CHAPTER-3

NATIONAL INSTRUMENTS ON JUVENILE JUSTICE

It is well known fact that the present is buried in the past, so to understand and appreciate fully the present juvenile justice system as available in India, it is necessary to know its historical background relating to legal development that took place in the juvenile justice system.

England passed the Reformatory School Acts of 1854 and 1855 for the separate treatment of juvenile delinquents.  

The Industrial School Act of 1857 was passed in England for neglected children who might turn into delinquents.

The Reformatory School Acts of 1866, 1872, 1891 and 1893 and the Industrial Schools Act of 1866, 1879, 1880 and 1891 were passed in England for separate treatment of juvenile delinquents and neglected children respectively.

It is important to mention here that up to this stage England maintained the integrity of the concept jurisprudence. The juridical justice and social


justice were dealt under separate enactments as mentioned above.

It is generally accepted fact that the juvenile court established in America in the year 1899 was the first of its kind not only in the United States but in the whole world. It was an act to regulate the treatment and control of dependent, neglected and delinquent children with separate treatment, by a specially designed judge.  

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.

**The Apprentices Act, 1850 (India Act XIX of 1850)**

In India, the earliest law relating directly to the treatment of juvenile delinquents was the Apprentices Act (India Act XIX of 1850). The Act has been repealed by the Apprentice Act, 1961. It was an all-India measure to deal with children between the ages of 10 and 18 years who had committed petty offences and were destitute. The Magistrate could bind apprentice convicted of vagrancy or the commission of any petty offence to an employer for a period of seven years (continue not beyond 21) for the purposes of learning a trade or craft. The main emphasis of the Act was to regulate relations between

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the masters and apprentices preparing to earn a livelihood.\textsuperscript{34}

The magistrates were authorized to act as a guardian in respect of a destitute child or any child convicted of vagrancy or the commission of petty offences and could bind him as an apprentice to learn a trade, craft or employment.\textsuperscript{35}

\textbf{The Indian Penal Code, 1860 (45 of 1860)}

Section 82 of the Indian Penal Code 1860 says that a child nothing is an offence which is done by a child under seven years of age.

Section 83 of the Code, 1860 says that 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.

\textbf{Reformatory Schools Act, 1897 (Act VIII of 1897)}

The second special law directly related to the treatment of juvenile delinquents in India was the Reformatory Schools Act VIII of 1897. It was also an All-India measure which repealed earlier Act of 1876. This Act dealt with delinquent boys under 16 years of age in Bombay Province and under 15 years elsewhere. Under the Act, Reformatory schools may be established and youthful offenders may, on the direction of the sentencing Courts, be ordered to be detained in Reformatory schools from 2 to 7 years, instead of undergoing sentence of imprisonment. It also established regulations concerning the


\textsuperscript{35} [S.M.A. Qadri, Ahmad Siddique’s Criminology & Penology, p.277 (Eastern Book Company, Lucknow, 6th edn, 2009)]
standards for the administration of such schools.  

The Act even today acts as the basic law in those areas where no Children Acts or any special laws dealing with the juvenile offender have been enacted.  

**The Criminal Procedure Code, 1898 (5 of 1898)**

Section 29-B of the Code of Criminal Procedure, 1898 provided that any offence not punishable with death or imprisonment for life, committed by any person who at the date when appears or is brought before the court, is under the age of 16 years, may be tried by the court of a Chief Judicial Magistrate or by any court specially empowered under the various Children Acts.

Following the American Juvenile court system, England passed the Children Act of 1908 providing legal provision for juvenile courts throughout the country. The provisions for a remand, or committal to custody in place of detention for delinquent children and for care of children in need of care and protection were made in the Act.

Due to ongoing development in psychological approach to juvenile delinquency in England the need was felt to make changes in Children Act of 1908. So, the Children and Young Persons Act of 1933 was passed containing

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chapters on Prevention of Cruelty and Exposure to Moral and Physical Danger, Employment, Protection of Children and Young Person in relation to Criminal and Summary Proceedings, Remand Homes, Approved Schools, and Persons to whose Care Children and Young Persons may be Committed, Homes supported by Voluntary Contributions and Supplemental.40

The Children (Amendment) Act of 1948 was passed in England to make further provision for the care or welfare, up to the age of eighteen and, in certain cases, for further periods, of boys and girls when they are without parents, or have been lost or abandoned by, or are living away from, their parents, or when their parents are unfit or unable to take care of them etc.41

The Madras Children Act, 1920 was the earliest Children Act to be enacted by a provincial legislature in India. The Indian Jail Committee of 1919-20 and the Declaration of Geneva 1924 awakened public interest in the protection and care of the child. The Declaration of Geneva proclaimed that mankind owes to the child the best it can give. The result was that the Bengal Children Act of 1922 and the Bombay Children Act of 1924 were passed by respective provincial legislatures, soon after the Madras Children Act, 1920. The main object of these Acts was to provide for the custody, trial, and punishment of youthful offenders and for the protection of children and young persons.42

The Bombay Children Act, 1924 provided for the care and removal and treatment of four types of children, viz., the destitute, the uncontrolable, the

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42 [S.P. Srivastava, Juvenile Justice in India: Policy, Programme and Perspective, p.46 (Ajanta Publications, New Delhi, 1989)]

Other Children Acts, more or less were drawn up on the lines of the Bombay Children Act, 1924.\footnote{44}{D.V. Kulkarni, ‘Children in need- A Retrospect of Laws’, Vol. XI, No.4, The Indian Journal of Social Work, pp. 353-364 (March, 1951)}

It appears that all these Provincial Children Acts, like Children Act of 1908 in England, made provisions for juvenile courts, probation services, institutional treatment, and place of detention to which children were remanded. Further, both the English Act, and Indian Acts which were modeled on it, provided not only for remedial but also for preventive treatment. They were concerned not only with children who were delinquent, but with children who were in need of care or protection.\footnote{45}{A.D. Attar, Juvenile Delinquency: A Comparative Study, Chap.II Conclusion (Popular Prakashan, Bombay, 1964)}

It is important to mention here that all the subsequent Children Acts passed by many States after independence but before the enactment of Children Act, 1960 were based more or less on the Model of the Bombay Children Act, 1948.

**The Bombay Children Act 1948 (No. LXXI of 1948)**\footnote{46}{infra f.n. 44}

The Preamble to the Bombay Children Act, 1948 provides that

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 herein, etc.

The main principle of the Act is the rehabilitation of children in need of care and protection and all the procedures in the Act are supposed to work towards this ideal. Some of the improvements introduced in the Bombay Children Act, 1948, which stress the social principles and highlight the trends in the field of child welfare are enumerated below.

Sections 9-13 provide that all juvenile offenders must be tried in Juvenile Courts in that area and not in adult Courts, and there should be no joint trial of child and adult in areas where Juvenile Courts exist.

