PART II
Juvenile Delinquent and the Law
Chapter IV

JUVENILE LEGISLATIONS

4.1.1. Social consciousness as regards the necessity of special legal provision for the treatment and protection of young offenders and children in need of state care, has found expression in the passing of the Children Acts. Modern legislative approach to the problems of children and young persons and the responsibility of society and the state for their welfare is very well brought out by the Preamble to the Children Act of 1960. The preamble points out:

"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 can be 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, as it is on their physical and mental well-being that the future of the nation depends. With increased industrialisation and urbanisation, the State needs to be even more alert and vigilant in this respect. ..... It should also be remembered that children often become delinquent by force of circumstances and not by choice. By improving the unfavourable environment and giving suitable training, it is possible to reform his (the child's) anti-social attitudes and to mould him (the child) into a responsible citizen."1

4.1.2. Under the Constitution of India, the State has a special obligation to protect childhood and youth from exploitation and moral and material abandonment.2

1 The Preamble to the Children Act, 1960.
2 Article 39(f), The Constitution of India.
The Apprentices Act of 1850

4.2.1. It is interesting to note that a century back, through legislation, a positive initiative was taken in India for the rehabilitation of orphans and poor children. During the period 1850 to 1919, a few legislative measures took special note of the needs of children. Out of these, the Apprentice Act of 1850, and the Reformatory Schools Act of 1897 were specially meant for children, and the Indian Penal Code and the Code of Criminal Procedure incorporated certain special clauses considering the States and needs of children and the protection to be given by the State. The earliest legislative measure, that dealt only incidentally with delinquent and destitute children, was the Apprentices Act of 1850. The object of the Act was "for better enacting children, and specially orphans and poor children brought up by the public charity, to learn trades, crafts and employment, by which, when they come to full age, they may gain a livelihood."\(^3\)

4.2.2. It was an all-India measure, the main purpose of which was to regulate the relations between employers and employees. But it also dealt with children between the ages of ten and eighteen years who had committed petty offences or were destitutes. It authorized the magistrates to commit such children as apprentices to employers and provided for controlling the relations between them. Evidently, the underlying motivation of the Act was to divert the misdirected energies of juveniles towards the learning of some trade or craft in order to equip them with proper training for earning an honest living. The Act contains several safeguards for the protection of children so bound.

\(^3\) The Preamble of the Apprentices Act, (Act No XIX) of 1850.
The Indian Penal Code of 1860:

4.3.1. The Indian Penal Code of 1860 was the first important codified law of the land introduced by the British. Sections 82 and 83 of the Code related to juvenile offenders by defining the lower age limit for criminal responsibility and the operation of the concept of discernment in the case of juvenile offenders. The sections said: "Nothing is an offence which is done by a child under seven years of age;⁴ "and, "Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion."⁵ Under the age of seven years no infant can be guilty of a crime; for, under that age an infant is, by presumption of law, doli incapax, and cannot be endowed with any discretion. If the accused were a child under seven years of age, the proof of that fact would be ipso facto an answer to the prosecution.⁶ But in the case of children between the ages of seven and twelve years, it had to be proved that the child concerned was incapable of judging the nature and the consequence of his conduct before he could be discharged under this Section.⁷

The Criminal Procedure Code of 1861:

4.4.1. The Criminal Procedure Code of 1861 was also an all-India enactment instituted by the British Government. Sections 399 and 562 of the said Code related to the treatment of juvenile delinquents. Section 399 of this Code, which mainly dealt with the commitment of juveniles to reformations in lieu of imprisonment, reads as follows: "When any person under the age

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⁴ Section 82, The Indian Penal Code, 1860
⁵ Section 83, The Indian Penal Code, 1860
⁶ Lukhini Agradanini (1874) 22(W.R.) (Cr.) 27.
⁷ Mussamat Aimona, (1864) 1 W.R. (Cr.) 43; Krishna, (1883) 6 Mad. 373.
of fifteen years is sentenced by any criminal court to imprisonment for any offence, the court may direct such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein." The said section dealt mainly with juvenile delinquents under the age of fifteen years, and excluded destitute children. Even in the case of a juvenile delinquent below fifteen years of age, it was necessary to prove that an offence as laid down by the India Penal Code was committed by him and a sentence of imprisonment for a definite period was passed by a criminal court. It was only then that Section 399 of the Criminal Procedure Code of 1861 could come into operation and direct that the child be confined in a reformatory instead of a criminal jail for an identical period. The young offender could thus be segregated from adult prisoners and his possible deterioration by association with them could be avoided. Furthermore, the object of such placement was explicitly stated to be 'discipline and training in some branch of useful industry.' With this enactment, the entire outlook of penal philosophy with reference to juvenile delinquent, changed from punishment to correction and, for the first time in legal history, the principle of reforming the juvenile delinquent by

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8 This section is repealed by the Code of Criminal Procedure, 1973 (Act No II of 1974).
giving him training in some useful vocation was emphasized.  

4.4.2. Section 562 of the said Criminal Procedure Code dealt with suspension of sentence of first offenders including juveniles under twenty-one years of age and read as follows:

"When any person not under twenty-one years of age is convicted of an offence punishable with imprisonment for not more than seven years, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or transportation for life, and no previous conviction is proved against the offender, if it appears to the court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the court may, instead of sentencing him at once to any punishment, direct that he be released on his entering a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct, and in the mean time to keep the peace and be of good behaviour."  

