CHAPTER-IV

LAW RELATING TO JUVENILE OFFENDER

4.1. Introduction

Declaring children supremely important asset of the nation, the national policy for children in 1974 maintained that their nature and solicitude are the sole responsibility of the nation and State has to provide adequate services to children up to full physical, mental and social development. Along with it, State shall also protect the children against neglect, cruelty and exploitation. The socially handicapped children who have become delinquent have been ensured facilities for education, training and rehabilitation. This National Policy for Children in 1974 also contains provision for special assistant to all children belonging to the weaker sections to attain equality of opportunity.

By virtue of a different nomenclature and different character, the concept of juvenile justice is vastly different from the concept of criminal justice so is the law applicable to the juveniles. The concept of juvenile justice as a philosophy envisages a comprehensive approach towards dealing with the problems of delinquent children and those vulnerable to delinquency through care, protection, treatment, rehabilitation, aftercare and follow-up. The juvenile justice system gives high priority to reducing the need for legal interventions in order to avoid children's cases from ill-effects of criminalization, penalization and stigmatization. The purpose behind this different attitude towards children is to save them from ordinary criminal court games, wherein the punitive considerations prevail over protective considerations. The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders observed that the concept of justice at the former stage (before the onset of delinquency) hardly ever has a legal connotation. It is essentially the notion of social and ethical justice. This involves the devolution and, even, imposition of social responsibilities on the child whilst at the same time demonstrating societal
concern for him.\textsuperscript{1} The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, identified three models of juvenile justice system on the basis of contemporary approaches to dealing with juvenile offenders:\textsuperscript{2}

(i) the due procedural model;
(ii) the social welfare model; and
(iii) the participatory process model.

The first model is based upon the concept of equality, the role of law and due process, the professional lawyers making the main decisions. The second model is based upon notions of economic and social justice through State planning and welfare, with administrators and professionals from the "helping services" making the main decision. The resolution of the issue with respect to the first two competing models is essential for the proper development of a mechanism to control and protect the juveniles. The third model resolves the issue because juvenile justice can more meaningfully take place at the macro level, with greater participation of citizens in the resolving or containing of conflict at the local level with a minimum intervention of the centralized power structure of the modern State. The third model exists still in the pre-industrialized countries and is also applied to juvenile and youthful offenders in the developing countries. At present there is hardly any country in which juvenile justice system subscribes entirely to one of these three models. Most juvenile justice systems have elements of each model to a varying degree. The balance between the three models has been achieved according to the culture and the stage of development of a country. The juvenile justice system in each country is related to the history and culture of the country, to the criminal justice system for adults and to other social institutions.

The juvenile justice system reaffirms its positive faith in fundamental

human rights, the dignity and the worth of the individual. It recognizes that that the children, by reason of their physical and mental immaturity, need special safeguards and care, including appropriate legal protection. The underlying idea is that the children should enjoy special protection and be given opportunities and facilities, by law and by other means, to enable them to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. The State owes a different duty to children than to adults.

After adoption of the National Policy for Children and prior to enforcement of the Juvenile Justice Act, 1986 three sets of laws applied to children in different parts of the country. In the states and districts where the Children Act was not enacted or if enacted not enforced, provisions of the Code of Criminal Procedure 1973 Cr. P C applied. The Children Acts applicable in the remaining areas were divided into two categories. The first category included the Children Acts enacted prior to the Children Act 1960, and the other consisted of the Children Acts passed thereafter.

The principles, procedure, and consequences relating to children also differed materially under these three sets of laws. The differences resulted in discriminatory treatment being meted out to children residing in different parts of the country. A delinquent child of seventeen years was entitled to the benefits of the Children Act in Gujarat or West Bengal but not so in Maharashtra. A child whose parents were unable to take his/her care was included in the definition of neglected children by the Children Act 1960 but not by the Children Acts of Uttar Pradesh and Gujarat, resulting in denial of state care to them. In some areas, delinquent children could be sentenced to death, in others they could be imprisoned only in exceptional cases, and in some other areas imprisonment of children was illegal under any circumstance. The centre made efforts to bring about uniformity by persuading the states to amend their Children Acts in conformity with the Children Act 1960. Only Karnataka and Andhra Pradesh amended their Children Acts to bring the definition of child in accordance with
the Children Act 1960. The centre due to the constitutional scheme was obliged to extend the Children Act 1960 to the whole country.

Amendments were introduced to remove some of the problem faced in the operation of the Children Act 1960 by the Children (Amendment) Act 1978. The prohibition against the presence of a lawyer before the competent authority was lifted in the case of juvenile courts in view of the order of the Gujarat High Court striking down a similar provision in the Saurashtra Children Act. Provision was made for inter-transfer of delinquent and neglected children between the juvenile court and the child welfare board, if it was found necessary in the circumstances of the case. The amending Act also included provisions defining 'place of safety, 'fit person and fit institutional. It also provided for keeping the children at a place of safety and for placing them under the care of a fit person. The children court was required to be assisted by a panel of two social workers. Other Children Acts that had adopted the scheme and provisions of the Children Act 1960 did not incorporate the changes introduced by the amendment Act.

The Children Act 1960 introduced provisions for separate handling of delinquent and non-delinquent children through specialized institutions. It also emphasized that the children below certain age (16 for boys, 18 for girls) should not be dealt with by ordinary criminal courts and should not be sent to prisons. It also provided for set up of Children Welfare Board to deal with non-delinquent children. Juvenile Justice Act 1986 replaced Central Children Act, 1960 and State Children Acts. However, the scheme for institutional treatment, more or less remained same. The State Governments were required to establish and maintain juvenile homes for neglected juveniles and special homes for delinquent juveniles. Due to international obligations and various conventions and guidelines of the United Nations to which India is also a signatory the Government of India enacted Juvenile Justice (C&P) Act, 2000. Keeping in view the fact that much greater attention was required and a distinction had to be drawn between the treatment of juvenile in conflict with law and those in need of care and protection, the Juvenile Justice (C & P) Act, 2000 created a separate system of justice
dispensation. The Act also provided for effective involvement of informal social arrangements at the level of the family voluntary organizations and the Community.

4.2 National Policy and Scheme for Children

The National Policy for Children adopted by the Government of India on August 22, 1974 stated that "the nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by Society. 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 ensuring social justice." Keeping in view these goals, the government of India resolved that it shall be the policy of the State to provide adequate services to children, both before and after birth and through the period of growth to ensure their full physical, mental and social development. The State shall progressively increase the scope of such services so that, within a reasonable time, all children in the country enjoy optimum conditions for their balanced growth. In particular, the following measures shall be adopted towards the attainment of these objectives:

(i) All children shall be covered by a comprehensive health programme.

(ii) Programmes shall be implemented to provide nutrition services with the object of removing deficiencies in the diet of children.

(iii) Programmes will be undertaken for the general improvement of the health and for the care, nutrition and nutrition education of expectant and nursing mothers.

(iv) The State shall take steps to provide free and compulsory education for all children up to the age of 14 for which a time bound programme will be drawn up consistent with the availability of resources. Special efforts will be made to reduce

---

the prevailing wastage and stagnation in schools, particularly in the case of girls and children of the weaker sections of the society. The programme of informal education for pre-school children from such sections will also be taken-up.

(v) Children who are not able to take full advantage of formal school education should be provided with other forms of education suited to their requirements.

(vi) Physical education, games, sports and other types of recreational as well as cultural and scientific activities shall be promoted in schools, community centers and such other institutions.

(vii) To ensure equality of opportunity, special assistance shall be provided to all children belonging to the weaker sections of the society, such as children belonging to the Scheduled Castes and Scheduled Tribes and those belonging to the economically weaker sections, both in urban and rural areas.

(viii) Children who are socially handicapped, who have become delinquent or have been forced to take to begging or are otherwise in distress, shall be provided facilities of education, training and rehabilitation and will be helped to become useful citizens.

(ix) Children shall be protected against neglect, cruelty and exploitation.

(x) No child under 14 years shall be permitted to be engaged in any hazardous occupation or be made to undertake heavy work.

(xi) Facilities shall be provided for special treatment, education, rehabilitation and care of children who are physically handicapped, emotionally disturbed or mentally retarded.

(xii) Children shall be given priority for protection and relief in times of distress or natural calamity.

(xiii) Special programmes shall be formulated to spot, encourage and assist gifted children, particularly those belonging to the weaker sections of the society.

(xiv) Existing laws should be amended so that in all legal disputes whether between parties or institutions, the interests of children are given paramount consideration.

(xv) In organizing services for children, efforts would be directed to strengthen
family ties so that full potentialities of growth of children are realized within the normal family, neighborhood and community environment. In formulating programmes in different sectors, priority shall be given to programmes relating to:

(a) preventive and promotive aspects of child health;
(b) nutrition for infants and children in the pre-school age along with nutrition for nursing and expectant mothers;
(c) maintenance, education and training of orphan and destitute children;
(d) crèches and other facilities for the care of children of working or ailing mothers; and
(e) care, education, training and rehabilitation of handicapped children.

