CHILD WELFARE UNDER CRIMINAL LAW

Different reactions to the offences perpetrated by children and those commuted by adults have been developing for more than a century. While the societal, reaction to the offences of both the groups has been slowly changing from a punitive to a treatment reaction, this change has been much more pronounced incase of juveniles. In 1824 a juvenile reformatory was established in New York State so that children, after conviction, would not be confined with adult criminals. To draw a line of distinction between the juvenile Court with the Criminal Court is difficult because of large number of variations in the procedure and organization of each Court. The following comparison refers to the Conventional Criminal Court and juvenile Court in its ideal form.

<table>
<thead>
<tr>
<th></th>
<th>Criminal Court</th>
<th>Juvenile Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Trial characterized by continuousness; two partisan groups in conflict.</td>
<td>Hearing characterized by scientific methods of investigation</td>
</tr>
<tr>
<td>2.</td>
<td>Purpose of trial is to determine whether defendant committed the crime with which he is charged</td>
<td>Purpose of hearing to determine whether the child is delinquent and the general condition and character of child</td>
</tr>
<tr>
<td>3.</td>
<td>Little machinery for securing information regarding the character of accused</td>
<td>Elaborate machinery for securing information regarding the character of the child</td>
</tr>
<tr>
<td>4.</td>
<td>Such information, if secured, may not be introduced as a part of evidence</td>
<td>Such information is the basis on which a decision is made.</td>
</tr>
</tbody>
</table>

2. Ibid.
5. Punishment if convicted. Protection, guardianship and treatment by the state of the existing conditions show the need.

6. Correctional methods in a specific case determined not by the needs of the particular individual but by the legislature, in advance, for all who violative the law in question, with reference primarily to the other actual or potential criminals. Correctional methods in a specific case determined by the needs of the particular individual without reference to the other actual or potential delinquents.

The expected reaction of the Criminal Court personnel to crime is punitive, as they seek, to implement a punitive reaction to an offence. In contrast the expected reaction of the Juvenile Court personnel is that of treatment, they seek to implement a treatment reaction to the offender. The ideal of Juvenile Court is that the personnel “are not looking outwardly at the act but, scrutinizing it as a symptom, are looking forward to what the child is to become.”

At common law, a century and a half ago, children were tried and punished for violation of law in the same ways as adults, with the exception that a child under seven years of age was regarded as not responsible and, therefore, as incapable of committing crime. While a child between the age of seven and fourteen was regarded as having the possibility of such discernment as would make him responsible, and this was decided in each case of examination. In the course of time the minimum age was raised in some American States from seven to ten years of age but still it happens that children under fourteen years of age are arrested, held in jail, tried in court, and punished in the same ways as adult

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4 Ibid.
criminals. In 1956, 6 percent of the persons admitted to the three major Massachusetts prisons were 17 years of age or younger; one was fourteen year old boy convicted of murder.6

Sometimes back a shooting incident in Columbine High School, Colorado, USA, where two school boys went on a rampage, killing 13 persons has made us ask ourselves the question whether a similar situation is possible in India. In truth, we need to address ourselves to reality that such a situation, or the seeds of it, has actually been in existence here for some years now and there’s something very big and very malign afoot. Consider the following sample cases.7

- A 16 years old boy was shot by two of his classmates with an air gun, seriously injuring the boy in Bangalore.8
- Shoot-out of Abhishek Tayagi (14-15) of class VIII student of Euro International School by two of his classmates9 in Gurgaon.
- Murder of Sachin a student of IV standard by another boy (15) of same village of Faridabad district.10
- A 15 year old student was killed by a 17 years old classmate at a government school in M.P.11

Delhi, along with Madras and Bombay contributes heavily in the incidents of crime by Juvenile. Why there is so much rate and intensity of violence involving children in India? This is the question which needs some factors responsible for the involvement of juvenile in crime. But before jumping to it, first we have to understand what is Juvenile delinquency?

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8 The Tribune, “curbing school violence”. 20th May 2008;
11 Supra n. 8.
DIVERSE CONCEPTUAL EXPLANATION:-

Meaning of Juvenile Delinquency :- Juvenile deviance and anti-social propensities have been dwelt on at length by different authors and experts. In the context of the present changing social milieu, the problem of juvenile deviance has evoked a lot of interest. As a matter of fact, behaviour becomes deviant when it violates social norms. Thus, delinquency or crime is the prototype of deviance in this sense. Normative rules are inherent in the nature of all social systems, whether they be peer groups, families, work teams, factories or societies. The pioneering work of Burt (1938)\(^{12}\) Healy (1915)\(^{13}\) and Shaw and Mckay (1942)\(^{14}\) had considerably inspired the writing of many authors in this direction and later on problem was explored scientifically. Shaw and Lucas\(^{15}\) (1970) point out that psychiatry is responsible for a trouble child. Shaw and Mckay\(^{16}\) emphasis the fact that the environmental system has a significant bearing on producing strain and ultimately deviant behaviour. Many authors and experts have dwelt at length on this problem and attempted to define juvenile delinquency and social maladjustment. They have expressed different views. Therefore, there is no precise definition of juvenile delinquency.\(^{17}\)

Dr. Cyril Burt defines delinquency as accruing in a child “when his anti-social tendencies appear so grave that it becomes or ought to become the subject of official action. In the opinion of Prof. William H. Sheldon “Delinquency is behaviour disappointing beyond reasonable expression.

DELIMITATION OF SCOPE OF JUVENILE DELINQUENCY :- The question of exact definition of juvenile delinquency has always remained a

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16 Supra n. 14.
debatabile issue among criminologists. Because a clear definition of fundamental concept of juvenile delinquency is a primary requisite. There is no general agreement on just what constitutes delinquency.

It has been engaging the attention of United Nations for quite some time. The Second Nations Congress on the Prevention of Crime and the Treatment of Offenders held in August, 1960 in London, took up the problem of juvenile delinquency, and the consensus was that the issue of definition need not be stretched too far and the meaning of the term ‘juvenile delinquency’ be restricted to all violation of criminal law and maladjusted behaviour of minors which are disapproved by society.\(^\text{18}\)

The New York Joint Legislative Committee on court re-organisation, in its draft of a Family Court Act, has taken a similar stand:

"Juvenile delinquent" is defined in the proposed legislation as

"a person over seven and less then sixteen years of age does any act which, if done by all adults would constitute a crime, and requires supervision, treatment or confinement." The definition considerably narrower than the current definition accords with the common understanding\(^\text{19}\).

We believe that the statistical collections and analysis in terms of the definitions of delinquency must adopt this delimitation if they are to provide a useful measurement of index of the volume, character or trend of delinquency.\(^\text{20}\)

In India, the definition of Juvenile delinquency is also in consonance with the recommendation made by the U.N. as stated above. The children Act, 1960 and other children Act of various states which defined the juvenile delinquent and other types of children have removed anomaly that prevailed earlier due to unrestricted definition of the term juvenile.


\(^\text{19}\) Joint Legislative Committee report on Court Reorganisation and the Family Court Act, New York State, Daniel G. Albert Chairman (Albany), New York 1962, p. 6.

\(^\text{20}\) Id; p. 26.
There was a need of uniform legislation for the entire country.