Section 14 provides that appearance of legal practitioners before Juvenile Courts except in cases where such appearance is necessary in public interests is restricted.

Section 20(2) provides provisions for children suffering from leprosy or of unsound mind is provided for.

Section 24 provides that provisions of Code of Criminal Procedure, 1898 applicable to trials and proceedings under the act except as expressly provided.

Section 47 provides provisions for uncontrollable children may, in addition to Certified Schools, be committed to fit person, institutions or to the care of a guardian or relative.

Section 59 provides provision to prevent exploitation of children is made.

Section 63 says that offences against Children are cognizable.
Section 64 provides provision for bail.

Section 68 restricted the power of the court to commit the dangerous children over 14 to jail. This clause leaves it to the government to pass final order in such cases.

Section 73 made provisions for repatriation of children to their Provinces of origin is provided for.

Sections 106 and 107 provide provision for probation etc.

The Children Act, 1960 (Act No. 60 of 1960)

The Statement of Objects and Reasons

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…. 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 anti-social attitudes and to mould him into a responsible citizen.47

The object of the Children Act 1960 was, to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of

neglected or delinquent children and for the trial of delinquent children in the
Union Territories.\footnote{ibid at p. 471}


The Indian Council for Child Welfare resolved in 1959 that a uniform Children Act in the States and the Union Territories of India for the protection, training and rehabilitation of children and young offenders was necessary. But because of constitutional difficulty, a uniform Act applicable to all the States in India could not be passed. Instead, the Children Act, 1960, was passed and made applicable to the Union Territories. This Act may serve as a model for the States.

Section 2 of this Act provides that a child means a boy who has not completed the age of sixteen years or a girl who has not completed the age of eighteen.

Section 4 provides for the establishment of Child Welfare Boards for the protection of destitute and neglected children.

Section 5 provides for the establishment of special Children's Courts for hearing cases concerning delinquent children.

A Children's Court, under this Act, consists of such number of magistrates forming a bench as the Administrator may think fit to appoint. One of these magistrates is designated as the principal magistrate. The Court is assisted by two honorary social workers, at least one of whom must be a woman. The panel is appointed by the Administrator. Every Bench is

\footnote{ibid at p. 471}
empowered with the same powers as are conferred by the Code of Criminal Procedure, 1973, on a magistrate of the first class. Where the magistrates are not in accord, the opinion of the majority prevails; but when there is no such majority, the decision of the chairman or the principal magistrate, as the case may be, prevails.

Sub-section (3) of Section 5 of this Act provides that no person shall be appointed as a magistrate in the Children's Court unless he or she has, in the opinion of the Administrator, special knowledge of child psychology and child welfare; this applies to membership of the Board also.

The Board or the Children's Court is given power to deal exclusively with all proceedings under this act, relating to neglected children or delinquent children, as the case may be.

Clause (j) of Section 2 of the Act defines a 'delinquent child' as a child who has been found to have committed an offence. And under Clause (l) of Section 2 of this Act, 'neglected child' is a child who is found begging, or without having any home or settled place and abode or any ostensible means of subsistence, or destitute, whether an orphan or not, or who has a parent or a guardian who is unfit to exercise or does not exercise proper care and control over the child, or who lives in a brothel or with a prostitute or frequently goes to any place used for prostitution or is found to associate with any prostitute or any other who leads an immoral, drunken or depraved life.

Section 7(3) of the Act conferred powers on the Board or Children's Court by or under this Act may also be exercised by the High Court and the Court of Sessions where the proceeding may go in appeal, revision or otherwise.
Section 9 of the Act provides for the establishment of children's homes. The Administrator may establish and maintain as many such homes as may be necessary for the reception of neglected children under this Act. The Administrator may certify an institution as a children's home for the purposes of this Act.

Sub-section (3) of Section 9 provides that every children home to which a neglected child is sent shall not only provide the child with accommodation, maintenance and facilities for education, but also provide him with facilities for the development of his character and abilities and give him necessary training for protection against moral dangers or exploitation and to ensure all-round development of personality and shall also perform such other functions as may be prescribed.

Section 10 of the Act empowers the Administrator to establish and maintain as many special schools as may be necessary for the reception of delinquent children under this Act. Every special school to which a delinquent child is sent shall not only provide the child with accommodation, maintenance and facilities of education, but also provide him with facilities for the development of character and personality and abilities and provide necessary training for reformation and shall also perform such other functions as may be prescribed.

Section 11 empowers the Administrator to establish and maintain as many observation homes, including the standards and the nature of services to be maintained by them, as may be necessary for the temporary reception of children during the pendency of any inquiry regarding them under this Act. Every such observation home shall not only provide the child with accommodation and facilities for medical examination and treatment, but also
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Section 12 empowers the Administrator to provide for the establishment or recognition of after-care organizations with such powers as may be necessary for effectively carrying out their functions under this Act. Every such organization shall take care of the children when they leave children's homes or special schools and shall, for the purpose of enabling them to lead an honest, industrious and useful life, take all such measures as it may deem necessary or as may be prescribed.

Section 13 of the Act provides for the protection of neglected children placed before Boards. If any police officer or any other person authorized by the Administrator in this behalf is of opinion that a person is apparently a neglected child, such police officer or other person, as the case may be, may take charge of that child for bringing him before the Board. Every child so taken charge of must be brought before the Board within twenty-four hours of such charge taken, excluding the time necessary for the journey from the place where the child has been taken charge of to the Board.

Section 14, special procedure has to be followed when the neglected child has a parent. In such a case, the police officer has to report to the Board for initiating an enquiry regarding the child, since the child is in actual charge of a parent or a guardian. On receipt of a report, the Board may call upon the parent or guardian to produce the child before it and to show-cause why the child should not be dealt with as a neglected child. If it appears to the Board that the child is likely to be removed from its jurisdiction or is likely to be concealed, the Board may immediately order his removal to an observation home or a place of safety.
Section 15 provides that enquiry may be made by the Board regarding neglected children. When a person who is alleged to be a neglected child is brought before the Board, the Board shall examine the police officer or the authorized person who brought that child or made the report, and shall record the substance, of such examination and hold an enquiry in the matter and may then make such orders as it may think fit. When the Board is satisfied on enquiry that the child is a neglected child and that it is expedient to deal with him, the Board may make an order directing the child to be sent to a children's home for the period until he ceases to be a child. It is, however, open to the Board, for reasons to be recorded, to extend the period of such stay. In no case, the period of stay can extend beyond the time when the child attains the age of eighteen years in the case of a boy or twenty years in the case of a girl. It is also open to the Board to reduce the period of stay to such period as it may think fit.

During the pendency of an enquiry regarding a child, the child shall, unless he kept with his parent or guardian, be sent to an observation home or a place of safety for such period as may be specified in the order of the Board. No child can be kept with his parent or guardian if, in the opinion of the Board, such parent or guardian is unfit to exercise, or does not exercise, proper care and control over the child.

