3.1. Introduction:

The nation’s children are a supremely important asset. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and bring social justice (Government of India). The children’s rights need to be protected if the civilisation has to progress in the right direction. Juvenile Justice System should be an integral part of human resource development planning and kept apart from criminal justice system to ensure development opportunities for the children in conflict with law and the children in need of care and protection, without alienating them from the main social stream.

India, home to one fifth of the world’s children (UNHCHR) and Nine percent of the world’s children live in India. Over 440 million people in the country are aged 18 years and below and constitute 42 percent of the total population (NNLRJ India). Children related laws and issues are of great importance in any developing country like India. ‘The protection of children’s right has figured prominently in the discourses of social scientists in the last 30 years’ (Arnab Bhattecharya). Widespread and entrenched social, economic, psychological, physical exploitation, irrational gender discrimination, caste bias and many other social flaws in India including economic and political crisis affected the country’s social progress and all round national development. Despite of the fact of huge child population, and the poor indicators for children’s health, education, all round development and very human survival, children’s issues received peripheral or mere political attention in India.

India being a State Party to the Convention on the Rights of the Child (“CRC”) ratified the Convention on the Rights of the Child as of January 11, 1993 (UNHCHR). India being a party to the convention and various other rules and guidelines of the United Nations on the children’s rights, the Government of India is bound to fulfill the duties set out in

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1 National Policy for Children, Government of India, Department of Social Welfare, New Delhi, the 22nd August, 1974
3 http://www.hindu.com/2010/02/19/stories/2010021955601100.htm written by NNLRJ India Extracted from website on February 19, 2010 at 08:26 pm
4 The TeleChart Friday 16th December, 2011 Page – 11, article – “Parenting a troubled nation” written by Arnab Bhattecharya
Accordingly, the government is taking action to review
the national and state legislation and bring it in line with the provisions of the international
Convention. It has also developed appropriate monitoring procedures to assess progress in
implementing the Convention-involving various stakeholders in the society. Following
constant closer international attention and universal attachment to the issue of juvenile
justice in the late 1990’s, the issue moved by the Union Government even in regional and
domestic circles with a number of consultations held on juvenile justice both nationally,
provincially and regionally. The combination of a growing focus on the issue of juvenile
justice embodied by the global regime forced the central government of India to submit the
Country Report to the Committee on the Rights of the Child outlining a concrete common
international achievements, seems to have inspired the Ministry for Social Justice and
Empowerment go in for drafting of this new law on Juvenile Justice.

The legal rights of children in India, has given their emotional, mental, psychological
and physical status, mandates that they should be treated as a special category. Before
enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000, the Indian
legislature was not child friendly or the legislature showed least attention to formulate child
development oriented legislation. It is also evident in the distinction family laws make
between legitimate and illegitimate children depending on the status of their parents'
maintenance or other kinds of relationship. A child born out of wedlock having no legal sanctity
or of a void or illegal marriage is considered 'illegitimate'. Children pay for the decisions
taken by the parents and are denied inheritance rights. Even worse, a child born in
consequence of rape is stigmatised and treated as 'illegitimate', both by society and the law
in force of the country. Despite of specific legislation to restrict the illegal practice child
marriages are still continuing in Indian society. Almost from all part of the country children
are being trafficked for slavery, exploitation-commercial and sexual, begging rackets, illegal
adoption purpose and use as a means of cheap labour.

Though India has a National Policy for Children declaring children to be a national
asset and a large number of laws to protect and promote the rights of children, even the
majority of India’s children continue to be in difficult circumstances. Despite of this number

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Administration of Juvenile Justice (The Beijing Rules), Nov. 29, 1985, United Nations Rules for the Protection of
of legislations driven by constitutional guarantees for protecting children as well as recognizing international concern for child, the Indian state has made numerous arrangements in this direction. The policy announcement for children and the issue of child rights is regarded as a mere welfare issue rather than a rights issue. The events concerning juvenile justice in this country was equally influenced by several international developments. It primarily includes the UN Convention of the Rights of the Child (UNCRC) 1989, the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) 1985.

India has signed and ratified the UN Convention on the Rights of the Child in 1992 and obligated itself to work towards ensuring all the rights enshrined in the convention to all its children, but the contrast in India was disappointing in terms of the rigor of the work undertaken. Years have passed since the ratification, but there are no signs that the government is inclined to take affirmative action excepting framing of some legislation. The dismal status of children in India clearly reflects the indifferent and callous attitude of the judiciary, legislators and society towards the most vulnerable group in the society. There has been no systematic collection of data, comparative experiences, experiential learning’s that could inform the thinking on juvenile justice.

With the technological and social advancement during past decades the Indian family system has undergone many fold changes in its tradition, customs, beliefs, values and attitudes towards family lifestyle. All of these changes create such a family environment which is not congenial for emotional and psychological growth of the child. At this social transitional point, the formation of nuclear family system leads to our children to a lop-sided development of his personality and ultimately, the child falls in bad company and becomes delinquent. ‘The study of an Indian family will reveal that, children now-a-days, are losing respect for their parents, elders and teachers and, consequently, there has been a tremendous erosion of Value System amongst our teenagers and they have become, obstinate, aggressive and in disciplined’ (Basudeb Bhattacharya).7

Despite of considerable important progress during last five decades in India on the field, children of India are yet to be viewed as key stakeholders in rule of law initiatives of the country. It requires a very complex and elaborate infrastructure. The work to implement

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juvenile justice standards is frequently handled separately from broader criminal and social justice reform. ‘Our children’s lives are likely to be more regulated by government and international convention than ever before’. Though the idea of access to justice for protecting the rights of vulnerable groups, are increasingly growing as an important strategy, the men and authority in charge of enforcement and/or implement rarely take children into account to ensure that children are integrated in broader justice reform.

An adequate legislative framework, consistent implementation, accountability and a lack of impunity are essential elements of a protective environment (David Nosworthy). The law which was enacted to deal with offences committed by juveniles, in a manner which was meant to be different from the law applicable to adults, is yet to be fully appreciated by those who have been entrusted with the responsibility of enforcing the same, possibly on account of their inability to adapt to a system which, while having the trappings of the general criminal law, is, however, different there from. The implementation of the said law, therefore, requires a complete change in the mind-set of those who are vested with the authority of enforcing the same, without which it will be almost impossible to achieve the objects of the Juvenile Justice (Supreme Court of India). India experiences child rights deprivations in greater absolute numbers than any other country (UNICEF). Children who have no one to take care of them are hence condemned to languish for years in government detention facilities (David Nosworthy). The Government of India, its partners and a multitude of non-governmental organizations have made determined efforts to reduce child deaths, expand access to health care and get children into primary school. The country is also making headway towards identifying child protection violations and creating legal means of redress (David Nosworthy). The most recent assessment of progress indicates a complex scenario of successes as well as challenges and need for accelerated actions against a backdrop of great expectations. The slowing decline in poverty and an unsettling of

8 ‘The TeleChart’ Calcutta Thursday 31st August, 2006 Page – 19, article “Everything but the big picture” written by Anabel Loyd
9 “Seen, but not Heard: Placing Children and Youth on the Security Governance Agenda” edited by David Nosworthy, 2009 Para 3 of Page-83
10 Extracted from Para 2 of the Judgment delivered by the Hon’ble Supreme Court of India on 05.05.2009 in Criminal Appeal No. 907 of 2009 (Arising out of S.L.P.(Crl.)No.3336 of 2006) Hari Ram... Appellant Vs. State of Rajasthan & Anr. Respondents
12 “The Children’s Prison: Street Children and India’s Juvenile Justice System” Federico Ferrara and Valentina Ferrara October, 2005, Para 3 of Page 18
13 Ibid- 9 Para 4 of Page- 33
traditional, pre-modern livelihoods and local economics has constrained the earning capacity of millions of families and impacted children. This necessitates measures that target not only children but also their milieu (Asia-Pacific Regional meeting).14

Present day National programs in India serve juvenile delinquents are all designed to do two things: protect society and redirect the young person so that he does not continue in a life of crime. It is currently regarded as a system to provide specialized and preventive treatment services for children and young person’s as means of ‘secondary prevention’, rehabilitation and improved socialization (Sixth UN Congress).15

3.1.1. The Basic Rights of the Children recognized in India:

i) The right to Name, Identity & Nationality
ii) The right to paternity
iii) The right to humane Survival
iv) The right to Education and Cultural Development
v) The right to Expression and Thought
vi) The right to Information and Participation
vii) The right to Nutrition
viii) The right to Health & Care
ix) Right to protection from harm
x) The right to protection from Abuse
xi) The right to protection from Exploitation
xii) The right to protection from Neglect
xiii) The right to Recreation

This chapter is primarily structured around legislative development in India and consequently is an attempt to make a philosophical osmosis for the understanding to the development of Indian legislation in the field of Juvenile Justice. Secondly, the chapter encompasses the apparent problems and issues perceives in India affecting Juvenile Justice with an analysis of the crucial factors intricate in the formal implementation of legislations.

Thirdly the chapter has been carried out a study based on analysis of the data published by the National Crime Records Bureau of India, New Delhi.

3.1.2. **The chronological path of legislative development of India**

1) 1850: The Apprentices Act
2) 1860: Indian Penal Code
3) 1861: The police Act
4) 1872: The Evidence Act
5) 1875: The Indian Majority Act
6) 1876: The Reformatory Schools Act
7) 1890: Guardians and Wards Act
8) 1894: The Prisons Act
9) 1928: Borstal Schools Act
10) 1933: Children [Pledging of Labour] Act
11) 1938: Employment of Children Act
12) 1948: The Bombay Shop and Establishments Act
13) 1948: Factories Act
14) 1950: The Constitution of India
15) 1951: Plantations Labour Act
16) 1952: The Mines Act
19) 1956: The Young Persons [Harmful Publication] Act
20) 1956: Hindu Adoption and Maintenance Act
22) 1958: Probation of Offenders Act
23) 1958: The Merchant Shipping Act
24) 1960: Orphanages and Other Charitable Homes (Supervision and Control) Act
25) 1960: Children Acts
26) 1961: The Motor Transport Workers Act
27) 1961: The Maternity Benefit Act
28) 1961: The Apprentice Act
29) 1962: The Atomic Energy Act
30) 1963: The Limitation Act
31) 1966: The Bidi and Cigar Workers (Condition of Employment) Act
32) 1970: The Contract Labour (Regulation and Abolition) Act
33) 1973: The Code of Criminal Procedure
34) 1974: National Policy for Children
35) 1975: Integrated Child Development Services (ICDS) Scheme
36) 1976: The Bonded Labour System (Abolition) Act
37) 1983: Dangerous Machines (Regulation) Act
38) 1986: The Juvenile Justice Act
39) 1986: Child Labour (Prohibition and Regulation) Act
40) 1987: Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act
41) 1989: Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act
42) 1992: Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act
43) 1994: Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act
44) 1994: Transplantation of Human Organ Act
45) 1996: Persons with Disabilities (Equal Protection of Rights and Full participation) Act
46) 2000: Information Technology Act
48) 2000: The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act
49) 2002: The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act
50) 2003: National Charter for Children
51) 2005: The Protection of Women from Domestic Violence Act
52) 2005: The Commissions for Protection of Child Rights Act
53) 2006: Food Safety and Standards Act
54) 2006: Prohibition of Child Marriage Act
55) 2006: Juvenile Justice (Care and Protection of Children) (Amendment) Act, 2006
56) 2007: The National Policy for children
57) 2009: The Right of Children to Free and Compulsory Education Act, 2009
58) 2009: Prevention of Crimes Against Children Bill
59) 2012: The Right of Children to Free and Compulsory Education (Amendment) Bill
In common parlance, however, socio-economic inequality is understood and approached in a different manner. The usual practice is to represent inequality by some measure of the average dispersion of income or consumption levels across individuals living in a society at any given point in time. These measures typically tell us to what extent disparity in living conditions actually exists among the citizen and are often used to rank countries according to their degrees of inequality. The measures are also employed to compare inequality levels of a single country over different points in time. Various measures of actual inequality are used in practice, and perhaps the most notable among them is the Gini index to which we shall turn in due course (The Telegraph).
3.2. An appraisal to the legislative developments of India coupled with governmental action

3.2.1. **Indian Penal Code, 1860**

(Act No. 45 of 1860) [6th October, 1860]

For the purposes of criminal responsibility, the age limit is 7 and 12 under the Indian Penal Code, 1860. Section 82 of the code says that nothing is an offence which is done by a child under 7 years of age. Section 83 further says that nothing shall be an offence which is done by a child above 7 years of age and under 12, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion. The aforesaid provisions of the Indian Penal Code need to be read with section 6 of the same which says that throughout this code every definition of an offence, every penal provision, every penal provision and every illustration of every such definition or penal provision shall be understood subject to the exceptions contained in the Chapter entitled, “General Exceptions” though those exceptions are not repeated in such definitions, penal provisions or illustrations. So the sections of the Code which contain definitions of offences, do not express that a child under 7 years of age cannot commit such offences, but the definitions are to be understood subject to the general exceptions which provides that nothing shall be an offence which is done by a child under 7 years of age. For purposes of protection against kidnapping, abduction and related offences, it’s 16 years for boys and 18 for girls. Section 105 of the Indian Evidence Act, 1872 provides that the burden of proof is upon the accused for showing the existence, if any of circumstances which bring the offence charged within any of the special as well as any of the general exceptions or proviso contained in any part of IPC or any law defining the offence. Section 82 and 83 of IPC deal with the question as to how far the infancy of the offender would be a defence to criminal charge. It was held in Queen v. Lukhini that non attainment of maturity in case of a child over 7 and below 12 would have apparently to be specially pleaded and proved. But subsequently it is humbly submitted that this view is not correct. Authorities make it clear that the accused need not plead and lead evidence to prove maturity of understanding in order to get benefit under section 83, IPC. It is always permissible for a court to arrive at the finding whether the accused is of immature understanding even on the consideration of the circumstances of the particular case. It is to be born in mind that a child between 7 and 12 years of age cannot be convicted of any offence unless it is expressly found that the child
has attained sufficient maturity of understanding to judge the nature and consequences of the act done (Debdatta Das).\(^{17}\)

3.2.1. 1. Immoral use of children and punishment under IPC

Sections 372 and 373 are counterparts of each other, and they refer to the same offence committed by the two parties to the bargain, Section 372 dealing with the seller, and the next with the purchaser of such minors. The criminal law reprobates the sale for immoral purposes. What is ‘immoral’, the Code does not define, nor can it, for it must, in a great measure, depend upon the social habits of the people. These sections penalize traffic in minors for immoral purposes; both their sale and their purchase are crimes under the IPC. The word ‘person’ in both these sections refers to a minor irrespective of sex. Neither Section 372 nor Section 373 prohibit by prescribing a penalty, the transfer of a person above the age of eighteen years. They both refer only to persons below that age. It may be noted that while Sections 372 and 373 recognize that a minor, either male or female, may be sold or purchased for the purposes of illicit intercourse or for any unlawful and immoral purpose, Sections 366, 366-A and 366-B of the IPC, dealing with kidnapping, abduction, inducing, procuring, importing for the purpose of illicit intercourse, apply only when such actions are directed against women. Though Sections 366-A and 366-B apply to a girl below the age of eighteen and twenty-one years respectively, Section 366 applies to females of all ages. The rationale for excluding men from these provisions may be traced to the notions of morality, virginity and chastity applicable to women. Men found in situations of illicit intercourse do not suffer either a social stigma or a psychological scar, as it is acceptable behaviour given the assumptions about the nature of male sexuality. But women lured into such situations will perhaps end up being prostitutes due to the social and psychological repercussions of illicit intercourse with them. That also explains the inclusion of prostitution, and illicit intercourse in the same sections (Kathmandu School of Law et al).\(^{18}\)

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3.2.1.2. Provisions of the Indian Penal Code provide punishment for Crimes:

Section 302: Murder
Sections 315 & 316: Foeticide
Section 315: Infanticide - 0 to 1 year of age
Section 305: Abetment to suicide
Section 317: Exposure and Abandonment

All degrees of hurt or abuse
Section 319: Hurt
Section 320: Grievous hurt
Section 321: Voluntarily causing hurt
Section 322: Voluntarily causing grievous hurt
Section 324: Voluntarily causing hurt by dangerous weapons or means
Section 339: Wrongful restraint
Section 340: Wrongful confinement

Kidnapping and Abduction
Section 360: Kidnapping for exporting
Section 361: Kidnapping from lawful guardianship
Section 363 read with Section 384: Kidnapping for ransom
Section 363: Kidnapping for camel racing
Section 363-A: Kidnapping for begging
Section 366: Kidnapping to compel for marriage
Section 367: Kidnapping for slavery
Section 369: Kidnapping child for stealing from its person: child under 10 years of age only
Section 366-A: Procuration of minor girls
Section 366-B: Importation of girls
Section 371: Habitual dealing in slaves
Section 372: Selling of girls for prostitution
Section 373: Buying of girls for prostitution
Section 374: Unlawful compulsory labour
Section 376: Rape
Section 377: Unnatural offences
3.2.1.3. **Effect of introduction of JJ Act, 2000 on implementation of the provisions of IPC:**

After coming into force the Juvenile Justice (Care and Protection of Children) Act, 2000 a considerable number of IPC sections have lost its practical significance. Presumption of psychological immaturity now is being considered with the relaxed age of eighteenth years. The word punishment has lost its applicability upon the wrongdoer who did not reach the cutoff age of eighteenth years at the very date of commission of the offence. On the other hand penalty for using or employing the child for the purpose of begging, exploitation of juvenile or child employee, cruelty to juvenile or child etc. have received its special place consideration under the JJ Act, 2000.

3.2.1.4. **Wider horizon under IPC to protect youth is still have greater preference than JJ Act, 2000**

Under the Penal Code, generally, the Judges have been given discretion to impose the punishment within the prescribed limits. In few sections, the minimum punishment and the fixed punishments have been prescribed. The main problem is as to what shall be the right measure of punishment in a case. For the court, it becomes necessary to bear in mind the proportion between an offence and the punishment for it. There cannot be laid down any hard and fast rule but the courts should observe a desirable proportion between the gravity of the offence and the punishment (Dr. T. Padma).

The scope of consideration of the Judge to award punishment on a finding of guilty under IPC is still wider than JJ Act. Under JJ Act, the age of Juvenility or youth can only be protected, if the wrongdoer comes only under bellow the age of eighteenth years. JJ Act has no role to play in the field when for the protection of youth is required who crossed the age of eighteenth year, but did not reach the state of total psychological maturity for any physical or societal reason is attached with him. The rule of presumption of innocence or total exemption of punishment for the offence committed in the very childhood is still have same importance as of before JJ Act, 2000.

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19 ‘Law of Probation in India under Probation of Offenders Act, 1958, ‘Contradictions and Inconsistencies’ in its Application, by Dr. T. Padma., LL M., PhD (Law), published in ALT (Criminal)/Monthly March - 2010, PART-3, April, 2010/ PART-4
3.2.2. **The police Act of 1861**

(5 of 1861) [22nd March, 1861]

The Police Act, 1861 was introduced by the British in the aftermath of the Mutiny of 1857 or the First War of Independence. The British, naturally at that time wanted to establish a police force that would suit the purpose of crushing dissent and any movement for self government. This Act continues to this day in most states of India despite far reaching changes in governance and India’s transition from being a colonised nation to a sovereign republic. The government and its police today are obliged to respect political diversity and guarantee a climate of peace in which people feel secure in the exercise of their rights and the protection of their freedoms. Because these sentiments are not reflected in the legislation governing the police, it has contributed to the police remaining outside the loop of prevailing democratic values. The Police Act of 1861 governs most police forces in India (Maja Daruwala et al).

The Police Act, 1861 was enacted with a limited purpose. Its preamble mentions that it is expedient to reorganise the police and to make it a more efficient instrument for the prevention and detection of crime". This has led to frequent assertion by the police that they have no other societal role to play, given their duties under the Act (Maja Daruwala et al). The police Act of 1861 did not incorporate within its ambit concepts like, 'juvenile', 'delinquency', 'children in need of care and protection' etc (Kathmandu School of Law et al). The Police Code of Conduct requires all the police personnel to respect and uphold the rights of citizens guaranteed in the Constitution and the laws in force. The police force is the only authority to deal with beforehand, the entire problem which may attach with crime relates to children or a delinquent juvenile. But unfortunately after more than one and half century, there has been no specific provision in the Police Act, 1861 requiring special manner to deal with the juvenile in conflict with law or delinquent juveniles. The Acts or approach of police mainly based on other law and rules. The Police Act, 1861 needs to be revoked with such legislative change that reflects the desired nature of provisions in conformity with the changed up-to-date juvenile justice system of India.

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21 Ibid page – 10

22 Ibid 2010, Page – 10
3.2.3. The Evidence Act, 1872

(Act 1 of 1872) [15 March 1872]

The Indian Evidence Act is an adjective Law which defines the pleading and procedure, by which the substantive law is applied in practice. Purpose of law of evidence is the establishment of facts in issue, by proper legal means, to the satisfaction of the Court and this is done by production of evidence. As such the Indian Evidence Act has no concern about to prescribe or to enforce child right. It is concerned with only the way through which the evidence shall be placed or produced before the court to prove a particular fact in issue. Only some provisions of the act signify the status of a child equal to a matured person and privileged right to paternity.

3.2.3.1. Presumption as to Right to paternity:

Section – 112 deals with law as to the proof of legitimacy as it stands today. It says that the fact that a child was born during the continuance of a valid marriage or within 280 days after its dissolution but before the mother remarried someone else is itself a conclusive proof that the person to whom the mother of the child was married is the biological father of the child born. The word 'begotten' used in S – 112 of the Act means 'conceived' and not 'born'. The emphasis on birth during wedlock as against conception is there in S – 112 for the reason that as a general rule, it is the birth after marriage, which confers legitimacy on a child until its contrary is not proved (Pragya Mishra).

The essential conditions for the presumption to arise are (Pragya Mishra):

1. The child should have been born during the continuance of a valid marriage, or if the marriage was dissolved, within 280 days after its dissolution, the mother remaining unmarried.
2. The parties to the marriage should have had access to each other at any time when the child could have been begotten.

The rationale behind such a presumption is that the law does not want the paternity of a new born child to be a matter of doubt and uncertainty and in case such a chance arises the most expedient choice to determine the person in charge of the child's responsibility is

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24 Ibid 23
the person to whom the mother is married at the time of birth. Thus the presumption will apply to children conceived before marriage as also to those born after the dissolution of marriage, provided the other pre-requisites are present (Pragya Mishra).

3.2.3.2. Status of child witness equal to an adult person

The test of competence of child witnesses:

The Courts have held that a child witness, if found competent and reliable to depose to the facts and such evidence, could be the basis of conviction. In other words, even in the absence of oath, the evidence of a child witness can be considered under Section 118 of the Evidence Act, provided that such witness is able to understand the answers. Therefore, the evidence of a child witness and his/her credibility would depend upon the circumstances of each case. The only precaution that the Court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness so that there is no likelihood of the child being tutored (UNICEF).

Judges and Magistrates, must record their opinion that the child understands the duty of speaking truth and state why they think that the evidence of a particular child-witness was or was not credit-worthy. But, even if such an opinion is not expressed in the judgment, it can be gathered whether the Magistrate or Judge was of that opinion or not, from the circumstances of the case. It was held that the “tender years of the child, coupled with other circumstances appearing in the case, such, for example, as its demeanour, unlikelihood of tutoring and so forth, may render corroboration unnecessary” (Law Commission of India). Further, Section 118 of the Evidence Act envisages that all persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them or from giving rational answers to the questions, because of their young age, extreme old age, or disease -- whether of mind or any other

25 Ibid 23
27 Law Commission of India 185th Report-Part – IIIB, Extracted from lawcommissionofindia.nic.in/reports on 20.08.2012, Page – 287 & 288
similar cause. However, a young child can be allowed to testify if he/she has the intellectual capacity to understand questions and provide rational answers (Debdatta Das).28

The act enshrines the provisions of social integration of a child born out of matrimonial wedlock through the means of providing an invisible path to acknowledge the right to paternity long before his birth. Conceptually, the same beneficial idea has been introduced in the Juvenile Justice (Care and Protection of Children) Act, 2000 to favour the child. On the other hand to opine for his own wellbeing of a child prescribed in the JJ Act, has a touchy relevance with Section – 118 of the Evidence Act. The principles which have been taken into consideration by the legislators long before centuries ago are still evident as pragmatic and applicable.

3.2.4. The Indian Majority Act, 1875

(Act No. 9 of 1875) (Dated: 2 March, 1875)

The law respecting majority remained in an unsettled state until the Indian Majority Act, 1875 was passed. That act (as is preamble state) was passed for pioneering the period of non age and attaining more uniformity and certainty respecting the age of majority in case of persons domiciled in British India (Law Commission of India).29

Under the Age of Majority Act 1875, every person domiciled in India shall attain the age of majority on completion of 18 years and not before. The Indian Majority Act was enacted in order to bring uniformity in the applicability of laws to persons of different religions. Unless a particular personal law specifies otherwise, every person domiciled in India is deemed to have attained majority upon completion of 18 years of age. However, in the case of a minor for whose person or property, or both, a guardian has been appointed or declared by any court of justice before the age of 18 years, and in case of every minor the superintendence of whose property has been assumed by the Court of Wards, age of majority will be 21 years and not 18 (Debdatta Das).30 Though the Indian Majority Act 1875 prescribes a uniform process to fix the age of majority, but it does not override the applicability of personal laws of citizen’s of India. Still different personal laws are applicable.

28 Ibid 17 Page – 18
30 Ibid 17, Page – 17
to the citizens of India respecting their caste and religion in respect to their marriage, devolution of property etc.

To add the complications of the law as to the age of majority before the passing of Indian Majority Act 9 of 1875 there were several other enactments fixing the age of majority for the special purposes of such acts. The enactments pointed different directions for different purposes (Law Commission of India). The same conceptual definition for the word “child” or “minor” has been followed, by reference to the Indian Majority Act, 1875 in almost all subsequent Indian legislation up to the enactment of the Juvenile Justice (Care and Protection) Act, 2000. The modern legislation the Juvenile Justice (Care and Protection) Act, 2000, has been enacted by the union legislature under the protégé of colonial legislation of the year 1875 in determining the age of juvenility.

The Indian Majority Act, 1875, divides minors into two groups and fixes their age. The first group consists of Minors for whom the Court has appointed Guardians and the second group consists of all minors for whom the Court has not appointed guardians. The age of majority for all minors (except those for whom the Court has appointed a Guardian) is fixed as the age of 18 years as they (minors) will be deemed to be major. However, for any reason whatsoever, in any particular case, before the age of 15 years, if any Court has appointed a Guardian, such minors even after the age of 18 years will be treated as minor and will be treated to have reached the age of majority on attaining the age of 21 years.

3.2.5. The Prisons Act, 1894

(Act IX of 1894) [22nd March 1894]

‘Prisons’ is a State subject under List-II of the Seventh Schedule to the Constitution of India. The management and administration of the Prisons falls exclusively in the domain of the respective State Governments, and is governed by the Prisons Act, 1894 and the Prison Manuals of the respective State Governments. Thus, States have the primary role, responsibility and authority to change the present day prison system. The present day jail management and administration operates in India is guided by the Prisons Act, 1894. This is misfortunate that the Act has hardly undergone any substantial change after more than one century of its enactment.

31. ibid 29
The Prisons Act, 1894 under Section 27 also provided that in a prison where male prisoners under the age of 18 are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not (Asia-Pacific Regional meeting). The earmark age twenty-one later substituted by amendment in place of the age 18 years by the Prisons Amendment Act, 1930 (9 of 1930). The liberal idea of special separate arrangements for the adolescent offenders was patently existed in the mind of legislator during British regime and the same idea continued to follow even long after the independence.