**DISCRIMINATORY APPLICATION OF AGE FOR JUVENILE JUSTICE**

For the purpose of Criminal Responsibility, a juvenile is a person who knows or understands the difference between right and wrong. Normally mental and physical maturity grows side by side. In some cases the physique outgrows the mind and vice-versa. Nevertheless, it is difficult to mark off clearly the various development stages from one another in terms of chronological periods. Law makes three gradations for sake of convenience of administrations and criminal responsibility. These three stages are:

(i) The age of no responsibility.
(ii) The age of Quasi-responsibility.
(iii) The age of full-responsibility.

The first is the infancy stage which is exempted from criminal responsibility. The immunity from criminal responsibility of infancy was recognized under the well established doctrine of ‘mensrea’ which made a guilty mind as an essential ingredient of responsibility. As the child lacks the mental capacity to entertain an evil design he cannot be made responsible for his acts. He is ‘doli incapax’. The law lays down an absolute presumption that he is incapable to committing a crime. This age is governed by Indian Penal Code, 1860, which lays down:

"Nothing is an offence which is done by a child under seven years of age." 22

Second stage is the age of quasi-responsibility. This is also known as doubtful age. But the presumption raised in such case is of responsibility, which

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21 The idea of dividing children into three classes was first conceived by the Romans. Under Roman Law a child below 7 years was not responsible from understanding and insight; from 7 to puberty he could be punished if it could be proved that he had some understanding and insight; from puberty to 25 years, chronological age determined punishment. Later this scheme was adopted by the English Common Law.

22 Indian Penal Code 1860, Sec. 82
can however be rebutted by the accused by proving his immaturity. This code lays down:

“Nothing is an offence which is done by a child of above seven years and under twelve, who has not attained sufficient maturity of understanding to judge nature and consequence of his conduct on that occasion”.

Even though criminal responsibility is ascribed by ordinary law yet protection against heavy punishments, such as death and imprisonment, is provided under special laws. The Reformatory Schools act, 1877, entered it upto 15 years. After independence many of the States also developed their separate Acts with regard to child.

For example, in Gujarat, Bengal and Madras the age limit for both male and female is 18 years. So, a male child below 18 years of age cannot be imprisoned being a juvenile offender and has to be treated under the provisions of Children Acts of these states. However, in the rest of the states the male child would be treated as an adult offender because the age limit of male child is 16 years, and cannot be treated under the Children Acts of their respective states and may be sentenced to undergo imprisonment. Likewise, a female child offender above 16 years in Punjab and Uttar Pradesh would be treated as an adult offender. While in the other states as child offender.

By and large some of the common features of these Acts were.

- The Act covered neglected, delinquent and victimized children.
- Initially, there was only one agency to deal with the children, viz., the Juvenile Court. The Central Children Act for the first time introduced a separate agency, namely the Child Welfare Board for handling neglected children and leaving the Juvenile Court to deal with delinquent children.
- Appointment of Separate Probation Officer to deal with the child and proper aftercare services for his/her rehabilitation in the society were

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23 Id; Sec. 83.
provided for in the Acts of all States, though in Practice they were hardly taken care of by the States.

- There was no provision for special qualification, training or knowledge of child psychology for person dealing with juvenile cases.
- Different States followed different practice and procedures.

For the purpose of removing this discriminatory application there was a need of uniform legislation for the entire country. Therefore the Children Act, 1960 was replaced by a central enactment; the Juvenile Justice Act 1986.

I) The Juvenile Justice Act, 1986

The Act came into force bringing about a Juvenile Justice System in whole India. The Act is based on twin doctrines of *Parens patriae* and *mensrea*. The Preamble of the Juvenile Justice Act, 1986\(^\text{24}\) stated that the Act was to provide for the care, protection, treatment, development and rehabilitation of neglected and delinquent juveniles and adjudication of certain matters relating to disposition of delinquent juveniles.

The objectives of the Juvenile Justice Act, 1986 were the following:

- To lay down a uniform framework for juvenile justice in the country so as to ensure that no child under any circumstances is lodged in jail or police lock-up.
- To establish norms and standards for the administration of juvenile justice system.
- To spell out the machinery and infrastructure required for the care and protection, treatment, development and rehabilitation of the various categories of children coming within the purview of the juvenile justice system.

\(^{24}\) Act No. 53 of 1986, Published in the Gazette of India, Extra Ordinary, Pt. II, dated 3\(^{rd}\) December, 1986.
• To develop appropriate linkage and co-ordination between the formal system of juvenile justice and voluntary agencies.

• To provide for a specialized approach towards the prevention and treatment of juvenile delinquency.

• To constitute special offences in relation to juveniles to bring the operation of the juvenile justice system in conformity with the United Nations Standard Minimum Rules for the administration of juvenile justice.

The Juvenile Justice Act, 1986 classified children into two main categories:

(i) Neglected Juvenile

(ii) Delinquent Juvenile.

Neglected Juvenile\(^{(25)}\) is synonymous with “socially handicapped child.” It includes a juvenile who is found begging or who has no home and is a destitute or who has unfit parents or who lives in brothel or with a prostitute or who leads immoral life. A delinquent juvenile\(^{(26)}\) means a juvenile who has been found to have committed an offence under law of the land and comes in conflict with law.

(A) Type of Institutions under the Act

The Act provided for the classification and separation of delinquents on the basis of their age, the kind of delinquency and the nature of offences. There were following four types of institutions under the Act:

1. Observation Homes:\(^{(27)}\) were meant for temporary reception of juveniles during the pendency of any inquiry regarding them under this Act.

2. Juvenile Homes:\(^{(28)}\) where a neglected juvenile could be sent for accommodation, maintenance and facilities for education, vocational training and rehabilitation.

\(^{(25)}\) The Juvenile Justice Act, 1986, Sec. 2(1), Id; Sec. 2(e).

\(^{(26)}\) Id; Sec. 9.

\(^{(27)}\) Id; Sec. 2(e).

\(^{(28)}\) Id; Sec. 1.
3. Special Homes: for a delinquent juvenile for accommodation, maintenance and facilities for education, vocational training and rehabilitation.

4. After-Care Organization: These were provided with the object of taking care of juveniles after they leave juvenile homes or special homes and for the purpose of enabling them to lead an honest and useful life.

Chapter-IV of the Juvenile Justice Act, 1986 provided for punishment in respect of the juvenile.

<table>
<thead>
<tr>
<th>Special Offences</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 41 Cruelty of Juvenile (Assault, abandoning etc)</td>
<td>Imprisonment upto six months or fine or both.</td>
</tr>
<tr>
<td>Section 42 Employment of Juvenile for the purpose of begging</td>
<td>Imprisonment upto three years and fine.</td>
</tr>
<tr>
<td>Section 43 Giving intoxicating liquor or narcotic drug or psychotropic substance</td>
<td>Imprisonment upto three years and fine.</td>
</tr>
<tr>
<td>Section 44 Exploitation of Juvenile employees</td>
<td>Imprisonment upto three years and fine.</td>
</tr>
<tr>
<td>Section 45 Alternative punishment under any other Central or State Act for the same act or omission</td>
<td>Liable for punishment which is greater in degree</td>
</tr>
</tbody>
</table>

(B) Implementation of Juvenile Justice Act, 1986

The Juvenile Justice Act, 1986 can be proclaimed the first All India Child Welfare enactment seeking to promote best interests of juveniles. A general review of the working of the Juvenile Justice Act all over the country discussed in the report of the National Consultation on Juvenile Justice revealed that despite the formulation of rules by almost all the States/UTs under Section 62 of the
Juvenile Justice Act, there are still few States and UTs which had yet to constitute Juvenile Welfare Boards and Juvenile Courts as required under Section 4 and 5 of the Act.\textsuperscript{31} The problems in the effective implementation of Juvenile Justice System in India were:

