CHAPTER-VIII
CRITICAL APPRAISAL ON
JUVENILE JUSTICE (CARE
AND PROTECTION OF
CHILDREN) ACT, 2000
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Critical Appraisal on Juvenile Justice (Care and Protection of Children) Act, 2000

The Juvenile Justice Act was introduced to establish the basis for a national uniform juvenile justice system, addressing care, protection and treatment of neglected and delinquent juveniles. The amendment was brought in to revise the Act in order to strengthen the Act and instill a child-centric rehabilitation and family restoration focused system. It provides for a special approach towards the prevention and treatment of juvenile delinquency and a frame work for the protection, treatment and rehabilitation of children in the purview of the juvenile justice system. It takes care of every aspect of the children in need of care and protection of the State, which includes their health care, diet, education, vocational training, recreation facilities etc. as also their personal requirements of clothing, sanitation etc.

The present thesis is primarily concentrated on the problems and issues affecting the effective enforcement of the Juvenile Justice (Care and Protection) Act 2000. An analysis of critical study on children in conflict with law with the reference to Justice, Care and Protection under the Juvenile Justice (Care and Protection) Act. There is no concept of parental responsibility in generating situations ripe for delinquency under this Act. In many cases, the parents place the children in situations where their exploitation and abuse become imminent.

- **Juvenile Justice Board:**

The JJ Act, 2000 classifies all children who interact with the legal system together, which alleviates some of the stigma attached to those in conflict with law. Furthermore, although the age of criminal responsibility is approximately seven years old, because juveniles are not considered capable of the requisite mens rea according to ordinary criminal procedure, they are Observation Homes are the locations where juveniles in conflict with law are incarcerated pending disposition of their cases or bail release. These Homes are each connected to a Juvenile Justice Board, and hold children from up to four districts within a state. Observation Homes are designed to be less punitive or stigmatizing than a jail, and staff members are prohibited from using weapons or handcuffs on the children.
Juvenile Justice Board inquiries therefore merely endeavor to create a record of offense and offender. To that end, the records of JJB proceedings are not kept permanently, and do not follow the children into adulthood, to prevent any child from being labeled as a criminal based on offenses committed before the age of eighteen, regardless of the offense. The presumption of innocence is a crucial element of criminal judicial proceedings in India, but becomes complicated in juvenile proceedings. Per the Committee on the Rights of the Child, the presumption of innocence “means that the burden of proof of the charges brought against the child is on the prosecution.”

This is a conundrum for the JJB, which does not generally have a separate prosecutor. The JJB therefore acts as both arbiter and prosecutor. Moreover, the fact that guilt and retribution are not intended to be elements of the proceedings means that for any crime, all children receive the same punishment (if any). The impotence of the JJB and the insignificance of its outcomes are criticized by government officials, and have also led to an indifference on the part of all actors in the system as to whether the child actually committed the offense in question. As a result, children generally cannot be found innocent of a crime. In addition, because juveniles are not punished, there is no perceived need to create a probation system or diversion opportunities. The orders that Juvenile Justice Boards may issue with respect to children include detention in a Special Home, probation, and community service, but these are rarely utilized. The vast majority of cases end with a disposition of “admonish and release.” All juveniles, regardless of guilt or innocence, undergo the same experience waiting, either on bail or in an Observation Home, to be processed and released.

- Delay

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 JJ 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 indefinitely. 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, 2000. 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. Admission enables the JJB to proceed to admonition and release.

- **Bail**

Delayed proceedings raise problems for all, but particularly for those who are institutionalized without the possibility of release on bail. While JJBs release a majority of juveniles in conflict with law to their families, provided they appear every few weeks to stand before the Board, many are left in residential Observation Homes throughout the duration of the proceedings. This may change under the new Model Rules. According to Model Rule the Board, “at the summary preliminary inquiry can discharge the case, if the evidence of the juvenile’s conflict with law appears to be unfounded or where the juvenile is involved in trivial law breaking”.^1^  

Every inquiry by the Board shall be completed within a period of four months after the first summary inquiry. Only in exceptional cases involving trans-national criminality, large number of accused and inordinate delay in production of witnesses, the period of inquiry 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.

Despite this provision, magistrates are reluctant to grant bail when they do not have proof of residence, as they have no way of ensuring that the children will return to future hearings. Magistrates grant bail to schoolchildren and those with parents who can provide landed surety, but are less likely to grant bail to children of day laborers; children are rarely granted bail if only extended family, rather than parents,

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^1^ Rule 7 1 (a) of Juvenile Justice (Care and Protection) Rule, 2007.
come to claim them. These implicit bail and surety restrictions have resulted in the institutionalization of children along socio-economic lines, in violation of international conventions expressing anti-discrimination principles.

