CHAPTER-III

THE HISTORY AND DEVELOPMENT OF JUVENILE JUSTICE DELIVERY SYSTEM

3.1 Introduction

Understanding the existing state of the Juvenile Justice System in India requires look to history. Scholars and historians are unable to agree on the legal foundation for the present-day juvenile court. According to some its beginnings can be traced to the English Federal courts of High Chancery. Under the English laws of Equity, the courts of High Chancery were given the responsibility by the crown to serve as parens-patriae (in place of the parent) to protect the interest of the child whose property was in jeopardy. The other view reflects that juvenile courts sprang from common law of crimes. The English Federal Courts of High Chancery extended their protection to other areas of general child welfare and incorporated the neglected and dependent child within their jurisdiction. There is no indication, however, that these courts exercised any jurisdiction over the delinquent child.

Under the common law, a child under 7 years of age was considered incapable of developing the required criminal intent, and a child between the ages of 7 and 14 was also deemed incapable of developing the required intent unless it could be shown by his maturity and understanding that he was aware of the consequences of his actions. Because of this and because adult criminal courts were unable to deal effectively with Youthful offenders, special quasi-judicial tribunals began to develop to deal with children. Eventually the administrative and procedural guidelines that grew out of these Tribunals became commonly accepted policies which were then institutionalized into practice in order to deal with delinquent youth.

The Juvenile Justice System in India originated during the British rule and was the direct consequence of Western ideas and developments in the field of prison reforms and juvenile justice. The changes introduced by Britisher in India to deal with delinquent juveniles, were not confined only to those practiced in
England. The juvenile court established under the Madras Children Act, 1920 was not different from that under the English Children Act, 1908. But subsequent Children Acts dispensed with the presence of lawyers on the lines of the parens patriae model of the American juvenile courts. The juvenile welfare boards, adopted by the Scandinavian countries became an integral part of the legislations dealing with delinquent and neglected children since 1960.

3.2 Development of the Juvenile Justice System

The juvenile justice systems, in the juridical sense, in various countries in the West have developed through a similar course. First, there was a recognition that children were not as mature as adults to understand the nature and consequences of their acts and could not be held responsible for their criminal acts. Then the accounts of the appalling prison conditions led to improvement in the living conditions in prisons and segregation in prisons. Since the refuge, reformatories and other correctional institutions concentrated more on custody and less on reform, institutionalization by the year 1850, was considered as non-fruitful. The Common Law and customary practice of dealing with youthful offenders was to assume that children accused of misbehaviour and crimes were guilty as charged. Possible innocence was not considered; the jury's responsibility was to determine whether children understood their offences. By the early nineteenth century this method of handling delinquents had become unsatisfactory for two major reasons. First, despite courtroom partiality toward youths, increasing number were being convicted and sent to jails, where it was commonly believed that they were schooled in crime by adult offenders. Second, and more important, some children gained acquittal by appealing to the jury's sympathy; which is an equally unsatisfactory disposition because it allowed them to escape the consequences of their actions. Juvenile delinquency was

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1 See, O. Nyquist, Juvenile Justice, A Comparative Study with Special Reference to the Swedish Child Welfare Board and the California Juvenile Court System Part II, 1960 (hereinafter Nyquist).
progressing from petty delinquencies to greater and more heinous crimes. Prisons and other similar institutions failed to control crime and rapid increase in justice delinquency paved way for alternative measures for children.

In USA, the first refuge was founded in New York in 1824 by members of the society for the Reformation of Juvenile Delinquents. In 1826, following the recommendation of Boston's Mayor, the Boston City Council founded the House of Reformation for juvenile offenders. A group of Philadelphia's leading citizens received a charter to form a house of refuge, which was opened in 1828. The New York and Philadelphia refuges were privately managed. These three institutions were the only organized efforts to reform juvenile delinquents until 1847.

The guiding premise of these early reformatories was that children should be punished not cruelly, but correctly. These early reformatories were required by their charters to receive destitute and orphan children as well as those convicted of crimes, crimes sometimes no greater than vagrancy, idleness, or stubbornness. These institutions were soon came to be criticized for their inability to halt juvenile delinquency or to prevent the spread of violent activities by gangs of youth who roamed the streets of our major cities after the Civil War. These early institutions immediately faced the problem of over-crowding and had to deal with large numbers of children without adequate financial support.

Another problem that contributed to the failure of the refuges was the indiscriminate grouping of serious offenders with children who were not delinquents or who had committed only minor offences. Inevitably, the recalcitrant and youthful serious offenders began exerting their influences, and the refuges became miniature schools of crime.

The recognition of the harmful effects of keeping adult and juvenile offenders together resulted in separate juvenile jails and reformatories. The

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4 A 1836 report of the inspectors of prisons reiterated that absolute impunity would have been far less mischievous than the confinement of adults and children together. "The boy is thrown among veterans in guilt...and his vicious propensities cherished and inflamed .... He enters the prison a child in years, and not infrequently also in crime, but he leaves it with a knowledge in the ways of wickedness) Quoted in Morris, p. 8.
The principle of segregation further led to separate hearings, other changes in the criminal procedure, and the creation of juvenile courts. The search for means for prevention of crime and delinquency finally moved towards utilization and organization of community resources.

3.3 The Principles Underlying the Development of the Juvenile Justice System in India and other Countries

History of juvenile legislation in India dates back to the Apprentices Act, 1850 and Reformatory Schools Act, 1897 which were modeled on the corresponding British legislation. Therefore, to better understand the course of development of latest legislation on juveniles in India, we will have to go back to the British system which in turn was influenced by the U.S. Development in the field of juvenile justice. Institutionalized treatment to the juveniles also came up for consideration as a mode of dealing with the delinquent. Credit for giving the idea of institutional treatment to juvenile, goes to the Pope Clement XI, who set up a centre at the Hospital of Saint Michael in Rome in 1704 for the correction and instruction of profligate youth, that they who when idle were injurious, may when taught became useful to the state. Germany and other European Countries followed the idea of setting up separate institutions for the treatment of juveniles. There was rapid industrialization and urbanization in eighteenth and nineteenth

5 For example, The Juvenile Offenders Act, 1847 in England allowed larcenies and thefts committed by persons under fourteen to be heard by magistrates in petty sessions. The Summary Jurisdiction Act, 1879 provided for summary trial of children under sixteen for nearly all indictable offences. See Morris, p. 10. In America the first law separating juvenile and adult offenders was passed in 1863. The Swiss Law in 1872 restricted publicity when the courts were dealing with juvenile cases and also provided for separate hearings. See Nyquist, p. 141.

6 The two primary assumptions underlying the Children Act, 1908 of England were: (i) juveniles were less responsible for their actions than adults, and (ii) juveniles treated with adult offenders were likely to be contaminated in some way, so the two groups should be treated separately. D. P. Farrington, 'England and Wales in M. W. Klein (ed.), Western Systems of Juvenile Justice, 1984, p. 73.

7 The history of juvenile treatment is replete with bold initiatives taken by private persons in a spirit of humanity and social justice. The pioneering work done by Mary Carpenter and her associates in relation to the reformatory system in England and by John Augustus in relation to probation in America are just two such examples. Today, community involvement and diversion of juveniles away from the state legal system are the key words in the Juvenile Justice System.

centuries which brought radical changes in socio-economic structure of England.

It was in this background of social conditions of lower classes in which exploitation of children and crime was more prevalent that stimulated the social reformers to bring some relief to the children in particular and adults generally. As these conditions were productive of crime in the children, these had to be changed to stall increasing juvenile delinquency.

In 1817 because of the efforts of Robert Owen, father of British Socialism with the support of Sir Robert Peel and other philanthropists, three factory Acts of 1817, 1825 and 1831 were passed by British Parliament. These Acts, with further Factory Act, 1833, regulated the working hours, minimum age for appointment and education etc. But in these Acts there was no provision for the treatment to be given to the juveniles for their misconduct.

