CHAPTER FIVE

JUVENILE JUSTICE via JUVENILE COURT AND
CHILD WELFARE BOARD

I. Juvenile Court and Juvenile Justice

Justice and the child is a distinct jurisprudential-criminological branch of socio-legal speciality which is still in its infant stage in India and many other countries.¹ The Children Act is a preliminary exercise; The Borstal School is an experiment in reformation and even Sec.360 Cr.P.C. tends in the same direction. Correction informed by compassion, not incarceration leading to degeneration is the primary aim of this field of criminal justice.² Juvenile justice has constitutional roots in Art.15(3) and 39(e) and the pervessive humanism which bespeaks the superparental concern of the State for its child citizens including juvenile delinquents.³ The penal pharmacopoea of India, in tune with the reformatory strategy currently prevalent in civilized criminology, has to approach the child offender not as a target of harsh punishment but of humane nourishment.⁴ Juvenile court had been the front-runner agency for the administration of juvenile justice till the middle of last decade (1975). With the establishment of Juvenile Welfare Boards the duty role of juvenile court was excluded in the cases of neglected juveniles in some states but not in Punjab. It was only with the coming into force of Juvenile Justice Act that a clear demarcation in the processing agencies of two categories (neglected & delinquent) has been introduced at national level.

Modern criminal justice recognises that no one is born criminal and that a good many crimes are the product of socio-economic milieu.⁵ It is well accepted

2. Ibid.
3. Ibid.
4. Ibid.
that crime does not originate from any single source but results from the
interplay of diverse causes which are related to the stage of social evolution
of the people, their economic and social development and the individual psycho-
logical make-up. Differently shaped and differently circumstanced individuals
react differently in given situation. A judge is, therefore, required to balance
the personality of the offender with the circumstances, the situations and the
reactions and then to choose the appropriate sentence to be awarded. These
changed notions of criminal jurisprudence have as a result of social transfor-
mation shifted the focus of penal policy from crime to criminal - individualization
of punishment. Law is now used as tool for reforming and rehabilitatting of the
offender in the society and not as an instrument of retributive justice which
has outlived its existence. The imprisonment of the offender ought to be
ordered by the court in special cases and not as a general rule as rehabilitation
of the offender through curative therapy and not his incarceration is the under-
lying object of the administration of criminal justice of the day. This further
implies that punishment must be geared to attain a special goal which must at
once be reformatory. The sentencing must have a policy of correction and
must attempt at the possible reformation of the offender.

Justice for juveniles means treatment which is manifested to save them
from the problem areas in which they happen to be there for reasons beyond their
control. As the rehabilitation of the juveniles in problem is basic to juvenile
justice, which, in turn, is a component of social justice - a primary duty of
the State. It is, therefore, absolutely necessary to properly design and operate

the agencies basic to the successful running of the system and produce qualitative output. This requires a thorough introspection of the two agencies which are pivotal to the management of juvenile justice at the first point of entry.

II. Juvenile Court: An Introspection

Juvenile court is a twentieth century baby. Within the first few decades of its coming into being it acquired a role of 'super parent' for the juveniles falling within the broader range of delinquent conduct - neglected and destitute juveniles and offender juveniles. It started functioning as the sole processing agency for the two categories of juveniles and thus became a fountain of juvenile justice system. But this role was short-lived and after few decades of its operation it was felt that neglected and destitute juveniles are unnecessarily being coupled with the delinquent juveniles for the administration of juvenile justice. As a result two separate processing agencies for both the categories have now been established. Their corrections too have been separated. Thus two major processing agencies - Juvenile Court and Child Welfare Board, came into existence to deal with the cases of delinquent and neglected juveniles respectively. This departure is the result of impression that juvenile court and its procedures have been built into and operate within the existing framework of criminal justice system. Therefore, contact of juvenile court system and its processing set-up is counter productive in the cases of neglected and destitute juveniles. They need a more social and informal agency to look after and protect their interests. The result was the establishment of a distinctly separate agency

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13. For historical background see Chapter Two.
for the processing of neglected juveniles.

Until the beginning of 20th century, an Indian child accused of an offence was tried exactly as if he were an adult. Various nineteenth century statutes sought to remedy the existing common treatment principle for juvenile and adult offender alike by diluting the punishment rigour with small doses of favourable treatment to juveniles. Apprentices Act, 1850, Reformatory Act 1897 and State Borstal Acts (1926 in case of Punjab) are some of such enactments which attempted to mitigate the sufferings of young offenders at the hands of law.

This was only a partial remedy. The procedure in the magistrate's court was still the same as designed for adult offenders. The courts were still courts dealing primarily with adult offenders, with whom the juveniles were often free to mingle. The introduction of separate courts with a simplified procedure was still a far cry.

As Indian criminal justice system is largely legacy of British criminal justice system, similarly Indian juvenile justice system too has been developed on the pattern of British juvenile justice system. The development of the aspects of psychology helped to change the attitude of people in England and the U.S.A., towards the formation of special juvenile courts, at the end of 19th century or the beginning of twentieth century. The Third International Conference for the Welfare and Protection of Children, was held in London from 15th-18th July, 1902 under the patronage of H.M. King Edward VII. The Congress considered the problem of neglected children and probabilities of their turning towards delinquency if due care of them was not taken. All these considerations after some experiments by individual magistrates, led to the establishment of juvenile court by the passing

15. For details see Chapter Two.
of the Children Act, 1908. Closely following the British experiments in the area of administration of justice, the first Children Act was passed in India in the year 1920. Then series of other such enactments followed marking the beginning of juvenile justice system in India.

In the post independence era Punjab was the first State to enact the Children Act. East Punjab Children Act, 1949 was passed by the legislature for dealing with the cases of delinquent and neglected juveniles. Provisions for the establishment of Juvenile Court and Corrections were also made in the Act. However, the Act did not come into force immediately. Rules under the Act were framed in the year 1960 and the Act came into force in the year of 1969, twenty years after it was passed by the legislature. The requisite infrastructure had not yet been properly established when the Act was repealed and replaced by the Juvenile Justice Act, 1986, an all India measure. This is how the dawn, if we can say so, of juvenile justice system began in the State.

But as we will see in later pages the juvenile court functioning failed to respond to the situation. It has, in practice, fallen short of their announced goals. As justice Blackman puts it in words eloquent enough to be quoted at length:

The devastating commentary upon the system's failure as a whole reveals the depth of disappointment in what has been accomplished. The community's unwillingness to provide people and facilities and to be concerned, the insufficiency of time devoted, the scarcity of professional help, the inadequacy of dispositional alternatives, and our general lack of knowledge all contribute to dissatisfaction with the experiment....

What emerges, then, is this: In theory the juvenile court was to be helpful and rehabilitative rather than punitive. In fact, the distinction often disappears, not only because of the absence

17. The first Juvenile Court in England was established in 1905, the Children Act was passed three years later. See H.M.S.O. London, Children Act, 1908, Sec. 111.

18. Reference here is to President Commission's Report on Law Enforcement and Administration of Justice.
of facilities and personnel but also because of the limits of knowledge and technique. In theory the court's action was to affix no stigmatizing label in fact a delinquent is generally viewed by employers, schools and armed services - by society generally - as a criminal. In theory the court was to treat children guilty of criminal acts in non-criminal ways. In fact it labels truants and runaways as junior criminals. In theory the court's operations could justifiably be informal, its findings and decisions made without observing ordinary procedural safeguards, because it would act only in the best interest of the child. In fact, it frequently does nothing more nor less than deprive a child of liberty without due process of law - knowing not what else to do and needing, whether admittedly or not, to act in the community's interest even more imperatively than the child's. In theory it was to exercise its protective powers to bring an errant child back into the fold. In fact, there is increasing reason to believe that its intervention reinforces the juvenile's unlawful impulses. In theory it was to concentrate on each case the best current social science learning. In fact, it has often become a vested interest in its turn, loathe to co-operate with innovative programmes or avail itself of forward - looking methods. 19

There cannot be a more milder way of summarizing the working of juvenile courts in India as they existed and operated under the State Children Acts, before the coming into force of Juvenile Justice Act, 1986, than the carefully selected words of Justice Blackman quoted above. It was the gap between aspirations and achievements in the working of juvenile courts specially in the cases of neglected and destitute children that evoked the counter-current against the traditional jurisdiction of the juvenile court. Perhaps the most important was the very fact that juvenile courts made use of (as treatment) sanctions and agencies so similar to those the criminal courts impose as punishment. The working of juvenile corrections and probation system further corroborate this assertion. It was realized that by changing the nomenclature alone the end results will not change. The need for thorough introspection was felt strongly and it culminated in the form of Juvenile Justice Act, 1986. There is nothing to be very happy about it as the system

under which the juvenile justice has to be managed and the necessary infrastructure has not yet changed in substantial manner. Inspite of the judicial pressure\(^\text{20}\) the reformative and rehabilitative apparatus contained in the Act barely exists in fact, because legislation has been pushing ahead of reality and without infact support from political leadership, it would not be wrong to say that if all the facilities which were prescribed by the pre-1986 legislation for the use of the Juvenile Court, had come into existence in sufficiency the old system would not perhaps have been found wanting. As it is we have a new system, specially in contrast to earlier East Punjab Children Act,1949, which has certain well meaning merits, which with patience and understanding can be made to work in time, as facilities materialize.

