xii).
e.g. benefits made available to a disabled person under the Workmen's Compensation Act, 1923 or the Employees State Insurance Act, 1948 etc. Then there are the general laws of health, labour and traffic etc. which influence the prevention, cure or rehabilitation of the handicaps, e.g. the Drugs Act, the Motor Vehicles Act, Mines Act, the Plantations Labour Act, etc.; but these laws hardly serve the purpose of special care to the handicapped child, many of whose needs are in some respect different from those of a handicapped adult.

In case of children the emphasis should be more on the prevention of the causes of the handicap, the early detection of the handicap and its early cure though the rehabilitative aspect too cannot be ignored. But in case of adults the rehabilitative aspect comparatively gains more importance.

Secondly, there being no law exhaustively providing a legal protection to the handicapped persons, there exists a confusion of concepts. For instance, there is no uniformly accepted definition of the different terms employed to describe a particular category of handicapped person. The term 'handicapped person' is itself viable to different meanings and so is the term 'socially handicapped'.

Thirdly, no demarcation is made between the rights of a disabled child and an adult disabled either under the Declaration on the Rights of Mentally Retarded Persons, 1971 or the Declaration on the Rights of Disabled Persons. The Declaration of the Rights of the Child 1959, on the other hand, under principle Five refers to the special needs of the handicapped child in three areas viz. treatment, education and care. The National Policy on Children adds 'rehabilitation' to this list. Principle Five however, does not specifically say about the 'prevention' of the disabilities and banks upon its cures. The prevention aspect is covered under Principle Four of the Rights of the Child, which deals with the right to social security in general and nutrition and medical care of the child in particular.

Physically And Mentally Handicapped Children

The term 'handicapped' when used singly is understood to mean only physically handicapped. In its common use the term physically handicapped denotes only those who are orthopaedically handicapped. 'Disabled' is the term employed to denote all categories of physically and mentally handicapped children. Under the Declaration on the Rights of the Disabled person, a 'disabled person' means:

any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of a deficiency, either congenital or not in his or her physical or mental capabilities (5).

The major types of physical handicaps are the blind, the deaf, the dumb, the orthopaedically handicapped. Others are those partially sighted, partially deaf, children considered to have speech or language defects, children considered to be severely mentally impaired, deficient or retarded. Children with specific types of learning disabilities, children who have behavioural problems, maladjusted and psychotic children. Then there are children with various combinations of such conditions.

5. Resolution No.3447(XXX) of the 9th December, 1975.
6. In reference to award of scholarship to handicapped, a 'Blind' has been defined as the person who suffers from total lack of sight or whose visual acuity does not exceed 6/60 or 20/200 (Swellon) in the better eye with correcting lenses or whose limitation of the field of vision, sub-standing an angle of 20 degree or worse.
7. 'Deaf' is defined as the one whose sense of hearing is non-functional for the ordinary purposes of life or whose loss of hearing at 70 decibel or above at 500,1000 or 2000 frequencies will make residual hearing non-functional.
8. 'Orthopaedically handicapped' is defined as one who has physical defect or deformity which causes an interference with the normal functioning of the bones, muscles and joints.
Here we shall enquire into the legislative and/or any other protection available to the physically and mentally handicapped children in India with special reference to their education, training and treatment and also the preventive aspects of disability.

(A) Education and Training of the Disabled Child

There is no separate law for the education and training of the disabled child. The compulsory education Acts, exempt a child from attending the school, who suffers from such a physical or mental defect which prevents him from attendance. But these Acts do not provide for any special facility for the education of such children. The constitutional directive of universal, free and compulsory education for all children is equally applicable to the handicapped children. The State has also introduced a scheme of three percent reservation in educational institutions for the physically handicapped children.

The requirement of the disabled children is some special aid compensating their physical defect and some extra facilities by way of special equipment and staff. To get this special care is their right and a law should be enacted to fill the gap in the field of compulsory education of the physically handicapped children.

It is submitted that the thrust of the U.N. Declaration of the Rights of the Disabled persons, is now 'full participation and equality', therefore, in the matter of education and training the Legislature should as far as possible adopt a policy of integrating such children with the normal children and make their segregation an exception. Class inter-action in the impressionable years, promotes understanding and appreciation of the assets and limitations, both of the handicapped and the non-handicapped children. Another distinct advantage is that the child remains

10. Article 24 of the Constitution of India.
11. Right I, Ibid. The Phrase was the theme of the International Year of Disabled Persons, 1981.
with his family and is saved from the pernicious consequences arising from separation from his family in the crucial years of his childhood.

A Working Group set up by the Ministry of Education on 'Educating the Disabled Child' also recommended the integrated system of school education as the most important measure through which educational opportunities should be given to a large number of handicapped children and specially in the rural area. In pursuance of this recommendation the Central Government has revised its Scheme of Integrated Education.

