4. Evolution of Juvenile Justice Laws in India

The juvenile justice system developed from the recognition that children were not as mature as adults to understand the nature and the consequence of their criminal acts.\(^1\) The appalling prison conditions led to improvement in the living conditions in prisons and segregation in prisons. At that time there was only ten percent of the total population in prison in the age group of 15-20 years who made up almost quarter of the criminal population.\(^2\) Those under 15 years of age made up to 6.5 per cent of the criminal population.\(^3\) The failure of prisons and other similar institutions to control crime and the rapid increase in juvenile delinquency necessitated alternative measures for children. The prison reformers did not want children to be processed as adults and sent to penitentiaries but neither did they want the children released. The recognition of the harmful effects of keeping the adult and juvenile offenders together resulted in separate juvenile jails and reformatories. The principle of segregation further led to separate hearings, changes in the criminal procedure which finally led to the creation of juvenile courts. The search for new means for the prevention of crime and delinquency finally moved towards utilization and organization of community resources.

In this chapter the evolution of Juvenile Justice is studied from two phases. This chapter deals with the development of the legal system on juvenile laws,

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\(^2\) Krishnamurthy, V. and Rao, B. *Handling delinquent at Home*, Social Defense 1986, p.36
\(^3\) Morris, A. and Giller, H. *Understanding Juvenile Justice*, Dorset Russel House, 1944 p.8
and the subsequent changes in the jail rules which gave rise to separate
treatment to juveniles. It also chronologically traces the growth and
development of the juvenile law in India and establishment of juvenile courts.

4.1 Origin of Juvenile Justice System in India

In the 17th century the British through the Regulating Act of 1773 acquired the
powers of making laws and enforcing them in India. The period from 1773 to
1850 saw various committees examining the conditions of jails in India with
special focus on children in jails. The first legislation for keeping children out
of jails was enacted in 1850.

4.1.1. The Apprentice Act, 1850

The Apprenticeship Act, 1850 is the first legislation for children in India. This
Act was concerned with delinquent behavior of the child. Children convicted
by courts were intended to be provided with some vocational training which
might help their rehabilitation. Children found destitute, or guilty of petty
offence by the trying magistrates were also covered by this Act. The Magistrate
was authorized to act as guardians in respect of a child committing a petty
offence and could bind him as an apprentice to learn a trade, craft or
employment. This legislation sowed the seeds of Juvenile Justice System in

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5Kumari, V. The Juvenile Justice System in India from Welfare to Rights, Oxford University Press, 1st
  e.d 2004, p.57-71
6Act No. 19 Of 1850 Repealed
7The Act was repealed by the Apprentice Act, 1961 which does not contain provisions relating to the
destitute children.
India. It was not specifically concerned with Juveniles but it emphasized the need to treat children in a different manner from adults. The Act was repealed by the Apprentices Act, 1961 which did not contain provisions relating to delinquent children.

4.1.2. The Reformatory School Act, 1876

The Reformatory School Act, 1876 is the next landmark legislation dealing on juvenile delinquents in India. The Act empowered local governments to establish reformatory schools in accordance with the Indian Penal Code, 1860 and exempt children less than 12 years of age from criminal offences. According to the Act the Court could keep the child for two to seven years in reformatory schools if it was under 18 years of age. Youth placed in reformatories could leave if they found gainful employment. Under this Act a beginning was made for incorporating rehabilitative technique in penal philosophy for juvenile offenders.

4.2. Period from 1851- 1920

Many legislations were enacted during this period covering a wide range of matters concerning the children. The Female Infanticide Prevention Act, 1870

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9Mokherjee, A. An In-dept Study on matters Related to Children, Sarkar & Sons Pvt Ltd, Calcutta India 1989 p.55
10Act V of 1876
12Siddique, A. Criminology and Penology, Eastern Book Company Lucknow, 6th ed p.249-307
13The early period is from 1851- 1920 when Acts were enacted during the British rule. Many of these Acts are a British Legacy in India even today.
14Act no 14 of 1870
and *The Vaccination Act, 1880*, Act No 13 of 1880 sought to secure life and health of the victim. *The Guardianship and Wards Act, 1890* Act No 8 of 1890 made provisions for the care and protection of children. To combat the evil of child labour special provisions were made by *The Factories Act, 1881*.\(^\text{15}\)

*The Whipping Act, 1864*, Act No VI of 1864 whose intend was not to shield the child from the whip, but to keep it from the adult space of the jail by facilitating the use of flogging instead of incarceration. The Whipping Act was seen as an ideal way of dealing with juveniles who were neither fit for reformatory nor jail and thus were neither children nor adults. The violence of beating could be utilized to make graduations in the juvenility and criminality of the individual offender. With time the number of juvenile offenders increased and a few strips did not deter them much.\(^\text{16}\)

Legislation in criminal justice to deal against forcible abduction of children was proposed in 1848.\(^\text{17}\) Under the existing law the forcible taking of girls without their parents’ permission for the purpose of sale or prostitution was an offence but this was not covered by the Regulation. The draft legislation was not approved and the cases were covered under illegal trespass.\(^\text{18}\)

\(^{15}\)Dr. Padhi, P.K. *Child Labour Retrospect and Prospect*, Laxmi Offset, Cuttack p.3


\(^{17}\)Following the abduction of a 7 year girl due to personal vengeance

\(^{18}\)Original Legislative Consultations (Manuscript) Legislative Nos 8, 9, 8 January 1848
4.2.1 The Reformatory Schools Act, 1897

Sir Richard Temple the Lt. Governor of Bengal had observed that juvenile offenders were growing in vice and ignorance. Need was felt to pass the Reformatory School Act, 1976. The proposed Bill was intended to apply to delinquent juveniles and non delinquent juveniles. Strong protests were made by the British Indian Association and Bombay Government against the inclusion of non delinquents in the Bill. It was felt that it posed the risk of injustice. The non delinquents were excluded from the scope of Reformatory Schools Act, 1876. This Act was passed to amend the law relating to Reformatory Schools and to make further provisions for dealing with youthful offenders. This Act marks the beginning of incorporating the rehabilitative techniques in the penal philosophy of juvenile offenders. According to the Act children up to the age of 15 years were sentenced to imprisonment or could be sent to reformatory schools rather than prison.

