CHAPTER-6
LAW RELATING TO JUVENILE OFFENDER

6.1. Introduction
In general it is accepted that early-phase intervention is the finest approach to preventing juvenile delinquency. In this process first we must categorize such juveniles and subsequently provide them treatment. Prevention requires individual, group and organizational efforts to keeping away juveniles from violating the law. And it can be achieve through the economic development, professional training programs, educations are the measures to prevent the juvenile from involvement in criminal and illegal activities. In application of Juvenile Justice Act, it is very important for the authorities first to get involved in the Juvenile justice system and construct effectual partnership with society. NGO and local communities’ involvement can also help in preventing the Juvenile delinquency. Government should give importance to effective, beneficial and long-term programs for juveniles so that they can get back their self confidence and feel motivated to join main stream of the society. By declaring children as supremely asset of the nation, the national policy on children in 1974 maintained that the social and natural development is the sole liability of the nation and State has also provide sufficient opportunities to children for their mental, physical and social development. And further the state should also protect children against abuse, neglect, cruelty and exploitation. The socially backward children who become criminal/delinquent have been ensured facilities for education, professional training and rehabilitation. This National Policy for Children in 1974 also contains provision for special assistant to each and every children belonging to the weaker sections to attain equal opportunity.

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1International Journal of Interdisciplinary and Multidisciplinary Studies (IJIMS), 2014, Vol 1, No.6, 64-70. 70
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 include an all-inclusive approach to deal with the problems of delinquent children and those exposed to delinquency treat them through love, care, protection, rehabilitation and aftercare treatment. The JJ system gives high priority to reducing the need for legal interventions in order to avoid children's cases from bad effect of criminalization, penalization and stigmatization. Purpose behind this different attitude towards children is to protect them from usual criminal court proceedings, wherein 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.²

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 all the 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.PC 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 also entitled to get 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 board 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 participation of informal social measures at family level and also at the Community level.

The question of Age Determination
Age determination is a disputed issue in juvenile justice system and a number of cases have been decided by the courts on this context. In the context of juvenile legislation in India, “a juvenile is a person who has not completed eighteen years of age” and shall be tried by the Juvenile Justice Act as a child below the age of seven years and have been granted blanket immunity under section 82 of the IPC. The objective behind this is that not to treat such child as an adult for their criminal/illegal activities but to reform and rehabilitate them, the question of age determination is controversial because there is no clarity in the law on this issue. Even in the Indian Penal code 1860, sections 82 and 83 said that the children below the seven years and not above twelve
years of age, not be prosecuted for their criminal act. Here the question arises that who will determine the age bracket they fall in? Section 49(1) of the Juvenile Justice Act, 2000 and section 94 of the Juvenile Justice (C&P) Act 2015 confers the power on competent authority or Board to determine whether the person brought before it is a child or not. The following evidences are taken into consideration for the process of age determination i.e the date of birth certificate from the school or the matriculation certificate from the concerned examination board, birth certificate issued by any competent authority and if any of the above evidences are not available then the age shall be determined by ossification test or any other medical test.

According to Act there are two ways to determine age of any delinquent person, first is documentary evidence provided by him or by medical (Examination) evidenced. The Supreme Court held in Jaya Mala vs. Home Secretary, Government of Jharkhand, “that the age as ascertained or determined by medical examination is not conclusive proof of age of a person. It is mere opinion of the doctor and there is a margin of 2 years could be on either side”. In another leading case, Bhoop Ram vs. State of UP, the apex court held “that in case of conflict between documentary evidence and medical report, the documentary evidence will be considered to be correct”. This leads to the conclusion that it needs to produce documentary evidence to determine the age of any delinquent. Now one more concern arises here because to get the document forged is the easiest things in our country. Even we cannot rely on medical examination alone because it was also held not to be hundred percent conclusive proof by medical practitioners. The Allahabad High Court’s in its own admission said that “a doctor is not always truthful”. In Smt. Kamlesh and. vs. State of UP, the court maintained that a professional witness is prone to side with a party that engages his/ her service. Thus, a doctor is not always truthful. Now, the question arise that if age cannot be

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3Section 82 and 83 of Indian Penal code 1860
4The Juvenile Justice (care and Protection of children) Act, 2015
determined by using either documentary or medical evidence, then in that case what is to be done? The Supreme court in Babloo Passi vs. State of Jharkhand held that no fixed norm had been laid down by the Act for the age determination of a person and the plea of the juvenile must be judged strictly on its own merit. The medical evidence as to the age of a person is a very useful guiding factor but it is not conclusive proof and has to be considered along with other cogent evidence.

