CHAPTER FOUR
STATUTORY FRAMEWORK FOR JUVENILE JUSTICE
(WITH REFERENCE TO EAST PUNJAB CHILDREN ACT, 1949
AND JUVENILE JUSTICE, 1986)

I. Introduction

Crime is a shadow of civilization. Its shape, size, sophistication and propensity is deeply rooted in the interaction of social and economic considerations prevalent in the society at any given point of time. So is true to societal responses in their endeavour to control the crime situation. Approaches and instrumentalities to keep crime within tolerable limits must respond to the march of civilization towards more sophistication and humanistic heights. Since social perfection is still a very far away desired end, so the crime control strategies too can never be designed to last for ever and for every society. Thus, the evaluation and necessary changes in legislative framework, judicial outlook and other crime control instrumentalities become imperative. Keeping in view the social progress, scientific knowledge of crime and crime-control mechanism and needs of the society, if necessary changes in the criminal justice delivery-system are not introduced it will create an un-bridgeable gap between effective and positive kind of criminal justice system and current needs of the society. In totality it will result in the failure of working of the system as such.

In the post-independence era, specially after the coming into force of the Constitution, a lukewarm interest has been shown in the qualitative improvement and rationalization of the criminal justice system which continued to be a purely colonical legacy. It has now been established in absolute terms that the primary function of criminal justice and its related agencies is to reform the criminal and reintegrate him again as a useful member of the society. In the light of ever increasing preponderance of this jurisprudential conception
in the ambit of criminal justice major changes have been brought about in almost all the nations in their legislative, administrative and judicial structure and outlook. This has been done in order to tailor their criminal justice systems in consonance with the spirit and philosophy of this accepted criminological realities. In view of the special situational and other factors it becomes more imperative to vigorously experiment this philosophy in the cases involving juveniles who are comparatively more responsive to reformation and improvement and less blameworthy for their objectionable conduct.

It is this spirit of thought that ultimately led to the movement of establishing an altogether new criminal justice system to deal with socially maladjusted juveniles which has now come to be known as "Juvenile Justice System". Though the pace has been quite slow yet it is better to be late than never.


After independence, Punjab was the first State to pass legislation exclusively dealing with juvenile delinquents. East Punjab Children Act, 1949\(^2\) was the first in point of time though it took 18 years for the state to enforce this Act, as it came into force on 27th of September, 1969. This reflects the lack of political will towards the implementation of rehabilitative philosophy - the central core of juvenile justice system. Now that East Punjab Children Act 1949 has been replaced by Juvenile Justice Act, 1986 which came into force in Punjab from 2nd of Oct., 1987, it will not be proper to confine the discussion to any one of the two enactments. Since the whole of the infrastructure

1. See, Chapter Three.
(whatever little was there) created under the East Punjab Children Act, 1949 largely continues to be same, so it will be fruitful to have a bare look at the legal framework of East Punjab Children Act, 1949, the immediate predecessor of Juvenile Justice Act, 1986.

(i) Guiding Principle

In cases involving the custody or guardianship of children, the courts have always regarded the welfare of the child as the first and paramount consideration. The Select Committee of the Legislative Assembly\(^3\) stressed that this principle of guardianship lay at the root of all juvenile court procedure, and the principle has been given statutory recognition in the form of East Punjab Children Act, 1949. The rules framed under the Act contain visible contours of welfare philosophy.

In all such cases the proceedings shall be conducted in as simple a manner as possible and no unnecessary formality shall be observed. Care shall be taken that the child accused of an offence understands the nature of the proceedings.\(^4\)

Throughout the proceedings the court shall constantly have regard to the effect that the proceedings may have on the mind of the child and shall take all possible precautions to protect the child from mental shock or intimidation.\(^5\)

For the purpose of passing any order under the Act, the Court shall have regard to the following factors (a) the character and age of the child; (b) the circumstances in which the child is living; (c) the reports made by the Probation Officer or Police Officer; (d) information given by any other person present in court who may be in a position to give information in respect of (a)(b) above;

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(e) such other matters as may, in the opinion of the court, require to be taken into consideration in the interest of the child."^6

Although these are just few specific instances, the idea of welfare, protection and rehabilitation is knitted in the whole framework of the Act. It may be bail, it may be procedure, sentence or treatment.

(ii) Constitution of the Juvenile Court

The Act provides for the establishment of juvenile courts to deal with cases of children. Under the Act the State Government, in consultation with the High Court, may provide for the establishment in any area of one or more separate courts presided preferably by woman judicial magistrate for the conduct of proceedings under the Act at which the attendance of a child is required and may confer powers on such courts. 7 However, at the take-off stage a time gap arrangement was provided under the Act by conferring the powers under the Act upon the following categories of Courts: 8

(a) High Court;
(b) Court of Session;
(c) Chief Judicial Magistrate;
(d) Any Juvenile Court constituted under Section 60;
(e) Any Judicial Magistrate of the 1st Class;
(f) Any Court notified in this behalf by the State Government in consultation with the High Court.

On the contrary the jurisdiction to deal with the cases of children is conferred only upon the Chief Judicial Magistrate under the Criminal Procedure

6. Id., Rule 4(3).
7. Id. Rule 9(1)(a) to (e).
8. Id. Sec.6.
Code, 1973. Apparently Section 27 of the Criminal Procedure Code seems to be in conflict with Section 6 which too deals with the jurisdiction of the different courts under the Act. But this controversy has now been resolved by the Juvenile Justice Act, 1986 by providing exclusive jurisdiction to juvenile courts in all cases involving juveniles. Even earlier to Juvenile Justice Act, 1986 the Supreme Court in the cases of Rohtas v. State of Haryana and Raghbir v. State of Haryana had held that there is no conflict between Section 27 Cr.P.C. and the Children Act. Children Act being a special enactment has overriding effect upon Section 27 Cr.P.C.

