CHAPTER-IV

AIMS AND OBJECTIVES OF JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000
Chapter IV
Aims and Objectives of the Juvenile Justice
(Care and Protection of Children) Act, 2000

The Juvenile Justice care and protection Act 2000 was brought into force on 1\textsuperscript{st} April 2001. The main purpose of this Act is providing juvenile justice system for juvenile in conflict with the law and children in need care and protection by adopting a child friendly approach in the adjudication and disposition of the matters in the best interest of children and for their rehabilitation keeping in view the developmental need of the children. The legal framework, which is to be applied, should be uniform throughout the country. Children under no circumstances should be arrested and put in the lockups. States shall have special approach so as to prevent delinquency amongst children and in case they turn to criminality instead of being punished, they should be treated. Most of the children are socially maladjusted. The approach should be separate in the administration of juvenile justice whether in terms of investigation and prosecution, adjudication and disposition and care, treatment and rehabilitation\textsuperscript{1}.

This Act indicates greater attention is required to be given to children in conflict with law or those in need of care and protection. It is also necessary that the juvenile system must be accessible to juvenile or child or any on their behalf including the police, voluntary organizations, social workers, or parents or guardians, throughout the country. There is an urgent need for creating adequate infrastructure necessary for implementation of the proposed legislation with a larger involvement of informal system specially the family, the voluntary organization and community.

This Act is enacted for the purpose of to achieving of the following objectives-

1. To lay down basic principles for administering justice to a juvenile or the child in the bill:

The concept of Juvenile Justice system connotes a major departure from the traditional criminal justice system. In India Juvenile justice system began and developed as an off shoot of criminal justice system but the scheme of the J.J. Act, 2000 clearly shows that it has completely served its ties with the criminal justice system. Recognition of this independent status to the juvenile justice system by all

\textsuperscript{1}. Aims and Objectives under Juvenile Justice (Care and Protection of Children) Act, 2000.
within and outside the system is a precondition for bringing about any change in formulation and implementation of laws to ensure justice to juveniles. One of the main objectives of juvenile legislations is to provide Special Courts and special procedure for the hearing of cases concerning juveniles.

The Bombay High Court in Sarita V. State\(^2\) observed that even in matters of offences punishable with death or imprisonment for the life the jurisdiction of all courts created by Code of Criminal Procedure to try juvenile is outset and solely conferred on Juvenile Court to be constituted under the Act and in the absence of the constitution of such court by concerned Magistrate First Class himself as Juvenile Court. The Act makes no distinction between a major and minor offence and it is as if the gravity is immaterial. The court further said: The law relating to juveniles, both neglected and delinquent, is a part of the Human Right Legislation which is a welfare statute, must be necessities receive a broad. Where a legislation is design to give relief against certain kind of mischief, it is not open to the courts to make inroads and divest jurisdiction of the court which are specially created or empowered.

2. To make the juvenile system meant for a juvenile or the child more appreciative of the developmental needs in comparison to criminal justice system as applicable to adults:

During the 20th century, the development of a truly independent juvenile justice system is accepted. In today's world in many countries the world over, separate juvenile justice systems are in place to deal with young people who run afoul of the law. Although the juvenile justice system bears some similarities to the adult judicial system, there are some profound differences. These variations exist in recognition of the difference in maturity and intellect between adults and juveniles. They also exist based on an understanding of the primary importance of rehabilitation over punishment when it comes to juveniles charged with and adjudicated of crimes.\(^3\)

An independent juvenile justice system is of fairly recent origin when one considers the development of the criminal law more generally. The concept of an independent juvenile justice system came to fruition during the earlier part of the 20th century. Prior to that time, the standard practice was to both try minors in regular

\(^2\) 1990 CrI. L. J. 351 (Bom.)
\(^3\) http://www.ehow.com/about_5135532_juvenile-justice-system.html
courts and to incarcerate them in the same penal institutions that housed adults. Ultimately, it was determined that the interests of youth who violate the law and of society at large could best be served through an independent juvenile justice system with separate courts and confinement facilities.

The function of the juvenile justice system is to adjudicate. The juvenile justice system places its emphasis on developing a meaningful pathway that will allow young people who break the law the chance to obtain meaningful rehabilitation. Although punishment for wrongdoing plays some role in the juvenile justice system, it takes a second chair to the concept of providing services and resources that allow for a rehabilitation and appropriate integration of youthful offenders into the common web of society.

The two primary physical features of the juvenile justice system is the existence of separate courts and separate confinement facilities. In a juvenile court, a youth charged with illegal conduct is an adjudicated juvenile offender and not found guilty. The theory is that as a juvenile, a youth lacks the mental capacity to be guilty of a crime in the same manner as an adult. When it comes to the issue of confinement, the concept in the juvenile justice system is that the youth should be kept in the least restrictive venue upon adjudication. In other words, sentences such as probation are preferred when possible within the juvenile justice system.

Common misconceptions of the juvenile justice system include the idea that juveniles are convicted and found guilty of crimes after a trial. Although the proceedings of this system have similarities to a trial in adult court e.g., testimony by witnesses, presentation of evidence, in the end, a youth is not convicted in the juvenile system. A youth is adjudicated a juvenile offender. Another common misconception is that a youth on trial in the juvenile system is a defendant. A youth on trial in the juvenile system usually is referred to as juvenile offender or in a similar manner.