4.4.3. Section 562 was meant for the first offenders only, and even amongst them for those alone whose offence was of not so grave a nature as to be punishable with death or transportation for life. However, its importance lies in the fact that the said Section provided for an alternative to imprisonment, namely probation and contemplated to give the first offender a chance to mend his ways and to prove himself a law-abiding citizen in the future by keeping peace and being of good behaviour. Moreover,  

10 Section 562 of the Criminal Procedure Code (Act XXV of 1861) which was replaced by Act X of 1872. This Act was supplanted by code of 1898 and now the corresponding provision of the Criminal Procedure Code, 1973 is Section 360.  
11 Section 31, The Reformatory Schools Act, 1897.
this section was wide enough to include persons of a higher age-group than that referred to by the previous one. Furthermore, the emphasis was shifted from the nature of the offence to the personality of the offender—his age, character, antecedents, extenuating circumstances, etc. Herein lie the roots of the principles later accepted in all progressive Children Acts.

4.4.4. Whereas Sections 399 and 562 of the said Code carried with them the seeds of provision for socialised treatment of juvenile delinquents, and provided for a progressive approach towards them, Section 392, dealing with the application of whipping to juvenile offenders, has outlived its period of utility, if any, in some of the less progressive States of the Union of India.

The Reformatory Schools Act of 1897:

4.5.1. The first special law which prescribed provisions for dealing directly and solely with the treatment of juvenile delinquents was the Reformatory Schools Act of 1876, later replaced by the Reformatory Schools Act of 1897. It was an all-India measure, which was in operation in all those States in India which did not have Children Acts till 1986. This Act prescribed provisions for dealing with juvenile delinquents under 16 years of age, in the Bombay Presidency, and under 15 years of age in other Presidencies. In the history of juvenile legislation in India, the Reformatory Schools Act marks an important step forward towards correctional philosophy by its emphasis on the confinement of a young offender in a reformatory school for treatment and reformation through the learning of a trade and by finding out for him, wherever possible, a job and thus pre-planning for the prospective licensee. As per the said Act, youthful offender means any boy who has been convicted of any
offence punishable with transportation or imprisonment and who was, at the time of such conviction, under the age of fifteen years. The Act provided for the establishment and maintenance of Reformatory Schools which provided the means of giving industrial training to such juvenile offenders and where male juvenile delinquents could be detained, at the discretion of the sentencing court, for two to seven years instead of undergoing imprisonment. But no youthful offender could be detained in such a school after the age of eighteen years. Another feature of this Act is that it provides for the licensing out of boys over fourteen years of age if any suitable employment is found for them.

4.5.2. The Act of 1897 is primarily and essentially meant for male youthful offenders, since it does not provide for the opening of reformatory schools for either girls or destitute children. This Act specified that for the purposes of this section the term 'youthful offender' shall include a girl. In fact, this Act does take note of female juvenile offenders to a limited extent. Section 31 of this Act refers to both boys as well as girls offender. It reads: "Notwithstanding anything contained in this Act or in any other enactment for the time being in force, any court may, if it shall think fit, instead of sentencing any youthful offender to transportation or imprisonment or directing him to be detained in a Reformatory School, order him to be (a) discharged after due admonition, or (b) delivered to his parent or to his guardian or nearest adult relative, on such parent, guardian or relative executing a bond, with or without sureties, as the court may require, to be responsible for good behaviour of the youthful offender for any
period not exceeding twelve months.\textsuperscript{12}

The Criminal Tribes Amendment Act of 1897:

4.6.1. The Criminal Tribes Amendment Act of 1897, provided for the establishment of industrial, agricultural and reformatory schools for the children, between the ages of four and eighteen years, of members of any so-called criminal tribe. Criminal tribes were such tribes which were declared to be criminal under the Criminal Tribes Act. The members belonged to these tribes were supposed to have criminal propensities and were treated both by the Government and the people as born criminals. The Local Governments were empowered to remove such children from Criminal Tribes Settlements and place them in a reformatory under the charge of a superintendent.

The Whipping Act of 1909:

4.7.1. The Whipping Act of 1909 represented a retrograde step in the humanitarian and correctional approach towards young offenders that was gradually gathering strength in India. It was an all-India measure providing that a juvenile who abetted, committed or attempted to commit any offence punishable under certain sections of the Indian Penal Code might be punished with whipping in lieu of or in addition to any other punishment to which he might be liable.

The Indian Jails Committee, 1919-20:

4.8.1. In 1919-20, the Indian Jails Committee was set up. It was of opinion that the child offender should be accorded better treatment in view of their tender age. If they are given a new chance to live a better life, they would not resort to crime any more. Following the recommendations of the Jail Committee,

\textsuperscript{12} Section 31, The Reformatory Schools Act, 1897.
Children Acts were passed in different States in India.\textsuperscript{13}

Children Acts are of two types: (1) Comprehensive Acts which provided not only for the delinquent Children but dealt also with the problem of needy children in general including pre-delinquent, destitutes, neglected and uncontrollable children, and (ii) Acts with limited scope to forestall a particular social evil. Children Acts of the type I were in force in the States of Andhra, Bombay, Madhya Pradesh, Punjab, West Bengal, U.P., Kerala. The Act in Bombay was extended to Ajmer and Delhi also. Acts affecting children, but of limited scope include such legislations as


(ii) The Prevention of Children Taking Intoxicants Act – in force in Madhya Pradesh;

Under these two Acts, sale of tobacco, Bhang, Ganja, Opium, Charas and all alcoholic drinks have been prohibited;

(iii) Suppression of Immoral Traffic Acts in force in Bihar, U.P., Orissa, West Bengal, Punjab, Mysore, Madras, Rajasthan and Delhi;

(iv) The Children (Pledging of Labour) Act;

(v) Employment of Children Act in operation in Madhya Pradesh.

