Chapter Five

Legal Development and Legislative Progress Relating to Juveniles and Crimes Against them: A Critique
"Children are like wet cement, whatever falls on them makes an impression".

---Dr. Haim Ginett

"Only those who look with the eyes of children can lose themselves in the object of their wonder".

-Eberhard Arnold
CHAPTER-FIVE

5.0 GENERAL INTRODUCTION

It is evident that legislation is one of the main weapons of empowerment of children. Even though appropriate legislation may not necessarily mean that the objectives of the legislation will be achieved, its very existence creates an enabling provision whereby the state can be compelled to take action. Legislation reflects the commitment of the state to promote an ideal and progressive value system. The notion of duty also applies to the state.

India follows an adversarial legal system with an in-built bias in favour of the accused who is presumed innocent till proved guilty. The Constitution of India, the fundamental law of the country, came into effect on 26 January 1950. It provides a protective umbrella for the rights of children. These rights include right to equality [Art. 14], right to freedom including the freedom of speech and expression [Art. 19(1)(a)], personal liberty, right to due process of law [Art. 21], right against exploitation [Art. 23], religious, cultural, educational rights [Art. 29], and right to constitutional remedies [Art. 32].

In addition to these basic rights, there are certain fundamental rights especially for children. These rights are necessary because of their physical and mental immaturity; the children are especially vulnerable and need special protection. Article 15 of the Constitution prohibits discrimination of citizens on the grounds only of religion, race, caste, sex, place of birth, or any of them. But clause 3 of the aforesaid Article mandates: ‘Nothing in this Article shall prevent the State from making any special provision for women and children.’ Therefore, relevant laws can be definitely made giving special protections to children. These rights are included in Part III and Part IV of the Constitution. The fundamental rights in Part III are enforceable in
courts whereas the directive principles of State policy envisaged in Part IV are the guidelines and principles which are fundamental to the governance of the country. It is the duty of the State to apply these principles in making laws. If the fundamental rights are violated, a writ petition can be filed in the Supreme Court or the High Courts of India under Arts. 32 and 226.

5.1 HISTORICAL PERSPECTIVE OF INDIAN LEGAL FRAMEWORK

Ancient Laws: In ancient Indian law, especially in the Laws of Manu, the child though located very near the bottom of a social pyramid was bestowed the society’s protection. And this protective indulgence was best reflected in the matters which concerned the children most — namely, their chastisement. Children were only to be beaten with a rope or bamboo stick split at the end. The split bamboo, as we may remember from circus clowns’ mock fights, makes a loud noise but does not inflict much pain. Moreover, even this punishment was to be carried out only on the back and never on the head or the chest. All those who hold progressive views on child discipline, the beating of children may hardly seem like ‘protective indulgence’.¹ Nevertheless, the extent of this indulgence becomes strikingly clear when we compare Manu’s Laws with legal texts of other ancient societies where brutal forms of child abuse and maltreatment existed. As already mentioned in the beginning, there is evidence in the law codes and digests of ancient Rome to suggest that brutal forms of child abuse were common mistreatment, which the more enlightened emperors attempted to mitigate. And that it was only as late as 374 A.D. that infanticide was declared a capital offence in the Roman world. In short, though Manu’s Laws by modern standards have been severely condemned as a repository of inequity and their attitude towards children is one of protective nurturance, is unexceptionable, at least within the premises of the patriarchal society which gave the Laws their birth. Surprisingly, Manu also expressed that kindness be shown to the daughter as she is ‘physically more tender and her emotions are more delicate’. Interestingly, though historical and sociological documentation of early Indian civilization points out towards the pervasive biases of that time in the upbringing of children, on account of factors like caste, kinship, age, gender and the like, rulers like Ashoka (268-31 B.C.), Chandragupta Vikramaditya (A.D. 375-415) tried to propound moral edict as a

counter-balance in which obedience towards parents and respect for elders was extolled. In nutshell, the point driven home was that loyalty and obedience to one’s elders, was not only moral but also socially approved and valued behavior. For an account of children and childhood in the Indian literary tradition, let us also take a look at the classical Sanskrit literature. Here, the child curiously seems to have appeared as a wish that is, in the context of a couple’s or more often a father’s longing for offspring or as the fulfillment of the wish in descriptions of parental happiness when a child was born and in lyrical accounts of parental love, usually of a father for his son. On the whole, children rarely figured as individuals in their own right, with activities, reactions and feelings separate from those of their all powerful parents. Bhavabhuti’s description of Rama’s love for Lava and Kusha, and Banbhatta’s hapsodization over Prabhakarvardhan’s love for his son Harsha, are two well-known examples that could be cited here. Kalidasa, the greatest of all Sanskrit poets, too was lyrical in his descriptions about the father’s feeling for his son but at the same time has sensitively portrayed, with much empathy, the sage Kanva’s love for his daughter Shakuntala. Needless to mention, the classics of the regional languages are also replete with rich accounts of children and childhood. It would be useful to mention here the medieval Hindi literature associated with the Bhakti movement, especially the songs of Surdas on Krishna’s childhood and that of Tulsidas on Rama’s childhood. The verses of these songs, till date, are a rich source for Hindu ideals of childhood and for delineating the topography of a culturally approved utopia of childhood. Besides, the Bhakti poetry laid enormous emphasis on the loving relationship between the mother and the child. Analogous to the mother-child interplay, or rather as its extension, we find a third theme in Bhakti literature in which the child is at the centre of an admiring circle of adults. If the mother is in the foreground, then the background consists of the adults in the community—the gopis of Gokul, the citizens of Ayodhya—milling around him. This particular theme reveals the child’s primary need to be central to his world, rather than exist forlornly at its outskirts, to cause a glow in the eyes of adults rather than be looked at with indifference (Kakar, 1981: 200-204). In traditional India, thus, in comparison to the West, it was early childhood rather than adulthood that was considered to be the ‘golden age’ in the individual’s life history. Shashi Pande has distinguished Western

2 Ibid.
3 Ibid.
and Indian social relations by suggesting that in the West, intimacy in a relationship develops out of some shared activity, as when a father takes his son on hunting and fishing trips as a means of developing (or proving) a mutual trust and camaraderie, whereas no such ‘hidden agenda’ is needed for a cultivation of a relationship in Indian society. However, before getting lost in any self-congratulatory adulation, we must also note that the gravest drawback of the Indian tradition was the inferior status accorded to girl children. For girls, in comparison to boys, learning the mandatory skills of household work, cooking and childcare, etc. constituted the daily activities around which their lives revolved. In this, of course, the mother, grandmother, aunts, sisters and sisters-in-laws, her allies against the discriminations and inequities of the existent patriarchal order and values groomed her. In fact, late childhood marked the beginning of an Indian girl’s deliberate training in how to be a ‘good woman’ and hence the conscious inculcation of culturally designated feminine roles. M.N. Srinivas, in his book, Marriage and Family in Mysore writes that “it is the mother’s duty to train her daughter up to be an absolute docile daughter-in-law…” Girls were also married at an early age, which invariably marked the end of their childhood. The low status accorded to the girl child was perhaps one of the reasons for the prevalence of female infanticide in the traditional India which continues to exist even today.4

With the coming of the Arabs, Turks, Afghans and the Mughals, the medieval period stretching from the eleventh to seventeenth centuries almost saw an all-round impoverishment and degeneration in India. The foreign invasions not only plundered but completely destroyed the wealth and socio-cultural ethos of India. Due to the overall economic deterioration experienced by the people, the children too faced adverse vicissitudes. Imposition of foreign culture had a profound impact at all levels. Families, and particularly those of the preponderant rural population, could no longer afford wholesome food and amenities for their children. Emphasis on elementary education gradually withered away which was quite widespread earlier. Among the Hindus, elementary education was mostly confined to the higher castes like Brahmans, Rajputs and Vaishyas. Elementary education among the Muslims was given to those who belonged to aristocratic and rich families at home through the Maulvis. Others had to go to the maktabs situated in mosques. Girls, on the other

hand, were seldom given education and their status in comparison to boys remained inferior. The rulers or the people took no remedial steps either.\textsuperscript{5}

During this period, in India too, the early legal statements were conspicuously silent on children's rights. The Ten Commandments, arguably the most influential of all legal codes, contains a clear normative pronouncement on parent-child relations but it is in terms of respect for parents and is silent on the obligation of parents to love and nurture children. One of the earliest recognitions of Children's rights perhaps are found in the Massachusetts *Body of Liberties* of 1641 where parents are told not to choose their children's mates and not to use unnatural severity against their children. Children, furthermore, were given 'free liberty to complain to the Authorities for redress'. But this was also the law that prescribed the death penalty for children over 16 who disobeyed parents. There is no evidence though those children did successfully litigate against their parents but nor is there any that disobedient children were executed. The document, nevertheless, remains interesting in showing, as it does, that even some 365 years ago protection of children went hand in hand with adding the power of the State to parental authority. The eighteenth century as well can hardly be said to be identified with children's rights. It is pertinent to remark that the documents emanating from the great libertarian revolutions, the American and the French, have nothing specifically to say about children. (Freeman, 1997: 48).

