

**Speech delivered by Hon'ble Mr Justice, Pankaj Mithal, Hon'ble the Chief Justice, High Court of Jammu & Kashmir and Ladakh, on 9th October 2021, at inauguration of 4th Round Table Conference on Juvenile Justice.**

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My esteemed Justice Ravindra Bhat, Judge Supreme Court of India, Justice Ali Mohammad Magrey, my brother Judges present here and brothers and sister joined through virtual mode, Dr. Arun Mehta, Chief Secretary, Government of UT of J&K, Ms. Yasmin Ali Haq, Country Head, UNICEF, Judicial Officers, Officers of the Government UT of Jammu & Kashmir, ladies and gentlemen. Namaste and a very good morning to all.

It is really a proud privilege to be sharing dais with Hon'ble Mr. Justice Ravindra Bhat, Judge, Supreme Court of India and the Chairperson, Juvenile Justice Committee of the Supreme Court.

Ladies and gentlemen, this fourth Roundtable Conference organised by the Juvenile Justice Committee of the Supreme Court in association with the Juvenile Justice Committee of the High Court and the Government of UT of Jammu & Kashmir and Ladakh, is mainly aimed at reviewing the distance travelled and covered in the direction of strengthening the juvenile justice regime in the two UTs, and to renew our pledge to work with utmost devotion and vigour for the best interest of the children. It is heartening to note that the conference has the active support of UNICEF.

A Nobel Prize winning poet, Gabriela Mistral has written, I quote –

**We are guilty of many errors and many faults,**

**But our worst crime is abandoning the children,**

**Neglecting the fountain of life,**

**Many of the things we need can wait,**

**The child cannot wait,  
Right now is the time  
His bones are being formed,  
His blood is being made,  
And his senses are being developed,  
To him we cannot answer 'tomorrow',  
His name is 'Today'**

On the international horizon, efforts were underway since 1960 to provide for a separate legal base for juvenile delinquencies. In the 6<sup>th</sup> UN Congress held in Venezuela in 1980, it was felt necessary to have Standard Minimum Rules for the administration of Juvenile Justice. The fundamental basis for this need was the understanding that – every child has its human rights and these rights should not be denied to them by anybody. Hence, it was felt that there should be laws to protect the rights of the children. Consequently, it was accepted that special attention must be given to the problem of child delinquency. In the meeting held at Beijing in May, 1985, the Standard Minimum Rules for the Administration of Juvenile Justice were examined and adopted.

The United Nations Convention, 1989 on Child Rights and the Beijing Rules form the bedrock of the understanding of Juvenile Justice system and for adopting a separate approach and treatment for Juvenile delinquency, apart from the penal laws and criminal trial procedures in vogue in different jurisdictions world over.

The Constitution of India in Part-III and Part-IV provides special provisions for the welfare and protection of children and women, and a positive action expected from the State, as directive principles, for ensuring best interest of every child. Based on the constitutional mandate and the understanding

developed in the International Conventions and meetings, India came up with its first legislation on Juvenile Justice in the year 1986, the Juvenile Justice Act. It was quite early when it was realized that the legislation was insufficient to ensure the best interest of the children. Moreover, there had been few judicial interventions of the Supreme Court, especially through its judicial pronouncements in "*Sheela Barse Vs. Union of India*" cases. These judicial interventions from the Supreme Court expedited putting in place an updated legislation in the form of Juvenile Justice (Care and Protection of Children) Act, 2000. This legislation was intended to keep pace with international developments. It was for the first time that a distinction was made between a child as a juvenile delinquent and a child in need of care and protection. The fundamental principle, however, remained the same i.e. to serve the best interest of the children.

Inadequacies in the Act of 2000 were tried to be removed by way of exhaustive amendments in the year 2006. Experience gathered from the working of Juvenile Justice Boards and Child Welfare Committees for over a period of six years, was utilized to make the provisions of Juvenile Justice more pragmatic and scientific. The legislation of 2000, amended in the year 2006, was found wanting in the wake of the sensational *Nirbhaya episode* that happened in the year 2013. Collective outcry had led to further overhauling of the provisions of the Juvenile Justice Act in the year 2015. This was based on the popular understanding developed over a period of time that children in certain age groups do behave like adults and for that reason they need to be dealt with by the Courts like the adults. This understanding changed the focus of policy makers from the child centric approach to 'seriousness of the offence' centric approach.