The Indian Jail Committee (1919-1920) condemned the practice of sending juvenile to jail and recommended for setting up of separate machinery for the trial and treatment of children and young offenders. Following the recommendations of the Indian Jail Committee, Madras, Bengal and Bombay also enacted Children Acts in 1920, 1922 and 1924 respectively. Andhra Pradesh implemented Madras (Andhra Area) Children Act, 1920 to deal with the children. Bombay Children Act, 1948 was made applicable to Gujarat and Maharashtra. The East Punjab Children Act, 1949 was enacted in Punjab to deal with the children (Asia-Pacific Regional meeting).

Despite statutes prohibiting placement of juveniles in jail or the recommendation of the Model Prison manual, they are routinely shown as adults on arrest, kept in police lock-ups and jails, their trials are conducted before regular criminal courts, and they are convicted and sentenced to imprisonment, sometimes even life imprisonment. [Chapter XXV, Young Offenders, Formulated by BPR&D, Ministry of Home Affairs, 2003] (Debdatta Das)

3.2.6. The Reformatory Schools Act, 1897

[Act No. 8 of 1897] [11th March, 1897]

The Reformatory Schools Act was passed in England in 1854 while the Reformatory Schools Act was passed in India in 1876. Thus, the Indian law followed with the British principle & precedent and developed from the primitive and retaliatory approach of the

31 Ibid 22 Page – 14
32 Ibid 14
33 Ibid 17 Page – 21
rigid criminal courts towards the gradual acceptance of the humanitarian approach of re-education and protection of child in need as the ward of a state.

The Reformatory Schools Act enacted in 1876 and later modified in 1897, was the first landmark in the treatment of young offenders. It empowered the government to establish reformatory schools, where boys could be detained till they attained eighteen years. It also provided boys above 14 years of age could be licensed out if suitable employment could be found (Asia-Pacific Regional meeting). The preamble prescribes the objects, of the Act was to make provision for dealing with youthful offenders, but not with all youthful offenders. The youthful offenders intended were only those boys who had been convicted of any offence punishable with transportation or imprisonment, and who at the time of conviction might be under the age of 15 years.

The Reformatory School Act, 1876 was the landmark legislation in the treatment of juvenile delinquents. It empowered local government to establish reformatory schools. Under the Act, the sentencing court could detain boys in such institutions for a period of two to seven years but they would not be kept in the reformatory schools after they had attained the age of eighteen years. There was also a provision to license out boys over fourteen years of age if suitable employment could be found. In Bombay Presidency, the Act was applicable to boys under sixteen years of age, while elsewhere it applied to boys under fifteen years of age.

The policy and object of the Legislature in enacting of the Reformatory Schools Act, 1897, was to exclude the interference of Courts (Section 16), whether by way of appeal, or by way of revision with (1) any finding by the trying Magistrate under Section 11 of the Act, which states what such Magistrate considers the age of a youthful offender before him to be, and (2) any order passed under Section 8 of the Act, whereby, instead of undergoing a sentence of transportation or imprisonment, any youthful offender may be directed to sent to a reformatory school. The probability is that, in determining these two matters, the Legislature considered the trying Magistrate to have such advantage over a Court of appeal or revision that any interference would be inexpedient. So the courts of appeal or revision shall be duty bound to promote in the fullest manner the policy and object of the Legislature. The Legislature further intended and provided that, even in the case of such

34 Ibid 14
offenders, all such should not be sent to a reformatory school, but only such of them, whom, by rules made for this purpose, having regard to the nature of their offence or other considerations, the Local Government might consider fit subjects for detention in a reformatory (Allahabad High Court).\textsuperscript{35}

Under the Act the Court or the Magistrate has the jurisdiction to make an order for detention in a reformatory school in substitution for an order of transportation or imprisonment, and in the exercise of that jurisdiction the Court or Magistrate has to make an order for detention in consonance with the provisions of Section 8, 9 or 10, and such order was not open to interference in appeal or revision and was considered as final, provided the order not transgressed the provisions of the Act or the rules framed by the Local Government under the Act, Section 16 and in such case the order was not protected from interference in appeal or revision (Allahabad High Court).\textsuperscript{36}

3.2.7. Guardians and Wards Act, 1890

[Act No. 8 of Year 1890][21\textsuperscript{st} March, 1890]

The Guardian and Wards Act (1890) was the first legislation that empowered Indian courts to consider the views and preferences of the children. \{The Guardians and Wards Act, 1890 was a law to supersede all other laws regarding the same. It became the only non-religious universal law regarding the guardianship of a child, applicable to all of India except the state of Jammu and Kashmir\} (childlineindia).\textsuperscript{37} In the early 20\textsuperscript{th} century, different States of British India passed their respective separate Children's Acts such as the Madras Children Act (1920), the Bengal Children Act (1922) and the Bombay Children Act (1924). This law is particularly outlined for Muslims, Christians, Parsis and Jews as their personal laws don't allow for full adoption only guardianship (childlineindia).\textsuperscript{38} The ancient Hindu personal law has been reviewed and re-coded by various legislations passed by the Central Government since independence in 1947, while Muslim personal law still based upon the un-coded Shariat. The Guardian and Wards Act (1890) is a Secular Act and it applies to all children regardless of race or creed.

\textsuperscript{35} Emphasis received from the judgement of Allahabad High Court in case of Queen-Empress vs. Hori decided on 27 May, 1899, by the full Bench comprised by the Hon'ble Justice Mr. Arthur Strachey, C.J., Justice Knox, and Justice Banerji, Equivalent citations: (1899) ILR 21 All 39
\textsuperscript{36} ibid 35
\textsuperscript{38} ibid 37
The Act grants discretionary powers to the Judge(s) to listen directly to and to take into consideration the views of children. Acts pertaining to Hindu personal law also empowers judges to consider the wishes of a child. Muslim law is an un-codified way of adjudication based on Shariat and does not prescribe any patent procedure to be followed to pay special attention to the preferences of a child.

According to this act a minor/child is one who has not completed the age of 18 years. The district court or appointed authorities on application have authority to decide rationale about the appointment or removal of a guardian of a minor, even the revocation of earlier conditions imposed upon such appointed guardian. The applications should contain all the possible information about the child and the intended or proposed guardian and reasons for seeking assignment of guardian. The decision of guardianship shall be preceded with the view to serve the interest of the child and to protect the property of the minor basis of the age, sex, religion, character of the guardian, the death of the parent(s), relation of the child to the guardian, etc sync with the preference of the minor. The statute does not deal with adoption as such but guardianship and the prescribed process makes the child a ward, not an adopted child. When the child turns to the age of 21 years, he ceases to remain wards and assumes his individual legal identity. Consequently a ward under adoption does not acquire an automatic indefeasible right of inheritance likewise progeny or blood relatives, unless adoptive parents have to leave whatever they wish to bequeath to the ward through a will or otherwise.

Today, India has a separate judicial system for the children which have provided the discretion of the magistrate, to hear the children directly. There are numerous government schemes and setup governmental bodies that reaffirm the Government of India’s commitment to child rights. If we closely scrutinize and compare rights enshrined in the Guardians and Wards Act, 1890 with the latest JJ Act, 2000 we will find a common conceptual protection and privileged preference have been provided in both the legislations.
3.2.8.  **Borstal Schools Act, 1928**  
\[\text{(Act No. I of 1928) [16\textsuperscript{th} February, 1928]}\]

The primary objective of Borstal Schools is to ensure care, welfare and rehabilitation of young offenders and to keep them away from contaminating atmosphere of the prison. Borstal schools cannot be treated as either a miniature jail or a substitute of it. Inmates are only kept and they are never imprisoned. The offenders who are detained in Borstal Schools are subjected to various vocational trainings. They are also given education with the help of trained teachers (N C R B).\(^{39}\)

The Borstal Schools Acts prescribes modes and manners of trial of cases where the wrongdoer is juvenile and also prescribes after-care programmes for the delinquent juveniles. The provisions contained in the Act relates to the establishment, Constitution, functions, powers, duties and procedure to be followed by Juvenile Welfare Boards, Juvenile Courts, Juvenile Homes, Special Homes, Observation Homes, Probation Officers, and After-care Organisations concerning the juvenile delinquents, neglected juveniles, uncontrollable juveniles, etc.

Any person who is not less than 16 years nor more than 21 years of age on the date of his conviction of an offence punishable with imprisonment or who having been ordered to give security under Section 106 or Section 117 of the Code fails to furnish such security is considered an adolescent offender under the Act. When such an offender is convicted of an offence punishable with imprisonment it is the duty of the court convicting him to consider whether having regard to his criminal habits or tendencies or association with persons of bad character he should be detained for such period and under such instruction and discipline as appears most conducive to his reformation and repression of crime. If the court considers that it is desirable to do so it may in substitution of the sentence of imprisonment pass a sentence of detention in a Borstal School for a term which shall not be less than two years and shall not exceed five years. In no case he can be detained in a Borstal School beyond the age of twenty three years. The Court is given the power to decide the suitability

\(^{39}\) Statistic published by National Crime Records Bureau East Block-7, R.K. Puram, New Delhi-110 066, Tel: 26186576 Fax : 26197984, New Delhi September, 2005, chapter 1 page – 1
of the offender to be sent to Borstal detention in lieu of imprisonment (Madras High Court).  

3.2.8.1. The mode reformation under the Act

Factory work and agriculture form two main heads of vocational training. Weaving, manufacture of furniture and stationery, and smithy are some of the other vocations taught. The adolescents sent to this school are given such individual training and formal education and are subjected to such disciplinary and formal influences as will be conducive to their reformation. However, boys found to be too incorrigible or unsociable to be kept in the Borstal School are transferred to the juvenile section of the prison. Similarly, if the Inspector-General of Prisons thinks that any prisoner in the juvenile section can be better treated to his advantage if he is sent to the Borstal School, he may be transferred accordingly. Both juveniles and adolescents, when they have finished a certain period of residence in the institutions to which they are sent and acquired some proficiency in a trade, are released, under a licence prescribed under the rules, to live in their homes, or if they are destitute, in after-care hostels, under supervision, and efforts are made to find employment for them.

3.2.8.2. State wise figure of Borstal School

Ten States namely, Tamil Nadu (12), Andhra Pradesh, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Maharashtra, Punjab and Rajasthan (1 each) have reported Borstal Schools in their respective jurisdiction (Table 1.2). Tamil Nadu had the highest capacity for keeping 667 inmates followed by Punjab (500), Haryana (355), Karnataka (200), Maharashtra (105), Jharkhand & Kerala (100 each). Haryana (195) and Himachal Pradesh (15) are the only States which have reported capacity for lodging female inmates in their Borstal Schools (Table 2.6). Existence of Borstal Schools was not reported from any of the UTs (National Crime Records Bureau).  

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40 Habeas Corpus Petition No.596 of 2007, Thangammal vs The Home Secretary, decided by the Madurai Bench of Madras High Court on 6th February, 2008, Coram of the Hon’ble Judges Mrs. Justice Prabha Sridevan, the Hon’ble Mr. Justice N. Paul Vasantha Kumar and the Hon’ble Mr. Justice S. Nagamuthu extracted on 18.08.2012 from http://www.indiankanoon.org/doc/39664

41 Ibid 39 chapter 1 page 2
3.2.9. **Children (Pledging of Labour) Act, 1933**

(Act No. 2 of 1933) [24th February, 1933]

The first Act in India on the subject of child labour was the Enactment of Children (Pledging of Labour) Act of February 1933. The Act lays down that an agreement, oral or written, expressed or implied, made by parent or guardian of child in consideration of some payment or benefit for causing or allowing the services of a child to be utilized in any employment, shall be void. However, it is worth mentioning that an agreement without detriment to the child and made in consideration of any benefit, other than reasonable wages to be paid for the services of the child and terminable at not more than a week’s notice will not be void. This was followed by the Employment of Children Act in 1938 (Mubashshir Sarshar). This Act provides for penalties for 1) parent or guardian 2) any person contracting with such parent or guardian and 3) any person who employs a child with the knowledge that the child has been pledged (UNODC).

There are three major areas in the act:

Firstly;

Section 4 – Penalty for parent or guardian making agreement to pledge the labour of a Child

– Whoever, being the parent or guarding of a child, makes an agreement to pledge the labour of that child, shall be punished with fine which may extended to fifty rupees.

Secondly;

Section – 5 Penalty for making with a parent or guardian an agreement to pledge the labour of a Child. – Whoever makes with the parent or guardian of a child an agreement whereby such parent or guardian pledge the labour of the child shall be punished with fine which may be extended to two hundred rupees.

Thirdly;

Section – 6 Penalty for employing a child whose labour has been pledged. – Whoever, knowing or having reason to believe that an agreement has been made to pledge the labour of a child, in furtherance of such agreement employees such child, or permits such child to

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42 Sociological Study of Children (Pledging of Labour) Act, 1933, published in January, 2010 National Law University, by Delhi, Mubashshir Sarshar, Student at National Law University, Delhi, (page 10)

be employed in any premises or place under his control, shall be punished with fine which may extend to two hundred rupees.

Given the magnitude and complexity of the problem and the relative ineffectiveness of implementing mechanism, the meager penalties which have been provided for violation of the Act are requires to immediate attention of the legislature for drastic amendment. Specially, provisions of compulsory imprisonment with imposition of exemplary fine required to be inserted instead of present futile amount of fine, otherwise the law itself will lost its significance. And lastly, to put a stop on second or subsequent occurrence or recurrence of the offence a new provision need to be introduced, which should prescribe severe Penalties for making Second or subsequent Default.

3.2.10. Employment of Children Act, 1938
(26 of 1938) [1st December, 1938]

In 1938, the Employment of Children Act was the first enactment squarely addressing the issue of child labor. This followed from the twenty-third session of the International Labor Conference, held in 1937, which adopted a special article ex-clusively on India, recommending that children below thirteen years be prohibited from work in certain categories of employment. The 1938 act set the minimum age of employment in certain industries at fifteen and in the transport of goods on docks and wharves at fourteen (Usha Ramanathan).  

1978, the Employment of Children act 1938 was further amended so as to extend the prohibition of employment of a child below 15 years in railway premises such as cinder-picking or clearing of an ash-pit or building operation in catering establishments at a railway station or in occupations relating to construction of a railway station or any other work done in close proximity to or between the railway lines. These occupations were not covered before 1978 (Subrata Sarkar). The Employment of Children Act, 1938 (26 of 1938) has been repealed by Section – 22 of the Child Labour (Prohibition and Regualtion) Act, 1986. The authority which has been provided by the new legislation the Child Labour (Prohibition and Regualtion) Act, 1986 is totally inconsistent with the earlier law and that

the two cannot stand together any longer it must be construed that the earlier law had been repealed by necessary implication by the latter law.

3.2.11. The Bombay Shop and Establishments Act, 1948

[Bombay Act No. LXXIX of 1948] [11th January, 1948]

The Bombay Shop and Establishments Act (1948), focused on corporate social responsibility of the enterprises with legal guidelines as to how they can manage their business processes to produce an overall positive impact on society at large. There are important arrangements that apply in the State which encourage beyond good employment practices, to improve minimum commitment of labour rights and environmental responsibility outlined, to include issues of fair trading in the market place, corporate governance, and investment in community outreach.

3.2.11.1. Objectives:

1) To regulate conditions of work and employment in shops, commercial establishments, residential hotels, restaurants, eating houses, theatres, other places of public entertainment and other establishments.

2) Provisions include Regulation of Establishments, Employment of Children, Young Persons and Women, Leave and Payment of Wages, Health and Safety etc.

The Act is one of the model statutes of India which has successfully been tried so far in Maharashtra, to provide relative provision for the workers of tender age to protect their childhood and youth. Employment of children or rendering work by a child is prohibited under Section – 32 of the Act, irrespective of the fact that the child is the member of the family. Section 2(2) defines "Child" is a person who has not completed his fifteenth year of age; but does not include a person who has, before the date of commencement of the Bombay Shops and Establishments (Amendment) Act, 1977, completed his twelfth year of age even though he has not completed his fifteenth year of age, if he is on the day immediately preceding the said date an employee in any establishment to which this Act applies.

Section – 34 fixes daily working hours for young persons. Under sub – Section 1 of Section – 34 of the Act, no young person shall be required or allowed to work, whether as
an employee or otherwise, in any establishment for more than six hours in any day. Sub Section – 2 permits six hours work by young person as an employee or otherwise in any establishment, if he has had an interval for rest of at least half an hour after three hours work. On the other hand no such young person shall be required or allowed to work in any establishment after 7.00 p.m Section – 33(2). A "Young person" means a person who is not a child and has not completed his seventeenth year Section 2(33).

The violation of the above provisions are punishable under Section – 52 and shall warrant prosecution at the instance of Inspector or authority with previous sanction under Section – 60 or a representative of registered union, on a written complainant made under Section – 61 within the prescribed period of limitation of three months.

The Act created a complete ban upon the employment or requiring work of a children bellow the age of fifteenth year and reasonable restriction securing work from a young person attached with the establishment, even though the child may be the owner or a member of the owner’s family. The Act has encouraged the organized sector to undertake committed campaigns to culminate the scope of spoiling childhood and youth not only in the organized sector but also in the unorganized sector as a part of their corporate social responsibility. Though the primary object of the Act limited to its applicability within a specific part of the union of India, but undoubtedly it has initiated the advocacy for the need of uniform social responsibility oriented welfare legislation for the children, throughout India.

3.2.12. Factories Act, 1948

(Act No. 63 of 1948) [1st day of April, 1949]

Acknowledgment of child labor as a distinct constituent of the workforce has been on India’s statute book since at least 1881 (Usha Ramanathan).\(^46\) The Factories Act of 1881 was the first law to define child and to prescribe prohibitory regulations for employment of children below 7 years of age (Bilal Ahmad Bhat)\(^47\) (with a maximum of nine hours of work per day (Usha Ramanathan).\(^48\) The Factories Act, 1911 prohibited employment of children in

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\(^{46}\) Ibid 44


\(^{48}\) Ibid 44
dangerous occupations and working during night hours (Usha Ramanathan).\textsuperscript{49} The act also outlawed the “double employment” of child workers in two factories on the same day (Usha Ramanathan).\textsuperscript{50}

In 1891 the Factories Act was amended, increasing the minimum age for employment in a factory to nine years. In 1911, the act was again amended to prohibit the employment of children in certain dangerous processes. The device of a “certificate of fitness” was introduced. This has survived to the present, where a certifying surgeon is entrusted with assessing whether a “young person has completed his 14\textsuperscript{th} year, that he has attained the prescribed physical standards and he is fit for such work” (Usha Ramanathan).\textsuperscript{51} The first Convention of ILO, compelled amendment of the Act in 1922, to raise the minimum age of child to 15 years. However, children below the age of 12 years where prohibited for employment. The age rose to 13 years in 1935 under the Act. The present Factories Act, 1948, prescribes prohibitory regulations for employment of children below 14 years of age in any factory.\textsuperscript{52} Factories Act, 1948 was again amended in 1976 (Bilal Ahmad Bhat).\textsuperscript{53}

In compliance of memo issued by Govt. of India, Ministry of Labour & Employment Notice No. S-25012/1/96-ISHII (Vol.IX) dated 13.01.2011 the Govt. of India (Prime Minister Office) has constituted an Expert Committee under the Chairmanship of Shri Narendra Jadhav, Member, Planning Commission with Shri Prabhat Chaturvedi, Secretary (L&E) as one of the two members to examine the issue of Comprehensive Amendments to the Factories Act, 1948. The proposed works of the government are mainly based on Sections – 64 and 66 (payment on overtime work and working hours of woman etc.). The present evaluation work of the committee has no attributes in relation to further evaluation on employment of child.

\textsuperscript{49} Ibid 47
\textsuperscript{50} Ibid 44
\textsuperscript{51} Ibid 44
\textsuperscript{52} Ibid 47
\textsuperscript{53} Employers Propose Amendment of Factories Act, posted by labour law India, on 21\textsuperscript{st} December, 2011
3.2.13. The Constitution of India
Adopted by the Constituent Assembly on 26th November 1949,
Came into force on 26th January 1950

The Constitution of India guarantees fundamental rights and full freedom to enjoy childhood for the children of the country (Bilal Ahmad Bhat).54 Several provisions in the Constitution of India impose on the State the primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected (Debdatta Das).55 The Constitution of India guarantees all children certain rights, which have been specially included for them. These include:

1. Right to free and compulsory elementary education for all children in the 6-14 years of age group (Article 21-A).
2. Right to be protected from any hazardous employment till the age of 14 years (Article 24).
3. Right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength (Article 39(e)).
4. Right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment (Article 39 (f)).

Besides these they also have rights as equal citizens of India, just as any other adult male or female:

1. Right to equality (Article 14).
2. Right against discrimination (Article 15).
3. Right to personal liberty and due process of law (Article 21).
4. Right to being protected from being trafficked and forced into bonded labour (Article 23).
5. Right of weaker sections of the people to be protected from social injustice and all forms of exploitation (Article 46).

The juvenile justice policy in India is structured around the Constitutional mandate prescribed in the language of Articles 15(3), 39 (e) & (f), 45 and 47. In 2002, Article 21 A was

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54 Ibid 47
55 Ibid 17 Page – 15
added through a Constitutional amendment to make elementary education a Fundamental Right for every child in the age group of 6 to 14 years (Asia-Pacific Regional meeting).56 Article 21 A of the Constitution of India says that the State shall provide free and compulsory education to all children within the ages of 6 and 14 in such manner as the State may by law determine. Article 45 of the Constitution specifies that the State shall endeavour to provide early childhood care and education for all children until they complete the age of 6. Article 51 (k) lays down a duty that parents or guardians provide opportunities for education to their child/ward between the age of 6 and 14 years (Debdatta Das).57

The rights approach is primarily concerned with issues of social justice, non-discrimination, equity and empowerment. The achievements of right based approach will depend on sincere performance of corresponding duty performed by the other stakeholders in the society. It has been specially introduced in the Indian Constitution under Art 51 A (k), which reads as: “It shall be a duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child, or, as the case may be, ward between the age of six and fourteen years” (Debdatta Das).58 Article-46 makes provisions for promotion, with special care of the educational and economic interest of SC and STs and other weaker sections of the society. Article-47 lays emphasis on raising standard of living of people by the State. These also include children in their purview (Bilal Ahmad Bhat).59

3.2.14. **Plantations Labour Act, 1951**
[Act No. 69 of 1951] [2nd November, 1951]

The Plantations Labour Act of 1951 prohibited the employment of children below twelve, and adolescents between the ages of twelve and eighteen were required to obtain a certificate of fitness. Both laws prohibited night work for children (Usha Ramanathan).60 The word twelve year in Sections – 2(a), 2(c), and 26 has been repealed and replaced by the Act 61 of 1986 (Parliament of India).61 Section – 25 of the act put a total ban upon employment of a child bellow the age of 14 years whereas section – 26 puts reasonable restriction upon

56 Ibid 14 Page – 2
57 Ibid 17 Page – 15
58 Ibid 17 Page – 30 & 31
59 Ibid 47 Page – 21
60 Ibid 44 page – 2
61 The Child Labour (Prohibition and Regulation) Act, 1986 (Act no. 61 of 1986)
working of "Adolescent “persons based on certificate of fitness prescribed under section – 27.

Section – 27 (1) provides that a certifying surgeon shall, on the application of any young person or’ his parent or guardian accompanied by a document signed by the employer or any, other person on his behalf at such person will be employed in the plantation if certified to be fit for work, or on the application of the employer or any other person on his behalf with reference - to any young person intending to work, “amine such person and ascertain his fitness for work either as a child or as an adolescent. For the examination of adolescent the employer has to bear the fees of the surgeon (Section – 27 (3)), and the fees shall not be recovered from the young person, his parents or guardian. The statute also puts a process of routine checkup of fitness for a period fixing twelve months validity period and scope renewal afterwards (Section – 27 (2)).

3.2.15. The Mines Act, 1952

(35 of 1952) [15th March, 1952]

This is another legislation that contains several protective provisions for the benefit and protection of men, women and children (UNODC). In 1901, the Mines Act prohibited the employment of a child under the age of twelve years in any mine where the conditions were dangerous to their health and safety. Employment of children was restricted to open-cast mines with a depth of less than twenty feet (Usha Ramanathan). Mines Act, 1951 prohibits employment of children below 16 years in any underground mines (Bilal Ahmad Bhat). The Mines Act of 1952, and especially since 1984, has categorically rejected the employment of persons below the age of eighteen years, with the exception of apprentices under the Apprentices Act of 1961, or other trainees under proper supervision who may be as young as sixteen years. The Mines Act of 1952, and especially since 1984, has categorically rejected the employment of persons below the age of eighteen years, with the exception of apprentices under the Apprentices Act of 1961, or other trainee’s under proper supervision who may be as young as sixteen years (Usha Ramanathan). This contains provisions for measures for the health, safety and welfare of workers in the coal.
metalliferous and oil mine. Directorate General of Mines Safety conducts inspections and inquiries, issues competency tests for the purpose of appointment to various posts in the mines, organizes seminars/conferences on various aspects of safety of workers.

3.2.16. Protection of Civil Rights Act, 1955

(Act No.22 OF 1955) [8th May, 1955]

According to the provisions under Section 15-A of the PCR Act, the State Governments shall take appropriate measures to ensure that the rights arising from the abolition of untouchability are made available to, and availed of, by persons subjected to untouchability. These measures may include the provision of adequate facilities, including legal aid, appointment of officers for initiating or exercising supervision over prosecution for the contravention of the provisions of this Act, setting up of Special Courts for the trial of offences under this Act, etc. Article 17 of the Constitution of India abolished the practice of untouchability and in furtherance of the provision thereof the Protection of Civil Rights Act (PCR Act) was enacted in the year 1955 (Government of India). Still a lot of children from downtrodden family background in every year fell as victims of caste based discriminations and violence, and loss of their lives and belonging. Besides special provision on abolishing untouchability in Constitution itself, the Protection of Civil Rights Act 1955 has been playing an important role throughout the country. It is needless to quote that there is no patent formula prescribed by the Act to protect the child victims of social injustice.

3.2.17. The Young Persons (Harmful Publication) Act, 1956

(93 of 1956) [20th December, 1956]

The Young Persons (Harmful Publication) Act, 1956 prohibits publications which could corrupt a child or young person & incite him to commit crimes of violence or cruelty etc (Section – 3 of the Act). A contravention of the provisions of this Act is punishable with imprisonment which may extent to six months or fine or both. Under the Act young person means a person under the age of twenty years (Section – 2(c)).

This Act may be used to counter pornography to some extent. Although this Act will only operate if the publication is harmful or corrupts the mind of young persons, it can still be used against pornography. Harmful publications include a book, magazine, pamphlet, leaflet, newspaper or like publications. If a person sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, prints, makes or produces or has in his possession any harmful publication, or advertises or makes known by any means whatsoever that any harmful publication can be procured from or through any person, he shall be punishable with imprisonment which may extend to six months, or with fine, or with both. All offences under this Act are cognizable. This legislation may not be directly relevant in trafficking cases, but would be an add-on where there has been trafficking for pornography for distribution among young persons (UNODC).

3.2.18. Hindu Adoption and Maintenance Act, 1956
[Act No.78 of 1956] [21st December, 1956]

Adoption is one of the best and appropriate forms of alternative family care. Indeed, it is the only way to break the mindset of institutional care for children, which has been posed as the only solution for many years (Debdatta Das). Adoption as a legal concept was available only among the members of the Hindu community except where custom permits such adoption for any section of the polity. Only Hindus were allowed to legally adopt the children and the other communities could only act as legal guardians of the children.