4.2.2. The Criminal Procedure Code, 1898

The Criminal Procedure Code of 1898 contained provisions for juvenile delinquents. Section 29(b) of the code restricted the jurisdiction of the

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22 See Long title
23 See Section 8, 10 of Reformatory Schools Act 1897. Report of the Indian Jail Committee 1889,April 1889, p.71
24 Act V of 1898
25 See Section 29-b and Section 399
26 Section 29(b) deals with jurisdiction in case of juveniles. This Section was retained in the Code of Criminal Procedure 1973.
ordinary courts in the trial of juvenile delinquents.\textsuperscript{27} Such offences could be tried by the District Magistrate or a Chief Presidency Magistrate, or Magistrate specially empowered by the Provincial Government to exercise powers.\textsuperscript{28} Section 399 provided that when any person under the age of fifteen years was sentenced by any criminal court to imprisonment for any offence, the court could direct such a person to a reformatory school established by the State government instead of a jail. Section 562\textsuperscript{29} made specific provision for persons under certain conditions instead of sentencing such persons to imprisonment.\textsuperscript{30}

4.2.3. Changing Attitudes towards children and efforts of Indian Leaders

During the 19\textsuperscript{th} century the social reform movements began against child marriage. Leaders like Raja Ram Mohan Roy, Mahatma Gandhi and others who awakened the people to overcome their backwardness, in the shape of illiteracy or socio-cultural practices like child marriage or neglect in order to facilitate the upbringing of children.\textsuperscript{31} Raja Ram Mohan Roy prohibited the practice of Sati. Lord William Bentick the Governor General asked the Court of Directors to abolish sati. Regulation No. XVII of September 4, 1829 declared the practice of sati to be illegal and punishable by criminal courts as culpable

\textsuperscript{27}Except for offences which are made punishable with death or transportation for life.

\textsuperscript{28}These powers were granted to Magistrates under Section 8 subsection (I) of the Reformatories Schools Act, 1897.


\textsuperscript{30}Full text of the Criminal Procedure Code available at http://bombayhighcourt.nic.in/libweb/oldlegislation/CRIPC1898/cripc1898.html accessed on 15/2/2012

\textsuperscript{31}Dr. Lata, S and Dr. Kant, A. Child and the Law, APH Publishing Corporation, New Delhi, 2009 p.16-17
homicide. This regulation applied to Bengal Presidency. It was extended to Madras and Bombay in 1830.\textsuperscript{32}

The Census Report of 1911 of India reported that 2 million wives were less than 15 years of age in the year 1911. This meant that something like half the girls of India were married before the completion of 15 years. The \textit{Age of Consent Bill} raised the age of consent to 14 years. Gandhiji favoured raising the age of girls for consent to 16 years. The \textit{Sri Harbilas Sarda Marriage Act, 1929} was passed to discourage solemnization of marriage between boys and girls between 18 and 14 years. This Act received objection from the Hindus.\textsuperscript{33}

This period saw a social transformation which made people to come out of their weakness. Consequently, the care of the child came to be viewed as a vital element in the resurrection of the nation. Mahatma Gandhi and later Pt. Jawaharlal Nehru, gave importance to inculcate social concern for the citizens of tomorrow the children.\textsuperscript{34}

The 19\textsuperscript{th} century saw a change in attitude towards children. The resultant effect of all this was that a large number of dedicated visionaries, charitable and voluntary organizations moved by the harrowing tales of children, worked relentlessly to improve the overall position of children in society along with that of women. All of them invested their time, knowledge and resources towards better health, education, and growth of the weaker children. It was


\textsuperscript{33}Srinivasa, H.V.M. \textit{History of India Part II} National Law School of India Bar Council of India Trust Eastern Book Company 1997 p.42

\textsuperscript{34}ibid
during this period that some of the oldest voluntary organizations such as ‘The Children’s Aid Society’ and ‘Balkan Ji Bari’ came into being in 1920s in the service of children belonging to the poor, uneducated and helpless families.\textsuperscript{35} The entire century of freedom struggle may well be termed as the evanescent dawn of voluntary action when people learnt to pool their common resources to remove social ills, rather than rely upon an alien regime which had no State Policy nor a programme to meet the needs of children.\textsuperscript{36}

4.3. Period of 1919 -1950

From the year 1920 legislations for Juvenile Courts and other institutions in various parts of the country were passed in the form of Children’s Acts. As the country was still under British rule, it could not enact central legislation for the entire country. However, individual provincial governments could choose to enact their own legislation, which prompted the second major effort wherein provincial governments did just that, and enacted separate legislation for juveniles in their respective jurisdictions. The first province to enact its own piece of juvenile legislation was Madras.\textsuperscript{37}

4.3.1. Madras Children Act 1920

The Madras Children Act 1920 made provision for the custody, trial, and punishment of youthful offenders and for the protection of children and young


\textsuperscript{36}Bose, A.B. \textit{The State of Children in India}, New Delhi, Manohar Publishers, 2003

\textsuperscript{37}Sharma, S.D. \textit{Administration of Justice in Ancient India}, Harman Publishing House, New Delhi, 1988 p.24
persons.\textsuperscript{38} The Madras Act was not enforced properly till 1939. The Madras Act started the era of diversion of all children from the criminal justice system by establishment of a separate juvenile court and residential institutions under it in 1920. This pattern was followed by many other States like Bengal in 1922 and Bombay in 1924.\textsuperscript{39} The Children’s Act’s have been implemented in all districts. Apart from these three provinces, other jurisdictions either neglected to create a separate legislation for juveniles, or failed to fully enforce their respective acts even after Independence. Nagaland, Orissa, Sikkim and Tripura did not have legislations on juvenile delinquency. The acts did not have a uniform definition of the term ‘child’.\textsuperscript{40}

The Children’s Acts of the various states in 1920 were enacted to provide for custody, trial, maintenance, welfare, education and punishment of young offenders. They also provided for the protection of children and young offenders who were neglected, destitute or in moral danger and in need of care and protection.\textsuperscript{41}

The Children Acts passed around this time had certain common features though they laid down different cut-off ages for defining children.\textsuperscript{42} They all included two categories of children, ‘delinquent’ and ‘neglected children.’ However, the definition of ‘neglected children’ differed in these legislations. They all provided for establishment of a separate children’s court to deal with all cases

\textsuperscript{38}http://www.childlineindia.org.in/1098/b15jjact-history.htm accessed 12/2/2012
\textsuperscript{39}ibid
\textsuperscript{40}Mookerjee, A. and De A. Juvenile Justice- An Indepth study on matters relating to Children, S.C. Sarkar and Sons Pvt. Ltd, Calcutta, 1947 p.54-73
\textsuperscript{41}Barooah, P.P, Handbook of Child with Historical Background, Concept Publishing Company, 1999
\textsuperscript{42}Sabnis, M.S. Legislation for the Protection of Children, Indian Journal of Social Work, 1960, p.50-69
of children covered by the Children Act. These Children Acts also made provisions for the establishment of separate residential institutions to house the children during the pendency of their proceedings or after disposal of their cases by the children’s courts, directing such children to be sent to an institution.\textsuperscript{43} Use of prison was permitted in exceptional circumstances under these legislations.\textsuperscript{44}