- **Prevention of Juvenile Delinquency:**

  In the criminal justice context, children cannot hold the system accountable because they have no voice or representation of their own. The system as devised under the JJ Act does not adequately address this issue, as few mechanisms exist to ensure accountability. One severely under-utilized mechanism of accountability is the court system itself. As India’s is a common law system, appellate courts should hear cases brought on appeal from Juvenile Justice Board proceedings. However, owing to the scarcity of resources for appeals proceedings, and the fact that few children are represented by lawyers at the initial proceedings making the prospect of an appeal unlikely, significant case law has yet to develop.

  Under the JDL Rules as well as the United Nations Guidelines for the Prevention of Juvenile Delinquency “The Riyadh Guidelines” instruments addressing the protection of persons subject to detention or imprisonment an independent body that oversees the various institutions responsible for juveniles in conflict with law is a crucial mechanism for maintaining the best interests of children.

- **Police viciousness and Abuse:**

  The relationship between police and juvenile offenders is a precarious one. When the police apprehend a child for allegedly committing an offense, it is generally the first point of contact between the child and the juvenile justice system. The U.N. Standard Minimum Rules for the Administration of Juvenile Justice “The Beijing Rules” advise that interactions between police and juveniles should “promote the well-being of the juvenile and avoid harm to her or him.” The Riyadh Guidelines go further, suggesting that police “should be trained to respond to the special needs of young persons.” However, rather than avoiding harm, police interactions with juveniles tend to involve abusive interrogation techniques, sometimes bordering on torture. As the children who undergo such interrogations understand it, their liberty, to all juveniles and to all records of such facilities.” “Efforts should be made to establish an independent office ombudsman to receive and investigate complaints made by
juveniles deprived of their liberty and to assist in the achievement of equitable settlements police want them to confess to other crimes. Police are reputed to have an arrest quota, so they pin cases on children they can torture without repercussions. These children are generally targeted based on their poverty and vulnerability. The common refrain from children is that if they “make one mistake” by committing one crime, they can expect to be brought in for questioning by police indefinitely, for any or no cause.

Police discretion under the JJ Act is intended to reduce the number of children that are brought into the system, but that is not how it is being utilized. According to the Model Rules, which were established by the Government of India to direct implementation of the JJ Act at the state level, police should only apprehend children in cases of serious crimes. However, the demographics of the children in Observation Homes throughout the country clearly demonstrate that the vast majority of juveniles have been arrested for petty theft, and police arrest many of those on far less than a reasonable suspicion. Abuse of children occurs within the Observation Homes as well. Lack of supervision and limited staff, combined with a lack of training, strain relations between Home staff and children.

Lack of accountability and lack of training also contribute to the inefficiency of staff during legal proceedings, leading to much of the delay that occurs in JJB proceedings. Responsibilities of the Probation Officers include investigation of the juveniles’ homes, preparation of case files, and unofficial duties within the Observation Home, such as driving girls to and from JJB hearings and assisting the guards. Delays occur with both investigations and clerical tasks.

- **The Role of Non Governmental Organisation:**

  The Model Rules are mildly controversial among children’s rights NGOs in India, as the Ministry did not consult with NGOs during the drafting of the Rules. One of the primary criticisms of the Rules is that they invest too much authority in the police, something that most child-friendly legislation seeks to minimize. The Rules also limit the pool of people that will be eligible to serve on the Juvenile Justice Boards, for example by requiring that Board members be at least thirty-five years old, hold a post-graduate degree in social science, and have seven years of experience in child welfare.
NGOs are concerned about excessive restrictions, as Juvenile Justice Boards already have difficulties filling positions. One oddity of the Model Rules is that they have a set of "principles," as if the document were a Convention or Act, as opposed to a set of procedures or protocols. It is unclear who will enforce these principles, which is of concern because enforcement and implementation of legislation were a key problem in the first place. Despite these criticisms, the Model Rules may have a tremendous impact on ameliorating the current problems within the system. The Rules advocate for a stronger relationship between NGOs and government agencies, an acknowledgement of the positive impact NGOs can have within the Observation Homes and throughout the system. There are also two key changes that may prove important: the elimination of the charge-sheet require - All states currently operate under their own Rules on juvenile justice, and it appears that the Model Rules are intended to supersede the state Rules in cases of conflict.

