CHAPTER 10
CONCLUSION AND SUGGESTIONS

Mahatma Gandhi said:

If we are to teach real peace in this world, and if we are to carry on a real war against war, we shall have to begin with the children.

The profile of the children in India reveals that a majority of them are living in the conditions of want, deprived of basic survival, subsistence, and developmental opportunities. Worldwide the protection of child has been accepted as the responsibility of the state. The concept of child has gone through complete shift from the welfare to rights of children basing it mostly on the ideals laid down in international standards.\(^{721}\) It was observed throughout the world that the states started taking responsibility towards the children who are deprived and need protection. Efforts were being made to improve their condition and provide ample opportunities to the children living in conditions of want and showing signs of social maladjustments. Almost every country has a juvenile justice process, though the quality and maturity vary from country to country.

In India, too, the state realized and hence accepted the responsibility of providing care and protection to children and their rehabilitation. Through welfare schemes and juvenile justice system, its an endeavor to provide care and protection to neglected and delinquent children. However, studies have shown that the schemes are inadequate and JJS is malfunctioning.\(^{722}\) From 1972 to 1999 and now to 2011, a little seems to have changed on the ground level for


bailable offences made under Cr.P.C. Bail to the child may be refused only if release of the child will be detrimental to the interests of the child or will defeat the ends of justice. It raises the question if bail in bailable offences may be refused to a child who satisfies conditions mentioned in Section 12. This question has neither reached the higher courts nor the Rules have clarified this aspect though very elaborate rules have been framed laying down the post-production procedure to be followed by the JJB. Further there is no explicit requirement that detention shall be used only as a measure of last resort, and the broad grounds for detention based on exposure to “moral danger” do not promote minimal use of detention. Street children are particularly vulnerable to pre-trial detention, even if charged with minor offences. One magistrate estimated that roughly 30% to 40% of children are not released on bail because their family is unfit or cannot be located. Bail is denied not because of the nature of the offence, but because there is nobody to take custody of the child. The magistrate further clarifies that things are changing for good form past two years. The enforcement of the Act is better now and the bail is also grants in majority of cases. The word “apprehension” has been substituted for arrest in Section 12. Question is whether it means that now a child may be “apprehended” without warrant for non-cognizable offences?

The JJCPA 2000 calls for the creation of special juvenile police units to deal with children in conflict with the law and children in need of protection. Every police station must have at least one officer designated and specially trained as the “juvenile or child welfare

---

727 Section 12 of JJCPA 2000.
729 Interview with one of the Principle magistrate, JJB, Delhi.
The Act requires that every child apprehended by police be placed under the charge of the special juvenile police unit or the designated police officer that shall immediately report the matter to a member of the Board. In fact, the Act itself provides limited direction with respect to the operation of the special juvenile police units. These issues have been left to the discretion of states in the framing of Rules and states have been slow to establish special police units due to limited resources.

Another issue which is contentious whether there is a need for a separate law on offences against children or a separate chapter within the Indian Penal Code (IPC) to address all forms of violence, abuse and exploitation of children. The IPC is the main criminal law that defines offences and provides for punishment, a copy of it lies in every police station, so police find it easy to relate to it. Special legislations are treated as secondary to the IPC, especially if they are on women and children, which are soft subjects for the politician or police. Yet, proponents of a special law for child abuse argue that without it, children's issues will remain at the periphery and child-friendly procedures will be compromised for procedures meant for adults. Some of the NGO feels as long as police use the outmoded Criminal Procedure Code to deal with children, they will remain far from justice. A separate procedural code for dealing with children, for both victims of crime as well as those in conflict with law, along with changes in the Indian Evidence Act are needed urgently to ensure a child-friendly legal system.

A close reading of the Rules shows that it has incorporated the welfare model rather than the rights model in conducting the inquiry. For example, Rule 13 of Model Rules 2007 provides for child-friendly

---

Section 63 JJCPCA 2000.
The JJCPCA 2000 states that Special Homes are to be established by the State or voluntary organisation for the reception and rehabilitation of children in conflict with the law. Most States have established one or more Special Homes and have established Rules for the certification and management of the homes. As with Observation Homes, the Act specifically promotes partnerships with NGOs in the running of the homes. This partnerships approach is being actively encouraged by the central government, and has shown considerable success, particularly in Tamil Nadu, Maharashtra, Karnataka and Delhi. In some cases, Government/NGO partnerships arrangements have been established wherein NGO personnel are providing education, vocational training and other programmes in institutions that are managed and staffed by the government. The state of Andhra Pradesh has put into practice a scheme of co-management of the State's children's institutions with selected NGOs. Under this scheme each institution will have a key NGO co-managing the institution and other member NGOs on a committee to monitor implementation. In other cases, the State government has certified Special Homes that are fully operated and managed by a trusted NGO, with State funding support. This has reportedly improved the quality and range of services being provided to the children, since NGOs generally have specialised staff and are able to mobilise community involvement and volunteer professional services from

---

734 Section 9 JJCPCA 2000
doctors, lawyers, etc. Reports of physical abuse of children in institutional are persist, and most lack adequate facilities for education, vocational training, counselling and reintegration. One concern raised regarding the homes is that while the JJCPCA 2000 clearly differentiates between Observation Homes (for children subject to pre-trial detention); Special Homes (for children convicted of an offence); and Children's Homes (for children in need of protection), in practice many homes are certified under one or more of these categories. This has resulted in the continued mixing children in conflict with the law with children in need of protection, thereby undermining the distinction the Act is trying to promote.