The nineteenth century, however, saw the birth of the child-saving movement, the growth of the orphanage, the development of child protection legislations, schooling and the construction of separate institutions, including the juvenile courts, for delinquent children, in different parts of the Western world. One of the reasons for this kind of development was that in the wake of Industrial Revolution there was severe exploitation of many working-class children who were widely employed in textiles, mining, agriculture, domestic service, docks and navigation. Moreover, the so-called 'advances' of industrialization and urbanization had serious consequences. Displacement of communities, unemployment and socio-political unrest often resulted in marginalization and abandonment of many children whose 'opportunities' were restricted to petty offending as means of survival. These children were left to their fate to fend for themselves. At this point of time, the British ruled India. Being a colony of the British, the plight of its children especially those belonging to the lower

\textsuperscript{5} Supra note 1.
stratum of society was certainly gloomy. As Britain was negotiating its place within a new emerging economic, social and political world order, it was a time of great uncertainty for India and this inevitably affected its children too. Despite all this, moral panic and political reaction of that time dovetailed into the already existing reform and philanthropic efforts towards children which mobilized charity crusades and inspired voluntary effort. But, all this took a back seat in the face of growing imperialism of that time that had taken one of its worst forms. This development spelled doom for children as they were thought of as ‘Bricks for Empire Building’ and like others continued to be exploited in different ways. The ensuing freedom struggle, that nearly spread over 100 years from mid-nineteenth to the mid-twentieth century aimed not merely at achieving political independence from the British rule, but also at reinvigorating the debilitated sunken society of India which under decades of slavery had lost its initiative, values and vitality.6

It was the endeavor of leaders like Raja Ram Mohan Roy, Mahatma Gandhi, Sir Syed Ahmed Khan and others to awaken the people and rouse them to overcome their backwardness, be it in the shape of illiteracy or socio-cultural practices like child marriage or neglect in the upbringing of children, etc. As a result, the long years of struggle for freedom saw an all-round spate of activities which may be termed as ‘social action’ so to come out of the prevailing weaknesses in society and to build self-reliance in the people. Consequently, the care of the child came to be viewed upon as a vital element in the resurrection of the nation. Mahatma Gandhi and later Pt. Jawaharlal Nehru, in person, gave much of their time to inculcate social concern for the citizens of tomorrow – the children. Advancing literacy, in Western societies, to a large extent, helped to change attitudes towards children. The resultant effect of all this was that a large number of dedicated visionaries, charitable and voluntary organizations moved by the harrowing tales of children, worked relentlessly to improve the overall position of children in society along with that of women. All of them invested their time, knowledge and resources towards better health, education, and growth of the weaker children. It was during this period that some of the oldest voluntary organizations such as ‘The Children’s Aid Society’ and ‘Balkan Ji Bari’ came into being in 1920’s in the service of children belonging to the poor, uneducated and helpless families. The entire century of freedom struggle may well be termed as

the Evanescent Dawn of Voluntary Action when people learnt to pool their common resources to remove social ills rather than rely upon an alien regime which had no State Policy nor a programme to meet the needs of children. This was also the beginning of a spirit of independence at the group social action level (Luthra, 1979: 90-91). This period also witnessed the enactment of laws such as the Apprentices Act, Reformatory Schools Act and Factories Act which became important factors in the shaping and structuring of a new childhood. The period immediately following the First World War, posed a variety of challenges to Britain and other countries of Europe and North America. These were mainly connected to the question of how they could create a society which would preclude the cataclysm of violence and upheaval through which they had just passed. It would be worthwhile to mention that partly as a result of the ravages of war on the civilians in affected countries and partly in response to the growing concern in most countries of Europe and North America for the protection of children, the newly formed League of Nations established a Committee on Child Welfare in 1919.7

Interestingly, the private agencies felt the need to provide broad social standards for the protection of children. Of particular importance was the Save the Children International Union, inspired largely by the work of an English woman, Eglantyne Jebb, who had founded Save the Children in response to her own experience with child victims of war in the Balkans. In 1923, Save the Children International Union adopted as its charter a five-point declaration which described the basic conditions a society should meet in order to provide adequate protection and care for its children. The next year, the Union persuaded the League of Nations to adopt the same declaration.8 Since the League of Nations held its meetings in Geneva, this 1924 Declaration of the Rights of the Child came to be known as the “Declaration of Geneva”. Recognizing that ‘mankind owes to the child the best that it has to give’, the five simple principles of the Declaration established the basis of child rights in terms of both protection of the weak and vulnerable, thus promoting of the child’s development. The Declaration also made it clear that the care and protection of children was no longer the exclusive responsibility of families or communities or even

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individual countries; the world as a whole had a legitimate interest in the welfare of all children. The gist of the “Declaration of Geneva” is given in Box below.

**“Declaration of Geneva”**

- Child must be given the means needed for its normal development, both materially and spiritually.
- Hungry child should be fed, sick child should be helped; erring child should be reclaimed; orphans and the homeless child should be sheltered and succored.
- Child must be first to be the receiver of relief in times of distress.
- Child must be put in a position to earn a livelihood and must be protected against every form of exploitation.
- Child must be brought up in the consciousness that its best qualities are to be used in the service of its fellow men.

5.2 Present Legal Framework

It is evident that legislation is one of the main weapons of empowerment of children. Even though appropriate legislation may not necessarily mean that the objectives of the legislation will be achieved, its very existence creates an enabling provision whereby the state can be compelled to take action. Legislation reflects the commitment of the state to promote an ideal and progressive value system. The notion of duty also applies to the state.\(^9\)

It is estimated that there are more than 250 Central and State statutes under which the child is covered in India. Some of the important, special legislations that deal with children are the following:

1. **The Guardian and Wards Act 1890**: This Act deals with the qualifications, appointment, and removal of guardians of children by the courts and is applicable to all children irrespective of their relation.

2. **Hindu Adoption and Maintenance Act 1956**: This Act codifies the law relating to adoption and maintenance among Hindus.

3. **The Hindu Minority and Guardianship Act 1956**: This provides for the appointment of guardians of minors among Hindus.

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4. **Young Persons Harmful Publications Act 1956**: This Act prevents the dissemination of certain publications that are harmful to young persons.

5. **Probation of Offenders Act 1958**: This Act lays down the restrictions on imprisonment of offenders under twenty-one years of age.

6. **The Orphanages and Other Charitable Homes (Supervision & Control)**: This Act provides for the supervision and control of orphanages and homes for children.

7. **Apprentice Act 1961**: This lays down qualifications for persons above fourteen years of age to undergo apprenticeship training in any designated trade.

8. **The Medical Termination of Pregnancy Act 1971**: This law stipulates when pregnancies may be terminated by registered medical practitioners.

9. **The Child Labour (Prohibition & Regulation) Act 1986**: This Act prohibits the engagement of children in certain employment and regulates the conditions of work of children in certain other employments.

10. **The Children (Pledging of Labour) Act 1933**: This Act prohibits pledging the labour of children.

11. **The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act 1992**: This Act regulates the production, supply, and distribution of infant milk substitutes, feeding bottles, and infant feeds with a view to the protection and promotion of breastfeeding and ensuring the proper use of infant feeds.

12. **The Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act 1994**: This provides for the regulation of the use of prenatal diagnostic techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of the misuse of such techniques for the purpose of prenatal sex determination leading to female foeticide.

**Major Constitutional Provisions**: Let us have a glimpse of the major Constitutional provisions, meant for the protection of human being including Children's welfare.

**5.3 Fundamental Rights**

**Article 14**: State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

**Article 17**: "Untouchability" is abolished and its practice in any form is forbidden.

**Article 15 (3)**: It permits the State to make special laws for women and children.
Article 19: (1) All citizens shall have the right –
(a) To freedom of speech and expression; ...
(b) To form associations or unions;
(c) To move freely throughout the territory of India;
(d) To reside and settle in any part of the territory of India.

Article 21: No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 21 A: State shall provide free and compulsory education to all children of the age of six to fourteen years

Article 23 (1): Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Article 24: No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

5.4 Directive Principles of State Policy

Article 39(e): It directs the State to safeguard the tender age of children from entering into the jobs unsuited to their age and strength forced by economic necessity.

Article 39(f): It directs the State to secure facilities for the healthy development of children and to protect childhood and youth against exploitation and moral and material abandonment.

Article 45: It requires the State to provide free and compulsory education to all children up to the age of 14 years.

Article 47: It states that it is the duty of the States to raise the level of nutrition and standard of living of children.

The parliament has enacted the 86th Constitutional Amendment in 2002 and made Right to Education a Fundamental Right.

Article 51: The State shall Endeavour to:
(c) Foster respect for international law and treaty obligations …

Article 51A: (k) Parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

5.5 Provisions in Indian Penal Code

Crimes committed against Children which are punishable under Indian Penal Code (IPC)- These includes punishable crimes, such as, Foeticides, Infanticides, Abetment of Suicide, Exposure and abandonment, kidnapping and abduction (for
exporting, ransom, camel racing, begging, compelling marriage, Slavery, for seduction or illicit intercourse, prostitution, unnatural offences. The Indian Penal Code deals with the sexual abuse of children in the form of rape (Section 375), unnatural practices (Section 377), molestation and outraging the modesty. Exploitation is addressed in the form of obscenity, indecent representation and procuring persons for the purpose of prostitution and trafficking (Section 372 and 373). The common forms of sexual abuse of children do not come under the definition of rape.

5.6 Crime Against Children which are punishable under ‘Special and local Laws’-includes

i. The Immoral Trafficking Prevention Act, 1956 ("ITPA"), the main statute dealing with sex work in India, does not criminalize prostitution or prostitutes per se, but mostly punishes the acts by third parties facilitating prostitution like brothel keeping, living off earnings and procuring, even where sex work is not coerced.

ii. Immoral Traffic Prevention Act, 1986 (where minors are abused for in prostitution)

5.7 Prevention of Immoral Traffic Act, 1956


2. This Act is primarily based on Article 23 of the Constitution which prohibits trafficking of human beings.

3. Under this Act, a "child" means a person who has not completed the age of 16 years.

A "minor" means a person who has completed the age of 16 years but has not completed the age of 18 years.\(^\text{10}\)

A "major" means a person who has completed the age of 18 years. "Brothel" includes any house, room, conveyance or place, or any portion of any house, room,

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conveyance or place, which is used for purpose of sexual exploitation or abuse for the
gain of another person or for the mutual gain of two or more prostitutes.

A "corrective institution" is the one where persons in need of correction are
detained, and includes a shelter where under trials may be kept in pursuance of this
Act. A "protective home" is an institution where persons in need of care and
protection are kept.

4. Prostitution is not per se an offence. This Act punishes the brothel keeper and the
procurer. A prostitute can be arrested only if she is found soliciting customers in a
public place.

5. This Act punishes with imprisonment any person who procures or attempts to
procure a child for prostitution, or any person who is found with a child in a
brothel. It shall be presumed that a child or minor found in a brothel has been
detained in such place for the purpose of prostitution.

