CHAPTER-4


It is seen that the Apprentices Act, 1850\(^{81}\) was passed for better enabling children, and specially orphans and poor children brought up by public charity, to learn trades, crafts and employment by which when come to full age, they may be able to gain a livelihood. The Act also attempted to keep the child out of prison. Therefore, the ultimate object of the Act was to keep the children committing petty offences out of the prison and rehabilitate them. The competent authority used to be a magistrate.

As the name suggests the Reformatory Schools Act 1897 established schools to prevent the children from being lodged in the jail. The authority under the act was a magistrate.

The various Children Courts provided provisions for protection, treatment and rehabilitation of children and youthful offenders. The object of the Act was to rehabilitate the children in need of care and protection. It made provisions for establishment of juvenile courts. It prohibited legal practitioners before the juvenile court. However, children committing serious

\(^{81}\) (infra) f.n. 34
offences could be sent to jail at the order of the government. It also contained provisions for probation officers. Offences against children were made cognizable. The Act also contained the provisions for bail.

The Children Act 1960 was also passed for treatment, training, care and rehabilitation of juvenile delinquent and neglected juveniles. Under Section 2(e) it defines a child as a boy or girl who has not attained the age of 16 or 18 respectively. Section 2(j) defines a delinquent child as a child who has been found to have committed an offence.

**Juvenile Justice Act 1986 was a replica of the Children Act 1960**

The Juvenile Justice Act 1986 was also passed to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juvenile. It will not be wrong to say that the Juvenile Justice Act 1986 was a replica of the Children Act 1960 except with few changes in the terminology, for example, the term neglected juvenile was substituted for the term neglected child, the term juvenile welfare board was substituted for child welfare committee, the special homes was substituted for special schools and the term juvenile homes in place of children homes. Rest all the provisions of the Act 1986 in its theme and substances were same as in 1960. Not even that, the provisions of the Act 1986 were same section-wise also.

**Juvenile Justice (Care and Protection of Children) Act 2000 as amended in 2006, in theme and substance, is similar to Juvenile Justice Act 1986**

The preamble to the Juvenile Justice (Care and Protection of Children) Act 2000 as amended in 2006 clearly reveals the fact that it was passed to provide a new law relating to juvenile in conflict with law and children in need
of care and protection. The Act professes to provide special provisions for proper care, protection and treatment by catering to the developmental needs of children in need of care and protection. Thus, the preamble itself speaks of justice to juveniles and care, protection and treatment by catering to developmental needs of the children in need of care and protection. It will not be out of place to mention here that all the provisions of the enactment are in the direction of justice to juvenile and care, protection and treatment to children in need of care and protection, though separately under different sections, chapters and by different methods.

On overall reading of the Act 2000, it appears that it differs from the Act 1986 only to the extent that it has abstractly incorporated some of the provisions of the Convention on the Rights of the Child.

Before the Amendment 2006, preamble to the Act contained that the rehabilitative process was to be carried out through the institutional set-up but after amendment, the same was deleted which shows that the institutional method of providing treatment, care and protection should be adopted by the state as a last resort. It should be noted here that, diversionary programmes or after-care services are not in existence in the Indian Juvenile Justice system as on date. As to the infrastructure and the condition of care and protection services existing in India need no mention.

Further changes in the Act 2000 can be gauged in terms of providing provisions for enhanced machinery to implement the Act and in terms of change in the terminology retaining the theme and substance of the earlier Act.

The Act 2000 shows that there is no court, there is board; there is no juvenile offender or delinquent juvenile, there is juvenile in conflict with law;
there is no neglected juvenile, there is children in need of care and protection; there is no arrest, there is custody; there is no remand, there is bail; there is no trial, there is adjudication; there is no police investigation, there is social investigation; there is no police, there is child welfare officer; there is no decision or judgment, there is disposition; there is no punishment, there is care and protection; there is no jail, there is home etc.

The major provisions of Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006 are Juvenile Justice Board, Observation homes, Special homes, Child Welfare Committee, children homes, shelter homes, adoption, foster care, sponsorship, after-care organisation, linkage and coordination, Inspection Committee, social auditing, restoration, special offences against the juveniles.