- Lack of timely assistance from the police.
- The Juvenile act, 1986 prescribes cut-off age for boys at 16 years and for girls 18 years, which is unfair as boys over 16 years of age who may have committed an ordinary offence will be treated at par with adult criminals.\textsuperscript{32}
- Lack of special knowledge of child psychology and child welfare among the members of Juvenile Courts and Welfare Boards. Juvenile Welfare Board is the life line of the entire Juvenile Justice System. The members are part-time honorary workers, whereas this is full time job which requires total commitment.
- Lack of training and sensitization judicial Officers, Administrators and Police personnel.\textsuperscript{33}
- The Juvenile Justice Act, 1986 supposed to have separate procedures for responding to ‘neglected’ and ‘delinquent’ children, the borders between the two groups becomes merged, as the inadequacies and discrimination in the system result in children generally being in appropriately dealt with as criminals. There prevails general ignorance about the legal methods and social correctional schemes in processing juvenile delinquents. Though the Juvenile Justice Act speaks an integral approach, there exist many gaps in coordinating all the involved machineries. The Police, the Prosecutor, the

\textsuperscript{32} Supra n. 25, sec. 2(h).
\textsuperscript{33} National Consultation Meet on Juvenile Justice, Better implementation of the Juvenile Justice System, 11-13 February’ 1999 Susan Mathews, pp. 31-33.
Defence Counsel, the Probation Officer, the case-worker the Juvenile Court, the observation homes and Special homes, often seem to function in isolation by simply discharging their individual functions. There are few occasions for a joint appraisal and meeting of all functionaries to reflect on their experience and knowledge to understand what these juvenile go through. Juvenile Justice needs to be seen in a more holistic sense rather then the narrow concept. There is also fragmentation that arises on account of lack of co-ordination between the autonomous sub-system at the input, output and process stage.

- Shortage of homes in different States; though State like Madhya Pradesh, Maharashtra and Bihar have reported high incidence of juvenile crimes under IPC during the year 1996, we find that in Madhya Pradesh there were just two Juvenile Homes, three special Homes and one after care organization, in comparison to the magnitude of the crimes committed by Juveniles.

- It cannot be ignored that despite all the goals set by the Juvenile Justice Act, 1986, many States were reported to have pendency level in the disposal of apprehended juveniles. Out of total juvenile apprehended, 23.5 percent were disposed off after advice or admission 12.0 percent were under the care of parents/guardians, 4.2 percent set off to the institutions, 8.5 percent were set not special homes, 4.6 percent were dealt with fine and 7.9 percent were either acquitted or otherwise disposed off.

- The juvenile’s apprehension by the police is the first step in the State intervention and further intervention cannot be avoided in the juvenile’s interest if the police take recourse to appropriate diversion, though the

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36 Ibid.
present Act does not permit formal diversion by the police. The juvenile police units, wherever established, also vary in terms of organization, structure, and functions, depending on the type of police department and size and the nature of problems persistent in their particular jurisdiction.\textsuperscript{37} This Act has now been repealed and \textbf{Juvenile Justice (Care and Protection of Children) Act, 2000} is enacted. Now, whether it is male or female, if a crime is committed by the child below the age of 18 years, then both will be called “in-conflict with the Law”. In other words, a uniform age criteria of 18 years for both male and female has been enacted under this Act. Two categories of children has been formulated under this Act:

(i) Juvenile in conflict with the law  
(ii) Child in need of care and protection.

\textbf{(C) Factors responsible for children coming in conflict with the Law}

The causes of children offending are wide ranging and complex. They include among other reasons:

\textbf{(1) Poverty} :- The children growing in chronic poverty or violent surrounding adopting risky behaviour that brings them into conflict with the law is very often not by choice but part of their daily life. A large chunk of juveniles (72.3\%) belonged to the poor family whose annual income was up to Rs. 25,000 /-. The share of juveniles hailing from middle income group (Rs. 50,000 – Rs. 2,00,000) was 8.7 percent. The share of juveniles from upper middle income (Rs. 2 lakh to 3 lakh) and upper income (above Rs. 3 lakh) was considerably low at 0.3 percent and 0.02 percent respectively.\textsuperscript{38}

In 1999, the National Crime Records Bureau had observed, \textit{‘As expected, low income and education, poor economic set up is generally the main attributes for delinquent behaviour of juveniles.’}

\begin{flushleft}
\textsuperscript{37} Supra n. 34 p. 344.  
\end{flushleft}
(2) **Industrial Development and Economic Growth** :- The growth of these two factors in India has resulted into urbanization, which in turn has given rise to new problems such as housing, slum dwelling, and overcrowding etc. Due to poverty and in order to support their families financially, parents in far flung areas send their minor children to work in bigger cities and metros where some of them end up committing crimes like theft and chain snatching or becoming part of the begging network.

(3) **Disintegration of Family and Lack of Parental control** is yet other cause of increase in juvenile delinquency.

At the same time we cannot ignore the impact of media on children. Violence in today’s cinema, acceptable aberrations shown in TV serials, advertisements, fashion shows, reality TV showing crime related episodes, all of these have a negative impact on the minds of children.

(4) **The Biological factors** are another reason responsible for violent behaviour of child. The age of puberty among girls has gone down by three to four years on an average. Today, Indian girls attain puberty at the age of twelve, while they still remain mentally incapable of conceiving about the realities of life. In result, they fall an easy prey to sex involvements. 39

(5) **Further, Migration of destituted and destitute boys** to slums brings them in contact with anti-social elements and thus they lend into the world of delinquency.

(6) **Inadequacy of Law** and the behaviour of police add to the woes of children. It has been found that children, often innocent ones, are rounded up by the police for theft and robbery so that the police can claim that can show. Some action on the cases reported by them.

(7) **Besides the aforesaid, causes**, illiteracy, child labour, lack of education, lack of parental guidance and due to peer pressure etc., are also some of the contributing factors aggravating juvenile delinquency.

CHILDREN IN CONFLICT WITH THE LAW AND THE UNITED NATIONS SYSTEM

The UN CRC contains several articles that specifically relate to the situation of children in conflict with the law. For example, Article 12 states that children have the right to be heard in judicial proceedings affecting them. Article 37 states that no child shall be subjected to torture, cruel treatment or punishment, unlawful arrest or deprivation of liberty. And Article 40 states that a child in conflict with the law has the right to treatment, which promotes the child’s sense of dignity and worth, takes the child’s age into account and aims at his or her reintegration into society. The child is entitled to basic guarantees as well as legal or other assistance for his or her defence. Judicial proceedings and institutional placements shall be avoided wherever possible.

Some other international documents worth mentioning here are:

I) Standard Minimum Rules for the Treatment of Prisoners (1955), which first established, the principle of separation of young people from adults in custodial facilities.

II) UN minimum Rules for Non-custodial Measures : The Tokyo Rules (1990), are intended to promote ‘greater community involvement in the management of criminal justice, specially in the treatment of offenders’ and to ‘promote among offenders a sense of responsibility towards society’. The rules cover pre-trial, sentencing and post-trial issues.

The entire framework for the protection of children in conflict with the law should be viewed in the wider context of human rights protection as embodied in Universal Declaration of Human Rights (UDHR) of 1948 and subsequently by UN.