6. Punishment is more stringent in case of an offence against a child or a minor.

7. Where the person rescued is a child or minor, the Magistrate may direct the
placement of the child or minor in an institution established or recognized under
the Juvenile Justice [Care and Protection of Children] Act 2000. The Magistrate is
to maintain a list of experienced social workers, particularly women social-
workers who may be called upon for assistance.

8. As trafficking is an inter-State offence, the Central Government is to appoint
trafficking police officers for dealing with offences under this Act, and their
powers extend all over India. The State Government is to appoint Special Police
Officers for dealing with offences under this Act, and they can exercise

5.8 Child Marriages

Child Marriage is a blatant abuse & violation of human right. To stop such
abuse government had enacted many Acts like:

5.8.1 Child Marriage Restraint Act, 1929 (SARDA ACT):


These Acts prohibits the child marriage. The Object is basically to restrain the
solemnnization of the child marriage.

It provides:

Age: Male: below 21 years is a child.
Female: below 18 years is a child.
Minor: both the girl & boy below the age of 18 years.
Punishment for those who arrange & actively participate in the marriage. The minor bride & bridegroom are not punished under the Sarda Act.

If the male adult contracts to marry a minor girl, then male adult is punishable with imprisonment & fine.

Section 375 of Indian Penal Code provides that if the husband does sexual intercourse with bride below 15 years of age is a Rape and the husband shall be punished for his act. All the Personal laws Acts like Hindu Marriage Act, Parsi Marriage Act; Christian Marriage Act also prohibit the Child Marriages.

Child marriage is outlawed in many developing countries and a series of international agreements and conventions also forbid the practice. Despite nearly universal consensus that child marriage is harmful, the practice continues uncaringly because of insufficient resources, lax enforcement or ingrained cultural traditions. However, communities are mobilizing to take a more active role in working with families to end child marriage.

In India, the Supreme Court has recently handed down a decision requiring married couples to register their consent to be married and their age with local authorities, in order to better enforce the law establishing 18 as the minimum age of marriage. In the state of Uttar Pradesh, the government has launched a program to increase awareness about the legal age of marriage, change values and attitudes about child marriage, and deny eligibility for government jobs to people marrying before age 18.11

Thus to conclude:

Child marriage chains the children in unhealthy customs. The stringent provisions prohibited Child Marriage to a larger extent from India but to eradicate it completely from the Country it is the basic responsibility of the parents, to protect their own children's rights & not to abuse them.

5.8.2 The Women's and Children's (Licensing) Act 1956:

1. The Women's and Children's (Licensing) Act was enacted to provide for the licensing of institutions for women and children and for matters incidental thereto. The main object of this Act is to protect women and children from exploitation and inhuman conditions prevailing in institutions.

2. Under this Act "child" means a boy or a girl who has not completed the age of 18 years. An "institution" means an institution established and maintained for the reception, care, protection, and welfare of women or children.

3. No institution can be established or maintained without the prior permission of the licensing authority, viz. the State Government. The license contains the conditions to be complied with by the institution. The license is to be periodically renewed.

4. The license may be revoked on the institution not complying with the provisions of the Act or the license conditions. On revocation of a license, the children are restored to the custody of the parent/guardian, or are transferred to another institution. The person responsible for contravening the provisions of this Act or the licence conditions is punishable with imprisonment or fine or both.

5. On revocation of licence, the option of changing the management of the institution and closely monitoring its functioning should be explored.\(^\text{12}\)

5.8.3 Child Labour (Prohibition and Regulation) Act, 1986:

Given the socio-economic conditions in the country, a multi-pronged strategy for elimination of child labour has been adopted, which emphasises on legislative measures; general development programmes for the benefit of families of child labour and project-based action in the areas of high concentration of child labour.

As per Child Labour (Prohibition & Regulation) Act, 1986, children below the age of 14 years are prohibited from employment in hazardous occupations/processes specified in the Act. India has not ratified ILO Conventions No. 138 and 182 since they fix minimum age of employment as 18 years. The Government is working on the modalities of ratifying these ILO Conventions, particularly No. 182. Consultations are taking place. However, it is pertinent to point out that the Government issued three notifications in the last five years, expanding the list of banned and hazardous processes and occupations in Schedule II of the Child Labour (Prohibition and Regulation) Act, 1986. The number of occupations listed in Part A now is 18 and the number of processes listed in Part B is 65. Further, the worst forms of child labour are already prohibited under various Acts such as Bonded Labour System (Abolition) Act, 1976, Immoral Traffic Prevention Act 1956, the

Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 and Child Labour (Prohibition and Regulation) Act, 1986. Consequently there is no dearth of inclination to progressively eliminate child labour from India.

The Government is implementing National Child Labour Project (NCLP) for the rehabilitation of child labour. The NCLP is operational in 266 Districts, with about 7300 special schools. These special schools are mainly run by NGOs and impart non-formal/ formal education, vocational training, etc. to children withdrawn from employment, so as to prepare them to join mainstream education system. 852,000 children have been mainstreamed under NCLP. There has been a 45% reduction in child labour over the last 5 years (2009-10).

5.9 Child Labour Laws in India

The Child Labour (Prohibition and Regulation) Act 1986: The salient features are as follows –

1. The Child Labour [Prohibition and Regulation] Act 1986 was basically enacted to prohibit the engagement of Juveniles in certain employments, and to regulate their conditions of work in certain other employments.

2. This Act is based on Article 24 of the Constitution under which no child below the age of 14 years is to be employed in any factory or mine or engaged in any other hazardous employment.

3. Under this Act, a child means a person who has not completed 14 years of age.

4. This Act contains a Schedule with two parts, i.e. Part A and Part B. Part A contains a list of occupations such as transport of passengers or goods or mail by railway, cinder picking, etc. Part B contains a list of processes such as bidi-making, carpet-weaving, manufacture of matches, explosives and fireworks, etc. No child is to be employed in any of the occupations and processes listed in the Schedule.\(^\text{13}\)

5. The Central Government has the powers to add any occupation or process to the Schedule in consultation with the Child Labour Technical Advisory Committee.

6. The government is to employ Inspectors to ensure compliance with this Act.

7. This Act contains provisions to regulate the conditions of work in those occupations or processes in which child labour can be employed, e.g. a child

\(^{13}\) The Child Labour (Prohibition & Regulation) Act, 1986.
should not be made to work between 7.00 p.m. to 8.00 a.m., nor should a child be made to work overtime, nor should a child be made to work for a period exceeding six hours a day.

8. Any person who employs a child in any occupation or process mentioned in the Schedule or who does not comply with the provisions of this Act, is to be punished with imprisonment or fine or both.

9. Any person, police officer or Inspector may file a complaint in respect of non-compliance of the provisions of this Act before the Metropolitan Magistrate or a Magistrate of the First Class.

The Juvenile Justice (Care and Protection of Children) Act, 2000, (JJ Act) is the principal legislation for the protection of children in India. The Act was amended in 2006 and The Juvenile Justice (Care and Protection of Children) Rules, 2007, (JJ Rules, 2007) were also framed for effective implementation of the Act. In 2006, the scope of the Act was expanded; inter alia, by including child beggars and working children in the category of children in need of care and protection. In November, 2010, the Government introduced the Juvenile Justice (Care and Protection of Children) Amendment Bill, 2010, with the aim of removing discriminatory references against children affected by diseases such as leprosy, Hepatitis B, sexually transmitted diseases and tuberculosis. It has since been passed by the Parliament.\textsuperscript{14}

In 2006, the Prohibition of Child Marriage Act (PCMA) was enacted repealing the Child Marriage Restraint Act of 1929 making child marriage an offence.\textsuperscript{15}

It is the primary legal framework for juvenile justice in India. The Act provides for a special approach towards the prevention and treatment of juvenile delinquency and provides a comprehensive framework for the protection, treatment and rehabilitation of children in the purview of the juvenile justice system. This law, brought in compliance of Child Rights Convention, repealed the earlier Juvenile Justice Act of 1986. This Act has been further amended in year 2006 and 2010. Government of India is once again contemplating further amendments and a review committee has been constituted by Ministry of Women and Child Development which is reviewing the existing legislation.

\textsuperscript{14} Juvenile Justice (Care & Protection of Children) Act, 2000.
\textsuperscript{15} Bajpai Asha, Child Rights is India, New Delhi, Oxford Press, 2006, p.133.
JJ Act 2000 is considered to be an extremely progressive legislation and Model Rules 2007 have further added to the effectiveness of this welfare legislation. However the implementation is a very serious concern even in year 2012 and Supreme Court of India is constantly looking into the implementation of this law.

The Juvenile Justice (Care and Protection of Children) Act 2000 is a legislation that conforms to the United Nations Minimum Standards for Administration of Justice to Children. It is an Act to consolidate and amend the law relating to juveniles in conflict with the law and children in need of care and protection by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of the matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment. Under the Act of 2000, juvenile means a 'boy' or a 'girl' who has not attained the age of 18 years.

Under the Juvenile Justice (Care and Protection of Children) Amendment Act, 2005, the following amendments were introduced and applicable to all cases involving detention, prosecution or sentence on imprisonment of juveniles under any such law:

"Juvenile in conflict with law" means a juvenile who is alleged to have committed an offence and has not completed his 18th year as on the date of the offence being committed.

Whenever a claim of juvenility is raised before any court, or a court is of the opinion that the accused person produced before it was a juvenile on the day the offence was committed, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of the person, and shall record a finding as to whether or not the person is a juvenile or a child, stating his age as nearly as may be an important provision is that a claim of juvenility may be raised before any court and it shall be recognized at any stage even after disposal of the case in terms of the provisions. If the court finds a person to be a juvenile on the day the offence was committed, it shall forward the juvenile to the Board.

