The Juvenile Court and the Magistrate

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In the treatment of the so-called delinquent child, the magistrates are more section-minded than child-minded. "A child is not merely a bundle of thoughts and emotions, nor a mere neuro-muscular glandular organism, nor yet wholly a sociological entity; but a composite of all these in the larger whole of world Gestalt." Consequently, the writer, in this article which was a paper read before the Bombay Probation Conference, pleads for the Juvenile Court functioning not as a criminal but as a social court with the aid and technique of social sciences and workers.

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Though the topic which is here discussed is for brevity's sake entitled "The Juvenile Court and the Magistrate", the field and scope of it are wider and may be said to cover the place of social work and the social sciences in the Juvenile Court and the role of the Juvenile Court Magistrate as a Social Pathologist and Social Therapist. This may sound highly pretentious, but such a description of the Juvenile Court and the Magistrate is nothing new or revolutionary in principle. The social role and functions of these have been tried with great success in most of the advanced countries of the West and even right here in India thinking people are slowly but surely coming to hold similar conceptions about the Juvenile Court and the Juvenile Magistrate. In a booklet Lt.-Col. A. H. Shaik making a clean break-up with the Criminal Courts and definitely laying down different procedure, presents three schemes—(1) for Delinquency and its correction, (2) for Prevention and correction of Delinquency, mental disorder and mental deficiency by Social Courts and (3) for Adult Crime. The writer says: "These courts will be social courts. Their decision should be based on (a) Statement of the Police (b) Case History of a probation Officer, (c) Recommendations of the Guidance Clinic. These three schemes represent Lt.-Col. Shaikh's personal views and have only been just submitted by him to the U. P. Government and have not yet been officially considered by the U. P. Government. It is not at all suggested here that the Bombay Government should take up these proposals. Our main purpose in referring to this pamphlet is to show that there are people in India who are seriously thinking of child conservation, child welfare and child protection through the Juvenile Courts and of adjusting and modifying the Juvenile Court machinery in such a way as to secure the maximum benefit for the child.

As a basis for our discussion let us take two very simple and homely proverbs. The first is, "As the twig is bent, the tree's inclined" and the second is, "There is nothing new under the sun". In the language of the biologist the first proverb will read: The conditions of origin and growth determine the character of all developing organisms. The second will read: All structures arise from previously existing structures and all processes as modifications of previously existing functions. In terms of the Sociologist the first could be translated as: Nature and nurture both play their inevitable roles in the shaping of an individual or of society; and the second would imply: History repeats itself even though change is inexhaustible and no generation repeats the previous generation precisely; and things appear to be eternally new in their ever changing phenomenal aspects. Psychologically the first proverb would read: A normal and abnormal personality is the result of hereditary, organic, psychogenic and sociogenic factors and that a child will develop in accordance with the satisfaction or otherwise of its fundamental need or with the proper guidance, or otherwise of its parents or guardians. The second would read: Human instincts and emotions are the same the world over and have remained and will remain the same through times.
Thinking along the lines of these basic Concepts it will be apparent that we will have to change our static, legal, criminal definition of a child as a person below the age of 16, 18 or 21 to a dynamic definition of a child as a living, growing, developing organism constantly emerging and developing with the action of the bodily forces of nerves, glands, blood, muscles within itself and of the interaction of those forces with the environment or the world outside from the moment of the fertilization of the ovum upto the time of its death. That is to say, a child is not merely a biological product nor just a bundle of thoughts and emotions nor a mere neuro-muscular glandular organism, nor yet wholly a sociological entity; but a composite of all these in the larger whole of world Gestalt. Now, if such is the complex, many sided and baffling nature of the beings we are to deal with, it is evident that those who are in charge of these highly complex little beings called children must be fully acquainted with the biological, psychological, sociological and physiological factors and processes that have gone into the making or marring of a child.

And it is precisely here that the Juvenile Court Magistrate emerges as a social pathologist and social therapist with the Juvenile Court machinery of Probation Officers, Psychiatrists, Psychologists, Psychiatric Social Workers, Child Guidance Clinic, Physicians, Pediatrist, etc., as a vast laboratory for the diagnosis and treatment of the socially, mentally or physically ill child, who, because of this illness or deficiency or defect, has come in conflict with society. And this is precisely where Social Work and the Social Sciences can become an integral, vital and indispensable part of the Juvenile Court machinery.