Another facet of nineteenth century was that severe punishment continued to be inflicted including death against petty offences. The juveniles were considered as wrongdoers and prevailing procedures for dealing with adult offenders were thought appropriate for dealing with juveniles. Though the courts were given a wide and flexible range of disposition but decisions were mainly based on the seriousness of offence and interest of public. There were over 10,000 children below the age of seventeen years of age in British Prisons around 1849. Activated by the horrid conditions in jail where there was no separate arrangement for delinquent juveniles and were put in the same prisons, some public spirited persons like Sir Thomas Buxton, William Wilberforce Macintosh, Mathew Hill, Scarlet, the Gurneys and Frys and Sydney Turner formed the society for Reformation of Prison Discipline. Ultimately by the efforts of Charles Dickens, Reformatory Schools Act, 1854 was passed. This Act was followed by the Reformatory School Act, 1855 for separate treatment to juveniles. There was another Act passed for the neglected children in 1857, namely Industrial School.

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10 See, Morris, p.11.
Act, 1857. These Acts were later amended by Reformatory School Acts of 1866, 1879 and 1872, 1891 and 1893 and Industrial School Acts of 1866, 1879, 1880 and 1891. However, until 1891 there was a condition in the Reformatory Schools Act, for fourteen days imprisonment before going to a reformatory school. It was Sir William Harcourt, because of whose sincere efforts for change from retribution to reformation, with the support of Queen, it became possible to abolish the system of imprisonment as a preliminary condition for going to reformatory school in 1891.14

The establishment of a separate juvenile court in England, was the consequence of the principle of segregation of juveniles from adult offenders. Hence, the Children’s Court established under the Children Act 1908 was a criminal court. The authorized magistrates held separate sittings and tried children in the same manner as adults. There was movement in other countries also to treat the children separately from adult offenders. Throughout nineteenth century there was rising concern about the official treatment of children the growth of what has been called the spirit of social justice.15

America also came in the sweep of this movement. A house of Refuge was set up in New York city in 1825 where children were kept separate from adults and given corrective treatment rather than traditional punishment. After this state reform and industrial school followed, which were first established in Massachusetts in 1847 for disciplining and instilling confidence in them for advancement through hard work. In Chicago in 1861 its Mayor was authorised to appoint a commissioner to hear and decide petty charges against boys between six and seventeen years and to place them on probation or in a reformatory. In 1869 a state agent was required to be in court where a juvenile might be committed to reformatory by the Massachusetts statute. Finally, it was in April 1899 when the Illinois legislature passed the Juvenile Court Act, creating the first statewide court especially for children.16

16 Ruth Shonle Caran, Juvenile Delinquency (3rd Ed.) pp.409-410
The juvenile court in America, on the other hand, was neither a criminal court nor did it follow the criminal procedure. The judge was likened to a helpful but stern parent, and his function was to rescue juveniles rather than to punish them. Dispositions were to be based on an examination of the juvenile's special circumstances and needs. The rules of criminal procedure were, therefore, inapplicable. The basis of the new juvenile courts was the concept of parens patriae.

Chancery jurisdiction in England arose from concern over the estates of children, lunatics and idiots. When the property interests of a child were in jeopardy the Lord Chancellor, acting for the Crown and through chancery courts, could make the child a ward of the Crown (State) when necessary and place him under the protection of the Crown (State). In so doing he was exercising the doctrine of parens patriae, i.e., the philosophy that the state or its agent the chancery court is the ultimate parent of all juveniles requiring care and protection. This followed principle of special provisions for the care and protection of children, but these countries adopted the juvenile welfare board system instead of the juvenile court. Nyquist suggests that perhaps the two systems arose completely independently in the absence of knowledge about each other.

He concluded:

"we must admit that we have not found any convincing reason why the Scandinavian countries, with the exception of Norway, did not even consider a juvenile court alternative. The alternative was apparently not thought of"

Developing alongwith the idea that juveniles and adults should be

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17 See, Morris, p. 12.

18 He refers to the time schedule of developments in America and the Scandinavian countries which explains the absence of reference of development from other countries. The work on the proposal for a Norwegian Child Welfare System by Bernhard Getz was started in the 1880s and it was published in 1892. The final government bill was submitted in 1896 and passed in the same year. The Danish proposal was submitted in 1895. A Swedish Committee appointed in 1896 submitted its proposals in 1898 and 1900. Intensive activity for juvenile courts in Illinois took place in 1898 and early 1899. The Danish and Swedish proposals became law only in 1902 and 1905 but perhaps Getz's international survey was taken for granted. See, Nyquist, pp. 145-6.

19 See, Nyquist, p. 148.
institutionalized separately, was the concept that children should be separated from adults before and during the trial. In 1861, the Mayor of Chicago was authorized to appoint a special commission to hear and decide cases that involved boys from ages 6 to 17 who were charged with committing minor offences. In 1867, this commission was empowered to place the delinquents who came before it on probation or to sentence them to a special institution for delinquent children. In 1869, a Massachusetts law permitted the employment of a state agent who would be available for counsel and guidance to the court and would locate and report on foster homes that the court might use in placing of the children who came before it. Boston passed a law in 1870 which required that children’s cases should be heard separately and that an authorized state agent should be appointed to investigate cases, attend trials, and protect children’s interest. A few years later, Massachusetts passed additional legislation which specified that in juvenile cases, the courts were to hold separate sessions, schedule juvenile cases by a special docket, and maintain a separate records system.

The first Juvenile Welfare Boards were established in Norway by an Act adopted in 1896 but the first true juvenile court was established in 1818 in Illinois Chicago in America. In the last decade of the nineteenth century, a group of reformers that consisted of some local jurists, the Illinois Bar Association, civic groups, and social scientists and social workers worked to persuade the Illinois state legislature to enact laws dealing with children and to vest the authority for applying these laws in a court that would be designated specifically for this purpose. In April 1899, the legislature passed the Act to Regulate Treatment and Control of Dependents. Neglected and Delinquent Children and on July 1, 1899, the Juvenile Court of Cook Country was established in Chicago.

It marked a conceptual change in the nature of a child's conduct, a child's responsibility for its conduct and role of state in dealing with that conduct. A new relationship between child and state was based on the English concept of parens-patriae. The landmark decision incorporating parens-patriae into the American legal structure was given by Supreme Court Justices of the State of Pennsylvania
in 1838. 20

“...A perusal of records of juvenile reformatories would show that the children kept in these reformatories who were away from the view of judiciary and public did not interact with their keepers and like a benevolent parent. Heavy number of attempted escapes, assaults upon guards and fellow inmates, attempted arson and homosexual relations would show that the inmates were not separated from the influence of improper associates’ as suggested in Ex Parte Crouse21

Reports of overcrowding and inadequate staff were not rare.22 The actual functioning of the juvenile court was no better. Studies of the juvenile courts in England criticized that the magistrates constituting the juvenile courts were selected due to their active involvement in party politics; they were allowed to continue on the bench when too old to do their job properly and they were inadequately trained.23 In America, the Supreme Court in re Gault24 observed that:

“The absence of substantive standards has not necessarily meant that children receive careful, compassionate, individualized treatment ... Departures from established principles of due process have frequently resulted not in enlightened procedure, but in arbitrariness”.

The shift from parens-patriae towards Constitutional rights to children began with the challenge to the Constitutional validity of the juvenile court itself.25 When one jurisdiction after another dismissed the challenge, the attack shifted to modifications and improvement in its procedure.

In view of the fact that the delinquent child was not to be treated as a criminal, but a person in need of help, some changes were made in juvenile courts. In place of the adversarial proceedings which typify the adult criminal trial, informal hearings were conducted in an atmosphere more conducive to

21 Pisciotta, see, supra note 18 on p. 422.
22 B. Bayh, ‘Juvenile v Justice in Legal Rights of Children, see, supra note 20 on p. 25.
23 J. Watson, Which is the Justice, 1969, p. 74.
24 387 US 1; 18 L ed 527 (1967).
treatment than to adjudicating guilt or fixing blame. In this informal atmosphere, the judge assumed the role of a fatherly and sympathetic figure while remaining a symbol of authority. Special emphasis was placed on investigating, diagnosing, and prescribing treatment. The individual's background was more important than the facts of a given incident; specific conduct was regarded more as sympathetic of the need for the court to apply its resources and to help rather than as a prerequisite for jurisdiction.