This act applies to all Hindu, Buddhists, Sikhs and Jains by religion. A child, legitimate or illegitimate, whose parent(s) or guardians were Hindu, Buddhist, Jain or Sikh is also considered under this act. A person who converted to these religions is also considered under this act. According to the act a 'Hindu' is any person to whom this act applies. In this act a minor is any person who has not completed 18 years of age. This act supersedes any act concerning Hindu adoption and maintenance.

The act provide for a trifurcated integrated system of Adoption. The adoptions can only be made if all three parties, the minor, the giver and the adopter are all in agreement.
and considered legally fit to perform his legal obligation. An intended Hindu male can only adopt a male or female child under concurrence of his wife. Common intention and consent of both the spouse is the pre requisite. A female Hindu can adopt if she is of sound mind, unmarried or married and her husband is dead, of unsound mind or has been ceased to be a Hindu. Only the father, mother or the guardian of a child can place the child for adoption. A child can only be adopted if he/she is Hindu, not previously adopted, not married and has not completed fifteen years of age.

In case the adoptive family already has a son or grandson or great-grandson (paternal lineage only) in their home they are not permitted to adopt a son. The same principle applies for adoption of a female child. An age difference of 21 years is mandatory when the adoption involves a child of the opposite sex the adopter. This provision has been intended to block the scope of sexual abuse.

Once the child is being adopted, he acquires indefeasible rights and liabilities equal to the progeny of the adoptive father and mother and all ties of the adopted child with his/her previous family shall cease to exist except with regard to prohibitions of marriage and property inherited by the child. A valid adoption cannot be null by any party. Bribing a party for adoption is an offence punishable under this act. The of 1956 dealt specifically with the legal process of adopting children by a Hindu adult, as well as the legal obligations of a Hindu to provide "maintenance" to various family members including, but not limited to, their wife or wives, parents, and in-laws.

3.2.19. **Immoral Traffic (Prevention) Act, 1956**

[104 of 1956] [30th December, 1956]

Child trafficking is one of the most heinous manifestations of violence against children. India has not ratified yet the Palemo Protocol, which provides protection to children against trafficking. This is taking on alarming proportions - nationally and internationally. Although, very little reliable data or documentation is available, meetings and consultations across the country have revealed the gravity and the extent of this crime. It is high time we understood and realised that children are trafficked for a number of reasons and this cannot be treated synonymously with prostitution.
According to a report by the National Human Rights Commission of India it is estimated that 200,000 persons are trafficked in India every year. Only 10% of human trafficking in India is international, while almost 90% is interstate. Nearly 40,000 children are abducted every year of which 11000 remain untraced.

The Immoral Traffic (Prevention) Act, 1986 (ITPA) was enacted for the prevention of immoral traffic. All persons, whether male or female, who are exploited sexually for commercial purposes, fall under the purview of ITPA. Offences involving children are being dealt with through increased strictness by enhancing the period of imprisonment. Prostitution per se is not illegal in India but related activities such as brothel-keeping, living off the earnings of a prostitute, soliciting or seducing for the purposes of prostitution are all punishable offences. ITPA provides more severe penalties for the trafficking of women and child prostitution (UNICEF).  

A child is a person under 16 years of age and a minor is between 16 and 18 years of age under the ITPA. For procuring, inducing, or taking a person for the purpose of prostitution, the punishment in the case of a child is rigorous imprisonment for a term of not less than seven years but may extend to life (UNICEF).  

In 1950 the Government of India ratified the International Convention for the Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution of others. In 1956 India passed the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA). The act was further amended and changed in 1986, resulting in the Immoral Traffic Prevention Act also known as PITA (wcddel).  

Section five of the act states that if a person procures, induces or takes a child for the purpose of prostitution then the prison sentence is a minimum of seven years but can be extended to life. If a person if found with a child it is assumed that he has detained that child there for the purpose of sexual intercourse and hence shall be punishable to seven year in prison up to life imprisonment, or a term which may extend to ten year and also a maximum fine of one lakh rupees. If a child is found in a brothel and after medical

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69 ibid 26 Page – 22 &23  
70 ibid 69  
examination has been found to have been sexually abused, it is assumed that the child has been detained for the purpose of prostitution (childlineindia).\textsuperscript{72}

Any person committing prostitution in public with a child shall be punishable to seven year in prison up to life imprisonment, or a term which may extend to ten year and also a maximum fine of one lakh rupees. If prostitution of a child is being committed with knowledge of an establishment owner such as a hotel the license of the hotel is likely to be cancelled along with the given prison sentence and/or fines (wcddel).\textsuperscript{73}

Any child found in a brothel or being abused for the purpose of prostitution can be placed in an institution for their safety by a magistrate. Landlords, lesasers, owner, agent of the owner who unknowingly previously rented their property to a person found guilty of prostituting a child, must get approval from a magistrate before re-leasing their property for three years after the order is passed (wcddel).\textsuperscript{74}

The key provisions under Immoral Traffic (Prevention) Act, 1956 to deal with the issues relating to child right and check upon abuse of children are as follows:-

1) Section 3 : Stringent action and punishment for keeping a brothel or allowing premises to be used as a brothel
2) Section 4 : Living on the earnings of prostitution
3) Section 5 : Procuring, inducing or taking a person for the sake of prostitution
4) Section 6: If any person is found with a child in a brothel it shall be presumed, unless the contrary is proved, that he has committed an offence of detaining a person in premises where prostitution is carried on. The punishment consists of imprisonment of either description for a term which shall not be less than 7 years
5) Section 21 : Establishment of protective homes by the State Government

3.2.19.1. Main features of proposed amendment ITPA Amendment Bill, 2006

1) Section 2: Change the definition of child from 16- to 18-year-old
2) Section 3: Enhance the punishment for a person who keeps or manages or acts or assists in keeping or managing of a brothel

\textsuperscript{73} Ibid 72
\textsuperscript{74} Ibid 72
3) New Section 5: Define the offence of “Trafficking in Persons”, to provide punishment for the said offence and also to provide punishment for a person who visits or is found in a brothel for the purpose of sexual exploitation.

4) Section 6: Enhance the punishment provided for the offence of detaining a person on a premises where prostitution is carried on.

5) Section 8: Omission of the Section.

6) Section 22: Make provision for in camera proceedings to protect the privacy and dignity of the victims. Confiscation of the property of the persons involved in the offence of trafficking in persons.

3.2.19.2. Presumptions in favour of child in prostitution (Kathmandu School of Law et al).\(^\text{75}\)

The provisions of ITPA allow the raising of certain presumptions in favour of child victims. The act of detaining a person whether with or without consent, by another person in a brothel or any premise where prostitution is carried on is punishable under Section 6. A person found with a child in a brothel shall be presumed to have committed an offence under this section unless the contrary is proved.

Where a child or minor found in a brothel on being medically examined is found to have been sexually abused, it shall be presumed unless the contrary is proved, that the child or minor has been detained for purposes of prostitution or has been sexually exploited for commercial purposes. A report in a newspaper on the use of certain premises as a brothel is deemed to be sufficient proof of the landlord, occupier, or tenant allowing such use.

3.2.20. The Probation of Offenders Act, 1958

[No.20 of 1958] [16th May, 1958]

The Probation of Offenders Act, 1958, is intended to bring about reformation of the offender in his own home, if possible. It applies to the offenders of all the age groups. If the offender has no previous convictions and is convicted of an offence, which is punishable with no more than two years imprisonment, he may be released after admonition. In order cases, he may be released on his executing a bond for maintaining good behaviour during

\(^{75}\) Ibid 18 Page 147 & 148
the period not exceeding three years. He may also be placed under the supervision of a child Welfare Officer (Probation), under section 4(3) of the Probation of Offenders Act, 1958 (court.mah.nic.in).76

If the Judges are satisfied upon the circumstances under which the offender has undertaken his illegal action to break the law, deserves special relaxation to apply the provisions of the Probation of Offenders Act, 1958, he may liberally in cases of youthful offenders and in case it comes to the notice of the judge that benefit of such provisions should be given to any youthful offender, he shall consider the same exercising powers conferred by section 11(3) of the Probation of Offenders Act, 1958, and grant benefits to such offenders even suo-moto. The concept of rehabilitation and reformation are the main features to the enlargement of the benefit of the act. The same idea has been carried forward in the juvenile legislations.

3.2.21.  

The Merchant Shipping Act, 1958  

[44 of 1958] [30th October, 1958]

After independence, taking care of new conditions and changes that have taken place in the Shipping Industry, a comprehensive legislation passed by Indian Parliament in 1958 known as Merchant Shipping Act, 1958. The Act has been constantly under revision and amendments to ratify the changes approved by the International Maritime Organisation, through its conventions and protocols, to which India is a Member.

Under the Merchant Shipping Act, 1958, no person under 15 years of age shall be engaged or allowed to work in any capacity in any ship, except in a school ship, or training ship, in accordance with the prescribed conditions; or in a ship in which all persons employed are members of one family; or in a home trade ship of less than 200 tones gross; or where such person is to be employed on nominal wages and will be in the charge of his father or other adult near male relative (UNICEF).77 The Act also prohibits employment of young person below the age of 18 as trimmers and stokers except under certain specific conditions.

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76 Extracted from the website address http://court.mah.nic.in/courtweb/criminal/html/chapter8.html on 20.08.2012
77 Ibid 26 Page – 6
3.2.22. **Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960**

(L0 of 1960) [9th April, 1960]

Laws for children do not generally include provisions for voluntary entry or exit from institutions. Any legislation that attempts to register and monitor residential care should therefore be armed with suitable mechanisms to prevent and penalize abuse while also promoting and affirming the more positive achievements of genuine organizations that respect and nurture children (CRY).  

The Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960 came into force on 9th April, 1960. It was enacted with the objective of arriving at a deeper understanding of the challenges with regard to monitoring of residential care specifically for the children in need of care. [Article 3.3 of the United Nations Convention on the Rights of the Child (1990), though a much later international legally binding standard articulates the object of the OCH Act] (CRY).

As per the information available at the time of writing this paper, only a handful of States have notified Rules under the Act, despite it being enacted in 1960. Needless to say that despite notification, even fewer states are actively implemented the law (CRY).

3.2.22.1. **Basic objectives:**

1) To provide for the supervision and control of orphanages, homes for neglected women or children and other like institutions:

2) Comprehensive monitoring authority for all children in residential care:

3) Child Code, single window system and parity in standards:

4) Registration of a shelter home is mandatory. According to the officials, violation of the provision can lead to imprisonment up to three months in the first instance and six months if the offence is repeated (Sukhbir Siwach).

5) Monitoring control by the Board formed by the legislators and under supervision of govt. nominated persons:

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78 The Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960, Main Features, Critique and Recommendations, Paper presented at the National Core Group Meeting of 'The Quality Institutional Care and Alternatives Initiative (CRY)', Hyderabad, February 2005
79 Ibid 78
80 Ibid 78
81 The Times of India, 18th May, 2012 100 state child shelters not registered Sukhbir Siwach, TNN May 18, 2012
6) Democratic election from Managing Committees and setting up of Selection Committee (SC) to nominate and select other members:

3.2.22.2. Critiques:

1) The language used in the statute ‘neglected’ or ‘orphan’ have received its alignment with a more comprehensive understanding as ‘children in need of care and protection’, in the Juvenile Justice (Care and Protection) of Children Act, 2000.

2) After coming into force the Juvenile Justice (Care and Protection) of Children Act, 2000, the Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960 has lost its practical significance.

3.2.23. Children Acts, 1960

[Act No. 60 of 1960] (26th December, 1960)

From the early 1920s, when states enacted their Children Acts, legislation provided for juvenile offenders and adult offenders to be treated differently. Juvenile legislation has always focused on reformation and rehabilitation instead of penalising the child. It is not the past misdemeanors of the child, but his future welfare that concerns the juvenile justice system (Debdatta Das). The union legislation, the Children Act, 1960 was passed to cater to the heads of the Union Territories. To remove some inherent lacunae of the Act, of 1960, the Children (Amendment) Act was passed in 1978. The existing justice system as available for adults is not considered suitable for being applied to the juvenile. It seems necessary that a uniform juvenile justice system should be introduce throughout the country which should make adequate provision for dealing with all aspects in the changing social, cultural and economic situation in the country. There has been need for larger involvement of informal systems and community based welfare agencies in the care, protection, treatment, development and rehabilitation of such juveniles.

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82 Ibid 17 Page - 20
3.2.23.1. **The objectives of the statute:**

(i) To lay down a uniform legal framework for ensuring juvenile justice in the country so as to no child under any circumstances is lodged in jail or police lock-up. This has been ensured by establishing the Juvenile Welfare Boards and Children Courts;

(ii) To prescribe a welfare oriented specialised approach towards the prevention and treatment of juvenile delinquency in its full range in keeping with the developmental needs of the child found in any situation of social maladjustment;

(iii) To provide the machinery and necessary infrastructure required for the care, protection, treatment, development and rehabilitation of various categories of children coming within the ambit of the new juvenile justice system. These are proposed to be achieved by establishing Observation homes, juvenile homes for neglected juveniles and special homes for delinquent-juveniles;

(iv) To set forth the norms and standards for the administration of juvenile justice in terms of investigation and prosecution, adjudication and disposition, and care, treatment and rehabilitation;

(v) To develop appropriate linkages, coordination and co-operation between the formal system of juvenile justice and voluntary agencies engaged in the welfare of neglected or socially maladjusted children and to specifically define the areas of their responsibilities and their respective roles;

(vi) To constitute special offences in relation to children and provide for punishments therefore;

(vii) To bring the operation of the uniform juvenile justice system throughout the country in conformity with the United Nations Standard Minimum Rule for the Administration of Juvenile Justice.

To bring the operations of the juvenile justice system in the country in conformity with the UN Standard Minimum Rules for the Administration of Juvenile Justice, Parliament seems to have exercised its power under Article 253 of the Constitution read with Entry 14 of the Union List to make law for the whole of India to fulfill international obligations. On 22nd August, 1986, the Juvenile Justice Bill, 1986 was introduced in the Lok Sabha. After coming into force the Juvenile Justice Act, 1986 (53 of 1986), the Children Act, 1960 has lost its significance.
3.2.24. **The Motor Transport Workers Act, 1961**

[Act 27 of 1961] [20th May, 1961]

The Act is an independent legislation applicable to motor transport workers as a whole and to regulate various aspects connected with the conditions of employment work and wages. The Motor Transport Workers Bill received the assent of the President on 20th May, 1961 after being passed by both the Houses of Parliament and came into force as the Motor Transport workers Act, 1961 (27 of 1961).

Section – 2(c) of the Act, states that “child” means a person who has not completed his fifteenth year and Section – 2(a) states that “adolescent” means a person who has completed his fifteenth year but has not completed his eighteenth year. Chapter VI of the statute prescribes total prohibition upon employment of a child and imposes reasonable check upon employment of adolescent person based on statutory rigor. Section – 21 states that no child shall be required or allowed to work in any capacity in any motor transport undertaking. Section – 22 states that no adolescent shall be required or allowed to work as a motor transport worker in any motor transport undertaking unless—

- a certificate of fitness granted with reference to him under section 23 is in the custody of the employer; and
- such adolescent carries with him while he is at work a token giving a reference to such certificate.

The certificate of fitness shall follow with a course of renewal at an interval of twelve months routine check at the cost of employer (Parliament of India).\(^3\)

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\(^3\) S – 23 Certificate of fitness.—
(1) A certifying surgeon shall, on the application of any adolescent or his parent or guardian accompanied by a document signed by the employer or any other person on his behalf that such person will be employed as a motor transport worker in a motor transport undertaking if certified to be fit for that work, or on the application of the employer or any other person on his behalf with reference to any adolescent intending to work, examine such person and ascertain his fitness for work as a motor transport worker.
(2) A certificate of fitness granted under this section shall be valid for a period of twelve months from the date thereof, but may be renewed.
(3) Any fee payable for a certificate under this section shall be paid by the employer and shall not be recoverable from the adolescent, his parent or guardian.

24. Power to require medical examination —
Where an inspector is of opinion that a motor transport worker working in any motor transport undertaking without a certificate of fitness is an adolescent, the inspector may serve on the employer a notice requiring that such adolescent motor transport worker shall be examined by a certifying surgeon and such adolescent motor transport worker shall not, if the inspector so directs, be employed or permitted to work in any motor transport undertaking until he has been so examined and has been granted a certificate of fitness under section 23.
Though the Act does not provide for any patent formula to protect the youth of a person, but it has put some reasonable restriction to keep a periodic watch upon the youth and a total protection of childhood detaching them from the unsuitable anti child atmosphere, the arena of motor transport work.

3.2.25. **The Maternity Benefit Act, 1961**

(53 of 1961) [12\textsuperscript{th} December, 1961]

The Maternity Benefit Act, 1961 regulates employment of women in certain establishments for a certain period before and after childbirth and provides for maternity and other benefits. Such benefits are aimed to protect the dignity of motherhood by providing for the full and healthy maintenance of women and her child when she is not working. The Act is applicable to mines, factories, circus industry, plantations, shops and establishments employing ten or more persons, except employees covered under the Employees’ State Insurance Act, 1948. It can be extended to other establishments by the State Governments (business.gov.in).\textsuperscript{84}

Applicability to every factory or establishment in which 10 or more persons are / were employed on any day of the preceding twelve months.

- Eligibility for Maternity Benefit: Has to work for 80 days in the preceding 12 months immediately preceding the date of her expected delivery.
- Eligible for 12 weeks maternity benefit of which not more than six weeks shall precede the date of her expected delivery.
- Maternity benefit is paid at the rate of the average daily wage for the period of her actual absence. The average daily wage means the average of the woman’s wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself.
- Where a woman has delivered a child and dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the period, then for the days up to and including the date of the death of the Child.

6 weeks leave with wages for tubectomy and two weeks immediately following the day of a tubectomy.

Nursing breaks – Two times in the course of daily work till the child attains 15 months.

Prohibition from dismissal for absence during pregnancy. However, for Misconducts, forfeiting of Maternity Benefit and Medical bonus permissible.

3.2.25.1. Short comings of the Act

1) Facility available only to a class of woman who are in regular employment:

There is nothing contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis or on muster roll on daily wage basis (LLR). 85

2) Scope to multiply proceedings:

Availability of this remedy i.e. appeal to prescribed authority will not bar the aggrieved person to file a suit against the decision of Inspector in any court of competent jurisdiction (LLR). 86

3) The entitlement is subject to prevailing rules of the establishment:

If any woman of a registered Trade union or of a registered voluntary organisation has been denied of any of the benefits of the Act, then she has the right to file a complaint in any court of competent jurisdiction. But this right is subject to applicability of the Act to that establishment under which she works (LLR). 87

4) The authority of the State Government overwhelms the implication of the Act:

The appropriate Government on being satisfied with regard to grant of a benefits, has the power to exempt an establishment or a class of establishment, i.e. hospitals, nursing homes and dispensaries, from the operation of all or any of the provisions of the Act, And this exemption will remain in force as long as it has not been cancelled by further notification. 88

85 Municipal Corporation of Delhi v. Female Workers (Muster Roll), 2000 LLR 449
86 Thomas Eapen v. Assistant Labour Officer. 1993 LLR 800 (Ker)
87 Ibid 86
88 Ibid 86
3.2.26. **The Apprentice Act, 1961**

(Act No. 52 of 1961)


Apprenticeship is a system of training a new generation of practitioners of a structured competency based set of skills. Development of human resource is crucial for the industrial development of any nation. Upgradation of skills is an important component of Human Resource Development. Training imparted in Institutions alone is not sufficient for acquisition of skills and needs to be supplemented by training in the actual work place.

The first juvenile legislation passed in India was the Apprentices Act, 1850. Under this Act the Magistrates were empowered to commit children between the ages of ten and eighteen years as apprentices to employers and provisions were made for controlling the relations between such children and the employers. Children who were found to have committed petty offences were dealt with under this Act (Debdatta Das).89

The Act, 1850 was the legislation dealing with children in conflict with law, providing for binding over of children under the age of 15 years found to have committed petty offences as apprentices. The Act provided that children in the age group of 10-18 convicted by courts was intended to be provided with some vocational training which might help their rehabilitation. It was followed by the Reformatory Schools Act, 1897.

India’s legislative regime has in the past century undergone a number of reforms enabling employment of child-related legislation to conform to the spirit and tenets of international conventions on the child and on child labor. The colonial legislation of 1850 have been replaced by the sovereign of India by Act No. 52 of 1961 as amended by Acts 52 of 1964, 25 of 1968, 27 of 1973, 41 of 1986 and 4 of 1997.

The Apprentices Act, 1961 was enacted by the Government on 12.12.1961, to regulate and control the training of apprentices in certain designated trades, with the object of getting adequate manpower trained in Industrial Skills for the developing industries in the country (rulemaster.wordpress.com).90 The Act purports to be comprehensive legislation for the regulation and control of apprentices in all of the trades. It provides for the qualification of apprentices and the contract for apprenticeship. It requires that employers make suitable arrangement for their training; provide for their health, safety and welfare, pay

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89 Ibid 17 Page – 14
compensation under the Workmen’s Compensation Act, etc. At the conclusion of the term of apprenticeship, the Act stipulates that the National Council test the apprentice to determine proficiency in the designated trade. The minimum age for an apprentice is fourteen years old. Though the Act recognizes the appointment of child in the name of trainee within the age limit of 14 years too less than 18 years, but it has put a check through the intervention of guardian. Section - 4 (1) of the Apprenticeship Act states that, no person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or, if he is minor, his guardian has entered into a contract of apprenticeship with the employer. So the act establishes the process of wellbeing of an apprentice trainee, if he is a minor through bifurcated responsibility by employer and guardian.

The Apprentices Act of 1961 disqualifies a person less than fourteen years from being engaged as an apprentice (Usha Ramanathan).  

3.2.27. The Atomic Energy Act, 1962  
(No. 33 of 1962) [15th September, 1962]  

The Act provides protection and safety of workers and people dealing with radioactive material. The [Atomic Energy Act of 1972 prohibits the employment of children below the age of 15 or 14 in certain specific sectors of the industry] (BeeHive Digital Concepts Cochin).

3.2.28. The Limitation Act, 1963  
(Act No. 36 of 1963) [5th October, 1963]  

The object or the law of limitation is to prevent disturbance or deprivation of what may have been acquired in equity and justice by long enjoyment or what may have been lost by

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91 Ibid 44 Page – 2  
a party's own inaction, negligence, or laches. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So, a life-span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest re publicae ut sit finis litium (it is for the general welfare that a period be put to litigation) (SCC).

Since the Act is an adjective law, it does not provide for any patent formula to ensure the right of the child. But considering the age of immaturity during minority, the statute relaxed the threshold time period to prefer litigation. Section – 6 of the Act recognizes the age of minority within the purview Legal Disability. So long the minor does not attains his age of majority the period of litigation shall not begin to run. The Explanation to the Section – 6, also affirms the right of child in the womb and considers a child in the womb as a minor. It is such kind of right which a person inherits before his birth in the mortal world. Thus it can be ascertained that the Limitation Act, protects & retains certain rights of a minor so long he attains his age of majority.

3.2.29. The Bidi and Cigar Workers (Condition of Employment) Act, 1966
(Act No. 32 OF 1966) [30th November, 1966]

The Act has been enacted to provide for the welfare of the workers in beedi and cigar establishments and to regulate the conditions of their work and for the matters connected therewith. This Act is being implemented by the concerned State Governments. The Act does not apply to the owner or occupier of a private dwelling house who carries on any manufacturing process in such private dwelling house with the assistance of the members of his family living with him and dependent on him provided that the owner or

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93 Rajender Singh and Ors.Vs.Santa Singhand Ors, AIR 1973 SC 2537
95 "Received the Assent of the President of India on 30th November, 1966 and published in the Gazette of India. Extraordinary, Pm111, Section I, dated December I, 1966/Agrahayana 10, 1888 Saka, pages 515-526 (S)."
occupier thereof is not an employee of an employer to whom this Act applies (SECTION 43). The Act provides for the facilities for Cleanliness (Section – 8), Ventilation (Section – 9), Over Crowding (Section – 10), Drinking Water (Section – 11), Latrines and Urinals (Section – 12), Washing Facilities, (Section – 13), Crèche (Section – 14), First Aid (Section – 15) and Canteens (Section – 16) to be provided by the employer (labour.nic.in).

The Bidi and Cigar Workers (Condition of Employment) Act (1966) is such an statute through which the Indian government has developed a policy oriented legislation aimed at monitoring working conditions and providing social security benefits for the welfare laborers attached with bidi industries in general with special provisions for their children and child or youth workers. The reality of the policies based on the legislation to improve the conditions and livelihoods of the children of bidi workers or child workers are as follows:

- Prohibition of Employment of Children: Employment of children less than 14 years of age prohibited under the laws (Sec – 24).

- Prohibition of Employment of Young person’s during certain hours: In occupations and processes other than the above mentioned, work by children is permissible only for six hours between 6.00 A.M. and 7.00 P.M. with one day's weekly rest (Sec – 25).

- Provision of annual leave with wages as against duties performed: In the case of a young person working in the industry and work performed by him during the previous calendar year shall be entitled to leave at the rate of one day for every fifteen days of work. The leave admissible under this sub- section shall be exclusive of all holidays whether occurring during, or at the beginning or at the end of, the period of leave (Sec - 26(1) (ii)).

- Provision as to proper intimation to the authority: Occupier of establishment employing children to give notice to local Inspector and maintain prescribed register (Section-22, Rule-22).

- Extraordinary welfare measures: In 1976 the union legislature has passed the Bidi Workers Welfare Fund Act, 1976 to provide basic benefits such as health care, education, insurance, housing assistance, scholarships, drinking water supplies, and provides 12 hospitals and 276 dispensaries across the country for bidi workers.

96. Extracted from internet on 18.03.2012 [http://labour.nic.in/dglw/beedicoe.html](http://labour.nic.in/dglw/beedicoe.html)
3.2.30. The Contract Labour (Regulation and Abolition) Act, 1970

(Act 37 of 1970) [1st February, 1971]

This Act is to regulate the employment of contract labour in certain establishments and to provide for abolition of contract labour in certain circumstances and for other connected matters. Pursuant to certain recommendations of the Second Five Year Plan, based on consensus opinion of the Tripartite Committees, the Contract Labour (Regulation and Abolition) Bill was passed by both the Houses of Parliament and subsequently received the assent of the President on 5th September, 1970. It came into effect on 10th February, 1971.

The system of employment of contract labour lends itself to various abuses including abuse child labour. The problem of contract child labour and progressive abolition of this worst system and improvement of the living conditions of children led the authority to incorporate provisions of prosecution against employer, employing the children. The Contract Labour (Regulation and Abolition) Act, 1970, can be used to prosecute the principal employer in cases where in the engagement of child labour has been done through a contractor. This practice is common and used by many companies to absolve themselves of any liability. This Act draws on the principle of ‘vicarious liability’ and can be used effectively to prevent companies and contractors from engaging child labour.

The Act regulates the employment of Contract Labour in certain establishments and provides for its abolition in certain circumstances and for matters connected therewith in general. The provisions of the Act together would cover most children who are in the labour force, including agriculture and allied activities, and must be used individually and/or collectively, by the government and other stakeholders to take firm action against the employers’ concerned.

3.2.31. The Code of Criminal Procedure, 1974

[Act 2 of 1974] [25th January, 1974]

The Code of Criminal Procedure is the main legislation on procedure for administration of substantive criminal law in India. It was enacted in 1973 and came into force on 1 April, 1974. It provides the machinery for the investigation of crime,
apprehension of suspected criminals, collection of evidence, determination of guilt or innocence of the accused person and the determination of punishment of the guilty. Additionally, it also deals with public nuisance, prevention of offenses and maintenance of wife, child and parents (wikipedia).\footnote{Extracted from http://en.wikipedia.org/wiki/Criminal_Procedure_Code,_1973_(India) on 18.08.2012} The object of the Code is to further the ends of justice and not to frustrate them by the introduction of endless technicalities and to ensure that an accused person gets a full and fair trial along with certain well-established and well-understood canons of law that accord with the notions of natural justice.