III. Juvenile Justice:Panjab Experience

Before the coming into operation of the Juvenile Justice Act,1986\(^\text{21}\) in the state juvenile justice system in the State was being managed under the East Punjab Children Act,1949. As earlier discussed Juvenile Court was having dual jurisdiction under the Act(E.P.C.Act) and accordingly, it was the sole processing agency at the judicial level to deal with the cases of neglected as well as delinquent juveniles. In spite of the repeated claims\(^\text{22}\) to the contrary no juvenile court had ever been established under the Act. Thus the powers of juvenile court were being exercised by ordinary criminal courts in whose jurisdiction the case fell by virtue of Sec.27 of the Criminal Procedure Code\(^\text{23}\) or under the

\(^{20}\) Legal Aid Committee Supreme Court v. Union of India, 1989 Cr.L.J.1126(S.C.); Sheela Barse v. Union of India, 1986 Cr.L.J.1736(S.C.).


\(^{22}\) As per the claims of Social Welfare Deparment there were two Juvenile Courts one at Hoshiarpur, for Jalandhar Division(four districts i.e. Jalandhar, Hoshiarpur, Gurdaspur and Amritsar) other at Patiala,(for four districts, Patiala, Sangrur, Ludhiana and Ropar). Thus there was no juvenile court for Ferozepore Division(i.e., Ferozepore, Faridkot, Bhatinda and Kapurthala districts).Later on all Chief Judicial Magistrates(all districts) were notified as Juvenile Courts. See Annual Report of Social Welfare Deptt.,Pb. (1985-86) submitted to Ministry of Welfare,Govt. of India.

\(^{23}\) Sec.27(corresponding to Sec.29-B of Cr.P.C.1989) provides:"Any offence (conted.)
provisions of East Punjab Children Act, 1949.\textsuperscript{24} There always remained a confusion as to which court has the jurisdiction to conduct juvenile cases, as under the Criminal Procedure Code, 1973 (Sec. 27) Chief Judicial Magistrate has been conferred with the power to try juvenile cases while under the East Punjab Children Act, 1949 (Sec. 6) even Judicial Magistrate First Class has the power to try juvenile cases. Thus, it was the sweet will of any of these two courts to take up juvenile cases. In some of the cases it was observed that the Magistrate First class has referred the case to Chief Judicial Magistrate for inquiry and trial and Chief Judicial Magistrate in turn has sent it back to the same Magistrate with the remarks that he (Magistrate Ist Class) has the jurisdiction over the case under East Punjab Children Act, 1949. Magistrate First Class being subordinate court had no option but to try the case. All serious cases involving juveniles and punishable with death or life imprisonment were tried by the Court of Session as a matter of routine. Since almost all the cases involving juveniles terminate at the trial court level so this jurisdictional conflict has never been taken up in appeal or seriously viewed by the higher courts. Thus, the jurisdictional confusion in juvenile cases continued unabated and has not completely been solved even after the coming into force of the Juvenile Justice Act, 1986.\textsuperscript{24A}

not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the court is under the age of 16 years, may be tried by the Court of a Chief Judicial Magistrate or by any Court specially empowered under the Children Act, 1960, or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.

\textsuperscript{24} Section 6 of the Act provides: The powers conferred on Courts by the Act shall be exercised only by: (a) High Court; (b) a Court of session; (c) a Chief Judicial Magistrate; (d) omitted; (e) any Juvenile Court constituted under Sec. 60 of the Act; (f) Judicial Magistrate or the First Class and (g) any court notified in this behalf by the State Govt. in consultation with the High Court.

\textsuperscript{24A} See The Tribune (Chandigarh) (Jan. 13, 1990) p. 6. "Joint Trial of a minor by the Court of Session at district Sangrur stayed by High Court".
The young offender, who has been found to have committed an offence, is required to be dealt with according to the procedure laid down in the Children Act and not according to the procedure under the Code of Criminal Procedure which provide for the investigation, inquiry and trial of offence under the Penal Code or under any other law for the time being in force. Section 5 of the Cr.P.C. clearly excludes the operation of Sec. 4 where a local or a special law provides a specific procedure for inquiry or trial of specified offences or offenders e.g., juvenile offenders. But in practice the courts continued to be indifferent towards the real purpose and objectives of the Act.

Almost all the Children Acts passed before the coming into force of new Criminal Procedure Code 1973 (1st April 1974) contained a specific provision which excludes the operation of section 29-B (Cr.P.C., 1898) to the cases falling under the Children Acts. However, no such specific prohibition is there, so for the East Punjab Children Act, 1949 is concerned. But the Courts even at the higher level did not respond to the requirements of Children Acts in proper perspective. Even in the interpretation of Haryana Children Act, 1974 which contained a specific exclusion to the application of Section 29-B of Cr.P.C, The Punjab and Haryana High Court took a purely technical argument and declared the trial of a child (under Sec. 302 IPC) under Haryana Children Act void. Since the Children Acts, passed before the coming into force of new Cr.P.C., 1973, do not have any reference (rather it could not be) to Sec. 27 of the new Code which corresponds to Sec. 29-B of the old Cr.P.C., 1898, so the courts, refusing to be moved by any logic, held that Sec. 27 has overriding effect on Children Acts. The Punjab and Haryana High Court held that Sec. 27 of the new Cr.P.C. is in conflict with the Children Act (Haryana) so far as the trial of an offence punishable with death or imprisonment for life is concerned. Since the matter relates to a subject

in the Concurrent List so the law made by Parliament is supreme and to that extent the provisions of the Children Act (State Law) are void,\textsuperscript{27} i.e. the trial of offence punishable with death or life imprisonment cannot be held under the Children Act. The High Court cited Art.254 in support of its view.\textsuperscript{28}

In the absence of any specific exclusion of Sec.29-B (Now Sec.27) of Cr.P.C. in the case of East Punjab Children Act,1949, the situation remained more fluid and unsatisfactory in Punjab. Though after the decision of the Supreme Court in the case of Rohtas v. State of Haryana,\textsuperscript{29} the decision of the Punjab and Haryana High Court has been reversed and correct position has been restored. Now all the cases, irrespective of punishment involved, fall under the jurisdiction of Haryana Children Act. But the position in Punjab continued to be same and cases are being tried by Session Court as per the requirement of Criminal Procedure Code where the juvenile is involved in a case punishable with death or life imprisonment. The position has not changed in practice even after the coming into force of Juvenile Justice Act,1986 which contains clear provision that all cases involving juveniles shall, notwithstanding anything contained in any other law for the time being in force, be exclusively dealt with by the Juvenile Court.\textsuperscript{30} Cases, are still being tried by Session Courts and joint trial with adults is still a common practice. However, with the coming into operation of Juvenile Justice Act, 1986 things will improve but the process is quite slow. During my visits to districts (in March 1987) it was noticed that in the districts of Patiala and Ludhiana cases involving children were pending before Session Courts. All this is indication of poor perception level of judges towards juvenile justice system and its objectives.

\textsuperscript{27} Ibid.
\textsuperscript{28} Id., p.217.
\textsuperscript{29} A.I.R.1979 S.C.1839.
\textsuperscript{30} Sec.7.
\textsuperscript{31} (See next page)
The apathy towards the neglected juveniles under the East Punjab Children Act, 1949 had been much more pronounced in comparison to delinquent juveniles. As discussed in the Chapter relating to corrections for neglected juveniles the intake procedure had been arbitrary and unfair.\(^{32}\) In most of the cases juvenile courts acted more or less as a stamping authority in the selection of treatment alternatives. The choice was limited to a pointed question as to whether the child should be admitted to the correction or not. Whatever, the Superintendent wanted in the case, that had been the decision of the Court. It is a strange realism that the parent/guardian always wanted to get their child admitted in the correction and for this they sought the help and co-operation of superintendent of the correction of concerned area. Thus, the whole process dealing with the cases of neglected juveniles had been more or less a farce.\(^{33}\)

IV. Juvenile Court under Juvenile Justice Act

The juvenile justice system is likely to improve with the coming into force of Juvenile Justice Act, 1986 in the State. Efforts are already on for the Constitution of three juvenile courts at Jalandhar, Amritsar and Ludhiana.\(^{34}\) However, as at present the juvenile courts have not been constituted and thus in the absence of properly constituted juvenile court the following courts have been conferred with the power to deal with the cases involving juveniles:\(^{35}\)

31. The trial of a minor with adult under Sec.302 I.P.C. pending before Distt. Session Judge Sangroor was stayed by the High Court. See, The Tribune (Chandigarh) (Jan.13, 1990), p.6.