Section 16 of the Act provides that the Board may, if it so thinks fit, instead of making an order for sending the child to a children's home, make an order placing the child under the care of the parent, guardian or other fit person, on such parent, guardian or fit person executing a bond with or without a surety to be responsible for the good behaviour and well-being of the child and for the observance of such conditions as the Board may think fit to impose.

Section 17 deals with uncontrollable children. When a parent or a
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Section 17 deals with uncontrollable children. When a parent or a guardian of a child complains to the Board that he is not able to exercise proper care and control over the child and the Board is satisfied on enquiry that proceedings under this Act should be initiated regarding the child, it may send the child to an observation home or a place of safety and make such further enquiry as it may deem fit.

Section 18 deals with bail and custody of children. A child may be released on bail unless such release is likely to expose him to dangers of association with any notorious criminal or expose him to moral danger or is likely to defeat the ends of justice. In case the child is not released on bail, the child must be kept in an observation home and not in a police station or jail, until he can be brought before a Children's Court. When bail is refused by the Children's Court, the child must be sent to an observation home for such period during the enquiry as may be specified in the order of the Court.

Section 19 provides that where a child is arrested, the officer-in-charge of the police station to which the child is brought, must inform the parent or the guardian of the child, if he can be found, of such arrest, and must direct him to be present at the Children's Court before which the child will be appearing. The officer-in-charge must also inform the probation officer in order to enable him to obtain information regarding the antecedents and family history of the child and other material circumstances likely to be of assistance to the Children's Court for making enquiry.

Section 21 provides that where a Children's Court is satisfied on enquiry that the child brought before it has committed an offence, the Children's Court may, if it so thinks fit, allow the child to go home after advice or admonition, or direct that the child be released on probation of good conduct and be placed under the care of parent, guardian or other fit person,
upon the execution of a bond for the well-being of the child for a period not exceeding three years, or may make an order directing the child to be sent to a special school; or the Court may order the child to pay a fine if he is over fourteen years of age and earns money. It may here be stated that the infliction of a fine on a child is a punitive measure and should be considered as being against the avowed objective of the juvenile court. A child is to be protected and treated, and not punished.

It is open to the Children's Court, while releasing a child on probation, to order that the child be kept under the supervision of a probation officer for a period not exceeding three years. If the probation officer reports that the child does not behave well, the Children's Court may order the child to be sent to a special school.

Section 22 provides that no delinquent child can be sentenced to death or imprisonment, or committed to prison in default of payment of fine or for default in furnishing security. Where a child who has attained the age of fourteen years has committed an offence and the Children's Court is satisfied that the offence is so serious or that the child's conduct and behaviour have been such that it would not be in the interest of the child or in the interest of other children in a special school to send him to such special school and that none of the other measures provided in this Act is suitable or sufficient, the Children's Court may order the delinquent child to be kept in safe custody in such manner and place as it may think fit. The Court must report the case for the orders of the Administrator. The Administrator may then make such arrangement in respect of such child as may be found by him to be proper and may order that the child be detained at such place and on such conditions as he may think fit, provided that the period of detention so ordered must not exceed
the maximum period of imprisonment provided under the law for the offence.

Section 24 provides that no child can be charged with or tried for any offence together with a person who is not a child.

Section 25 provides that when a child has committed an offence and has been dealt with under this Act, he should not be made to suffer any disqualification, attaching to conviction of an offence under the law.

Section 33 provides certain directive principles for the guidance of the competent authority dealing with children's cases. This section provides that in making any order in respect of a child, under this Act, the competent authority shall take into consideration the following circumstances, namely

(a) the age of the child;

(b) the circumstances in which the child is living;

(c) the report made by the probation officer;

(d) the religious persuasion of the child; and

(e) such other circumstances as may, in the opinion of the competent authority, require to be taken into consideration, in the interests of the child.

Section 36 prohibits the publication of the name of any child involved in any proceedings under this Act. No report in any newspaper, magazine or news-sheet of any enquiry regarding a child under this Act, can disclose the name, address or school of the child; nor shall any picture of any such child be published. For reasons to be recorded in writing, the authority holding the enquiry may permit such disclosure, if, in its opinion, such disclosure is in the interest of the child. Any person who contravenes this provision prohibiting
publication, shall be liable to a fine which may extend to one thousand rupees.

Chapter VI, that is to say, Sections 41-44 deal with offences in respect of children.

Section 41 provides punishment for cruelty to children. This section provides that if anybody, having the actual charge of or control over a child, assaults, abandons, exposes or willfully neglects the child or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause him or her unnecessary mental and physical suffering, he shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

Section 42 punishes those who employ children for begging, with imprisonment for a term which may extend to one year, or, with fine, or with both. Similarly, penalty is provided for those who abet such begging by children. This offence, under Section 42, is made cognizable.

Section 43 provides punishment, for giving intoxicating liquor or dangerous drug to a child, with fine which may extend to two hundred rupees, if the liquor or the drug was not given under the order of a duly qualified medical practitioner or in the case of sickness or other urgent cause.

Section 44 provides that whoever ostensibly procures a child for the purpose of any employment and withholds the earnings of the child or uses such earnings for his own purposes, shall be punishable with fine which may extend to one thousand rupees.

Section 48 provides that when a child is kept in a children's home or special school, the Administrator may, if he so thinks fit, release the child from
the children's home or special school and grant him a written licence for such period and on such conditions as may be specified in the license, permitting him to live with, or under the supervision of, any responsible person named in the license, willing to receive and take charge of the child with a view to educating and training him for some useful trade or calling. The Administrator may, at any time, revoke any such license and may order the child to return to the children's home or special school from which he was released or to any other children's home or special school.

Section 50, the competent authority which orders the sending of a neglected or delinquent child to a children's home or a special school or under the care of a fit person, may order that the parent or other person who is liable to maintain the child must contribute to the maintenance of the child, if he is able to do so. The competent authority, before making such an order, must enquire into the circumstances of the parent or other person liable to maintain the child.


Section 4(2) provides that all offences other than the offences under the Indian Penal Code, 1860, shall be investigated, inquired into, tried according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Section 27 states that any offence not punishable with death or imprisonment for life, committed by any person who at the date when appears

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or is brought before the court, is under the age of 16 years, may be tried by the Court of a Chief Judicial Magistrate or by any court specially empowered under the Children Act, 1960 (60 of 1960), or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders.

The National Policy for Children (1974)\(^5\)

The Government of India had for consideration the question of evolving a national policy for welfare of children. After the consideration, it decided to adopt the policy enunciated below

(i) All children shall be covered by a comprehensive health programme.

(ii) Programmes shall be implemented to provide nutrition services with the object of removing deficiencies in the diet of children.

(iii) Programmes will be undertaken for the general improvement of the health and for the care, nutrition and nutrition education of expectant and nursing mothers.

(v) Children who are not able to take full advantage of formal school education should be provided other forms of education suited to their requirements.