However, no special arrangements were made for selecting the special magistrate to sit in the juvenile courts; the juvenile court sittings were treated as just another court to be fitted into the existing rota arrangements which practically continues even now though rules for the establishment of specific juvenile courts were framed as early as 1960 known as Punjab Children (Juvenile Court) Rules, 1960. Though rules did not provide for any specific or special qualification or training for the juvenile court judge but it, of course, made a provision for the appointment of a woman magistrate to head the Juvenile Court. Incidently that never happened as no juvenile magistrate has ever been appointed inspite of the fact that two juvenile courts were notified in Punjab, one at Patiala and other at Hoshiarpur (Districts) under the East Punjab Children Act, 1949. But these courts were never established in fact.

(iii) The Court Room

The importance of the physical separation of juveniles from adult offenders is recognized under the Act in most clear terms. A juvenile court

cannot be held in an adult court room unless there is a an interval between the sittings of the juvenile court and adult court.\textsuperscript{14} This is important rule, but its practice reveals a situation which is far from satisfactory. This rule is observed more in violation than observation in actual practice.

The child shall not, while in court, be kept under the close guard of a police officer, but shall be directed to sit or stand by himself or in the company of a relative or friend or probation officer, in some convenient place as near as may be to the presiding officer of the court.\textsuperscript{15} However, this rule can be over-looked if it is necessary to do so in order to prevent the child from doing injury to himself, or to any other person, or from disturbing or interrupting the proceedings of the court.

(iv) Privacy

In keeping with the philosophy of the juvenile justice proceedings in a juvenile court, the Act provides for privacy as far as possible in the conduct of cases involving juveniles. No person can be present at any sitting of a juvenile court or the court where a child is brought under the provisions of the Act.\textsuperscript{16} However, certain persons directly connected with the conduct of the case like members and officers of the court, parties to the case, their counsel, witnesses, bonafide representatives of newspapers and news agencies, are permitted to be there in the court room.\textsuperscript{17} Publication of any report of any proceedings in juvenile court which reveal the name, address or school, or include any particulars calculated to lead to the identification of any child or young person concerned in those proceedings, either as being the person

\begin{itemize}
  \item [14.] Supra note 7.
  \item [15.] Supra note 13, Rule 6.
  \item [16.] Supra note 7, Sec.61.
  \item [17.] Ibid.
\end{itemize}
against or in respect of whom the proceedings are taken or as being a witness therein is prohibited under the Act.\footnote{18} Any violation of this direction has been made punishable under the Act.\footnote{19} The Act requires that even a report of the Probation Officer or any other information relating to child's character, family circumstances etc., shall be treated as confidential.\footnote{20}

(v) Procedure

(a) \textit{As per Criminal Procedure Code.} The Act provides that the procedure to be followed in the trial of cases and the conduct of proceedings under the Act shall be in accordance with the provisions of the Code of Criminal Procedure, 1898 (Now Criminal Procedure Code, 1973). Except in cases where the child is jointly tried with another person who is not a child,\footnote{22} the court dealing with cases of juveniles shall follow the procedure prescribed by the Code of Criminal Procedure, 1898 (Now Cr.P.C. 1973) for the trial of summon cases and recording evidence therein.\footnote{23} Thus no separate or special procedure has been prescribed by the Children Act. However, one philosophical rider that has been suggested is that all the proceedings must be devoid of any kind of formalism and strict technicalities of legal terminology must be avoided as far as possible.\footnote{24} Special care shall be taken so that nothing in the conduct of proceeding should effect the mind of the child. Special precautions must be taken to protect the child from any mental shock or intimidation.\footnote{25} Thus the Act suggests an informal and family like atmosphere in dealing with the juvenile cases.

\begin{itemize}
\item \textsuperscript{18} Id. Sec.16(1); Sec.68(1).
\item \textsuperscript{19} Id.Sec.37; Sec.62(2); 68(2).
\item \textsuperscript{20} Supra note 13, Rule 9(1).
\item \textsuperscript{21} Id. Rule 10.
\item \textsuperscript{22} Joint trial of a Juvenile with a person not a juvenile has now been prohibited under the Juvenile Justice Act, 1986, Sec.24.
\item \textsuperscript{23} Supra note 13, Rule 13.
\item \textsuperscript{24} Id.,Rule 4(2).
\item \textsuperscript{25} Id.,Rule 4(3).
\end{itemize}
(b) Personal Attendance of the Child: Personal attendance of the child can also be dispensed by the court and he can be permitted to represent his case by a pleader. The Act requires the use of these powers in most liberal manner.

(c) Examination of the Child: In examining a child accused of an offence and recording his statement, the court shall not be bound by the provisions of section 364 of the Code of Criminal Procedure, 1898 (Section 281 of Cr.P.C. 1973). The Court shall be free to address the child in any manner that may seem suitable in order to put the child at ease and to elicit the true facts, not only in respect of the home surroundings but also influences to which the child has been subject. The record of the examination shall be in such form as the court may consider suitable having regard to the contents of the statement and circumstances in which it is made.

