CHAPTER 2
JUVENILE IN CONFLICT WITH LAW

“The children of the future do not belong to their parents; they are the concern of everyone of us; they are literally the hope of the world”.

Meininger

2.1 Introduction

Whenever we hear the term “juvenile in conflict with law” the first thing strike our mind is children and other thing is how and why they become criminal? In literal meaning when a child commits an offence he is termed as “Juvenile in conflict with law”. Multiple factors are responsible for that like migration, social and economic deprivation, illiteracy, homelessness, poverty etc. With the increase of industrialization and urbanization, the crime rate in India has increased tremendously though as compared to other states in the world specially developed countries of Europe and America the number is much less.

The rate of juvenile crimes in urban areas is much higher than in rural areas. The juveniles apprehended under various IPC crimes in the states of Madhya Pradesh reported the highest number of juveniles arrested (6,407) under IPC crimes followed by Maharashtra (6,246), Gujarat (2,276), Chhattisgarh (1,969), Rajasthan (1,908) and Andhra Pradesh (1,801). Madhya Pradesh reported the highest number of juveniles arrested for Attempt to Commit Murder (157), Rape (235), Hurt (1,352), Dowry Deaths (21), Molestation (217) and Sexual Harassment (53). The highest numbers of juveniles under SLL
were apprehended in Madhya Pradesh (943) followed by Tamil Nadu (881), Gujarat (602), Maharashtra (590) and Chhattisgarh (451). Madhya Pradesh alone has accounted for 19.8% of total juveniles apprehended under SLL crimes. The enormity of the problem can be gauged by the fact that crime by the juvenile is increasing rapidly. For a closer look see the Table 4 which consists of the number of crimes, incidence of cognizable crimes, number of boys and girls apprehended in the last 10 years.

**Table 4**

**Incidence And Rate of Juvenile Delinquency Under Indian Penal Code (1999-2009)**

<table>
<thead>
<tr>
<th>Year</th>
<th>Incidence of Juvenile Crimes</th>
<th>Incidence of total cognizable crimes</th>
<th>Percentage of Juvenile crimes to total crimes</th>
<th>Rate of crime by juvenile</th>
<th>Boys apprehended</th>
<th>Girls apprehended</th>
<th>Total juvenile apprehended</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>8,888</td>
<td>17,64,629</td>
<td>0.5</td>
<td>0.9</td>
<td>13,088</td>
<td>5,372</td>
<td>18,460</td>
</tr>
<tr>
<td>2000</td>
<td>9,267</td>
<td>17,71,084</td>
<td>0.5</td>
<td>0.9</td>
<td>13,854</td>
<td>4,969</td>
<td>18,923</td>
</tr>
<tr>
<td>2001</td>
<td>16,509</td>
<td>17,69,308</td>
<td>0.9</td>
<td>1.6</td>
<td>31,295</td>
<td>2,333</td>
<td>33,628</td>
</tr>
<tr>
<td>2002</td>
<td>18,560</td>
<td>17,80,330</td>
<td>1.0</td>
<td>1.8</td>
<td>33,551</td>
<td>2,228</td>
<td>35,779</td>
</tr>
<tr>
<td>2003</td>
<td>17,819</td>
<td>17,16,120</td>
<td>1.0</td>
<td>1.7</td>
<td>30,985</td>
<td>2,335</td>
<td>33,320</td>
</tr>
<tr>
<td>2004</td>
<td>19,229</td>
<td>18,32,015</td>
<td>1.0</td>
<td>1.8</td>
<td>28,878</td>
<td>2,065</td>
<td>30,943</td>
</tr>
<tr>
<td>2005</td>
<td>18,939</td>
<td>18,22,602</td>
<td>1.0</td>
<td>1.7</td>
<td>30,606</td>
<td>2,075</td>
<td>32,681</td>
</tr>
<tr>
<td>2006</td>
<td>21,088</td>
<td>18,78,293</td>
<td>1.1</td>
<td>1.9</td>
<td>30,375</td>
<td>1,770</td>
<td>32,145</td>
</tr>
<tr>
<td>2007</td>
<td>22,865</td>
<td>19,89,673</td>
<td>1.1</td>
<td>2.6</td>
<td>32,675</td>
<td>1,856</td>
<td>34,527</td>
</tr>
<tr>
<td>2008</td>
<td>24,535</td>
<td>20,93,379</td>
<td>1.2</td>
<td>2.1</td>
<td>32,795</td>
<td>1,712</td>
<td>34,507</td>
</tr>
<tr>
<td>2009</td>
<td>23,926</td>
<td>21,21345</td>
<td>1.1</td>
<td>2.0</td>
<td>31,550</td>
<td>2,092</td>
<td>33,642</td>
</tr>
</tbody>
</table>

Source: Crime in India 2009
About four million children are in Government run homes established under the provisions of the JJCPCA 2000. India has witnessed an increase both in crimes committed by children and those committed against them. There has been a 7.9 per cent increase in crimes committed by children between 2003 and 2004, with more children being apprehended for arson, theft and cheating. The crime statistics for 1999-2009 shown in Table 4 shows that the number of children in conflict with law has increased from 8,888 in 1999 to 24,535 in 2008 and came down in 2009 i.e 23,926. While the cognizable offences has also increased from 17,64,629 in 1999 to 19,89,673 in 2007 which is an increase by 1.7 per cent in crimes by juvenile. The comparative data of offences by boys and girls shows that the rate of juvenile crimes is fairly high in case of boys and more and more children are coming in conflict with law. On other hand the crime rate by girls has decreased from 5,372 in 1999 to 1,856 in 2007. But it increased drastically in year 2008 and 2009 from 1,712 to 2,092 respectively.

Under the JJCPCA 2000 all persons under 18 years of the age on the date of commission of the offence are to be dealt with under this Act, irrespective of the crime committed. To give protection to the children is the essence of the juvenile legislation. It is imperative to understand the need to treat juvenile in conflict with law distinctly, as many are of the opinion that treatment of an offender should be commensurate to the gravity of the crime committed and not the age of offender. It is universally accepted that persons below particular age are immature and unable to cope with situations, thus they reacts

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impulsively and without weighing the consequences of their acts. What is needed is a change of outlook so that a juvenile offender is not considered hardened criminal but a child deserving protection. The JJCPCA 2000 under Section 2(l) defines “Juvenile in the conflict with law” as a juvenile who is alleged to have committed an offence and has not completed eighteen years of age as on the date of commission of such offence.

Even after more than eighty years of experience in administrating the juvenile justice system in India the issue relating to the age, relevant date of applicability of Act, procedure to be followed in determination of age and the relevant documents are still being raised before the Supreme Court even under the JJCPCA 2000. The JJ 2006 and the Model Rules, 2007 have however addressed those issues and removed anomalies found in the earlier provision. Before we move further is important to have a detail look on this issue raised in relation to age and this give a glimpse of the complexity of this simple proposition.

The assessment of age for legal purposes is of considerable importance for administration of justice. The JJCPCA 2000 is applicable only to the juvenile, so the question regarding a claim of juvenility has been raised various times before the Apex court. For claim of juvenility the court of law is dependent on the “determination of the age”. It is found that the adult offenders to escape the criminal responsibility misuse this provision of JJCPCA 2000. Many advocates dealing with criminal cases have been seen resorting to JJCPCA 2000 in order to find a shield for their clients from legal system, which

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169 Medical Jurisprudence and Toxicology, (2005) at 399.
is applied on adults. Obviously documents are fabricated and records are tampered, in many cases. In 2006 amendment Section 7A was inserted which deals with the procedure for the determination of the age. Still the controversy regarding the relevant date and determination of age and the compulsive proof for the determination of age is not over and is trapped in various ambiguities. Lets go through the provision related to this question and the judgments passed by the Hon’ble Apex court.

Section 7 along-with 7A of the JJCPA 2000 lays down the procedure for the determination of age, which is further elaborated in the Model Rules, 2007. The age verification and establishment of juvenility is fundamental to the implementation of the Act. The law clearly says when in doubt, the child must be presented before the JJB and the age verification can take it course. The maximum time limit for determination of the age is 30 days. If any Magistrate not empowered under the JJCPA is of the opinion that a person brought before him is a juvenile that he shall without any delay record such opinion and forward the juvenile (if found to be so) to the competent authority.

Section 7A of the Juvenile Justice Act, 2006 lays down as follows:

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Before amendment Section 7 of the JJCPA reads as under:

Procedure to be followed by a Magistrate not empowered under the Act. - (1) When any Magistrate not empowered to exercise the powers of a Board under this Act is of the opinion that a person brought before him under any of the provisions of this Act (other than for the purpose of giving evidence), is a juvenile or the child, he shall without any delay record such opinion and forward the juvenile or the child, and the record of the proceeding to the competent authority having jurisdiction over the proceeding.

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Section 7A, procedure to be followed when claim of juvenility is raised before any court.

1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-Section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect.

In simple terms this means if a juvenile in conflict with law is brought before any other court or commission besides the JJB. The judge may record the evidence proving the age of juvenile on the date of commission of offence and forward to the JJB. The Procedure to be
followed for determination of age in case of plea of juvenility is raised is more elaborately dealt with in the Model Rules 2007. Rule 12 (3) of the said Rules reads as under:

**Procedure to be followed in determination of Age**

3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining-

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the date of birth certificate given by a corporation or a Municipal authority or a panchayat;

(b) and only in the absence of either (i) , (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the court or the board or, as the case may be, the committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile
by considering his/her on lower side within the margin of one year.

In simple words the Board/ Committee/ Court shall determine the age within 30 days of application *prima facie* on the basis of physical appearance or documents, if they are available and on basis of that send him to the observation home or in jail. It further states that in every case of child or juvenile in conflict with law the determination of the age can be conducted by the court/board/ committee by seeking evidence. The Rule 12 (3) specifies the documents that can be obtained in course of determination of the age.

1. Matriculation or equivalent certificate
2. Birth certificate
3. Incase, in absence of either, upon seeking medical opinion.

The Rule 12 is significant because, often, parents of children, who come from rural backgrounds, are not aware of the actual date of birth of a child, but relates the same to some event, which may have taken place simultaneously. In such a situation, the Board and the Courts will have to take recourse to the procedure laid down in Rule 12.\(^\text{172}\) Though attempts are made to keep the law precise it has still been trapped in various ambiguities. The Supreme Court has also been very volatile and has been changing its mindset with time on these aspects. They are discussed as under:

**Revelent Date For Applicability of Act**

What is the relevant date to determine for finding whether he is juvenile or not? Does the Act apply to children who ceased to be so

\(^{172}\) See *infra Han Ram v State of Rajasthan*, at 220.
by the time they were arrested or were brought up for initiating inquiry? What is relevant is the date of occurrence, or of arrest or of trial? The amendment in 2006 definition has put to rest the debate as to the relevant date on which juvenility is to be determined.\(^{173}\) However, the issue of the relevant time at which the child should be below the age of the 18 has been raised in many decisions and has resulted in controversy. The question has been agitated before the High Court and the Supreme Court in several cases. Some cases have been discussed herein below in detail, as they present different reasons for choosing either the date of commission of the offence or that of trial or that of first appearance as being conclusive of the applicability of Act and represent varying judicial responses to the same issue on different occasions.\(^{174}\)

This question came before the Calcutta High Court in *Madan Prodhan v State of West Bengal*,\(^ {175}\) in this case division bench considered the age of the accused at the time of commission of the offence as relevant under the West Bengal Children Act (WBCA),1959. In another case the division bench of the same High Court opined that a number of the Sections in the WBCA clearly required the person to be a child when brought before the court for trial.\(^ {176}\) Unable to agree with the earlier division bench decision, it referred the matter to the Chief Justice for full bench consideration.

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\(^{174}\) Supra note 39 at 179.

\(^{175}\) 1976 (1) Cal 224.

\(^{176}\) Gobinda Chandra v State of West Bengal, 1977 Cri LJ 1501 (Cal) (DB).

As the plea of child status had not been taken before or at the time of committal of the case to the court of session, no case had been initiated under the WBCA. It held that the Section 3 of the Act, providing for continuation of proceedings even after the child ceased to be so, had no application in the absence of any proceedings under the Act. Therefore, it said that determination of relevant date for applying the WBCA, in the case, would be of no consequence.
The full bench, however, refused to give answer that it thought would be of only academic use. This question again came up for decision in *Dilip Saha v State of West Bengal.* The full bench, in this case, gave elaborate reasons for holding that the age at the date of commission of the offence was decisive of the applicability, taking into account the protective nature of the Act. First, it pointed out that attainment of a particular age was no bar to the trial of a child delinquent under the Act. Secondly, the Act had conferred on the child rights not enjoyed by adults. Thirdly, the separate Section providing for separate trial of child delinquent from adult offender, did not say ‘that if a person was a child at the time of commission of the offence but became an adult at the time of trial, he would be deprived of the benefits conferred by the Act’. Fourthly, the court pointed out that delay in the trial of an accused may be caused by the investigating officer. In such case, denial of the benefits of the Act would defeat its whole object and purpose. It will also be against the provisions of Article 20 (1) of the Constitution.

The controversy continued and the question again came for consideration before the Supreme Court in *Umesh Chandra v State of*  

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177 Supra note 39 at 180.
178 1979 Cri LJ 88 (FB).
179 Id. at 91.
180 Id. at 91-92.
181 Supra note 62, at 91. If we interpret Section 28 to mean that it prohibits a joint trial of a child and an adult only when the child as a ‘child’ at the time of trial, that interpretation would go against the provisions of Article 20 (1) of the Constitution which prescribes that no person shall be convict of any offence except for violation of a law in force at the time of the commission of the act charged as an offence not be subjected to a penalty greater that that which might have been inflicted under the law in force at the time of the commission of the offence. If therefore, at time of the commission of the offence a child cannot be sentenced to death or ordinarily imprisoned he cannot be subjected to a greater penalty at the time of his trial even if he becomes an adult at the time of trial.

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Rajasthan.  A three-Judge bench of this Court after considering the preamble, aims and objects and Sections 3 and 26 of the Rajasthan Act, held that the Act being a piece of social legislation is meant for the protection of infants who commit criminal offences and, therefore, such provisions should be liberally and meaningfully construed so as to advance the object of the Act. The court held the date of commission of offence as the relevant date for applying the Children Act. It observed:

As regards the general applicability of the Act, we are clearly of the view that the relevant date for the applicability of the Act is the date on which the offence takes place. Children Act was enacted to protect young children from the consequences of their criminal acts on the footing that their mind at that age could not be said to be mature for imputing mens rea as in the case of an adult. This being the intendment of the Act, a clear finding has to be recorded that the relevant date for applicability of the Act is the date on which the offence takes place. It is quite possible that by the time the case comes up for trial, growing in age being an involuntary factor, the child may have ceased to be a child. Therefore, Sections 3 and 26 became necessary. Both the Sections clearly point in the direction of the relevant date for the applicability of the Act as the date of occurrence. We are clearly of the view that the

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relevant date for applicability of the Act so far as age of the accused, who claims to be a child, is concerned, is the date of the occurrence and not the date of the trial.

Further, the issue did not end with the above decision of the Supreme Court. The issue continued to be raised under the JJCP Act 2000. In the year 2000, the Supreme Court was again faced with the similar question in the case *Arnit Das v State of Bihar.* In this case, two questions came before the Supreme Court, one, whether the finding of lower courts was sustainable that the petitioner was not a juvenile on the date of commission of offence? Secondly, by reference to which date the age of the petitioner was required to be determined for finding whether he is a juvenile or not? The ACJM had held inquiry to determine the age of the accused and arrived at a finding that he was above 16 years of age on the date of occurrence. The Sessions Court in appeal and High Court in revision maintained this finding. The Supreme Court found no reason to interfere with that finding arrived at by lower courts after considering material on record produced by the prosecution and the accused.