\textsuperscript{13} Madras - 1920  Punjab - 1949
Bengal - 1922  Bombay - 1924
Mysore - 1943  Ajmer - 1926
Travancore - 1945  Delhi - 1939.

and Cochin
The Madras Children Act, 1920:

4.9.1. The essential philosophy behind the term 'legislation for children' is to provide protective and reformative services for the children who are destitute, deviated, and delinquent. During the twentieth century, social reforms by Government and administration of criminal justice in India were accorded the place of Provincial or State subjects. The movement for further development in the field of juvenile legislation started on provincial or state level rather than on an all-India basis, and in their efforts to deal with the problem of juvenile delinquency, certain States, sooner or later, reached the stage of passing a specific Children Act. The first Children Act in India was passed in Madras in 1920. It has now been amended six times and has become very progressive. According to Hansa Sheth, "Of the special legislation relating to the treatment of juvenile delinquents, the Madras Children Act of 1920 is the earliest provincial legislation providing for the custody, trial and punishment of youthful offenders and for the protection of children and young persons." 14

4.9.2. Though the Madras Children Act was passed in 1920, the Junior Certified School was not established in Madras till 1923 and the Madras Children's Aid Society did not come into operation until 1926. In fact, the Madras Children Act did not really begin to operate effectively till 1928, and it was not until 1939 that the first Juvenile Court constituted under the Act started to function.

4.9.3. The Madras Children Act provided for protection of child offenders and juvenile delinquents i.e. "youthful offenders." Section 4 of the Madras Children Act stated that

powers conferred on the Courts by that Act shall be exercised by the Courts mentioned therein. The language employed under the Madras Children Act is comprehensive enough to include all charges. Under Section 6 of the Act, certified schools, where juvenile Courts could send young offenders, if they thought it fit to do so, were established and maintained. The Act of 1920, as also the later Act, provided for the management and inspection of such schools. The Act provided for releasing of youthful offenders on bail, and of taking them in custody when bail was not allowed. The child could be detained in manner prescribed by the Government. Section 36(1) provides for establishment in any district of one or more courts for hearing of charges against children or young persons. The Act provided for attendance at courts of parents or guardians of children or young persons charged with an offence, and capital punishment, transportation or imprisonment for a child offender or a youthful offender got prohibited. Imprisonment in default of fine also got prohibited. One of the questions was whether Juvenile Court under the Madras Children Act, 1920, is competent to try a murder case falling under Section 302 of the Indian Penal Code which is triable exclusively by a Sessions Court. The question was also whether Section 29B of the Criminal Procedure Code, 1898, which came into force on 1st September, 1923 repealed by implication the earlier Madras Children Act which came into force on 29.6.20. The matter was again complicated because of a decision of the Calcutta High Court. A boy of thirteen or fourteen years was produced before the Presidency Magistrate who was presiding over the Central Children Court, Calcutta for an offence under Section 304 of the Indian Penal Code. The Magistrate referred the matter to the High Court for its valuable opinion whether the said Magistrate was
competent to try cases exclusively triable by the court of session. However, the Judges of the High Court, after quoting Section 29B of the Criminal Procedure Code, 1898, observed that the Magistrate-in-charge of the Central Children Court can try all offences except those which are offences which are punishable with death or transportation for life. The Act recognised discharge after admonition, and the committing of youthful offenders to the custody of their parents, guardians or any other adult relative, or, in the absence of any such person, to the custody of any trust-worthy and respectable person, upon a bond being executed by such person (being the parent, guardian, relative or other trustworthy person), with or without sureties as the court may think fit, to be responsible for the proper custody and good behaviour of the youthful offender for a period not exceeding twelve months. The youthful person concerned could also be put under supervisions of some person. By the Act, the court was enabled to direct the parent or guardian of a child or young offender, on whom a fine was imposed, to pay the fine. A juvenile, under this Act, can be dealt with in the following ways:

1. discharged after due admonition with or without supervision;
2. committed to the care of a parent, guardian, relative or a person named by the court with or without supervision;
3. sent to a certified school established under the Act;
4. fined;
5. whipped; or
6. imprisoned (in certain cases): No disqualification is to be attached to the conviction of a child or a young person.

juvenile under the age of fourteen years can be sentenced to death or to transportation or to imprisonment. Offenders between the ages of fourteen and sixteen years may be sentenced to imprisonment under specified conditions.

4.9.4. The Madras Children Act prohibits joint trial of a child along with adult. Three accused were committed to the Court of Sessions for trial under Section 302 and Section 323 of the Indian Penal Code. One of the accused was child. The Madras High Court had held that the committal of the juvenile accused along with two adult accused was illegal. It was further held that where some of the persons are adults and others juveniles the same forum should try the adult and juvenile accused persons not jointly but separately. The persons who are adults will be tried under the provisions of the Criminal Procedure Code and juvenile delinquents accused in accordance with the Madras Children Act not jointly but separately. It was further held that such a procedure will avoid conflict of decisions in respect of the same occurrence. No discrimination will be shown merely on the ground that some of the accused are juveniles. To sum up, The Madras Children Act, 1920, for the first time, embodied new social awareness and community consciousness and humanizing attitude towards the under-privileged and disadvantaged sections of the juvenile population.