III) Universal Declaration of Human Rights (UDHR) :- The Universal Declaration of Human Rights had stipulated under para 2 of Article 25 that
childhood is entitled to special care and assistance. This principle along with other principles of the Universal Declaration Concerning the Child were incorporated in the Declaration of the Rights of the Child adopted by the General Assembly on November 20, 1959.

IV) International Covenant on Civil and Political Rights (1966) prohibits the death penalty for crimes committed when under 18 (Article 6) and states specifically that in the case of juvenile persons, the procedure shall be such as it will take account of their age and the desirability of promoting their rehabilitation (Article 14).

JUVENILE JUSTICE IN INDIA

Profile of Delinquents: According to a publication of the National Crime Records Bureau (NCRB), "Crime in India, 1991", 12588 cognizable crimes under Indian Penal Code (IPC) were committed by juveniles in India. Under the special and Local Law (SLL) during the same year 22143 cognizable cases were registered against juveniles. It is revealed by the publication that more than 69% of children are delinquent despite their living with parents. Most of the delinquents (84%) originated from economically weaker section of the society whose monthly income level is below Rs. 1,000/-. The data further exhibits that major chunk of juvenile offenders originate from illiteracy (38.4%).

This data provided us a situation before two decades approximately. In reality, India has witnessed an increase in crimes committed by children. The number of such children has increased over the years, from 17,203 in 1994 to 30,943 in 2004. The crimes committed by juveniles have also seen an increase in the same period from 8,561 to 19,229. While part of this increase in juvenile crimes may be attributed to the inclusion of boys aged 16-18 years in the

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definition of child in the revised juvenile justice law of fairly high and more and more children in the 16-18 years category are coming in conflict with the law.

<table>
<thead>
<tr>
<th>Year</th>
<th>Incidence of Juvenile crimes</th>
<th>Incidence of total cognizable crimes</th>
<th>% of juvenile crime to total crimes</th>
<th>Total juvenile apprehended</th>
<th>Boys apprehended</th>
<th>Girls apprehended</th>
</tr>
</thead>
<tbody>
<tr>
<td>1994</td>
<td>8,561</td>
<td>16,35,251</td>
<td>0.5</td>
<td>17,203</td>
<td>13,852</td>
<td>3,351</td>
</tr>
<tr>
<td>1996</td>
<td>10,024</td>
<td>17,09,576</td>
<td>0.6</td>
<td>19,098</td>
<td>14,068</td>
<td>5,030</td>
</tr>
<tr>
<td>1998</td>
<td>9,352</td>
<td>17,19,820</td>
<td>0.5</td>
<td>18,923</td>
<td>13,974</td>
<td>4,969</td>
</tr>
<tr>
<td>2000</td>
<td>9,267</td>
<td>17,71,084</td>
<td>0.5</td>
<td>17,982</td>
<td>13,854</td>
<td>4,128</td>
</tr>
<tr>
<td>2002</td>
<td>18,560</td>
<td>17,80,330</td>
<td>1.0</td>
<td>35,779</td>
<td>33,551</td>
<td>2,228</td>
</tr>
<tr>
<td>2004</td>
<td>19,229</td>
<td>18,32,015</td>
<td>1.0</td>
<td>30,943</td>
<td>28,878</td>
<td>2,065</td>
</tr>
</tbody>
</table>

**Source**: Crime in India 2004 NCRB

**Status of Disposal of cases of Children in Conflict with Law (1998-2004)**

<table>
<thead>
<tr>
<th>Year</th>
<th>Arresterd &amp; sent to court</th>
<th>Sent to home after advice or admonition</th>
<th>Released on probation and place under care of</th>
<th>Sent to special homes</th>
<th>Dealt with fine</th>
<th>Acquittal or otherwise disposed off</th>
<th>Pending disposal</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Parents/ Guardian</td>
<td>Institution</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1998</td>
<td>18,964</td>
<td>2,620</td>
<td>3,889</td>
<td>829</td>
<td>1,751</td>
<td>908</td>
<td>2,107</td>
</tr>
<tr>
<td>2000</td>
<td>17,982</td>
<td>2,619</td>
<td>3,091</td>
<td>2,012</td>
<td>1,864</td>
<td>609</td>
<td>1,132</td>
</tr>
<tr>
<td>2002</td>
<td>35,779</td>
<td>3,236</td>
<td>11,338</td>
<td></td>
<td>3,381</td>
<td>908</td>
<td>1,693</td>
</tr>
<tr>
<td>2004</td>
<td>30,943</td>
<td>3,848</td>
<td>5,662</td>
<td>1,138</td>
<td>4,942</td>
<td>1,256</td>
<td>1,957</td>
</tr>
</tbody>
</table>

**Source**: Crime in India, 1998-2004, National Crime Record Bureau

As can be gathered from the above table, with increase in the age of boys covered by the juvenile justice law from 16-18 years, the burden of pending cases and the pressure on the juvenile justice boards has clearly increased. Number of convictions is high as compared to acquittals, which can be seen from the number of children sent to special homes and those acquitted. Those who are pending
disposal are either kept in observation homes or may have been released on bail. Till date no information has been collected on number of children released on bail. The Juvenile Justice Boards as well as the concerned administrative authority are usually shy of sharing such information with public.

Juvenile apprehended under IPC and SLL crimes by age group

<table>
<thead>
<tr>
<th>Year</th>
<th>7-12 Years</th>
<th>12-16 Years</th>
<th>16-18 Years</th>
<th>Total Apprehended</th>
</tr>
</thead>
<tbody>
<tr>
<td>2005</td>
<td>1645</td>
<td>13090</td>
<td>17946</td>
<td>32681</td>
</tr>
<tr>
<td>2006</td>
<td>1595</td>
<td>12535</td>
<td>18015</td>
<td>32145</td>
</tr>
<tr>
<td>2007</td>
<td>1460</td>
<td>12114</td>
<td>20953</td>
<td>34527</td>
</tr>
</tbody>
</table>

Source: Crime in India 2007, NCRB

Thus, in 2005 the total apprehended juvenile were 32681, out of which 1645 Juvenile were of 7-12 years of age group; 13090 were of 12-16 years of age group and 17946 were of 16-18 years of age group.

However, the crime rate by 7-12 and 12-16 years of age group reduced to 1460 in 2007 and 12114 respectively. But the crime rate by 16-18 age group enhanced by 20953 in 2007 by which the total apprehended juvenile rate also increased from 32681 in 2005 to 34527 in 2007.\(^{41}\)

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

The Indian Constitution has, in several provisions, including clause (3) of Article 15, clause (e) and (f) of Article 39, Article 45 and 47, impose on the state a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected. The General Assembly of the United Nations has also adopted the convention on the Rights of Child on the 20\(^{th}\) November 1989. The Convention on the Right of Child has prescribed a set of standards to be adhered to by all state parties in securing the best interest of the child.

\(^{41}\) Data by NCRB available on http://ncrb.nic.in accessed on 20\(^{th}\) May 2010.
child. The Convention on the Rights of the Child emphasizes social reintegration of child victims, the extent possible, without resorting to judicial proceedings.\textsuperscript{42}

Since the Government of India has ratified the convention on the 11\textsuperscript{th} December, 1992, therefore, it has been thought expedient to re-enact the existing law relating to juveniles bearing in mind the standard, prescribed in the Convention on the Rights of the Child, the United Nations standard Minimum Rules for the Administration of Juveniles Justice, 1955 (Beijing Rules) and all other relevant international instruments. Therefore, the Parliament enacted the juvenile justice (Care and Protection of Children) Act, 2000.\textsuperscript{43}

This Act conforms to the UN CRC 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 the 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.