By 1946 statutes on children were passed in several states in United Province,\textsuperscript{45} Bikaner,\textsuperscript{46} Cochin,\textsuperscript{47} Central Province and Berar,\textsuperscript{48} Mysore\textsuperscript{49} and Travancore.\textsuperscript{50} In the year 1929 \textit{The Child Marriage Restraint Act, 1929} Act No 19 of 1929 came into operation.\textsuperscript{51} \textit{The Vagrancy Act 1943} Act No VII of 1943 provided for the care and training of children who lived on begging or were under unfit guardianship or were under the care of parents who had a habit of drinking or criminal habits or frequently visited prostitutes or who were destitute or were subject to bad treatment.\textsuperscript{52}

Madras, Bengal and Bombay amended their Acts between 1948 and 1959. The West Bengal Children Act of 1922 was replaced by the Act of 1959. Other states which passed children Acts were East Punjab 1949, Hyderabad 1950,
Uttar Pradesh 1951 and Saurashtra 1956. Mysore Children Act 1943 was replaced by a new statute in 1964.\textsuperscript{53}

To avoid mushrooming of bogus women and child institutions and to have effective control on them the \textit{Women’s and Children’s Institutions (Licensing) Act, 1956} Act No 105 of 1956 was passed. It made provisions for obtaining licenses by such institutions after fulfilling the norms and conditions and provided for penalty for breaches. For having effective control on the Orphanages and homes the \textit{Orphanages and other Charitable Homes (Supervision and Control Act, 1960} Act No 10 of 1960 \textsuperscript{54} was passed.\textsuperscript{55}

\textit{The Probation of Offenders Act, 1958}\textsuperscript{56} empowered the courts to release certain offenders only on admonition or on probation of good conduct though they are found guilty. It imposed restrictions on imprisonment of offenders under 21 years of age. The Probation Officers were to keep watch on them and act as their friends, philosophers and guide and help to rehabilitate them as useful members of society.\textsuperscript{57}

\textbf{4.3.2. Children Act 1960}

The Education Minister, who moved the Children Bill in 1959, stated that the subject matters constituting juvenile justice fell in the State list of the

\textsuperscript{53}Supra 9  
\textsuperscript{54}Full text of Women’s and Children’s Institutions (Licensing ) Act, 1956 is found at: http://www.lawyersclubindia.com/bareActs/Women-s-and-Children-s-Institutions-Licensing-Act-1088.asp\textsuperscript{Act no (10 of 1960) and full text of the Orphanages and other Charitable Homes (Supervision and Control ) Act 1960 found at http://www.nls.ac.in/ccl/jddocuments/orphanages.pdf accessed on 4/5/2012}  
\textsuperscript{55}Kanti, N. and Dr. Chatterjee, S.S. \textit{Law and Child}, R. Camray Pvt. Ltd, 2004 p.97  
\textsuperscript{56}Act No (20 of 1958)  
\textsuperscript{57}Supra 9
Constitution of India. Parliament enacted the first central legislation, for Delhi and other Union Territories for the year 1960 namely, the Children Act, 1960\(^5\) which was a model legislation. The Children’s Act 1960 was passed to cater to the needs of the Union Territories.\(^5\) All the states that enacted their Children Acts after 1960 followed the same pattern.\(^6\) The Act was made applicable to the Union Territories of Delhi, Dadar and Nagar Haveli, Goa, Daman and Diu, Lakshadweep and Pondicherry.\(^6\) The Central Children Act had not been enforced in Adaman and Nicobar Islands, Arunachal Pradesh, Chandigarh, Dadra and Nagar Haveli, Lakshadweep and Mizoram.\(^6\)

In India the legal support for ‘neglected’ children is found in the Central Children’s Act 1960. The object of the Children’s Act was treatment and rehabilitation of neglected children.\(^6\) The basic premise of this Act was the obligation of the state as ‘parens patria’ to provide protection for children.\(^6\) The preamble of the Central Children’s Act, 1960 stated, that the aim of the legislation was to provide for care, protection, maintenance, welfare, training, education and rehabilitation of ‘neglected’ and ‘delinquent’ children.

\(^6\)Supra 9
\(^6\)ibid
\(^6\)See long title of the Act
\(^6\)Statement and Objects and Reasons of the Children’s Bill reinforce this: Children are the most vulnerable group in any population and in need of the greatest social care. On account of their vulnerability and dependence they are exploited, ill-treated and directed into undesirable channels by anti-social elements in the community. The State has the duty of according proper care and protection to children at all times.
The Children’s Act dealt with two categories of children namely ‘neglected’ and ‘delinquent’ children.65

The definition of the term “neglected child” was widened by including the cases where the parents are not able to exercise proper care and control over the child.66 Fitness could now be looked into economic factors as well. There were cases when the parents of the child were poor to take care of the child but who were otherwise fit could now be covered by the Act.67 ‘Neglect’ under the Children Acts was defined as, when the child has no ‘settled place of abode.’

The Act defines neglect situations in terms of parental conduct or home environment. Neglect situations covered situations like physical abuse, cruelty, inadequate supervision, inadequate parenting, immoral or unconventional parental behavior.68 Prosecution of a guilty parent or guardian was to be based on a complaint and no complaint could be made without the prior sanction of the state69 or an officer authorized by him on that behalf.70

The Children Act, 1960 introduced a sex-discriminatory definition of child71 and established two separate adjudicatory bodies to deal with children in conflict with laws and children in need of care.72 It prohibited imposition of

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65 Supra 9; Also See Full text of the Act available at http://wcd.nic.in/childrenact1960.htm accessed on 12/2/2002
66 Previously the definition referred to those parents only who are unfit to exercise care and control over the child
67 There are practical difficulties in implementing this provision
68 See Section 2(l)
69 Governor, Commissioner or Administrator
70 See Section 41(2)
71 See Section 2(e).
death penalty or sentence of imprisonment or use of jails or police station for keeping children under any circumstance. It did not recognize the right to a lawyer in the proceedings before the children’s courts.

There were two kinds of authorities Juvenile Courts and Child Welfare Boards to deal with delinquent and neglected children. Delinquency was recognized as nothing but the consequence of parent’s negligence. During pendency or enquiry the child was to be kept in an observation home.\(^\text{73}\) The observation homes were of institutional kind\(^\text{74}\) quite official and impersonal in their approach and environment. Besides observation homes the child could be sent to any other place of safety\(^\text{75}\) which may be better in terms of individual attention. These homes provided opportunity for closely observing the child and prescribing its treatment and training.\(^\text{76}\)

The Act outlined the duties of a Probation officer whose duty was to prepare a social investigation report whenever the police apprehend a child. The Probation Officer has to pay home visit for detailed interviews with the child, his parents and neighbors, teachers and employer which would help in the diagnosis of the treatment programme for the child.

