CHAPTER-5
THE HISTORY AND GROWTH OF JUVENILE JUSTICE DELIVERY SYSTEM

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

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

The Juvenile Justice System in India originated during the British rule and was the direct consequence of western ideas and developments in the field of prison reforms and juvenile justice. The changes introduced by British in India to deal with delinquent juveniles, were not confined only to those practiced in
England. The juvenile court established under the Madras Children Act, 1920 and the English Children Act, 1908 were not different from each other. But subsequent Children Acts dispensed with the presence of lawyers on the lines of the parens-patriae model of the American juvenile courts. The juvenile welfare boards, adopted by the Scandinavian countries became an integral part of the legislations dealing with delinquent and neglected children since 1960. The development of concept of juvenile justice in India is lacking behind on many aspects which needs to be worked on as compared to the developments that have taken place in western world, especially in the light of children and human rights jurisprudence in Europe and America. The Apprentices Act, 1850 was the first legislation that laid the foundation of juvenile justice system in the India. Subsequently the concept of juvenile justice gained momentum with the passing of the Indian Penal Code - 1860, Reformatory Schools Act - 1897, and recommendations made by the Indian Jail Committee (1919-1920), which firmly suggested that the juvenile offender should be treated in a different way from an adult offender and the detention of juvenile offenders should be prohibited and recommended the provision of reformatory schools and constitution of juvenile courts with procedures - as informal and elastic as much as possible. The Committee also show the desirability of creation of provisions and special laws for juveniles who had not committed any crime so far or who are the first offender, but there will be possibility in the near future on account of residing with offenders/criminals in reformative and remand homes.

The “Madras Children Act 1920” was the first Children Act to be enacted which was narrowly followed by Bengal and Bombay in 1922 and 1924, respectively. And after that many states enacted their own Children laws, covering the two categories of children, as follows (a) delinquent children, and (b) neglected children and these two categories of children are handled by the juvenile courts. These children were to be kept in rehabilitative and remand homes or can be released on their good character, with a possibility of
imprisonment when the nature of offence was serious and the character of the offender so depraved as to justify imprisonment\(^1\). At this point of time, by and large, the “welfare” approach was adopted for children whether they are delinquent or neglected.

In 1704 it was Pope Clement XI, who first introduced the idea of “the correction and instruction of profligate youth in institutional treatment”. Subsequently Elizabeth Fry and her associates allocated resources to establish separate reformative homes for juvenile offenders. Consequently, in Britain Reformatory Schools Act and Industrial Schools Acts were brought on statute book. Special courts established for juveniles were initiated for the first time in 1847, in United States of America. However, the first ‘Juvenile Court’ could be established in 1899, in Chicago under Juveniles Offenders Act. And in 1905 the first Juvenile court was set up in England.

The term “Juvenile justice” was used for the first time by the legislature by the state of Illinois, USA, in 1899, while passing the Juvenile Court Act. The approach under lying this law was that juvenile offenders should not be dispensed out the same punitive and retaliatory treatment as adults but rather given individual attention for their own protection as well as that of the society\(^2\). The word “Juvenile” has been derived from Latin term “juvenis” meaning Young. The term “delinquency” has also been derived from the term do (away from) and liqueur (to leave). The Latin initiative “delinquare” translate as to emit in its original earliest sense\(^3\).

\(^1\) Wrobleski, M. Henry (2000) an introduction to law enforcement and criminal justice, Thomson learning, USA, pp-540-541
\(^3\) http://www.development4you.org/2011/12/juvenile-justice-system-in-india.html
According to Reckless⁴, the term “juvenile delinquency” applies to the violation of criminal code and /or pursuit of certain patterns of behavior disapproved of for children and young adolescents. Caldwell⁵ prefers to leave the term indistinct and includes within it all acts of children, which tend them to be pooled indiscriminately as wards of state. Juvenile delinquency⁶ as a technical term rather than merely a descriptive phrase is entirely a legislative product, but generally speaking, the term refer to a large variety of disapproved behavior of children and adolescent which the society does not approve of, and for which some kind of admonishment, punishment or corrective measure is justified.

