PART - III

AN INTEGRATED APPROACH TO CHILD PROTECTION
- DEVELOPMENT OF A MODEL
INTRODUCTION

The review of the existing legal framework providing any kind of protection to the children in India made in the foregoing chapters of this work was aimed at knowing how far our substantive law and the procedural law respond to the universal charter of Rights of the Child, and our Constitutional and National Policy commitments. Our study reveals that much has been achieved in the field, but much more remains to be done. The legal protections so far made available to the children do not match their actual needs in many areas. The existing law provides special safeguards to the children both at the substantive and the procedural law, whether civil or criminal and follows a policy of protective discrimination in favour of the child, yet in terms of the child's rights, parents' duties, societies' obligations and the state's responsibilities, we still lag behind the ideals set up under the Declaration of the Rights of the Child and also certain developed legal systems.

1. Certain Positive Features of the Existing Protection to Children

The positive role played by law in progressively advancing the civil status of the child and safeguarding his personal and proprietary rights can not be denied when looked in the historical perspective. The children who in the Pre-Vedic society, like any other patriarchal society, were considered as chattels got a civil status and certain freedoms and rights in the Dharmashastra period and the kingly duty to protect the interests of children in need of protection was also recognised. But before the children jurisprudence could progress it got arrested during the Muslim and the early British period. It was in the later half of the 19th century that a new process of providing protection to children began under the western influences. Protective jurisdictions were conferred on the civil and criminal courts in respect of children. The judiciary with the aid of the principle of welfare of the child could further curtail the guardian's rights over children and regulate their conduct in respect of them. Certain interests of the children were also safe-guarded through the substantive laws civil and criminal. The principle of State responsibility.
also found recognition under the various Children Acts which sought to provide care and protection to children who needed it. These efforts got a further boosting after 1950 when India promulgated its own Constitution and the children are today on the threshold of their separate Bill of Rights and a separate Children Code.

The Constitution of India recognises the children's right to enjoy special protection, to opportunities and facilities for their overall development and to some of the specific rights and protections sought to be conferred by the U.N. Declaration of the Rights of the Child. The Indian law, has attempted to materialise these rights in some areas. For instance, in the civil law area, the law of contract protects the child's interests by declaring him incompetent to contract yet necessarily suited to his condition in life may be supplied to him. Whereas transfers by minor are declared void, transfers in favour of minor have been held to stand on a different footing being beneficial to him. A minor has no personal civil liabilities, whether arising out of any transaction or out of tort. No suit may be filed by a minor without a next friend and no suit may proceed against him without a guardian-ad-litem being appointed for him.

All personal laws declare the parents as natural guardians of their minor children. The custody of children of tender age belongs to the mother. All legitimate children may claim maintenance against their father as a civil right under the Hindu and Muslim laws and as penal sanctioned in case of the Christian, Parsee and Jewish children. Welfare of the child is the paramount consideration before the Courts in deciding questions of guardianship and custody of minor children. In case of matrimonial disputes between the parents the Courts are entitled to make orders for the custody, maintenance and education of minor children. A child born during a lawful wedlock and within 280 days

1. Article 15(3), Constitution of India.
2. Article 39(f), Ibid.
3. Vi/.; Right to nationality, equality etc.
5. Order XXXII, Civil Procedure Code, 1908.
6. Hindu Marriage Act Sec. 26, Special Marriage Act, Sec.38, Indian Divorce Act, Sections 41-44, Parsee Marriage and Divorce Act, Section 49.
After the father's death is presumed to be legitimate. Certain children of void and voidable marriages are deemed legitimate under Hindu law while Muslim law considers children of Fasid (irregular) marriage as legitimate under the doctrine of acknowledgement.

In the criminal law area also a child has been afforded a special protection. Nothing is offence which is done by a child under seven years of age. A child between 7 and 12 years of age who has not attained sufficient maturity of understanding is also exempt from penal consequences. Juvenile delinquents are dealt differently from the adult offenders. Juvenile justice is made available to them under a distinct process of treatment, training and rehabilitation through the instrumentality of separate Juvenile Courts, and short-term and long-term institutions.

Cruelty to the child, child abuse and child neglect have been declared as offences against the child, under the general penal law and under the various Children's Acts. For instance, whosoever having the charge or control over a child assaults, abandons, exposes or wilfully neglects the child, whoever uses any child for the purpose of begging or gives him intoxicating liquors or dangerous drugs is punishable. A similar purpose is sought to be achieved by various states anti-beggary and juvenile Smoking Prohibition Acts. Exploitation of child employees and pledging of child labour have also been declared offences against the child. The child in womb and those just born are also protected against injury through penal sanctions.

To protect children against moral and material exploitation the Constitution prohibits trafficking in human beings.

7. Section 112, Evidence Act, 1872.
9. Section 85, Indian Penal Code, 1850.
10. Section 84, Ibid.
11. See, the Children Act, 1960 and the State Children Act.
12. The Indian Penal Code, Secs.312, 315, 317, 318, etc.
14. Section 42, Ibid.
15. Section 43, Ibid.
16. Section 44, Ibid.
17. Sections 4, 5, 6, the Children (pledging of labour) Act, 1953.
18. Art. 23 Constitution of India.
and also employment of children below 14 years of age in any factory or other hazardous employment. Carrying out the constitutional objective, the Suppression of Immoral Traffic in Women and Girls Act, 1956 provides protection to girls against moral dangers while the Employment of Children Act, 1938 and several other labour laws protect the children against their physical exploitation. These labour laws not only contain a similar prohibition against employment of children below 14 years, but also regulate working conditions of the adolescent labourers e.g. his maximum hours of work, night work, medical check-up and minimum pay etc.

The State also shares its responsibility towards the children as a parens patriae. The children who are neglected, abandoned, destitutes, orphaned or otherwise in need of care and protection, being uncontrollable by the parents or those who are placed in an atmosphere of moral or material danger are taken into its charge by the State, institutionalised in Children's Homes and provided with maintenance treatment and necessary training to help them in their rehabilitation. Law recognises the role of the society by certifying and licensing institutions setup at the voluntary level. Thus a network of institutional services has been created to provide an alternative care to the unprovided children.

Primary Education Acts have been passed for all the States and Union Territories to establish and recognise educational institutions for imparting compulsory and free primary education. The parents are obliged to send their children to approved schools, failing which they are liable to be penalised. Vaccination against small-pox is administered freely and compulsorily. Maternity benefits are made available to the women working in factories and certain other enterprises. Creche facilities are

19. Art. 24 of the Constitution of India.
22. See, the Delhi Primary Education Act, 1960 and the State Education Acts.
made available for the children of working women under certain labour laws.25

II. Certain Negative Features of the Existing Protection to Children

The question is, do the existing safeguards available to the child at law sufficiently protect his vivid and varigated interests. As pointed out earlier what the law has provided to the child so far only partially meets his legal needs. In some areas the existing law is anomolous or ambiguous, in some areas there are legislative gaps, while in certain areas we have no law to protect the child. In a few areas e.g. guardianship and custody, the judicial law is more progressive and much ahead the written law. These gaps and lacunae in different aspects of legal protection to children are detailed in this work under the respective heads of discussion, but the major areas of such deficiencies may be pointed out here.

Before ascertaining a child's legal status, a child must be defined in law. It is a difficult task because most laws which affect children have their own definition of child.26 Thus under the Indian Majority Act a minor is a person below the age of 18 years, while the different personal laws have their own concepts of minority. Under various labour laws, a child may be a person below the age of 12, 14 or 16. Under the various Children Acts a child may be below the age of 14, 16, 18 or even 21.27 Age of childhood for boys and girls may vary.28

A conceptual confusion persists in many areas of children jurisprudence. There is a complete freedom to Parliament and the 22 State legislatures to coin a term or a new phrase every time an enactment is passed. For instance, who is described as a

27. e.g. Andhra Pradesh-14 years, Punjab-16 years, W. Bengal-18 yrs.
28. The Children Act, 1960, Sec.2(e).
Children have no specifically defined civil rights against their parents or the State, with the exception of a right to maintenance recognised under the Hindu and the Muslim law. Under the Christian, the Parsee and the Jewish personal laws the children do not have a legal right to maintenance. The summary proceedings of Section 125 Cr.P.C. is the only remedy available to these children against their father. The quality and adequacy or inadequacy of maintenance provided hardly the concern.

Foot NOTE at Hindu law, there is no law of legitimation in India. The illegitimate children do not enjoy equality of status in respect of guardianship or maintenance or inheritance. Their rights are governed by the personal laws which are varied. Illegitimate children are treated as filius nullius at all personal laws except the Hindu law. Only at Hindu law they are treated equally for the purposes of their maintenance. Only the Hindu law confers legitimacy on children of certain void marriages.

Although the judiciary with the aid of the principle of welfare of the child has brought up the law of guardianship and custody close to the developed systems and has also achieved a uniformity between the different personal laws, yet the statutory law and the customary laws stand in their place with many discrepancies and gaps and lag behind the judicial law. For instance, all personal laws and the Guardians and Wards Act.

29. Section 6, Hindu Minority and Guardianship Act, 1956.
32. Section 19 (b), Guardians and Wards Act, 1890.
retain the rule of paternal supremacy, the Muslim law does not give to the mother even a second place in the race for guardianship; custody of the child belongs to the guardian as of right, except a limited right of the mother to have the custody of children of tender years, the upper age for which varies under the different personal laws. On the other hand the judiciary considers welfare of the child as the paramount consideration in deciding such matters and the personal laws and paternal supremacy stand superseded.

The Declaration and the National Policy equally recognise that welfare of the child must be the paramount consideration in all disputes involving the children. But all the substantive or adjective laws do not give place to the principle. The Guardians and Wards Act, 1890, though recognises the welfare principles but does not declare it to be a paramount consideration. Neither the welfare of the child finds place under the provisions of the matrimonial laws dealing with the custody and maintenance of children during matrimonial causes nor is it a consideration for deciding the maintenance allowance of the children, be it under the personal laws or Sec. 125 of the Code of Criminal Procedure, 1973. There is no occasion for the court to consider the welfare of the child, to be given in adoption by the natural guardian under the Hindu Adoption and Maintenance Act, 1956 at any stage. Only the Hindu Minority and Guardianship Act, 1956 declares the welfare of the child as a paramount consideration for deciding the matters of guardianship and custody under the Act.

There is no general law on adoption or foster care. Adoption is recognised only at the Hindu law which, too, is not child-oriented and contains certain out-dated concepts e.g. only a Hindu child may be adopted, the adoptive parents may not adopt a son if they have a son, a grand son or a great grand son.

33. See Sections 7,17 and 25 Guardians and Wards Act, 1890.
34. e.g. Hindu Adoptions and Maintenance Act, 1956.
35. Section 13, Ibid.
Similarly, a daughter cannot be adopted if there is one up to the same degrees. No permission of the court is required where the child is given in adoption by the natural guardian and his wishes are not material in such adoption. Adoption once made is irrevocable. Non-Hindus cannot adopt a child even if they wish to do so.

Though right to equality is a constitutionally guaranteed fundamental right of every child, in some matters children suffer inequalities amounting to discrimination on grounds of religion, birth or sex only 36.

There is no law on child nutrition and child health except in the sole area of compulsory and free vaccination against small pox. There is no general law to provide pre-natal and post-natal services to the mother and the child.

The hardest hit are the physically handicapped and the mentally retarded children who have no legislative protection whatsoever. The Lepers Act, 1898 and the Lunacy Act, 1912 adopt a segregative policy and seek to save the society from the lepers and the unsound rather than protect their interests. The Mental Health Bill, 1981 37 which will replace the Lunacy Act, 1912 when enacted, also does not effect any major changes in the old policy and is not helpful to a mentally retarded child. 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 which could provide some relief to the deaf and blind children respectively, 37A are limited in their application to the Union Territory of Delhi only.

Neither there is any legislation providing financial assistance to the economically weak parents for the purpose of

36. See Chapter III of this work.
37. The Bill was introduced in the Parliament on Dec. 14, 1981.
37A. The two Acts legalise the removal of ears and eyes respectively, from the dead body of such persons who have authorised such removal before their death.
maintaining their children as available at certain developed systems nor is there some scheme of social security or supplementary benefits to parents or children within the legal framework. The services provided through the Integrated Child Development Scheme is limited to certain selected projects and has no legal support. The same is the case with Supplementary Nutrition Programme, the Minimum Needs Programme, immunisation and other services provided by the State under the Five-Year Plans.