Apart from the determination of age, the question of the date from when the age has to be taken into account has also been a matter of controversy. In Umesh Chandra. vs. State of Rajasthan, it was held that “it is the date of the offence that has to be considered”. Arnit Das vs. State of Bihar overruled the judgment saying that the date of commission of offence is irrelevant and it is the date of bringing the accused in the court that has to be taken into account. This was again overruled in Pratap Singh vs. State of Jharkhand where the court held that the reckoning date for the determination of the age of the juvenile is the date of an offence and not the date when he is produced before the authority or in the Court.5

6.2 National Policy and Scheme for Children

The National Policy for Children adopted by the Government of India on 22 August, 1974. According to it Children are the supreme assets of the nation. Therefore, Children's programs find an important part in our national plans for the development of children and women, so that in future our children become healthy, educated, physically and mentally fit, motivated & become vigorous citizens. Our aim is to provide equal opportunities for the upliftment and development of all children during their adolescent period, and also try to

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reduce discrimination and ensuring social justice to all.\textsuperscript{6} Therefore, following measures should be undertaken for the attainment of these goals:

1. Comprehensive health programme.
2. Requisite nutrition services to remove deficiencies in the diet of children.
3. General improvement in health care and nutrition education of expectant and nursing mothers.
4. Free and compulsory Education for all children up to the age of fourteen years. Measures need to be taken to reduce the prevailing wastage and stagnation in schools, particularly in the case of girls and children of the economically weaker sections.
5. Children who are not in position to take full advantage of formal school education should be facilitated with other forms of education suited to their requirements.
6. Children should be protected against harsh treatment and exploitation. Child under fourteen years of age shall not be permitted to be engaged in any labour work and hazardous occupation.
7. Special care and treatment, education and rehabilitative reforms should be provided to physically challenged, emotionally disturbed or mentally retarded children.
8. Children should be given priority for protection and relief in times of distress or natural calamity.
9. Special programs shall be formulated to encourage and guide the gifted children, particularly those belonging to the weaker sections of the society.
10. Recreational activities such as physical education, cultural or scientific activities shall be promoted in schools, community centres and such other institutions.

\textsuperscript{6}National Policy for Children (1974).
11. Special assistance and equal opportunity should be given to all children belonging to the socially and economically backward sections of the society.

12. Facilities of education, professional training and rehabilitation should be provided to socially handicapped Children, who have become delinquent or have been forced to take to begging or are otherwise in distress so that they can also become useful citizens.

13. Interests of children should be given paramount consideration in all legal disputes.

14. Family bonding and care need to be strengthened to full potentialities for the proper growth and development of children. In formulating programmes in different sectors, priority shall be given to programmes relating to:
   i. preventive and promoted aspects of child health;
   ii. nutrition for infants in the pre-school age;
   iii. education and training and development of orphan and destitute children;
   iv. crèches and other facilities for the care of children or ailing mothers; and
   v. Special Care, education, training and rehabilitation of physically challenged children.

The Government of India prepared in 1979, the National Plan of Action in observance of the International Year of the Child (IYC). The Plan stated that the specific objectives of the observance of the International Year of the Child in India shall be as under⁷:
   i. To make concerted efforts to reduce the incidence of child mortality by providing effective health programmes and must check their nutritional needs.

⁷ National Plan of Action during the International Year of the Child (1979)
ii. 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.

iii. 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.

iv. To strive for the speedy realization of the goal of universal elementary education and to substantially reduce the rates of school drop-out.

v. 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.

vi. To secure entitlement of all children in the poverty groups born no/after 1 January 1979 to public assistance for their survival, growth and development.