32. Only ten per cent of the neglected juveniles really deserved to be provided with treatment in corrections, rest had been from reasonable families. See, Chapter Eight.

33. For details see Infra.


35. Juvenile Justice Act, 1986, Sec. 7(2).
(a) The District Magistrate, or
(b) Sub-Divisional Magistrate, or
(c) Any Metropolitan Magistrate or Judicial Magistrate of the First Class, as the case may be.

The powers conferred on the Juvenile Court by or under the Act may also be exercised by the High Court and Court of Session, when processing comes before them in appeal, revision or otherwise. 36

Since category(c) courts alone are judicial courts thus a Metropolitan Magistrate or judicial Magistrate First Class is competent to try cases involving juveniles. 37

After the Juvenile Courts are established the total complexion of this judicial body will undergo a tremendous change. The Act requires that the Juvenile Court must be a specialized institution which is professionally competent to take up juvenile cases. The State Government may by notification in the Official Gazette constitute for any area specified in the notification, one or more Juvenile Courts for exercising the powers and discharging the duties conferred or imposed on such court in relation to delinquent juveniles under the Act. 38

A Juvenile Court shall consist of such number of Metropolitan Magistrates or Judicial Magistrates of the First Class, as the case may be, forming a Bench, of whom one shall be designated as the Principal Magistrate. 39 Every Juvenile Court shall be assisted by a panel of two honorary social workers possessing such qualifications as may be prescribed of whom at least one shall be a woman, and such panel shall be appointed by the State Government. 40 A

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36. Id. Sec.7(3).
37. Id. Sec.5(2).
38. Id. Sec.5(1).
39. Id. Sec.5(2).
40. Id. Sec.5(3).
person to be appointed as an honorary social worker on the panel shall be a respectable educated citizen with the background of special knowledge of child psychology, sociology, social work, education or home science. A teacher, a doctor, a retired public servant or a professional who is involved in work concerning juveniles or a social worker is also eligible for this job.

(i) Courts and Treatment Alternatives

As is clear that in the absence of Juvenile Courts, the ordinary criminal courts are exercising the powers of Juvenile Court under the Act. Thus, all cases concerning delinquent juveniles are required to be processed by ordinary courts in order to finally decide which treatment alternative is most suitable in the case of any particular juvenile.

In making any order in respect of a juvenile under the Act, court shall take into consideration the following circumstances, namely:

(a) the age of the juvenile.
(b) the state of physical and mental health of the juvenile.
(c) the circumstances in which the juvenile was and is living.
(d) the reports made by the Probation Officer.
(e) the religious persuasion of the juvenile.
(f) such other circumstances as may, in the opinion of the competent authority, require to be taken into consideration in the interest of the welfare of the juvenile.

But in the cases of juvenile delinquents, the above circumstances shall be taken into consideration after the Juvenile Court has recorded a finding

42. Id. Rule 4(b) and Rule 4(c).
43. Supra note 35, p.33.
against the juvenile that he has committed the offence. In case no report
by the probation officer has been submitted within ten weeks of his being infor-
med, it shall be open to the Juvenile Court to proceed without such report.

After examining the relevant records concerning the antecedents of the
juvenile the court can proceed further in taking a final decision as to what
kind of order should be passed in case he is found guilty. Since a juvenile
offender has been provided with preferential treatment under the Act so the
court can pass only those orders which are permitted under the Act irrespec-
tive of the nature of his offence. The Act provides that where a Juvenile Court
is satisfied on inquiry that juvenile has committed an offence, then, notwith-
standing anything to the contrary contained in any other law for the time
being in force, the Juvenile Court may, if it so thinks fit.

(a) allow the juvenile to go home after advice or admonition;
(b) direct the juvenile to be released on probation of good
conduct and place under the care of any parent, guardian
or other fit person or such person, guardian or other fit
person executing a bond, with or without surety as that court
may require, for the good behaviour and well-being of the
juvenile for any period not exceeding three years;
(c) direct the juvenile to be released on probation of good
conduct and place under the care of any fit institution for
the good behaviour and well-being of the juvenile for any period
not exceeding three years.
(d) make an order directing the juvenile to be sent to a special
home,

44. Id. proviso.
45. Ibid.
46. Id. Sec.21(1).
(i) in the case of a boy over fourteen years of age or a girl over sixteen years of age, for a period of not less than three years;

(ii) in the case of any other juvenile for the period until he ceases to be a juvenile:

Provided that the Juvenile Court may, if it is satisfied having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it think fit.

Provided further that the Juvenile Court may, for reasons to be recorded, extend the period of such stay, but in no case the period of stay shall extend beyond the time when the juvenile attains the age of eighteen years, in the case of a boy, or twenty years in the case of a girl;

(e) Order the juvenile to pay a fine, if he is over fourteen years of age and earns money.

The court has also been conferred with the power to place the child under the supervision of a probation officer while making an order under clause (b), clause(c) or clause(e) of the above mentioned powers. In case a delinquent juvenile does not comply with the orders of the court or it is reported by the probation officer that the juvenile has not been of good behaviour during the period, the court may, after making such inquiry as it thinks fit, order the delinquent juvenile to be sent to a special home.

But no delinquent juvenile can be sentenced to death or imprisonment, or committed to prison in default of payment of fine or in default of furnishing

47. Id. Sec.21(2).
48. Id. Sec.21(2) Proviso.
security. However, a juvenile above the age of 14 years who has committed a serious offence or whose conduct and behaviour have been such that it would not be in his interest or in the interest of other juveniles in the Special Home may be ordered to be kept in safe custody in such place and manner as the court thinks fit and his case shall be reported to State government for making such arrangement in respect of the juvenile as the Government deems proper.

(a) Presentence Report and its Importance

Accordingly the court has wide discretionary powers and a range of treatment alternatives available to dispose of cases of juvenile delinquents. If this power is carefully exercised and is based upon solid material concerning the juvenile it will be a first step in the right direction. In a situation where the court has diversified obligations making a choice as proximately correct as possible is a very difficult task. Without the proper assistance and guidance from other variables of the juvenile justice system, specially the probation services, it will not be possible for the court to discharge its duty in the right earnest. Making a right decision is the central problem of sentencing policy when juveniles are found guilty of delinquency. A scientific approach may insist on a search for fuller material sufficient to individuate the therapy to suit criminal malady.

The United States' Supreme Court's observation in Williams v. New York about the importance of presentence in reaching at a possible correct decision is worth quoting here in detail:

Presentence have been given a high value by conscientious judges who want to sentence person on the best available information rather than on guess-work and inadequate information. To deprive sentencing judge of this kind of information would undermine modern penological procedural policies that have been cautiously adopted throughout the nation.

49. Id. Sec.21(1).
50. Id. Sec.22(1) Proviso.
52. (1949) 337 U.S.241 at p.249.
Judge F. Ryan Duffly has written:

If the Judge has before him a complete and accurate presentence investigation report which sets forth the conditions, circumstances, background, and surroundings of the dependent, and the circumstances underlying the offence which has been committed, the judge can then impose sentence with greater assurance that he has adopted the proper course. He can do so with much greater peace of mind.

Regrettably, our juvenile justice system still thinks in terms of terror, not cure, of wounding, not healing, and a sort of blind man's buff is the result. The negative approach converts even the culture of juvenile homes into junior jails. From the reformatory angle, the detainees are left to drift, there being no constructive programmes for the detainees nor correctional orientation and training for the institutional staff.

The Juvenile Judge has a vital role to play in exercising his dispositional options concerning the juvenile. He has to strike a equitable balance between social considerations and the welfare of the child. He is charged with the solemn determination whether to deprive juveniles of liberty or whether they can be released in their parent's custody or placed in any other community-based correction. In making such adesion the Judge should carefully consider all the material placed before him and the legal presumption should favour non-institutional alternatives. If the decision is to detain, the Judge must make a record to support that decision. This is possible only if some procedural absolutes are made a part of decision making process and the most important in that respect is pre-sentence report. This will assist in offering constructive and creative treatment alternatives that may include dominant contours if rehabilitation and resocialization of the young delinquent. Otherwise also, in the era of fiscal conservatism and in light of increasing cost of the justice system sentencing decision will demand utilization of inexpensive treatment alternatives.
Dangerous deviation is perhaps the most complex problem faced by the juvenile justice system. Selection of treatment alternative in such cases has far-reaching consequences. On one side there are compulsions of "welfare of the juvenile" and on the other hand there is a concern for the social protection. A lenient alternative in such cases can alienate the society's support - a must for the successful functioning of the juvenile justice system. A tough choice may offend the spirit of juvenile justice. In such a crisis situation courts can not afford to be careless in making the choice. Juvenile justice too must find answer to this challenge. Viscount Simonds, highlighted the imperatives and identified new heads of public policy in what is known as the Lady's Directory Case. Reformative and curative jurisprudence have been found to be not entirely responsive. Deterrence is surely a component of the sentencing system. Even the reputation of hedonistic psychology would not justify rejection of deterrence argument. In the words of E.A. Ross:

If one rascal out of 20 men might aggress at will, the higher forms of control would break down. Man after man would be detached from the honest majority. This deadly contagion of lawlessness would spread till social order lay in ruins. Law therefore, is still the corner-stone of the edifice of order.

