CHAPTER - III
JUVENILE JUSTICE ACT, 2000

3.1 CONSTITUTION OF INDIA:

The Constitution of India was drafted at the time when the Universal Declaration of Human Rights was adopted. The framers of the Indian Constitution were influenced by the concept of human rights. The Constitution of India, which is the law of the land, contains various provisions for the protection and promotion of rights of children and their development. The Constitution makers thought it prudent to ensure certain rights to children, which they considered essential for the proper development of human personality. Part III of the Constitution deals with fundamental rights, which are justifiable and Part IV deals with Directive Principle of State Policy. Under Part III of the Constitution, special provision has been made for the protection of children. Article 15 (3) provides that the State shall make special provisions for women and children. Accordingly, the State has made various special laws for protecting the interest and promoting the welfare of children.

Nearly half the population in India is 18 years of age. For their proper development, the Constitution casts a duty upon the state, so that the tender age of children are not abused. It is also an obligatory duty on the part of the State to see that children are not forced by economic necessity to accept avocations unsuited to their age and strength. Further, it is the duty of the State to ensure appropriate opportunities to the children for their proper development. Children are the most vulnerable sections of the society and are the victims of
exploitation. The Constitution makers were prudent enough for the protection of children against exploitation. Article 23 of the Constitution prohibits traffic in human beings and begging and other similar forms of forced labour. The Constitution also prohibits children below the age of 14 years to work in hazardous factories.

It is the mandatory duty of the State to impart free and compulsory education up to the age of 14 years. Early childhood care and education, the Constitution casts a direction on the State to ensure that all children until they complete the age of 6 years have the right to early childhood care and free education. Thus, for the protection and promotion of interest of children and for their welfare, the Constitution provides various provisions, including the right to develop in a healthy manner and in conditions of freedom and dignity is a human right, which is acquired by birth.

3.2 Introduction to Juvenile Justice Act, 2000

The Union Parliament, providing a uniform law on juvenile justice for the entire country, passed the first central legislation in 1986. Prior to this law each state had its own laws on this matter. The 1986 law did not however result in any dramatic improvement in the treatment of children. Human rights circles continued to be concerned about the way children were treated in special and juvenile homes. Concern in international and domestic circles combined with pressure on the government to submit a Country Report (outlining concrete achievements) to the Committee on the Rights of the Child, seems to have inspired the Ministry for Social Justice and Empowerment. The Juvenile Justice (Care and protection of children) Act was passed in 2000.
3.2.1 Who is a juvenile?

Any juvenile or child who has not completed the age of eighteen would be covered by the Act in Separation of child in conflict with the law from child in need of care and protection. In the past children who had committed serious offences used to be kept in the same institution as children neglected child calls for observation homes for juveniles in conflict with the law and children's homes for children in need of care and protection.

3.2.2 Points specific to the child in conflict with the law

- Whatever the nature of the offence, the child shall be released on bail regardless of surety. If extraordinary circumstances call for detention it must be in an observation home, not prison or police station.

- The Juvenile Justice Board which consists of two social workers and one magistrate has the discretionary power to send the child home after admonition or advice or order him or her to perform community service or release the child on probation. (Sec. 15)

- A child cannot be sentenced to death or life imprisonment or committed to prison in nonpayment payment of fine or furnishing of security. (Sec. 16)

- No child shall suffer any disqualification attaching to a conviction. After a reasonable period of time the records of the conviction must be removed.(Sec.19)

- No child shall be tried with an adult. (Sec.18)

- The act also protects the privacy of the child. No media report may carry identifying particulars or particulars of a child in conflict with the law or a child in need of care and protection.(Sec.21)
3.2.3 Points specific to the child in need of care and protection

- **Expansion of category** In JJA 2000, the category of children in need of care and protection has been expanded to include victims of armed conflict, natural calamity, and civil commotion, child found vulnerable and likely to be inducted into drug abuse.

- **Custodial framework for dealing with child in need of care and protection**
  Children in need of care and protection stay within the purview of the criminal justice system. The police have the powers to contact a child, hold an inquiry and produce him before the Child Welfare Committee.

- **Restoration as option for child in need of care and protection**
  The law emphasizes restoring the child to parents, adopted parents or fosters parents with adoption, foster care, sponsorship and aftercare through the juvenile and special homes being a secondary option.

  The fundamental premise underlying the JJ Act is that children who commit offences and children who need care and protection would fall within the ambit of the juvenile justice system. The Act builds in certain avenues for release of the child either to parents, guardians, fit persons or adoptive parents or to people who would provide foster care. However, it is important to remember that the logic of the juvenile justice system is to provide what the preamble of the Act calls 'proper' care, protection and treatment by catering to their development needs' within an institutional setting.