In view of this decision, the other question considered by the Supreme Court should have become infructuous. The question of deciding the relevant date for applying the JJA 1986 would have survived for determination if the accused was a juvenile on the date of commission of offence but ceased to be so at a later date. The two Bench of the Supreme Court held the "So far as the present context is concerned we are clear in our mind that the crucial date for

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determining the question whether a person is a juvenile is the date when he is brought before the competent authority”.  

The division bench reasoned that the usage of the word ‘is’ at two places read in conjunction with ‘a person brought before it’ in Section 32 of the JJA 1986 clearly indicates for determination of age when the accused was present before the court. Disagreeing with Dilip Saha, it said that the right under Article 20 of the Constitution would not be violated if the applicability of the Act were determined by reference to the date of the commencement of the inquiry or trial. The decision was *per incurium* and was widely criticised. It was criticised as it diverted from well-settled principle of law thereby depriving young persons of the beneficial provisions of the juvenile legislation.

Ultimately in five judge Bench settled this issue in *Pratap Singh v State of Jharkhand and others*, reverting back to the findings that had been incorrectly overturned in *Arnit Das* judgment. The Apex Court in *Pratap Singh* was faced with dual questions as to

(a) Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as juvenile offender or the date when he is produced before the court or competent authority?

(b) Whether the Act of 2000 will be applicable in the case a proceedings initiated under 1986 Act and pending when the Act of 2000 was enforced from 1/4/2001.

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While deciding the question(s) the aim of JJA 1986 was referred and we may at this stage notice the preamble of the 1986 Act.\(^\text{187}\)

An Act to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to, and disposition of, delinquent juveniles.

Thus, the whole object of the Act is to provide for the care, protection, treatment development and rehabilitation of neglected delinquent juveniles. It is a beneficial legislation aimed at to make available the benefit of the Act to the neglected or delinquent juveniles. It is settled law that the interpretation of the Statute of beneficial legislation must be to advance the cause of legislation to the benefit for whom it is made and not to frustrate the intendment of the legislation.\(^\text{188}\)

It was submitted that word \textit{is} is used in two places of the Section and contended that the word \textit{is} suggests that for determination of age of juvenile the date of production would be reckoning date as the inquiry with regard to his age begins from the date he is brought before the Court and not otherwise. The court vehemently rejected this submission and stated that the definition of delinquent juvenile means a juvenile who has been found to have committed an offence. The word \textit{is} employed in Section 32 is referable to a juvenile who is said to have committed an offence on the date of the occurrence. The provisions of Section 18 provides for bail and custody also show that the arrest and release on bail and custody of juvenile, the reckoning

\(^{187}\) Ibid, para 9.  
\(^{188}\) Ibid, para 10.
date of a juvenile is the date of an offence and not the date of production.

All the five judges unanimously held, “the reckoning date of the juvenile is the date of the offence and not the date when he is produced before the authority or in the court. The decision in the Umesh Chandra case\footnote{Umesh Chandra v State of Rajasthan, 1982 SCC (Cri) 396; 1982 Cri LJ 994. A three bench of judges of this court after considering the preamble, aim and objects and Sections 3 & 26 of the Rajasthan Children Act, 1970, held that he Act being a piece of social legislation is meant for the protection of infants who commit criminal offences and therefore such provisions should be liberally constructed to advance object of the Act.} was held to be the correct law, and it was established that the decision rendered by the two Bench of this court in Amit Das couldn’t be said to have laid down the good law.\footnote{Amit Das v State of Bihar, (2000) SCC 488; 2000 SCC (Cri) 962 at para 8, 19 & 20.}

To answer the aforesaid question, the court said, it would be necessary to make a quick survey of the definitions and Sections of JJCPA 2000 relevant for the purpose of disposing of the case at hand. As stated hereinabove the whole object of the Act is to provide for the care, protection, treatment development and rehabilitation of juveniles. The Act being benevolent legislations, an interpretation must be given which would advance the cause of the legislation i.e. to give benefit to the juveniles. Sub-Section (2) postulates that anything done or any action taken under the JJA 1986 shalldeem to have been done or taken under the corresponding provisions of the JJCPA 2000.\footnote{Supra note 186 (para 23,25) at 2739.} Thus, although the JJA 1986 was repealed by the JJCPA 2000, anything done or any action taken under the 1986 Act is saved by Sub-Section (2), as if the action has been taken under the provisions of the JJCPA 2000. Even where an inquiry has been
initiated and the juvenile ceases to be a juvenile i.e. crosses the age of 18 years, the inquiry must be continued and orders made in respect of such personas if such person had continued to be a juvenile. These provisions show that even in cases where a mere inquiry has commenced or even where a juvenile has been sentenced the provisions of the JJCPCA 2000 would apply. Therefore, Section 20 is to be appreciated in the context of the aforesaid provisions.

Section 20 of the Act as quoted above deals with the special provision in respect of pending cases and begins with non-obstante clause.

The sentence “Notwithstanding anything contained in this Act all proceedings in respect of a juvenile pending in any Court in any area on date of which this Act came into force” has great significance. The proceedings in respect of a juvenile pending in any court referred to in Section 20 of the Act is relatable to proceedings initiated before the JJCPCA 2000 came into force and which are pending when the JJCPCA 2000 came into force. The term “any court” would include even ordinary criminal courts. If the person was a “juvenile” under the 1986 Act the proceedings would not be pending in criminal courts. They would be pending in criminal courts only if the boy had crossed 16 years or girl had crossed 18 years.

The court make it clear that the JJCPCA 2000 would be applicable in a pending proceeding in any court initiated under the

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192 Supra note 186 (para 29) at 2740.
193 Id. para 31 at 2740.
JJA1986 and is pending when the JJCPA 2000 came into force and the person had not completed 18 years of the age as on 1/4/2001.\textsuperscript{194}

The Section 20 and 64 of JJCPA 2000 were amended in 2006 and a proviso and an explanation were added to each.\textsuperscript{195} Explanation to the Section 20 make it clear that the question of juvenility is to be determined by reference to the age of the person on the date of offence. The explanation to the these Section make it very clear that if the person was below the age of 18 years on the date of the commission of the offence, the final orders in the pending case of such persons are to be made under JJCPA 2000, even if the juvenile ceases to be so on or before the date of commencement of the Act and the provisions of this Act shall apply as if the said provisions has been in force, for all purpose and at all material times when the alleged offence was committed.

\textsuperscript{194} Id. para 37 at 2741.

\textsuperscript{195} Proviso and the Explanation to Section 20:

\textit{Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.}

\textit{Explanation.}— In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (i) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.

Proviso and the Explanation to Section 64 read as follows:

\textit{Provided that the State Government, or as the case may be the Board, may, for any adequate and special reason to be recorded in writing, review the case of a juvenile in conflict with law undergoing a sentence of imprisonment, who has ceased to be so on or before the commencement of this Act, and pass appropriate order in the interest of such juvenile.}

\textit{Explanation.}—In all cases where a juvenile in conflict with law is undergoing a sentence of imprisonment at any stage on the date of commencement of this Act, his case including the issue of juvenility, shall be deemed to be decided in terms of clause (i) of Section 2 and other provisions contained in this Act and the rules made thereunder, irrespective of the fact that he ceases to be a juvenile on or before such date and accordingly he shall be sent to the special home or a fit institution, as the case may be, for the remainder of the period of the sentence but such sentence shall not in any case exceed the maximum period provided in Section 15 of this Act\textsuperscript{1}.
This amendment made it clear that it is the age at the time of commission of offence that determines applicability of Act and not the age at the time of commencement of JJCPA 2000 i.e. 1/4/2001 as held in Pratap Singh by Supreme Court.

However, Pratap Singh, ruling was followed by the Supreme Court in Jameel v State of Maharashtra,\(^{196}\) ignoring the amendment introduced in Section 20 and 64 of JJCPA 2000. Jameel was arrested on 16-12-89 and convicted on 16-1-1991 by the sessions judge u/s 363, 376 read with Section 511 and Section 377 IPC. He was sentenced to suffer rigorous imprisonment for 3 years, 5 years and 7 years under Section 363, 376/511 and 377 IPC respectively and to pay a fine of Rs 2000 u/s 363 and Rs 3000 each u/s 376/511 and 377 IPC respectively. On appeal, the Bombay high Court upheld his conviction and sentenced on 27-1-2005.

In his appeal to Supreme Court, Jameel sought transfer of the case to the JJB for final orders as provided by Section 20 of the JJCPA 2000 claiming to be below 18 years on the date of commission of the offence. The Supreme Court dismissed Jameel appeal on the ground that he had become more than 18 years of age on 1-4-2001 the relevant date for applying Section 20 as per its decision in Pratap Singh. It did not record a finding whether Jameel was below the age of 18 years on the date of commission of the offence or not. Nor was there any reference to the amendment 2006.

Similarly in Jyoti Prakash v State of Bihar,\(^{197}\) that was decided two years later, on 4-3-2008, even after the notification of the Model Rules, 2007 under the JJCPA amendment in 2006, shows the non-

\(^{197}\) (2008) 15 SCC 223.
application of the amended law and the rules thereunder. Jyoti Prakash was charged with murder and his age was determined to be around 17 years on the date of offence i.e. 12-5-2000. After JJCPCA was passed and enforced Jyoti Prakash sought transfer of the case to the JJB as per Section 20. Two boards were constituted on 24-4-2001 and 29-6-2001 both opined that Jyoti Prakash was between 18-19 years of age. The High Court held that "the proper way to assess the age of the petitioner will be that his age should be fixed in between 18-19 years on the date of examination, according to which the age of the petitioner comes to 18 years, 5 months and 8 days on 1-4-2001 when he first appeared before the Medical Board on 29-6-2001. Supreme court upheld the decision of High Court. By the time Jyoti Prakash came to be finally disposed of by the Supreme Court on 4-3-2008, not only the amendments but the Model Rules 2007 were also in force. However, the Supreme Court reiterated Pratap Singh ruling.

*Pratap Singh* decision has no relevance for cases decide after 22-8-2006 the date on which 2006 Amendment received assent of the President on 22-8-2006 as published in the gazette of India on 23-8-2006.\(^\text{198}\) The Explanation to Section 20 categorically states that in all the pending cases including at the stage of trial, revision and appeal, the determination of the juvenility of such juvenile shall be in terms of Section 2 (I), “even if the juvenile ceases to be so on or before the date of commencement of the Act”. The consequence of this amendment is that all cases, including of those persons who had ceased to be below the age of 18 years on 1-4-2001 got included within scope of Section 20 (and Section 64) if they were above 16

\(^{198}\) *Gazette of India, Extraordinary, Part II, Section I, dated 23-8-2006.*
years of age but below the age of 18 years on the date of the offence irrespective of their age on the date of enforcement of the JJCPCA 2000.

Some of the other cases in which no reference has been made to the JJ 2006, Ranjit Singh v State of Haryana,199 and Balu v State of Tamil Nadu.200 The Supreme Court finally took on board all these cases in Hari Ram v State of Rajasthan,201 court observed that the first proposition that the age on the date of commission of offence determined the applicability of the Act got crystallised by the amended Section 2 (I). The second proposition that the Act applied if the juvenile was below the age of 18 years on the date of enforcement of the Act, however was neutralised by the amendment in 2006. It is clear from the court observation whereunder the provisions of the Act were also made applicable to juveniles who had completed eighteen years of age on the date of commission of the offence. The law as now crystallised on a conjoint reading of Section 2 (k), 2 (I), 7-A, 20 and 49 read with Rules 12 and 98, places beyond all doubts that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1-4-2001, would be treated as juveniles, even if the claim of juveniles was raised after they had attained the age of 18 years on or before the commencement of the Act and were undergoing sentence upon being convicted.

Kabir, J., however has done sterling job in Hari Ram, discussing all the amendments to JJCPCA 2000, their impact and judgements given hitherto. Hari Ram is a landmark that now is relied on widely by

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200 (2009) 2 SCC (Cri) 829.
the advocates and judges dealing with children cases under the JJCPCA 2000. Later on the Hari Ram was followed in Dharambir v State (NCT of Delhi) and Another, and also in Mohan Mali & Another v State of M.P.

In Bhim @ Uttam Ghosh v State of West Bengal on the question of determination of the age of the appellant the court decided on the basis of conjoint reading of the Sections 2 (k), 2 (l), 7-A, 20 and 49 of the JJCPCA 2000 read with Rules 12 and 98 of Model Rules 2007 that the appellant was 15 years old at the time of commission of the offence. The appellant held to be a juvenile, within the meaning of Section 2 (i) of the amended act.

In Daya Nand v State of Haryana from the judgment of the HC it appears that the plea of the appellant’s juvenility was raised and the Principal Magistrate, JJB, Narnaul, by its order dated 20 March 1998 had found the appellant was a juvenile. Against the order state went in appeal the session judge reversed the findings of the Principal Magistrate, observing that the date of birth of the appellant as recorded in Deaths and Births register maintained by the Registrar was August 14, 1981 and reckoned on that basis, he was not a juvenile on February 2, 1998, the date of occurrence. The plea of juvenility was again raised in appeal and High Court rejected it referring to the findings of the Sessions Judge. This court in Hari Ram v State of Rajasthan, held that the Constitution Bench in Pratap Singh case was no longer relevant since it rendered under the unamended Act considered the effect of the amendments in the JJCPCA 2000. In

203 AIR 2010 SC 1790.
204 2010 Ind law SC 994.
205 2011 Ind law SC 19.
the instant case, there is no controversy that the appellant was about 16 years of age on the date of commission of the alleged offence and had not completed 18 years of age. In view of the Sections 2 (k), 2 (l) and 7A read with Section 20 of the Act, the provisions thereof would apply to the appellant’s case and on the date of the alleged incident it has to be held that he was a juvenile.

In *Lakhan Lal v State of Bihar*, the question that arises for the consideration is whether or not the appellants who were admittedly no ‘juvenile’ within the meaning of the JJA 1986 when the offence were committed but had not completed 18 years of age on that date are entitled for the benefit and protection under the provisions of the 2000 Act? A constitution Bench of this court in *Pratap Singh* held that the relevant date for determining the age of person who claims to be juvenile/child would be the date on which the offence has been committed and not the date when he is produced before the authority or in the court. It was further stated that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1st April, 2001 would be treated as juvenile even if the claim of juvenility is raised after they have attained the age of 18 years on or before the date of commencement of JJCPCA 2000 and were undergoing sentences being convicted. The next question for consideration is as to what order and sentence is to be passed against the appellants for the offences committed by them under Section 302 read with Section 34 of IPC. The appellants have crossed the age of 40 years as at present and also they have undergone an actual period of sentence of more than three years the maximum period provided u/s 15 of JJCPCA 2000. While sustaining the

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206 AIR (SC) 842; 2011 (1) SCALE 504.
conviction of appellants for offences punishable u/s 302 read with 34 of the IPC, the sentences awarded to them is set aside.

Reliability on The Documents Obtained from School Records

This question relating to the authenticity of the document obtained from the school record has been raised before the Supreme Court several times. It is discussed herein below:

Rule 12 (3)(a)(i)207 and (ii)208 of the Model Rules 2007 lays down that the determination of age shall be done by obtaining the matriculation or equivalent certificates or the date of birth certificate from the school (other than play school) of the juvenile in conflict with law. In case of absence of the any either (i), (ii), or (iii)209 of clause (a) of Rule 12 of Model Rules 2007 the Medical opinion from duly constituted Medical board will be taken given under clause (b). These will be considered as a conclusive proof of the age.

