CHAPTER 7

LEGISLATIVE FRAME WORK FOR THE PROTECTION OF JUVENILES
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Now after historical study of the juvenile justice system, it is necessary to study the legislative work in India to deal with the problem. The constitution of India is a supreme legislation and the law relating to the juvenile justice is framed subject to the provisions of the constitution of India. The law in existence would be helpful to make inquiry into the functioning of the juvenile justice system.

Indian Constitutional Provisions

Legislative Authority Specially for Children

The Constitution of India made some special provisions for the well being of the children.

Article 15(3) empowers the state to make special provisions for women and children. Under the authority several states in India have enacted Children Acts. So also Centre enacted, The Children Act 1960 and Juvenile Justice Act 1986. Art. 24 of the constitution of India provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Art. 39 (f) of the Constitution provides that the state shall direct its policy to secure that the children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Art 45 provided that the state should endeavour to provide for free and compulsory education for all children until they complete the age of 14 years.
Thus the Constitution of India made provisions for protection and welfare of children and Government formulated the policy in the interest of the children.

National Policy For Children

The policy for children is to be formulated by the State as per the provision of article 39 (f) of the Constitution. The Government of India has had under consideration the question of evolving a national policy for the welfare of the children. Children program should find a permanent part in our national plans, so that our children grow up to become robust citizens, physically fit, mentally alert, morally healthy, endowed with skills and motivations needed by society. Equal opportunities for development to all children during a period of growth should be our aim. The Government of India with these aims, adopted the resolution dated: 22nd August 1974 on the national policy for children.¹

Policy and Measures: It shall be the policy of the state to provide adequate services to children both before and after birth and through the period of growth, to ensure their full physical, mental and social development. To attain these objectives the following measures shall be adopted.

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

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

iii) Programs should be undertaken for the general improvement of the health and for the care, nutrition and nutrition education of expectant and nursing mothers.

iv) The State shall take steps to provide free and compulsory education for all the children up to the age of 14. Special efforts will be made to

¹ Vedkumari, Treatise on the Juvenile Justice Act 1986 Edn, 1993
Annexure XIII, p.117
reduce the prevailing wastage and stagnation in schools, particularly in the cases of girls and children of the weaker sections of society.

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

vi) To ensure equality of opportunity, special assistance shall be provided to all children belonging 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.

vii) Children, who are socially handicapped, shall be provided facilities for education, training and rehabilitation.

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

ix) No child less than 14 years shall be permitted to be engaged in any hazardous occupation or be made to undertake heavy work.

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

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

xii) Special programs shall be formulated to encourage and assist gifted children, particularly those belonging to the weaker sections of society.

xiii) Existing laws should be amended so that in all legal disputes, whether between parents or institutions, the interests of children are given paramount consideration.

xiv) In organizing services for children, efforts would be directed to strengthen family ties.
xv) In formulating programs in different sectors priority should be given to programs 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) creches and other facilities for the care of children of working or ailing mothers; and
   e) care, education, training and rehabilitation of handicapped children

**National Children Board**

A National Children's Board shall be constituted to provide expansion in the health, nutrition, education and welfare services and to ensure continuous planning, review and coordination of all the essential services. Similar board also be constituted at the state level.

**Voluntary Organizations**

Voluntary Organizations engaged in the field of child welfare will continue to have the opportunity to develop, either on their own or with state assistance, in the field of education, health, recreation and social welfare services.

**Legislative And Administrative Action**

The state will provide necessary legislative and administrative support to achieve the aims. Facilities for research and training of personnel will be developed.
People's Participation

The Government of India trust that the policy enunciated will receive the support and cooperation of all sections of the people and organizations working for children. The Government of India calls upon the citizens, State Governments local bodies, educational institutions and voluntary organizations to play their part in the overall effort to attain these objectives. But people's participation cannot be achieved without active implementation of the welfare program of child. The parents, legal guardian and the State have the responsibility to strive for the all-round development of children. When the parents or legal guardians of the child do not have the means or intention to strive for the development of a child, the duty falls upon the State to take steps to ensure that the child is not neglected.  

Development of Juvenile Law from 1986 to 2000

Before passing Juvenile Justice Act 1986, Mrs. Sheela Barse a dedicated social worker had filed petition under article 32 of the constitution of India as public interest litigation in the Supreme Court of India on 9th September 1985. Union of India and 24 states were joined as respondents. This case gave a turn to Juvenile law.