  These institutions, designated as observation homes, children's homes or special homes, share one feature in common - they are all
closed institutions, which completely deprive the child of his or her liberty. In its conceptualization, the Act purports to focus not on punishment, but on how best one can reform the erring individual. Thus, the deprivation of liberty is not conceptualized as punishment, but as a mode through which the juvenile is reintegrated into society. What is to be noted is that this program of 'reintegration' is to be carried out with respect to the child in conflict with the law for a period of not less than 2 years in the cases of children who are over 17 and below 18 and for other juveniles till she/he ceases to be a juvenile. For children in need of care and protection, the child would continue in the children's home if the other measures conceptualized under the Act, like foster care, adoption, sponsorship and after care are not suitable.

Thus the philosophy seems to be that by detaining children till they reach the age of 18 and by subjecting them to a monotonous daily routine and an enforced separation from all forms of living outside daily routine, one would produce individuals who can then be reintegrated back into society. However the daily reality of life in most "homes" really reflects an adherence to the classical model of punishment."

3.2.4 Strengths

The adjudicating authority has been changed from a Magistrate (to be assisted by two social workers) to a Bench of two social workers and a Magistrate, redesignated as the Juvenile Justice Board. This change in composition of the adjudicating authority is one of the more significant changes in the new law. Now, space has been created 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 can now be displaced by a social worker's inquiry, which could focus on why the child committed the offence, and how one may redress the situation. 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 (which are framed by the individual states) operationalize the same.

3.2.5 Loopholes

Juvenile Justice Act 2000 fails completely to engage with crucial conceptual questions (for instance, about the responsibility of the origin of the crime) in the area of juvenile justice. Critiques on the Act:

- 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 her (Art 12). 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.

3.2.6 Juvenile Justice:

The perception of children has changed over a period of time. Initially a child was recognized as a person, but merely as source of pleasure and joy. By the beginning of the 17th century the second idea of childhood emerged when the child was perceived as a miniature adult who could be groomed and trained because the belief was that the child was a miniature adult with all the inclinations towards evils and potential for a fallen human nature\(^2\). The Juvenile Justice (Care and Protection of Children) Act, 2000\(^3\), passed to reform the 1986 Act, is designed as a comprehensive legal framework by which the Indian government has pledged to alleviate the devastating impact that underdevelopment, poverty, and crime have on children. The Act spells


\(^3\) Hereafter referred to as the Act.
out the government’s responsibilities in the care, the protection, and the development of neglected children, and also tackles issues related to crime prevention and the rehabilitation of juvenile delinquents.\textsuperscript{25}

The Act has been formulated in pursuance of the international obligations and standards regarding juvenile offenders. The basic principles under the Beijing rules are: (a) that the reaction to juvenile offenders should always be in proportion to the circumstances of both the offenders and the offence; (b) that the placement of the juvenile in an institution should be a disposition of last resort and for the minimum necessity period; (c) that detention pending trial should be used only as a measure of last resort and for the shortest possible period of time; (d) that police officers dealing with juveniles should be specially instructed and trained.\textsuperscript{26} Surprisingly, the Act has been unable to follow either of the abovementioned principles.

Even with the passing of the enactment, child protection in India remains a low priority of the centre with an annual allocation of 0.027 per cent of the union budget in 2007-08. The recent Nithari killings, the increasing child trafficking, malnutrition, child labour, girl child neglect all seem to vindicate the hypothesis that the plight of children in India has remained largely neglected.

\subsection*{3.3 Deficiencies in the Act}

The preamble of the Act of 2000 reads that the Act seeks to amend the law relating to juveniles by ‘providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and

\begin{footnotesize}
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\item \textsuperscript{25} Infra, n.33.
\item \textsuperscript{26} Infra, n.10, pp.54-55.
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disposition of matters in the best interest of children’. Sadly, none of these aims have been fulfilled because of glaring insufficiencies in the Act itself which are not very difficult to point out. Both, in procedural as well as substantive portions, there is a lot that needs to be added to the Act in order that it may actually be useful for the purpose for which it has been established.

Some of the very evident loopholes are as following:

3.3.1 Usage of the word ‘may’:

A lot of the implementation part has been left up to the States by way of the rules that the States may formulate. The usage of the word ‘may’ as far as the framing of rules by the States is concerned, is a major fallacy because until and unless, the formulation of rules is not made mandatory, the implementation of the Act will remain a dream. Sec. 8 of the Act is an example of the abovementioned problem. According to Sec. 8 (3) of the Act, the State may formulate rules and standards for the observation homes that are to be established. Leaving something as important as maintenance of standards to the discretion of the State is a major problem and should be made mandatory for the State to regulate such basic areas. Even the appointment of inspection committees for the children’s homes has been left to the discretion of the States and they ‘may’ constitute such committees according to Sec. 29. Something as important as after care organizations, to check up on the juveniles who have left the special homes and have been adopted or rehabilitated, has also been left to the discretion of the States according to Sec. 44.