(d) Examination of the Witnesses: When witnesses are produced for examination, the court shall make free use of the powers conferred on it by Section 165 of the Indian Evidence Act, 1872, to so question them as to bring out any point that may go in favour of the child.

(e) Factors to be taken into Consideration in Passing Orders: For the purpose of passing any order which a court has to pass under the Act, the court shall have regard to the following factors:

(a) The character and age of the child:
(b) the circumstances in which the child is living;

26. Id., Rule 5.
27. Id., Rule 8.
29. Supra note 7, Sec. 36; supra note 13, Rule 9.
(c) the report made by the probation officer or police officer;
(d) information given by any other person present in court who may be in a position to give information in respect of (a) and (b) above;
(e) such other matter as may, in the opinion of the court, require to be taken into consideration in the interest of the child.

(f) Bail: Liberal provision for bail of juvenile delinquents concerned with the commission of any offence has been made in the Act. Where a person apparently under the age of sixteen years is arrested on a charge of a non-bailable offence and cannot be brought forthwith before a court, the officer-in-charge of the police station to which such person is brought may in any case and shall, unless the charge is one of culpable homicide or any other offence punishable with death or transportation, release him on bail if sufficient security is forthcoming unless for reasons to be recorded in writing the officer believed that such release would bring him into association with any reputed criminal. In cases where any girl apparently under the age of sixteen years is arrested the officer-in-charge of a police station who has made the arrest or before whom the girl is produced shall release her at once if any person who in his opinion is a sufficient surety enters into a bond for such sum of money as the officer considers sufficient to produce her before the court and to appear in her stead if required at the police station.

(g) Correctional Alternation with the Court: Where a child charged with any offence is tried by any court, and the court is satisfied of his guilt, the

30. Supra note 7, Sec.24.
31. Id. Sec.24, Proviso.
court shall take into consideration the manner in which, under the provisions of the Act, the case should be dealt with, namely whether -

(a) by discharging the offender after due admonition; or

(b) by committing the offender to the care of his parent, guardian, other adult relative, or other fit person on such parent, guardian, relative or person executing a bond to be responsible for his good behaviour; or

(c) by so discharging the offender and placing him under the supervision of a person named by the court; or

(d) by releasing a person on probation of good conduct; or

(e) by sending the offender to a certified school; or

(f) by ordering the offender to pay a fine; or

(g) by ordering the parent or guardian of the offender to pay a fine; or

(h) where the offender is a child of 14 years or upwards to whom the proviso to Section 27 applies, by sentencing him to imprisonment; or

(i) by dealing with the case in any other manner in which it may legally be dealt with.

In cases where the offence is punishable with fine the court in an appropriate case may impose the fine upon parents instead of the child offender.\(^{32}\)

The Act prohibits the imposition of death sentence or transportation or committal to prison of any person who was a child at the date of commission of the offence.\(^{33}\) No child can be sent to prison in default of payment of fine,

\(^{32}\) Id., Sec.33.

\(^{33}\) Id., Sec.27.
damages or costs. However, a child who is fourteen years of age or upward may be committed to prison where the court certifies that he is of so unruly or of depraved character that he is not fit person to be sent to a certified school and that none of the other methods is suitable. Similarly no proceedings under Chapter VIII of the Criminal Procedure Code could be taken against any child.

(h) Dual Jurisdiction of the Juvenile Court: Under the Act the court has been conferred with dual jurisdiction, both criminal and civil. As a general rule, all young persons are subject to the jurisdiction of juvenile court for any act for which an adult could have been tried in a criminal court. Quite apart from its criminal jurisdiction, the juvenile court has wide jurisdiction in matters which are in essence civil in nature. Many cases under this jurisdiction are concerned with the welfare and protection of the child.

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<tr>
<th>Juvenile Court Jurisdiction under the Act</th>
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<td>:</td>
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<tr>
<td>Civil</td>
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<td>Care Protection and Control Cases(Section 8)</td>
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Although detailed discussion on the juveniles concerned in cases of civil nature may not be possible it would be in the fitness of things to make brief comments on the provisions of the Act dealing with such cases. A juvenile court can take action if it is satisfied that a child or young person is in need of care, protection or control. The statutory definition of this category

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34. Ibid.  
35. Id. proviso to Sec.27.  
36. Id., Sec.28.  
37. Id., Sec.8.
is an unhappy piece of draftsmanship being too value and uncertain leaving much
to the individual discretion of the court's presiding officer or the person
who brings such a child before the court, (usually it is police) to be processed
against under Chapter II of the East Punjab Children Act, 1949. The provision
can be summarised as follows:

"Any police officer or such other person authorised in
this behalf in accordance with rules made by the State
Government, may bring before a court any person who in
his opinion is a child and who—

(a) has no home, place of abode, or visible means of
subsistence, or is being wilfully neglected by him
parents or guardian; or

(b) is found destitute and his parents or surviving
parent or other guardian or in the case of an illegitimate child his mother or other guardian, are or
is, as the case may be, undergoing transportation or
imprisonment; or

(c) is under the care of a parent or guardian who by reason
of criminal or drunken habits is unfit to have the care of
such person; or

(d) frequents the company of any reputed thief or prostitute;
or

(e) is lodging or residing in or frequenting a house used by
prostitute for the purposes of prostitution; or

(f) is made or allowed to beg or receive alms; or

(g) is being grossly overworked or ill-treated by his employer.

Quite apart from its complexity, this definition has some unsatisfactory features. The home situation may be intolerable as a result, for example, of sexual offences by a member of the household. In this situation, the court can only intervene if the parents can be shown to have failed to behave as good parents would in the circumstances, and this may be impossible.