To assist the handicapped in pursuing their education and technical/vocational training, the State Governments are operating a scheme of scholarship by funds provided by the Government of India. Special programmes of education, training and rehabilitation of the four categories of the disabled persons, namely the blind, the deaf, the orthopaedically handicapped and the mentally retarded are being implemented by the government at Union and State levels. But the existing services offer facilities to only four percent of the physically disabled, two percent of the blind, two percent of the deaf and barely 0.2 percent of the mentally retarded.

13. Now 100 percent assistance is available to the State governments and the Union Territories for the implementation of the Scheme, Ibid.
(B) Special Treatment of the Disabled Child

A child suffering impairment has a whole life in front of him. Any protection provided for his treatment and cure therefore, is more valued than his later rehabilitation. By curing and normalising a disabled child, the society and the State are benefitted equally. Treatment of a few types of handicaps viz. leprosy and lunacy is partially provided by law, other categories of impairments and disabilities have no such legal coverage. The Lepers Act, 1898 provides for the segregation and medical treatment of 'pauper lepers' in lepers asylums. Thus the Act does not cover all the lepers but only pauper lepers. The other provisions of the Act reveal that the main aim of the Act is to segregate the lepers from the public.

The only enactment pertaining to the mentally handicapped persons is the Lunacy Act, 1912. The Act aims at the reception, care and treatment of lunatics. But it is also of partial application. The Act provides that no person other than a criminal lunatic or a lunatic so found by judicial inquisition shall be received or detained in an asylum. The asylum usually is a mental hospital for lunatics. A perusal of the Act gives the impression that the Act caters to the adult lepers only, as the insistence is on the husband or the wife of the lunatic to move the court for a reception order. It is hardly helpful to the mentally retarded children.

16. A pauper leper has been defined to mean a leper who publicly solicits alms or lives on charity or has no ostensible means of subsistence, Section 2(2) Lepers Act, 1898.
17. Section 3 and 8, Ibid.
18. Section 4, Lunacy Act, 1912.
19. Section 3(1) Ibid.
20. Section 6, Ibid.
Both these enactments serve no purpose of the child handicapped. Treatment appears to be the secondary aim, the main object being to protect the public from such lunatics.

A new Bill viz. The Mental Health Bill 1981 which has been introduced in the Parliament to replace the Lunacy Act, 1912, also does not affect any major changes in the old policy except a change over to a civilized terminology and gives no special relief to the mentally retarded children.

The Ear Drums and Ear Bones (Authority for use for Therapeutic purposes) Act, 1982 and the Eye (Authority for use for Therapeutic purposes) Act, 1982 enacted to provide relief to the deaf and the blind respectively by legalizing extraction of the ear bones or ear drums or the eyes of a dead person to restore ability to hear to a deaf or eye sight to a blind, are applicable to the Union Territory of Delhi only and thus not of much help to the big number of handicapped children of these categories, in the country.

It is now well within ability to eradicate leprosy, early childhood mental retardation and certain other impairments, but early diagnosis and treatment is crucial. What is needed is a proper legislative frame work, covering all types of handicaps and providing facilities for their treatment, at the State cost at least for those who cannot afford it.

(C) Care and Rehabilitation of the Disabled Child

Physical and mental impairments do not necessarily mean that such persons cannot become active members of the society. Timely curative and rehabilitative measures can reduce the incidence of handicaps.

The Union Government has established four National Institutes for the handicapped i.e. one each for the visually handicapped, the hearing handicapped, the Orthopaedically handicapped

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and the mentally retarded, for providing research oriented services in their respective fields at the national level. Similarly, there are a few rehabilitation units with hospital for meeting rehabilitation needs of disabled children.

For sponsoring research in the rehabilitation of the handicapped, the Union Ministry of Social Welfare has initiated a scheme under which 100 percent grant is given to recognised institutes and voluntary organisations, which are engaged in research in this field. A new scheme of setting up of 'Rehabilitation Centres' for physically handicapped was approved by the Planning Commission during 1982-83. Under this scheme, comprehensive and integrated services for the physically handicapped would be possible at the district and PHC level, for the first time enabling the services to reach the rural masses.

Modern technology has made possible reduction of the disability of the handicapped through the use of special aids and appliances. To provide the benefits of aids and appliances to individual handicapped, the Union Ministry of Social Welfare has launched a scheme for providing financial assistance to individuals for purchasing such aids and appliances and to the voluntary organisations for taking up the projects/programmes for education and training of the physically handicapped.

These measures of financial assistance, it is submitted, not being within a legal frame work, lack full coverage of all the handicapped children and are selective in their implementation. Further, all aids and appliances are not made available through the assistance programmes. To secure such assistance being uniformly available to all physically handicapped children, it is necessary that the Parliament enacts a Social Security Act, covering all such contingencies. Such a legislation is long overdue. It would implement the constitutional directive contained under Article 41, which reads:

23. Ibid. p.49.
24. Ibid. p.50, PHC, denotes Primary Health Centres.
25. Ibid. p.58.
The State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and in the other cases of undeserved want (26).

