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14.45 hrs

The Lok Sabha re-assembled after Lunch at forty five minutes

past Fourteen of the Clock.

(Mr. Speaker in the Chair)

Title: Discussion on the Juvenile Justice (Care and Protection of Children) Bill, 2000 (Not concluded).

MR. SPEAKER: The House will now take up Item No.15. Shrimati Maneka Gandhi. The time allotted is one hour.

THE MINISTER OF STATE OF THE MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT (SHRIMATI MANEKA GANDHI):
Sir, I beg to move:

"That the Bill to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment, be taken into consideration. "

Sir, the Juvenile Justice Act, 1986 enacted by Parliament to provide for care, protection, development and rehabilitation of neglected or juvenile delinquents has been in force since 2nd October, 1987. The Government felt that provisions of this Act were not addressing the issues of care and protection of neglected children adequately. The revision of the current Act has been pending for some time and a review of the Act and its implementation over the years revealed a number of deficiencies/shortcomings warranting extensive amendments in the Act. The Bill which is now before this august House for consideration is an attempt to make the judicial system more child-friendly and accessible to a juvenile or child or anyone on their behalf including the Police, voluntary organisations, social workers or parent and guardians throughout the country and provide for rehabilitation of the destitute child.

The present Juvenile Justice Act, 1986 is not in conformity with the International Conventions on the Rights of the Child ratified by India such as the UN Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1995. These Conventions have prescribed a set of standards to be adhered to by all State parties in securing the best interests of the child. CRC being a subsequent development to the enactment of Juvenile Justice Act, 1986, it is essential that the Juvenile Justice Act is amended to bring it in conformity with CRC.

The Government consulted experts and knowledgeable persons in the field and based on the feedback, the present Bill was drafted for replacing the existing Juvenile Justice Act, 1986. As the review of the present Act by experts has revealed that a large number of amendments would have to be made in the Act, it was decided to bring in a fresh Bill before this august House for replacing the present Juvenile Justice Act, 1986.

I would like to highlight the salient features of the proposed Bill which are as follows:

It would separate the Act into two parts – one for juveniles in conflict with law and the other for the juvenile or children in need of care and protection which will give the clarity and distinction in the treatment; the proposed Bill will make the justice system for juvenile/children more appreciative of the developmental needs in comparison to criminal justice systems as applicable to adults; it brings the juvenile law in conformity with the CRC; it prescribes a uniform age of eighteen years for both boys and girls as per Article 1 of CRC; it ensures speedy disposal of cases within a limited time period of four months; it spells out the role of the State as a facilitator rather than doer by involving voluntary organisations and local bodies in the implementation of this Act; it proposes creating several juvenile police units with a humane approach through sensitization and training; it would enable increased accessibility to juvenile or child by establishing Juvenile Justice Boards and Child Welfare Committees and Homes in each district or group of districts; and it contains effective provisions for various alternatives to rehabilitation and social reintegration such as adoption, foster care, sponsorship and aftercare of abandoned, destitute, neglected and delinquent juveniles or children as provided in Articles 18 to 21 of CRC.

I hope that with the enactment of the Bill, the children in need of care and protection will get a better deal. With the creation of adequate infrastructure for the implementation of the Act with the involvement of informal systems especially the family, voluntary organisations and the community, our objective to treat the children in the best possible manner and to ensure that they get their rightful place in the society will be achieved.

MR. SPEAKER: Motion moved:

"That the Bill to consolidate and amend the law relating to juveniles in conflict with law and children in

need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment, be taken into consideration. "

SHRI PAWAN KUMAR BANSAL (CHANDIGARH): Mr. Speaker, Sir, a true benchmark to judge a nation's progress is not its military strength, it is not the splendour of the cities but it is the state of the children, their health, their level of nutrition, the reach and standard of education and the care and protection that the nation offers to its children, to the young growing bodies and minds.

The quality of succeeding generations would depend upon what we do for our children today. Children are our valuable assets. But, at the same time, they are also the most vulnerable sections of our society. Sadly enough, over 32 million children in India are today said to be engaged in labour.

Sir, they miss the joy of childhood to sweat and toil for a living. Restrictive provisions of the Child Labour (Prohibition and Regulation) Act, 1986 have failed to prove effective because of family poverty and lack of schools. What is alarming is that in many cases, children of tender age are forced to slog for over 12 hours in hazardous places like mines, factories, and garbage dumps. Such labour takes a heavy toll on child and destroys the natural urges of innocence and beauty in children. It leads to stunted development, both intellectual and physical; and leads to diseases which could prove fatal.