3. To bring the law conformity with the United Nations Convention on the rights of the child:

The roots of the UNCRC can be traced back to 1923 when Eglantyne Jebb, founder of Save the Children, summarised the rights of children in five points. Her Declaration of the Rights of the Child was adopted by the League of Nations in 1924 and the five points subsequently became known as the Declaration of Geneva.
Following World War II, and its atrocities, the United Nations concentrated on producing the Universal Declaration of Human Rights, which was adopted in 1948. Although the rights of children were implicitly included in this Declaration, it was felt by many to be insufficient and that the special needs of children justified an additional, separate document. In November 1959, the UN General Assembly adopted the second Declaration of the Rights of the Child. This consisted of ten principles and incorporated the guiding principle of working in the best interests of the child. However, this 1959 Declaration was not legally binding and was only a statement of general principles and intent. Ten years in the making, the UNCRC was adopted by the UN General Assembly in 1989, exactly thirty years after the 1959 Declaration. On 2nd September 1990 it entered into force as international law.

The Preamble of the UNCRC acknowledges the family as the fundamental unit of society and the natural environment for the growth and well-being of children. The Preamble also states that the family should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community.

A) Declaration of Geneva:

The rights of the child for the first time are discussed in ‘Declaration of Geneva’ in 1924. In this declaration the five basic principles for child welfare and protection were mentioned. The same year the league of nation for the first time attempted to codify the fundamental condition to which children had rights. The declaration of Geneva 1924 stated that the child by reason of including appropriate legal protection before as well as after birth. It contained stipulation which played a positive role in consolidating the international principles and rules for the protection of children. The declaring of Geneva proclaimed the principles and norms of child protection not in the name of states. The proclamation of declaration of Geneva was in the name of man and women of all the countries in the world. It was rather a public declaration with a moral binding force and effects. The declaration did not assume to impose obligation upon the states but the principles and norms under it were guiding principles for the state in the cause of the child justice.

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Declaration of Geneva proclaimed certain basic principles which were new as regards to the children's right. Although these proclamation containing guiding principles, which the state can use the juvenile justice. The declaration of the Geneva was the proclamation which applied the society to protect rights of child and played a significant role to plant the regard of rights of the children in mind of the people in general. The state has to respect the feeling of the people and if general public opinion is formed. The state takes the account of it for making laws. The declaration, however, was adopted by the assembly of the League of Nation in which state had representation and for them it was morally binding

Principle of the Declaration of Geneva 1924

The declaration proclaimed in its preamble the principle to protect children regardless of all considerations based on social, civil and religion differences. This principle underline that child is asset endowed by the nature and the human being should not attach with it any discrimination social, civil or religion. The child should be seen through the glass of equality and not through the glass of inequality. This was the principle introduced for the first time I the international convention in 1922.

By the present Declaration of the Rights of the Child, commonly known as "Declaration of Geneva," men and women of all nations, recognizing that mankind owes to the Child the best that it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed.5:

1. The child must be given the means requisite for its normal development, both materially and spiritually;
2. The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succored;
3. The child must be the first to receive relief in times of distress;
4. The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation;

5. The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.

We are concerned with the international movement of the human rights of the child and its protection. The United Nation made various declarations and convocations and invites the attention of the member states to basic rights movement before the first world war and after second world war in relation with the human rights of the child.

B) United Nation Charter:

The United Nations Charter is the treaty that forms and establishes the International organization called the Nations. As a charter it is a constituent treaty, and all members are bound by its articles. Furthermore, the Charter states that obligations to the United Nations prevail over all other treaty obligations. The Charter of the United Nations was signed on 26 June 1945, in San Francisco, at the conclusion of the United Nations Conference on International Organization, and came into force on 24 October 1945. The Statute of the International Court of Justice is an integral part of the Charter. The main object of this charter was to save succeeding generation and to maintain international peace and security. Following are the purposes and principles of the united Nation Charter:

- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom,
- to practice tolerance and live together in peace with one another as good neighbours, and
- to unite our strength to maintain international peace and security, and

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• to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and
• to employ international machinery for the promotion of the economic and social advancement of all peoples,

The United Nation engaged in many fields like rights of the child in Universal declaration of Human rights, 1948 the United nation adopted certain rights of the child.8

C) Universal Declaration of Human Rights 1948:

The Universal Declaration of Human Rights (UDHR)9 is a declaration adopted by the General Assembly on December 10, 1948. UDHR as the "Most Translated Document" in the world. The Declaration arose directly from the experience of the end World War and represents the first global expression of rights to which all human beings are entitled. It consists of 30 articles which have been elaborated in subsequent international treaties, regional human rights instruments, national constitutions and laws. The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International covenant on civil and political rights and economic, social and cultural rights.

In 1966 the General Assembly adopted the two detailed Covenants, which complete the International Bill of Human Rights; and in 1976, after the Covenants had been ratified by a sufficient number of individual nations, the Bill took on the force of international law.

It also contains the rights of the children and motherhood, all children whether who are born in or out of wedlock shall enjoy the same protection.10 Everyone has right to education it should be free at least in the elementary and fundamental stages this education shall be compulsory. Parents have a prior right to choose such kind of education. The compulsory elementary education denotes the liability of the state towards its children. Thus Universal Declaration of Human Rights emphasized on the

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10. Art. 25(2 ) Universal Declaration of Human Rights
rights and freedom of child in relation to its protection and education. For the first
time in history the representative of most governments on earth have agreed that
certain rights belong not to any one nation or group but to every human being mother
and child.

D) Declaration on the rights of the child 1959:

The peoples of the United Nations have, in the Charter, reaffirmed their faith
in fundamental human rights and in the dignity and worth of the human person, and
have determined to promote social progress and better standards of life in larger
freedom, the child, by reason of his physical and mental immaturity, needs special
safeguards and care, including appropriate legal protection, before as well as after
birth, the need for such special safeguards has been stated in the Geneva Declaration
of the Rights of the Child of 1924, and recognized in the Universal Declaration of
Human Rights and in the statutes of specialized agencies and international
organizations11.

