The preamble to the Juvenile Justice (Care and Protection of Children) Act, 2000 says that the act was enacted with an object to incorporate the standards prescribed in the United Nations Convention on the Rights of the Child 1989, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) 1985, the United Nations Rules for the Protection of Juveniles deprived of their Liberty 1990 and all other relevant international instruments.

In the matter of construction of juvenile legislations, the Supreme Court observed that the Constitution is a source of, and not an exercise of, legislative power. The principles of international law whenever applicable operate as a statutory implication.\(^{16}\)

In the matter of juvenile justice legislation, India followed the British pattern as well as the development taking place at the international level under the auspices of United Nations Organisation. Therefore, the origin, growth and development of Indian juvenile justice system can be traced back somewhere else and not in India itself.

To facilitate understanding on the Indian juvenile justice system, the relevant international instruments are cited here with discussions at relevant places.

The Third International Congress for the Welfare and Protection of Children (1902)

The Third International Congress for the Welfare and Protection of Children was held in London from 15th to 18th July 1902, under the patronage of His Majesty King Edward VII. The Congress considered the problems of neglected children and the probabilities of their turning towards delinquency if due care of them was not taken. Thus, this is the point where the Congress emphasized the linkage of neglected juveniles and juvenile delinquency.

The Covenant of the League of Nations (1919)

Article 23 of the Covenant obliges the Members of the League to endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend. The Covenant also proposed that the Member of the League should establish necessary international organisations for that purpose.

Of course, this provisions related to conditions of labour for children, however, this led to development of today's children's rights.

The Human Rights of the Child under the Geneva Declaration (1924)

The Declaration provided that the child that is hungry must be fed, the

---

child that is sick must be helped, the child that is backward must be helped and
the delinquent child must be reclaimed.

The Declaration is important in the sense that it suggested in the year
1924 to the Members of the League to adopt rehabilitative measures to
reclaim the delinquent child. This provision led to the development of the
principle of rehabilitation and social reintegration of the child.

**Universal Declaration of Human Rights (1948)**

The important Article in this Declaration is Article 16 which indirectly
relates to rehabilitation and social reintegration of juvenile delinquents. The
Article says that the family is the natural and fundamental group unit of
society and is entitled to protection by society and the State. If family is taken
care of, the children will automatically be taken care of. If children are taken
care of and family is left in destitution, all child care programmes become
frustrated. Therefore, to protect the human rights of the children, the human
rights of their parents first must be protected.

**The International Covenant on Civil and Political Rights (1966)**

Article 6 of the Covenant mandates the State Parties not to make
legislations awarding death sentence for the offence committed by juvenile
offender who is below eighteen years of age.

Article 7 provides that the accused juvenile shall not be punished in an
inhuman or degrading manner. No torture or cruelty can be meted out during
the custody or detention.

---

20 [Ian Brownlie & Guy S. Goodwin-Gill, Basic Documents on Human Rights, pp.23-28 Oxford
University Press, 5th edn., 2010]

21 infra f.n. 18
Article 10 provides that the accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

**The International Covenant on Economic, Social and Cultural Rights (1966)**

Article 10 of the Covenant provides that the State should afford widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children.

This is the only provision which is ignored in all the jurisdictions at the international and municipal level what is heard is human rights of the children and not the human rights of the parents or guardian of the children. It is not understood how one can take care of children without taking the care of their family. From this point of view, the whole discourse of human rights appears to be mere academic discussion.


**Scope of the Rules and Definitions used**

Rule 2 provides that a juvenile is a child or young person who, under

---

20 [Ian Brownlie & Guy S. Goodwin-Gill, Basic Documents on Human Rights, pp.23-28 Oxford University Press, 5 edn., 2010]
21 infra f.n. 18
22 infra f.n. 18
the respective legal systems, may be dealt with for an offence in a manner which is different from an adult. An offence is any behaviour (act or omission) that is punishable by law under the respective legal systems. A juvenile offender is a child or young person who is alleged to have committed or who has been found to have committed an offence.