Because the ostensible purpose of the juvenile court was to treat and help rather than adjudicate guilt or innocence, the court was empowered to act in ways inconsistent with many of the procedural safeguards available to adults in the regular courts. For example, since the hearing was not an adversarial process, there was no need for defence lawyers or a prosecutor to be present. Trials by juries were dispensed with for the same reason. Other basic rights, such as the right to cross-examine and to be confronted with the witnesses against the accused, were seldom practiced in these courts.

In place of these legal guarantees and rights, the courts employed behavioral scientists, particularly social workers, psychologists, and psychiatrists, because delinquency was considered a disease that needed expert diagnosis and treatment. This use of personnel treatment had been a unique characteristic inception. Along with this emphasis, a new legal vocabulary developed that was adopted by the juvenile courts. Instead of a compliant, a petition was substituted; a summon was used in place of a warrant; instead of a preliminary hearing, there was an intake interview; in place of an arrangement, there was a hearing or inquiry; finding of involvement replaced a conviction; and there was a disposition instead of a sentence.

Another characteristic of juvenile courts that has developed over the years is the extension of their authority over forms of behaviour which if committed by an adult would not be a crime, but under the provisions of state juvenile codes places the child under the authority of the court.
3.3.1 United Nations Declaration of the Rights of the Child

The change in viewpoint is noticeable in the United Nations also. Concept of juvenile justice system in India and its statutory protections to the juvenile delinquent also discussed the United Nations Declaration of the Rights of the child 1958 which sought to secure for physically, mentally or socially handicapped children, 'the special treatment education and care required by this particular condition';\(^{26}\) the UN Standard Minimum Rules for the Administration of Juvenile Justice 1985 (the Beijing Rules) emphasize on the accountability of exercise of discretion relating to children\(^ {27}\) and observance of basic procedural safeguards at all stages of proceedings, \(^ {28}\) along with the aim of 'promoting juvenile welfare to the greatest possible extent'.\(^ {29}\) The basic principles under the Beijing Rules are:

(a) that the reaction to juvenile offenders should always be in proportion to the circumstances of both the offenders and the offence;

(b) that the placement of the juvenile in an institution should be a disposition of last resort and for the minimum necessity period;

(c) that detention pending trial should be used only as a measure of last resort and for the shortest possible period of time; and

(d) that police officers dealing with juveniles should be specially instructed and trained.

The highest point of ensuring the rights to juveniles without compromising the welfare principle has been reached by the UN Convention on the Rights of the Child 1989 (CRC) that came into force on 3 September 1990. The Convention recognized not only the right of a juvenile to be processed according to principles of justice and also approved the right to participation, name, nationality, identity, survival and development, adoption, and right against exploitation. These protections being necessary for child's well being, the concerned states have undertaken to ensure such protection to the child.

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\(^{26}\) Principle 5

\(^{27}\) Rule 6.

\(^{28}\) Rules 7.1, 14.1

\(^{29}\) Rule 1, Commentary. See also, Rules 5.1, 17
protection is ensured also in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative or legislative bodies, the best interests of the child shall be a primary consideration.

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The basic principles underlying the CRC are:

(i) that the best interest of the child shall be the primary consideration in all actions undertaken by public or private social welfare institutions, courts of law, administrative, or legislative bodies;

(ii) that children's opinion shall be given careful consideration in all matters affecting them;

(iii) that all efforts shall be made to ensure family care to the child;

(iv) that all children shall enjoy the rights specified in the CRC without discrimination;

(v) that the state parties shall respect the right of the child and shall ensure realization of these rights by taking measures to the maximum extent of their available resources with regard to economic, social, and cultural rights; and

(vi) that state parties shall, by appropriate and active means, make the principles and provisions widely known to adults and children alike.

The United Nations further adopted the Rules for the Protection of Juveniles Deprived of Their Liberty in 1990. The fundamental perspective of these Rules is that the Juvenile Justice System should uphold the rights, safety and promote the physical and mental well-being of juveniles while incorporating the principles of the Beijing rules. 'The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.'


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30 Article 3, UN Convention on the Rights of the Child.
32 Rule 11 (b)
33 Adopted and proclaimed by the General Assembly resolution 45/112 of 14 December 1990.
provides that its provisions are to be 'interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, the International Covenants on Economic, Social and Cultural Rights, the International Covenants on Civil and Political Rights, the Declaration of the Rights of the Child, and the Convention on the Rights of the Child, and in the context of the Beijing Rules, as well as other instruments and norms relating to the rights, interests, and well-being of all children and young persons. The basic idea behind the Riyadh Guidelines is the recognition of the need for and importance of progressive delinquency-prevention policies. The policies are supposed to include various opportunities particularly education as it would not only satisfy the varying needs of the young but also would serve as a supportive framework for safeguarding the personal development of those children who being in social danger zone are in need of special care and protection.

3.4 Development of Juvenile Justice System in India

The History of the Juvenile Justice System in India has been divided here into five periods by reference to legislative or other landmark developments, namely, (i) prior to 1773; (ii) 1773-1850; (iii) 1850-1918; (iv) 1919-50; and (v) Post—1950. The year 1773 marked a historical break in the Indian legal system as the Regulating Act of 1773 granted to the East India Company the powers of making laws and enforcing them on a very restricted scale.

3.4.1 Prior to 1773

At that time personal laws of Hindus and Muslims were followed rigorously. Religious guiding principles had great impact on the life of the people. The law governing the children were vague and there was hardly any special law for separate treatment to the juvenile which largely depend on the ruler. However, personal laws of both the Hindus and Muslims had provisions for the maintenance of children. The primary responsibility to bring up children was that of parents and family.\textsuperscript{34} Charity for the care of poor and destitute has been a noble cause under both Hindu and Muslim laws and indirectly provided for the care of children.

children in case of failure of the family to do so.\footnote{35} Muslim law makes it compulsory for a person who finds an abandoned child to take its charge, if he has reason to believe that he may otherwise perish.\footnote{36}

It is generally mentioned that neither set of laws had any reference to juvenile delinquents.\footnote{37} However, a cursory study of the 'Manusmriti' and 'The Hedaya' show differential punishment to children for certain offences. For example, under the Hindu law, a child throwing filth on a public road was not liable for punishment but only to admonition and made to clean it, while an adult in similar circumstances was to pay a fine and made to clean the filth.\footnote{38} Hindu ethical codes find mention as to the type of treatment which should be meted out to the children as under:

A parent should not administer any punishment for any offence to a child who is under five years of age. Children of such tender age should be nursed and educated with love and affection only. After the age of five, punishment may be given in some suitable form, such as physical chastisement or rebuke by parents.

Towards the later half of childhood, however, punishment should be gradually withdrawn and replaced by advice. From the age of sixteen upward, sons and daughters should be treated as friends by parent.\footnote{39}

But this advice of the Hindu ethical code reflects for the treatment of children in different age categories the concern only in ethics it did not mean that

\begin{thebibliography}{99}
\item 35 The principle of Dharma under Hindu law made it incumbent on the king to provide to each one in the society an opportunity to realize his ultimate goal of human existence. R. Lingat, The Classical Law of India, translated from French with additions by I. D. M. Derrett, 1973, p. 39. Zakat, i.e., contribution of a portion of property assigned to the use of the poor is compulsory under specified circumstances under Muslim Law. Id., The Hedaya.
\item 36 Id. The Hedaya at 206ff.
\item 38 Munusmriti, Shloka 283, p. 390.
\item 39 U.N. Comparative Survey on Juvenile Delinquency p.130.
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they were actually treated in that way for their legal violations. Rather they were treated as adults when brought before legal institution for adjudication on legal violations. Under Muslim law a consented sex with a adult woman by a young boy was not punishable. This was based on the principle of lesser culpably of children for their criminal activity.

The purpose of punishment is correction and disposition of men with respect of it are different, some being sufficiently corrected by reprimands, whilst others more obstinate, require confinement, and even blows. Under the Hindu law, the motive, the time and place of offence, the ability of the criminal to suffer and the nature of crime, and its cause the punishment to fall on those who deserve it. Under the Hindu law the King was under the obligation, as was the case with the equity courts in England, to take care of a child's property till he came of age and became capable of taking care. This all indicates that children were treated as separate entities from adults, who needed more care for their survival. They were not fully responsible for their acts.