Enhanced machineries like Advisory Boards provided in section 62, child protection units provided in section 62A, special juvenile police units provided in section 63 and social auditing provided in section 36 have been provided in the new Act. The new chapter-4 had provided for rehabilitation and social reintegration particularly of children in need of care and protection by adoption, foster care, sponsorship programmes, linkage coordination provided in sections 41-45 respectively. The Amendment Act 2006 has introduced some procedural changes like the date of determination of status of juvenility, registration of juvenile justice institutions etc.

Rest all the provisions of the Act 2000 are similar to the Act 1986.

The Juvenile Justice Act, 1986 was enacted to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of such matters relating to
disposition of delinquent juveniles. The pre-existing law was found inadequate to tie over social knowledge, instrument, delinquency or improvement of the child. The Act sought to achieve a uniform legal framework for juvenile justice in the country as a whole so as to ensure that no child, in any circumstance, is lodged in jail and police lock-up.

The object of the Act, therefore, is to provide specialized approach towards the delinquent or neglected juvenile to prevent recurrence of juvenile delinquency in its full range, keeping in view the developmental needs of the child found in the situation of social maladjustment. That aim is secured by establishing observation homes, juvenile houses, juvenile homes or neglected juvenile and special homes for delinquent or neglected juveniles.

Juvenile Justice (Care and Protection of Children) Act, 2000 was passed to provide care and protection to children by catering to a child's development needs, adopting a child-friendly atmosphere and approach for adjudication of cases relating to juvenile and children, keeping the child's best interest in the mind and keeping rehabilitation of the child as a goal. 82

The Act, 2000 applies to two categories of children known as juvenile in conflict with law and children in need of care and protection. Juvenile or child has been defined as a person who is below the age of eighteen years.

Juvenile in conflict with law is a child who is alleged to have committed an offence and has not completed eighteen years of age as on date of

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82 [Preamble to the Juvenile Justice (Care and Protection of Children) Act 2000 (Act No. 56 of 2000), Bare Act, p.17, Current Publications, Mumbai, 2010]
commission of such offence.\footnote{Sec. 2(l)}

The definition of child in need of care and protection as provided in Section 2(d) is an inclusive definition which includes ten categories of children in it, for example, a child who is found without any home or settled place or abode and without any ostensible means of subsistence; a begging child; a street child; a working child; child living with a dangerous person in whose hand the child will be killed, abused or neglected; mentally or physically challenged child; child suffering from terminal or incurable disease having no one to support; child in the custody of unfit parents or guardian; the child whose parent is incapacitated to exercise control over him; a child without parent; an abandoned child; surrendered child; missing and runaway child; a child who is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts; a vulnerable child likely to become the victim of drug abuse or trafficking; a child who is likely to be abused for unconscionable gains; and lastly, a child who is a victim of armed conflict, civil commotion or natural calamity.

Juvenile in conflict with law is to be handled by the state government and Juvenile Justice Board. The child in need of care and protection is to be looked after by state government and Child Welfare Committee. The primarily responsibility of implementing the act lies with the state government.

The Act was amended in the year 2006 by Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 [33 of 2006]. The Amendment Act has provided for greater intervention of non-governmental organisations and local authorities; special emphasis on social rehabilitation and social reintegration of the children; simplified procedure for adoption of children; registration of all child care institutions within six months of the amendment coming into force; setting up special juvenile police unit; setting up of juvenile welfare board and child welfare committee in every district; and recognizing all offences against a juvenile as cognizable offence.

For the offence of cruelty, it provides punishment up to six month of imprisonment or fine or both; for the offence of employment for begging, it provides sentence of imprisonment which may extend up to three years and also fine; for the offence of giving psychopathic substance, it provides punishment of imprisonment up to three years and fine.

The Act has afforded protection to juvenile in conflict with law in the following manners:

- Handling by special juvenile police unit;
- No handcuffing of juvenile in conflict with law;
- Police not to be in uniform while dealing with the children;
- Abolition of death penalty and imprisonment;
- Cannot be kept in jail or lockup;
- Informal, participatory and private proceedings;
- Deletion of records of juveniles after seven years;
- Involvement of parents in juvenile processes;
- Right to free legal aid;
- No joint trial with an adult;
- And no release of information about juvenile to media.

