Institutional Structure Of Homes under Present Study

1. Observation Home for Girls, Nirmal Chhaya Complex, Jail Road, New Delhi

Physical Facilities:
The above-mentioned Observation Home from where the respondents were selected is one of the homes for socially delinquent girl child. While it has a capacity of only 50 girls the website of the Delhi Social Welfare Department shows that the total number of girls in the institution in the year 2001 was 183. Even at the time when information was being gathered from the respondents for this present study the strength of the home was 200 girls.

Staff Position:
The Home is composed of the following staff: Superintendent, Welfare Officer/Probation Officer, Care Taker, Educator, Vocational Instructor, Peon and a cook

Food:
In the breakfast, children are given bread, eggs etc. In the evening they get tea and biscuits. In the lunch, rice, dal and vegetables are served. In dinner, chapatti, dal and vegetables are given to the children. The quality of food was found to be good.

Education and Vocational Programme:
Non-Formal Education and Vocational Training Skills are given to the girls.

Health:
The home has a health center. Children undergo health check-ups at the time of admission. A doctor comes everyday and sits in the Health Center. Children get the medicine and special diet as prescribed by the doctor The complicated cases of illness are referred to District Hospital or private nursing home for treatment and expenses are borne by the home.
Physical Facilities:
This shelter home for girls was established in the year 1999 for those in need of care and protection. It has a capacity of 50 girls and at the time of data collection there were 50 girls. The Child Welfare Committee refers these girls to Prayas Shelter home for rehabilitation and repatriation. It is an NGO run Institution under the authorization and permission of the Government. Prayas has been declared a Fit Institution to run homes.

Staff Position:
The Home is run by a Shelter home manager, social worker, two house mothers, cook, and two office attendants.

Food:
In the breakfast, children are given porridge, milk, fruits, bread eggs etc. In the evening they get tea and snacks. For lunch and dinner chapatti, rice, dal and vegetable are served. The quality of food was found to be very good.

Education and Vocational Programme:
The girls are given Non-Formal Education and Vocational Training Skills according to the need and demand.

Health:
The Home has a medical room. Children undergo regular health check-ups. A doctor comes every alternate day and gives medicines as and when required.
The responses received from the girls on the conditions present in the institutions, where they were staying, are as follows.

The above data shows that 75 percent of the respondents from both the homes felt that they were getting adequate food to eat. While 12 percent of the girls felt that there was a need for more number of toilets, 88 percent had no complains from the same. It was felt that the overall medical facilities made available for the girls were adequate. However 10 percent of the girls did face some problems in medical aid during emergencies.

The residential care has always been under severe criticism because it isolates children from wider society. The poor physical conditions and prevalence of inhuman unfriendly atmosphere are two primary reasons for such criticism. So much so that in spite of its necessity, in principle, they have agreed to the principle of
institution as a last resort. More importantly, there is complete lack of understanding about the meaning and significance of the term Home as discussed earlier among the functionaries.

The meaning of residential care/institutional care must be understood in running a Home, both in terms of concept and management. The management (system) should be informal and inter-personal relationships amongst the children, the staff should be cordial. The children should have the rights of participation in the management (system) of the home and then alone can we have a good residential care system or a child friendly home.

Most of the time it is seen that there are a number of undesirable practices prevalent in these institutions, which are often contrary to the provisions of the Act and the Rules. This is probably one of the reasons that the condition of Institutions for children in India is so deplorable and the inmates are not happy staying these institutions. The present study data shows that almost 60 percent of the respondents expressed that they were not happy in their respective institutions. The reasons given for not being happy included misbehavior by the staff (see table below).

![Figure 4: Reasons for not being happy in the Institution](image)
Even though these children have gone through worst of time they still have dreams of being independent, having a career and living by themselves. As shown in table above maximum number of respondents wanted to become doctors (24%) followed by Teachers (18.5%) and 13% said that their only ambition in life was to earn lots of money. Questions relating to how do they foresee their future now revealed that out of the total sample of 200 girls, 40 of them wanted to do a job, 31 wanted to go back home and 29 wanted to stay back and study more.
Most of the respondents were very unhappy (60%) with their present status but a notable observation was that they wanted the society to make efforts to improve their present status and condition. They felt that the best way to do it was to provide them with better educational opportunities. Others felt that the mechanisms should be worked out where their pending cases are decided at the earliest so that they can lead a free life. Some felt that best way to upgrade their present situation was to do a job and for this they wanted to acquire varied market-driven vocational skills.
Leaving aside 3% of the case where the child came in contact with the Juvenile Justice System because of being abandoned by family the remaining 97% very affirmatively feel that what they did was due to their unfavorable conditions.

**Table 1: Respondents Expectation from Society**

<table>
<thead>
<tr>
<th>Child's Expectation from Society</th>
<th>Frequency</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>People should know the problems of children</td>
<td>54</td>
<td>43.9</td>
</tr>
<tr>
<td>People should know the facts about the case before making their judgment</td>
<td>29</td>
<td>23.5</td>
</tr>
<tr>
<td>Abusers should be punished severely</td>
<td>9</td>
<td>7.4</td>
</tr>
<tr>
<td>People should not misbehave with children</td>
<td>20</td>
<td>16.3</td>
</tr>
<tr>
<td>Family should not differentiate between a girl and a boy</td>
<td>11</td>
<td>8.9</td>
</tr>
<tr>
<td>Total</td>
<td>123</td>
<td>100.0</td>
</tr>
</tbody>
</table>

They were very upset with the society’s reaction and parental attitude and wished that society would change their attitude towards girl child delinquency (66%) and understand that even they may have aspirations and have the right to get what they wanted. The kind of changes in the society’s perspective included:

**Does the child consider her act as antisocial**

- Yes: 38%
- No: 62%
More than half of them felt that what they did was not anti-social and was only a means of running away from their plight and abusive circumstance. Since the circumstances to fulfill these rights were not favorable they had to act out to forcefully fulfill their aspirations. The above analysis shows that no child actively wants to disobey or violate the law. She or he is forced to do so because of the circumstances. This external force acts upon the child and govern her/his behavior. After interacting with the girls it was felt that the social environment in which the offence was committed is very important if we want to understand their delinquency behavior and the reasons behind it.

Precisely for these reasons the Juvenile Justice (Care and Protection of Children) Act, 2000 prescribes for child-friendly approach and adjudication and disposition of matters in the best interest of the children in the preamble itself. Further, the provision of involvement of social workers and voluntary organizations in the running the institutions, production of children, the functioning of the Competent Authorities and Advisory Boards, have been made to make the institution more homely and child-friendly. Only when the provisions of the Juvenile Justice Act are properly implemented the children will feel happy to stay in these Homes and would enable their proper growth and development. The programmers are likely to be more meaningful which may help to rehabilitate the children in the society. Provisions like Adoption, Foster care and Sponsorship are aimed at rehabilitation and, at the same time, would become the means to deinstitutionalize children.
(i) UNCRC

(ii) Constitutional Provisions for Girl Child

(iii) Indian Penal Court

(iv) Juvenile Justice (Care and Protection of Children) Act, 2000

(v) Goa Children Act 2003

(vi) Immoral Traffic (Prevention) Act, 1956

(vii) Child Labour (Prohibition and Regulation) Act, 1986

(viii) Child Marriage Restraints Act, 1929

(ix) Governments’ Recent Initiatives

   a National Charter for Children, 2003

   b National Plan of Action for Children, 2005

   c Commissions for the Protection of Child Rights Act, 2005

   d Offences Against Children’s Bill, 2005

   e Integrated Child Protection Scheme, 2006

(x) Initiatives by the Delhi Government

In India, children have been subjected to excessive and brutal punishments for their misbehavior by parents, teachers, guardians, the police, and custodians of institutions. This is because in the attitudes of most adults those children are "not persons", and therefore should not have a voice on matters, but should submit to what adults wish. This attitude is gradually changing, especially because of the active efforts of many governmental and non-governmental organizations, and child and legal advocacy groups. Increasingly children are recognized as "persons" who deserve to be treated with care, protection, right, decency and fairness.