Under Section – 125 of the Code of Criminal Procedure, 1973 (2 of 1974), right of maintenance extends to the dependent children, but also his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is by reason of any physical or mental abnormality or injury unable to maintain itself. The provision is secular one and it applicable to all citizen of India irrespective of caste, race or religion.

An application for grant of maintenance is maintainable, so far as the children are concerned, till they had not attained majority. As a cause of action for grant of maintenance would arise only in the event a person having sufficient means, neglects or refuses to maintain his legitimate or illegitimate minor child unable to maintain itself. Once, therefore, the children attained majority, the said provision would cease to apply to their cases (Supreme Court of India).\footnote{Amarendra Kumar Paul Vs Maya Paul and Others, reported in (2010) 3 MLJ (Crl) 446 (SC)}

The Code of Criminal Procedure enacted in 1898 provided for specialized treatment for juvenile offenders. Section 399 of the Code provided for commitment of juvenile offenders up to the age of fifteen years to reformatory Schools (Debdatta Das).\footnote{Ibid 17 Page – 14} The act of 1898 has replaced and repealed by the Code of Criminal Procedure Code, 1973.

The Criminal Procedure Code 1973 has focused the attention of the court on this important aspect by referring specifically to section 360, while taking the crucial decision in the matter of sentencing. Section 360 Cr. P. C. refers to order of release on probation of good conduct or after admonition. The legislature has further taken care to fix the gauge of the sentence, by introducing a new provision in section 361 of the Code of Criminal procedure 1973, on the important aspect of making the primary decision in the sentencing
process. The section reads, “Special reasons to be recorded in certain cases—wherein any case the court could have dealt with (a) an accused person under section 360 or under the provision of Probation of offender’s Act 1958 (20 of 1958), or (b) a youthful offender under the Children Act 1960 (60 of 1966) or any other Law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in the judgment the special reasons for not having done so (Dr. T. Padma).”

Departure from equitable parity and welfare view of JJ Act, 2000
Section – 14 of the Act No. 5 of 2009\(^ {101}\) added a new proviso to Explanation – II of sub – Section – 2 of Section – 167 prescribing protection of woman under the age of eighteen years arrested in connection of any offence. It states as follows:

“Provided further that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution” (Parliament of India).\(^ {102}\)

The JJ Act, 2000 recognised equal protection during and after arrest to all children below the age of eighteen years. Long after the enactment of JJ Act, 2000 prescription of special provision for the juvenile woman arrested and under the age of eighteen years, to keep her in a home apart from primitive jail system, perhaps meaningless. JJ Act, 2000 provides separate arrangements of juvenile homes for all persons under the age of eighteen years alleged to have committed an offence and produced before the board or court under apprehension. The new provision of the Code only brought a conflicting state of position to deal with the subject.

3.2.32. National Policy for Children, 1974

[22\(^{nd}\) Aug, 1974]

The National Policy for Children was adopted on 22\(^{nd}\) Aug, 1974. This Policy lays down that the State shall provide adequate services towards children, both before and after birth and during the growing stages for their full physical, mental and social development. The measures suggested include amongst others, a comprehensive health programme,

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\(^ {100}\) Ibid 19
\(^ {101}\) Notification No.S.O.3313 (E), dt. 30-12-2009
\(^ {102}\) The Code of Criminal Procedure (Amendment) Act, 2008, came into force on 7\(^{th}\) January, 2009
supplementary nutrition for mothers and children, free and compulsory education for all children up to the age of 14 years, promotion of physical education and recreational activities, special consideration for children of weaker sections like SCs and STs, prevention of exploitation of children, etc (wcd.nic.in).  

The Government of India adopted the National Charter for Children which has been prepared after obtaining the views/comments and suggestions of the State Governments/UT Administrations, concerned Ministries and Departments and experts in the field. The National Charter is a statement of intent embodying the Government’s agenda for Children. The document emphasizes Government of India’s commitment to children’s rights to survival, health and nutrition, standard of living, play and leisure, early childhood care, education, protection of the girl child, empowering adolescents, equality, life and liberty, name and nationality, freedom of expression, freedom of association and peaceful assembly, the right to a family and the right to be protected from economic exploitation and all forms of abuse. The document also provides for protection of children in difficult circumstances, children with disabilities, children from marginalised and disadvantaged communities, and child victims. The document while stipulating the duties of the State and the Community towards children also emphasizes the duties of children towards family, society and the Nation. The National Charter for Children was notified in the Gazette of India on 9th Feb., 2004 (wcd.nic.in).

3.2.33. Integrated Child Development Services (ICDS) Scheme, 1975

[2nd October 1975] (wcd.nic.in)

Launched on 2nd October 1975, today, ICDS Scheme represents one of the world’s largest and most unique programmes for early childhood development. ICDS is the foremost symbol of India’s commitment to her children – India’s response to the challenge of
providing pre-school education on one hand and breaking the vicious cycle of malnutrition, morbidity, reduced learning capacity and mortality, on the other.

3.2.33.1. Objectives: The Integrated Child Development Services (ICDS) Scheme was launched in 1975 with the following objectives:
   i. to improve the nutritional and health status of children in the age-group 0-6 years;
   ii. to lay the foundation for proper psychological, physical and social development of the child;
   iii. to reduce the incidence of mortality, morbidity, malnutrition and school dropout;
   iv. to achieve effective co-ordination of policy and implementation amongst the various departments to promote child development; and
   v. to enhance the capability of the mother to look after the normal health and nutritional needs of the child through proper nutrition and health education.

3.2.33.2. Services: The above objectives are sought to be achieved through a package of services comprising:
   i. supplementary nutrition,
   ii. immunization,
   iii. health check-up,
   iv. referral services,
   v. pre-school non-formal education and
   vi. nutrition & health education.

   The concept of providing a package of services is based primarily on the consideration that the overall impact will be much larger if the different services develop in an integrated manner as the efficacy of a particular service depends upon the support it receives from related services.

3.2.33.2.1. Nutrition including Supplementary Nutrition:

   This includes supplementary feeding and growth monitoring; and prophylaxis against vitamin A deficiency and control of nutritional anaemia. All families in the community are surveyed, to identify children below the age of six and pregnant & nursing mothers. They avail of supplementary feeding support for 300 days in a year. By providing supplementary feeding, the Anganwadi attempts to bridge the caloric gap between the national
recommended and average intake of children and women in low income and disadvantaged communities.

Growth Monitoring and nutrition surveillance are two important activities that are undertaken. Children below the age of three years of age are weighed once a month and children 3-6 years of age are weighed quarterly. Weight-for-age growth cards are maintained for all children below six years. This helps to detect growth faltering and helps in assessing nutritional status. Besides, severely malnourished children are given special supplementary feeding and referred to medical services.

3.2.3.2.2. Immunization:

Immunization of pregnant women and infants protects children from six vaccine preventable diseases—poliomyelitis, diphtheria, pertussis, tetanus, tuberculosis and measles. These are major preventable causes of child mortality, disability, morbidity and related malnutrition. Immunization of pregnant women against tetanus also reduces maternal and neonatal mortality.

3.2.3.2.3. Health Check-ups:

This includes health care of children less than six years of age, antenatal care of expectant mothers and postnatal care of nursing mothers. The various health services provided for children by anganwadi workers and Primary Health Centre (PHC) staff includes regular health check-ups, recording of weight, immunization, management of malnutrition, treatment of diarrhoea, de-worming and distribution of simple medicines etc.

3.2.3.2.4. Referral Services:

During health check-ups and growth monitoring, sick or malnourished children, in need of prompt medical attention, are referred to the Primary Health Centre or its sub-centre. The anganwadi worker has also been oriented to detect disabilities in young children. She enlists all such cases in a special register and refers them to the medical officer of the Primary Health Centre/Sub-centre.

3.2.3.2.5. Non-formal Pre-School Education (PSE):

The Non-formal Pre-school Education (PSE) component of the ICDS may well be considered the backbone of the ICDS programme, since all its services essentially converge at the anganwadi—a village courtyard. Anganwadi Centre (AWC) – a village courtyard – is the main platform for delivering of these services. These AWCS have been set up in every
village in the country. In pursuance of its commitment to the cause of India’s Children, present government has decided to set up an AWC in every human habitation/settlement. As a result, total number of AWC would go up to almost 1.4 million. This is also the most joyful play-way daily activity, visibly sustained for three hours a day. It brings and keeps young children at the anganwadi centre - an activity that motivates parents and communities. PSE, as envisaged in the ICDS, focuses on total development of the child, in the age up to six years, mainly from the underprivileged groups. Its programme for the three-to six years old children in the anganwadi is directed towards providing and ensuring a natural, joyful and stimulating environment, with emphasis on necessary inputs for optimal growth and development. The early learning component of the ICDS is a significant input for providing a sound foundation for cumulative lifelong learning and development. It also contributes to the universalization of primary education, by providing to the child the necessary preparation for primary schooling and offering substitute care to younger siblings, thus freeing the older ones – especially girls – to attend school.

3.2.3. Nutrition and Health Education:

Nutrition, Health and Education (NHED) is a key element of the work of the anganwadi worker. This forms part of BCC (Behaviour Change Communication) strategy. This has the long term goal of capacity-building of women – especially in the age group of 15-45 years – so that they can look after their own health, nutrition and development needs as well as that of their children and families.

3.2.3.3. ICDS Training Programme:

Training and capacity building is the most crucial element in the ICDS Scheme, as the achievement of the programme goals largely depends upon the effectiveness of frontline workers in improving service delivery under the programme. Since inception of the ICDS scheme, the Government of India has formulated a comprehensive training strategy for the ICDS functionaries. Training under ICDS scheme is a continuous programme and is implemented through 35 States/UTs and National Institute of Public Cooperation and Child Development (NIPCCD) and its four regional centres.

During the 11th Five Year Plan, the Government of India has laid much emphasis on strengthening the training component of ICDS in order to improve the service delivery
mechanism and accelerate better programme outcomes. An allocation of Rs. 500 crore has been kept for the ICDS Training Programme during the 11th Five Year Plan.

3.2.33.4. Recent Initiatives:

The Ministry has recently initiated a process of consultations with the States and other stakeholders to review and identify gaps in the existing training system and make suggestions to strengthen the ICDS Training programme including its contents/syllabi, training methodology and the existing monitoring mechanism under ICDS training programme. Three regional workshops have since been organized in collaboration with NIPCCD and with technical support from USAID/CARE INDIA during July-August 2009 at three Regional centres of NIPCCD at Bangalore, Lucknow and Guwahati.

3.2.33.5. Evaluation of ICDS Scheme:


i. Most of the AWCs across the country were located within accessible distance (100-200 meters) from beneficiary households. A majority of the beneficiary households was within 100 metres of the AWC. Another 10 per cent were about 150-200 meters away. The rest were beyond 200 meters. Thus, the factor of distance of beneficiary households from the AWC was unlikely to affect attendance at the AWC during inclement weather;

ii. Most of the AWCs in the country, except those in Tamil Nadu, Kerala, Karnataka and Orissa were functioning from community buildings. The type of building plays an important role in safeguarding against any natural hazards. Of those sampled, about 40 per cent were functioning from pucca buildings.

iii. Nearly 50 per cent AWCs reported adequate space, especially for cooking.
iv. One out of two AWWs was found to be educated at least up to matriculate level across the country. In all central and southern states, less than 50 per cent of the AWWs were ‘at least matriculate’; more than 75 per cent of AWWs were matriculates in the northern and eastern states of the country. Gujarat and Rajasthan reported lowest percentage of matriculate functionaries.

v. Though about 84 per cent of the functionaries reported to have received training, the training was largely pre-service training. In-service training remained largely neglected.

vi. The day to day functioning of the AWC is a critical indicator of the effectiveness of the ICDS programme. An assessment of on-going activities of sample AWCs through observations, record reviews and personal interviews with the AWWs revealed that, on average, an AWC functioned for 24 of 30 days in a month. On a given day, the AWC functioned for about 4 hours. By and large, environmental factors did not affect the functioning of the AWC.

vii. On an average nearly 66 per cent of eligible children and 75 per cent of eligible women were registered at the AWCs. This indicates lack of motivation on the part of the AWW in identifying and registering the entire eligible population.

viii. Community leaders were generally positive about the functioning of the AWCs (more than 80 per cent in all states) while more than 70 per cent found the programme to be beneficial to the community;

ix. Participation of beneficiary women and adolescent girls in AWC activities was reported to be low. These two segments of population form the foundation for any child care programme and their involvement is imperative for successful implementation of the ICDS Services.
3.2.34. **The Bonded Labour System (Abolition) Act, 1976**  
* (Act No. 19 of 1976) [9th February, 1976] (Parliament of India)*106*

The bonded labour system refers to an exploitative labour system where persons take loans from employers in return for working off the loan over a period of time. A person who has to work in order to pay off this loan is called a bonded labourer. This may be a child or relative of the person who has taken the loan, or even the person himself. Wages are not paid and adjustments are supposed to be made with the amount due (UNODC).107 Bonded labour system has been abolished in India and bonded labourers were freed from any obligation to render bonded labour and payment of debt with the commencement of the Bonded Labour System (Abolition) Act, 1976. Any custom, agreement or other instrument by virtue of which a person is required to render any service as bonded labour became void. District Magistrates have been entrusted with certain duties and responsibilities for implementing the provisions of this Act. Vigilance Committees at district and sub-division level are required to be constituted to monitor the identification and rehabilitation of the bonded labourers (Government of India).108 The object of the Act is to provide for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the people and for matters connected therewith or incidental thereto.

The Act speaks of the illegality of slave or bonded labour in general with reference to both adults and children. The provisions of the Act outlined the law as it pertains to children below the age of 18 years. This Act does not outline a more severe punishment for offences committed against a child. It is the general context of India that in every six child one is worker and earning by children is always compulsive. So the full-fledged application of the Act shall restore childhood of the deprived children.

The Indian government had failed to study, accurately report, or acknowledge the incidence of bonded labor, child labor, and bonded child labor; to enforce its own laws,

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106 The Bonded Labour System (Abolition) Act, 1976 (Act No. 19 of 1976) [9th February, 1976] the Act came into force on the 25th day of October, 1975 by virtue of sub Section – 3 of Section – 1, Received the assent of the President on 9.2.1976 & pub. in Gaz. of India, Extra., Pt. II, S.1, dt. 9.2.1976, pp. 135-44

107 Ibid 43

which taken together outlaw the use of bonded child labor and require rehabilitation of bonded laborers; or to implement its own policies that purport to combat child labor (Human Rights Watch).\(^{109}\) Statistics on bonded and child labor held by the Ministry of Labour vary widely from those held by states, demonstrating the government’s failure to collect accurate data and its gross underrepresentation of the problem. Children who are freed are likely to become bonded again. Legally mandated rehabilitation programs for both bonded and child labor remained promising but extremely limited. Money alone is not the problem: government money allocated for rehabilitating bonded laborers and for establishing transitional schools for child workers (National Child Labour Project schools) remains unspent each year. Instead, the problem is political will (Human Rights Watch).\(^{110}\)

### 3.2.35. Dangerous Machines (Regulation) Act, 1983

[Act 35 of 1983] [14\(^{th}\) December, 1983]

The Act is to provide the regulation of trade and commerce in, and production, supply, distribution and use of, the product of any industry producing dangerous machines with a view to securing the welfare of labour, operating any such machine and for payment of compensation for the death or bodily injury suffered by any labourer while operating any such machine, and for matters connected therewith or incidental thereto. Section – 3(a) defines a "child" means a person who has not completed his fourteenth year of age and Section – 3(g) states that a "family", in relation to an operator, means his wife and dependent children and includes his dependent parents. Thereby the act acknowledges equal right as an adult member of a family to secure the right to compensation against accident. The determining age of childhood is same as of earlier union legislations like Child Labour Prohibition, 1986 or JJ Act, 1986.

### 3.2.36. The Juvenile Justice Act, 1986

[No.53 of 1986] [1\(^{st}\) December, 1986]

To bring the operations of the uniform juvenile justice system in the country in conformity with the UN Standard Minimum Rules for the Administration of Juvenile Justice,

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\(^{110}\) ibid 109, Page - 7
the Parliament of India seems to have exercised its power under Article 253 of the Constitution read with Entry 14 of the Union List to make law for the whole of India to fulfill international obligations (Government of India). The JJA was more humanistic and treatment-oriented.

On 22nd August, 1986, the Juvenile Justice Bill, 1986 was introduced in the Lok Sabha. Though belated however, the first Union legislation on Juvenile Justice passed by the Parliament of India on 1st December, 1986 thereby providing an uniform legal mechanism on juvenile justice for the entire country except the State of Jammu and Kashmir, is apt to be regarded as much welcome step in the field in so far as it has done away with the different state Children Acts and consequently removed the anomalies, and confusion arising out of the conflicting provisions which in many cases created problems rather to ensure welfare of the juveniles. Prior to this law each individual Indian states had its own enactments or statutory system on juvenile justice with there being little differences in the way through which juveniles were treated by the individual provincial legal systems.

3.2.36.1. **Salient features of the Act (Government of India):**

i) To lay down a uniform legal frame work throughout the country replacing the Children Act, 1960 or its corresponding state enactments;

ii) To ensure that no juvenile under any circumstances be put in jail or police custody;

iii) Establish Juvenile Welfare Boards and Juvenile Courts;

iv) To provide for a specialised approach towards the prevention and treatment of juvenile delinquency in its full range in keeping with the developmental needs of the child found in any situation of social maladjustment;

v) Establishment of observation homes, juvenile homes for the juveniles and special homes for delinquent-juveniles;

vi) To provide infrastructure required for the care, protection, treatment, development and rehabilitation of various categories of children coming within the purview of Juvenile Justice Act;

111 Protocol on Prevention, Rescue, Repatriation and Rehabilitation of Trafficked & Migrant Child Labour, the protocol provides practical guidelines to key stakeholders on crucial issues relating to prevention, rescue, repatriation and rehabilitation of trafficked and migrant child labour, Ministry of Labour & Employment Government of India, page - 13


113 Source: Bill No. 103 of 1986, dated 20th August, 1986, introduced in Lok Sabha on 22nd August, 1986
vii) To establish norms and standards for the administration of juvenile justice in terms of investigation, prosecution, adjudication and disposition, care, treatment and rehabilitation;

viii) To create an osmosis and to develop appropriate linkage and co-ordination between the formal system and voluntary agencies engaged in the field;

ix) To constitute special offences in relation to juveniles and provide for punishment therefore;

x) To bring the operation of juvenile justice throughout the country in conformity with the norms and standard United Nation;

The definition of a child under the juvenile justice law of 1986 was different for males and females. In the case of males, only a person below 16 years got the benefits of the juvenile justice law, whereas in the case of females the age of juvenility was below 18 years (Government of NCT Delhi). Since the juvenile justice law involves children in conflict with law, this differential treatment of boys and girls created a serious judicial anomaly. By keeping boys of 16 years and above out of the juvenile justice law, the 1986 law created a serious anomaly on the question of a minor’s capacity to represent himself before the court of law.

The Juvenile Justice Act, 1986 was repealed and a new law was formulated in 2000, which is called the Juvenile Justice (Care and Protection of Children) Act, 2000. This new law marked the beginning of a shift away from custodial measures and detention or institutional care to alternative non-institutional forms of care such as adoption, quality care and rehabilitation through a child-centered juvenile justice system and special protection from persons in whose care/control/charge they are (Government of NCT Delhi).

3.2.36.2. Reasons for change in the 1986 law (Government of NCT Delhi):

- The 1986 law was based on the welfare model, had focus on custodial measures and institutionalisation of children.

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114 ‘Manual for Trainers Training on Juvenile Justice System for Police Officials’, First Edition, October 2009, Published by the Department of Women and Child Development, Government of NCT Delhi, as per directions of the Juvenile Justice Committee of Delhi High Court, Page - 79
115 Ibid 114
116 Ibid 114 Page – 81
117 Ibid 116
• It was unable to fulfill its objective of protecting and promoting the rights of children on many counts.
• Legal anomalies in the 1986 law had been ignored for too long.
• Administration of juvenile justice too required streamlining and strengthening.
• India ratified the United Nations Convention on the Rights of the Child (UNCRC), 1989 on December 11, 1992. This demanded that child-related laws be brought in conformity with the UNCRC. It also demanded a child-friendly system of justice delivery, with a clear focus on alternative measures of care and rehabilitation rather than detention.

3.2.37. **The Child Labour (Prohibition and Regulation) Act, 1986**

(Act No. 61 of 1986) [23rd December, 1986]

The Act bans the employment of children, those who have not completed their 14th year, in specified occupations and process. It lays down a procedure to make additions to the schedule of banned occupations or processes. The Act further regulates the working conditions of children in occupations where they are not prohibited from working. For the violation of the mandates of the law it lays down penalties for employment of children in the works which are forbidden. The Act also brought out uniformly in the definition of "Child" in other related laws. Section 5 of the child Labour (Prohibition & Regulation) Act 1986 also provides for the constitution of a child labour Technical Advisory Committee to advise the Central Government for the purpose of addition of occupations and processes to the schedule of the Act.

The main objective behind these legislations is to eradicate the evils of child labour and improve their working conditions so as to allow them to develop into good citizen. The basic aim of all these enactments is to prohibit the employment of children in certain employments and regulate the conduct of the employers of child workers in such a way that these poor creatures are not exploited any more. These legislations strictly deal with the number of working hours of child workers, food facilities, rest hours, medical facilities, entertainment hours, schedule of weekly, monthly and yearly holidays of the child workers minimum wages and mode of payment etc. The employers of the child workers have been
directed to carry out these rules in strict sense. Penalty can even be imposed on these employers in case of violations of the provisions of these legislations (lawyersclubindia).  


Many victims of trafficking belong to marginalised groups. Traffickers target such areas, as they are vulnerable socially and economically. This legislation provides an additional tool to safeguard women and young girls belonging to Scheduled Castes and Scheduled Tribes and also to create a greater burden on the trafficker/offender to prove his lack of complicity in the matter (UNODC).  

This Act can be effectively used to counter the offence of trafficking of Scheduled Castes and Tribes if the offender has the knowledge about the victim’s status as belonging to these communities. Sec. 3 primarily deals with atrocities committed against people belonging to the Scheduled Castes or Scheduled Tribes. It specifically covers certain forms of trafficking such as forced or bonded labour and sexual exploitation of women. A minimum punishment of six months is provided which could extend up to five years in any offence covered Sec. 3 (UNODC).

According to the constitutional position of India the children has been considered as vulnerable group. The children belonging to the marginalized sections of the society are more vulnerable than in general and taking the advantage of the downtrodden societal position of the child belonging to SC/ST family are being trafficked and often transported to the places that are at far distance from their native places and may be confined all through the process of multi-dimensional form of exploitation. The exploitation of children may be for many reasons like prostitution, other sexual exploitation, forced labour, begging, forced marriages, adoption, and fake adoption to use for domestic works, transport to Arabian country for camel jacking, transplantation of human organs, etc. According to the statute it is the duty of the Government to rehabilitate a victim under the Act, by providing special provision for maintenance and rehabilitation (Parliament of India).

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119 Ibid 43 Page - 19  
119 Ibid 119  
120 Ibid 119  
121 sub – Section 2 of Section – 21 of Act No. 33 of 1989

(41 of 1992) [29th December, 1992]

The main objects of the Act,

1) Balancing Trade Interest and Child Health infections, malnutrition and death.............” (Panna Choudhury)\(^{122}\)

2) Enactment of the Act has been seen as an example of an innovative and progressive legislation and India was heralded as a global leader in the area of legislation on infant and young child health. Realizing the importance of breastfeeding for promotion of child health and the need to curb industry’s influence towards erosion of breastfeeding practices in India (Panna Choudhury).\(^{123}\)

3) The IMS Act, the Act was amended to include complementary foods and banned all forms of promotion of baby foods. The Act also banned sponsorship of the medical profession by baby food companies. India was again appreciated globally to raise the bar of protection of children from commercial exploitation of baby food industry (Panna Choudhury).\(^{124}\)

4) The strong commitment from various quarters including legislation, government, non-governmental organizations, academia, and professional started yielding dividends. The IMS Act proved effective in curbing the promotional activities of baby food companies (Panna Choudhury).\(^{125}\)

5) The statement of objectives presented in Parliament during the enactment of the IMS Act clearly stated: “Inappropriate feeding practices lead to infant malnutrition, morbidity and mortality in our children. Promotion of infant milk substitutes and related products like feeding bottles and teats do constitute a health hazard. Promotion of infant milk substitutes and related products has been more extensive and pervasive than the dissemination of information concerning the advantages of mother’s milk and breastfeeding and contributes to decline in breastfeeding. In the absence of strong interventions designed to protect, promote and support

\(^{122}\) Panna Choudhury, Consultant Pediatrician, Lok Nayak Hospital, New Delhi-110 002, India, extracted from www.indianpediatrics.net/mar2005/211.pdf on 20.08.2012

\(^{123}\) Ibid 122

\(^{124}\) Ibid 122

\(^{125}\) Ibid 122
breastfeeding, this decline can assume dangerous proportions subjecting millions of infants to greater risks of infections, malnutrition and death.............”(Panna Choudhury)\(^{126}\)

6) It therefore, is a shock to learn that the IMS Act along with several other pieces of legislation is being considered for repealing under the modern integrated food laws. This is intended to avoid multiplicity of food laws by having one regulator. The integrated law is to take care of the long pending demand of the food industry to avoid multiple levels of licensing. (Panna Choudhury)\(^{127}\)

3.2.40. **Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994**

(Act No. 57 of 1994) [20\(^{th}\) September, 1994]

Strong male preference and the consequent elimination of the female child have continued to increase rather than decline with the spread of education. This has been helped by the techniques of elimination of the girl child becoming more scientific with the progress in science and technology. Female infanticide now in most places has been replaced by female foeticide and in fact sadly, female foeticide has made inroads into areas where traditionally there were no instances of female infanticide. The moral guilt attached to elimination of the girl child after she is born is not felt equally if the child is eliminated while still in the womb (Government of India).\(^{128}\)

The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 was enacted and brought into operation from January 1, 1996. Primarily, the Act prohibits determination and disclosure of the sex of foetus (www.savegirlchild.org).\(^{129}\)

The statute is unique piece of legislation to put a ban upon heinous act of killing female foetus before birth and thereby to restore the natural balance gender ratio of child. All the offences under the act made punishable, cognizable, non boilable and even non compoundable. Though all the offences depicted in the statute are offence against person, but the scope to take cognizance of an offence under this Act is only based on a complaint

\(^{126}\) Ibid 122

\(^{127}\) Ibid 122


preferred by the state authority only (Parliament of India)\textsuperscript{130} and thus the illegal act of violation of the has received the shape of an offence against the state. Impliedly the next progeny in the womb has been considered as our national wealth and state has sheered the duty to protect its wealth. On the other hand the general principle of presumption of criminality at the first instance adversely goes against the husband and family member of the carrying woman who has undergone the test of sex identification of the foetus in her womb, until the criminal liability is rebutted (Parliament of India).\textsuperscript{131}

It is important to mention that the PNDT Act has an important link with the Medical Termination of Pregnancy Act, 1971 (hereinafter referred to as the MTP Act). Prior to 1971, abortions were considered illegal in our country and in fact the same could be punishable under the Indian Penal Code. In 1971, the MTP Act was passed which provides for the termination of certain pregnancies by registered medical practitioners (as defined under the MTP Act). Thus it is clear that abortion is not provided for in all cases of pregnancy but only in case of certain pregnancies.\textsuperscript{132}

The Pre-Natal Diagnostic Techniques Act was amended in 2003 (Parliament of India)\textsuperscript{133} to empower the above further in light of the new fertility technologies, which facilitate the selection of the sex of the foetus before conception (www.savegirlchild.org).\textsuperscript{134} The main purpose has been to ban the use of sex-selection techniques before or after conception as well as the misuse of pre-natal diagnostic techniques for sex selective

\textsuperscript{130} Section – 28 of Act No. 57 of 1994

\textbf{Cognizance of offences}

(1) No court shall take cognizance of an offence under this Act except on a complaint made by—
(a) the Appropriate Authority concerned, or any officer authorised in this behalf by the Central Government or State Government, as the case may be, or the Appropriate Authority; or
(b) a person who has given notice of not less than fifteen days in the manner prescribed, to the Appropriate Authority, of the alleged offence and of his intention to make a complaint to the court.