There are several places in the Act where the usage of the word ‘may’, will wreck havoc with the implementation of the Act.
3.3.2 Extension of period regarding inquiry:

Sec. 14 says that any inquiry regarding a juvenile, needs to be completed within a period of four months unless there are some special circumstances in special cases. There is absolutely no mention of what the maximum period for inquiry should be and what may be the special circumstances under which the period should be extended. This discretion permits cases to languish in the system indefinitely. Sec. 14 gives a lot of scope for arbitrariness and any lackadaisical attitude on behalf of the juvenile justice board may be sought to be explained as the special circumstances of the cases and hence, they have the option of getting away with it. This is extremely dangerous for a juvenile, in whose case the inquiry should be completed as soon as possible.

3.3.3 Punishment for cruelty to a juvenile: According to Sec. 23

A person responsible for cruelty to a juvenile will be punished with imprisonment for a period of 6 months or with fine or with both. It is very strange that at a time when the government is trying to curb the menace of cruelty with juveniles, the punishment that they have prescribed is in no way going to act as a deterrent to such erring individuals. The punishment needs to be increased and also the fine amount needs to be specified so that it may discourage the potential law breakers in this area.

3.3.4 Adequate training for the officials dealing with juveniles:

No provisions have been provided in the Act regarding the specifications of the special training of the officials who are supposed to deal with juvenile offenders. Even though Sec. 63 provides for

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27 [www.law.harvard.edu/students/orgs/hrj/iss21/155-166.pdf](http://www.law.harvard.edu/students/orgs/hrj/iss21/155-166.pdf)
properly trained police unit, it pays mere lip service to the requirement of special training because no proper guidelines have been provided as to how the special training will be given. Lack of properly trained officials defeats the entire purpose of the Act. Officially the police are charged with enforcing the law. Unofficially, the police can be very corrupt, quite arbitrary and sometimes brutal. Because of these practices, it should be no revelation that their treatment of juvenile offenders is frequently informal, arbitrary and extralegal. When juvenile delinquents are sent to locked custody, there is a great deal of disparity in official and unofficial standards of treatment. In fact, corruption and unequal treatment is the rule rather than the exception.

3.4 SUBSTANTIVE ISSUES

3.4.1 Age: The need to pay attention to empirical research findings on children’s cognitive capacities has been largely ignored by policy makers, with an inevitable arbitrariness in legislation. During early adolescence, young people’s thinking tends to become more abstract, multidimensional, self reflective and self aware, with a better understanding of relative concepts. Not only do young people become increasingly able to consider the long term consequences of their actions, they also tend to think about such consequences more in terms of their own sense of responsibility and with increased awareness of the effects of their action on other people. Overall crime rates, including crime by juveniles, have greatly risen in the past century.

3.4.2 Offenders being children: A nine year old boy earned the dubious tag of being the country’s youngest rapist after raping a six

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29 Ibid, p.363
31 Ibid, p.89.
year old girl, in Indora, Kangra. Three ten year olds in a Haryana school were booked for molesting a ten year old girl from the same school\(^\text{32}\). Horrifying incidents like these should force the government to do a rethink on the policies regarding the juvenile offenders. It is very evident that there is something drastically wrong in the society where such incidents take place. The basic cause of juvenile delinquency and neglect were poverty coupled with lack of parental or societal care, industrialization and slums, bad cinema, substandard education and so on\(^\text{33}\).

First, there are explanations based on individual risk factors as genetic influences, low IQ and poor educational attainment. Secondly, it could be because of changes in living conditions and socioeconomic factors. Thirdly it could be based on family and socialization factors, including the influence of mass media\(^\text{34}\). Whatever may be the reasons for such behaviour by children, apart from improving the society and the environment in which the children grow, the fact remains that such children need to be dealt with in a manner that ensures that they do not repeat such acts. Apart from looking into the psychology of such children and getting to the root of the problem, it needs to be ensured that theory of deterrence is used which will discourage the other potential offenders.