The elimination of the charge-sheet may lead to significant improvements in the efficiency of proceedings, although this may come at the expense of accuracy. The charge-sheet, which is submitted by the police and is currently required for the case to move forward, contains all the information relevant to the case, but can take up to three months for the JJB to receive. Moving to a general daily diary, as the Rules stipulate, may mean less information is provided to JJB members, but has the potential to significantly alleviate delays and allow children to exit the system sooner. However, it is unclear whether magistrates and police officers will follow this change in procedure, and whether it would involve a complete transition from charge-sheet to general daily diary, or whether such a determination would be on a case-by-case basis. "Openness and transparency" is a new goal emphasized by the Model Rules. As such, one form of independent oversight that will be established by the Rules that may generate change is a social audit, essentially a detailed review of the workings of individual Observation Homes, to be conducted by the government in conjunction with NGOs.

In order for the social audit to work, the process will need a government official to oversee it as well as strong initiative and significant resources contributed by those conducting the audit. The recognition of the right to legal representation for all juveniles may alleviate the problems of the lack of child participation and accountability of the judicial proceedings by providing juveniles with an advocate who can object to inordinate delays or inappropriate behavior on the part of the
Board, as well as through the establishment of a body of case law. Children are likely to be represented by free legal aid, such as a district legal services authority, not all of which may have the time or resources to be able to appeal cases. However, an increase in attorneys required to be involved in juvenile proceedings may mean an increase in support from either the Government of India or NGOs. This may lead to more challenges and appeals, bringing the juvenile justice system increased attention from the courts.

- **Integrated Child Protection Scheme: ICPS**

  The problem with these changes is that they are still at the legislative level, and may not actually be implemented. The Integrated Child Protection Scheme will hopefully address implementation concerns, through an entirely new bureaucratic structure and increased expenditures for child protection. Set to be completed over the course of the next Five-Year Plan (2007-2012), the ICPS will create new offices known as State and District Child Protection Units. These Units are intended to be both the supervisory bodies as well as the chief funding resource for all Observation Homes, Juvenile Justice Boards, and Special Juvenile Police Units. However, it is unclear whether these Units will be able to be independent, as they are still under the Ministry's umbrella and organizational hierarchy.

  The Ministry has attempted to increase their independence by hiring staff for the Units on a short-term, contractual basis. NGOs fear this to be an ineffective solution, as it will tend to lead to political appointments of people who may not have the proper training or commitment to the position. This is currently the only solution the Ministry has proposed to the problem of accountability throughout the entire system. Both the Model Rules and the ICPS are currently in draft form, and the implementation and outcome of these changes is unclear. The Government of India is advancing these solutions in order to improve a failing system, but both require significant commitment and engagement from both state governments and civil society. In order to see real change, the Government will need feedback from the NGO community and the public at large to create the necessary external motivation that will transform these documents into reality.
There are some critics who look at probation as a form of leniency towards the offenders. To quote Dr. Walter Reckless, probation like parole, seems to the average laymen a sap thrown to the criminal and a slap at society. Probation is still generally perceived as a lenient approach rather than a selective device for the treatment of offenders who are no threat to public safety. Probation system lays greater emphasis on the offender and in the zeal of reformation the interests of the victim of the delinquents are completely lost sight of. This obviously is against the basic norms of justice. Keeping in view the increasing crime rate and its frightening dimensions, it is assumed that undue emphasis on individual offender at the cost of societal insecurity can hardly be appreciated as a sound penal policy. Some criticize probation because it involves undue interference of non-legal agencies in the judicial work which hampers the cause of justice.

Further, when non-custodial correctional measures are used arbitrarily, without being resorted to on objective grounds, there is danger of men of means taking undue advantage and abusing the system as against those who would really deserve but have no advocacy or support, and of the whole approach becoming counter-productive and coming into public disrepute. The answers to these criticisms would lie in the fact that the aim of the criminal justice system is to correct the offender and for some offences this would be best done outside the prison. Further, laying down strict guidelines to determine when probation should be awarded would defeat the very purpose of the concept. The broad parameters laid down age of the offender, surrounding circumstances, nature of the offence, etc. provide a broad framework for the judge to apply his discretion. It would also defeat the purpose if probation has to be granted when certain conditions are satisfied, if for example the facts on record show clear pre-meditation to do a wrongful act.