**Extension of the Rules**

Rule 3 provides that relevant provisions of the Rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult. In other way of saying that the juvenile offenders and status offenders (non-delinquent) both should be processed together. Its justification in the modern legal system is highly doubted. This is the weakness of the Rule 3.

**Age of Criminal Responsibility**

Rule 4 says that the minimum age for criminal responsibility should not be fixed at too low age level, bearing in mind the facts of emotional, mental and intellectual maturity.

**Aims of Juvenile Justice**

Rule 5 provides that the juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence. This clearly shows that the rule does not prohibit punishing juvenile offenders.
Scope of Discretion

Rule 6 provides that the official exercising control over the juvenile offenders should be made accountable at all stages.

Rights of Juveniles

Rule 7 provides the principle of fair trial. It says that the basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

Protection of Privacy

Rule 8 provides for the protection of the juvenile's right to privacy at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labeling. In principle, no information that may lead to the identification of a juvenile offender shall be published.

Initial Contact

Rule 10 provides that upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter. A judge or other competent official or body shall, without delay, consider the issue of release.

Diversion

According to Rule 11, consideration shall be given, wherever
appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority. Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application. In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.

**Specialization within the Police**

According to Rule 12, the police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.

**Detention Pending Trial**

Rule 13 provides that detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time. While in custody, juveniles shall receive care, protection and all necessary individual assistance including social, educational, vocational, psychological, medical and physical that they may require in view of their age, sex and personality.

**Competent Authority to Adjudicate**

Rule 14.1 provides that where the case of a juvenile offender has not been diverted, she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial.
Rule 14(2) provides that the proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

**Legal Counsel, Parents and Guardians**

Rule 15(1) provides that throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.

**Social Inquiry Reports**

Rule 16(1) says that in all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority.

**Guiding Principles in Adjudication and Disposition**

Rule 17(1)(a) provides that the reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society. The rule postulates the principle of individualization of punishment.

Rule 17(1)(d) provides that the well-being of the juvenile shall be the guiding factor in the consideration of her or his case.
Rule 17(2) prohibits death sentence to juvenile offenders.

Rule 17(3) prohibits corporal punishment to juveniles.

**Various Disposition Measures**

Rule 18(1) lays down various alternatives or diversionary programmes in substitute to institutional method of treatment and they are as follows

(a) Care, guidance and supervision orders;

(b) Probation;

(c) Community service orders;

(d) Financial penalties, compensation and restitution;

(e) Intermediate treatment and other treatment orders;

(f) Orders to participate in group counselling and similar activities;

(g) Orders concerning foster care, living communities or other educational settings;

(h) Other relevant orders.

**Least possible use of institutionalization**

Rule 19(1) provides that the institutional method of treatment should be the last resort.

**Avoidance of unnecessary delay**

Rule 20(1) provides for expeditious disposal of cases of juvenile
offenders.

**Records**

Rule 21(1) provides that the records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons.

Rule 21(2) provides that the records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

**Need for professionalism and training**

Rule 22(2) lays down that the Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies.

Rule 23 provides for effective implementation of dispositional directions passed by the competent adjudicatory authorities.

Rule 23(1) provides that the suitable provisions shall be made for the implementation of orders of the competent authority, as referred to in rule 14(1) above, by that authority itself or by some other authority as circumstances may require.

Rule 23(2) provides that provisions should also be made to include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in
accordance with the principles contained in these Rules.

**Provision of Needed Assistance**

Rule 24(1) obliges the States to make efforts to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process.

**Mobilization of Volunteers and other Community Services**

Rule 25(1) provides for involvement of volunteers, voluntary organisations, local institutions and other community resources to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

**Objectives of institutional treatment**

Rule 26(1) lays down the objectives of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills.

Rule 26(2) provides that the juveniles in institutions shall receive care, protection and all necessary assistance.