In effect, the legislation is attempting the impossible. Provision of
this sort are designed, in part, to protect parental rights. Yet the whole of
this jurisdiction is based on the paramountcy of the child's welfare. In some cases, the interests of the child and those parents will conflict; it is impossible to satisfy the claims of both parties, and legislative attempts to do so are bound to fail.

(1) Probation Services: The Act provides for the appointment of Probation Officers for the purpose of dealing with the cases involving juvenile delinquents in a objective and individualized manner at the various stages through which his case is processed under the Act.\(^8\) Broad classification of the duties of Probation Officer were also enumerated under the Act. The following duties of the Probation Officer have been identified specifically:\(^9\)

(a) A Probation Officer shall, subject to the rules made under this Act and to the direction of the court—

I. visit or receive visits from the child or the youthful offender at such reasonable intervals as may be specified in the order passed by the court or, subject thereto, as the Probation Officer may think fit;

II. see that the relative of the child or the youthful offender, at the case may be, or other person to whose care such child or youthful offender is committed, observes the conditions of the bond;

III. report to the court as to the behaviour of the child or the youthful offender, as the case may be;

IV. advice, assist and befriend the child or the youthful offender, and when necessary, endeavour to find him suitable employment;

and

V. perform any other duty which may be prescribed.

\(^{38}\) Supra note 7, Sec.31. \(^{39}\) Ibid.
The Rules framed under the Act have further added and clarified the duties of the Probation Officer. A Probation Officer shall carry out all directions given to him by the court of the District Magistrate and perform inter alia the following duties. 40

I. To make initial enquiries regarding the home and school conditions and the conduct, character and health of the children under his supervision;

II. to attend regularly the court and submit report;

III. to keep diary, case files and registers;

IV. to visit regularly children placed under probation or supervision and also places of employment or school attended by such children, and to submit regular monthly reports;

V. to take children, wherever possible, from court or place of safety to certified school or fit person institutions;

VI. to bring before the court immediately children who have not been of good behaviour during the period of supervision;

VII. to run recreation clubs; and

VIII. to perform any other duty which may be specified by the court or any releasing authority in respect of children under the supervision.

A probation officer is prohibited to employ a child or youthful offender, placed under his supervision, for his own private purposes or take any private service from him. 41

40. Supra note 4, Rule 11(1).
41. Id., Rule 11(2).
(j) Institutional Care: Institutional care is one of the inevitable, though least desired, pillars of juvenile justice delivery system. The Act provides for the establishment and management of juvenile institutions. No difference has been made between delinquent and non-delinquent juveniles so far the reception and treatment of such juveniles who fall within the scope of the Act is concerned. As we will later on see this common treatment system has now been done away with under the Juvenile Justice Act, 1986. Two categories of institutions have been suggested under the Act i.e. Certified Schools and Auxiliary Homes. How far these institutions serve the purpose for which they exist shall be critically evaluated in a separate chapter.

There is a provision for boarding out of children in appropriate cases. The Manager of the certified school to which a child under the age of eight years is sent may, with the consent of the Chief Inspector, board the child out with any suitable person until the child reaches the age of ten years and thereafter for such longer period, with the consent of the Chief Inspector, as the manager considers to be advisable in the interest of the child subject to the exercise by the managers of such powers as to supervision, recall and otherwise as may be prescribed.

Similarly a child or youthful offender could be placed out on licence also. Where a child or youthful offender is detained in a certified school, the managers of the school, may, at anytime with the consent of the Chief Inspector, by licence, permit the child or youthful offender on the conditions prescribed in this behalf to live with any trustworthy and respectable person named in the licence willing to receive and take charge of him with a view to educate him or train him for some useful trade or calling.

42. Supra note 7, Part VII (Sec. 46 to 59).
43. Supra note 7, Sec. 39.
44. Id. Sec. 40.
(k) Some other important provisions of the Act:

(i) Chapter III (Sections 9 to 23) provide for some provisions which tend to protect the child from exploitation - emotional, moral, physical and sexual, cruelty and other forms of misuse of a child for economic advantages like begging. The Act provides punishment for allowing a child to beg, to drink intoxicating liquor, to smoke, to be in brothel by the person having actual charge or control of the child. Any child in danger of exploitation or cruelty etc., can be taken from the custody of the person in actual charge or control of such child and can be detained at any place of safety.  

(ii) When a child is found to have committed any offence, the fact that he has been so found shall not have any effect under Section 75 of The Indian Penal Code 46 or Section 565 of the Code of Criminal Procedure 1898 (Sec.356 of Cr.P.C.1973) 47 or operate as a disqualification for office or election under any law. 48

(iii) The Act provides for the committal of children suffering from leprosy, venereal or tubercular disease to a place prescribed in this behalf by the State Government for such periods as court may think necessary to meet the requirement of medical treatment of such child. 49

(iv) In case where a person is brought before the court who appears to be a child for the purpose other than of giving evidence the court shall make due enquiry as to his age and shall record a finding thereon, stating the age of the child as nearly as

45. Id. Sec.20.
46. Section 75 I.P.C. deals with enhanced punishment for certain offences in case of reconviction.
47. Section 565 corresponds to Section 356 of the Code of Criminal Procedure (conted.)
possible. \textsuperscript{50}

(v) Religious denomination of the child shall be taken care of while sending the child to any juvenile institution by the court. \textsuperscript{51}

(vi) The court which makes an order for the detention of a child or youthful offender in a certified school or for the committal of a child or youthful offender to the care of a relative or other fit person may make an order to the parent or other person liable to maintain the child or youthful offender to contribute to his maintenance, if able to do so. \textsuperscript{52}

III. Juvenile Justice Act, 1986

(1) Introduction

Juvenile Justice Act, 1986 came into force in the State of Punjab with effect from 2nd of Oct., 1987 replacing the already existing East Punjab Children Act, 1949. It is a comprehensive code providing for a multi-directional approach towards the various aspect of problems that juveniles face in our social set-up, whether with or without any fault of their own. Broadly speaking this Act provides its protective umbrella to juveniles in any of the following situations.

