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As late as 1833, a boy of nine was sentenced to be hanged for the comparatively trivial offence of poking a stick through a patched up pane of glass and stealing two penny worth of paint, although it is only fair to record that the sentence was not carried out - Peter Boss, 'Social Policy and the Young delinquent' (1967), Routledge & Kegan, London, Ch. II, p. 20.

(A) Legal Controls

6.1 Introduction

The effective Juvenile Justice System in the world has been developed in the last hundred years. After the establishment of United Nations Organisation some International Conventions have taken place even to respect the rights of the juveniles. In India, since its Independance, number of Central Acts and State Acts have been enacted. The different legal controls at International and National levels are being discussed below.

6.2 International Documents

United Nations Organisation has firmly believed that juveniles in conflict with law and children in need of care and protection must be provided with proper care, protection and treatment. There must be a child friendly approach in the adjudication and disposition of their matters. Number of documents, Covenants and Conventions came out during last 50 years. The four notable documents are studied below in detail. They are -

2. International Convenant on Civil and Political Rights, 1966
3. The Beijing Rules, 1985

6.2.1 U.N. Declaration of the Rights of the Child, 1959

The child, by reason of his physical and mental immaturity needs special safeguards and care, including appropriate legal protection; hence UNO has declared the rights to the child to the end that he may have a happy childhood and enjoy for his own good and ultimately for the good of the global society.

Every child shall enjoy, without discrimination, all the rights set forth in this declaration. The child shall enjoy special protection by law to enable him to develop physically, mentally, morally, spiritually and socially. While enacting the various laws, the best interest of the child shall be considered paramountly. To give him, the benefits of social security, the child shall have the right to adequate nutrition, housing, recreation and medical services. The child needs love and understandings, hence required to 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. In India, this principle is honoured in S.15(a) in the Juvenile Justice (Care and Protection of Children) Act, 2000. The child shall in all circumstances be among the first to receive protection and relief. The child shall be protected against all forms of neglect, cruelty and exploitation and finally child shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood. (For full text, please refer Appendix D)
6.2.2 International Covenant on Civil and Political Rights, 1966

The International Covenant on Civil and Political Rights, 1966 precisely speaks on the different rights of the juveniles; some important articles are reproduced below.

Every human being has the inherent right to life and hence it shall be protected by law. Any one arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law.

This covenant has safeguarded following rights of the prisoners and juveniles -

1) **Article 10 :** (1) All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person (2) (a) Accused persons shall save in exceptional be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. (3) The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

2) **Article 14 .2 :** Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law (This provision is adopted in Beijing Rules, 1985 under rule 7.1 Rights of the Juveniles - Presumption of Innocence)

**Art 14.3 :** In the determination of any criminal charge against him,
everyone shall be entitled to the following minimum guarantees in full
equality............(C) to be tried without under delay (d) to be tried in his
presence and to depend himself in person or through legal assistance of his
own choosing....... (This provision is adopted in Beijing Rules, 1985 under
rule 7.1 Rights of the juveniles ....... the right to counsel)

**Art 14.4 :** In case of juvenile persons, the procedure shall be such as
will take account of their age and the desirability of promoting their
rehabilitation [The procedure of the juvenile court in India is more of
informal nature and the judge is the friend, philosopher and the guide of the
child in conflict with law. This principle is well reflected in Ss. 4(3) and 7A
(Juvenile Justice Board) of Juvenile Justice (Care and Protection of Children)
Act, 2000]

3) **Article 17 :** 1) No one shall be subjected to arbitrary or unlawful
interference with his privacy, family, home or correspondence, nor to
unlawful attacks on his honour and reputation (The right of privacy of the
juvenile is respected under Beijing Rules, 1985 under rule 8.1 Protection of
Privacy)

6.2.3 **The Beijing Rules, 1985 (U.N. Standard Minimum Rules for the
Administration of Juvenile Justice)**

In the juvenile justice system, at the Internation level, the year 1985
is considered to be a year of land mark when U.N. has adopted standard
minimum rules for the administration of juvenile justice. These rules are
called as Beijing rules. These rules give more emphasis on the rights of
the juveniles. The total rules are 30 in number. They are divided under
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Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus at the same time contributing to the protection of the young and the maintenance of a peaceful order in society. The aim of the juvenile justice system is the wellbeing of the juvenile.