The Supreme Court has passed lot of judgments and it seems that certain times Supreme Court is in consonance with this and certain times held that the entries made in such a register cannot be taken as a proof of age of the accused for any purpose.210 At one instance the date of birth of a girl mentioned in the school certificate was not accepted.211 And at another it accepted the date of birth of a girl as mentioned in the school certificate as the date of birth.

207 Clause (3)(a)(i) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining- (a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof
208 Clause (3)(a)(ii) the date of birth certificate from the school (other than play school) first attended; and in the absence whereof
209 (iii) The birth certificate given by a corporation or a municipal authority or a panchayat.
mentioned therein was supported by an affidavit filed by the father of the girl.\textsuperscript{212} It seems that court is confused.

In \textit{Umesh Chandra case}\textsuperscript{215} the Supreme Court observed, while interpreting Section 35 of the Indian Evidence Act, that there is no legal requirement that a public or other official book should be kept only by a public officer and all that is required is that it should be regularly kept in discharge of official duties. It is clear that to ascertain the age of accused persons only School Leaving Certificate cannot be relied upon alone and the court has to see all the other facts and circumstances along with the other material placed on record.\textsuperscript{214}

It is clear the Supreme Court is in dilemma, at different times passed different judgment on this topic. Lets have a look at some of the decisions made by the Apex Court: In \textit{Umesh Chandra case}\textsuperscript{215} the age was under question and to prove the same documentary and oral evidence was produced. The Supreme Court held that in such cases oral evidence can hardly be useful to determine the correct age and the question would largely depend upon authenticity of the documents. The Supreme Court observed:

That the School where the documents were maintained was an English public school and the record maintained by it was undoubtedly unimpeachable and authentic and could not be suspected or presumed to be tampered with. At the time when the age of the appellant was first mentioned in the admission form, there was absolutely no dispute about the date of birth or for that matter the

\textsuperscript{213} \textit{Supra} note 189.
\textsuperscript{214} \textit{Vimal Chada v Vikas Choudhary and another}, 2008 (56) BLJR 2033.
exact date on which he was born and there could not have been any motive on the part of the parents of the accused to give a false date of birth because it was his first admission to a school at a very early age. Further, the school to which the appellant was admitted being a Public School enjoyed good reputation of authenticity.

It was held that if a public school maintains a register in ordinary course of business, the same would be admissible in evidence and should not be suspected to be tampering with.

In Updesh Kumar and others v Prithvi Singh and others,\textsuperscript{216} in this case Indian Oil Corporation invited applications for allotment of a retail outlet with a condition, the applicant not being less than 21 years and not more than 50 year on date of application. Prithvi Singh, Mamta Rani and Updesh Kumar were found to be first, second and third eligible candidate respectively. The authenticity of the Birth Certificate was challenged mainly because the Medical Officer, Smt. Bhatia denied her signature thereon. But upon consulting a handwriting expert it was held by the Trial Judge that the certificate bore the signature of the Medical officer Smt. Bhatia. The appellate court, however, did not consider all these aspects and regarded the fact that Smt. Bhatia had denied the signature and therefore, Prithvi Singh must have forged the birth certificate. However it was held by the Supreme Court that she must have deposed so because the original records kept in the office of the Chief Medical Officer were found tampered with. The pages had been found torn and replaced. It was noticed by the trial Judge that the entries in the register for the year 1965-66 were in Urdu script while those on the relevant pages

\textsuperscript{216} MANU/SC/0040/2001.
were in Hindi. The corresponding leaf of the sheet containing entries 74 to 85 in the register was found removed and another paper was pasted. As the original register was found tampered with, Smt. Bhatia had no other go but to deny her signature on certificate issued from her office. Considering all these factors. It was held that Prithvi Singh had attained the age of 21 years as on the date of his application, the judgment of the appellate and High Court was set aside. The appeal filed by Prithvi Singh was allowed.

In *Ravinder Singh Gorkhi v State of U.P.*,\(^{217}\) the question before the court was whether the school-leaving certificate purported to have been issued by the authorities of a primary school would attract the provision of Section 35 of the Indian Evidence Act, 1872.

It was held that, Section 35, required the following conditions to be fulfilled before a document is held to be admissible thereunder:

(i) it should be in the nature of the entry in any public or official register;

(ii) it must state a fact in issue or relevant fact;

(iii) entry must be made either by a public servant in the discharge of his official duty, or by any person in performance of a duty specially enjoined by the law of the country; and

(iv) all persons concerned indisputably must have an access thereto.

Nothing on record to show that the said date of birth was recorded in register maintained by the school in terms of the

\(^{217}\) AIR 2006 SC 2157.
requirements of law as contained in Section 35 of the Indian Evidence Act and hence not relied upon.

Rule 12 3 (b) of Model Rules 2007 lays down that in absence of documentary evidence to prove the age of the juvenile in conflict with law, a medical committee would be formed to determine the age and such finding shall be considered as conclusive proof.

However there are many shortcomings of this method. A professional witness is prone to side with a party that engages his/her services. Thus, a doctor is not always truthful.²¹⁸ It is no more than an opinion. More so, even the Medico-Legal opinion is that owing to the variation in climatic, dietic, hereditary and other factors, affecting the people of different States in the country, it would be imprudent to formulate a uniform standard for the determination of the age. True, that a Medical Board’s opinion based on the radiological examination is a useful guiding factor for determining the age of a person but is not incontrovertible.²¹⁹ Of course the doctors’ estimates of age is not a study substitute for proof, as it is only his opinion and therefore cannot be regarded as a conclusive proof. This issue is elaborately dealt in the following cases and will make it clearer to understand. In the case Ram Deo Chauhan or Raj Nath v State of Assam,²²⁰ Supreme Court observed that too much reliance couldn’t be placed upon text-books, on medical jurisprudence and toxicology while determining the age of an accused. In this vast country with varied latitudes, heights, environment, vegetation and nutrition, the height and weight cannot be expected to be uniform. Though the appellant was proved to be a

juvenile on the date of occurrence he was awarded death sentence. The Supreme Court held that the age could not be concluded with help of scattered answers.

“Speaking about the medical evidence it was observed that too much reliance could not be placed as it was just an opinion but it also cannot be side lined. In the absence of all other acceptable materials it could certainly be accepted. In other words, if the age of the petitioner cannot be held to be unquestionably above 16 on the relevant date its corollary is that the lesser sentence also cannot unquestionably be foreclosed”.

In the case Babloo Pasi v State of Jharkhand and Another,\textsuperscript{221} Accused was apprehended in relation to the death of his wife. The accused was produced before the Chief Judicial Magistrate, he claimed himself to be a “juvenile” as having not attained the age of eighteen years and, therefore, entitled to the protection and privileges under the Juvenile Justice (Care and Protection) Act and was so sent to the Child Rehabilitation Centre. He failed to produce the evidence in support of his claim. Taking all factors in consideration accused was adjudged by the board to be a major. The Supreme Court held that the Medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other cogent evidence. The Supreme Court observed:

In the absence of evidence to show on what material the entry in the Voters List in the name of the accused was made, amere production of a copy of the Voters List, though a public

\textsuperscript{221} 2009 (1) JCR 73 (SC).
document, was not sufficient to prove the age of the accused. Similarly, though a reference to the report of the Medical Board, showing the age of the accused as 17-18 years, has been made but there is no indication in the order whether the Board had summoned any of the members of the Medical Board and recorded their statement. It also appears that the physical appearance of the accused, has weighed with the Board in coming to the afore-noted conclusion, which again may not be a decisive factor to determine the age of a delinquent.

It is still not very clear that what one should do in matter of the determination of age where the question is to decided on the basis of the availability of evidence. As we know that in India to procure false documents is not at all difficult task moreover we can’t even frame out the misuse of law by adults. So in determination of age the courts should follow the Rule 12 of Model Rules 2007.

2.2 Juvenile Justice Board (JJB)

“The center of interest in the juvenile court is always the juvenile and his welfare, not the act or its consequence which might have resulted in his (or her) being brought before the court”.  

222 The criminal cases of a juvenile in conflict with law are to be dealt with JJB, and not with regular criminal courts. Under JJCPA 2000, JJB is a “competent authority” in relation to the juvenile in conflict with law. A Juvenile Justice Board has to be constituted for each district or group

of districts, and consists of two social workers and a Judicial Magistrate. This is an attempt to bring change in the nature of the inquiry and decriminalize the administration of juvenile justice through the presence of the two social workers. The JJCPCA 2000 Act has given equal importance to the Magistrate and social workers, they jointly constitute the competent authority.

The JJCPCA 2000 defines the JJB as under:

Section 4

1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government may, by notification in the Official Gazette, constitute for a district or a group of districts specified in the notification, one or more Juvenile Justice Boards for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to juveniles in conflict with law under this act.

2. A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, and two social workers of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974), on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of the first class and the Magistrate on the Board shall be designated as the principal Magistrate.

3. No Magistrate shall be appointed as a member of the Board unless he has special knowledge or training in
child psychology or child welfare and no social worker shall be appointed as a member of the Board unless he has been actively involved in health, education, or welfare activities pertaining to children for at least seven years.

4. The term of office of the members of the Board and the manner in which such member may resign shall be such as may be prescribed.

5. The appointment of any member of the Board may be terminated after holding inquiry, by the State Government, if:
   
a. he has been found guilty of misuse of power vested under this act,
   
b. he has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence, he fails to attend the proceedings of the Board for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year.

The JJB consists of a Metropolitan Magistrate or a Judicial Magistrate of the first class in a non-metropolitan area, and 2 social workers one of whom must be a woman.\(^{223}\) The magistrate and social worker has to work as a Bench but their roles are different. The Magistrate presiding over the bench must have ‘special knowledge or training in child psychology’ while social workers must have atleast

\(^{223}\) JJCPGA 2000, Section 4(2)
seven years of experience in “health, education or welfare activities pertaining to children”. The Magistrate plays an important role in deciding whether the juvenile has committed an offence or not. When the JJB is satisfied that an offence has been committed, then social workers pay an important role in deciding what should be done for the comprehensive rehabilitation of the juvenile, keeping in view the circumstances in which the offence was committed. It is rightly put by Barry C. Feld the Magistrate takes care of the deed and the social workers of the needs of the juvenile.

Qualification

1. **Principal Magistrate**

   Principal Magistrate must be a Metropolitan Magistrate or a Judicial Magistrate of the first class having special knowledge or training in child psychology and child welfare.[Section 4(3) r/w Rule 5(3)]

2. **Social worker**

   A Social worker:

   (i) who has been actively involved in health, education, or welfare activities pertaining to children for at least seven years;

   (ii) not less than 35 years of age;

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224 Id., Section 4(3).
(iii) who has a post-graduate degree in social work, health, education, psychology, child development or any other social science discipline;

(iv) should not:

(a) have been convicted under any law;

(b) have indulged in child abuse or employment of child labour or any other human rights violations or immoral act;

(c) be holding such other occupation that does not allow him to give necessary time and attention to the work of the Board;

(v) selected by a Selection Committee headed by a retired High Court Judge. [Section 4(3) r/w Rule 5(4), 7 and 91]

3. **Sittings of the Board**

The JJB shall hold sittings in any observation homes or any suitable place but in no case court operate from court premises. In the event of any difference of the opinion amongst the members of JJB while passing any order, the majority opinion shall prevail but where there is no majority opinion of principal Magistrate shall prevail. The minimum attendance of the members in a year is ¾.

4. **Tenure**

- Three years

- Members of the Board can be appointed for a maximum of two consecutive terms. [Rule 6]
5. **Termination**

- Principal Magistrate being a judicial officer, service conditions are governed by relevant State Judicial Service Rules.

- Member of the Board – by the State Government, after holding inquiry, if:
  
  (i) He has been found guilty of misuse of power vested under this Act or

  (ii) He has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or he has not been granted full pardon in respect of such offence or

  (iii) He fails to attend the proceedings of the Board for consecutive three months without any valid reason or he fails to attend less than three-fourth of the sittings in a year. [Section 4 (5)]

6. **Power of JJB**

The power of the JJB is given under Section 6 of the JJCPCA 2000. The same is reiterated herein below.

7. **Powers of Juvenile Justice Board**

(a) Where a Board has been constituted for any district (***), the Board shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, have

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226 The word 'or group of districts' omitted by Act 33 of 2006, Section 7 (w.e.f 22-8-2006).
power to deal exclusively with all proceedings under this Act relating to juvenile in conflict with law.

(b) The power conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise.

The plain reading of the clause (1) of Section 6 manifest that JJB has been empowered to administer all the proceedings as to the juvenile in conflict with law exclusively. The Clause (2) expresses that the High Court and the Court of session have got some powers only in case of appeal, revision or otherwise.

Exclusive Jurisdiction: Board has exclusive jurisdiction to deal with Juvenile in conflict with law notwithstanding any other law for the time being in force. [Section 6]

Here in below some case are mentioned regarding exclusive jurisdiction of the court.

- JJCPCA 2000 has overriding effect and all offences including offences under NDPS Act, Arms Act, SC/ST Prevention of Atrocities Act allegedly committed by a juvenile has to be inquired by the Board.227

- In the case of a ‘juvenile’, the exclusion of anticipatory bail by Section 18 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

does not apply in view of Section 12 of the Juvenile Justice (Care and Protection of Children) Act. 2000.\textsuperscript{228}

- Where Juvenile Justice Board is not constituted, the Magistrate concerned has jurisdiction to deal with cases of juvenile and appeal will go before the Sessions Judge.\textsuperscript{229}

**Functions of the Board**

- To adjudicate and decide cases of juvenile in conflict with law; [Section 6 r/w Rule 10(a)]
- Take cognizance of crimes committed under Section 23 to 28 of the Act; [Section 27 r/w Rule 10 (b) and 18]
- Monitor Institutions for juveniles in conflict with law; [Rule 10(c)]
- Deal with non-compliance on the part of concerned government functionaries or functionaries of voluntary organizations; [Rule 10 (d)]
- Direct District authority and Police to provide necessary infrastructure or facilities so that minimum standards of justice and treatment are maintained in the spirit of the Act; [Rule 10 (e)]
- Maintain liaison with the Child Welfare Committee in respect of children needing care and protection; [Rule 10(f)]

\textsuperscript{228} Tara Chand v State of Rajasthan (Raj), 2007 Cr檚 LJ 3047, RLW 2008 (2) Raj 1013, MANU/RH/0128/2007

g) Liaison with Boards in other districts to facilitate speedy inquiry and disposal of cases through due process of law;

h) Send quarterly information about juveniles in conflict with law produced before them to the District and State Child Protection Unit, State Government and Chief Judicial Magistrate or Chief Metropolitan Magistrate: [Rule 10 (i)]

i) Grant permission to visit the premises of an Institution. [Rule 73 (1)]

Production before Single Member

In case Board is not sitting, the juvenile shall be produced before any single member of the Board, who is empowered to pass all appropriate orders except final disposal. [Section 5(2) r/w Rule 11 (10)]. Any such order shall be ratified by the Board in the next meeting [Rule 11 (14)]. However, 2 members including Principal Magistrate can pass final order. [Section 5(3)]

Decision by Majority

In the event of any difference of opinion among the members of the Board in the interim or final disposal, the opinion of the majority shall prevail. Where there is no such majority, the opinion of the Principal Magistrate shall prevail.230

2.3 Procedure of inquiry

'A person who has not completed 18 years of age' commits an offence. As soon as a Juvenile alleged to be in conflict with law is apprehended by police231 or Special Juvenile Police Unit (herein after referred as SJPU)232 as soon as possible after the arrest, who shall

230 JJCPCA 2000, Section 5(4).
232 Id., Section 63.
immediately report the matter to a member of the board and shall inform the parents/guardian or probation officer and direct them to present before JJB. He shall inform the probation officer to enable him to obtain information regarding the antecedents and family background and other material circumstances likely to be of assistance to the JJB for making inquiry. Any person or other agency so producing the juvenile must inform the concerned Police Station or SJPU about such production. In no case juvenile be send to lock-up. The juvenile is to be produced before the JJB within 24 hr of his arrest. If the JJB is not sitting, the juvenile may be produced before a single member.