In Sheela Barse Vs Union of India, the Supreme Court observed that despite statutory provisions to the effect that the children should not be kept in jail, a large number of children were lodged in jails. The Supreme Court, in this case, therefore issued directions that in case of offences punishable with less than 7 years, investigation must be completed within a period of 3 months, failing which, the case must be closed. The maximum time limit for completion of trial in such cases was fixed for 6 months. The Supreme Court in this case, reiterated that there is no controversy or doubt that the juveniles are to be kept in remand homes or observation homes and not in jail pending

trial or inquiry irrespective of the fact that they have attained the age of 16 years pending trial.

The Juvenile Justice Act 1986 received the assent of the President of India on December 1, 1986 and published in the Gazette of India dated 3rd December 1986.

The Juvenile Justice Act 1986 is a comprehensive parliamentary legislation, which contemplates the creations of institutions and authorities for the care, protection and correction of juvenile delinquents. It is more sensitive legislation than the previous Children Acts enacted by the State and the Children Act 1960 enacted by the centre for Union territories.4

This juvenile justice Act 1986 is now repealed and in place of it the juvenile justice Act 2000 is passed by the parliament with change of spirit of the treatment of juvenile delinquents.

Compared with the juvenile justice Act 1986 the spirit in the juvenile justice Act 2000 can be described on the basis of terms used in the juvenile justice Act 2000 for the terms used in the Act 1986.

<table>
<thead>
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<th>The term used in juvenile justice Act 1986</th>
<th>The term used in juvenile justice Act 2000 for the term in column 1</th>
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<td>1 Delinquent juvenile</td>
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From the above changes introduced in juvenile justice Act 2000, it is obvious that there is no change in the actual practical treatment of the

juvenile. The linguistic are the only changes. The term “delinquent” signifies failure of duty imposed by law. It connotes the criminal behaviour of juvenile. The purpose of juvenile justice law is not for the attachment of criminality to the child but to treat and provide him proper care and protection, treatment and rehabilitation and therefore to address him as “delinquent” appears to be in conflict with purpose and principle of rehabilitation of juvenile. So also the term “Neglected Juvenile” does not create the feeling that one should see such juvenile with pity. The term “Child in need of care and protection” create the feeling to provide aid to such needy child. So is as to the term “juvenile court”. Any court has to adjudicate the matter and if criminal offence is proved the court has to punish offender. In juvenile cases, the juvenile is not to be punished but to be rehabilitated him with good treatment. The “Juvenile Justice Board” has not to award punishment to juvenile but to provide protection according to law to the children under the age of 18 years.

Delinquent Juvenile & Juvenile In Conflict With Law

Whether these two terms have the same meaning? Or do they signify different meanings? “Juvenile delinquent” means a juvenile who has been found to commit an offence.  

The term juvenile in conflict with law means a juvenile who is alleged to have committed an offence.

Found to have committed an offence

The expression “Found to have committed an offence’’ signifies that the juvenile court conducted an inquiry in to alleged offence against the juvenile and juvenile court found him, in the inquiry to have committed it. It means that the offence is proved against the juvenile after concluding the proceeding. The

5. Sec. 2(e) The Juvenile Justice Act 1986
state Government may establish and maintain as many special homes as may be necessary for the reception of the delinquent juveniles.\(^7\)

**Alleged to have committed an offence**

The expression “Alleged to have committed an offence” does not signify the conclusion of the proceeding. It signifies the allegation of commission of offence against the juvenile.

Then question arises as to whether the juvenile in conflict with law can be received in the special home? The answer to this question is in positive. Any state Government may establish and maintain either by itself or under an agreement with voluntary organizations, special homes for reception and rehabilitation of juvenile in conflict with law.\(^8\)

It is clear under old Act that the juvenile against whom the offence was proved was received in special home. But the provision under section 9 (1) of J.J. Act 2000 makes it clear that even a juvenile who is alleged to have committed an offence would be received in the special home.

Is it a spirit of law? Does the provisions of law of juvenile, intend to receive the children alleged to have committed an offence in the special home?

Where a Board (Juvenile Justice Board) is satisfied on inquiry that a juvenile has committed an offence, the Board may, if it thinks fit, make an order directing the juvenile to be sent to a special home.\(^9\)

Does it mean that the juveniles who are alleged to have committed an offence and the juveniles who have been proved to commit an offence are received in the special home? The answer will be in negative. It cannot be the spirit of law. The ambiguity in section 9 (1) of the Juvenile Justice Act 2000 will have therefore to be removed by making amendment in the section by

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\(^7\) Sec 10(1) Juvenile Justice Act 1986

\(^8\) Sec 9 (1) Juvenile Justice Act 2000

\(^9\) Sec 15(1)(g) Ibid
deleting last line that is “Juvenile in conflict with law under this Act” and by substituting in its place the words “Juvenile who has committed an offence”.