The Bengal Children Act of 1922:

4.10.1. The Bengal Children Act of 1922 was the second Children Act to be passed in India. The aims and objectives and the major provisions of the Act are identical with those of the Madras Children Act. This Act provided for the constituting of

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10 Section 39 of the Madras Children Act, 1920.
Juvenile Courts and for sending juvenile offenders to industrial schools (when not released on probation) and for release, on licence from industrial schools, for the State Government could establish and maintain industrial schools for receiving youthful offenders and children who may be sent there by the Courts.

4.10.2. Child,\textsuperscript{10} means a person under the age of fourteen years, 'young person'\textsuperscript{10} means a person who is fourteen years of age or upwards and under the age of sixteen years' and youthful offender\textsuperscript{20} means "any person who has been convicted of an offence punishable with transportation or imprisonment, and who at the time of such conviction was under the age of sixteen years."

4.10.3. Due provisions were made for the release of youthful offenders on bail, and where a child could not be released on bail, he could be detained, in a fit manner by the Government, until brought before the court.

4.10.4. The parents or guardian of a child (charged with an offence or brought before the court on an application for order for sending him to an industrial school), could be required to attend at the court before which the child's case is tried, at all the stages of the proceedings.

4.10.5. No child or young person could be sentenced to death, transportation or imprisonment or committed to prison in default of payment of a fine or in default of furnishing security; but a young person (no a child), i.e., person, 14 years or upwards but under 16 years of age, could be sentenced to imprisonment when the court certified him as so unruly or depraved a character as to be unfit for a reformatory school and

\textsuperscript{10} Section 3(1) of the Bengal Children Act, 1922 (Bengal Act No II of 1922).
\textsuperscript{10} Section 6; Ibid.
\textsuperscript{20} Ibid, Section 7.
that there was no other method of suitably dealing with him.  

4.10.6. The Act provided for discharging of youthful offenders after due admonition, and for committing youthful offenders to the custody of their parents, guardians or any adult relative, or in the absence of any such person, to the custody of any trusted and respectable person, upon a bond being executed by such parent, guardian, relative, or other person, as the case may be, with or without sureties, as the court deemed fit, to be responsible for the proper custody and good behaviour of the youthful offender for a period not exceeding twelve months. The court could also order that such youthful person be kept under supervision of a person to be named by the court.

4.10.7. This Act empowered the courts to order that a fine inflicted on a child or a youthful offender be paid by his parent or guardian. If it appeared to a court, on the complaint made by any person, that a girl under the age of sixteen was being treated with cruelty by her parent or guardian or that such girl, with the knowledge of her parents or guardian, was exposed to chances of seduction or prostitution, the court could direct her parent or guardian to enter into a recognizance for exercising proper care and supervision of that girl.

4.10.8. Further, this Act provided for placing out youthful or child offenders on license on such conditions as might be prescribed. The child or the youthful offender was, under the license, placed under the care of some respectable person named in the license and willing to receive and take charge of him for the purpose of training him for some useful trade or occupation.

4.10.9. It is, however, interesting to note that a Juvenile Court was established along with the House of Detention in

21 Ibid, Section 21.
Calcutta, the capital of Bengal, as early as 1914, i.e. eight years before the passing of the Act and twenty-five years before a similar Court in Madras started functioning.  

**THE BOMBAY CHILDREN ACT OF 1924:**

4.11.1. The Bombay Children Act of 1924, though passed later than the Madras and the Bengal Acts, was the most progressive and comprehensive piece of legislation to date in this field. This Act followed very closely the English Children Act of 1908. Its aims and objects, mentioned in the Preamble of the Act, are to make further provision:

(i) for the custody and protection of children and young persons;

(ii) for the custody, trial and punishment of youthful offenders and

(iii) for the amendment of the Reformatory Schools Act, 1897; in its application to the Presidency of Bombay.

4.11.2. The Act marked a significant step forward in the humanitarian approach towards children by extending the helping hand of the State to those in need of care and protection. The Act brought within its purview children under the age of sixteen years. A youthful offender was a person under sixteen years of age (and above seven years as specified in the Indian Penal Code) who had committed an offence punishable with transportation or imprisonment. It provided for the establishment of separate juvenile courts for children; but children co-accused with adults or children victimized by adults were permitted to be taken to other criminal courts. Again, the Act laid down severe

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punishment ranging from imprisonment for one month to three years and fine from fifty rupees to two hundred rupees for those who offended against children. Provision was made for compensation for giving false and frivolous or vexatious information against a person in connection with ill-treatment of a child. The Act also provided for the establishment and maintenance of certified schools and other institutions for the reception of children and of youthful offenders. The principle of separate hearings and separate institutions for juveniles was thus accepted by this Act. This Act also made provisions for the appointment of Probation Officers and laid down their duties. The Act laid down that no child should be committed to death or transportation and also prohibited the publication of names, addresses or other details concerning children involved in offences, and removed any disqualification for office or election attached to convictions for offences.

4.11.3. The Bombay Children Act refers to four types of children:

(i) 'neglected and destitute' or 'socially handicapped' children;

(ii) 'uncontrollable children';

(iii) 'victimized' or 'offended against' children; and (iv) 'delinquent' children or 'young offenders'. Under this Act, a 'neglected' and 'destitute' or 'socially handicapped' child is one who:

(a) (i) has no home, settled place of abode or visible means of subsistence; or (ii) has no parent or guardian who exercises regular and proper guardianship; or

(b) is found destitute, and his parent or guardian is undergoing transportation or imprisonment; or
(c) is under the care of a parent or guardian, who, by reason of criminal or drunken habits, is unfit to have the care of such person; or

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

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

(f) is otherwise likely to fall into bad association or to be exposed to moral danger or to enter upon a life of crime.