All states enacted their Children’s Acts which had provisions similar to the Central Act.\(^\text{77}\) State Acts of Bombay, Uttar Pradesh, East Punjab, Andhra Pradesh, Saurashtra, Karnataka, Kerala, Tamil Nadu, West Bengal and Madhya

\(^{73}\) See Section 11
\(^{74}\) See Section 2(m) and \textit{ibid}
\(^{75}\) See Section 2(nm)
\(^{76}\) Supra 72
\(^{77}\) Supra 5 p.83
Pradesh had Juvenile Courts to deal with neglected children.\textsuperscript{78} The Assam Children Act, 1970 and the Jammu and Kashmir Children Act 1970 also provided for Boards but the Acts in these states have not been implemented.\textsuperscript{79} Orissa introduced Children’s Act as late as 1982. The Orissa Children’s Act provided for the care, protection, maintenance, welfare, training, education and rehabilitation on neglected and delinquent children and for trial of delinquent children.\textsuperscript{80}

4.3.3. Criminal Procedure Code, 1973

The Criminal Procedure Code, of 1889 was replaced by The Criminal Procedure Code of 1973. This code provides for separate courts for Juveniles and empowers magistrates to send juveniles to the magistrate Courts established by the various States Children Laws.\textsuperscript{81} The basic purpose was to treat children separately and not punish them.\textsuperscript{82} Section 4 of the Criminal Procedure Code, 1973 provides for any special legislation to try offences.\textsuperscript{83}

\textsuperscript{78} Child Welfare Boards have been set up only under the Central Children’s Act.
\textsuperscript{79} Supra 5
\textsuperscript{81} Raghuvir V. State of Haryana 1981 Cr.L.J. 1497 Supreme Court directed that the trial of juvenile delinquents be conducted according to the provisions of the Children’s Act. It quashed sentence and punishment given by the High Court.
\textsuperscript{82} Munna Ali and Others V. State of U.P.1982 Cr.L.J 1000 the Supreme Court observed that no person under 16 years of age should be sent to jail instead he must be sent to a children’s home or any other suitable place of safety as the law is very much concerned to see that the juvenile does not come in contact with hardened criminals.
\textsuperscript{83} See Section 4(2) The Criminal procedure Code,1973- All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.
The Criminal Procedure Code, 1973 enshrines that whenever there is a special or local law covering the same area the latter law will prevail. Unless the law has a specific provision to the contrary that will override the special or local law is limited in scope. All proceedings where a juvenile comes in conflict with law are to be tried by the court under that special law.

In matters of all offences punishable with death or imprisonment for life, the jurisdiction of all courts created under the Code of Criminal Procedure Code, 1973 to try a juvenile is ousted and solely conferred on Juvenile Court to be constituted under the Act and in the absence of the constitution of such a court by concerned Magistrate First Class which could act as a Juvenile Court.

Section 27 of The Criminal Procedure Code, 1973 dealt with the provision of “Jurisdiction in the case of juveniles” which states that no offender will be punishable with death penalty and imprisonment for life, if it is found that the person is less than sixteen years of age. The Section provides that offences by children should be tried by the Courts mentioned in the Act instead of the Sessions Court. The object was to avoid lengthy trials and detention of juvenile

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84 See Section 5 of the Criminal Procedure Code, 1973
86 After passing of the Juvenile Justice (Care and Protection of Children) Act, 2000 the same provisions of the Criminal Procedure Code are to be applied as follows: Criminal cases of juvenile in conflict with law are to be dealt with by Juvenile Justice Board (JJB) and not the regular criminal courts. When a child and any person who is not a child are accused of an offence separate trials are to be held. Similarly there may be instances when there will be same area of operation of the Goa Children’s Act, 2003 and the Criminal Procedure Code. Since the Goa Children’s Act, 2003 does not have any specific provision which limits the operation of the Act the Goa Children’s Act, 2003 prevails and ousters the operation of the Criminal procedure code. For e.g All offences on the Child victim after the passing of the Goa Children’s Act, 2003 are tried in the Children’s court established under the provisions of the Act. The court of Sessions will have no jurisdiction to try any such offences.
87 Sarita V. State 1990 CrLJ 351(Bom)
88 Supra 5
offenders. Section 27 is a specific provision within meaning of Section 5 and there is no conflict between these two provisions.\textsuperscript{90}

\textbf{4.3.4. Children (Amendment) Act 1978}

Some lacunae were identified in the Act of 1960 and amendment was desirable. The definition of the term “neglected child” was widened to include cases where the parents are not able to exercise proper care and control over the child. Previously the definition referred to only those parents who were unfit to exercise care and control over the children.\textsuperscript{91} The Act permitted lawyers in a Children’s Court and permitted the transfer of cases between the Board and the Children’s Court. The community played a wider role like there was a panel of social workers to assist the children’s court, fit person, fit institution and a place of safety.\textsuperscript{92}

\textbf{4.4. First National Legislation for Juveniles}

The Apex Court analytically examined the treatment meted out by courts and juvenile institutions vis-à-vis the National Policy for the Welfare of Children adopted by the Government of India.\textsuperscript{93} This judgment made it clear that the State will not be able to provide proper care, protection and rehabilitation to the

\textsuperscript{90}See Sarkar, p.65. See \textit{Ram Singh v. State of Haryana}, (2000) 6 SCC 759. Furthermore, to avoid any doubt in this respect, Section1 (4) of Juvenile Justice (Care and Protection of Children) Act, 2000 states “notwithstanding anything contained in any other law for the time being in force the provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under such other law.”

\textsuperscript{91}Fitness could be looked in economic factors as well.

\textsuperscript{92}Supra 72

\textsuperscript{93}\textit{Sheela Barse .V. Union of India} (1986)3SCC 596;1986SCC(Cri)337
juveniles unless the Courts are aware of the responsibilities.\textsuperscript{94} The Court recommended a central statute in the interest of uniform dealing of juvenile delinquents across the country also emphasizing the need for their soft and separate dealing.

The judgment went a long way and with rapid space influenced the Parliament. The first national legislation on juvenile justice, titled \textit{“The Juvenile Justice Act, 1986”} was passed by the Parliament, providing a uniform law for the entire country. A progressive legislation, the 1986 Act provided for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles, and for the adjudication of certain matters relating to, and disposition of, delinquent juveniles.