In view of the above, there can never be a complete substitute to institutional method of providing care and protection for ultimate rehabilitation. Therefore, need of juvenile justice system institutions cannot be overemphasized.

The features of Juvenile Justice Act, 1986 have been carried forward in
and local authorities; special emphasis on social rehabilitation and social reintegration of the children; simplified procedure for adoption of children; registration of all child care institutions within six months of the amendment coming into force; setting up special juvenile police unit; setting up of juvenile welfare board and child welfare committee in every district; and recognizing all offences against a juvenile as cognizable offence.

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The features of Juvenile Justice Act, 1986 have been carried forward in
the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006 with some additional alternatives. The most important feature of this Act is that it makes institutional method of treatment as a last resort.

It is seen from the above analysis that Children Act, 1960 contains total 53 sections, the Juvenile Justice Act, 1986 contained total 63 sections and Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006 contain total 70 sections. The Act, 1986 was almost replica to the Children Act, 1960 and the Act, 2000 retained the major features of the Act, 1986 with some important changes effected by amendment in 2006. However, except the changes in terminology and introducing some certainty in the procedure particularly the status of juvenility, the Juvenile Justice (Care and Protection of Children) Act, 2000 more or less retain the feature of earlier legislation.

Like the Juvenile Justice (Care and Protection of Children) Act, 2000, all the legislations in India were enacted with one sole apparent object and that is care and protection of both the categories of children, that is delinquent and non-delinquent.

Some Comments on Welfare Legislations

In the preamble, the words maintenance, welfare, training and education are substituted by the words 'treatment and development' signifying only a symbolic semantic change. Similarly, the word child has been replaced by the term juvenile. The word trial has been dropped in favour of the more benevolent and appropriate expression “adjudication of certain matters relating to and disposition of.”

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84 [S.M.A. Qadri, Ahmad Siddique's Criminology & Penology, p.277, Eastern Book Company, Lucknow, 6th edn, 2009]
Before passing of the Juvenile Justice Act, 1986, the laws applicable to children were not uniform and did not uniformly prohibit the imprisonment of juveniles in jails. Some of the Children Acts permitted imprisonment of juvenile delinquents in exceptional circumstances. In areas where the Children Act had not been enforced, the delinquent juveniles were dealt with by the ordinary criminal courts applying the general criminal law and were sent to imprisonment in the ordinary course along with adult offenders.\(^{85}\)

The Juvenile Justice Act, 1986 is virtually a verbatim reproduction of the Children Act, 1960 introducing only a few minor and non-vital changes here and there.\(^{86}\)

Some new definitions have been provided in Section 2, that is fit person, fit institution and place of safety. The definition of neglected child has been expanded to include a juvenile who is being or is likely to be abused or exploited for illegal or immoral purposes or unconscionable gain.\(^{87}\)

Section 10 providing for special homes (formerly schools) has been given an additional clause enabling the state governments to make rules for the classification and separation of the delinquents on the basis of age and nature of offences committed by them.\(^{88}\)

Act of 2000 provides for the creation of welfare and rehabilitation funds for juveniles, establishment of advisory boards and appointment of visitors to the juvenile institutions.\(^{89}\)

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86 infra f.n 84
87 ibid
88 ibid
89 ibid
The machinery for implementing the Act were, observation homes for temporary reception of juveniles during the pendency of any inquiry regarding them (section 11), juvenile homes for neglected juveniles to provide accommodation, maintenance, facilities for education, vocational training and rehabilitation (section 9), special homes for delinquent juveniles to provide accommodation, maintenance, facilities for education, vocational training and rehabilitation (section 10) and after-care organisation for the purpose of taking care of juveniles after they leave juvenile homes or special homes and for the purpose of enabling them to lead an honest, industrious and useful life (section 12).  