In rule 7, the rights of the juveniles are being stated. According to rule 7.1 "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 shall be guaranteed at all stages of proceedings.

Under rule 8, protection of privacy - R. 8.1 The juveniles right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling R.8.2. In principle, no information that may lead to the identification of a juvenile offender shall be published. Under rule 10.2 A judge or other competent officer or body shall without delay, consider the issue of release.

In the above rules, the following rights of the juveniles are being protected -
1) Right of presumption of innocence
2) Right to be notified of the charges
3) Right to remain silent
4) Right to counsel
5) Right to the presence of a parent or guardian
6) Right to confront and cross examine witnesses
7) Right to appeal to a higher authority.
8) Right to privacy and
9) Right to speedy trial.

1) Presumption of Innocence: An accused person is presumed to be innocent is the rebuttable presumption or praesumptiones juris tantum. In the accusatorial system of administration of criminal justice, the burden of proving that an accused person violated some law is on the prosecution. In India, there is a presumption in favour of the accused that the offence has not been committed by him and the presumption continues to be operative until the prosecution is able to prove its case according to the rules of procedure and evidence prescribed by law. The same principle has been incorporated in the Evidence Act. (El incumbit probatio qui dicit non qui negat). This presumption is also applicable to juveniles in India.

2) Right to Counsel: The International Covenant on Civil & Political Rights 1966 provides that everyone shall be entitled to be tried in his presence and to defend himself in person or through legal assistance of his own choosing...... The right to provide legal assistance is implicit in Article
21 of the Constitution. In the case\textsuperscript{15} Krishna Iyer J. - If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal ...... for want of legal assistance, there is implicit in the court U/Art. 142 read with Art. 21 and Art. 39A of the Constitution, power to assign counsel for such imprisoned individual, for doing complete justice. Indian juveniles are under the umbrella of "Complete Justice". In India, this right is in the form of curtailed right to counsel. Since the procedure & evidence in a juvenile court are of informal nature and the assumption being that the proceedings are in the interest of the child, it is believed that a child need not be represented by a lawyer.\textsuperscript{16}

3) **Right to appeal to a higher authority** : S.52 of Juvenile Justice (Care and Protection of Children) Act, 2000 is very much clear that (1) any person aggrieved by an order made by a competent authority under this Act may within 30 days prefer an appeal to the court of session but as per S.52 (2) no appeal shall lie from (a) any order of acquittal made by the children's court in respect of the child alleged to have committed an offence or (b) order of the Board that the child is not neglected.

It is further laid down that only one appeal against the order of conviction shall lie to the Sessions Court whose decision shall be final.\textsuperscript{17}

4) **Right to Privacy** : The Beijing Rule 8-confes the right of privacy to a juvenile. Privacy is a core principle of natural law. Nature has provided right of privacy to every one. On the same line U.N. Convention on the Rights of the Child, 1989 guarantees privacy rights to the children.\textsuperscript{18} Right to privacy also includes protection from unlawful affairs on his or her honour
and reputation. The convention also guarantees child from any arbitrary or unlawful interference with child's family, home or correspondence. Private hearing on the juvenile's case is also provided under section 21 of Juvenile Justice Act, 2000. Apart from the judge and the court officials, the only persons allowed at the hearing are the child, parents and police officers. Even the press are not allowed to report the proceedings, offender's name, address or school or any particulars likely to identify him.

5) **Right to speedy trial:** Beijing rule 10.2 speaks about right of speedy trial available to the juvenile. Right to speedy trial is the right of the accused which is an integral part of right to life U/Art.21 of the Indian Constitution. Hussainara Khatoon V/s Home Secretary State of Bihar\(^{19}\), Kadra Pahadia V/s State of Bihar\(^{20}\) & Srinivas Pal V/s Union territory of Arunachal\(^{21}\). S.C. observed that quick justice is a sine qua non of Art. 21 of the Indian Constitution.