The Ganga Saran Sinha Committee while suggesting a system of insurance for the disabled persons for those who can afford to pay the required minimum, observed that gradually the State may consider providing social assistance to the handicapped belonging to the low income economic strata.

As the ultimate aim of special education and training to the physically handicapped is his rehabilitation, such education and training should be vocational and job-oriented. It should better be linked with the employment available in the open industry and other sectors in a particular area where such handicapped is placed.

Rehabilitation of the handicapped child has to be conceived as a total process, the culmination of which is the eventual social and economic integration of such child into his community.

At present there is a three percent reservation in all public employments for the physically handicapped persons and special Employment Exchanges have been established for them. A similar reservation should be introduced in the voluntary sector it is submitted.

(D) Major Causes and Prevention of Disability

Can disability be prevented? If so, what role the law can play in preventing it. It is now established that certain types of impairments, disabilities and handicaps may be prevented by preventive measures, early detection and cure. For instance,

26. Emphasis writer's
28. Ibid. p. 714.
29. ANNUAL REPORT 1982-83, Govt. of India, Ministry of Social Welfare, New Delhi, p.50.
Polioc, blindness, small pox, wooping cough etc. may well be prevented by immunization and proper care during and after pregnancy. Adequate nutrition and medi-care, psychiatric services may prevent and cure many disabilities if detected early. Timely curative and rehabilitative measures can reduce the incidence of handicaps.

To promote effective measures for prevention, early detection and cure of certain disabilities law can play its part. To this end the major causes of disability shall have to be hit at. The major causes of disability among children have been identified by the UNICEF. We shall discuss such causes in the context of the attempts made at law to counter them.

(i) Inadequate nutrition of mothers and children including vitamin deficiencies

It has been pointed out that we have no law ensuring adequate supply of nutritious foods and vitamins to the children in their formative years. According to an estimate, about 2.5 million children in India are threatened by blindness in early childhood on account of lack of vitamin 'A'. About 14 thousand go blind every year because of this deficiency. About 10 to 15 percent of all children suffer from night blindness.

(ii) Abnormal condition before and after birth, like pre-natal damage, genetic factors and damage at birth

It is now established that if the pregnant woman is taken care of adequately without the adversities of poverty, medical neglect and environmental pollution, the child would be normal. After the child is born prompt paediatric attention must be ensured so that brain damage and other disabilities can be obviated or attenuated. It is a right to be born without retardation mental

30. See, Chapter V of this Work.
or physical and the corresponding duty of the State is to take preventive, curative and corrective steps the pre-natal and post-natal stages.  

There are two laws relative to the pregnant women and the child in womb viz. The Medical Termination of Pregnancy Act, 1971 and the Maternity Benefits Act, 1961. The first Act permits the termination of a pregnancy if there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped. The later Act entitles the women employed in certain specified industrial concerns to avail leave six weeks before and six weeks after the birth of the child and also saves her from heavy work. Suggestions have been made supra to modify these provisions.

(iii) Misuse of drugs by mother during pregnancy

Misuse of drugs by mothers during pregnancy some times leads to injuries to the foetus and causes handicaps to the child, when he is born. It is submitted that the manufacture and sale of drugs injurious to the pregnant women should be strictly regulated and checked. No sale of such drugs should be allowed without the prescription of a qualified medical practitioner. Drugs injurious to pregnant women should bear such compulsory caution as 'Injurious to pregnant women'. Similarly drugs injurious to the children should bear similar cautions as 'Not for Children' or 'For Adults only' or any other suitable mark.

(iv) Infectious Diseases

Mal-nutrition leads to low vitality to fight against infection and disease. Many such vaccines and drugs have been invented which if given to the child within a defined age period immunise the child against certain infections or diseases, which often lead to an impairment in the child. The Central and the

33. Section 3(b), Medical Termination of Pregnancy Act, 1971.
34. Section 4, Maternity Benefits Act, 1961.
35. Section 4(3) Ibid.
36. See, Chapter V of this Work Under the head 'Laws Regarding to Maternal Health Nutrition and Care'.
State Vaccination Acts make vaccination compulsory only against small box. It has already been submitted\(^\text{37}\) that by a minor modification in the Vaccination Acts immunisation against Polio, T.B., Leprosy etc. should also be made universal and compulsory. Obligation should be statutorily imposed upon local authorities upto village level to take immediate steps for the control of infection and contagious diseases. The infected children should be kept away from the other children at schools, play grounds etc. School health services should be introduced and made an integral part of the Education Acts.

(v) **Accident**

Accident is usually accidental, but some time it is negligent too. It is the later aspect which may be regulated in certain cases. Accidents occur not only at roads but everywhere and of every variety. But the contingencies being innumerable it may perhaps be too much to expect the law to provide for all such cases. However, the major known causes of accidents involving the children should be secured against, to prevent and reduce impairment and disability.