\textbf{4.4.1 Juvenile Justice Act 1986}

The Juvenile Justice Act, 1986\textsuperscript{95} was enforced throughout the territory of India except the State of Jammu and Kashmir on October 2, 1987, bringing in a uniform system of juvenile justice throughout the country. The Act superseded 25 Children Acts in different States and Union Territories along with the Central Children Act, 1960.\textsuperscript{96} The Act was a virtual verbatim reproduction of

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\texttt{Sheela Barse and Another V. Union of India and others AIR 1986 SC 1773 \textquote{It is an elementary requirement of any civilized society and it has been so provided in various statutes concerning children that children should not be confined in jail because of incarceration in jail has a dehumanizing effect and it is harmful to the growth and development of the child. The survey made by the Home Ministry and the social welfare department show that a large number of children below the age of 16years are confined in jail in various parts of the country.” This made it clear that the State will not be able to provide proper care, protection and rehabilitation to the juveniles unless the Courts are aware of the responsibilities.}}
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the Children’s Act introducing only few minor and non vital changes.\textsuperscript{97} It was aimed at giving effect to the guidelines contained in the Standard Minimum Rules for the Administration of Juvenile Justice adopted by the United Nations Countries in November, 1985. The Act consisted of 63 Sections spread over seven chapters.\textsuperscript{98}

In the Preamble of the Act the words maintenance, welfare, training and education were substituted by the words treatment and development signifying only symbolic semantic changes. The word “child” was replaced by the word “juvenile” and the word “trial” was dropped and the expression “adjudication relating to and disposition of” was used. It continued the same sex-discriminatory definition of child.\textsuperscript{99} The Statements and objects of the Act indicate that it was intended to pay greater attention to delinquent and neglected children and to set up a uniform juvenile justice system throughout the country.\textsuperscript{100}

New definitions were provided in Section 2 like “fit person”, “fit institution” and “place of safety”. The definition of neglected child has been expanded to include a juvenile who is being or is likely to be abused or exploited for illegal or immoral purposes or unconscionable gain. It laid down a uniform framework for juvenile justice in the country so as to ensure that no child under any

\textsuperscript{97} Supra 8
\textsuperscript{98} Prof. Paranjape N.V. Criminology and Penology 13\textsuperscript{rd} e.d Central Law Publications, 2007 Allahabad p.527
\textsuperscript{99} Ministry of Law and Justice the Juvenile Justice Act, 1986 The Gazette of India Extraordinary Part II-Section I, New Delhi 1986 p.39
circumstances is locked in the police lock-up.\textsuperscript{101} It spelled out the machinery and infra structure required for care, protection, treatment, development and rehabilitation required for various categories of children coming within the purview of juvenile justice system.\textsuperscript{102} It set out norms and standards for the administration of justice in terms of investigation, prosecution, adjudication and disposition, care and protection.\textsuperscript{103}

The definition of juvenile delinquency\textsuperscript{104} given under the Act makes it clear that it is applied to a child offender who has been found to have committed an offence.\textsuperscript{105} Delinquency is a legal term for a social problem.\textsuperscript{106} The Act provides for inquiry to find out if the child is a juvenile and during the course of inquiry if he ceases to be a juvenile then such person is to be continued to be treated as a juvenile according to Section 3.\textsuperscript{107}

It sought to develop appropriate linkages in Section 52, 53 and 54 provide for creation of welfare and rehabilitation funds for juveniles, establishment of advisory boards and appointment of visitors to the juvenile institutions.\textsuperscript{108} The three new provisions are establishment of Advisory Boards, creation of a Children’s Fund and appointment of visitors for each institution.\textsuperscript{109}

\textsuperscript{101} Tripathi, N.M. \textit{Child and the Law}, Indian Law Institute, Bombay 1979
\textsuperscript{102} Kratcoski, L.D and Kratcoski, P. \textit{Juvenile Delinquency} Prentice Hall, New Jersey, p.234-311
\textsuperscript{104} The word ‘delinquent’ was first defined in Saurashtra Children Act, 1954
\textsuperscript{105} See Section 2(e)
\textsuperscript{106} Mayo, L. W. and Henry W \textit{Concerning Juvenile Delinquency},. Thurston University Press, 1942, p.195
\textsuperscript{108} Supra 9
\textsuperscript{109} Supra 5
The Act remained operative for thirteen years when it was repealed and replaced by the *Juvenile (Care and Protection of Children) Act, 2000* which is a Central Act and became operative from December 30, 2000.\(^{110}\)

**4.5. Prison Reform in India from Jails to Juvenile Institutions in India**

Prisons were considered as a ‘House of Captives’ where prisoners were kept for retributory and deterrent punishment. The East India Company dominated India, during the period of 1773 and 1850.\(^{111}\) During this period, the prison reform movement emerging in England also influenced India. The contemporary prison administration in India is a legacy of the British Rule. Lord Macaulay, Lord William Bentick, Lord Auckland, Lord Cornwallis, Sir John Lawrence and Lord Dalhousie added important landmarks in changing the prison policy for juveniles.

**4.6. Prison Reforms during British Rule**

Lord Macaulay, while presenting a note to the Legislative Council in India on December 21, 1835, for the first time, pointed out the terrible inhumane conditions prevalent in Indian prisons and he termed it as a shocking to humanity. The prisons lacked cleanliness, provision for food and clothing and attention for the sick. The prisoners were employed in extramural labour on public roads which was the worst forms of treatment.\(^{112}\) The process was ruthless, had severe privation, it involved very hard work, solitude, silence and

\(^{110}\) Supra 5  
\(^{111}\) *ibid*  
\(^{112}\) *ibid*
separation for correction of criminals. Criminals of all classes, old and young, male and female were mixed and mingled together in Indian prisons. They were treated like brute beasts rather than like human beings. One cell was common to all; there was neglect and disregard to their fate. There were no reformations, no classifications of prisoners and no provisions for moral principles and no education of any kind. No attempts were made to civilize them. Prisons were converted from places for transporting convicts to places for keeping convicts. The Prison Discipline Committee supported the policy of the then rules.

4.6.1. Prison Discipline Committee

Lord Macaulay recommended that a committee be appointed to suggest measures to improve discipline in prisons. Consequently, on 2nd January, 1836, a Prison Discipline Committee was constituted by Lord William Bentick for this purpose. The Committee submitted their report in 1838 to Lord Auckland, the then Governor General which revealed the prevalence of rampant corruption in the subordinate establishments, the laxity in discipline and the system of employing prisoners to do work. The Committee


114 Law Index 1801 -1810 p.54, Report on Calcutta Jail Cons no2 and 3 15 December 1809 p. 167

115 Legislation on Children in India

116 Prisons in India: An overview of reforms and current situation available at www.nimhans.kar.nic.in/prison/chapter_2.pdf


118 Ibid
recommended more rigorous treatment of prisoners. Suggestions were sent from the state and internal arrangements were made in Bengal jail.\textsuperscript{119}

At that time West was getting transformed by a reformation movement. India as a British colony did not remain unaffected. The setting up of factories by East India Company forced rural population to migrate to cities as incentives were being provided. It increased destitution and delinquency among children. There was concern for welfare of children. Krishna Chandra Ghoshal and Jai Narain Ghoshal pleaded with Lord Cornwallis to establish a home for destitute children in the vicinity of Calcutta.