Explanation.—For the purpose of this clause, “person” includes a social organisation.

(2) No court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Where a complaint has been made under clause (b) of subsection (1), the court may, on demand by such person, direct the Appropriate Authority to make available copies of the relevant records in its possession to such person).

\textsuperscript{131} Section – 24 Presumption in the case of conduct of pre-natal diagnostic techniques.

Notwithstanding anything contained in the Indian Evidence Act, 1872, the court shall presume unless the contrary is proved that the pregnant woman was compelled by her husband or any other relative, as the case may be, to undergo pre-natal diagnostic technique for the purposes other than those specified in subsection (2) of section 4 and such person shall be liable for abetment of offence under sub-section (3) of section 23 and shall be punishable for the offence specified under that section

\textsuperscript{132} Ibid 128 Page – 27

\textsuperscript{133} The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2002 (No.14 of 2003)

\textsuperscript{134} Extracted on 20.08.2012 from http://www.savegirlchild.org/legal-jurisdiction.html
abortion and to regulate such techniques. To make this clear, the long title of the Act has been suitably amended to read:

“An Act to provide for the prohibition of sex selection, before or after conception, and for regulation of pre-natal diagnostic techniques for the purposes of detecting abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide and for matters connected therewith or incidental thereto” (Government of India).^{135}

3.2.41. Transplantation of Human Organ Act, 1994  
(No.42 of 1994) [8th July, 1994]

The Transplantation of Human Organs Act, 1994 is meant to "provide for the regulation of removal, storage, and transplantation of human organs for therapeutic purposes and for the prevention of commercial dealings in human organs." The Central Act illegalises the buying and selling of human organs and makes such transactions a criminal offence. The law establishes an institutional structure to authorise and regulate human organ transplants and to register and regulate, through regular checks, hospitals that are permitted to perform transplants. The Act came into force on 8th July, 1994.

In India the known purposes of trafficking are prostitution, domestic work, work in carpet, garment, fishing and brick industries, forced labour, camel jockeys, illegal adoption of children, organ transplantation, forced marriage, drug trafficking, begging, circus and other exploitative form of work (Kathmandu School of Law et al).^{136} The legal frameworks that typically prescribed in the context are able to put a clog upon organ transplantation of trafficked children.

^{135} Ibid 128 Page – 5  
^{136} Ibid 18 Page - 129
3.2.42. **Persons with Disabilities (Equal Protection of Rights and Full Participation) Act, 1996**

*No.1 of 1996* [1st January 1996]

The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, is a comprehensive law which has been enacted and enforced in February 1996. The law deals with both prevention and promotional aspects of the rehabilitation such as education, employment and vocational training, creation of barrier-free environment, provision of rehabilitation services for persons with disabilities, institutional services and supportive social security measures like unemployment allowance and a grievance redressed machinery both at the Central and State levels.

Children with disability continue to suffer unequal social treatments and opportunities for survival and future development. They are denied personal or economic security, health care, education and all basic needs necessary for their growth. Further more certain disabilities like mental disability carry even greater stigma. And if the disabled child is a girl, then the discrimination is doubled. The rights of disabled persons have finally been recognized with the enactment of the Persons with Disabilities (Equal Protection of Rights and Full Participation) Act, 1995. The Government has to set up teacher training institutions for training children with disabilities and prepare comprehensive education schemes providing for transport facilities to disabled children to attend school, provide books, uniforms, other materials to them, I scholarships, restructured curricula and amanuensis for blind students.

3.2.43. **The Information Technology Act, 2000**

*No 21 of 2000* [October 17, 2000]

The Information Technology Act, 2000 provides legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as 'electronic commerce', which involves the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies (Kathmandu School of Law et al).\(^{137}\)

\(^{137}\) Ibid 18 Page - 156
The Act under Section 67 penalizes publication or transmission in electronic form of any material which is lascivious or appeals to prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied therein. The law has relevance to addressing the problem of pornography, which is often a consequence of trafficking in women and children (Kathmandu School of Law et al).\(^{138}\)

Section 67 of IT Act however, does not use the word ‘pornography’. Instead it has mentioned “lascivious and prurient interest”. The section neither defines nor gives the parameters for lascivious and prurient interests. The interpretation of these terms is left to the adjudicating officer and the controller for certifying authority. The term “obscene material” needs to be redefined. Provisions of IT Act need to be made more stringent to even control gateways and server owners to help fix responsibility. It also needs to be considered that pornography is legal in many countries of the world, for example in Denmark. Therefore, if a Denmark based person creates a pornography site, he possibly cannot be extradited because of the absence of an extradition treaty. A prior regulation regime also needs to be worked out. But that is something not specified in the IT Act. Given the wildly varying estimates, serious definitional and methodological differences, and a lack of worldwide studies, it is virtually impossible to measure the true global extent of the sexual exploitation of children. Additionally, most studies of child sexual exploitation focus mainly on child prostitution without adequately accounting for the global danger of child pornography and the co-relation between the two through child sex-rings and the trafficking of children (Kathmandu School of Law et al).\(^{139}\)

3.2.44. The Juvenile Justice (Care and Protection of Children) Act (2000) 
(Act No. 56 of 2000) [30th December 2000]

In 2000, India introduced a new Juvenile Justice (Care and Protection of Children) Act (JJA 2000). The Act governs both children in conflict with the law and children in need of protection, but has introduced greater conceptual distinction between these two categories of children. The JJA 2000 aims to create a separate system of justice for children at every

\(^{138}\) Ibid 136
\(^{139}\) Ibid 18 Page – 156 & 157
stage, distinct from the criminal justice system for the adults (UNICEF). While the JJA 2000 is central government legislation, implementation lies with the State governments, which have powers to make Rules, establish Juvenile Justice Boards, establish institutions, set up Special Juvenile Police Units, and develop rehabilitation and social reintegration programmes. The National government has issued Model Rules to guide the States in developing their own implementation rules. Most States have either adopted the model rules or framed their own (Kathmandu School of Law et al).

The implementation of the JJA 2000 varies significantly from state to state. However the process of drafting rules and promoting awareness on the new law has created a significant amount of synergy and impetus for reform. To help promote the implementation of the Act, the Ministry of Social Justice and Empowerment is providing matching funds to States seeking to establish or upgrade institutions under the JJA 2000 (Kathmandu School of Law et al).

3.2.44.1. The Cardinal Principles the New Legislation, 2000 (NLSIU et al)

1) Prime preference to the Rights of the child:
   The juvenile justice system shall uphold the rights and safety and promote the total well being of children. Children housed in facilities under the Act, or coming under specific schemes under this Act should be guaranteed the benefit of meaningful activities and programs which would serve to promote and sustain their health and self-respect to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

2) Right to inhumane treatment:
   No child shall be subject to torture or cruel, inhuman or degrading treatment.

141 Ibid 18
142 Ibid 18
143 Emphasis received from Fourth Draft on the Juvenile Justice (Care and Protection of Children) Act, 2000, Model Rules for effecting a more Child Friendly Juvenile Justice System the Centre for Child and the Law, National Law School of India University, Bangalore, in consultation with the Department of Women and Child Development and the Department of Police, Government of Karnataka, Individuals and NGO partners & the Department of Social Welfare and Panchayats, Government of Madhya Pradesh & Key concepts from Drafts submitted to the Governments of Chattisgarh and Andhra Pradesh & Draft submitted to the Government of Tamil Nadu
3) **Guarantee for presumption of innocence:**

Every child alleged to have infringed the penal law, shall have the following guarantees:

i) Presumed to be innocent until guilty is proved – though it is the general principle of administration of criminal, but JJ Act, assigned special care and protection to a child in conflict with law.

ii) Right to protection of innocence: The child’s right to innocence and presumption of innocence up to the age of seven years or up to the age of twelve years, as the case may be respected throughout the process to deal with the child in conflict with law. Even after the enactment of the JJ Act, 2000, the general presumptions prescribed under the IPC still has the same force of mandatory implication.

iii) Procedural safeguards: There shall be procedural guarantee to protect the presumption of innocence.

4) **Guarantee of Rights:**

i) Right to be informed: To be informed promptly and directly of the charges against him or her, and if appropriate through his or her parents or legal guardian

ii) Right to free legal aid: There shall be appropriate assistance in the preparation or presentation of defense through legal practitioner at the cost of state

iii) Right to speedy procedure and trial: To have the matter determined without delay by a competent, independent and impartial authority.

iv) Right to protection against testimonial compulsion

v) Right to an interpreter: To have the free assistance of an interpreter.

vi) Right to privacy: To have his or her privacy fully respected at all stages of the proceedings.

vii) Right against determination of age after the date of commission: The date of alleged violation of law shall be taken into consideration in all respect for the proceeding.

viii) Non-waiver of rights: No waiver of rights of the child whether by himself or by the competent authority or anyone acting or claiming to act on behalf of the child is either permissible of valid. Non-exercise of a fundamental right does not amount to waiver.
ix) Principle of fresh-start: The principle of fresh start promotes new beginning for the child by ensuring erasure of his past records shall be followed.

5) **Right to Participation and form opinion:**

The right of participation to express freely the view of the child shall be considered in order to preference, in accordance with the age and maturity, to form opinion in all matter affecting his right.

6) **The protection of the best interest of the child:**

The holy duty lies upon all concern to ensure that the best interest of the child is protected in all the fields, where the matters pertaining to the principle of best interest is involved. In the decision making process the opinion of the child shall have the preferential consideration.

7) **Right against discrimination and right to equal treatment:**

The Act shall be applied impartially, without any discrimination as to race, colour, sex, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family pedigree, ethnic or social origin, disability or any other status.

8) **Right against deprivation of liberty:**

Children should only be deprived of their liberty in accordance with the principles and procedures set forth in the Juvenile Justice Act (Care and Protection) Act 2000 and the rules there under. Deprivation of the liberty of a child should be a disposition of last resort and for the minimum necessary period and should be limited to exceptional cases. The competent authority should determine the length of the sanction, without precluding the possibility of his or her early release.

9) **Affirmative action for children with special needs:**

Children with special needs shall be provided with special care and affirmative action.
10) **Right to be with family:**

Every child shall have the right to be with and under the care & contact of family and family environment. In absence of own family environment, individual persons may be assigned to the responsibility to the child’s care and nourishment.

11) **Right to identity:**

All concerns are duty bound to protect & preserve the identity of a child including nationality, name and family relations as recognized by law without unlawful interference. All children coming under the purview of this Act shall have the right to enjoy their own culture, to profess and practice their own religion, or to use their own language, unless separation is warranted for the well being of the child under order of the court.

12) **Role of parents and the State:**

Parents or as the case may be, legal guardians have the primary responsibility for the upbringing and development of the child. The best interest of the child shall be the prime concern. All concerns shall ensure the child such protection and care as is necessary furthering for his future well being.

13) **Right to free education:**

Education, including general and vocational education shall be considered as a basic right and all efforts shall be made to ensure that children and learners with special needs have access to education under states arrangements that meet their requirements.

14) **Right to Privacy:**

No child shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence during any stage or to unlawful attacks on his or her honor and reputation. All children shall have the right to their personal belongings, which serve to contribute to their basic sense of personal identity and worth.

15) **Doctrine of Confidentiality:**

All procedures and documentation concerning the child shall be treated as confidential. However, the child himself/herself, parents/legal guardians, fit
persons, and legal advisors shall have the right of access to the same. Other persons such as researchers may be authorized at the discretion of the State Government. In certain cases, if it is found to be in the best interest of the child, this principle may be waived.

16) Child Centered procedures and environments:

Children shall be received, interviewed and dealt with in a child friendly manner by officers who have received special training in dealing with children. All officers, in particular those who first receive an interview such children shall as their prime responsibility take on the role of a ‘friend of the child’.

17) Individualized assessment:

All inquiries shall take into account the heterogeneity of children and therefore provide individualized attention with due regard to the circumstances of each case.

18) Protection from abuse and exploitation:

The competent authorities shall take all measures to protect the child in the juvenile justice system from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse. Such protective measures should as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who care for the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment, and follow up of instances of child maltreatment described heretofore, and as appropriate, for judicial involvement.

19) Protection against Secondary victimization:

All procedures under the Act shall be conducted in a manner that prevents secondary victimization of the child. The non-stigmatizing semantics of the said Act must be strictly adhered to, and the use of adversarial or accusatory words, such as, arrest, remand, accused, charge sheet, trial, prosecution, warrant, summons, conviction, inmate, delinquent, neglected, custody, etc. is PROHIBITED in the processes pertaining to the child under the said Act.
20) **Right to an interpreter:**

The Rules should be made readily available to juvenile justice personnel in their regional languages. Children who are not fluent in the language spoken by the personnel administering juvenile justice institutions and schemes should have the right to the services of an interpreter free of charge, whenever necessary, in particular during medical examinations and disciplinary proceedings. Children with disability should have access to hearing aids and other such equipment to help them in such situations.

21) **Repatriation:**

Any child who is a foreign national, and who has lost contact with his family, shall also be eligible for protection under the Act and he shall be repatriated at the earliest to his country of origin.

22) **Transparency:**

All the authorities under the Act shall assure and facilitate transparency of the affairs of the administration of Juvenile Justice, especially with organizations that are recognized and authorized under the Act and those who undertake to jointly manage any of the institutions or programmes under the Act.

23) **Application of principles of the Act:**

All types and forms of interventions including programmatic and institutional intervention including adoption, foster care, and placement in special homes, observation homes and children’s homes shall be in accordance with the rules.

3.2.44.2. **The basic features of the Act:**

Two principle features:

First one is Juvenile in Conflict with Law; and second one is Child in need of Care and Protection.

1) Child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions bearing in mind the standards prescribed in the United Nations Conventions (Parliament of India).\(^\text{144}\)

\(^{144}\) Preamble to the JJ Act, 2000
The Convention on the Right of the Child lays down four sets of rights for the child:

i) The Right to Survival
ii) The Right to Protection
iii) The Right to Development
iv) The Right to Participation

2) Unique constitution of Juvenile Justice Board: The Board shall be headed by one Metropolitan Magistrate or Judicial Magistrate of the first class and two social workers of whom at least one shall be women. Magistrate to have special knowledge or training in child psychology or child welfare. Appointment to be made by the State Government in accordance with the rule to deal with matters relating to juveniles in conflict with law.\(^{145}\)

3) Federal prerogative in the process of decision making: When a Juvenile in conflict with law is produced before JJB/a member of JJB when JJB not sitting JJB may act and pass orders in the absence of any member. At least two members including Magistrate are to be present at time of final disposal of case. The opinion of majority will prevail. In absence of majority, opinion of magistrate will prevail and the Board has power to deal exclusively with all proceedings under this Act.\(^{146}\)

4) Determination of Juvenility: All the proceedings before the Board shall be preceded with determination of the Juvenility of the Juvenile brought before it. In every case relates to the age concerning a juvenile/child the Board shall either obtain: a) A birth certificate by a corporation or municipal authority; b) A date of birth certificate from the school first attended Matriculation or equivalent certificates, if available and c) in absence of either any of the two the decision shall be based on ‘ossification’ test. The birth certificate, school certificate and ossification test certificate shall have the respective orderly preference, later shall be considered in absence of earlier.\(^{147}\)

5) Establishment of pretrial observation homes and post trial or enquiry rehabilitation centers: The pretrial observation homes and post trial rehabilitation centers shall be established and maintained by the State Govt. or State Govt. recognized Voluntary organisations in every district or group of Districts for temporary reception of juvenile in conflict with law during the pendency of enquiry and after deposal of cases. Care and

\(^{145}\) Section – 4 of the JJ Act, 2000
\(^{146}\) Section – 5 & 6 of the JJ Act, 2000
\(^{147}\) Section – 7 & 7A read with Section 49 of the JJ Act, 2000 and Rule – 12 of JJ Rules, 2007
Classification and separation for reception and rehabilitation of juvenile shall be according to his/her age group, mental and physical status, and the nature of offence alleged to have been committed.\(^{148}\)

6) Special juvenile police unit to apprehend Juvenile in conflict with law: As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer.\(^{149}\)

7) Extra ordinary control of Board to supervise custodian of Juvenile: The Board shall remain in touch to supervise the person or institution including parent under whose acre and control the Juvenile has been kept after apprehension.\(^{150}\)

8) Unique blend of flexibility to release the apprehended Juvenile on bail: A Juvenile must be released on bail with or without surety irrespective of the offence, alleged to have been committed by him. Bail may only be refused if the release will bring him into an association with a criminal or exposes the juvenile to moral, physical or psychological danger or defeats the end of justice. If the Juvenile is not released on bail he must be kept in the observation home/place of safety during the pendency of enquiry.\(^{151}\)

9) Obligation to inform: the concerned Police authority is duty bound to inform the parent or probation officer immediate of apprehension.\(^ {152}\)

10) Completion of enquiry within the prescribed period: An inquiry under this Act shall be completed within a period of four months from the date of its commencement, unless the period is extended by the Board or CWC as the case may be for the reasons recorded in writing. The period may be extended for a period of two months.\(^ {153}\)

11) Sentencing policy:

A) Prohibition upon corporal punishment: Corporal punishment is not included as a permitted punishment for juveniles under the Juvenile Justice (Care and Protection of Children) Act, 2000.\(^ {154}\)

\(^{148}\) Section – 8 & 9, 34 of the JJ Act, 2000  
\(^{149}\) Section – 10 read with Section – 63 of the JJ Act, 2000  
\(^{150}\) Section – 11 of the JJ Act, 2000  
\(^{151}\) Section – 12 of the JJ Act, 2000  
\(^{152}\) Section – 13 of the JJ Act, 2000  
\(^{154}\) Section – 15 of the JJ Act, 2000
B) Diversion and alternative system of punishment for reformation of JCL: Where the Board after considering the materials of investigation and the report from the probation officer, is satisfied that a child has committed an offence, it may impose the following orders:  

- Allow the juvenile to go home after advice or admonition following the appropriate inquiry and counseling to the parent or the guardian and the juvenile;
- direct the juvenile to participate in group counseling and similar activities;
- order the juvenile to perform community service;
- order the parent of the juvenile or the juvenile him/herself to pay a fine, if s/he is over fourteen years of age and earns money;
- direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person for up to three years;
- direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for up to three years;
- Direct the juvenile to be sent to a “special home” until he/she turns eighteen, or in the case of a juvenile who is over seventeen years, for a period of not less than two years. The Board may reduce the duration of institutionalisation having regard to the nature of the offence and the circumstances of the case;
- if the child is 16 years or older and has committed a serious offence, he/she may be sent to a “place of safety” for detention for up to the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed.

C) Non applicability of Chapter VIII of the Code of Criminal Procedure not competent against juvenile: No proceeding shall be instituted and no order shall be passed against the juvenile under Chapter VIII of the Code of Criminal Procedure.  

D) There shall be disqualification for any sentenced imposed upon a juvenile under this act.  

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156 Section – 17 of the JJ Act, 2000
12) No joint proceeding or trial with adult: No juvenile shall be charged with or tried for any offence together with a person who is not a juvenile. Even the trial has been commenced or advanced or completed the principle of fresh beginning shall apply.\(^{158}\)

13) Protection against leveling social stigma: The disclosure of the name, address or school or any other particulars calculated to lead to the identification of the juvenile or the picture of the Juvenile report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law under this Act, is punishable, except such disclosure is for the benefit of the child.\(^{159}\)

14) Prescription of punishment for cruelty or misuse or abuse of Juvenile: All offences under this Act, committed against a Juvenile are cognizable.\(^{160}\) When there is any conflict between the provisions of the JJ Act with any other penal laws for the same offence the greater degree of punishment shall prevail.\(^{161}\)

i) Punishment for cruelty to juvenile or child.\(^{162}\)

ii) Employment of juvenile or child for begging.\(^ {163}\)

iii) Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child.\(^ {164}\)

iv) Exploitation of juvenile or child employee.\(^ {165}\)

15) Formation and power of Child Welfare Committee: The committee shall Consists of 5 members including a chairperson appointed by State Govt. to deal with matters related to children is need care & protection. The one 1 of 4 members to be a women and another expert of matters concerning children. The committee to function as a bench of magistrates and to have power conferred by Cr.PC on a metropolitan magistrate or a judicial magistrate of the first class.\(^ {166}\)
16) Democratic way of disposition based on majority decision with equal authority as court law: A child in need of care & protection to be produced before CWC/a member, when CWC not sitting. The opinion of the majority shall prevail in case of difference of opinion. In absence of majority opinion of chairperson will prevail. CWC may act and pass orders in absence of any member.  

17) Exemption from complying with formality to produce a child in need of care and protection: Any authority, institution, body or person and even the child himself be produce before the CWC. 

18) Adoption of the process of restoration: "Restoration of child" means restoration to- (a) Parents; (b) adopted parents; (c) foster parents. 

19) Restoration and protection to a child is the prime objective of children/ shelter home. 

20) Rehabilitation and Social Reintegration: The rehabilitation and social reintegration of a child shall begin during the stay of the child in a children’s home or special home and Adoption, foster care, sponsorship & after care to be used as alternatives for rehabilitation and social reintegration. 

21) Bifurcated arrangement of power and duty in regard to adoption of a child: CWC to declare a child legally free for adoption and JJB is empowered to give children in adoption and carry out investigation. Child consent to be taken before offering him/her for adoption if the child can understand and express his/her consent. 

22) Establishment of after-care organization: the government shall frame rule for after care organization for the establishment of the institution. The period for which the juvenile or child may be stay in the after-care organisation for not more than three years. Further it is mandated that a juvenile or child over seventeen years of age but less than eighteen years of age would stay in the after-care organisation till he attains the age of twenty years. 

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167 Section – 30 & 31 of the JJ Act, 2000  
168 Section – 32 of the JJ Act, 2000  
169 Explanation of Section – 39 of the JJ Act, 2000  
170 Section – 39 of the JJ Act, 2000  
171 Section – 40 of the JJ Act, 2000  
172 Section – 41 of the JJ Act, 2000  
173 Section – 44 of the JJ Act, 2000
23) Confidentiality of reports: A report of the probation officer/social worker to be treated as confidential.\textsuperscript{174}

24) Acknowledgement of general judicial hierarchy in the matters pertains to enquiry, appeal or revision barring the order of acquittal: Any person aggrieved by an order made by a Board may prefer an appeal to the Court of Session within thirty days from the date of such order. The Appellate Court may entertain the appeal after the expiry of the period on sufficient cause being shown.\textsuperscript{175} No appeal shall lie from any order of acquittal made by the Board in respect of a juvenile.\textsuperscript{176} The High Court may, at any time, call for the record of any proceeding for the purpose of satisfying itself as to the legality or propriety of any order of the Board or Court of Session.\textsuperscript{177} The powers conferred on the Board under this Act may also be exercised by the High Court and the Court of Session.\textsuperscript{178}

25) Concurrent power state and union Government to frame rules: The power to frame rules under the Act is not uniform. Both the State and Central Govt. may frame their rules to carry out the purposes of the Act. Unless appropriate state rule is framed the central rule shall prevail. To remove the ambiguity the both the rules so framed shall apply as mutatis mutandis.\textsuperscript{179}

26) Repealing JJ Act, 1986 to cause into effect the international commitment: India’s original Juvenile Justice Act (1986), written before many of the international instruments were promulgated, did not align with their requirements. The Juvenile Justice Act 1986 was repealed by this Act. This is a key shift from the earlier Act of 1986. The statement of objects and reasons for the Juvenile Justice (Care and Protection of Children) Act 2000 clearly articulates this role (Hon’ble Justice K.G. Balakrishnan).\textsuperscript{180}

\textsuperscript{174} Section – 51 of the JJ Act, 2000
\textsuperscript{175} Section 52(1) of the JJ Act, 2000
\textsuperscript{176} Section 52(2) of the JJ Act, 2000
\textsuperscript{177} Section 53 of the JJ Act, 2000
\textsuperscript{178} Section 6(2) of the JJ Act, 2000
\textsuperscript{179} Section – 68 of the JJ Act, 2000
Comment:

The introduction of the Juvenile Code represents a significant step forward in the development of a comprehensive juvenile justice system (Kathmandu School of Law et al.). A child-centered juvenile justice system becomes a reality with the involvement of responsive, vigilant, and innovative voluntary organizations willing to work closely with all the stakeholders. While day-to-day responsibilities are listed in (Hon’ble Justice K.G. Balakrishnan) ensuring full implementation will require continued, focused efforts to build the capacity of the Government, and to sensitize police, prosecutors, judges, rehabilitation officials, social workers, and other professionals on the rights of children in conflict with the law (Kathmandu School of Law et al.). It is necessary to go beyond the letter of the law and imbibe the spirit behind it. The preamble to the Act provides guidance on this. Clear understanding of the fundamentals makes the approach obvious (Hon’ble Justice K.G. Balakrishnan).

Responsive voluntary organizations play a crucial role in the reformation, rehabilitation, and social reintegration of children in conflict with law. Vigilant organizations ensure that all the stakeholders play their roles effectively and the system is free of corruption and malpractices. Innovative organizations bring in new child-centered interventions that will treat each child differently (Hon’ble Justice K.G. Balakrishnan). The Juvenile Justice (Care and Protection of Children) Act (2000) (“JJ Act”), amended in 2002, 2006, 2010 and 2011 to cover all aspects of interaction between children and the legal system. Government of India is once again contemplating bringing further amendments and a review committee has been constituted by Ministry of Women and Child Development which is reviewing the existing legislation.

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181 Ibid 18
182 Ibid 180 extract from Page - 131
183 Ibid 18
184 Ibid 182
185 Ibid 182 Page – 132
3.2.45. **National Charter for Children, 2003 (Government of India)**

The Government of India has adopted a National charter for Children to reiterate its commitment to the cause of the children in order to see that no child remains hungry, illiterate or sick.

3.2.45.1. The basic features of the Resolution:

1) The State can make special provisions for children, (Art 15 (3))

2) The State shall provide free and compulsory education to all children of the age of six to fourteen years, (Art 21.A)

3) No child below the age of 14 years shall be employed to work in a factory, mine or any other hazardous employment, (Art. 24)

4) The tender age of children is not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength (Art. 39 e), and that Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that youth are protected against exploitation and against moral and material abandonment (Art. 39 f)

5) The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years, (Art. 45)

6) Imposition of duty of a parent or guardian to provide opportunities for education of his child or ward between the age of six and fourteen year, (Art. 51A)

7) Affirmation of a combined action based on duty of the State, civil society, communities and respective families in their obligations in fulfilling children’s basic needs for healthy growth and development and protects children from all forms of abuse.

8) Special protection of the Girl Child, the State and community shall ensure that crimes and atrocities committed against the girl child, including child marriage, discriminatory practices, forcing girls into prostitution and trafficking are speedily eradicated.