(vi) Physical education, games, sports and other types of recreational as well as cultural and scientific activities shall be promoted in schools, community centres and such other institutions.

(vii) To ensure equality of opportunity, special assistance shall be provided to all children belong to the weaker sections of the society, such as children belonging to the Scheduled Castes and Scheduled Tribes and those belonging to the economically weaker sections, both in urban and rural areas.

(viii) Children who are socially handicapped, who have become delinquent or have been forced to take to begging or otherwise in distress, shall be provided facilities of education, training and rehabilitation and will be helped to become useful citizens.

(ix) Children shall be protected against neglect, cruelty and exploitation.

(x) No child under 14 years shall be permitted to be engaged in any hazardous occupation or be made to undertake heavy work.

(xi) Facilities shall be provided for special treatment, education, rehabilitation and care of children who are physically handicapped, emotionally disturbed or mentally retarded.

(xii) Children shall be given priority for protection and relief in times of distress or natural calamity.

(xiii) Special programmes shall be formulated to spot, encourage and assist gifted children, particularly those belonging to the weaker sections of the society.

(xiv) Existing laws should be amended so that in all legal disputes whether between parents or institutions, the interest of children are given paramount consideration.
In organizing services for children, efforts would be directed to strengthen family ties so that full potentialities of growth of children are realized within the normal family, neighbourhood and community development.

**Priority in Programme Formulation**

In formulating programmes in different sectors, priority shall be given to programmes relating to

(a) preventive and promotive aspects of child health;

(b) nutrition for infants and children in the pre-school age along with nutrition for nursing and expectant mothers;

(c) maintenance, education and training of orphan and destitute children;

(d) crèches and other facilities for the care of children of working or ailing mothers; and

(e) care, education, training and rehabilitation of handicapped children.

**The Children (Amendment) Act, 1978**

The Children Act, 1960 was amended in the year 1978. The definition of the term 'neglected child' was widened by including the cases where the parents are not able to exercise proper care or control over the child. Previously, the definition referred to those parents only who were unfit to exercise care and control over the children. In other words, fitness could now be looked into with reference to economic factors as well. A child could now
be sent to the juvenile court to the welfare board and vice-versa.\textsuperscript{52}

To the children's court constituted under section 5 of the Act of 1960 were available only magistrates without any social worker. This was taken care of by the Amending Act.\textsuperscript{53}

**The Juvenile Justice Act 1986**

The statement of objects and reasons of the Juvenile Justice Act, 1986 was to bring the administration of juvenile justice in the country in conformity with the Beijing Rules. That made it an apparent exercise of the power given by Article 253 of the Constitution to enact a law on any subject for implementing a decision at any international conference, association, or other body. If the central government wanted, it could have initiated a uniform Children Act any time after the transfer of 'education' and 'administration of justice' from the State List to the Concurrent List in 1976.\textsuperscript{54}

The following Statement of Object and Reason was appended to the Bill placed before Parliament for introducing the proposed enactment of the Juvenile Justice Act, 1986

“A review of the working of the existing Children Acts would indicate that greater attention is required to be given to children who may be found in situations of social maladjustment, delinquency or neglect. The justice system as available for adults is not considered suitable for being applied to juveniles. It is also necessary that a uniform juvenile system should be available

\textsuperscript{52} [S.M.A. Qadri, Ahmad Siddique's Criminology & Penology, p.277 (Eastern Book Company, Lucknow, 6th edn, 2009)]

\textsuperscript{53} ibid

\textsuperscript{54} [Ved Kumari, The Juvenile Justice System in India: From Welfare to Rights, p.91 (Oxford University Press, New Delhi, 2nd edn, 2010)]
throughout the country which should make adequate provisions for dealing with all aspects in the changing social, cultural and economic situation in the country. There is also need for larger involvement of informal system and community-based welfare agencies in the care, protection, treatment, development and rehabilitation of such juvenile.  


The care protection, treatment development and rehabilitation of neglected or delinquent juveniles and the adjudication of certain matters relating to delinquents have been provided for in the Juvenile Justice Act, 1986.

The Act provided for laying down a uniform legal framework for juvenile justice in the country so as to ensure that no child under any circumstances is lodged in jail or police lock-up. This is ensured by establishing Juvenile Welfare Boards and Juvenile Court.

It provided for a specialized approach towards the prevention and treatment of juvenile delinquency in its full range in keeping with the development needs of the child found in any situation of social maladjustment.

The Act provided for the machinery and infrastructure required for the care, protection, treatment, development and rehabilitation of various categories of children coming within the purview of the juvenile justice system. This is proposed to be achieved by establishing observation homes for delinquent juveniles.

It made provisions to establish norms and standards for the administration of juvenile justice in terms of investigation and prosecution, adjudication and disposition, and care, treatment and rehabilitation.

It contained provisions to develop appropriate linkages and co-ordination between the formal system of juvenile justice and voluntary agencies engaged in the welfare of neglected or socially maladjusted children and to specifically define the areas of their responsibilities and roles.

One of the purpose of the Act was to constitute special offences in relation to juvenile and provide for punishment for the same.

The purpose of the Act was also to bring the operation of the juvenile justice system in the country in conformity with the United Nations Standard Minimum Rule for the Administration of Juvenile Justice adopted by the Seventh United Nations Congress on Prevention of Crimes and Treatment of Offenders which was held in 1985.

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categories of children coming within the purview of the juvenile justice system. This is proposed to be achieved by establishing observation homes for delinquent juveniles

It made provisions to establish norms and standards for the administration of juvenile justice in terms of investigation and prosecution, adjudication and disposition, and care, treatment and rehabilitation.

It contained provisions to develop appropriate linkages and coordination between the formal system of juvenile justice and voluntary agencies engaged in the welfare of neglected or socially maladjusted children and to specifically define the areas of their responsibilities and roles.

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The purpose of the Act was also to bring the operation of the juvenile justice system in the country in conformity with the United Nations Standard Minimum Rule for the Administration of Juvenile Justice adopted by the Seventh United Nations Congress on Prevention of Crimes and Treatment of Offenders which was held in 1985.

The Act introduced uniform juvenile justice system throughout the country and made adequate provisions for dealing with all the aspects in the changing social, cultural and economic situations in the country with large involvement of informal systems and community based welfare agencies.

Salient Features

The progressive features of the Juvenile Justice Act, 1986 as compared to the provisions of the erstwhile Children Acts are summarized below
(i) The definition of neglected juvenile has been construed more precisely so as to ensure legal support. Sections 2(l) defines neglected juvenile as a juvenile who

a) is found begging or

b) is found without having any home or shelter place of abode and without any ostensible of subsistence and is destitute.

c) has a parent or guardian who is unfit or incapacitated to exercise control over the juvenile or

d) lives in a brothel or with a prostitute or is found to associate with any prostitute or any other person who leads an immoral or drunken or deprived life.

e) who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain.