This is an Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation. The Act defines a juvenile/child as a person who has not completed the age of 18.

\textsuperscript{43} Ibid.
years. It has two separate chapters – one for juveniles in conflict with Law and the other for children in need of care and protection. It also contains an exclusive chapter concerning rehabilitation and social reintegration of children. This Act also provides that all offences committed against a child are cognizable and punishable under the provisions of this Act.

I) **Juvenile in Conflict with the Law**: This is defined under section 2(l) of the Act. This definition is very much similar to the definition of 'delinquent juvenile' of the earlier Act of 1986. The Juvenile Justice Act 1986 provides that any violation of existing penal law (including SLL) of the country committed by a child under sixteen years of age and a girl under eighteen years, shall be an act of juvenile delinquency for the jurisdiction of the juvenile court. But now this Act has been repealed by the New Juvenile Justice (Care and Protection of Children) Act, 2000 and it defines juvenile in conflict with law as "a child who is alleged to have committed an offence" and according to Act "Juvenile is a person who has not attained the age of 18 years."

The New Act is more precise and clear in this regard that it does not deal with “delinquent” behaviour of a child which may include smoking, drinking and absenting one self from house and which may be tolerated by the society if done by an adult member. The New Act deals with crime if any committed by a juvenile.

(A) **Procedure with Regard to Juvenile Justice Board**

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 of whom at least one shall be a woman and a judicial magistrate.

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44 Juvenile Justice (Care and Protection of Children) Act 2008, Sec. 2(k).
45 Juvenile Justice Act, 1986, Sec. 2(e)
46 Supra n. 44, Sec 4.
Although we have specific provision in the Act for the establishment of Juvenile Justice Board in each district but the reality is far away from this Act.

The Uttar Pradesh government has not cared to set up juvenile Justice Board in all its districts -- is an issue which the Ministry of Women and Child Development (MWCD) is taking very seriously. Only 17 out of 71 district in the state have Juvenile Justice Board, which are mandatory to be established in every district.\(^{47}\) This is an example of a single state, if we look across India there are the chances of increase in number of such cases. How harrash is the reality?

(1) **Special Juvenile Police Unit** :- Whenever any juvenile in-conflict with the law is apprehended is to be produced before the Juvenile Justice Board.\(^{48}\) This apprehension of juvenile in conflict with law can be made by police but after apprehension he (juvenile) will be placed under the charge of the special juvenile police unit, who immediately report the matter to a member of the Board.\(^{49}\)

(2) **Granting of bail** :- Section 12 of the Juvenile Justice (care and protection of children) Act, 2000 deals with the granting of bail to juvenile who is apparently in conflict with law. According to Section 12 "*any person who is apparently a juvenile and is accused of a bailable or non-bailable offence may be released on bail notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law at the time being in force.*" But a juvenile shall not be released on bail if there appears reasonable ground for believing that the juvenile if released is likely to fall pray to a criminal or the release may expose a juvenile to moral or physical or psychological danger or that release of juvenile would defeat the end of justice.

But if a juvenile in conflict with law not released on bail then the Juvenile Justice Board shall instead of committing such a juvenile to prison, make an order

\(^{47}\) Aditi Tandon "Penal Demands details of missing children", The Tribune, 8th June 2008,

\(^{48}\) Supra n. 44, Sec. 5.

\(^{49}\) Id; Sec. 10.
for sending him to an observation home or a place of safety during the pendency of inquiry.

(3) Inquiry by Board Regarding Juvenile: Section 14 of the Act provides that where a juvenile who is charged with the offence, is produced before the Board, the Board shall hold inquiry and such inquiry shall be completed within a period of 4 months. The Juvenile Justice Board has a power to extend the period of inquiry beyond 4 months but in that case the Board has to state reasons for doing so.

The inquiry under section 14 of the Act is held for the purpose to decide whether a person who said to be in conflict with the law is a juvenile or not? And what kind of punishment should be inflicted on him?

In a country where millions do not have birth certificate or other records, it is very difficult to decide whether an offender is a child or not. Because Act of 2000 applies only to children who have not completed the age of 18 years. While there are many judgments declaring that in the absence of a birth certificate the age as is recorded in the school register before the occurrence should be taken as the true age of the person, there are problems where different ages are recorded in different school. In the absence of documentary proof, a court may send the accused for medical examination to determine the age. The problem with the medical examination is that it can at best provide only an approximate age within the range of 6 months.

The ruling is also given by the honorable Supreme Court in Gurgaon shootout in 2007 that if the age of such offenders was in doubt to apply the juvenile law there, it could be determined by the medical test with doctors applying flexible norms.

The court said though the medical report has never been considered to be a foolproof test to determine the age of a person either by the court of law or
medical scientists, yet when there was no proof to show that he was a juvenile, the courts were left with no option but to accept the doctors report. But the doctors should be given flexibility of two years on either side to determine the age.

Since under the new Juvenile Justice (Care and Protection of Children) Act, 2000, which came into force from April 2001, the age of a juvenile has been fixed 18 years to exempt him from being prosecuted under the provisions of the Indian Penal Code, the court said in such cases the date of commission of the crime was very important.

The Supreme Court said “in absence of any evidence which is relevant for the said purpose as envisaged under section 35 of the Indian Evidence Act, the same must be determined keeping in view the factual matrix involved in each case.”

(B) Specified orders to be passed against juvenile

Once the Juvenile Justice Board is of the opinion on inquiring that a juvenile has committed an offence then the Board may pass several orders about juvenile. It should be noted that the fundamental purpose of juvenile justice is not to sentence the child to the same punishment as an adult offender. He is to be treated with concern and sympathy. In this perspective, the Juvenile Justice Board may pass the following orders in respect of the child offender:

(a) after advice or admonition may allow the juvenile to go home;
(b) direct the juvenile to participate in group counselling.
(c) a juvenile may be ordered to perform community service.
(d) a juvenile may be ordered to pay fine himself if the is over 14 years of age and earns money or parents of such juvenile may be ordered to pay fine, if that juvenile is below 14 years of age.

51 Supra n. 44, Sec. 15.
(e) Direct the juvenile to be released on probation of good conduct or place him in care of parents/guardian /fit person by executing a bond.

(f) direct the juvenile to be released on probation of good conduct and handed over in care of fit institution but in any case not exceeding the period of three years.

(g) Make an order directing the juvenile to be sent to a special home wherein the juvenile is over 17 years but less than 18 years of age for a period of not less than 2 years, however, in case of any other juvenile for the period until he ceases to be a juvenile.

It is mandatory for the Juvenile Justice Board to get social investigation report on juvenile through a recognized voluntary organization or through a probation officer or otherwise and the Board has to take into consideration the finding of such report before passing any order as above-mentioned.

The above-mentioned are the orders that may be passed against a juvenile but there are certain orders also that may not be passed against a juvenile in conflict with law and they are:

(i) Sentence of death
(ii) sentence to imprisonment
(iii) committed to prison in default of payment of fine or
(iv) committed to prison in default of furnishing security.52

Although, wherein a juvenile has attained the age of 16 years and has committed the offence and the Juvenile Justice Board is of the opinion that a crime committed by him is of serious nature and it is not in the interest of justice to send him to special home then the Board may pass an order to send that juvenile-in conflict with law to a place of safety and report the matter to the concerned State Government.