3.4.2 From 1773 to 1850

During this period of 1773 to 1850, East India Company emerged as a governing body from a trading company. This period saw the introduction of the first legislation relating to children. This period also witnessed the change in prison concept as a place for keeping convicts, from places for transporting convicts to places for keeping convicts. The report of the committee appointed by Lord William Bentinck, on the subject of jail discipline, was submitted in

40 The Hedaya, p. 187.
41 Id., p. 203.
43 Manusmriti, Chapter Eight, Shilka 28. See note 41, Supra at 39.
44 Till 1818 references to prisons in the archival material related to either the expenses of transporting convicts or for repairing the jails. Capt. Puton, executive officer, reported the state of the jail and several other buildings attached to it and the estimates of repairing it. Cons. No. 2 and 3, date of letter 30 July 1803, What bones No. 4 August 1803, Law Index 1801 -1810, p. 54; Report on Calcutta Jail, Cons. No. 2 and 3, 15 December 1809, Id., p. 167. For the recommendation for the erection of a prison for convicts, see, Marine Board reply for conveyance of convicts, Law Proceedings, Cons. No. 3, 2 October 1818.
45 Legislative, Cons. No. 1, 21 December 1836 4/8. Later T. B. Macaulay was co-opted to be its member. Legislative, Cons. No. 33 to 35, 28 December 1836 4/8.
1839. It fearlessly exposed the evils of the jail management existing then.\textsuperscript{46} India, as a British colony, did not remain unaffected from ongoing reformation movement in the West. The exploitation eased out the indigenous rural economy and forced many class of people to live in slums in the suburbs. It also increased destitution and delinquency among their children.\textsuperscript{47} Issue of the welfare of children came to fore in 1787. Krishna Chandra Ghoshal and Iai Narain Ghoshal pleaded with Lord Cornwallis, the then Governor-General in India, for establishing a "home" for destitute children in the vicinity of Calcutta.\textsuperscript{48} The first 'ragged school' for orphans and vagrant children in India was established in 1843 in Bombay through the exertions of an Englishman, Dr Buist, which is now known as the David Sasoon Industrial School.\textsuperscript{49} The school was established with the objectives

(i) the reformation of juvenile offenders arrested by the police, and
(ii) the encouragement of apprenticeship amongst the working classes.

All these developments together prepared the ground for the introduction of the Apprentices Act 1850.

3.4.3 From 1850 to 1919

This period saw many legislations being enacted covering a wide range of matters concerning children. The Female Infanticide Act, 1870, and The Vaccination Act, 1880 sought to secure life and health of infants; The Guardianship and Wards Act, 1890 made provisions for their continued care and protection. The Factory Act, 1881 took care of child labour and the need for special provisions for them was recognized. This act was enacted 'for better enabling children, and especially orphans and poor children brought up by public charity, to learn trades, crafts and employments by which when they come to full age, they may gain a livelihood.'\textsuperscript{50} The first legislation concerning came in 1850

\textsuperscript{46} Legislative, Cons. Nos 5, 6, 7, B. S., 29 January 1838 and Cons. Nos 43 and 46, 8 October 1838.
\textsuperscript{48} NAI Original letter dated 17 June 1787, no. 280, quoted in Ibid.
\textsuperscript{49} A Report on Juvenile Delinquency in India. See note 43, Supra at 10-11.
\textsuperscript{50} Original Legislative Consultations (Manuscript) Legislative Nos 8, 9, 8 January 1848.
when the Apprentices Act was passed. This Act in fact was not primarily concerned with the delinquent behaviour of children but laid down, as the name of the Act itself implies, the provisions relating to the relationship between employers and young persons learning a trade from them as apprentices. The Act provides that the father or the guardian could bind a child between the ages of 10 and 18 years up to the age of 21 years. Magistrates were authorized to act as guardian in respect of a destitute child or any child convicted of vagrancy or the commission of a petty offence and could bind him as an apprentice to learn a trade, craft or employment. This Act mooted the concept of neglected children for the first time for legislative purposes and provided for a community alternative to imprisonment of delinquent children for minor offences. The Apprentices Act 1850 was the harbinger of many other legislations to follow, laying down special provisions in relation to children. The Indian Penal Code, 1860 (IPC) declared children below 7 years of age as doli incapax, while the presumption of Mensrea could be rebutted in case of children in the 7-12 age group.

The Reformatory Schools Act, 1897 is a landmark in juvenile legislation in India. The considerations which lead to separate correctional institutions for young offenders in the U.S.A. and England had their impact in India as well. The Act provided that young offenders up to 15 years of age found guilty of offences punishable with imprisonment or transportation were not to be sent to ordinary prisons but to reformative schools. The Act, even today, acts as the basic law in those areas where no Children's Acts or any other special laws dealing with juvenile offenders have been enacted.

Prison reports in the meanwhile continued to point towards the need for change in policy and administration. Since the refugees, reformatories and other correctional institutions concentrated by the 1850's institutionalization was considered as non fruitful. Though only 10 percent of the total population was in

51 The Act was repeated by Apprentice Act, 1961, which does not contain provision relating to destitute or delinquent children. Children Acts passed in the meantime have taken care of these problems.
52 Ibid.
the 15-20 age, they made up almost a quarter of the criminal population. Those under 15 years made up 6.5 per cent of the criminal population. Juvenile delinquency was progressing from petty delinquencies to more and more heinous crimes. Prisons and other similar institutions failed to control crime and the rapid increase in juvenile delinquency paved way for alternative measures for children. Noticing the high rate of recommittals and the remarkable increase in the number of juvenile offenders, the government asked for further explanation, as also the names of jails having separate provisions for juveniles. The Whipping Act, 1864 followed as a consequence. It was hoped that the Whipping Act would prove to be of eminent service in thinning the juvenile population of the jails.

The Indian Jail Committee was constituted in 1864 immediately after the passing of the Whipping Act. The Committee was to intimate that the Act was not to supersede the necessity or the larger measures of prison reform. The Governor General, amending the little progress made since the 1838 report towards either improvement in the conditions of prisoners or the prevention of crime, said:

The loss of life amongst all classes of those confined in jail continues, year after year, to be very great, amounting at present to 7 per cent .... compared with the mortality in the jails of England, which is less than one percent .... and it seems on this ground alone that the inquiry is forced upon us, as to what steps should be taken to reduce, the great mortality which far exceeds that amongst other classes of the population.'

Juvenile delinquents and reformatories were such issues which required urgent legislative action. Some members of the Indian Jail Committee opposed education through reformatories in India, apprehending a great danger of unworthy parents urging their children to commit crimes to obtain government education. At the same time the Committee was clear that:

"It is of highest importance that juvenile offenders should not be

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54 Minute by the Governor General, p. 3, dated 3 March 1864.
55 Id., p. 1.
56 Indian Jail Committee Report, 1864, p. 20.
exposed to contamination by association, within our Jails, with more hardened and practiced culprits .... There are many reasons...for thinking that in absolute isolation from adults, lies the only prospect of preserving the young from corruption during their residence in jail. We are therefore unanimous in recommending that in every Jail means should be provided for separating juvenile offenders from adults, and that it is, moreover, highly desirable, wherever such an arrangement is practicable, that separate sleeping accommodation should be provided for each juvenile prison inmate.\(^57\)

The segregation of juveniles from adult offenders was secured within prisons by modifications in the prison codes of Madras, Bombay, North Western Provinces, and Bengal.\(^58\) The idea of a reformatory school for delinquent children was in the air for long in view of the bad prison conditions and the felt need for segregating delinquent children from adult offenders. The immediate impetus for enacting The Reformatory Schools Act, 1876 was provided by the Government of Bengal’s contemplation. In 1874, Sir Richard Temple, the then Lt. Governor of Bengal, had observed that imprisoned juvenile offenders were actually growing up in vice and ignorance.\(^59\) It was felt desirable that they should be subjected to reformatory and industrial training ‘instead of being brought in contact with older offenders in jail or being left to beg or live in streets. The proposed Bill was intended to apply to delinquent juveniles and other non-delinquent juveniles growing up in vagrancy and prone to inculcating criminal habits.