The Government of India prepared in 1979, the National Plan of Action in observance of the International Year of the Child. The Plan stated that the specific objectives of the observance of the International Year of the Child in India shall be as under:

(a) To make concerted efforts to significantly reduce the incidence of maternal and child mortality and morbidity by providing effective programmes and services of their health and nutritional needs.
(b) To promote community awareness and education about the crucial importance of the healthy development of the child and a happy family life as the foundation for the child's security and well-being.
(c) To facilitate optimum psycho-social development of pre-school children so as to prepare them for schooling by providing a network of Balwadis/ Anganwadis/ Crèches/ day-care centers/ nursery schools.
(d) To strive for the speedy realization of the goal of universal elementary education and to substantially reduce the rates of school drop-out.
(e) To secure the basic rights of children and to protect them against neglect, cruelty, hazards and exploitation by promoting effective implementation of existing legislation and enacting new ones where necessary.
(f) To secure entitlement of all children in the poverty groups born no/after 1

---

4 National Plan of Action during the International Year of the Child (1979)
January 1979 to public assistance for their survival, growth and development.

The approach strategy had accepted the following guidelines:
(a) The general theme of IYC in India shall be “Reaching the Deprived Child”.
(b) The IYC should not be construed as a one year programme. It should be viewed as a spring board for vigorous and continued action during the residual part of the century. The goals and objectives as spelled out should positively be achieved by the end of the century and to this end, a perspective plan for the next two decades (1979-99) should be evolved.
(c) The emphasis during this period shall be on children of weaker sections of Society, namely, Scheduled Castes, Scheduled Tribes and other poverty groups located in rural areas and urban slums. Within this target group, greater attention should be bestowed on children in the age group of 0-6 years, primary school children as also pregnant and nursing mothers.
(d) Since it will be difficult to cover, during IYC, all children under health and nutrition programmes, priority should be given to cater to the needs of children below the age of 6 years, pregnant and nursing mothers.
(e) During the IYC, an attempt should be made to reduce maternal and infant mortality rate by about five percent.

4.2.1 Scheme for Children in Need of Care and Protection

The Government of India has finalized a national scheme for the welfare of children in need of care and protection. The objective of the Scheme is to expand and strengthen the available network of welfare services for destitute children in order to rehabilitate them as normal citizens in the community they belong to. The programme for the purpose includes ameliorative services of food, shelter, clothing, medical attention and curative services of education, pre-vocational and vocational training, vocational guidance, recreation and cultural development and citizenship education. Under this programme, it is proposed to utilize the existing institutions run by voluntary social welfare organizations that have the possibility and potential of expanding their services with the help of assistance from Government. Besides providing institutional services, provision is
also proposed in the programme for providing foster care and adoption services. The programme of services that are proposed to be offered to children at the existing institutions include physical and social care, school, education and recreational activities and near family atmosphere. For the Children between 12 and 18 years, the programme will include prevocational education, vocational training in different occupations and citizenship education. The benefit of the apprenticeship training of the Ministry of Labour, Government of India would be made available to children above 15 years of age. With regard to children in institutions who have attained the age of 18 years, but have not yet started earning a livelihood and have no place to go, the following guidelines are prescribed:

(i) If older children (above 18 years) have to be kept in children's homes in the absence of any other alternative, separate arrangements for them would be desirable instead of keeping them with younger children.

(ii) Special care should be taken of girls and every effort should be made to get them married, self-employed or otherwise settled honourably. They should not be sent away from homes without proper care and suitable alternative.

(iii) Academically brilliant children, whether boys or girls, should be given full opportunity to stay on in the homes, pursue higher studies and realize their full potential.

(iv) Non-formal vocational training, especially through apprenticeship and expansion of vocational training facilities in the form of service and repair centers and production-cum-training centers, should be the major plunk for enabling such children to earn honorable living and cease to be dependent on homes.

(v) The grant-in-aid should continue to be given to the institutions for destitute children above 18 years of age.

(vi) As a general rule, efforts should continue to be made to plan the education/career of the destitute children in such a way that they become self-reliant by the time they attain 18 years of age. Extension should be given only in the most exceptional cases and should be the minimum required for finalizing the placement. Review of the institutions should be carried out periodically to avoid
The Scheme makes the provision of providing assistance in the form of grants to existing child welfare institutions in the initial stage. Consolidated assistance in the form of recurring grants will be given to the institutions for all recurring items, e.g. Food, clothing, soap, oil, electricity and water charges, postage, stationery, education, text-books, vocational training, health, recreation salary of house mother, supervisor, helper etc. Provision for rent is made till the institutions are in a position to construct accommodation. Where the institutions already have their own buildings, the provision for rent can be used for maintenance and repairs to these buildings. Non-recurring grant is admissible for construction of cottage and furniture, equipment and utensils. The grant will be made available to agencies which have already succeeded in establishing good standard of welfare services for children. Preference will be given to those agencies having branches in metropolitan cities. The selection of the agencies will be based on the capacity of these agencies to shoulder the responsibility of supporting the programme financially.

The admission of children in the aided children homes would be made according to the following criteria:

1. Children who do not have either parents or near relations;
2. Children of single parent families deprived of adequate family care due to death, desertion, prolonged illness, imprisonment of one of parents and where the income of the family is less than Rs.500/- per month; and
3. Children found without any home or settled place of abode or any ostensible means of subsistence.

The Scheme also intends to develop foster care services in order to provide near-home atmosphere of foster family to children who become destitute at a very early age (below 6 years) and in whose case adoption cannot be readily arranged. The Scheme is applicable for such voluntary child and family welfare organizations which have established their credentials in the field of child development. The benefits of the foster care programme are available in the
metropolitan cities of Delhi, Bombay, Calcutta and Madras and also State/Union Territory capitals and other towns with a population of not less than 2 lakhs. In exceptional cases the benefits can be given even in towns with a population of less than two lakhs, if good voluntary organizations come forward for implementation of the Scheme.

4.2.2 Scheme of Prevention and Control of Juvenile Social Maladjustment

With a view to fulfilling the statutory responsibilities of the State as laid down under the Juvenile Justice Act, 1986, a comprehensive Scheme for the prevention and control of juvenile social maladjustment is proposed to be introduced under the Seventh Five Year Plan. The Scheme has the following objects:

(i) To provide for full coverage of the services contemplated under the Juvenile Justice Act, 1986 in all the districts so as to ensure that no child under any circumstances is lodged in prison.

(ii) To evolve a system for separate handling of non-delinquent children covered under the Juvenile Justice Act, 1986 vis-a-vis delinquents at various stages of their apprehension, processing and rehabilitation.

(iii) To bring about a qualitative improvement in the juvenile justice services on the basis of certain well defined minimum standards.

(iv) To develop infrastructure for an optimum use of community-based welfare agencies in the care, protection and rehabilitation of maladjusted children as contemplated in the Juvenile Justice Act, 1986.

(v) To promote voluntary action for the prevention of juvenile social maladjustment and the treatment and rehabilitation of socially maladjusted juveniles.

Under the Scheme, the juvenile justice system, is intended to be developed in keeping with the true spirit of the new law, without undermining the dignity and rights of the juvenile. A systematic effort will be made to ensure that only those categories of juveniles are processed through the formal system consisting

---

of the police, courts and correctional institutions which could not be handled by
the informal social control mechanisms within the family or the community. For
this purpose, the services of the voluntary welfare agencies will be utilized to the
maximum at various states of referral, treatment and rehabilitation of juveniles,
especially with regard to non delinquents. A variety of alternatives including
foster-care, sponsorship, probation etc. will be resorted to, on a selective basis. An
effective linkage will be established with community based welfare institutions,
whether run by voluntary organizations or set up under the general child, welfare,
by way of licensing or certification. In this respect, the institutions established
under the scheme for the welfare of Children in Need and Care and Protection by
voluntary agencies will also be utilized for the placement of non-delinquent
categories of children coming within the purview of the law. Institutional care will
be used only as the last measure by enlarging the range of suitable alternatives. A
much greater stress will be placed on individualised handling of the juvenile
through a programme of study and diagnosis, appropriate placement, corrective
education, vocational training and social reassimilation. Obviously, high priority
would be given to the training of juvenile justice functionaries from the police,
courts and correctional agencies as also of voluntary workers engaged in this
field.

Accordingly, the institutional and non-institutional pattern of services
under the juvenile justice system is envisaged to be so reorganized as to render
individualized care to the juvenile in keeping with his personality traits and
welfare requirements. Adequate number of Juvenile Courts for delinquents and
Juvenile Welfare Boards for non-delinquents coming within the purview of the
Juvenile Justice Act 1986 will be established by State Governments and Union
Territory Administrations. During their processing, the non-delinquent categories
of children will be lodged separately from delinquents, preferably with
individuals or voluntary institutions to be recognized as 'places of safety'. As far
as possible, these categories will be handled by authorized persons or
organizations rather than the police. For Juvenile delinquents machinery for study
and diagnosis will be made available by opening additional observation homes to cover all the districts. The existing institutions set-up by State Govt. and Union Territory Administrations will be upgraded on the basis of accepted norms. As far as possible the homes for destitute children functioning under the Ministry's Scheme for the Welfare of Children in Need of Care and Protection being implemented through voluntary agencies will be recognized for the care, treatment and rehabilitation of non-delinquent categories of children processed through Juvenile Justice Act 1986. However, additional institutions may be necessary both under the Government and voluntary organizations, once the Act is effectively enforced. Side by side, a regular programme training of functionaries of the juvenile justice system and voluntary organizations engaged in this field will be initiated through State Government and Union Territory Administrations. In developing these services, the standards enunciated in the Operations Manual for Children Act are proposed to be followed, with such modifications as found suitable to local conditions.