52 Id; Sec. 16.
The State Government then make necessary arrangement for the safe and protective custody of that juvenile. The period of detention of such juvenile can not exceed the sentence of imprisonment for the offence committed.

Now the question arise if this Act is a protective legislation for juvenile in conflict with law then why is he sent to a place of safety? And if the period of detention is same as for the offence committed then what is the difference between adult jail and the place of safety. Although Juvenile is provided food, clothes, schooling and medicines but in reality these are not more than a "Chillar Jail" (small change). The juvenile in these place are cut off from the larger community. The children raised in these place of safety are typically withdrawn or violent, and find it hard to integrate with the larger world into which they are ejected as soon as the state is not bound by the law to protect them.

(C) Homes to be established under the above referred Act

The State Government under new Act of 2000 may establish homes for stay and rehabilitation of juvenile in conflict with law. The homes that can be established by the State Government by themselves or with an agreement with voluntary organizations are:

(1) Observation Homes

(2) Special Homes

(1) Observation Homes (Section 8) :- The main purpose for the establishment of the observation homes is the temporary reception of juvenile in conflict with law during the pendency of any proceeding or inquiry under the Juvenile Justice (Care and Protection of Children) Act 2000. These homes also provide services for rehabilitation and social integration of juvenile. The juvenile who is not placed under the charge of parents/guardian sent to an observation Home for the purpose of preliminary inquiry, care and classification as per his age group, i.e. seven to twelve years, thirteen years to sixteen years and seventeen to eighteen years.
Other than the age consideration, due consideration to physical and mental status and gravity of offence committed is to be given prior to further induction of the juvenile into observation homes.

Recently, Juvenile Justice Board of Rohtak district has asked the district administration to ensure the provision of free of cost educational facilities including computer skills, to Juveniles lodged in observation Home. It has also directed the police department to appoint a team of trained and sensitive officials to deal with criminal cases related to juveniles.53

It is worth noting here perhaps it is the first time that such a direction has been given by a district-level board.

(2) Special Homes (Section 9) :- The Juvenile Justice (Care and Protection of Children) Act 2000 also stipulated for the establishment of special homes for the reception of juvenile in conflict with law. These special homes provide the juvenile with accommodation, maintenance and facilities for education, vocational training and rehabilitation. The special home also provide him with facilities for the development of his character and abilities and give him necessary training for his reformation and shall also perform such other functions as may be prescribed to ensure all-round growth and development of his personality.

As it is envisaged in the preamble of the Act that this Act meant for the proper care, protection and rehabilitation of children and for achieving these aims the homes are established by the authority. The children who have been brought up in various state homes routinely described as “children’s jail”. During the pendency of inquiry the juveniles are languished in these homes and categorized in different groups on the basis of their age, gravity of offence etc. The Act provided for three categories as 7-12 years, 13 to 16 years and 17-18 years but if

we take a close look on these observation Homes, we may find a fourth category of children in age group of 23-24 years. They have been languishing in homes as their cases are not being settled.

The sources said in Delhi alone 14,000 cases against children lodged in juvenile homes were pending with the Juvenile Justice Board. This is the main reason that these homes are overcrowded.54

Moreover, the maximum custody period for a Juvenile in observation homes is 3 years but they had been languishing for the post seven years in these homes.55

A like statement was also given by Sandhya Bajaj, a member of National Commission for protection of Child Rights. (NCPCR) in an interview to Vibha Sharma published in the Tribune, an November 18, 2007.

(D) Prohibition on Publication of Name of Juvenile Involved in any Proceedings :- Section 21 of the JJ Act, 2000 prohibits publication of report of inquiry regarding a juvenile in conflict with law in newspaper, magazine, news sheet or in visual media. Such publication shall not disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile nor the picture of any such juvenile. However, the authority can disclose the name etc. if it is in the interest of juvenile.

The punishment in the form of fine can be inflicted on the person whoever disable the provision. And the fine for disobeying was 1,000 rupees that was enhanced by an amendment of the Act in the year of 2006 upto Rs. 25,000/-. 

(E) Penalties and Punishments under the Act :- The penalties and punishments under the Act are provided from Section 23 to section 26 of the said Act.

55 Ibid.
<table>
<thead>
<tr>
<th>Special Offences</th>
<th>Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>23 Cruelty to Juvenile</td>
<td>Imprisonment up to 6 months of fine or both</td>
</tr>
<tr>
<td>24 Employment of juvenile</td>
<td>Imprisonment up to 3 years and fine</td>
</tr>
<tr>
<td>25 Giving intoxicating liquor or narcotic drug or psychotropic resistance to juvenile</td>
<td>Imprisonment up to 3 years and fine</td>
</tr>
<tr>
<td>26 Exploitation of juvenile</td>
<td>Imprisonment up to 3 years and fine</td>
</tr>
<tr>
<td>28 Alternative punishment under any other central or State Act for the same act or omission</td>
<td>Liable for punishment which is greater in degree</td>
</tr>
</tbody>
</table>

Section 23 of J J Act 2000 provides punishment for cruelty to juvenile or child. According to this section anyone having the actual charge of juvenile can be punished if he assaults, abandons, exposes or willfully neglects the juvenile or causes or procures him to assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile unnecessary mental or physical suffering. He shall be punished with imprisonment for a maximum period of six months or fine or with both.

Section 24 of the Act provides punishment to any person who employs or uses a child for begging. This section also provides for punishment in respect of a person who abets the commission of an offence. This punishment provided under this section is one year imprisonment.

Section 25 inflicts punishment of 3 year imprisonment if anyone gives intoxicating liquor, narcotic drugs or psychotropic substance to a juvenile without the order of a qualified medical practitioner.

And Section 26 deals with the persons who ostensibly commits the following acts –
(i) who procures a juvenile or the child for the purpose of any hazardous employment keeps him in bondage, and
(ii) withholds the earnings of the juvenile or child; or
(iii) uses the earnings of the juvenile or the child for his own purpose.

II) Child in Need of Care and Protection :- As stated earlier there are two categories of children under the Act (i) child in conflict with law. For this “observation” and “Special homes” has been established by the State Government in each district and group of district ; (ii) child in need of care and protection. Same as first categories of children; for this purpose a Child Welfare Committee has been constituted by the State Govt. for each district or group of districts.

(A) Who are in Need of Care and Protection :- A child is said to be in need of care and protection.56

(i) who is found without any home and any ostensible means of subsistence.
(ii) who is found begging
(iii) who reside with a person who has threatened to kill him
(iv) who is mentally or physically challenged or suffering from incurable disease having no one to look after.
(v) who has parents/guardians but are unable to control over child
(vi) who does not have parents
(vii) who is abused or tortured for the purpose of some illegal acts.
(viii) who is found vulnerable and is likely to be inducted into drug abuse; and
(ix) who is victim of any armed conflict, civil commutation or natural calamity.

(B) Child Welfare Committee :- This committee shall consist of a chairperson and four members out of whom one shall be a woman. This committee shall function as a Bench of Magistrate and exercise such power as given to a Metropolitan Magistrate or JMIC under the Code of Criminal Procedure, 1973.