Note: The SJPU function and duties in detail are given in the end of this chapter.

**Arrest/Apprehension**

Under juvenile justice system the word “apprehension” replaces the word “arrest”. The precautions and safeguards contained in the Constitution of India and Supreme Court judgments with regards to the rights of an accused on arrest also apply to juveniles in conflict with law. The Supreme Court in *Dilip K. Basu v State of West Bengal & Others,* issued guidelines to be followed in all cases of arrest or detention till legal provisions were made in that behalf as a measure to prevent custodial violence. The police personnel “should bear accurate, visible and clear identification and name tags with their designation” during arrest and interrogation. Furthermore, the police at the time of arrest should prepare a memo of arrest attested by

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233 Id., Section 10(1).
234 Id. Section 13.
235 Ibid.
236 JJCPCA 2000 sec. 5(2) as amended in 2006.
237 AIR 1997 SC 160
atleast one witness and countersigned by the arrestee. An arrested person shall be entitled to have a friend or relative or other person known to him or having interest in his welfare being informed, as soon as possible, that he has been arrested and is being detained at a particular place.

Under juvenile justice system the child should be apprehended as given under Section 10(1) of JJCPCA 2000 and Rule 11 (2) of Model Rules 2007. The Section 10 (1) of JJCPCA 2000 provides that a juvenile to be produced before the JJB within 24 hour of his arrest/ apprehension. It further states in no case a child shall be placed in a lock up or jail. It is important that while dealing with the juvenile the police officers should strictly follow the provisions of JJCPCA 2000, JJA 2006 and Model Rules 2007. Detaining a child in custody beyond this period amounts to illegal detention. In a case before the Bombay High Court in Baban Khandu Rajput v State of Maharashtra,\textsuperscript{238} the court imposed the compensation of Rs. 10,000/- upon the state for keeping the Petitioner in detention for a period of two and half days without producing him before the appropriate authority with malafide intention without giving any explanation justifying the said detention.

Under Section 13 of the JJCPCA 2000, the police as soon as may be after the arrest, inform:

(a) the parent or guardian of the juvenile, if he can be found, of such arrest and direct him to be present at the Board before which the juvenile will appear; and

(b) the probation officer of such arrest to enable him to obtain information regarding the antecedents and family background of the juvenile and other material

\textsuperscript{238} 2002 ALLMR (Cri) 1373
circumstances likely to be of assistance to the Board for making the inquiry.

Similar provisions were there in JJA 1986. If the juvenile’s parent or guardian cannot be instantly informed, any person of the juvenile’s choice should be informed of the arrest. The JJB on first production should seek a police report with regards to the date and time of the juvenile’s arrest and his admission to the observation home, and whether a parent or guardian and PO has been informed about the juvenile’s arrest.

As per the Rule 75 of Model Rules 2007 a police officer while examining a juvenile should always be in plain clothes. The parents and guardian may be allowed to be present when the juvenile is being questioned. The Rule 11 (11) of Model Rules 2007 further explains that the police or the juvenile or the CWO, shall exercise the power of apprehending the juvenile only in cases of his alleged involvement in serious offences such as rape, murder (entailing a punishment of more than 7 years imprisonment for adults) or such offences committed jointly with an adult. In such cases an FIR to be registered and submit charge sheet/final report before the JJB.

In all other cases involving offences of non-serious nature (entailing a punishment of less than 7 years imprisonment for adults) and cases where apprehension is not necessary in the interest of the juvenile, the police or the juvenile or the CWO shall record the information in the daily diary, intimate the parents or guardian of the juvenile about forwarding the information regarding nature of offence alleged to have been committed by their child or ward and forward a report containing his socio-economic background to the Board before

239 Rule 75. Police Officers to be in plain clothes.—While dealing with a juvenile or a child under the provisions of the Act and the rules made thereunder, except at the time of arrest, the Police Officer shall wear plain clothes and not the police uniform.
the first hearing, which shall have the power to call the juvenile for subsequent hearings. Allow the juvenile to go back to his home with family members.

Some of the important points at glance:

- While dealing with a Juvenile, the police officers should never be in uniform [Rule 3 (VIII) & Rule 75].
- Must not handcuff or fetter (rope etc.) a juvenile [Rule 3(11) & 76].
- Must not put up a juvenile in conflict with law in lock up or jail [Section 10 (1) & Rule 11 (3)].
- There should not be any delay in informing the parents or guardian of juvenile, designated police officer and probation officer [Section 13 & Rule 11 (1)].
- No registration of FIR or file charge sheet where the offence alleged to have been committed by the juvenile is of a non-serious nature (entailing a punishment of less than 7 years imprisonment) [Rule 11(11)].
- If in case FIR to be registered then no delay registration of FIR if, the offence alleged to have been committed by the juvenile is of a serious nature or offence committed jointly with adult.
- A juvenile not to be refuse to release on bail unless it is in the interest of juvenile [Section 12 & Rule 11 (8)].
- Avoid unnecessary delay in determining the age of juvenile (Rule 12).
• Generally, identity of juvenile should not be exposed to Media by any means unless it is in the interest of juvenile (Section 21).

• Juvenile cannot be taken on police remand [Rule 3 (VIII)].

• Do not keep pending the investigation of cases relating to Juveniles without any reasons.

The problems of arbitrary arrests, police brutality and abuse of children persist, including incidents of extreme violence and torture. Children interviewed as part of the Prayas study in Bihar and Delhi reported manhandling and arbitrary arrests at the hands of the police. However, there have been many interesting initiatives to promote more child-sensitive police practices. In Bangalore, for example, the Juvenile Police Unit is being supported by the NGO ECHO to develop child-friendly procedures for children in conflict with the law. The police are encouraged to divert juvenile cases by advising and counselling the child, rather than referring them to formal legal proceedings. In Karnataka, the JJA Rules State that the Special Juvenile Police Units will be assisted by recognised voluntary organisations. In some States, whenever the police apprehend a child they call Childline, India’s toll-free helpline for children. Childline has a resource pool of local NGOs and institutions and is able to arrange services such as shelter and counselling for the children.

First Information Report (FIR)

FIR should not be registered where the offence alleged to have been committed by the juvenile is of a non-serious nature (entailing a punishment of less than 7 years imprisonment). But in case of the

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offence alleged to have been committed by a juvenile is of serious nature such as rape, murder (entailing a punishment of more than 7 years imprisonment) or when such offence is alleged to have been committed jointly with an adult.

Going by the principles of juvenile justice across the world. The police or the Juvenile Justice Boards should not use a term like charge sheet while dealing with matters involving juveniles a “charge” that is an accusation. In a criminal proceeding, the “charge” is an important step as it separates the inquiry from the trial. However, in juvenile justice matters there can be no ‘charge’ against a juvenile since the proceeding is not against a ‘criminal’ but against a ‘child alleged to be in conflict with law’ and it is not meant to be a criminal proceeding. There is no trial. All inquiries have to be completed within four months. However, the police can file a Police Investigation Report (which would lead to framing the charges on completion of police investigation). Ideally the term Police Investigation Report should have been used in the Act also. Unfortunately, the juvenile justice law has always been amended in a great hurry and therefore even while stressing in principle on the need to change semantics, many of the terms used in the Criminal Procedure Code continue to be used for children too. The JJCPJA 2000 specifies that a Charge Sheet can be filed against juvenile in conflict with law where the offence alleged to have been committed by the juvenile is of a serious nature such as rape, murder (entailing a punishment of more than 7 years for an adult), the charge sheet in such cases shall be filed before JJB within prescribed period of 90 days, but in cases where he has committed such an offence jointly with an adult, then separate charge sheet containing the social background of the juvenile be forwarded to the board.
Order on First Production of Juvenile

On production of juvenile, the Board shall pass the following order in the first summary inquiry on the same day, namely:

(ii) Dispose of the case, if the evidence of his conflict with law appears to be unfounded or where the juvenile is involved in trivial law breaking Rule 13(1)(a).

(iii) Transfer the juvenile to the CWC, if the police report states that the juvenile is in need of care and protection Rule 13(1)(b).

(iv) Consider release of juvenile on bail Section 12, JJCPA 2000.

(v) Release the juvenile in the supervision or custody of fit persons/ institutions or Probation Officers, through an order in Form-I, Rule 13 (1)(c).

(vi) Detain the juvenile in an Observation Home or fit institution pending inquiry, only in cases of juvenile's involvement in serious offences as per order in Form-II, Rule 13 (1)(d).

The SJPU who produce the juvenile before the JJB don't not require to register FIR or charge-sheet except where the offence alleged to have been committed is of serious nature such as rape, murder etc. The police shall record information like the name, age and address of the juvenile, social background of the juvenile and the circumstances in which the juvenile was apprehended in general dairy. The report must be forwarded to the JJB.242 They must give reason for delay, if production is after 24 hours of the arrest. The

SJPU or police must take the assistance of a voluntary organization having requisite skill, to prepare the report containing the social background of the juvenile and to take care of the juvenile production before JJB.243 In cases of inquiry pertaining to serious offences the board shall follow the procedure of trial in summons case.244

When a juvenile is produced before the board they must grant bail to the accused person whether or not the alleged offence was bailable or non-bailable in nature.245 The board may refuse to grant bail only if it has reasonable grounds to believe that his release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.246 The JJCPA 2000 obviates distinction between bailable and non-bailable offences and makes bail right of the accused juvenile unless it is in interest of the juvenile not to be granted bail. If the juvenile is not granted bail on the basis that extenuating condition apply to him, the board shall ‘instead of committing him to prison send him to observation home or place of safety for such period during the pendency of the inquiry regarding him. 247

The presumption is in favour of bail, however the grounds for refusal are broad, and include situations where there “appear to be reasonable grounds for believing that release is likely to bring the child into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice”. There is no explicit requirement that detention shall be used only as a measure of last resort, and the broad grounds for

243 Id. Rule 11(12)
244 Id. Rule 13(2)(e)
245 JJCPA 2000 Section 12(1)
246 Ibid
247 Id., Section 12(3)
detention based on exposure to “moral danger” do not promote minimal use of detention. Moreover in reality bail is not given so easily, many times NGOs have brought to notice the pendency of granting bails. Same we can see in case of *Ravi Kumar v The State (NCT of Delhi)*. Where the offence was committed in 2004 and till 2009 he was not granted bail. The High Court ordered the Petitioner to produced before the JJB-I Kingsway Camp on 20th April 2009 and the application for bail to be considered by the JJB-I on that date in accordance with law. Further, made observation that The JJB-I will consider the Petitioner's bail application notwithstanding the dismissal of the bail application by the learned ASJ by the order dated 17th December 2005 or any subsequent order. The JJB-I will pass an order in terms of Section 14 read with 49 of the JJCPCA within a period not later than four months from 20th April 2009.

Children who are not released on bail must be committed to an Observation Home or a “place of safety”. The Act explicitly prohibits the detention of a child in a prison or police lockup. It also introduces

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248 MANU/DE/0782/2009. In the case bail application was moved by the Petitioner and claim of juvenility was also raised. But the bail application kept pending till charge was framed i.e on 29th March 2005. The photocopy of the I-Card of the accused showing the date of birth to be 16th June 1987 was filed. The Petitioner also produced certificate from the schools in which he had studied. The learned ASJ directed the Investigating Officer (“IO”) to verify the records of Government Boys Secondary School and to confirm from the said school whether admission had been given to the Petitioner on the basis of certificate issued by the municipality or on the basis of some affidavit filed by his parents. Further bone X ray was also done on order by the court. The Medical Report stated approx. the age of accused to be 20 years but not more than that on date of examination i.e on 24th Nov, 2005. Bail application rejected and even regular bail rejected by the learned ASJ. The school certificates, which had been directed to be verified by the learned ASJ, were verified by the police to be genuine.

This Court finds that the learned ASJ erred in dismissing the application of the Petitioner by the impugned order dated 14th November 2008 only on the ground that the issues raised already stood decided by the predecessor ASJ on 15th December 2005. The order passed on 15th December 2005 merely recorded the opinion of the Medical Board. The said short order does not decide whether in fact the Petitioner’s plea as to the age of the date of the commission of offence was considered. The learned ASJ ought to have directed the production of the Petitioner before the JJB for conducting an enquiry as to his age in terms of the JJCPCA.
an innovative government/NGO partnership approach to the management of Observation Homes, stating that they may be established and maintained by the government itself, or "under an agreement with voluntary organisations". Most states have certified one or more Observation Homes for children on remand.

One of the best examples of India’s new partnership approach is the Prayas Observation Home for Boys in Delhi. The Home’s facilities are owned by the government, but managed by Prayas, a national children’s NGO, through a partnership agreement. The Government provides grants to Prayas to run the institution, which is staffed entirely by Prayas personnel. Upon taking over the facility, Prayas made significant changes to the physical environment to make it less prison-like and more child-friendly. Prayas has a team of counsellors and probation officers on staff that assesses the children and conduct family tracing and family reunification. All children participate in education and vocational training, and regularly take part in recreational and cultural activities, including regular outings and sporting activities in the community. Through its linkages with the broader NGO community, Prayas has also been able to expand its services by mobilising volunteer support from other professionals such as lawyers and doctors.

After bail has been granted the board shall hold an inquiry into alleged charges against the juvenile. The inquiry must be completed within a period of four months unless an extension is

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249  JJCPCA 2000, Section 8.
251  JJCPCA Section 14.
required in special circumstances that have to be recorded in writing.\textsuperscript{252}

**Age Determination**

**Determination by Board**

(a) When a person is brought before a Board under any of the provisions of the Act who appears to be juvenile, the Board shall make due inquiry as to the age of that person, Section 49 of JJCPA 2000.

(b) The Board shall determine the age of juvenile within a period of 30 days, Rule 12 (1) Model Rule 2007

**Determination by Magistrate/Court**

(a) When a person brought before a Magistrate is a juvenile in his opinion, the magistrate shall transfer the juvenile and the record to the Board. The Board shall then hold the inquiry as if the juvenile was originally brought before it, Section 7 r/w Rule 77.

(b) When a claim of juvenility is raised arises before any court at any stage even after final disposal of the case, such claim shall be decided by the Court after taking evidence in accordance with the provisions of the Act and Rule, Section 7 A.

**Relevant date is well settled after 2006 amendment.**

- Relevant date for determination of juvenility is the date of offence, provided person had not completed 18 years of

age as on or before the date of commencement of the Act, i.e., 1-4-2001.\textsuperscript{253} [Section 2 (i)]

- The Act was amended in 2006, inter alia, amending Sections 2(l), 7A, 20 and 64 cumulative effect of which is that even if the juvenile has ceased to be so on 01.04.2001, still he will be considered as juvenile if he was below 18 years of age on the date of Commission of offence.\textsuperscript{254}

**Procedure to be adopted**

(a) Prima facie Opinion

- On production of a person, the Board is to decide the Juvenility or otherwise, prima facie, on the basis of physical appearance or documents, if available, and send him to the Observation Home or jail, Rule 12 (2).

- The Board can consider bail application of the person, if it is of the prima facie opinion that the person produced is apparently a juvenile, Section 12(1).

(b) Conclusive Enquiry

- The age determination inquiry shall be conducted by the Board by seeking evidence by obtaining.