**3.4.3. Offenders being teenagers:** The 2007 case of the gruesome murder of a 16 year old boy, Adnan Patrawala, by his

\(^{32}\) [http://jjindia.net/1/Default.aspx?pg=c0bdfda2-2f20-4583-bc99405e84a479c&detail=e0d8c1fc-2b69-41e6-8255a1f62075#c8c85fd9-d8bd-4f6b-a3bc-e14800506545](http://jjindia.net/1/Default.aspx?pg=c0bdfda2-2f20-4583-bc99405e84a479c&detail=e0d8c1fc-2b69-41e6-8255a1f62075#c8c85fd9-d8bd-4f6b-a3bc-e14800506545)


\(^{34}\) Supra n.8, pp.90-91.
teenager friends, who later pleaded delinquency is a very important case as far as the importance of age is concerned. In a very recent case of a similar kind, a 17 year old boy was kidnapped and killed by his close friends for money. Section 2 (k) of the Act has defined a juvenile as anyone below 18 years of age. This section will protect the offenders in the abovementioned cases because they were below the age of 18 years.

The logic behind the existence of the Act was to protect the juveniles because they were not supposed to have the necessary mental element required to commit crimes. This is the reason behind having milder laws and punishments to deal with juvenile offenders. However, in the abovementioned cases, it is very evident that the offenders had the necessary knowledge and mental element regarding the commission of the crime. During the debate regarding the Act, Shrimati Lakhanpal said that the problem of delinquent children ‘is a difficult one and not understandable for all. The tendency of these children is corrupt, morbid and quite different from the ordinary ones. They have extraordinary leanings for crime. It is an essential though difficult task to make them good citizens. It is not fair that an offender of 19 years of age get life imprisonment for a murder while an individual of 17 years of age gets away with a minor punishment.

3.4.5 Need for the Policy of Waiver: In Reepak Ravindran case, the 15 year old boy was convicted for rape of a 7 year old girl. The fact that the boy was working in a lodge where he was exposed to

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37 1991 Cri LJ 595 (AP).
act of adults, and blue films while serving guests were considered as mitigating circumstances leading to the commission of offence. Even if the crime is shocking to the conscience and the conduct abhorring, still Section 22, being aware of it, provides for keeping them in safe custody.\textsuperscript{38} In case the offence was serious or the child is of depraved nature, the courts suggested that the appropriate course for the juvenile courts was to send the matter to the government\textsuperscript{39} for deciding the term of detention.\textsuperscript{40} The concept of waiver has been extensively used in the United States of America. There exists an underlying acceptance that juveniles who engage in felonious offences should be treated as adults, because the harm to society committed by youths is identical to harm committed by adults.\textsuperscript{41} There are three kinds of waiver- legislative waiver, judicial waiver and prosecutorial waiver. In case of legislative waiver, the legislature excludes certain crimes from the jurisdiction of the juvenile court. Some crimes such as murder, rape, etc. are so severe that no leniency should be shown to the offenders. In judicial waiver, the juvenile court judge has the discretion to waive of the jurisdiction of the juvenile court keeping in mind the nature of offence, age of offender and the past record of the juvenile. The same powers are given to the prosecutor in case of prosecutorial waiver.\textsuperscript{42}

In most states judges decide whether a youth is a criminal or a delinquent in a waiver hearing and base their discretionary assessments on a juvenile’s ‘amenability to treatment’ or ‘dangerousness’.\textsuperscript{43}

\textsuperscript{38} Ibid.
\textsuperscript{40} Peter Gill v. State of Punjab, 1983 Cri LJ 231 (Punj) NOC
\textsuperscript{41} Supra n.6, p.239.
Legislatures increasingly use age and offence criteria to redefine the boundaries of adulthood, coordinate juvenile transfer and adult sentencing practices, and reduce the ‘punishment gap’\textsuperscript{44}. There are some juveniles who are extremely dangerous to others and who do not appear to be amenable to rehabilitation. Most of the states have established mechanisms for transferring or waiving jurisdiction to adult courts in such cases\textsuperscript{45}. India needs to include something on the lines of waiver in the Act in order to take care of juveniles committing serious offences and also in cases where the juvenile is a teenager and well aware to understand the implications of his act. An assessment of a minor's level of competency should constitute the first legal decision so decide the manner in which the minor should be treated. To promote a more coherent juvenile justice policy, and to permit alternatives to the current system to be implemented, a different rhetoric should be developed, based on the competency and responsibility of individual juveniles\textsuperscript{46}.

\textbf{3.4.6 Facilities being provided to the juvenile delinquents:}

In the face of unproven efficacy and inadequate resources, the possibility of rehabilitation program constitutes an insufficient justification to confine young offenders ‘for their own good’ while providing them with fewer procedural safeguards than those afforded adults charged, convicted and confined for crimes. So long the myth prevails that juvenile court intervention constitutes only benign coercion and that in any case children should not expect more, youths

\textsuperscript{44} Supra n.6, p.599
\textsuperscript{46} Steven Friedland, The Rhetoric of Juvenile Rights, 6 Stan. L. & Pol'y Rev. 137
will continue to receive the ‘worst of both the worlds’. The increased suicide rates among the delinquents and the mass break out of the delinquents from the Madivala observation home (Bangalore) are very discouraging. Most of the observation homes in our country have bad living conditions, poor diet, weak security lacking in entertainment and education. Such incidents show very clearly that there are many deficiencies in the institutions and this problem needs to be tackled.