(ii) Section 13(l) provides that a neglected child may be brought before the competent authority not only by a police but also by any other person or organisation authorized for the purpose.

(iii) The confinement of the juvenile in a police lock-up or jail has been prohibited. Every juvenile taken charge of shall unless he is kept with his guardian or parent, be sent to an observation home.57

(iv) It is now specifically provided that an inquiry regarding a juvenile under this Act shall be held expeditiously and shall ordinarily be completed within a period of three months from the date of its

57 [Section 13(4) and 18(2)]. Contact of the juvenile with the police has been reduced to the minimum;
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It is now specifically provided that an inquiry regarding a juvenile under this Act shall be held expeditiously and shall ordinarily be completed within a period of three months from the date of its commencement, unless for special reasons to be recorded in writing the competent authority otherwise directs; 58

(v) The Act provides for a differential approach in the processing of the neglected juvenile vis-à-vis delinquent. 60 While neglected children would be produced before the juvenile welfare Board 61 the delinquents are to be dealt with by the Juvenile Court. 62 No person will be appointed as the member of the Board or a Magistrate in the Juvenile Court unless he or she has special knowledge of child psychology and child welfare. 63

(vi) The Juvenile Welfare Board and the Juvenile Court have been empowered for the transferability of cases brought before them on the basis of necessary screening. 64 An important feature relates to the classification and separation of delinquent juveniles on the basis of their age and nature of offences committed by them. 65

(vii) Among the various circumstances to be taken into consideration in making an order the Act, the state of physical and mental health of the juvenile and his welfare interests have to be ascertained as an additional requirement. 66

(viii) when a juvenile is sent to juvenile home or a special home, there
is a definite provision for his conditional discharge or transfer to a fit person or a fit institution.\(^{67}\)

(ix) Observation homes are contemplated for the temporary reception of the Juveniles during the pendency of any inquiry against them under this Act. Every observation home not only provides the juvenile with accommodation, maintenance and facilities for medical examination and treatment but also provides him with facilities for useful occupation.\(^{68}\)

(x) Juvenile homes are established and maintained by the government or voluntary institutions to be certified as such for the juveniles. Such juvenile homes not only provide the juvenile with accommodation, maintenance and facilities for educational, vocational training and rehabilitation, but also provide him with facilities for the development of his character and abilities and give him necessary training for protecting himself against moral danger or exploitation and also perform such other functions as may be prescribed to ensure all-round growth and development of his personality.\(^{69}\)

(xi) Similarly for delinquent juveniles, special homes are required to be set up or voluntary institution certified as such. Every special home to which a delinquent juvenile is sent under this Act not only provides the juvenile with accommodation, maintenance and facilities for education, vocational training and rehabilitation but also provides him with facilities for

\(^{67}\) [Section 16(1)]
\(^{68}\) [Section 11(1), (2) & (3)]
\(^{69}\) [Section 9(1), (2) & (3)]
the development of his character and abilities and give to him necessary
training for his reformation and also perform such other functions as may be
prescribed to ensure all round growth and development of his personality. 70

(xii) The Act contains a comprehensive provision regarding the
establishment or recognition of after care organizations for taking care of
juveniles discharged from juvenile homes or special homes and for the
purpose of enabling them to lead an honest, industrious and useful life. 71

(xiii) Keeping in view of the newly emerging problems, offences in
respect of juveniles have been redefined for instance, employment of
juveniles for begging or giving intoxicating liquor or narcotic drug or
psychotropic substance or exploitation of juvenile employee is liable to be
punished by imprisonment for a term which may extend to three years and also
liable to fine. 72 In case of cruelty to juvenile by a person having actual charge
or control over a juvenile is punishable with imprisonment for a term which
may extend to six months or with fine or with both. 73

(xiv) The Act provides for the alternative punishments. Where an act
or omission constitutes an offence punishable under this Act and also under
any other Act Central or State Act, then notwithstanding anything contained in
any law for the time being in force, the offender found guilty of such offence is
liable to punishment only under such Act as provides for punishment which is
greater in degree. 74

70 [Section 10(1), (2) & (3)]
71 [Section 12]
72 [Sections 42, 43 & 44]
73 [Section 41]
74 [Section 45]
(xv) This Act has provided for the creation of a fund for the welfare and rehabilitation of the juveniles dealt with under this Act. Such fund has to be raised from voluntary donations, contributions and subscriptions made by any individual or organisation.75

(xvi) The Act requires the State Government to constitute advisory boards to advise on matters relating to the establishment and maintenance of homes, mobilization of sources, provisions of facilities for education, training and rehabilitation of neglected and delinquent juveniles and coordination among the various official and non-official agencies concerned.76

(xvii) The Act provides for the nomination of non-official visitors for each of the homes, not more than three to visit such homes periodically and make a report to the State Government.

The Juvenile Justice (Care and Protection of Children) Act, 2000 (Act No.56 of 2000)

Preamble

The Preamble to the Act of 2000 states that the Constitution of India has in several provisions, including clause (3) of Article 15, Article 39(e) and (f), Articles 45 and 47, imposed on the State a primary responsibility of ensuring that all need of children are met and that their basic human rights are fully protected. The United Nations has adopted the Convention on the Rights of the Child which prescribes a set of standards to be adhered to by all States in securing the best interests of the child. It also emphasizes social reintegration
of child victims, to the extent possible, without resorting to judicial proceedings. India being a signatory, it is expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child which prescribes a set of standards to be adhered to by all States in securing the best interests of the child. It also emphasizes social reintegration of child victims, to the extent possible, without resorting to judicial proceedings. India being a signatory, it is expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (The Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and all other relevant international instruments. The Juvenile Justice (Care and Protection of Children) Act, 2000 is an Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection by providing for proper care, protection and treatment by catering to their developmental needs and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.\(^{77}\)

The Provisions of Juvenile Justice (Care and Protection of Children) Act, 2000\(^{78}\)

The salient features of this Act are as follows

The name of the Act itself reflects that the emphasis of the enactment


\(^{78}\) [Dr. G. Kameswari, Ex-Principal, University College of Law, Juvenile Delinquency and Neglect-Prevention and Control, JUSTICIA, Osmania University Law Quarterly, Hyderabad, p.12 (2000)]
would be to provide care and protection to needy children;

Section 2(k) defines Juvenile or child as a person who has not completed 18 years of age.

The children intended to be protected under the Act are classified under two heads (i) juvenile in conflict with law (equivalent to delinquent juvenile under the Act of 1986) who is a juvenile who is alleged to have committed an offence. The definition has been provided under section 2(l) of the Act.

and (ii) child in need of care and protection (equivalent to neglected juvenile under the Act of 1986) who is a child who is (a) found without any home or means of subsistence, (b) resides with a person who is likely to kill, abuse or neglect such child, (c) who is ill and without support, (d) whose parent or guardian is unfit to look after the child, (e) who does not have a parent or guardian, (f) who is likely to be abused, tortured or exploited for sexual or illegal acts or for unconscionable gains, (g) who is likely to be inducted into drug abuse or trafficking or (h) who is a victim of an armed conflict, civil commotion or natural calamity. [Section 2(d)].