Responding to the other criticism, it is essential that non-legal agencies, namely probation officers, interference is only meant for smooth functioning, and also it is not mandatory for the judge to consider using the probation officer always. He may not ask for a pre-sentence report, may not put the offender under supervision.
• Problems while releasing on Probation:

The Probation of Offenders Act, which makes it easier for a person below 21 years of age to benefit from probation\(^2\). This is regardless of their antecedents, personality and mental attitude. It might lead to recidivism because many of them may not respond favourably to this reformative mode of treatment. Also, in many cases it is difficult to ascertain whether the delinquent is a first offender or a recidivist.

The Probation of Offenders Act lays down that report of the probation officer is considered before awarding probation\(^3\). But, the Courts generally have shown scant regard for the pre-sentence report of the probation officer because of lack of faith in integrity and trustworthiness of the Probation Officers. In their view calling for the pre-sentence report would mean unnecessary delay, wastage of time, undue exploitation of the accused by the probation officer and likelihood of biased report being submitted by him, which would jeopardize the interest of the accused and would be contrary to the object envisaged by the correctional penal policy.

The Probation of Offenders Act does not make supervision of a person released on probation mandatory when the court orders release of a person on probation on his entering into a bond with or without sureties. This is not in accordance with the probation philosophy, which considers supervision essential in the interests of the offender, against corrective justice\(^4\).

The lower judiciary in India has not at all taken into consideration the objects and reasons of this act, while applying its discretion in regard to grant of probation. In an umpteen number of cases the accused had to move the High Court and even the Supreme Court to get the relief of probation. If an accused gets relief of probation only in the High Court or the Supreme Court after passing through the turmoil of a long and cumbersome judicial process, he would, psychologically, be diverted towards hardened and the whole purpose of the Act would be forfeited. Variation or

\(^2\) Section 6 of the Probation of Offenders Act, 1958  
\(^3\) Ibid. Section 4 (2)  
\(^4\) Ibid.
discharge of the probationer is based solely on the report of the probation officer; this leaves the probationer at the mercy of the Probation Officer.

Thus, even considering that a sentence of probation has been passed and the offender is placed under supervision it is nothing more that a regular visit to the officer. There is no scientific process of rehabilitation and the Probation Officers arent adequately trained. They are recruited between 20 and 26 years of age. They are grouped into districts and supervised by a state or provincial chief. There is no in-service training and occasional refresher courses, and thus they are not adequately trained.

Further, often there is a lack of interest for social service among the probation personnel. Lack of properly qualified personnel, want of adequate supervision and excessive burden of casework are attributed as the three major causes of inefficiency of the probation-staff.

Age:

The Act fails to express the minimum age, below which the Act would not be applicable. The definition of juvenile delinquency provides very little scope for petty acts to be dealt within the community. There is no concept of parental responsibility. The education, training and recreation of children, who are in observation homes, have not been provided for. Besides, basic or school education, even higher education and training of these children should be considered in this Act. The Act fails to provide for procedural guarantees like right to counsel and right to speedy trial. The Act does not take into account the orders and directions of the Supreme Court and the various high courts relating to determination of the age of the child. It empowers the Juvenile Justice Board to give a child in adoption; even though, it is the Child Welfare Committee that deals with children in need of care and protection. The Act is silent on inter-country adoption. There is no linkage between the Juvenile Justice (Care and Protection) Act 2000 and the other legal provisions relating to children, for instance child labor, primary education, sexual abuse, adoption, disabilities and health.

Juvenile Justice (Care and Protection) Act 2000 was not based on policy regarding children in conflict with law or children in need of care and protection. The ad hoc nature of a possible policy can only be gleaned by examining the Act. In examination the following points emerged as articulating the approach of the act.
towards children. The law provides that any juvenile or child who has completed the age of eighteen would fall within the jurisdiction of the act. In the previous enactment the definition of juvenile included boys who had not completed the age of 16 and girls who had not completed the age of 18. With the present change, the CRC standard, which defines a child as any under the age of 18, has been complied with.

- **Separation between child in conflict with the law and child in need of care and protection:**

  The law provides for separate treatment for children in need of care and protection and juveniles in conflict with the law. Under the old Act the classification of delinquent juveniles and neglected juveniles was meant to separate the two categories of children with the Juvenile Welfare Board and the Juvenile Home meant for the neglected juvenile and the Juvenile Court and Special Home meant for the delinquent juvenile. However the separation was only a partial separation as pending inquiry both categories of children were kept in an Observation Home together. Thus the argument went that often children who had committed serious offences were kept in the same institution as children whose only crime was that they were neglected children as per the Act.