The approach strategy had accepted the following guidelines:

i. The general theme of International Year of the Child in India shall be “Reaching the Deprived Child”.

ii. The IYC should not be taken up as a short term 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.

iii. 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 child in the age group of 0-6 years, primary school children as also pregnant and nursing mothers.
iv. 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 six years, pregnant and nursing mothers.

v. During the IYC, an attempt should be made to reduce maternal and infant mortality rate by about 5%.

6.2.1 Scheme for Children in Need of Care and Protection

The GOI has formulated a national scheme for the welfare of children in need of care and protection. The objective of 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 society they belong to. The programme for the purpose includes ameliorative services of food, shelter, clothing, medical attention and curative services of education, prevocational 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. The following guidelines have been prescribed to those children who have attained the age of 18 years, but have not yet started earning a livelihood and do not have a proper place to live:
A. 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.

B. 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.

C. 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.

D. Non-formal vocational training facilities in the form of service and repair centres and production-cum-training centres, should be the major plunk for enabling such children to earn honourable living and cease to be dependent on homes.

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

F. Efforts should continue to be made to plan the career of the destitute children in such a way that they become self dependent 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 indefinite stay of children beyond 18 years of age.

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. Priority 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 bonding due to death, separation, imprisonment of one of parents and where the income of the family is less than Rs.500/- per month; and
3. Children found with no home or any settled place.

The Scheme also intends to develop foster care services 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.

6.2.2 Scheme of Prevention and Control of Juvenile Social Maladjustment

1. 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 of juvenile social maladjustment is
proposed to be introduced under the Seventh Five Year Plan. The Scheme has the following objects:

ii To provide for full coverage of the services contemplated under the Juvenile Justice Act, 1986 in all the districts, and to ensure that no child under any circumstances put in prison.

iii 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.

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

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

vi 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.

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8 Scheme for the Prevention and Control of Juvenile Social Mal-adjustment (1985), Ministry of Welfare Government of India
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 assimilation. 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.

6.2.3 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/she appears or 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 juvenile offenders”. The Central and State Children Act⁹ incorporate special provision for the handling of children with regard to arrest, bail, investigation,

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⁹ The Children Act, 1960 (Act No. 53 of 1986)
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 alternatives open to children's court are: allowing the child to go home after advice; directing the child to be released on probation and placed under the care of parents; and directing the child to pay fine if he is over fourteen years of age and earns money.

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 (Cr.PC) 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.

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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 constitution obliged the centre to extend the Children Act 1960 to the whole country.

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6.3 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 to all over the India. The JJA being uniform and non-penal legislation, it removed many difficulties that had arisen due to lack of uniformity.

6.3.A Administration Of Juvenile Justice.

One of the objects and reasons for the Juvenile justice Bill was “to bring the operation of Juvenile Justice System in the country in compliance 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 concern with the delinquent and neglected children all over the country. 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

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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 aftercare 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 form 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 standardized definition of juvenile for the whole country;
ii  A wider role given to NGO’s;
iii Prohibition on detention of children under all circumstances; and

The JJA specified the children who were within its purview. Under Juvenile Justice Act, 1986 Boys under the age of 16 years and girls under the age of 18
years 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, settlement of their matter and pre and post adjudication care and after care were made. Police persons and voluntary organizations authorized in this regard, could brought the delinquent and neglected children before competent authority. Here competent authority meant “The Juvenile Court” with regard to delinquent children and “The Juvenile Welfare Board” with regard to neglected children, and it also included the magistrates specified in Section 7(2) of the JJA.

The competent authority was required to hold necessary enquiry to determine whether 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 “whether accused for 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 his release would defeat the ends of justice”. In case if the juvenile was not released on bail then he could only be sent to observation home or place of safety. 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. 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. 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 license.


The JJ (C&P) Act, 2000 was passed by Parliament and has been enforced since 1st April 2001 in the whole of India except the state of J&K.\(^{11}\)

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 instrument\(^{12}\). The Act was passed keeping in view the constitutional provision and conventions on child rights, in the following terms:-

The Constitution under several provisions, including clause (3) of article 15, clauses (e) and (f) of article 39, articles 45 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. The General Assembly of

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\(^{11}\) Enforced by SO 1777(E) dated 28 February 2001 w.e.f. 1 April 2001.