It is, therefore, necessary to be realistic and nearer to society in the making and application of the law. Inadequate sentences can do harm to the system. Law must meet the challenges that criminalisation offers. Maudlin sentiments, bordering on tottering weakness cannot masquerade or reformative sentiments cannot do service for rational sentence system. Misconceived liberalism cannot be countenanced. Overzealous judicial dispensation can invite social indifference and ridicule the whole system and its working. Firmness and fairness

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55. Raman v. Francis, 1988 Cr.L.J.1359 (Kerla High Court).
remain the only two guiding principles in the selection of dispositional alternative by the courts. Great Britain and United States, which have experimented most liberal approach in the cases involving juvenile delinquents, have already taken up a tough stand in the cases of dangerous or persistent delinquency cases. The U.S. Supreme Court in the case of Scherr v. Martin\(^{56}\) has at many points in its judgement referred to phrases like "legitimate and compelling state interest\(^{57}\) the weighty social order\(^{58}\) in order to support tough stand in such cases. Similarly the clear desire to move away from a "treatment" approach can/seen in the policy change reflected in the Criminal Justice Act, 1982(U.K.)\(^{59}\)

(b) Presentence Report and its Statutory Structure

Section 33 of the Act specifically mentions the various circumstances that the court shall take into consideration before making any order under the Act. Besides the age, physical and mental health of the child, living conditions the Act requires that the report of the probation officer shall be taken into account before any delinquent's case is disposed of after he is found guilty by the court.\(^{60}\) Duties of the probation officer also enjoins him to submit a detailed report concerning the juvenile.\(^{61}\) As has already been seen that juvenile cases were being disposed of by the courts under the Probation of Offenders Act 1958\(^{62}\) inspite of the fact that East Punjab Children Act, 1949 was in force in the State so a reference to the provisions of Probation of Offenders Act becomes imperative. Section 4 of the Act requires for the

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57. Id.,p.2410.
58. Ibid.
60. Supra note 35, Sec.33.
61. Supra note 41,Rule 44.
62. See Infra Chapter Seven for details.
consideration of probation officer's report. Similarly duties of the Probation Officer under the Act require him to submit detailed report as and when called for by the Court.63

Similar provisions were there under the East Punjab Children Act, 194964 and Children Act, 196065 which required that totality of circumstances concerning the juvenile and his offence including the report of the Probation Officer should be taken into consideration before passing any order under the respective Acts. Under the Criminal Procedure Code, 1973 too there are provisions which provide that the Judge shall hear the accused on the question of sentence, before passing an order of sentence on him according to law.66 These sections, though not directly referring to presentence reports, have the import of something like presentence report.

(c) Presentence Report and Its Judicial Application

Although there is no case directly relating with the cases of juveniles but there are number of judicial pronouncements on the point which have relevance on the importance of presentence report even in cases involving juveniles. Whether presentence report is mandatory or not is a question on which there is a sharp division of judicial opinion. In view of the absence of Supreme Court decision on the point, the controversy goes on unabated. If this ambiguity continues in the same manner it may undermine the power of the court regarding the grant of probation even in juvenile cases.

The majority of the High Courts hold the view that the court is bound to call for the report of probation officer before considering the question of release on probation of good conduct. In case the court releases an offender

63. See Sec. 4(1), 4(2); Sec. 14; and Rule 24, 14 of the Probation of Offenders Rules.
64. Sec. 36; and the Punjab Children (Juvenile) Rules, 1960, Rule 9.
65. Id. Sec. 33.
66. See Sec. 235(2); Sec. 248(2).
on probation of good conduct without the requisition of the report and its consideration, if received, the order of release is bad in law and is liable to be quashed in revision. According to this view, the report of probation officer is a pre-condition for grant of probation under the Act. By implication these decisions impose a ban on the release of a person on probation without calling for the presentence report.

On the other hand minority view is held by the Bombay High Court. According to this view the judge may or may not call for a presentence report of the probation officer for acting under Sec.4(1) of the Act. He can dispense with the calling for the report if he is of the opinion that it is expedient to do so. Thus according to Bombay High Court the requisition of the presentence report is not a pre-condition for invoking the provision of Sec.4(1) of the Probation of Offenders Act, 1958.

Although there is no Supreme Court decision pointedly deciding the moot question but some of the decisions of Supreme Court, where the court released an accused on probation without insisting upon presentence report, are indicator that the requirement of presentence report cannot be considered as mandatory in all the cases. This, however, does not mean that desirability of presentence report has been negated by these decisions of the Supreme Court. In order to avoid improper use of probation it becomes imperative that the courts must insist upon presentence report wherever the circumstances of the case demand.

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Now if we look at the provisions of the Juvenile Justice Act, Sec.33(d) of the Act provides that before making any order under the Act the court shall take into consideration the report of the probation officer. However, this section further provides that in case the probation officer does not submit the report within ten weeks from the date he(probation officer) has received the information about the detention of a juvenile from the police officer as desired by Sec.19(b) of the Act the court may proceed further without any report from the probation officer.

In this background the view of the Bombay High Court is the correct one and is more workable under the prevailing circumstances as there is very small and insufficient number of probation officers in the State. Thus, the court must evaluate the totality of circumstances before taking a decision to call or not to call the presentence report. Making the presentence report mandatory in every case will not only result into avoidable wastage of court's time but also over burden the probation officer. However, in cases where the court feels from the available information that institutional treatment is desirable for the juvenile it will be better if the court calls for presentence report before finalization of its option. Accordingly a change in the law to that effect must be made. Presentence report should be made mandatory in juvenile cases where the available information goes in favour of institutional detention. But in cases where on the very face of the case there is a clear cut case for grant of probation, there seems to be no justification for calling of the report.

As has been observed in the chapter relating to probation that courts not in the State are in the habit of calling for presentence reports either in juvenile cases or in adult cases. In about 2 per cent of juvenile cases

70. See infra, Chapter Seven.
and one percent of adult cases the courts prefer to call for presentence reports. Even in cases where presentence reports are called for the quality of the report is very poor and information scanty. One of the reason for this negligence of duty, both on the part of courts and probation officers, perhaps, is that probation has not yet been accepted as a proper mode of penological treatment in our justice system. As probation is the only community-based treatment alternative which courts prefer to opt for in the cases involving juveniles so in most of the cases it is based upon either without any sociological information or the presentence report which contains scanty information. Thus it is the guess work which taken as major consideration in releasing a juvenile on probation.

Another feature, which came into notice in the working of courts dealing with juvenile delinquents, is the active participation of the court in arranging for plea-bargaining with the juvenile. Through the prosecution and police the young offender is persuaded to confess his guilt and in lieu of his confession he is promised with release on probation without any supervision, or in very rare case, with the supervision of the probation officer. There is a total misconception of the concept of probation at the juvenile delinquent level and he takes it as equal to acquittal, specially in cases where it is without any supervision of the probation officer. The defence counsel, if any, also plays the role in making the person agree to be released on probation in lieu of confession of guilt because it results an early termination of the case for him. In this way all the juvenile justice agencies feel happy about the outcome for the reasons which help them in distorting the facts for their professional credit. The only sufferer of the practice is the young delinquent who is misled at every step and by every agency of the juvenile justice system.