4.2.3 Policy for Children in Conflict with Law

The substantive criminal law prescribes a differential approach towards children in view of their physical and mental limitations. The Indian Penal Code declares that “nothing is an offence which is done by a child under seven years of age”, and further that “nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion”. Side by side, the Code and other laws specify a large number of acts against children as offences for the protection and welfare of children.

The criminal process in relation to children is governed by a differential procedure for trial, adjudication and punishment under the code of Criminal Procedure 1973. the Code provides that 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 sixteen years, may be tried by the Court of a 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. The Central and
State Children Act incorporate special provision for the handling of children with
regard to arrest, bail, investigation, trial and disposal. The punishment of
imprisonment is sparingly used for juvenile offenders. Young offenders in the age
group of 16 to 21 years are treated separately from adult offenders under the
Borstal Schools Acts enacted in several states. The Probation of Offenders Act
1958 places restriction on the imprisonment of young offenders. According to it
any person under twenty-one years of age found guilty of an offence punishable
with imprisonment (but not with imprisonment for life) would not be sentenced to
imprisonment; instead he/she would be provided with the benefit of the provisions
contained in the Probation of Offenders Act, 1958, if circumstances do warrant
his/her release on probation. The Children Acts of different States law down a
comprehensive procedure for apprehension, remand, and observation unless there
are reasons to do otherwise. Even when placed in penal institutions, juvenile
offenders are effectively segregated from adult offenders and subjected to a set of
a specialized measures of education, training and individualized correctional
treatment.

The postulates of juvenile justice policy have been clearly spelt out in
various state-level children Acts within the overall provisions of the Indian Penal
Code and the Code of Criminal Procedure. The Children Acts of different States
lay down a disposition, institutional and non-institutional care, release on licence
and aftercare. These enactments specify the procedure of specialized handling of
children by the police, a separate trial and processing of juveniles, confidentiality
in proceedings of juvenile courts, a diversified programme of institutional and
non-institutional treatment, an effective collaboration with voluntary welfare
agencies and a programme of aftercare. The disposal alternatives open to
children's court are: allowing the child to go home after advice or admonition;
directing the child to be released on probation of good conduct and placed under

---

the care of parents, guardian, or fit person or fit institution under specified conditions; making an order directing the child to pay a fine if he is over fourteen years of age and earns money. Any child dealt with under the provisions of the Children Act does not suffer any disability attached to conviction.

Until recently the juvenile justice system in the country had centred around the implementation of the Children Acts. The experience of over two and a half decades had suggested to the Government of India that the quality of services under the Children Acts brought to fore several basic deficiencies like lack of uniformity in the provisions of the Children Acts being implemented in different states, absence of clearly laid down minimum standards for basic needs, living conditions and therapeutic services for children in juvenile correctional institutions, and the non-availability of specialized infrastructure in most of the states. The major problem areas were: incomplete geographical coverage (55 districts still uncovered), the number of juvenile/children courts pretty small, child welfare boards virtually non-existent, children in certain states still lodged in jails, variations in the upper age in defining the child, the content of correctional services pretty weak, inadequately trained personnel and lack of public participation.

After adoption of the National Policy for Children and prior to enforcement of the JJA, 1986 three sets of laws applied to children in different parts of the country. In the states and districts where the Children Act was not enacted or if enacted, not enforced, provisions of the Code of Criminal Procedure 1973 (CrPC) applied. The Children Acts applicable in the remaining areas were divided into two categories. The first category included the Children Acts enacted prior to the Children Act 1960, and the other consisted of the Children Acts passed thereafter.

The principles, procedure, and consequences relating to children also differed materially under these three sets of laws. The differences resulted in discriminatory treatment being meted out to children residing in different parts of the country. A delinquent child of seventeen years was entitled to the benefits of
the Children Act in Gujarat or West Bengal but not so in Maharashtra. A child whose parents were unable to take his/her care was included in the definition of neglected children by the Children Act 1960 but not by the Children Acts of Uttar Pradesh and Gujarat, resulting in denial of state care to them. In some areas, delinquent children could be sentenced to death, in others they could be imprisoned only in exceptional cases, and in some other areas imprisonment of children was illegal under any circumstance. The centre made efforts to bring about uniformity by persuading the states to amend their Children Acts in conformity with the Children Act 1960. Only Karnataka and Andhra Pradesh amended their Children Acts to bring the definition of child in accordance with the Children Act 1960. The centre due to the constitutional scheme was obliged to extend the Children Act 1960 to the whole country.

Amendments were introduced to remove some of the problem faced in the operation of the Children Act 1960 by the Children (Amendment) Act 1978. The prohibition against the presence of a lawyer before the competent authority was lifted in the case of juvenile courts in view of the order of the Gujarat High Court striking down a similar provision in the Saurashtra Children Act. Provision was made for inter-transfer of delinquent and neglected children between the juvenile court and the child welfare board, if it was found necessary in the circumstances of the case. The amending Act also included provisions defining ‘place of safety, fit person and fit institutional. It also provided for keeping the children at a place of safety and for placing them under the care of a fit person. The children court was required to be assisted by a panel of two social workers. Other Children Acts that had adopted the scheme and provisions of the Children Act 1960 did not incorporate the changes introduced by the amendment Act.

4.3 Juvenile Justice Act, 1986

The juvenile justice Act 1986 introduced a uniform legal framework for children from 2 October 1987 for the whole of India, except the state of Jammu and Kashmir. The juvenile Court Act was in force in the state of Jammu and Kashmir (J&K) till the passing of the J&K Children Act 1970. However, the J&K
Children Act 1970 was enforced only in the districts of Jammu and Srinagar since 16 October 1973. It had provisions similar to those of the Children Act 1960 as they were prior to 1978. The Jammu and Kashmir Juvenile Justice Act 1997 (Act VIII of 1997) replaced both the earlier Acts with its enforcement in the whole state on 1 April 1998. It incorporates all the provisions of the juvenile justice Act 1986. The Juvenile Justice Act, 1986 introduced a uniform legislation for rest of India. The JJA being uniform and non penal legislation, it removed many difficulties that had arisen due to lack of uniformity.

The J.J. Act, 1986 provides for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles, and for the adjudication of certain matters relating to, and disposition of, delinquent juveniles. The Act envisages a comprehensive approach towards justice for children in situations of abuse, exploitation and social maladjustment. The specific objections of the legislation are:

1. To lay down a uniform legal framework for juvenile justice in the country so as to ensure that no child under any circumstance is lodged in jail or police lock-up. This is being ensured by establishing Juvenile Welfare Boards and Juvenile Courts;
2. 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;
3. To spell out the machinery and infrastructure required for the care, protection, treatment, development and rehabilitation of various categories of children coming within the purview of the juvenile justice system. This is proposed to be achieved by establishing observation homes, juvenile homes for neglected juveniles and special homes for delinquent juveniles;
4. To establish norms and standards for the administration of juvenile justice in terms of investigation and prosecution, adjudication and disposition, and care, treatment and rehabilitation;

---

(5) To develop appropriate linkages and coordination 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 roles;

(6) To constitute special offences in relation to juveniles and provide for punishments therefor; and

(7) To bring the operation of the juvenile justice system in the country in conformity with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

One of the objects and reasons for the Juvenile justice Bill was “to bring the operation of JJS in the country in conformity with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). While enacting Juvenile Justice Act 1986, the Parliament exercised its power given to it by Article 253 of the Constitution, to make any law for the whole or part of the country for implementing an international agreement, convention, or decision, the JJA made the delinquent and neglected children all over the country a concern of the state at the national level. The legislation itself, however, did not mark a change in the policy relating to the agencies, services, and programmes to deal with delinquent and neglected children.

The changes made in the JJA did not reflect any substantial difference either in the scheme or the approach towards delinquent and neglected children, and it was a virtual re-enactment of the Children Act 1960. Apart from substituting the word ‘juvenile’ with ‘child’, the JJA had made modifications in the definition of neglected juvenile, substituted the provisions relating to drugs and after-care, and introduced five new provisions. The definition of ‘neglected’ child in the JJA differed in certain respects from that in the Children Act 1960. In fact, the definition has become wider than that under the Children Act 1960.

Due to change in the definition of ‘drug’ to ‘narcotic drug’ and ‘psychotropic substances’ the provision for transfer of children addicted to narcotic drugs and psychotropic substances to an appropriate treatment centre had
been incorporated in Section 48 of the Juvenile Justice Act, which resulted in rapid increase in the problem of drug addiction among children and young persons.

Section 12 of the Juvenile Justice Act relating to after care was much more elaborate and listed out all the matters that went into the making of an exhaustive scheme for after-care. But the provision, as was earlier also, did not make after-care compulsory and left it to be regulated by rules to be made under the Juvenile Justice Act. Section 52 of the Juvenile Justice Act reflected the recognition of the need for a separate fund for the welfare and rehabilitation of the children dealt with under it. But the provision neither made the creation of such a fund compulsory nor specified the state’s contribution to it. Sections 53 and 54 of the JJA provided for constitution of an advisory board and appointment of visitors for institutions. The advisory board was to coordinate the activities of various agencies involved in carrying out the objectives of the JJA, to develop such services in accordance with any area-specific needs, and to mobilize financial, material, and human resources. Visitors were required to be appointed for each home. The homes would have become visible to society by the appointment of visitors who could have acted as spokespersons for the otherwise ‘out of sight’ (and perhaps out of mind also) children at various fora within and outside those homes. The constitution of the advisory board and nomination of that visitors, like most of the other provisions, was left to the discretion of the state government.