3.4.7 *Closed nature of Juvenile homes and Observation Centers:*

The institutions designated as observation homes, children’s homes and special homes share one feature in common – they are all closed institutions, which completely deprive the child of his or her liberty. Should prisonization occur during institutionalization, there exists a distinct possibility that a child will be ‘lost’ and grow up to become an adult criminal. Indeed the consequences are readily apparent, as research has shown that recidivism rates are very high among juvenile participants in aftercare (parole) programs. The closed, informal and confidential nature of delinquency proceedings reduces the visibility and accountability of the justice process and precludes external checks on coercive interventions. It is a fact that people become institutionalized when confined to a facility and exposed to certain conditions over a long period of time, meaning that their behaviour and social interactions adapt to the prevalent norms of inmate subcultures. Physical harm is certainly a risk in these environments, as are psychological problems, which can arise from

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47 Supra n.6, p.602.
48 Whose crime is it anyway?, Times of India, Bangalore, 23 October 2007
49 Aastha Suman, “Critique of the Juvenile Justice Act, 2000”
50 Supra n.6, p.249
51 Supra n.6, p.602.
extended confinement in dangerous or dangerously restrictive environment.\textsuperscript{52}

\textbf{3.4.8 Conditions in the juvenile homes and observation centers:}

a) Facilities provided: Research in the US indicates that there are systemic problems of inadequate security, crowded residential space and improper health care. Institutional crowding is, in fact conducive to violence because of the administration’s inability to closely monitor youths and because subcultural pressures are intensified\textsuperscript{53}. In the United States, relying on the parens patriae principle for support, ‘child savers’ argued that indulgent, improper parents should lose all legal rights over their children and the children be brought under state’s protection\textsuperscript{54}. The knowledge of the court about the internal operations and ‘benevolent effect’ of reformatories was derived from the information received from the manager of these institutions but various investigations internal affairs brought out some brutal facts\textsuperscript{55}.

It had been suggested in the Parliamentary debates that the homes should be small and should provide adequate space, medical facilities, vocational training, education and a home like atmosphere. They should be unlike prisons or brothels and should be made attractive to children. There was a need for laying down standards as homes functioning below standards were more harmful. An advisory committee ought to be constituted to report on the condition in these homes\textsuperscript{56}. In the Pilla Jail, Vijaywada’a Observation Home, in June 2004 — 130 children ranging from 3 to 18 years of age were kept in

\textsuperscript{52} Supra n.6, p.249.
\textsuperscript{53} Supra n.6, p.248.
\textsuperscript{54} Supra n.11, p.49
\textsuperscript{55} Supra n.11, p.50.
\textsuperscript{56} Supra n.11, p.108.
three rooms whose combined size does not exceed 700 sq. feet (about
the size of a normal one-bedroom apartment).

b) **Treatment of the juveniles:** The life of children who have
the misfortune of ending up there is frequently more horrifying than
the family environment they escaped and often more wretched than the
life on the streets from which the government supposedly rescued
them. The children in the Vijaywada Observation Home were made to
sit in a single room for the entire day so that the guards can easily
control them. There is absolutely no recreation for them except for a
few hours of television. Hygiene is a major problem. The food supplies
are not enough and most of the times the children stay hungry because
they cannot risk asking for more food on account of the beatings they
receive. Medical facilities provided are not enough for the children.
Systematic physical abuse also takes place in the Vijaywada home.
Children are frequently beaten up, made to massage the guards, forced
to eat their excreta as a form of punishment and also subjected to
sexual abuse. Beatings — most often designed to coerce the children
into performing sexual acts — are the norm.

### 3.4.9 Improvement of the Juvenile and Observation Homes:

For the welfare of the juvenile offenders, it is imperative that the
government draft rules for the administration and upkeep of the
juvenile and observation homes. Rather than leaving such important
areas to the States, it is necessary that the government lay down
specific guidelines for such places. Rather than leaving such duties as
the constitution of inspection committees and the laying down of

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57 Federico Ferrara and Valentina Ferrara, “The Children’s Prison: Street Children and India’s
Juvenile Justice System”, www.careshareindia.org/OHome/OHEnglish.pdf,
58 Ibid.
59 Ibid.
minimum standards for the juvenile and observation homes to the discretion of the States, these rules should be made and strictly followed by the Union Government itself. Also, violations of such laws should be heavily punished in order to prevent more law breaking in this aspect. Also there should be provisions for the surprise inspections for such places, the minimum requirements for such places.