The Code of Criminal Procedure of 1898 contained relevant provisions\(^60\) regarding the jurisdiction of criminal courts and custody of juvenile offenders. The present position under the Code of Criminal Procedure, 1973 regarding jurisdiction is as follows:

\(^{58}\) Report of the Indian Jail Committee 1889, April 1889, p. 20.
\(^{59}\) Legislative Department, A Proceeding, March 1876, nos 23-4, quoted in G. Chatterjee, see, supra note 6 on p. 5.
\(^{60}\) Sections 29B and 399.
“Any offence not punishable with death or imprisonment for life committed by any person who at the date when he appears or is brought before the court is under the age of 16 years, may be tried by the Court of Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960 or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders”61

There was initially some doubt and judicial controversy as to whether Section 27 of the Code overrides the provisions in the Children Acts prohibiting the trial of juveniles in any court except children's courts. The issue has been set to rest by the Supreme Court in *Raghbir v. State of Haryana*62 where it was held that The Haryana Children Act, 1974 was to prevail over Section 27 of the Code and even a child accused of an offence punishable with death or life imprisonment could not be tried by ordinary criminal courts. Reformatory Schools Act, 1876 was repealed by Reformatory Schools Act, 1897 empowered the local government to effect the reformation in a more cohesive manner. Under this Act the Courts were empowered to order the detention of a youthful offender under fifteen years of age, found guilty of committing an offence punishable with transportation or imprisonment, to Reformatory School instead of sentencing them.

The Code of Criminal Procedure 1898 which came a year later authorized magistrates to send juvenile offenders to reformatories instead of prisons in the specified circumstances along with provisions relating to grant of probation and trial of children by the juvenile court.63 Children of members of criminal tribes were also given special attention under the Criminal Tribes (Amendments) Act,1897. This Act provided for the establishment of industrial, agricultural, and reformatory schools for children of members of the criminal tribes who were in the age group of 4-18 years. The local governments were empowered by this Act to remove such children from criminal tribal settlements and place them in a...
The report of the Indian Jails Committee, 1889, reiterated the need for segregation and classification of offenders according to their age and duration of sentence. While emphasizing that younger juveniles should never be punished with curtailment of diet, it recommended daily exercise and compulsory education for them. It also emphasized that habitual juvenile offenders should not be sent to reformatories as they take with them to the schools the worst traditions and practices of the convict prisons.64

In view of the expertise required of a magistrate to select appropriate cases for sending to reformatory schools, certain modifications in judicial procedure were introduced by some states in this period. The Government of the United Provinces passed a resolution for the appointment, in every district, of a special magistrate to try children’s cases in order to secure more intelligent treatment for them.65 The Bengal Government constituted a juvenile court though children charged jointly with another person above 15 years of age were not to be dealt with by this court. Reformatory Schools were established at many places in India—Madras, Burma, Bihar, Orissa, the Central Provinces, Bombay, and Delhi, but most of them were not considered to be appropriate.

3.4.4. From 1919-1950

One of the most significant developments in the history of the juvenile justice system in India is the Report of Indian Jail Committee 1919-20. It undertook the most comprehensive exercise for the overhauling of the entire prison system after visiting numerous jails and reformatory schools in the country and abroad. Preparation for a Children Act were underway in Madras since 1917 and it passed the legislation in June 1920.66

The Jail Committee 1919-20 noted that prison administration, since 1889,

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despite advances in the matters of administration, health, food, labour, etc., little attention was paid to the possibility of moral or intellectual improvement and reformation of prisoners. It pointed out that 'primary duty of keeping people out of prison, if it can possibly be done, has to be recognized by all including courts.

Children with defective intellect should be sent to institutions specially provided for them. For young offenders above the age of 15 years, it recommended Borstal Schools. The committee emphasized the need for aftercare as well as maintenance of records. The committee further recommended the constitution of children's courts with procedures 'as informal and elastic as possible. Taking note of the practical difficulty in creating children's courts in view of the small number of children committing crimes and to make magistrate realize that he was dealing with a special case requiring different viewpoint, it suggested that the regular magistrates should sit at special hours, and if possible, in a separate room to hear charges against juvenile offenders.

Madras (now Tamil Nadu) had already passed the first Children Act on 20 June 1920. Its provisions relating to age limit of childhood, prohibition against imprisonment of child offenders, remand homes, certified schools, and non—criminal children in bad surroundings were recommended for adoption by other states. Children Acts in Bengal and Bombay were enacted in quick succession in 1922 and 1924 respectively. Pursuant to the recommendations of the Indian Jail Committee, 1919-20, the Madras Children Act, 1920 was adopted in the Andhra area.


Order No. 992, dated 30 November 1928.
The only States which have not yet enacted any legislation in the area of juvenile delinquency are Nagaland, Orissa, Sikkim and Tripura. The Central Children Act has not so far been enforced in the Andaman and Nicobar Islands, Arunachal Pradesh, Chandigarh, Dadra and Nagar Haveli, Lakshadweep and Mizoram. Further, in many of the States the Children Acts have not been implemented in all the districts. In *Hiralal Mallick v. State of Bihar* the Supreme Court expressed its anguish regarding the lack of Children Acts in some of the States.

The Children Acts of British India followed a somewhat similar pattern. Delinquent and neglected juveniles were to be dealt with by the juvenile court, kept in remand homes and certified schools, or released on probation, with a possibility of imprisonment when the nature of offence was serious and the character of the offender so depraved as to justify imprisonment. The most important difference that had far-reaching consequences for children was the differential age limits for defining the child. It varied from 13 to 18 years under these Acts, and a person could be dealt with as a child in one state but not so in another.

Another enactment, The Vagrancy Act, 1943 also provided for the care and training of children below 14 years who lived on begging, were under unfit guardianship, or under the care of parents of drinking or criminal habits, frequently visited prostitutes, were destitute, or subjected to bad treatment.

Juvenile justice in its juridical sense did not get prime political attention of Indian nationalist movement leaders. Juvenile welfare, elementary education for children, and child labour, however, were specifically mentioned in the All-party Conference in August 1928 and the Congress Declaration, 1933. Mass migration of people due to partition aggravated the problem of juvenile delinquency and destitution, leading to sporadic political activities. Central Government realizing that very little had been done by states for looking after destitute and delinquent children, convened a Conference of Education Ministers of all provinces in

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68 National Institute of Social Defence; Towards Delinquency Control, 1979, p.22.
August 1949\textsuperscript{70} which recommended the appointment of an expert committee by the government for drafting a bill. The expert committee, prepared a draft which the education ministry considered as a Draft Bill. As the Bill was intended to be a model, it was cut short to focus on important and fundamental things, leaving the details to be filled in by the states according to their needs. The modified Bill was introduced in the Rajya Sabha on 14 September 1953, but it was withdrawn in view of the reorganization of Part C states to which it was to be extended.

3.4.5 Post-1950

Various official and non-official developments have contributed to the development of juvenile justice since 1950. The following section highlights some processes, including legal, which have contributed to the development of care and welfare measures for children in this period.

The Central Children Act, 1960 was intended to act as a model legislation for the states. The states of Assam, Rajasthan, Jammu and Kashmir, Haryana and Madhya Pradesh have passed Children Acts which are modeled on the more or less same pattern as The central Children Act, 1960 which was later amended in 1978 whereby the definition of 'Neglected child' has been widened by including the cases where the parents are not able to exercise proper care and control over the child and social workers were made available to the Juvenile Courts under the amended Act.

In a later case \textit{Sheela Barse v. Union of India}, \textsuperscript{71} the Supreme Court has emphasized that a central act is needed for ensuring social, economic and psychological rehabilitation of the children who are either accused of offences or are abandoned or destitute or lost. It further stressed the need not only of having a legislation, but to enforce it with all earnestness and each please like financial constraints would not serve our purpose in building up of powerful human resources who are to take the reins of nation in its forward march. The Supreme Court questioned the non enforcement of the Children Acts, it directed the states

\textsuperscript{70} English translation of Maulana Abul Kalam Azad’s Urdu speech delivered on 19 December 1953, Appendix VI, Annexure No. 125, Rajya Sabha Debates, 19 December 1953.