Rule 26(3) provides that the juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution.

Rule 26(5) lays down that in the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access.
Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations

Rule 27(1) provides that the Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication.

Rule 27(2) provides that efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality.

**Frequent and Early Recourse to Conditional Release**

Rule 28(1) provides that the conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time.

Rule 28(2) provides that the juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.

**Semi-institutional Arrangements**

Rule 29(1) provides that efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-timing training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society.
Research as a Basis for Planning, Policy Formulation and Evaluation

Rule 30(3) provides that efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration.

Rule 30(4) provides that the delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.


Article 1 provides the definition of a child. According to it, every human being below the age of eighteen years is a child.

Article 3(1) provides that in all actions, the best interests of the child shall be a primary consideration.

Article 3(2) provides that while ensuring protection and care to a child, the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her shall be taken into account by the State.

Article 3(3) lays down that the States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

24 [Ian Brownlie & Guy S. Goodwin-Gill, Basic Documents on Human Rights, Oxford University Press, 2nd edn., 1981]
Article 12(2) provides that the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rule of national law.

Article 20 (1) states that a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

Article 20(2) provides that States Parties shall in accordance with their national laws ensure alternative care for such a child. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 37 provides that States Parties shall ensure that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.

Article 37(b) states that no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.
Article 37(c) states that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

Article 37(d) provides that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 39 provides that the States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child who is the victim of any form of neglect, exploitation, or abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40(1) provides that the States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in a society.
Article 37(c) states that every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

Article 37(d) provides that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 39 provides that the States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child who is the victim of any form of neglect, exploitation, or abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40(1) provides that the States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in a society.

Article 40(2)(a) provides that no child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed.

It clearly shows that the child can be accused of or recognised as having infringed the penal law. One important question arises here what would be the designation of a child who has been accused of or recognised as having infringed the penal law. Certainly he will be called as an accused child. Therefore, the Convention does not wipe out the stigma of as attached with the term juvenile. It is submitted that the accusation itself is a stigma in terms of Convention.

Article 40(2)(b)(i) lays down the principle of innocence.

Article 40(2)(b)(ii) lays down the principle of reasonable opportunity to be heard. It provides that the charges against him or her to be informed promptly and directly through his or her parents or legal guardians, and be provided with legal or other appropriate assistance in the preparation and presentation of his or her defence;

Article 40(2)(b)(iii) provides that the accused child shall have a right to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

Article 40(2)(b)(iv) prohibits testimonial compulsion. According to it, no accused child shall be compelled to become a witness against himself or
herself.

Article 40(2)(b)(v) provides right to an convicted accused child to go for appeal or revision against the order of the subordinate authority before the higher competent authority.

Article 40(2)(b)(vii) provides the child right to privacy at all stages of the proceedings.

Article 40(3) mandates the States Parties to seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal laws.

Article 40(3)(a) mandates the State to fix the minimum age of criminal responsibility below which children shall be presumed not to have the capacity to infringe the penal law.

Article 40(3)(b) provides that whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

Article 40(4) provides that the variety of dispositions, such as care, guidance and supervision orders, counselling, probation, foster care, education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.
The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)

Rule 1 provides that the imprisonment should be used as a last resort. In other words, sentence of imprisonment can be awarded to the juvenile delinquent.

Rule 2 provides that in depriving the liberty of juvenile delinquents, the rules as set forth in these Rules and Beijing Rules should be followed.

Rule 11(a) provides that a juvenile is a person who is under the age of 18. It provides further that deprivation of liberty should be as per law.

Rule 11(b) defines the deprivation of liberty. It means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

Rule 12 provides that juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

Rule 14 provides that the juveniles should be provided right to challenge the legality of the execution of the detention.

**Juveniles under arrest or awaiting trial**

Rule 17 lays down the principles of fair trial to an accused person. It
says that the juveniles who are detained under arrest or awaiting trial are presumed to be innocent till their guilt is proved beyond reasonable doubt.