In some cases law has stepped in to prescribe preventive measures. For instance the Motor Vehicles Act, 1938, regulates road traffic, prescribes the maximum limits of speed\(^\text{38}\) of vehicles while approaching a school or a play ground and erection of traffic signs on both sides of the school buildings, to bring to public notice the speed limits fixed.

The Arms Act, 1959, prohibits acquisition or possession by, or sale or transfer of arms to young persons below the age of sixteen years\(^\text{39}\). The Poisons Act, 1919, provides for the safe custody, labelling of the vessel, packages or covering in which a poison is sold or possessed for sale\(^\text{40}\). Accordingly the rules prescribe for putting the caution, label 'Poison' in red on all

\(^{37}\) See, Chapter V of this Work, under the heading 'Laws Regarding Child Health, Nutrition and Care.'

\(^{38}\) Section 71, Motor Vehicles Act, 1938.

\(^{39}\) Section 9(1)(a)(i), The Arms Act, 1959.

\(^{40}\) Section 2(f).
such containers. We need not discuss here the measures adopted under certain industrial enactments designed to improve safety in working conditions and minimise the possible hazards, as they concern more to hazardous employments and hence to adult workers.

(vi) Other Factors

Various other factors such as environmental pollution, food adulteration, lack of sanitation, are also the causes of disability which the law can interfere with. We have the Prevention of Food Adulteration Act, 1954 which prohibits the adulteration and sale of adulterated food. But for want of its proper implementation the law has failed to achieve the desired results. Recently the Government of India has formulated a Code which prohibits the advertisement, display and free distribution of samples etc. of substitutes of Baby Milk Foods, with the same end in view.

The incidence of insanitation in urban slums is the highest, as they are congested and thickly populated and then in the rural areas. The Municipalities Acts, Town Area Acts and Panchayat Acts impose obligations upon the respective local authorities to ensure proper sanitary conditions. But the poor implementation of these provisions frustrates their purpose.

The causes leading to impairment, disability and handicap cannot be entirely excluded by legal regulations, but can certainly be diminished. An integrated legislative approach shall have to be adhered for the same and a Children Code promoting basic services of adequate nutrition, immunisation, health, pre-natal and post-natal services to the mother and the child and special care for all categories of the handicapped children is the urgent need of the child.

(D) A Bill of Rights of the Disabled

Speaking at the International Rehabilitation Congress held at Manila Mr. Justice V.R. Krishna Iyer observed:

We should recognise that the handicapped too are human, that disability shall not forfeit personality and that multi-disciplinary, cross-fertilise remedial juris-prudence and therapeutic technology shall be at the service of the disabled citizenry through the establishment of a comprehensive Bill of Civil Rights and Social Security for them (42).

The Declaration of the Rights of the Child focuses on the needs of the child handicaps as a special sector of the child population. But in a wider context a disabled child is a human being entitled to the general civil rights of all human beings and also the particular civil rights to which all disabled persons should be entitled. It is in this context that a reference to the U.N. Declaration on the Rights of Mentally Retarded Persons, 1971\(^4\) and the U.N. Declaration on Rights of Disabled persons, 1975\(^4\) becomes essential.

The U.N. Declaration on the Rights of Mentally Retarded Persons, 1971 aims to develop abilities and promote integration of mentally retarded persons; grants them right to an equal status to enjoy, as far as feasible, the same rights as other human beings enjoy; right to medical care, physical therapy, and to such education; training, rehabilitation and guidance as will enable them to develop feasibility and maximum potential; right to economic security and a decent standard of living; right to live with his own family or foster parents, wherever possible; right to have a qualified guardian of his person; right to protection from exploitation, abuse and degrading treatment and a right to due process of law. Because of the severity of their handicap, wherever a mentally retarded is unable to exercise the above rights in a meaningful way or it should become necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial must conform to the proper legal safeguards and should be subject to appeal.

42. Excerpts from the Speech delivered at the International Rehabilitation Congress held at Manila in Jan. 1978.
44. Resolution 3477 (XXX) of 9th December, 1975.
The U.N. Declaration on the Rights of Disabled Persons, 1975 proclaims that all the disabled persons are entitled to the same fundamental rights as other human beings; the right to enjoy a decent life, as normal as possible; to respect for their human dignity; to the same civil and political rights as their fellow citizens; to measures enabling them to become as self-reliant as possible; to medical, psychological and functional treatment; rehabilitation and placement of services to help develop their skills; hastening their process of social integration; to economic and social security; to live with their families or foster parents and enjoy all social activities and if institutionalised, their environment and living condition shall be as normal as possible; to protection against exploitation and discrimination; to legal aid and to enjoy these rights, regardless of race, colour, sex, religion, nation and social origin.

The Constitution of India, is quite in tune with many of the rights declared in the aforesaid two documents. Some of these rights are covered under the Fundamental Rights, while the others are secured through the Directive Principles. The rest of these rights are now covered by the objectives set to realise the rights of the disabled in the National Plan of Action, prepared during the International Year of The Disabled. As a sequel to the observance of the International Year of Disabled, a Working Group was appointed by the Government of India to consider the framing of a legislation for the handicapped. The Group has since submitted its report which is under consideration of the Government. To secure the due rights of the disabled persons legislative protection should be made available to them in the proposed Children Code.