Primary education statutes which make education universal compulsory and free is yet to record a cent per cent enrolment, attendance and area coverage. The handicapped children are left out of the general education scheme. The part-time educational needs of labour child below 14 years, who is compelled to serve due to his poor economic circumstances too remains out of the per-view of the Education Acts. These Acts provide no coverage to school health service, nutrition service or play and recreational service as part of the schooling system. The concepts of hazardous and non-hazardous employment not having been defined, legal protection to the child labour remains piece-meal. The labour laws that exist are uneven in their safeguards and lack proper implementation. Millions of children still work in unhealthy and hazardous conditions mostly in the unorganised sector.

The judicial and administrative child protection remains to be fully child-oriented. There is a big gap in the administrative machinery to properly implement the children's laws and to care for and protect the child. Though juvenile justice is statutorily promised to the delinquent and the neglected children but due to the deficiency of Children Courts, Welfare Boards and the Children Act institutions, both short-term and long-term, more than 20,000 children lie detained in prisons waiting for

38. Under English Child Benefit Act, 1975 a person responsible to maintain a child below the age of 16 years and if the child is receiving a full-time education, under the age 19 years, is entitled to financial assistance called a child benefit (Sections 1 and 2); Financial assistance is also available under the Social Security Act, 1975 and the Supplementary Benefit Act, 1966.
The soft justice. There are only 11 welfare Boards to deal with the neglected children out of which seven are in Rajasthan and one each in Delhi, Punjab, Pondicherry and West Bengal. The rest of the States and Union territories have no such Boards. Children courts have not so far been constituted in all parts of the country.

There are no civil courts specially to hear children's causes. A next-friend or a guardian - ad-litem is their only privilege. The structure and functioning of the civil courts can hardly guarantee a patient hearing needed to keep the welfare of the child as a paramount consideration in all disputes pertaining to him. The civil courts have no powers to commit a child in need of care and protection to a children's home, to keep him in the wardship of the court or appoint supervisors in respect of him in any situation needing a watch over the parents or guardians.

Inspite of a plethora of legislation seeking to provide protection to them, children are not assured of many essential benefits, facilities and opportunities needed to develop in a healthy manner and in conditions of freedom and dignity. Childhood and youth lacks a full legislative umbrella to protect them against exploitation and moral and material abandonment. Judged in terms of the 'Rights of the Child', the Indian children have yet to see the fulfilment of many of these rights and particularly in the field of nutrition, health and social security of the common child and the special care needed by the physically and socially handicapped child.

III. Causes for the Inefficacy of Existing Child Protection

The poverty of the masses and financial constraints on the national exchequer is said to be the basic cause for the prevailing problems of the children and which they maintain can not be removed or reduced by a magic rod. No doubt, poverty plays its negative role but if children are considered to be supremely

40. See, Order XXXII, C.P.C. 1908.
Important assets'in its true meaning a judicious and efficient use of the available national resources, keeping in view the commitments made and goals set up, can certainly diminish the impact of this factor. The socio-economic problems can not constitute a valid excuse if we ant to fulfill our commitments to children.

Since the objective of providing a total care and protection to the child has to be materialised under the existing socio-economic circumstances, which can hardly be dispensed with in the immediate future, we have therefore to bank upon removing the other hurdles in the way of securing an efficacious protection to children. Innumerable factors may be attributed for the inefficacy of legal protection to children in India but the major causes are:

First, the biggest single factor responsible for this state of affairs is probably the piece-meal and isolated treatment given to children. We have proceeded on an adhoc basis, framing laws whenever needed, wherever needed, keeping in view the limited objectives and specific needs of a particular section of the child population or a particular aspect of child's needs or the particular time. The existence of over a dozen statutes aiming to protect child labour in a few occupations and each defining the child in its own way and differing in the maximum hours of work, and other provisions and lack of such law in many more areas where it is needed, provides an illustration. The lack of a uniformity in the age of child or minor under different laws and the prevailing use of different terminology under different Children Acts for the delinquent and neglected children are other instances of the scattered nature of legislative activities. The result is that both in the fields of substantive and procedural law in some areas there is duplication of laws and jurisdictions while in other areas there is a deficiency or a gap in law.
Secondly, unlike the developed systems which have uniform and secular children's laws, Indian children are still governed in family matters, e.g. legitimacy, guardianship, maintenance and adoption by their personal laws which are religion-oriented and differ from each other in content and philosophy. This leads to diversity, anomaly and discrimination in the treatment of children otherwise similarly placed.

Thirdly, the existence of a plethora of enactments relating to children on the statutes book, instead of being a boon to the children, is proving an impediment to their protection. Many cooks spoil the dish. It has created complexity and confusion. A layman can not be blamed when even the Bar and the Bench are not fully aware of the existing legislation on children and their implications.

Fourthly, the division of legislative competence between the Union and States accounts for the territorial variations in the children's laws. Some states have enacted anti-beggary and anti-vagrancy and prohibition of smoking Acts, some have not done it. All State Children Acts do not provide a uniform protection to the delinquent and the neglected children. Thus welfare boards, separate children homes for the neglected children and after-care services have been provided under a few State Children Acts.

Fifthly, there are many ambiguities, discrepancies, loopholes and other lacunae under the existing enactments adversely affecting their effectiveness. In spite of being pointed out by the judiciary and the jurists from time to time these defects have not been removed. For instance, the lack of an inherent jurisdiction over children of the Panjab and Haryana High Court and that of the Mysore High Court, which had been pointed out by the judiciary much earlier remains to be supplied by the Parliament.

Sixthly, some needs of the child e.g. his special health and nutrition needs, some phases of childhood viz. pre-primary school age, some categories of children e.g. the physically and mentally handicapped children, still continue to be the exclusive...
Concern of the executive and totally outside the legal periphery. Similar is the case with pre-natal and post-natal needs of the mother and the child or the needs of child labour in the unorganised sector. Thus the rights of the child are getting only a partial coverage and a total well-being of every child and all children is not secured as envisaged under the Declaration of the Rights of the Child.

Seventhly, there are jurisdictional, structural and procedural anomalies and limitations of the existing courts exercising jurisdiction over children. Even with respect to children's causes we have the common formal adversary system of litigation. Children are not necessary parties and no legal aid is provided to them. The same courts decide the children's causes which decide the property matters or the commercial disputes on the civil side and murderers, decoits and professional criminals on the criminal side. The District Courts are presided over by a single judge and are not aided by any expert in child welfare. They have no special qualifications in children's laws, child welfare or psychology.

Eighthly, for want of proper administrative machinery and proper institutional services many schemes of child welfare formulated under various statutes lie unimplemented. For instance, the provisions of the central Children Act, yet remain a pious wish and in many of the States and Union territories the delinquent children continue to be tried by common magisterial courts. The same courts are dealing with the neglected children. These two entirely different categories of children are being dealt with by the same administrative staff and placed in the same institutions. The compulsory enrolment and attendance provisions of the Primary Education Acts are hardly made use of. Infringement of regulations relating to child labour are loosely prosecuted.

Ninthly, there is no co-ordination between the different agencies governmental, semi-governmental and voluntary, involved in the process of providing care welfare and protection to children, in the various aspects and at different levels. Each agency
Books to the child from its own perspective. Due to the lack of a proper liaison and co-ordination the welfare of the child becomes segmented and misses a look upon the child as an integral whole. There is no local agency to secure his care and protection from the perspective of his total welfare covering all the aspects of childhood. An integration is absent in the arena of juvenile justice civil, criminal and protective. A proper linkage between the judicial child care and administrative child-care is also absent. The legislative policy reduces its worth till it reaches the child to deliver the desired relief.

Tenthly and lastly, the voluntary effort in child care and welfare has not found its due recognition at law. The role of voluntary organisations has not been properly defined nor demarcated. Legislation is confined to the certification and licensing of institutions and certain orphanages and homes. The non-institutional services of the society are neither recognised nor regulated.

(iv) Need for an Integrated Approach

To cure the existing deficiencies of the children's laws in the Indian legal system and to achieve the ultimate objective of a total welfare of the child and to provide a complete legal protection to all the children, making no discrimination on grounds of religion, caste, creed or nationality, modifications are required both in the substantive and procedural fields of law. The new efforts of reform should adopt a different perspective in terms of the children jurisprudence that has emerged at the modern law. It can not remain limited to the regulation of the guardian's conduct or providing a bare maintenance to the children or providing sporadic facilities for child education, child labour or the delinquent or neglected children.

The new legislative policy should be devised in terms of the 'Rights of the Child' to which we are committed. A separate Bill of Rights for the child is the latest need of the children. These rights now include a special protection to them ensuring a full development and growth of their personality in all its aspects. They require not only food and shelter but 'adequate
nutrition' and a 'proper medi-care'. In the words of Justice V.R. Krishna Iyer:

Law must realise its guilt in neglecting the child and acknowledge the urgency of a juvenile jurisprudence which will begin with the mother's womb and linger longer than Teddy boys, school drop out and little geniuses who turn to thistles for sheer societal unconcern and cruelty (41).

The fulfilment of their natural obligations by the parents can not be left to their morals, nor can it always be presumed. Further, when children are looked upon as national assets, they as much become the concern of the society and state. The Declaration which contains the model charter of the child's rights, specifically mentions of the role of the parents, individuals, voluntary organisations, local authorities and national governments to provide opportunities and facilities to the end that the child may have a happy childhood and enjoy for his own good and the good of society, the rights and freedoms set forth therein (42). In the new efforts of providing fuller and better care and protection to the child certain substantive rights have to to be conferred upon the child. The respective obligations and responsibilities of the parents, the society and the state need to be defined and demarcated at law, and their observance has to be equally assured.

The same rational and integrated approach shall have to be adhered to in relation to the administrative and judicial machinery responsible for the enforcement of the children's laws. A new integrated and unified hierarchy of children courts having exclusive jurisdiction over children, shall have to be set up to hear all children's cases, civil or criminal. Some special qualification for the Judges of such courts shall have to be prescribed and the entire machinery involved in the process of administering justice or protection to the child shall have to be child-oriented. For this purpose the procedure at such courts

41. The Child and the Law, SOCIAL WELFARE, November 1979, p. 3.
should also be simplified and made less formal. Some auxiliary services as exist under certain other legal systems, should also be made available to assist the children courts in administering fair and full justice to children.

The implementation of children's laws will have to be geared up by creating some more welfare agencies both governmental and non-governmental, from the local to the Union level. The state shall have to play a greater role in providing proper institutional and non-institutional care to children on a uniform basis and to remove the prevalent disparities and deficiencies of treatment among the various states in India. The voluntary efforts in child care should be recognised and assimilated in the legal system.

Above all a perfect co-ordination and integration should be achieved in the efforts of the different agencies of child care at different levels viz. between the parents, the society and the state, between the legislature, judiciary and the executive. Then the different interests of the child himself should also be simultaneously considered. A simplification of the existing law relating to children, substantive and procedural should also be aimed at in the process of reform.

The goal of attaining a 'total well-being' of each child and of all children, equally without any exception, whatsoever, without any distinction or discrimination on account of race, sex, language, religion, national or social origin, or other status, of keeping up the best interests of the child and of ensuring every child's physical, mental, moral, spiritual and social development, can be achieved only through a carefully drawn up integrated scheme of reform of the existing legal framework of child care and protection. An attempt has been made in this part of the work to develop a model framework of an integrated Children Code.

43. Principle 1, Declaration of the Rights of the Child.
44. Principle 2, Ibid.
The charter of the 'Rights of the Childs' contained under the Declaration, the statement of legislative policies concerning the welfare of the child contained under the Constitution of India and National Policy for Children and the commitments made to the child through various documents of the international body to which India is a party and which it has adopted can be materialised through an overhauling of the existing legal framework providing protection to children in India.

In the perspective of the Rights of the Child and the modern children jurisprudence, there is hardly an enactment on the statute book which may not need a modification minor or major. Scores of discrepancies, lacunae and gaps in the children's law which have been pointed out in this work, require removal, repairing and filling as the case may be. Defects lie in the system as a whole, as much at the level of policy making as at the stage of legislative drafting. The infrastructure and functioning of adjudicative and administrative machinery is equally unsuitable to impart the child a true juvenile justice. Should the reform be brought about by the cut and paste method of legislative repairing? Or should a modern edition of the legislative framework comprehensively dealing with all aspects of child care welfare and protection in the form of a Children Code, substitute the present system?

In the submission of this writer the task is so gigantic that the desired modifications in the law can not be satisfactorily made through the method of amendments. In the amendment method both the Parliament and twenty-two state legislatures will have to initiate more than hundred bills, to make the law tolerably uniform and comprehensive, which in itself would be a feat and appears improbable. In this effort too the initiative shall have to be taken by the central government by providing a model legislation on every aspect of child care and protection as it did in the enacting the Children Act, 1960.
The interests of the child are vivid, variable and complex. The different interests are so interwoven to each other that if an attempt is made to protect one interest in isolation, the other interests may be adversely affected. All these interests of the child, therefore, have to be integrally considered in relation to the whole child and his total welfare. Then, the best interests of all the children have to be equally protected. Only an integrated scheme of child welfare can secure a sound legal protection to children. This can not be achieved through the mechanism of amendment of the existing statutes.