Thus, the new Act expanded the scope of the term and brought within its fold many more categories of neglected children.

Section 4 of the Act 2000 says that the Juvenile Justice Board (Juvenile Courts under the Act of 1986) is required to be constituted by the State Government with a Metropolitan Magistrate or Judicial Magistrate of I Class with two social workers of which at least one has to a woman and the Magistrate is required to have special knowledge or training in child psychology and child welfare and the social workers should have been actively involved in health, education or welfare activities pertaining to
children for at least seven years.

Section 6 provides that the Board will have the exclusive power to deal with all proceedings relating to juveniles in conflict with law.

Sections 8 and 9 empower the State government to establish observation homes for temporarily receiving juveniles in conflict with law.

Section 14 provides that a juvenile, having been charged with an offence is produced before the Board, the Board is required to hold an inquiry which shall, except under exceptional circumstances, be completed within four months from the date of commencement of the inquiry (new provision introduced in this Act).

Section 15 provides that The Board, if satisfied that the juvenile had committed an offence shall make an order

(i) allowing the juvenile to go home after advice or admonition; or

(ii) directing the juvenile to participate in group counseling and similar activities; or

(iii) that the juvenile perform community service; or

(iv) directing the parent of the juvenile or the juvenile to pay fine; or

(v) directing the juvenile to be released on probation of good conduct and place him under the care of parent, guardian or any fit institution for any period not exceeding 3 years; or

(vi) directing the juvenile to be sent to a special home

Direction to perform community service and direction to participate in
group counseling and similar activities are an innovation under the new Act.

Like the repealed Act of 1986, the Act of 2000 also provides that a juvenile shall not suffer any disqualification attaching to a conviction of an offence under law. The Act of 2000, in addition, requires the Board to make an order directing that the relevant records of such conviction, after expiry of the period of appeal, shall be removed.

Regarding the provisions relating to child in need of care and protection (neglected juveniles of the Act of 1986), the Act empowered the State Government to constitute Child Welfare Committees (Juvenile Welfare Boards under the Act of 1986) which shall consist of a chairperson and four members of whom one shall be a woman and another an expert on matters concerning children. The Committee disposes of cases for the care, protection, treatment, development and rehabilitation of children as well as provides their basic needs and protection of human rights.

Child in need of care and protection may be produced before the committee by any police officer, any public servant, Childline, a registered voluntary organization or any social worker or any public-spirited citizen authorized by the State Government or by the child himself. The Committee, after holding an enquiry (to be completed within four months), is of the opinion that the child has no family or ostensible support, may make an order allowing the child to live in the Children's home or shelter home till suitable rehabilitation is found for him or till he attains the age of 18 years.

Section 34 empowers the State Government to establish and maintain children's home for reception of children in need of care and protection during inquiry and subsequently for their care, treatment, education, training,
development and rehabilitation.

The State Government can also permit voluntary organizations to set up shelter homes to function as drop-in-centres for juveniles and children in need of urgent support. The children's homes and shelter homes are primarily required to give protection to a displaced child and restore the family environment of which the child is deprived.

Section 35 provides for appointment of inspection committees by the State Government for the children's homes

Section 36 also provides for social auditing wherein the Central Government may monitor and evaluate the functions of the children's home at such period through such persons or institutions, as may be specified by that Government.


Section 48 of the Act stated that the rehabilitation and social reintegration shall begin during the stay of the child in a children's home or special home and shall be carried out alternatively by adoption, foster care, sponsorship and sending of children to aftercare organizations.

Section 41 provides that adoption should be resorted for rehabilitation of orphaned, abandoned, neglected and abused children. The Juvenile Welfare Board is empowered to give children in adoption after thorough investigation and children's home and state-run institutions for orphans shall be the adoption agencies.

Section 42 provides for foster care is to be used for temporary
placement of those infants who are to be given for adoption.

Section 43 provides for sponsorship programme. It is intended to provide supplementary support to families, children's homes and special homes to meet medical, nutritional, educational and other needs of children in order to improve the quality of their life.

Section 44 provides for aftercare organizations. To provide aftercare to juveniles or children after they leave children homes so as to enable them to lead an honest, industrious and useful life.

The Section 62 provides for the constitution of Central, State, District and City Advisory Boards to advise the Government on matters relating to establishment and maintenance of homes, mobilization of resources, provision of facilities for education, training and rehabilitation of children and coordination among various official and non-official agencies concerned. The Advisory Board shall consist of eminent social workers, representatives of voluntary organizations in the field of child welfare, academicians and medical professionals as members.

The Act also contemplates the constitution of Special Juvenile Police units to exclusively deal with juveniles and children under the Act manned by officers with aptitude, appropriate training and orientation.

The orientation of the new Act is towards protection, rehabilitation and social reintegration of children who are in need of care and protection. However, this Act also did not specify the date by reference to which, the Court should determine whether the person was a juvenile or not. Elaborate provisions are made in the Act to achieve the objects of the Act, i.e. ameliorating the conditions of the needy and neglected children and
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A look at the various provisions of the enactment shows that the effective implementation of the provisions of the enactment depends on the sincerity of the Governments.

The State Governments are required to set up institutions like Juvenile Justice Boards, Child Welfare Committees, Observation Homes, Children's Homes, Special Homes, Shelter Homes and Aftercare Organizations for the care and protection of the needy juveniles; to set up Advisory Boards and Special Juvenile Police Units; to appoint suitable personnel to man these institutions; to frame rules providing guidelines for adoption, foster care and sponsorship for needy children; and to ensure effective linkages between various agencies involved in rehabilitation and social integration of these children.

**The National Charter for Children, 2003**

The Government of India have had for consideration the question of adopting a National Charter for Children to reiterate its commitment to the cause of the children in order to see that no child remains hungry, illiterate or sick. After the consideration, it has been decided to adopt the National Charter for Children enunciated below.

The Constitution of India enshrines both in Part III and IV the cause and the best interest of children.

Article 15(3) empowers the State to make special provisions for

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children

The State shall provide free and compulsory education to all children of the age of six to fourteen years, [Article 21-A]

No child below the age of 14 years shall be employed to work in a factory, mine or any other hazardous employment, [Article 24]

The tender age of children is not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength [Article 39(e)], and that

Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that youth are protected against exploitation and against moral and material abandonment [Article 39(f)],

The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years, (Article 45)

It is a Fundamental Duty of a parent or guardian to provide opportunities for education to his child or ward between the age of six and fourteen year, (Article 51-A)

The Government is committed to providing for adequate services to children, both before and after birth and throughout the period of growth, to ensure their full physical, mental and social development,

The best interest of children must be protected through combined action of the State, civil society, communities and families in their obligations in fulfilling children's basic needs,
The Society, Community and Family have obligations towards children. These must be viewed in the context of intrinsic and attendant duties of children and inculcating in children a sound sense of values directed towards preserving and strengthening the family, society and the nation.