II. THE SOCIALLY HANDICAPPED CHILDREN

The phrase 'socially handicapped children' has not been legally defined so far. It is a general term covering a wide variety of children. As observed by the Committee for Preparation of a Programme for Children, Socially handicapped children are those whose social environment is not conducive to their normal growth and development. The factors that hamper their growth primarily stem from the social surroundings. Family dis-harmony and dis-organisation, extreme poverty, family conflict, neglect, absence of affection and care, uncertainty arising out of migration, vicissitudes such as earthquake, drought, death and unwholesome environment, due to bad housing, slums and presence of antisocial influences, are some of the factors, which contribute to deprive children of opportunities for normal development.

The Committee includes in the category of socially handicapped children not only children described as 'neglected' or 'in need of care and protection' e.g. the orphaned, destitute, child beggar, children of unfit or inadequate parents, victimised children, but also the 'delinquent children', the 'working children' and 'children belonging to the Scheduled castes and scheduled tribes.'

The special care and protection provided to the first category of socially handicapped children i.e. the 'neglected children' has been discussed supra under Chapter IV, 'Parental Care and Social Care' while the safeguards provided to the child labour, have been dealt with supra under Chapter VI, 'Protection against Neglect, Cruelty and Exploitation.' Here we shall proceed to enquire into the special protection provided at law to the children belonging to the


48. Ibid. p. 53.
Scheduled Castes and the Scheduled Tribes.

(A) Special Protection to the Delinquent Children

A delinquent child is defined as one who has been found to have committed an offence punishable under law. The delinquent children are said to be socially handicapped for two reasons. First, because of the undesirable social influences which predispose them to anti-social behaviour and second, because of the social handicaps which characterise their lives after they have been dealt with by agencies exercising authoritarian control such as the court and other correctional institutions.

No child is born delinquent. Though delinquency can not be explained in terms of any single cause, a large number of children who are brought before the juvenile courts as delinquents come from families suffering from poverty and disharmony. In many cases destitution is the forerunner of delinquency. In some cases delinquency is found to exist in conditions of affluence also, but such cases are rare. The causes of delinquency are also traceable to some emotional disturbances or experiences, which might have occurred in early childhood. The new philosophy of juvenile justice looks to the delinquent children not as offenders, but as social patients in early stages of the disease, which may by proper treatment and precautions be completely cured.

The modern juvenile law tries to understand each delinquent child in relation to his particular situation in life, to diagnose the causes leading to his delinquent behaviour and attempts to prescribe measures which are best suited to treat, train and rehabilitate such child as a normal child. As a physically handicapped child for his rehabilitation in life needs special types of aids and appliances, education and training to restore his normal functioning, similarly a delinquent child too needs a special type of dealing(treatment) during his trial, training during his stay at the special school and after care for his rehabilitation in life. The normal requirements of these children

viz. education, health, nutrition and recreation, family care and affection are the same as those of normal children, but they also require some additional care, treatment and training to enable them to overcome the effects of their handicaps. It is in this light that the legal provisions have to be interpreted.

The Children Acts, central and the state's, provide an altogether different set of adjudicative machinery and institutional and non-institutional measures for the delinquent children as compared to the adult offenders. Under the Children Act, 1960 and the Children Acts enacted on the pattern of this Act, a further distinction is maintained between the adjudicative machinery and institutions meant for the neglected, and the delinquent children.

Jurisdiction over delinquent children is exercised by the Children's Courts constituted under the relevant Children Act. The Magistrates of these courts, must have special knowledge of child psychology and child welfare. Besides this every Children's Court is assisted by a panel of two honorary social workers possessing the prescribed qualifications.

The rules for bail and custody during trial are different and the measures prescribed are treatment-oriented. A wide range of options is available to the Children's Court to provide a differential treatment to every child according to his specific requirements for rehabilitation. The Children Act, 1960 being considered as a model piece of legislation on the subject, its provisions relevant to the delinquent children are examined here-under:

(1) Release on bail

When any person apparently a child accused of a bailable or non-bailable offence is arrested or detained or appears or is brought before a Children's Court, such person is, notwithstanding anything contained in the Code of Criminal Procedure, 1973,

52. Section 6(3).
53. Section 5(3).
or any other law for the time being in force, to be released on bail with or without surety. In certain circumstances the Children's Court may refuse to release such child on bail viz. where such court has reasonable grounds for believing that the release is likely to bring the child into association with any reputed criminal or expose him to moral danger or that his release, would defeat the ends of justice.

Where the child is not released on bail at the stage of his arrest by the Police Officer Incharge of the Police Station or later by the Children's Court such child, instead of being kept in the police station or jail, shall be kept in an observation home or a place of safety until he can be brought before a Children's Court or for such period during the pendency of the inquiry regarding him as the case may be.