3.5 PROCEDURAL ISSUES

More than the substantive issues, it is the procedural issues that have played spoilsport for the Act. Lack of properly trained officials and allocation of proper funds have been responsible for the widespread violations of the Act.

3.5.1 Lack of proper allocation of funds:

A major drawback in the implementation procedure is a constant lack of resources both financially and in terms of personnel. The JJA has required a substantial amount of funds and so it was not always possible to find members with the desired background in child welfare, resulting in posts remaining vacant. This delays an already delay-prone system. Lack of proper funds also hampers the training process which should be made mandatory for all people associated with the implementation of the Act. The Government needs to lay down proper guidelines regarding the allocation and distribution of funds for the welfare of the juveniles.

4.2 Lack of guidelines regarding the minimum requirements of officials to be associated with the system The officers meant to be associated with the implementation of the act remain apathetic and

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60 Supra n.27.
insensitive to the conditions of juveniles. Special training modules need to be developed for magistrates and social workers appointed or to be appointed as members of the board or the committee. All members of such boards and committees must be given special training in the philosophy of juvenile justice and policy and scheme of the Act. It is imperative that children are moulded in such a manner that they grew up as responsible adults and it is not possible within the traditional framework of law. Judicial officers are not used to being overshadowed by social workers while dealing with persons committing offences, nor are the social workers familiar with the idea that their opinion counts as much as that of the magistrate’s. In addition, the magistrates usually do not have occasion to acquire special knowledge of child psychology and welfare, which is an essential qualification under the Act, before being appointed to the Board. Social workers need to know the laws applicable to children lest the magistrates subdue them. The members of the committee, too, need to know the scheme and provisions of the Act under which they operate. Complete knowledge regarding the various laws applicable to the juveniles is required. Special training of police officers in each police station is essential for the special juvenile/child welfare officers and special juvenile police units in each district to discharge their duties effectively. Rather than avoiding harm, police interactions with juveniles tend to involve abusive interrogation techniques, sometimes bordering on torture. Furthermore, it is observed that the members tend to be not well informed in child psychology and dynamics of juvenile

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61 Supra n.21.
62 http://www.indopia.in/India-usa-uk-news/latest-news/1165/National/1/20/1,
63 Ibid
64 Supra n.11, pp.165-166
behaviour which results in apathy towards following an urgent path to finding a solution for a child presented before the Child Welfare Committee. Moreover the magistrates so provided are mostly unpaid for their work which only creates inefficiency. Also, though the chairperson of the Child Welfare Committee is given the powers of a magistrate, lack of awareness among the police officials and other administrative staff leads to a delay in the implementation of their decisions\textsuperscript{65}. Some of the guards, in the Vijaywada Observation home, who are for the most part solely trained as corrections officers, regularly beat the boys with belts, bent telephone wires, and the long bamboo sticks that can be found everywhere on the premises\textsuperscript{66}. Rules need to be made to prevent such incidents. Lack of supervision, and limited staff, combined with a lack of training, strain relations between Home staff and children at the Observation homes and this worsens the situation\textsuperscript{67}. It needs to be ensured that all people to be associated with the implementation of the Act are adequately trained to deal with the juveniles and in cases of any violations or incidents of cruelty, strict punishment needs to be given.

3.6 JURISPRUDENTIAL ANALYSIS

Two distinct reasons compel a re-examination of juvenile justice jurisprudence:

1. there do exist systems where either juvenile justice has not fully evolved, or a common understanding of the concept is lacking

2. even in advanced countries serious doubts and rethinking is under

\textsuperscript{65} Supra n.27
\textsuperscript{67} Supra n.11, p.50.
way in the field that is manifest in the process of “Re-criminalizing Delinquency” and measures like juvenile justice jurisdiction, waiver provisions and statutes.

The Convention on the Rights of the Child provides an elaborate catalogue of children's rights that can be grouped into four main categories:

- Right to Survival
- Right to Protection
- Right Participation and
- Right to Development

The rights impose obligations not only on the state, but also on parents and the community, which means a change in approach: from kindness and charity to children to moral and legal obligations to them. However this system has come in for criticism because like the needs of the children, their rights are also a creation of the adult institutions, in which children have no say even though they have a positive contribution in the construction of their own lives and in the lives of others. Prof. Freeman has opined that there is a greater need to take into account the part played by children themselves in the construction of their own social lives, the lives of others and societies in which they live.

Applying John Rawls’ theory of justice, which is about equality of opportunity and the difference principle, it would be perfectly in

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69 Ibid.
70 The difference principle provides a criterion for ordering socio-economic practices accordingly to benefits they bring to the least advantaged, like children.
order not to grant to children same liberty rights as adults, but they ought to be accorded protection rights and rights based on needs. Therefore, all children should be provided with resource and opportunities that will allow them to develop their freedom since not being able to participate effectively in taking choices that governs ones life would be a capability deprivation since both material and political control over one’s environment is a central human capability.