I. Delinquent Juveniles (Chapter III)

II. Neglected Juveniles (Chapter IV)

III. Victimized Juveniles (Chapter VI)

\textsuperscript{1973} It provides for the notification of addresses of previously convicted offenders.

48. Supra note 7.

49. Id. Sec. 65.

50. Id. Sec. 63.

51. Id. Sec. 64.

52. Id. Sec. 38.
One of the major achievements of the Juvenile Justice Act, 1986 is that it has provided a uniform and integrated 'juvenile justice system' for India as a whole. In the context of juvenile justice system as it was prevailing under different Children Acts in the States in India, this legislative initiative is quite modern and progressive piece of legislation. The Act has rightly undone the dual system of jurisdiction of the juvenile court upon delinquent and neglected juveniles as it was there under some of the State Children Acts. Not only that, the Act has also envisaged separate juvenile corrections for the treatment and rehabilitation of delinquents and neglected children. Thus, the Act reflects the impact of many progressive developments with regard to scientific and empirical explorations in the fields of criminology, penology, criminal law, sociology, psychology, psychiatry, social work; its methods, techniques and practices and social welfare administration. The Act envisages a comprehensive approach towards justice for children in situations of abuse, exploitation and social mal-adjustment.

(ii) Objectives of the Juvenile Justice Act

(a) to lay down a uniform legal framework for juvenile justice in the country so as to ensure that no child under any circumstance is lodged in jail or police lock-up. This is being ensured by establishing juvenile welfare Boards and Juvenile Court as primary processing agencies for neglected and delinquent juveniles;

(b) to provide for a specialised approach towards the prevention and treatment of juvenile delinquency in its full range in any situation of social mal-adjustment;

(c) to spell out the machinery and infrastructure required for the care, protection, treatment, development and rehabilitation of various categories of children coming within the perview of the

53 Bedi, M.S.D., "The Scope and Significance of the Juvenile Justice Act, 1986", (conted.)
juvenile justice system. This is proposed to be achieved by establishing observation homes, juvenile homes for neglected juveniles and special homes for delinquent juveniles;

(d) to establish norms and standards for the administration of juvenile justice in terms of investigation and prosecution, adjudication and disposition, and care, treatment and rehabilitation;

(e) to develop appropriate linkage and co-ordination between the formal system of juvenile justice and voluntary agencies engaged in the welfare of neglected or socially mal-adjusted children and to specifically define the areas of their responsibilities and roles;

(f) to constitute special offences in relation to juveniles and provide for punishment therefore; and,

(g) to bring the operation of the juvenile justice system in the country in conformity with United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

Thus at the normative level a sincere effort has been made to standardize and reinforce the juvenile justice system according to international standards. The Act aims at replacing the traditional mechanism for dealing with children in conflict with law as had been developed under the Children's Act in various States and Union Territories. The Act propounds a new concept of juvenile justice within the overall framework of social justice as enshrined in THE Constitution of India. It symbolises a response to the changing socio-cultural and economic conditions that affect juveniles, in terms of an equal
sharing of opportunities for their growth and fulfilment. Besides a thorough restructuring of the juvenile correctional system, the Act contemplates a vigorous use of the inherent potentials of the community for dealing with erring juveniles within the mainstream of social life. The scheme for the rehabilitation of the socially maladjusted juveniles is based on an individualized care, re-education and vocational training as essential means of their reintegration into the society. The new approach undoubtedly places an onerous responsibility on the State to mobilise all possible resources of the family, the community and social organizations in tackling the problem of juvenile social mal-adjustment in its full range.

(iii) Salient Features of The Act

The progressive features of the Juvenile Justice Act, 1986, as compared to the provisions of the existing Children Acts of most of the states (not all states) are quite significant. Before we go ahead with a brief discussion of the main features it is worth mentioning that the present Juvenile Justice Act, 1986 is more or less a reproduction of Children Act, 1960 as amended in 1978. Similar situation is there in relation to the Children Acts of some other States, like Andhra Pradesh Children Act, 1977, The Bombay Children Act, 1948, Haryana Children Act, 1974. In comparison to Children Act, 1960 which is applicable to all the Union Territories, though it had not been enforced in all the Union Territories like Chandigarh, Lakshadweep till replacement by the Juvenile Justice Act, 1986, only marginal changes can be noticed. The major new inclusions in the Act pertain to classification of delinquent juveniles in special homes;\(^54\) expeditious completion of any enquiry against the juvenile;\(^55\) provision for alternative punishments in cases of offences in respect of juveniles;\(^56\) establishment of

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\(^{54}\) Juvenile Justice Act, 1986, Sec. 10(5).

\(^{55}\) Id. Sec. 27(3).