The need of the day is to have an exhaustive and separate Children Code where the entire gamut of interests of the child may be integrally considered, whether under the substantive law area or the procedural law area and whether under the personal laws or the public laws. In this effort the anamolies and discriminations existing at present, specially in the personal law area and the gaps and lacunae in the entire law, may be easily removed and the law relating to the children may be simplified, unified and brought in conformity with the Rights of the Child, the National Policy for Children and the modern children jurisprudence, making necessary adjustments in the context of the existing socio-economic and religious factors.

(A) WORKING PRINCIPLES FOR FRAMING THE CHILDREN CODE

To frame a Children Code aimed at providing a comprehensive protection to the children certain fundamental working principles shall have to be settled first and the sources of the material of the Code shall have to be ascertained and identified. Any Code must have a well-defined objective based upon the knowledge of social facts and figures. It must step in the area where it is needed most. The machinery for its implementation both judicial and administrative should also be appropriate to the aims. The draftsman should learn from past experience, look to the present needs and provide some flexibility to the law for the future. The state's economic resources should also be borne in view. The law should not be too technical to be understood by
those for whom it is meant. And the feasibility of its effective implementation and public acceptability should also be considered.

Every legal system has certain features peculiar to itself in the context of its socio-economic structure and its religious cultural background. Every model rule of action can not claim to have a universal applicability. Local variations in terms of the needs and circumstances of the area and population may become necessary to be devised to mould it to suit the local conditions, as the success of a legislation also lies in its acceptability. It is in this perspective that the following working principles have been formulated to help in the preparation of a frame work of a Children Code for India.

(a) Objectives of the Children Code

To define the objectives which the Children Code is sought to achieve, is the first step in the process of preparing a draft outline of the Code. Naturally our sole objective is to serve the child, secure his best interests and total welfare. Both the general and specific objectives are well described in the three major sources, viz. the Constitution of India\(^1\), the National Policy for Children and the U.N. Declaration of the Rights of the Child.

It may be observed that a confusion persists at the conceptual level regarding the nature of the protections enlisted under the aforesaid three documents. The short title of the U.N. Declaration describes the enumerations as 'Rights of the Child' while the body of the Declaration bears the marginal title of 'Principle' for the same. The contents of these Principles or Rights also refer to the responsibilities of the parents, society and the state\(^2\). Similarly the objectives in relation to children under the Constitution of India\(^3\) are placed under Part IV titled, 'Directive Principles of State Policy'. The National Policy for

1. Article 39(e) and (f).
2. e.g. Principles 6 and 7.
3. Arts. 39(e), (f) and 45.
Children accept the 'Principles' of the Declaration under the heading 'Policy and Measures'.

Although, no hard and fast line may be drawn between the concepts of 'Principle', 'Policy' and 'Rights' yet some distinction has to be maintained while describing the objectives or Principles and the concrete and specific rights of the child. The objectives of the Children Code would no doubt, be to grant all the specific rights to the child but they have to be described in general terms resembling more to the statement of a Policy or Principle, rather than a right or responsibility.

It has been pointed out\(^4\) that the Constitutional provisions and the National policy put together cover almost all the objectives contained under the U.N. Declaration, therefore, we may safely make out these objectives out of the three documents as follows:

(a) To give a special protection to the child, in contrast to an adult through a policy of protective discrimination\(^5\).

(b) To provide opportunities and facilities to the child, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity\(^6\).

(c) To make the 'best interest' of the child or the 'welfare of the child' as the paramount consideration in all matters pertaining to the child including enactment of any law\(^7\) and in all legal disputes in relation to the child\(^8\).

(d) To create certain rights of the child, duties of the parents and the responsibilities of the society and the state in terms of the U.N. Declaration of the Rights of the Child\(^9\).

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4. See, Chapter II of this work.
7. Principle 2, Declaration, Ibid.
8. Policy and Measures 3(XIV).
9. Preamble, Declaration, Ibid.
(e) To secure that all categories of children without any exception or discrimination whatsoever, are entitled to protection.  

(f) To ensure that the child who handicapped physically,  
mentally or socially receives special treatment, training and care.  

(g) To protect the child against all forms of neglect cruelty, and exploitation.  

(b) Needs of Children in India  

A survey was undertaken by the United Nations International Children’s Fund (UNICEF) in 1961, on the needs of the children in the developing countries including India, to assess the priority needs of children and planning practical measures to meet these needs. It noted that India had quite high a mortality rate, it is deficient in child and mother health services, school health services and the care of the handicapped. The nutrition level of the Indian child is inadequate. The degree of illiteracy varies from one part of the country to another. Rural families are largely ignorant of the essential elements of physical care of children or the basic principles underlying child development. Those families which migrate to new industrial town have to live in slums, their parents have neither time nor the means to attend to the needs of their children.  

The Ganga Saran Committee, appointed by the Government of India for the preparation of a programme for children, noted with concern that millions of children suffer from malnutrition and other consequences of poverty. Additional support, therefore, need to be provided to enable the family to fulfill its obligation to its children in terms of nutrition health care, education, and social well-being. The committee observed that rapid growth of population is another important factor which has a bearing on

10. Principle 1, Declaration; Articles 14 and 15, Constitution of India.  
11. Principle 9, Declaration; Arts. 23 and 24, Ibid.  
the capacity of the families to fulfil their obligations to children and without measures of family planning it may not be possible to strengthen the foundation of the welfare of the children and mothers.\footnote{14}

The committee pointed out certain special needs of the Indian children. It found that communicable diseases are the major causes of sickness and death during childhood. Maternity and child-health services are, therefore, basic to the development of health of mother and child. Similarly nutrition is basic to health and adequate nutritive food for the expectant mother and the child is a necessary condition for the healthy growth of the child. Children in the age group of 0-14 constitute forty percent of the total population and women in the age group of 15-45 constitute nearly 22 percent of the total population. Thus the health needs of nearly 62 percent of the total population have to be met through maternity and child health services. Of these only a small proportion are being reached at present through the existing services.\footnote{15}

Another area of vital importance which, in the opinion of Ganga Saran Committee, should be accorded highest priority, is the care and protection of those children who are destitute or exposed to moral danger and exploitation or are subject to cruelty.\footnote{16} It observed:

As the problems of destitution neglect and delinquency among children are inter-related it would be desirable to adopt an integrated approach to the development of services for children, combining the institutional services, the foster care and adoption services with the community services of play centres, community or neighbourhood centres, the children and youth clubs, school social works, and child guidance clinics etc. (17).

The labour-child is one of the highest exploited category of children. Available information shows that there is less of child labour in organised industries which are generally subjected to various legislative provisions, and more in small scale and

\footnote{14} See Report of the Committee for Preparation of Programme for Children, Government of India, pp.4-5; emphasis writer's.
\footnote{15} Ibid. p.8.
\footnote{16} Ibid. p.59.
\footnote{17} Ibid. p. 60; emphasis writer's.
village industries and in agriculture and other occupations. Due to the inadequacy of enforcement staff of the Labour Directorate, the legal provisions about the conditions of their work are sometimes either openly or tacitly disregarded by employers as well as the parents.

One more category of children who have received inadequate attention are the physically handicapped. In the 1981 census it is estimated that there are 12 million physically disabled persons in India of which children constitute a sizeable number\(^{18}\). If the constitutional directive assuring social justice to all citizens has to be honoured, it would be necessary to give greater attention to the welfare of the handicapped children.

The areas where the children's needs are more pressing and immediate have also been identified under the National Policy for Children. It has recognised the following areas for according priority in programme formulation:

(a) prevention and promotive aspects of child health,
(b) nutrition for infants and children in the pre-school age along with nutrition for nursing and expectant mothers,
(c) maintenance, education and training of orphan and destitute children,
(d) creches and other facilities for the care of children of working or ailing mothers, and
(e) care, education, training and rehabilitation of handicapped children\(^{19}\).

The priorities fixed by the National Policy are based on the policy of progressive realisation of the goals of total child welfare envisaged under the Declaration and the 'developing country' excuse is at the back of this selective policy. The priority does not include education or the child labour which are the two

\(^{18}\) National Sample Survey, 1981, Govt. of India.

\(^{19}\) Policy 4.
co-related aspects deserving immediate attention. It seems that the government has looked to the needs of children from the perspective of his material needs only and left out his non-material needs, which are not so perceivable.

But the non-material needs such as education and recreation are as real as the material needs are and their value cannot be diminished. Then the protective needs of the child stand on altogether different footing as they do not involve money value e.g. protection against neglect, cruelty and exploitation. Therefore in the preparation of the legislative frame work we should not be misled by the priority formulation of the National Policy, it is submitted. The legal frame work has to be comprehensive in its coverage. All the protective and non-material needs must be fulfilled, while the material needs may be granted moderately. The legislative policy should give a lead in this direction for the administrative policy to be modified accordingly.

(c) The Economic Context

Poverty is said to be the basic factor for the problems of the children of almost all developing countries and India falls in that category. The physical needs of the children are measurable in terms of money. The objectives of total well-being of the child and all categories of children have an economic context which can not be ignored. Law can only lay down rules, it cannot supply money. On the one hand the statistics tell that 306 million persons, of whom 130 million were below 14 years, have been living below poverty line in 1977-78. On the other hand there are financial constraints on the national exchequer.

It is due to the financial constraints on the national exchequer that the National Policy on children is cautious to note down that 'the state shall progressively increase the scope of such services' so that within a reasonable time, all children in the country enjoy optimum conditions for their balanced growth. It is for this reason that a priority in programme formulation has been fixed under the policy. The question

is, should the Children Code lay down ideal rules in terms of absolutes or adopt a progressive policy on the pattern of the National Policy. If it has to be selective than which areas it should cover first?

It is submitted that under the existing social and economic conditions we can not think in terms of absolutes or ideals. To make our legislative efforts meaningful an integrated approach has to be adopted in laying down the rights of the child or the duties of the parents or the state, to measure moderately in terms of their financial impacts. For instance, unless the State secures full economic security to the parents, the parents can not be compelled to refrain from employing a child even in a non-hazardous employment or in the family occupation. Similarly, the economic responsibility of the State towards children can not be declared universal, compulsory and free for all children and in all aspects of child welfare. It has to be on a progressive pattern starting from those in the most vulnerable and particularly disadvantaged groups e.g., the physically and socially handicapped children.

(d) The Socio-Religious Context

India is a secular state but its citizens are all religious. They are either Hindus or Muslims or Christians or Parsis etc. The personal laws of these communities are in some respects different in their content and philosophy. Certain matters relating to children fall under the personal laws area, viz., legitimacy, guardianship, custody, maintenance and adoption. Although with the aid of certain enactments, judicial interpretation and the doctrine of 'welfare of the child', the law of guardianship, custody and maintenance have to a great extent been brought at par, on the subjects of legitimacy and adoption the variations still exist. The repeated attempts made by the Parliament to enact a secular law of adoption have been thwarted on account of the objections raised by an orthodox section of the people, particularly Muslims. They maintain that adoption is prohibited under the Muslim law, although that contention is disputed by those who hold a liberal view. The 1980 Adoption Bill has now been opposed
Thus the parliament could not pass an adoption law till now, the first attempt having been made in 1965. Without entering into the controversy of propriety or impropriety of the objections raised to the Adoption Bills, and even ignoring the majority view and the Constitutional competence of the Parliament to enact such law of adoption, the fact remains that the Bill is still pending and there appears to be a meagre chance of its passage. Thus the socio-religious context in framing a Children Code becomes quite relevant. The draftsman has therefore to adopt the policy of flexibility in those parts of the code which relate to the personal law area, and particularly adoption and legitimacy, to add to its universal acceptibility. The Children Code may well provide an enabling law on adoption and legitimacy for all the communities. Those who do not wish to be governed by it, may be relaxed till the proper consciousness to protect the interests of children grows up among the sections of people who stick to orthodoxy and adamancy.

(e) Integrated Role of Parents, Society and State

There are three protectors of the child, the parents, the society and the state. The parents provide care to the child out of natural love, as a moral obligation or as a legal duty. Benevolence and charity inspire the society to provide some care to the child, but it is purely a voluntary action. The State for a very long time has been considered to be the Supreme guardian of the children and liable to provide to those who remain unprovided.