4.11.4. Children who are beyond the control of their guardians or parents and whom the parents or guardians concerned wish to send to a certified school were taken cognizance of under the Act.

4.11.5. Children who were 'victimized' or 'offended against' were given protection under the Act. This Act mentioned 'such offences against children' which entitled them to be brought before the juvenile court as follows:

(1) cruelty to a child by the person having the actual charge of or control over him by way of abandoning, exposing, wilfully neglecting or ill-treating him, or wilfully failing to provide adequate food, clothing, medical and or lodging in a manner likely to cause such child unnecessary suffering or injury to his health;

(2) allowing a child to beg or inducing the giving of alms;

(3) being drunk while having the charge of a child apparently under the age of seven years and being incapable by reason of drunkenness of taking due care of the child;

(4) giving intoxicating liquor to a child except when medically necessary;

(5) inciting a child to bet or borrow money;
(6) taking on pawn articles from a child;

(7) allowing a child between the ages of four and sixteen years to reside in or to frequent a brothel;

(8) causing or encouraging seduction or prostitution of a girl under the age of sixteen years by a person having the actual charge of or control over her;

(9) treating a girl under the age of sixteen years cruelly by her parents or exposing her to the risk of seduction or prostitution or of living a life of prostitution.

4.11.6. Children taken cognizance of under this Act could be dealt with by the juvenile court as under:

A 'socially handicapped' child may be
(i) sent to a certified school;

(ii) committed unconditionally to the care of a relative or other fit person until he attains the age of eighteen years or for any shorter period;

(iii) committed to the care of a relative or other person on his executing a bond for the good behaviour of the child;

(iv) committed to the care of a relative or fit person and placed under supervision;

(v) allowed to remain in the custody of a parent or guardian and placed under supervision on such parent or guardian giving an undertaking. An 'uncontrollable' child may be sent to a Certified School if the court is satisfied that it is expedient to deal with him. This Act prescribed certain methods of dealing with victimized children and also suggested penalties for those who victimize children. 'Victimized' children were to be dealt with in more or less the same way as 'socially handicapped children'.

4.11.7. Under the Act, a youthful offender may be dealt with in the following manner by a court:
(1) Discharged after due admonition;
(2) committed to the care of his parent, guardian, other adult relative or other fit person on their executing a bond to be responsible for his good behaviour;
(3) placed under supervision;
(4) released on probation of good conduct;
(5) sent to a certified school;
(6) sentenced to caning if his conduct is such as to lead the court to believe that no other punishment would be effective;
(7)(a) ordered to pay a fine:
(b) if the offender is below fourteen years of age, the parent or guardian may be ordered to pay the fine;
(8) sentenced to imprisonment if the offender is fourteen years of age, or upwards.

4.11.8. In passing final orders, the Bombay Children Act first made distinction between the neglected, the victimized and the uncontrollable children on the one hand and the youthful offenders on the other. While in the case of the former, factors such as the character and circumstances of the child were to be taken into consideration before passing the order, in the case of latter, these factors were to be taken into consideration after recording a finding against the child that he had committed an offence. Such a discrimination is suggestive of the old penal approach towards the offenders which should have been done away with. Provisions such as caning juvenile offenders and penal terms such as 'punishment', 'conviction' and 'sentence', incorporated in the body of the said Act, go against its spirit. The experience of the actual working of the Bombay Children Act of 1924 in the twenty years of its operation revealed many
defects which required to be remedied. The wording of the Act in certain sections was ambiguous, giving rise to conflicting interpretations by different magistrates. The Act also suffered from over-lapping, defective arrangement and discrepant phraseology. Experience has shown the need, as well, for the addition of certain more suitable provisions for better enforcement of the Act as an instrument designed throughout to promote the well-being of children affected by it.

REPORT OF THE COMMITTEE OF INQUIRY INTO THE CARE OF DESTITUTE CHILDREN AND YOUNG OFFENDERS

4.12.1. Six years after the functioning of the Bombay Children Act, the Government of Bombay appointed a Committee under the chairmanship of Mr. Strate in 1933, to inquire into the problems of destitute children and young offenders, as a number of administrative and practical difficulties were experienced during the six years of the working of the said Act.

The terms referred to the Committee were as follows:

(1) To consider and make recommendations for the better co-ordination of work of various institutions operating under the Bombay Children Act 1924, the Apprentices Act, the Reformatory Schools Act, and the Bombay Borstal Schools Act,

(2) To consider and make recommendations for the best use of available grants,

(3) To consider whether juveniles from outside the Presidency should be admitted to these institutions,

(4) To examine the method of ensuring future employment to those trained at the schools, including especially agriculture,

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23 Government of Bombay, Report of the Committee of Inquiry into the Care of Destitute Children and Young Offenders, Bombay, 1933.
(5) To examine the arrangements connected with 'after care' including particularly the present facilities for training workers among juvenile delinquents, and to make suggestions for improving these facilities.

4.12.2. The important recommendations of the Committee were:

(1) Multiplicity of legislative enactments dealing with juveniles hampers the working of the Children Act. The Reformatory Schools Act and the Apprentices Act should, therefore, be repealed so far as they affect this Presidency.