On 20th November, 1959 the General Assembly of the United Nations with
representative of 78 countries meting adopted the declaration of the rights on the child
unanimously. The object of the declaration is that child may have happy childhood
and enjoy for his own good and for the good society rights and freedoms set forth in
the declaration. The General Assembly called upon parents, men, women and
individual voluntary organizations, local authorities, National Governments to
recognize the rights of child.12

The General Assembly proclaims this Declaration of the Rights of the Child to the
end that he may have a happy childhood and enjoy for his own good and for the good
of society the rights and freedoms herein set forth, and calls upon parents, upon men
and women as individuals, and upon voluntary organizations, local authorities and
national Governments to recognize these rights and strive for their observance by
legislative and other measures progressively taken in accordance with the following
principles.

11 http://www.canadiancrc.com/UN CRC/UN Declaration on the Rights of the Child.
12 Sharon Detrick, 'A commentary on the United Nations Convention on the Rights of the
Child', Martinus Nijhoff Publishers, 1999, P XXXIII.
• The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family\footnote{13}.

• The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration\footnote{14}.

• The child shall be entitled from his birth to a name and a nationality\footnote{15}.

• The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services\footnote{16}.

• The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition\footnote{17}.

• The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable\footnote{18}.

\footnote{13} Principle 1 of the Declaration on the rights of the child, 1959.  
\footnote{14} Principle 2 of the Declaration on the rights of the child, 1959.  
\footnote{15} Principle 3 of the Declaration on the rights of the child, 1959.  
\footnote{16} Principle 4 of the Declaration on the rights of the child, 1959.  
\footnote{17} Principle 5 of the Declaration on the rights of the child, 1959.  
\footnote{18} Principle 6 of the Declaration on the rights of the child, 1959.
• The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgment, and his sense of moral and social responsibility, and to become a useful member of society. The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents. The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities, shall endeavour to promote the enjoyment of this right.¹⁹

• The child shall in all circumstances be among the first to receive protection and relief.²⁰

• The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form. The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.²¹

• The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.²²

E) Beijing Rules:

The United Nation Standard Minimum Rules for the administration of Juvenile justice known as Beijing Rules were approved on 6th September 1985 by 7th congress which recommended them to General Assembly for adaptation. The assembly adopted the rules on 29th November 1985. The members of the state of United Nations these rules could serve as a model in treatment of juvenile offenders.

Under these rules the General Assembly invited the member states to do things in the interest of the juvenile. The member states were not under obligation to do things as per these rules. But these rules could serve as a model for the member states of the United Nations to deal with juvenile problems. The General Assembly adopted these standard minimum rules for the administration of juvenile justice. These rules expected from the member states that it should seek to further the well-being of juveniles and family of the juvenile endeavor to develop conditions.

The Beijing Rules provide guidance to States for the protection of children's rights and respect for their needs in the development of separate and specialized systems of juvenile justice. Limited provisions concerning juvenile justice may be located in regional human rights treaties and in the International Covenant on Civil and Political Rights 1966. Similarly, the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted in 1955, set out certain basic requirements for all prisoners but do not address specific issues in relation to young offenders. The Beijing Rules were the first international legal instrument to comprehensively detail norms for the administration of juvenile justice with a child rights and development-oriented approach. They were a direct response to a call made by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders which convened in 1980.

The Rules operate within the framework of two other sets of rules governing juvenile justice, both adopted in 1990. The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. These three sets of rules can be seen as guidance for a three-stage process:

- firstly, social policies to be applied to prevent and protect young people from offending (the Riyadh Guidelines);
- secondly, establishing a progressive justice system for young persons in conflict with the law and

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• finally, safeguarding fundamental rights and establishing measures for social re-integration of young people once deprived of their liberty, whether in prison or other institutions. Although the Beijing Rules predate the United Nations Convention on the Rights of the Child 1989, several of the fundamental principles have been incorporated into that Convention and they are expressly referred to in its Preamble.

Fundamental Principles:

Under the Beijing Rules the juvenile offender means a child or young person who is alleged to have committed or has been found to have committed an offence under this rules there are some important principles laid down as under24:

1. The fair and humane treatment of juveniles in conflict with the law. In particular, the aims of juvenile justice should be two fold, the promotion of the well-being of the juvenile and a proportionate reaction by the authorities to the nature of the offender as well as to the offence.

2. The use of diversion from formal hearings to appropriate community programmes where the consent of the juvenile is encouraged.

3. Where diversion is not appropriate, detention of the juvenile should be used as a measure of last resort, for the shortest period of time possible and separate from adult detention.

4. Proceedings before any authority should be conducted in the best interests of the juvenile and in the manner which allows him/her to participate and to express himself/herself freely.

5. Deprivation of liberty should only be imposed after careful consideration for a minimum period and only for serious offences.

6. Capital and corporal punishment should be abolished for any crime.

7. Institutionalization of juveniles should only be resorted to after consideration of alternative disposition measures.

8. Both personnel and police officers dealing with juvenile cases should benefit from continued specialized training.

9. Whilst undergoing institutional treatment, appropriate educational services and care should be made available to assist juveniles in their return to society.

10. Release should be considered both on apprehension and at the earliest possible occasion thereafter.

The Beijing Rules were the first international legal instrument to comprehensively detail norms for the administration of juvenile justice system and child’s rights development oriented approach.

F) Convention on the rights of the child, 1989:

The main objective of this convention is to protect children from discrimination, neglect and abuse. It is the principal children's treaty, covering a full range of civil, political, economic, social and cultural rights. It grants rights for children in peacetime as well as during armed conflict, and provides for the implementation of those rights. The Convention serves as both a rallying point and a useful tool for civil society and individual people, working to protect and promote children's rights. In many ways, it is an innovative instrument.