If child is respected the society is respecting itself.

The Charter intends to secure for every child its inherent to be a child and enjoy a healthy and happy childhood, to address the root causes that negate the community in the wider societal context to protect children from all forms of abuse.

**Aims & Objects**

**Survival, Life and Liberty**

(a) The State and community shall undertake all possible measures to ensure and protect the survival, life and liberty of all children.

(b) In particular, the State and Community will undertake all appropriate measures to address the problems of infanticide and foeticide, especially of female child and all other emerging manifestations that deprive the girl child of her right to survive with dignity.

**Promoting High Standards of Health and Nutrition**

(a) The State shall take measures to ensure that all children enjoy the highest attainable standards of health, and provide for preventive and curative facilities at all levels especially immunization and prevention of micronutrient deficiencies for all children.

(b) The State shall take measures to cover, under primary health
facilities and specialized care and treatment, all children of families below the poverty line.

(c) The State shall take measures to provide adequate pre-natal and post-natal care for mothers along with immunization against preventable diseases.

(d) The State shall undertake measures to provide for a national plan that will ensure that the mental health of all children is protected.

(e) The State shall take steps to ensure protection of children from all practices that are likely to harm the child's physical and mental health.

The State shall take steps to provide all children from families below the poverty line with adequate supplementary nutrition and undertake adequate measures for ensuring access to safe drinking water and environmental sanitation and hygiene.

**Assuring Basic Minimum Needs and Security**

(a) The State recognizes that the basic minimum needs of every child must be met, that foster full development of the child's faculties.

(b) In order to ensure this, the State shall in partnership with the community provide social security for children, especially for abandoned children and street children.

(c) State and community shall try and remove the fundamental causes which result in abandoned children and children living on streets, and provide infrastructural and material support by way of shelter, education, nutrition and recreation.
Play and Leisure

The State and community shall recognise that all children require adequate play and leisure for their healthy development and must ensure means to provide for recreational facilities and services for children of all ages and social groups.

Early Childhood care for Survival, Growth and Development

(a) The State shall in partnership with the community provide early childhood care for all children and encourage programmes which will stimulate and develop their physical and cognitive capacities.

(b) The State shall in partnership with the community aim at providing a child care centre in every village where infants and children of working mothers can be adequately cared for.

(c) The State will make special efforts to provide these facilities to children from SCs/STs and marginalized sections of society.

Free and Compulsory Primary Education

(a) The State recognises that all children shall have access to free and compulsory education. Education at the elementary level shall be provided free of cost and special incentives should be provided to ensure that children from disadvantaged social groups are enrolled, retained and participate in schooling.

(b) At the secondary level, the Stat shall provide access to education for all and provide supportive facilities from the disadvantaged groups.

(c) The State shall in partnership with the community ensure that all
the educational institutions function efficiently and are able to reach universal enrolment, universal retention, universal participation and universal achievement.

(d) The State and community recognise that a child be educated in its mother tongue.

(e) The State shall ensure that education is child-oriented and meaningful. It shall also take appropriate measures to ensure that education is sensitive to the healthy development of the girl child and to children of varied cultural backgrounds.

(f) The State shall ensure that school discipline and matters related thereto do not result in physical, mental, psychological harm or trauma to the child.

(g) The State shall formulate special programmes to spot, identify, encourage and assist the gifted children for their development in the field of their excellence.

Protection from Economic Exploitation and all Forms of Abuse

(a) The State shall provide protection to children from economic exploitation and from performing tasks that are hazardous to their well-being.

(b) The State shall ensure that there is appropriate regulation of conditions of work in occupations and processes where children perform work of a non-hazardous nature and that their rights are protected.

(c) The State shall move towards a total ban of all forms of child
(d) All children have a right to be protected against neglect, maltreatment, injury, trafficking, sexual and physical abuse of all kinds, corporal punishment, torture, exploitation, violence and degrading treatment.

(e) The State shall take legal action against those committing such violations against children even if they be legal guardians of such children.

(f) The State shall in partnership with the community set up mechanisms for identification, reporting, referral, investigation and follow-up of such acts, while respecting the dignity and privacy of the child.

(g) The State shall in partnership with the community take up steps to draw up plans for the identification, care, protection, counselling and rehabilitation of child victims and ensure that they are able to recover, physically, socially and psychologically, and reintegrate into society.

(f) The State shall take strict measures to ensure that children are not used in the conduct of any illegal activity, namely, trafficking of narcotic drugs and psychotropic substances, begging, prostitution, pornography or violence. The State in partnership with the community shall ensure that such children are rescued and immediately placed under appropriate care and protection.

(i) The State and community shall ensure protection of children in distress for their welfare and all-round development.

(j) The State and community shall ensure protection of children during the occurrence of natural calamities in their best interest.
Protection of the Girl Child

(a) The State and community shall ensure that crimes and atrocities committed against the girl child, including child marriage, discriminatory practices, forcing girls into prostitution and trafficking are speedily eradicated.

(b) The State shall in partnership with the community undertake measures, including social, educational and legal, to ensure that there is greater respect for the girl child in the family and society.

(c) The State shall take serious measures to ensure that the practice of child marriage is speedily abolished.

Empowering Adolescents

(a) The State and community shall take all steps to provide the necessary education and skills to adolescent children so as to equip them to become economically productive citizens. Special programmes will be undertaken to improve the health and nutritional status of the adolescent girl.

(b) Equality, Freedom of Expression, Freedom to Seek and Receive Information, Freedom of Association and Peaceful Assembly

(c) The State and community shall ensure that all children are treated equally without discrimination on grounds of the child's or the child's parents or legal guardian's race, colour, caste, sex, language, religion, political or other opinion, national, ethnic, or social origin, disability, birth, political status, or any other consideration.

(d) All children shall be given every opportunity for all round
development of their personality, including expression of creativity.

(e) Every child shall have the freedom to seek and receive information and ideas. The State and community shall provide opportunities for the child to access information that will contribute to the child's development.

(f) The State and community shall undertake special measures to ensure that the linguistic needs of children are taken care of and encourage the production and dissemination of child-friendly information and material in various forms.

(g) The State and community shall be responsible for formulating guidelines for the mass media in order to ensure that children are protected from material injuries to their well-being.

(h) All children shall enjoy freedom of association and peaceful assembly, subject to reasonable restrictions and in conformity with social and family values.

**Strengthening of Family**

(a) Every child has a right to a family. In case of separation of children from their families, the State shall ensure that priority is given to reunifying the child with its parents. In cases where the State perceives adverse impact of such a re-unification, the State shall make arrangements immediately, keeping in mind the best interests and the view of the child.