Adoption

In the Juvenile Justice Act 1986, there was no provision for adoption of children orphaned, neglected, abandoned and abused. In the Juvenile Justice Act 2000, the provision for adoption of orphaned, abandoned, neglected, abused children through institutional and non-institutional methods is made.10 The Juvenile Justice Board is empowered to give children in adoption after carrying out investigations necessary for giving the children in adoption in accordance with the guidelines issued by the State Government from time to time in regard to adoption of such children.11

Foster Care

In foster care, the child may be placed in another family for a short or extended period of time, depending upon the circumstances, where the child’s own parent usually visit regularly and eventually after the rehabilitation, the children may return to their own homes.12

The foster care may be used for temporary placement of those infants who are ultimately to be given for adoption.13

Sponsorship

The scheme of sponsorship of children is for improving the quality of life. The sponsorship program may provide supplementary support to families

10 Sec 41 (2) of the Juvenile Justice Act 2000
11 Sec 41 (2) Ibid
12 Sec 42 (2) Ibid
13 Sec 42 (1) Ibid
children homes and special homes to meet medical, nutritional, educational and other needs of the children.14

This sponsorship program has to be implemented by the Government to secure the improvements of quality in the life of children.

Child Welfare Officer in Police Station

In every police station, at least one officer with aptitude and appropriate training and orientation may be designated as juvenile or child welfare officer who will handle the juvenile or child in co-ordination with the police.15

Special Juvenile police unit

The police officers are engaged in prevention of juvenile crimes. They have the training how to deal with the adult offenders. They can deal offenders roughly. If the juveniles in need of care and protection or the juveniles in conflict with law were so dealt with roughly, as the adult offenders are dealt with, the very purpose of juvenile law would be defeated. In order to enable the police officers, who frequently and exclusively deal with juveniles or are primarily engaged in the prevention of juvenile crime or handling of the juveniles, shall be specially instructed and trained to perform their functions more effectively.16

Special Juvenile police unit shall be created in every district and city to co-ordinate and to upgrade the police treatment of the juveniles. All the juvenile or child welfare officers, who have to handle juveniles, shall be the members of special juvenile police units.17

As per the above provisions, in every police station there will a police officer who shall be designated as a juvenile or child welfare officer. He will sit.

14 Sec 43(1) Ibid.
15 Sec 63 (2) Ibid.
16 Sec 63 (1) Ibid.
17 Sec 63 (3) Ibid.
in the uniform of police. The uniforms of police create the deterrence in the mind of an offender, which is appreciable. But it is appreciable in case of adult offenders. It cannot be appreciable in case of juvenile offenders. The way in which the juveniles are to be dealt with is the way of creating situation unfavorable to violation of law in the juvenile in conflict with law and creating self confidence to live life in a graceful manner in juveniles in need of care and protection. If a juvenile in conflict with law or a juvenile in need of care and protection is brought in the police station before the juvenile welfare officer who will be in a police uniform, the impression on the mind of a juvenile shall be laid that he has been brought in the police station and he will be habitual to the atmosphere of police station if he has been brought often in the police station.

To keep the office of juvenile welfare officer away from police station would be an appropriate policy to serve the purpose of juvenile welfare. So also, the juvenile welfare officer’s uniform should not be as police uniform. The uniform should be so changed that the uniform should look as juvenile welfare officer, indeed.

Increase in Age of Juvenile

The significant change in the juvenile justice Act 2000 is the increase of age limit of a juvenile boy from age sixteen to eighteen years. In the juvenile justice Act 1986, the juvenile was defined as a boy who has not attained the age of sixteen years. 18 This definition of juvenile is altered in the juvenile justice Act 2000. The juvenile justice Act 2000 defines the juvenile as person who has not completed 18 years of age 19

In accordance with the juvenile law before 2000, the delinquent boy or neglected boy above 16 years could not be allowed to receive in the special home or juvenile home. The boy above 16 years of age was dealt with as an

18. Sec 2(b) of Juvenile Justice Act 1986
19. Sec 2(k) of Juvenile Justice Act 2000
adult offender and he was kept in jail. Undoubtedly the age up to 18 years is a
tender age compared with the criminals in the jail. Prison treatment of such
child along with other criminals in prison would certainly affect the mental
condition of child. In prison environment, he will either lose the hope of his
life or he would learn the criminal behaviour. To keep these boys of above 16
years to 18 years of age away from jail environment is a very good reform in
view of the improvement of the young boys.