The Convention is the first legally binding international treaty to give universally-recognized norms and standards for the protection and promotion of children's rights in a single text. It is the most rapidly and widely ratified international human rights treaty in the world. This unprecedented wide participation clearly shows a common political will to improve the situation of children. The Convention highlights the spirit of complementarily and the interdependence of human rights by combining civil and political rights with economic, social and cultural rights. It calls for a holistic approach in analysis, and recognizes that the enjoyment of one right cannot be separated from the enjoyment of others. It creates a new vision of the child, combining provisions aimed at protecting the child through positive action by the child's country, parents and relevant institutions, with provisions that recognize the child as a holder of participatory rights and freedoms.

In this way it creates rights in areas not covered by previous international treaties, such as the right of the child to freely express views and have those views taken seriously, and the right of the child to a name and nationality from birth. The
Convention also creates standards for such issues as alternative care, the rights of disabled and refugee children; and the administration of juvenile justice. It also stresses the need for recovery and social reintegration of a child victim of neglect, exploitation or abuse. While stressing the country's duty to help families care for and protect the child, the Convention acknowledges the primary role of family and parents in this task. It calls for positive action by institutions and the State or parents.25

It serves as a useful tool for advocacy and greater awareness of the new understanding on children's rights, and attaches special importance to international cooperation and assistance as ways of protecting children's rights. The Convention rests on a foundation of four general principles that express its philosophy and offer guidance to national programs for putting that philosophy into effect.

Key provisions focus on:

- Non-discrimination
- Best interests of the child
- Right to life, survival and development
- Views of the child

The Convention obliges states to allow parents to exercise their parental responsibilities. The Convention also acknowledges that children have the right to express their opinions and to have those opinions heard and acted upon when appropriate, to be protected from abuse or exploitation, to have their privacy protected and requires that their lives not be subject to excessive interference. The Convention also obliges signatory states to provide separate legal representation for a child in any judicial dispute concerning their care and asks that the child's viewpoint be heard in such cases.

The Convention forbids capital punishment for children. Under this convention many rights are binding on the signatory countries like right against discrimination, right to life, to protect best interest of the child, right to nationality right against separation of child from parents, right to maintenance, illicit transfer of

children to abroad, right to freedom of expression, right of religion, right to for association and peaceful assembly, right to privacy, right to information, right of disabled child, right to health, right of standard living, right to education, right to play, right against child labour, protection of child from sexual harassment, protection of children from illicit use of narcotic drug and psychotic substances, social reintegration of child, protection against child’s recruitment in armed forces, right of dignity etc.

these important right of the child has evolved by this convention for the protection of the children from different types of the exploitation.  

India is a party to the UN declaration on the Rights of the Child 1959. Accordingly, it adopted a National Policy on Children in 1974. The policy reaffirmed the constitutional provisions for adequate services to children, both before and after birth and through the period of growth to ensure their full physical, mental and social development. Accordingly, the government is taking action to review the national and state legislation and bring it in line with the provisions of the Convention. It has also developed appropriate monitoring procedures to assess progress in implementing the Convention involving various stake holders in the society.

India is also a signatory to the World Declaration on the Survival, Protection and Development of Children. In pursuance of the commitment made at the World Summit, the Department of Women and Child Development under the Ministry of Human Resource Development has formulated a National Plan of Action for Children. Most of the recommendations of the World Summit Action Plan are reflected in India's National Plan of Action- keeping in mind the needs, rights and aspirations of 300 million children in the country. The priority areas in the Plan are health, nutrition, education, water, sanitation and environment. The Plan gives special consideration to children in difficult circumstances and aims at providing a framework, for actualization of the objectives of the Convention in the Indian context.  

27 India's children and the union budget, Volume 2, The Centre, 2001, P.16
In India Constitution is the supreme law of the nation. The declaration though not specifically mentions for formulation of national policy the states are morally and politically bound to formulate national policies towards the children. On the basis of same the India has adopted so many rights under the Indian constitutional law and other special legislations.

The Constitution of India in Article 39 of the Directive Principles of State Policy pledges that "the State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused, and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength, that children are given opportunities and facilities to develop in a healthy manner, and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation, and against moral and material abandonment."\(^{28}\)

As a follow-up of this commitment and being a party to the UN declaration on the Rights of the Child 1959, India adopted the National Policy on Children in 1974. The policy reaffirmed the constitutional provisions and stated that "it shall be the policy of the State to provide adequate services to children, both before and after birth and through the period of growth to ensure their full physical, mental and social development. The State shall progressively increase the scope of such services so that within a reasonable time all children in the country enjoy optimum conditions for their balanced growth."

As the responsibility of children's nurture and proper growth is bestowed on the Government, children's programmes have occupied a prominent place in the national plans for human resource development. Successive Five Year Plans have provided the wherewithal to deal with these issues. In the last decade of this century, dramatic technological developments particularly in the areas of health, nutrition, education and related spheres have opened up new vistas of opportunities for the cause of children.

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India's Commitment towards Rights of Children:

The Constitution of India, the National Policy for Children, many other policies and legislation accord priority to children’s needs. The Government of India ratified the Convention on the Rights of the Child on 2nd December, 1992. Accordingly, the government is taking action to review the national and state legislation and bring it in line with the provisions of the Convention. It has also developed appropriate monitoring procedures to assess progress in implementing the Convention, involved all relevant government/ministries/departments, international agencies, non-governmental organisations, and the legal profession in the implementation and reporting process, publicised the Convention, and sought public inputs for frank and transparent reporting.29

India is also a signatory to the World Declaration on the Survival, Protection and Development of Children. In pursuance of the commitment made at the World Summit, the Department of Women and Child Development under the Ministry of Human Resource Development has formulated a National Plan of Action for Children. Most of the recommendations of the World Summit Action Plan are reflected in India's National Plan of Action.