The environment of deprivation and economic compulsions at times forces a child to fall prey to unhealthy social influences and commission of an act which would tantamount to an offence under the law, you would see him being branded as a criminal. It is not the company of hardened criminals behind the prison bars but reformative measures and humanistic approach towards such children in conflict with law which is the need of the hour today. The Juvenile Justice (Care and Protection of Children) Bill, 2000 seeks to provide for these measures. The effort is welcome, but, Sir, permit me to say that it fails to bring about desired improvements in the existing law which are necessary to deal with the appalling situation that prevails on the ground today.

As the hon. Minister said, this Bill does deal with two different categories of children. Firstly, juveniles in conflict with law, that is, those children who are said to have committed an offence; and secondly, children in need of care and protection, that is, those children who are abandoned or who are not taken care or are exploited or abused. Sir, adequate provisions have not been made to deal with offences against the child. And that was the most important thing which we would expect to be incorporated in the Bill, when we have a new Bill, which is replacing the earlier law. It is only a few clauses dealing with such matters which we find tagged with the chapter which deals with the children in conflict with law. There should have been a separate detailed chapter dealing with the offences against the children. Sir, this betrays a comprehension of the gravity of the issues involved or in any case, a half-hearted approach to this problem.

Sir, we are painfully aware of the high incidence of child abuse. According to a survey, children below ten years of age account for 27 per cent of the rape victims in our country. What have we done for them? There are sordid forms of child abuse. But, our law at present, that is, the Indian Penal Code, does not recognise that.

According to law, if an act falls short of intercourse, that is, the legal requirement to prove rape, nothing would happen to the rapist excepting that he would be charged of outraging the modesty of the victim. Then, what a harrowing experience it is for the young child to have to narrate the entire lurid details of the incident before the Police or in the court to prove the charge against the rapist. It is not only frightening but it is also self-defeating.

This Bill ignores these important aspects of child abuse. I find an element of either complacency or ignorance while this Bill was being drafted, quite in contradiction to the hon. Minister's concern for these sensitive issues. Otherwise, how else would you explain clause 2d(vi) which qualifies child abuse with the adverb "grossly" for the victim, to come under the category of the child in need of care and protection? This will only provide a leeway to the guilty to take shelter behind legal technicalities and evade action. The present Bill fails to lay down a satisfactory definition of the term 'abuse' and, therefore, fails to provide for commensurate penal action.

Sir, I would, very briefly, like to refer to *Encyclopaedia Britannica* which describes child abuse as follows:

"Child abuse, also called cruelty to children the wilful and unjustifiable infliction of pain and suffering on children. The term can denote the use of inordinate physical violence; unjustifiable verbal abuse, the failure to furnish proper shelter, nourishment, medical treatment, or emotional support; incest, other cases of sexual molestation or rape, and the making of child pornography."

If the law does not provide or does not define child abuse on the lines that I have quoted from the *Enclopaedia Britannica*, I think, our intentions to help the children in need of care and protection would not suffice, because

ultimately when it comes to between the accused and the victim, it is the courts which interpret the law. The courts interpret it according to the strict letter of law and hardly do we find them interpreting it according to the spirit of law.

The incidence of child abuse, though high, is grossly under-reported, particularly when it relates to cases of incest and sexual abuse. It is overlooked even by the family of the victim child because of a perceived sense of shame it would attract if the incident were to come to light and in certain cases, we find that the poor parents of the victims are threatened and at times enticed with money and other considerations to drop out of the cases pending in courts finally leading to in acquittal of the accused. For the child this trauma of the agonising assault refuses to heal and may, manifest in serious psychological problems later. This is what we have to really keep in mind and we ought provide for strict punishment for offenders against the children. This law misses out on that important provision.

Sir, in many cases like that of the hapless Ruchika, who was molested by none other than an Inspector-General of Police, the victims end up taking their own lives to escape the ignominy and harassment. Then, we all know that girls employed as domestic servants often fall victims to the lust of their employers. In such cases, coercion, intimidation and violence are used to obtain submission. The exploitative environment and poverty are taken advantage of by the anti-social elements also to push young girls into prostitution. According to a UNICEF Survey, in India, children under the age of 18 years involved in prostitution number four to five lakhs. This figure is much more than any other country if my facts are not wrong. Concomitant to this is the danger of AIDS and other deadly diseases.

Sir, the Bill brings, in its ambit, children who are involved in or are victims of armed conflict, commotion or natural calamities.

15.00 hrs.

Today, wars, civil strife and terrorism affect children the most. This is our sad experience. They are killed, disabled, orphaned and rendered homeless. The society owes much to them. Traumatized by the atrocities, their horrifying memories refuse to die.

MR. SPEAKER: Shri Pawan Kumar Bansal, you can continue later.

SHRI PAWAN KUMAR BANSAL : Sir, I think, these are important matters.

MR. SPEAKER: Yes. But you can continue later on. Now, it is three o'clock and we have to take up Private Members' Business. Now, Shri M.O.H. Farook.