\textbf{4.6.2. Ragged School}

The first ‘ragged school’ for orphans and vagrant children in India was established in 1843 through the efforts of an Englishmen Dr. Buist who was instrumental in the establishment of the first Ragged school at Bombay.\textsuperscript{120} The object of the school was reformation of juvenile offenders arrested by the police and the encouragement of apprenticeship among the working classes. The Ragged Schools\textsuperscript{121} were charitable schools, dedicated to providing free education of destitute children.\textsuperscript{122}

\begin{flushleft}
\textsuperscript{119}The committee of the report was appointed by Lord Bentick pursuant to T.B. Macaulay on the subject of jail discipline
\textsuperscript{120}Today known as David Sasoon industrial School
\textsuperscript{121}Special name given to orphanages
\textsuperscript{122}J.M Sethna, \textit{Society and the Criminal}, Tripathi Private India Limited, Bombay, 1980 p. 417
\end{flushleft}
4.6.3. Second Commission of Enquiry

Sir John Lawrence, a renowned jurist, again examined the conditions of Indian prisons in 1864. Consequently Second Commission of Enquiry was set up to look into prison management and discipline which was appointed by Lord Dalhousie. This Commission made specific recommendations regarding the accommodation, improvement in diet, clothing, bedding, and medical care of the prisoners and for the appointment of Medical officer in jails. The Commission fixed the minimum space for one prisoner which was 54 sq. ft. and 640 cubic ft. The Commission also recommended the separation of male prisoners, from females and children from adults. The number of juvenile offenders in the jails started increasing. The government asked for names of jails having separate provisions for juveniles.¹²³

The Committee felt the need of segregation of juveniles from adult offenders. Hence Prison Codes of Madras, Bombay, North Western provinces and Bengal¹²⁴ were modified. Each of these codes adopted a different age for defining a child. The Committee suggested a classification mode namely attainment of puberty as determined by a Medical Officer.¹²⁵ During this period Reformatory Schools, Borstal Schools, Certified Schools and Juvenile Jails were established in India.

¹²³ Bombay government’s resolution on the Report on the Jails of that Presidency 1861. Home Department, judl. Con. No. 7-9 (a), 12 January 1863. See also Report on Criminal Justice in the Bombay Presidency for 1857, Home Department, judl 7 (6 August 1858)
¹²⁴ Report of Indian Jail Committee 1889, April 1889, p.20
¹²⁵ This practice was prevalent in North Western Provinces; See Supra 95
4.6.4. Reformatory Schools in India

The Reformatory Schools Act 1897 authorizes the establishment of reformatory Schools by the state or use of schools maintained by private organizations. State owned Reformatory Schools were established in India at Madras, Burma, Bihar, Orissa the Central Provinces, Bombay and Delhi but most of them were not considered appropriate. In every case they consisted of centralized buildings without any features of reproducing a home. In Madras, Bihar and Orissa they were located in old jail buildings. The building had a high wall around them and they were located next door to a jail thus bringing in the jail atmosphere. The number of boys collected was large for a jail superintendent to be able to give attention to a single case. There was no female care taker and they looked more like juvenile jails rather than reformatory schools.

4.6.5. Borstal Institutions in India

Borstals have been established under the Borstal School Act, 1928 and Reformatory Schools Act 1897. These institutions provide for adequate educational and vocational training to young offenders who were convicted by the Juvenile Courts. These institutions keep the adolescent offenders upto 21 years. These institutions were run by prison departments of the States.

127 Sarkar, C. Juvenile Delinquency, Daya Publishing House 1987
130 Bhattacharya, B.K. Juvenile Delinquency and Borstals, S.C. Sarcar & Sons, 1962 p.43
Admission was given to adolescent offenders convicted under the Indian Penal Code, 1860 and the Borstal School Act. If the sentence period of the offender extended beyond 21 years then on completion of 21 years they were sent to an adult jail.\textsuperscript{131}

4.6.6. Certified Schools in Madras

The Madras Children Act suspended the operation of the Reformatory Schools Act, 1897.\textsuperscript{132} The certified schools were divided into senior and junior. There was power to recognise private schools, which would then be placed under regular inspection. The general trend of the provisions of this Act seems to be in the direction of bringing the institutions certified under it more into line with ordinary schools. \textsuperscript{133} The David Sasoon Industrial and Reformatory Institution\textsuperscript{134} at Bombay was located in an old jail building.

4.6.7. Juvenile Jails in India

Juveniles who had to serve long sentences were sent to Juvenile Jails in India. Juvenile Jails were located at Tanjore in Madras, Moiktila in Burma, Alipore in Bengal, Monghyr in Bihar and Orissa, Narsinghpur in the Central Provinces, Dharwar in Bombay, Bareilly in the United Provinces, and Lahore in the Punjab.\textsuperscript{135} These jails were for juvenile offenders who had committed grave crimes like murder, dacoity, rape, culpable homicide and those who have

\textsuperscript{132}The term 'Reformatory School' was replaced by the term 'Certified School'
\textsuperscript{133}Sheth, H.\textit{Juvenile Delinquency}, Popular book Depot, 1961
\textsuperscript{134}Licensed under Apprentice Act 1850 (XIX of 1850)
\textsuperscript{135}Supra 107
relapsed into crime after undergoing a term in Special adolescent Homes or those who are classed by the court as in correctible criminals. They were to be sent to jail like institutions where labour and education was conducted on jail lines and where remission was earned on jail lines and there was no limit of detention except the sentence of court.\textsuperscript{136}

\textbf{4.6.8. Indian Jail Committee 1889}

Indian Jails committee 1889 \textsuperscript{137} reiterated the need for segregation and classification of offenders according to their age and duration of sentence.\textsuperscript{138} They emphasized that youngest juveniles should not be punished with curtailment of diet it recommended daily exercise and compulsory education. It emphasized that habitual juvenile offenders should not be sent to reformatories. As this would deprive them of going to school and this was a worse practices for the convict person.\textsuperscript{139}

\textbf{4.6.9. All India Jail Committee Report 1919- 1920}

The most significant development in Juvenile history is the Report of Indian Jail Committee 1919-20. It visited numerous jails and reformatory schools. The Jail Committee Report 1919- 20 brought to the fore the vital need for separate trial and treatment of young offenders.\textsuperscript{140} All India Jail Committee on Jail Reforms observed in many cases the age of the children was purposely

\textsuperscript{136}Vadackumcherr, J. \textit{The Police and Delinquency in India}, APH Publishers , New Delhi 1996 p.181
\textsuperscript{137}Report of the Indian Jail committee,1889,April 1889, p.71
\textsuperscript{138}Indian Central Bureau of Correctional Services, Juvenile Delinquency, 1970
\textsuperscript{139}Supra 107
\textsuperscript{140}ibid
shown on the higher side by the police so as to bring these children under the
category of young offenders i.e. between 16, 18 years and 23 years.\textsuperscript{141} If the
number of these children is added to the total turnover of children in prison it is
observed that the problem on incarcerated children was much more serious than
what is seen in official statistics in the year 1919-1920.\textsuperscript{142}

The Committee recommended that the Juvenile probation was nonexistent in
India at that time. Releasing children on probation and treating them in the
community under supervision through the probation organization will be a
practical solution was the Committees opinion.