\textsuperscript{71} AIR 1986 S.C. 1175.
to ensure that the Act is brought into force and implemented in accordance with the provisions contained therein. In this context it is also important to quote Article 30 of the Constitution as amended by the amendment Act of 1976\textsuperscript{72} which makes provision for state to direct its policy towards securing that the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and moral and material abandonment. The Children Acts, which have been enacted prior to this amendment are to be considered for further improvement and for achieving this a central legislation applicable to all the states need to be enacted.

The lacunae and shortcomings which came to be identified in the Act of 1960 were sought to be cured by the Amendment in the Act so the Children Amendment Act, 1918 was passed which made some changes as under:

(a) The definition of the term 'neglected child' was widened by including the cases where the parents are not able to exercise proper care and control over the child. Previously the definition referred to those parents only who were unfit to exercise care and control over the children. It must, however, be said that though the provision is sound in theoretical terms, there may be practical difficulties in the implementation of this policy having regard to the extreme poverty among large sections of the country's population. Probably there may be millions of children who may need the benefits of this provision.

(b) There were two kinds of authorities i.e. juvenile court and child welfare boards, to deal with delinquent and neglected children respectively under the Act of 1960. Now sometimes delinquency may be nothing but the consequence of parents' negligence and a 'delinquent' child in such a case must be sent to the welfare board rather than to the juvenile court. Such a course was not permissible under the Act of 1960. The Amending Act removed this difficulty. Now it was possible to achieve some mobility between the two agencies. A child

\textsuperscript{72} Article 30 (f), Constitution of India, 1950 provides "that children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment,".
could now be sent from the juvenile court to the welfare board and vice versa.

During the pendency of any enquiry under the Act, the child was to be kept in an observation home established under Section 11 of the Act, 1960. The problem with these observation homes is that they are of an institutional kind i.e. quite official and impersonal in their approach and environment. Beside the observation home, a child could not be sent to any other place of safety which may be better in terms of individual attention and personal warmth.

(d) The children's courts constituted under Section 5 of the Act of 1960 had only magistrates without any social worker; a deficiency in view of the correctional philosophy of the court. This was taken care of by the amending Act.73

3.5 Various Plans, Policies and Welfare Boards

With the establishment of the Planning Commission in 1951, the Five Year Plans were started and provisions for children were made under these Plans though implementation of services and juvenile justice has not been a specific head of expenditure in the Five Year Plans. Implementation of state as well as central Acts relating to neglected and delinquent children has remained with the states.

The Eighth Plan recognized the 'Girl Child' as an important target group, demanding attention of the government for her development and to fight against the prevailing gender discrimination. The Ninth Plan took note of the persistent discrimination against the girl child and aimed to eliminate all forms of discrimination and violation of the rights of the girl child which include strict enforcement of laws against pre-natal sex selection and the practice of female foeticide/female infanticide; child marriage; child abuse; child labour; or child prostitution etc. It took cognizance of the increasing problems of social maladjustments such as juvenile delinquency/vagrancy, abuse, crime, and exploitation.

The draft Tenth Five Year Plan by the ministry of social justice and

73 Towards Delinquency Control, op. cit., p.45.
empowerment hinds that mandate is to reach out to every child in need of care and protection and to ensure that his/her basic rights are fulfilled.

3.5.1 National Policy for Children

In 1974, India declared its 'National Policy for Children' recognizing children as a Nation’s supremely important asset and that their programmes must find a prominent place in the national plans for the development of human resources. In 1975 a National Children's Board under the chairmanship of the Prime Minister was constituted. The United Nations declared 1979 as the International Year of the Child (IYC). Its theme in India, 'Reaching the Deprived Child; was 'deliberately chosen to emphasize the fact that if we are to tackle the problems of children comprehensively in a vast country like ours with an immense population, we should prioritize and first focus action on children of the underprivileged and deprived sections of the society'.

The momentum generated by the then SAARC Conference on Children in 1980 contributed to the convening of the World Summit for Children held in New York in September 1990 declaring 1990 as the SAARC year of the Girl Child and 1991-2000 as the decade of the Girl Child thereafter. A National Programme of Action on Children-India' was approved by the union cabinet on 18 June 1992 as a follow-up of the World Declaration on the Survival, Protection, and Development of Children, reaffirming India’s commitment to achieving the goals detailed in the programme.

3.5.2 Establishment of Central Social Welfare Board

In 1953, the Central Social Welfare Board was established which was wholly financed by government for Child care programmes and projects, such as rural Balwadis, holiday homes, women's homes, etc.,

In 1985 the department of women and child development was set up in the ministry of human resource development to ensure development of women and children. The Union HRD minister had said that a National Commission for Children, consisting of seven members with a retired Supreme Court Judge as its

74 IYC in India, ministry of social welfare, Government of India, 1980
head, would be constituted to implement the rights for children as enshrined in the Constitution.75 However, that still continues to be in the realm of promises.76

3.6 Various Enactments by the Government of India

Constitution of India secured special status for children in the Indian community since its adoption in 1950. Children figure in the chapter containing Fundamental Rights and the Directive Principles of state policy. The Nehru Report77 which contained the principles of the Constitution of India also provided for free elementary education and urged Parliament to make suitable laws for maintenance of health and fitness for work of all citizens and welfare of children. The provisions are incorporated in the Constitution in Articles 15 (3) 24, 39 (e) and (f), and 45. Article 15 (3) of the constitution permitted the state to enact special legislation for women and children.78 The constitution guaranteed the children below 14 years of age against their employment to work in a factory or mine or engaged in any other hazardous employment. In the light of Article 39 (e) and (f) and 45 of the Constitution an employment which interferes with the education of the child or exposes him/her to exploitation is hazardous79 . Article 45 requires the State to endeavour to provide for free and compulsory education for all children or to the age of 14 years. Dr W C. Reckless, UN Expert on criminology and correctional administration recommending progressive prison administration in India suggested giving top priority to removal of juvenile delinquents from adult jails, adult courts and police lock-ups as well as to the provision for juvenile courts, remand homes, probation, certified schools and

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76 Panel to protect rights of children on the anvil; The Times of India, 26 March 2002.
78 Anjali v State of West Bengal, AIR 1952 (SC) 825.
79 See, ‘An Abstract of Professor Upendra Baxi’s Keynote Address delivered at the Seminar on Child Labour in India, held at the Indian Social Institute, New Delhi, 14-16 November 1985.
after care. In 1958 U.N declaration of the Rights of the Child further passed enactment of special law for children. India passed its first central legislation, namely, the Children Act, 1960 applicable only to the Union Territories. This model was to be approved by the states in the enactment of their respective Children Acts.

Children Act, 1960 brought a drastic change prohibiting imprisonment of children for the first time in India under any circumstance. It also introduced a sex- discriminatory definition of child. It provided for two separate bodies to deal with the delinquent and neglected children which were called children court and child welfare board respectively. This act introduced the system of three-tier institutions, namely, an observation home for receiving children during the pendency of their proceedings, a children’s home for housing neglected children, and a special school for delinquent children. All states which enacted their Children Acts following the Children Act, 1960 had provisions similar to it.

Gujarat High Court in Kario alias Mansingh Malu and others v State of Gujarat. See Statement of Objects and Reasons, The Children (Amendment) Bill 1978 struck down provision prohibiting a lawyer in juvenile court proceedings. Due to certain difficulties faced over the years in the functioning of the Children Courts, Children Amendment Act, 1978 was passed which permitted lawyers in a children court and made provisions for inter-transfer of children between board and children court except Nagaland, Orissa, Sikkim, and Tripura, all states enacted their Children Acts and in the International Year of child. However, these acts were not in conformity with the Central Act. Karnataka and Andhra Pradesh, however, amended the definition of child on the lines of the

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Central Children Act for want of a uniformity in the Children Acts. Children continued to be subjected to differential treatment originating from the varying conceptions of child and childhood. The Constitutional guarantee of Equal protection of the law became a casualty of the legislative autonomy of the states.