(2) The problem of destitution is widespread in India and the destitute child, therefore, constitutes a special problem. Experience has already shown in Bombay City that the majority of children dealt with under the Children Act are absolutely destitute, who, for many years have adopted the life of the road rather than being merely poor children rescued from impoverished circumstances, before a vagabond manner of life has developed. Owing to the far more hardened nature of the former type, they require more specialized treatment than is available in voluntary institutions designed merely for the admission of poor children. Special institutions are, therefore, necessary for destitute children between seven and sixteen years of age.

(3) The juvenile court deals with the following cases of children less than sixteen years old:

(i) neglected and destitute children,

(ii) uncontrollable children, and

(iii) young offenders whose offence is not too serious in nature.

It will thus be noted that children who have been offended against fall outside the scope of the juvenile court, owing to
the fact that the other accused being adults, have to be dealt with in the ordinary courts. In view of the unavoidable necessity of children having to give evidence in such cases in the adult court, their evidence, which is generally in respect of sexual offences, should always be heard in camera.

(4) In practice, another class of juveniles who are co-accused with adult persons are still being dealt with in the adult court, in spite of the juvenile court being given the jurisdiction in such cases by the 1931 Amendment of the Children Act. Alteration of this practice has not occurred owing to a fear that by introducing adult co-accused in the juvenile court, a criminal atmosphere will be introduced. This can be avoided by arrangement of a separate session. Thus, cases in which children are co-accused with adults would be tried by the juvenile court sitting in separate session.

(5) In dealing with young offenders, the question of the age of responsibility is important. Under the Indian Penal Code, seven is the lower age limit of criminal responsibility and twelve is the age of discernment. However, it should be proved that the child is incapable of judging the nature and consequences of his conduct before he can be discharged on that plea. That is to say, the burden of the proof that his mentality is infantile is thrown on the child. And as a consequence, that child alone who has guardians of standing and intelligence benefits by this plea. The burden of proof should, therefore, be laid upon the prosecution.

(6) When a child is acquitted on the grounds that he was incapable of judging the nature and consequences of his conduct, or discharged for other reasons, enquiry should be made whether, besides being an accused person, the child is not also destitute,
uncontrollable, or neglected within the meaning of the Children Act, so that the child be given the necessary treatment by the juvenile court.

(7) The object of special treatment of children is remedial and penal terms such as 'conviction' and 'sentence' should, therefore, be expunged from the Children Act.

(8) All cases of offences by children, however petty, should be brought before the regular juvenile court, or if a juvenile court does not exist, then before a Stipendiary Magistrate at a place other than the ordinary court and at a time outside court hours.

(9) A juvenile court should be constituted in each District Headquarters. It should be in a separate building.

(10) Too big a rota of lady magistrates makes the individual turn, too infrequent for good experience to be achieved. It is, therefore, recommended that only sufficient lady magistrates should be appointed to provide for a reserve. Unrestricted appointment would bring in a number of incompetent persons whose only object is to gain a post of social importance.

(11) As the whole purpose of the Children Act is to provide treatment and not punishment, the role of the Magistrate of the juvenile court is far more akin to that of a doctor, or a teacher than to that of a learned dignitary of the law. The greatest care should, therefore, be taken in the appointment of the Magistrate as the right type of men and women are required.

(12) The proceedings in a juvenile court should be simple, privacy of hearing insisted on, the presence of pleaders avoided, admission of visitors or reporters should be only by permission of court. Parents should be encouraged to attend the hearing of their children's cases.
(13) All children from outside the Presidency should be repatriated under escort and the cost of maintenance of such children as are homeless should be borne by the Province or State of their origin and they should not be sent to one of the Certified Schools prior to being so deported.

(14) Steps should be taken to ensure a closer watch being kept by the Railway authorities to prevent children travelling without tickets.

(15) The term 'Reformatory' should be dropped from the names of schools.

(16) A policy of too summarily committing to school tends to weaken parental responsibility and the wise Magistrate will only use the institutional method when treatment in the open has failed, when the home influence is bad or when the child is destitute. When institutional treatment is the only remedy, then the greatest care must be taken to select the right type of school.

(17) The whole of the Children Act should be put into immediate operation throughout the whole Presidency.

(18) Pending the passage of the all-India Probation Act, the Bombay Children Act should be amended to provide for probation.

(19) Few steps have been taken to educate public opinion on the value of the work which aims at reclaiming young life. Its cost should be reckoned in human rather than merely money value and against such cost should be off-set the consequent reduction in adult crime which has already been experienced in the West.

4.13.1. Though the Government had the Starte Committee Report with it in the year 1945, it felt that piecemeal amendments to the old Act would serve no useful purpose. Therefore, the Government thought it desirable to re-enact the
Act with appropriate modifications remedying the then existing defects and incorporating the new provisions. Having decided to thoroughly amend the Act, a small Departmental Committee of five members was appointed under the Chairmanship of Mr. Streatfield in the year 1945. The following were some of the important innovations suggested by the Departmental Committee:

1. Relegation to the Government instead of the trying courts, of the power of sentencing children to imprisonment, the power of deferring the passing of the final orders suggested by courts, and releasing the child on probation.

2. Raising of the age of a statutory child to eighteen in the case of a girl.

3. Abolition of caning.

4. Clarification that all juvenile offenders must be tried in juvenile courts.

5. Restrictions on the appearance of pleaders.

6. Provision to prevent exploitation of child employees.

4.13.2 The Committee suggested certain principles which they felt important to be engrafted into the Act. The Committee also pointed out the need for action along certain lines to facilitate more effective working of the Act in the interest of the children. These are as follows:

1. Need for an all-India enactment.

2. Need for more Certified Schools; and suggestion that till special institutions for older girls are established, Government should exclude by Notification, girls between sixteen and eighteen years of age from the provisions of the Act.