The traditional law has defined the duties of the parents towards their children. The modern law imposes the duty of providing an alternate social care to the children upon the State, whether it is supervisory, supplemental or by way of direct assumption of the child's custody. The aim of the Declaration is also to bring the societal efforts within the legal framework.

The Declaration of the Rights of the Child lays an equal emphasis on the obligations of the parents, individuals, voluntary organisations, local authorities and national governments, to recognise the rights of the child and strive for their observance. Principle Six makes a special mention of the duties of the society to extend particular care to children without a family and those without adequate means of support. Another duty of society particularly mentioned is that of providing opportunity for play and recreation. We have to assess the extent of this new role given to the voluntary organisations as an equal partner in sharing the responsibilities towards the child from the legal perspective and properly integrate it in the legal framework of the Children Code.

Voluntary efforts in India have a very long history and have been playing an important role in providing services to the underprivileged, the destitute and the handicapped. Traditionally all institutional services to the socially handicapped children were provided by the voluntary agencies. The first voluntary institution was established in the country in 1865. Prior to the First Five Year Plan there were 558 voluntary agencies working for children. In 1961 this number rose to 3,377 out of which 561 were the institutions catering to 27,326 children. The rest of the voluntary organisations are giving general child welfare services.

28. 200 offering educational services for normal children, 75 maternity and child welfare services; 128 medical and health services for normal children; 172 nutrition services; 15 psychological services; 131 recreative services; 28 research and literature on child-welfare; 52 services for juvenile delinquents; 5 services for mentally handicapped; 40 services of physically handicapped and 141 services for the socially handicapped children. Ibid.
Some new types of services and institutions also run creches, day care centres for babies of working mothers, after-care institutions, child guidance clinics, schools for mentally retarded children, free school education and family counselling services. Some voluntary organisations also provide adoption, foster-care and sponsorship services. Thus it is established that voluntary organisations are sharing in providing care, welfare and protection to the needy children in India. The Ganga Saran Committee on children recognised that the services for the physically and socially handicapped children were mostly organised by voluntary organisations, while the government contribution is mainly in promoting social legislation and organising 'model' centres as demonstration projects. The Committee realised that a broad understanding for the respective roles of voluntary and governmental organisations in promoting child welfare services is essential for the successful implementation of the different child welfare programmes. The committee observed:

Initiative for revision of the existing social legislation to meet the changing requirements for child welfare may be taken by people or government. Implementation of the programme will have to be entrusted to the voluntary organisations who should take the necessary steps to train and orient their personnel to meet the requirements of the programmes.

The existing law gives recognition to at least four roles of the voluntary child welfare efforts. First, various institutions established by the voluntary organisations are recognised, as certified/approved and special schools or remand homes/observation homes, under the various Children Acts. Secondly, the Children Act, 1960 lays for the assistance to be provided to the children courts by a panel of social workers in arriving at a decision regarding a delinquent child. Thirdly, Order XXXII A

29. Chapters IV and XI of this work.
31. Previously private children institutions were certified as 'reformatory schools' under the Reformatory School Act, 1897.
of the Code of Civil Procedure empowers the civil courts hearing any matter relating to family including children's causes to take the assistance of some welfare experts, preferably a woman where available or a person professionally engaged in promoting the welfare of the family, in making effort for settlement of the subject matter in dispute. Fourthly, the primary and other Education Acts recognise the privately established schools, subject to the fulfilment of the prescribed conditions.

There being no law on nutrition, for mother and children, maternity and child health services, or regarding creches, or foster-care or adoption services or other services, no legal recognition is available to the voluntary effort in these fields.

Whereas the existing size and volume of social welfare services organised both by the government and voluntary agencies is very inadequate, as compared to the large unmet needs of the child population, there are still areas where there is certain amount of overlapping and duplication - sometimes between the efforts of voluntary agencies and government and sometimes among the voluntary agencies themselves, or even between the various units of a single voluntary agency. Though some co-ordination is attempted to be achieved by the Central Social Welfare Board, which grants the financial aid to these voluntary organisations and the National Institute of Public Cooperation and Child Development, through its training programmes, but it has not borne fruits.

A broad understanding of the respective roles of voluntary and governmental organisations in promoting child care, welfare and protection services is essential for the successful implementation of the different child welfare programmes. The Ganga Saran Committee on children felt that legislative framework, financial assistance and administrative coordination for such programmes should come out at the government's initiative.

It is submitted that the only method of achieving this co-ordination not merely between the voluntary organisations and the government or the voluntary organisations inter-se, but also between the parents, the voluntary organisations and the government is through a broad demarcation in their respective areas of obligations, in the legal framework of the Children Code. Although no hard and fast line may be drawn between the duties and functions of these three protectors of the child but a mechanism may be devised in such Code to ensure that gaps and duplications are avoided. In the West, problem of duplication and overlapping at the local level is sought to be removed by creation of co-ordinating counsels. We should have some such bodies at the local, state and the National levels. Only an integration in the efforts of the parents, the society and the state can meet the objective of total child care.

Primarily it is the responsibility of the parents not only to provide the minimum requirements of food, cloth and shelter to their children but also love, affection and a stable home environment to ensure their child's physical, mental and social development. If the parents fail, the society should assist, if the society too fails, the state as parens patriae must assume the full responsibility of every child in need of care and protection. This sharing of responsibilities may be ensured only through an integrated legal framework.

(f) Integrated Role of Legislature, Judiciary and Executive

There should be a perfect integration in the efforts of the three organs of the State while providing protection to the child. It has two aspects - first, the Children Code should aim at a complete integration between the substantive law and the adjective law relating to children. The structure of the court adjudicating in relation to children and the procedure to be

adopted before such court should be such that the court may pa-
tiently consider the best interests and the true welfare of the
child. Thus a judge who has not been imparted any training in
children's laws, child psychology or child-welfare and who is
not provided with any assistance to know the family back-ground
or the personality of and the other circumstances of the child
and who is so much over-worked with commercial and property dis-
putes and sessions trials involving henious crimes and hardened
criminals, can not be supposed to appreciate the finer aspects of
a child's psychology and administer the modern concept of juvenile
justice.

Integration in this context will mean that the qualifica-
tion of the judge who hears the children's cause should be so
prescribed that he has the knowledge of special rights of the
child, the duties of the parents and the state and the function-
ing of the court is in such an atmosphere and the procedure is so
simple that the legislative spirit of providing special protection
to the child and considering his best interests, may find its true
interpretation at the hands of the court. For this purpose the
structure and functioning of the juvenile judiciary should be
child-oriented.

Secondly, there should be an integration between the ju-
dicial approach and the administrative approach in child-care.
If a measure of child-care and protection ordered by the juvenile
court is not executed by the administrative machinery in the
same spirit of juvenile philosophy, the whole attempt to provide
protection to the child is frustrated. Thus the Children Acts
empower a juvenile court to send a delinquent child to a special
school where he is to be treated, trained and reformed to be
properly rehabilitated in life like a normal citizen. If the
administration does not establish any or insufficient number of
special schools and the delinquent children are detained in or-
dinary jails with adult prisoners and no special training is
provided to them as intended by the legislature and ordered by
the juvenile court, the justice to the child, though seriously
aimed by the legislature and the judiciary at their turn, gets
crushed at the hands of the administrative machinery. Justice must reach the child. The first and last link in the process being administration, it too must be devised to act in the same spirit as the first two organs of the state.

(g) **Integration of the Different Interests of the Child**

The concept of 'integration' which the Children Code is required to achieve, is not free from ambiguity in its translation. At many a child welfare forums, the point has often been made as how to integrate and what. Let us at least be clear about the concept of integration for the purposes of the children Code. When we say that there is a compulsive need for an integrated approach in the field of legal protection to children in India, we wish to cover two areas, one, the integration of the different interests of the child and two, the integration in the child protection efforts of the three organs of the state viz. the legislature, the judiciary and the administration, on the one hand, and the parents, the society and the state on the other.

Our aim being the total welfare of the child, the different interests of the child should be so considered at law that while securing some particular interest by prescribing a rule, his other interests should not be lost sight of. The interests of the child are vivid, variable and complex. The different interests are so inter-woven to each other that if an attempt is made to protect one interest in isolation the other interest may be adversely affected.

The Constitution of India provides an illustration of such integration by directing the state under Art. 45 to provide free and compulsory education upto the age of 14 years and simultaneously prohibiting the employment of children upto the same age under Article 23. But again to integrate the ideal with the socio-economic condition of the masses, Article 23 allows by necessary implication, children of poor families to seek employment in non-hazardous trades and vocations. Similarly when it is attempted to bring the illegitimate children totally at par with the legitimate children it is forgotten that it hits at the sanctity of the institution of marriage, which essentially exists
for the well-being of the children. Therefore, the rules must be so devised that they provide full relief to the illegitimates without impugning the sanctity of the institution of marriage.

The Integrated Child Development Scheme provides a very good example of the integration of the different interests of the child. Mal-nutrition and disease have a synergy relationship. The scheme involves the delivery of a package of services including supplementary nutrition, immunisation, health check-up, referral services, non-formal pre-school education and health and nutrition education for children in the age of 0-6 years. The concept of providing such a package deal is primarily based on the fact that the combined effect of a few essential services will be more conducive than where these services are delivered in isolation. The Scheme should be brought within the legal frame work of the Children Code and its age group should be extended at least upto 14 years, it is submitted.

(h) Conceptual Certification and Standardization of Terminology

Children jurisprudence in India suffers from a lack of conceptual clarity and coherence. Conceptual problems arise from ambiguities of ideas, of terms and objectives. In Child Welfare, for instance, the terminological pendulum has swung uncertainly between 'child welfare' and 'child development'. The terms 'child' and 'minor' themselves are not certain as their meaning differs from enactment to enactment in terms of age. Terminological confusion and ambiguity in describing a child during the different stages of childhood e.g. infancy, childhood, adolescence and youth or the different categories of neglected children e.g. destitute, abandoned, foundling, deprived children, children in need of care,

Then the short-term institutions performing the same function are called differently in different states viz. remand home, observation home, reception centre, place of safety. Similarly the long-term institutions for the delinquent children are called differently as certified school, industrial school, approved school, special school or approved centre.42

The problem arose due to the fact that we have proceeded on an adhoc basis in the matter of child legislation and every subsequent draftsman felt him free to use any term that appealed him most. Then, the legislation on children is fragmented between the centre and the state. Every State Act has used a different terminology to cover the same type of subject matter. These ambiguities are not limited to Children Acts or the criminal legislation alone, similar anomalies and ambiguities are visible at the civil law also. Thus, the terms minor, ward, infant, guardian, custody, maintenance, support and legitimation and acknowledgement are not free from doubt. There exist certain marked variations in these concepts as interpreted by the judiciary and as they literally appear to be in the enactments. This is liable to do injustice to a lay guardian who has hardly any access to the judicial law and relies on literal word of the law.

The objective of the Children Code is to remove all ambiguities and confusions by adopting a standard terminology to convey a certain sense. Which of the many existing terms is appropriate, shall have to be decided cautiously and integrally. The definitions contained in the Central Act should ordinarily be adopted, unless it is behind the modern jurisprudence. For instance, the age for being called a child under the Children Act, 1960, is 16 years for boys and 18 years for girls, but under the State Children Acts it is usually common for the children of both the sexes. The distinction created under the Central Act has a nexus to the objective of protecting the weaker sex for a longer duration and seems to be more appropriate. By

42. Bombay Children Act, 1948 as amended uses the term approved Centre.
adopting this age of child in the Children Code the variations in the state Acts shall automatically vanish.

The legal glossary prepared by the Ministry of Law may also help in deciding the appropriate term. Where there is an internationally recognised term or the matter pertains to the area covered by an international document the term employed therein should be used. Then the concepts should be defined keeping in view the judicial decisions and modern advances in the children jurisprudence.

(B) A FRAME WORK OF THE CHILDREN CODE

There is no unanimity of thought on the framework and contents of the envisaged Children Code. Those who look to the question in the light of the existing division of the children's law between the Union and the States hold that 'in our federal set up unless the (subject) 'children' is included in the Concurrent List, there may be two parts of the Code— one falling within the jurisdiction of the Union and the other within that of the State'.

If the view is accepted, the next question would be, who would then frame the Children Code. When neither the Union nor the States have exclusive authority over all aspects of the children, how can such a Code come into existence at all. If it be assumed that the Union prepares the Code containing all the subjects pertaining to children falling in the Union or concurrent list, how would the other part covering subject matters falling in the state list come into being, there being 22 states having a valid say for their respective territories. So the view, it is submitted, does not seem to weigh in its practical application.

The Constitutional competence of the Parliament to enact a Children Code has been examined in the later part of this chapter, which leads to the conclusion that the Parliament is competent to enact such a Code even under the existing provisions.