Rule 18(a) also lays down the principle of fair trial. It provides that the juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications.

**The Management of Juvenile Facilities**

Rule 19 provides the provisions in the direction of removal of stigma attached with juvenile delinquency. It says that the records of the juvenile delinquent should be placed confidential and third party should be allowed to have access as per the procedure made therein. After discharge of the juvenile delinquent from the institutions, the record should be destroyed at the appropriate time.

It is submitted that this provision is against the aim and spirit of justice to juveniles. This law has no scientific basis because a rapist child or murderer child will have the stigma even if they are designated with some other terminology. Moreover, this law is not based on the opinion of the juvenile delinquent. This is based on the adult opinion which is not justified on the ground that it creates invisibility in the juvenile justice system resulting into lack of transparency and arbitrariness in the administration of justice.

Rule 21 provides for the method and manner of keeping and maintaining the records of the juvenile in the institutions.

Rule 22 provides that the parents, guardians or close relative of the
juveniles who are detained under arrest or awaiting trial are presumed to be innocent until their guilt is proved beyond reasonable doubt.

Rule 18(a) also lays down the principle of fair trial. It provides that the juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications.

The Management of Juvenile Facilities

Rule 19 provides the provisions in the direction of the removal of stigma attached with juvenile delinquency. It says that the records of the juvenile delinquent should be placed confidential and third-party should be allowed to have access as per the procedure made therein. After discharge of the juvenile delinquent from the institutions, the record should be destroyed at the appropriate time.

It is submitted that this provision is against the aim and spirit of justice to juveniles. This law has no scientific basis because a rapist child or murderer child will have the stigma even if they are designated with some other terminology. Moreover, this law is not based on the opinion of the juvenile delinquent. This is based on the adult opinion which is not justified on the ground that it creates invisibility in the juvenile justice system resulting into lack of transparency and arbitrariness in the administration.

Rule 21 provides for the method and manner of keeping and maintaining the records of the juvenile in the institutions.

Rule 22 provides that the parents, guardians or close relative of the juvenile should be informed without delay about admission, place, transfer and release.

Rule 23 provides that as soon as possible after reception, full reports and relevant information on the personal situation and circumstances of each juvenile should be prepared and reported to the administration.

This provision is similar to the provisions in the municipal law regarding information given to the magistrate by the police after arrest of any person.

Rule 30 provides for open detention facilities for juveniles.

**Physical environment and accommodation**

Rule 31 provides that juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity.

Rule 37 provides that every detention facility shall ensure that every juvenile receives food that is suitably prepared and presented at normal meal times and of a quality and quantity to satisfy the standards of dietetics, hygiene and health.

**Education, vocational training and work**

Rule 38 provides that every juvenile of compulsory school age has the right to education suited to his or her needs and abilities and designed to prepare him or her for return to society.

Rule 39 provides that the juveniles above compulsory school age who wish to continue their education should be permitted and encouraged to do so,
and every effort should be made to provide them with access to appropriate educational programmes.

Rule 41 provides that every detention facility should provide access to a library that is adequately stocked with both instructional and recreational books and periodicals suitable for the juveniles, who should be encouraged and enabled to make full use of it.

Rule 42 provides that every juvenile should have the right to receive vocational training in occupations likely to prepare him or her for future employment.

Rule 44 provides that all protective national and international standards applicable to child labour and young workers should apply to juveniles deprived of their liberty.

Rule 46 provides that every juvenile who performs work should have the right to an equitable remuneration.

Rule 49 says that every juvenile shall receive adequate medical care, both preventive and remedial, including dental, ophthalmological and mental health care, care, as well as pharmaceutical products and special diets as medically indicated.

Rule 50 gives every juvenile a right to be examined by a physician immediately upon admission to a detention facility, for the purpose of recording any evidence of prior ill-treatment and identifying any physical or mental condition requiring medical attention.