India has a long history of Juvenile legislation; most of the legislative provisions have followed, more or less, the British law pattern. The British law providing separate provisions for juvenile offenders was passed on to India in the last quarter of the nineteenth century. Chronologically ‘The Apprentices Act, 1850’ was the first law to deal with the children in distresses that are to be trained for trade and commerce. According to the Indian Penal Code 1860 children under the age of seven years are exempted from criminal responsibility⁷. It also exempts children between the age of seven to twelve years, who have not attained sufficient maturity to understand the nature and consequences of their own immoral act and conduct, from criminal responsibility⁸. The IPC Act also provides protection to the children from the evil designs of adults⁹. The Reformatory School Act was enacted in the year 1876 and later the Act again modified in 1897, was considered the landmark legislation in the treatment of juvenile delinquents. It empowered the governments to establish reformatory schools. According to this Act, the court

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⁵ Caldwell: Criminology, p-357
⁶ Black law dictionary, (1999), seventh edition, west group
⁷ Section 82 of IPC
⁸ Section 83 of IPC
⁹ Section 363A IPC
could keep in custody juvenile in such institutions for a time period of two to seven years but after attained the age of 18 years they would not be kept in the reformatory schools. There was also a provision to provide suitable employment to juvenile who cross over the age of fourteen years.

The Criminal Code also visualizes the commitment of juvenile offender up-to the age of fourteen years to Reformatory Schools and provided probation on good conduct up-to the age of twenty one years. Consequently Indian children Acts passed by the Presidencies and provinces also maintained this thinking. These enactments had provisions for the establishment of a specialized mechanism for the handling and treatment of children/juveniles. And in this regard, recommendations of the Indian Jails Committee 1919-20, gave an additional momentum to legislative action. In the post independence period; the Government of India understands the problems of juvenile, and in this regard government take step for juvenile justice particularly and apply law in the centrally administered union territories i.e the Children Act 1960. The law was in to force in all the UTs, but the states were not having juvenile legislation but the state were free to adopt it. At this stage, juvenile justice in the country was not uniform because each state had its own standards, norms and practices. These problems were sought to be removed by passing the Juvenile Justice Act 1986\(^\text{10}\). On the other hand, the concepts of juvenile justice was undergoing through various basic changes, as it is indicated by the Beijing Rules and the UN Convention on Rights of the Children. This led to the formulation of the Juvenile Justice (Care and Protection of Children) Act, 2000, which was comprehensive amended in 2006 by Act No.33 of 2006. And again in 2012 the introduction of new amended law gained momentum because of the dark memories evoked by the Nirbhaya case (Delhi gang rape case) where the Delhi police disclose the fact that the most brutal attack on the victim came from the juvenile offender who succeeded in escaping the death

\(^{10}\) Black law dictionary, (1999), seventh edition, west group
sentence only because he was a juvenile. Minister of Women and Child Development Maneka Gandhi, dipping into this groundswell of anger, has warned unilaterally that “an adult crime by a juvenile requires adult punishment, not leniency”.

Delhi gang rape case was an example that should be taken into consideration by the official to immediate carryout amendments in the definition of juvenile and insert necessary exceptions which would cover the fact and circumstances of that case and which include gravity and heinousness involved in that particular case along with the level maturity and understanding of the offence by the juvenile concerned.

Now there is a need to bring some reforms in the juvenile laws as there is an increase in serious crimes involving children of 16 to 18 years of age and they are well abide by the fact that below 18 years is the gateway pass for them from the criminal prosecution. So, 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 after receiving Presidential assent it become “The Juvenile Justice (Care and Protection of Children) Act, 2015” and came into force in whole India except Jammu and Kashmir from 31st December, 201511.