A second approach visualised is that we need not have all the law relating to children in one book and may have a set of certain mini Codes in the major areas of child care and protection and leave the minor matters to be governed by the existing law. Thus we may codify the family law matters pertaining to children into one enactment and call it a 'Guardianship Code', as they have at the Polish law. Then we may enact a separate 'Child-Labour Code' covering all aspects and all categories of child-labour. The Primary Education Acts and Children Acts which are already there, with minor variations may be modified to conform to the Children Act, 1960 and the Delhi Education Act, 1973 while the other major areas are left to State legislation. On these aspects on which we have no law e.g. nutrition, health and the disability, the Parliament should enact a model legislation as it did in case of the Children Act, 1960 and the Primary Education Act, 1960. A modification of the law relating to children in India without disturbing much the existing legal system, is the aim of this method.

This approach has a conservative leaning in maintaining the existing set up in its place and seeks to modify it rather than to reform, a process which has already been tried, it is submitted. It does not serve the unity of purpose and the clarity of objectives and can not achieve perfect integration in the rights of the child and the ends of juvenile justice. The fragmentation of the substantive law, the adjective law and its administration may be perfectly consolidated only through the enactment of a comprehensive Children Code as a single enactment.

The next question is about the scope and the contents of the Children Code viz. the matters it should include and leave out. One view is that it should lay down the substantive rights of the child, the duties of the parents and the State, enact certain other prohibitions and mandates and leave the matters pertaining to the area of adjective law and specially the administrative child-care to be governed by the general law of the land. The

45. The Prohibition of Smoking Acts, Anti-Beggary Acts and State Vaccination Acts, the subject matter of which is already covered under the Children Act and the Central Vaccination Act respectively, will then become redundant for children.
other view is that such Code should be a self-contained piece of legislation covering all the three aspects of legal protection to children, viz. the substantive law, the procedural law, and its administrative aspects.

The later course, it is submitted, is the only proper course, which may ensure the ends of juvenile justice. It has been pointed out that the existing system of courts specially the civil courts is not child-oriented. Both its structure and its functioning are unsuitable and inefficient to secure the 'best interests' of the child, which the Declaration and the National Policy cherish to be the paramount consideration in any cause relating to the children and an over-hauling of the court structure and the procedure threat is urgently required. If the machinery to adjudicate and administer the Children Code is not child-oriented, the concept of juvenile justice will be at stake.

The Children Code should therefore be a self contained and exhaustive Code covering all the three aspects of the legal protection to children viz. the substantive law, the procedural law and the adjective and administrative machinery. An attempt has been made hereunder to provide a frame work of the envisaged Children Code. But it may be pointed out that even if the suggestion of an integrated Children Code does not materialise for any reason, the submissions made hereunder in respect of the system of courts and administrative machinery would stand of their own, independently of each other.

The integrated Children Code will have the following parts:

Part I - Rights of the Child and Responsibilities towards the Child (dealing with the integrated substantive law for children).

Part II - Integrated Family and Children Courts (dealing with the structure and functioning of such courts).

Part III - Integrated Administrative Setup for Child Care (dealing with the structure and functioning of the different agencies of child care).
The framework of the first part of the Code designed to deal with the entire body of substantive law relating to children viz. the rights of the child and responsibilities towards the child, whether parental or social is dealt with hereunder this chapter. The legal frames designed for the second and third parts of the Children Code have been discussed under Chapters XI and XII infra respectively.

THE CHILDREN CODE - PART I

RIGHTS OF THE CHILD AND RESPONSIBILITIES TOWARDS THE CHILD

The existing substantive law relating to children is broadly divisible into three parts viz. the civil law, the criminal law and the child welfare law. The civil law is further divisible into personal law and the public law. The personal law matters particular to children are legitimacy, guardianship, custody, maintenance, adoption and inheritance. Inheritance has a relevancy with reference to the rights of illegitimate children under all personal laws and also a child in womb in the Mitakshra School under the Hindu law.

The public law governs the citizenship, capacities, rights, disabilities, liabilities, powers and obligations of the child whatever under the civil law, and offences by the child, offences against the child and his privileges, immunities and penal liabilities, if any, under the criminal law. The welfare law provides him a social security in his care, welfare and protection in the different aspects and different stages of childhood and provides a special care to special categories of children.

The whole range of the matters aforesaid covered by the substantive law is scattered over a period of more than 130 years and even a greater number of central and state laws.

46. Child marriage is now prohibited by the Child Marriage Restraint Act, 1929 as amended in 1978.

47. Beginning around 1850s when the Bombay Minors and Bengal Minors Acts were passed, to regulate the guardians conduct under the civil law and the Apprentices Act was passed to provide some protection to the children under the criminal or welfare law.
These enactments are further divisible in two categories. First, laws which are special to children e.g., the Children Acts, the Primary Education Acts, the Child Marriage Restraint Act, 1929, the Juvenile Smoking Prohibition Acts, the Employment of Children Act, 1958 etc. Second, the general laws containing special provisions relating to children e.g., the Factories Act, 1948, the Plantations Labour Act, 1952, the Indian Contract Act, 1899, the Indian Penal Code, 1860.

The task before us is not only to systematically arrange the subject matter covered by the aforesaid enactments but two more sources of the children's law proper have also to be considered. First, all the personal law matters relating to children not being statutory, the customary laws have also to be considered. Secondly, on certain aspects the judicial interpretation is far ahead of the provisions of the statutory law or the customary law when interpreted literally. In certain cases the judiciary has pointed out the gaps and anomalies of law and need for their modification.

Now the real job is to assimilate into the aforesaid proper legal sources, the rules gathered from the extra-legal sources both international and national, but which have to be brought

49. Sections 82, 83 etc.
50. Only the Hindu law is codified viz. the Hindu marriage Act, 1955; the Hindu Minority and Guardianship Act, 1956; the Hindu Adoptions and Maintenance Act, 1956 and the Hindu Succession Act, 1956. In case of the Christian law, the Parsi law and the Jewish law, only the matters of custody and maintenance in the event of a matrimonial dispute are statutory.
into the legal framework of the Children Code, to make the code integrated, modern and comprehensively protective to the children. Such sources are the decisions and covenants of the United Nations Organisation and its agencies viz. The Declaration of the Rights of the Child, the Declaration of the Rights of the Disabled Persons, The Declaration for the Rights of the Mentally Retarded persons, the Draft General Principles on Equality and Non-Discrimination in Respect of Persons Born out of Wedlock, International Covenants on the Civil and Political Rights, International Covenants on Economic, Social and Cultural Rights, the Various Conventions of the International Labour Organization etc. There are 18 conventions of the I.L.O. on different aspects of child labour out of which only 6 have been ratified by India. Then the advances made in the Child jurisprudence at certain foreign legal systems in the area of care and protection to children should also be kept in view.

At the National level, the National Policy for Children, the different recommendations of Law Commission of India, The reports of the Labour Commission, the Education Commission and the committees on different aspects of child care and protection specially set up by the central or state governments such as the Ganga Saran Sinha committee on children, have also to be considered. Then the seminars held and the papers published on any

52. e.g. care and protection of children by the local authorities at the English Law, Integrated Family court system in Japan, Equality of the legitimate and illegitimate children at the Polish law etc.

53. For instance the 71st Report which recommended that the Hindu Marriage Act, 1955 should be amended to provide that the court shall not pass a decree of divorce until it is satisfied that proper arrangements have been made for the maintenance of the children of marriage. In its 54th Report the Law Commission has recommended for the establishment of separate family court to deal with all matters relating to family including children's causes.

aspect of child and the law, and the researches made by institutions and individual scholars provide very valuable suggestions for reform and should not be ignored.

Having identified the sources from where the rules to be incorporated under the Children Code shall be taken, we proceed to lay down a scheme for the contents of the first part of the Children Code dealing with the substantive law relating to children. Part-I of the Children Code should consist of the following Chapters.

I. General matters and definitions.
II. Status and Rights of the child
III. Parents and the Child.
IV. Guardians and their Wards.
V. Care of children in special categories.
VI. Juvenile delinquency
VII. Child Protection against neglect cruelty and exploitation.
VIII. Employment of children
IX. Health, education and general child welfare.

I. GENERAL MATTERS AND DEFINITIONS

Besides the formal matters of short title, extent and commencement etc. the chapter should define the technical terms used in the body of the Code. The policy of standardization of the terms should be followed. The distinction between the terms 'minor' and 'child' should be maintained, the first being applicable to civil matters of capacity to contract, to transfer etc. and the second to other matters as at present, but the age should be standardized. Minority should end at the completion of 18 years of age for all purposes including the children in respect of whom a guardian is appointed by the court. But power

55. Such as the Seminar on 'Child and the Law' held at Panjab University, Chandigarh, in 1979, the other held at the National Institute of Public Co-operation and Child Development, New Delhi in 1982, with the same theme.

should be vested in the court to extend the period of minority in special cases, requiring care and protection of the minor and it should be called 'extended minority'. The same definition should apply for the purposes of custody, and maintenance of children under the different matrimonial statutes, which at present vary.

There is a conflict of opinions on the age of the child for employment purposes. One view is that it may be brought down to 10 years in case of non-hazardous employments and the opposite view is that it should be increased to a minimum of 16 years in all cases.

For the purposes of care and protection proceedings in respect of the neglected children and the delinquency proceedings against juveniles the Children Act, 1960, distinguishes between boys and girls in terms of age which is just. It may therefore not be feasible to prescribe a single age of the child for all purposes. However, as far as possible the variations should be minimised. For care proceedings the policy adopted under the Children Act, 1960 should be followed and for employment purposes the standards set under the I.L.O. conventions as applicable to India should be followed.

The conflict of views regarding the scope of the term 'guardian' should be removed by specifically providing whether it includes a de-facto guardian or not. 'Custody' legal and actual should be defined as under the English law. The words 'infant', or 'infancy' should be defined to distinguish children of tender years of age from the other children. But as has been pointed out it should be specified that the word 'infants' wherever it occurs in the Letters Patents of the different High Courts shall mean a 'minor'. Similar other terms should be defined keeping in view

60. For the Table of ILO Conventions, see Appendix III to this work.
63. See Chapter VIII of this work.
the modern children jurisprudence. Where a particular term has a relevancy only to some particular aspects or is not of general application for the whole body of the Code, it should be placed under the respective chapters.

II. STATUS AND RIGHTS OF THE CHILD

This chapter should deal with two aspects—first, the civil status of the child and the second, the rights of the child. The provisions relating to civil status will include—

(i) capacities and incapacities of the child e.g. to enter into an agreement, to transfer property, to be a partner, a share holder or a trustee, to endorse negotiable instruments, to membership of societies, to hold public offices, to drive motor vehicles, to subscribe life insurance policies, to file or defend a suit etc.

(ii) Privileges and immunities of the child e.g. in all circumstances the child would be the first to receive protection, he may be admitted to the benefit of partnership, or a company, he may be a transferee, or agent under the prescribed conditions, he would have no personal liability in contracts or torts etc.

(iii) Obligations of the child if any, both civil and personal. For instance, where he is supplied with necessities suited to his condition in life, his property may be held liable, his personal obligation shall be limited to his obedience of the parents, guardians, legal custodians, tutors, instructors and respect for the control, but it shall entail no liability, or disability except a moderate chastisement by the parent, guardian legal custodian or tutor as the case may be.

64. Principle 8, Declaration of the Rights of the Child.

The second portion of the chapter should prescribe a bill of rights of the child, which should be in terms of the U.N. Declaration of the Right of the Child with necessary adjustments in their scope, which may be needed to be made in the present economic context of the country as discussed above. The child should have the following rights:

(i) Right to special protection.
(ii) Right to equality and non-discrimination.
(iii) Right to a name and nationality.
(iv) Right to Parental care.
(v) Right to social care.
(vi) Right to nutrition and health.
(vii) Right to education, play and recreation.
(viii) Right to protection against all forms of neglect, cruelty and exploitation.
(ix) Right to special care if handicapped, physically, mentally or socially.
(x) The privilege of being first to receive protection under all circumstances.