4. To prescribe the uniform age for both boys and girls:

The Juvenile Justice (Care & Protection of Children) Act, 2000 deals with the children who have not completed the age of 18 years of age. Earlier the Act, 1986 Act defined juvenile according to the gender, it is applicable in case of boys when they were below 16 years and the case of the girl who were below 18 years. The present Act applies to children who are below the age of 18 years irrespective of their gender. The Act deals with two kinds of children, the one who are in conflict with law and the children who need care and protection. As the children belong to different categories the approach to deal with them also differs. For the latter category the state has to provide proper care, protection and treatment by catering to the development needs and the former category of children has to adopt a child friendly approach in the

adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.

The constitution of India has a several provisions including Art. 15(3)30, 39 (e)31 (f)32, 4533 and 4734 impose on the state a primary responsibility of ensure that of all the needs of the children are met and their basic human rights are fully protected.

The United Nation General Assembly on 20th Nov, 1989 had adopted a convention on the rights of the child and had prescribed a set of standards. According to that convention without judicial proceedings the child should be reintegrated into the society. Indian Government was the one of the member states and in the year 1992, it had ratified the convention and in spite of ratifying it the Government had taken eight years to make a law, which envisage for the care and protection of the Juveniles. While making such law, the Indian Government had in mind the standard prescribed by the United Nations General Assembly, the Beijing rules United Nations Standard Minimum rules for the administration of justice 1985 and United nations rules for protection of Juveniles deprived of their liberty 1990.

This convention states that, “for the purposes of the present convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attended earlier”. Under this new Act boys and girls below the age of 18 years enjoy the protection of juvenile legislation. This amended definition has put to rest the debate as to the relevant date as at which juvenility is to be determined. The Supreme Court continuously held that the date of offence was relevant date.

In Arnit Das V. State of Bihar35, Supreme Court held that the relevant date at which juvenility has to be determined was date on which the juvenile was produced.

30 Art. 15 (3) Nothing in this article shall prevent the state from making any special provision for women and children.
31 Art. 39(e) Health and strength of workers, men and women, and the tender age of the children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
32 Art. 39(f) that children are given opportunities and facilities to develop in the healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against the exploitation and against moral and material abandonment.
33 Art.45 Provision for free and compulsory education.
34 Art. 47 Duty of the state to raise the level nutrition and standard of living to improve public health.
35 (2000) 5 SCC (Cri) 962.
before the competent authority. The Juvenile Justice Board raised the question about reference to which date the age of the petitioner is required to be determined for finding out whether he is juvenile or not? Two judges Bench of the Supreme Court held that, “so far as present context is concerned it is clear that crucial date for determining a question whether a person is juvenile is the date when he brought before the competent authority”.

This judgment was criticized on the ground that law depriving young persons of the beneficial provisions of juvenile legislation. Moreover it did not consider a 1982 three judges Bench decision of the Supreme Court that had ambiguously held that relevant date was date of an offence. To resolve the conflict between the two opinion review petition was filed before the larger Bench of Armit Dase case but the court demurred from resolving issue then because on the fact Armit Das was not a juvenile on the date of offence and the court was not inclined to answer.

Ultimately five judges Bench settled this issue in Pratap Singh V. state of Jharkhand & Others

5. To ensure speedy disposal of cases:

Admission enables the Juvenile Justice Board to proceed to admonition and release by authorities envisaged under this bill regarding juvenile or the child within a time limit of four months. The CRC emphasizes the importance of conducting proceedings involving juveniles “without delay.” The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (“JDL Rules”) further underscore, “when preventive detention is nevertheless used, juvenile courts and investigative bodies shall give the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention.” To ensure speedy proceedings, the Juvenile Justice (Care & Protection of Children) Act, 2000 specifies that proceedings “shall be completed within a period of four months from the date of their commencement,” but with exceptions if the “period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.” This discretion permits cases to languish in the system.

37 A.I.R. 2005 SC 2731
38 Convention on the Rights of the Child,
Due to a lack of reporting mechanisms, the percentage of cases that last longer than four months is unknown. However, the existence of any such case that does not have proper justification violates the JJ Act. Because the proceedings do not primarily determine guilt or innocence, children who did not commit an offense are subject to the same lengthy delays, sometimes longer, as they are often unwilling to admit to offenses.

6. To spell out the role of the state as a facilitator rather than doer by involving voluntary organization and local bodies in the implementation of the proposed legislation:

Voluntary organizations have continued to play a limited role even after the enactment of the Juvenile Justice Act of 1986. During the formulation and enactment of the Juvenile Justice (Care and Protection of Children) Act 2000, the Parliament decided to give a larger role to voluntary organizations in the operation of the juvenile justice system in the country. Content. Furthermore Children Acts were not enforced till the mid 1980s and the demand for a separate statute on juvenile justice was demanded by various voluntary organizations. Sheela Barse, a journalist and activist persistently raised the detention of children in prisons and the conditions found there in her writings and through Public Interest Litigations (PILs). Her campaign for a uniform code for children and her PIL in the Supreme Court pushed the issue centre stage. The Supreme Court suggested parliamentary legislation on the subject in 1986 and the Juvenile Justice Act of 1986 was enacted. The Juvenile Justice (Care and protection of children) Act 2000 states, “There is also an urgent need for creating adequate infrastructure necessary for the implementation of the proposed legislation with a larger involvement of the informal systems specially the family, the voluntary organizations and the community.” The implementation of the Juvenile Justice (Care and Protection of Children) Act 2000 has demonstrated that involvement of the voluntary organizations helps in promoting a child centered juvenile justice system. The statement of the objects and reasons for the Act defines the role of voluntary organizations.