6.2.4 **U.N. Convention on the Rights of the Child, 1989**

The U.N. Convention on the Rights of the Child through Articles 5, 9, 16, 18, 20 & 40 guarantees different rights. Right of parental guidance; non separation from parents against their will; privacy, honour and reputation of the child, child rearing, State's responsibility in the case of parentless children are major articles among them. Article 40 in detail speaks out treatment to be provided to a child in penal matters. **The presumption of innocence, right to be notified of the charges, right to counsel, right to cross examine the witness, right to appeal, right to privacy and right to speedy trial of the child accused** are specifically mentioned in detail.
in this article (The full text is given in Appendix B).

6.3 Legal Controls in India

Various laws of the land recognise the need to protect and nurture the rights of the child including juveniles. The extracts of relevant laws are given herein below.

6.3.1 Constitutional Mandates

The Indian constitution provides the following rights -

i) Art. 15(3) - Special provisions for women and children

ii) Art. 21 - Right to life and personal liberty also extended to right of speedy trial in criminal matters.

iii) Art. 24 - Prohibition of employment of Children in factories.

iv) Art. 39(c) - Protection of the health and strength of workers and the tender age of children.

v) Art. 39(f) - Opportunity and facilities to the children for their development, etc.

vi) Art. 45 - Provision for free and compulsory education for children.

vii) Art. 47 - Duty of the State to raise the level of nutrition.

6.3.2 Provision in Indian Penal Code and Criminal Procedure Code

A) Indian Penal Code: S.82 - Act of a child under 7 years of age. Nothing is an offence which is done by a child under 7 years of age (Doli Incapax) and S.83 - Act of a child above seven years and under twelve of immature understanding - Nothing is an offence which is done by a child
above seven years of age and under 12 who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

**B) Code of Criminal procedure, 1973 :** (1) S.27 - Jurisdiction in the case of juveniles - Any offence not punishable with death or imprisonment for life committed by any person who at the date when he appears or is brought before the court is under the age of 16 years, may be tried by the court of Chief Judicial Magistrate or by an Court specially empowered under the Children Act (60 of 1960) or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.

- In Raghubir V/s State of Haryana\(^{23}\); it was held that the Haryana Children Act, 1974 was to prevail over S.27 of the code and even a child accused of an offence punishable with death or life imprisonment could not be tried by ordinary criminal courts.

(2) S.360 - Order to relaese on probation of good conduct or after admonition provided no previous conviction is proved against the offender if the offender is under 21 years of age and the offence is not punishable with death penalty or life imprisonment.

**6.3.3 Central Acts**

The growth of juvenile justice system has evolved in India since long back. Various Central and State laws related to juvenile justice have been enacted. The major Central laws are being discussed below :

(a) *Apprentices Act, 1850* : The first registation concering children
came in India in the form of the Apprentices Act, 1850. Though primarily concerned with the relationship between employers and young persons learning a trade from them as apprentices it did contain some provisions relating to destitute and delinquent children wherein may be discerned some of the principles and practices of the future juvenile court and institutions. The Act authorised Magistrates to act as guardian in respect of a destitute child or any child convicted by vagrancy or the commission of a petty offence and to bind him as an apprentice to learn a trade craft or employment.\textsuperscript{24}

\textbf{(b) Reformatory Schools Act, 1897 :} This act is a landmark in the juvenile legislation in India, as under it, a beginning was made for incorporating the rehabilitative techniques in the penal philosophy for juvenile offenders. It provided that young offenders upto 15 years of age found guilty of offences punishable with imprisonment or transportation were not to be sent to ordinary prison but to reformatory schools. The Act even today works as the basic law in those areas where no children's Acts or any other Special Laws dealing with juvenile offenders have been enacted.