Rule 59 lays down the principles of social reintegration of juveniles into community after his or her discharge from the detention centre. For that it
provides that every juvenile should have the opportunity of adequate communication with the outside world, which is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for their return to society.

Rule 60 provides provisions similar to parole and licence while undergoing institutional treatment. It says that every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel.

Rule 61 lays down the provision that every juvenile should have the right to communicate in writing or by telephone at least twice a week with the person of his or her choice, unless legally restricted, and should be assisted as necessary in order effectively to enjoy this right. Every juvenile should have the right to receive correspondence.

Rule 63 provides that recourse to instruments of restraint and to force for any purpose should be prohibited.

Rule 64 provides exception to the above Rule 63. It says that instruments of restraint and force can only be used in exceptional cases, where all other control methods have been exhausted and failed, and only as explicitly authorized and specified by law and regulation.

**Disciplinary Procedures**

Rule 67 prohibits cruel, inhuman or degrading treatment in disciplinary matter. It prohibits corporal punishment, placement in a dark cell,
closed or solitary confinement or any other punishment that may compromise the physical or mental health of the juvenile concerned.

Rule 68 provides guidelines in the matter of legislation or regulations by the competent administrative authority. It lays down that the authority should establish norms taking full account of the fundamental characteristics, needs and rights of juveniles.

Rule 72 provides that the competent authority should appoint qualified inspectors not belonging to the administration of the facility to conduct inspections on a regular basis.

Rule 75 provides right to every juvenile to have the opportunity of making requests or complaints to the director of the detention facility and to his or her authorized representative.

Rule 76 provides right to every juvenile to make a request or complaint, without censorship as to substance, to the central administration, the judicial authority or other proper authorities through approved channels, and to be informed of the response without delay.

Rule 77 suggests for establishing an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty and to assist in the achievement of equitable settlements.

Rule 78 provides right to every juvenile to request assistance from family members, legal counselors, humanitarian groups or others where possible, in order to make a complaint.

Rule 80 suggests that competent authorities should provide or ensure services to assist juveniles in re-establishing themselves in society and to
lessen prejudice against such juveniles.

Rule 81 provides that the personnel should be qualified and include a sufficient number of specialists such as educators, vocational instructors, counselors, social workers, psychiatrists and psychologists.

Rule 82 provides that the administration should provide for the careful selection and recruitment of every grade and type of personnel. Since the proper management of detention facilities depends on their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.

Rule 87(b) suggests that all personnel should rigorously oppose and combat any act of corruption, reporting it without delay to the competent authorities.


Guideline 56 of the Riyadh Guidelines talks about status offences and status offenders. It says that in order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.

This provision of the Guidelines clearly speaks of removal of status offender from the jurisdiction of administration of juvenile justice. It asserts

---

the proposition that justice to delinquent juvenile is different than the justice to the neglected or other juveniles. The removal of status offenders which includes many categories of children in the present definition of children in need of care and protection establishes the fact that juvenile justice system generally begin with taking into custody of children which results into deprivation of liberty of children. That is the reason, the Guidelines suggests removal of status offenders from the administration of juvenile justice. Considering this guidelines, the children in need of care and protection should also be taken out from the jurisdiction of administration of juvenile justice which essentially envisages custodial treatment.

Guideline 58 provides for diversionary programmes for juvenile delinquents outside the juvenile justice system. It clearly suggests that to the best possible extent the juvenile delinquent accused of non-serious offences should be dealt with under various rehabilitatory schemes and programmes outside the jurisdiction of juvenile justice administration. It clearly establishes the fact that juvenile justice essentially relates to administration of juvenile justice and that cannot be done without depriving the liberty of the juvenile delinquent. It further suggest that the custody and liberty is the main issue involved in the juvenile justice system and for that reason the international documents binding or non-binding provide for diversionary programmes in the justice system.