It is natural then that if our emphasis is to shift from the static, the legal and the penal to the living and social, our Juvenile Courts should be protective, preventive, curative, remedial and rehabilitative rather than legal, criminal and punitive in outlook, set-up and procedure. It will be noticed that we have purposely not used the word reformative because in keeping with our dynamic viewpoint as opposed to the static, I believe with Horace Mann that "Where any thing is growing, one former is worth a thousand reformers." Of all the work that is done or that can be done in India, the greatest and the grandest is that of educating the body, mind and spirit through physical, intellectual, aesthetic, moral and spiritual training of those who in a few years are to decide the destinies of our country, be they normal, sound and healthy or ill, anti-social and destitute. And how are we going to educate and rehabilitate the vast hordes of destitutes, truants, illiterates and delinquents? The over-crowding in our Remand Homes and Certified Schools and the innumerable little waifs and strays thronging the streets, foot-paths, station platforms and trains of India doing coolie work or dock labour, pilfering, thieving, pick-pocketing, pimping, soliciting, begging, pester ing soldiers and sailors, smoking, spitting, drinking, visiting cheap cinemas and prostitutes, using the filthiest language, not knowing what it is to have a home or parents' care and affection are a silent, but grave commentary, on the inadequacies of our institutions and on the pathological conditions of our society itself. The thought that automatically slips out is, "What a colossal waste of human energy and man power!"

So long as our social and economic structure remains the same, no radical or effective cure can ever be brought about. All that the Juvenile Court, even with the modern scientific outlook and its band of social workers and psychiatrists and backing of the Social Sciences and professionally trained magistrates can do is at best to assuage or have a sedative effect on the sickness of the child; and the larger the dose of this sedative drug the longer the possibility of the child remaining normal and contented. The first essential then is the change in our social structure, or the
removal of the canker in our society which is responsible for the mass production, mass neglect, mass rot and decay of these innocent children who could, if properly guided and cared for, be turned into vast reservoirs of clean, healthy, vibrant human energy. As a change in our social and economic structure can only come about cataclysmically through a revolution or gradually through evolution, and as evolutionary process involves centuries and even milleniums, we would have to turn to a more practical method of solution. This practical approach lies in the combined efforts of scientists, sociologists, psychologists, psychiatrists, educationists and medical experts, and the one co-ordinating agency for all these as well as the judicial and executive authorities is the Juvenile Court.

But if the reclaiming, rehabilitation, conservation and protection of the child is going to be the keynote of our effort, many changes will have to be effected in the Juvenile Court and Juvenile Court Procedure and the Bombay Children's Act. In the first place, the Juvenile Court should be recognized as a Social Court and not as a criminal court, for, as has been pointed out, we are not dealing with crime and punishment in the abstract but with living, growing, developing human organisms who have, because of some personal or environmental difficulty, deviated from the normal and come in conflict with society and the law which is made for the protection of society; and it is our purpose not to wreak vengeance on them on behalf of the society but to restore their self-respect and self-confidence and send them back to society as normal healthy citizens. Now if the Juvenile Court is regarded as a criminal court and the child is brought to it as a person under sixteen who has committed a crime, no matter what camouflages we use in the form of summary trial, informal atmosphere, euphuistic language, etc., the very fact that the child has come to a criminal court can hardly help to restore its self-respect and self-confidence. I particularly mention this, because inspite of the Bombay Government's keen desire to look to the future welfare of the child rather than the seriousness of the offence and inspite of the provision by the Bombay Government of a Juvenile Court Machinery in the shape of Probation Officers, psychiatrists, psychologists, Child Guidance Clinic, etc., in one case where a girl juvenile was committed to an institution and it was ordered that the authorities of the institution may marry the girl juvenile to a certain man after making thorough inquiries, the then Chief Justice of the Bombay High Court set aside the latter part of the order, remarking that while the commitment order was right, the order regarding inquiries and marriage was quite wrong; and that the Juvenile Court Magistrate should remember that while such an order would be perfectly legal and proper if passed by a civil court it is not correct for the Juvenile Court to pass such an order and the Juvenile Court Magistrate should not go beyond the limits of a Criminal Court.

The trouble with our Juvenile Court is that they are pseudo-social and semi-legal and criminal in nature. Hence there is a certain amount of confusion. We may have one court that is legalistic in outlook and regards the child as a criminal and we may have another court that recognises the principle of guardianship and looks upon the child as a person in need of adult help and correction. The dual conception thus allows the presiding magistrate to emphasize whichever element coincides with his way of thinking. And it is my belief that until magistrates, as a class, are better trained in the fundamentals of the Juvenile Court movement than they are at present, the emphasis on the criminal aspect is bound to predominate. I personally believe that the American method has a definite advantage over the English system for it makes a clean break with criminal court procedure.