Juvenile Justice Act 1986 introduced some major changes in the normative structure of the JJS in India. These changes included:

(i) a uniform definition of juvenile for the whole country;
(ii) a wider role to voluntary organizations;
(iii) prohibition of imprisonment of children under all circumstances; and
(iv) a uniform structure of juvenile justice for the whole country, except the state of Jammu and Kashmir.

The JJA specified the children who were within its purview. Under Juvenile Justice Act, 1986 Boys below the age of 16 and girls below the age of 18
fell within the purview of the JJA if they were found to have committed an offence or were neglected. Uncontrollable children could also be brought within the purview of the JJA when so brought by their parents or guardians. So provisions for taking their charge, adjudication of their matter and pre and post adjudication care and after care were made. Police, persons, or voluntary organizations authorized in this regard, could bring delinquent and neglected children before competent authority. Competent authority meant the juvenile court with regard to delinquent children and the juvenile welfare board with regard to neglected children, and also included the magistrates specified in Section 7(2) of the JJA.

The competent authority was required to hold necessary enquiry to determine whether or the person brought before it was a child and whether she/he was delinquent or neglected, and if so, to pass appropriate orders in relation to her/him. The delinquent juvenile accused of a bailable or non bailable offence, notwithstanding anything contained in Cr.P.C. of 1973 or any other law for the time being enforced, was to be released on bail except where his release was likely to bring him in association with any known criminal or expose him to moral danger or his release would defeat ends of justice. In case he was not released on bail he could only be sent to observation home or place of safety and not to prison. After completion of inquiry, the competent authority was authorised to direct release of delinquent children after due admonition or on probation; to their placement under the care of their parents or guardians, fit person or fit institution; and order a fine if earning and above fourteen years of age; or incarceration in special home under the Act. A neglected juvenile could be placed under the care of their parent or guardian, fit person or fit institution, or in a juvenile home.

The JJA provided for three sets of homes for keeping children. An observation home was to be established or recognized for keeping children during the pendency of their proceedings unless they were kept with their parents, guardians, or at a place of safety. A juvenile home was to be established or recognized for housing neglected children and a special home for delinquent
children. The observation homes were required to take care of the short-term needs of the children, while the other two categories of homes were to provide care and facilities for development on a long-term basis.

Juvenile Justice Act provided for only one appeal to the sessions court against an order of the competent authority. However, no appeal could be filed against a finding that the juvenile was not neglected or delinquent. The High Court of revisional power and it could call for the records of the proceedings to satisfy itself about the legality or propriety of orders made by the competent authority or the Sessions Court. There was provision for evolving schemes, programmes and standards for aftercare of institutionalized children. The institutionalized children could be conditionally or unconditionally discharged earlier than prescribed by the competent authority or placed out on licence.


The JJ (C&P) Act, 2000 was passed by Parliament and has been enforced since 1 April 2001 in the whole of India except the state of Jammu and Kashmir. On coming into force, the JJ (C&P) Act has repealed and replaced the JJA. The JJ (C&P) Act has been enacted specifically in recognition of India’s ratification of the UN Convention on Rights of Child and other relevant international instruments. The Act has been passed with a view to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation (and for matters connected therewith or incidental thereto). The Act was passed keeping in view the constitutional provision and conventions on child rights, in the following terms :-

"Whereas the Constitution has, in several provisions, including clause (3) of article 15, clauses (e) and (f) of article 39, articles 45

---

8. Enforced by SO 1777(E) dated 28 February 2001 w.e.f. 1 April 2001.
9. Subs. by Act 33 of 2006, sect. 2, for "through various institutions established under this enactment" (w.e.f. 22.8.2006).
and 47, impose on the State a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected;

And whereas, the General Assembly of the United Nations has adopted the Convention on the Rights of the Child on the 20th November, 1989;

And whereas, the Convention on the rights of the Child has prescribed a set of standards to be adhered to by all State parties in securing the best interests of the child;

And whereas, the Convention on the Rights of the Child emphasises social reintegration of child victims, to the extent possible without resorting to judicial proceedings;

And whereas, the government of India has ratified the Convention on the 11th December, 1992.

And whereas, it is expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (The Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), and all other relevant international instruments”.

The long title of the JJA described it as an Act to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent children and for the adjudication of certain matters relating to, and disposition of delinquent children. The JJ (C&P) Act has been enacted to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this
The JJA (C&P) Act applies to persons who have not completed the age of eighteen years and they are referred to as children or juveniles. ‘Juvenile’ refers to children alleged to or found to have committed an offence. ‘Child’ includes a large number of categories in need of care and protection. Special note may be taken of the fact that both boys and girls who have not completed the age of eighteen years have been included within the purview of the JJ (C&P) Act. Addition of two more years in the case of boys is expected to increase the number of children in conflict with law many folds. There are no figures available of the number of children in need of care and protection. The competent authority to deal with ‘juvenile in conflict with law’ is the juvenile justice board (Board) and children in need of care and protection' is the child welfare committee.

The Board shall consist of a magistrate and two social workers, one whom shall be a woman. The Principal Magistrate should have special knowledge or training in child psychology and child welfare and the social worker are required to have been actively involved in health education or welfare activity pertaining to the children for at least 7 years and should have post graduate degree in social work, health education, psychology, child development or any other social science discipline. The constitution of the Board under the JJ (C&P) Act differs significantly from the juvenile court under the JJA. The two social workers, who were required to assist the magistrate under the JJA, have now been made part of the Board. This provision, if implemented in letter and spirit, has the potential to convert the legal and technical nature of the proceedings of the Board into care and welfare proceedings. The presence of the magistrate is essential for final disposition of the case, but the case itself is to be decided by majority. In essence, it means that the opinion of the two social workers together shall prevail over the opinion of the magistrate. It is essential, therefore, that the two social workers actually be appointed to the Board. Both of them should also ensure their presence on the date of final disposal in every case to give effect to this significant change in the approach of the JJ (C&P) Act. But due to apathy of government Juvenile
Justice Board do not have qualified members appointed as required under the law.

JJ(C&P) Act, 2000 has also not defined the terms 'care', 'protection', 'treatment', 'development', and 'rehabilitation' nor were they defined by the JJA. These terms, however, may be understood by reference to the statements in the National Policy and other related schemes. Hence, care ought to include the survival needs of children, that is, adequate food, clothing, and shelter. They ought to be protected against neglect, cruelty, and exploitation. Provisions ought to be made for proper programmes for reforming the behaviour and attitude of the delinquent children. Such programmes ought to aim at instilling in children the values of honesty and industrious life so that they become robust citizens, physically fit, mentally alert, and morally healthy, endowed with the skills and motivations needed by society. Measures necessary for their all-round development and growth ought to be made part of the juvenile justice schemes and programmes. The Scheme for the Welfare of Children in Need of Care and Protection conceives of rehabilitation in terms of ameliorative services of food, shelter, clothing, medical attention, and curative services of education, pre-vocational and vocational training, vocational guidance, recreation and cultural development, and citizenship education to make the children, when they grow up, job-worthy.

The Child Welfare Committee is to comprise five members, one of whom is to be a woman and another, an expert on matters concerning children. It is to function as a bench of magistrates and its members shall have the powers conferred by the Code of Criminal Procedure on a metropolitan or judicial magistrate. It is submitted that in view of this statutory vesting of powers, there is no need for conferring the powers specially as is required by the Cr.PC. Unlike the JJA, the JJ (C&P) Act does not specify any authority/body that may deal with children or juveniles in the absence of a board or a committee. So there has to be, without fail, a board and a committee to execute and enforce the object and provisions of the act which has beneficial provision for juveniles.

The JJ (C&P) Act 2000 and rules made there under in 2007 provide that
all inquiries under the JJ(C&P) Act should be completed within a period of four months' extendable by two months in serious offences.\textsuperscript{10} In case of petty offences punishable with fine upto 1000/- only, the police may dispose of the case at the police station itself. In case of non serious offences punishable with imprisonment upto seven years juvenile can be apprehended only if it is necessary in the interest of juvenile and in case of serious offence punishable with imprisonment for more than seven years, a juvenile can be apprehended. However, he cannot be handcuffed, chained and fettered. In case of non serious offence, no FIR or charge sheet is required. The police may record the information regarding the alleged incident in general dairy. A social background report, circumstances of apprehension and offence however, are required to be submitted to the board before first hearing. The competent authority has to follow the summons procedure for holding inquiries, subject to other provisions of the JJ (C&P) Act and any rules made under it. No appeal lies against a finding that the child did not need any state care or had not committed an offence. In other cases, one appeal lies to the court of sessions and the High Court may exercise its power of revision in any case.

To take charge of children covered under the JJ (C&P) Act, 2000 namely, a wide range of person, namely, the police, public servants, non-governmental organizations, authorized individuals or the children themselves has been authorised under the Act. There has been a significant change in the role and responsibility of the police. Each police station is now required to have at least one police officer specially trained to deal with children in conflict with law as well as those in need of care and protection. All such police officers will constitute the special juvenile unit in each district. Implementation of this provision goes to the root of the functioning of the JJ(C&P) Act, 2000. The prohibition of keeping children in a police station under any circumstance under the Juvenile Justice Act has been substituted by prohibition against keeping them in the police lock-up only. No provision bars the keeping of even girls taken

\textsuperscript{10} Rule 13(7) of the Juvenile Justice (Care and Protection of Children) Rules, 2007.
charge of under the Act in a police station and this may lead to many problems especially regarding the security of young girls so kept.