71. See Chapter Seven for details.
Even among the available alternatives most commonly used community based alternatives is probation with or without supervision. Restoration to parents/guardians or releasing after administrating has never been used by the courts (See Table V-1). This reflects the apathy of courts to community-based alternatives either because of ignorance of their importance or just lack of faith in their curative value. While in other states like Madhya Pradesh, Maharashtra, Tamil Nadu and Andhra Pradesh there is liberal use of the alternative whereby the juveniles are restored to parents/guardians. 72

(ii) Courts and Their Procedural Requirements

The other procedural requirements like prohibition of joint trial, informal procedure and separate place of sitting of the courts where juvenile cases are being tried are frequently violated with impunity. Even after more than two years of coming into force of Juvenile Justice Act, 1986 in the State joint trials still take place at some places. 76 Same procedure, without any favourable consideration for the juveniles, is being followed by the courts as is their in the adult cases. Thereis not even a single court which conducts its sittings in a separate room in cases involving juveniles. Juveniles are openly handcuffed 77 to the knowledge of the court. The only

72. For the year 1983, the total cases disposed of by the courts in the States of Andhra Pradesh, Tamil Nadu, Madhya Pradesh and Maharashtra about 15, 30, 13 and 4 per cent cases respectively were disposed of by restoring the Juvenile to his parents/guardians. See Crimes in India-1983, p. 109.
74. Supra note 41, p. 5.
75. Sec. 27(2).
76. See, The Tribune (Jan. 13, 1990), p. 6 (Joint trial of a juvenile by Session Court at Sangroor stayed by the High Court).
77. Juvenile Justice (Punjab) Rules, 1987; Rule 38 prohibits handcuffing of juveniles.
Table V-1
Showing Disposal of Juveniles by the Courts
During the Years 1983-84 to 1987-88

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Year</th>
<th>Total Juveniles sent to Courts</th>
<th>PENDING Disposal</th>
<th>Acquitted or otherwise disposed</th>
<th>Sent to Borstal</th>
<th>Sent to School</th>
<th>Released to Guardians/Parents</th>
<th>Released on Probation</th>
<th>Released after admonishing</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>1983-84</td>
<td>1804</td>
<td>724</td>
<td>295</td>
<td>81</td>
<td>241</td>
<td>-</td>
<td>-</td>
<td>463</td>
</tr>
<tr>
<td>2.</td>
<td>1984-85</td>
<td>1913</td>
<td>822</td>
<td>293</td>
<td>103</td>
<td>283</td>
<td>-</td>
<td>-</td>
<td>412</td>
</tr>
<tr>
<td>3.</td>
<td>1985-86</td>
<td>2114</td>
<td>913</td>
<td>321</td>
<td>207</td>
<td>159</td>
<td>-</td>
<td>-</td>
<td>514</td>
</tr>
<tr>
<td>4.</td>
<td>1986-87</td>
<td>1931</td>
<td>781</td>
<td>332</td>
<td>95</td>
<td>216</td>
<td>-</td>
<td>-</td>
<td>497</td>
</tr>
<tr>
<td>5.</td>
<td>1987-88</td>
<td>2043</td>
<td>913</td>
<td>309</td>
<td>120</td>
<td>172</td>
<td>4</td>
<td>-</td>
<td>519</td>
</tr>
</tbody>
</table>

* Juvenile here means any person who is below the age of 20 years. This is so as the statistics are maintained as such.

** Other disposal includes discharge and imposition of fine.
difference is that before the juvenile is taken inside the courtroom handcuffs are removed and as and when he walks outside the court-room he is again handcuffed. Thus nothing happens before the eyes of the court, though the court is otherwise aware of it. Policemen always come in uniform while producing the juvenile in the court. They have never been told to come in civil dress as desired by the Juvenile Justice Act. All these observations are based on personal information as collected after watching proceedings of courts conducting juvenile cases.

Speedy Trial

Speedy trial has long been recognised as one of the fundamental rights of every person accused of an offence. But somehow its contents have not been determined in clear terms. Thus it continues to be vague and subjective in nature. In the cases involving juveniles the Act provides that "an inquiry 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 commencement, unless, for special reasons to be recorded in writing, the competent authority otherwise directs." The Act does not provide as to what shall be the legal consequences in case the inquiry is not completed within a specified period. Thus, the courts and the other processing agencies do not take this direction very seriously. In the case of Sheela Barse v. Union of India, The Supreme Court has given a clear direction that in the cases involving juveniles and punishable upto seven years of imprisonment the investigation by the police must be concluded within three months from the date of filing of the complaint or F.I.R. If the investigated is not completed within three months

78B. Supra note 35, Sec. 27(3).
the case shall be treated as closed. Similarly, the trial in such cases also must be completed with six months from the date of filing the charge otherwise the prosecution shall be quashed. But in practice these directions are seldom followed. During field study it was found that some of the cases involving juveniles are continuing for more than six months or even a year in few cases. Juvenile Courts should be given clear direction to follow these directions in juvenile cases.

(iii) An Appreciation of Judges Approach

The individual attitude of the judge towards juvenile justice plays important role in the proper administration of the system. It is not enough to pass law and say that juvenile justice system has come into existence. The judges, the prosecution and the Bar must be convinced of its advantages and they must become its votaries. The judge who is not favourably inclined towards the juvenile justice philosophy or who operates the system without proper scrutiny, renders the objectives of the system practically inoperative or operates it to the detriment of the cherished goals of correctional justice sought to be achieved through the preferential legislation - Juvenile Justice Act, 1986.

As it has been observed in the chapter relating to Probation that inspite of the application of East Punjab Children Act, 1949 in the State, the courts were releasing even the juvenile offenders under the Probation of Offenders Act, 1958. No reference to Act(E.P.C.Act) or its provisions has ever been made in releasing the juveniles on probation. This was contrary to the provisions of law. Even in releasing on probation the courts mostly relied

78D. Id.para 12.
79E. See infra, Chapter Seven.
upon guess work or scanty information contained in the police report. Presentence report has been called only in 2 per cent cases. Joint trial, and other procedural violations\textsuperscript{78F} have all along been a matter of routine without any concern by the courts. Since most of the cases involving juveniles terminate at trial court level so these gross procedural violations have never been taken seriously. Similarly, juveniles were being sent to jails\textsuperscript{78G} or in some cases into Borstal institution\textsuperscript{78H} instead of certified schools as desired by the East Punjab Children Act.

It is a very microscopic minority of cases which ultimately come for consideration by the courts at the higher level. Even here the position is not very healthy. A classical example in this context is the case of \textit{Rattan Lal v. State of Punjab}\textsuperscript{79}. The appellant was a 16 years of age young child and he was convicted under Sec.354 and 451 of Indian Penal Code and sentenced to imprisonment for 6 months by the Magistrate. In his appeal to the Additional Session Judge, he was not granted probation. He filed revision petition before the Punjab High Court requesting it to exercise jurisdiction under Sec.11 of the Probation of Offenders Act,1958. The High Court dismissed the petition. The Supreme Court in special leave to appeal recommended to the High Court to follow the mandatory provision of Section 6 of the Probation of Offenders Act and remanded the case. The Highest Court instead of remanding the case should have disposed it of under Section 11 of the Act. Thus the petitioner was made to continue his fight for justice at his own expenses before so many courts. This also indicates the interest and attitude of the courts at every level towards community based correctional alternatives.

\textsuperscript{78F}Like place of sitting of the Court, Police handling of juveniles and informal nature of procedure etc., See supra.
\textsuperscript{78H}See Chapter Nine, (Borstal Institution).
\textsuperscript{79} A.I.R. 1965 S.C. 444.
It is, therefore, most important not only to select judges for the juvenile courts with utmost care and caution but also to train them specifically for this delicate task. The quality of juvenile justice does not depend upon the quality of its substantive and procedural laws but it largely depends upon the quality and competence of persons who are to manage its operative agencies.

V. Juvenile Welfare Board

Juvenile Welfare Boards are the outcome of a cry for segregation of neglected juveniles from the delinquent juveniles, both, for the purpose of processing and treatment. Children, who had been victimized by the fast changing social processes as a consequence of industrialization and urbanization, among other economic and sociological phenomena, became the object of widespread concern. It was realised that these unfortunate juveniles deserve better social concern because of three factors. Firstly, it goes to their credit that inspite of social and economic adversities they did not choose delinquent way of life. Secondly, the disadvantageous situational factors, in which they happen to be there, are the creation of many social and economic processes in the making or unmaking of which they have no role to play. Thirdly, it was to save them from the possible bad influences which are most likely to be there in the company of delinquent juveniles. Accordingly, it was realized that it is improper to grind these social outcastes in the rigid and legalistic procedure of criminal justice system(The procedural norms of juvenile justice and criminal justice are practically the same). This concern was past due and certainly justified, but was perhaps sentimentalised out of guilt that children's rights had been callously ignored for far too long. It was, therefore, considered necessary that for the processing and treat-

79A See Chapter Two.
ment of neglected and destitute juveniles a more society-based agency should be established to take up their cases. And similarly, a more open and constructive treatment alternatives should be made available to the processing agency in such cases. The outcome of this was the establishment of Juvenile Welfare Board and also separate institutional care for this category of juveniles.

The dawn of the institution of Juvenile Welfare Board in India is comparatively late. It was only with the passing of Children Act, 1960 that provision for dealing with delinquent and non-delinquent children separately was made. In fact in the original draft Bill of the 1960 Act the old pattern (Juvenile Court as the sole agency to process and dispose of the cases of delinquent and non-delinquent children) was contemplated. But the Joint-Select Committee of the Parliament set-up to consider the provisions of the Central Bill recommended that there should be two different machineries for dealing with delinquent and neglected children. It was also recommended that atleast one member of the forum to be established for the neglected children should be a woman. The Committee suggested the nomenclature 'Welfare Board' for such body. These recommendations were accepted and incorporated in the Act. Thus, this Act became the model Children Act for all other states which passed their won children Acts later on. The Children Acts of Karnataka, Assam, Madhya Pradesh, Jammu and Kashmir, Rajasthan, Tamil Nadu and Haryana which have been passed after Children Act, 1960 are based, more or less, on the pattern of the Children Act, 1960. Some other states followed the same pattern later on. However,

In Punjab the Juvenile Court continued to exercise dual jurisdiction, both in the cases of delinquent as well as neglected juveniles, till the coming into force of Juvenile Justice Act, 1986 in the State.