In the criminal administration of justice, it was noticed quite early that children need to be treated differently compared to the adult offenders. In that view of the understanding, there have always been special provisions in the substantive and procedural laws to treat the children differently from men. This understanding stems from the doctrine "*Doli - incapax*", meaning thereby a child has no capacity of realizing the consequence of his or her actions. It was for this reason that in the penal code exceptions were carved out under which a child up to the age of 07 years would be considered to have committed no offence and a child up to the age of 12 years was to be probed for his/her mental maturity and capacity to know the consequences of the offence and only after analyzing such capacity a child could be charged for the offence. Similarly, in the criminal procedure code there were many concessions allowed in favour of children, be it in the matter of grant of bail or post conviction conferment of benefit of probation. Benefit of probation could even be extended in favour of first offenders aged upto 21 years. Gradually, on the basis of scientific studies and the analysis of socio-psychological factors there has been a progressive updation of laws relating to children, especially the delinquents. Creation of Special Homes, Observation Homes and Places of Safety for the children was the outcome of the understanding so developed over a period of time that delinquent children would need to be treated differently and they needed to be segregated from adult offenders and convicts.

Lately, it has been understood that even if found involved in the commission of offence, a child cannot be segregated in such a manner that he is taken away from his social surroundings. There has been a paradigm shift wherein stress has been given to restorative and rehabilitative mechanisms rather than retributive and consequent segregation from the community or society. The Observation Homes and Special Homes even with the best of

facilities cannot match and be a suitable replacement for family and community atmosphere. There cannot be an overall mental and socio-physiological development of a child by keeping him or her away from the social atmosphere. Juvenile Justice legislations have tried to fill the gaps by making provisions for restoration of delinquent children to the care and protection of their families or kin, with further provisions for making concerted efforts for the well being of the child in the family and in the community to which it belongs.

There have been many studies undertaken at national and international level to get a peep into the reasons for Juvenile delinquency. These researches and studies have shown that there can be numerous causes of Juvenile delinquency. Every person in its psychological manifestation depicts different behavioral patterns which are influenced by the family, community and social factors surrounding such persons. During the growing years a child picks up behavioral patterns from his/her surroundings and the social atmosphere deeply impacts their thoughts and actions. Broadly speaking, the factors giving rise to Juvenile delinquency are adolescent-instability, economic and social conditions, family values, educational standards in the family and the community around, changing dynamics of modern living, physical and sexual exploitation of children and the migration of families owing to poverty, conflict or job related requirements. These factors greatly influence the child behavior and give rise to child delinquencies. The factors which give rise to Juvenile delinquency need to be addressed in order to ensure the 'best interest of a child'.

Addressing the issues of Juvenile delinquency and ensuring the welfare of children in need of care and protection through Juvenile Justice legislations is only a part of the process of ensuring the best interest of children in line with the mandate of the Constitution of India and the international conventions. A lot needs to be done towards achieving the said objectives.

There are few constitutional provisions and children specific legislations which need to be implemented in letter and spirit. By neglecting to implement any of these legislations, we will be doing a disservice to the future of this nation, for we owe the future of the nation to our children. By securing the future of our children, we are sure to ensure the future of our nation. By neglecting to secure the fullest development of children we cannot guarantee the complete national development.

Abraham Lincoln had said a century ago -

**“A child is a person who is going to carry on what you have started. He is going to sit where you are sitting, and when you are gone, attend to those things you think are important. You may adopt all the policies you please, but how they are carried out depends on him. He is going to move in and take over your churches, schools, universities and corporations. The fate of humanity is in his hands”.**

So far as the UT of Jammu & Kashmir and UT of Ladakh are concerned, it is noticed that there has been a tardy pace in the direction of invocation and implementation of Juvenile Justice laws. The pace of actual implementation of the Juvenile Justice legislation moved only at a snail's place. It is now satisfying to know that because of the keen interest shown by the Juvenile Justice Committee of the Supreme Court and Juvenile Justice Committee of this High Court, the Juvenile Justice legislation is being implemented in its letter and spirit. Three Round Table Conferences conducted in this direction have given impetus to the efforts for implementation of all the policies to ensure Juvenile Justice. Starting in August 2017, these Round Table Conferences have produced positive results and the ground realities are surely changing for the better. I must complement the Juvenile Justice Committee of

the Supreme Court and of this High Court for shaking up the administration and seeing to it that in the matter of Juvenile Justice we are not left behind. I believe there is still a lot required to be done on ground level.

The Government is under obligation to create a robust mechanism in terms of the provisions of the juvenile justice legislation. The foremost requirement is to constitute a fully functional Child Rights Commission which can oversee every welfare measure required to be taken in respect of children in terms of the International Conventions and the Constitutional provisions. Creation of the Child Protection Society is another vital step in the direction of catering to the best interest of the children. Formulation of the rules under the Juvenile Justice (Care and Protection of Children Act), 2015, is imminently needed in order to give full effect to the provisions of the Juvenile Justice Act. In the rest of the country, rules have been notified on the lines of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016. Creation of Juvenile Justice Fund would go a long way in ensuring that our policies and child welfare measures do not get stuck up for want of sufficient funds.