5.2 Development of Juvenile Justice System in India


5.2.A. The Children Act 1960

After the partition of India, there was a high growth in the number of neglected and delinquent children. Some special programmes took up in first

11 www.pib.nic.in
five year plan to meet the needs of neglected children. Industrialization coupled with urbanization also brought different types of problems for children. One of the problems was an increase in cases of juvenile delinquency in big cities and the most common offence committed by them was theft. As laws dealing with delinquent children existed only in a few states, so, the Government of India enacted the Children Act 1960. Though the Act was applicable only to the U.T.s but it was a model to be followed by the states in the enactment of their own Children Acts.

The Children Act 1960, provided the care, protection, welfare, education and rehabilitation of neglected and delinquent children. For the first time in India, any Act strictly prohibited the detention of children in jail under any circumstances. It provided for separate legal bodies to deal with delinquent children: the children court and a child welfare board. The Act introduced a system of three-tier institutions, firstly, an observation home for children who stay during the pendency of their proceedings, secondly, children’s home for accommodating neglected children, third and lastly, a special school for delinquent children. However, it introduced a sex discriminatory definition of child, “Child in case of a boy is below sixteen years and in case of a girl is below eighteen years of age”. However, all states consequently passed or adopted the similar Children Acts but the definition of the ‘child’ differed from state to state. So, the delinquent and neglected children were subjected to different treatment in different states.

5.2.B. Juvenile Justice Act 1986

The necessity for a uniform or standardize Children Act across the country paved the way for the enactment of the Juvenile Justice Act (JJA) 1986. It promoted “the best interest of the juveniles” by incorporating the important provision of the Indian Constitution and the 1974 National Policy Resolution for Children and also add the universally agreed principles for the protection of juveniles such as the “United Nations Declaration of the Rights of the Child
1959” and the “United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) 1985”. The detention of juveniles in police lock-up or jail abolished by this Juvenile Justice Act 1986. It specifies two main authorities, a Juvenile Welfare Board and a Juvenile Court, to deal with delinquent juveniles. It also recommended to establish various kinds of institutions for the care and protection of juveniles, a juvenile home for the treatment of neglected juveniles, a special home for delinquent juveniles and an observation home for the temporary reception of juveniles during the pendency of their trial, and an after-care home for the purpose of taking care of juveniles after discharge from a observation home or a special home. The main objective to adopt these different approaches was to protect/save juvenile from criminalization, penalization and stigmatization. With the enactment of the JJA, the “welfare” approach gave way to the “justice”.

But while implementation of the JJA-1986 various loopholes were experienced like in terms of age determination, separate trials, court proceedings, notification of charges to parents or guardians, filing of reports by probation officer, rehabilitation and after care of juveniles. Juvenile who stays or kept in government run institutions, did not know the purpose of their stay. In addition, the states and union territories who had formulate their regulations for the implementation of the Juvenile justice Act were not according to the basic structure of Juvenile Welfare Boards, Observation Homes, Juvenile Courts and After-Care Homes. Hardly any required measures are taken for adherence of minimum standards for institutional care such as foster care, sponsorship, adoption, etc. The controversy between the reality and the implementation of the law was felt all with the adoption of the “Convention on the Rights of the Child (CRC) 1989” and it was ratified by the Government of India in 1992. The provisions of the CRC with regard to children in conflict with law were augmented in two other United Nations instruments, firstly “the United Nations Guidelines for the Administration of
Juvenile Delinquency (Riyadh Guidelines)” and the second “United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDL Rules)”. Both provided detailed information about the processes to be followed by the juvenile justice system in dealing with persons below the age of 18 years. The 1993 World Conference on Human Rights held in Vienna and the successive adoption of Vienna Declaration and Programme of Action which urged States to ratify and implement promptly the CRC which made a definitive impact on all those concerned with the dilemma of these children in India including the government.