With this change of improvement in the conditions of young boys,
another factor is required to be considered.

The boys of the age of 17 and 18 are energetic and strong. Their
imaginary power is more than the children below 16 years. The delinquent
boys of the age 17 or 18 years of age are mentally strong. If they are the
members of any criminal gang, they are not less than the criminals are.

By this change of law, such type of boys of 17 and 18 years of age shall
be kept along with the boys of the age 13 years and above in the special home
or observation home of boys. The question arises, how would they influence
upon the boys below 16 years of age? Whether they will be controlled by the
superintendent of special home or observation home? Would they not create a
problem, if the superintendent is a lady, before her? Would they not use their
muscle power against such lady superintendent or the boys below 16 years of
age?

All these questions are to be considered while keeping them along with
the boys below 16 years in the special home and observation home. In *Sheela
Barse v. Union of India* 20, the Supreme Court gave directions to the
Government that such juveniles who have crossed the age of 16 years should
also be kept at a distance from under 16 years age group. In *Surinder Singh and
Another v. State of U.P.* 21 The question relating to the age of the accused was
raised before the Apex Court and it was observed that the juvenile act on which

the appellants have placed reliance was not in existence at the time of occurrence, and Uttar Pradesh Children Act, 1951 which was repealed by Juvenile Act was operative. The apex court therefore held that the plea based on purported age raised by the appellants had no merit and it rejected. In Bikau Pandey and others v. State of Bihar\(^22\) the apex court did not rely on the affidavit of the father as to the minor age of the appellant. It was observed that the school records clearly indicated that he was more than 18 years of age on the date of occurrence. It was also observed that the juvenile act on which the appellants have placed reliance was not in existence at the time of occurrence and at no point of time during trial or before the High Court this question was raised. Therefore the apex court did not permit this question to be raised before it.

**Prohibition of Employment of Children in Factories and Hazardous Employment**

Happy childhood is the right of every child and to provide it is the concern of every welfare state.\(^23\) Child Labour is work performed by children that either endangers their health or safety interferes with or prevents their development.\(^24\) Labour age of the child is different from the age of criminal responsibility.\(^25\) Article 24 of the Constitution of India provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any hazardous employment. Under this provision, the Constitution of India imposed the duty upon the state to protect the child below 14 years of age from the hazardous employment. In *People Union for Democratic Rights v.s Union of India*\(^26\), the Supreme Court held that the construction work is

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\(^{22}\) A I R 2004 S C 997


\(^{24}\) Encyclopedia American Vol. VI (1976), p 460 Quoted in Ibid.


\(^{26}\) A I R 1983 S C 1473

In *M.C. Mehta v. State of Tamilnadu*, the Supreme Court laid down exhaustive guidelines which aimed the state authorities should protect economic social and humanitarian rights of millions of children, working illegally in public and private sectors. The petitioner, the public-spirited lawyer laid before the court that the children were engaged in Sivakasi Crackers Factories. The court directed the setting up of child labour Rehabilitation Welfare Fund and asked the offending employer to pay for each child a compensation of Rs.20,000 to deposit in the fund and suggested various measures to rehabilitate them. The court directed that the liability of employer would not cease by disengaging the child. The court imposed the duty upon the government to ensure that the adult member of the child’s family should get a job in factory of anywhere in lieu of a child. If it would not be possible to provide job, the appropriate Government would deposit Rs.5,000 as its contribution in the Fund for each child employed in factory or mine or in any hazardous employment. The court made it clear that interest income from deposit of Rs.25,000 would become available to the child’s family till he continues his studies up to 14 years of age. The court issued a direction, among

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others, that the inspectors shall have to see that the working hours of the child, in so far as non-hazardous job are concerned, are not more than 4 to 6 hours a day and it receives education at least for two hours each day. The cost of education shall be borne by the employer. In *Bandhua Mukti Morcha v. Union of India and others* “The Supreme Court gave directions to the Government of India to convene a meeting of the concerned Ministers of the respective State Governments and their Principal Secretaries holding concerned Departments, to evolve the principles and policies for progressive elimination of employment of the children below the age of 14 years in all employments governed by the respective enactments mentioned in 1997 AIR SCW 407 to evolve such steps consistent with the scheme laid down in that decision to provide (1) compulsory education to all children either by the industries itself or in co-ordination with it by the State Government to the children employed in the factories, mine or any other industry, organized or unorganized labour with such timings as is convenient to impart compulsory education, facilities for secondary, vocational profession and higher education; (2) apart from education, periodical health check-up: (3) nutrient food etc; (4) entrust the responsibilities for implementation of the principles. Periodical reports of the progress made in that behalf be submitted to the Registry of the Supreme Court.”