The JJ (C&P) Act, 2000 continues to have the three-tier residential pattern of the JJA, but ensures non-interaction between the two categories of children even during the pendency of their proceedings before the competent authority. Children homes, whether established or recognized by the state government, have the responsibility of looking after children in need of care and protection during the pendency of their proceedings before the committee as well as after disposal, if so ordered. Observation homes are required to look after children in conflict with law during the pendency of their cases before the Board and special schools to receive them after disposal, when so directed. A child may be kept with the parent or guardian also during the pendency of proceedings before the competent authority, if found suitable. With regard to children in need of care and protection, the JJ (C&P) Act, 2000 provides that if they have no family or ostensible support, they may be allowed to remain in a children home or shelter home till they are rehabilitated or they attain the age of 18. The JJ (C&P) Act 2000 has done away with the provision of the JJA that enabled a juvenile court to transfer matters brought before it to the juvenile welfare board and vice versa. Children in need of care and protection have been segregated from juveniles in conflict with law in the children’s home during the pendency of proceedings as well as after-decision.

A number of options have been introduced in the orders that may be passed with regard to children in the conflict with law or those found to have committed an offence. The orders which can be passed are as under:

(i) Allowed to go home after advice or admonition and counseling to the parent or guardian and the child.

(ii) Participation by Juvenile in Group counseling and other similar activities.

(iii) Order to perform community service (serving elderly in nursing home, helping local fire or police department, helping in hospital and social disabled children etc.

(iv) Order the parent or the child to pay fine, if is above 14 years of age and
earning (But he cannot be sent to prison in default of payment of fine)

(v) Release on probation for good conduct under the care of parent, guardian, or other fit person, with or without surety, for not more than three years.

(vi) Release on probation for good conduct under the care of a Fit institution for not more than three years.

(vii) Sending to a special home for not more than three years.

Counseling of the children and their parents guardians has been made integral to an order of release after advice or admonition. Group counseling, community service, imposition of fine on the parent, are the new measures introduced by the JJ (C&P) Act. A child found to have committed an offence cannot be sentenced to death or given life imprisonment or committed to prison in default of payment of fine or furnishing security. A juvenile cannot be sent to serve a term of jail even after conviction.11

Regarding Child in need of Care and Protection the JJ (C&P) Act has included many new measures for dealing with all children (including juveniles) aimed at their rehabilitation and reintegration in society. The most important among them is adoption. The JJ (C&P) Act recognizes that the primary responsibility of looking after children lies with their family. After a proper scrutiny, a child falling within the provisions of the JJ (C&P) Act, may be declared available for adoption and given in adoption. A child, irrespective of its religion and up to the age of eighteen years, may be given in adoption to a parent or parents irrespective of their religion and the number and gender of any living biological children. This provision has far-reaching implications in securing family care for children beyond the limitations imposed by the Hindu Adoption and Maintenance Act.

Provisions relating to foster care for children while they are waiting for a family or returning to their own family is another effort under the JJ (C&P) Act at keeping children in a family environment instead of state-run institutions. The provisions relating to sponsorship provide for supplementary support to families

11 Devendra @ Sonu Vs. State of Rajasthan RLW 2006 (1) Raj 407.
and institutions in children’s capacity building. Now the child may be given an adoption under JJ(C & P) Act, 2000 to irrespective of the number or gender of living biological children in the family. Provision for foster care is there for short and extended period till the child return to his family or a family otherwise found to provide additional support regarding medical education sponsorship programme are also envisaged.


The JJA had incorporated various provisions and principles for ensuring additional care and protection to delinquent and neglected children for their rehabilitation in society. Those special provisions and principles were in conformity with the Beijing Rules. The primary principle underlying all these provisions was care, protection, and non-penalization of children dealt with under the JJA. The following features of the JJA that have been incorporated in the JJ (C&P) Act, 2000 also.

(a) Continuation of Inquiry

The JJ (C&P) Act, 2000 makes provision for continuation of inquiry in relation to a person who ceases to be a juvenile during the course of inquiry. Underlying principle is that the children cannot be imputed with the same degree of mens rea as adults, and due to their mental immaturity need protection against the consequences of their criminal acts. The rationale does not lose its force merely because with the passage of time the person, who was a child at the time of commission of the offence, ceases to be so at the time of final orders. Orders of the competent authority are not vitiated by a subsequent proof that the person dealt with under its provisions was not a juvenile. The age, as recorded by the competent authority after due inquiry, is deemed to be the true age of the person for the purpose of the JJ(C&P) Act.

Despite the fact that the juvenile crossed the age of 18 years during inquiry the inquiry with regard to such a juvenile has to be continued treating him juvenile as the legislation has been enacted with a view to protect the children
who by virtue of their tender age were unable to understand the consequences of their wrong acts.

The Supreme Court and High Court have gone a step further while allowing the benefit of this Act to the juveniles whose cases had already been disposed of by the Juvenile Court or a regular court, they being more than 16 years of age and not a juvenile under 1986 Act. Effect of the amendment of Sections 2(1), 7A, 20 and 64 Juvenile Justice (Care and Protection of Children) Act, 2000 in 2006 is that even if the juvenile has ceased to be so on 1.4.2001, still he will be considered as a juvenile if he was below 18 years of age on the date of commission of offence.\textsuperscript{12}

Relevant date for determination of juvenility is the date of offence, provided the person had not completed 18 years of age as on or before the date of commencement of Act i.e. 1.4.2001.\textsuperscript{13} Now a claim of juvenility can be raised before any court at any stage even after final disposal of the case and such claim shall be decided by the court after taking evidence in accordance with the provisions of the Act and Rules.\textsuperscript{14} However, in case of a continuing offence the age of the juvenile in delinquency should be determined with reference to the date on which the offence is said to have been committed by the accused.\textsuperscript{15}

(b) Special Provision of for Bail

The Juvenile Justice (Care and Protection of Children) Act, 2000 has done away with the distinction between serious and other offences (bailable and non-bailable offences) maintained by the Cr PC for purposes of bail. The Juvenile Justice (Care and Protection of Children) Act, 2000 provides for the release of all children on bail whether they are charged with the commission of a bailable or non-bailable offence. When any person apparently a juvenile is brought before a Board, such person shall be released on bail or placed under the supervision of a Probation Officer/fit institution/fit person.

\textsuperscript{13} Partap Singh v. State of Jharkhand, AIR 2005 SC 2731
\textsuperscript{14} Vicky Sao v. State of Jharkhand, 2008 (3) JCR 489 (Jhr): MANU/JH/0446/2008
\textsuperscript{15} Vimal Chadha v. Vikas Choudhary, 2008 (8) SCALE 608 : 2008 (9) SCR 911.
The ground for refusing bail to children is not the nature of the offence committed. Bail may be refused only if there appears reasonable grounds for believing that:

(i) if such release is likely to bring the juvenile in association with any known criminals; or

(ii) expose him to moral, physical and psychological danger, or

(iii) it will defeat the ends of justice.

The provision is a means for keeping children in the community unless their own interest requires them to be kept in an institution, even when such stay is for a short time.

In *Mannoham Singh v. State of Punjab*\(^{16}\) and *Manoj alias Kali v. State (Delhi)*\(^{17}\), it has been held that a juvenile has to be released on bail mandatorily unless exceptions carved out in Section 12 are made which should be based upon some material/evidence available on record. For the purpose of bail, view expressed by the court in *Abdul Rab v. State of Bihar*\(^ {18}\) is that a prima-facie satisfaction of juvenility subject to further inquiry regarding age on the date of offence is a sufficient ground for granting bail to the juvenile. *Master Niku Chaubey v. State (Delhi)*\(^ {19}\) and *Anand Vishal Khujur v. State of Jharkhand*\(^ {20}\) are the cases wherein it has been made specifically clear that the nature and gravity of offence is not one of the conditions on which bail can be refused to a juvenile. The denial of bail on the ground of ends of justice being defeated has to be considered in the context of the welfare of the juvenile\(^ {21}\).

In some cases falling under the exceptions carved out in Section 12, bail to the juvenile can be refused. Where accused was allegedly engaged in smuggling activities and there was possibility of his being joining the gang and repeating the activities if released on bail were not ruled out, he was held not entitled to bail\(^ {22}\).

---

16 (2004) 136 PLR 497
17 2006 Cr.L.J. 4759
18 2008 (12) SCALE 359
20 2008 (3) JCR 488 Jhr
21 *Master Abhishek (Minor) v. State (Delhi), 2005 VI AD Del. 18.*
Bail to a juvenile was denied in another case where there was likelihood that after his release on bail the accused would again mix up with other adult co-accused who were still absconding and it could lead to moral and psychological danger and would also defeat ends of justice. The Bail can be justifiably denied to accused if it would expose him to moral and psychological danger as was in this case where the family sent the child below 16 years of age to work as daily wager and the juvenile took the victim to his house and committed rape showing clear criminal tendency in him. In such a situation it was held that if released on bail, he will be exposed to moral and psychological danger.

(c) Constitution of Competent Authority

There are mainly two authorities to deal with the 'juvenile in conflict with law' and 'child in need of care and protection', that are Juvenile Justice Board and Child Welfare Committee respectively.