(i) Documentary evidence


- matriculation or equivalent certificates;
- date of birth certificate from the school;
- birth certificate given by corporation or municipal authority or panchayat;

(ii) Medical Opinion

- in the absence of aforesaid documents, the medical opinion can be sought from a Medical Board. The Board may, for reasons to be recorded, give benefit to the juvenile by considering his/her age on lower side within the margin of one year. [Rule 12 (3)]

- Determination by the Board as above by an order is conclusive proof of the age as regards such juvenile. [Rule 12 (3)(4)]

The date of birth is to be determined on the basis of material on record and on appreciation of evidence adduced. Medical evidence, though a very useful guiding factor, is not conclusive and has to be considered along with other cogent evidence.255

Orders that may not be passed by the board include death penalty, life imprisonment, committing to prison in default of payment of fine or furnishing of security except the cases in which serious offences has been committed by a juvenile who has attained the age of 16 years. When board is satisfied that sending him to a special juvenile rehabilitation centre shall neither be in interest nor in the interest of other juveniles, he may be kept in protective custody with Babloo Pasi v State of Jharkhand, 2008 (13) SCALE 137, MANU/SC/2008/1371.

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prior direction from the State Government after the matter has been reported.256

After inquiry if the board is satisfied that the juvenile actually committed offence, following are the orders delineated under Section 15 of the JJCPCA 2000, which may be passed by the board:

(i) Section 15(1)(a), Allow the juvenile to go home after advice or admonition and counselling to parent/ guardian and juvenile.

(ii) Section 15(1)(b) r/w Rule 15(4), Direct the juvenile to participate in group counselling and similar activities and necessary direction may also be made to the District or State Child Protection Unit or the State Government for arranging individual counselling and group counseling.

(iii) Section 15(1)(c) r/w Rule 2(e)and 15(4), Order the juvenile to perform community service that is not degrading and dehumanizing and necessary direction may also be made to the District or State Child Protection Unit or the State Government for arranging community service which may include:

(a) Cleaning a park;
(b) Getting involved with habitat for humanity;
(c) Serving the elderly in nursing homes;
(d) Helping out a local fire or police department;
(e) Helping out at a local hospital or nursing home;

256 JJCPCA 2000 Section 16 (1).
(f) Serving disabled children.

(iv) Order the parent or the juvenile himself to pay fine, if he is over 14 years of age and earns money; however, no juvenile shall be committed to prison in default of payment of fine as per Section 15(1)(d) r/w Section 16(1).

(v) Section 15(1)(e), (3) & (4) r/w Rule 15(5), (6) & (8), direct the juvenile to be released on probation of good conduct and place him under the care of parent, guardian or other fit person, on executing a bond in Form V, for the good behaviour and well-being of the juvenile for a maximum period of three years.

In addition, the Board may also direct:

- Furnishing of surety
- Execution of bond in Form VI by juvenile
- Juvenile shall remain under the supervision of a Probation officer.

(vi) Direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years, located nearest to the place of residence of the juvenile's parent or guardian. In addition, the juvenile may be placed under supervision of a Probation Officer, Section 15(1)(f), (3) & (4) r/w Rule 15(7) & (8).

(vii) Make an order directing the juvenile to be sent to a special home for a maximum period of three years.
located nearest to the place of residence of the juvenile’s parent or guardian, Section 15(1)(g) r/w Rule 15(7)

Appeal and Revision Section 52 of JJCPCA 2000

(a) Any person aggrieved by an order made by a Board may prefer an appeal to the Court of Session within thirty days from the date of such order. The Appellate Court may entertain the appeal after the expiry of the period on sufficient cause being shown.

(b) No appeal shall lie from any order of acquittal made by the Board in respect of a juvenile.

(c) The High Court may, at any time, call for the record of any proceeding for the purpose of satisfying itself as to the legality or propriety of any order of the Board or Court of Session.

(d) As per Section 6(2), the powers conferred on the Board under this Act may also be exercised by the High Court and the Court of Session.

(e) The procedure to be followed in hearing appeals or revision shall be, as far as practicable, in accordance with the provisions of the Cr.P.C. 1973, Section 54(2) of JJCPCA 2000.

Section 4 of the JJCPCA 2000 empowers the State Government to constitute one or more Juvenile Justice Boards in each District. The provisions of the 2000 Act are rehabilitation oriented and the procedure prescribed under the Act and the Rules framed there under are child-friendly and not adversarial. The Bench, therefore, has to deal with juvenile delinquency from a point of view, which is entirely different from the procedure prescribed for adults.
under the Code of Criminal Procedure. Necessarily, the Principal Magistrate, who is a member of the judicial service and is used to the provisions of the Code, has to undergo a complete mental metamorphosis and attitudinal transformation while discharging his or her duties under the act. The two Members, who probably have little legal experience, have to blend their expertise in the field of social welfare with the legal parameters to effect solutions that are rehabilitation oriented which is the primary object of the JJCPA 2000.

The other most important objects that the Act seeks to achieve and has to be kept in mind by the JJB are the speedy disposal of inquiries contemplated under the Act. If the infrastructure is not available, it is for the Board and, in particular the Principal Magistrate, to ensure that the same is made available. Each Member of the Board has to be sufficiently sensitized to understand the trauma a child, who is removed from his normal surroundings or familiar faces, suffers when faced with an unfamiliar situation which he or she is unable to handle. If is, therefore, the moral, if not legal, duty for the Members of the Board and the Principal Magistrate in particular, to ensure that all those involved in the juvenile justice delivery system, from the Probation Officers to the Superintendents of the different Homes contemplated under the Act, perform their duties conscientiously and without resorting to unfair means. Children are hardly in a position to raise their voices in protest against injustice, but if the same is brought to the notice of the Board, itsmembers must act with alacrity and not shirk their responsibility in dealing with the problem.

It would be a complete negation of the provisions of the JJCPA 2000 if the case of a juvenile in conflict with law is allowed to remain pending indefinitely for whatever reason. It is the duty of the
Board to keep track of such cases so that they can be disposed of at the earliest opportunity and the juvenile and his guardians cease to be exploited by unscrupulous players within the juvenile justice delivery system.

The Model Rules 2007 provides a comprehensive procedure to be followed in dealing with juveniles in conflict with law. If the same is implemented in its true spirit, considerable change can be brought about in the Juvenile Justice delivery system and can help juveniles in conflict with law to return to the mainstream of society and become responsible citizens, instead of being transformed into hardened criminals. A grave responsibility has been entrusted to the JJB, which is exclusively empowered to deal with offences relating to children and to rehabilitate such children so that they became responsible members of society instead of being criminalized. It is for the Board and its Members to discharge such responsibility in the true spirit of the special law for children and in the interest of the children who come under their jurisdiction.

2.4 Custody of Juvenile

When the police apprehend a child for allegedly committing an offence or for an offence committed against him/her, it is the first point of contact between the child and the juvenile justice system. Also, the JJCPCA confers a major role for the police for both categories of children, especially in regard to children in need of care and protection giving them the power to hold an inquiry, a provision that has been criticised as “a deeper level of recriminalization rather than decriminalization” of the children.\(^{257}\) The child should be produced before the competent authority within 24 hours of police having got his

or her custody. A child cannot be kept in the police lock-up. On arrest, a child in conflict with law should be kept at the Observation Home. A child in need of care and protection should be kept at the Children’s Home. Police should file a report before the CWC/JJB detailing the manner in which they obtained custody of the child.

The main object of JJCPA is the speedy disposal of cases. To ensure expeditious completion of inquiries pending before the competent authority, police should file their reports on time, promptly respond to the directions of the competent authority, and conduct a prompt and diligent investigation. In this process of the investigation the police should take help of professionals and voluntary organizations working on children’s issues when appropriate. For example, the involvement of a child psychologist or counselor is important while recording a child’s statements they are trained to make the child feel at ease, speak openly and freely. And most importantly, on rescue or apprehension, the police must ask the victim or accused their age. If below 18 years of age, the child should be produced before the CWC or JJB, respectively. The reality of course is vastly different. There is uniformity among police in this country, especially when dealing with children in conflict with law—they are uniformly violative and disrespectful said by D Geetha. According to D Geetha, there has been hardly any change in police attitude towards children in conflict with law, despite the amendments to the law. “Though the law is now rights oriented, the police are not”.

Here the important thing is the custody of the juvenile when the police apprehend the child. In case of pendency or during the course of the inquiry or when the matter is finally decided the act specifies to either send to observation home or children home or other homes as

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258 Geetha, D., A Practicing Lawyer in Chennai Deals with Child Matters.
per the situation of the case and in accordance to the order passed. Nowhere in the JJCPCA the word “custody” has been defined. The only reliable thing after juggling into the Act one find is “place of safety” which is not properly defined.

Under the JJA 1986, both the CICL and CNCP were housed in a common observation home initially, after being picked up by the police (most CNCP children were picked up by the police in those days), a provision that came under a lot of flak. The JJCPCA 2000 separated the children at the very outset, to different destinations—the observation home and the children’s home. While it is clear that CNCP children can be placed in any Children’s Home or a Shelter Home without any written orders (Sub rule 5 of Rule 27 of the Model Rules 2007), and be produced before the CWC the next day, in case of CICL in Section 10 it is mention that in no case a juvenile in conflict with law shall be placed in police lock up or a jail.

Section 10 (2) reads:

The State Government may make rules consistent with this Act:

(i) to provide for persons through whom (including registered voluntary organization) any juvenile in conflict with law may be produced before the board.

(ii) to provide the manner in which such juvenile may be sent to an observation home.

This shows that the power is in State Government hands to decide how a child could be send to the observation home. Though Section 12 (2) says very clearly that a juvenile shall be kept only in an observation home, until produced before a Board. So nowhere it says that a child can be kept at police station beyond 24 hours limit. But in practice it is not followed. In reality, no institution, whether government
or NGO-run, is willing to house any apprehended child without written orders from the JJB. Where does that leave children apprehended in the night when the JJB has stopped functioning for the day? By default is a police station. Though the Act specifically restrain form keeping child in jail or police lock-up and that once produced before the JJB and during pendency of the case, the child shall be in an Observation Home, the confusion occurs because it does not specify where the child will be housed till he/ she can be produced before the JJB. It is clearly say the limit is 24 hours to produce before JJB/ CWC. So a child picked up on holiday or late at night has no place to go.

Place of Safety: Section 2(q) of the JJCPCA 2006, defines Place of Safety as “any place or institution (not being a police station lock-up or jail), the person in charge of which is willing, temporarily to receive and take care of the juvenile and which, in the opinion of the competent authority, may be place of safety for the juvenile”.

But nowhere in the Act it is mention clearly which children and in which circumstances a child could be sent to a Place of Safety. In the case of Amit Kumar, for example, the 14-15 years old child was in detention for the entire period of inquiry for his case that lasted five years, after which he was sent by the JJB to a Place of Safety. Ironically, that place was inside Central Jail No 5, Tihar, New Delhi, where the boy stayed for another 19 months, because he had crossed 18 years by that time. This is not one case there are many cases like this, which bring out the real picture of the procedure under the Act. It can be presumed that the police are mostly not interested in or

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259 JJCPCA 2000, Section 12(2).
260 The name of the child in all cases mentioned here has been changed to protect their identity.
particular about age verification, because of which many children are languishing in adult prisons such as the Tihar jail in Delhi, where they can be and are abused and mistreated. Also, they rarely inform the parents at the time of taking a child in custody, and parents are unable to arrange for a lawyer at the right time, fatally delaying the case. The law says that all possible attempts will be made by those seeking custody of the child to show that the child is above 18 years of age. To avoid this responsibility and further complications, police try to register the child as an adult.

Similar case are been discussed herein to substantiate the above contention. Suraj was apprehended from Nizamuddin, Delhi, on the charge of murder on 25 June 1999 and spent six and a half years waiting for justice. It took almost two years to verify his age (on 20 November 2001) and frame charges against him. More important for the rights of Suraj is the fact that for almost six years, he stayed in Tihar jail, a prison for adults, and was sent back there by the court. In the process of challenging the order, one eminent NGO discovered that 12 children were staying in the “place of safety inside Tihar”, two of whom had been convicted. Bail, which is a right of every child, was regularly denied to children, leading to overcrowding in the Observation Homes.262

Pran from Bawana, Delhi, was apprehended in a murder case on 10 August 2001 and remained in judicial custody till 2006, when his case came to HAQ. His co-accused had been granted bail, but not he. When an NGO filed a bail plea on his behalf, it was again rejected, for no reason. In some other instances, such as in the case of Devinder of Jahangirpuri, HAQ had to move the session court to bail him out, after the JJB declined its plea in 2006. The boy had already

262 \textit{Id} at 70.
been in judicial custody for 36 months. Denial of bail in this case happened both due to the attitude of the judiciary as well as due to a lack of understanding of the philosophy of juvenile justice.263

Yet, another case of Sairam of Krishna Nagar, Delhi, who had been in judicial custody since March 2001, his statement was recorded in October, 2005 and the case put up for the final argument in end November 2005. After that, the case was adjourned an unbelievable 16 times! The boy was finally released only in 2007.

In one of the matter HAQ NGO spent many hours, needlessly, trying to get such boys declared as CICL and taken before the JJB for bail and ultimate release, a process that can be entirely avoided if the police are a bit more respectful of the rights of these boys seven if they are, according to them, “criminals”. In the case of Dinesh from Narela, Delhi, for instance, a boy apprehended in February 2006 in a case of rape, police produced him before the session court even after he produced a birth certificate. To top it all, the session court kept him in judicial custody and then sent him to a prison for adults.264

From the above mentioned cases it is not wrong to say that the system lacks in providing safety to the child. Forget about the observation homes or children homes, the main concern is the first place where child should be kept. Neither the Act nor the Rules define the place of safety.

It is observed that despite apparently the best of intentions, several welfare schemes, a liberal democratic government, and 24 years of working laws on justice for children, several thousands of India’s children are routinely neglected by the government’s care system and often ill-treated and tortured beyond imagination and

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263 Ibid.
264 Ibid.

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comprehension. That justice is routinely delayed, even denied, to the children who approach the system seeking care and protection, or come into conflict with law due to economic or work pressure, or are often taken into and detained in custody needlessly by a callous administration, resulting in an ultimate denial of their right to life. That the task ahead of the administration is gigantic, yet there is little will to meet the challenge with empathy while upholding the constitutional rights of the children as free and thinking human beings.

2.5 Bail to Juvenile

Bail is the release of an accused person pending investigation and/or trial, while at same time ensuring his future attendance in court at the trial stage. The position with regards to bail is very different under juvenile jurisprudence. Under Juvenile Justice Act, 1986 Section 18 dealt with “Bail and custody of juveniles” and is reproduced hereunder:

Section 18. Bail and custody of juveniles:

(1) When any person accused of a bailable or non-bailable offence and apparently a juvenile is arrested or detained or appears or is brought before a Juvenile Court, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral danger or that his release would defeat the ends of justice.
(2) When such person having been arrested is not released on bail under sub-Section (1) by the officer-in-charge of the police station, such officer shall cause him to be kept in an observation home or a place of safety in the prescribed manner (but not in a police station or jail) until he can be brought before a Juvenile Court.

(3) When such person is not released on bail under sub-Section (1) by the Juvenile Court it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

Hence, even under the 1986 Act, it was obligatory upon the juvenile court to release the juvenile on bail except in certain prescribed instances. This provision also clarifies that a juvenile under no circumstances can be kept in a police lock-up or jail. A similar provision for bail existed under the JJCPCA 2000 with minor modification made to the Juvenile justice Act, 1986

(i) a juvenile could not be released on bail if such release exposed him to “moral, physical or psychological danger”, and

(ii) the police were obligated to place a juvenile only in the observation home, and not in a “place of safety”.  