There are several Central and state government schemes and the non-governmental organisation interventions in the administration and implementation of the Juvenile Justice Act 1986. The interventions are in the areas of preventive, institutional, non-institutional, as well as rehabilitative work. Observation homes, juvenile homes, special homes, and aftercare homes are run by the government as well as by the non-governmental organisations.

The distinctive characteristics of juvenile courts under Juvenile Justice Act 1986 have been separate hearings for children's cases, informal hearing, private hearing, curtailed right to counsel, protection against legal consequences and stigma, appeals from the juvenile court's order, non-penal sanction.  

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91 ibid at p 295
92 [S.M. A. Qadri, Ahmad Siddique's Criminology & Penology, pp.281-285 (Eastern Book Company, Lucknow, 6th edn., 2009)]
The features of the Juvenile Justice Boards under the Act, 2000 are separate hearings for children's cases, informal hearing, private hearing, curtailed right to counsel, protection against legal consequences and stigma, appeals from the juvenile court's order, non-penal sanction etc.  

It is said that the political freedom is incomplete without freedom from social and economic bondage. Want, disease, ignorance, squalor, and idleness are five giant enemies of human race. Social policy of a nation is concerned with a program to combat with them. In its content and philosophy, it tends to be an amalgam of principles of social justice, of ethical approach, of ameliorative measures to uplift the underprivileged, however, it has been found that the same has been enemical to the well-being of the society as a whole.

However strong may be one's sentiment towards children, the analysis of juvenile delinquency by sociologists, social workers or lawyers should be clear-sighted and unsentimental. For an understanding of delinquency or an effective method of dealing with it through social action, critical detachment will serve better than the maudlin involvement that is so easy a substance for thinking where children are concerned.

93 ibid
Poverty is the root cause of child neglect and the degree to which the state can improve the lot of neglected children by legislation is debatable. The legislators pass the law and leave the headache of implementing the several bits and pieces of it to bureaucracies, which mess up the whole process.\textsuperscript{96}

Social Justice cannot be through force but only by non-violence and mutual cooperation.\textsuperscript{97}

The Supreme Court, in a very recent judgment in Nandini Sundar & Ors. v. State of Chattisgarh\textsuperscript{98} suggesting that the solution to the problem of poverty and destitution lies elsewhere, made the following observations

The benefits of this paradigm have been disproportionately cornered by the dominant sections at the expense of the poor, who have borne most of the costs. Development which is insensitive to the needs of these communities has inevitably caused displacement and reduced them to a sub-human existence.

The root cause of the problem and hence its solution, lies elsewhere. The culture of unrestrained selfishness and greed spawned by modern neo-liberal economic ideology, and the false promises of ever increasing spirals of consumption leading to economic growth that will lift everyone, under-gird this socially, politically and economically unsustainable set of circumstances in vast tracts of India.

\textsuperscript{96} [Manu N. Kulkarni, 'Justice for Delinquents', Economic and Political Weekly, Vol. 29, No.26 (June 25, 1994), pp. 1575.]
\textsuperscript{97} [Dr. Ravindra Kumar, Global Peace: An International Journal of Philosophy, Peace, Education, Culture & Civilization", Vol-10, No-1, Sept.2010]
\textsuperscript{98} [2011 (5) Supreme 33]
The child receives the worst of both worlds, that he gets neither protection accorded to adults nor the solicitous care and regenerative treatment postulated for children.\textsuperscript{99}

The nations have sought to control youth, and have justified their actions in the name of concern for their eventual welfare. Neither research nor the present debate shows that there is an unequivocal effect upon youths as a result of their encounters with the juvenile justice system. In many respects, it is an unfair and paternalistic system that seeks to control aspects of children behaviour which are not clearly evil (mala in se).\textsuperscript{100}

The statutes provide children with either substantive or procedural rights or combination of both. The law provides State protection of abused and neglected children, their representation by guardian ad litem and periodic judicial review of their placements in the institutions. Procedural protections have often failed to improve substantive outcomes. The statutes that sought to improve services have never been self-executive and can be targets of recession and elimination. The failure also highlights the confused and fragmented nature of approaches to legal issues affecting children.\textsuperscript{101}