Juvenile Justice Act, 1986 has thus the distinction of introducing a uniform pattern on all India basis in the processing and treatment systems of neglected and delinquent juveniles. Delinquent juveniles fall within the jurisdictional scope of Juvenile Court for the purpose of processing and disposition. Neglected and destitute juveniles fall within the jurisdiction of Juvenile Welfare Board for the purpose of processing and disposition of their cases.

The advent of Juvenile Welfare Board on the Punjab scene is the gift of Juvenile Justice Act, 1986 and is still in its infancy. The Department of Social Welfare, Punjab has already established three Juvenile Welfare Boards in the State at Patiala, Ropar and Jalandhar. These Boards have been established on the recommendations of the District Magistrate of the concerned area. The Gurdaspur Juvenile Welfare Board has not yet been established because of non-availability of the recommendations of the District Magistrate Jalandhar.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Name of Institution</th>
<th>Jurisdictional Area</th>
<th>Category of Juveniles covered</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>Juvenile Welfare Board, Ropar</td>
<td>Ropar, Ludhiana, Hoshiarpur</td>
<td>-do-</td>
</tr>
<tr>
<td>3.</td>
<td>Juvenile Welfare Board, Jalandhar</td>
<td>Jalandhar, Kapurthala Paridkot &amp; Ferozepur</td>
<td>-do-</td>
</tr>
<tr>
<td>4.</td>
<td>Juvenile Welfare Board, Gurdaspur</td>
<td>Gurdaspur, Amritsar</td>
<td>-do-</td>
</tr>
</tbody>
</table>

Each Board is consisting of three members one of whom is a woman. The Boards have started functioning as desired under the Act. However, it will not be possible to pass a correct judgement on the working of these Boards because of a very short span of its existence. Otherwise also, it is not possible for any new establishment to work at its optimum level immediately after its take of stage.

(i) Structure of the Board

No doubt, the Juvenile Justice Act, 1986 provides for the establishment of two different agencies for processing of delinquent and neglected juveniles under the scheme of the Act. There are only a few distinctive features between the structure and the function of the two agencies, i.e., Juvenile Court and Juvenile Welfare Board.

The Act empowers the State Government to constitute by notification for any area specified in the notification, one or more Juvenile Welfare Boards for exercising the powers and discharging the duties conferred or imposed on such Board in relation to neglected juveniles under the Act.\textsuperscript{84} The Board shall consist of a Chairman and such other members as the State Government thinks fit to appoint, of whom not less than one shall be a woman.\textsuperscript{85} No person is eligible for being appointed as a member of the Board unless he possesses special knowledge of child psychology and child welfare.\textsuperscript{86} Every member of the Board shall have the powers of a Magistrate as vested by the Criminal Procedure Code, 1973. But when the Board functions as a Bench it shall have the powers of Magistrate First Class.\textsuperscript{88} There is no provision for the assistance of social worker as is

\textsuperscript{84} Supra note 35, Sec.4(1).
\textsuperscript{85} Id.Sec.4(2).
\textsuperscript{86} Id.Sec.6(3).
\textsuperscript{87} Id.Sec.4(2).
\textsuperscript{88} Id.Sec.4(3).
there in the case of a Juvenile Court.

The Juvenile Welfare Board has been vested with the exclusive powers
to deal with all proceedings relating to neglected children within its terri-
torial jurisdiction. Where there is no Welfare Board constituted for any
area a transitory provision has been made by conferring the powers of a
Board on District Magistrate or Sub-Divisional Magistrate. The High Court
and the Court of Session are vested with the powers of Welfare Board when
they hear an appeal or revision. A neglected juvenile under the Act has been
defined as:

'Neglected juvenile' means who

(i) is found begging; or

(ii) is found without having any home or settled
place of abode and without any ostensible means
of subsistence and is destitute; or

(iii) has a parent or guardian who is unfit or incapaca-
ted to exercise control over the juvenile; or

(iv) lives in a brothel or with a prostitute or fre-
quently 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; or

(v) is being or is likely to be abused or exploited
for immoral or illegal purposes or unconscionable
gains.

(ii) Function of the Board

The objective behind establishing separate bodies for dealing with the
neglected children is to segregate such juveniles from coming into contact
with those children who have already shown a delinquent behaviour. The Act,
has tried to maintain this distinctive treatment from the initial stage of the

89. Id.,Sec.7(1).
90. Id.,Sec.7(2).
91. Id.,Sec.7(3).
92. Id.,Sec.2(J).
process of taking them into change. The Legislative has been cautious in using the phrase "taking charge of" as used with reference to a delinquent child. Charge of an apparently neglected juvenile, for being brought before a Juvenile Welfare Board, may be taken either by a police officer or any person or organisation authorised by the State Government on this behalf by special or general order. Since in the State of Punjab no person or organisation has so far been authorised by the State Government to exercise these powers, so only police officer is left with the power to take charge of the neglected juvenile. A police officer in charge of a police station, when informed about any neglected child within the limits of the police station, shall exercise his powers to assume charge of such juvenile and he shall enter in a book to be kept for the purpose the substance of such information before taking action on the information received by him. In case the police officer does not propose to take charge of the juvenile, he shall forward copy of the entry made to the Board for further appropriate action. But, if the juvenile is taken charge of by the police officer, he shall be produced before the Board within twenty four hours, and in the meantime shall either be kept with his parent or guardian or in an observation home, but in no case in a police station or jail.

The Act has prescribed a special procedure where the neglected juvenile has a parent or guardian. In such case the police officer or authorised person or authorised organisation may instead of taking charge of the juvenile, make

93. Id. Sec.13(1).  
94. Id. Sec.18(1).  
95. Id. Sec.13(1).  
96. Id. Sec.13(2).  
97. Ibid.  
98. Id. Sec.13(4).  
99. Id.,Sec.13(3).
a report to the Board for initiating an inquiry regarding the child.\textsuperscript{100} The Welfare Board may serve a show cause notice upon the parent or guardian as to why the juvenile be not dealt with as a neglected juvenile under the Act. If it appears to the Board that the juvenile is likely to be removed from its jurisdiction or to be concealed it may immediately order his removal to an observation home or place of safety.\textsuperscript{101}

(a) Intake Procedure: At the intake level the proceedings of the Juvenile Court and Juvenile Welfare Board are quite at par except that the services of the panel of social workers is not available to the Welfare Board and the probation officer is not obliged to make social inquiry report, without being called for by the board, as in the case of delinquent juvenile.\textsuperscript{102} A Welfare Board may, if it deems it desirable in the case, seek such a report from the probation officer with a view to assist it in assessing the best possible mode for placement with the family or in an institution.\textsuperscript{103} As a general rule no legal practitioner is entitled to appear in any proceeding before a Welfare Board, except with the Board's special permission. This step is intended to add to the informal nature of the proceeding. This presents a good compromise between the public policy and the rights of child.

Different procedure is sought to be prescribed for the neglected juveniles as distinguished for the delinquent juveniles, but no material changes are visible except the use of terminology "take change" for arrest and replacement of provision for bail with the discretion of the police or the authorised person or authority to take or not to take charge of the child at the initial stage.

\textsuperscript{100} Id. Sec.14(1).
\textsuperscript{101} Id. Sec.14(2).
\textsuperscript{102} Id. Sec.19(b).
\textsuperscript{103} Supra note 41, Rule 5(5).
(b) At Police Level: Thus the general authority of taking into his charge a neglected juvenile and producing him before the Board vests with the police officials\(^{104}\) under the Juvenile Justice Act, 1986. Similar provision existed under the East Punjab Children Act, 1949.\(^{105}\) Under the Juvenile Justice Act, no body has so far been authorised to take charge of the neglected juvenile for further processing. However, under the East Punjab Children Act, District Magistrate of the concerned area had been given the power to recognise a competent person or authority for this purpose.\(^{106}\) But in practice this recognition has no sense as even the general public does not know this fact. Thus, the common man has no power to bring the neglected juvenile to the notice of the Welfare Board. The only way out for him is to approach the police for this purpose. How much responsible the police is specially in such non-obligatory situations is well known to every one. So no body dares to get himself insulted by bringing such matters to the notice of the police.

The role of a police official may be assessed differently in relation to a delinquent juvenile but it is certainly questionable in relation to neglected juveniles. The mere fact of dealing with a police official in our society relates the matter to some crime and a common man who is otherwise interested in the welfare of the child may be detracted just because he himself will have to contact the police. The only logic for not allowing a common man to directly approach the Board in the interest of welfare of juvenile appears to be to avoid the possibility of some person of doubtful integrity assuming the charge of a juvenile on that pretext. But then the vast number of juveniles who could have been helped, go unprotected. This becomes more pronounced in the context of the attitude of our police towards such a thankless job as that of dealing with neglected juveniles. Otherwise also police is an organisation which has an image

\(^{104}\) Supra note 35, Sec.13(1).  
\(^{105}\) Sec.8(1).  
\(^{106}\) The Punjab Children Rules, 1960, Rule 16.
of authority and is tuned in dealing in a rough and tough manner so the contact of neglected juvenile with the police is not conducive to treatment and rehabilitative strategy of juvenile justice.