The JJCPCA 2000 has made distinction between serious and other offences (bailable and non-bailable offences) maintained by the

\[265\] Section 12 of JJCPCA 2000
Cr.P.C for the purposes of bail. The JJCPCA 2000 provides for the release of all children on bail whether they are charged with the commission of a bailable or non-bailable offence. As per the Act the ground of refusing bail to children is not the nature of the offence committed. Bail may be refused only if such release is likely to bring the children in association with known criminals or expose them to moral danger or if it will defeat the ends of justice. The provisions is a means for keeping children in the community unless their own interest requires them to be kept in an institution, even when such stay is for short time.

The bail provisions remained on paper, the reality was very different. A vast number of juveniles were refused bail or could not avail of bail granted as JJB were conservative, and did not adhere to the essence of juvenile legislation. Though bail was mandatory, in most cases it was not granted on grounds such as severity of offence or apprehension that he may abscond, which grounds though relevant in the case of an adult offender are not applicable in the case of juveniles. Furthermore, in event of bail being ordered the JJB always imposed condition that the juvenile should furnish sureties for large amounts. This though the law allows the granting of “bail with or without surety”. Moreover, JJB insist that a parents or guardians file a bail application and take charge of juvenile when he is released on bail and those who have nobody from there family are unable to seek protection of the mandatory bail provision. In *Ravi Kumar v The State (NCT of Delhi)*, the offence was committed in 2004, repeated bail application was moved in Lower Courts, all got rejected on some grounds and till 2009 the bail was not granted to Ravi Kumar. In *Rohit Saini v State of Rajasthan*, again the bail was rejected by the two

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courts with any substantiate reasons. The court held the JJB to reconsider the bail application and shall give the reasoning as to on what basis observations are made that in case the accused-petitioner is released on bail or that his release would defeat the ends of justice and after giving the reasons shall consider the bail application of the accused-petitioner afresh and shall pass fresh order.

One more aspect of bail that have been left unaddressed is that the bail to the child may be refused only if release of the child will be detrimental to the interest of the child or will defeat the ends of justice. It raises the question if bail in bailable offences may be refused to a child who satisfies conditions mentioned in Section 12. This question has neither reached the higher courts nor the Rules have clarified this aspect though very elaborate rules have been framed laying down the post-production procedure\textsuperscript{268} to be followed by the Board.\textsuperscript{269} Taking note of this dichotomy, the 2006 amended to the JJCPCA 2000 has inserted that a juvenile may when released on bail be “placed under the supervision of the Probation Officer or under the care of any fit institution or fit person”.\textsuperscript{270}

**Section 12: Bail of Juvenile**

(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release

\textsuperscript{268} Rule 13 of Model Rules 2007.
\textsuperscript{270} JJCPCA 2000, Section 12(1).
is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-Section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can brought before a Board.

(3) When such person is not released on bail under sub-Section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

Salient features

1. Bail of Juvenile:

A Juvenile:

- Must be released on bail irrespective of the offence.
- May be released on bail with or without surety.
- May not be release on bail only if release bring him into an with a criminal exposes juvenile to moral, physical or psychological danger defeats the end of justice.
- Not released on bail must be kept in the observation home/place of safety pending inquiry.

2. Inquiry:
• The probation officer enables the officer-in-charge to obtain the preliminary information.

3. The age

• The age at the time of offence is committed is considered for the trial. Which means if a child at the age of 17 commits a crime and his/ her trial begin at the age of 18, still the proceedings will follow under JJCPCA 2000, as the perpetuator was minor at the time of committing crime.

It is hoped that this amendment results in a greater number of juveniles being released on bail. Those not having parents/guardian or those unable to furnish surety can take advantage of this new insertion in the law. A fit institution or a fit person willing to take temporary care of a juvenile pending inquiry may file a bail application before JJB.271 JJB should not wait for a bail application to be filed on behalf of a juvenile; they should be pro-active and suo-moto grant bail.

The Beijing Rule provides that “Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time”.272 And when ever possible, detention pending trial shall be replaced by alternative measures such as close supervision, intensive care or placement with a family or in an educational setting or home”.273 The Beijing Rules provide that upon apprehension of a juvenile, a judge or other competent body should without delay consider the issue of release of the juvenile.274 The courts in India repeatedly held that bail could only be refused to a juvenile on the

271 JJCPCA 2000 Inserted in Section 12(1) by amendment in 2006.
272 Clause 13.1 of the Beijing Rules.
273 Id. Section 13.2.
274 Id. Section 10.2.
three prescribed grounds\textsuperscript{275} and not on the grounds of heinousness of offence\textsuperscript{276} or prima facie proof of guilt.\textsuperscript{277} But still the opinion of the courts differs. Recently the HC in Rajasthan held that bail not to be granted and even stated that Section 12 of the JJCPCA is misnomer. The judgment is reproduced herein below where the intention and the cause of denying the bail can be drawn.

In \textit{Chetan & Another v State of Rajasthan},\textsuperscript{278} the petitioners have challenged the order dated 24.12.2010, passed by the Juvenile Justice Board, whereby the learned Board has dismissed the bail application filed by the petitioners. They have also challenged the order dated 18.01.2011, passed by the Additional Sessions Judge No.5, Kota, whereby the learned Judge has upheld the order dated 24.12.2010.

\textbf{Brief facts}

That on 15.10.2010, one Guddy @ Anarkali had lodged a report at Police Station Mahaveer Nagar, Kota against eight accused-persons including the petitioners, wherein she alleged that she has been gang raped by four accused-persons, including the petitioners. On the basis of the said report, the police had chalked out a formal FIR, FIR No. 505/2010 for offences under Sections 452, 323, 341, 147, 376 and 120B IPC. During the course of investigation, the petitioners were arrested. However, as they were juvenile delinquents, their case was placed before the learned Board. Vide order dated 24.12.2010, the learned Board dismissed their bail application under Section 12 JJCPA 2000. Subsequently, the petitioners filed an appeal before the learned Judge. However, vide order dated

\textsuperscript{275} Ranjit Singh v State of H.P., 2005 Cri LJ 972 (H.P).
\textsuperscript{276} Vijender Kumar Mali, etc. v State of U.P., 2003 Cri LJ 4619 (Allahabad).
\textsuperscript{277} Rahul Mishra v State of M.P., 2001 Cri LJ 214 (M.P.).
\textsuperscript{278} Criminal Revision Petition No.187/2011.

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18.01.2011, the learned Judge, while upholding the order dated 24.12.2010, dismissed the appeal. Hence, this petition before this Court. Mr. Govind Choudhary, the learned counsel for the petitioners, has vehemently contended that both the Board and the learned Judge have erred in denying the benefit of bail on the ground that the petitioners are likely to come in contact with known and unknown criminals. According to him, there is no such evidence available on record that the petitioners belong to any known or unknown gang of criminals. Therefore, the basis for denying bail is unsustainable.

Secondly, according to the prosecutrix herself, allegedly the petitioners and other accused-persons had assaulted her children. Therefore, she has falsely implicated the petitioners in a case of gang rape. Thirdly, the falsity of the case is apparent from the fact that her allegation of rape is not buttressed by the medical evidence. According to the medical report, no definite opinion could be given regarding forceful sexual intercourse. On the other hand, Mr. Paresh Chaudhary, the learned Public Prosecutor, has strenuously contended that a gruesome crime of gang rape has been committed by the petitioners. Section 12 of the Act debars the grant of bail in case such a grant will defeat the ends of justice. Secondly, merely because, there was an altercation between the prosecutrix's children and the petitioners, a lady would not allege gang rape on such a flimsy ground. An allegation of rape exposes the victim to ridicule by the society. Therefore, it is highly unlikely that the petitioners have been falsely implicated in the present case. Thirdly, law does not require corroboration from the medical evidence. In fact, according to the Hon'ble Supreme Court, the testimony of the prosecutrix should be taken as the gospel truth. Heard the learned counsel for the parties and perused the impugned orders.
It is, indeed, a misnomer that Section 12 of the Act is a mandatory provision. After going through the Section 12 of the Act the Court made an observation that although the bail may be the rule, but under three circumstances, the benefit of bail can be denied to the juvenile delinquent: if it is shown that he keeps company with known or unknown criminals, if his release would expose him to mental, physical or psychological danger, or in case it would defeat the ends of justice. Justice is neither a one way street, nor is it limited only to the accused. While rule of law demands that the accused be provided a fair trial, rule of law also dictates that the victim should have the feelings that justice has not only been done, but also appears to be done to him / her. If justice were not done to the victim, the victim would lose faith in the rule of law. Similarly, since crime is an act against the society, if justice were not done with the society, the faith of the society in the judicial process would be shattered. Therefore, the judiciary must balance the interest of the individual of the accused, on the one hand, with the interest of the victim and the society, on the other hand. Although it is true that the gravity of an offence cannot be the deciding factor, but while trying to administer justice, the Court must be conscious of the nature of the offence. It would be one of the factors to be kept in mind while trying to impart justice to the accused and to the victim, in particular, and to the society in general. In a case of gang rape to release the accused on bail would certainly defeat the ends of justice. This view has been held by this Court in the case of Om Singh @ Kuldeep Singh v State of Rajasthan. The JJCPCA is not mean to be used as a revolving door by the juvenile delinquent. Juvenile delinquent cannot argue that once he has committed a grave offence, he must be permitted to be released on bail so as to permit him to commit further crime. One of the aims of the Act is to reform

\[279\] S.B. Criminal Revision Petition No 1277/2010 decided on 28.03.2011.
the juvenile delinquent so that he is prevented from graduating to being a hardened criminal. This process of reform cannot be done by releasing the juvenile delinquent. He/she can be reformed only in an institutional setting. Therefore, the denial of a bail to the juvenile delinquent and keeping him within judicial custody is not a denial of his personal liberty or life. In fact, if he can be reformed, if he can be taught techniques and trade to earn a living, if he can be treated psychologically, if he can be reformed to the point that upon his release he will become a contributory member of the society, such a detention would be both in his interest and in the interest of the society. An allegation of rape invites not only ridicule, but also ostracism of the victim. Therefore, repeatedly, the Hon'ble Supreme Court has held that in a conservative society like ours, it is highly unlikely that a women would allege that she was ravished without any foundation. In the present case, the prosecutrix happens to be forty years old married women. Thus, it is highly unlikely that she would allege the offences of rape, that too of gang rape, merely to falsely implicate the petitioners. Therefore, the contention raised by the learned counsel is unacceptable. Hence, this Court does not find any illegality or perversity in the impugned orders. This petition, being devoid of any merit is, hereby, dismissed.

On similar grounds same bench passed same order in another case where also the bail application got rejected and same was challenged.\textsuperscript{280} From the above case it can be stated that even the higher courts are in dilemma regarding the provisions of the Act. The HC erred in not granting bail to the petitioner. The contention of reformation of juvenile made by the Court is not denied but at same time we can not deny the fact that our reformation machinery is not working properly the homes are not upto the mark, the facilities are

\textsuperscript{280} Sahukar v State of Rajasthan, (S.B. Criminal Revision Petition No.373/2011)
not sufficient, the vocational training are not been given. Last but not the least this is contrary to the Beijing Rules which states that detention and institutionalization should be last resort. Even the Model rules 2007 specifies that need to send to institution should be the last measure. Court even did not mention the amendment made in 2006 in the judgment. After the perusal of the order of HC of Rajasthan seems that court has not given nay heed to the intention and objective of the Act. Just to make and prove society that decision has been done they denied the bail to the juvenile who has a right to get the same as per the Act.

2.6 Punishment to Juvenile

Juvenile in conflict of law are subject to same law as are the adults criminal but their treatment is different. The aim of juvenile justice system is for the future welfare of the juvenile rather than on punishment for past misdemeanors. One of the primary objects of punishment is deterrence. So while passing punishment to the juvenile it is essential that it must incorporate this (deterrence) element along with reformation and rehabilitation elements. It is always necessary for juvenile delinquents that they must be re-integrated into the common fold of the law-abiding mass. The purpose of the JJCPCA 2000 can only be fulfilled if the juvenile is accepted in the society and he/she gets the normal atmosphere to live-in as other human being. What is of concern, they should not be discerned as an outcast, derelict or forlorn.

Various international guidelines came up with rules for child who infringed the penal law to be treated with dignity and balance


282 'Deterrence' means a thing that discourages or is intended to discourage someone from doing something. www.merriam-webster.com/dictionary/deterrence.
approach to be adopted. The United Nation has framed rules under Standard Minimum Rules for the Administration of juvenile justice, had been adopted by the General Assembly. Rule 17 of the above mentioned standard minimum rules prescribe certain guiding principles to be followed whilst adjudication and disposition by the competent authority. As per rule, they must adopt balance approach, not only the circumstances and the gravity of the offence be viewed but regard must be given to the need of juvenile as well as to the circumstances of the society. Curbing of personal liberty of a juvenile as a punishment must be restored at the very end. Only if juvenile adjudicated of a serious act involving violence against another person or if he is recidivist, should be imposed with punishment. Capital punishment has been ruled out completely as also corporal punishment.

Article 40 (4) of Convention on the Rights of the Child, states that every child, accused of, or have infringed the penal law must be treated with promotion of child’s dignity or worth. While deciding the matter age of the child to be taken into account along with child reintegration and assuming a constructive role in society.283

Rule 16 of the Beijing Rule mandates a ‘Social Inquiry Report’ that would contain the background and circumstances in which the juvenile is living or the condition under which offence has been committed. This report is to be examined by the competent authority before it renders a final disposition prior to sentencing. This is in order to facilitate ‘judicious adjudication of the case by the competent authority.”284

284 Beijing Rules, General Assembly Resolution 45/112.
The JJCPCA 2000 in keeping with the above mandate framed the Section 15 and 16. Reformation and rehabilitation is the main intent of the juvenile justice system. Section 15 of JJCPCA 2000 provides for various sorts of order that the JJB can pass depending on the gravity of crime. Section 16 deals with the order that may not be passed against the juvenile like juvenile shall not be sentenced to death or imprisonment for life.

Section 15(1) of JJCPCA 2000 has wide range of orders that the JJB can pass form admonition and counselling to confinement in a special home and is reproduced hereunder:

**Section 15: Order that may be passed regarding juvenile**

(1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks so fit,-

(a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;

(b) direct the juvenile to participate in group counselling and similar activities;

(c) order the juvenile to perform community service;

(d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e) direct the juvenile to be released on probation of good conduct and placed under the care of any
parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

[(g) make an order directing the juvenile to be sent to a special home for a period of three years:

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.]

(2) The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report before passing an order.

(3) Where an order under clause (d), clause (e) or clause (f) of sub-Section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order

[285 Substituted by the Act 33 of 2006.]
that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law:

Provided that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.

(4) The Board shall while making a supervision order under sub-Section (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.

If juvenile is released under Section 15(1) (d), (e) or (f) the JJB may direct that juvenile in conflict with law shall remain under the supervision of a PO and may impose conditions for the Supervision of the juvenile. Prior to the 2006 amendment there was ambiguity in the law as to the period for which a juvenile could be detained in a Special
Home, but the judicial trend\textsuperscript{286} was that a juvenile who had crossed the age of 18 years should not be incarcerated in a Special Home. By the 2006 amendment, it made clear that juvenile could be detained in Special Home for a maximum period of 3 years.