  Keeping this argument in mind, the state has now ensured a complete separation between the two categories as now juveniles in conflict with the law are kept in the observation home and children in need of care and protection are sent directly to the juvenile home. However this shift itself seems a cursory attempt at really changing the deeply custodial nature of the entire juvenile justice system. If one was serious about decriminalizing at least the child in need of care and protection then, one needed to intervene at every level starting from the police. In fact the police are still empowered to come in contact with both categories of children. The police have more power vis-a-vis the category of child in need of care and protection as under Sec 33 of the enactment they are now even empowered to inquire into the situation of the child. With regard to the role of the police what has happened is really a deeper level of decriminalization rather than decriminalization. What is also important to keep in mind is that the distinction between the two categories is illusory as the way the law treats both categories is by prescribing custodial care as one of the options.
• **Adjudicating Authority for child in conflict with the law:**

The adjudicating authority has been redesignated as the Juvenile Justice Board and the composition has changed from an adjudicating authority which was a Magistrate with a panel of two social workers to assist her as prescribed under the old law to a Bench which is composed of two social workers and one Magistrate. This change in composition of the adjudicating authority is one of the more significant changes in the new law, as now the space exists for bringing about a change in the very nature of the inquiry. The primary inquiry of whether the child did commit the offence as mandated by a magistrate’s training could now be displaced by a social workers inquiry, which could focus in on why the child committed the offence, and how does one redress the same. The shift in composition of the Board can bring about a shift in the line of inquiry from intention to motive. Thus what could change has been referred to as the criminal law mindset itself. This is in effect an important step towards decriminalizing the administration of juvenile justice, provided the rules operationalize the same.

• **Legal Protections for child in conflict with the law:**

The protection under the Juvenile Justice (Care and Protection of Children) Act, 2000, guaranteed to the child in conflict with the law. The protections can be enumerated as follows:

- JJA, 2000 does not take into account lessons from law reform efforts in other parts of the world including developing nations such as Uganda and South Africa, or make serious efforts to incorporate the provisions of the Child Rights Convention (CRC) that India has ratified. For instance, the Board has the power to send the child to a special home for a minimum period of not less than two years for a child who is over seventeen and less than eighteen and in case of any other juvenile till he or she ceases to be a juvenile. This provision is in clear contravention of Art. 37(b) of the Convention of the Rights of the Child, which notes that arrest, detention or imprisonment of a child, shall be used only as a measure of the last resort and for the shortest appropriate period of time.

- The soul of the CRC is the notion that the child has the right to participate in decisions that affect. This fundamental principle has completely been ignored in the JJ Act, 2000. If an enactment were to implement Article 12, it would mean a
radical overhaul of existing ways of interacting with children. At every stage in
the interface between the child and the juvenile justice system, space should be
created for expression of the child's opinion. So right from the point of arrest, to
adjudication before the competent authority to assessment by the authority to
placement to everyday living within the institutions set up under the juvenile
justice system, the child's opinion should not only be heard, but given due weight
in accordance with the age and maturity of the child. In particular the
protectionist understanding (which lets adults decide what is in the "best interest"
of the child underlying the juvenile justice administration would be subject to a
radical shift

- The change in composition of the adjudicating authority seems a cursory attempt
  at really changing the deeply custodial nature of the entire juvenile justice
  system. If the state is serious about decriminalizing the treatment of, if not the
  child in conflict with the law, then, at least, the child in need of care and
  protection, it needs to bring about changes at every level starting from the police.
- While the aim of minimizing the stay of the child in the juvenile home and
  special home as conceptualized is laudable, there are serious concerns as to
  whether restoration is the best solution. For instance, in cases involving child
  sexual abuse, this solution can be ill conceived. In the cases of children in
difficult circumstances too (such as children on the street, children engaged in
sex work, etc.), restoration might not be a solution.
- Yet, another concern relates to the fact that no safeguards have been built into the
  procedures regulating adoption and foster care in the Act itself, leaving it entirely
to the discretion of states, which have the power to make rules under the Act.
- There can be no argument that our best minds and our most critical and
  compassionate thinking must be at work while designing laws that are meant for
  the care and rehabilitation of our children. In this context, it is of deep concern
  that in an age when our knowledge about wrongdoing has increased
exponentially, and traditional criminological approaches have been contested by
explanatory frameworks which locate the reason for wrongdoing in societal
structures, the Act bears no trace of any new thinking.
• Custodial framework for dealing with child in need of care and protection:
The framework of the law remains within the criminal justice system as the police still have power to contact a child and produce him before the Committee. In fact the powers of the police have been expanded as under the new Act the police have also been empowered to hold an inquiry regarding the child in the prescribed manner. Further if the child is sent to a Juvenile Home, then such home remains a place where the child is deprived of her liberty, thereby rein scribing the custodial nature of the institution.