The Juvenile Justice Act 2000 lays down a non-penal protective juvenile justice system for children alleged to have committed an offence. While the legislation itself is well-intentioned, there are many stumbling blocks in its implementation, chief among them the difficulty of establishing whether an offender
is a child or not, in a country where millions do not have birth certificates or other records.\textsuperscript{16}

The Criminal Justice System (CJS) consists of the legal provisions defining offences, providing punishment for those offences, procedures for investigation of those offences, prosecution and trial leading to conviction or acquittal of accused persons. Initially, CJS dealt with all persons committing offences. However, since 1920, Special laws have been made for children committing offences and presently it is the Juvenile Justice (Care and Protection) Act, 2000 that prescribes different procedures for investigation and trial of cases where children are alleged to have committed an offence.

JJ Act, 2000 is applicable to the whole of India, except the State of Jammu and Kashmir, and lays down a non-penal protective juvenile justice system for them. The Act applies to all children who have not completed the age of 18 years who may have committed an offence or may be in need of care and protection. This legislation was basically passed to bring the law in conformity with international legal provisions contained in the UN Convention on the Rights of the Child, the Beijing Rules for Administration of Juvenile Justice System, Riyadh Guidelines and the Rules Relating to Children Deprived of Liberty.\textsuperscript{17}

"Juvenile" or "child" means a person who has not completed eighteenth year of age. "Juvenile in conflict with law" means a juvenile who is alleged to have committed an offence. "Child in need of care and protection" means a child -

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

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

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

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

\textsuperscript{16} Id., p. 135.
\textsuperscript{17} Id., p. 136.
who is mentally or physically challenged, or ill children, or children suffering from terminal diseases or incurable diseases having no one to support or look after,

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

(iii) who does not have parents and no one is willing to take care of or whose parents have abandoned him or who is missing and runaway child and whose parents cannot be found after reasonable inquiry,

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

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

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

(vii) Who is victim of any armed conflict, civil commotion or natural calamity?

"Fit institution" means a governmental or a registered non-governmental organization prepared to take responsibility of a child, and found fit by the Competent Authority to take responsibility of the child.

"Fit person" means a person, being a social worker or any other person, who is prepared to take responsibility of a child, and found fit by the Competent Authority to take responsibility of the child.

"Place of safety" means any place or institution, not being a police station or jail, which in the opinion of the Competent Authority is a place of safety for the child.18

5.9.1 Children in the Juvenile Justice System:

Children come into contact with the juvenile justice system as offenders or as victims. The Juvenile Justice (Care and Protection of Children) Act, 2000 and amended in 2006, deals with two categories of children—"juvenile in conflict with the law' and 'child in need of care. 'Juvenile in conflict' with the law means a person who is alleged to have committed an offence under the law of the country and who is below 18 years of age on the date when the offence was committed.19

18 Id., p. 137.
The Legislative and Institutional Framework for the Protection of Children in India. Its objective is basically to provide for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the matters and in the best interest of children and for their ultimate rehabilitation. The Juvenile Justice (Care and Protection of Children) Act (JJA), 2000, is a legislation that conforms to the CRC and the United Nations Minimum Standards for Administration of Justice to Children (Beijing Rules). The CRC has laid down the basic principles of decision-making to promote the best interests of children, and all decisions relating to children need to be guided by this consideration. The Beijing Rules direct that institutions should be used only as a last resort and only after community measures are not available for children. As the JJA, 2000 was specifically made to implement India’s obligations under these and other international instruments, it is incumbent upon the authorities implementing this legislation to ensure the effective protection and promotion of the principles embodied in the JJA, 2000. The Act also provides that no report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with the law or a child in need of care and protection under this Act shall disclose the name and address of the school or any other particulars calculated to lead to the identification of the juvenile or child, nor shall any picture of any such juvenile or child be published. The authority holding the inquiry may permit such disclosure, in exceptional cases, if in its opinion such disclosure is in the interest of the juvenile or the child. In spite of these specific provisions, many well-known publications even today, reveal the identity of the child.

19. According to the Juvenile Justice Act 2000, a ‘child in need of care and protection’ means a child:

- who is found begging or is a street child or a working child;
- who is found without any home or settled place or abode and apparently without any means of subsistence;
- who resides with a person (he may or may not be a guardian of the child) and such person;
- who has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out;

20 Ibid.
who has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person;

- who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after them;

- who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child;

- who does not have either parent and no one is willing to take care of him/her or whose parents have abandoned or surrendered him/her or who is a missing and run-away child whose parents cannot be found after reasonable injury;

- who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts;

- who is found vulnerable and is likely to be inducted into drug abuse or trafficking

- who is being or is likely to be abused for unconscionable gains; or

- who is a victim of any armed conflict, civil commotion or natural calamity.

5.9.2 **Children of India: Rights and Opportunities:**

In this Act, ‘juvenile’ or ‘child’ means a person who has not completed the eighteenth year of age, mainly to bring juvenile legislation in conformity with the CRC. Both boys and girls below the age of 18 years enjoy the protection of juvenile legislation.

5.10 **Children in Conflict with the Law**

The definition of ‘juvenile in conflict with the law’ was amended in 2006 and it is clear today that this term means a juvenile who is alleged to have committed an offence and has not completed the eighteenth year of age as on the date of commission of such an offence.

The occurrence of violent juvenile crimes is a global phenomenon. Juvenile crimes are also increasing at an alarming rate in India. Today, newspapers are full of news of murder, rape, and kidnapping committed by teenagers. The National Crime Research Bureau (NCRB) claims that 83.7 per cent of the crimes committed by juveniles in 2006 came under the Indian Penal Code. While Maharashtra reported the highest number of IPC crimes among juveniles in 2006, Madhya Pradesh registered the highest number of crimes such as murder, rape, kidnapping and abduction (GoI,
2006). The news of teenagers being used to smuggle marijuana also makes regular headlines in the dailies.\textsuperscript{21}

The legal definition of a child also affects the manner in which the courts deal with offenders. A person who is a minor or a child cannot be convicted in the same manner as an adult. If a juvenile is accused of an offence under the provisions of the Narcotics Drugs and Psychotropic Substances Act (NDPS), or Prevention of Terrorism Act (POTA), he is certainly entitled to the necessary benefits under the special enactment, namely the Juvenile Justice Act. While different High courts have taken different positions on the applicability of JJA 2000 to the cases where the accused is a child, the Supreme Court has clearly held that JJA, 2000 will apply to children alleged to have committed offences under those special penal legislations too.\textsuperscript{22}

5.11 Claim of juvenility

Whenever a claim that a person is a juvenile or below 18 years is raised before any court or a court is of the opinion that an accused person produced before it was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not evidence of age on an affidavit) to determine the age of such person and then the court shall record a finding as to whether the person is a juvenile or a child or not, stating his age as near to the actual as may be. If the court finds that the person was below 18 years on the date when the offence was committed, the court must send the juvenile to the Juvenile Justice Board, as only the latter can pass any order in such a case. An important provision is that a claim of juvenility or that the accused was a juvenile may be raised before any court and it shall be recognized at any stage even after disposal of the case. In India, there are millions of children, especially in the villages, who do not have birth certificates.

It has been observed that in many instances, if the police take a child into custody, and find him/her to be well-built, s/he is considered as an ‘adult’ and denied the beneficial provisions of the Juvenile Justice system.

Age determination of the children in conflict with the law is a very complex issue. The largest number of cases that come before the High Courts and the Supreme Court under this legislation and its predecessors pertain to the determination of true

\textsuperscript{21} Ibid.
\textsuperscript{22} Madan Singh v. State of Rajasthan, SC DOJ 2.4.05; Raj Singh v. State of Haryana, [2000] 6 SCC 759.
age. In the absence of a birth certificate, a child may easily be excluded from the operation of the JJA and denied its care and protection (Ved, 2007). Ameena, the minor girl from Hyderabad married to a 60-year-old Arab, rescued by air hostess Amrita Ahluwalia, remained in the observation home in Delhi for over seven months before being sent back to Hyderabad. But her age was never properly determined and different courts kept referring to her as 10, 11 or 12 years old. In Ramdeo Chauhan, case the Supreme Court refused to determine the age of the accused on the basis of entries in the school register or medical evidence, both of which indicated him to be a child on the date of the offence, and confirmed the death penalty for the offence of murder even though one judge expressed a doubt as to whether the boy was 21.23

The governor later commuted his sentence to life imprisonment on the recommendation of the National Human Rights Commission (Ved, 2007). There have also been some recent judgments on this issue. The Supreme Court has held that as regards the point of proof of age, the school-leaving certificate is the best evidence and that as far as the medical certificate is concerned, the same is based on an estimate and the possibility of error cannot be ruled out. However, the date of birth in the Secondary School Certificate is not to be taken to be correct unless corroborated by the parents of the child who have got the same entries made.

The following are some important rulings under the Juvenile Justice (Care and Protection of Children) Act, 2000, dealing with juveniles in conflict with the law:

I. When the school-leaving certificate shows the age of the child as below 18 years, but the arrest memo shows it as 18 years, the court should first enquire about the current age of the child and the order of rejecting the bail without such inquiry in respect of the age in the NDPS Act is improper.

II. If the age of the accused during the recording of the statement under Section 313 of the Cr. P. C. is 22 years, but the accused was a ‘juvenile’ at the time of commission of the offence, she/he must be treated as a ‘juvenile’ for sentencing purposes.

III. The plea of juvenility can be taken at any time even before the appellate court.

IV. The conduct of trial of a juvenile by the Sessions Court without first enquiring his/her age in order to ascertain as to whether s/he is a juvenile or not is not

proper and the Rajasthan Court had directed the sessions judge first to conduct an enquiry about the age of the accused and if he were found to be juvenile, then to forward the relevant record to the competent court, and if found otherwise, to decide the sessions case as per the law.

V. The provisions of the JJ Act, 2000 would be applicable even to those cases that have been initiated and pending for offences committed under the Act of 1986, provided the offender has not completed 18 years of age as on 1 April 2001.

VI. The reckoning date for determination of age of a juvenile offender is the date of offence and not the date when he is produced before the court/competent authority.