The age below which a person was considered to be a child differed at least in six states. West Bengal and Gujarat had prescribed 18 years for both girls and boys. In Maharashtra, Punjab, and Uttar Pradesh it was 16 years for both. Tamil Nadu described persons below 14 years as children and those above 14 but below 18 as young persons, and institutions for them were established on this basis. Difference in age led to differential treatment being meted out to children of the same age group residing in different states. A delinquent child of seventeen years was entitled to all the benefits of the Children Act in Gujarat or West Bengal but if she belonged to Maharashtra or was transferred there, she would have been treated as an adult offender and might have ended up in its jails.

States like Maharashtra and Gujarat were involving volunteers and public in the work of the Children Act in good measure—thus keeping the child in the mainstream of society. In a majority of states this outlook itself was missing which not only adversely affected their development and growth but also resulted in their alienation from the community. The approach towards institutions also differed under the various Children Acts. Karnataka, Kerala, Maharashtra, Punjab, and Uttar Pradesh had a single institution for both delinquent and neglected children and that was contrary to the principle of segregation and individualization. Imprisonment in exceptional circumstances was permissible under the Children Acts of Madras, Punjab, and Uttar Pradesh while it was specifically barred under the Children Act, 1960 and other Acts following it.
By 1984-85\textsuperscript{82} the Children Acts, though enacted, were not enforced at all in Sikkim, Tripura, Arunachal Pradesh, Chandigarh, and Lakshwadeep and were enforced partially in Assam and Jammu and Kashmir. Even at places where the Acts were enforced the specialized machinery had either not been constituted at all\textsuperscript{83} or not constituted in the prescribed manner.\textsuperscript{84} The need for a uniform Children Act continued to be emphasized at official and non-official fora,\textsuperscript{85} but the Central government showed its inability to enact one on the ground that the subject matter of Children Act fell in the state list of the Seventh Schedule of the Constitution.\textsuperscript{86} The judiciary, too, time and again emphasized the need for a Children Act in every state.\textsuperscript{87}

The stage for bringing about uniformity in the law relating to juvenile justice all over the country was set with the adoption by the UN General Assembly of the Beijing Rules in 1985, recommendation for a uniform law in the 69\textsuperscript{th} Report of the Committee on Subordinate Legislation tabled in Parliament on 12 May 1986 and the Supreme Court's suggestion in 1986 for initiation of parliamentary legislation on the subject.

Parliament enacted the Juvenile Justice Act, 1986 and brought it into force

\textsuperscript{82} ‘Statistical Survey Children Homes/Fit Persons Institutions 1984-5’ 96, Social Defence, 43 Table 1, April 1989, pp. 44-5.

\textsuperscript{83} There were only 175 residential institutions established in the 401 districts in 1984-5.

\textsuperscript{84} Sunil Kumar \textit{v} State, 1983 Cri LJ 99 (Ker). See also, Chapter Five.

\textsuperscript{85} The issue was raised and discussed time and again in Parliament during the debates on the Children Bills of 1953 and 1959. See Chapter Three. See Report of the Committee for the Preparation of a Programme for Children, Ganga Sharan Sinha, Chairperson, 1968, pp. 209-10. It was recommended by social scientists and experts in a Seminar organized by the National Institute of Social Defence. The Times of India, 16 March 1980. Another National Seminar on Child and Law organized by the National Institute for Public Co-operation and Child Development also emphasized streamlining of machinery for effective implementation of Children Acts, Indian Express, 4 December 1982. See also, S. Barse, ‘Towards a Uniform Justice System; Indian Express, 8 September 1985; Workshop on National Children’s Act, New Delhi, 10 August 86, infra note 180; V. Kumari, ‘Uniform Children Act-Its Feasibility under the Constitution Z 1987 SCC (Cri) (Jour)


\textsuperscript{87} For example, Sheela Barse \textit{v} Union of India, AIR 1986 (SC) 1773; Nuruddin \textit{v} State of HP 1984 Cri LJ 1712; Moti \textit{v} State, 1981 Cri LJ 45 (NOC).
on 2 October 1987 in all the areas to which it was extended. Though the JJA extended to the whole of India except the state of Jammu and Kashmir, it virtually brought about a uniform system of juvenile justice in the whole country.\footnote{88} In addition, the JJA provided for prohibition of confinement of children in police lock-up or jail, separate institutions for the processing, treatment, and rehabilitation of the neglected and delinquent children, a wide range of disposition alternatives, to family/community-based placement, and a vigorous involvement of voluntary agencies at various stages of the juvenile justice process.

Most of the states had not set up the basic infrastructure consisting of juvenile welfare boards, juvenile courts, observation homes, juvenile homes, special homes and after care homes. Despite mandatory requirements, the minimum standards for institutional care in terms of accommodation, maintenance, education, vocational training, or rehabilitation, were not spelt out in most of the states. There was no definite policy towards the manpower development of juvenile justice. The gap between rhetoric and reality further widened with the ratification of the Convention on the Rights of the Child.\footnote{89} A number of national consultations were held concerning juvenile justice administration during 1999-2000 to improve the existing unsatisfactory state of affairs.\footnote{90}

It was with this background that a committee was appointed under the chairmanship of Justice Krishna Iyer to prepare a Children Code. This committee prepared the Children’s Code Bill 2000 and presented it to the Prime Minister Atal Bihari Vajpayee on 14 November 2000. He assured that the Children’s Code 

\footnote{88} The provisions of the Jammu and Kashmir Children Act 1970, in force in Jammu and Kashmir, were more or less similar in approach to the JJA.

\footnote{89} ‘Current Issues in Juvenile Justice Administration; paper presented at the National Consultation on Juvenile Justice held at the National Law School of India University, Bangalore during 11—13 February 1999.

\footnote{90} Namely, National Consultations Meet on the Juvenile Justice System and the Rights of Child held by the National Institute of Public Cooperation and Child Development, Delhi, 20-1 January 1999; National Consultations on Juvenile Justice, National Law School of India University, Bangalore on 11-13 February 1999; National Seminar on juvenile Justice held by Butterflies, Delhi, 8-9 April 1999; National Consultations on Juvenile Homes held by Prayas Institute for Juvenile Justice, Delhi, 29-30 July 1999. There were also regional consultations held in Madras, Hyderabad, and Patna.
Bill 2000 would be a valuable input: The Juvenile Justice (Care and Protection of Children) Bill 2000 was introduced in the Lok Sabha and Rajya Sabha without any mention of the Children's Code Bill 2000. It introduces a wider range of community placement options in terms of adoption, foster homes, shelter homes, and sponsorship while imposing fine on the parents and providing counselling to the family of a child in conflict with law. The JJ (C&P) Act 2000 recognizes the family of the child as a unit to deal with while dealing with children. The good intentions in bringing forth the new legislation have been marred by loose and inconsistent drafting.

The Juvenile Justice (Care and Protection of Children) Act, 2000 is designed for the care, protection, treatment, development and rehabilitation of delinquent juvenile and for the adjudication of certain matters relating to and disposition of delinquent juveniles. The Juvenile Justice (Care and Protection of Children) Act, 2000 which replaced J. J. Act, 1986 provides for a uniform legal framework of justice across the country with a view to ensure that no child in any circumstance is lodged in jail or lock up. This act covered children upto 18 years. The Act took care for providing machinery and infrastructure required for care protection development and rehabilitation of children. There is a fine distinction between the two bodies to deal with the children. Juvenile Justice Boards deal with juvenile in conflict with law and Child Welfare Committees are constituted for the care and protection and treatment of child in need of care and protection. The J.J. Act of 2000 enables the competent authority a wide range of disposition alternative with preference to family and community based placement.