4.6.10. Lal Mohan Patnaik Committee Report

Lal Mohan Patnaik Committee Report 1938 suggested that trial of Juveniles
should take place in Children’s Court presided by a Magistrate with special
training in child psychology and social science.\textsuperscript{143} The prosecuting officer
should place before the court a report dealing with the antecedent that led to
commission of offence.\textsuperscript{144} The Committee also recommended that legal
provisions should be made in lines of the Bombay Children’s Act to Deal with
Juveniles and Vagrants.\textsuperscript{145} Juvenile offenders on conviction should never be
sent to prison but be admitted to an institution which should be more of a
residential school than a prison, for training. The institution should have

\textsuperscript{141} Ahuja, R. Social Problems In India, Rawat Publications,1992
\textsuperscript{143}Report of Juvenile Delinquency in India,1956 Bureau of Delinquency Statistics and Research, Bombay
\textsuperscript{144}Nanda, C.P. Vocalizing Silence, Political Protests in Orissa: 1930- 1942, Sage Publications India Pvt.
\textsuperscript{145} Ltd, New Delhi, 2008 p.240
\textsuperscript{146}\textit{ibid}
separate enclosures for children of the following age groups 7 -12 years, 12 -18 years and 18 -21 years.\textsuperscript{146} Their training program should be chalked out in consultation with the psychiatrists. During this period special adolescent institutions and special institutions were established.

4.6.11 Special Adolescent Institution

A reformatory school for adolescent was established at Bombay. In Bombay adolescent offenders were sent to homes opened by the Salvation Army. The prisoners to be sent to this home were selected by the Superintendent of jail and a conditional order passed by the local government under Section 401 of the Criminal Procedure Code.\textsuperscript{147} The adolescent was transferred to the home during the period of the sentence and a conditional order of release was made to the local government allowing him to be released from the prison on the condition that he shall remain in prison till the sentence expires. It was used for boys under sixteen sent by a conditional release by the Magistrate. The boys went to night school and were employed in the day on handloom weaving.\textsuperscript{148}

4.6.12 Special Institutions

The Children’s Act, 1920 provided for short term and long term institutions for care and rehabilitation of neglected children. The short- term institution is known as ‘observation home’ or ‘remand home’ where children are kept pending enquiry before the Board. During the period of enquiry the children

\textsuperscript{146}Bhattacharya, S.K. \textit{Treatment of Adolescent Offenders}, Social Defence , Vol.XVIII, No.71 January, 1983

\textsuperscript{147}Mahalar, K.P.S. \textit{Juvenile Delinquency, prisons and role of police}, Lawyer 1987, July, p.40-45

\textsuperscript{148}Singh, K.R.S. \textit{Juvenile Delinquency in India}, Universal Publishers, 1948
could also be kept with parents or guardians. They were not to be kept with their parents or guardians if the Board feels there is parental or guardian ‘unfitness’ or ‘inadequacy.’ The ‘observation home ‘remand home’ is envisaged as a venue for temporary care and custody of neglected children pending enquiry. Psychiatrists and case workers conduct the social investigation of neglected children and submit reports to the Board for its guidance as well as future treatment and rehabilitation of the children.\textsuperscript{149}

On the completion of neglect proceeding if the Board is satisfied that a child is ‘neglected.’ Or if a child commits an act it is sent to long term institutions known as ‘Children’s Homes.’ Under Bombay Act there were called Certified School and under West Bengal Act they were called Industrial School and they were kept there, till it ceases to be a child. There were 90 Children Homes and 45 Certified Schools in the country at that time. In special situations the period of stay could be extended, but not beyond the age of eighteen years in case of a boy or twenty years in case of a girl. The period could also be reduced by the Board but in both the situations the Board had to record reasons in writing. The Act facilitated the establishment of ‘Voluntary Homes’ and ‘Fit person Institutions’ which are maintained wholly or partly by voluntary contributions.\textsuperscript{150} Such voluntary contributions are under the general monitoring control of the government appointed inspecting staff. The government is empowered to suspend monitoring control of government appointing inspecting


\textsuperscript{150}Bedi, M.S. \textit{Problems of Juvenile Correctional Institutions in India}, Social Defence, 1985, 20(80) p.30-38
staff. The government is empowered to suspend or withdraw the certificate granted to private institutions if their performance is not satisfactory. The Acts provided for an after care organization designed to meet the special needs of children leaving institutions.

4.7 Changes in Prison Administration after Independence

The Constitution of India which came into force in 1950 retained the position of the Government of India Act, 1935 in the matter of prisons and kept ‘Prisons’ as a State subject by including it in List II the State List, of the Seventh Schedule. The first decade after independence was marked by strenuous efforts for improvements in living conditions in prisons. A number of Jail Reforms Committees were appointed by the State Governments, to achieve measures of humanization of prison conditions.151

4.7.1. Dr. W.C. Reckless Report

While local Committees were being appointed by State Governments to suggest prison reforms, the Government of India invited technical assistance in this field from the United Nations. Dr. W. C. Reckless, a United Nations Expert on Correctional Work, visited India during the years 1951-52 to study prison administration in the country and to suggest ways and means of improving it. His report ‘Jail Administration in India’ is another landmark document in the

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history of prison reforms. Dr. W. C. Reckless recommended that Juvenile delinquents should not be handed over by the courts to the prisons which are meant for adult offenders. A cadre of properly trained personnel was essential to man such services.

4.8. The National Policy on Prisons

The National Policy on Prisons suggested that prisons were not the places for confinement of children. Children\(^\text{152}\) could not be sent to prisons. All children confined in prisons at present had to be transferred to appropriate institutions, meant exclusively for children with facilities for their care, education, training and rehabilitation.\(^\text{153}\) Benefit of non-institutional facilities also had to be extended to such children.

Young offenders\(^\text{154}\) could not be confined in prisons meant for adult offenders. There had to be kept in separate institutions, keeping in mind their young and impressionable age, they had to be treated and given training suited to their special needs with aim of rehabilitation.\(^\text{155}\)

The Government of India convened a Conference of Chief Secretaries of all the States and Union Territories on April 9, 1979, in order to assess the gaps in the existing prison management system and to lay down guidelines for standardization of prison conditions throughout the country. Government of India requested the State Governments and Union Territory Administrations.

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\(^\text{152}\) Under 18 years of age
\(^\text{153}\) See xvi
\(^\text{154}\) Between 18 and 21 years
\(^\text{155}\) Xvii
This was to ensure that no child in conflict with law was to be sent to the prison for want of specialized services under the Central Children Act, 1960. It was also necessary to have at least one Borstal School set up under the Borstal Schools Act, 1929 for youthful offenders in each State.