• Restoration as option for child in need of care and protection:
The innovation the law makes with respect to children in need of care and protection is the conceptualization of restoration of the child as being the focal point, with restoration being conceptualized as restoration to parents, adopted parents or foster parents. This being the crux, the law then outline four options for children in juvenile homes and special homes which include adoption, foster care, sponsorship and after care. While the aim of minimizing the stay of the child in the juvenile home and special home as conceptualized is laudable, there are serious concerns as to whether restoration can be the only solution. Especially in the case of sexual abuse the solution can be ill conceived. Further in the case of children in difficult circumstances such as children on the street, children in prostitution restoration might not be an immediate solution. The other concern is as to the fact that no safeguards have been built into the procedures regulating adoption and foster care in the Act itself leaving it entirely to the discretion of states, which have the power to make rules under the Act.5

• The Criminological considerations:
The discussion on the merits of the present enactment also has to be located in the context of the debates in criminology regarding crime and punishment. One needs to understand the philosophy motivating the JJ Act 2000 itself and locate the critique in a deeper conceptual basis. Any policy prescription necessarily needs to locate itself in a certain kind of criminological understanding. To do so this section will be-

The various criminological approaches:

Criminology is a rich discipline with multifarious approaches. While understanding that no approach stands on its own, and there is a degree of interpenetration between approaches it is still useful to classify approaches at least as ideal types. Cunnen classifies the criminological approaches broadly within the framework outlined below.

• Classical theory:

It is premised on the notion of free will. If individuals commit crime, it is because they freely choose to do so and have to take responsibility for their action. Since individuals are responsible for their actions this theory advocates that punishment is a way of deterring rational individuals all individuals are rational from committing crime. Classical theory is based on a Benthamite calculus of pleasure and pain and believes that if pain is administered by way of imprisonment then wrong doing would be deterred.

• Positivist approaches:

Positivist approaches advocate that individuals commit crimes either because of biology, environmental factors or sociological factors. Individuals thus commit crimes for reasons often beyond their control and they should be ‘cured’ of their disposition to commit crimes. Positivist approaches thus recommend an individualized approach where offenders are classified and different kinds of treatments are prescribed. Thus a whole range of expert interventions is recommended to ensure that the individual does not commit crime again as suggested by sociologists, psychologists, doctors, social workers and other ‘experts’.

• Strain theories:

This approach decisively moves responsibility for crime away from the individual person on to the social structure. Crime is not the result of an individual predisposition for crime, but happens because of the way society has structured
common goals and ways to achieve them. For example in Merton's analysis, if all individuals share the common American dream of financial success, but the institutional means to achieve success are limited to a few, then one outcome would be crime, which is a non institutional means to achieve the same. Thus crime is seen as an outcome of a social disease be it inequality of opportunity, inability to integrate those considered alien or a socially and culturally discriminatory attitude.

- **Social Control theory:**

Social Control theory is premised on the idea that it is an individual's bond to society, which makes the difference in terms of whether or not they abide by society's general rules and values. Hirchi theorized that the social bond is made up of four elements

1. **Attachment:** the ties of affection and respect to significant others in one's life, and more generally a sensitivity to the opinion of others
2. **Commitment:** the investment of time and energy in activities such as school and various conventional and unconventional means and goals.
3. **Involvement:** the patterns of living which shape immediate and long term opportunities, for example, the idea that keeping busy doing conventional things will reduce the exposure of young people to illegal opportunities
4. **Belief:** the degree to which young people agree with the rightness of legal rules, which are seen to reflect a general moral consensus in society.

It is the combination of attachment, commitment, involvement and belief which shapes the life world of the young person and which essentially dictates whether they will take advantage of conventional means of social advancement or whether they will pursue illegal pathways to self gratification.

- **Youth subcultures:**

Another important theory closely linked to social control theory is the idea of youth subcultures, wherein what society calls criminal behavior is learnt in a group setting. The sub culture sees itself as operating on different value systems, different notions of right and wrong and individuals act in conformity to the norms of the subculture to which they belong. Subcultures are also seen as a response to social andeconomic marginalization and are a creative mode of coping with or resisting deprivation.
• **Labelling theory:**

Labelling theories focus on the fact that deviancy is subjectively made and not objectively given. Deviance is seen to be a product of the juvenile’s interaction with the criminal justice system. Once the juvenile commits the act prohibited by law, and he/she is apprehended then the very interface with the criminal justice system produces the identity of the criminal. Society identifies the individual henceforward with only one identity, namely that of the criminal. This kind of societal reaction results in the individual taking on the identity as a response to societal stigma and learning the norms of behavior conferred by the label. The label thus serves to amplify deviance or criminality.