\(^{56}\) Id. Sec. 45
the juveniles under the Act;\textsuperscript{57} provision for the Constitution of Advisory Board
at the State level;\textsuperscript{58} and non-official visitors for homes established under the
Act.\textsuperscript{59} Besides this the nomenclature under Children Act,1960 of words -"Child"
and "Children Homes" has also been changed to "Juvenile" and "Juvenile Homes"
respectively under the Juvenile Justice Act,1986.

The broad features of the legal framework of the Juvenile Justice Act,
1986 can be classified in the following order:

(a) The Act provides for a differential approach in the processing
of the neglected juveniles vis-a-vis the delinquent. While neg­
lected children would be produced before the Juvenile Welfare
Board,\textsuperscript{60} the delinquents are to be dealt with by the
Juvenile Court.\textsuperscript{61} No person will be appointed as a member of
the Board or a magistrate in the Juvenile Court unless he or
she has special knowledge of child psychology and child welfare.\textsuperscript{62}
The Juvenile Welfare Board and the Juvenile Court have been
empowered for the transferability of cases brought before them
on the basis of the necessary screening.\textsuperscript{63} Among the various
circumstances to be taken into consideration in making an order
under the Act, the state of physical and mental health of the
juvenile and his welfare interest have to be ascertained as an
additional requirement.\textsuperscript{64}

\textsuperscript{57} Id.,Sec.52.
\textsuperscript{58} Id.,Sec.53.
\textsuperscript{59} Id.,Sec.54.
\textsuperscript{60} Id., Sec.4 and Sec.13.
\textsuperscript{61} Id.,Sec.5.
\textsuperscript{62} Id.,Sec.6(3).
\textsuperscript{63} Id.,Sec.7.
\textsuperscript{64} Id.,Sec.33.
(b) The definition of "neglected juveniles" has been construed more precisely. This is to ensure that only those juveniles who are likely to be abused, exploited, and inducted into criminogenic life and are in need of legal support to be weaned away from such situations are processed through law. The earlier definitions of 'neglected child', 'destitute child', 'uncontrollable child', etc., under different Children Acts were so vague to render the poor to be deprived of his basic right to freedom. A juvenile will now be separated from his parent or guardian only if the latter is unfit or incapacitated to exercise proper control. At the same time, legal protection, has been extended to all juvenile being abused or exploited for immoral or illegal purposes or unconscionable gain. Of course, a juvenile who is found begging or who lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution or is found to associate with any prostitute or any other person who leads an immoral, drunken, or depraved life is duly covered within the scope of 'neglected child'.

(c) The procedure of handling neglected or delinquent juveniles at various stages of apprehension, processing and placement have been rationalised from the viewpoint of the protection of their basic rights as are not inconsistent with the requirements of the law. A neglected child may be brought before the competent authority not only by a police officer but also by any other person or organization authorised for the purpose. This provision should enable social workers and voluntary welfare organisa-

65. Id. Sec.2(1).
66. Id.,Sec.13(1).
tions to increasingly assume the responsibility of referral of neglected juveniles to appropriate care. Apart from prohibiting the confinement of juveniles in a police lock-up or jail, his contact with the police has been considerably reduced.  

During the pendency of the case before the competent authority, a provision has been made for the placement of the juvenile with any person or voluntary institution as considered fit. It is now specifically provided that an enquiry regarding a juvenile under this Act shall be held expeditiously and shall ordinarily be completed within a period of three months from the date of its commencement, unless, for special reasons to be recorded in writing, the competent authority otherwise directs.

The Act lays down a wide range of dispositional alternatives open to the competent authority, with preference to family/community based placement. The neglected juvenile will be sent to a juvenile home only if his care with a parent, guardian, or fit person or fit institution is not found conducive. For juvenile delinquent also, institutional care will be resorted to only as the last measure, in cases where restoration to parent, release on advice/admonition, placement on probation, care under fit person/fit institution or discharge or fine is not considered appropriate. In both the cases, the care of the juvenile with his own family or substitute, family or within the community is considered more congenial for normal growth and development of the juvenile. Even when the juvenile is sent to a juvenile home

67. Id. Sec.13(3).
68. Id. Sec.15(3).
69. Id. Sec.27(3).
70. Id. Sec.21.
71. Id. Sec.13(4).
or a special home, there is a definite provision for his conditional discharge or transfer or transfer to a fit person or a fit institution. This approach would provide for a considerable amount of flexibility in the treatment of the juvenile in keeping with his behavioural development and responsiveness to therapeutic devices.

(e) Observation homes are contemplated for the temporary reception of juveniles during the pendency of an enquiry, when their placement with parents, guardians, or places of safety has not been feasible. Any institution other than an observation home established or maintained by the government may be recognised as an observation home. Every observation home is required under the Act not only to provide for the juvenile facilities for accommodation, maintenance, medical examination and treatment but also for useful occupation. There is a mandatory provision regarding the framing of rules for the management of observation homes, including the nature and standards of services to be maintained therein.

(f) For neglected juveniles in need of institutional treatment, juvenile homes are required to be established or maintained by the government or voluntary institutions to be certified as such. Such juvenile homes will not only provide for the juvenile the facilities for accommodation, maintenance, education, vocational training and rehabilitation but would also

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72. Id.Sec.46.
73. Id.Sec.11(1).
74. Id.Sec.11(2).
75. Id.Sec.11(3).
76. Id.Sec.11(4).
77. Id.Sec.9(1),(2).
ensure the development of his character and abilities as well as necessary training for protecting himself against moral danger or exploitation.\textsuperscript{78} The nature and standards of services are to be spelt out in rules.\textsuperscript{79} The focus on education, vocational training and rehabilitation is an important feature of institutional living.