9) The State shall take serious measures to ensure that the practice of child marriage is speedily abolished.

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186 Published in the Extraordinary Gazette of India, Part-I, Section-I) No. F. 6-15/98-CW Government of India Ministry of Human Resource Development Department of Women and Child Development New Delhi, the 9th February, 2004
10) Empowerment of Adolescents: The State and community shall take all steps to provide the necessary education and skills to adolescent children so as to equip them to become economically productive citizens. Special programmes will be undertaken to improve the health and nutritional status of the adolescent girl.

11) Strengthening Family: The State shall ensure that priority is given to re-unifying the child with its parents. In cases where the State perceives adverse impact of such a re-unification, the State shall make alternate arrangements immediately, keeping in mind the best interests and the views of the child through adoption etc.

12) Assignment of responsibilities of Both Parents: The State recognises the common responsibilities of both parents in rearing their children.

13) Protection of Children with Disabilities: The State and community recognise that all children with disabilities must be helped to lead a full life with dignity and respect. All measures would be undertaken to ensure that children with disabilities are encouraged to be integrated into the mainstream society and actively participate in all walks of life.

14) The State shall encourage research and development in the field of prevention, treatment and rehabilitation of various forms of disabilities.

15) Care, Protection, Welfare of Children of Marginalized and Disadvantaged Communities. The State recognises that children from disadvantaged communities and weaker/vulnerable sections of the society are in need of special interventions and support in all matters pertaining to education, health, recreation and supportive services. It shall make adequate provisions for providing such groups with special attention in all its policies and programmes.

16) Ensuring Child Friendly Procedures: All matters and procedures relating to children, viz. judicial, administrative, educational or social, should be child friendly. All procedures laid down under the juvenile justice system for children in conflict with law and for children in need of special care and protection shall also be child-friendly.
3.2.46. **The Protection of Women from Domestic Violence Act, 2005**

*(No. 43 of 2005) [13th September, 2005]*

The Protection of Women from Domestic Violence Act, 2005 covers all children below the age of 18 years and even includes any adopted step- or foster child (Asha Bajpai).\(^{187}\)

Domestic Violence has been defined as any act that (Asha Bajpai):\(^{188}\)

- Harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the child or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse;
- Harasses, harms, injures or endangers the child with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- Has the effect of threatening the child or any person related to her by any conduct. An Order of Protection of children from domestic violence can be obtained under this Act.

3.2.47. **The Commissions for Protection of Child Rights Act, 2005**

*(No. 4 of 2006) [20th January, 2006]*

India ratified the United Nations Child Rights Convention in the year 1992 and this Act was passed as one of the necessary steps to protect the rights of the children in the country (UNICEF).\(^{189}\) The initiative taken by the Government of India to enact The Commissions for Protection of Child Rights Act, 2005 is an important milestone in translating commitments into action (Asha Bajpai).\(^{190}\) The Act is a piece of legislation which provides for the constitution of a National Commission and State Commissions for Protection of Child Rights and Children’s Courts for providing speedy trial of offences against children or of violation of child rights and for matters connected therewith or incidental thereto (Parliament of India).\(^{191}\) The Act received its Universality through adopting the definition of ‘Child Right’ directly from the United Nations convention on the Rights of the Child, 1989.

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\(^{188}\) Ibid 187

\(^{189}\) Ibid 26 Page – 51

\(^{190}\) Ibid 187


The Commissions for Protection of the Child Rights Act 2005 The Government has recently notified the Commissions for Protection of Child Rights Act 2005 in the Gazette of India on 20th Jan., 2006 as Act No.4 of 2006 (wcd.nic.in). The Act empowers the state government to notify at least a court in the state or a Court of Sessions in each district as a Children’s Court, with the concurrence of the Chief Justice of the concerned High Court. For every Children’s Court, the state government is required to appoint a Public Prosecutor or an advocate who has been in practice for not less than seven years as the Special Public Prosecutor (UNICEF). The act prescribes for setting up National Commission for the Protection of Child Rights and State Commission for the Protection of Child Rights in the respective states.

3.2.47.1. National Commission for the Protection of Child Rights

The National Commission for Protection of Child Rights (NCPCR) emphasises the principle of universality and inviolability of child rights and recognises the tone of urgency in all the child related policies of the country. For the Commission, protection of all children in the 0 to 18 years age group is of equal importance. Thus, policies define priority actions for the most vulnerable children. This includes focus on regions that are backward or on communities or children under certain circumstances, and so on. The NCPCR believes that while in addressing only some children, there could be a fallacy of exclusion of many vulnerable children who may not fall under the defined or targeted categories. In its translation into practice, the task of reaching out to all children gets compromised and a societal tolerance of violation of child rights continues. This would in fact have an impact on the program for the targeted population as well. Therefore, it considers that it is only in building a larger atmosphere in favour of protection of children's rights, that children who are targeted become visible and gain confidence to access their entitlements.

Likewise, for the Commission, every right the child enjoys is seen as mutually-reinforcing and interdependent. Therefore the issue of gradation of rights does not arise. A

192 Extracted from http://wcd.nic.in/cwnew.htm on 18.08.2012
193 Ibid 26 Page – 51 & 52
child enjoying all her rights at her 18th year is dependent on the access to all her entitlements from the time she is born. Thus policies interventions assume significance at all stages. For the Commission, all the rights of children are of equal importance (NCPCR).  

3.2.47.2. The functions of the Commission:

The Commission shall perform all or any of the following functions, namely;

a) Examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation

b) Present to the Central Government, annually and at such other intervals, as the Commission may deem fit, Reports upon the working of those safeguards

c) Inquire into violation of child rights and recommend initiation of proceedings in such cases

d) Examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disasters, domestic violence, HIV/ AIDS, trafficking, maltreatment, torture and exploitation, pornography, and prostitution and recommend appropriate remedial measures

e) Look into matters relating to children in need of special care and protection, including children in distress, marginalised and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures

f) Study treaties and other international instruments and undertake periodic review of existing policies, programmes, and other activities on child rights and make recommendations for their effective implementation in the best interest of children

g) Undertake and promote research in the field of child rights

h) Spread child rights literacy among various sections of society and promote awareness of the safeguards available for protection of these rights through publications, media, seminars and other available means
i) Inspect or cause to be inspected any juvenile custodial home or any other place of residence or institution meant for children, under the control of the Central Government or any State Government or any other authority including any institution run by a social organization, where children are detained or lodged for the purpose of treatment, reformation or protection and take up with these authorities for remedial action, if found necessary

j) Inquire into complaints and take sup moto notice of matters related to:

  i. Deprivation and violation of child rights
  ii. Non implementation of laws providing for protection and development of children
  iii. Non compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children or take up the issues arising out of such matters with appropriate authorities

k) Such other functions as it may consider necessary for the promotion of child rights and any other matter incidental to the above functions (NCPCR)\textsuperscript{195}

The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force (NCPCR).\textsuperscript{196}

In addition, the Commission is to perform the following functions as well (NCPCR).\textsuperscript{197}

a) Analyse existing law, policy and practice to assess compliance with Convention on the Rights of the Child, undertake inquiries and produce reports on any aspect of policy or practice affecting children and comment on proposed new legislations from a child rights perspective

b) Present to the Central Government annually and at such intervals as the Commission may deem fit, Reports upon the workings of these safeguards

\textsuperscript{195} Extracted on 18.08.2012 from www.ncpcr.gov.in/mandate_commission.htm National Commission for Protection of Child Rights, 5\textsuperscript{th} Floor, Chanderlok Building, 36, Janpath, New Delhi- 110 001 NCPCR

\textsuperscript{196} Ibid 195

\textsuperscript{197} Ibid 195
c) Undertake formal investigations where concern has been expressed either by children themselves or by concerned persons on their behalf

d) Ensure that the work of the Commission is directly informed by the view of children in order to reflect their priorities and perspectives

e) Promote, respect and seriously consider the views of children in its work and that of all Government Departments and Organizations dealing with children

f) Produce and disseminate information about child rights

g) Compile and analyse data on children

h) Promote the incorporation of child rights into the school curriculum, teachers training and training of personnel dealing with children

The NCPCR believes that child participation is integral to addressing child rights. Therefore the Commission facilitates children’s participation to enable children to access their rights and entitlements. The Rules of the Commission for Protection of Child Rights Act, 2005 under Rule 17(e) and (d) mandates that the Commission (NCPCR):\(^{198}\)

1. Ensures that the work of the Commission is directly informed by the views of children in order to reflect their priorities and perspectives

2. Promotes, respects and seriously considers the views of children in its work and in that of all government departments and organisations dealing with children

The Commission’s functioning is also informed by Article 12 of the United Nations Child Rights Charter indicating that, “States Parties shall assure to the child who is capable of forming his or her own views, the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”. Children are active stakeholders in defining and deconstructing their problems and addressing their vulnerabilities (NCPCR).\(^{199}\)

The Commission encourages child participation in each one of its interventions. For example, during its state visits, the Commission emphasises the need to listen to children in public hearings. When children feel shy and need greater privacy, the Commission has

\(^{198}\) Ibid 195
\(^{199}\) Ibid 195
maintained a space for children to speak with confidence and comfort. There is a response in contacting such children and after conducting an enquiry, the matter is settled in the best interest of the child, while, at the same time, the institutions are dealt with firmly (NCPCR).\textsuperscript{200}

In its interaction with children who have taken the courage to bring to the notice of the Commission matters regarding violation of their rights, it has been found that they have been patient, tolerant and even magnanimous. They have shown a sense of justice and amicability, despite the adversities they have faced. While the Commission honours complaints from children with utmost seriousness, children have also shown remarkable maturity in utilising the Commission’s space as their own (NCPCR).\textsuperscript{201}

3.2.48. \textbf{Food Safety and Standards Act, 2006}  
\hspace{1em} (No. 34 of 2006) [23\textsuperscript{rd} August, 2006]

3.2.48.1. \textbf{The object of the Act}

To consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto (Parliament of India).\textsuperscript{202}

The Act has been carried into effect the same definition assigned in the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 (4 1 of 1992). Section – 3(x) defines, "infant food" and "infant milk substitute" that shall have the same meanings assigned to them in clauses (n and (g) of sub-section (I) of section 2 of the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 (4 1 of 1992), respectively. Section – 100 brought amendment to the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 (4 1 of 1992). Thus the Act has received its practical implication through the Act 41 of 1992 for the healthy wellbeing of the child.

\textsuperscript{200} Ibid 195  \textsuperscript{201} Ibid 195  \textsuperscript{202} The Food Safety and Standards Bill, 2005
3.2.49. The Prohibition of Child Marriage Act, 2006

[No. 6 of 2007] [10th January, 2007]

The Government of India has enacted the Prohibition of Child Marriage Act, 2006 (PCMA) repealing the Child Marriage Restraint Act (CMRA) of 1929. PCMA was notified in the Gazette of India on 11th January, 2007 and has been enforced w.e.f 1st November, 2007. PCMA fills in two major gaps of the earlier legislation. One, the PCMA seeks to prohibit child marriages rather than only restraining them; and secondly, it identifies authorities responsible for prevention of the child marriages and for prosecution of those violating the Act (Government of Kerala).

The important features of the Prohibition of Child Marriage Act, 2006, can be broadly categorized into three broad areas: Prevention of child marriages, Protection of victims of child marriage, and Prosecution of offenders (Government of Kerala).

3.2.49.1. The salient features of the Prohibition of Child Marriage Act, 2006, are as follows (UNICEF):

• Promoting, permitting, or participating in child marriages is punishable.

• Child Marriage Prevention Officers have been appointed to deal with cases of child marriage.

• Child marriages can be declared null and void at the option of the contracting party—a child—with in two years of his/her attaining majority.

• While granting the decree of nullity, the court shall order both the parties to the marriage and their parents or guardian, to return to the other party, the money, valuables, ornaments and other gifts received on the occasion of marriage by them from the other side or an amount equal to their value.

• The court can order maintenance for and residence to the female contracting party.

• If the children are out of child marriage, then their best interests should be the paramount consideration.


204 Ibid 203

205 Ibid 26 Page – 21
The following are some of the shortcomings of the Prohibition of Child Marriage Act, 2006 (UNICEF): 206

- The child marriage is declared void only in cases of compulsion and trafficking.
- The onus of declaring the marriage void is on the court only if the child or his/her guardians file legal proceedings, but in reality, the parents may never take such a step.
- The Act implicitly acknowledges traditional marriages.
- There is no provision for the punishment of officials under the Act.
- There are no incentives for traditional communities to motivate them to stop the practice of child marriage.

3.2.49.2. Comment:

The validity of a marriage is primarily to be adjudged from the standpoint of the personal law applicable to the parties to the marriage. The validity of a marriage between Hindus is to be considered in the context of the HMA and the validity of a marriage between Muslims is to be viewed in the light of Muslim personal law and so on. A Hindu marriage in contravention of clause (iii) of section 5 of the HMA is not void. But, by virtue of section 12 of the Prohibition of Child Marriage Act, 2006, is a secular provision cutting across all religious barriers, a marriage which is not void under the personal laws of the parties to the marriage may yet be void if the circumstances specified therein are attracted. However, the other side of the coin is that where the circumstances listed in section 12 do not arise, the marriage of a —minor child would still be valid unless it is a void marriage under the applicable personal law. So, a Hindu marriage which is not a void marriage under the HMA would continue to be such provided the provisions of section 12 of the Prohibition of Child marriage Act, 2006 are not attracted. In the case at hand, none of the circumstances specified in the said section 12 arise (legalperspectives.blogspot.in). 207 A marriage in contravention of clause (iii) of section 5 of the HMA was neither void nor voidable, but it may yet be void in any one or more of the circumstances specified in section 12 of the Prohibition of Child marriage Act, 2006.

This provision, irrespective of whether a child marriage is or is not voidable under personal law, makes every child marriage voidable at the option of a party to the marriage,

206 Ibid 205
207 Extracted from http://legalperspectives.blogspot.in/2010_08_01_archive.html on 18.08.2012
who was a child at the time of marriage. Another important aspect of this provision is that a petition for annulling a child marriage by a decree of nullity can be filed only by a party to the marriage, who was a child at the time of marriage. It is therefore clear that where, earlier, a child marriage may not have been voidable under personal law, as in the case of the HMA, by virtue of the 'secular' provisions of section 3 of the Prohibition of Child marriage Act, 2006 it has explicitly been made voidable at the option of the 'child' spouse. But, nobody other than a party to the marriage can petition for annulment of the marriage (legalperspectives.blogspot.in).  

It is clear that because of the change in law brought about by the enactment of the Prohibition of Child marriage Act, 2006 and repeal of the Child Marriage Restraint Act, 1929, the statement of law with regard to the validity of a child marriage has to be modified. The legal principle that a marriage in contravention of clause (iii) of section 5 of the HMA was — neither void nor voidable was established prior to the enactment and enforcement of the Prohibition of Child marriage Act, 2006. The principle which is now applicable is that a marriage in contravention of clause (iii) of section 5 of the HMA is not ipso facto void but could be void if any of the circumstances enumerated in section 12 of the Prohibition of Child marriage Act, 2006 is triggered and that, in any event, all such marriages would be voidable at the option of the 'child'spouse in terms of section 3 of the Prohibition of Child marriage Act, 2006 (legalperspectives.blogspot.in). Christians and Parsis also reach majority at 18. But the age of marriage in Muslim personal law is the age of puberty (around 14 years). It was held that Muslims are not exempted from this law. If the marriage of a Muslim girl is performed while she is a minor, the marriage cannot be void, but the persons who participated in the marriage are not immune from the legal punishment provided under the present Act. A Muslim girl can marry on attaining the age of puberty, and her marriage cannot be declared void because she is below the age of 18. The present legislation in India, following the judicial directions is, prescribes the marriageable of children to be 18 years for both boys and girls. {The Act also calls for appointment of Child Marriage Prohibition Officers for implementing the Act} (Govt. of India et al).  

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208 Ibid 207  
209 Ibid 207  
210 Handbook on the Prohibition of Child Marriage Act, 2006, published by the Ministry of Woman and Child Development to the Govt. of India in collaboration unicef
3.2.50. **The National Policy for children, 2007**
(P I B, Govt. of India) 211

**Policy Initiatives**

The National Policy for children lays down that the State shall provide adequate services towards children, both before and after birth and during the growing stages for their full physical, mental and social development. The measures suggested include amongst others, a comprehensive health programme, supplementary nutrition for mothers and children, free and compulsory education for all children up to the age of 14 years, promotion of physical education and recreational activities, special consideration for children of weaker sections including SCs and STs and prevention of exploitation of children, etc. 212

The Government of India has also adopted the National Charter for Children, which has been prepared after obtaining the views/comments and suggestions of the State governments/UT Administrations, concerned Ministries and Departments and experts in the field. The National Charter is a statement of intent embodying the Government’s agenda for children. The document emphasizes Government of India’s commitment to children’s rights to survival, health and nutrition, standard of living, play and leisure, early childhood care, education, protection or the girl child, empowering adolescents, equality, life and liberty, name and nationality, freedom of expression, freedom of association and peaceful assembly, the right to a family and the right to be protected from economic exploitation and all forms of abuse. The document also provides for protection of children in difficult circumstances, children with disabilities, children from marginalized and disadvantaged communities, and child victims. The document while stipulating the duties of the State and the Community towards children also emphasizes the duties of children towards family, society and the Nation. The National Charter for Children was notified in the Gazette of India on 9th February, 2004 (P I B, Govt. of India). 213

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212 Ibid 211
213 Ibid 211
3.2.50.1. **Child welfare programmes**

Several Ministries and Departments of the government of India are implementing various schemes and programmes for the benefit of children. Some of the Schemes and programmes are as under (PIB, Govt. of India):  

1) Integrated Child Development Services (ICDS) being implemented by Ministry of Women and Child Development is the world’s largest programme aimed at enhancing the health, nutrition and learning opportunities of infants, young children (0-6 years) and their mothers.

2) Creche Scheme for the children of working mothers

3) Reproductive and Child Health Programme

4) Sarva Shiksha Abhiyan - All children to be in school, bridging all gender and social gaps at primary stage by 2007 and at elementary education level by 2010.

5) Integrated programme for Street Children

6) Integrated Programme for Juvenile Justice

3.2.50.2. **The main objects of Integrated Programme for Juvenile Justice**

The programme is being implemented by the Ministry of Social Justice and Empowerment with a view to providing care to children in difficult circumstances and children in conflict with the law through Government institutions and through NGOs. Some special features of the scheme areas: (PIB, Govt. of India).

i) Establishment of a National Advisory Board on Juvenile Justice

ii) Creation of a Juvenile Justice Fund.

iii) Training, orientation and sensitization of judicial, administrative police and NGOs responsible for implementation of JJ Act.

iv) Institutional are shall be used but only as a last measure by enlarging the range of suitable alternatives.

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214 Ibid 211  
215 Ibid 211  
216 Ibid 211
v) Financial assistance to bring about a qualitative improvement in the existing infrastructure.

vi) Expansion of non-institutional services such as sponsorship, foster care, probation etc. as and an alternate to institutional care.

vii) Child helpline

viii) The National Rural Health Mission

ix) Elimination of Child Labour

x) Prevention of Offences against Children

xi) The Government is also actively considering introducing child budgeting.

xii) Pilot projects for combating trafficking of women and children

3.2.51. The Right of Children to Free and Compulsory Education Act, 2009

[35 of 2009] [26th August, 2009]

It was after a long campaign and struggle that the 86th Constitutional Amendment to make the right to education a fundamental right was made in 2002 was made. Article 21A provides for free and compulsory education to all children in the age group of 6-14 years. The manner of education has to be determined by enacting a law. The expression ‘education’ must be given a broader meaning with regard to Article 21A of the Constitution of India (UNICEF)\(^{217}\) the directive principles of the state policy. The State is under a Constitutional mandate to provide educational institutions at all levels, which must function to the best advantage of the citizens (UNICEF).\(^{218}\)

The long awaited Right of Children to Free and Compulsory Education Act, 2009 (RTE Act) received the Presidential assent on 26 August 2009 (PIB Govt. of India).\(^{219}\) The Right of Children to Free and Compulsory Education Act, 2009 (RTE) came into force on April 1, 2010, extending India’s commitment to a rights-based system of development and translating the Constitutional provision to a justiciable right for 6-14 year old children. Not only do the provisions in the Act seek to improve the access to education by ensuring enrolment, attendance and completion of the elementary cycle of education, they also envisage improvement in the quality of education through improved qualification and training standards for teachers; curriculum frameworks that are more child friendly and inclusive;

\(^{217}\) Ibid 26 Page – 2

\(^{218}\) Ibid 26 Page – 3

\(^{219}\) Ibid 216
allowing for preservation of local knowledge bases; evaluation systems that are continuous and comprehensive; and classroom transactions based on positive engagement. They are all recognized as the legal rights of the child under this Act. Further, the Act mandates systems of accountability to the beneficiaries which foster greater community participation (Asia-Pacific Regional meeting).²²⁰

3.2.51.1. The main features of the Act are (Asia-Pacific Regional meeting).²²¹

1. Free Elementary Education by ensuring that no financial constraint “prevents” a child from enrolling, attending and completing elementary education.

2. Elementary Education Compulsory for the State to provide.

3. Quality norms for all schools.

4. Qualification and working norms for teachers in all schools.

5. System of evaluation that is free of the oppression of annual exams.

6. Enhanced role of local government in implementation as well as grievance redressal.

7. Participation of civil society in the management of schools; makes teachers accountable to parents and the community.

8. Inclusive education delivery in the country by mandating 25% reservation for children from weaker sections in private schools.

9. Separation of the agency for implementation of the Act (Education Department) from the agency charged with monitoring the implementation of the Act (National Commission for Protection of Child Rights).

3.2.51.2. Some of the shortcomings in the Act are (UNICEF):²²²

• RTE 2009 Act is an instrument that legalizes the existing multi-layered education system, which depends on the economic capacity of the parents. It legalizes the current four operating systems—government schools, aided private schools, the special category schools, and non-aided private schools.

²²⁰ Ibid 14 Page – 5
²²¹ Ibid 14 Page – 5 & 6
²²² Ibid 26 Page – 3 & 4
Chapter III                                      Juvenile Justice under Indian Jurisprudence

• The provisions relating to recognition of schools under the Act raise concerns about the children studying in unrecognized schools.

• The Act is silent on child labour. In fact, the Right to Education Act must be used to eliminate child labour. Issues of children with special needs and the availability of trained teachers for such children are also missing in the Act.

• The Right to Early Childhood Care and Education of children below the age of 6 years has been denied. The RTE Act should have covered the entire school education system for children aged 0-18 years. The exclusion of groups of children is a violation of human rights.

• Higher education to children completing secondary schooling as per the Constitutional Directive of Article 41 must be ensured by the State. Education is a fundamental right. Therefore, privatization and computerization of the education system under the guise of PPP (private-public partnership) or ‘decentralization’ is not proper.

• Certain important norms and standards need to be included like distance of school from the child’s residence, teaching aids, computers, equipment in laboratories, promotion of teachers, etc. These issues must be made justiciable.

3.2.52.                  Prevention of Crimes Against Children Bill, 2009

Offences against any child are regarded as a heinous crime, which shakes the conscience of the members of society and is repugnant to good morals and well being of the society. The bill seeks to consolidate all the offences against children in a separate Code bearing in mind international and regional standards, directives provided by the Supreme Court of India, other good practices relating to children and learning from the experiences of other countries.

3.2.52.1.                Statement of Objects and Reasons (Govt. of India):223

The Bill seeks to achieve the following ends:

1) to consolidate and define the different offences against the child and to provide a legal remedies for violation of the same;
2) to make the applicability of the laws uniform to both boys and girls;

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223 Prevention of Crimes Against Children Bill, 2009
3) to bring the existing laws and procedures in conformity with international, regional and national standards;

4) to set forth good practices, relevant norms and principles for administrating justice to a child;

5) to provide stringent penalties to any person who violates the provisions of this Bill, thus, creating a deterrence;

6) to ensure that criminal justice machinery functions, keeping the best interest of the child, as the focal point at all stages;

7) to ensure the speedy disposal of cases, with a view to avoiding delays, which can result in intimidation, retaliation and secondary victimization of the child.

3.2.52.2. The guiding principle of the Bill (Govt. of India):224

1) Principle of Best Interest of a child

2) Principle of ‘Protection’ of a Child

3) Principle of Equality and non discrimination

4) Principle of Individuality and Participation

5) Principle of Privacy and Confidentiality

6) Principle of Non-Stigmatizing language, Decisions and Actions

7) Principle of Avoidance of Harm

8) Principle of non criminalization of a Child

3.2.52.3. Comment:

The Prevention of Crimes Against Children Bill, 2009 - amends the penal code of India to increase penalties for offenses relating to the sexual exploitation of children and child pornography, transportation of minors for illicit sexual purposes, child sex trafficking and prostitution, and sex crimes against children resulting in death, exploitation of child for economic purposes, causing harm to child, cruelty to child, child labour, corporal punishment to child, employing child for begging, disclosure of name of child victim. The bill also seeks to introduce collective responsibility upon the society,
individual, media and a bifurcated organized program with the govt. and NGO’s for the implementation of the object of the proposed act.

The National Commission for Protection of Child Rights (NCPCR) organized a Consultation on the proposed “Prevention of Offences Against the Child Bill, 2009” in New Delhi’s Vigyan Bhawan Annexe, on 19th January 2010, as the Ministry of WCD had solicited the comments on the draft Prevention of Offences Against the Child Bill, 2009. Legal Experts, Child Rights Activists and Concerned Government Officers among others took part in the day-long deliberation and shared their comments/views on the Bill (Govt. of India). The bill is under the process of consultation and yet not received the final sanctity. Though almost all the principle objects of the bill patently existed in the criminal code of India especially in the JJ Act, 2000, but the attempt of unification of all the existed provisions with fixation of extended criminal liability with collective responsibility sync with international and national development has given a unique shape of acceptance.