Essentially, there are three components to the juvenile justice system:

(1) identify the patterns of thinking that have led the child to perform acts of crime and violence in the past and that pose a risk of such behaviors in the future;

(2) learn specific skills for intervening in and controlling these patterns of thinking; and

(3) summarize these patterns and interventions in the form of a plan for controlling their high-risk thinking in the community.

3.6.1 Therapeutic Jurisprudence:

Therapeutic jurisprudence is the study of the role of the law as a therapeutic agent and the law can be seen to function as a kind of therapist or therapeutic agent producing therapeutic and antitherapeutic consequences. It can be defined as “the use of social science to study the extent to which a legal rule or practice promotes the psychological

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71 Supra n. 46.
73 Amy D. Ronner, Songs Of Validation, Voice, And Voluntary Participation: Therapeutic Jurisprudence, Miranda And Juveniles, 71 U. Cin. L. Rev. 89.
or physical well-being of the people it affects\textsuperscript{75}. The field of psychology and law has the potential to fill a fundamental gap in modern jurisprudence that is necessary to complete the realist vision of a legal system that is committed to doing good\textsuperscript{76}. In the juvenile system it would require:

(a) enabling juvenile respondents to make good use of legal representation and

(b) ensuring that they believe that their point of view is being taken seriously because people value procedures in which they are treated with respect and given a say in matters pertaining to them. This results in greater compliance with the decision. Individuals feel that the legal system has treated them with fairness, respect, and dignity and it has a therapeutic effect\textsuperscript{77}.

Some states reacted to the perceived increase in juvenile violence by enacting non-individualized juvenile waiver mechanism such as:

1. legislative waiver: State legislatures determines when juvenile waiver is appropriate, generally establishing criteria based on offense categories and age. There does not appear to be a deterrent effect of legislative waiver on rates of juvenile crimes\textsuperscript{78}.

2. prosecutorial waiver: extraneous factors such as sympathy for victim, public outcry etc. might be given a lot of importance in this case.

\textsuperscript{75} Gene Griffin, Michael J. Jenuwine, Using Therapeutic Jurisprudence To Bridge The Juvenile Justice And Mental Health Systems, 71 U. Cin. L. Rev. 65.

\textsuperscript{76} Gary B. Melton, The Law Is a Good Thing (Psychology Is, Too): Human Rights in Psychological Jurisprudence, available at \url{http://www.jstor.org/stable/1394270}

\textsuperscript{77} Supra n.51.

\textsuperscript{78} Supra n. 52.
Non-judicial waivers may be antitherapeutic since the basic tenets justifying the passage of the waiver statute are empirically questionable and disregard any assessment of the individual juvenile. In Kent v. United States, the Supreme Court enumerated eight factors that judges should evaluate when determining whether a juvenile is amenable to treatment in the juvenile justice system. These are:

(1) the nature, circumstances, and seriousness of the alleged offense;
(2) the child's court and delinquency record;
(3) the child's age and maturity;
(4) the child's family, school and social history;
(5) the success or lack of success of any past treatment efforts of the child;
(6) the nature of services available through the juvenile justice system;
(7) the adequate protection of the public; and
(8) the likelihood of rehabilitation of the child.

However, currently importance is being given to impose a rebuttable presumption upon all juveniles to prove they are amenable to treatment and rehabilitation because such a presumptive judicial waiver encourages juvenile participation throughout the entire transfer process.

3.6.2 Approaches to be Utilized: Two main approaches regarding the juvenile justice:

1. Diversionary approach: to avoid criminal courts. This has been

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79 Supra n.52
81 Supra n.52.

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considered to be the most important approach.

2. Interventionist approach: emphasized the positive good that new programs administered by child welfare experts could achieve. A child centered court was an opportunity to design positive programs that would simultaneously protect the community and cure the child. Such an approach needs to be designed using the abovementioned theory about therapeutic jurisprudence.

It is submitted that rather than taking one of the abovementioned approaches for the structuring of the juvenile justice system, it is necessary to combine both to ensure that the child is kept away from the criminal court system and at the same time is brought into the mainstream society by way of the programs as part of the interventionist approach. The procedural and the substantive issues highlighted above need to be taken care of to ensure that it has therapeutic effects on the delinquents. Providing the juveniles with proper facilities, adequate care and protection and improvement in the procedures being followed will ensure that the children get the best possible chance to improve their position in life. Concept of judicial waiver need to be brought into the system so that the child gets the chance to directly interact with the judge and gets a chance to present his side of the story. This participation will have a therapeutic effect as mentioned above and would lead to increased effectiveness of the system, tailor made to suit the needs of the particular children.