\textit{(g)} Similarly, for delinquent juveniles, special homes are required to be set up or voluntary institutions certified as such.\textsuperscript{80} Social homes have to offer suitable facilities for accommodation, maintenance, education, vocational training and rehabilitation as well as for the development of their character and ability and reformative training, so as to ensure an all rounded growth and development of their individual personality.\textsuperscript{81} An important provision of the Act relates to the classification and separation of delinquent juveniles on the basis of age and nature of offences committed by them.\textsuperscript{82}

\textit{(h)} The Act contains a comprehensive provision regarding the establishment or recognition of after-care organisations for taking care of juveniles discharged from juvenile homes or special homes or special homes and for the purpose of enabling them to lead an honest, industrious and useful life.\textsuperscript{83} Specific rules are to be formulated for the relevant scheme as also for the nature and standards of organisations.\textsuperscript{84} The mandate calls for a systematic approach towards bridging the gap between the institutional

\textsuperscript{78} Id. Sec.9(3).
\textsuperscript{79} Id. Sec.9(4).
\textsuperscript{80} Id. Sec.10(1).
\textsuperscript{81} Id. Sec.10(3).
\textsuperscript{82} Id. Sec.10(5).
\textsuperscript{83} Id. Sec.12(a) and (b).
\textsuperscript{84} Id. Sec.12.
(i) Offences in respect of juveniles have been redefined in keeping with the newly-emerging problems faced by them. For instance, employment of juveniles for begging is liable to be punished by imprisonment for a term which may extend to three years along with fine. Similar penal sanctions have been provided for giving intoxicating liquor or narcotic drugs as psychotropic substances to juveniles or for the exploitation of juvenile employees.

More significantly, a new provision has been made to the effect that where an act or omission constitutes an offence punishable under this Act and also under any other Central or State Act, then notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such Act as provides for punishment which is greater in degree.

(j) Consequent upon the enactment of the Narcotic Drugs and Psychotropic Substances Act, 1985 providing inter alia, for the establishment and notification of treatment centres for drug addicts, a provision has been made for the transfer of juveniles addicted to drugs to such treatment centres as in the case of juveniles of unsound mind and those suffering for leprosy.

(k) A new provision has been incorporated for the creation of a fund to be exclusively utilised for the welfare and rehabilitation of juveniles dealt with under this Act. Such a fund may be raised from

85. Id.Chapter VI.(Sec.41-45).
86. Id.Sec.42.
87. Id.Sec.43.
88. Id.Sec.44.
89. Id.Sec.45.
90. Id.Sec.48.
voluntary donations, contributions or subscriptions made by individuals or organizations. This surely opens a definite avenue of generating public support and participation in building up an effective system of juvenile justice.

(e) The Act requires the State Government to constitute advisory boards to advise on matters relating to the establishment and maintenance of homes, mobilisation of resources, provision of facilities for education, training and rehabilitation of neglected and delinquent juveniles and co-ordination among various official and non-official agencies concerned. At the institutional level, non-official visitors are required to be appointed for each home. These provisions seek to enlist an enlightened public opinion and to make an optimum use of various sectors of socio-economic welfare in the development of juvenile justice system.

An overview of the Act, specially in the context of facilities that have been desired under the Act and what has been actually created so far, gives an impression that the reformative and rehabilitation apparatus barely exists in fact. It appears as if legislation has been pushing ahead of reality. Legislation, of course, has a tendency to do so. If all the facilities which were prescribed by the Children Act, 1960 for the use of juvenile justice system had come into existence in sufficiency the old system would not perhaps have been found wanting. As it is we have a new system which besides having introducing uniformity at all India level, has certain positive merits which, with patience, understanding and hard work, can be made to work in time, and to its optimum level, as the facilities materialise. In fact, the system as envisaged by the Juvenile Justice Act, 1986 can serve as an ideal, a goal to be pursued with

91. Id. Sec.52.
92. Id. Sec.53.
93. Id. Sec.54.
relentless efforts in the years to come. Let us hope and wish that it does not take too long for the sake of our children in need of care, protection, reformation and rehabilitation.

Thus, the Juvenile Justice Act, 1986 represents a very ambitious blueprint of a system to be established under the Act. In keeping with the International norms for the administration of juvenile justice, the Act calls for a thorough reorganisation of the existing system. There is a clear stress upon the involvement of voluntary sector and community based treatment for a better operation of the whole system. New infrastructure and mobilization of human and material resources in a better and co-ordinated manner has to be planned in order to make the system under the Act work at its desired level. Though in the 7th Five Year Plan a provision for providing better treatment to socially maladjusted children has been made but it has not yet produced desired results due to lack of proper co-ordination between the various departments of the States and also Central and State Social Welfare departments. It is hoped that the past experience of two years will be a good pointer for better management and for optimum operation of the juvenile justice system as a whole. Punjab State is among the first few States to opt for the new system and the first necessary step towards the new goal has already been taken by enforcing the Juvenile Justice Act with effect from 2nd of Oct., 1987 along with the adoption of necessary Rules under the new Act. Much more has to be done. Still it is a welcome move towards a better future for our juveniles in distress. A beginning has to be there in order to reach at the end and that beginning has taken place.