\(^{12}\) Subs. by Act 33 of 2006, sect. 2, for “through various institutions established under this enactment” (w.e.f. 22.8.2006).

The JJA (C& P) Act applies to persons who are under the age of eighteen years and they are referred to as children or juveniles. ‘Juvenile’ refers to children alleged to have committed an offence. ‘Child’ includes those who 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. 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 good and healthy citizen. 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 and vocational training, 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 as an expert on matters concerning children. Its members shall have the powers conferred by the Cr.PC 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. In case of petty offences punishable with fine up to 1000/- only, the police may dispose of the case at the police station itself. In case of non-serious offences punishable with imprisonment up to 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. No FIR or charge sheet is required in case of non serious offence and the police may record the information only in their 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 in juvenile case. 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

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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 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 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, they may be allowed to remain in shelter home till they are reformed 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. 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 follows:

i  Allowed to go their respective homes after advice and counselling to both the parent and the child.

ii  Increase in participation of Juvenile in Group counseling.
iii Order to perform community service (serving elderly in old age home, helping local 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 can’t be sent him to prison in default of payment of fine)

v Release on probation 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, is 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.14

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 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

14Devendra @ SonuVs. State of Rajasthan RLW 2006 (1) Raj 407.
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 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 result of their wrongful 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 eighteen 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”. 15

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 16. 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. 17 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.  

(b) Special Provision of 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 that the juvenile should be released on bail whether the offence committed by them is bailable or non-bailable. When a juvenile brought before a Juvenile Board, then such juvenile shall be released on bail or put him under the supervision of a Probation Officer/fit person.

The ground for refusing bail to children is not the nature of the offence committed. Bail can be refused only on reasonable grounds for believing that:

i  if such release is likely to associate the juvenile with any known criminals;

ii  expose him to moral, physical and psychological danger,

iii  if 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 Manmohan Singh vs. State of Punjab and Manoj alias Kali vs. State (Delhi), 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

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18 Vimal Chadha v. Vikas Choudhary, 2008 (8) SCALE 608 : 2008 (9) SCR 911
19 (2004) 136 PLR 497
20 Cr.L.J. 4759
21 2008 (12) SCALE 359
bail, view expressed by the court in Abdul Rab vs. State of Bihar\textsuperscript{22} 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 NikuChaubey vs. State (Delhi) and Anand Vishal Khujur vs. State of Jharkhand\textsuperscript{23} 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”.\textsuperscript{24}

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.\textsuperscript{25} Bail to a juvenile was denied in another case\textsuperscript{26} where there was likelihood that after his release on bail the accused would again mix up with other adult co-accused who was 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\textsuperscript{27} 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.

\textbf{(c) Constitution of Competent Authority}

\textsuperscript{22}129 (2006) DLT 577
\textsuperscript{23}2008 (3) JCR 488 Jhr
\textsuperscript{24}Master Abhishek (Minor) v. State (Delhi), 2005 VI AD Del. 18.
\textsuperscript{26}FawaadNasir alias Ziya v. State (Delhi), MANU/DE/8845/2007
\textsuperscript{27}Sandeep Kumar vs. State (Delhi), 2005 Cr.L.J.3182
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.

1. Juvenile Justice Board (JJB)

The JJB has exclusive jurisdiction to deal with the juvenile cases and the Board headed by a Principal Magistrate “who should be a Metropolitan Magistrate or a Judicial Magistrate First Class having special knowledge 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, psychology, child development or any other social science discipline.

Exclusive jurisdiction over the juveniles has been given to the Juvenile Justice Board and the Board has power to adjudicate and decide cases of juveniles. “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 the Section 18 (prohibition of anticipatory bail) of Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 does not apply in case of a juvenile.

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

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of the Juvenile Justice Board can be terminated after inquiry, by the State Government on following grounds:

i. if he/she has been found guilty of misuse of power vested under this Act, or

ii. He/she 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/she 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.