In enacting this act the Parliament considered a progressive law in accordance with international principles, such as United Nations Conventions on the Rights of the child to which India became a signatory in 1992. The United Nations Rules provides for the protection of the juveniles deprived of their liberty and all other relevant international instruments. It is, however, widely believed that inspite of government's positive intention to implement the Act there are considerable failures in the existing system.
The Juvenile Justice (Care and Protection of Children) Act, 2000\(^91\) is aimed at achieving the following objects:

(i) to lay down the basic principles for administering justice to a juvenile or the child in the Bill;

(ii) to make the juvenile system meant for a juvenile or the child more appreciative of the developmental needs in comparison to criminal justice system as applicable to adults;

(iii) to bring the juvenile law in conformity with the United Convention on the Rights of the Child;

(iv) to prescribe a uniform age of eighteen years for both boys and girls;

(v) to ensure speedy disposal of cases by the authorities envisaged under this Bill regarding juvenile or the child within a time limit of four months;

(vi) to spell out the role of the State as a facilitator rather than doer by involving voluntary organizations and local bodies in the implementation of the proposed legislation;

(vii) to create special justice police units with a humane approach through sensitisation and training of police personnel;

(viii) to enable increased accessibility to a juvenile or the child by establishing Juvenile Justice Boards and Child Welfare Committees and Homes in each district or group of districts;

(ix) to minimise the stigma and in keeping with the developmental needs of the juvenile or the child, to separate the Bill into two parts- one for juveniles in conflict with law and the other for the juvenile or the child in need of care and protection.

(x) to provide for effective provisions and various alternatives for rehabilitation and social reintegration such as adoption, foster care, sponsorship and aftercare of abandoned, destitute, neglected and delinquent juvenile and child.

The Juvenile Justice Act, 2000 laid down a primarily law not only for the

\(^{91}\) Statement of Objects and Reasons of J.J.(C & P), Act, 2000
care and protection of the children but also for the adjudication and disposition of matter relating to children in conflict with law. The J.J. System is limited in its application to children committed offence and when in need of care and protection.

There was a growing feeling that greater attention was required for children in conflict with law and those in need of care and protection. There is an urgent need for creating adequate infrastructure necessary for implementation of the legislation with their involvement of informal system specially the family, the volunteer organization and the community. The JJ (C & P) Act, 2000 raised the age of juvenile and child to be covered under the Act to 18 years. Juvenile in conflict with law is a child defined as a juvenile who is alleged to have committed an offence and has not completed 18th years of age as on date of commission of such offence. The child in need of care and protection” means a child\[92\]

(i) who is found without any home or settled place or abode and without any ostensible means of subsistence,

(ia) who is found begging, or who is either a street child or a working child,

(ii) who resides with a person (whether a guardian of the child or not) and such person-

(a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or

(b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,

(iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,

(iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,

(v) who does not have parent and no one is willing to take care of or

\[92\] Ins. By Act 33 of 2006, sec. 4 (w.e.f.22.8.2006).
whose parents have abandoned (or surrendered) him or who is missing and run away child and whose parents cannot be found after reasonable injury,

(vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts.

(vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking,

(viii) who is being or is likely to be abused for unconscionable gains,

(ix) who is victim of any armed conflict, civil commotion or natural calamity;

Juvenile Justice Board constituted to deal with the juvenile in conflict with law would consist of a Metropolitan Magistrate or Judicial Magistrate 1st Class and two social workers of whom at least one would be a woman. The Magistrate on Board shall be designated as Principal Magistrate. The Magistrate is required to have special knowledge or training in child psychology or child welfare. No social worker shall be appointed unless he is actively involved in health education or welfare activity pertaining to children for at least 7 years. The Amendment Act of 2006 requires the State Governments within a period of one year from the date of commencement of the juvenile justice (care and protection of Children) Amendment Act, 2006 to constitute for every district one or more juvenile justice boards for exercising the power and discharging the duties conferred on such boards in relation to juveniles in conflict with law.

To keep the juvenile away from the routine and regular courts filled with vicious atmosphere. The rules 2007 provides that in no circumstance the board shall operate from within any court premises. It directs that the board shall hold its sitting in premises of an observation home or any place in proximity of the observation home or at any other suitable premises in any institution run under the Act which shall be child friendly. Rule 14 provides that the board shall conduct the proceeding in non-adversarial environment. Legal Officer in the District child protection in it and the State Legal Aid Services Authority is under a legal obligation to provide legal services sought by the board in the enquiries

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which are required to be completed within stipulated time of four month. Separate residential facilities for boys and girls upto 12 years, 13-15 years and 16 years and above are to be set up in the observation homes, special homes set up by the Government or voluntarily organizations recognized by the State Government.

Bail to a juvenile is his valuable right. Liberty of any individual particularly a juvenile has to be protected and taken atmost care within the parameter of the law. The Section 12 of J.J.(C & P) Act, 2000 has made it mandatory to release any person accused of a bailable or non bailable offence, and apparently a juvenile, on his arrest, detention, appearance before the Board, notwithstanding anything contained in the Cr.P.C. of 1973 or any other law for the time being in force or place him under supervision of a Protection Officer or under the Care of any fit institution or a fit person. But he may be detained and refused bail if there are reasonable ground for believing that his release is likely to bring him into association with any non criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

So far as disposition of a juvenile is concerned no juvenile in conflict of law can be sentenced to death or imprisonment for any term which may extend to imprisonment for life or committed to prison in default of fine or in default of furnishing security. Provision has made to keep juvenile in place of safety if he has attained 16 years of age in case the offence committed is serious in nature and due to his conduct and behaviour it would not be in the interest of justice or other juveniles in a special home to send him to special home and other measures provided under the Act are found not suitable and sufficient. A juvenile dealt under the Act will not suffer any disqualification attached to conviction of an offence under the law. This beneficial legislation for juvenile has been made applicable to all proceedings in respect of a juvenile pending in any court or area.

The J.J.(C & P) Act of 2000 has made provisions for Children Homes for children in need of care and protection, Shelter Homes for children in need of
care and protection, such as street children, run away children. Such Shelter Homes would include short stay homes, transitional homes etc. Creation of special juvenile police units at District level and posting of child welfare officer at police station level is also noted.

The JJ (C & P), Act, 2000 taking a big step towards the rehabilitation and social re-integration of child has enacted provisions for rehabilitation and social re-integration of a child in children homes or special homes by way of adoption, foster care, sponsorship and sending the child to and after care organization. It is the primary responsibility of the family to provide care and protection to the child. Adoption is required for the rehabilitation of the children who are orphan, or surrendered through such mechanism as may be prescribed. A child is declared surrendered after due process of enquiry by Committee. A surrendered child to be free for adoption would be any of the following :-

(i) born as consequence of a non consensual relationship;
(ii) born of an unwed mother or out of wedlock;
(iii) a child in whose case one of biological parent is dead and the living parent is incapacitated to take care;
(iv) A child where the parents or guardians are compelled to relinquish him due to physical, emotional and social factors beyond their control.

No child above 7 years of age who can understand and express his opinion shall be declared free for adoption without his consent. For children, who cannot be placed in adoption, they shall be kept under the supervision of a Probation Officer or Care Worker or some worker under the order of the competent authority, for foster care for a period depending on the need of the child.

It is the duty of the State Government to prepare sponsorship programme in consultation with the non governmental organizations, child Welfare Committee and other relevant Government Agencies and corporate sectors. After identifying families and children at risk necessary support service in the form of sponsorship for child's education, health, nutrition and other developmental needs are to be provided by the State Government with the help of District or State
Child Protection in the State.

For care of juveniles or children after they leave special home or children homes with the objective to facilitate their transition from an institution based life to mainstream society for social reintegration this after care programme is available for 18-21 years old persons who have no place to or are unable to support themselves. Juvenile Justice has not been taken seriously. Many states have still not constituted adequate number of Juveniles Courts or Juvenile Welfare Boards. There is a poor network of juvenile observation homes or reception-cum-classification centres where these observation homes or boards do exist, they are not manned by the kind of sensitive personnel envisaged under the Juvenile Justice Act.

Juvenile Justice System has gained some shape with passing of Juvenile Justice (Care and Protection of Children), Act 2000. Magistrate to deal with the juvenile are also from the State cadre of the Magistrates and not specialized person. Dealing for fulfillment of ends and better enforcement of the act in the real sense the persons dealing with children need to be sensitized themselves with this Act. Provisions and problems of the Act need to be understood only then improvements can be suggested. One should not forget that a juvenile delinquent, could be nothing more than a poor child caught red-handed in the struggle for survival and he or she deserves an empathic treatment.

The provisions should be there for a support person for the juvenile throughout investigative process enquiry and even after enquiry is over, to enable the child to have a single support person to help him/her during the enquiry process.