VII. Considering the difficulty of transportation of juveniles from remote places for trial and considering the fact that only five Juvenile Justice Boards (JJBs) were constituted

The Legislative and Institutional Framework for Protection of Children in India to deal with the entire State of Karnataka, the High Court directed the Karnataka State government to consider the necessity of establishing one JJB in each district.

The JJB Board has the exclusive power to deal with the trial of juveniles in conflict with the law, to the extent, the jurisdiction of any court including that of the Sessions Court or Fast Track Court is barred (Bajpai, 2006).

In one case, a juvenile was not presented before the court on various dates. The jail authorities misplaced the copy of the order of the court declaring the petitioner to be juvenile and directing that he be shifted to the observation board. The juvenile had to remain in an adult's jail for 25 months. The court then granted the juvenile a compensation of rupees one lakh. In the same case, the Bombay High Court directed the Sessions Court and Magistrates’ Courts to get a compliance report of their orders in six weeks in all cases wherein bails are granted to avoid such incidents in the future.

The Sessions Courts cannot refuse to make an enquiry for the purpose of determination of the age of the alleged juvenile offender on the sole ground that the JJ Board has been constituted for this purpose. If the accused had admittedly opened an account in a bank, his contention that he was a minor at the time of the commission of the offence cannot be accepted because he could not have opened the account, had he been a minor.
While dealing with the question of determination of the age of the accused, for the purpose of finding out whether he is a juvenile or not, a hyper-technical approach should not be adopted while appertaining the evidence adduced on behalf of the accused in support of the plea that he was a juvenile, in borderline cases.

The law has recognized the importance of the speedy disposal of cases and the 2006 amendment provides that the Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board every six months and shall direct the Board to increase the frequency of its sittings or constitute additional Boards.

5.12 Children in Need of Care and Protection

The children in need of care and protection include vulnerable children like street children; orphaned, abandoned, abused and destitute children; working children; child labourers; Juvenile Justice Care and Protection of Children Act 2000 amended 2006, Section 14(2).

Children of India: Rights and Opportunities trafficked children; mentally ill children; children affected or infected by HIV/AIDS; and children who are victims of conflict and disaster situations. These children had committed no offence but they were the victims of their circumstances or situations. Some other categories of children who need special assistance are migrants, those affected by armed conflict and victims of natural calamities like floods or cyclones. These are children in especially difficult circumstances and need to be protected from all kinds of abuse, neglect and exploitation.

The Act has expanded the definition of the child in need of care and protection very significantly. There are however, no figures available on the number of children in need of care and protection as defined under JJA, 2000. It has to be ensured that this expanded definition does not lead to undue interference in the lives of several poor children and their families by the ‘system’.

5.12.1 Non-institutional services under the Juvenile Justice Act, 2000

The Juvenile Justice Act (JJA), 2000, provides for rehabilitation and social re-integration of children in conflict with the law as well as children in need of care and protection.

The process of a child’s rehabilitation and social re-integration has to begin in the children’s home or special home. Non-institutional services are based on Articles
20 and 21 of the CRC. The Act provides for non-institutional services like adoption, foster care, and sponsorship.

Section 40, Juvenile Justice (Care and Protection of Children) Act, 2000.

1. Article 20, CRC-children deprived of family environment provided with alternate family care or institutional placement.

2. Adoption means the process through which the adopted child is permanently separated from his biological parents and becomes the legitimate child of his adoptive parents, with all rights, privileges and responsibilities that are attached to the relationship [Section 2(aa) JJA]. Adoption is considered as the best service for the orphaned, abandoned, destitute child since it provides permanent substitute care in a family environment. In India, adoption laws are religious-based. There is an adoption law for Hindus called the Hindu Adoption and Maintenance Act, 1956. But there is a legal vacuum as regards adoption by or of other communities in India.

3. Foster care provides temporary substitute care for children, whose parents are unable to care for them due to illness, death, or desertion, of one parent or any other crisis situation.

4. Providing financial support to families in order to meet the medical, nutritional and educational needs of children and to improve the general quality of their lives.

5.12.2 Institutional Structures Relating to Protection of Children

Institutional structures under the various laws have been provided to protect the rights of the child. The institutions and structures under the Juvenile Justice Act are as follows:

5.13 Observation

Home, Special Homes, Children’s Homes, Shelter Homes, Juvenile Justice Boards (JJBs), Child Welfare Committees (CWCs), Special Juvenile Police Units (SJPUs), Child Protection Units, and After-care Organizations. In addition, there are Family Courts established under the Family Courts Act, 1984, and the National Commission for Protection of Children Act, 2005.24

5.13.1 Institutions under the Juvenile Justice Act, 2006

1. Shelter Homes

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24 Supra note 6, p. 24.
2. Children’s Homes
3. Observations Homes
4. Special Homes
5. After Care
6. Child Welfare Committees
7. Juvenile Justice Boards
8. Special Juvenile Police Units

Shelter Homes function as temporary drop-in centres for children in need of care, protection, and urgent support. The State governments recognize reputed and capable voluntary organizations and provide them with assistance to set up and administer as many shelter homes as required.

Children’s Homes have to be established and maintained in every district or group of districts by the state government or voluntary organization certified by the state government, for the reception of a child in need of care and protection initially during the pendency of any inquiry. After the inquiry is over, the Child Welfare Committee may send the child to the Home for their care, treatment education, training development and rehabilitation.  

Observations Homes are set up and maintained in every district or a group of districts by the state governments or voluntary organizations, certified by state governments, for children in conflict with the law. Children in conflict with the law are temporarily placed in Observation Homes during the pendency of any inquiry pertaining to them under the Act. Initially, a juvenile is kept in the reception unit of the observation home for preliminary inquiries, care and classification of the juvenile according to his/her age group, physical and mental status, and nature of offence.

Special Homes have to be established and maintained in every district or group of districts by the State government or voluntary organization certified by the state government for reception and rehabilitation of children in conflict with the law.

After-care Organizations have to be established or recognized by the rules under the Act made by the respective state governments. These organizations are slated to take care of juveniles or children after they leave special homes and children’s homes to enable them to lead honest, industrious and useful lives. The

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25 Sec. 34, JJ (Care & Protection of Children) Act 2000.
26 Ibid.
27 Ibid.
report of the probation officer for each child, before his/her discharge from the Special Home or Children’s Homes, and the necessity and nature and period of after-care will be determined for each child. The maximum period of stay in after-care organizations is three years and the juvenile or child must be above 17 years but less than 18 years of age, and s/he would be able to stay there till s/he is 21 years of age.28

The after-care organizations, at present, are highly inadequate. They need to have facilities for career counselling and guidance, as also trained staff. Child Welfare Committees (CWCs) have to be constituted under the Act to deal with children in need of care and protection for every district. In the case of Prerana v. State of Maharashtra and Ors,29 it was held that children rescued from brothels should be treated as “children in need of care and protection” under the Juvenile Justice (Care and Protection of Children) Act, 2000. A lawyer representing the accused should not represent the victims.

The Child Welfare Committee will consist of the Chairperson and four other members, and among the members, one of them has to be a woman and another an expert on matters concerning children.30 The Committee will have the powers of a Metropolitan Magistrate or a Judicial Magistrate of First Class. A child in need of care and protection can be produced before the Juvenile Justice (Care and Protection of Children) Act 2000.31

Children of India: Rights and Opportunities CWC by any police officer or a designated police officer or special juvenile police unit, by any public servant, by Childline (a registered voluntary organization) or any state government recognized voluntary organization, or by the child himself or herself. There is a provision in the Act for a social worker or a public-spirited citizen to produce the child before the CWC, provided the child is produced before the CWC within 24 hours (excluding the time necessary for the journey). Restoration of a child to his/her parents including adopted and foster parents, guardians, fit persons and fit institutions, and protection to a child are the primary objectives of setting up the CWCs. Members of a CWC have the very serious responsibility of dealing with issues that include victims of child sexual abuse, trafficked children, child labourers, bonded labourers, disabled children, displaced children, migrant children, etc. Many of them, however, are part-time
honorary staff members and are not trained to deal with such complex legal issues that they have to face. There is thus a need for full-time dedicated, trained members for the CWCs.\footnote{32}{Writ petition No. 788 of 2002, Bombay High Court.}

The Juvenile Justice Board (JJB) has been constituted under this Act to deal with juveniles in conflict with the law. The Chief Metropolitan Magistrate (CMM) or Chief Judicial Magistrate (CJM) must review the pending cases every six months. In case there is a large pendency of cases, they must direct to increase the frequency of sittings of the Board or constitute additional Boards, to clear the pending cases. The Juvenile Justice Board can pass the following orders:

- Allow the juvenile to go home after advice and admonition and counseling, or
- Direct the juvenile to participate in group counselling and similar activities, or
- Order the juvenile to perform community service, or Order the parent of the juvenile or the juvenile herself/himself to pay a fine, if s/he is over 14 years of age and earns money, A JJB must consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, and two social workers. One of the social workers must be a woman. The Magistrate is designated as the Principal Magistrate of the JJB. The Magistrate must have special knowledge or training in child psychology or child welfare, and the two social workers must have been actively involved in health, education or welfare activities relating to children for at least seven years.\footnote{33}{Tiwari, T. \textit{Law for the Child in India}. Kanpur, Kanpur Law Journal, 2006. p. 137.}

- Direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person; such parent or guardian or fit person must execute a bond for the good behaviour and well-being of the juvenile for a maximum period of three years, or
- Direct the juvenile to be released on probation of good conduct under the care of any fit institution for a period not exceeding three years, or
- Make an order directing the juvenile to be sent to a special home for a period of three years. The JJB has powers to reduce this period taking into consideration the nature of the offence and the circumstances of the case, in case the juvenile is over 17 years but less than 18 years of age, for a period that is below two years; in any other case, till he attains the age of 18 years. In case of any juvenile above 16 years who has committed such a serious offence that s/he cannot be kept in a
production, the juvenile has to be kept in the Observation Home. The SJPU must inform the parent or guardian or any other person of the juvenile’s apprehension. Section 12(2) of JJA, 2000 gives the police the authority to release the juvenile on bail immediately on apprehension. In case of any dispute relating to age, the JJB directs the police to take the juvenile for medical examination to determine the age. As per the Model Rules of the JJA, 2000, the police, while dealing with the juvenile, must be in plain clothes and not in uniform. A juvenile in conflict with the law must never be handcuffed and any police officer found guilty, after due inquiry, of torturing a child mentally or physically shall be liable to be removed from service besides being prosecuted for the offence.35

5.14 Management of Institutions

All institutions constituted under the JJA have to be registered. Inspection committees and social auditing are provided for the monitoring of these homes. The inspection of the institutions must also include the quality of care and also involve civil society representatives.