3.7 CONCLUSION

The story of the Juvenile Justice Act is one of broken promises and dashed hopes.\textsuperscript{83} Passing of the proposed bills without the necessary resources is merely eyewash as implementation is the crux of the

\textsuperscript{83} Supra n.27
The general quality of juvenile justice remains coarse and arbitrary with little regard for fairness and justness to the juvenile concerned. Though the concept of juvenile justice comprises two important ideas, viz., fairness or justness to children and alternative standards of administering justice, there is preoccupation with the second idea due to the utilitarian grounds of serving the public. As of September 2007, the Government of India is drafting two bills that will hopefully offer solutions to the present problems. The Ministry of Women and Child Development is creating Model Rules as an addendum to the Juvenile Justice Act, with the intention that all states will adopt and comply with them. These rules will hopefully take care of all the inadequacies of the Act, and will provide for set guidelines regarding the implementation of the Act. The Ministry is also overhauling the Department of Women and Child’s organizational structure and policy, creating an Integrated Child Protection Scheme ("ICPS"). 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. The Integrated Child Protection Scheme will hopefully address implementation concerns, through an entirely new bureaucratic structure and increased expenditures for child protection.

Three different justifications have been advanced for a separate juvenile system:

1. compared to adults, children are more treatable;

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84 Supra n.11, p.104.
85 Supra n. 46
86 Supra n.46.
87 Supra n.11, p.51.
(2) compared to adults, children are less culpable; and
(3) compared to adults, children are less deterrable.

All these criteria need to be utilized to ensure that the objective of the separate juvenile justice system is fulfilled. It has been discovered that deterrence-based interventions do not have the requisite effects on children and it is therefore better to go in for reformative justice. In order to have effective functioning of the juvenile justice system, there must be close coordination between police, magistracy and social services. The involvement of NGO’s in the juvenile justice system is a boon as they seem to be more aware of ground realities and problems facing the children\textsuperscript{89}. Mental health and juvenile justice systems must work together to address the psychological components of rehabilitating delinquent youth. Therapeutic jurisprudence, which lies in the use of community based programs for the mentally ill juvenile offenders, needs to be applied in the juvenile justice system\textsuperscript{90}. Fairness and justness to children does not only demand that their liability ought to be diminished, but also ordains that they must be subject to protective and restorative measures as are most conducive to their reintegration into the society\textsuperscript{91}. It needs to be ensured that the child does not end up getting the worst of both the worlds; he gets neither the protections accorded to adults nor the solicitous care nor regenerative treatment postulated for children\textsuperscript{92}.

The Juvenile Justice (Care and Protection of Children) Amendment Bill, 2010 was introduced in the Lok Sabha on November

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\textsuperscript{89} Supra n.27.
\textsuperscript{90} Supra n. 53.
\textsuperscript{91} Supra n. 46.
\textsuperscript{92} Mr. Justice Fortas in Kent v. United States, (383 U.S. 541).
16, 2010 by the Minister of State Shrimati Krishna Tirath for the Ministry of Women and Child Development. The Bill seeks to amend the Juvenile Justice (Care and Protection of Children) Act, 2000\textsuperscript{93}.

- The Bill was referred to the Standing Committee on Human Resource Development on December 1, 2010. The Committee submitted its report on February 25, 2011.

- The Bill omits a provision from the Act which provided for the separate treatment of juveniles or children suffering from leprosy, sexually transmitted disease, Hepatitis B, Tuberculosis, or children with unsound minds.

- The Bill also replaces a provision which gave competent authorities in special homes or children’s homes the power to move children suffering from leprosy, unsound mind, or drug addiction to special facilities for such children.

- Under the Bill, the competent authority can move children who are mentally ill or addicted to alcohol or drugs, only if such condition leads to a behavioural change in the children. He can then order their removal to a psychiatric hospital or psychiatric nursing home.

- In case the child has been removed to a psychiatric facility, the competent authority can remove the child to an Integrated Rehabilitation Centre on the basis of the discharge certificate issued by the psychiatric facility.

As per Juvenile Justice (Care and Protection of Children) Bill 2014, the Bill treats 16-18 year olds committing heinous offences as adults. The proposed changes in the law has come against the backdrop

\textsuperscript{93} Juvenile justice Bill passed in RS, Indian Express, Aug 20, 2011
Rajya Sabha passes Juvenile Justice Bill, Hindu, Aug 19, 2011

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of the outrage over the lighter punishment of three year in a reform home given to a minor convicted in December 16, 2012 (Delhi gang rape Case)