\textbf{(c) The Children Act, 1960 :} The most significant legislation in the area of juvenile delinquency was the Children Act, 1960 which was central enactment for Delhi and other union territories. This enactment was intended to be and was regarded as a model legislation on the subject. The Act was to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent childrens and for the trial of delinquent children in the union territories. The act was consists of VII chapters and 60 sections with constitution of competent authorities and Institutions for children (Ss. 4 to 12), neglected children (Ss.13 to 17),
delinquent children (Ss.18 to 26), procedure of C.A. generally and appeals and revision (Ss.27 to 40), special offences in respect of children (Ss. 41 to 44) and miscellaneous provisions (Ss. 45 to 60). Some lacunae were identified in this Act which were rectified by an Amendment in 1978 but later, along with this Act, all state enactments were repealed by S. 63 of the Juvenile Justice Act, 1986 (53 of 1986).

(d) The Orphanages and other Charitable Homes (Supervision and Control) Act, 1960: Everybody will admit that orphanages and other charitable homes are necessary for the society for diverse reasons. Besides giving protection to the unprotected and unhappy members of the society and affording an outlet for laudable charity for charitably minded persons these institutions, if run on proper national lines can help the building of the nation. With these objects, the Orphanages and other Charitable Homes (Supervision and Control) Act 1960 was being enacted. It is meant to provide for the supervision and control of orphanages, homes for neglected woman or children and other like institutions and for matters connected therewith. The act consists of five chapters with 31 sections including the board of control and its powers and functions (Ss. 5 to 12), recognition of homes (Ss.13 to 19), management of recognised homes (Ss.20 to 23) and miscellaneous provisions (Ss. 21 to 31).

(e) National Policy for Children, 1974: The Government of India has evolved a National policy for the welfare of the children. It states - "The Nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our National plans for the development of Human
resources. So that our children grow up to become robust citizens, physically fit, mentally alert, healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim for this would serve our large purpose of reducing inequality and ensuring social justice."

The national policy sets out the measures which Government of India proposes to adopt towards attainment of the objectives set out in the introduction and they include measures designed to protect children against neglect, cruelty and exploitation and the strengthen family ties so that full potentialities of growth of children are realised within the normal family neighbourhood and community environment." (For full text of the policy please refer Appendix E).

(f) The Children (Amendment) Act, 1978: Some lacunas were identified in the Children Act, 1960 and amendment was therefore desirable. This was done by the Children (Amendment) Act 1978. The definition of the term neglected child was widened by including the cases where the parents are not able to exercise proper care and control over the child. Previously there was no mobility of sending a case of delinquent and neglected child from Juvenile Court to the Child Welfare Board. By amendment transferring the case from court to Board and viceversa is made easy. Children's Court were given the help of social workers.

(g) The Juvenile Justice Act, 1986: Over the years, the need was felt for a uniform policy regarding juvenile justice for the whole country and the Juvenile Justice Act of 1986 fulfils this need. Besides bringing
uniformity at the national level, it also takes care of the states where no legislation was forthcoming in the area of juvenile justice. The Act is virtually a verbatim reproduction of the Children Act 1960 introducing only a few minor and nonvital charges. The act was enacted as a Human Rights legislation. It deals with two types of juveniles i.e. (i) neglected juveniles and (ii) delinquent juveniles. As stated in the preamble, the act is to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters related to and disposition of delinquent juveniles. It contemplated both reformative and preventive treatment to curb the criminality. The Act consists of VII chapters with 63 sections. This act was repealed by S. 69 of Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000).

(h) The Juvenile Justice (Care and Protection of Children) Act, 2000 (Act 56 of 2000) (and as amendment by Act No. 33 of 2006) : The Juvenile Justice (Care and Protection of Children) Act 2000 was aimed at providing a juvenile justice system for juveniles in conflict with law and children in need of care and protection by adopting a child friendly approach in the adjudication and disposal of matters in the best interests of children and for their rehabilitation keeping in view the development needs of the children. India has re enacted this law bearing in mind the standard prescribed in the Convention on the Rights of the Child; The U.N. Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (The Beijing Rules), the U.N. Rules for the Protection of Juveniles Deprived of their Liberty (1990) and all other relevant International instruments. The Act consists of 7 chapters and 70 sections. Chapter I comprising of Ss.1-3
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deals with preliminary matters, Chapter II relates to juvenile in conflict with law (Ss. 4-28), Chapter III contains provision dealing with child in need of care and protection (Ss. 29-39), Chapter IV enacts provisions for rehabilitation and social reintegration (Ss. 40-45) and Chapter V contains the miscellaneous provision (Ss. 46-70), along with its amendment (Act No. 33 of 2006), this act is currently applicable in the state of India (The abridged text of the act is annexed in Appendix M)