3. Training of all workers under the Act—Superintendents, Probation officers, other personnel and Magistrates.

(4) Need for the greatest degree of informality possible in the operation of the juvenile court, and entire elimination of the legal aspect of the court.

4.14.1 After Independence, when greater interest was aroused in social problems including that of juvenile delinquency, the Reports of the above two Committees received due attention. In 1948, in the light of the recommendations made by the Starte Committee and by the Committee to amend the Bombay Children Act, 1924, the new Bombay Children Act of 1948 was framed repealing the Act of 1924.

4.15.1. The Bombay Children Act, 1948

The Bombay Children Act, 1948, shows a dynamic approach to the problems of juvenile delinquency and a gradual shift from a penal to a social treatment. In the preamble, for example, the Bombay Children Act of 1924, is described as "And to make further provision for the custody and protection of children and young persons and for the custody, trial and punishment of youthful offenders." The new Act, however, went still further and the preamble reads: "Whereas it is expedient to consolidate and amend the law for the custody, protection, treatment and rehabilitation of children and youthful offenders and for the trial of youthful offenders in the province of Bombay, and for certain other purposes specified therein ..." The comparison of these two preambles clearly shows that there has been a marked

27 Preamble, The Bombay Children Act, 1924.
change in outlook and in the philosophy of the treatment of juvenile delinquents. Greater stress has been laid in the 1948 legislation on treatment and rehabilitation rather than on mere custody, protection, trial and punishment. The object of 'treatment and rehabilitation of children' as well as of 'youthful offenders' is a definite improvement on the old objective and of 'custody and protection of children'. Furthermore, the new Act drops altogether the punitive clause 'punishment of youthful offenders', while providing for their 'trial', and recommends 'custody, protection, treatment and rehabilitation', putting the youthful offenders thereby on par with other children. The Act of 1948 breathes the air of the philosophy of protective, rehabilitative and corrective approach towards the delinquent child. It is a distinct landmark in the history of special legislation for juveniles in India and has formed the basis not only of the All-Indian Children Act of 1960 but of several other Children Bills which have since been drafted or which are in the process of being drafted in different States in India.

4.15.2. The Act of 1948 provides for the establishment of Juvenile Courts, Remand Homes, Certified Schools and other institutions for the implementation of the Act. In the whole of India, it is the only State Children Act which gives exclusive jurisdiction to juvenile courts in proceedings concerning children. The Act accepts the principle of separate trials for children and for adults.

4.15.3. The Bombay Children Act, 1948, made provisions for the custody and due protection of children, and for dealing with offences against children. The Act deals also with youthful offenders. Under the Act, 'children' are persons below sixteen
years of age and 'youthful offenders' are persons below sixteen years (and above seven years, as seven is the age of criminal responsibility laid down by the Indian Penal Code) who are alleged to have committed an offence. Another important improvement on the previous Act lies in the provisions for the continuation of proceedings against a child on his attaining the age of sixteen years. The Act of 1948 states: Provided that if during the course of the proceedings under this Act a person attains the age of sixteen years, the proceedings already commenced shall be continued and orders may be passed in respect of such person under this Act as if such person was a child notwithstanding anything to the contrary in this Act. Such a provision acts as a safeguard against depriving the juvenile of special treatment on reaching the upper age-limit during protracted trials. In all other parts of India except Bombay State, it is the age of the juvenile at the time of conviction that is taken into account when passing orders and not his age at the time of the commission of the offence. The age of treatment eligibility, i.e. the age up to which the juvenile is eligible for treatment, is eighteen years in both the Acts.

4.15.4. Under the Act, juvenile Courts can try cases of children under 16 years of age and have got the jurisdiction regarding the guidance, safe custody and treatment of children.

4.15.5. A police officer, or other authorized person, can produce before a juvenile court a child homeless or without any perceptible means of subsistence, or a destitute, with a parent or guardian suffering transportation or undergoing a sentence of imprisonment or a child under the protection or care of a person who, by reason of his conduct, character, or habits, could be regarded as incapable of being its guardian, or a child found in
the company of a thief or prostitute, or exposed, in any way, to moral danger or liable to enter into a career of crime.

4.15.6. A juvenile court can send a delinquent child to a certified school or home, or commit him to the guardianship of a relative or other fit and proper person who is willing to undertake or accept such responsibility regarding the child.

4.15.7 The Bombay Children Act provided for the placing of juvenile delinquents under the supervision of probation officers, or some other fit and proper person appointed by the court for that purpose. The probation officers can be-friend and guide delinquent children entrusted with them. There should be probation officers and probation associations in all towns and cities for the efficient execution of these provisions.

4.15.8. Any adult person, who has victimized or cruelly treated any child, or has offended against any child, can be dealt with at law and punished. Offences against children are cognisable.

4.15.9. Making or allowing a child to beg made the adult concerned liable to punishment. Going about, with a child in charge, in a drunken state, or giving intoxicating liquor or dangerous drug to a child or allowing it to enter any place where such liquor or drug is sold, or inciting a child to bet or wager or borrow, was also made punishable under the Act.

4.15.10. Under the Act police officers were given the power to seize any cigarette, tobacco or smoking material or instrument found in the possession of child or found smoking in any public place or street.