(I) Juvenile Justice Board

The Juvenile Justice Board which has exclusive jurisdiction to deal with the juvenile in conflict with law is to be headed by a Principal Magistrate who should be a Metropolitan Magistrate or a Judicial Magistrate 1st Class having special knowledge or training in child psychology and child welfare. There are two social workers one of whom must be a female. They are required to be actively involved in health, education or welfare activity pertaining to children for seven years and have a post-graduate degree in social work, health, psychology, child development or any other social science discipline.

Exclusive jurisdiction over the juveniles has been given to the Juvenile Justice Board. Only Juvenile Justice Board can adjudicate and decide cases of juveniles in conflict with law. The Juvenile Justice (Care and Protection of Children) Act, 2000 has been given overriding effect and all offences including NDPS Act, Arms Act, SC/ST Prevention of Atrocities Act allegedly committed by a juvenile have to be inquired by a Juvenile Justice Board. Even prohibition of

---

24 Sandeep Kumar vs. State (Delhi), 2005 Cr.L.J.3182
anticipatory bail by Section 18 of Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 does not apply in case of a juvenile.26

The Principal Magistrate has to be a Metropolitan Magistrate or a Judicial Magistrate whereas the social workers are selected by a Selection Committee headed by a retired High Court Judge. The tenure of the members is 3 years and they can be appointed for a maximum of 2 consecutive terms. The Principal Magistrate being a Judicial Officer is governed by the service conditions of the relevant State Judicial Services Rules. However, a member of the Juvenile Justice Board can be removed from his post on the following grounds:

(i) if he has been found guilty of misuse of power vested under this Act, or
(ii) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence, or
(iii) he fails to attend the proceedings of the Board for consecutive three months without any valid reasons or fails to attend less than three-fourth of the sittings in a year.

A social worker member of the Board is paid a minimum of Rs.500/- per sitting whereas allowances of the Principal Magistrate being a Judicial Officer are governed by his Service Rules.

(II) The Child Welfare Committee

The State Government is to constitute, within a period of one year from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, one or more Child Welfare Committee for every District for exercising powers and discharge of duties conferred on such committees in relation to child in need of Care and Protection under Juvenile Justice (Care and Protection of Children) Act, 2000.

The committee to deal with the child in need of protection and care is to be consisted of a Chairman and four other members of whom at least one shall be a woman. The Chairman or the member of the committee should be a post-graduate

in social work, psychology and child development, education, psychology, law criminology and where such person is not available then at least a graduate in any of the social science discipline or he should be a teacher, doctor or a social worker involved in work concerning children.

The tenure of the committee is three years. The tenure of chairperson and member is co-terminus with the tenure of the committee. The allowance of the members cannot be less than 500/- per sitting. The member of the committee may be terminated after holding inquiry, by the Government, if-

(i) if he has been found guilty of misuse of power vested under this Act, or
(ii) he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence, or
(iii) he fails to attend the proceedings of the Board for consecutive three months without any valid reasons or fails to attend less than three-forth of the sittings in a year.

The Committee has final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights.

(d) Procedure of Competent Authority

The Juvenile Justice Board and The Child Welfare Committee should function as a bench of Magistrates. Various procedural differences have been incorporated in the JJ (C & P) Act for ensuring special care and protection to children while ensuring a fair trial to them. The proceedings of the competent authority are open to only those persons who are directly related with the proceedings.

The JJ(C&P) Act has provided for speedy disposal of proceedings before a Juvenile Justice Board by laying down the time limit of four months within which all inquiries relating to children should be completed. However in exceptional cases i.e. cases involving transitional criminality; or large number of accused or inordinate delay in production of witnesses, the period can be extended by two
months. Delay beyond four to six months leads to the termination of proceedings in non-serious offences. Delay beyond six months in serious offences has to be reported by the board to the CJM/CMM stating the reasons for the delay and steps taken. The procedure to be followed by the competent authority in holding the inquiry is that prescribed for the trial of summons cases, thereby doing away with the elaborate procedure of warrant cases, even in serious offences by children.

The committee is required to receive children and decide on the matters before it and reach out to children in need of Care and Protection. A child in need of Care and Protection can be produced before the Committee within 24 hours excluding journey time by any police officer or special juvenile police units or a designated police officer, any public servant, child line, a registered or recognized voluntary organisation, social worker, any public spirited citizen or by the child himself. The Committee is also competent to take *suo moto* cognizance of cases brought to their notice. In absence of the committee child may be produced before a single member of the Committee.

The proceedings before the Board or Committee should be held in child family environment.

(e) Ban on Disclosure of Identity of the Children

The Act prohibits and punishes the publication of a report of any inquiry regarding a child disclosing the name, address, school, or any other particulars calculated to lead to her/his identification, except with the written permission of the competent authority. The provision conforms to the principle contained in the Beijing Rules and aims at protecting the interest of the child and to protect him for public stigma.

(f) Segregation from Hardcore and Adult Offenders

The JJ(C&P) Act, 2000 has incorporated various provisions to ensure that children do not come in contact with adult offenders under any circumstance. The Board alone has the jurisdiction to process and dispose of all cases of delinquent children. This Act also contains a provision against the joint trial of children with others, overriding the provisions of Cr.PC permitting joint trials. The provisions
for keeping children in institutions and places specially established or recognized under the JJA, further ensure that juveniles do not interact with adult offenders. The JJ(C&P) Act also specifically provides that a juvenile should not be kept in jail.

(g) Removal of Disqualification

The JJ (C&P) Act also provided for removal of disqualification, if any, attaching to a conviction of an offence in case of children who have been dealt with under its provisions.

(h) Individual Care

The Act contains many provisions aimed at providing individualized care to every child. The competent authority is free to choose the most suitable order for the child in question, keeping in view the various circumstances relating to the juvenile. The JJ (C&P) Act provides that the competent authority or local authority may discharge children earlier in their best interest either absolutely or on condition considered appropriate in the circumstances. Children may be discharged early for their education, training in useful trade or calling or for their rehabilitation under the supervision of their parent or guardian or an authorised person. The provisions for evolving an aftercare programme and the progress report thereafter for the institutionalized juveniles are other provisions indicating the individualized nature of the services and programmes under the JJ(C&P) Act.

(i) Role of NGO and Social Organisation

The JJ (C&P) Act having relies on involving voluntary social workers and community services at various points in the interest of juvenile. It provides for involvement of social workers in intake, decision making, community placement, institutionalization, and rehabilitation of neglected and delinquent children. The wider role given to voluntary social workers make the juvenile justice delivery system more transparent and enables the child to remain in touch with society without co-operation of the community the objective of rehabilitation of these children in society cannot be achieved.
4.6 An Over View of the Juvenile Justice Acts

The Juvenile Justice Act, 1986 introducing a uniform and non-penal approach with regard to the juvenile in India, removed many difficulties that had arisen due to lack of uniformity. It improved the situation considerably but still many other lacunae in the field of Juvenile Justice needed to be removed for achieving its purported objectives of ensuring care, protection, rehabilitation, etc., to delinquent and neglected children and make administration of the Juvenile Justice System in accordance with the Beijing Rules and other U.N. conventions and declarations.

The definitions of 'juvenile', 'neglected juvenile', and 'delinquent juvenile' determined the categories of persons falling within the scope of the JJA. A close examination of these definitions in the JJA showed an absence of clarity. The definition of 'juvenile' was sex-discriminatory and the justification offered for the discrimination did not have a scientific basis. The distinction was justified as being necessary because in the Indian society girls required protection for a longer period. But the JJA, apart from the differentiation in the cut-off age, made no provision for the special care of girls. It did not recognize the fact that girls were neglected more than the boys. In accordance with the Beijing Rules, special attention to programmes under the JJA for girls was essential to ensure that girls did not receive less care, protection, or treatment than the boys. The JJA Act, 2000 has now provided the cut-off age of 18 for both boys and girls but without making any special provisions for girls.

The JJA has provided for different treatment to delinquent and neglected children. The living conditions of these children are similar and they keep on drifting between an honest, industrious life and one of crime in their struggle for survival. Their labeling as delinquent or neglected by reference to the commission of an offence, especially in case of minor offences, is purely legalistic and circumstantial. A destitute child found gambling when taken charge of, is to be dealt with as a delinquent juvenile. The social investigation report of another destitute juvenile may show that he is used to gambling but if he is not caught
gambling, he is to be dealt with as a neglected juvenile.

Though proviso of Section 7(1) of the JJA provided for inter-transfer of children between the board and the juvenile court, the criterion for such transfer had not been specified. In the absence of a specific provision for transfer by reference to the character rather than the offence committed by the child, the exercise of the discretion was dependent on personal belief and attitude of the concerned members or Magistrates of the juvenile welfare board and the juvenile court. Mostly, the police made this crucial decision and that too, by reference to the circumstances in which the child was caught.

The Juvenile Justice (Care and Protection of Children) Act, 2000 has made divide between juveniles in conflict with law, and children in need of care and protection more rigid. The Act starts with the statement that this legislation adopts a child friendly approach but it failed to even refer to all the children covered under its purview as children. Some of them are declared children while others are juvenile. The word ‘juvenile’ has been made an equal of delinquent child. The JJ (C&P) Act itself has used the word ‘juvenile’ in numerous sections to refer to a child either alleged or found to have committed an offence.