Poverty is the lot of the majority and, though there are millions of poor people who are law-abiding citizens, there is no doubt that poverty is an incentive to crime.\textsuperscript{102}


\textsuperscript{100} [Peter K. Manning, Introduction to Crime and Delinquency: The Problems of Youth in Contemporary Society by MP Singh, p. xi, (UDH Publishers, New Delhi, 1st Edn, 1983)]


According to Robert G. Schwartz, at every age, among all races and income groups, and in communities nationwide, many children are in jeopardy. They grow up in families whose lives are in turmoil. Their parents are too stressed and too drained to provide the nurturing, structure, and security that protect children and prepare them for adulthood. Some of these children are unloved and ill tended. Others are unsafe at home and in their neighbourhoods. Many are poor, and some homeless and hungry. Often, they lack the rudiments of basic health care and a quality education. Almost always, they lack hope and dreams, a vision of what their lives can become, and the support and guidance to make it reality.\textsuperscript{103}

In its white paper on human rights published in 1991, China took the stand that for any country or nation, the right to subsistence is the most important of all human rights without which the other rights are out of question.\textsuperscript{104}

India annually gets richer by 200 billion. India's foreign resources have exceeded 140 billion. Remember the country had to mortgage its gold in London because the foreign exchange coffers were dry. In the list of world's billionaires, 27 of the world's richest people are Indian, most of them staying in India. A large portion of the world's poorest people live in India too and you don't need to go Davos to meet them. Our country's poor live below a poverty line that seems to be drawn just this side of the funeral pyre. 250 million


\textsuperscript{104} [Dr. Gokulesh Sharma, Human Rights and Legal Remedies, pp.786-787 (Deep & Deep Publications Pvt. Ltd., New Delhi, 2008)]
people living in conditions that are a blot on our individual collective
consciences is too rave a matter to be lightly dismissed.\textsuperscript{105}

The following comments of Mr. Peter K. Manning made in the year 1983 on the functioning of juvenile justice system in America reflects a true picture of today's juvenile justice system across the country.

It should be noted that like the problem of poverty, juvenile conduct is a universal focus of adult concern. The ways in which society has dealt with juvenile misconduct vary historically, culturally and societally. This suggests that it is a universal problem to which solution will always be applied and for which in fact no true solution will ever be devised. It is tried on, pulled, and shrugged into position, gazed at in the mirror, seen from one and another perspective, and then cast off for yet another garment. Some of the garments, or policies will be placed in a pile to be tried on again. And they will be tried on again as the history of approaches to poverty.\textsuperscript{106}

Juvenile justice after the onset of delinquency referred to justice in its normal juridical sense and that juvenile justice before the onset of delinquency referred to social justice. Thus, the concept of social justice was to be seen as relevant to the development of children and young persons generally and to endangered or adjudicated young offenders. The two were closely related but could be separated for purposes of discussion and training.\textsuperscript{107}

\begin{thebibliography}{9}
\bibitem{105} [Sashi Tharoor, The Tiger Elephant, the Tiger and the Cell Phone, cited in 'Perspective of the Judiciary to Economic Reforms vis-a-vis Rights of the Poor' by Rajiv Maheshwaram, All India Reporter, Vol. 99, Part 1181, pp.71-82, Journal Section, May 2012]
\bibitem{106} [Peter K. Manning, Introduction to Crime and Delinquency: The Problems of Youth in Contemporary Society by M.P. Singh, p. xi, (UDH Publishers, New Delhi, 1st Edn, 1983)]
\end{thebibliography}
The protection of women and children has become so serious that the Committee has recommended for creation of a new constitutional authority having power and jurisdiction akin to the Comptroller and Auditor-General of India for education, non-discrimination in respect of women and children.\(^{108}\)

Justice Verma Committee has recommended that the time has come where the judiciary, on the principle of parens patriae, should act as an immediate and ultimate guardian of children, women, persons with disabilities, inmates of mental homes and widows for their safety and physical security. The Committee also recommended that monitoring of homes should be left in the hands of judiciary. Accordingly, it recommended that, the Chief Justice of the High Court in every state could devise the appropriate machinery for the administration and supervision of these homes in conjugation with experts in the field.\(^{109}\)