III. PARENTS AND THE CHILD

This chapter should cover the different aspects of parent-child relationship viz. natural guardianship, maintenance, legitimacy and adoption of children. All these subjects are at present governed by the personal laws to which the parents are subject. It has been pointed that due to the operation of the doctrine of welfare of the child the law of guardianship and custody of the Hindus, Muslims, Parsees, Christians and Jews stands unified at the judicial level. The rule of paternal supremacy which is common to all the personal laws and also finds recognition under the Guardians and Wards Act is now subordinate to the rule of welfare of the child. The paramountcy of the

66. See early part of this chapter.
67. See Chapter III of this work.
68. Section 25 of the Guardians and Wards Act, 1890.
personal law regarding guardianship and custody of the child is
no more the rule. In all matters of guardianship and custody70
the welfare of the child is now the paramount consideration.
Similarly the mother's position as a guardian after the father71
and as a custodian of the children of tender years even during the
life time of the father is now established.72 Muslim law too re-
cognises the mothers' hisanat over children of tender year.73
It is desirable that the rule of joint-guardianship of the mother
and the father, which is the rule at almost all advanced systems
including the English legal system74 should be incorporated in the
Children Code. It is also in consonance with the principle of the
Declaration75.

The duties and obligations of the natural guardians of all
communities to maintain, educate and provide necessary medical
care to the child and to provide him an atmosphere of love and
affection and material and moral security76 should be properly
spelt out. If the parents fail to discharge their obligations
certain consequences should ensue e.g. the guardian should be
warned and the child should be placed under 'supervision or'
or 'institutionalised'. Similarly the extent of the parental
power should be defined so as to include all acts which are ess­
cential for the due discharge of the parental control, keeping
in view the best interest of the child. The scope of the power of
control of natural guardians should be devised from the pers­
pective of guardianship as an obligation rather than a right of
the guardian.

70. Rosy Jacob v Rosy, 1973 S.C. 2090.
71. Mother can be appointed guardian even during the life of
the father, Tija Bai v Pathan Khan, ibid.
72. Ibid, Section 6, Hindu Minority and Guardianship Act, 1956.
74. Guardianship of Minors Act, 1971, Secs.1 and 2.
75. Principle 6, Declaration of the Right of the Child.
76. As defined under the Hindu Adoptions and Maintenance
Act, Section 3(d).
77. There is no such obligation of the guardians at present.
Certain variations exist under the different personal laws in the matter of liability of the parents to maintain their legitimate and illegitimate children. Only the Hindu law gives equal rights of maintenance to the legitimate and the illegitimate children against both the parents. Though the other personal laws consider an illegitimate child as filius nullius and impose no obligation on the putative father to maintain him, but the provisions of Section 125 of the Code of Criminal Procedure in directly imposes such duty on the father who refuses to maintain his minor children, whether legitimate or illegitimate by empowering the court to make orders for the payment of an amount not exceeding Rs.500 by the father. Thus from the point of view of liability to maintain, no difference is left out in the father's liabilities to maintain both categories of children under the different personal laws. The Children Code should therefore provide uniform rules of maintenance of minor children by the parents. If both parents are invested with the joint-guardianship of their children there should be no difficulty in prescribing the rule of joint-liability to maintain and discharge other parental obligations.

The legal system already contains certain rules regarding legitimacy by birth by legal presumption, by conferring legitimacy under certain specified circumstances e.g. void and voidable marriages and by acknowledgement. Legitimation by orders of courts through legitimation proceeding needs also to be introduced.

Although the subject matter of legitimacy requires to be dealt with on the just policy of a complete equality in terms of care and protection between the legitimate and illegitimate children, in view of the General Principles on Equality and Non-Discrimination in respect of Person Born Out of Wedlock, as adopted by the U.N. Economic and Social Council and endorsed by India, yet the matter being covered by the personal laws of the different communities some flexibility may have to be introduced in this respect. It may be done by imposing equal

78. See, Chapter III of this work.
80. See, Chapter III of this work.
obligations both on the mother and the putative father to provide care and protection to the illegitimate children at par with the legitimate children, while maintaining some kind of distinction between a 'true son' and a 'legitimated son' in certain circumstances, to respect the religious instincts of certain communities, viz. the Muslims illegitimate children should be given a share in the property of his mother and putative father equal to the legitimate children.

Adoption, which is at present recognised only under Hindu law being the best alternative to parental care of children under various circumstances needs to be universalised. Since the Parliament's efforts to provide a general law on adoption have been thwarted by the opposition of certain sections of the Muslim community and the Parsee community, a realistic attitude shall have to be adopted in respect of the subject. The proper course under the existing circumstances is to make the adoption legislation an enabling one. As observed by Mr. Hidayatullah, the Bill should clearly make it optional for any person in India to adopt the proposed legislation and that in such an event a Muslim could make a declaration that other existing laws on the subject namely the Shariat laws would be inapplicable to him. The court's permission should be made a pre-requisite condition before every adoption even under the Hindu law, which now provides for it only in case of the child being given in adoption by a guardian other than a natural guardian.

IV. GUARDIANS AND WARDS

This chapter should provide for the powers of the courts to appoint and remove guardian and pass other orders in respect of guardianship, custody, access, care and protection of the children. It should also provide the right, duties, powers and liabilities of all categories of guardians other than the parents or natural guardians. The rights, duties and powers of testamentary

82. See, Chapters II and III of this work.
84. e.g. Sec.9(4), Hindu Adoption and Maintenance Act, 1956.
guardians are under all personal laws similar to those of the natural guardians subject to the limitations if any, placed under the will or other instrument through which they are appointed.

Under the Hindu law a testamentary guardian appointed by the father cannot act as such if the mother is alive. Such is not the case under the Muslim law. Under the Hindu law after the father, the mother can appoint a testamentary guardian but a Muslim mother has no such right. Thus the rules in relation to appointment of a testamentary guardian differ under the two laws.

If the Children Code adopts the rule of joint-guardianship of the father and the mother at a uniform level, a consequential change with regard to the power of both parents to appoint a testamentary guardian shall have to be made. The English law provides a good example in this regard. At that law, if either parent dies the testamentary guardian appointed by him has a right to act as a joint-guardian with the surviving parent and where both parents expire, the testamentary guardian appointed by both, if both have done so, act as joint-guardians. The same rule may be adopted in the Children Code.

The Guardians and Wards Act, 1890 is the common adjective law governing the declaration and appointment of guardians by the court in respect of all communities. The Act which was passed nearly a century ago, is out of time with the modern children jurisprudence. It still retains the rule of paternal supremacy and considers custody as an essential attribute of guardianship while the doctrine of welfare of the child has judicially made these rules redundant in their application. The Act does not declare welfare of the child as a paramount consideration as envisaged under the Declaration and the National Policy for children. The courts have neither been empowered to pass

85. Section 9(2) Hindu Minority and Guardianship Act, 1956.
86. Sec. 9(3) Ibid.
87. Sec. 3 (f) Guardianship of Minors Act, 1971.
88. Sec. 19(b) of the Guardians and Wards Act.
89. Sec. 25, Ibid.
91. Principle 7, Declaration of the Rights of the Child
92. Policy and Measures 3(XIV).
'supervision orders' nor 'care orders' nor 'wardship orders' in respect of the children in need of care and protection. Thus the Guardians and Wards Act lags behind the modern law. The deficiencies of the Act and the modifications needed to be made in certain sections of the Guardians and Wards Act have been pointed out in this work. The Children Code should remove all such lacunae, enlarge the court's powers and bring the guardianship law in consonance with the modern law.

Defacto guardians are recognised under all the personal laws but their obligations are not defined. Under the modern English law any one other than a legal guardian, who assumes charge of a minor is bound to inform of the fact to the local authority. Such child is visited periodically by officers of the local authority to ensure that he is being properly looked after and is not placed in an atmosphere of moral or material danger. The Children Code should secure the fate of children the care and control of whom has been assumed by the defacto guardians.

V. CARE OF CHILDREN IN SPECIAL CATEGORIES

Principle Five of the Declaration of the Rights of the Child proclaims that the child who is physically, mentally or socially handicapped, shall be given special treatment, education and care required by his particular condition. Principle Six obliges the society and the state to extend particular care to children without a family and those without adequate means of support. This chapter of the Children Code will cater to the needs of such children who are placed under extraordinary circumstances,
except the juvenile delinquents who fall in a separate category needing more of correction and reform than care.

That portion of the Children Act, 1960\textsuperscript{7} and the State Children Acts which deals with providing care and protection to the neglected, destitutes, uncontrollable and similar other categories of children in need of care shall form the first part of this chapter. The second part shall consist of the care to be provided to physically handicapped children, while the third part shall deal with the care of mentally retarded children.

The description of children entitled to care and protection varies under the different Children Acts\textsuperscript{8}. The Children Act, 1960 employs the term 'neglected children' to describe such children\textsuperscript{9} and gives a simple and compact definition in general terms which covers almost all such children. The central Act has also created a separate forum 'Welfare Board' to conduct proceedings in respect of such children and order appropriate measure e.g., send them to children's home\textsuperscript{10} or place them in the custody of a 'fit person' which may be an individual or an institution, or pass a 'supervision order in respect of the child while he remains in the custody of the parents, guardian or other fit person'.\textsuperscript{1}

The provisions of all the State Children Acts are not uniformly extensive in respect of the measures that may be ordered by the court, nor all of them provide a separate forum to hear such children. In many states such children are heard and disposed of by the same juvenile courts which deal with the delinquent children. Thus the provisions of the Children Act, 1960 are an improvement over the provisions of the other State Children Acts and provide a model which may be adopted in the Children Code subject to the condition that the forum to hear such children should be the Integrated Family and Children Court as suggested below and certain other lacunae which have been pointed out should also be removed.

\textsuperscript{7}Viz. Secs. 2, 4, 5 and Chapter III etc.
\textsuperscript{8}See, Chapter IV of this work.
\textsuperscript{9}Sec. 2(e).
\textsuperscript{10}Section 16, Children Act, 1960.
\textsuperscript{1}Section 15, Children Act, 1960.
We have no law particular to the physically or mentally handicapped children at present. As has been pointed out the Lepers Act, 1898 and the Lunacy Act, 1912 which touch a fringe of the respective subjects, adopt a policy of segregation of lepers and the lunatics from the society rather than protect them. The Mental Health Bill 1981, which is under consideration of a joint-Select Committee of the Parliament, as at present too, does not help the mentally retarded children much.

It has been submitted that the vaccum in the field of law for the physically and mentally handicapped children should be supplied at the earliest. The government is trying to enact some law on the disabled persons. It is submitted that special treatment, training and care needs of the disabled child, be he a blind, a deaf, a dumb or an orthopaedically handicapped or one suffering from any other disability, has to be looked from a different perspective as compared to an adult handicapped, as the child has a whole life before him and more chances to suffer. The Children Code should integrally deal with the preventive, curative and rehabilitative aspects of the physically and mentally handicapped children. The Declaration of the Rights of the Disabled, the Declaration of the Rights of the Mentally Retarded Persons, read with Principle Five of the Declaration of the Rights of the Child, provide the necessary framework for such provisions.

The special care needs of the handicapped children, have to be determined in terms of their treatment, their education or training and their rehabilitation. Law should entitle every handicapped child to be treated in a hospital and as far as possible on the State cost and be provided with the needed aids and accessories. Certain categories of disabled children need a continuous medi-care e.g. those suffering from rheumatoid arthritis and they should legally be entitled for it. The Scheme of Integrated Education For the Handicapped Children, 1981 started by the Ministry of Social Welfare should be brought in the legal framework.

2. See, Chapter VII of this work.
3. See, sub-head, 'Certain Negative Features of Existing Protection to Children,' Introduction to Part III of this work.
4. See, Chapter VII of this work.
5. See, Chapter VII of this work.
6. Ibid.
Where it is not possible to impart education to such children at the common schools, they should be entitled to receive education in a special school suitable to their requirements.

The Courts should be empowered to send a handicapped child to some hospital or special Institute for the treatment or to an integrated school for the disabled, for their education or training, on the same pattern as a neglected child is sent to the children's home or a delinquent child is sent to a special school. Similarly, supervision orders may be passed in respect of the guardians of the disabled children to ensure that they are properly cared for. Reservations may be statutorily provided to rehabilitate such children into jobs suiting to their disability in both the public and private sectors. A policy of compulsory registration of all the disabled should be introduced and a provision should be made for the issue of a 'disability card' to them to facilitate the easy availability of the required special care.

VI. JUVENILE DELINQUENCY

The chapter on juvenile delinquents may be divided in two parts. The first part containing the exemptions granted to the child under Sections 82 and 83 of the Indian Penal Code, 1860 and the second part dealing with the special treatment afforded by law to juvenile delinquents. Section 82 grants an absolute exemption from criminal liability to a child below seven years of age, considered to be an age of no-responsibility, while section 83 provides the rule for the age of quasi-responsibility, which is between 7 to 12 years. It is considered as the doubtful age and responsibility is presumed which may, however, be rebutted by the accused by proving his immaturity of understanding.