(b) All children have a right to maintain contact with their families, even when they are within the custody of the State for various reasons.
(c) The State shall undertake measures to ensure that children without families are either placed for adoption, preferably intra-country adoption, or foster care or any other family substitute services.

(d) The State shall ensure that appropriate rules with respect to the implementation of such services are drafted in a manner that are in the best interest of the child and that regulatory bodies are set up to ensure the strict enforcement of these rules.

(e) All children shall have the right to meet their parents and other family members who may be in custody.

Responsibilities of Both Parents

The State recognises the common responsibilities of both parents in rearing their children.

Protection of Children with Disabilities

(a) The State and community recognises that all children with disabilities must be helped to lead a full life with dignity and respect. All measures would be undertaken to ensure that children with disabilities are encouraged to be integrated into the mainstream society and actively participate in all walks of life.

(b) State and community shall also provide for their education, training, health care, rehabilitation, recreation in a manner that will contribute to their overall growth and development.

(c) State and community shall launch preventive programmes against disabilities and early detection of disabilities so as to ensure that the
families with disabled children receive adequate support and assistance in bringing up their children.

(d) The State shall encourage research and development in the field of prevention, treatment and rehabilitation of various forms of disabilities.

Care, Protection, Welfare of Children of Marginalised and Disadvantaged Communities

(a) The State and community shall provide care, protect and ensure the welfare of children from marginalised and disadvantaged communities, support them in preserving their identity, and encourage them to adopt practices that promote their best interest.

(b) The State recognises that children from disadvantaged communities and weaker/vulnerable sections are in need of special interventions and support in all matters pertaining to education, health, recreation and supportive services. It shall make adequate provisions for providing such groups with special attention in all its policies and programmes.

(c) Ensuring Child Friendly Procedures All matters and procedures relating to children, viz., judicial, administrative, educational or social, should be child-friendly. All procedures laid down under the juvenile justice system for children in conflict with law and for children in need of special care and protection shall also be child friendly.
The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006

The following are the amendments that have been carried out to the Principal Act

The definition of the term child in need of care and protection has been expanded to include a child who is found begging or who is either a street child or a working child [Section 2d(ia)].

Juvenile in conflict with Law would mean a Juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of commission of such offence [Section 2(1)].

The State Government is required to set up Juvenile Justice Boards and Child Welfare Committees in every district within a period of one year from the date of commencement of the Amendment Act 2006 (Section 4 and Section 29).

A new section, 7A has been inserted after Section 7 of the principal Act which prescribes the special procedure that has to be followed when claim of juvenility is raised before any court.

Section 10 of the principal Act has been amended and as per the amended provision, as soon as a juvenile in conflict with law is apprehended by police, he should be placed under the charge of the Special Juvenile Police Unit or the designated police officer who shall produce the juvenile before the Board without any loss of time, but within 24 hours of his apprehension.
excluding the journey time. In no case should be a juvenile in conflict with law be placed in a police lock up or lodged in a jail [Section 10(1)].

The Chief Judicial Magistrate or the Chief Metropolitan Magistrate is required to review the pendency of cases of the Board at every 6 months and has to direct the Board to increase the frequency of its settings or may cause the constitution of Additional Boards [Section 13(2)].

The Amendment Act prohibits the sentencing of a juvenile in conflict with law to death or imprisonment for any term which may extend to imprisonment for life or commit him to prison in default of payment of fine of furnishing security [Section 16(1)].

The penalty has been enhanced from Rs. 1000/- to Rs. 25,000/- for any newspaper, magazine, newssheet or visual media that discloses the name, address, school or any particulars calculated to lead the identification of the juvenile or child in need of care and protection or publishes the juvenile's or child's picture (Section 21).

Regarding the production of child in need of care and protection before the Child Welfare Committee also, it has been provided that the child shall be produced before the Committee without any loss of time but within 24 hours excluding the journey time (Proviso to Section 32).

The State Government is required to review the pendency of the cases of the Committee at every 6 months and should direct the Committee to increase the frequency of its sitting or may cause the constitution of additional Committees [Section 33(3)].

A provision has been inserted requiring the institutions run for children
in need of care and protection to be registered under the Act within 6 months from the date of commencement of the Amendment Act 2006 irrespective of whether they are run by the State Government or voluntary organizations [Section 35(3)].

Section 41 of the Act of 2000 has been amended providing guidelines for adoption of children who are orphans, abandoned or surrendered through prescribed mechanism. The Court, instead of the Juvenile Justice Board is empowered to give children in adoption after satisfying itself regarding the investigations having been carried out as are required for giving such children in adoption.

The Court may allow a child to be given in adoption

(i) to a person irrespective of marital status or

(ii) to parents to adopt a child of same sex, irrespective of the number of living biological sons and daughters or

(iii) to childless couple [Section 41(6)]

The Central Government is also empowered to frame model rules in respect of all or any of the matters. Elaborate procedure has also been prescribed for the laying of rules made by the Central Government under the Act before each House of the Parliament [Proviso to Section 68(1) & Section 68(3)].
CONCLUSION

It may be seen that in England, the first Apprentices Act was passed in 1802 and after 48 years, India passed the Apprentices Act, 1850. The English Reformatory School Act was passed in 1854 while the Indian Reformatory Schools Act was passed in 1870. The next English Reformatory School Act was passed in 1893 and following it, the Indian Reformatory Schools Act was passed in 1897. The first English Children Act was passed in 1908, while in India, after 12 years, Madras passed the first Children Act in 1920.

The Declaration of Geneva, awakened public interest in the protection and care of the child. The Declaration proclaimed that mankind owes to the child the best it can give. The result was that the Bengal Children Act of 1922 and the Bombay Children Act of 1924 were passed by respective provincial legislatures, soon after the Madras Children Act, 1920.

The English Children and Young Persons Act was passed in 1933, while the Bombay Children Act, 1924 was revised and The Bombay Children Act, 1948 was passed.


Preamble to the Juvenile Justice (Care and Protection of Children) Act, 2000 shows that the Act was brought into force to give effect to the provisions of UNCRC 1989 along with other international instruments such as Beijing

It is also the fact that Article 14, clause (iii) of Article 15, Article 20, Article 21, Article 22, Article 23, clause (e) & (f) of Article 39, Article 45 and Article 47 of the Constitution of India have been borrowed from Universal Declaration of Human Rights, 1948.

Thus, it is seen that before independence India closely followed the English juvenile justice laws and after-independence it has tried to incorporate into its domestic law the provisions of international standard and norms on juvenile justice, however, deliberately avoiding the incorporation of certain important provisions in those international instruments, for e.g., due-process rights, principle of fair trial, minimum age of criminal responsibility, social, economic and cultural rights of the children, respecting the rights of parents or guardians in the matter of custody of children in need of care and protection, supports to the family of juvenile in conflict with law or children in need of care and protection etc.