Legal provisions towards this change began to evolve with the growing democratization of the country and new interpretations of the Constitution of India and the rights therein. The Juvenile Justice Act of 2000 is a great improvement as it
includes not only the practices under the Common Law and Indian traditions, but also incorporates United Nations recommendations, especially the U.N. Convention on the Rights of the Child of 1989. The importance of the U.N. Convention on the Rights of the child for India is that, in addition to stressing the importance of "Participation right" and "Survival and development rights," it also stresses "Participation rights of children. This does not mean that adults have to consult small children on every matter, but that "the child should grow to recognize its own voice and to respect those of others."

**UN Convention on the Rights of Child (UNCRC) 1989**

The UNCRC adopted by the General Assembly of the United Nations in 1989 to protect the rights of children is the most important instrument in the history of child rights at the international level. The Convention has been ratified by most of the developed as well as developing countries, including India, which ratified the Convention in 1992. The major Articles in the Convention leading to abusive situations among children are:

- **Article 2 (2):** Protection against all forms of discrimination or punishment
- **Article 3:** Protect the best interests of children
- **Article 19:** Protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse while in the care of parents, legal guardians or any other person in whose care they are.
- **Article 25:** Protection of the physical and mental health of the child.
- **Article 33:** Protection from illicit use of narcotic drugs and psychotropic substances.
- **Article 34:** Undertake to protect children from all forms of sexual exploitation and sexual abuse.
- **Article 35:** Take all appropriate national, bilateral and multi-lateral measures to prevent the abduction of, sale of or traffic in children for any purpose or in any form.
Article 36: Protection from all forms of exploitation prejudicial to any aspect of child’s welfare

The UNCRC has identified four core rights of children, namely the rights to survival, development, participation and protection. All children being deprived of these basic rights fall in the category of child abuse and neglect.

\[ \text{Constitutional (Indian) Provisions related to Girl Child.} \]

The Constitution of India contains several provisions dealing directly or indirectly with children including the girl child:

Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

Article 15: The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.

Article 15(3): Nothing in this article shall prevent the State from making any special provision for women and children.

Article 19(1) (a): All citizens shall have the right (a) to freedom of speech and expression;

Article 21: No person shall be deprived of his/her life or personal liberty except according to procedure established by law.

Article 23: Traffic in human beings and beggary and other forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.

Article 24: No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Article 38: The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.
Article 39: The state shall, in particular, direct its policy towards securing
(e) that the health and strength of workers, men and women, and the
tender age of children are not abused and that citizens are not forced by
economic necessity to enter avocations unsuited to their age or strength
and
(f) That children are given opportunities and facilities to develop in a
healthy manner and in conditions of freedom and dignity and that
childhood and youth are protected against exploitation and against moral
and material abandonment.

Article 45: The State shall endeavor to provide, within a period of ten years from the
commencement of this Constitution, for free and compulsory education
for all children until they complete the age of fourteen years.

The Indian Penal Code

Crime against Children punishable under the Indian Penal Code (IPC) includes:
A) Foeticides (Crime against children being born) Section 315 & 316 IPC
B) Infanticides (Crime against unborn children) Section 315 IPC
C) Abetment of Suicide (Abetment to commit suicide to minor) Section 305 IPC
D) Exposure & Abandonment (Crime against children by parents or others to expose
or to leave them with the intention of abandonment): Section 317 IPC
E) Kidnapping & Abduction: i) Kidnapping for Extortion (Section 360 IPC), ii) Kidnapping
from Lawful Guardianship (Section 361 IPC), iii) Kidnapping for Ransom (Section 363 read with Section 384 IPC), iv) Kidnapping for Camel
Racing etc. (Section 363 IPC), v) Kidnapping for Begging (Section 363-A IPC),
v) Kidnapping to Compel for Marriage (Section 366 IPC), vii) Kidnapping for
Slavery etc. (Section 367 IPC). viii) Kidnapping for Stealing from Person (under
10 years of age only) (Section 369 IPC)
F) Procurement of Minor Girls (by inducement or by force to seduce or have illicit
intercourse) section 366-A IPC
G) Selling of Girls for Prostitution (Section 372 IPC)
H) Buying of Girls for Prostitution (Section 373 IPC)
I) Rape (Section 376 IPC)
J) Unnatural Sex (Section 377 IPC)

The Juvenile Justice (Care and Protection of Children) Act, 2000

The Juvenile Justice (Care and Protection of Children) Act, 2000, which is considered a 'Blueprint of Child Welfare', appears to be the most comprehensive law for the children in the country. The Juvenile Justice Act of 2000 provides for the improved treatment of the child, with dignity, concern, and care. It is required that those who work with juveniles in the roles of law enforcement or providing care and services, such as judges, police officers, and probation officers, should have special training in child psychology and treat children with care and dignity. This Juvenile Justice Act of 2000 brings juveniles under juvenile court jurisdictions for two main reasons: for being in conflict with the law, or for being in need of care and protection.

1) **Children in need of care and Protection include a child:**
   - Who is found without any home or settled place or abode and without any ostensible means of subsistence.
   - Who is found begging or who is either a street child or a working child.
   - Who resides with a person (whether a guardian of the child or not) and such person a ) – has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person.
   - Who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable disease having one to support or look after.
   - Who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child.
• Who does not have parent and no one is willing to take care of or whose parents cannot be found after reasonable inquiry,
• Who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts.
• Who is found vulnerable and is likely to be inducted into drug abuse or trafficking.
• Who is being or is likely to be abused for unconscionable gains.
• Who is victim of any armed conflict, civil commotion or natural calamity.

Under the subject matter of children in need of care and protection, many services are provided. Services are provided for abandoned, neglected, dependent, abused, begging, mentally ill, and physically ill children. Children, who are in danger from others, and those who are forcefully subjected to dangerous work, also come under this jurisdiction, as do matters relating to the adoption of children.

2. Children in conflict with law (also referred to as juveniles) include a child: who is alleged to have contravened a provision of a criminal/penal legislation and is below the age of 18 when such offence is committed by him/her.

The Juvenile Justice Act outlines the rules and procedures that juvenile justice officials and organizations should follow for juveniles in conflict with the law. When a juvenile is accused of committing an offence it becomes the responsibility of the police officers to ascertain whether the offence has occurred, and if so register the case with the cooperation of the juvenile police unit or officer. The officer is also required to explain to the juvenile the charges against him or her in an understandable manner. The juvenile police officer then has to refer the matter to Juvenile Justice Board (court) and inform the parents of guardians of the child and the probation officer as soon as possible, and let them know where the juvenile will appear before the Board.
If the juvenile is not released to the parents of guardians, the juvenile police officer is required to place the juvenile in an appropriate facility or custody to make the child appear before the Board. The police cannot compel or threaten juveniles to gain incriminating information (Arulselvam, 2002:131). The custodians in charges of the facility are required to provide the care, control, and protection that parents would normally provide. Temporary custody may be in Observation Homes or Special Home (Custodial or holding institution), either started by the state government or a state-certified private agency. Juveniles places there are studied and classified.

It is then decided whether they should stay with parents or guardians, or be placed in Observation Homes or Special Homes, pending the inquiry by the Board. Juveniles are classified on the basis of their gender, age, seriousness of the offence, and special psychological characteristics. These Observation or Special Homes are located in specified places within each district, or a group of districts. There are not very many such institutions, because juveniles needing official attention are very low in number.