(i) National Charter for Children, 2003 : The Government of India has adopted a National charter for Children in 2003 vide a resolution dt.9/02/2004, issued by Ministry of Human Resource Development to reiterate its commitment to the cause of children. The intention of the state underlying this charter is to secure for every child its inherent right to be a child and enjoy a healthy and happy childhood to address the root causes that negate the healthy growth and development of children and to awaken the conscience of the community in the wider social context to protect children from all forms of abuse while strengthening the family, society and the Nation. The charter protects the survival, life and liberty of child. It promotes high standards of health, assures basic minimum needs and security, early childhood care for survival and growth, assures free education, gives protection from economic exploitation, protection of the girl child is specially assured. Disabled children and marginalised and disadvantaged communities children are separately protected by the charter. (The full text of the chapter is annexed in Appendix N)

(j) Commission for Protection of Child Rights Act, 2005 : To give effect to the policies adopted by the Government for the protection of the
rights of the child, the Commission for the Protection of Child Rights Act, 2005 was enacted on January 20, 2006.

The commission shall consists of a Chairperson and 6 other members (minimum 2 women) which will perform a number of functions as provided U/S.13 of this Act. The Act also provides for the constitution of State Commissions for the protection of child rights.

The Act also laid down (S.25) that for the purpose of providing speedy trial of offences against children or of violation of child rights specify at least a court in the state or specify for each district a Court of Session to be a children's court to try the said offences. For every Children's Court, public prosecutor will be appointed.

(k) Juvenile Justice Rules, 2007: To give effect to the provision of the JuvenileJustice (Care and Protection of Children) Act, 2000 and Amendment Act, 2006 for better implementation and administration has made model rules and laid down the fundamental principles to be applied in administration of juvenile justice. The rules are divided into VII chapter (Total 100 rules) with two schedules and 22 specimen forms. The Government has given fundamental principles of juvenile justice and thus assured protection to children. They are the principles of - (i) presumption of innocence, (ii) dignity and worth, (iii) right to be heard, (iv) best interest, (v) family responsibility, (vi) safety, (vii) non-stigmatizing semantics, decisions and actions, (viii) non waiver of rights, (ix) equality and non discrimination, (x) right to privacy and confidentiality, (xi) last resort, (xii) repatriation and restoration and (xiii) fresh start (Refer Appendix 'O').
6.3.4 State Acts

Before the commencement of the Juvenile Justice Act, 1986, juvenile justice was governed by indifferently implemented Children Acts, Borstals Schools Acts and various states Juvenile Justice Rules. They are listed below -


The rules are generally related with procedure to be followed while holding inquiry. Placement of juveniles under the care of parent, guardian or fit person, escorting of a girl from one place to another and mode of dealing with juveniles suffering from diseases. The detailed rules are also being made for indoor management of the institutions, daily routine of inmates, diet scale, sanitation and hygiene in the institutions etc. The detailed rules are being prescribed for medical care of the inmates, arrangement of various institutional programmes and recreation facilities. Different measures are also being suggested to the superintendent to prevent and control emergency situations. The other rules are about transfer of juveniles, release on licence, establishment of and recognition of after care homes, inspection of institutions and duties of superintendent, probation officer, case workers, care takers etc.

B) Judicial Responses

6.4 Introduction

The entire juvenile justice in India seeks to tackle the problem of juvenile delinquency on the basis of two fundamental assumptions - (i) Young offenders should not be tried, they should rather be corrected and (ii) They should not be punished but be reformed. The higher courts
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of India have acted in favour of these assumptions. (Please refer Appendix 'R')

Analysing some decisions delivered by the higher judiciary would reveal the active judicial efforts in dealing with cases of juvenile delinquents.