• **Marxist theories:**

Traditional Marxist theories locate the cause of crime in the unequal access to material resources, with crime itself being seen as a class response to inequality. Later applications of Marxist thinking to criminology have carried the analysis further and analyze how wrongdoing by the powerful and wrong doing by the powerless is defined.

• **Convention on Rights of the child:**

As a State Party to the Convention on the Rights of the Child (CRC) and various other rules and guidelines on children’s rights, the Government of India is bound to fulfill the duties set out in these instruments. International agreements on children’s rights, as they concern juveniles in conflict with law, promote a holistic approach, concerned with the development, care, and protection of children throughout their interactions with the juvenile justice system.

Juvenile justice is more concerned with the rehabilitation of its charges than is adult criminal justice. When discussing juveniles in conflict with law, international agreements generally emphasize the importance of preventing juveniles from coming into conflict with the law in the first place, as well as an expectation of complete rehabilitation by the time they leave the juvenile justice system. Throughout the proceedings within the system, “States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child’s sense of dignity and worth.”

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response to the U.N. Committee on the Rights of the Child’s recommendation that India incorporate the aims of the Convention on the Rights of the Child into domestic legislation, a new law was passed in the form of Juvenile Justice (Care and Protection of Children) Act, 2000.

India ratified the Convention on the Rights of the Child as of January 11, 1993. Juveniles in conflict with law is a term used by international conventions and the Government of India alike, in an effort to reduce the stigma placed on children by the terms ‘juvenile delinquent’ or ‘juvenile offender.’ The word ‘juvenile’ has a negative connotation in society today. However, this Recent Development uses the terms children and juveniles interchangeably.

- **Defective Approach:**

  The juvenile justice system in India is an offshoot of the criminal justice system. Because of this, its approach towards children has always been marked by the tension between the protective approach of juvenile justice and the traditional approach of dealing with crime. Juvenile Justice (Care and Protection) Act 2000 does not perceive the delinquency or the issue of children exploitation in holistic terms. Resultantly, this law does not emerge as progressive legislation. Its emphasis, though it seems in obvious terms, is not towards solving the problem of child. The institutional set up suggested in the law seems, at best, interventionist, and not essentially professional.

  In certain states, there are observed some differences in treatment and other procedure relating to case. This hampers the *uniformity* on national level. Juvenile Justice (Care and Protection) Act 2000 prescribes for the creation of different institution for custody, adjudication and trial and treatment of juveniles. The non-setting up of such institutions in the states is a major setback to the successful implementation of Juvenile Justice (Care and Protection) Act 2000. A major irritant in the effectiveness of this law remained the unconcerned attitudes of the officials associated with this law. The lack of training in handling the affairs relating to children on the part of such officials is found to be a decisive factor. Considerable failures in implementing this law also stems from the lack of coordination amongst various institutions involved in the process. The financial crunch in the institutions involved is also cited as a factor discouraging the progress of implementation of this
law. The career growth of the staff involved in the implementation of this Act has also to do with the fate of this Act.

1. The act fails to express the minimum age, below which the Act would not be applicable. The definition of juvenile delinquency provides very little scope for petty acts to be dealt within the community.

2. There is no concept of parental responsibility in generating situations ripe for delinquency under this Act. In many cases, the parents place the children in situations where their exploitation and abuse become imminent.

3. The education, training and recreation of children, who are in observation homes, have not been provided for. Besides, basic or school education, even higher education and training of these children should be considered in this Act.

4. The Act fails to provide for procedural guarantees like right to counsel and right to speedy trial

5. The Act does not take into account the orders and directions of the Supreme Court.

6. It empowers the Juvenile Justice Board to give a child in adoption; even though, it is the Child Welfare Committee that deals with children in need of care and protection. The Act is silent on inter-country adoption. There is no linkage between the Juvenile Justice Act 2000 and the other legal provisions relating to children, for instance child labor, primary education, sexual abuse, adoption, disabilities and health.

7. Juvenile Justice thrives under the shadow of the adult criminal justice agencies and institutions like the police. Moreover, the juvenile Justice adjudicatory cadres are drawn from the pool of the magistrates from the state.