It is important to note that different international organisations has strictly mentioned time and again that incarceration of a juvenile in a detention facility should be resorted to only exceptional cases and for minimal period. The Beijing Rules emphasizes, ‘The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period’\textsuperscript{287}

Section 16 of the act as amended in 2006 states that a juvenile shall not be sentenced to death or given life imprisonment or committed to prison for default of fine. Section is reproduced hereunder:

\textbf{Section 16: Order that may not be passed against juvenile}

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death [or imprisonment for any term which may extent to imprisonment for life]\textsuperscript{288}, or committed to prison in default of payment of fine or in default of furnishing security:

Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is of so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the

\textsuperscript{286} Gurdeep Singh v State of Punjab, 2006 CrI LJ 126 (SC).
\textsuperscript{287} Clause 9.1 of the Beijing Rules.
\textsuperscript{288} Substituted by Act 33 of 2006, Section 13 for “or life imprisonment”.
interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government.

(2) On receipt of a report from a Board under sub-Section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit:

[Provided that the period of detention so ordered shall not exceed in any case the maximum period provided under Section 15 of this Act.]

It is pertinent to mention herein that juvenile justice system must not lose its essence and turn into a criminal justice system. The Supreme Court of U.S. has observed in Kent v United States290 "the child receives the worst of both worlds: he gets neither the protection accorded to the adults nor the solicitous care and regenerative treatment postulated for children".

It's important to have a look at the practical application of these Sections. So let's see how judiciary response to this. Going through some of important decision of the Apex court it seems that court is in confused state. Let's have a glance on some of the cases. In the case

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289 JJCPA 2000, Section 13, before substitution stood as “Provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the juvenile could have been sentenced for the offence committed”.

290 383 U.S. 541, 545 (1966)
of *kakoo v State of Himachal Pradesh*,\(^{291}\) the appellant (kakoo) committed the rape when he was 13 years of age on a child of two years. The Sessions Court and High Court justified a harsh punishment while Supreme Court kept in mind the age of Kakoo and prescribed a lower punishment. The High Court sentenced him to 4 years rigorous imprisonment. Commenting on sentence the advocate for the appellant urged that if the object of punishment is the reformation of the prisoner and to reclaim him into the society, the prolonged detention of 13 year old Kakoo in the company of the hardened criminals would be surly subversive to that object. The Supreme Court accepted this argument and held that:

‘An inordinary delay long prison term is sure to turn him into an obdurate criminal. In the case of child offenders, current penological trends command a more humanitarian approach’.\(^{292}\)

Kakoo’s sentence was reduced to 1-year rigorous imprisonment with a fine of Rs 2000/-. He was to be kept separately from the adult prisoners, preferably in reformatory school if any for the said period.

In *Satto v State of Uttar Pradesh*,\(^{293}\) Krishna Iyer, J enunciated the aim of criminal justice to be ‘correction informed by compassion, not incarceration leading to degeneration’. According to him the criminal law in India should approach the child offender not as a target of harsh punishment but of humane nourishment. He place reliance on ‘pre-sentence’ repots which was emphasized by the United Sates

\(^{291}\) AIR 1975 SC 1991: 176 Cri LJ 1545. The case came up before the Supreme Court by way of a Special Leave Petition under A/136 limited to the point of sentence.

\(^{292}\) Ibid, at para 4.

\(^{293}\) AIR 1979 SC 1519: Cr LJ 1979 At 943. In this case 3 boys between 10 to 14 years raped a 11 year old girl.
Supreme Court in *Williams v New York*,\(^{294}\) in this case Judge F. Ryan Duffy urges that such a report giving the background and surroundings of the defendant along with the circumstances under which the offence is committed is available to the court it would facilitate the imposition of sentence. The judge would be assured that the proper course has been adopted by keeping in view all relevant information about the juvenile in conflict with law.

The function of a judge is enhanced in such cases. The solemn determination of deprivation of liberty of a juvenile rests on the discretion of the judge. In exercising the same, the judge should follow due process hearing procedures and the legal presumption should favour release.\(^{295}\) Krishna Iyer, J. vehemently puts forth that it is time that the notion that secure detention is good for the child be rebuked.

In the year 2000 comes consternation in the case of *State of Himachal Pradesh v Mango Ram*,\(^{296}\) the three bench of Supreme Court held that the accused, 17 years old was guilty of committing rape on his niece yet refuse to impose a sentence on ground of both victim and the accused being “immature and young” inter alia. It submitted that the sentence already gone by the accused would be sufficient to meet the ends of justice.

In the year 2002, Supreme Court in the case of *State of Rajasthan v Om Prakash*,\(^ {297}\) took a strong stand on child rape cases, which they slated to be “against humanity”, and declared that in such cases the responsibility on the shoulders of the courts is more

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294 (1948) 337 US 241, 249.
295 Supra note 293.
296 AIR 2000 SC 2798.
297 AIR 2002 SC 2235.
onerous so as to provide proper legal protection to these children. In this case, the apex court refused to accept the contention that the incident had taken place a good 13 years ago and that the accused had matured since then and would be around 31 years of age and having already gone nearly three years of sentence, the same may be treated a sufficient punishment. The court held:

Having played with the life of a child, the respondent did not deserve any leniency and from him sympathy on the above ground will be wholly uncalled for. He deserves to undergo the remaining part of the sentence awarded by the trial court.

The Om Prakash Case is one of its kinds. The norm in sentencing policy is that of reducing or quashing sentences of juvenile offenders as opposed to punishing them. ‘Tender age’, ‘young blood’, ‘passion’ etc., have been used by the Supreme Court to cover the belligerence of the offending juveniles. However, now it is felt that, most juvenile justice system needs to give foremost attention to increasing their responsiveness to the needs of crime victims. As a vision for systematic juvenile justice reform, restorative justice suggests that the response to youth crime must strike a balance among the needs of victims, offenders, and communities, encouraging each to be actively involved to the greatest extent possible in the juvenile process. In United States of America has adopted the restorative justice approach\textsuperscript{298} in order to strike balance between the needs of the offender, victim and community. In restorative justice ‘punishment’ and ‘treatment’ of offenders takes a backseat. It gives

\textsuperscript{298} U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, \textit{http://www.ojp.usdoj.gov/ovc/publications/bulletins/vjj_10_2000+2/vjj_meeting.html.}
importance on studying of the nature of the harm caused and the manner in which it can be set right. This implies imposing accountability on the offenders for the damage caused to the victim and the community at large.

The time has come when the Indian judiciary draws lessons from the US approach and adopts a balanced measure to mete justice geared both to the victim and the needs of the juvenile offenders. The Supreme Court in *Supreme Court Legal Aid Committee v Union of India*,\(^{299}\) states “It is the responsibility of the society and is one of the paramount obligations of those who are in charge of governance of the country to attend to the children to make them appropriate children of tomorrow”.

1.7 Offences Against Juvenile

Crimes against children are rising alarmingly, children are being trafficked for marriage, and they are vulnerable to abuse anywhere, including within homes, outside homes, in schools and institutions, and at work. There is no separate classification of offences against children. Generally, the offences committed against children or the crimes in which children are the victims are considered as Crime against Children. Indian penal code and the various protective and preventive 'Special and Local Laws' specifically mention the offences wherein children are victims. The age of child varies as per the definition given in the concerned Acts and Sections but age of child has been defined to be below 18 years as per JJCPCA, 2000.

**Crime Against Juveniles**
According to the latest report by the National Crime Records Bureau of the Union Ministry of Home Affairs, Delhi reported the highest crime rate in relation to children with an average of 16 cases per one lakh population when compared to the national average of 2 cases per one lakh population. The "Crime in India 2009" report puts the number of rape of minors at 296 and incest at 11 in the capital. Child rights activists draw attention to the fact many cases go unreported because there are attempts to brush them under the carpet due to societal pressure. The matter is hushed up by the police because of which the data that does not mirror the social conditions. The NCRB figures are based on information provided by Delhi Police. The crime rate has marginally increased from 2.0 in 2008 to 2.1 in 2009. The rate was highest in Delhi (16.0) followed by A & N Islands (9.7), Madhya Pradesh and Sikkim (6.6 each) and Chandigarh (6.5) as compared to the National average of 2.1.

The cases in which the children are victimized and abused can be categorised under two broad sections:

1) Crimes committed against children that are punishable under Indian Penal Code (IPC).

2) Crimes committed against children that are punishable under Special and Local Laws (SLL). Specific Sections/Acts under above two categories are as follows:

1. Crimes against children punishable under the Indian Penal Code (IPC) are:

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300 "Delhi Reports Highest Number of Crimes Against Children", Times of India, 3rd February, 2011.
a) Murder (302 IPC)

b) Foeticides (Crime against a foetus) Section 315 & 316 IPC.

c) Infanticides (Crime against new born child) (0 to 1 year) Section 315 IPC.

d) Abetment to Suicide (abetment by other persons for commitment of suicide by children) Section 305 IPC.

e) Exposure & Abandonment (Crime against children by parents or others to expose or leave them with the intention of abandonment): Section 317 IPC.

f) Kidnapping & Abduction:
   
i) Kidnapping for exporting (Section 360 IPC).

   ii) Kidnapping from lawful guardianship (Section 361 IPC).

   iii) Kidnapping for ransom (Section 364 A).

   iv) Kidnapping for camel racing etc. (Section 363 IPC).

   v) Kidnapping for begging (Section 363-A IPC).

   vi) Kidnapping to compel for marriage (Section 366 IPC).

   vii) Kidnapping for slavery etc. (Section 367 IPC).

   viii) Kidnapping child for stealing from its person (under 10 years of age only) (Section 369 IPC).
g) Procuration of minor girls (for inducement to force or seduce to illicit intercourse): Section 366-A IPC.

h) Selling of girls for prostitution (Section 372 IPC).

i) Buying of girls for prostitution (Section 373 IPC).

j) Rape (Section 376 IPC)

k) Unnatural Offences (Section 377 IPC)

2. Crime against children punishable under ‘Special and Local Laws’ are:

a) Immoral Traffic Prevention Act, 1956 (where minors are abused in prostitution).

b) Child Marriage Restraint (Amendment) Act, 1929.


Table 1

Crime Against Children- State wise distribution
### Table 2

**Crimes against Children in the country and % variation in 2009 over 2008**

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Crime Head</th>
<th>Year</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>% Variation in 2009 over 2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Murder</td>
<td></td>
<td>1377</td>
<td>1296</td>
<td>1488</td>
<td>14.8</td>
</tr>
<tr>
<td>2.</td>
<td>Infanticide</td>
<td></td>
<td>134</td>
<td>140</td>
<td>63</td>
<td>-55.0</td>
</tr>
<tr>
<td>3.</td>
<td>Rape</td>
<td></td>
<td>5045</td>
<td>5446</td>
<td>5368</td>
<td>-1.4</td>
</tr>
<tr>
<td>4.</td>
<td>Kidnapping &amp; Abduction</td>
<td></td>
<td>6377</td>
<td>7650</td>
<td>8945</td>
<td>16.9</td>
</tr>
<tr>
<td>5.</td>
<td>Foeticide</td>
<td></td>
<td>96</td>
<td>73</td>
<td>123</td>
<td>68.5</td>
</tr>
<tr>
<td>6.</td>
<td>Abetment of Suicide</td>
<td></td>
<td>26</td>
<td>29</td>
<td>46</td>
<td>58.6</td>
</tr>
<tr>
<td>7.</td>
<td>Exposure &amp; Abandonment</td>
<td></td>
<td>923</td>
<td>864</td>
<td>857</td>
<td>-0.8</td>
</tr>
<tr>
<td>8.</td>
<td>Procurration of Minor Girls</td>
<td></td>
<td>253</td>
<td>224</td>
<td>237</td>
<td>5.8</td>
</tr>
<tr>
<td>9.</td>
<td>Buying of girls for Prosecution</td>
<td></td>
<td>40</td>
<td>30</td>
<td>32</td>
<td>6.7</td>
</tr>
<tr>
<td>10.</td>
<td>Selling of Girls for Prosecution</td>
<td></td>
<td>69</td>
<td>49</td>
<td>57</td>
<td>16.3</td>
</tr>
<tr>
<td>11.</td>
<td>Other Crimes</td>
<td></td>
<td>6070</td>
<td>6699</td>
<td>6985</td>
<td>4.3</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td>20410</td>
<td>22500</td>
<td>24201</td>
<td>7.6</td>
</tr>
</tbody>
</table>

The Table 1 and 2, shows the crime against children in India. A total of 1,551 cases of Murder of children (including infanticides) were reported in the country against 1,436 cases in 2008 resulting in an
increase of 8.0% in 2009 over 2008. Uttar Pradesh has reported the highest number of such cases (372) accounting for 24.0% of the total cases reported in the country. Arunachal Pradesh, Mizoram, Nagaland, Daman & Diu, and Lakshadweep did not report any case of child murder during the year. A total of 5,368 cases of child rape were reported in the country during 2009 as compared to 5,446 in 2008 accounting for a decrease of 1.4% during the year. Madhya Pradesh has reported the highest number of cases (1,071) followed by Uttar Pradesh (625) and Maharashtra (612). A total of 8,945 cases of Kidnapping & Abduction of children were reported during the year as compared to 7,650 cases in the previous year accounting for a significant increase of 16.9%. Delhi (2,248) has accounted for 25.1% of the total cases reported in the country. The rate of crime was also highest in Delhi at 12.6 followed by Dadra & Nagar Haveli (2.9) and Chandigarh (2.5) as compared to the National average of 0.8. The case of Foeticide are not far behind Madhya Pradesh has reported the highest number of such cases (39) followed by Punjab (23). 32 cases of ‘Buying of girls’ and 57 cases of ‘Selling of girls’ for Prostitution were reported in the country during 2009 against 30 and 49 such cases respectively in 2008. From the data available there is an overall increase of crime against the children.

The physical abuse of children is dealt with under the Indian Penal Code (IPC), under Sections 323-326. Under the JJCPA 2000, special offences covered under Section 23 relate to cruelty to a juvenile or a child by persons having charge. Any person with the charge or control of a juvenile or child, who assaults, abandons, neglects or exposes a child to physical and mental suffering or employs or uses them for begging or provides intoxicating liquor or
narcotic drugs or psychotropic substance, or uses the child in hazardous employment, will be punished. All these acts have been made cognizable and a complaint can be filed against the offenders and it prescribes the punishment for the same (Table 3 given below). The Act provides for punishment for cruelty to juvenile or child by person having actual charge or control over juvenile. Who assaults, abandons, willful neglects, the juvenile or child which likely to cause unnecessary mental or physical suffering. Such person shall be punished with the imprisonment for a term, which may extent to six months, fine, or with both.301 Whoever employs or uses juvenile or child for purpose or causes any juvenile to beg or its abetment shall be punishable with imprisonment for term of which may extent to 3 years or shall also be liable to fine.302 Whoever gives intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child except by duly qualified practitioner shall be liable to the punishable offence.303 Section 26 of the Act provides for punishment for procuring a juvenile or child for the purposes of any hazardous employment, keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for maximum 3 years with fine. All these offences are made cognizable.304

Where an act or omission constitute an offence punishable under this act or also under any other Central or State Act the offender found guilty of such offences shall be liable to punishment

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301 JJCPCA 2000, Section 23.
302 Id. Section 24 (i) & (2).
303 Id. Section 25.
304 Id. Section 27.
only under such Act as provides for punishment which is greater in degree.