The Supreme Court in\(^{110}\) has expressed its grief over the poor plight of the farmers in Maharashtra in the following words

We cannot shut our eyes to the stark realities. From the National Crime Records Bureau (NCRB), it is clear that close to two lakh farmers committed suicide in India between 1997 and 2008. This is the largest sustained wave of suicides ever recorded in human history. Even though Maharashtra is one of the richest States in the country and in its capital Mumbai, twenty five thousand of India's one lakh dollar millionaires reside, the Vidarbha region of Maharashtra, is today the worst place in the whole country for farmers. The position was so pathetic in Vidarbha region that families are holding funerals and weddings at the same time on the same day. The gap between haves and have-nots of the society which existed even in pre-Independence India has widened to such an extent that it may take many decades before even a token equality is restored.

In the last 63 years, the execution of the Parliament enacted laws has been extremely inadequate and tardy and benefit of welfare measures enshrined in those legislations has not reached millions of poor, downtrodden and disadvantaged sections of the society and the efforts to bridge the gap between the haves and have-nots have not yielded the desired result. Unfortunately, when the judiciary has issued directions for implementation of the laws enacted for the poor and illiterate, a theoretical debate is started by raising the bogey of judicial activism or judicial overreach.

Cardinal virtues such as compassion and tolerance have taken the backseat in the rat race for success at any cost. When money becomes the sole determining factor of power, position and status, and when corruption is eulogized as the order of the day, it is hardly surprising that our children—whose young minds are constantly fed on the lure of the lucre, violence and sex—should be trying to emulate their peers.

Where man has lost belief in the Supreme Being, where man believes only in a material existence, where man is lured by the desire for power and the craving for possessions at all and any costs, where man has no belief in the existence-to-come-hereafter, where man has forgotten completely his inner.

\(^{108}\) [Report : Justice Verma on Committee Amendments to Criminal Law, January 23, 2013, para 18, p.421]

\(^{109}\) infra f.n. 108

\(^{110}\) [State of Maharashtra & Ors. v. S.S. Chavan & another [(2011) 1 SCC 577]
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\textsuperscript{111} ibid
\textsuperscript{112} ibid
\textsuperscript{113} (Aarti Dhar, 'Enhancing Institutional Care', THE HINDU, Friday, March 23, 2012).
and finer being, where the true self is lost, and the longings of matter alone become conspicuously dominant in the desires of man, there is no wonder that there is, and would be, social disorganization and maladjustment leading to conflict of interests and crime.114

The recommendations and observations made by Mrs. Violet Alva, the then Deputy Minister for Home Affairs, Government of India in the year 1959 are worth-mentioning here below

Various facilities should be made available to strengthen the family and the home. If the family does not become the care of every industrialist in the private and the public sector, the child delinquency, prostitution, crimes of all degrees of evil will also become highly developed. A home here and a home there in the city for children is like an oasis in a desert. We need a revolution within us for an evolution in society, and unless that revolution comes from within you and me, social legislation even though it expands in every field, will not achieve results.115

The highly discretionary nature of Juvenile Justice system is a double-edged sword. This subjective design has traditionally been in place in order to be able to focus on the best interests and rehabilitative potential of each child. Yet the discretionary attribute also allow the operation of unconscious biases towards harsher alternative at various points in the system. Traditional equal


115 (Mrs. Violet Alva’s address, as Chairman at the Indian Conference of Social Work, 11th National Session, Hyderabad, 27th to 31st December, 1959; published in the Indian Journal of Social Work, Vol. XX, No. 4, March, 1960, published by the Tata Institute of Social Sciences, Chembur, Bombay 71)
protection doctrine falls short in several respects. In the juvenile justice system conscious racial biases and stereotypes are a serious problem.\textsuperscript{116}

A specialized cadre of judicial officers may be evolved to exclusively deal with neglected and delinquent children by entrusting the work under the Juvenile Justice (Care and Protection of Children) Act, 2000 to one or more magistrates on a permanent basis.\textsuperscript{117}