To achieve the task of diversion is a mirage because it involves participation of the community and the community cannot be forced to involve in the rehabilitative processes of juvenile delinquents.
Main Issues in Juvenile Justice

India is the largest Country Programme of UNICEF for juvenile justice in the world. UNICEF projects are being implemented in India through Master Plan of Operations, an agreement between Indian and UNICEF in 1978.  

In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention, the United Nations Convention on the Rights of the Child (1989) has entitled the United Nations Children's Fund to be represented at the consideration of the implementation of the provisions of the Convention. (Article 45)

The journal Innocenti Digest is compiled by UNICEF International Child Development Centre to provide reliable and easily accessed information on critical children's right concern. It is designed as a working tool for executive decision-makers, programme managers and other practitioners in child-related field. The Digest has discussed the international standards in juvenile justice highlighting the main issues involved in the administration of justice to juvenile. The international standards in juvenile justice as incorporated in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 (Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 and the United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 (Riyadh Guidelines). The presentation made in the Digest is lucid, vivid and reliable.

The relevant provisions of the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966) have also been discussed in the Digest.

It is submitted that for the sake of clarity and brevity, the relevant extracts of the Digest is presented here in this chapter.

The international juvenile justice system focuses on the situation of children and young people under the age of eighteen who come into contact with the justice system as a result of being suspected or accused of committing an offence. Arrest is the starting point. There has been a growing concern over violation of children's rights throughout the world. Policy and practices relating to juvenile justice are among those areas most frequently criticized by the Committee on the Rights of the Child, the body responsible for monitoring the implementation of the United Nations Convention on the Rights of the Child.

Juvenile justice is not seen as a top priority in many countries and its realities are often hidden or ignored.

**International Standards**

The International Covenant on Civil and Political Rights prohibits the death penalty to persons found guilty of crime committed when they were under the age of eighteen. (Article 6.5) The document also contained many safeguard applicable to all persons brought to trial and detained. It specifically states that in the case of juvenile persons the court procedure shall be such as will take account of their age, and desirability of promoting their rehabilitation. (Article 14.4) The international standards and norms focusing care and protection of children are contained in the United Nations Standard

The Convention on the Rights of the Child reflects the basic principles and enhances the force of many standards contained in these rules and guidelines.

The State Parties are given options that they may ratify the conventions with or without reservations regarding any provisions, subject to the content of reservation is not deemed to go against the basic spirit and purpose of treaty. Several countries have registered reservation in connection with Article 37 and Article 40 of CRC.

India has ratified the Convention with reservation by submitting its instrument of accession on 11 Dec., 1992. This reservation relates to implementation of economic, social and cultural rights of the children. India has promised to implement this provision progressively. The fundamental rights to free and compulsory education to all the children up to the age of 14 years has been fulfilled by the Government of India by enacting the Right to Education Act, 2009. India is signatory to all the above-mentioned Conventions and Resolutions.

As to the implementation of social, cultural and economic rights is concerned, the Beijing Rules itself provides that although such standard is difficult to achieve at present but the same is intended to be attainable as a policy minimum.

The law as provided in the Protection of Juveniles deprived of their
Liberty 1990 is flouted and the General Assembly is alarmed at the conditions and circumstances under which juveniles are deprived of their liberty worldwide. It is paradoxical that both the resolutions (Beijing Rules and JDLs) go on urging the member states to allocate necessary resources to ensure the successful implementation of each set of Rules.

The states while depriving the liberty of juveniles itself affirms the fulfillment of economic, social and cultural rights by providing adequate food and clothing, access to medical care and education. The states acting in loco parentis bears this responsibility directly towards the detained children. However, the report worldwide speaks opposite side of the story.

The hurdle to economic, social and cultural rights measures is Article 4 of the Convention itself which says that measures for it to be undertaken by the state parties only to the maximum extent of their available resources.