6.5 Case Law

(I) Right not to mix juvenile offenders with hardened criminals  
(Jail custody to be avoided) :

(A) Sheela Barse V/s Union of India: In Sheela Barse's case Mr. Bhagwati C. J. had observed after noticing the Art. 39(f) of the Constitution of India - "If a child is a national asset, it shall be the duty of the state to look after the child with a view to ensuring full development of its personality. That is why all the statutes dealing with children provide that a child shall not be kept in jail. Jail is hardly a place where a child should be kept...... Even where children are accused of offences they must not be kept in jails. It is no answer on the part of the state to say that it has not got enough number of remand homes or observation homes or other places where children can be kept and that is why they are lodged in jails..... It is the atmosphere of the jail which has a highly injurious effect on the mind of the child, estranging him from the society and breeding in him aversion boarding on hatred against a system which keeps him in jail...... That is what the learned judge had observed prior to enforcement of the Juvenile Justice Act and because of the observations of the Supreme Court in the aforesaid case, the Parliament has come forward for enacting Juvenile Justice Act, 1986.
(B) Sanjay Prasad Yadav V/s State of Bihar\textsuperscript{26} : The Patana High Court was called upon to decide the question whether a juvenile accused who is guilty of an offence U/S. 302, 34 IPC and ordered to be kept in 'Observation Home during enquiry under the Juvenile Justice Act, 1986 has to be shifted to jail if he has crossed the age of 16 years pending inquiring. The Court held that such a juvenile must be continued to be kept in the Observation Home even if he crosses 16 years during inquiry pending under the Act and he is not viable to be transferred to Jail.

(c) Krishna Bagwan V/s State of Bihar\textsuperscript{27} : Different sections put a strict bar in the juvenile being to jail custody either before an enquiry or after the conclusion of the enquiry in respect of the offence alleged or proved to have been committed. The benefit has to be extended not only to an accused who is a juvenile at the time of commencement of the enquiry but even to an accused who has ceased to be so during the pendency of the inquiry.

(d) Abdul Mannan and others V/s State of W.B.\textsuperscript{28} : In this case, the court ruled that juvenile offenders are required to be tried by juvenile courts and in case of non constitution of juvenile courts Additional Sessions Judge is competent to proceed with the trial of the juvenile accused as he has all the powers and jurisdiction of the Sessions Judge to try offences enumerated under Cr.P.C. 1973 as laid down in S. 9(1) & (3). See also Sarita V/s. State 1990, Cr. L. J. 351.

(e) Raghuvir Bajaj V/s State of Haryana\textsuperscript{29} : The Supreme Court observed that the conviction and sentence of the accused, a 16 years old-offender tried under S. 5 & 27, Cr.P.C. 1973 could be limited to only the
period of sentence already undergone and he need not be sent to juvenile court. In the instant case, the accused had undergone 7 years sentence on becoming major. The apex Court further ruled that the trial of children with adults is prohibited by the earlier Children Act.

(f) Munna V/s State of U.P.\textsuperscript{30} : The case presented a situation which indicated the pathetic state of affairs with regard to imprisonment of children and their sexual abuse in the adult jails. A news report and the consequent writ petitions in the Allahabad High Court led to an inquiry regarding the allegation that more than 100 children were lodged in the Kanpur Central Jail and they were being sexually exploited by the adult prisoners. There were seven juveniles under trial prisoners below 16 years in Kanpur Central Jail. The Supreme Court observed - "We would strongly impress upon the Magistrates...... that they must be extremely careful to see that no person under 16 years is sent to jail but he must be detained in a Children's Home or other places of safety. No words we can use would be strong enough to convey our feelings in this respect. A Nation which is not concerned with welfare of its children cannot look forward to a bright future.

(g) Sanjay Suri V/s Delhi Adm.\textsuperscript{31} : In this case, the Supreme Court had to lay down a duty on the jail authorities that no young person was to be admitted to an adult jail unless the court certifies that the person was above the age prescribed for juvenile offenders.