3.2.53. The Protection of Children from Sexual Offences Bill, 2011

The Protection of Children from Sexual Offences Bill, 2011 was introduced in the Rajya Sabha on 23rd March, 2011. In pursuance of Rule 270 relating to Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha referred the Bill to the Committee on 28 March, 2011 for examination and report. The Committee started its deliberations by issuing a Press Release on 8 June, 2011 for inviting views and suggestions of the general public as well as the stakeholders on the Bill. The Committee received 15 memoranda in response to the Press Release. The memoranda were forwarded to the Ministry of Women and Child Development for comments. Views of the stakeholders and the comments of the Ministry were taken note of while formulating the observations and recommendations of the Committee. The Committee heard the views of the Secretary, Ministry of Women and Child Development in its meeting held on 18 August, 2011. Besides the Ministry, the Committee also held deliberations with a number of stakeholders which included the National Commission for Protection of Child Rights, Civil Society Organizations and Child Right Agencies, i.e. HAQ Centre for Child Rights, India Alliance for Child Rights, Tulir Centre for Prevention &

3.2.53.1. The objects of the Bill (Govt. of India):²²⁷

1) The Bill seeks to protect children from offences such as sexual assault, sexual harassment and pornography. India is a signatory to the UN Convention on the Rights of the Child since 1992. The parties to the Convention are required to take measures to prevent children from being coerced into any unlawful sexual activity (Govt. of India).²²⁸

2) Any person below the age of 18 years is defined as a “child”. The Bill seeks to penalise any person who commits offences such as “sexual harassment”, “sexual assault”, “penetrative sexual assault”, and “aggravated penetrative sexual assault” (Govt. of India).²²⁹

3) A person commits “sexual harassment” if he uses words or shows body parts to a child with sexual intent, shows pornography to a child or threatens to depict a child involved in sexual act through the media. The penalty is imprisonment for up to three years and a fine (Govt. of India).²³⁰

4) A person commits “penetrative sexual assault” if he penetrates his penis into the vagina, mouth, urethra or anus of a child or makes a child do the same or inserts any other object into the child’s body or applies his mouth to a child’s body parts. If however the child is between 16 and 18 years, it shall be considered whether consent for the act was taken against his will or was taken by drugs, impersonation, fraud, undue influence and when the child was sleeping or unconscious. The penalty is imprisonment between seven years and life and a fine (Govt. of India).²³¹

²²⁸ Ibid 227
²²⁹ Ibid 227
³⁰ Ibid 227
³¹ Ibid 227
5) The Bill penalises “aggravated penetrative sexual assault.” Such an offence is committed when a police officer, a member of the armed forces or a public servant commits penetrative sexual assault on a child. It also includes gang penetrative sexual assault and assault using deadly weapons, fire or corrosive substance. The Bill also covers assault by staff of private hospital and staff of an educational institution if the child is in that institution (Govt. of India). 232

6) Penetrative sexual assault shall be considered aggravated if it injures the sexual organs of the child or takes place during communal violence or the child becomes pregnant or gets any other threatening disease or is below 12 years. It also covers cases where the offender is a relative of the child through blood or adoption or marriage or foster care or is living in the same household (Govt. of India). 233

7) A person commits “sexual assault” if he touches the vagina, penis, anus or breast of a child with sexual intent without penetration. If the child is between 16 and 18 years, it shall be considered whether the consent was taken against the child’s will or by threat or deceit. The penalty is imprisonment between three to five years and a fine (Govt. of India). 234

8) The offence of “aggravated sexual assault” is committed under similar conditions as for “aggravated penetrative sexual assault”. The penalty for the offence is imprisonment between five to seven years and a fine (Govt. of India). 235

9) A person shall be guilty of using a child for pornography purposes if he uses a child in any form of media for the purpose of sexual gratification through representation of sexual organs of a child or using a child in sexual acts or other types of obscene representation. The penalty is rigorous imprisonment for up to five years and a fine. On subsequent convictions, the term of imprisonment is up to 7 years and fine (Govt. of India). 236

10) The Bill also includes penalties for storage of pornography material and abetment of an offence (Govt. of India). 237

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232 Ibid 227
233 Ibid 227
234 Ibid 227
235 Ibid 227
236 Ibid 227
237 Ibid 227
11) An offence committed under this Act shall be reported to either the local police or the Special Juvenile Police Unit who has to report the matter to the Special Court within 24 hours. The police also have to make special arrangement for the care of the child. In case a person fails to report a case, he shall be penalised. Also, the Bill includes penalties for making false complaints (Govt. of India).[238]

12) Each district shall designate a Sessions Court to be a Special Court. It shall be established by the state government in consultation with the Chief Justice of the High Court. The state government shall appoint a Special Public Prosecutor for every Special Court. The Court shall, as far as possible, complete the trial within one year. The trial shall be held in camera and in the presence of the child’s parents or any person trusted by the child (Govt. of India).[239]

13) The guardian of the child has the right to take assistance from a legal counsel of his choice, subject to the provisions of Code of Criminal Procedure, 1973 (Govt. of India).[240]

14) If an offence has been committed by a child, it shall be dealt with under the Juvenile Justice (Care and Protection of Children) Act, 2000 (Govt. of India).[241]

3.2.54. The Protection of Children from Sexual Offences Act, 2012

The data collected by the National Crime Records Bureau shows that there has been increase in cases of sexual offences against children. This is corroborated by the ‘Study on Child Abuse: India 2007’ conducted by the Ministry of Women and Child Development. Moreover, sexual offences against children are not adequately addressed by the extant laws. A large number of such offences are neither specifically provided for nor are they adequately penalized. The interests of the child, both as a victim as well as witness, need to be protected. It is felt that offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence (Govt. of India).[242]

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[238] Ibid 227
[239] Ibid 227
[240] Ibid 227
[241] Ibid 227
The Protection of Children from Sexual Offences Act, 2012, has been passed by the Lok Sabha today, 22nd May, 2012. The Bill was earlier passed by the Rajya Sabha on 10th May, 2012. The Protection of Children from Sexual Offences Act, 2012 has been drafted to strengthen the legal provisions for the protection of children from sexual abuse and exploitation. For the first time, a special law has been passed to address the issue of sexual offences against children. Sexual offences are currently covered under different sections of IPC. The IPC does not provide for all types of sexual offences against children and, more importantly, does not distinguish between adult and child victims (Press Information Bureau).243

The Protection of Children from Sexual Offences Act, 2012 defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography. These offences have been clearly defined for the first time in law. The Act provides for stringent punishments, which have been graded as per the gravity of the offence. The punishments range from simple to rigorous imprisonment of varying periods. There is also provision for fine, which is to be decided by the Court. An offence is treated as “aggravated” when committed by a person in a position of trust or authority of child such as a member of security forces, police officer, public servant, etc (Press Information Bureau).244

3.2.54.1. Punishments for Offences covered in the Act are (Press Information Bureau):245

i) Penetrative Sexual Assault (Section 3) – Not less than seven years which may extend to imprisonment for life, and fine (Section 4)

ii) Aggravated Penetrative Sexual Assault (Section 5) – Not less than ten years which may extend to imprisonment for life, and fine (Section 6)

iii) Sexual Assault (Section 7) – Not less than three years which may extend to five years, and fine (Section 8)

iv) Aggravated Sexual Assault (Section 9) – Not less than five years which may extend to seven years, and fine (Section 10)

v) Sexual Harassment of the Child (Section 11) – Three years and fine (Section 12)

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244 Ibid 243
245 Ibid 243
vi) Use of Child for Pornography Purposes (Section 13) – Five years and fine and in the event of subsequent conviction, seven years and fine (Section 14 (1))

The Act provides for the establishment of Special Courts for trial of offences under the Act, keeping the best interest of the child as of paramount importance at every stage of the judicial process. The Act incorporates child friendly procedures for reporting, recording of evidence, investigation and trial of offences. These include (Press Information Bureau):

i) Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector

ii) No child to be detained in the police station in the night for any reason.

iii) Police officer to not be in uniform while recording the statement of the child

iv) The statement of the child to be recorded as spoken by the child

v) Assistance of an interpreter or translator or an expert as per the need of the child

vi) Assistance of special educator or any person familiar with the manner of communication of the child in case child is disabled

vii) Medical examination of the child to be conducted in the presence of the parent of the child or any other person in whom the child has trust or confidence.

viii) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.

ix) Frequent breaks for the child during trial

x) Child not to be called repeatedly to testify

xi) No aggressive questioning or character assassination of the child

xii) In-camera trial of cases

3.2.54.2. Comment:

The Act recognizes that the intent to commit an offence, even when unsuccessful for whatever reason, needs to be penalized. The attempt to commit an offence under the Act has been made liable for punishment for up to half the punishment prescribed for the

246 Ibid 243
commission of the offence. The Act also provides for punishment for abetment of the
offence, which is the same as for the commission of the offence. This would cover trafficking
of children for sexual purposes (Press Information Bureau). 247

For the more heinous offences of Penetrative Sexual Assault, Aggravated Penetrative
Sexual Assault, Sexual Assault and Aggravated Sexual Assault, the burden of proof is shifted
on the accused. This provision has been made keeping in view the greater vulnerability and
innocence of children. At the same time, to prevent misuse of the law, punishment has been
provided for making false complaint or proving false information with malicious intent. Such
punishment has been kept relatively light (six months) to encourage reporting. If false
complaint is made against a child, punishment is higher (one year). 248

The media has been barred from disclosing the identity of the child without the
permission of the Special Court. The punishment for breaching this provision by media may
be from six months to one year. For speedy trial, the Act provides for the evidence of the
child to be recorded within a period of 30 days. Also, the Special Court is to complete the
trial within a period of one year, as far as possible. To provide for relief and rehabilitation of
the child, as soon as the complaint is made to the Special Juvenile Police Unit (SJPU) or local
police, these will make immediate arrangements to give the child, care and protection such
as admitting the child into shelter home or to the nearest hospital within twenty-four hours
of the report. The SJPU or the local police are also required to report the matter to the Child
Welfare Committee within 24 hours of recording the complaint, for long term rehabilitation
of the child (Press Information Bureau). 249

The Act casts a duty on the Central and State Governments to spread awareness
through media including the television, radio and the print media at regular intervals to
make the general public, children as well as their parents and guardians aware of the
provisions of this Act. The National Commission for the Protection of Child Rights (NCPCR)
and State Commissions for the Protection of Child Rights (SCPCRs) have been made the
designated authority to monitor the implementation of the Act (Press Information
Bureau). 250

247 Ibid 243
248 Ibid 243
249 Ibid 243
250 Ibid 243
3.3. An analysis of crimes against children and juvenile crimes

3.3.1. Crimes against Children:

The issues relating to child victims and crimes committed against children call for holistic considerations. Various social organisations with the support of the government have been making relentless efforts to address this menace. Efforts have been made to prevent and save children from the vulnerabilities and exploitations to which they are subjected to by the law enforcement agencies. Despite the fact that such crimes are viewed as social evils and extremely bad in nature, the reported incidents of such crimes continue to rise in magnitude. This necessitates the need for greater involvement of the society to create awareness and influence the attitudes towards such crimes to fight and contain this menace (NCRB). Incidentally, there is no separate classification of offences categorized as offences against children. Generally, the offences committed against the children or the crimes in which children were the victims are considered as Crime against Children. The general penal code of the country and the various protective and preventive 'special and local laws' specifically mention the offences wherein children are known to be victims (NCRB).

Within the ambit of the promulgation of the JJ Act, 2000 an attempt has been made in this chapter to analyze the statistical data available from the National Crimes Record Bureau. The data have been presented in two types of tables: one for the period 1990-2000 (i.e. Pre 2000 legislation period) and other one for the period 2001-2011 (i.e. Post 2000 legislation period)


Table No. 1

All India Position of Crimes against Children from 1990 to 2000

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Child Rape (up to 16 years)</td>
<td>2499</td>
<td>3729</td>
<td>3113</td>
<td>3393</td>
<td>3986</td>
<td>4067</td>
<td>4083</td>
<td>4144</td>
<td>4153</td>
<td>3132</td>
<td>3132</td>
</tr>
<tr>
<td>2</td>
<td>Kidnapping &amp; Abduction</td>
<td>431</td>
<td>517</td>
<td>521</td>
<td>485</td>
<td>864</td>
<td>726</td>
<td>571</td>
<td>620</td>
<td>699</td>
<td>791</td>
<td>711</td>
</tr>
<tr>
<td>3</td>
<td>Procuration of minor girls</td>
<td></td>
<td></td>
<td></td>
<td>206</td>
<td>107</td>
<td>94</td>
<td>87</td>
<td>171</td>
<td>172</td>
<td>147</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Selling of girls for prostitution</td>
<td></td>
<td></td>
<td></td>
<td>34</td>
<td>17</td>
<td>6</td>
<td>9</td>
<td>11</td>
<td>13</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Buying of girls for prostitution</td>
<td></td>
<td></td>
<td></td>
<td>4</td>
<td>19</td>
<td>22</td>
<td>13</td>
<td>13</td>
<td>5</td>
<td>3</td>
<td>53</td>
</tr>
<tr>
<td>6</td>
<td>Abetment of suicide</td>
<td></td>
<td></td>
<td></td>
<td>7</td>
<td>9</td>
<td>11</td>
<td>13</td>
<td>28</td>
<td>24</td>
<td>18</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Exposure and Abandonment</td>
<td></td>
<td></td>
<td></td>
<td>491</td>
<td>570</td>
<td>554</td>
<td>582</td>
<td>575</td>
<td>593</td>
<td>660</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Infanticide</td>
<td></td>
<td></td>
<td></td>
<td>131</td>
<td>139</td>
<td>113</td>
<td>107</td>
<td>114</td>
<td>87</td>
<td>104</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Foeticide</td>
<td></td>
<td></td>
<td></td>
<td>45</td>
<td>38</td>
<td>39</td>
<td>57</td>
<td>62</td>
<td>61</td>
<td>91</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Child Marriage Restraint Act</td>
<td></td>
<td></td>
<td></td>
<td>53</td>
<td>57</td>
<td>89</td>
<td>78</td>
<td>56</td>
<td>58</td>
<td>92</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>Total Reported Incidents</td>
<td>2930</td>
<td>4246</td>
<td>3634</td>
<td>3878</td>
<td>5821</td>
<td>5749</td>
<td>5582</td>
<td>5980</td>
<td>5882</td>
<td>4957</td>
<td>5023</td>
</tr>
</tbody>
</table>
3.3.3. **Chart No. 1**

The Chart No. 1 shows the varying range of child rape during the period of 1990-2000. The linear forecast trend shows the average picture of increasing trend of the offence during the said period.
3.3.4. **Chart No. 2**

The Chart shows the varying range of kidnapping and abduction during 1990-2000. The linear forecast trend shows the average picture of increasing trend of the offence during the said period.
The Chart shows the varying range of procuration of minor girls during 1994-2000. The procuration of minor girls was the lowest at 87 in 1997 and the highest at 206 in 1994 during the period 1994-2000. But the linear forecast trend shows the average picture of the offence during the period is increasing.
The Chart No. 4 above shows the cases of selling of girls for prostitution during the period of 1994-2000. The linear forecast trend shows the average picture of the offence during the assessed period is going downwards. The maximum number of offence reported is 34 in 1994 and minimum number is 6 in the year 1996. The trend has received its steep downfall from 1994 to 1996. But from the year 1996 to 2000 it is gradually increasing and never got a deep.
3.3.7. **Chart No. 5**

The Chart shows that the number of abetment of suicide during 1994-2000 increased gradually from 1994 to 1997 and then shot up abruptly to 28 in 1998 and thereafter started gradually going down. The linear forecast trend shows the average picture of steep increasing trend of the offence during the assessed period. The reported offence increased by the number 7 in the year 1994 to the number 18 in the year 2000, an increase of 63.63%.
3.3.8. Chart No. 6

The Chart shows that exposure and abandonment was fluctuating during 1994-2000 and remained within the range of 491 to 660. The linear forecast trend shows the average picture of increasing trend of the offence during the assessed period. The average trend of increase has received its nominal deep in the years 1996 and 1998.
The infanticide fluctuated during 1994-2000 hitting high at 139 in 1995 and low at 87 in 1999. The linear forecast trend shows the average picture of decreasing trend of the offence during the assessed period. But the reported incident of 1999 increased by 19.54% in 2000, the maximum rate of yearly increase for the period assessed.
The Chart No. 8 shows that during 1994-2000, the child marriage restraints fluctuated between 53 and 92. The linear forecast trend shows the average picture of increasing trend of the offence during the assessed period. The reported incident of 1994 increased by 73.58% in the year 2000.
During 1990-2000, the Chart shows that there has been a steep rise in number of crimes against children in 1997. Thereafter though it decreased in the successive years, it has shown the average increasing trend. As such the number of crimes against children has increased substantially as against 1990.
### Table No. 2

All India Position of Crimes against Children from 2001 to 2011

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Head of Crime</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Murder</td>
<td>1042</td>
</tr>
<tr>
<td>2</td>
<td>Infanticide</td>
<td>133</td>
</tr>
<tr>
<td>3</td>
<td>Rape</td>
<td>2113</td>
</tr>
<tr>
<td>4</td>
<td>Kidnapping &amp; Abduction</td>
<td>2845</td>
</tr>
<tr>
<td>5</td>
<td>Foeticide</td>
<td>55</td>
</tr>
<tr>
<td>6</td>
<td>Abetment of Suicide</td>
<td>26</td>
</tr>
<tr>
<td>7</td>
<td>Exposure and Abandonment</td>
<td>678</td>
</tr>
<tr>
<td>8</td>
<td>Procuration of Minor Girls</td>
<td>138</td>
</tr>
<tr>
<td>9</td>
<td>Buying of Girls for Prostitution</td>
<td>6</td>
</tr>
<tr>
<td>10</td>
<td>Selling of Girls for Prostitution</td>
<td>8</td>
</tr>
<tr>
<td>11</td>
<td>Other Crimes</td>
<td>3770</td>
</tr>
<tr>
<td></td>
<td>(including offence relating to Child Marriage Act)</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>Total Reported Incidents</td>
<td>10814</td>
</tr>
</tbody>
</table>
The Chart No. 10 shows that the cases of child murder during 2001-2011 have increased successively with minor aberrations in 2006, 2008 and also in 2010. The linear forecast trend shows the average picture of steep increasing trend of the offence during the assessed period. Moreover, the reported incident of 2001 is increased by more than 39.25%.
The incidents of child rape progressively increased during the period 2001-2011 with a slight dip in 2009. The linear forecast trend shows the average picture of steep increasing trend of the offence during the assessed period. Overall, the number of child rape incidents has increased from 2,113 in 2001 to 7,112 in 2011 indicating a heart wrecking rise of more than 236%.
3.3.15.  

Chart No. 12

The Chart above shows the trend of exposure and abandonment during the period 2001-2011. It shows a steep increase to 933 in 2005 from 715 in 2004 and then it has gradually gone down. The linear forecast trend shows the average picture of gradual increasing trend of the offence during the assessed period.
The fluctuating Chart above shows the trend of use of girl child for prostitution during 2001-2011. The linear forecast trend shows the average picture of increasing trend of the offence during the assessed period is more or less steep rise. The rate of increase in the years 2006 and 2010 comparing with last years figure is heart wrecking. Overall, the number of girl child used for prostitution incidents has increased from 14 in 2001 to 140 in 2011 indicating a heart wrecking rise of more than 900%.
In kidnapping and abduction during 2001-2011, there was a marginal dip in 2002 as compared to 2001. Thereafter it increased exponentially in the successive years and reached an alarming figure of 15,284 in 2011. The linear forecast trend shows the picture of steep increasing trend of the offence during the assessed period. The total number of offence 2,845 in 2001 is increased by 15,284 in 2011, a spectacular increase of more than 437.23%. The increase is not a sudden spurt. Only during the last year the incident reported is increased by more than 43.24%.
The Chart above indicates that the total number of crimes against children during the period 2001-2011 have shown an overall upward trend with minor aberration in 2002. The yearly rates of increase has shown as maximum for an about 24% in the year 2011 comparing with the last year increase. The number of incident 10,814 in 2001 to 33,098 in 2011 indicates a rise of more than 206%.
The Chart shows that the total crimes against children during the period 2001-2011 have increased steadily from the second half. While during 2001-2003, the crimes against children in each year constituted 5% of total crimes during the period, it increased to 7% in 2004 and was at the same level in 2005. The figure jumped to 9% in 2006 and thereafter in every subsequent year it steadily increased and rose to a staggering 16% in 2011.
3.3.20. Chart No. 17

**Comparative position of Crime against Children**

The above chart indicates that there has been a huge increase (four times) of average reported incidents during 2001-2011 as against average reported incidents during 1990-2000 against total number of incidents during the period of 1990 – 2011.

3.3.21. Comparative comment on table 1 and 2

A comparative study of both the tables and the trend linear of the Charts gives interesting revelations. It is found that even after the advancement of JJ Act, 2000, the total reported incidents of crimes against children have not reduced rather it has progressively increased from the year 2001 except a nominal dip in 2002. What is revealing is the astounding increase in the crimes relating to kidnapping & abduction, rape, other crimes (including offence relating to Child Marriage Act), procuration of minor girls. It is being found that the incidents of crime against children on account of kidnapping and abduction have increased from 711 in 2000 to 15,284 in 2011 – an increase of around 2050%. The crime of child rape reported saw an increase from 3,132 in 2000 to 7,112 in 2011 – an
increase of 127%. Offence relating to Child Marriage Act increased from a level of 92 in 2000 to 7,293 in 2011 (this figure contains the number of other crimes including offence related to Child Marriage Act) connoting a significant increase. The crime of procuration of minor girls was increased by around 846% from 147 in 2000 to 862 in 2011. The other heads of crimes against children have also witnessed varying changes. From the above statistics, it may be inferred that the JJ Act, 2000 has brought about a change in the societal psyche and has acted as an enabler to report the crimes against the children. It has prompted people to report more about the incidents of crimes against children. What probably used to be kept under the carpet in the pre-legislation period has been reported more and more for redress and justice after the Act has been operationalized. For example, there has been a sudden surge in the total reported incidents of crime against children from a level of 1,891 in 2000 to 10,814 in 2001 – an increase of about 472%. It is extremely difficult to explain the sudden increase in the total number of incidents reported in a span of one year only. The plausible explanation to this sudden spurt in the number is the introduction of the JJ Act, 2000 which facilitated people to report the crime against children explicitly and confidently. In this context it may be mentioned that the Juvenile Justice Act, 2000 brought several clarities for the people to comprehend and act for justice. For example, the Juvenile Justice Act of 1,986 defines a girl child as one who is below 18 years of age. At the same time, the 'Child Marriage Restraint Act' of 1929 specifies 18 years as the cut-off age for restraining child marriage. Again for the purpose of Section 375 (IPC), the crucial age in case of wife is considered to be 15 years. However, in Section 376 (IPC) a distinction has been made on the basis of wife below the age of 12 years. These lead to conflicting interpretations about the status of the child and must have created confusion in the minds of people.

It is a fact that there has been a gradual recasting of social structure resulting in a shift of paradigms in social values in recent times. The decadence of family values from predominantly joint family structure to nuclear family structure might have manifested itself as an increase in crimes against children. It suggests a more effective administration and implementation of the Juvenile Justice Act. It can further be commented that though the JJ Act, 2000 was promulgated in the right earnest, much can be expected to reap benefits of the act in curbing the crimes against children in general. En resume, a good number of children continue to remain the victims in the hands of the perpetrators even after the introduction of the JJ Act, 2000.
3.3.22. **Juvenile crimes:**

The Juvenile Justice Act, 1986 came into force on 02.10.1987. This Act has taken place of the Children Act enacted by various states and UTs, which stand repealed under Section – 63 of this Act. Accordingly, 1988 was the first year when ‘Juvenile’ status was determined on the basis of this law. The new Act, defines a ‘Juvenile’ as male below 16 years of age or female below 18 years age. Prior to 1988 juvenile boys and girls were the same age groups i.e. below 21 years of age. Hence juvenile statistics from 1988 onwards are not at all comparable with the juvenile statistics of yesteryears (NCRB). This Act has not only replaced the Acts relating to children prevailing in various States and UTs but has also brought down the upper age limit of a ‘Juvenile’ considerably. Since 1988, collection of data is on the basis of this Act (NCRB).

On the other hand Juvenile Justice (Care and Protection of Children) Act (2000) (Act No. 56 of 2000), which came into force on 30th December 2000 generalized the age of maturity of men and women as 18 years. Hence the statistics of juvenile from 2001 onwards are not at all comparable with the juvenile statistics of yesteryears. Hence the juvenile crimes have been studied in two phases: Pre 2000 legislation and Post 2000 legislation.

3.3.22.1. **Pre 2000 legislation period:**

The share of offences committed by the Juveniles to the total IPC crimes reported in the country has shown a declining trend since 1990, notwithstanding the fact that there is an appreciable increase in the population of the country. From 0.9% during 1990, the share of Juvenile crimes has steadily gone down. It recorded the lowest at 0.5% during 1994 but increased marginally to 0.6% during 1995 and 1996. It again went down to 0.5% during 1997 to 2000. The crime rate too has shown a declining trend with lowest at 0.8% in 1997 though it slightly increased to 1.0% in 1998 and again went down marginally to 0.9% during the years 1999 and 2000. The Chart - 18 shows the trend of the incidence of juvenile crimes under IPC during 1990 to 2000 (NCRB).

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255 Ibid 252 chapter – 10
3.3.23. **Chart No. – 18**

**Incidence of Juvenile Crimes under IPC During 1990 TO 2000 (NCRB)**

The Chart No. 18 shows that the incidences of juvenile crimes under IPC during the period 1999-2000 saw a steep dip from 15,230 in 1990 to 8,561 in 1994. Thereafter it gradually increased in 1995 & 1996 and then it again decreased in 1997. Thereafter, it decreased and increased in 1999 and 2000. The linear forecast trend shows the average picture of the trend of juvenile crime under IPC during the assessed period is going down satisfactorily.

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Ibid 252 chapter – 10
The Chart No. 19 shows that the incidences of juvenile crimes under SLL during the period 1990-2000. The number has got a sudden increase from 14,799 in 1990 to 22,143 in 1991. The most interesting revelation is that, it saw a steep dip from 22,143 in 1991 to 7,532 in 1992. Thereafter it gradually decreased till 1995 and then increased in 1996 and again got a deep of about 23% in 1997. Thereafter, it was rose up more than 36.27% in 1998. After that it has successively decreased till 2000. The linear forecast trend shows the average picture of the trend of juvenile crime under SLL during the assessed period is going down satisfactorily.
3.3.25.  

**Chart No. 20**

**Total Figure of Juvenile Crime for the Period Of 1990 To 2000**

![Graph showing juvenile crime figures from 1990 to 2000](image)

The Chart No. 20 shows that the total number of crimes (SLL + IPC) committed by JCL during the period 1990 -2000 saw a sharp decline in the year 1992 by more than 46.35% as compared to the previous year. Thereafter it remained steady till 1998 and fluctuated within the range of 14,523 in 1994 from 18,632 in 1992. In 1999, it witnessed decline to 14,457 from 15,346 in the previous year and then again it got down to 14,421 in 2000. Specially the SLL crimes committed by JCL sharply decreased in 1992 from 1991 and thereafter fluctuated within the range between 5,154 and 7,532 during 1992-2000.
3.3.26. The Chart – 21 below shows the trend of Juveniles apprehended by gender during the period (NCRB)\(^{257}\)

**Chart No. 21**

Comparative position of boys and girls for the crimes committed during the period of 1990 to 2000

It can be seen from the Chart that the number of total Juveniles apprehended has been gradually declining over the years. Moreover, the number of minor girls apprehended during the period of 1990 to 2000 is much less as compared against the numbers of boys. The reason for this may be ascribed to the generally repressive positions of the girls in the society and also the social practices and customs, which do not encourage the girls to assert themselves rather encourage them to take reclusive positions in the society in general and family in particular.