Another concern is that, while the institutions have become more open to NGO involvement, the Rules themselves continue to promote an environment based on confinement rather than community contact. For example, under the Model Rules, a child is permitted a family meeting only once per month, and there are strict limitations on leaves of absence and other community contact. The Rules also do not include any restrictions on discipline and use of force against children in institutions. In terms of reintegration of children who have completed their term in a Special Home, the JJCPCA 2000 makes provision for “after-care programmes” to assist them “to lead an honest, industrious and useful life”. While the Act is not specific with respect to what this involves, the implication is that after-care is also premised on an institutional approach.

The JJCPCA 2000 makes provision for a Central Advisory Board to coordinate implementation and monitoring of the juvenile

---

736 Interview with a social worker from prayas.
737 Concluding Observations of the UN Committee on the Rights of the Child: India, CRC/C/15/Add.228, 26 February 2008.
738 Section 44 which states that a child may “stay” with an after-care organisation for up to three years (three year is the maximum limit).
adoption it is find that little progress has been made on the ground. Follow-up is poor in the case of foster care and sponsorship, making it unattractive for civil society organisations. Adoption has assumed an ugly face with adoption agencies turning into rackets for selling children outside the country even as several parents are waiting in queue. That information too is not shared publicly.

It has been found that the girl victims of sexual abuse face segregation in institutions and are treated as “bad girls”, evendisowned by families. Rehabilitation of children in conflict with law is particularly difficult as their record travels with them all their lives. Stigmatization and lack of access to and/or poor quality of education and vocational skill programmes in institutions not only erode these children’s self-esteem but also fail to ensure their social reintegration. Rehabilitation schemes of both government and private sectors have failed to touch theirlives except few of NGO that are working in right direction. It would be good if corporate sector play a big role in helping these children through mentorship and rehabilitation programmes and with job opportunities, but it has not happened. Government must make efforts to involve the corporate sector into rehabilitation process of the child.

The other worry is that full-fledged programmes like the ICPS too will now be run by societies registered under the Societies Registration Act. In an alarming trend of “burden-shifting”, most of the flagship programmes for children are being handed over to private bodies and NGOs for implementation. The state has abdicated its responsibility of not only implementing them but also monitoring these new bodies, which should have been welcome only as visitors and consultants, providing technical assistance and management expertise. The National Plan of Action for Children 2005 has provided
more space for child rights to be heard. It has a chapter on child participation, in which the very first goal emphasizes promotion and respect for the views of all children, including the views of the most marginalized, especially girls, within the family, community, schools and institutions, as well in judicial and administrative proceedings. The goal talks about facilitating children’s participation in all issues affecting them. This Plan of Action must be implemented forthwith in both letter and spirit and states and Union territories too must formulate and implement their own Plans. For this to happen, the government as well as the juvenile justice system must urgently address the areas of concern summed up above and adopt the following suggestions.

**Suggestions**

The effective implementation is possible only by making the system more accountable. The most concerned suggestions are being given priority wise:

- Reliance on Criminal Procedure Code is major obstacle is giving informal nature to proceedings under JJCPCA 2000. It remains harsh and unnecessarily coercive. Criminal Procedure Code needs to give way to a procedure code specially designed for juveniles’ proceedings.

- JJB/CWC remains powerless because they are not seen as “Judicial Bodies”. Though the presence of a Judicial Officer in JJB makes a lot of difference but CWCs are really pathetic because “Duty Holders” do not take CWC seriously and Department of Women & Child Development treats CWCs as its employees and it in turns make service delivery very difficult. Honorary nature
of CWC/JJB members should also be abolished. It should be replaced with a properly recruited, trained cadre of "National Juvenile Judicial Services". Because of this ad-hoc structure of JJB/ CWCs nothing meaningful is being achieved. CWCs are a total anarchy.

- Section 19 of JJCPCA 2000 is very cryptic and does not answer many issues. If disqualification and disclosure is prohibited, then it should also contain a provision in it saying that an inquiry initiated under Act shall not be treated, as “Criminal case” and no body will be compelled to disclose it in application forms.

- JJCPCA itself uses words like "Arrest", "Detention" "Accused", and "Conviction" etc. that contrary with Rules. It should be removed. Moreover Act does not provide anything on "Police investigation", leaving entirely on Cr.P.C., where the procedure prescribed is for adults. Because the purpose of investigation of a Juvenile's case is not to seek persecution, investigation should also be structured keep in mind the child.

- JJCPCA 2000 does not contain any provision on "Legal Aid". It is only in Model Rules. The kind of legal aid required for JJB/CWCs is totally different from the adult Courts and The Legal Services Authority Act is not structured to provide juvenile specific legal aid. JJCPCA 2000 should give a statutory basis for legal aid in JJB/CWCs. At the same time quality of legal aid services must improve. Free legal aid should not lead to a compromise in the quality of service, as often happens now.
Age verification should happen at the earliest. In case of doubt, police should get the age certificate from the school, so that the child is not sent to home during the pendency of case. As institutionalization should be the last resort.

In cases where the ossification test is resorted to, the lower range of age suggested in the test may be considered.

Right from the point of arrest up to adjudication before the competent authority, as well as assessment, placement and everyday living within the institutions, the child’s opinion should not only be heard but also given due weight in accordance with his or her age and maturity.

The Social Investigation Report should be made at the earliest. The job of making the SIR should also be given to credible NGOs.

In case of delay in proceeding, which is a common phenomenon, firstly, the Act must specify the maximum limit and that should be strictly implemented. Secondly, child must be compensated for the delay because the fault is of system not of a child and the age is very crucial for there development, if they waste there time running in courts to get justice that can be detrimental for their future.