4.15.11 A child with regard to whom an offence was committed, or believed to have been committed, could be detained in a place of safety by any police officer, not below the rank of
Sub-Inspector, or by any other police officer or person so authorized by the State Government, but such detention could not be for more than twenty-four hours (exclusive of the time required for taking the child from the place of detention to the court) without the production of the child before the court. The court could then make orders for further safe custody of the child. Cases involving serious offences by a child, including murder, are to be tried by the juvenile court alone.

4.15.12. The main emphasis of the Act is not on the offence but on the child and his treatment and rehabilitation. The reformative approach towards the offender is also evident from the shifting of emphasis from the offence to the offender, from the nature and gravity of the offence to the character and age of the child and circumstances in which the child is living.

4.15.13. It cannot be said, however, that the Bombay Children Act is perfect. It must be remembered that new ideas and methods for the treatment of juvenile delinquency are constantly being developed and that there is a continuous need for improvement. After care has not been adequately developed. There is no specific reference of these services in the Bombay Children Act, 1948. It goes without saying that the real test of success in the treatment of delinquency depends on the actual rehabilitation of children on their return to society and for this purpose after-care should be established on a statutory basis. The objectives of the Children Act cannot be fully attained if effective after-care, which is the logical conclusion of the treatment programme, is not provided to the children going out to face the complex social malign.

4.15.14. It was pointed out that the Act does not make provision for segregation of children. At present both
delinquents and non-delinquents are kept together in remand homes and certified schools. The Act does lay down that a child may be committed to the care of a fit person or a fit person institution. The use of fit person is not common. A special provision for children who are mentally ill is lacking. Provisions for after-care services, segregation of delinquents and non-delinquents, and special provision for mentally ill children were thought to be essential.

4.15.15. Section 109 of the Act empowers the State Government to make rules to carry out the purposes of the Act and the Government has framed rules for the management of remand homes maintained by District Associations. Earlier, all remand homes in the State were maintained by Distinct Associations.

4.15.16. In conclusion, we may say that the Bombay Children Act of 1948 is the culmination of a series of stray legal provisions on an all-India basis and special provisions for dealing with juveniles in the State of Bombay and is the most progressive juvenile law in the country. In other provinces (except Madras, Bengal, and Bombay) of India, for example in Delhi the Children Act was passed in 1941, the Mysore Children Act in 1943, the Travancore-Cochin Children Act in 1948, the Punjab Children Act in 1949 and the Uttar Pradesh Children Act in 1951. Hyderabad enacted the Children Act in 1951 and Saurashtra in 1954. After the formation of the new State of Andhra, the Madras Children Act was made applicable to it. Another characteristic feature of this slow legislation is that some of the States having the Children Act have not enforced and implemented the provisions of the Act even long after the enactment of the Act. In comparison with the advanced countries of the West, much, however, still remains to be done in the
achievement of juvenile welfare through social legislation. Bombay is still lacking in having a juvenile law which would deal with over-all problems of juvenile welfare.

4.16.1. Bombay Children Act (Amendment of 1976) -- The present Bombay Children Act, amended in 1976, has given a juvenile law which deals with over-all problems of juvenile welfare. The new nomenclature has been useful in raising the status of those who have devoted their services for hundreds of juvenile boys and girls. By changing 'Remand Home' into 'Observation Home', the concept of social investigation will become more predominant. By raising the age of juvenile girl to 18 years, many girls in their danger period of adolescence would be brought under the shelter of law and other institutions which are vigilant in the work of prevention of crime.

4.16.2 The present Act has dealt not only with care but even with the aftercare of those who are cared and corrected. By this provision, released children not equipped to face the world, would be taken care of and this work will check recidivism.

4.16.3 The Act has given emphasis on 'Trained Professional Personnel' who will look after not only the problems of probation but also those dealing with placement and Liaison.

4.16.4 The Act has provided for the effective administration of child welfare activities. If properly implemented, many intricate problems in the field of child welfare may be dealt with immediately.


Interest in the problem of juvenile delinquency has acquired special importance after the attainment of Independence and the coming into effect of the Indian Constitution. The Constitution of India lays down that "the State shall, in particular, direct
its policy towards securing that childhood and youth are protected against exploitation and against moral and material abandonment." In consonance with this principle, the Government of India convened a Conference of Education Ministers of the States in 1948 to consider:

(1) the enactment of legislation on an all-India basis to ensure that juvenile offenders are treated not according to penal laws, but re-educated in special institutions to become useful citizens, and;

(2) the establishment of suitable organisation for the prevention of juvenile delinquency. In order to emphasize the educative and reformatory character of such activities, it has also been suggested that the problem of juvenile delinquency should be handled by the Ministry of Education at the Centre and the Departments of Education in the States.

4.17.2. The Conference of Education Ministers of the States called by the Government of India discussed the problem of juvenile delinquency at length and appointed a small committee of experts to go into it and to frame a model Children Act.

4.17.3. The necessity for an All-India Children Act dealing with juvenile delinquents has also been felt by the States where some progress has been achieved in the field at the State-level. Efficient working of the State Children Acts is not possible without the co-operation of other States and similar facilities for the treatment of juveniles in other States. The difficulties are particularly greater in States like Bombay and Calcutta where children from other parts of the country flock in large numbers, and form a considerable proportion of the delinquent population.

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28 Article 39(f) of the Constitution of India.
of the state. On an all-India basis, laws dealing with juvenile
delinquents had been of a piecemeal nature. In the year 1953,
therefore, a Special Children Bill was placed before the Indian
Parliament and the Children Act was passed in December, 1960.