(ii) Information to parent or guardian and the Probation officer

Where a child is arrested, it is obligatory for the Officer Incharge of the Police Station concerned to give information of such arrest as soon as may be, first, to the parent or guardian of the child, if he can be found, of such arrest and direct him to be present at the Children's Court, before which the child will appear, and secondly to the Probation Officer to enable him to obtain information regarding the antecedents and family history of the child and other material circumstances likely to be of assistance to the Children's Court for the purpose of making the inquiry.

(iii) Inquiry and Measures

The inquiry procedure for the delinquent and neglected children is nearly the same, though the authorities are different. An inquiry regarding a child under the Children Act, as far as practicable, shall be held in a building or room different from that in which the ordinary sittings of civil or criminal courts

54. Section 18.
55. Sections 18(2) and 18(3).
56. Section 18(3).
57. Section 19(b).
are held or on different days or at times different from those t
which the ordinary sittings of such courts are held. No pers
on other than the parties to the inquiry or the parent or gua
do the child and those directly concerned in the inquiry includ
police officer and legal practitioners, or those allo
d, by the

tent authority, can be present during such inq
ry. If at
any stage of the inquiry it is found expedient in the interest of
the child or on grounds of decency or morality of the above
referred persons may also be ordered to withdraw or be removed.
The attendance of the child may also be dispensed with by the
court.

If on inquiry the Children's Court finds that, the child
has committed an offence, the court before ordering the measure,
has to take into consideration the age of the child, the circumst-
cances in which the child is living, the reports made by the
Probation Officer, the religious persuasion of the child and such
other circumstances as may, in the opinion of the Children's
Court ought to be taken into consideration, in the interest of the
child. The Children's Court may pass any of the following or-
ders against a child who is found to be a delinquent child:

(a) Allow the child to go home after advice or admoni-
tion.

(b) Direct the child to be released on probation of
good conduct and placed under the care of any parent,
guardian or other fit person.

(c) Make an order directing the child to be sent to a
special school. Provided a boy over fourteen
years of age or a girl over sixteen years of age
has to be sent to the special school for a period of
not less than three years. In other cases the child
may be sent for any period until he ceases to be a
child. The Children's Court may, having regard to the
nature of the offence and the circumstances of the
case reduce or increase the period of stay of the
child at the special school. But this period can not
be extended beyond the time when the child attains
the age of eighteen years in the case of a boy, or
twenty years in the case of a girl.

58. Section 28(1).
59. Section 28(2).
60. Section 30.
61. See Section 33, Ibid.
(d) Order the child to pay fine, where he is over fourteen years of age and earns money.

Order that the delinquent child shall also remain under the supervision of a Probation Officer, in cases where he has either been released after advice or admonition or ordered to pay only a fine.

In no case a delinquent child is to be sentenced to death or imprisonment or committed to prison in default of payment of fine or in default of furnishing security. Even in a case where the Children's Court is satisfied that the offence committed is of so serious nature or that the conduct and behaviour of a delinquent child, who is above fourteen years of age, is such that it is in his interest or in the interest of other children in a special school, to send him to such school and that none of the other measures aforesaid is suitable or sufficient, the Children's Court may order that the delinquent child be kept in safe custody in such place and manner as it thinks fit and report the case for the orders of the administrator who may make special arrangements for such child.

(iv) Institutional Care of the Delinquent Child

Many alternative measures are available to the Children's Court to deal with a delinquent child. The perusal of the scheme of the Act reveals that the Children's Court orders for sending the delinquent child to a special school only as a last resort, when the parental or guardian's or fit person's custody is not found fit and the child needs a special treatment and training for his reformatory. A special school whether established by State or certified by the State to be fit for reception of the delinquent children being a long term institution to receive the delinquent children, has to maintain certain minimum standards of facilities and services.

Under the Children Act, 1960 every special school to which a delinquent child is sent by the Children's Court is required to provide to the child, accommodation, maintenance...
and facilities for education but also provide him with facilities for the development of his character and abilities and give him necessary training for his reformation and has also to perform such other functions as may be prescribed to ensure around growth and development of his personality. The main aims of institutionalisation are psychological treatment, vocational training and personal education of the delinquent by which his personality is normalised. The Children Act, 1960 and some State Children acts e.g. West Bengal, Saurashtra and Haryana, also make provisions for after-care organisations, to help such children in their proper rehabilitation.

In certain States Borstals have also been established to receive adolescent offenders below the age of 21 years, punished by the common Criminal Courts. The lower age for borstalisation varies under the different Borstal Schools Acts. Thus under the Punjab Borstal Schools Act, 1926, it is 16 years. In West Bengal, Borstal Schools receive delinquent children above the age of 14 years. The objective behind setting these borstals is also to provide a special treatment to the adolescent offenders different from the adult criminals, and nearly similar to their treatment and training the special schools.