**Definition and Terminology**

The international instruments are not consistent in this respect and it is necessary to determine exactly whom they cover in order to use them appropriately. Many terms have negative connotation. The Riyadh Guidelines while warning strongly against the use of the word delinquent to describe a young person talk frequently of delinquency in describing the acts of young persons. In the same way, the Beijing Rules also use the word juvenile offender and at the same time they include within the meaning of that term a child or young person who is alleged to have committed an offence.

It is important to note that the inconsistency in the definition and terminology used in the international instruments on juvenile justice may be because of inconsistency in the minds of the member states leading to draw an
adverse inference of malafidesness on the part of the member states.

**Age of Criminal responsibility**

There is no clear international standard regarding the age at which the criminal responsibility can be reasonably imputed to a juvenile. The Convention, 1989 simply enjoins state parties to establish a minimum age below which children's shall be presumed not to have the capacity to infringe the penal law (Article 40.3.a). The Beijing Rules provide that beginning of that age shall not be fixed at too low age level bearing in mind the facts of emotional, mental and intellectual maturity of juvenile (Rule 4.1).

Section 82 of the Indian Penal Code provides that a child below seven years is doli incapax. Section 83 provides that there is a criminal responsibility of persons seven and above but below twelve subject to proof of sufficient maturity. This is in sharp contrast to the Convention and Resolutions to which India claims to have incorporated into the Juvenile Justice Act, 2000.

**Arrest and Pre-Trial Disposition**

International standards including the Convention on the Rights of the Child, clearly states that deprivation of liberty should be used as a last resort and that too for a minimum possible period. This norm is applicable even in pre-trial detention. India has incorporated this standard in the year 2006 when it effected amendment in the preamble to the Act, 2000 by deleting “rehabilitative process to be carried out through institutional treatment”.

**The Court and Alternative Procedures**

There is no international standard which require explicitly the
establishment of separate set of courts specifically for juveniles. Before the enactment of Act 2000, all the legislations in India on juveniles from 1920 contained the provisions for establishment of separate juvenile courts. However, the literature speaks that in essence the same ordinary criminal court used to function as a juvenile court. Act, 2000 for the first time substituted juvenile court for juvenile justice board which follows the mixture of formal and informal proceedings both.

**Due-Process Guarantees**

Article 40(3)(b) of the Convention 1989 explicitly calls on State Parties to promote the establishment of measures for dealing with children alleged as, accused of, or recognised as having infringed the penal law by utilizing diversionary measures as far as possible without resorting to judicial proceedings.

The functioning of alternative measures is possible only after the juvenile has admitted the offence. If he or she denies the alleged act, a court of law is the only forum in which the case should be heard and debated. The alternative bodies or schemes are not supposed to deal with the serious offences.

The question arises, can these extra-judicial responses in the form of diversionary schemes provide guarantee of due process as available to an adult criminal in a normal court of law for the juvenile. This issue arises from the fact that there is no presumption of innocence and accordingly no right to legal representation. In such a situation, the juvenile may admit the offence simply to avoid the formal justice system.

The Article 40(3)(b) of Convention 1989 provides that the alternative
measures should be resorted to whenever appropriate and desirable ensuring that human rights and legal safeguards are fully respected.

It is accepted under International law that deprivation of liberty may be required for juveniles in certain cases. According to Protection of Juveniles Deprived of their Liberty, the persons under eighteen who are deprived of liberty should not be deprived of rights for which they are otherwise entitled.

In the conclusion, it can be observed that from the global perspective the term juvenile justice includes both, civil and political as well as economic, social and cultural justice. By implication, it refers to both, after onset of delinquency and before the onset of delinquency. To be more precise, the first one refers to the administration of juvenile justice by applying internationally accepted standards and norms and second refers to schemes and policies of the government to prevent the first incident of crime.

However, the proper functioning of justice administration and welfare administration from one platform at the municipal level appears to be debatable. At the municipal level implementation of the binding international covenant is confronted with the problem of coordination, monitoring etc. apart from the constitutional limitation created by the principles of federalism.