5.2.C. Juvenile Justice (Care & Protection of Children) Act 2000
After taking experiences from all the past developments, the government modifies the Juvenile Justice Act to make it in coherence with the CRC and a new Act came into force in 2000 named “Juvenile Justice (Care & Protection of Children) Act 2000”. The enactment of this Act endorsed the “justice” as well as the “rights” approach towards children and moreover made use of a better terminology as “juveniles in conflict with law” and “children in need of care and protection”. This separation aims to restrain the awful influence on the child who is in need of care and protection from the one who is in conflict with law. The Juvenile Justice Act 2000 brings uniform definition of a ‘juvenile’ or a ‘child’ throughout the country except in the State of Jammu & Kashmir. “A ‘juvenile’ or ‘child’ is a person who has not completed eighteenth year of age”. Juveniles in conflict with law consist of all those children alleged or found to have committed an offence. Juvenile in conflict with law are to be handled by the Juvenile Justice Board and juveniles in need of care and protection deal by child welfare committee. While dealing with juveniles and adolescents it also gave advice to their parents how they prevent their children from delinquency and also arrange counseling for them. It also introduced a broad choice of community programme options for juveniles.
The JJ Act 2000, though passed with good intentions but it also ignored the insertion of certain substantive and procedural process.

5.2.D. Juvenile Justice (Care and Protection of Children) (Amendment) Act 2006
Juvenile Justice Act 2000 was amended in 2006 to make it clearer that juvenility would be considered from the “date of commission of offence” who have not completed the age of 18 years thus clarifying ambiguities raised in Arnit Das vs State of Bihar. In amended Act it was also clear that under any conditions, a juvenile in conflict with law should not be kept in a police lock-up or jail. Further it also specify that the CJM or the CMM has every right to review the pendency of cases in the Board at every six months, and the child protection units should be set up in each and every states and districts to check the implementation of the Act.

5.2.E. Juvenile Justice (Care and Protection of Children) (Amendment) Act 2015
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 came into force on 31st December 2015, to whole India except the state of Jammu and Kashmir.

The JJ (C&P) Act, 2015 provides for strengthened provisions for both children in need of care and protection and children in conflict with law. And in the new Act some important and many new definitions also included 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 the timelines for inquiry by Juvenile Justice Board (JJB); special

12 [(2000] 5 SCC 488]
13 www.pib.nic.in
provisions for serious offences committed by children above the age of sixteen year and also included a 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.

5.3 National Human Rights Commission and Juvenile Justice System
The National Human Rights Commission (NHRC) is an autonomous body to check the promotion and protection of human rights in India. Since the commencement of National Human Rights Commission, the plight of juveniles who come in category of conflict with law and children who are in need of care and protection was their concern. The National Human Rights Commission monitors the complaints against children; Projects and Programmes Division and policy making and implementation of the policies at the national level. It also studying and recommending effective application of those international instruments which necessary for improvement of overall functioning of the juvenile justice system in India.

5.4 Other Measures
In the year 2005, the Registrar General of the High Court Patna informed the National Human Rights Commission that the implementation of the Juvenile Justice Act 2000 was extremely poor in Bihar. The National Human Rights Commission have given directions regarding the matter of juvenile justice to be reviewed expeditiously in each state and U.T. Along with this, the National Human Rights Commission in collaboration with an NGO had undertaken a study concerning the implementation of the Juvenile Justice Act 2000 in 16 states. And after research the facts revealed that the implementation of the Act was poor in all its aspects and needed to be strengthened.
The National Human Rights Commission also organized a National Conference on Juvenile Justice System in India in 2007 in New Delhi. In the
Conference number of recommendations and suggestions made to improve the working of the system in India. Concern was laid on the implementation of the Act 2006 in both letter and spirit, also advice the states and UTs to establish the required infrastructure under the juvenile justice system and also ensure zero pendency and the inquiry should be completed within the specific time period. It also emphasized on providing due care, protection, growth and development of children.