Comparative evaluations of the provisions of the different Children Acts, that have been made on different aspects, reveal that variations exist in many respects in these Acts. For instance, under three Children Acts, i.e. The Madras Children Act, 1920, The Saurashtra Children Act, 1954, the West Bengal Children Act, 1959, the children are covered upto 18 years. The

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64. Section 12, Children Act, 1960.
65. See, Chapter XI under the sub-head, 'Statutory Institutions'.
67. For a detailed study of these variations See, Chapter XI of this Work under sub-head 'Statutory Institutions'.

Children Act, 1960 and the Haryana Children Act, 1974 have raised the age limit to 20 years, for a female child only, while under the other Children Acts it is 16 years. Imprisonment of juvenile delinquent has been abolished only by the Children Acts of Saurashtra, West Bengal, Haryana and Union Territories, while the other Children Acts still retain imprisonment as a punishment for certain offences by Children above 14 years of age. The provisions for maximum and minimum periods of detention and release on licence also vary. Thus detention for six months is necessary for placing a child on licence under the Children Acts of Bombay, Hyderabad and Punjab, while under the West Bengal Act, the period is two years.

Several empirical studies have been made to evaluate the impacts of the Children Act Institutions on the delinquent and non-delinquent children separately. The findings do not show encouraging results, while the elementary needs of shelter, food and clothing are taken care of, their education and training are not always sufficient to set them up independently after they leave the institution. The picture at the traditional orphanages is all the more disheartening. Various personality deficits of institution-reared children have been documented.

68. e.g. The Children Act of Central Provinces, Barar, Travancore, Cochin, Uttar Pradesh, Mysore and Hyderabad.
69. Section 37, West Bengal Children Act.
Non-Institutional Care of Delinquent Child

In comparison to the provisions for institutional care, the non-institutional services for delinquent children are conspicuous by their absence in most of the states. The Children Act, 1960 refers to only one form of non-institutional care viz. the 'supervision' by the Probationary Officer, the child remaining in the care and custody of the parent or the guardian or a fit person. The Act does not go beyond laying that where a delinquent child is placed under the care of any person on certain conditions, the Probation Officer shall be obliged to see whether such conditions are being complied with. It is disgusting to find that while the provisions of Section 16(1) and 21(b) empowering the Welfare Boards and the Children Courts to place the neglected and the delinquent children respectively, under the care of any 'fit person' are identical in form and purpose, the schemes of foster-care initiated by the Central Social Welfare Board and some of the State's Directorates of Social Welfare do not provide such service to the delinquent children and limit it to neglected ones.

The omission is perhaps intentional and based on the assumption that no body would like to take into his foster-care a proved delinquent child. This attitude of neglect of the delinquent child depicted at the level of State Schemes goes against the objective of the Children Acts. The aim of the special favour shown to the juvenile delinquents at law is to restore them a normal life. If the arranged foster-care may provide such care to the neglected and the destitute children, it is all the more needed by such delinquent children who are released after due advice or admonition or on probation. These schemes need to be modified so that foster care facilities are also made available to the delinquent children also, it is submitted.

73. Section 53(e), Children Act, 1960.
74. e.g. Punjab, Delhi, Maharashtra, etc.
(vi) Prevention of Juvenile Delinquency

The Children Acts are silent on the preventive aspects of juvenile delinquency, which are quite essential in an integrated approach of special care to this class of the socially handicapped children. During the second and the third Five Year Plans (56-66), Boys Clubs were started in some states with the purpose of channelising the initiative and energy of children into normal activities. In Bombay, Calcutta, Hyderabad and Madras Juvenile Aid Police Units (JAPU) have been created to handle cases under the Children Act and also to organise delinquency prevention services through these clubs. The Police Boys Clubs render recreational and reading facilities for youngsters in urban slums to channelise their energies on constructive lines.

Certain preventive efforts have been put up at the voluntary level. In some bigger cities like Bombay, Calcutta, Delhi and Madras, Juvenile Guidance Bureaux have been set up to provide preventive services to both the mal-adjusted children and their families. The services offered include case work, counselling and guidance, organised recreations, educational activities, nutrition, medical aid and psychiatric and mental health-referral services. Many a time the Children Courts too utilise the expert services at such Bureaux.

The personality and intelligence tests administered at these Bureaux gives a correct analysis of the child's mind. Case conferences are held to formulate the treatment plans.

A policy for juvenile justice for the future, it is submitted, should recognise the value of such preventive measures and bring these measures within the legal framework at a uniform level, in all parts of the country. It has now been established that the treatment of children brought within the purview of the juvenile system, through non-institutional modes of delinquency treatment are more profitable both economically and

socially. The children so treated are saved from the stigma of defilement and contamination by hardened offenders. They are not only spared of the adverse effects of the institutional confinement but are also more likely to grow and develop as wholesome individuals. A child treated through community based correction is certainly at a great stake for social conformity then the one subjected to penal detention and labelled as delinquent. There has to be perfect blending and balancing of the preventive institutional and non-institutional measures to treat and protect the pre-potential, and proved delinquents respectively.