The Juvenile Justice Act of 2000 states that juveniles who are accused of bailable offences can be released can be released with or without surety. Such juveniles may not be released to their parents or guardians if their exposure could cause moral corruption, physical or psychological endangerment, or if the purpose of justice cannot be met, or the child may be taken away. Juveniles who should be detained are separated away from adult detention facilities, and often placed in observation Homes or a place of safety (detention institution).

The Board or the court consists of a qualified metropolitan magistrate (in cities) or a qualified judicial magistrate (in other areas), and two social workers, one of them female. The magistrate is required to have education and training in child psychology or child welfare. The social warders are required to have a minimum of seven years of experience connected with children, in health, education, or welfare services. A juvenile can be brought before a member of the Board for temporary action, pending
a decision by the Board. In the hearing of the case, rules of procedure should be followed, and a record of proceedings should be maintained.

In the final disposition of the case the principal magistrate should be present with at least one other member of the Board. The decision of the majority of the Board is final, but when majority support for a decision is absent, the decision of the principal magistrate is sustained. Additionally, the Act specifies that juvenile and adult cannot be concurrently tried for an offence, it is specified in the Act that a juvenile case should be completed within a period of four months, unless special circumstances dictate otherwise. The state High Court and the Court of Sessions are courts of appeal for review of Juvenile Justice Board decisions.

Children in conflict with the law have procedural rights in the processing of their cases. Parents and children have the right to the use of an attorney (which in practice may have to be approved by the court), and when they do not have means to hire an attorney, one could be appointed with state support or support of legal aid organizations. According to the Constitution of India, Articles 20, 21 and 22 children also have the right to a speedy trial, the right to remain silent, the right to be adjudicated only with sufficient evidence, and the right to life and liberty in accordance with set principles and provisions. Although these rights are talked about, they are not often adequately provided. It seems the justice done in courts incorporates elements of both the accusatorial and the inquisitorial systems of inquiry, more of the latter than the former, again blended with informal, paternalistic, and rehabilitation thrusts.

The Act specifies that the Board should use the services of probation officers employed by the state. Volunteer probation officers who are selected to help regular probation officers may also provide services, probation officers collect information, which the Board uses to inquire into juvenile cases, adjudicate them, and dispose of them with appropriate sanctions and placements. This contrasts with the American
Juvenile Justice system, in which probation officers are mainly entrusted with doing persistence reports, but usually not inquiry reports to be used for adjudicating cases.

Many choices in the disposition of the cases exist. In some cases the Board sends the child home to his or her parents or guardians and consults parents and guardians as well, without imposing any serious sanctions. It may order consoling, community service, or place a juvenile on probation, no exceeding a period of three years. For good conduct observed from the reports of the probation officers, the probation period can be reduced. Sometimes fines are collected from parents, or from the juvenile, if the juvenile is over 14 years of age and his income. Juveniles who are stubborn, older, and unresponsive to treatment can be sent to special homes through appropriate changes made to their earlier placements. A 17-year old juvenile, for instance, for instance, can be sent to a special Home (custodial institution). Such decisions made for the protection of the juvenile and the public are required to be explained to the parents, guardians, or the institution responsible for the juveniles. Juveniles who have committed serious offences or repeat offenders can be placed in reform schools or Borstal Schools for training, education, and discipline.

No juvenile can be subjected to the death penalty or a life sentence, as per the Act. A juvenile cannot be held in custody for inability to pay a fine or a surety. A juvenile who has committed a serious offence, and is 16, if noted to possess characteristics that would be dangerous to other juveniles in Special Homes, can be placed, as noted above, in a Place of Safety for protective custody. This custody should not be above the maximum period of confinement already specified. Provisions exist for the aftercare of children released from custodial institutions.

After they are studied they are recommended for aftercare. The appropriate conditions that the children should follow and the services they should receive from persons and organization to which they are entrusted are outlined. The records of juvenile convocations are made null and void after the expiry of the date of appeal to the case,
or a specified time as per the rules. Juveniles are also protected from publicity of their name and identities, but under specific circumstances when it is to the advantage of the juvenile, these may be revealed.

If parents, guardians, custodians, and other adults who are held responsible for the protection and care of children fail in their roles, and neglect, abandon, or cruelly handle children, they are subject to punitive sanction. Adults contributing to the delinquency of juveniles, who induct them into begging or prostitution, place children in bondage, exploit their labor for personal purposes, involve them in ill illegal and immoral activities, or place them in dangerous occupations are subject to severe penalties. Similarly those who provide alcohol or drugs to juveniles are punished.

The Act contends that children are not responsible for their actions, and requires the juvenile court, as a state agency, to fulfill its role ingrained in the notion of parents patriae, so that the best interests of children can be served. From the thrusts of the Act and the kinds of agencies called for, one could say that the model of juvenile justice created is tilted more toward the welfare model than the legal model.

In the processing of delinquency case, procedural formalities and rights are recognized, and the parents of guardians can utilize the services of attorneys, but providing care, protection, services, and rehabilitation are given a higher priority. This Act is very ambitious and requires the court to find out the causes of the delinquent behavior, and rehabilitate the offender. It remains to be seen how this Act is going to be implemented. There are many legal and administrative issues and problems that the states are confronting that need to be resolved.

The scheme of law distinguishes and comprehensively covers these two categories of children and creates competent authorities such as Child Welfare committee for children in need of care and protection (Section 29) and Juvenile Justice Board (JJB) for juveniles in conflict with law.
The Child Welfare Committee (CWC)

The Juvenile Justice Act of 2000, sensitive to issues regarding harm done to children, mandates, apart from the Juvenile Justice Board, a parallel organization known as Child Welfare Committees. They process and dispose cases of children "in need of care and protection." One or more Child Welfare Committees is present in each district or group of districts within a state to receive, examine and dispose of these types of cases. The committee includes five members: a chairperson and four other members chosen by the state government. One of these persons should be a woman, and another, a professional in the area of child welfare.

When the committee is convened it functions as a bench with the power of a magistrate court. The committee can order needed services for the care, protection, treatment, development, and rehabilitation of children. The committee also is given the role of helping to fulfill the basic needs of children and protection of their rights. The members of the committee are expected to be persons of honorable character and committed to the cause of children. Children needing help and services can be referred to this committee by police, public, public servants, welfare agencies, and citizens. Juveniles themselves can seek care and protection. A child in need of protection services may be temporarily produced before a member of a committee for safe custody, until the committee meets and decides a course of action by a majority decision, or lacking such by the decision of the chairperson of the committee.

A police officer or the committee may as a preliminary step inquire into the juvenile in question and refer the juvenile later for study and information to a Children's Home, maintained by the state or certified by it. The inquiry and the disposition should occur within a period of four months. If the Juvenile is not supported and protected by the family or guardians, such children can be kept in children's Homes or shelters until an appropriate placement is made. As there are many runaway, needy, abused, and begging children who could be found to be away from their district of residence, provisions are made for their transfer to Child Welfare Committees in their
own districts, where inquiries are made and appropriate services are rendered to them for their "restoration" with parents and guardians.

It has sole authority to deal with matters concerning children in need of care and protection. A Committee has to be constituted for each district or group of districts, and consists of a chairperson and 4 other persons one of whom at least should be a woman. The committee has the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and human rights. A child rescued from hazardous occupation, brothel, abusive family or other such exploitative situation must be produced before the CWC who will conduct an inquiry to ensure optimum rehabilitation with minimal damage to the child. Children in need of care and protection are sent directly to the children's home by the Child Welfare Committee that passes necessary orders for their rehabilitation, restoration and social reintegration.