56 Supra n. 44, Sec. 2(d).
The Child Welfare Committee shall have final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of children. The committee also provide for basic needs and protection of human rights of children.

(C) Production Before Committee :- The J J Act 2000 under Article 32 provides that any child in need of care and protection may be produced before the child welfare committee by one of the following persons:-

(i) any police officer
(ii) any public servant
(iii) any registered voluntary organization
(iv) any social worker or public spirited citizen
(v) by child himself.

During the pendency of inquiry the child can be entrusted to children’s home.

(D) Homes for the Child in need of care and Protection :- The State Government under JJ Act, 2000 may establish homes for stay or and assistance for child in need of care and protection. The homes can be established by the State Government by themselves or in an agreement with voluntary organisation, are:

1) Children’s Homes
2) Shelter Homes

(1) Children’s Homes :- The main purpose of establishment of the children’s Homes is for the reception of child in need of care and protection during the pendency of inquiry. And after the inquiry is over a children’s home will serve the need of care, treatment, education, training, development and rehabilitation. The Central Government or the State Government is under legal obligation to monitor and evaluate the functioning of children’s home’s through their own agencies and persons. This role of the government is called social auditing.
(2) Shelter Homes :- The shelter homes perform functions as a drop-in-centres for the juvenile in need of immediate assistance when brought to the shelter homes through any police officer, public servant, registered voluntary organization, social worker, public spirited citizen or by child himself. The child who are in urgent support are brought in shelter homes.

The children’s homes and shelter homes are established with a prime objective of restoration and protection of a child who is deprived of his family temporary and permanently. The restoration and protection of a child means restoration to parents/adopted parents/foster parents/guardians/ fit persons or fit institution.

In centres for the children in need of urgent support. Restoration of and protection of a child shall be the prime objective of above-discussed homes. The Committee shall take necessary steps to restore the child in need of care and protection to his parent, guardian fit person or fit institution as the case may be.58

III) Provision relating to rehabilitation and social reintegration:

Chapter-IV of the Act deals with the Rehabilitation and Social Regenerations of Children who are in Children Homes or Special Homes. This shall be carried during their stay in homes alternatively by :-59

i) Adoption

ii) Foster Care, section 42(a);

iii) Sponsorship, section 43(1), and

iv) Sending the Child to an after-care organization, section 44

Adoption has to be resorted to for the rehabilitation of orphaned, abandoned, and neglected children. The children’s homes or the institutions run by State governments for orphans will be recognized as adoption agencies under the Act, both for scrutiny and placement of such

57 Id; Sec. 37.
58 Id; Sec. 39.
59 Id; Sec. 40.
Children for adoption in accordance with the guidelines issued for adoption by the State government [section 41(4)]. The Juvenile Justice Board is empowered to give the child in adoption after the following formalities are complied with [Section 41 (3)].

- Two members of the Child Welfare Committee have declared the child legally free for placement in case of abandoned Children;
- Till two months period for reconsideration by the parent is over in the case of surrendered children; and
- The consent of the child who can understand and express the same has been obtained.

The Board can allow a child to be given in adoption to a single parent and also to parents who have a child of the same sex irrespective of the number of living biological sons or daughters [Section 41(5)]

IV) Appeal and Revision:-

Any person aggrieved by an order of competent Authority under this Act may within thirty days from the date of such order prefer an appeal to the Court of Sessions. The High Court has the power to call for any record of any proceeding in which any competent authority or Court of Session has passed an order for the purpose of satisfying itself as to legality or propriety of any such order and may pass such order in relation there to as it thinks fit; provided that the High Court shall not pass an order under the section prejudicial to any person without giving him a reasonable opportunity of being heard. The competent authority while holding an inquiry under any of the provisions of this Act, shall follow such procedure as may be prescribed and shall follow, as far as may be, the procedure laid down in the Code of Criminal Procedure, 1973 for trials in summons Case.

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61 Supra n. 44 Sec. 52.
62 Id; Sec. 53.
63 Id; Sec. 54.
V) Significant changes brought by the Juvenile Justice (Care and Protection of Children) Act, 2000:

The objective of Act, 2000 was to develop a child-friendly approach in the adjudication and disposition of matters relating to juvenile in conflict of law and child in need of care and protection.64

- In the old Act, juvenile delinquents were being brought before the juvenile Court. This has been redefined as a Juvenile Justice Board and will remove the stigma associated with appearing in a Court like adult criminals.
- Children will not have to wait for justice indefinitely, as the new enactment provides for the disposal of cases within a limited period of four months by the concerned authorities.
- It has also been made compulsory to set up the Child Welfare Committee under the present Act.
- Every offence against a juvenile is now cognizable. This will enable the police authority to take cognizance to such offence and would also result in appreciable reduction in such offence against children.
- Set up of special juvenile police units under the new Act.
- Special emphasis has been laid down for the rehabilitation and social re-integration of children.
- The new Act empowers the Board to give child in adoption and this adoption is allowed to even single parent and to same sex, irrespective of the number of biological sons or daughters.
- Local authorities including Panchayats, Zilla Parishads, Municipal Committees, Corporations and Cantonment Boards play a role in transfer

64 Supra n. 35 pp. 347-348.
VI) Critique of the Juvenile Justice (Care and Protection of Children) Act 2000

• This Act has expanded the definition of the child in need of care and protection very significantly. It could lead to undue interference in the lives of several poor children and their families by the ‘system’. Adequate Safeguards needs to be provided or there should be two distinctly separate legislation.

• The Act fails to expressly lay down the age of innocence, i.e. the minimum age below which this Act would not be applicable

• The problem of special care and needs of the disabled children have been ignored. The education, training, and recreation of children have not been provided for. Besides basic or school education, even higher education and training of these children have to be considered. Open school and open university education system should be made accessible to these children.

• The Act has not taken into account the orders and directions of the Supreme Court and the various High Courts on the repatriation and duty counsels, determination of age of the child, etc.

• Training of personnel and functionaries working in the system is required for the implementation of the Act in its true spirit.

• There is no concept of parental responsibility in the Act.

65 Supra n. 60 pp. 307-308.
- The Act fails to provide for procedural guarantees like right to counsel and right to speedy trial.

- The Act is silent on inter-country adoption. The Act empowers the Juvenile Justice Board to give a child in adoption whereas it's the Child Welfare Committee that deals with children in need of care and protection.

- The provision on adoption in the New Juvenile Justice Act could lead to problems because of prohibition of adoption by the personal laws of certain communities. Muslims, Christian, parsis, and jews are not covered by any law on adoption. It is not clear whether we new JJ Act can give them rights not conferred upon them by any law directly. The Hindu are governed by the Hindu Adoption and Maintenance Act 1956 which is a special law on adoption whereas the JJ Act 2000 is a general law on adoption. It is unclear as to which law would have precedence. Usually, a special law overrides a general law.

- Standard of quality care have not been laid down,

- Section 16 of the Act provides for segregation of a Juvenile who has attained the age of sixteen years and has committed a serious offence. This has to be removed as segregation and solitary confinement will violate the right to development of the child.