The Act does not cast any obligation on the part of the state. A rights based perspective, is a missing dimension in this law. In its present shape, child protection becomes more of charity than a commitment. Protection of such children is not seen as a right but as charity or welfare. Juvenile Justice (Care and Protection) Act 2000 does not have specific provisions ensuring services for children relating to education, health, legal and social. In the absence of any mechanism of identification of juvenile in need of care and protection, the reach of this law becomes restricted.
Addressing to the requirement of such children needs a regular coordination amongst parallel government agencies working in the similar areas. This lack of coordination and Convergence of programmes defies the core objective for juvenile justice policy. The Juvenile Justice (Care and Protection) Act 2000 does not have any provisions, which could ensure the continuous supervision, monitoring and evaluation of the functioning of juvenile justice system as a whole.

The coverage of the act is quite limited and a large number of children technically fall away from the preview of this law. The resources and infrastructure required for the effective implementation of this law is hardly proportionate to the population and geographical regions covered under it. Children caught in the system are often helpless with very little redressal. The children affected by the problems like HIV/AIDS, drug abuse, militancy, disaster etc. do not have any redressal under this law. Similarly the concomitant issues like child marriage, female feticide, street children, and working children too fall away from being covered in it.

The lack of institutional infrastructure and trained manpower in the states has blunted the whole objective of this legislation. The requirement of constitution of Child Welfare Committees and Juvenile Justice Board is largely remain unfulfilled resulting in the delay of disposal of cases. The problem of enforcement of this law is also characterized by the lack of support services to vulnerable families, which becomes a major factor in turning their children into delinquency. The Juvenile Justice (Care and Protection) Act 2000 has got relatively greater emphasis on institutional setup as compared to non-institutional services. The facilities and services in the institutions in different states are found to be varying and lacking and there is no yardstick to standardize them. There is a dearth of services and programmes to the children of special needs. There is no index of performance measurement of the institutions in the area of juvenile justice. Therefore, there is no way of knowing the quality of performance of these Segments of juvenile justice.

There are number of incidences violating the procedure of handling of juveniles by the police. In fact the indifference of police towards this law is most disappointing feature. The basic idea of this law has not been internalize by the police due to insufficient training and orientation. The instances of bringing the age of juvenile into adult range while writing the FIR by the police are often heard. Handcuffing and keeping the juvenile in police lockup is not unusual.
The basic idea of juvenile justice was to reintegrate the child into family and society. This needs a proper network of rehabilitation and after care services. Unfortunately, this arrangement is almost nonexistent. The current juvenile justice policy does not have a preventive approach. The delinquency prone situations are increasing but there is no substantial mechanism to check it.

The view was expressed in judgment of the Supreme court as matter of suggestion that wherever any law is enacted by the Government, it should be ensure beforehand that the states are ready with the infrastructure to implement it. Otherwise, besides blunted the objective of the law this puts the whole machinery into unnecessary pressure and frustration. Our zeal to bring the law is more pronounced than evolving the ways and means to enact the same. The need to make a proper study of the feasibility is imperative. At times, the goals of such laws are too ambitious and they do not relate well to the ground level situation.

Legal Proceedings

According to the JJ Act, 2000 the rights of juveniles conform to the general rights of the accused under Indian criminal procedure. The international community is concerned with the standard litany of “basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority.” In addition to these basic protections, particular attention must be paid to the special needs of the juvenile.

The goal of this composition is to have a legally recognized body that is also sensitive to the needs of children. To some degree, this has been successful, but there are also limitations; by assembling these groups of people, the government has absolved itself of much responsibility in terms of training. As a result, the magistrates have limited understanding of child welfare and child psychology, and the social workers rarely have any legal expertise. The JJB is intended to be a non-adversarial, child-friendly environment. This implies that each Board acts as both prosecutor and arbiter, a difficult combination that the state attempts to justify on the basis that
juvenile proceedings are not intended to be criminal proceedings, but rather records of offenses that took place.

Juvenile judicial proceedings differ notably from ordinary criminal proceedings. The room is typically occupied by the following: the three JJB members hearing the case; probation officers serving as courtroom clerks; a court reporter; a guard from the Observation Home where children are provisionally incarcerated; a police officer or two; possibly the victim and his or her family; and the child, sometimes with his or her family. Some districts have shifted proceedings from courthouse to Observation Home; rather than make the proceedings more child-friendly, however, this simply removes trained courtroom staff from the proceedings and replaces them with usually untrained probation officers. These alternative proceedings do not significantly diminish the sense of formality and criminal suspicion