At present, the inspection generally involves quantity and accounting checks. Homosexual behaviour is largely common in such institutions. During inspections, the child’s view must be ascertained. Compensation can be provided for children who have been the victims of custodial and institutional abuse. The Government schemes relating to child development, education and child labour have to be made available to the children in institutions. Standards of quality care have not been laid down under the Act. The rules of the Juvenile Justice Act, 2000 and the Orphanages and Charitable Homes Act, 1960 have to be synthesized.

Although the legislation has rightly increased the age of children, keeping in conformity with the Convention on the Rights of the Child, the infrastructure as all as human resources under the Act have not been upgraded and are grossly inadequate. The education, training and recreation of children have not been provided for. Besides, basic or school education, even higher education and training of these children have to be considered. The educational and vocational facilities in the institutions need modernization. Instead of the age-old non-marketable vocations like making of shirts or making of brooms, what is required are courses like computer education, and certified courses on dress designing, among others.

35 Id., p. 28.
The Open School and Open University education system should be made accessible to these children. Trained Duty Counsels have to be appointed by the State Legal Services Authority to represent the children in the courts. Some states like Maharashtra have appointed Duty Counsels in the Juvenile Justice Boards. The institutional staff and the law enforcers including the police and judiciary need to be trained so that the spirit of the Act can be followed.

The law enforcers have to be made aware that children have a right to legal aid and other constitutional rights like the right to counsel, right to speedy trial, right to speedy disposal of cases, and right to child-friendly proceedings.36

5.15 Family courts

The main objective of the Family Courts is to stabilize the marriage, to preserve the family and where a marriage has broken down irretrievably, to dissolve it with maximum fairness and minimum bitterness, distress and humiliation. The Family Court system also visualizes the assistance of specialized agencies and experts. Family disputes involve many problems that need to be resolved. These relate to parties to marriage, their children and their property.

The Family Courts are supposed to be specialized courts wherein sensitive, delicate matters have to be dealt with. The human element, therefore, has to be present. The Courts and their environments and ambience have to be sensitive and humane. The process of problem resolution has to be quick, less expensive and less technical. Family courts require not only inputs in law but also a sociological knowledge of the family system and the plight of women in society, and a commitment to the policy of gender justice. The Act emphasizes conciliation, counselling and concern for an individualized approach based on initiative and innovative procedural modifications (Bajpai, 2006).

Children’s issues come before the Family Courts in custody, guardianship and maintenance cases. It is clear that rulings granting custody are affected by the issues like poverty, character adultery, immorality, religion, sex, age, abandonment, remarriage, the wishes of parents and children, and nearness of kin. These are the factors that are taken into account by the courts while determining the best interests of the child.

36 Ibid.
There have been some important judgments on the issue of custody, guardianship and maintenance of children. In one case, the court would not compel a girl, though she is a minor, to stay with her father or husband if she can decide her benefits on her own.

Another ruling stated that orders related to the custody of a minor are not final but interlocutory in nature and subject to modification at any future time upon proof of change of circumstances\(^{37}\). In a custody suit, where the minor lives with the mother, the place of jurisdiction is the mother’s residence and not the residence of the father\(^{38}\).

The Family Courts Act, 1984, is a legislation which relies significantly on networking among a large number of professionals concerned with the complex dimensions of families in India. The networking envisages the working of judges, social workers, counselors, case workers, psychiatrists, psychologists, police and NGOs. The concept of networking underscores the need to share roles in a dispute to get a shared and multi-disciplinary understanding of the situation. At present some of the family courts, especially in big cities like Mumbai, Nagpur and Pune, have introduced services within the court premises like child guidance clinics, children’s complex wherein the parents can get access to their children, inquiry cells, drug addiction centres, and counselling and stress management centres, which perform psychological screening and testing, diagnostic and counselling therapy, for all litigants wherein psychological problems are detected, whether during the litigation or pre-litigation stage. In cases relating to custody, guardianship and maintenance of children, the courts have to adopt the best interest of the child principle.

Decisions in Family Courts cannot simply be decided on the basis of the case ‘proved’ or ‘not proved’. They are sensitive and emotive issues. Such decisions necessarily involve lengthy investigations of the family, personalities and their motivations. Family Courts are the courts in which the principles of law, the conscience of the community and the social sciences, particularly those dealing with human behaviour and personal relationships, work together. It is clear that successful innovations depend upon particular individuals being at the right place at the right time. Children’s rights in the family courts need to be protected. There is a dire need to provide quality services to the family courts so that justice is provided to women and children who are the victims of domestic violence, broken homes and marriages,

\(^{37}\) R.G. Bhuvanesh V.G. Usha Rani 2004 (S) CTC 17.

\(^{38}\) Ranubala Moharana & Anr V. Mina 2004 (3) SC 377.
and matrimonial disputes. Above all, the families must be made aware of and must avail of these services.\textsuperscript{39}

\textbf{5.16 Best Interests of Children in Family Courts}

There are no hard and fast rules or precedents, in fact, there cannot be. Decisions are based on the facts and circumstances of each case. Courts often prefer not to disturb the status quo and generally place the child in the custody of the person who has already exercised custody at the time of the petition. Courts have also in recent times rejected the arguments of working women, and economic well-being, but in some cases, orthodox views still persist.

Issues like child abuse, and cruelty to children have not come up frequently. The child's interests are fashioned primarily on the perspective, needs and wishes of competing adult claimants or to protect the general policies of childcare or what the adults perceive to be the best interests of the child. Wherever possible, the courts have taken the wishes of children into account but many children can be easily tutored by the undue influence of the non custodial parent against the absentee parent.

Clearly, the best interest standards provide tremendous discretion to the judges. The background of judges and their understanding as to what is the best interest of the child play an important role. It is still a question of 'proved' and 'not proved', based on the facts presented before the courts. There also appears to be tension between the apparent meaning of the 'best interest' standard and its construction in legislative and court decisions. The delays and adjournments that are a regular feature of the legal system also pose risks to the child. Since the child is unrepresented in the family courts, it is up to the judge to ensure that the child's interests are not harmed or negated. The judges are not trained or sensitized to be friendly. Besides, even in those cases where the courts have managed to determine the best interests of the child, the social, administrative and enforcement machineries are not sensitive enough to implement them.

By and large, the spirit and the objectives of the Act have been forgotten and many family courts are working, in practice, like civil courts. There is thus a need to document the best practices of integrating support services in family courts, and after suitable adaptation, replicating them in others which do not have them. The counsellors play a very important role in Family Courts, but in the absence of proper

\textsuperscript{39} Bajpai Asha, \textit{Child Rights in India: Law, Policy, Practice}. New Delhi, Oxford University Press. 2006, p. 140.
infrastructure and uniform rules with regard to remuneration, etc. of the counsellors, skilled counsellors are either not available or are engaged on very small fees, and consequently, many of them they feel demoralized and have no interest in giving quality time or attention to the cases.

5.17 National Commission for the Protection of Child Rights

The initiative taken by the Government of India to enact the Commissions for the Protection of Child Rights Act, 2005 is an important milestone in translating commitments into action.

The National Commission for Protection of Child Rights (NCPCR) is a statutory body of the Government of India, set up in March 2007 to protect, promote and defend child rights in the country. India ratified the United Nations Child Rights Convention in the year 1992 and this Act was passed as one of the necessary steps to protect the rights of the children in the country.

The National/State Commission consists of seven members, including a Chairperson and six members, of which at least two need to be women. The Act provides for Children’s Courts for speedy trial of offences against children or of violation of Child Rights. The Act empowers the state government to notify at least a court in the state or a Court of Sessions in each district as a Children’s Court, with the concurrence of the Chief Justice of the concerned High Court. For every children’s Court, the state government is required to appoint a Public Prosecutor or an advocate who has been in practice for not less than seven years as the Special Public Prosecutor. The State Children’s Commissions still have to be constituted.

Some of the significant tasks undertaken by the National Commission are to issue guidelines for corporal punishment in schools, investigation into complaints on corporal punishments and child labour, and reviewing of laws relating to juvenile justice and child labour. The Commission has raised a lot of hopes among activists for protecting the rights of the child.

There is also a need to enhance the powers and resources of the NCPCR so that it can work effectively. This commission must be given independence from political pressures to work and act to protect children.

- Undertake a periodic review of policies, programmes and other activities related to child rights in reference to the treaties and other international instruments;
- Spread awareness about child rights among various sections of society;
• Examine and recommend appropriate remedial measures for all factors that inhibit
the enjoyment of rights of children affected by terrorism, communal violence/
riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment,
torture and exploitation, pornography and prostitution;
• Undertake and promote research in the field of child rights;
• Inspect institutions meant for juveniles/children;
• Inquire into complaints of deprivation and violation of child rights, non-
implementation of laws and non-compliance of policy decisions, guidelines or
instructions; and
• Undertake other necessary functions for the promotion of child rights. The
Commission has the power of a civil court and all criminal cases brought to the
same have to be forwarded to a concerned Magistrate who has jurisdiction to try
the same.