2. The Child Welfare Committee

The State Government may, within a period of one year from the date of commencement of the Juvenile Justice (C & P of Children) Amendment Act, 2006, by notification in the official gazette (constitute for every district) one or more Child Welfare Committee for exercising the powers and discharge the 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 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 work in field of child development.

The tenure and qualification of chairman and the member appointed by state government for a term of three years. 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-fourth 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.

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, any public servant, child help line, recognized voluntary organisation, social worker. The Committee is also competent to take suomoto 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 Hard core 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 authorized 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.
6.6 The Juvenile Justice (Care And Protection Of Children) Act, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015 has come into force and repeals the Juvenile Justice (Care and Protection of Children) Act, 2000. The Juvenile Justice (Care and Protection of Children) Bill, 2015 was passed by Lok Sabha on 7th May, 2015; was passed by Rajya Sabha on 22nd December, 2015 and received Presidential assent and come into force on 31st December, 2015.30

The JJ Act, 2015 provides for strengthening the provisions for both children in need of care and protection and children in conflict with law. Some of the key provisions include: change in nomenclature from ‘juvenile’ to ‘child’ or ‘child in conflict with law’, across the Act to remove the negative connotation associated with the word ‘juvenile’; inclusion of several new definitions such as orphaned, abandoned and surrendered children; and petty, serious and heinous offences committed by children; clarity in powers, function and responsibilities of Juvenile Justice Board (JJB) and Child Welfare Committee (CWC); clear timelines for inquiry by Juvenile Justice Board (JJB); special provisions for heinous offences committed by children above the age of sixteen year; separate new chapter on Adoption to streamline adoption of orphan, abandoned and surrendered children; inclusion of new offences committed against children; and mandatory registration of Child Care Institutions.

Under Section 15, “special provisions have been made to tackle child offenders committing heinous offences in the age group of 16-18 years. The Juvenile Justice Board is given the option to transfer cases of heinous offences by such children to Court of Session after conducting preliminary assessment. The provisions provide for placing children in a ‘place of safety’ both during

30 www.pib.nic.in
and after the trial till they attain the age of 21 years after which an evaluation of the child shall be conducted by the Children’s Court. After the evaluation, the child is either released on probation and if the child is not reformed then the child will be sent to a jail for remaining term. The law will act as a deterrent for child offenders committing heinous offences such as rape and murder and will protect the rights of victim”.

To make more efficient adoption procedures for orphan, abandoned and surrendered children, the existing Central Adoption Resource Authority (CARA) is given the status of a statutory body to enable it to perform its function more effectively. Separate chapter (VIII) on Adoption provides for detailed provisions relating to adoption and punishments for not complying with the laid down procedure. Processes have been streamlined with timelines for both in-country and inter-country adoption including declaring a child legally free for adoption.

Several new offences committed against children, which are so far not adequately covered under any other law, are included in the Act. These include: sale and procurement of children for any purpose including illegal adoption, corporal punishment in child care institutions, use of child by militant groups, offences against disabled children and, kidnapping and abduction of children.

All child care institutions, whether run by State Government or by voluntary or non-governmental organisations, which are meant, either wholly or partially for housing children, regardless of whether they receive grants from the Government, are to be mandatorily registered under the Act within six months from the date of commencement of the Act. After that penalty is provided in the law in case of non-compliance of Act guidelines.
6.7 Need of Amendment in Existing JJ (C&P) Act 2000

After the 2012 Delhi gang rape, it was found that one of the accused was a few months away from being 18 year of age. So, he was tried in a juvenile court. On 31 July 2013, Subramanian Swamy, a politician filed a Public Interest Litigation in the Supreme Court of India seeking that the boy be tried as an adult in a court. The Court asked the juvenile court to delay its verdict.

After the Supreme Court allowed the juvenile court give its verdict, the boy was sentenced to 3 years in a reform home. The victims’ parents criticised the verdict and said that by not punishing the juvenile as an adult criminal the court was encouraging other young offenders to commit the similar offence.

In the month of July 2014, Minister of Women and Child Development, Mrs. Maneka Gandhi said that they were preparing a new law which will allow 16-year-olds to be tried as adult. She said that 50% of juvenile crimes were committed by teens who actually know that they get away from it. She also added that amending in the law also allow the juvenile to be tried for murder and rape as adults. The bill was introduced in the Parliament by Mrs. Maneka Gandhi on 12 August 2014. On 22 April 2015, the Cabinet cleared the final version after some changes.