**The Juvenile Justice Board (JJB)**

It has sole authority to deal with matters concerning children 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. Once the crime is committed and the child is apprehended, the case comes before the Juvenile Justice Board. Till the inquiry is pending the child is kept in an observation home, unless otherwise released as per the law. On conviction, the child is sent to the special home or place of safety.

Under this law, every juvenile in conflict with law has a right to bail as granting bail is mandatory, except when it can pose a threat to the life or well-being of the juvenile. Instead of being sent to a jail, the law takes a reformatory approach and provides for
release on probation after advice and admonition or, places them in custody of special homes.

Even if the Child is being accused of doing an offence with an adult, the child must be tried separately in the Juvenile Court (Section 4.) called the Juvenile Justice Board. The Juvenile Justice Board and Child Welfare Committees are constituted to ensure child protection through child friendly administrative infrastructure, provisions for proceedings, enquiry and disposition.

It provides for custodial and protective care consisting of different types of homes for such children namely the Children Home, Shelter Home, Observation Home and Aftercare Home. Services such as Drop-in-Centre are also given in the act, wherein a child may seek assistance in the form of care, protection and other support services including a temporary abode, where he feels protected from an exploitative environment. In such a centre, a child may walk in to avail of humane services and walk out at his/her will. There are hundreds of such Centres now being run by the Railway Police and Railway Protection Force besides many public servants who are not able to create Government or NGO run Homes and Shelters under the Juvenile Justice (Care and Protection of Children) Act, 2000. In the absence of such Shelters and Drop-in-Centres the entire child protection system is likely to collapse.

The Act has created a Central Advisory Board at the Central Government level and state-level Advisory Boards to guide central and state governments on planning, implementation, and resource development activities connected with education and rehabilitation of juveniles needing care and protection, and those who have violated the law. In the cities, where many services are needed for juveniles, In this regard the Ministry of Social Justice and Empowerment at the Central Government is given the role of promoting state government initiatives.
In the cities, where many services are needed for juveniles, City Advisory Boards have been created as appendices of the organization that coordinates with the central agency and facilitates many of the juvenile service activities is the Directorate of Social Defense (Department of Social Defense, no date). At the level, within the districts, are also committees to monitor and facilitate the objectives of the Act, and coordinate with activities of state agencies and advisory boards.

The Juvenile Justice Act of 2000 has created a bifurcated system of services at the district level Advisory Boards to guide central and state governments on planning, implementation, and resource development activities connected with education and rehabilitation of juveniles needing care and protection, and those who have violated of the law. In the cities, where many services are needed for juveniles, city Advisory Boards have been created as appendices of the organization arrangements (Ministry of Law, justice and Company Affairs, 2000"31).

In the State of Tamil Nadu, the state organization that coordinates with the central agency and facilitates many of the juvenile service activities is the Directorate of Social Defense (Department of Social Defense, no date). At the state level, within the districts, are also committees to monitor and facilitate the objectives of the Act, and coordinate with activities of state agencies and advisory boards.


The recent amendments (2006) to the act are given below:

Section Amendments to the earlier Act of 2000

- 2(a)(a) Inclusion of definition of Adoption: "Adoption" means the process through which the adopted child is permanently separated from his
biological parents and becomes the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship.

- 2(d)(i) **Child beggars** included in the definition of children in need of care and protection.
- 10(1) In no case a juvenile in conflict with law shall be placed in a police lockup or lodged in jail.
- 14(2) Since the provision for enquiry to be completed within four months lacks proper implementation, as inquiries are pending before the Boards for a long period of time, it is proposed that the Chief Judicial Magistrate/Chief Metropolitan Magistrate shall review the pendency of cases of the Board every six months, and shall direct the Board to increase the frequency of its sittings or may cause constitution of additional Boards.'
- 15(1)(g) The Juvenile Justice Board can make an order directing the juvenile to be sent to a special home for a maximum period of three years only.
- 16(1) No Juvenile in conflict with law can be put under imprisonment for any term which may extend to imprisonment for life.
- 21 Contravention of provisions dealing with prohibition of publication of name etc. of child shall be punishable with fine extending to twenty five thousand rupees as against existing 1000 rupees.
- 4 & 29 The State Governments to constitute Juvenile Justice Board and Child Welfare Committee for each district within one year of the Amendment Act coming in to force.
- 33(3) The State Governments may review pending of cases before the Child Welfare Committee in order to ensure speedy completion of enquiry process.
- 34(3) **All State Government/voluntary organizations** running institutions for a child/juvenile shall be registered under this Act within a
period of six months from the date of commencement of the Amendment Act, 2006.

- 41(4) State Government shall recognize one or more of its institutions or voluntary organizations in each district as specialized adoption agencies for the placement of orphans, abandoned or surrendered children for adoption. Children's homes and the institutions run by the State Government or voluntary organizations for children who are orphans, abandoned or surrendered shall ensure that these children are declared free for adoption by the Child Welfare Committee and all such cases shall be referred to the adoption agency in that district for placement of such children in adoption in accordance with guidelines.

- 62(A) Every State Government shall constitute a Child Protection Unit for the State and, such units for every district, consisting of such officers and other employees as may be appointed by that Government to take up matters relating to children/juveniles with a view to ensure the implementation of this Act.

This law also creates a legal and rehabilitation/social reintegration package for adoption, foster care, sponsorship and aftercare services. It is a big step forward in terms of being a progressive and proactive legislation providing for the care, protection, treatment and rehabilitation of children in need of care and protection and juveniles in conflict with law. This Act contributes to the building of a uniform Juvenile Justice System throughout the country and reaffirms the child’s right to survival, protection, family development and participation.

It also considers institutional and non-institutional services for children. The Act has laid special emphasis on rehabilitation and social integration of the children and has provided for institutional and non-institutional measures for care and protection of children. The non-institutional alternatives include adoption, foster care, sponsorship,
and after care. The act also envisages a system of partnerships with local communities and local governments to implement the legislation.

This Act conforms to the UNCRC and seeks to promote a child-friendly Juvenile Justice System in India. The first example of this lies in the use of different and child-sensitive terminology used in legislation:

- A child alleged to have committed an offence is known as a "child in conflict with law" not a criminal/accused, or juvenile delinquent.
- A juvenile can be "apprehended" not arrested.
- A child in conflict with law is not subjected to a "trial" but to an "inquiry."
- A child in conflict with law apprehended by police is supposed to be produced before the "Juvenile Justice Board" not before any other regular Court of Magistrate.

**Goa Children's Act, 2003**

The Goa Children's Act, 2003 is intended to fill those above mentioned gaps and take a holistic view of a child. It also attempts to blend the legislative, administrative and children-related schemes to serve the best interests of the 'child in need', i.e., the expanded definition of 'child in need of care and protection' and the 'juveniles in conflict with law', as defined under the Juvenile Justice (Care and Protection of Children) Act, 2000. This Act refers to the Directive Principles, 93rd Amendment to the Constitution making Elementary Education a Fundamental Right, United Nations Convention on the Rights of Child (UNCRC) and [limited] provisions for children's Home while creating offences against child labour (including domestic), child trafficking, child education and prostitution etc.

However, at least on paper, this is the only Act that addresses the issue of Child Abuse in the following sections:

**Section 2 (m): 'Child Abuse**
Section 3: Rights of the Child (Section 5&8).

Section 7: Child Labour

Section 8: Child Abuse

Section 9: Child Sexual Trafficking

Section 10: Children in Difficult Circumstances

Section 11: Girl Child

Section 14: Violations and Penalties

To understand the Act better, one has to take an in depth look at its provisions.