\(^{257}\) Ibid 252 chapter – 10
3.3.27. The year-wise reported juvenile crime incidents under IPC & SLL Crimes for the period 1991 – 2000 have given in the Table No. 3 below:

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of offences committed under IPC crimes</th>
<th>Number of offences committed under SLL</th>
<th>Total number of crime incidents (column 3 + 4)</th>
<th>% of variation in IPC crimes over last year (+ or -)</th>
<th>% of variation in SLL crimes over last year (+ or -)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1990</td>
<td>15230</td>
<td>14799</td>
<td>30029</td>
<td>(-) 17.48 %</td>
<td>(-) 20.17 %</td>
</tr>
<tr>
<td>1991</td>
<td>12588</td>
<td>22143</td>
<td>34731</td>
<td>(-) 17.35 %</td>
<td>(+) 49.62 %</td>
</tr>
<tr>
<td>1992</td>
<td>11100</td>
<td>7532</td>
<td>18632</td>
<td>(-) 11.82 %</td>
<td>(-) 65.98 %</td>
</tr>
<tr>
<td>1993</td>
<td>9465</td>
<td>7199</td>
<td>16664</td>
<td>(-) 14.73 %</td>
<td>(-) 4.42 %</td>
</tr>
<tr>
<td>1994</td>
<td>8561</td>
<td>5962</td>
<td>14523</td>
<td>(-) 9.55 %</td>
<td>(-) 17.18 %</td>
</tr>
<tr>
<td>1995</td>
<td>9766</td>
<td>5255</td>
<td>15021</td>
<td>(+) 14.08 %</td>
<td>(-) 11.86 %</td>
</tr>
<tr>
<td>1996</td>
<td>10024</td>
<td>5719</td>
<td>15743</td>
<td>(+) 2.64 %</td>
<td>(+) 8.83 %</td>
</tr>
<tr>
<td>1997</td>
<td>7909</td>
<td>4408</td>
<td>12317</td>
<td>(-) 21.10 %</td>
<td>(-) 22.92 %</td>
</tr>
<tr>
<td>1998</td>
<td>9339</td>
<td>6007</td>
<td>16346</td>
<td>(+) 18.08 %</td>
<td>(+) 36.27 %</td>
</tr>
<tr>
<td>1999</td>
<td>8888</td>
<td>5569</td>
<td>6457</td>
<td>(-) 4.83 %</td>
<td>(-) 7.29 %</td>
</tr>
<tr>
<td>2000</td>
<td>9267</td>
<td>5154</td>
<td>14421</td>
<td>(+) 4.26 %</td>
<td>(-) 7.45 %</td>
</tr>
</tbody>
</table>

Table No. 3 (NCRB)

258 Crimes in India 2000
The data above shows that there have been fluctuations in the juvenile crimes from 1990 to 2000. As such during the period 1992-2000, the total number of juvenile crimes has more or less remained stagnant or in some years it has been increased marginally. The comparative ratio of increased juvenile crime incidents with the increase of child population perhaps does not put any threat to the society. The satisfactory mathematical decrease of the number may also be the reason of replacement of the Acts relating to children prevailing in various States and UTs by the JJ Act, 1986 which was brought down the upper age limit of a ‘Juvenile’ from 21 years (irrespective of gender) to 16 years for male and 18 years for female. The data of the table period is also prepared on the basis of age variation fixed by Act, 1986. As such the comparative study of the figure 1991 with 2000 shows a total decrease of 20302 numbers. There is no plausible ready mathematical explanation to the 58.47% high rate of decrease if the crime incidents from 1991 to 2000.
### Table No. 4

**Juveniles Apprehended under IPC & SLL Crimes by Sex during the period (1990-2000)**

<table>
<thead>
<tr>
<th>SL No.</th>
<th>Year of Reports</th>
<th>Male JCL</th>
<th>Female JCL</th>
<th>Total Number of JCL</th>
<th>Variation of total numbers over last year</th>
<th>Variation of % over last year</th>
<th>Variation of % of Male JCL over last year</th>
<th>Variation of % of Female JCL over last year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>1990</td>
<td>25269</td>
<td>5547</td>
<td>30816</td>
<td>(-) 5576</td>
<td>(-) 15.32 %</td>
<td>(+) 1.99 %</td>
<td>(-) 52.24 %</td>
</tr>
<tr>
<td>2</td>
<td>1991</td>
<td>23201</td>
<td>6390</td>
<td>29591</td>
<td>(-) 1225</td>
<td>(-) 3.98 %</td>
<td>(-) 8.18 %</td>
<td>(+) 15.20 %</td>
</tr>
<tr>
<td>3</td>
<td>1992</td>
<td>17474</td>
<td>3884</td>
<td>21358</td>
<td>(-) 8233</td>
<td>(-) 27.82 %</td>
<td>(-) 24.68 %</td>
<td>(-) 39.22 %</td>
</tr>
<tr>
<td>4</td>
<td>1993</td>
<td>16391</td>
<td>3676</td>
<td>20067</td>
<td>(-) 1291</td>
<td>(-) 6.04 %</td>
<td>(-) 6.20 %</td>
<td>(-) 5.36 %</td>
</tr>
<tr>
<td>5</td>
<td>1994</td>
<td>13852</td>
<td>3351</td>
<td>17203</td>
<td>(-) 2864</td>
<td>(-) 14.27 %</td>
<td>(-) 15.49 %</td>
<td>(-) 8.84 %</td>
</tr>
<tr>
<td>6</td>
<td>1995</td>
<td>14542</td>
<td>4251</td>
<td>18793</td>
<td>(+) 1590</td>
<td>(+) 9.24 %</td>
<td>(+) 4.98 %</td>
<td>(+) 26.86 %</td>
</tr>
<tr>
<td>7</td>
<td>1996</td>
<td>14068</td>
<td>5030</td>
<td>19098</td>
<td>(+) 305</td>
<td>(+) 1.62 %</td>
<td>(-) 3.26 %</td>
<td>(+) 18.33 %</td>
</tr>
<tr>
<td>8</td>
<td>1997</td>
<td>14282</td>
<td>3514</td>
<td>17796</td>
<td>(-) 1302</td>
<td>(-) 6.82 %</td>
<td>(+) 1.52 %</td>
<td>(-) 30.14 %</td>
</tr>
<tr>
<td>9</td>
<td>1998</td>
<td>13974</td>
<td>4949</td>
<td>18923</td>
<td>(+) 1127</td>
<td>(+) 6.33 %</td>
<td>(-) 2.16 %</td>
<td>(+) 40.84 %</td>
</tr>
<tr>
<td>10</td>
<td>1999</td>
<td>13088</td>
<td>5372</td>
<td>18460</td>
<td>(-) 463</td>
<td>(-) 2.45 %</td>
<td>(-) 6.34 %</td>
<td>(+) 8.55 %</td>
</tr>
<tr>
<td>11</td>
<td>2000</td>
<td>13854</td>
<td>4128</td>
<td>17982</td>
<td>(-) 478</td>
<td>(-) 2.59 %</td>
<td>(+) 5.85 %</td>
<td>(-) 23.16 %</td>
</tr>
<tr>
<td>Total</td>
<td>--</td>
<td>179995</td>
<td>50092</td>
<td>230087</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
</tbody>
</table>

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259 Crimes in India, 2000, Table No. 52
3.3.30. Chart No. 23

**Year wise variation trend of Juvenile apprehended from 1990 -2000**

3.3.31. Chart No. 24

**Comparative position of male and female JCLs apprehended during the period 1990 – 2000**
The data of the above Table No. 4 and Chart No. 22 and 23 shows that there have been fluctuations in the apprehension of juvenile from 1990 to 2000. As such during the period 1992-2000, the total number of apprehension has more or less remained stagnant or in some years it has been increased marginally. In 1990 when the rate of apprehension of male JCL was increased by 1.99 %, the rate of apprehension of female JCL was declined by 52.24 %. Thereafter, in some years the percentage variation of female JCL is much more pronouncing than the male JCLs except the years of 1992, 1997 and 2000. There is no plausible ready mathematical explanation for the fluctuated rate of variation of apprehension of female JCLs. The average trend of apprehension of JCLs within the period gives a common declining trend.

The rate of variation of apprehension of JCL and juvenile crime figure gives the high rate of decrease which is not compared here with the increase number of child population of the year 2000. From the above statistics, it may be inferred that the JJ Act, 1986 has brought about a change in the governmental psyche and role and has acted as a societal enabler to keep down the trend of commission of offence among the children.
3.3.33. Post 2000 legislation period:

The figures for Juvenile delinquency till 2000 were collected as per the definition of Juveniles in the Juvenile Justice Act, 1986. Male below the age of 16 years and female below the age of 18 years were considered as juveniles in this Act. The Act was amended in 2000 according to which, the age of juvenile males and females was brought at par as below the age of 18 years (NCRB).

The table number 4 below shows the number of juveniles apprehended under IPC & SLL crimes during 2001-2011 and the table 5 shows the juvenile IPC crime incidences during 2001-2011.

3.3.34. Table 5

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Year of Reports</th>
<th>Male JCL</th>
<th>Female JCL</th>
<th>Total Number of JCL</th>
<th>Variation of total numbers over last year</th>
<th>Variation of % over last year</th>
<th>Variation of % of Male JCL over last year</th>
<th>Variation of % of Female JCL over last year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2001</td>
<td>31295</td>
<td>2333</td>
<td>33628</td>
<td>15646</td>
<td>87%</td>
<td>125.89%</td>
<td>-43.48%</td>
</tr>
<tr>
<td>2</td>
<td>2002</td>
<td>33551</td>
<td>2228</td>
<td>35779</td>
<td>2151</td>
<td>6.40%</td>
<td>7.21%</td>
<td>-4.50%</td>
</tr>
<tr>
<td>3</td>
<td>2003</td>
<td>30985</td>
<td>2335</td>
<td>33320</td>
<td>-2459</td>
<td>-6.87%</td>
<td>-7.65%</td>
<td>4.80%</td>
</tr>
<tr>
<td>4</td>
<td>2004</td>
<td>28878</td>
<td>2065</td>
<td>30943</td>
<td>-2377</td>
<td>-7.13%</td>
<td>-6.80%</td>
<td>-11.56%</td>
</tr>
<tr>
<td>5</td>
<td>2005</td>
<td>30606</td>
<td>2075</td>
<td>32681</td>
<td>1738</td>
<td>5.62%</td>
<td>5.98%</td>
<td>0.48%</td>
</tr>
<tr>
<td>6</td>
<td>2006</td>
<td>30375</td>
<td>1770</td>
<td>32145</td>
<td>-536</td>
<td>-1.64%</td>
<td>-0.75%</td>
<td>-14.70%</td>
</tr>
<tr>
<td>7</td>
<td>2007</td>
<td>32671</td>
<td>1856</td>
<td>34527</td>
<td>2382</td>
<td>7.41%</td>
<td>7.56%</td>
<td>4.86%</td>
</tr>
<tr>
<td>8</td>
<td>2008</td>
<td>32795</td>
<td>1712</td>
<td>34507</td>
<td>-20</td>
<td>-0.06%</td>
<td>0.38%</td>
<td>-7.76%</td>
</tr>
<tr>
<td>9</td>
<td>2009</td>
<td>31550</td>
<td>2092</td>
<td>33642</td>
<td>-865</td>
<td>-2.51%</td>
<td>-3.80%</td>
<td>22.20%</td>
</tr>
<tr>
<td>10</td>
<td>2010</td>
<td>28763</td>
<td>1540</td>
<td>30303</td>
<td>-3339</td>
<td>-9.93%</td>
<td>-8.83%</td>
<td>-26.39%</td>
</tr>
<tr>
<td>11</td>
<td>2011</td>
<td>31909</td>
<td>1978</td>
<td>33887</td>
<td>3584</td>
<td>11.83%</td>
<td>10.94%</td>
<td>28.44%</td>
</tr>
<tr>
<td>Total</td>
<td>2001 to 2011</td>
<td>343378</td>
<td>21984</td>
<td>365362</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
</tbody>
</table>


261 The Data source NCRB
3.3.35. **Chart No. 26**

**Comparative Position of Male and Female JCL apprehended from 2001-2011**

The Chart clearly shows that during 2001-2011 the number of male JCL apprehended is much higher than the female JCL apprehended during the period. The number of male JCL apprehended during the period was highest at 33,551 in 2002 and lowest at 28,763 in 2010 denoting a deviation range of 14.27% between the lowest and the highest. In case of female JCL apprehended during the period the highest was at 2,335 in 2003 and the lowest was at 1,540 in 2010 connoting a deviation range of more than 34.04%.
### Table No. 6

**Juvenile IPC & SLL Crime Incidence 2001 – 2011**

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Year of Report</th>
<th>Number of incidents reported under IPC Sections</th>
<th>Variation of number of incidents under IPC Sections with last year (+ -)</th>
<th>Number of incidents reported under SLL cases</th>
<th>Variation of % number of incidents under SLL cases with last year (+ -)</th>
<th>Number of incidents reported under IPC + SLL</th>
<th>Variation of number against total number of incidents reported under IPC + SLL by last year</th>
<th>Total number of incidents – under IPC + SLL</th>
<th>Variation of % number against total number of incidents reported under IPC + SLL by last year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2001</td>
<td>16,509</td>
<td>7,342</td>
<td>3,178</td>
<td>78.10%</td>
<td>24,841</td>
<td>10,420</td>
<td>72.26%</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>2002</td>
<td>18,560</td>
<td>2,051</td>
<td>649</td>
<td>12.42%</td>
<td>27,541</td>
<td>2,700</td>
<td>10.869%</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>2003</td>
<td>17,819</td>
<td>-741</td>
<td>-1,114</td>
<td>-3.99%</td>
<td>25,686</td>
<td>-1,855</td>
<td>-6.735%</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>2004</td>
<td>19,929</td>
<td>2,110</td>
<td>2,111</td>
<td>11.84%</td>
<td>25,685</td>
<td>-1</td>
<td>-0.004%</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>2005</td>
<td>18,939</td>
<td>-990</td>
<td>906</td>
<td>-4.97%</td>
<td>25,601</td>
<td>-84</td>
<td>-0.327%</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>2006</td>
<td>21,088</td>
<td>2,149</td>
<td>4,729</td>
<td>11.35%</td>
<td>25,817</td>
<td>216</td>
<td>0.844%</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>2007</td>
<td>22,865</td>
<td>1,777</td>
<td>4,163</td>
<td>8.43%</td>
<td>27,028</td>
<td>1,211</td>
<td>4.691%</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>2008</td>
<td>24,535</td>
<td>1,670</td>
<td>3,156</td>
<td>7.30%</td>
<td>27,691</td>
<td>663</td>
<td>2.453%</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>2009</td>
<td>23,926</td>
<td>-609</td>
<td>4,321</td>
<td>-2.48%</td>
<td>28,247</td>
<td>556</td>
<td>2.008%</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>2010</td>
<td>22,740</td>
<td>-1,186</td>
<td>2,558</td>
<td>-4.96%</td>
<td>25,298</td>
<td>-2,949</td>
<td>-10.440%</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>2011</td>
<td>25,125</td>
<td>2,385</td>
<td>2,837</td>
<td>10.49%</td>
<td>27,962</td>
<td>2,664</td>
<td>10.530%</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>2001 to 2011</td>
<td>232035</td>
<td>----</td>
<td>----</td>
<td>59,362</td>
<td>----</td>
<td>----</td>
<td>----</td>
<td></td>
</tr>
</tbody>
</table>
3.3.37. The Chart above shows that as against juvenile IPC incidences, which have shown overall uptrend during the period 2001-2011, the juvenile SLL incidences have shown overall downward trend during the period. The juvenile IPC incidences have increased from 16,509 in 2001 to 25,125 in 2011 and the juvenile SLL incidences have decreased from 8,332 in 2001 to 2,837 in 2011.
During 2001-2011, the yearly share of total juvenile crime incidences, which took place during the period, has hovered between 8 - 10%. While it was 8% in 2001 and 10% in 2009 and 2011, in all other years it was at 9%. 
3.3.39. Chart No. 29

The Chart shows that the yearly share of juveniles apprehended during the period remained in the range of 8-10%. While in 2002 and 2007 it was 10% and in 2010 it was 8%, in the rest 8 years it was at the level of 9% in each year.

3.3.40. Comparative comment on data analysis of the period 2001 to 2011 (Tables 5 and 6):

The data above shows that there have been stagnant counts in Juveniles apprehended under IPC & SLL crimes during the period of 2001 to 2011, for both male and female and also in total. In compares with the ratio of increase of apprehended juveniles with the increase of child population within the table period, does not signify the claim of increase rather it has comparatively decreased. It is being found that the juveniles apprehended have increased from 33628 in 2001 to 33887 in 2011 – a minimum increase of around 0.7701%. Compares with the growth of the child population there has been no increase. The yearly
variation shows that in some years it reduced progressively. In this context it may be mentioned that the large number of increase in the year 2001 perhaps due to the introduction of the JJ Act, 2000 which came into force by replacing the Act, 1986. As per Juvenile Justice Act, 2000, the age of 18 years has been categorically mentioned as the age of child irrespective of the gender of the child for the purpose of the Act. It has given much better clarity and helped in storing data relating to crimes against children. It can also be argued that due to enhancement of age from 16 years to 18 years for the purpose of treating a person as child as per the Act, the number of reported incidents has increased covering the children within 16-18 years after the promulgation of the act.

The share of IPC crimes committed by juveniles to total IPC crimes reported in the country during 1999 and 2000 was same at 0.5%. This share increased to 0.9% in 2001 and further marginally increased to 1.0% in 2002 but remained more or less stagnant in 2003, 2004 and 2005. It marginally increased to 1.1% in 2006 and remained at the same level in 2007. It increased marginally to 1.2% in 2008 and decreased to 1.1% in 2009. The share further decreased to 1.0% in 2010 and marginally increased to 1.1 in 2011. The considerable increase in 2001 may be partly attributed to increase in age of delinquent boys from 16 to 18 years as per the new definition of juveniles. Similar pattern was observed in juvenile crime rate also. Juvenile crime rate was 0.9 during 2000, whereas it has shown a mixed trend during 2000-2011 (NCRB). 262

The numbers of the SLL crimes are steeply sloping down over the years. Where the number as shown in the year 2001 is 8,332 which reduced to 2837 in the year 2011, a rapid decrease of 65.95%. The trend of decrease in the number is gradual not sudden, except marginal growth in few years. On the other hand total number of crime incidents (IPC + SLL) since 2001 to 2011 are more or less stagnant. Only an increase of total number of crime 12.563% compares with 2001 to 2011. If the growth rate of crime is compared with the growth of child population, there is no increase.

The significant increase in 2001 was perhaps due to increase in the upper age of male juvenile from 16 years to 18 years as per Juvenile Justice (Care and Protection of Children) Act, 2000. It can be seen from the table the juvenile crimes as such are continuously decreasing over the years with marginal increase in some years in the intervening period.

262 Ibid 260
The data collected by the National Crime Records Bureau shows that there has been an increase in cases of sexual offences against children. This is corroborated by the ‘Study on Child Abuse: India 2007’ conducted by the Ministry of Women and Child Development. Moreover, sexual offences against children are not adequately addressed by the exact laws. A large number of such offences are neither specifically provided for nor are they adequately penalized. The interests of the child, both as a victim as well as witness, need to be protected. It is felt that offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence (Government of India).

In this context, it can be mentioned that apart from the cognizable cases reported by the police or multifarious government officials, there are many other non-cognizable cases and cases instituted by individual directly before the court of law. The total count of those cases will increase substantially the number of cases reported. Most of those cases are against the adult persons. It can also be mentioned that a large number of penal sections make offence against child as non-cognizable and bailable. No comprehensive data is available to ascertain the reported and non reported figures of cases relating to crime against children or offence committed by juvenile in the fragmented position. Under these circumstances, the methodology used in the study was to gather data from NCRB and also to collect information through published journals and articles.

In the past two decades, the juvenile justice systems of India have been benefited from the positive governmental steps taken by the government including promulgation of suitable legislations under the influence of the international bodies. The impact of these has manifested itself as reduction in the count of juvenile crimes progressively over the years.

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3.3.41. Chart No. 30

The Chart shows a clear trend. During the period 2001-2011 while the crimes committed by JCL has remained more or less steady with marginal up and down on year on year basis, the crimes committed against Children has steadily increased from 2002 onwards and witnessed about 3.3 times increase in 2011 as against 2001. From 2010 onwards the crimes against Children has overtaken the crimes by JCL.
Comparative share of juvenile apprehended for the periods 1990 to 2000 with 2001 to 2011

- 1990 - 2000
  - 230087
  - 39%
- 2001 - 2011
  - 365362
  - 61%
3.3.43. Chart No. 32

Comparative share of juvenile crime incidents for the period of 1990-2000 with 2001-2011

1990 - 2000
194884
40%

2001 - 2011
291397
60%

3.3.44. Comparative comment on Chart No. 31 and 32

Chart No. 31 shows the picture of apprehension of juvenile during the total assessed period of 1990 to 2011 divided into two parts. The later part of the period 2001 to 2011 has covered 61% area that is more than 22% of the period 1990 to 2000. Chart 32 shows the comparative picture of juvenile crime incidents for the total assessed period of 1990 to 2011 divided into two parts of which later part of the period 2001 to 2011 covered 60% area that is more than 20% than the period 1990 to 2000. Apparently the Charts shows that the periodic number of apprehension of JCL and juvenile crime incidents are more pronounced during the period of 2001 – 2011 than 1990 to 2000. In this regard two reasons may be ascribed herein, firstly; the total number of increase of child population has not been accounted during the last decade and secondly; the introduction of Act, 2000 which has given much more clarity to cover all persons as juvenile irrespective of gender below the age of eighteenth year. For example it may be mentioned that in 2001 India’s Population was 1.02 billion which after increase in 2011
stood 1.21 billion and currently, there are about 51 births in India in a minute.\textsuperscript{264} Perhaps the rate of increase of juvenile crime incidents and apprehended juveniles is much less than the increase trend of child population.

3.3.45. **Comparative study of crime against children and juvenile crime:**

From the study of crimes against children and juvenile crimes in this chapter, a distinct trend is palpable. While the number of crimes against children is showing an increasing trend post 2000 legislation, the crimes committed by the juveniles are actually decreasing over the years. It points towards the need of more sensitization, attitudinal change in the minds of people in the society and rigorous implementation of the Act for better juvenile justice. A large number of children continue to remain the victims at the hands of the perpetrators years after years. The long term policy prescription to arrest the trend is to create mass awareness and sensitize people against the evils of crimes against children. It will facilitate better lives of the juveniles in general. Concurrently, the judicial system must reorient itself for better records and quicker disposal of cases relating to crime against children. It will act as a deterrent to the crimes against children and will rekindle the faith of people on the systems for better redress.

The research work has been carried out with limited data. The data have been mainly collected from the publications of the NCRB. As such comprehensive data pertaining to juvenile justice are not available from the known sources. Availability of larger numbers of data pertaining to various factors of child right and juvenile justice would have made the interpretation much more statistically relevant. The trend of variation of crime incidents have been assessed only on the basis of reported & published crime figures, which differ from the actual figures due to several non-reported incidents that take place. While doing the analysis the growth of population in general and child population in particular has not been factored in.

\textsuperscript{264} Data source \url{http://www.indiaonlinepages.com/population/india-current-population.html} extracted on 02.10.2012
3.4. Conclusion

The chapter presents an account of the gradual plight of juvenile justice system in India. The study shows that over the years there has been a perceptible change in paradigms in the law, policy and practice of child welfare in the country. While tracing the history it is found that the concept of juvenile justice in India is rooted in the evolving changes and developments in this arena in the western countries and Europe. The human rights jurisprudence in Europe and America had an indelible impact on the evolution of juvenile justice in the world in general and India in particular. However, the study shows that in the past the juvenile justice system in India was bounded within the periphery of the criminal justice system for adults. As a result it created a cacophony of conflicting notion and interest between the protective approach of juvenile justice and the punitive approach of criminal justice and also incoherent and non-uniform juvenile justice system in individual states. However, with the passage of time and with several experience, this cacophony paved way to symphony of uniform juvenile justice system in the country as a whole duly orchestrated on the basis of important documents and instruments like the Convention on the Right of the Child, the fundamental Rights in Part III of the Constitution, Universal Declaration of Human Rights, the Directive Principles of the State Policy among others.

The Apprentices Act, 1850 was a landmark legislation, which can be said to be the cornerstone of emergence of the modern juvenile justice system in the country. It was followed by the Indian Penal Code (1860), Reformatory Schools Act (1897), Code of Criminal Procedure (1898) and most importantly recommendations made by the Indian Jail Committee (1919-1920). The recommendations of the Indian Jail Committee specifically stated that the child offenders should not be clubbed with the adult offenders and should be treated differently. It also mentioned that imprisonment of child offenders must be prohibited at any cost. It further recommended creating reformatory schools and introducing children’s courts with flexible and informal procedures. The Committee went on to highlight the need for taking proactive approaches by making specific provisions and also special enactment for children who, though did not commit crime so far but had the propensity to do so in the near future due to their living in pathetic and hostile surroundings or without proper care and proximity of guardians or homes.

Along with Independence, there came the dawn of a new era for the children in the country. The founding fathers of the nation laid due emphasis on survival, development and
protection needs of children by inserting relevant provisions in ‘Fundamental Rights’ and ‘Directive Principles of State Policy’ in the Constitution of India. The very fact that there was an exponential increase in the number of orphans, destitute and delinquent children at the altar of murky partition and the exclusive status accorded to children in the Constitution, it led to some special programmes aimed at meeting the needs of this group of children during the first five-year plan. It is indeed ironical that though with introduction of five-year plan, the country saw the vive of resurgence in its financial might and its overall conditions but the consequent industrialization and urbanization process brought forth new sets of problems for the children of the country. There was spurt in juvenile crimes. Among various juvenile delinquencies, the most noticeable one was the surge in theft cases by juveniles in the large cities. However, at that time as legislation for dealing with delinquent children existed only in few states, the Government of India had to step in and enacted the Children Act 1960. However, the Act was only restricted to the Union Territories and it was left to the states to enact their own Children Acts taking cue from the Children Act, 1960 as model. However, different enactment by states created several discrepancies, inconsistencies, misinterpretations in the juvenile justice system as a whole in the country.

To tide over the inadequacies of the pre-existing law and to bring uniformity across the nation, the Juvenile Justices Act 1986 was enacted for the whole country. With the objectives of providing special care, attention and treatment to the juveniles, the aim of the Act was to create a uniform legal framework for juvenile justice in the country as a whole and also to ensure that no child, in any circumstance, is lodged in jail and police lock-up. This also led to establishment of Juvenile Welfare Boards and Juvenile courts. The guiding approach was to prevent recurrence of juvenile delinquency and facilitate them in their development and social adjustment process. It also resulted in establishment of observation homes, juvenile houses, juvenile homes or neglected juvenile and special homes for delinquent or neglected juveniles. The Act drew heavily from the major provisions and clauses of the Indian Constitution, the 1974 National Policy Resolution for Children, the universally agreed principles and standards for the protection of juveniles such as the 1959 United Nations Declaration of the Rights of the Child and the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) among others. In spite of sincere intentions and efforts, the JJ Act 1986 had several lacunae and posed difficulties in implementation. Interestingly, the administration of juvenile justice has
historically been with the sole purview of the government. This somehow resisted the civil society to enter into this domain in the initial phase.

Taking cue from its own experience, to be in sync with the legal framework in the country and also in line with development in juvenile justice paradigms world-over, the government brought in a new Act, the 2000 Juvenile Justice (Care & Protection of Children) Act. This Act endorsed both ‘justice’ as well as the ‘rights’ approaches towards children. The new act also ushered in involvement and collaboration with civil society organizations for better juvenile justice in the country. The JJ Act 2000 was further amended in 2006 and made it clear that retrospective consideration of juvenility would be done from the date of commission of offence. The amendment also made it clear that under no circumstances, a juvenile in conflict with law is to be kept in a police lock-up or lodged in a jail. In addition, it also stressed on expediting the pendency of cases. Every child who is found to be neglected or delinquent juvenile should be dealt with under the JJ Act and should be brought within the protective umbrella of the juvenile home. It establishes the fact that there has been a revolution in the juvenile system in India post 2000. The impact of this has manifested itself as reduction in the count of juvenile crimes progressively over the years.

However, the interesting finding is that while the crimes committed by the juveniles are actually decreasing over the years the number of crimes against children is showing an increasing trend both in pre and post 2000 legislation. It points towards the need of mass awareness, attitudinal change in the minds of people in the society and rigorous implementation of the Act for better juvenile justice. It is apparent that a large number of children in our country continue to remain the victims at the hands of the perpetrators years after years. The long term policy prescription to arrest the trend is to create mass awareness and sensitize people against the evils of crimes against children. It will facilitate better lives of the juveniles in general. Concurrently, the judicial system must reorient itself for better records and quicker disposal of cases relating to crime against children. It will act as a deterrent to the crimes against children. There are ample opportunities to speed up and strengthen further child sensitive and child friendly jurisprudence. Perhaps the bills under discussion and tabled before the union legislature, may enlarge the scope and ambit to bring about reduction of the crimes against children in India and will foster better and robust juvenile justice system in the country in future.
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