Uniform delinquency and crime reporting and of criminal and correctional statistics as the pre-requisite of sound correctional policies, of foundations of behaviour research, and of follow-up of after conduct of discharged offenders.\textsuperscript{118}

In no other country are children so much neglected in spite of all love and affection bestowed on them as in India. No attention is paid in an average Indian home even to the legitimate requirements of the child. To solve the problem of neglected and dependent children, it is left to the State to solve the major social problems or else it will not be possible to rehabilitate these unfortunate ones.\textsuperscript{119}

Lack of benevolent and humanitarian principles among wealthy citizens, failure to realize the needs of neglected and dependent children and want of willingness to help them are some of the causes and hurdles that exist and retard the immediate care of the neglected and dependent child. In


general, such children usually live in a house of ill-fame or in a defective, broken or poor home.\textsuperscript{120}

A specialized cadre of judicial officers may be evolved to exclusively deal with neglected and delinquent children by entrusting the work under the Juvenile Justice (Care and Protection of Children) Act, 2000 to one or more magistrates on a permanent basis.\textsuperscript{121}

Sweden, with its progressive methods of dealing with the young delinquents, does not find it even necessary for the child welfare councils to prove the offence. The Scandinavian Child Welfare councils designed to keep children out of official Children's courts are performing valuable function in discouraging unnecessary arrests and court appearances.\textsuperscript{122}

Many of the children's lawyers and academics who came together have spent their careers speaking of children and the law in terms of children's rights. Indeed, children's rights have been asserted and assailed so often in recent decades that one might think of them, incorrectly as clear, known and easily stated. It is tempting to believe that once we find the appropriate unifying theory, children's rights will quickly move forward. As we review the multitudes of children's rights and issues, however we are struck by their substantive and procedural varieties and extent to which they are disputed.\textsuperscript{123}

The aspect of 'human contact' with the children, the main beneficiaries

\textsuperscript{120} ibid
\textsuperscript{121} (Ved Kumari, The Juvenile Justice System in India: From Welfare to Rights, 2nd Edn., 2010, Oxford University Press, New Delhi, p.298)
of the juvenile justice system is completely missing. In fact, it is the regular personal contact with both the categories of children, juvenile in conflict with law and children in need of care and protection inside and outside the institutions with suitable care and protection services by all the stakeholders in the field appears to be the proper solution to the 'prevention' and 'control' of the problems of delinquency and destitution.

Mr. T. Thomas\textsuperscript{124} also observed the same in the year 1980 in the following words

It is a human contact which keeps one sensitive and interested. Without them, one might as well be operating a huge machine.

This is a befitting example in the context of juvenile justice system in India where the majority of personnel in the discipline show their serious concern for the cause of children without having any personal contact with those children. They are not regularly visited either in the institutions or outside the institutions to afford suitable help to them. Therefore, the majority of the personnel concerned in the field are operating a huge machine without any sensitivity and interest. The result is ongoing failure of the system.

The penal approach was more visible in the buildings of special homes characterized by high walls and barred doors and windows. These penal undercurrents were visible in the nature of institutions that changed from open to closed institutions when delinquents were housed with others in the same home.\textsuperscript{125}


Some of the District Judges found a very small number of juveniles, or none, in the homes visited by them. All these facts together suggest that the homes have been functioning more for the benefit of the employees than that of the children.\(^{126}\)

The basic data relating to the number of juveniles in need of care and protection and their location continues to be non-existent. Therefore, it is difficult to ascertain the criteria by reference to which the number of juvenile courts/Juvenile Justice Boards or juvenile welfare boards/Juvenile Welfare Committees, homes, and other services at various places may be determined.\(^{127}\)

According to UNICEF, juvenile justice is not founded on a lenient approach as such but on responses to juvenile offending that encourage a process of behaviour change by helping the child or young person to feel accountable for his or her actions and understand their impact on others; foster integration rather than alienation avoiding the environment of the formal court system or to purely punitive responses such as deprivation of liberty wherever possible and give special importance to constructive community-based solutions.\(^{128}\)

An examination of the rights of children under various Indian laws and the United Nations Convention on Rights of Children, which India uses as a guiding principle, show a wide gap between law in the books and law in action.\(^{129}\)

\(^{126}\) ibid p.301

\(^{127}\) ibid p.302

\(^{128}\) [Juvenile Justice: Main Issues, Innocenti Digest UNICEF International Child Development Centre, Nov.1, 1997.]