**Rights of the Child** - The Act adopts the rights enshrined by the CRC. This is a positive step as for the first time international law on the rights of a child has been recognized as part of the law of the land. CRC recognizes the doctrine of the 'best interest of the child' as a primary consideration. The Act toes the CRC line and adopts the 'best interest of child' as the primary consideration. But 'the best interest of the child' has not been defined by the Act and is therefore open to interpretation. If the rights of the child are clearly laid out by the Act, then those rights are guaranteed to the child and are legally enforceable.

**Education** - It is common knowledge that education does not reach every nook and corner of India. Child illiteracy is rampant in India. There are many villages where a school is still unheard of. The Goa Children's Act takes into account school curriculum, medical facilities in schools, holistic education, proper infrastructure, counseling facilities, adequate teaching aids and banning of corporal punishment in schools. The Act has declared that the Government shall work towards the eradication of child illiteracy within a period of three years from the commencement of the Act. A comprehensive plan of action is to be made by the State in order to achieve total eradication of child illiteracy, but by the time the plan of action comes into effect, the three years may be up. Implementation has always been one of the biggest problems of the State. The State should come up with a realistic plan of action to tackle the problem of child illiteracy by taking into account the social and
economic conditions in the State. The State has also accepted the concept of 'zero rejection' for children. No child can be denied admission to schools on grounds of absence of documentation, diseases or if the child is differently abled. But punitive action for failure to implement this provision is not mentioned.

Health and Nutrition - This issue has been covered quite thoroughly with mandatory immunization, maternity leave for natural, adoptive and single mothers, crèches and day care centres, health cards, drug and alcohol abuse and HIV/AIDS and leprosy infected children.

Children's Homes - Children's Homes, governmental and non-governmental, have often neglected to take into account the best interest of the child. Bogus institutions have also come up in many parts of the country and abused or neglected the children under their care. Under this Act, all children's Homes are to be registered and District Inspection Teams are to be constituted for the regulation and supervision of these Homes.

Child Labour - There has been a lot of debate over the Central Government's decision to divide child labour into hazardous and non-hazardous occupations. The Goa Children's Act, 2003 has however taken a bold step in the right direction. It has chosen to ignore the distinction between hazardous and non-hazardous occupations and has declared all kinds of child labour as prohibited by the State of Goa. There has been a drastic rise in the physical and sexual exploitation of children in non-hazardous occupations like domestic labour and the hotel industry. Children in non-hazardous occupations also work long hours and are paid less than the minimum wage. This is the first Act to recognize that non-hazardous occupations are as hazardous to the well being of a child as the hazardous ones. This Act has gone a step further by declaring that trafficking of children for the purpose of labour is also prohibited. This is the first time in India that trafficking of children other than for the purpose of commercial sexual exploitation has been
recognized. Punitive measures will also be taken against employers of children under the age of 14 years. The State is to formulate a plan of action to eradicate all forms of child labour within a period of two years from the commencement of this Act and also include schemes for the identification, release and rehabilitation of child labourers. A Child Labour Vigilance Officer in each taluka will monitor the implementation of the plan of action.

**Child Abuse** - The Act has taken into consideration the increasing number of child sexual abuse cases in the State of Goa. For the last few years there has been a major increase in cases of child sexual abuse. Goa is also a tourist attraction and many pedophiles come to Goa with the aim of sexually abusing the children. Due to this, the Goa Children's Act has concentrated on child sexual abuse and covered it quite thoroughly.

In India there is no separate law for child sexual abuse. In fact it is barely recognized. There are a few sections in the Indian Penal Code that can be used in cases of child sexual abuse. Unless rape has taken place, the offence is not considered to be very traumatic to the child. There is also no definition of child sexual abuse. The Goa Children's Act 2003 has very clearly defined child sexual abuse and separated it into three types;

(i) **Grave Sexual Assault** - which covers different types of intercourse: vaginal, oral, anal, use of objects, forcing minors to have sex with each other, deliberately causing injury to the sexual organs, making children pose for pornographic photos or films;

(ii) **Sexual Assault** - which covers sexual touching with the use of any body part or object, voyeurism, exhibitionism, showing pornographic pictures or films to minors, making children watch others engaged in sexual activity, issuing of threats to sexually abuse a minor, verbally abusing a minor using vulgar and obscene language;

(iii) **Incest** - which is the commission of a sexual offence by an adult or a child who is a relative or is related through ties of adoption.
The punishment for grave sexual assault is imprisonment for not less than seven years but which may extend to ten years and fine of Rs.2,00,000/- and for sexual assault the punishment is imprisonment for a term that may extend to three years and fine of Rs.1,00,000/-. The punishment for incest is however laid down as imprisonment for the term of one year plus fine of Rs.1,00,000. Tourism has proved to be an area of concern in Goa. For this reason, two new sections have been introduced in the Act.

**Onus on Person** - All persons who keep children who are not related to them by blood will have to inform this fact immediately to the Director as per the prescribed form. The post of Director has been established under this Act. Goa has a problem with tourists who 'keep' children with them in hotels and other establishments. There is no logical explanation as to how a child spends the night in a hotel room with a tourist without suspicion being attached to the situation. It is now mandatory for persons with children who are not related to them to make a report to the Director.

**Onus on establishment** - All hotels and other establishments which provide boarding or lodging or any similar facility shall ensure that children are safe and are not at risk of child abuse within their premises including all adjoining beaches, parks etc.

Apart from the above mentioned sections, some other important sections are prohibition of children for the purpose of commercial sexual exploitation, internet pornography, organ trafficking of children, sexually obscene photographs, sale of children under the garb of adoption, Victim Assistance Units, child sensitization training and a child friendly tourism code for Goa. In all the above matters, the consent or willingness of the child to be a party to sexual abuse will not be a consideration.

**Child Sexual Trafficking** - There is nothing really new as far as child sexual trafficking is concerned in the Act. The Act prohibits the trafficking of children for commercial sexual exploitation and also condemns the devdasi system. Severe
punishment has been mentioned in relation to the parent/guardian of a child who is dedicated. The State has been given the responsibility to come up with a comprehensive plan of action, which shall include education and livelihood skills for the children who have been exploited for the purposes of prostitution.

**Children in Difficult Circumstances** - The children mentioned in this section are street children. The State Government is supposed to establish and maintain shelters for children, either by itself or in association with voluntary organizations, for the care, treatment, education, training, development and rehabilitation of street children.

**Girl Child** - The Act has recognised the girl child as an especially vulnerable section of society and has a plan of action for the survival, protection, development and advancement of the girl child. The Act also mentions gender sensitisation programmes at all levels and to eliminate degrading and violent portrayals of the girl child. The Act also encourages educational institutions and the media to adopt and project non-stereotyped images of girls and boys. The last point is extremely important because children at a very young age adopt stereotyped images of gender due to the environment they are raised in and the image that the media portrays in advertisements, magazines, books etc.

**Differently Abled Children** - The Act endeavors to ensure that children with disabilities are provided with appropriate initiatives like counseling to the parents of disabled children, early detection, vocational training and institutional and community based programmes.

**Other Provisions** - This provision contains the State Children's Fund, The State Commission for Children, Steering Committees, Village Child Committees, awareness campaigns, Child Friendly police stations, computer training for children and special provisions for children of prisoners and commercial sex workers. All
these provisions, if implemented correctly by the State, could have a very positive and progressive impact on the lives of children in Goa.

**Violation and Penalties** - Non-adherence or violation of all the abovementioned provisions could result in the imposition of a fine ranging from Rs.100/- to Rs.50,000/- on every occasion. The Department of Women and Child Development will be the competent authority for the purpose of this Act and their decision will be final and binding.