While making provision for penalization of persons who employ children for begging, it uses both child and juvenile even though both the terms mean persons below the age of eighteen. If ‘juvenile’ indicates that child in conflict with law is also included in this section, apparently ‘juvenile’ equals to ‘juvenile in conflict with law’. Further, by referring to children suspected to have committed an offence as ‘juvenile in conflict of law it stigmatizes them even before they are found to have committed an offence and the very spirit of the Act is against the stigmatization of the children. The wording leaves no scope for thinking that they are only suspected to be ‘in conflict with law’ and that it may turn out they have in fact, not violated the law.

The definition of neglected juvenile also does not show a clear policy. The definition of neglected juvenile was so wide as to include almost all poor children in India within the scope of the JJA. Inclusion of all poor children in India may
lead to interference with the lives of hundreds and thousands poor parents who would fall within the purview of the Act and invite punishment due to allowing of their wards to work to earn a livelihood or on account of small beating to discipline the child and it may disturb the social fabric otherwise. The provision might have been motivated by the intention of ensuring care and protection to all the children in need but it allowed uncontrolled power of intervention at the disposal of the state. Moreover, inclusion of such a wide variety and number of children within the scope of the JJ Act required a much greater emphasis on community participation and non-institutional treatment of children than was provided by the JJA. The JJ (C&P) Act has further expanded the definition of children in need of care and protection though excluding child beggars from its scope.

The JJA, like the Children Act, 1960 provided for elaborate administrative machinery but due to apathy of the Government only a few agencies were established which only added and increased the gap between the Government agency to provide care and protection to the children and the children in need. Distance thereby becomes a cause of harassment to the children and their parents. The institutionalized child is made an alien to his own family and community. Juvenile justice services should be localized and made accessible within walking distance of children in need to be more suitable for keeping the children integrated with their family and community. Given the widespread apathy towards implementation of the earlier Children Acts, the JJA should have preferred a singular infrastructure, with greater emphasis on individualization and segregation within that framework. The JJ (C&P) Act has not addressed this criticism and continues to have an elaborate administrative structure. The JJA had listed institutional and non-institutional measures for dealing with children. But the high number of provisions relating to institutionalization of children, coupled with the absence of a provision specifically providing for recourse to institutions only as a last resort, gave an apparent tilt to the JJA toward institutionalization. The great number and variety of children included within the JJA could neither be kept in
institutions nor rehabilitated through a process of institutionalization.

Community-based programmes and semi-institutional arrangements included in the Beijing Rules should have been incorporated in the JJA. A juvenile guidance bureau should be made an integral part of the juvenile justice infrastructure for providing psychological assistance which is most needed in cases for rehabilitation. The JJ (C&P) Act has incorporated many more community-based options but the details of such programmes has been left to be added by the rules to be framed under the Act which as experienced show are added only after a long time and at times after judicial intervention.

Despite the statement in the National Policy for Children that efforts would be made for assistance to families of poor children, no such measure had been incorporated in the JJA specifically dealing with such children. The JJA had missed the fundamental perspective of the Beijing Rules for reduced intervention and diversion. Various measures taken for the care and welfare of children and mothers were neither a part of the efforts of the juvenile justice administration nor were those services co-ordinated according to the patterns of neglect and delinquency among children.

No guidelines were available for invoking the general social welfare measures for the developmental needs of neglected and delinquent children dealt with under the JJA. The JJ (C&P) Act includes parents in the provisions relating to imposition of fine and release of children after due admonition but not in the provision dealing with sponsorship.

Inspite of The Beijing Rules clearly providing that all children have a right to fair and just trial in accordance with internationally recognized principles the JJA, only permitted lawyers in the case of delinquent children and continued with the prohibition on their presence in the case of neglected children. The justification could have been that as the neglected children were neither arrested nor tried for commission of an offence, there was no need for applying the same rules, standards, and principles that apply to delinquent children. However, does the use of different terminology change the nature of the proceedings?
Practically, there is no difference between ‘arrest’ of a delinquent juvenile and ‘taking charge’ of a child. The two categories of children go to different adjudicatory bodies only if such bodies are actually constituted for the area. Otherwise, the same Magistrate deals with both categories of children. The procedures to be followed by all of them are same, namely, the procedure prescribed for the trial of summons cases by the Cr.P.C. The consequences of a finding that the child is neglected or delinquent cannot be much different as similar disposal options are available in both cases. The JJ (C&P) Act conceives idea of separate homes for neglected and delinquent children but the provisions do not contain any distinction in the nature of the two homes. Moreover, practically they have to remain detained in the homes provided under the Act. In practice, in most places only one home is usually established for housing all categories of children.

All these factors show that different procedural and evidentiary principles cannot be justified. The possibility of curtailment of liberty in both cases is similar and, therefore, equal protection should be made available for both juveniles 'in conflict with law' and 'in need of Care and Protection'.

There is no mention that children before the board and the committee are entitled to a lawyer, and that the same shall be provided by the state in all those cases where the children may be incapable of doing so on their own. The basic principles of fair trial and even fundamental rights have been given a go-by by the JJ (C&P) Act. The constitutional mandate of producing persons deprived of liberty before a magistrate within twenty four hours finds no place in the JJ (C&P) Act, 2000 although a child in need of Care and Protection is required to be produced before the Committee within 24 hours.

After India signed the UN Rules for Protection of Juveniles Deprived of their Liberty, deprivation of liberty means 'any form of detention or imprisonment or the placement of that person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial,'

27 As required by rules 7 and 15 of the Beijing Rules read with Rules 2 and Juvenile Justice of the UN Rules for Protection of Juveniles Deprived of their Liberty.
administrative or other public authority. Children may be deprived of liberty only in accordance with the Beijing Rules. Hence all children whether in conflict with law or in need of care and protection, are entitled to a lawyer if India intends to fulfill its international obligations. The JJ (C&P) Act, 2000 does not make any such provision. Rather, it conceptualizes the stay of children in children homes and special homes as serving a term. The Act does little more than pay lip service in terms of incorporating its obligations under the Indian and international law.

The JJ(C&P) Act, 2000 like JJ Act continuing to be silent on finger printing, made an advance by providing that the Board shall direct that the relevant record of conviction be removed after the expiry of period of appeal, or after a reasonable period, as prescribed under the rules. Earlier, the JJA was silent about the use of records of child proceedings in subsequent proceedings and finger printing of children.

The JJA only specified the areas in which rules might be made by the state governments. It did not even lay down the nature and standard of after-care to be provided. Matters relating to after-care were left to be governed under subordinate legislation, relegating this essential component of the JJS to the background. The absence of a statutory provision for feedback on the progress of a child, after she/he left the home, also hampered the evaluation and improvement in the functioning of the JJS. The JJ (C&P) Act, 2000 has not changed position.

The JJA was also silent on the point initiation of proceedings regarding offences against children. Except the offence of using children for begging which was the only cognizable offence, someone was required to file a private complaint. The child or her parent or guardian was perhaps expected to file the complaint. This was an expectation divorced from the social and economic realities of their existence and presumed unrealistic awareness and moral courage.

---

28 Section 59(4) dealing with leave of absence provides that the duration of granted leave shall be deemed to be part of the time for which they are liable to be kept in the home, but in case of children who fail to return after their leave expires, the time that elapses between expiry of the leave and their return shall be excluded in computing the time during which they were liable to be kept in the institution.
on their part. The JJ (C&P) Act, 2000 has made all the offences against children as cognizable. However, the issue of unawareness and apathy towards enforcement and penalization of these offences should also have been taken care of.

Proper and sincere implementation of the Act can make the special schemes, provisions, principles, and changes introduced by any Special Act. Similarly, provisions of the JJA could be of any consequence only if the Act was implemented properly. Though the JJA had been enacted by Parliament, the only responsibility of the central government vis-a-vis the Act was to notify its enforcement. The responsibility of creation of the infrastructure, for housing all categories of children in most of the places, was with the state government. While notifying the Act, the problem of lack of funds faced by the states in implementing the Children Acts had been left untouched. The new provision relating to the welfare fund was stated in very general terms and did not specify the nature or proportion of contribution by the state in that fund. The financial memorandum attached to the Juvenile Justice Bill 1986 declared that the Bill incurred no additional financial burden on the central government as ‘this legislation would be implemented largely by the states and similarly in respect of Union Territories the existing infrastructure available under The Children Act, 1960 as amended in 1978 passed by Parliament would be reorganized and utilized. This meant that the Centre had not committed itself to any additional financial assistance to the state governments for setting up the required machinery under the Act. The JJ (C&P) Act, 2000 has also continued with the same system and pattern.

All the provisions dealing with the creation of various agencies under the JJA used the enabling word ‘may’ empowering the state government to establish, recognize, and constitute the necessary agencies. Such discretion might be necessary in a vast country like India to meet the varying needs of different regions. It only empowered without making the provisions obligatory on the States to implement the provisions of the Act. The pattern of implementation of
the Children Act giving similar discretion, bear witness that 'may' in official parlance meant 'may not' Still, 'may' was not replaced by 'shall' in the JJA and the same pattern has been adopted under The JJ(C&P) Act, 2000 which shows lack of insight in the problems faced in implementation of provisions of the Juvenile Justice Act, 1986.