\(^{129}\) (Menon, M.N.R., The Rights of the Child: Law, Policy and Enforcement, A background paper prepared for the National Law School of India University, 1990, p.23)
There is very little awareness both in the general public and among human service professionals about the constant and severity of abuse among children in India. Only after the problem comes to the forefront as a matter of national concern, will policy makers and professionals responsible for delivering services see the need for intervening aggressively on behalf of abused and neglected children.130

In Sheela Barse case, the Supreme Court, the highest court of the land almost appeared frustrated at the prevailing situation and passed orders after making a thorough dissection of the Children Act, 1960 and the Children Act(s) enacted in different states. This decision of the Supreme Court has hastened the legislature to come out with the Juvenile Justice Act, 1986.131

The Indian jurisprudence of Juvenile Justice is the wayward victim of legislative chaos and statutory slumber.132

The transition from the colonial to the post-colonial leaves the structures of state and law 'concerns' for the Juvenile Justice system almost intact.133

Somewhere in the Indian official discourse, lies undisclosed the notion and the logic that insistently and abundantly forfeits the constitutionally and the internationally enshrined human rights of the child, and consigns them to the realm of life not worthy of any serious protection.134

133 (Foreword by Upendra Baxi to The Juvenile Justice System in India: From Welfare to Rights, Kumari Ved, Oxford University Press, 2nd Edn, 2004, New Delhi, p. xiii)
An overview of literature on the operations under the Children Acts reveals a wide gap between the theory and practice of juvenile justice in India.\(^\text{135}\)

Even judiciary has failed to deliver a humane and just juvenile justice system.\(^\text{136}\)

No child has ever challenged before any higher court the finding of the lower court holding that he had committed the offence. It is hard to believe that it is reflective of the righteousness of the decisions of the lower courts in all cases. The answer may perhaps be found in the non-penal nature of consequences attached to such a finding dissuading a child with meagre means to approach the higher courts, or it may be due to the absence of proper legal representation.\(^\text{137}\)

The parallel welfare schemes for neglected children outside the juvenile justice system did very little to clarify the number of children covered under the schemes.\(^\text{138}\)

The Juvenile Justice system in India can be described in terms of combination of features of welfare, modified justice, justice, and crime control models. In the crime control and justice models, the law in relation to delinquent children in India, focuses on their criminal offences and police, lawyers, and judges are the prime actors. For children in need of care, the law

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\(136\) infra f.n. 134 p. xviii

\(137\) infra f.n. 135 p.372

\(138\) infra f.n. 135 p.305

\(139\) infra f.n. 135 p.2
is closer to the welfare and modified justice models, doing away with lawyers and judicial officers.\textsuperscript{139}

In its wider perspective it includes provisions for the welfare and well-being of all the children in need of care and protection, while the formal system of juvenile actually deals with those who are already in conflict with law or are likely to be so.\textsuperscript{140}

The term juvenile justice was sought to be clarified for the Sixth UN Congress on the Prevention of Crime and the Treatment of Offenders as follows

Due attention has not been given to the development of preventive measures like assistance to families in trouble which is one of the major contributory factors leading to delinquency and maladjustment among children. Very few after-care services are available.\textsuperscript{141}

The cases before the higher courts do not indicate the problems relating to the creation of the infrastructures under the law, or to the roles and responsibilities of various bodies and persons under it.\textsuperscript{142}

The invisibility of operations under the juvenile justice system does little to change the negative attitude of the general public. The periodical reports of mismanagement, exploitation, or abuse of children in the state institutions generate criticism of the state but not an outcry for protection of children.\textsuperscript{143}

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\textsuperscript{140} infra f.n. p.3 \\
\textsuperscript{141} infra f.n. 135 p.5 \\
\textsuperscript{142} infra f.n. pp.230-31 \\
\textsuperscript{143} infra f.n. p.306
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