Thus we see that the Goa Children's Act, 2003 (hereafter, the Act) is an act to protect, promote, and preserve the best interests of children in Goa and to create a society that is child-friendly. It is the first comprehensive Act, which has taken into account not just the welfare and best interests of the child but also the rights of the child as per the 'Convention on the Rights of the Child (CRC)'.

**The Immoral Traffic (Prevention) Act, 1956**

In 1986, the Government of India amended the erstwhile Suppression of Immoral Traffic in Women and Girls Act 1956, renamed as the Immoral Traffic (Prevention) Act to widen the scope of the law to cover both the sexes exploited sexually for commercial purposes and provided enhanced penalties for offences involving children and minors. "Child" under ITPA means a person who has not completed the age of sixteen years and "prostitution" means the sexual exploitation or abuse of persons for commercial purposes. The Immoral Traffic (Prevention) Act, 1956 prescribes stringent action and punishment for keeping a brothel or allowing premises to be used as a brothel (Section 3), living on the earnings of prostitution (Section 4), procuring, inducing or taking a person for the sake of prostitution (Section 5).

The Act further provides that where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence of
detaining a person in premises where prostitution is carried on (Section 6). Similarly, when a child or minor found in a brothel, on medical examination, detected to have been sexually abused, it shall be presumed unless the contrary is proved that the child or minor has been detained for purposes of prostitution or as the case may be, has been sexually exploited for commercial purposes.

The punishment consists of imprisonment of either description for a term which shall not be less than 7 years but which may be for life or for a term, which may extend to 10 years and shall also be liable to fine, with a provision for less than 7 years under special circumstances. Besides contemplating specialized machinery for its enforcement, the Act envisages a comprehensive scheme for rescue, protection and corrective treatment of prostitutes. (Section 21) deals with establishment of Protective Homes by the State Government.

The Ministry of Women and Child Development is in the process of amending the Act with a view to making the law victim friendly and, at the same time, making punishment for traffickers more stringent and putting greater criminal culpability on them.

The Child Labour (Prohibition and Regulation) Act, 1986 was formulated with a view to eliminating child labour from various hazardous occupations and processes. It defines a "Child" as a person who has not completed his fourteenth year of age; Section 3 of the Act deals with Prohibition of Employment of Children in certain occupations and processes.

Section 14. deals with the following Penalties - (1) Whoever employs any child or permits any child to work in contravention of the provisions of Sec. 3 shall be punishable with imprisonment for a term which shall not be less than, three months
but which may extend to one year or with fine which shall not be less than ten
thousand rupees but which may extend to twenty thousand rupees or with both. (2)
Whoever, having been convicted of an offence under Sec. 3, commits a like offence
afterwards, he shall be punishable with imprisonment for a term which shall not be
less than six months but which may extend to two years.

Children working in the unorganized sector (comprising almost 90% of the child
labour force), according to the Act, are not within the purview of law. Only about
10% of the children working in the organized or formal sector or within specified
occupations and processes are covered under the Act. The rest of the working
children are subjected to the worst forms of exploitation and abuse. The law has not
been able to meet its objective of eliminating child labour in totality primarily for this
reason and needs to be modified to include all categories of working children.

(Mohsin, 2002277) The law provides very limited coverage in terms of the protection,
care and rehabilitation, the only related scheme (NCLP) being able to cover just about
a miniscule out of the millions of unrecognized and unenumerated child labour in the
country.

Moreover, there is ambiguity with regard to the concept of child work and child
labour, due to which it has been difficult to undertake a complete enumeration of the
number of the children in the workforce. Rodgers and Standing (1981)278, have
divided children’s activities into four different categories i.e. domestic, non-monetary
work, usually within the family, non-monetary and non-domestic work usually found
in the poor agrarian/rural economies, children working in the non-agrarian
environment and children working as bonded labourer and are pledged by their
parents in lieu of debt.

277 Mohsin Nadeem (2002), Lost Innocence, New Delhi, Common wealth Publishers, pg- 73
Labour Office, pp-2-11
The Ministry of Labour, Government of India, only through a notification issued on July 10, 2006 has broad based the scope of the Child Labour (Prohibition & Regulation) Act, 1986, by including child domestic workers and children working in dhabas, up to 14 years of age within the purview of the Act. Although this widens the scope of the Act, it poses serious challenges to all civil society organizations and the government machinery to reach out to children, especially in domestic work, since most of these children are invisible, working within the four walls of the employers' homes.

These children are deprived of their right to education, health, play, security, protection, equal opportunity, participation and development. This further increases their vulnerability to exploitation and abuse. With no official statistics available, it is difficult to estimate their actual numbers. Also, majority of child domestic workers fall in the age category of 15-18 years and in the absence of any law for them, it is difficult to wean them out from work.

Child Marriage Restraints Act, 1929

The Child Marriage Restraint Act 1929, as amended in 1979 is an Act to restrain the solemnization of child marriages. The Act prescribes a minimum age of 21 years for males and 18 years for females for marriage. This law is applicable to all Indians. The Act provides for punishment of simple imprisonment which may extend to three months and shall also be liable to fine for solemnizing a child marriage (Section 5). It also provides for punishment of simple imprisonment which may extend to three months and shall also be liable to fine to parent or guardian, if they marry off their children/wards before the permissible age (Section 6).

Under the Act, any man who marries a minor girl is liable to the punishment of simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both incase the man is below 21 years of age
and a person above 21 years shall be punishable with simple Imprisonment which may extend to three months and shall also be liable to fine (Section 3 & 4). No woman can be punished under this Law.

Considering the shortcomings in the Child Marriage Restraint Act and its implementation, the Government of India has proposed an improved legislation – The Prevention of Child Marriage Bill 2004. The National Commission for Women and the National Human Rights Commission played an important role in the preparation of the draft Bill, which was introduced in the Rajya Sabha on December 20, 2004. The Bill aims at:

- Providing for declaration of all child marriages void
- Making a provision for declaring the child marriage as void in certain circumstances
- Requiring the husband or if he is a minor at the material time, his guardian to pay maintenance to the minor girl until her remarriage
- Providing for legitimisation of children born of a child marriage even if the marriage has been annulled, including providing for the custody and maintenance of the children born of child marriages
- Empowering the district court to add to, modify or revoke any order relating to the maintenance of the female petitioner and her residence and custody or maintenance of her children, etc.
- Empowering the courts to issue injunctions prohibiting solemnisation of marriages in contravention of the provisions of the proposed legislation
- Making the offences under the proposed legislations to be cognizable for the purpose of investigations and for other purposes
- Providing for appointment of child marriage prevention officers by the State Government
- Empowering the State Governments to make rules for effective administration of the legislation
The Parliament constituted a Standing Committee to receive written and oral evidence from several experts in the civil society to get their comments and suggestions on the proposed legislation. At present the Bill is still under discussion. In February 2006, the Supreme Court of India ruled that all marriages, existing and future would have to be registered. The Centre, State Governments and the Union Territories were accordingly directed by the apex Court to frame a uniform set of rules and procedures for registration of marriages.

**GOVERNMENT'S RECENT INITIATIVES ON GIRL CHILD PROTECTION**

*Initiatives taken by the Ministry of Women and Child Development*

India has taken a pro-active stand on the issue of child protection. Recent developments in this direction give clear signals about the government's intention to bring the issue of women and child development to the forefront of all major developmental activities. The setting up of an independent Ministry of Women and Child Development is not only the result of consolidation of earlier sporadic efforts towards the issue of child care and protection but also an indication towards effective convergence. Women and Child Development, previously a Department under the Ministry of Human Resource Development, Government of India has made some remarkable achievements during the last few months. The National Plan of Action for Children was formulated by the Department in 2005. It aims at ensuring all rights to children up to the age of 18 years.