It is, therefore, necessary that the first contact of a juvenile with the juvenile justice system must be reflective of a real concern for his welfare and safety and not of authority and force. In fact a juvenile in distress needs an affectionate and supportive touch at the very first contact of the system with him. It will be better to exclude the neglected juvenile from the jurisdiction of the police official or atleast this matter must be handled by a specialized police agency which is trained in child welfare. In addition to this some well respected professionals (both in service and retired) like teachers, judicial officers, doctors etc., too could be conferred with this power. Municipal Commissioners, Sarpanch of a village Panchyat, M.L.A., and M.Ps too could be considered for this duty. These personnel should be authorised to directly refer the matter to Welfare Board or they may seek the help of special juvenile police agency for this purpose. In the context of Punjab situation this becomes more imperative as the police force is awfully preoccupied with law and order problem in the State. It will also be inconsonance with the philosophy of maintaining a visible distinction in the handling of neglected juveniles in comparison to delinquent juveniles.

(c) At Welfare Board Level: So far the working of the Board for the purpose of intake system is concerned it is not upto the mark. Although woman members are also there as desired under the Act but none of the members possess any special knowledge of "Child psychology and child welfare". All the three Chairmen of the Boards are busy professionals from the legal side and accordingly they have
very little time for the Board proceedings. Another aspect that has come to the knowledge with regard to Boards is that the members specially the Chairmen have strong political affiliations. Two of them contested Assembly elections on party tickets. This affects the objectivity of the Board in its functioning. It will be better if retired judicial officials or retired senior teachers are appointed for the job who can devote sufficient time for the job.

The intake system is very simple and almost resembles with school admission committee in its working. Although according to the Act only police personnel or authorised person/organisation can bring the juvenile before the Board but in practice it does not happen. In the absence of any authorised person/organisation only police is left to take charge or bring the child before the Board. But this fortunately does not happen in most of the cases. The normal routine of the Board's function is that juveniles are brought before the Board by parents or guardians and some influential person accompanies them, so that the juvenile is admitted in the institution. All out efforts are made to convince the Board to take in the juvenile for institutional stay. Parents are guided by the simple logic that if the juveniles gets admission he shall ultimately be entitled to free boarding and lodging besides the free educational facility in an urban school. (See Table V-2) Thus all kinds of pressures and pulls are applied for pushing the juvenile in. This practice was wide spread till the coming into force of Juvenile Justice Act in the State. As it has been seen in the chapter dealing with corrections for neglected juveniles, most of the juveniles have parents/guardians alive and they come from rural background. (See Table V-3) The only allurement is free and better education at State expenses in the city.

107. See Chapter Eight for details.
Table V-2
Showing Number of Juveniles brought before the Board and their Disposition During 1987-88 and 1988-89

<table>
<thead>
<tr>
<th>Juvenile Welfare Board</th>
<th>Number of Juveniles brought before the Board</th>
<th>Institutionalised</th>
<th>Restored to Parents</th>
<th>Put under Supervision</th>
<th>Otherwise Discharged</th>
</tr>
</thead>
<tbody>
<tr>
<td>Patiala</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1987-88*</td>
<td>3</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>3</td>
</tr>
<tr>
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* Figures pertain to a period after Oct. 2, 1987 when Juvenile Justice Act, 1986 was enforced in the State.

** Otherwise discharged means that no orders were passed in their case. They were accordingly left to go to their place of stay.
Showing the Source through which juveniles were brought before the Board and their community and family background.

<table>
<thead>
<tr>
<th>Name of the Board</th>
<th>Total Juvenile brought before the Board</th>
<th>Brought by Police</th>
<th>Brought by Authorised Persons</th>
<th>Brought by Parents/Guardians</th>
<th>Juveniles from Rural Area</th>
<th>Juveniles from urban Area</th>
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Board does not call for any social inquiry report from the probation officer to ascertain the facts of the case, and decides the case on the facts presented by the interested parties. With the coming into force of Juvenile Justice Act the admission number has declined as the Board is reluctant to oblige all the people who approach it for securing admission in the juveniles home. However, the practice still continues to some extent because otherwise the admission will come to almost an end as the police does not bring neglected juveniles before the Board. In order to keep the correctional institution going it becomes imperative to relax the rigid procedural formality and consider cases of juveniles who are brought before it by persons not authorised by the law.

Neglected juveniles, falling in clause (ii), (iii) of Section 2(J) of the Act alone are being processed by the Welfare Boards in the State. There was not even a single juvenile who was brought before the Board other than those covered by the above two clauses. It also indicates that the police officials do not care to discharge their obligations under the Act.

In this manner most of the juveniles who are ultimately sent to the institution are from families which do not fall within the scope of the Juvenile Justice Act. It, however, does not mean that really deserving persons are not there. In fact, there is nobody to bother about them. Large number of such juveniles can be seen collecting waste material from garbage or begging at public places like Railway Stations, Bus Stands and Cinema Houses etc. Due to faulty intake system really deserving juveniles, who need the concern of the society most, fail to get the necessary attention of the juvenile justice system. In this way the whole system management becomes a wasteful exercise. The social justice does not reach the persons who deserve it. Another reason for this
malfunctionings of the system is the wrong notions of the people regarding the corrections and their objectives. There is a widespread belief among the people that these institutions have been established by the State for providing free education to the children of poor parents. This changes the whole outlook of the people and they insist upon getting their children admitted in the juvenile home.

(iii) Treatment Alternatives Available with the Board

Neglected juveniles are taken into charge by the State not by way of preventive detention but because they are in need of care and protected. Because if they are left unattended they are likely to drift towards delinquent way of life or may become a subject of exploitation by others. Such juveniles are those who are found begging or collecting rags from garbage or who are destitute having no home or ostensible means of subsistence. Certain juveniles who have become vagrant because their parents or guardians are unfit or unable to exercise control over them and those who are placed in circumstances dangerous to their moral health are also eligible for this social care. In all such cases the immediate need of the child is his moral and material security. As a last resort even institutionalised care is visualised for those juveniles who need active support of the State in order to prepare them to meet the challenge of real life.

Welfare Board having conducted the inquiry about the neglect of the juvenile taken into charge and having found that the juvenile is neglected may order any of the following measures to be taken in respect of that juvenile:

(a) The Board may make an order directing the juvenile to be sent to a juvenile home for the period until he ceases to be
a juvenile.108 Board may, for reasons to be recorded, extend
the period of stay upto the age of 18 years in case of a boy
and upto 21 years in case of a girl.109 The Board may, in
appropriate cases, reduce the period of stay to such period
as it thinks fit in the case.110

(b) The Board may make an order placing the juvenile under the
care of parent, guardian or other fit person on such parent,
guardian or fit person executing a bond with or without surety
to be responsible for the good behaviour and well being of
the juvenile and for the observance of such conditions as
the Board may think fit to impose.111

(c) At the time of making an order under sub section (1) of Section
16 or at any time subsequently, the Board may, in addition, make
an order that the juvenile be placed under supervision for any
period not exceeding three years in the first instance.112 In
case the conditions, under which the juvenile has been released
to parents/guardian etc., are not observed the juvenile may be
ordered to be sent to a juvenile home.113

In making the selection of treatment alternative suitable to any parti-
cular case the Board shall take into consideration the circumstances relating
to the age, physical and mental health, living conditions report of the proba-
tion officer, if any, religious persuasion and any other circumstances in the
interest of the welfare of the juvenile.113A Thus this aspect is the most crucial

108. Supra note 35, Sec.15(2).
109. Id. Sec.15(2) Proviso.
110. Ibid.
111. Id. Sec.16(1).
112. Id. Sec.16(2).
113. Id. Sec.16(3).
113A. Id. Sec.33.
and important in the functioning of the Board.

A juvenile ordered to be sent to a juvenile home is to be kept there until he ceases to be a juvenile. Thus under the Act, a boy shall ordinarily be institutionalised up to the age of sixteen years and girl until she attains the age of eighteen years. However, this period can be extended up to the age of 18 years in case of a boy and twenty years in case of girl if the circumstances of the case so demand. In appropriate case the Board has been empowered to reduce this period from 16 years and 18 years respectively. Institutional stay in fact is the last priority in the treatment alternatives and thus should be resorted only in rare cases where non-institutional methods are not likely to succeed.