39 Model Rule 7.6 under the Juvenile Justice (Care and Protection of Children) Act 2000, 2007, Model Rule states: “Every inquiry by the Board shall be completed within a period of four months after the first summary inquiry. Only in exceptional cases involving transnational criminality, large number of accused and inordinate delay in production of witnesses, the period of enquiry may be extended by two months on recording of reasons by the Board. In all other cases, delay beyond four to six months would lead to termination of the proceedings.”
The key roles envisaged are; the establishment and management of institutions, receiving children on bail, preparing social investigation reports, running ‘after care’ programmes, and above all active involvement in advisory bodies and playing a watchdog function. The launch of the Integrated Child Protection Scheme and constitution of child protection units at the state and district levels opens up the space for increased engagement of the voluntary sector in the implementation of the juvenile justice act in India. Indian Parliament has indeed worked as a vehicle of social engineering. Legislation being one important mechanism to bring about the necessary changes and to make adequate provision, the Parliament has enacted many progressive laws. The beginning of the twentieth century witnessed Children’s Acts passed in many states that were under colonial rule. However these were not uniform in their

As Indian society moves towards fuller development, it experiences some pulls and pushes. Some social problems emerge and some are accentuated. Among some of the pressing problems facing the nation are those concerning children as they are the future of India. And of course, one must ensure that one’s future is safe, secure and in competent hands, of the emerging social problems concerning children are single parent families sexual abuse and disabled children. Problems that have been accentuated in the recent times are those of juvenile in conflict with law, child labour and child prostitution, trafficking of children for the purpose of commercial sexual exploitation.

It is need of today to protect a child from this anti-social behaviour. If we are not protecting the children there is create chaos in the society, because children are the pillar of nation. To keep in mind this view the Non Governmental Organisation comes forward to protect the children. Today the Non-Governmental are active in all fields and they are involved in efforts to help all vulnerable sections of society to resettle and rehabilitate them.

“Architect design buildings, doctors deal with sickness and health, lawyers practice law and educators teach but Non-Governmental Organisation concerned with people”.

The Non-Governmental Organisation is made of the people dedicated to helping others change some aspect of their social functioning.
NGO's contributions in various fields:

i) To prevent and protect juvenile.
ii) Take initiatives and co-operation to the child abuse.
iii) Protect and prevent the child labour.
iv) Prevent the child prostitution.
v) Initiatives against the trafficking girls and women.
vi) Interventions for the rehabilitation of women and child victims.

vii) Counseling with public.

viii) Provides various facilities like education, shelter, health care service to the children and others vulnerable group in the society.

In simplest forms voluntary agencies help people improve their interaction with various aspect as their world. NGO’s bring a social change in society.

Social work is a profession that is full of contradiction social worker may deal with very successful people but more often they work more vulnerable members as our society. They relate the problem of every aspect from marital conflict to juvenile delinquency. Children are the most vulnerable sections of the society in the earlier times whenever they were in any type of difficulty the voluntary organization came forward to provide relief to needy children. The voluntary organization has played a pioneering race in organizing welfare services in various fields.

The five year plan when the planning commission decided to give priority to the needs of children the plan did not suggest any specific measures but it enable the existing voluntary organizations to carry on the work by providing necessary financial and technical assistance through the central social welfare board. Institutional services are being provided whenever necessary through the voluntary organization.

The period of childhood is of great significance on this is formative period when the child develops habits establishes behaviour pattern and attitude towards life. At this stage, the child is most receptive and the impressions formed during this age last almost throughout life any deficiencies during these years may cause irreparable damages to the future development of the child and no amount of subsequent attention can really make up for these deficiencies. Therefore it is necessary to provide right type of physical and mental care, guidance, assistance and opportunities to release their energies creatively and constructively these successive
plans gave special attention to the needs of children. The administrative and organizational responsibilities are shared by central and state government on one hand and the large number of voluntary organization on another.

The justice system as available for adults is not considered suitable for being applied to a juvenile or the child or anyone on their behalf including the police, voluntary organizations, social workers or parents and guardians, throughout the country. There is also an urgent need for creating adequate infrastructure necessary for the implementation of the proposed legislation with a larger involvement of informal systems specially the family, voluntary organizations and the community. The statement of reasons for the Act states that, "spell out the role of the State as a facilitator rather than doer by involving voluntary organizations in the implementation of the proposed legislation". Though the Act created an opportunity for the voluntary organizations to run institutions for the care of the children in conflict with law, the opportunity has not been utilized to the full potential. The voluntary organizations are hesitant to enter into this area for lack of experience and a lack of clear terms of engagement with the state.

7. To create special juvenile police unit with the humane approach through sensitisation and training of police personnel:

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

The police in India, created under the Indian Police Act 1861 or other Police Acts, are traditionally trained to enforce the provisions of the Indian Penal Code, 1860, and local and special laws, in accordance with the Code of Criminal Procedure, 1973. Although, there are provisions for the children, these laws are primarily meant for adults. As such, few police-officers are exposed to the modern

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concepts of the Juvenile Justice System, rights of the child, child protection, welfare and development, National Policy on Children, juvenile detention, institutional services, non-institutional alternatives, juvenile aftercare, public participation in juvenile correction and the like. Most of the time, the first contact that children or juveniles have with the legal system is with a police officer and most of the time the experience is unpleasant since the policeman is not trained or sensitized to handle them. Since the police officer has relatively wide discretionary powers, he can wield a great influence on the child's future behaviour and they can also create an indelible impression on the child and society.