(II) Right to speedy trial :

(h) Sheela Barse V/s Union of India\textsuperscript{32} : There should be speedy trial regarding the children. S.C. directed that measures be taken for the purpose of setting up of adequate number of courts, appointing requisite number of
judges and also to set up an Institute or academy for training of judicial officers so that their efficiency may be improved. All criminal trials pending since three years or more be quashed to the extent as far as the trials of juveniles in custody are concerned, they should be acquitted. In trials pending since less than 3 years the court should act in accordance with the provisions of the Juvenile Justice Act and dispose them off in relation to the cases where punishment upto 7 years in accordance with the directions of Supreme Court in this case.

(i) *Sanat Kumar Sinha V/s State of Bihar*\(^{33}\) : After giving the prosecuting agency, final opportunity to procure evidence as also to the defence to lead evidence, the court should close the case and proceed to dispose them of in accordance with law. All unnecessary adjournments which will cause delay in the trial should be avoided and trials where juveniles are involved be concluded as early as possible but definitely within one year.

**(III) Proper care in custody :**

(j) *Sheela Barse (I) V/s Union of India*\(^{34}\) : Sheela Barse, a journalist and social worker filed PIL for the welfare of the children. She brought the attention of the court towards the unsatisfactory implementation of children laws by several states. The court was also requested to issue directions to all District Judges to visit jails under their jurisdiction to ensure that children were properly looked after while they are in custody. The Supreme Court directed all the district judges to visit the jails to investigate and submit report to the Supreme Court within 10 weeks about the condition of the children in jails, existence of juvenile courts and observation homes within
their jurisdictions. The court expressed its regret that the Children's Acts have not been enforced in most of the states and directed the states to brought them in force and their provisions be implemented vigorously.

**(IV) Proper physical and mental hygiene :**

*(k) Supreme Court Legal Aid Committee V/s Union of India*\(^3^5\) : Children are in need of the greatest social care. They require the protective umbrella of society for their proper growth and development. The S.C. held that children of today are the citizens of tomorrow's India and the country's future would necessarily depend upon their proper hygiene - physical and mental. It is the responsibility of the society and is one of the paramount obligations of those, who are in charge of governance of the country today to attend to the children to make them appropriate citizens of tomorrow.

**(V) Court's duty to advice the child :**

*(l) Parvathy V/s Supt. Corporation Relief Centre*\(^3^6\) : It will be desirable that the presiding officers [appointed as per S.29 Ch.III Child in need of care and protection under Juvenile Justice (Care and Protection of Children) Act, 2000] who have to deal with cases under the Act prepares a list of the children's homes in consultation with the public prosecutor, who may avail the services of the police authorities. A child admitted would not be considered as illegally defamed child. The court, should, if time permits, monitor the child so admitted.

**(VI) Objectives and duties of Juvenile Homes :**

*(m) Sunilkumar V/s State*\(^3^7\) : The children home is intended to receive
neglected children and that should provide the child not only with accommodation, maintenance and facilities for education but also with facilities for the development of his character and ability and give him necessary training for protecting himself against moral dangers or exploitation. If the neglected juvenile is brought before the Juvenile Court, the court acts in the interest of the neglected child and directs it to be sent to the children's home in order to provide it with proper habitation and for looking after its physical and moral health.

\[(n) H.B. Singh Arsi V/s State of Bihar^{38} \] Neglected juveniles as defined in sub.Sec. (l) of S.2 of Juvenile Justice Act, 2000, if kept in juvenile homes, they must be provided proper facilities regarding food, clothing, health and education.

\[(VII) Duty of State Government towards nondelinquents :\]

\[(o) R. Rathinam V/s Kamala Vaiduriam^{39} \] When a juvenile child produced before court is not claimed by any person and he/she is not a delinquent juvenile, the court must ensure that he/she is not a delinquent juvenile, the court must ensure that he/she is kept in place of safety until he/she attains majority under provisions of Juvenile Justice Act, 1986, a duty is cast upon the Government of the state to provide accommodation, education and vocational training to neglected juvenile.