7. See, the Children Act, 1960.
The English law, which has been followed in India in this regard, since Norman conquest, settled the age of no responsibility at 7 years. While this age has been gradually raised at the English law,9 the Indian law continues to retain the same rule which it adopted in 1861, the year of enactment of the Indian Penal Code. In India also, in Hyderabad where the Asafia Penal Law is applicable, this age is 9 years. It is submitted that the Children Code too should raise the age of immunity to ten years and the age of quasi-responsibility to 14 years.

Above the age of no responsibility is the age of doubtful maturity, when criminal responsibility is ascribed by the ordinary law yet protection against heavy punishments, such as death sentence and imprisonment, is provided under special laws10. This is the juvenile age and the subject of various Children Acts. The different state Children Acts vary in fixing the upper age of the child entitling him to the special treatment and training based on modern juvenile philosophy11. The Children Code should standardize this age, the procedure and the measures which the juvenile courts may order for the juvenile delinquents and remove the existing variations in this regard12.

The law in relation to juvenile delinquents has been the subject of sufficient research and action. The latest Indian law on the subject is that contained under the Children Act, 1960 as subsequently amended. Most of the provisions are quite in consonance with the modern juvenile philosophy and sufficiently secure a distinctive treatment to the delinquent children as compared to the adult offenders, in terms of the judicial forum which hears them, the procedure threat and the measures that can be ordered by such forum. Certain lacunae in these provisions, have been pointed out13. For instance, the Children Act, 1960 neither provides for a juvenile police nor regulates the role of the

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9. Raised to 8 years by Children Act, 1953; to 10 years by the Children and Young Persons Act, 1963 (Sec.16(1); the Children and Young Persons Act, 1969, (Sec.4) provides to raise it to 14 years. But the section is not yet in force.
11. See Chapters III and VIII of this work.
12. See Chapter XI of this work.
13. e.g. See Chapters III, IV and VII of this work.
police vis-a-vis the delinquent children. The existing role of the police in uniform is not conducive to the juvenile philosophy and should be statutorily replaced by a juvenile police. Subject to certain modifications pointed out\(^\text{14}\) the Children Act, 1960, provides the model on the law of juvenile delinquency and should be adopted in this chapter.

**VII. CHILD PROTECTION AGAINST NEGLECT CRUELTY AND EXPLOITATION**

This chapter should deal with the 'special offences' against the child as defined under the Children Act, 1960 and the various State Children Acts\(^\text{15}\) as also the other offences against the child as detailed under the Indian Penal Code\(^\text{16}\). The Suppression of Immoral Traffic in Women and Girls Act, 1958, enactments dealing with employment of children and other similar legislation\(^\text{17}\).

A detailed study of the nature of these offences has been made under Chapter VI of this work and certain important lacunae have been pointed out. For instance, the list of special offences against the child prescribed under the Children Act, 1960 does not include certain offences against the child defined under certain State Children Acts. Some such offences are, taking pawn from a child\(^\text{18}\) being drunk while in charge of a child\(^\text{19}\) allowing a child to be in a brothel\(^\text{20}\), allowing a child to smoke or

\(^{14}\) Chapter VI of this work.

\(^{15}\) See, Chapter VI under the head 'Protection Against Cruelty'.

\(^{16}\) See, Chapter VI under the head 'Protection Against Cruelty'.

\(^{17}\) See, Chapter VI of this work.

\(^{18}\) Section 13, U.P. Children Act, 1951; Bombay Children Act; Andhra Pradesh (Telangana area); Karnataka Children Act and Saurashtra Children Act.

\(^{19}\) Section 9, the U.P. Children Act, 1951; outraging the modesty of a girl, Section 17, U.P. Children Act.

\(^{20}\) Section 14 U.P. Children Act; Section 17 the East Panjab Children Act, 1949; the Bombay Children Act, 1948.
drink intoxicating liquors\(^{21}\), inciting a child to bet or borrow etc.\(^{22}\). The offences too endanger the moral and physical security of the child and may be conveniently adopted under the Children Code.

The offences against the child under the provisions of the Indian Penal Code are so worded as to give an impression that they are meant to protect the adults and the children are incidentally covered. While consolidating such offences under the Children Code, they should be properly re-drafted from the perspective of the child's protection. For instance, the offence of kidnapping the child from lawful guardianship\(^{23}\) is interpreted more as an offence against the guardian than against the child, while it should be considered as an offence against the child also. Causing injury to unborn child\(^{24}\) or causing a woman to miscarry\(^{25}\) are the other instances.

Neglect, cruelty and exploitation which otherwise are overlapping phrases\(^{26}\) in their meaning, when dealt integrally under the Children Code would remove the duplication and gaps in the existing legal framework. Whether an act amounts to neglect or to cruelty or to exploitation, all the three being equally harmful to the interests and the well-being of the child, should be prohibited and made punishable.

Thus the present chapter should include all the penal provisions contained under the different enactments, where a person is sought to be punished for some wrong done to the child. For instance, the provisions of the Child Labour (Pledging of Labour) Act, 1933, the Young Persons (Harmful Publications) Act, 1958, Section 125(4) Code of Criminal Procedure, 1973, the penal

\(^{21}\) Section 14, East Panjab Children Act, 1949.
\(^{22}\) Section 15, Ibid.
\(^{23}\) Sec. 363, I.P.C.
\(^{24}\) Sections 315 and 316, I.P.C.
\(^{25}\) Section 312, I.P.C.
\(^{26}\) See, Chapter VI of this work.
provisions of Industrial Acts in respect of children etc. should all be consolidated and the gaps should be filled and overlappings removed.

VIII. EMPLOYMENT OF CHILDREN

In principle, child labour should be banned. However, such a course would not be feasible due to the prevailing socio-economic constraints and exigencies, as the children have to work to supplement their family incomes and thus their own feeding. To stop their working would result in a considerable deprivation in the fulfilment of their daily requirements. India therefore, can not afford to totally prohibit the employment of children in the immediate future. Our policy framework as contained under the Constitution of India\(^{27}\) and the National Policy on Children\(^{28}\) is quite in consonance with the principle of the Declaration of the Rights of the Child\(^{29}\) and should be the basis of the provisions of this chapter.

We have dozens of laws pertaining to the labour child but certain serious gaps still exist\(^{30}\). The Children Code should adopt an integrated policy in this respect. It should consolidate the law on the subject which already exists. First, the 'hazardous' and non-hazardous' employments should be clearly defined. We should adopt the standards in respect of the working conditions of child labour e.g. minimum age for employment, maximum hours of work, medical examination etc. as prescribed by the ILO conventions which India has ratified\(^{31}\). We should bring in the legal framework, the whole area of hitherto unorganised sector of child labour and regulate their conditions of work as far as possible in conformity to the ILO standards. It is only with respect to minimum age for employment that opinions differ. There is no divergence of opinion on the issue that those children who are employed should be ensured of proper conditions of work, with the

\(^{27}\) Article 24, Constitution of India.
\(^{28}\) Policy 3 (10), National Policy for Children.
\(^{29}\) Principle, 9.
\(^{30}\) See, Chapter VI of this work.
\(^{31}\) See, Chapter VI and Appendix III of this work.
objective that the employment does not interfere in the child's physical and moral development\textsuperscript{32} and his health and education are not adversely affected.

It is to facilitate the employed children that the need to make arrangements for informal education has been emphasised time and again\textsuperscript{33}. The timings of primary and middle schools in rural areas may also be adjusted to suit the agricultural cycle\textsuperscript{34}.

The infringement of the minimum standards of working conditions should be declared an offence against the child and should be severely dealt with. The implementation and administration of the child employment laws needs to be equally tightened. The existing inspecting machinery under the general labour laws has failed to safeguard the interests of the child labour even in the organised sector. Keeping in view the aim of bringing to regulation all kinds of occupations and employments in respect of children, we would require some more administrative machinery to inspect, supervise and ensure the due observation of the minimum standards of working conditions that may be prescribed and to launch prosecutions against those who deprive such conditions to the employed child\textsuperscript{35}.

IX. HEALTH, EDUCATION AND GENERAL CHILD WELFARE

Principle Two of the Declaration of the Rights of the Child and the Constitution of India\textsuperscript{36} uniformly require the State to give opportunities and facilities to children to develop in a healthy and normal manner. Principle Four makes a particular mention of social security, adequate nutrition, housing, recreation and medical services, including adequate pre-natal and post-natal care of the mother and the child. Similarly Principle Seven of the Declaration and Article 45 of the Constitution are common in requiring the State to provide facilities for imparting education to the child, which should be compulsory and free. This includes

\textsuperscript{32} Principle 9 Declaration of the Rights of the Child.
\textsuperscript{34} See, the Recommendations of the National Seminar on Child and the Law ( NIPCCD, 1981) papers, p.152.
\textsuperscript{35} For proposed frame work see, Chapter XII of this work.
\textsuperscript{36} Article 39(F) Constitution of India.
the opportunities for play and recreation. All these matters relate to the practical application of the doctrine of 'state responsibility towards children' as understood in the modern law. The Declaration cherishes all such facilities and opportunities to be provided to the children by law.

This chapter, should provide coverage to the discharge of state responsibility towards children through fulfilment of the material and moral needs of the child in terms of supplemental nutrition, immunisation facilities, medi-care to the child and the mother, education and play facilities and other schemes of social security beneficial to the child. Provisions for the alternate social care to the child should also be included.

Our inquiry into the aforesaid aspects of state responsibility, under the existing Indian law made reveals that only child education is covered by the legislative frame work. The sole legislation on medi-care of the child relates to vaccination against small pox. There is no law on either child nutrition or child health or general medi-care of the child or special pre-natal or post-natal care of the child and the mother. The play and recreation facilities too are not legislatively covered.

The Central and State governments have initiated certain schemes at the executive level, to supply nutritious food for the child, his immunisation against certain diseases and his health check-up. The most important among these is the Integrated Child Development Services Scheme (ICDS) which aims at providing a package of early childhood services of supplementary nutrition, immunisation, health check-up referral services, nutrition and health education and non-formal education to children below six years of age and expectant/ nursing mothers. The projects are at present being taken up in selective blocks in the most disadvantaged backward rural/tribal areas and urban slums.

37. See, Chapter I of this work.
39. See, Chapter V of this work.
41. Under the 20-point programme, it has been decided to increase the number of ICDS projects to 1000 during the VI plan.
For want of a legal support the ICDS Scheme and the other welfare services of the central or state governments have remained sporadic and serve only a minor fraction of the population. Although every body can not be serviced by the state yet the facilities should be made available to all children equally placed. A financial limit may be fixed for availing such services at the cost of the State. It is submitted that since the ICDS Scheme seeks to fulfil the child's varied needs in an integrated manner, it is most suitable for inclusion in the legal frame work of the Children Code. But the existing age group of 0-6 years is too low and should be raised to 14/16 years.

To further enlarge this scheme for the benefit of the higher age group of children, a school health service should also be made an integral part of the primary and other school education statutes.

The central government has quite recently put a ban on advertisements of substitutes of breast-milk and free distribution of its products by manufacturers and distributors, through an 11-point National Code. This provision should be brought in the legal frame work of the Children Code.

The need to have a general immunisation law, a maternity and child health law has already been emphasised. Provision securing these services should accordingly be included in the Code.

On the education front, the Code should provide coverage to pre-primary education play and recreation facilities to all children, non-formal education facilities for the working children and special facilities for the education of the handicapped children as far as possible in an integrated manner. The lacunae pointed out in the existing primary education statutes under the later part of chapter V of this work should be removed under the Children Code. A model in this regard may be found in Delhi School Education Act, 1973.

42. See Chapter V of this work.
43. For details See Ibid, under the sub-head 'Certain Lacunae in the Primary Education Statutes' of the heading 'Right to Education and Play'.
In a submission for enacting a Children Code an important question that arises for consideration is, whether such Code is feasible to be enacted in India, under the existing circumstances. The reply to the question seeks its solution in two different sources - first, the legislative competency to enact it and second, its public acceptability.

(a) Legislative Competence of Parliament

The legislative competence of the Parliament and the State Legislatures is derived from the provisions of Article 246 of the Constitution of India. The Article confers exclusive powers on the Parliament to make laws with respect to any of the matters enumerated in list I in the seventh Schedule, referred to as the 'Union list'. A similar competence in relation to List II, referred to as the 'State list' vests in the State Legislatures. Both the Parliament and the State Legislatures are competent to enact laws on any of the matters enumerated in List III referred to as the 'Concurrent list'. The residuary powers of legislation exclusively vest in the Parliament. On matters under the 'Concurrent list' the Parliamentary legislation supersedes the state legislation, if any.