It is imperative under the Juvenile Justice legislation to have full time Juvenile Justice Boards functioning in every district. Therefore, in 20 districts of UT of Jammu & Kashmir and 2 districts of UT of Ladakh we must have a Juvenile Justice Board. I am told, only 8 full time Juvenile Justice Boards that were notified in the year 2018 in Districts Jammu, Srinagar, Anantnag, Baramulla, Doda, Rajouri, Leh and Kargil, and 14 are still to be made functional. Even in those districts where full time Boards have been constituted, the Principal Magistrates have been burdened with additional duties. This goes against the spirit of the Juvenile Justice Act. The idea behind having full time Juvenile Justice Boards, Principal Magistrates and Members is that their mindsets and approach must be tuned to the special requirements of

the Juvenile Justice Act. Whereas the regular courts dealing with the offenders adopt only an adversarial approach keeping in focus the nature of offence. The Juvenile Justice legislation requires a complete departure from it and to have a child only in focus. It is very difficult rather impossible for a person to justify two different approaches at the same time by switching over from one to another. The Government of the UT of Jammu & Kashmir needs to act fast. It must expedite the process of constituting full time Juvenile Justice Boards in all the districts, else the whole purpose of setting up the Juvenile Justice Boards gets frustrated.

Special Juvenile Police Units, District Child Protection and Child Protection institutions are imperative to be set up to give effect to the important legislative measures for the children in conflict with law or the children in need of care and protection. No doubt creation of such facilities involves huge financial implications, but in my considered view no amount of money can be a substitute for securing the future of our children. We need to set our priorities right. Investing in the welfare of children is going to ensure a bright future for all of us and the real development of the nation. I am very optimistic that with the efforts which have been put in so far and those being constantly made by the Juvenile Justice Committee, the policy framers and the Government Agencies involved in the process of Juvenile Justice, we shall be able to achieve the desired results. A constant dialogue between all the stakeholders in this direction would be required to fill in the gaps and to update our understanding of the issues which are impediment for ensuring best interest of the children.

Another very important aspect I wish to highlight over here is creating a suitable atmosphere for overall development of our children at our homes and at the places meant for protection of children. It is hardly necessary to come up with big institutions and palatial buildings but it is more important

to build our characters and thereby build our nation. When we talk of national character we cite many examples from other countries. It is high time that we start developing a value based education system which shall form the bedrock of our national character. In this respect, it is necessary to impart moral and values based education to our children right from the inception of their schooling. Appropriate tinkering of curriculum would be required to achieve that objective. In the child protection homes also it is required that we engage our children in constructive activities for making them useful members of the society and responsible citizens of the country. In view of our demographic advantage of having a large pool of comparatively younger population, it is required that we frame our policies which would ensure that every child is able to achieve its optimum potential. If we are able to achieve this goal we have the potential of becoming world leaders. Let us work together and invest all our energies and resources towards realising this onerous objective.

I earnestly feel the need of capacity building and knowledge enhancement of all the stakeholders, especially those manning Juvenile Justice Boards, Child Welfare Committees, District Child Protection Units and Child Protection Institutions. This is needed for understanding the nuances of Juvenile Justice in the right perspective and to implement the legal framework to serve the best interest of the children. It would be essential that before their appointment as Chairpersons or Members of Juvenile Justice Boards or the Members of Child Welfare Committees, every single person is given rigorous training on the Juvenile Justice regime. Regular academic interactions, be it orientation or refresher courses, shall be handy for knowledge updation and to keep pace with the research being made in this direction. Judicial Academy can be roped in to materialize these efforts. There is a large pool of eminent resource persons available, who are internationally recognized and are willing

to participate in the academic discourses at all levels. Such Resource Persons may be identified to impart training. I may also emphasize creating a pool of local Resource Persons who can be engaged for regular interactive sessions involving all the persons associated with the Juvenile Justice regime. I would request the Juvenile Justice Committee of the High Court to prepare a regular calendar of activities to ensure that structured planning and implementation can be made in this regard.

I feel, these beautiful lines describe how to ensure the best interest of children:

शिशु पलते नहीं हेम से,  
शिशु पलते हैं प्रेम से ॥

In the end I thank Justice Magrey for all the pains taken by him in successfully organising this 4th Round Table Conference, the first in hybrid form after the international calamity of Covid-19 pandemic. I must acknowledge his organising skills and his capacity to arrange everything in the shortest possible time.

I wish all the best to the organisers of this conference and pray for its success. May all your efforts bear fruits and you are able to achieve your goal.