4.8.1. Institutional Services

The Juvenile Justice Act, 1986 provided for establishment of Observation Home, Juvenile Home and Special Home which were intended to keep children during the period of trial or inquiry pending trial or inquiry before a competent authority. Juvenile Homes and Special Homes were intended to provide not only for care and protection to delinquent and neglected children but were to facilitate their development of character and personality by providing educational and vocational training. There were 13 Observation Homes, 6 Juvenile Homes and 2 Special Homes.156

4.9. Development of Special Courts for Juveniles in Conflict With Law

With the disappearance of imprisonment as a method of dealing with child offender the question before the courts was how to dispose of criminal charges against children and young offenders. In 1889 the Government of the United Province passed a resolution for the appointment of a special magistrate in every district to try children in order to secure a more intelligent treatment to them.157 These magistrates were to have expertise and were required to select

156 Criminal Justice India Series Volume 6, Kerela, 2001
157 Resolution no.2985 dated 2nd August 1913, cited in Report of the Indian Jail Co Committee, 1919 -20, 30 Cmnd, 1303, 1921, p.197
appropriate cases for sending the child to reformatory schools. Certain changes were introduced in the judicial procedure. In the Provinces an attempt was made to give intelligent treatment to children by the appointment in each district a special magistrate to try children’s cases.\textsuperscript{158} This rule created more harm as children had to be taken over long distances from their homes to appear before a special magistrate. Outside big cities the cases against children were to be tried by a special magistrate having ordinary jurisdiction in the locality. He had to sit at a special hour and if possible in a special purpose. The first such Court was set up at Calcutta.

\textbf{4.9.1. Special Courts}

Reformatory Schools Act provided for special courts which could order three to seven years detention and training instead of imprisonment. Section 10 empowered the police officer incharge of a prison in which a youthful offender was confined to bring him before the District Magistrate if he had not attained fifteen years. The Magistrate could then direct the child to be sent to Reformatory School instead of completing the residue sentence. Before making any directions the Court had to make preliminary inquires as to the age of the child. The first juvenile court was set up in 1939 in the premises of Madras children’s Aid society\textsuperscript{159} under the Madras Children Act, 1920.

\textsuperscript{158} Resolution No. 2985, dated 2 August 1913 cited in the Report of the Indian Jail Committee, 1919 -20, 30 Cmnd, 1303, 1921, p.197

\textsuperscript{159} Supra 9
4.9.2. Children’s Courts

The Children’s Act, 1960 constituted a Children’s Court which had power to deal with delinquent children. The Children’s Court comprised of a Principal Magistrate who was a judge of Metropolitan Magistrates or Judicial Magistrates of the First Class, and he was assisted by a panel of two honorary social workers. The qualifications of the social workers were prescribed and they were appointed by the Administrator. Out of the two social workers one had to be a woman.

Chapter IV of the Act dealt with delinquent children. This Act barred any proceeding against a child with an adult and called for special procedure where the child was involved. It bared the application of Criminal Procedure Code to children. When a child was accused of a bailable or non-bailable offence and was arrested and detained and brought before the Children’s Court such a child had to be released on bail. If the child was not released he was to be sent to the observation home. Immediately after arrest of the child the parent or guardian or probation officer had to be informed. The probation officer had to obtain information regarding the antecedents and family history of the child and other material circumstances likely to be of assistance to the children's court for making the inquiry.

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The Court could make orders like allow the child to go home after advice or admonition. Direct the child to be released on probation of good conduct and place the child under the care of any parent, guardian or other fit person. Such parent, guardian or other fit person had to execute a bond, with or without surety as that court may require, for the good behaviour and well-being of the child for any period not exceeding three years. The Court could make an order directing the child to be sent to a special school for a period of not less than three years. In the case of a child of other then the specified age then the specified age then for the period until he ceases to be a child.

In case the Children’s Court on inquiry is satisfied that the child had committed an offence then it could order the child to pay a fine if he is over fourteen years of age and earned money. The court could also make an order that the child should be placed under the supervision of the probation officer. In determining the special school or any person to whose custody a child is to be committed or entrusted under this Act. The court could pay due regard to the religious denomination of the child to ensure that religious instruction contrary to the religious persuasion of the child is not imparted to him. The Court could not sentence a delinquent child to death or imprisonment or send the child to prison in default in payment of fine as surety to prison.

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163 Rampal, S.K. Juvenile Offenders, Social Defence, Oct, 1987 p.5-14
164 In case of a boy over fourteen years of age or of a girl over sixteen years of age
165 Supra 9
166 Supra 40
4.9.3. Juvenile Courts

The Juvenile Justice Act, 1986 provided for setting up Juvenile Welfare Board which will consist of a Chairman to be appointed by the State Government and at least one member to be a woman. They shall have powers of a Metropolitan Magistrate as specified in Criminal Procedure Code, 1973. The Board deals with neglected juveniles.\(^{167}\)

Section 5 of the Act requires that Juvenile Courts be established for dealing with delinquent juvenile. 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 as the State Government thinks fit to appoint, of whom one shall be designated as the Principal Magistrate.\(^{168}\) 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.

In the event of any difference of opinion among the members of a Board or among the Magistrates of a Juvenile Court, the opinion of the majority shall prevail. No order made by the Board or Juvenile Court shall be invalid by

\(^{167}\)Supra 161

reason only of the absence of any member or Magistrate, as the case may be,
during any stage of the proceeding.\footnote{Mukherjee, S.K. \textit{Administration of Juvenile correctional Institutions}, Sterling Publishers Private Limited, New Delhi p.4-29}

A juvenile once found to be delinquent may be released after looking into the circumstances under which he has committed the offence.\footnote{See Section 21 The Juvenile Justice Act, 1986} The juvenile may be allowed to go home after advice and admonition.\footnote{See Section360(3) of Criminal Procedure Code} The Juvenile may be released on probation of good conduct under the supervision of parents, guardians or fit person for a period not exceeding three years. The Juvenile courts may make an order that the juvenile be sent to special homes in case the boy is over fourteen years or in case the girl is over sixteen years for a period not less than three years or until he ceases to be a juvenile. The juvenile may be ordered to pay fine if it earns money. When the juvenile is released on probation of good conduct or under the supervisions of parent, guardian or fit person the juvenile shall remain under the supervision of the probation officer for a period not exceeding three years.\footnote{Singh, P.J. \textit{Juvenile Deviations and Protection in the Context of the Juvenile Justice Act, 1986}, Criminal Law Journal 1994 June, p.46}

In making any order with regard to the juvenile a competent authority shall take into consideration the age of the juvenile, the state of physical and mental health of the juvenile, and the circumstances in which the juvenile was living.
The reports made by the Probation Officer. The religious beliefs of the juvenile and any other circumstances were also considered.

The next chapter provides a preview to the first Juvenile Law in the country and the Decree passed by the Portuguese in Goa for juveniles in conflict with law. It further enumerates the positive aspects of the special law for juveniles the Juvenile Justice (Care and Protection of Children) Act 2000. The Chapter maps out the trial mechanism followed by the Juvenile Justice Board in dealing with the juveniles in conflict with law and their rights.

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174 See Section 33 of the Juvenile Justice Act, 1986