The Parliament may legislate even on matters enumerated in the state list under specified contingencies. Two of the contingencies are relevant for our purpose. First, it is lawful for the Parliament to pass an Act on a matter under the 'State list', if the Legislatures of two or more states pass a resolution to the effect authorising the Parliament to do so. When such law is enacted any other state may also afterwards adopt it by a resolution passed in that behalf by the houses of State Legislatures.

44. Article 248 Constitution of India.
45. Article 254, Ibid.
46. Viz. Article 249 (the National interest), Art. 250 (during emergency), Art. 251 (by consent of states), Art. 252 (to give effect to international agreements).
47. Article 252, Ibid.
Secondly, notwithstanding any provision to the contrary under the Constitution, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, organisation, agreement or convention with any other country or countries, or any decision made at any international conference, association or other body.

The proposed Children Code being a comprehensive piece of legislation relates to subject matters some of which are contained in the Union list, some in the Concurrent list and some in the State list and thus touches the legislative competence of both the Parliament and the State legislatures. The subject matter relating to United Nations Organisation and participation in international conferences, associations and other bodies and implementing of decisions made thereat, falls in the Union list.

All matters within the purview of personal laws generally and those relating to marriage and divorce, infants and minors, adoption, wills, intestacy and succession, joint family and partition particularly, are under the concurrent list (Entry 5, list III). The concurrent list also includes criminal law (Entry 1) and criminal procedure, (Entry 2), civil procedure (Entry 3), evidence (Entry 12), administration of justice, constitution and organisation of all courts except Supreme Court (Entry 11A), lunacy and mental deficiency including places for the reception and treatment of lunatics and mental deficients (Entry 15), vagrancy (Entry 15), social security and social insurance, employment unemployment (Entry 23), welfare of labour including maternity benefits (Entry 24), education (Entry 25), population control and family planning (Entry 20A) and jurisdiction and power of all courts with respect to any of the matters in list II lie in the concurrent list.

48. Article 252, Constitution of India.
49. Entry 12, List I, Sch. VII, Constitution of India.
50. Entry 13, List I, Ibid.
Subjects of local importance such as prisons, reformatories, Borastal institutions and other institutions of like nature (Entry 4, List II), local government (Entry 6), public health (Entry 6), relief of the disabled and the unemployable (Entry 9) and the jurisdiction and powers of all courts with respect to any of the matter in List II (Entry 65) etc. fall under the State list.

(b) Validity of Substantive Law Part of the Children Code

The contents of the proposed Children Code as outlined above, are divisible into three main parts, viz. substantive law, procedural law and administrative set up. The substantive part of the Code shall include matters some of which are at present subject to the personal laws, viz. legitimacy, guardianship custody, maintenance, adoption and inheritance and the rest come under the public law area. All the personal law matters being placed under Entry 5 of list III or the Concurrent list, are well within the legislative competence of the Parliament. That portion of the substantive law relating to children which at present is covered under the public law area relates to varied matter touching nearly all the three lists. It is for this reason that at present there are both central and state Acts on many subjects earmarked within their respective competency.

It is submitted that the Parliament is constitutionally competent to enact on all aspects of the public law area which may be included under the Children Code. The submission may be well pleaded. Most of the matters relating to children needing any kind of protection from the state and law are now contained under one or the other decisions made at international conferences, associations and other bodies whether called a Declaration or Resolution or Convention, which under Article 252 read with Entries 12 and 13 of list I (Union list) of schedule VII of Constitution of India, fall within the exclusive legislative competence of the Parliament, notwithstanding anything to the contrary under the Constitution.

51. Article 252.
The saving clause under Article 252, has been specifically mentioned by the Constituent Assembly for removing any doubt about the superseding nature of the Article. Thus even if a matter under the international declarations, resolutions or conventions, falls in list II, i.e. the State list, the bar of Article 246(3) will not apply in case the Parliament passes a legislation to implement such decisions.

India is a member of the United Nations and has signified, ratified or adopted many decisions of this body and thus committed itself to implement those decisions legislatively. Such major decisions pertaining to children, are the Declaration of the Rights of the Child, which contains almost all aspects of childhood requiring care and protection, the draft General Principles on Equality and Non-Discrimination in respect of Persons Born out of the Wedlock, the Declaration of Rights of the Mentally retarded, the Declaration of the Rights of the Disabled and various conventions of the International Labour Organisation(ILO) e.g. on the aspects of their minimum age for employment, medical examination and prohibition of night work etc., which India has so far ratified or which it may decide to ratify in future. Then there are certain other conventions which contain some matters relating to children e.g. the International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights etc.

The coverage provided by the international decisions is so wide that in the substantive law area, hardly a few aspects of the subject matter are left out to be judged on the basis of distribution of legislative powers among the Parliament and the State Legislatures. Though the subjects of local government, public health, reformatory and borstal and relief to the disabled which are to be dealt with in the Children Code lie in the state list, yet firstly, Article 252 supersedes the state competence and secondly, these are general matters concerning minors and

52. Article 246(3) confers exclusive competence upon the states on all matters contained in list II.

53. India has so far ratified only six of 18 conventions resolved by the ILO, See Appendix III to this work for the Table of Conventions.
infants and do not effect the Parliament's competence to enact a law on 'Protection to Children' as a distinct subject, also covered by the terms, 'minors and infants' under Entry 5 of the list II Concurrent list, as also under Article 248 dealing with the residuary powers of the Parliament as a last resort.

It excludes all possibilities of an objection to the validity of any substantive part of the Children's Code on the part of a state, on the ground of competence of the Parliament, being upheld in a judicial review of such law.

(c) Validity of Procedural Law Part of the Children Code

The administration of justice, constitution and organisation of all courts except the Supreme Court, the civil and criminal procedure and evidence and jurisdiction and powers of all courts with respect to all matters of the Union list or Concurrent list, are within the legislative competence of Parliament under Article 246(1) and (2) respectively. As the Parliament's competence with regard to the substantive law part of the Children Code has been established above, a new hierarchy of children courts can, therefore, validly be created and an informal procedure thereat may easily be prescribed for carrying out the provisions of the Children Code, a matter deemed to fall in the Union list.

(d) Validity of Administrative Setup Part of the Children Code

The Union is fully competent to entrust function, either to the state government or to its officers and authorities or impose duties in relation to a law made by Parliament, which applies in any state notwithstanding that it relates to a matter with respect to which the legislature of the state has no power to make laws. Therefore the Children Code can validly provide either a new administrative machinery or impose duties upon the existing officers of the state to discharge those functions. The local authorities may by analogy be obliged with certain duties in relation to the care, welfare and protection of children in need of such care etc. as proposed under the Children Code.

55. Article 258, Constitution of India.
(e) **Freedom of Religion and the Children Code**

A legal objection may be raised as to the legality of those portions of the proposed Children Code which are now subject to the personal laws, by certain sections of the population, on the ground that it infringes their fundamental right to freedom of religion guaranteed under Article 25 of the Constitution, hence liable to be declared void under Article 13 of the Constitution of India. This objection too is not tenable, it is submitted. Firstly, what Article 25 guarantees is freedom of religion and not any secular activities that may be associated with religious practices. Secondly, this right is not an absolute right and is subject to various conditions and restrictions also contained under Article 25.

The right to freedom to religion is subject to not only public order, morality and health but all other provisions of part III of the Constitution. Thus the Article is subject to the right to equality guaranteed by Article 14 and Article 15 which entitles the state to make any special provision for children, and for the advancement of any socially and educationally backward classes. Further clause (2) of Article 15 empowers the state to regulate or restrict any secular activity associated with religion, and to provide for social welfare and reform. Any reform in the existing practices or customs relating to legitimacy, guardianship, custody, maintenance, adoption etc., to meet the objective of child welfare as an essential part of social welfare, is therefore, well within the competence of the Parliament to make.

Thus the Parliament can validly enact a comprehensive Children Code covering all aspects of child care, welfare and protection, substantively, adjectively and administratively.

(f) **Public Acceptability of the Children Code**

A major and perhaps the only extra-legal obstacle in legislating a Children Code worth pointing, is the possible dissent

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56. Religion may be defined as a medium of relationship of man with God.
57. Article 25(1).
58. Clause (3) of Article 15.
59. Clause (4) Article 15.
60. Sub-Clause (a) to Clause (1) of Article 25.
61. Sub-Clause (b), Ibid.
of a certain section of the population holding orthodox views relating to certain personal law matters, particularly legitimacy and adoption. For instance some Muslims maintain that legitimation and adoption are prohibited by the Islamic law. Such opposition has already been demonstrated by them in the Parliament, during the deliberations of the joint committee on the Adoption of Children Bill 1972

The Adoption of Children Bill, 1980 pending before the Parliament, which excludes from its purview the Muslim community has now been opposed by a section of the Parsee community

Those Muslims who hold a liberal view maintain that adoption is not prohibited under Islam. Mr. Hidayatullah maintains that what Islamic law restrains is that the adoptee can not ever be regarded as the adoptor's 'true son' but not the institution of adoption. Similar are the views of Dr. Tahir Mehmood who holds that the adoption falls under that category called 'mubah' towards which Islam is indifferent, therefore reform is possible in this area. The orthodox view is also assailed on the reasoning that under the Shariat Act, in matters of adoption the Muslims are not compulsorily governed by the Muslim law.

It may also be pointed out that certain Muslim countries have adopted a liberal and modern view and have given place to the law of adoption under their legal system. Thus under the Turkish Civil Codes of 1926 and the Tunisian Law of Guardianship and Adoption, 1958, adoption is permissible.

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63. See, Indian Express, New Delhi, dated 12th Sept. 1982.
64. Vice-President of India and Ex-Chief Justice of the Supreme Court of India.
67. See, the Shariyat Act, 1937.
68. See, Section 3, Shariyat Act, 1937.
69. See, Dr. Tahir Mehmood, FAMILY LAW REFORM IN THE MUSLIM WORLD (1972) pp. 15, 99; see also MINORITIES AND THE LAW, (1972) Ed. Mohammad Imam.
Mr. M.C. Chagla, a renowned Muslim Jurist, maintained that in India Islamic law did not obtain and the Muslims in this country were always governed by Muslim law as interpreted by the Privy council and the Supreme Court. There is worth in this view. Our study has revealed that the law of guardianship and custody stands judicially modified and is no more the textual Hindu or Muslim law of guardianship and custody. Now the welfare of the child is the paramount consideration and the personal laws have been superseded by the welfare principle.

Section 125 Cr. P.C. obliging the putative father to provide maintenance to his illegitimate children, a matter totally against Muslim concept of treating an illegitimate child as filius nullius, is in force since 1898, when the old Code of Criminal Procedure was first enacted. Thus the law of maintenance can not be claimed to be Muslim. The age of marriage under the customary Hindu and Muslim law had been modified by the Child Marriage Restraint Act, 1929. After the 1978 amendment in this Act the role of guardians of marriage both under the Hindu law and the Muslim law becomes redundant. In respect of adoption, the Shariat gives an option to the Muslims.

When we look upon the concept of adoption and legitimation from the perspective of the child we find that they provide a solace and relief to the child. Adoption provides the best alternative to parental care for those children who get orphaned or are abandoned or who are otherwise in need of love and care. The U.N. Draft General Principles on Equality and Non-Discrimination in Respect of Persons Born Out of Wedlock, which has been endorsed by India, cherishes the same benefits to be given to the illegitimate children which are available to the legitimate children. Law has already interfered in the personal laws to provide maintenance to the child, it can provide him a status and a share in inheritance also by an extension of the doctrine of acknowledgement, where the facts are supported by proof, within the framework.
of the Muslim law and serving the purpose of the child.

With due respects for every religion, it may be submitted that it is more a question of perspective than religion. We may but feel pity for the children of such communities whose guardians do not wish a benefit to be conferred upon them by law. A deep rooted faith and adamancy understands no arguments, so it seems futile to communicate with those who hold orthodox views, about the modern philosophy of treating children as national and social assets, a perspective which compels the mankind to pledge that it owes to the child the best it has to give. And it is to translate this commitment to the child, also made by India as a party to the international body, that the change in law is contemplated.

The question then arises, whether the law can always be neutral where such minor differences arise? The matter of the Children Code should not be viewed on the analogy of a uniform civil code, envisaged under Article 44 of the Constitution of India. It has to be viewed entirely in a different way as a human problem of that tiny little being who is really suffering on account of the inhumane conduct of those who should have protected him. We may cite for those who oppose a benefit being conferred upon the children, the following recitation of Nobel Laureate Gebri a Mistrel:

'We are guilty of many errors, many faults, but our crime is abandoning the children, neglecting the fountain of life; many of the things we need can wait the child cannot. Right now is the time, his bones are being framed, his blood is being made and his senses are being developed. To him we cannot answer 'Tomorrow'. His name is 'Today'.