Table: 3

Legal provisions under the JJCPA 2000

<table>
<thead>
<tr>
<th>Section</th>
<th>Offence</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>23</td>
<td>Assault, abandonment, exposure or willfully neglect of a juvenile or a child causing unnecessary mental or physical suffering</td>
<td>Imprisonment for 6 months and/or fine</td>
</tr>
<tr>
<td>24</td>
<td>Forceful employment or beggary</td>
<td>Imprisonment for 3 years and fine</td>
</tr>
<tr>
<td>25</td>
<td>Provide intoxicating liquor or any narcotic drug or psychotropic substance</td>
<td>Imprisonment for 3 years and fine</td>
</tr>
<tr>
<td>26</td>
<td>Keep in hazardous employment or bondage</td>
<td>Imprisonment for 3 years and fine</td>
</tr>
</tbody>
</table>


Children have limited protection from physical violence and abuse under the Indian Penal Code 1860 (IPC), and the JJCPA 2000. Under the Indian Penal Code, 1860, corporal punishment is unlawful under the JJCPA 2000, which prohibits torture and other cruel, inhuman or degrading treatment or punishment. The phenomenon of sexual abuse and exploitation of children is not new, and the problem is severe to the extent that children are sold, rented out and sexually abused by adults everywhere. While it is almost impossible to obtain accurate figures, it is a fact that millions of girls
and boys worldwide are being used in prostitution, pornography, trafficking, and other forms of sexual abuse and exploitation. There is no uniformly accepted definition of child abuse. There have been a number of definitions of the phrase ‘child sexual abuse’ (hereinafter referred as CSA). It could be termed as an activity relating to the engaging of sex organs for sexual gratification, which takes advantage of, violates or deceives children or young people. CSA has been defined as any kind of physical or mental violation of a child with sexual intent, usually by a person who is in a position of trust or power vis-à-vis the child. CSA is also defined as any sexual behaviour directed at a person under the age of 16 years, without informed consent. CSA becomes exploitation when a third party benefits through a profit. Commercial sexual exploitation of children commonly refers to the use of a child for sexual purposes in exchange for cash or in-kind favours between the client/customer and intermediary or agent who profits from such trade in children. Those who profit from such trade in children include a wide range of persons, including parents, family members, agents, and community members, largely men, but also women. It includes child prostitution, through trafficking, child sex tourism and child pornography.305

The laws dealing with sexual offences do not specifically address child sexual abuse. The Indian Penal Code, 1860, does not recognize child abuse. Only rape and sodomy can lead to criminal conviction. Anything less than rape as defined by the law, amounts to ‘outraging the modesty’ of the victim. The word ‘rape’ is too specific; this does not even include abuse on ‘boys’.306 Child marriage also

306 The provisions in the Indian Penal Code, 1860, relating to sexual abuse are as follows:
Section 354: Outraging the modesty.
Section 366: Kidnapping, abducting or inducing a woman to compel her for marriage, etc.
constitutes a form of sexual abuse of children. In Rajasthan, on AkshyaTritiya day, which is popularly known as the Akha Teej, hundreds of child marriages are openly performed. Akha Teej is regarded as the most auspicious day for celebrating marriages. On this day, even infants who have just been born or are only a few years old and cannot even sit or walk are married. In April 2003, the Forum for Fact Finding Documentation and Advocacy (FFDA), a human right NGO, filed a public interest case 307 seeking strict implementation of the Child Marriage Restraint Act 1929 (CMRA). 308 In December 2006, the Indian Upper House of Parliament approved a Bill outlawing Child Marriages called the Prohibition of Child Marriage Act 2006.

Child trafficking means the procurement, recruitment, transportation, transfer, harbouring or receipt of persons, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise. Under the JJCPA 2000, child victims of trafficking are treated as children in need of care and protection. In the Indian Penal Code, there are provisions for dealing with children who are trafficked. The Immoral Traffic (Prevention) Act, 1986 (ITPA) was enacted for the prevention of immoral traffic. All persons, whether male or female, who are

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308 CMRA repealed by the Prohibition of Child Marriage Act 2006.
exploited sexually for commercial purposes, fall under the purview of ITPA.\textsuperscript{309}

Some current initiatives of the Government of India include the ‘Prevention of Offences against the Child Bill, 2009’\textsuperscript{310} and the Criminal Law (amendment) Bill 2010.\textsuperscript{311} Under the Prevention of Offences against the Child Bill, 2009, a child has been defined as any person who has not completed the age of 18 years. Another significant definition in the bill is that of duty-bearer, which means any person who has been entrusted with the bill, the JJCPA 2000, and the Immoral Traffic Prevention Act, 1956. Some of the child-friendly guiding principles included in this Bill are the Principle of Best Interest of a Child; Principle of ‘Protection’ of a Child; Principle of Equality and Nondiscrimination—“Leave No Child behind”; Principle of Individuality

\textsuperscript{309} Offences under ITPA include:
- Section 3: Keeping a brothel or allowing premises to be used as a brothel;
- Section 4: Living on the earnings of a prostitute;
- Section 5: Procuring, inducing or taking a person for the sake of prostitution;
- Section 6: Detaining a person in a premises where prostitution is carried on;
- Section 7: Prostitution in or in the vicinity of a public place;
- Section 8: Seducing or soliciting for the purpose of prostitution.

\textsuperscript{310} A few years ago the Ministry for Women and Child Development (MWCD) developed a new draft bill, The Offences against Children’s Bill, to cover the lacunae in several other acts relating to children. It also included a Section on CSA. The draft bill was submitted by MWCD to the Ministry of Law and Justice, which returned the bill asking for changes. After a hiatus of a couple of years MWCD submitted the bill to the National Commission for Protection of Child Rights (NCPCR) asking for a recommendation

\textsuperscript{311} The main objectives of the 2009 Bill are:
- to consolidate and define the different offences against the child and to provide legal remedies for violation of the same;
- to make the applicability of the laws uniform to both boys and girls;
- to bring the existing laws and procedures in conformity with international, regional and national standards;
- to set forth good practices, relevant norms and principles for administering justice to a child;
- to provide stringent penalties to any person who violates the provisions of this Bill, thus creating deterrence;
- to ensure that the criminal justice machinery functions, keeping the best interest of the child, as the focal point at all stages;
- to ensure the speedy disposal of cases, with a view to avoiding delays, which can result in intimidation, retaliation and secondary victimization of the child.
and Participation; Principle of Privacy and Confidentiality; Principle of Non-stigmatizing Language, Decisions and Actions; Principle of Avoidance of Harm; and the Principle of Non-criminalization of a Child. The definition of ‘Sexual Assault of a Child’ in this Bill attempts to include the various forms of sexual abuse against a child. The Bill also includes the definition of aggravated forms of sexual assault of a child or a person less than twelve years of age, unlawful sexual contact and also non-contact-based sexual offences with a child.

The last decade has seen a spurt of legislative initiatives on the issue of child rights. The right to protection includes freedom from all forms of exploitation, violence, abuse, and inhuman or degrading treatment. Laws on child sexual abuse and exploitation, corporal punishment, surrogacy and reproductive tourism, adoption, surrogacy, cyber crimes against children, education and child labour, have to be reformed and formulated. It is a matter of concern that the prevention, rehabilitation and compensation of child victims have still to be incorporated in various legislations. The law on child sexual abuse and paedophiles is the need of the hour. India has become a heaven for paedophiles because of its lax laws. Child labour is assuming new forms like those of child artistes, and migrant child with them. Recently in a case of Childline India Foundation and Another v Allan John Waters and Others, filed a complaint alleging sexual and physical abuse at the Anchorage Shelters against 3 persons who are the owner of shelter, one of them is British national. The appeal filed against the order of HC that acquitted all of them and set aside their conviction. It was observed that A1 and A2, sexually abused the

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313 2011 (3) JT 570: 2011 (3) SCALE 639.
children at the shelter homes. The children at all the three places i.e. Colaba, Murud (Janjira) and Cuffe Parade were being used for sexual exploitation. The street children having no roof on the top, no proper food and no proper clothing used to accept the invitation to come to the shelter homes and became the prey of the sexual lust of the paedophilia. SC set aside the impugned judgment of the High Court acquitting all the accused in respect of charges leveled against them and restore the conviction and sentence passed by the trial Judge.

Enacting a child-friendly legislation to ensure not just compulsory close links between education and the prevalence of child labour demand a convergence of laws on education and child labour. Education also signifies education of equitable quality to every child in India. There is a need for a national legislation on corporal punishment. There are links between missing children, forced labour and trafficking. There is no existing national database or uniform tracking procedure existing in India today that deals with missing children across the country. It is an issue of serious concern post-Nithari wherein many of the 38 missing children was found to have been killed, the social activist asked to make the system strict. The ‘missing children’ issue can no longer be dealt with through knee-jerk reactions as in the as in case of Nithari killings happened. On an

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314 Facts of the case, Noida and the surrounding area were for long haunted by incidents of kidnapping. Parents approached police officials for help but were always denied any support. The incidents of kidnapping of little children, mostly girls, continued unchecked. On 29 December 2006, when police were investigating the kidnap of a teenaged girl, electronic surveillance brought them to this unoccupied house owned by Moninder. The electronic surveillance traced the cell phone of the kidnapped girl, who was sexually assaulted and killed in this house. But when the police investigation progressed, skeletal remains of many more children were found in sacks in the drain that was situated behind the house. This is when the case of serial killings came to light.

When the skeletal remains and the objects found in the sacks were tested, it was found that they belonged to the children who went missing.
average, over 40,000 children in India are reported missing every year.\(^{315}\) It is important to monitor and enforce the laws. What is required now is that the spirit of the laws be inculcated among the lawmakers, law enforcers and civil society so that children get justice. Prosecution and conviction rates in cases relating to contravention of the laws pertaining to children are low, pointing out the poor implementation of the law, administrative lapses, lacunae in the laws, and an urgent need for law reform. Policies and legislations for children have, on the whole, suffered from weak implementation, owing to scant attention to issues of child protection, resulting in scarce resources, minimal infrastructure, and inadequate services to address child protection problems. All the laws are passed with good intentions but there is a problem in their implementation and enforcement. Laws relating to children are difficult to enforce, as the victims themselves are weak and vulnerable. It must be understood that strict enforcement of the laws should in itself act as a deterrent to the violators. There must be in-built mechanisms and structures in all laws to ensure their implementation and enforcement.

**Special Juvenile Police Unit (SJPU)**

The Act contemplates constitution of a special unit of the police force called 'Special Juvenile Police Unit' (SJPU) to deal with juvenile in conflict with law. In every police station at least one officer, specially instructed and trained, is required to be designated as 'Juvenile or Child Welfare Officer' (JCWO) to deal with juvenile. Police is the first person with whom a juvenile comes into contact in the juvenile justice

system; thus he is required to have a child friendly approach. Special care is to be taken not to treat the juvenile as a criminal.

**Organisation**

1. An officer of the rank of not less than Inspector General of Police (IGP) to act as Nodal Officer to coordinate and upgrade role of Police in issues pertaining to Juvenile. [Rule 84 (10)].

2. In every district and city there should be a 'Special Juvenile Police Unit' (SJPU) to handle juvenile to be constituted within 4 months of the notification of the Rules. [Section 63(3) r/w Rule 84(1)].

3. Superintendent of Police of district to head SJPU and oversee its functioning. [Rule 84 (9)].

4. SJPU shall consist of Juvenile or Child Welfare Officer (JCWO) of the rank of Police Inspector and two paid social workers one of whom shall be a woman. [Rule 84 (1)].

5. In every police station at least one officer, specially instructed and trained to be designated as the JCWO to deal with juvenile. [Section 63(2)(3) r/w Rule 84 (3)].

6. List of designated JCWO and members of SJPU with contact details to be prominently displayed in every police station. [Rule 11 (4)].
7. SJPU to seek assistance from NGOs, Panchayat & Gramshabhas and Residents Welfare Associations. [Rule 84 (7) (8)].

8. Central and State Government to monitor establishment and functioning of SJPU. [Rule 64(1)].

Duties & Functions

A. Apprehension/Arrest

1. In case of petty offences (punishable with fine upto Rs.1000/- only), the police may dispose off the case at the police station itself, Rule 13(2) (d).

2. In case of non serious offences (punishable with imprisonment upto 7 years) juvenile can be apprehended only if it is "necessary in the interest of the juvenile", Rule 11(7)(9).

3. In case of serious offence (punishable with imprisonment for more than 7 years) juvenile can be apprehended, Rule 11 (7).

B. Duties Upon Apprehension

1. Upon apprehension of a juvenile, the police shall not:
   (i) Hand-cuff, chain or otherwise fetter the juvenile; [Rule 76]
   (ii) Send the juvenile to police lock up or jail; [Section 10(1) provisor/w Rule 11 (3)]
In these cases, awarded monetary compensation where juvenile has been kept in jail or police lock up.\textsuperscript{316}

2. Upon apprehension of Juvenile the police shall:

(i) Inform the designated JCWO of the nearest police station to take charge of the juvenile and matter; [Section 10 (i) r/w Rule 11(1)(a)]

(ii) Inform the parents/guardian about apprehension of the juvenile, address of the Board and date and time of production; [Section 13 (a) r/w Rule 11 (1)(b)]

(iii) Explain to the parents/guardian about the possible need of personal bond/surety; [Section 50 (2) Cr.P.C.]

(iv) Give copy of police report to the parents/guardian free of cost; [Section 50 (1) r/w Section 50A (1) & 207 Cr.P.C.]

(v) Ask the parents/guardian to bring documents regarding age of juvenile;

(vi) Inform the Probation Officer; [Section 13 (b) r/w Rule 11 (1)(c)]

(vii) Record social background of the juvenile and circumstances of apprehension in the case diary and forward to the Board; [Rule 11 (6)]

(viii) Be responsible for the safety, food and basic amenities during the period of apprehension; [Rule 11 (13)]

(ix) Produce before the Board within 24 hours of apprehension; [Section 10 r/w Rule 11 (2)] and in case the Board is not sitting, the juvenile shall be produced before a single member of the Board, who is empowered to pass all orders except final disposal; [Sec. 5(2) r/w Rule 11 (10)]

(x) Where juvenile is not released on bail, he shall be sent to Observation Home; [Section 12(2)]

3. In case of apprehension apparently in the interest of juvenile, the police shall make a report to the Board for transferring the child to the Child Welfare Committee; [Rule 11 (8) r/w Rule 13 (1)(b)].

4. In case of non-serious offence, no FIR or charge-sheet is required. Police may record the information regarding the alleged incident in General Diary. A social background report, circumstances of apprehension and offence shall be submitted to the Board before the first hearing; [Rule 11 (11)].

C. Other Important Aspects

1. The police shall complete the investigation at the earliest having regard to the requirement of the Act to complete the inquiry by the Board within 4 months; [proviso to Section 14 (1)].
2. The police shall attend the Board proceedings in plain clothes and shall not wear police uniform except at the time of arrest. [Rule 75]

3. Every juvenile is entitled to be released on bail, except:
   (i) Release is likely to bring him into association with any known criminal, or
   (ii) Expose him to moral, physical or psychological danger, or
   (iii) Release would defeat the ends of justice. [Section 12 (1)]

4. In case of escape, police may trace the juvenile and send him back. No proceeding for such escape can be initiated against the juvenile. [Section 22, Rule 18(2)(a)]

5. SJPU to act as watch-dog against cruelty, abuse and exploitation of juvenile. [Rule 84(5)]

6. Police to accompany the juvenile for restoring him back to the family. [Rule 65(4)]

7. Police Officer if found guilty of torturing a child, is liable to be removed from service besides being prosecuted under Section 23 of the Act. [Rule 84 (11)]

The ultimate purpose of the JJCPCA is rehabilitation and social integration, be it, a child in conflict with law or a child in need of care and protection. For the purpose of achieving such rehabilitation and social integration, elaborate procedures are prescribed under the Act. The Act contemplates, under Section 63, the Police Officers with aptitude and appropriate training and orientation, to be designated as a Juvenile or Child Welfare Officer, to handle the juvenile in
coordination with the Police. Secondly it contemplates that the Police Officers, who frequently deal with the juveniles or engaged in the prevention of the juvenile crime, shall be specifically instructed and trained.