The bill allow a Juvenile Justice Board, to decide whether a juvenile criminal in the age group of 16–18 should tried as an adult or not. The bill also introduced concepts from the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption, 1993 which were missing in the previous act.

6.8 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, 2015 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 labelling 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.

“The Juvenile Justice (Care and Protection of Children) Act, 2015” 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 has 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'.

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, 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 fulfil its international obligations. The JJ (C&P) Act, 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, 2015 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

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31 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.
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, 2015 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 is recently added, 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 on their part. The JJ (C&P) Act, 2015 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-à-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, 2015 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, 2015.

The reasons for re-enacting The JJ(C&P) Act, 2000 and the JJ (C&P) Act, 2015, have been recognized under the Act as the Indian State’s obligation under the Indian and international laws. 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 is a provision in the Act that may be seen as recognizing some kind of rights under the CRC. Under Section 31(1)(vi), 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.

32 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.

33 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.
Another example of dis-empowerment of children is Section 11 of the JJ(C&P) Act 2015 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 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.

The JJ (C&P) Act, 2015 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 special home and under what circumstances can a child of eighteen years be sent to an aftercare home and are the rights and obligations of children adopted under the JJ (C&P) Act 2015 are similar to those of a natural-born child?

Police remain the principal agency for brought up children before the Juvenile Justice board, especially those in conflict with law, within the purview of the JJ (C&P) Act 2015. The provision enabling constitution of the board and the Committee. Also provide provision such as production of children before a magistrate within 24 hours, prohibition on keeping them in police stations but still the children come under the control of police completely for many hours.

The problem is further compounded as the JJ (C&P) Act, 2015 provides that children cannot be released on bail by the police officials and the between arrest and production children must be kept only in an observation home. It is

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35 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.
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, 2015 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, 2015. Just a few provisions may be focused to illustrate the point. What kind of inquiry is being conceived under this Act? 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’ 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 home or shelter home. The Act 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 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 years may stay till the age of 21.

To sum up, it can be said that The JJ(C& P) Act, 2015 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 Beijing Ruler (I985)
and UN Rules for juveniles Deprived of their Liberty (1990) which are invoked it its preamble. The JJ (C&P) Act 2015 remains a merely symbolic gesture in the direction of a more child friendly enactment.\textsuperscript{36}

The analysis reflects the need for bringing about comprehensive changes in the Juvenile Justice system in India as here 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, 2015 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. 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. However, it is too early to assess its real impact on the functioning of the new Act in India.

\textbf{6.9 Conduct with juvenile offenders}

To improve the conduct of Juvenile and to reform or rehabilitate them following considerations under the JJ Act and Rules are important;

i. Juvenile who not released on bail, are to be kept in Observation Home.

ii. Power of State Government to frame Rules for the classification and segregation of juveniles in Special Homes.

iii. The JJB authority to pass final protective custody order.

iv. Juveniles alleged with heinous or serious offences can maximum be sent to Special Home for not more than three years.

v. Juveniles are entitled to be socially integrated / rehabilitated through adoption, foster care, and sponsorship with after care.

vi. Intensive individualized attention to juveniles.

vii. Juvenile alleged with serious crime are generally not mentally healthy or had psychological disorder, e.g. addicted with alcohol or other drugs which leads to behavioral changes, such child be sent to a psychiatric hospital/ nursing home.

An appropriate response to juveniles who commit serious crime requires a system that demands specialized customized responses based on the needs and circumstances of each juvenile, taking into consideration the impact on the victim of his crime, and the wider interests of society. From the above analysis it is clear that juvenile law in India does indeed provide for a juvenile jurisprudence grounded system which focuses on reforming and rehabilitating juveniles who commit serious crime through individualized inter-disciplinary services that are monitored and reviewed rigorously, aspects that are not envisaged in the adult criminal justice system which is premised on retribution and punishment. It also retains the focus on the ends of justice, taking into account the interests of the victim and society.