Ajit Kumar Tripathi the State Labour Secretary of Orissa said that several attempts had been made to enumerate the exact number of child labour in Orissa by several organisations in the State. However the exact number had not been ascertained. The random sample survey conducted by the State Level Institute had put the number of child labour at 8.31 lakh.

Swami Agnivesh, leader of Bandhua Mukti Morcha and also a chairperson of the United Nations Trust Fund on Contemporary Forms of Slavery said in 1997 that at the time of Independence, India had a population of

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29. AIR 1997 SC 2218  
30. Times of India News Paper April, 18th, 1997
360 million. Today we have a total bonded labour and bonded child labour population of 365 million.\textsuperscript{31}

**Provisions for Education of children**

Is the juvenile above 14 years in special home entitled to education? The constitution of India imposed a duty on the state under Art 45 of the Constitution to provide education to the children less than 14 years of age. Art 45 says “The state shall endeavor to provide within a period of ten years from the commencement of this constitution, for free and compulsory education for all children until they complete the age of 14 years”.

It was the directive for the state to make provisions for the children’s education within 10 years. But the Government could not implement this directive within 10 years. The reason may be economic condition of the country in the beginning of the freedom. The right to education was not a fundamental right under part III of the Constitution.

In *Mohini Jain -v- State of Karnataka*\textsuperscript{32}, the Supreme Court held that the right to education is a fundamental right under Art 21 of the constitution. The right to education directly flows from the right to life.

In *Unnikrishnan -v- State of A.P.*\textsuperscript{33}, the Supreme Court reiterated that the right to education is a fundamental right. But in this case, the court partly overruled Mohini Jain’s case and held that the right to education is available to the children until they complete the age of 14 years and after that the obligation of the state to provide education is subject to the limits of its economic capacity and development.

**86\textsuperscript{th} Amendment of the Constitution**

The constitution (86\textsuperscript{th} Amendment) Act 2002 added a new Article 21 A after the Article 21 in the Constitution of India. It provides, “The State shall

\textsuperscript{31} Times of India News Paper August, 16th, 1997.
\textsuperscript{32} (1992) 3 S.C.C. 666.
\textsuperscript{33} (1993) 1 S.C.C. 645.
provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may, by law, determine".

Education of Juvenile in Children Home

See 34 of Juvenile Justice Act 2000 provides that the state Government may establish and maintain children homes in every district or group of districts for the reception of children in need of care and protection pending any inquiry and subsequently for their care, treatment education, training development and rehabilitation.

This provision again imposes the obligation upon the state Government to provide education to the children above 14 years to 18 years being a child and even thereafter if it is in need of care etc. Information Technology takes the country by storm, child of teenage of even three years or more are being exposed to computers.\textsuperscript{34} Is early exposure good for the child? The exposure, as long as it is not a burden, is good. The child in his formative stage learns all about the finger grip and also enjoys the visual,\textsuperscript{35} says Dr. Sangeeta Bhatia. Dr. Sanjay Chugh says that if the computer is introduced at the age of seven or eight the child will understand things better.\textsuperscript{36}

Conclusion

We find from the legislative study of the juvenile provisions that the Parliament used the provisions of Article 15(3) of the constitution of India and passed the Central Acts i.e. Juvenile Justice Act 1986 and modified its provisions by making amendments in it in the Juvenile Justice, (care and protection of children) Act 2000 for providing care, protection and treatment to the children and for adjudication and disposition of matters in the best interest of the children. The Parliament also used the provision of Article 24 of the constitution and made various provisions to protect the children from

\textsuperscript{35} Ibid.
\textsuperscript{36} Ibid.
child labour. The Parliament introduced Article 21A in the constitution by 86 Amendment and free education to all children of the age of 6 to 14 years has been made a fundamental right.

The Government of India has also made the use of the provisions of article 39(f) and formulated the national policy in the interest of children by adopting the resolution dated 22nd August 1974 and by making provision for constituting the National Children Board.

However, the national policy as framed under the provisions does not appear to have been implemented with more concern, or no inquiry appears to have been made as to the effect of the implementation of the national policy.

Judicial approach of apex-court as to the juvenile justice is highly commendable. In various matters, the apex-court formulated principles in the interest of children and issued directives in the juvenile interest, whether it is relating to the child education, child labour or child welfare.