The Juvenile Court in America is a court having special jurisdiction of a parent-
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The juvenile nature and it assumes that the welfare of the child and the welfare of the State are closely bound up together and that the erring child needs the care and protection of the State. In fact as the Juvenile Court is concerned with questions of psychology, sociology and education, the interests of the State as parent are not in conflict with the interests of the child and the purpose of the Juvenile Court hearing is to discover the circumstances which led the child into trouble with a view to their correction, because the Juvenile Court regards the social factors which enter into a case as of fundamental importance. The Probation Officer secures the social history of the child and the Juvenile Court discourages the introduction of lawyers into children's cases. The Court itself and particularly the Probation Officer is assumed to have the interests of a particular child at heart. The Juvenile Court is governed by the needs of a particular child at a particular time, without reference to legal precedents and if a child appears to need the assistance of the State in order that his life may be harmoniously adjusted, all the available resources of the State are utilized in his behalf.

Thus it will be seen that the non-criminal Juvenile Courts in America have long ago introduced and are working out those very conceptions which we are only as yet talking about and discussing; and it is my firm conviction that our Juvenile Courts will never operate successfully until these significant underlying assumptions are clearly understood and fearlessly faced. It is true that some of our courts, in spite of their dual nature and glaring defects in the Children's Act, do succeed in rendering the child quite a bit of assistance through social service channels, but they do so always at the risk of having all their work undone and all the time, money, energy and effort being wasted if an appeal is filed.

The problem then confronting us at present seems to be just this:—How can the Juvenile Court in the midst of this dual conception and defective legislation hope to utilize Social Service and the Social Sciences for the welfare of the child? The first step would be to get the Bombay Children Act amended at the earliest possible opportunity in the light of modern scientific approach to juvenile delinquency. Once this is done the necessity of having specially trained magistrates will become only too obvious. As it is not possible to have a large number of magistrates who are specially trained in Sociology, Psychology and Psychiatry and as present day magistrates are mostly lawyers who have specialised in criminal law, special discussion seminars might be held for judges and magistrates in Psychiatric aspects of delinquency and the mental hygiene approach to these problems. The magistrates at present are more section-minded rather than child-minded. They are far too preoccupied in finding out whether a child has committed an offence or not rather than in discovering the causes which led the child to commit an offence. They are much more concerned about the section under which they should or should not accept an application rather than the immediate and urgent need of the child. They forget that the child who stands before them charged for an offence is just like any other child with the same fundamental, physiological, psychological and physiological needs and that the reason why he has come in conflict with the law is that he has not had even the ghost of a chance of any of these needs being satisfied. To understand him intelligently the magistrate must study through the Probation Officer the child's biological heritage, his social history together with the immediate situation in which he was living at the time the offence was committed and the mental and emotional conflicts and stress and strain through which he may have passed. Viewed in this light, delinquency becomes a social problem and each delinquent child a social case. Those who are acquainted with the case histories of children are aware that the children come
from tenements that are made not to house but to ware-house people; that they live in a single, small, dark, dingy, filthy room, not by one family but by four or five families at a time, the total reaching sometimes fifteen to twenty persons per room; that the father or mother's income is Rs. 30/- or Rs. 50/- per month and frequently much less; and he or she has to support six or eight children; that where the children are runaways from far off villages the income of the parents is quoted as Rs. 5/- or Rs. 10/- per month with as many children to support: that even with such a tenuous income the father is a drunkard or a gambler and that the mother is insane or too sick, weak and hard-worked to look after the children. With such a dismal state of affairs what chance has the poor little child in life of any emotional security and economic security which are the most fundamental needs of a child and which should be the birth-right of every child that is born? The only birth-right that these little urchins know is the birth-right of ticket-less travel in and out of local and through trains. The only freedom these children know is the uncontrolled and the unconditional freedom of the foot-paths. What chance, what emotional or economic security has the poor little devil had in life? Is it any wonder then that these lost, lonely and destitute children have become habitual truants, shifting for themselves in open competition on the streets, falling into the clutches of gangs of mavalis and pick-pockets, plying their underworld trade with them by day and by night and becoming victims of sodomy, venereal diseases and homo-sexuality? Is it any wonder then that almost every third child that is admitted to the Remand Home covered from head to foot with scabies? And the incidence of venereal disease is not less horrifying. Suffice it to say here that for the last over two years about 50% of the girls in the Remand Home at any time have been undergoing treatment for venereal disease. This is because most of them come as victims or willing partners in kidnapping and rape cases. What is more amazing is the fact that 25% to 30% and 35% of the boys at any time are under treatment for syphilis, gonorrhoea or condyloma and except two cases of congenital syphilis all these are cases of acquired venereal disease and the age of these venereally affected boys is anywhere from 8, 9 to 16, and for the girls even 5, 6 and 3 onwards as they have been raped. Some of the Honorary Lady Magistrates who sit with me are appalled at this phenomenon and shocked when shown the Venereal Disease Sheets and medical histories of disease and treatment. And it is impossible to describe adequately the nefarious practices of the gangs of importers and exporters of child trade, child slavery, child exploitation and child labour. There are agents right here in our city of Bombay who import young boys of ten to sixteen years of age from Sialkot and other districts of the Punjab. These boys are made to go about during the day as champi-wallas and at night are used for purposes of sodomy. The agents make anywhere from Rs. 5/- to Rs. 50/- per night per boy and send to the parents of these boys in the interior villages of the Sialkot district, about Rs. 10/- per month. As for the girls, besides the well-known professional and traditional districts of Belgaum, Hubli, Bijapur, Dharwar they are even being imported from such places as Darjeeling, and Nepal and forced into prostitution in the brothels of Bombay. But the most insidious kind of child slavery and exploitation is that practised by the Goans, Mangaloreans, Karwaris and East Indian Christians. These children are brought directly by the employers from their parents in the villages of Goa, Mangalore or Karwar as though they were conferring a great boon or favour on the parents by paying for the children's passage to and from Bombay and engaging them as domestic servants in their house on Rs. 1-8-0 or Rs. 2/- per month. On this magnanimous salary the sight of which the child never sees and
which is supposed to be sent to the parents, the child is made to drudge from morn till night, and sometimes even has to get up at midnight and lose its precious sleep after the day's hard labour if the mistress's child happens to go into wild temper tantrums at that unearthly hour, and on top of all this the child is beaten and ill-treated. Very often, if it is a girl child servant, she is exposed to the danger of being raped either by other servants in the house or neighbourhood or by a member of the same family or by the male employer himself. Is it any wonder that the child runs away if offered better pay or work conditions or even if it commits theft? The child sees the mistress's children being well-fed, well-clothed, well looked after and enjoying the good things of life. The child also has exactly the same sentiments, instincts and desires and needs as the mistress's children, but even the most minimum and essential of its needs go unheeded. Is it any wonder if it becomes a delinquent in sheer desperation? But this is not all. There are agents who import these children from the various villages and keep about twenty to twenty-five of them in one room and find jobs for them on Rs. 8/- to Rs. 15/- or Rs. 20/- per month and pocket the entire salaries and send to the parents Rs. '24/-per year or Rs. 36/- per year according as the child is 8, 10, 12 and 16 years of age. If the child refuses to accept the job found for him he or she is mercilessly beaten and locked up in a room and starved for two or three days until the child consents to take up that job. These are not generalities or opinions or idle fancies and fantasies. These are cold hard facts literally, factually and statistically true. They are as cold and hard as the reality of life itself and the Children's Aid Society and Court records vouch for these facts. Any one can refer to them to get convinced.