The reasons for re-enacting The JJ(C&P) Act, 2000 have been recognized under the Act as the Indian State’s obligation under the Indian and international laws29. With such specific elaboration of the documents and their principles one would expect a shift from welfare to rights, leading to empowerment of children. There are two provisions in the Act that may be seen as recognizing some kind of rights under the CRC30 One is Section 32, which enables children in need of care and protection to approach the Committee themselves. However, there is no corresponding provision laying down that all children in need shall be provided the promised care. There has not been any data, or even rough estimates, as to how many children in India are in need of care and protection and where are they situated demographically. Secondly, Section 41 (5) provides that in case of adoption, children capable of expressing themselves must be consulted before being given in adoption. Children's right to participation in no other case has been recognized.

Another example of dis-empowerment of children is Section 11 of the JJ(C&P) Act which gives control to a custodian, like a parent, in whose care a child is placed, but the 'obligation' is only to maintain the child and there is no obligation on the custodian to ensure the full development and growth, like a parent of the child. The JJ (C&P) Act, further shows ignorance of many legal

---

29 Articles 15(3), 39(e) and (f), 45, and 47 of the Constitution of India, the Convention on the Rights of the Child 1989 (CRC), the UN Rules for the Administration of Juvenile Justice 1985 (Beijing Rules), the UN Rules for the Protection of Juveniles Deprived of their Liberty 1990, and all other relevant international instruments are among the reasons for this legislation.

30 Broadly speaking CRC recognizes five kinds of rights of children: (1) Right of survival and development, (2) Right to name, nationality and identity, (3) Right to family, (4) Right of participation and (5) Right against exploitation.
issues raised under the earlier Acts. Among the many issues relating to the JJA agitated before the Supreme Court and High Courts in the past, the following have been raised repeatedly.

- Relevant date for applying the JJA
- Responsibility to prove that the accused is a child
- Relationship of the JJA with other special Acts in case of a conflict of provisions.

The JJ (C&P) Act, 2000 has left many questions arising from its own provisions unanswered like what is the upper age limit under which a child may be kept in a children or special home and under what circumstances can a child of seventeen years be sent to an aftercare home and are the rights and obligations of children adopted under the JJ (C&P) Act similar to those of a natural-born child?

No policy change was announced while introducing the Bill or during its discussion in Parliament, and yet by introducing the word 'life' before 'imprisonment' it has been made possible to impose imprisonment on children. The change has gone unnoticed so far and may have occurred due to an overzealous drafter wanting to exclude all serious punishments for children.

Exclusion of imprisonment from this section is completely incongruous with the rest of the legislation India has made by signing various international instruments. Judges and others, like the judge who imposed life imprisonment on Chanchu despite the ban under the JJA, will pounce on this change and gleefully

---


32 Special provisions and Acts for dealing with neglected and delinquent children have been made since 1850 in India. In 1987, the Juvenile Justice Act was enforced in the whole of India excluding the state of Jammu and Kashmir. Even the state of Jammu and Kashmir accepted to abide by the direction of the Supreme Court in Supreme Court Legal Aid Committee v Union of India, JT 1989 (1) SC 549.

33 State v Chanchu @ Sudarshan Hansda, Juvenile Case No. 21 of 1999 arising out of SPE Case No. 7/99 judgment dated 30 September 2000. Chanchu, aged about fourteen years, was convicted by the Juvenile Court Bhubaneshwar in the Graham Staines Murder Case and sentenced to be detained in a juvenile home for a period of fourteen years under the proviso of Section 22(1) read with Section 22(2) of the Juvenile Justice Act.
send children committing serious offences to prison, contrary to the avowed commitment of providing 'for proper care, protection, and treatment by catering to their developmental needs and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children'.

The police remain the primary agency for bringing children, especially those in conflict with law, within the purview of the JJ (C&P) Act. The provision enabling constitution of the board and the Committee for a group of districts coupled with the various omissions, such as production of children before a magistrate within 24 hours, prohibition against keeping them in police stations, and presence of a lawyer, leave the children under the complete control of the police.

The problem is further compounded as the JJ (C&P) Act, 2000 provides that children not released on bail by the police officer may be kept only in an observation home. An observation home, too, may be established for a district or group of districts. It is well known that in many states only one observation home has been established, especially in case of girls, either these children will remain in police stations or in observation homes that may be far away from their ordinary place of residence.

The word ‘inquiry’ has been used in many sections of the JJ (C&P) Act, 2000 but it has not been defined. It is very difficult to point out all the instances of loose, vague, or contradictory drafting in the JJ (C&P) Act, 2000. Just a few provisions may be focused to illustrate the point. Section 15(1)(g)(i) provides that a child over 17 years but less than 18 years of age shall be sent to a special school

---

34 The Juvenile Justice (C& P) Act provides that all words used but not defined in this legislation, but defined in the Code of Criminal Procedure, shall have the meaning assigned to them in that Code unless the context otherwise requires. 'Inquiry' as defined by the Cr .P.C. 'means every inquiry, other than a trial conducted under this Code by a Magistrate or Court if the word is restricted to proceedings conducted by the magistrate and court only it will lead to many discrepancies. For example, it will no more be legal for an observation home to keep children unless they have been first produced before the competent authority as it can keep children only during an enquiry. It will not be an offence under Section 21 to publish information leading to identification of a child arrested but yet not produced before a magistrate, while doing so after such production will be penalized. Section 33 of the Juvenile Justice (C & P) Act itself provides for an inquiry by a police officer among others.
for not less than two years. It does not mention the maximum period for which such a child may be sent there. Now by amendment in 2006, a period of 3 years has been provided for. Section 33 raises questions about the procedure for dealing with children in need of care and protection. What kind of inquiry is being conceived under this section? Will the nature of inquiry conducted by the committee, a police officer, a special juvenile police unit, or the designated police officer be the same? Does the term 'social worker' in this section refer to the probation officer?

The limitation of four months within which to complete the inquiry applies only to a social worker and child welfare officer and not to the committee, as the period is to be counted from the date of 'receipt of the order. The Committee at this stage has been given the power only to 'allow the child to remain' in the children's home or the shelter home. The section does not seem to give any power to the committee to make appropriate orders in relation to children in need of care and protection to be kept with parents or guardians during proceedings. The provisions providing for adoption, foster care, or sponsorship to ensure familial care to children do not spell out who will consider the suitability of these options. The explanation to Section 39(3), instead of defining 'parent' as inclusive of natural, adoptive, and foster parents defines 'restoration of child' as such. The explanation contradicts Sub-section (3) that provides for restoration to parent.

It reads, 'inquiry- (1) On receipt of a report under Section 32, the Committee or any police officer or special juvenile police unit or designated police officer shall hold an inquiry in the prescribed manner and the Committee, on its own or on the report from any person or agency as mentioned in Sub-section (1) of Section 32 may pass an order to send the child to the children's home for speedy inquiry by a social worker or child welfare officer. (2) The inquiry under this section shall be completed within four months of the receipt of the order or within such shorter periods as may be fixed by the Committee; Provided that the time for the submission of the inquiry report may be extended by such periods as the Committee may, having regard to the circumstance and for the reasons recorded in writing, determine. (3) The State Government shall review the pendency of the Committee at every six months, and shall direct the Committee to increase the frequency of its sitting or may cause the constitution of additional Committees. (4) After the completion of the inquiry if the Committee is of the opinion that the said child has no family or ostensible support, it may allow the child to remain in the children's home till suitable rehabilitation is found for him or till he attains the age of eighteen years.
guardian, fit person, or fit institution.

The period of stay in an aftercare organization cannot exceed three years. This means that a child who goes there after completing the age of 18 may stay till the age of 21. However, a child above 17 years but below 18 years can stay only till the age of 20. Usage of the words 'neglected juvenile' in Section 52(2) or inclusion of proviso to Section 59(4) are difficult to explain in view of the changed terminology and non-penal approach of the JJ (C&P) Act, 2000. The instances of confusion created by the usage of new terminology are too numerous to be listed.

To sum up, it can be said that The JJ (C&P) Act, 2000 has given a challenge to all established norms and principles of legal drafting and interpretation. Apart from the question of a serious engagement with the issues, the Act also failed to comply with existing international human rights standards, specifically the Convention on the Rights of the Child 1992 (sic), The Belling Ruler (1985) and UN Rules for juveniles Deprived of their Liberty (1990) which are invoked in its preamble. The JJ (C&P) Act 2000 remains a merely rhetorical gesture in the direction of a more child friendly enactment.

The analysis reflects the need for bringing about comprehensive changes in the Juvenile Justice system in India as there has been no comprehensive review of the juvenile justice policy. One enactment has followed another with marginal changes aimed at removing some of the problems faced in its administration. These enactments have not fully incorporated the law laid down by the higher courts or provided clear answers to important questions raised on the meaning of certain words, expressions, or provisions contained therein.

The JJ (C&P) Act 2000 has too many anomalies to ensure smooth
operations under its existing provisions. Its statement of objects and reason may suggest that it has been passed with the best of intentions. However, neither the provisions of the JJ (C&P) Act nor the Model Rules framed thereunder show a sincere commitment and understanding of juvenile justice issues in its conceptualization, operationalization, or implementation. A lot more thinking, financial resources, and commitment, and not mere enactment of a new legislation, are needed to make a difference to the cause of children. It is too early to assess its real impact on the functioning of the JJS in India.\textsuperscript{40}

\textsuperscript{40} Ved kumari, 'The Juvenile Justice System in India; From Welfare to Right' Published by Oxford University Press, 2004