5.5 UN Convention on the Rights of the Children

The 6th UN Congress on the Prevention of Crime and Treatment of Offenders held in Venezuela in 1980 discussed in detail the problem of juvenile delinquency. As per discussion there should be the Standard Minimum Rules for the Administration of Juvenile Justice system. Each child has its human rights from its birth and it should not be denied by anyone. Therefore there must be adequate laws to protect the right of the children. Special attention should be given to homeless and street children in the urban setting to prevent juvenile delinquency.

A ‘child’ is defined under UN Convention on the Rights of the Child (CRC)\textsuperscript{14} as “a person under age of 18 years, it includes infancy, early childhood, middle childhood and adolescents”. The UN Convention on Rights of the Child,\textsuperscript{15} 1989 has granted four sets of rights for every child which includes: Civil, Political, Social, Economic and Cultural rights.

i. **Right to survival**: It includes the right to life, health and good standards of living. It also includes the right to identity and nationality.

ii. **Right to protection**: It includes protection of children from various problems like exploitation, inhuman treatment, violence, abuses and

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\textsuperscript{14} UNICEF(1985): united nations standard minimum rules for the administration of juvenile justice (Beijing Rules): new Delhi, UNICEF

\textsuperscript{15} UNICEF(1989): united nations convention on rights of the child (1989), new Delhi, UNICEF
also including the right to special protection in critical situations of emergency, civil and armed conflicts.

iii. **Right to development**: It includes the right to education, childhood care and development, social security and recreation and cultural activities.

iv. **Right to Expression**: It includes respect for the views of the child, freedom of speech and expression, freedom of thought and conscience etc.

The Convention provides legal remedies to ensure the rights of children in the society.

**Article 34**: It is the duty of States to protect the child from all type of sexual exploitation. For its implementation the States shall take all the necessary measures to prevent:

i. The inducement of a child to engage in any unlawful sexual activity;

ii. The use of children in prostitution.

iii. The use of children in pornographic.

**Article 35**: States shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, sale or traffic in children for any purpose or in any form.

**Article 36**: States shall protect the children from all forms of exploitation which prejudice any aspects of the child’s welfare. Child needs support and care to survive since the nature does not provide to the human infant any protection at all. The need to survival and protection continues till the child attains the age of maturity. Various programs pertaining to education, life skills, nutrition, health and shelter should be provided for the development of child.
5.6 Constitutional Provisions

Post Independence, the constitutional provisions have encouraged the developments in the field of juvenile justice system in India. Part III and Part IV of the constitution of India which deal with “Fundamental Rights” and “Directive Principles of State Policy” respectively and contain special provisions with respect to care and protection of the children.

**Article 15(3):** It allows the State to make special provisions for children and women.

**Article 21-A:** The state shall provide free and compulsory education to all children of the age of six to fourteen years.

**Article 23:** Prohibits the traffic in human beings and forced labour.

**Article 24:** Prohibits the employment of children below and the age of fourteen years in factories, mines and other hazardous employments.

**Article 39(e):** It directs the State to safeguard the tender age of children from entering into avocations unsuited to their age or strength.

**Article 39(f):** Directs the State to give opportunities and facilities for the healthy development of children and to protect childhood and youth against exploitation and moral and material abandonment.

**Article 45:** The State provides early childhood care and education to children below the age of six years.

**Article 47:** It is the duty of the state to raise level of nutrition and standard of living and to improve health\(^\text{16}\).

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\(^{16}\) Kumar, Narender (2003) constitutional law of India, pioneer publication, Delhi
5.7. Conclusion

No doubt, “juveniles in conflict with law” and “children in need of care and protection” are impoverished and need special care and protection. The state ensures special treatment to them through various legislative laws. But in reality, they often get victimized by legal and procedural complication. They are more prone to human rights violations sometimes by the hands of state agencies or otherwise by their own family in the form of arbitrary detention, cruel punishments, torture and abuse. Since last few years, the problems of children in need of care and protection and those in conflict with law has been receiving considerable attention by the government, NHRC, NGO as well as by the civil society. But, the problems faced by them are extremely large and all that is being done is not enough. We as a society would be failing in our duties unless the problems faced by them are not taken into account. Therefore it is important that as a society we must gave full attention towards children to ensure that all children are properly cared for which they have their legitimate rightful place in the society. Thereby, there is a need to spread awareness on the problems faced by them as well as build-up the capacities and capabilities to identifying the core areas of the problem.