The situation has vastly changed under the Juvenile Justice (Care and Protection of Children) Act, 2000, though in practice, it remains much the same in most of the country. Under Section 63 of the Act, a Special Juvenile Police Unit has to be constituted in every police district of India. The Special Juvenile Police Unit (SJPU), created under the new law, shall be exclusively to deal with 'juveniles in conflict with law' and 'children in need of care and protection'. The unit at the district level is to function under a Police Officer of the rank of inspector of police who may be assisted by at least two social workers one of whom shall be woman and another preferably child expert or having relevant experience). For the purpose, it is advisable to give training to two or three policemen out of whom may be deputed specially for this kind of job. In case of non-availability of the Juvenile Police Officer for any valid reason the services of other trained officers may be taken on a temporary basis 41.

The unit may function under the direct supervision of a Deputy Superintendent of Police who may besides this specialized job continue to perform other normal duties. At the police station level, two policeman of the rank of SI or ASI may be deputed for the purpose who may be designated as Juvenile / Child Welfare Officer. At the police station level the unit will be assisted by at least two or more honorary social workers. Such police officers deputed shall be specially instructed and trained to deal with the cases of child / juvenile. Thus, the Juvenile Police Unit, at the district level and the Juvenile / Child Welfare Officer at the police station level will have a

41 Ibid P.7.
team of at least three, one from the police and two social workers from the community.42

**Duties of Special Juvenile Police Unit:**

- To produce the child before Child Welfare Committee (CWC)
- To produce juvenile before Juvenile Justice Board (JJB)
- May hand over the child / juvenile to Voluntary Organisation
- Child / juvenile must be produced before the CWC / JJB within 24 hours
- Juvenile may be kept in Observation Home before production, if for any unavoidable reason cannot be produced immediately before JJB. But the juvenile must be produced in the subsequent sitting of the JJB

**Protection to Juvenile in Conflict with law:**

- The law provides certain protections which are mentioned below. The police should keep in mind the protection while handling the child / juvenile:
  - Handling by Special Juvenile Police / Juvenile / Child Welfare Officer
  - Handcuffing of juvenile/child prohibited
  - No detention in lock up or prison
  - Crimes against children are cognizable offence
  - No death penalty or life imprisonment
  - Proceeding are informal, participatory and private
  - Parents involvement in Juvenile process
  - Right to free legal aid
  - Information about Juvenile cannot be released to media
  - No case can be filed against a child below the age of 7 (Section 82 IPC)
  - No case can be filed against a child between the age of 7-13 if the child does not know the consequences of committing the crime (Section 83 IPC)
  - Child / juvenile cannot be tried in the normal court

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42 Ibid. P.25.
Duties of Police during Apprehension or Trial:

- Must inform parents / guardians about apprehension of child / juvenile
- Must inform the Probation Officer of the area about the apprehension of juvenile
- May release juvenile on bail
- Must make entry in the daily diary of the apprehension of child / juvenile and also enter the age of the child / juvenile
- FIR against victimizer of a child
- Conduct enquiry or age verification, as per the order of CWC / JJB

The above provisions, under the Juvenile Justice (Care & Protection of Children) Act, 2000, have been made to ensure this legal treatment, protection to the child / juvenile and their rights which, in any case, can be realized by making the police force child friendly.43

8. To enable increased accessibility to juvenile or the child by establishing juvenile justice board and Child Welfare Committees and Homes in each district or group of districts:

Under this Act the provisions of separate hearings are there. For Juvenile delinquent juvenile Courts are established. These courts are either distinct or independent of ordinary courts with wider jurisdiction. They are generally headed by Judicial Magistrate First Class. In India the Juvenile Courts do not have jurisdiction in offences punishable with death or life imprisonment. This is also one of the lacunas of this Act. Under this Act the provisions of separate hearing are there. For Juvenile delinquent juvenile Courts are established. These courts are either distinct or independent of ordinary courts with wider jurisdiction. They are generally headed by Judicial Magistrate First Class. In India the Juvenile Courts do not have jurisdiction in offences punishable with death or life imprisonment. This is also one of the lacunas of this Act.44

44 S. 27 of the Code of Criminal procedure.
It is quite different from hearing of an ordinary Criminal Court. It is simple and informal. The adjudicating authority has been redesignated as the juvenile Justice Board. Previously in the Act of 1986 the adjudicating authority was a magistrate. He was assisted by two social workers. The Magistrate used to conduct the inquiry whether the child has committed the offence or not. Now it is conducted by a social worker who could focus on why the child committees the offence, and how does one redress the same. The shift in composition of the Board can bring about a shift in line of inquiry from intention to motive. This is in effect an important step towards decriminalizing the administration of Juvenile justice.

In the ordinary criminal courts, where the hearing is open to all public, in Juvenile courts only parents and concerned parties such as probation officers and police officer involved in the case are permitted into the court. The Court unless has the discretion of asking any one of the officers to withdraw from hearing. Unless it is in the interest of the child, the press is not allowed to print the photo of the child report in the proceedings.

9. To minimize the stigma and in keeping with the development needs of the juvenile or the child:
This section provides for the orders that may be passed by juvenile justice board the juvenile in conflict with law who is found guilty of an offence but the present section prohibits the board from making any of the following orders.

- An order awarding death sentence or
- Awarding imprisonment for life or
- An order for imprisonment in default of payment of fine or
- An order for imprisonment in default of furnishing security.

The main object of this section is to prevent from the contact of hardened criminal or prisoner so that they are saved from contamination. It will also prevent the juvenile from stigmatization as prisoner. Where the Board in its discretion comes to the juvenile it would not in the interest of the Special Homes or the Juvenile himself to place him there and no measure specified in the Act is sufficient or appropriate for the juvenile it may order his placement in some special place or institution other than Special Home, as it deems fit. However in such cases report about the juvenile shall

45 Rakesh Khitan V. State of West Bengal, 1983Cr. L.J. 877 (Cal)
be submitted to the state Government for making necessary arrangement for his detention in some special place or institution with condition as it deems necessary but the period of such detention shall not exceed the term sentence specified for the offence which the juvenile is charged and found guilty.