Thus we come back to our original query or our initial little homely proverb. How can the Juvenile Court function as an effective social service authority and how can the twig be bent in such a way that the tree will be rightly inclined? Or in terms of the Psychologist how can we help the child to secure the best possible satisfaction of its physical, physiological, psychological and social needs and guide him so that instead of being at odds with reality the child will learn to face reality and master the difficult art of adjusting himself to his none too benign environment?

As we have stated above, the social concept of the Juvenile Court alone can help us to achieve this. We must shift our emphasis from the law and the offence to the child and its problems and needs. The child must be the centre and pivot around which the entire machinery of the Juvenile Court (including the Magistrate, the Police Officers, the Probation Officers, the Bombay Children Act, the Remand Home, the Children's Aid Society, the Guidance clinic with its staff of Psychiatrist, Psychologist, etc., the After Care Associations) should move. With this change in emphasis we need firstly a change in the outlook of Government Departments in charge of supervision, management and treatment of the delinquent and the destitute; secondly, improvement in the machinery of the Juvenile Courts by the proper, thorough and full time provision of psychological and psychiatric service for the correct understanding, diagnosis and treatment of delinquents; thirdly, specially trained magistrates in psychiatric and sociological aspects of juvenile delinquency if they are to play the role of social pathologists and social therapists; fourthly, the utilisation of the Probation System following its outstanding success in the treatment of delinquents and the training of Probation Officers in the principle of social ease work and mental hygiene. With the ever mounting case load in our Juvenile Courts we need a veritable army of well trained, professionally qualified, well paid Probation Officers who are genuinely interested in this work. Fifthly, training of a special force of police officers in regard to the social approach to