(B) Special Protection to the Scheduled Castes and Scheduled Tribes and Backward Classes Children

On account of the social structure based on Varna and caste hierarchy, children belonging to Scheduled Castes and Scheduled Tribes also suffered from many limitations of the social environment in their development, specially in the pre-independence era, with a view to afford protection and promote the welfare of the socially handicapped section of the population, the Constitution of India lays down that the State shall provide special care to the educational and economic interests of the weaker section of the people, and in particular, of the scheduled castes and scheduled tribes, and shall protect them from social injustice and all forms of exploitation. It is also in consonance with the solemn declaration of securing to all citizens, 'Justice, social, economic and political' and 'Equality of status and of opportunity'.

This class of socially handicapped children are also the subject of a special safeguard under the policy of protective discrimination, incorporated under Article 15 clause (4). As a general rule, Article 15, prohibits the State from discriminating between the citizens only on grounds of religion, race or caste etc, but clause (4) provides an important exception to this rule. It reads:


80. Preamble to the Constitution of India, 1950.
81. Added by the Constitution (1st Amendment) Act, 1951.
Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes (82).

This clause carries further the principles of the Directives of State policy contained under Article 46 of the Constitution. The need for insertion of this clause had arisen due to the decision of the Supreme Court in State of Madras v Champakam Dorairajan (83). In this case the Madras Government had reserved certain seats for the boys of Scheduled Castes and Tribes and some others in the State Medical and Engineering Colleges. The Supreme Court held the reservation void, on the ground that the directive contained in Article 46 could not over-ride the prohibition of Article 15(1).

The provisions of Article 15(4) enable the State to confer special benefits upon the children belonging to the Scheduled Castes and the Scheduled Tribes and also those who are socially and economically backward. The State has utilised the provisions by adopting a policy of reservation of seats specially for the Scheduled Castes and Scheduled Tribes children in all educational, vocational, medical and engineering colleges, for these categories of children and similarly by giving educational scholarship to them at all levels. A job reservation is also available to them under Article 16(4).

In A. Peria Keruppan v State of Tamil Nadu (84) the Supreme Court has held that the classification of backward classes on the basis of caste is well within the purview of Article 15(4). But the court has also cautioned that the Government should not proceed on the basis that once a caste is considered as backward it should continue as backward class for all the times. Such an approach, the court said, would defeat the very purpose of the reservation. The government should always keep under review the

82. Article 15(4), Constitution of India.
83. 1951, S.C. 226; See also, Jagwant Kaur v State of Bombay, 1952 Bom. 461.
84. 1971 S.C. 230.
question of reservation of seats. Only the classes which are really, socially and educationally backward should be allowed to have the benefit of reservation. Reservation of seats should not be allowed to become a vested interest, the court said. In K.S. Jayashree v Kerala the State of Kerala appointed a Commission to inquire into and to report as to what sections of the people in Kerala should be treated as socially and educationally backward classes. On the basis of the report of the Commission the Government directed that candidates belonging to families whose annual income was Rs.10,000 or above should not be eligible for seats reserved for backward classes in medical colleges. The Supreme Court held the Government direction to be valid. The court held that neither caste nor poverty by itself is determining factor of social backwardness. Though poverty is not the sole test of backwardness, but it is relevant factor in the context of social backwardness. Thus both caste and poverty are relevant in determining the backwardness of a citizen.

The Committee For the Preparation of a Programme for Children also recognised that alongwith other children in need of care, the children belonging to the Scheduled Castes and Scheduled Tribes constitute one large group of children who continue to suffer from social handicaps to a considerable extent. Unless the handicaps are removed, they will not have normal facilities for growth. The National Policy for Children commits to adopt the following measures in respect of such children:


86. 1976 S.C. 2381.

To ensure equality of opportunity, special assistance shall be provided to all children belonging to the weaker section of the society, such as children belonging to the scheduled castes and scheduled tribes and those belonging to the economically weaker sections both in urban and rural areas.

The state is following this policy to a great extent at least in relation to the children belonging to the scheduled castes and scheduled tribes. In the other category of children viz., those who belong to the economically weaker sections of the society called as 'economically and socially backward' under Article 15(4) of the Constitution of India, the categorisation usually tends to proceed on the basis of caste. As has repeatedly been pointed out by the Supreme Court, the caste criteria may be justified in the case of Scheduled Castes and Scheduled Tribes children as they are mentioned under Article 15(4) by a specific reference to caste, but in relation to others both economic and social backwardness must be considered before granting the special relief, failing which the purpose of the constitutional protection will be frustrated.

According to the 1981 Census, out of the estimated child population of 255 million at least 118 million, 99 million rural and 19 million urban live below poverty line. This makes extremely difficult for eighty percent of Indian children to get adequate nourishment and medi-care and other facilities for normal physical and mental growth. All these children in relation to their affluent brothers are thus economically weaker and need the support of the society and the law, in one form or the other.

88. Policy and Measure, 3(vii).