10. To separate the Bill in two parts, one for juveniles in conflict with law and other for the juvenile or the child of care and protection:

The children who had committed any offences are different from the children who do not have either parents or guardians and in case they have also parents and guardians abuse the children, belong to separate categories and thus need separate treatment from each other. Under the Act, 1986 the juvenile and neglected children are considered they were sent to juvenile homes. But pending the inquiry both the categories children were kept in observation homes. That was not good for either categories of children and worst hit were the neglected children. This lacuna was corrected by the Juvenile Justice (Care & Protection of Children) Act, 2000 as the state has now ensured that a complete separation between the two categories as now juveniles in conflict with the law are kept in the observation homes and children in need of care and protection are sent directly to the Juvenile Homes.

The Juvenile Justice (Care & Protection of Children) Act, 2000 clearly distinguishes between the juvenile and the child for the purpose of their appropriate treatment. The Act creates two distinct and separate systems to deal with child in conflict with law and child in need of care and protection. The former will be dealt by a Juvenile Justice Board in place of previous juvenile courts and the latter by a Child Welfare committee in place of the previous Juvenile Welfare Board. The emphasis has been given on adopting a child friendly approach in the process of adjudication and disposition. Secion 4 of the Juvenile Justice Act for the appointment of a Juvenile Justice Board to discharge duties for a district or group of districts. The Board shall have powers to exclusively deal with all proceeding under the Act. The Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be, and two social workers of whom at least one shall be a women. Now, no Magistrate can be appointed as a member of the Board unless he has special knowledge or training in child psychology or child welfare and no social worker shall be appointed as a member of the Board unless he has been actively involved in health,
education, or welfare activities pertaining to children for at least seven years. When the juvenile have been charged with the offence is produced before the Board, the Board shall hold enquiry and complete the enquiry within four months from the date of commencement of enquiry. If the enquiry is not completed within the period of four months, they shall record reasons in Writing for extending the time for completing the enquiry.

- **Separation of neglected children from Delinquent children:**

Under the Act, 1986 the juvenile and neglected children are considered they were sent to juvenile homes. But pending the inquiry both the categories children were kept in observation homes. This lacuna was corrected by the Juvenile Justice (Care & Protection of Children) Act, 2000 as the state has now ensured that a complete separation between the two categories as now juveniles in conflict with the law are kept in the observation homes and children in need of care and protection are sent directly to the Juvenile Homes.

- **Separate Hearing:**

Under this Act the provisions of separate hearing in case children in conflict with law and children in need of care and protection. Separate court and committees are established. These courts are either distinct or independent from ordinary courts with wider jurisdiction. They are generally headed by Judicial Magistrate First Class. In India the Juvenile Courts do not have jurisdiction in offences punishable with death or life imprisonment.

11. To provide for effective provisions and various alternative for rehabilitation and social reintegration such as adoption, foster care, sponsorship and aftercare of abandoned, destitute, neglected delinquent juvenile and child:

Rehabilitation has been made an integral part of the institutional programmes. Every neglected and delinquent juvenile has not only to be provided accommodation, maintenance and facilities for education, vocational training and rehabilitation but also the facilities for development of his character and necessary training for protecting himself against exploitation. The importance of after-care has been

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recognized as essential for rehabilitation of the juvenile in the community. The Act provides for the setting up of after-care organizations for juveniles after they leave the juvenile homes or special homes, to help their readjustment, resettlement and rehabilitation as self-reliant, socially useful citizens. Many state governments have established comprehensive after-care schemes, the objectives of which are the following:

a. To extend help, counseling, guidance, support and protection to all released juveniles whenever necessary;
b. To help a released juvenile to overcome his mental, social and economic difficulties;
c. To impress upon the juvenile the need to adjust his habits, attitudes, approaches and value schemes on a rational appreciation of social responsibilities and obligation and the requirements of community living;
d. To help the juvenile to make a smooth adjustment to his post-release environment;
e. To encourage the juvenile in making satisfactory readjustment with his family, neighborhood and community;
f. To assist the juvenile in functioning as a self-reliant, socially useful citizen;
g. To assist in the process of the juvenile's physical, mental, vocational, economic, social and attitudinal post-release readjustment and ultimate rehabilitation;
h. To complete in all respects the process of the juvenile's final readjustment, resettlement and rehabilitation.
Main Object of this Act:

<table>
<thead>
<tr>
<th>Response</th>
<th>Category</th>
<th>Aggregate Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>To protect children in conflict with law</td>
<td>16%</td>
<td>04%</td>
</tr>
<tr>
<td>To reform them.</td>
<td>16%</td>
<td>08%</td>
</tr>
<tr>
<td>Both</td>
<td>68%</td>
<td>88%</td>
</tr>
<tr>
<td>Total</td>
<td>100%</td>
<td>100%</td>
</tr>
</tbody>
</table>

While asking this question from total respondents 04% respondents agreed that main purpose of this Act, is to protect children in conflict with law. Whereas 08% respondents said that the main purpose of this Act, is to reform them, and 88%
respondents were agreed that main purpose of this Act, is to protect child in conflict with law as well as to reform them.

On the basis of above discussion it is concluded that the Juvenile Justice (Care & Protection of Children) Act, 2000 framed various objectives which are protecting the rights of the children in conflict with law. These objectives’ are really helpful for protection, rehabilitation to the children in conflict with law. Children are the assets of the nation and it is duty of the state to take care of the children and childhood. The main problem in India is that, there is lack of implementation of the provisions with specific reference to justice care and protection of this Act.