5.18 CHILD PROTECTION IN THE FIVE YEAR PLANS

5.18.1 Child Protection through First to Ninth Five Year Plans (1951-2002)

Child development has been a priority subject in the country's
developmental planning right from the First Five Year Plan (1951-56). The First
Five Year Plan recognized the importance of promoting social services for
maintaining and consolidating the gains of economic development, attaining
adequate living standards and social justice. Accordingly, a comprehensive
Social Welfare Programme that was developed during the First Five Year Plan
included welfare of Women and Children, Family Welfare, Welfare of the Physically
and Mentally Disabled.40

In the initial years, the responsibility of child care services had primarily
rested with voluntary organizations under the charge of a national apex body, viz.,
the Central Social Welfare Board which was set up in 1953 to promote
voluntary action in the field of women and child development and disabled
welfare. In September 1955, the Ministry of Education constituted a National
Advisory Council for the education of the physically disabled. The functions of
this Council were to advise Central Government on problems concerning the
education, training and employment and the provision of social and cultural

40 See Report of Ministry of Women and Child Development Govt. of India, New Delhi, 2013.
amenities for the physically and mentally disabled to formulate new schemes and to provide liaison with voluntary organizations working in the field.

Subsequent reviews and assessments concluded that holistic development of the child requires integration with other developmental sectors and their services. Accordingly, during the Second to the Fourth Plan (1956-78), Child Welfare Services were linked to different sectors of the Plan such as Health, Family Welfare, Nutrition, Education, Rural and Urban Development. These Plans, besides according high priority to education for children, also introduced measures to improve maternal and child health services, supplementary feeding for children and expectant and nursing mothers.

In the Second and Third Plans (1956-61 and 1961-66) social welfare activities were extended to different sectors. States were involved in the sphere of statutory enactment and organization of basic services for education and rehabilitation of the disabled and the extension of welfare services for women and children in rural areas. The Central Bureau of Correctional Services (CBCS) was set up in 1961 for collection and compilation of national statistics and preparation of guide books and model schemes. Social Defence programmes under the Suppression of Immoral Traffic in Women and Girls Act, Probation of Offenders' Act and Children Acts were organized. The Central Institute of Research and Training in Public Cooperation was set up in 1966 for research and training on problems relating to popular participation.41

In the Fourth Plan (1966-71), all attempts were made to consolidate the initiatives taken in the previous plans. The activities of Central Social Welfare Board were further strengthened. In addition to the three National Institutes for the Blind, the Deaf and the Mentally Retarded, a National Institute of Orthopaedically Handicapped was set up. For the placement of Disabled persons in employment, special employment exchanges were set up.

The Fifth Plan (1974-78) proved to be the landmark in the field of child development through the adoption of a National Policy for Children (1974), and launching of the Integrated Child Development Services (ICDS) with a shift from welfare to development in the approach towards development of children. The programme of ICDS, launched in 33 experimental blocks in 1975, aimed to reach

41 Ibid.
a package of 6 basic services, viz., health check-up, immunization, referral services, supplementary feeding, non-formal pre-school education and health and nutrition education for children below 6 years and expectant and nursing mothers living in the most backward areas through a single window delivery agency called 'Anganwadi Centre'. The Central and State Governments provided scholarships to the physically disabled. The State Governments extended institutional and non-institutional services for the socially and physically disabled. The Central Bureau of Correctional Services (CBCS) was raised to the status of an Apex agency and given the title of "National Institute of Social Defence (NISD)" to be a model organization at the national level with specialized services of training, research and developing alternative models for innovative experiments, field testing etc.  

The Sixth Five Year Plan (1980-85), i.e., the early Eighties witnessed an effective consolidation and expansion of programmes started in the earlier Plans. The National Policy of Health adopted in 1983 set certain specific targets like bringing down the high rates of Infant and Child Mortality and take up universalisation of immunization etc. by the year 2002 A.D. The National Policy on Education of 1986 emphasised universal enrolment and retention of children in the schools especially the girl children. Non-formal education programmes were also promoted intensively. Vocationalisation of education was given priority. Pre-school education centres were supported in the educationally backward states by extending grants to voluntary organizations. The social welfare programmes received further momentum in the State Sector. The Children's Acts (the present JJ Act of 2000) were enacted in all the States except Nagaland. The Central Social Welfare Board continued to function as a focal and apex agency in the voluntary sector. The Voluntary Action Bureau was set up in 1982 to meet the challenge of crimes and atrocities against women and children and to create awakening among the masses towards their social responsibility. An Information and Mass Education Cell was established with the aim of creating awareness of various social welfare schemes to mobilize public opinion against social evils like atrocities against women, child marriage etc. and to promote positive social attitudes.

42 Ibid.
The **Seventh Five Year Plan** (1985-90) continued the major strategy of promoting early childhood survival and development through programmes in different sectors, important among these being ICDS, universal immunization, maternal and child care services, nutrition, preschool education, protected drinking water, environmental sanitation and hygiene, and family planning. Under the maternal and child health services of the Ministry of Health and Family Welfare, the universal immunization programme to protect children from six major diseases which affect early childhood mortality and morbidity, viz. diphtheria, whooping cough, tetanus, polio, measles and childhood tuberculosis was strengthened for the development of children as a whole. ICDS continued to be the single nation-wide programme for early childhood survival and development during Seventh Plan. The Juvenile Justice Act (JJA) was enacted in 1986, to deal effectively with the problem of neglected or juvenile delinquents and provide for a standardized framework for dealing with such children. The Government of India enacted the Child Labour Prohibition and Regulation Act, 1986 and in 1987, the National policy on Child Labour was formulated. Projects were sanctioned to voluntary organizations for the welfare of working children to provide non-formal education, supplementary nutrition, health care and skill training. For children in need of care and protection, grants were given to voluntary organizations through the State Governments.\(^{43}\)

**During the Seventh Plan**, a significant expansion of programmes and services for the welfare of the Disabled took place. For education of the Disabled almost all the States implemented programmes to provide stipends and other incentives to the Disabled at the elementary school stage. The Scheme to award scholarships to physically Disabled students to pursue general, technical and professional courses from Class DC onwards on the basis of means-cum-merit test, was continued. To provide technical support to 11 District Rehabilitation Centres for the disabled, 4 Regional Rehabilitation Training Centres (RRTC) were set up for developing the training material and the manuals and for providing material to create community awareness through the use of different media. In addition to four National Institutes for Disabled, two other organizations, viz., the Institute for the Physically Handicapped (Delhi) and the National Institute of

\(^{43}\) ibid.
Rehabilitation Training and Research (Cuttack) also offered a wide range of services for the rehabilitation of the Disabled and organized manpower training. The Science and Technology Project in the Mission Mode of Application of Technology for the Welfare and Rehabilitation of the Disabled was launched in 1988. Voluntary organizations were also assisted to provide services to the physically handicapped in the areas of education, training and rehabilitation.\footnote{ibid.}

Human Resources Development being the major focus of the \textbf{Eighth Five Year Plan (1992-97)}, policies and programmes relating to 'child survival, protection and development' were accorded high priority with emphasis on family and community based preventive services to combat high infant and under-5 child mortality and morbidity. Following the ratification of the \textit{'Convention on the Rights of the Child'}, in 1992 the Government of India formulated two National Plans of Action (NPA) - one for children and the other exclusively for the Girl-Child. While the NPA for Children sets out quantifiable goals to be achieved by 2000 AD in the priority areas of health, nutrition, education, water, sanitation and environment, the NPA for the Girl Child (1991-2000) aimed at removal of gender bias and enhanced the status of girl child in the society, so as to provide them the equal opportunities for their survival, protection and development. Both the Plans of Action adopted an inter-sectoral approach in achieving sectoral goals laid down in the Action Plans in close uniformity with the major goals of "Health For All", "Education For All" etc.

In view of the main thrust of the Eighth Plan policies and programmes relating to survival, protection and development of all sections of the population especially those of the Disabled and Disadvantaged were implemented. The major thrust was towards enabling the disabled to become active, self-dependent and productive members of the nation by extending opportunities for education, vocational training and economic rehabilitation etc. Efforts were made to integrate the services for the Disabled covering the entire range of activities from prevention to rehabilitation. Programmes under different sectors of the Plan, more particularly, health, nutrition, education, science and technology, employment and welfare were integrated in such a manner that effective inter-sectoral support was developed. The enactment of a comprehensive legislation,
namely, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, was a landmark achievement in the history of the welfare of the Disabled. The Rehabilitation Council Of India (RCI) was set up as a statutory body under the RCI Act of 1992, with the objective of upgrading and standardizing the syllabus and ensuring uniform standards of training of professionals for the welfare of the Disabled. A Scheme of "Assistance to Voluntary Organisations for the Establishment of Special Schools "was initiated in 1992-93.\textsuperscript{45}

In the field of Social Defence, greater thrust was laid on non-institutional care and rehabilitation of beggars. Efforts were made to tackle the evil of prostitution and its diverse manifestations through strict enforcement of law besides building strong public support, with police and community vigilance. For prevention and control of drug abuse and alcoholism, apart from strict enforcement of the legislation, the role of the media was enlarged through both electronic and print media. Services of counseling, de-addiction and after-care centers were also expanded. The special feature in the field of Social Defence was launching in 1993 of a new programme of Welfare and Rehabilitation Services for the Street Children - an emerging problem. The revised guidelines and procedures laid down by the Supreme Court for regulating inter-country adoption was implemented by CARA.

Voluntary Organizations, which have been playing a key role in the organization of services for the Disabled and Social Defence were encouraged with necessary financial support and technical guidance. Simultaneously, efforts were also made to make the services community-based. Wherever required, the training programmes were modified and diversified to make them relevant to the market demands and job opportunities. Special efforts were made to encourage the disabled to initiate various self-employment ventures through extending necessary financial support.

The \textbf{Ninth Five Year Plan (1997-2002)} re-affirmed its priority for the development of early childhood as an investment in the country’s human resource development through inter-ministerial strategies.