The second alternative measure contemplates those situations where either the parent or guardian who was responsible for the juvenile's neglect either shows a sufficient cause of neglect and assures the Board that the child shall be properly cared for in future and wishes a chance to be provided for the same. This option can be exercised in those cases also where there is any "fit person" whether an individual or an institution, who is willing to assume the responsibility of the child in terms of his physical needs and moral and material welfare. In such contingencies it is in the interest of the juvenile that in place of institutionalisation the juvenile is committed to the custody of such parent, guardian or fit person. In cases where it is still doubtful supervision orders can also be made in order to find out whether the conditions of release to the parents are being followed or not.

However, in practice the situation is quite different. As seen in Table V-2 and Table V-3 juveniles are brought before the Board by parents in most of the cases in order to secure a kind of admission in the Juvenile Home where
free and better educational and other facilities are available. Because of poor intake scrutiny the quality of inmates is not of those who actually deserve care and protection of the State. Thus, the whole system becomes a failure and misdirected. In the absence of adequate juvenile probation system many practical difficulties are faced both at intake level and dispositional level. These difficulties are overcome by compromising the basic principles of the juvenile justice system in order to keep the system going for its own sake. This aspect of the working of the Board needs a serious concern if the lot of really deserving juveniles is to be improved.

VI. Conclusions and Suggestions

(i) Re Juvenile Court

(a) Need for Co-operation between different variables of Juvenile Justice System:

Juvenile Court and Juvenile Welfare Boards are, in fact, only one sector(sub-system) of the juvenile justice system as a whole and they cannot be dealt within isolation. Changes, deficiencies and defects in the operation and policies of any one sector(for example corrections, probation, police) affect the others and ultimately effect the quality of its out-put. It is therefore, necessary that the basic decisions affecting these many variables should be taken after due consideration of difficulties, needs and experiences of all of them. Effective flow of information, integration and co-ordination among all of them are, therefore, essential, so that the gains in effectiveness in one sector are not offset by a decrease in effectiveness elsewhere. This is possible only if all these major variables of the juvenile justice system operate under the control and guidance of single department. It is, therefore, necessary that all these variables should be put under the administrative control of the Social Welfare Department which should co-ordinate all
its activities.

(b) Working of the Juvenile Court

The working of the courts exercising juvenile jurisdiction is more of a formality than reality. The courts do not insist upon social inquiry or presentence report before the finalization of treatment alternative. Thus, the most vital consideration in reaching a decision with regard to treatment alternative is not available to the court and decisions are made on guess work or consideration of suitability of treatment alternative to all the affected parties. Probation is the main choice and it is without any supervision in good number of cases. Counsellors toe the line of the court and other agencies than protecting the juvenile in reality. Every effort is made to dispose the case in the minimum possible time to the satisfaction of all concerned with the final disposal of the case. Court by disposing the case achieves its units insisted upon by the High Court; prosecution is happy by the final verdict of conviction and thus successful termination of the case; parents and the juvenile get rid of the intricate and lengthy judicial process, by happily accepting probation as almost acquittal thus saving time and money; defence counsel is happy by procuring the judgement to the satisfaction of his client and thus receives full fee and saves any further botheration. A kind of connivance prevails all the variables of the juvenile justice system and the routine continues without any hue and cry from any side. It is therefore, necessary to appoint professionally trained personnel to manage the proceedings of juvenile court. So for no juvenile court has been established in the State. There is no juvenile probation service. There is no juvenile police and prosecution. The quality of juvenile justice will remain substandard unless adequate and competent persons are not appointed to manage the various variables of the juvenile justice system.
Presentence reports should be made mandatory where the court is of the opinion that the case calls for institutionalization of the juvenile. The quality of presentence report should be formalized and the courts should insist upon calling for complete information. Appropriate assessment in the selection of treatment alternative is possible only if the complete information is there before the Court.

The court must see that handcuffing the juvenile does not take place and police officers observe the conditions imposed by the Act.

(c) Decriminalization

Juvenile delinquents below the age of 12 years should be excluded from the jurisdiction of juvenile court and should be processed by Juvenile Welfare Board. However, where the Board is of the opinion that case deserves to be processed by juvenile court, in view of the nature of the office and character of the juvenile involved, it should be referred to the Juvenile Court. Thus, the first agency to take cognizance of the case involving a juvenile below 12 years should be Juvenile Welfare Board.

(d) Treatment Alternatives

The scope of treatment alternatives should be widened, giving more discretion to the juvenile court to opt for the best suitable one in the case in hand. Following alternatives can be included in the Act:

a) Family counselling in addition to any other alternative.

b) In the cases involving dangerous deviation the juvenile court should be empowered to send the juvenile to Borstal institution if he is above the age of 14 years and the nature of offence is
quite serious. Other considerations like character of the juvenile etc., too can be taken into account. Thus instead of sending the case under Sec.22 of the Act to Government for appropriate custodial detention the juvenile court should be authorised to send the juvenile to Borstal institution.

c) Community service orders should also be included in the treatment alternatives. The community service can range from one week to one month depending upon the circumstances of the case.

(e) Review of Detention Period

Where a juvenile has been sent to a Special Home and his stay in the Home has been peaceful and good his original detention period should be reviewed after the juvenile has already completed at least half of his term in the institution.

(f) Meetings/Seminars

Periodic meetings of juvenile court judges should be arranged where they can discuss their experiences and difficulties. This will help in introducing some kind of uniformity in procedural formalities and selection of treatment alternatives. Besides this it will provide necessary feedback for introducing changes in the existing legal framework of the Act. Similarly meetings and seminars between the officials of all the main variables of juvenile justice should be encouraged so that they can share good and bad experiences of each other and accordingly make suggestions for introducing necessary changes in the administrative setup or legal framework of the system.
(g) Young Offenders

The category of "young offenders" in the age group of 16-20 years too should be included within the jurisdiction of juvenile court. Borstal institution accordingly should be one of the alternatives available to the court for disposing of such cases. However, in cases of serious and dangerous conduct the court should be empowered to refer the cases to ordinary criminal court after recording its reasons.

(h) Licencing out and Parole release should be placed under the judicial scrutiny of Juvenile Court. This will secure public confidence in its fairness and reduce arbitrariness.

(ii) Re Juvenile Welfare Board

(a) Intake Procedure

The most vital aspect that needs immediate attention is the intake procedure. As it has been seen that the whole orientation of the intake system is faulty. In order to improve the intake method it is desirable that neglected juveniles should not be brought by the police but there should be a specialized police force to undertake this duty. Besides this private individuals of some social standing should also be authorised to bring the neglected juveniles before the Board. Teachers, judicial officers, doctors can be considered for that purpose. Social inquiry report must be insisted upon before taking a decision for the institutionalization of the juvenile unless the case is apparently so clear that it does not require any further investigation. This becomes more necessary in order to change the prevalent notions of the people concerning the institutional stay. Moreover careful intake is absolutely necessary in order to make the benefits available under the juvenile justice system to the really deserving cases.
(b) Constitution of the Board

The Juvenile Welfare Boards or working without any honorarium and are part-time. There nomination system is too simple as they are appointed on the recommendation of the Deputy Commissioner of the district concerned. In this manner the choice of right and committed person becomes difficult. It will be better if the members are permanent civil servants and are appointed after careful selection keeping in view of their qualifications. They must be imparted with necessary training in dealing with the cases of neglected juveniles. Since in the State of Punjab the problem of neglected juvenile is not very serious so one panel can be appointed for whole of the State which can function at different places by rotation according to prepared schedule.

(c) Stay in the Observation Homes

As at present the juveniles pending inquiry are sent to observation home and stay there till their case is finally disposed of. But in actual practice it has been found that juveniles are staying in the Observation homes for months together and some times for a year or more. It is, therefore, necessary that some time limit for the stay in the Observation Homes be fixed and inquiry in his case be completed within that specified period. However, in cases of hardship this stay could be extended for a month or so. So the Welfare Board must complete inquiry in a fixed span of period.

(d) Treatment Alternatives

New treatment alternatives should be introduced for the availability of the Welfare Board so that there is wide open choice to meet the requirements of each case. This will help in the individualization of justice. The following
alternatives are there to mention a few:

a) Family Counselling.

b) Semi-residential institutions, where the juvenile could stay for night and should be at liberty to work during day. Similarly institutions where the juvenile could learn during day and should be at liberty to stay for night. This will gain the confidence of the juveniles and will be cheaper in cost.

c) Periodical reporting to the probation officer or Superintendent of a correction to seek his help, guidance and advice.

d) Persistent deviation of serious type should be dealt in a more disciplined manner. Such juveniles who are above the age of 14 years and uncontrollable should be sent to special home instead of juvenile home. There should be no necessity of sending them to juvenile court for making fresh inquiry as it will be just a wastage of time.

(e) In order to secure community participation and co-operation in the rehabilitation process it becomes necessary that the Juvenile Welfare Board should work in a more open and informal manner. Local advisory committee should be there to extend necessary co-operation in this regard. This will help the Board to make the rehabilitation process more broad based and nearer to community living.