Ministry of Women and Child Development, GOI launched “the Integrated Child Protection Scheme (ICPS)” during the 11th 5 Year Plan (2007-2012) is an appreciating step in this direction. The ICPS encompasses the existing schemes of
1. Integrated Programme for Street Children,
2. Shishu Greha Scheme,
3. Programme for Juvenile Justice, etc.
Main focus of the ICPS is on the child protection and to share the responsibility with the Government, Family, Community and Civil Society as children are the mutual responsibility of all and all need to work jointly.

In order to ensure strengthening the ICDS Scheme implementation the following strategies are proposed:

1. **ICDS implementation with quality** - In order to improve and strengthen the quality utilize resources under the ICDS, following steps are necessary:
   i. Restructure ICDS with more decentralization to states and districts to deliver early childhood education, health and nutrition.
   ii. Strengthening ICDS infrastructure to provide continue care and protection to adolescent and young children.
   iii. Union with other flagships programmes and making Anganwadi Centres (AWCs) as the complete village child maternal and Adolescent Girl care centres.
   iv. Near location of schools and AWCs wherever possible
   v. Regional reviews by the Policy Coordination and Support Unit in the Planning Commission for ICDS strengthening
   vi. Implementation of ICDS in a Mission Mode to provide decision making power, fund transfer power and clearly defined the responsibility”.

2. **Focusing on the Infant needs**: There is a need for promotion of best possible Infant and Young Child Caring and Feeding Practices. The States have been requested to ensure compliance with “the Infant Milk Substitutes, Feeding bottles and Infant Foods (Regulation of Production, Supply and Distribution) Amendment Act, 2003”.

3. **Strengthening the ICDS AWC Platform**: “The ICDS Anganwadi platform would need to be strengthening for women and child development
with linkages to most government services such as, health, education, water and sanitation etc. For this, AWCs would need to be strengthened as comprehensive village maternal, child and Adolescent Girl care centre’s, with necessary infrastructure, hygienic SNP arrangements and a child friendly environment.

4. **Strengthening the early child care and learning environment:** The early years of a child last for a lifetime because these years are the foundation for lifelong learning and human development.

5. **Strengthening the physical infrastructure:** In order to facilitate better delivery of services under the Scheme, construction of Anganwadi Centre, as a distinct activity, in a phased manner under the ICDS Scheme is extremely essential. The Planning Commission has supported the idea during the Mid-Term Appraisal.

6. **Strengthening Health Education:** There is urgent need to strengthen the Food and Nutrition Board (FNB) as the Nodal National Technical body for providing technical and collaborative inputs, inter-sectoral coordination, and quality assurance of nutrition component of various programmes and coordination of activities related to nutrition education.

7. **Enhancing the participation of women and their communities:** Their involvement has been effective through women’s committees, as positive role models changing behaviours in others improving family care behaviours and in other innovations related to SNP preparation and community based monitoring. Therefore, efforts should be made to strengthen the capacity of women’s groups including SHGs, Mahila Mandals and Mothers’ Committees among others.
8. Regular surveys on Health and Nutrition: Database on the nutritional status of the population is required on a regular basis in order to assess the impact of various programmes such as ICDS and Mid Day Meal programme.

9. Use of Information, Communication Technology (ICT): In order to strengthen the information base the introduction of the common mother and child protection card by NRHM and ICDS, listing the mother’s UID number, JSY registration number and child’s birth registration number opens up several new possibilities for linking mother-child record at family and village levels, to ICT based monitoring of outcomes. Since the reach of internet is limited at this stage, however, mobile telephone has reached in all villages of the country; an effort should be made to link the ICDS with the mobile phones infrastructure also.