\section*{6.6 Conclusion}

The various legal controls enacted at International and Indian level are basically for the welfare of juvenile delinquents. The International documents reveal that juveniles in conflict with law and children in need of care and protection must be provided with proper care, protection and
treatment. Juvenile offenders be segregated from adults and be accorded treatment appropriate to their age and legal status. The procedure of juvenile court should be of informal nature and judge should act as friend, philosopher and guide of the accused. The 'Beijing Rules of 1985' should be implemented in the administration of juvenile justice. The 'Beijing Rules' has declared the nine basic rights of the juveniles. They are presumption of innocence, to be notified of the charges, to remain silent, to counsel, to the presence of parent/guardian, of cross examination, to appeal to higher authority, right to privacy and of speedy trial. These basic rights have afterwards been confirmed in the U.N. Convention on the Rights of the Child 1989 under article 40.

In sum, all the International documents so far been adopted have shown the keen interest in the care, treatment, protection and rehabilitation of juveniles in conflict with law.

In India, the children's rights are well protected through our basic law i.e. Constitution S.82 and 83 of Indian Penal Code establishes the principle of Doli Incapax S.27 of Cr.P.C. 1973 states that only Juvenile Courts or Chief Judicial Magistrate is competent to handle the cases of delinquent children. Since 1850, in the last 150 years, the India's Central Government and various State Governments have enacted so many acts related to juvenile justice. Some of them are The Children Act, 1960, The Juvenile Justice Act, 1986 and The Juvenile Justice (Care and Protection of Children) Act, 2000. Besides, National Policy for Children and National Charter for Children were prepared in India in 1974 and 2003 respectively. The Government of India has prepared the juvenile justice rules in 2007 in
which following fundamental principles of Juvenile Justice have been incorporated. These principles are-presumption of innocence, dignity and worth, right to be heard, best interest, family responsibility, safety, nonwaiver of rights, equality and non-discrimination, right to privacy and confidentiality, repatriation and restoration and the most important principle above all is the principle of fresh start.

The entire juvenile justice of India seeks to tackle the problem on the basis of two fundamental presumptions and they are - (i) young offenders should not be tried, they should rather be corrected and (ii) they should not be punished but be reformed. India's Apex Court i.e. Supreme Court of India, has given many decisions in the cases like Sheela Barse V/s Union of India, Abdul Mannan V/s State of W.B., Raghuvir Bajaj V/s State of India, Munna V/s State of U.P., Sanjay Suri V/s Delhi Adm. and many more and has set certain precedents regarding rights of juvenile children and duties of juvenile homes of State Governments. The major rights decided by Supreme Courts are - (1) right not to mix juvenile offenders with hardened criminals, (2) right to speedy trial, (3) right of proper care in custody and (4) right of proper physical and mental hygiene.

References:
1. Principle 1, Declaration of the Rights of the Child, 1959
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8. Article 6, - International Covenant on Civil and Political Rights, 1966
10. Rule 1.4 - The Beijing Rules, 1985
13. S. 101, Indian Evidence Act, 1872
17. S.52(3) The Juvenile Justice (Care and Protection of Children) Act, 2000
18. Art. 16
19. AIR (1980) 1SCC 81
20. AIR 1981 Cri LJ 481
21. AIR 1998 SC. 1729
23. (1981) 4 SCC, 210
24. The Act was repealed by the Apprentices Act, 1961 which does not contain provisions relating to destitute or delinquent children.
Children's Act, passed in the meantime have taken care of these problems.

25. 1986 Cr. L.J. 1740 (SC)
26. 1995(1) Crimes 476 Patna
27. AIR 1989 Pat. 217
28. (1996)1 SCC 665
29. AIR 1981 SC 2037
30. (1982) 1 SCC 545
32. AIR 1986 SC 1773
33. (1990) 2 B.L.I. 137
34. (1986)3 SCC 596
35. AIR (1989) SC 1278
36. 2002(1) ALJ (Cri) 316 (Ker)
37. 1983 Cr. L.J. 94(Ker)
38. (1991) 1 Crimes 535 (Pat)
39. (1991) 3 Crimes 582 (Mad)