IV. The Punjab Borstal Act, 1926

(1) Introductory:

Youthful offenders is a category of young offenders who do not fall
within the scope of Juvenile Justice Act, 1986 nor were they covered under the jurisdictional scope of various Children Acts which were in force in different States immediately before the coming into force of Juvenile Justice Act, 1986. Since, in the proposed study it is planned to cover "youthful offender" (above 16 below 21) and their possible inclusion within the scope of juvenile justice system, so it becomes imperative to evaluate the legal frame work pertaining to youthful offenders. Out of the age group below 21 years most of the crimes committed by persons in the age groups of 16 to 18 years and 18 to 21 years. Under the Indian Penal Code and under Local and Special Laws, these two groups taken together represent 90 per cent and 78 per cent respectively of the total crime committed by persons below the age of 21 years. This shows that this age group (16 to 18 and 18 to 21 years) must be given due consideration by the laws designed to reform, rehabilitate and reintegrate persons on the wrong side of the law in the society and also to save them from the inevitable stigma of normal criminal justice process.

The Punjab Borstal Act, 1926 was passed by the Punjab Legislative Council in 1926 and received the assent of Governor of Punjab on the 22nd July, 1926, and that of the Governor General on 16th August, 1926. It was first published in the Punjab Government Gazette Extraordinary, dated 27th August, 1926. The Act was aimed at the segregation of adolescent prisoners from those of more mature age, and their subsequent training in separate institution. The Act seeks to change the inmate's attitude and outlook on life in order to make them fit for normal social life. Inmates are required to be imparted training in different trades, such as welding, moulding, carpentry, painting,

95. Punjab Act 11 of 1926.
auto-mechanics, electrical repairs etc., depending upon their aptitude. These programmes are primarily aimed at keeping the inmates engaged during leisure time and to ultimately make them to be productive members of the society.

(ii) Jurisdictional Scope

The act is applicable to any male person who is less than twenty one years of age at the time of his conviction. The Act covers all kinds of offences under Indian Penal Code and under some Local Laws excluding some of them specifically like Public Gambling Act, 1867, Opium Act, 1878, Punjab Excise Act, 1914. However, any any offence which is punishable with death and also any offence punishable under Chapter V-A or Chapter VI of the Indian Penal Code do not fall within the scope of applicability of this Act.

(iii) Post-Trial Process

The Borstal system of treatment and rehabilitation is a post-trial process. It comes into operation when the person is ultimately found guilty by the criminal court and sentence is to be awarded to the accused. It empowers all Session Judges, Additional Session Judges, Magistrates of the Ist Class and any other Magistrate specially empowered under Sec. 30 of Criminal Procedure Code, 1887 (Sec. 32 of the Code of Criminal Procedure, 1973) to pass orders detaining youthful prisoner in Borstal Institutions for a term of not less than two years instead of sentencing them to the ordinary way to imprisonment. It further empowers District Magistrates, subject to appeal to a Session Judge and all appellate Courts to substitute for an order of detention in a Borstal Institute on sentence of imprisonment for a like or less term. It also gives power to a District Magistrate on the application of the Superintendent of a Jail, to order the removal of a youth, sentenced to life punishment or rigorous imprisonment.

96. Punjab Borstal Act, 1926, Sec. 2(4)
97. Id., Sec. 5
98. Id., Sec. 6.
ment, whether before or after the passing of this Act, to a Borstal Institution, there to serve the whole or any part of the unexpired residue of his sentence. The State Government is also empowered to transfer to jail any inmate who are reported by the Visiting Committee to be incorrigible or to be exercising a bad influence on the other inmates of the institute or is convicted under Section 19 of this Act or is reported by the Superintendent to have committed a major Borstal Institution Offence as defined under the rules.

(iv) Management

The Act further provides for the regulation and management of the Borstal Institutions. The rules framed under the Act provide for grading, classification, treatment, education and training of inmates. Detailed provisions have been made in respect of separate sleeping, accommodation, water supply and sanitation of the Borstal Institutions. The Rules also provide for the duties and powers of the Officer-in-charge of a Borstal Institution for the purpose of management and discipline in the institution.

(v) Visiting Committee

Provision is made for the appointment of a visiting committee to supervise and help in the management of the Borstal Institution. The Committee is required to visit the Borstal institution periodically to see every inmate; to hear complaints; and to see that the management of the institution is proper in all respects. The committee shall examine the punishment book and log book.
and bring any special case to the notice of the Director. Thus there is an active involvement of the Visiting Committee in the management and improvement of the running of Borstal Institution.

(vi) Release of Inmates on Licence

Visiting Committee has been conferred with the power to release any inmate on licence after the expiry of one third of the period of detention, or of two years, whichever is shorter. If the Committee is satisfied that the inmate is likely to abstain from crime and lead a useful and industrious life it can permit the inmate to be discharged from Borstal Institution on the condition that he be placed under the supervision of authority of any government officer, or secular institution or person or religious society. The Act further provides for the suspension and revocation of licences granted under Section 15 of the Act. There is a provision for the appointment of a Parole Officer who shall act as a "guide, philosopher and friend" to the licenced inmate. The Parole Officer shall remain in touch with the licenced inmate to watch over his conduct and to advise him on occasion of difficulty.

(vii) Correctional Detention not to be deemed as Disqualification

Since detention in a Borstal Institution has a dominant purpose of reforming the youthful offender, it does not operate as a disqualification for employment under the Government.

Taken in the context of its own times when India was under a foreign rule,
the Borstal Act was a welcome step towards the reformatory philosophy. How far
it has succeeded in its operation shall, however, be examined in the separate
chapter.\textsuperscript{113} Suffice it would be to state here that the legal framework envisaged
by the Act was a big leap in the right direction.

\textsuperscript{113} See infra, Chapter Nine.