The National Plan affirms government's commitment towards ensuring all measures and creating an enabling environment for the survival, growth, development and protection of all children so that each child realizes his/her inherent potential and grows up to be a healthy and productive citizen. The National Commission for the Rights of Children was also set up by the Department in the same year.
Further, with a view to dealing with the incidence of offences against children, the Ministry of Women and Child Development has proposed the Offences against Children’s Bill, 2006. The Bill aims at identifying incidence of offences against children and protecting them from offences; punishing persons who have committed offence against children and setting up rules to fulfill its objectives. The Bill has been sent to all the States for comments, after which it will be passed by the Parliament. A new initiative of the Ministry is the formulation of the Integrated Child Protection Scheme, on the lines of the Integrated Child Development Scheme, which has one of the largest outreach in the whole of the country.

National Charter for Children, 2003

Underlying the National Charter for Children, adopted in 2004, is the intent to secure for every child its inherent right to be a child and enjoy a healthy and happy childhood, to address the root causes that negate the healthy growth and development of children, and to awaken the conscience of the community in the wider societal context to protect children from all forms of abuse, while strengthening the family, society and the Nation. This Charter has the following sections on child protection:

- Survival, life and liberty;
- Protection from economic exploitation and all forms of abuse;
- Protection of the girl child;
- Care, protection, welfare of children of marginalised and disadvantaged communities;
- Ensuring child-friendly procedures.

National Plan of Action for Children, 2005

The National Plan of Action for Children commits itself to ensure all rights to children up to the age of 18 years. The government shall ensure all measures and an enabling environment for survival, growth, development and protection of all
children, so that each child can realize his or her inherent potential and grow up to be a healthy and protective citizen. This calls for collective commitment and action by all sectors and levels of government and partnership with families, communities, voluntary sector, civil society and children themselves.

The National Plan of Action for Children will be implemented throughout the country through national measures and through State Plans of Action for Children. In all actions for children, whether undertaken by public or private institutions, courts of law, quasi-judicial bodies, executive or legislative bodies, the best interests of the child shall be a primary consideration. In recognition of the fact that 41 percent of India's population is below 18, constituting a significant national asset, this Plan reaffirms the nation's commitment to wisely, effectively and efficiently invest its national resources to fulfill its commitments to children. The National Plan of Action for Children is divided into the following four sections and all categories of rights apply to all age groups, including before birth.

- Child Survival
- Child Development
- Child Protection
- Child Participation

Commissions for the Protection of Child Rights Act, 2005

The commission shall have the powers to uphold child rights and to take suo moto cognizance of child rights violations. Similar powers shall also vest in State Commissions. For the purpose of providing speedy trial of offences against children or of violation of child rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify at least a court in the State or specify, for each district, a Court of Session to be a Children's Court to try the said offences: provided that nothing in this section shall apply if (1) Court of Session is already specified as a special court; or (2) A special court is already constituted, for
such offences under any other law for the time being in force. For every Children's Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

**Offences against Children’s Bill, 2005**

Although, India has the second largest child population in the world, there is no separate legislation to deal with offences against children, hence this enactment. In addition to the child related provisions within the Indian Penal Code (1860) and several other central and state, local and special laws the basic legislation for children, namely, The Juvenile Justice (Care and Protection) Act 2000, deals primarily with the ‘juveniles in conflict with law’ and ‘children in need of care and protection’, but it does not separately cover the persons who commit crimes against children and some other categories of children under various circumstances of abuse, exploitation and neglect. In view of this, it is considered essential that the Government of India enact a separate law for the children under the title “Offences against Children”, 2006.

The act says that every child is entitled to the rights, freedoms and guarantees, enumerated in the constitution of India and the statutes besides the UN Convention on the Rights of the Child and other international instruments ratified by the Government of India. The children have inherent right to survival, protection, development and participation that include right to shelter, food, clothing, education and protection from physical, emotional and sexual abuse and exploitation within the over-arching provisions of equal and inalienable rights, without distinction on the basis of race, colour, sex, language, religion, property, political or other opinion, nationality or social origin, birth or other status that goes with it. The children which
mean those persons who have not completed 18 years of age, deserve the fulfillment of their basic rights that are also deemed to their basic needs.

It is expedient to enact a law to protect children from violation of their rights and to provide them holistic justice with the following objectives:-

• To identify offences against children, protect them and provide legal remedy.
• To provide for punishment against persons who have committed offences against children.
• To safeguard the best interest of children while providing support to child victims of crimes, abuse, exploitation and neglect.
• To set in place rules and create legal mechanism to fulfill the objectives of this act.

The Bill proposes to address the legitimate rights of children against sexual abuse, neglect, exploitation, torture, or any form of cruelty and aims at:

• Identifying offences against children and protecting children from offences
• Providing for punishment against persons who have committed offences against children
• Setting the rules to fulfill the objectives of the proposed Bill

In order to ensure that procedures and practices prescribed are child-friendly, the draft Bill is based on eight principles, including:

1) Principle of Best Interest of the Child
2) Principle of ‘Protection’ of the Child
3) Principle of Equality and Non-Discrimination - “Leave no Child behind”
4) Principle of Individuality and Participation
5) Principle of Privacy and Confidentiality
6) Principle of Non-stigmatizing Semantics, Decisions and Actions
7) Principle of Avoidance of Harm
8) Principle of Non-Criminalization of the Child
The Integrated Child Protection Scheme concretises the Government/State responsibility for creating a system to protect children in the country. Such a system is influenced by the nature of regulatory frameworks, structures, resources, professionals, and the relationships between them. When the child protection system functions in the best interest of the child then adequate state and voluntary institutions, services and structures are put in place and are backed strongly by policies, laws and regulations.

Professionals providing services for children are competent and bound by professional standards. Children's views are taken into account. The Integrated Child Protection Scheme is based on the cardinal principles of "protection of child rights" and "best interests of the child". The ICPS aims to promote the best interests of the child and prevent violations of child rights through appropriate punitive measure against perpetrators of abuse and crimes against children and to ensure rehabilitation for all children in need of care and protection. It aims to create a protective environment by improving regulatory frameworks, strengthening structures and professional capacities at national, state and district levels so as to cover all child protection issues and provide child friendly services at all levels.

The Target Groups of this scheme are:

**Child in Need of Care and Protection** means a child who:

- is found without any home or settled place or abode and without any ostensible means of subsistence;
- resides with a person (whether a guardian of the child or not) and such person has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person;
is a mentally or physically challenged or ill child or a child suffering from terminal diseases or incurable diseases, and/or having no one to support or look after him/her

• has a parent or guardian and such parent or guardian is unfit or incapacitated to care for or exercise control over the child;

• does not have a parent/parents and no one is willing to take care of him/her, or whose parents have abandoned him/her or who is a missing and/or runaway child and whose parents cannot be found after reasonable inquiry

• is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts

• is found vulnerable and is likely to be inducted into drug abuse or trafficking,

• is being or is likely to be abused for unconscionable gains

• is victim of any armed conflict, civil commotion or natural calamity

Children in Conflict With the Law is one who is alleged to have committed an offence.

Children in Contact with Law is one who has come in contact with the law either as a victim or a witness or due to any other circumstance.

Any other vulnerable child including, but not limited, to: Children of potentially vulnerable families and families at risk, children of socially excluded groups like migrant families, families living in extreme poverty, lower caste families, families subjected to or affected by discrimination, minorities, children infected and/or affected by HIV/AIDS, orphans, child drug abusers, children of substance abusers, child beggars, trafficked or sexually exploited children, children of prisoners, and street and working children would also be covered under the scheme.