\textsuperscript{45} \textit{Report of Ministry of Women & Child Development Govt. of India}, New Delhi, 2013.
The strategy aimed at placing the young child at the top of the Country's Developmental Agenda with a Special Focus on the Girl Child; instituting a National Charter for Children ensuring that no Child remains illiterate, hungry or lacks medical care; ensuring 'Survival, Protection and Development' through the effective implementation of the two National Plans of Action - one for the Children and the other for the Girl Child; acknowledging that the first six years as critical for the development of children, therefore, greater stress will be laid on reaching the younger children below 2 years; continuing to lay a special thrust on the 3 major areas of child development viz. health, nutrition and education; universalizing ICDS as the main-stay of the Ninth Plan for promoting the over-all development of the young children, especially the Girl Child and the mothers all over the country; arresting the declining sex ratio and curb its related problems of female foeticide and female infanticide; bringing down the MR to less than 60 and the CMR to below 10 by 2002 AD through providing easy access to health care services including RCH services and 100% coverage of immunization in respect of all vaccine preventable diseases; universalizing the Nutrition Supplementary Feeding Programmes to fill the existing gaps in respect of both pre-school and school children and expectant and nursing mothers with a special focus on the Girl Child and the Adolescent Girl; promoting the nutritional status of the mother and the child by improving the dietary intake through a change in the feeding practices and intra-family food distribution; strengthening the early joyful period of play and learning in the young child's life and to ensure a harmonious transition from the family environment to the primary school; recognizing girl's education as a major intervention for breaking the vicious inter-generational cycle of gender and socio-economic disadvantages; expanding the support services of creche/day-care services and to develop linkages between the primary schools and of the child care services to promote educational opportunities for the Girl Child; expanding the scheme of Adolescent Girls in preparation for their productive and reproductive roles as confident individuals not only in family building but also in nation building; and widening the scope and the spectrum of child development services with necessary interventions related to empowerment of women and children, families and communities through effective convergence and coordination of various sectoral efforts and services.
5.18.2 The Tenth Five-Year Plan (2002-2007):

The Tenth Plan has set certain monitorable targets for women and children including all children in school by 2003; all children to complete five years of schooling by 2007; reduction in gender gaps in literacy and wage rates by at least 50 percent by 2007; reduction of Infant Mortality Rate (TMR) to 45 per 1000 live births by 2007 and 28 by 2012; reduction of Maternal Mortality Rate (MMR) to 2 per 1000 live births by 2007 and to 1 per 1000 live births by 2012. The other objectives of the Tenth Plan include arresting the decline in the child sex ratio; increasing the representation of women in premier services and in Parliament; and universalisation of the Integrated Child Development Services (ICDS) scheme.

Though some of these targets are set for beyond the Tenth Plan, the Mid-Term Appraisal has been conducted in the light of these targets. The goals appear almost impossible to achieve. It took two decades to reduce the gender gap in literacy from 26.62 in 1981 to 21.69 in 2001. But the Tenth Plan envisages a reduction by 50 per cent in five years. The burning issues relating to women and children are the adverse child sex ratio, persistently high infant, child and maternal mortality ratios, wide gender gaps in literacy and in wage rates, escalating violence against women and the rising incidence of female foeticide and infanticide. Other important concerns are the feminisation of poverty and the exploitation of women in low paid, hazardous and insecure jobs in the unorganised sector and in the export processing or special economic zones.

According to the NSS 55th Round (1999-2000), women casual workers in urban areas were more vulnerable to poverty compared to not just their male counterparts but also to workers both female and male in other employment categories.

The mid-term appraisal of women and child development had found glaring gaps and inconsistencies on the ground in the light of the promises made in the Tenth Plan and the NCMP: A high-powered inter-ministerial review (under the chairpersonship of the Prime Minister) of gender justice will bring the Tenth Plan back on track regarding its commitment to gender justice. Alternatively, a Prime Minister's Mission on Women, Children and Development can be considered.46

46 Ibid.
5.19 Eleventh Plan on Child Protection

In the Eleventh Plan (2007-2012), Child Protection has been viewed as an essential component of the country's strategy of placing 'Development of the child at the centre of the 11th Plan'.

Violations of the child's right to protection, in addition to being human rights violations, are massive, under-recognized and under-reported barriers or obstacles to child survival and development. Failure to protect children has serious consequences for the physical, mental, emotional, social development of the child; consequences for the loss in productivity and the loss in human capital for the nation.

The Government of India had adopted a National Plan of Action for Children (NPAC) in 2005, which has Cabinet approval. Time targets in the NPA extended to 2012, the end-year of the Eleventh Plan. The NPA for Children sets out a range of positive measures and declares its intent to secure them for all children aged up to 18 years. It identifies the Constitution and the CRC as the guiding framework for realizing the rights of children below 18 years. It clearly implies cross-sectoral thinking and planning, and inter-sectoral measures. The NPAC has identified twelve key priority areas for the utmost and sustained attention in terms of outreach, programme interventions and resource allocations. These are:

- Reducing **Infant Mortality Rate**
- Reducing **Maternal Mortality Rate**
- Reducing **Malnutrition** among children
- Achieving 100% civil **registration of births**.
- Universalization of early childhood care and development and quality **education for all children** achieving 100% access and retention in schools, including pre-schools.
- Complete **abolition of female foeticide, female infanticide and child marriage and** ensuring the survival, development and protection of the **girl child**.
- Improving **Water and Sanitation** coverage both in rural and urban areas

Addressing and upholding the rights of **Children in Difficult Circumstances**. Securing for all children all legal and **social protection** from all kinds of abuse, exploitation and neglect.
• Complete abolition of child labour with the aim of progressively eliminating all forms of economic exploitation of children.

• Monitoring, Review, and Reform of policies programmes and laws to ensure protection of children's interests and rights.

Ensuring child participation and choice in matters and decisions affecting their lives.

The NPAC 2005 has articulated clearly the perspective and agenda for the development of children and provides a robust framework within which to promote the development and protection of children. It is therefore logical and imperative that the NPAC 2005 becomes the basis for planning for children in the Eleventh Plan in all sectors and the principles articulated in it guide the planning and investments for children. All budget for child protection schemes and programmes should be in the plan category and not in the non-plan category.

The Guiding Principles of the NPA are:

• To regard the child as an asset and a person with human rights

• To address issues of discrimination emanating from biases of gender, class, caste, race, religion and legal status in order to ensure equality

• To accord utmost priority to the most disadvantaged, poorest of the poor and the least served child in all policy and programme interventions

• To recognize the diverse stages and settings of childhood, and address the needs of each, providing all children the entitlements that fulfill their rights and meet their needs in each situation.

Since the finalization of the NPAC, 2005 the issues of children affected by HIV/AIDS and urban children in distress/difficult circumstances have also been accepted as key priorities by MWCD and will find a place in the Eleventh Plan as key priorities that need to be addressed.

The Government of India has accepted the MDGs as part of national commitments to be achieved by 2015. Most MDGs relate to children and there is strong link between child protection and the MDGs. The Mid-Term Appraisal report on the Tenth Plan found that outcomes on most of the goals were off-track in 2005. It is imperative that the link is understood and translated into investment and actions for strengthening child protection in the Eleventh Plan. In addition the Millennium Declaration provides the specific framework for specific attention to addressing the protection rights of children.
The draft Approach Paper for the Eleventh Plan has adopted a very narrow and inadequate perspective on child protection. In fact, the approach is welfare oriented, limited to identifying and mainstreaming street children, differently abled and other disadvantaged children. The major focus is on education and health. This does not fully reflect the vision, perspective and framework laid out in the National Plan of Action for Children, 2005 and the goals and objectives already approved at the highest level of the cabinet. It also does not reflect an understanding of the real situation of child protection in the country and the planning and investment required. This also does not reflect the clearly articulated commitment in the NCMP to 'safeguard the rights of children'. The main endeavour of the Ministry of Women and Child, therefore, was be to carve out a broad and comprehensive framework for child protection in the Eleventh Plan and set the foundation for creating and strengthening a robust protective environment for children. Child protection concept incorporates both prevention and corrective aspects. Children have a right to be prevented from becoming subjects of violence, abuse, neglect and exploitation, and at the same time if they do become victims of the same the State has a duty to mitigate the impact of the violation of their rights, through its services and support systems. This will be carried out with strong advocacy and a detailed implementation strategy for enhancing the infrastructure for protection services, increasing the access and range of services and to increase the investment for protection of children.\textsuperscript{47} The recommendation for the 12\textsuperscript{th} five year plan (2012-2017) has already been discussed in Chapter Two (pp. 25-31) which may kindly be referred into.

5.20 Conclusion

Children have a special place in all the wisdom and tradition of the world. A wide range of stakeholders and reform agents need to be brought including relevant actors from outside the legal, judicial, and human rights area, to jointly address issues relating to juveniles in a strategic way. Given the diversity and the disparities in the country, perhaps regional networks or strategic alliances on specific issues may be more workable. Initiatives have to be taken by various people's organizations, community leaders, advocacy groups, child right activists and public interest professionals, civil society, and government working towards the goal of translating

\textsuperscript{47} Ibid.
the dream of child rights into reality. Socio-eco-political-legal change cannot be sustained in isolation. Alliances have to be built with other movements for change such as women’s rights, environment, labour, housing, health, education rights, and with organizations, individuals, parents, and other civil society organizations involved in child rights issues. Interventions should be made at the level of government programmes and policy directives towards establishing an agenda to ensure the rights of the child.

Children can no longer be considered as passive recipients of services. Therefore, the governments and civil society must accept children as partners and facilitate their participation in matters which affect their lives. The challenge is, therefore, to change the mindset that children can no longer be objects of charity, philanthropy, and welfare. They have rights and the government, civil society, and NGOs are obliged to provide for them. There must be legislative, administrative, and judicial support to implement the policies, plans, and legislations in the interest of the child. The ideals and norms set forth in our Constitution, national laws and case laws, international conventions, regulations, policies, and practices have successfully addressed norms and issues relating to children and have contributed considerably towards the betterment of children. We also need other means like political, psychological, managerial, economic, social, and financial to implement the best interest of the child. Public interest litigation has been used beneficially to realize the goal of the protection of rights of children. The High Courts and Supreme Court of India has in recent years used the directive principles so as to expand fundamental rights to include socio-economic rights related to the children.