In spite of such efforts at the international and the national level, the conditions of children in various spheres have not substantially changed. They are often subjected to cruelty, exploitation and deprivation. There is a plethora of laws to deal with these
problems and to provide adequate care, protection and growth opportunity to the child in need. However, these laws could not be implemented properly partly due to paucity of funds and adequate infrastructures and partly to the inertia and lack of zeal and motivation on part of the authorities and the public in general\textsuperscript{279}.

Initiatives by the Department of Social Welfare, Government of NCT of Delhi

As reported in the website of Department of Social Welfare Delhi Government, the department has already taken the following initiatives for implementing the Juvenile Justice (Care and Protection of Children) Amendment Act 2006:

1. Delhi Juvenile Justice Care and Protection Rules 2002 have been notified on August 19, 2002 u/s 68 of this Act.

2. One Juvenile Justice Board as per Section 4 of Juvenile Justice (Care and Protection of Children) Act, 2000 has been notified on 10/4/2003 vide notification no. F.61 (SC)/DO-I/DSW/2003-04/3709-727. After the completion of the term of the Juvenile Justice Board for three years a fresh notification dated 10/4/2006 has been issued.

3. Four Child Welfare Committees have been notified u/s 29 of the Act. The offices of the Committees are located at Kasturaba Niketan Lajpat Nagar, Nirmal Chhaya Jail Road, Sewa Kutir Kingsway Camp & NPS Mayur Vihar.

4. Three Observation Homes have been notified u/s 8 of the Act for the Juveniles in conflict with law. One of the Observation Homes at Delhi Gate is being managed by an NGO, Prayas, under an agreement with State Govt. One Observation Home u/s 8(1) for boys is being run by the State Govt. at Sewa Kutir, Kingsway Camp & one special Home U/s 9(1) is being run at 1 Magazine Road, Delhi and Observation Home for Girls is being run at Nirmal Chhaya Complex, Jail Road, Delhi.

\textsuperscript{279} Bhattarcharya K Sunil (2002), Juvenile Justice: An Indian Scenario, New Delhi, Regency Publications, pg- Preface vii
5. a) Eleven Children Homes have been established by the Govt. for the care and protection of the children during pendency of inquiry and subsequently for their care, protection, education, development and rehabilitation vide notification no. F.61 (NOH)/DO-I/DSW/2002/5218-236 dated 10/6/2003 u/s 66 and 56 of Juvenile Justice (Care and Protection of Children) Act, 2000. In these Homes apart from boarding and lodging the children are provided vocational training, recreation and counseling facilities which is required for their emotional, social and psychological development. b) Out of these eleven Homes, three are exclusively for the mentally challenged children. In the case of girls, after attaining the age of 18 and if they are not restored, they are sent to After Care Institution for their rehabilitation and when marriage is possible to be arranged, the same is also organized.

6. Ten District level Visiting Committees have been constituted vide notification no. F.61 (NOH)/DO-I/DSW/2002/5358 dated 12/6/2003 for all the Districts to inspect the Children Homes advise and guide for their improvement and development.

7. Six Homes run by NGOs have been notified as Shelter Homes to provide immediate care and protection to the children in need of care and protection.

8. Eleven NGOs are recognized as Adoption Agencies. Foster care services are carried out by the Department itself. The department is also managing two After Care Homes; one for Girls at Nirmal Chaya Complex, Jail Road and another for Boys at Narela, Delhi.

9. JJ Fund u/s 61 has been created recently with a corpus of Rs. 10 Lacs. This fund shall be administered by the State Level Advisory Board which has been notified u/s 62 of the Act vide Notification no. 61(AB)/DO-I/DSW/2002/11901-956 dated 24/12/2003 for a period of three years.

It is incumbent upon the department to provide a child-friendly environment and also ensure rehabilitation of children in conflict with law and those requiring protection and care by providing vocational training and restoration to the family
The proposed vocations are in Electronic Trade (TV repairing), Electric Trade (House Wiring etc.), Mechanical Trade (Auto Repair etc.), Stenography, Typing/Computer, cutting and tailoring, phone repairing, DTP, candle making and plumbing etc.

The Act contemplates two distinct kinds of proceedings against the different categories of children. The Juvenile Justice Board has powers to deal exclusively with all proceedings relating to juveniles in conflict with law, and child welfare committees have the final authority to dispose of the cases for the care protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and protection of human rights.

Though one Juvenile Justice Board and four Child Welfare Committees are already functioning but regular posts and necessary infrastructure has not yet been created. The salary of the Pr. Magistrate is being drawn against the post of Dy. Director (Technical) in the scale of Rs 10,000-15,200. The ministerial staff posted there is on diverted capacity from other sections of the department. The honorarium of the members of Child Welfare Committees is being paid from the budget of Probation Services.

**Future Plan of Action of the Delhi Government under Implementation of Juvenile Justice (Care and Protection of Children) Act 2000**

- Identification of Sites and purchase of suitable Land in 9 Districts for creation of Observation Homes, Special Home, Children Homes, JJ Boards, Child Welfare Committees, Place of safety and After Care Homes.

• Expenses on salaries, Honorarium of members of JJ Board, CWC, their staff and manpower required for the all the statutory Homes.

• Expenses on purchase of Vehicle & Ambulance, office equipments, computerization, furniture / fixtures, stationery items, electricity, water charges, telephones charges, day-to-day maintenance charges and Conveyance charges.

• Expenses on food, clothing, education, vocational training, medical care, rewards /awards, sports materials, security etc.

• 2007-08: Identification and purchase of sites and Construction of New Observation Homes. Improvement / renovation of existing Observation Homes, special Home and of existing Juvenile Justice Board.

• 2008-09: Construction and operation of New Observation Homes, Special Home, Place of Safety and Children Home.

• 2009-10: Creation of new Juvenile Justice Board, Child Welfare Committee in the new set up of Observation Homes for Boys, Special Home and Place of Safety and Children Home. The operationlization of the new Observation Homes for Boys and Juvenile Justice Boards will be subject to the need assessment.

Other Initiatives by the Delhi Government

Delhi Ladli Scheme 2008

The Government of Delhi launched the 'Ladli Scheme' with an aim to curb female foeticide and enhance the social status of the girl child by promoting their education and protecting them from discrimination and deprivation. The Government has been quite successful in achieving what it aimed when the scheme was launched. In the first year of its implementation, more than one lakh girl
students registered themselves under the scheme in the Government-aided schools of the capital. MCD schools also witnessed an increase in the number of girl students.

"The scheme has got a tremendous response from the Government schools. What is encouraging is that the schools run by the MCD have also seen an increase in the intake of girl students", said an official from the Social Welfare Department. The news has come in at a time when the capital is struggling with a dwindling gender ratio. As per the last census, there are 886 girls per 1,000 boys in the capital against a national average of 927 girls per 1,000 boys.

Under this programme, the Government deposits Rs.10,000 in the name of girl child at time of her birth and subsequently deposits an amount of Rs.5000 each at the time of her admission to Class I, VI, IX, X and XII. An accumulated amount of approximately Rs.1 lakh becomes eligible to girl child on attaining the age of 18 years and at least passing out 10th standard. The scheme is being implemented in association with the State Bank of India (SBI) which serves as an authorised agency for the secure maintenance of deposit money in phases by the Government.

**Girl Child Protection Scheme**

The scheme envisages building awareness among society for changing attitudes considering girl child as an asset and not as liability; to ensure proper education and all round development of girl child; to ensure a better rehabilitation and economic security for a girl child and to protect the girl child from discrimination and deprivations. The benefit of the scheme will be open to all. An amount of Rs.5000/- will be deposited in the name of each girl child born in the Govt. hospital/Local Bodies which can be drawn after attaining the age of 18 years subject to her completing school education up to 10th class.