**TRENDS OF JUDICIAL RESPONSE TO JUVENILE JUSTICE:**

In the last decades of the Supreme Court, there have been numerous cases where a child in conflict with the law has been brought forward. In the majority of the cases by the time case comes to Supreme Court, the child no longer remains a child juvenile. So the most formative years are spent by the juvenile in the prison.
In Jayindra's Case, the Court came to the conclusion that at the time of offence he was about sixteen years. Therefore, the conviction was upheld but the sentence of imprisonment was quashed. The Court directed the immediate release of the youth. In Bhoop Singh's Case, the sessions Judge rejected the School Certificate as “it is not unusual that in schools, ages are understated by one or two years for future benefits”. The Supreme Court ordered the immediate release of the convict and held that the school certificate should be taken as valid, as there was no material evidence contradicting the age given in it. The Session Judge went by this surmise that many parents gave false age to given benefits. The same principle was applied in Pardeep Kumar's case.

Another important issue relating to juvenile was discussed in Dharampal’s case, where in the Apex Court had held that raising plea that the accused was a child for the first time in the Supreme Court cannot be accepted. This was diluted in Gopinath Gosh's case, when the Court allowed the plea to be raised for the first time in the Supreme Court. But in Shiv Shankar's case, the supreme Court re-iterated the position laid down in Dharampal’s case. There is no clarity as to right time to apply Juvenile Justice Act. There were many judgment which have held that the correct date would be date on which charges were framed but this aspect was dealt in Umesh Chandra's case when the Court held that relevant date for the applicability of the act was date of the offence and not the date of the trial. This was reaffirmed in Balwant Kaur’s case. But this was overruled again in Arnit Das's case where it was held that

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69 Dharampal and others vs. State of U.P., 1975 (2) SCC 596.
70 Gopinath Ghosh vs. State of West Bengal, 1984 (Supp) SCC 28.
72 Supra n. 69.
73 Umesh Chandra vs. State of Rajasthan, 1982(2) SCC 202.
74 Balwant Kaur vs. Union Territory of Chandigarh, 1988(1) SCC 1.
75 Arnit Das vs. State of Bihar, 2000 (5) SCC 488.
the relevant date for giving the benefit of the act to the child would not be the date of offence. Since there was a clear conflict in Arnit Das and Umesh Chandra’s case the matter was referred to the Constitution Bench in Pratap Singh’s case,\textsuperscript{76} where Court dealt with two main issues:

i) Whether the date of occurrence will be the reckoning date for determining the age of the alleged offenders as juvenile offender or the date when he is produced in the Court of competent authority?

ii) Whether the Act of 2000 will be applicable in the case where proceeding has been initiated under 1986 Act and pending when the act of 2001 was enforced with effect from 1.4.2001?

On the first issue the Court held that with regard to the relevant date for applicability of the Act, is the date on which the offence takes place and not the date on which he is produced before the authority or in the court. 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. On the second issue the Act and Rules framed by the Central Government indicates that the intention of the legislature was that the provisions of 2000 Act were to apply to pending cases provided on 1.4.2001 i.e. the date on which the 2000 Act came into force the person was “Juvenile” within the meaning of the term as defined in the 2000 Act i.e. he/she has not crossed 18 years of age.

The purpose of the Juvenile Justice Legislation is to provide succor to the children who were being incarcerated along with the adults and were subjected to serious abuses. The problem of juvenile is, no doubt, one of the tragic human interest so much so in fact that it is not confined to this country alone but cuts across national boundaries. In 1985 the United National Standard Minimum Rules for the Administration of Juvenile Justice were laid down which was also known

\textsuperscript{76} Pratap Singh vs. State of Jharkhand and another, 2005(3) SCC 551.
as Beijing Rules. These Rules were guidelines to member states in developing measures to protect the human rights of children in conflict with law:77

- Juvenile justice shall be an integral part of the national development process of each country.
- Reaction to juvenile offenders should be in proportion to the offender’s age and the offence.
- Member States shall seek to further the well being of juveniles and their families and ensure their meaningful lives in the community.
- Rights of juveniles, due process sand right to privacy to be suspected.
- Age of criminal responsibility should not be too low.
- Scope for discretionary power.
- Guidance regarding semi-institutional arrangement.

Thus Beijing Rules recognized particular care and assistance with regard to physical, mental and social development and require legal protection in conditions of peace, freedom of dignity and security” to the child.78 The Supreme Court of India said, in its judgment in the case of Sheela Barse’s case,79 that “........ Instead of each State having its own Children’s Act in other states, it would be desirable if the Central Government initiates Parliamentary Legislation on the subject, so that there is complete uniformity with regard to the various provisions relating to children in the entire territory of the country.”

To bring in conformity with the Beijing Rules and to have a uniform legislation on juvenile justice, the Juvenile Justice Act, 1986 came into existence which after ratification of the Convention of Child Rights in India 1992 and changing social attitude is replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000. In fact, the Act is based to achieve of welfare of juveniles

78 Ibid.
through twin doctrines of *parens patriae* and individualized treatment because to metre out justice becomes a serious responsibility in case if person in question in a juvenile.\(^80\)

**ISSUES OF CONCERN** :- It seems that the new Juvenile Justice (Care and Protection of Children) Act, 2000 tried to touch every area for the protection of children in conflict with law and in need of care and protection. But certainly there are few area due to the reason of which the Act failed in achieving its objectives.

The foremost is the co-ordination and interaction between different wings of the Juvenile Justice delivery system is very poor. Lateral linkage with other sectors and Ministries Departments such as health, nutrition, education and vocational training etc. need to be strengthened to stop any violation of basic human rights of children. Further the coordination is also missing between police, NGO's, Boards/Committees and probation officers of one state with the other state due to the reason of which the interest of a child may suffer a lot, particularly when he is shifted transferred to his/her native place.

Bail is a matter of right of every child offender except in three cases (i) when child is likely to be exposed to moral, physical and psychological danger (ii) when release defeat the end of justice and (iii) when release likely to bring him in association with any known criminal. It has been found that children are often denied bail on these grounds without clearly establishing the name of the person by whom the child is likely to be in danger. Moreover, to seek bail a child is to be legally presented before the Board. And engaging good and reputed lawyer is only the business of rich people. The poor has to rely on sub-standard legal aid services.

Another hurdle in helping these children access their right to bail depends upon the report made by probationary officer after meeting with friends, neighbourhood, relatives and child community etc. This in-depth inquiry has never been possible without the adequate number of probationary officers. As a result, there is no real assessment of child’s situations and circumstances; and denied bail.

Further the Act fails to express the minimum age below which the Act would not be applicable. There is no concept of parental responsibility. The Act fails to provide for procedural guarantees like right to counsel and right to speedy trial. It empowers the Juvenile Justice Board to give a child in adoption; even though, it is the Child Welfare Committee that deals with children in need of care and protection. Moreover the Act is silent on inter-country adoption. There is no linkage between the Juvenile Justice Act 2000 and the other legal provisions relating to children, for instance child labour, primary education, sexual abuse, adoption, disabilities and health.

The threatening environment and inhuman conditions of institution where a child is kept during inquiry is also a matter of concern. The child face inhuman treatment by police and guards here. Many a times they are physically abused and denied basic sanitary facilities and some times commingled with adults. Even when education is guaranteed as a fundamental right for 6-14 year olds, for those held in institution, this right stands violated.

The whole atmosphere of Juvenile Justice Board’s is unfriendly to child because the Juvenile Justice Board’s were created under the juvenile justice system to be a child-friendly mechanism, they continue to function like any other adult courts. Though training is mandate for the Juvenile Justice Board’s members, it does not happen in most cases.

Last but not the least the JJ Act 2000, makes an important but arguable distinction between children who are “in need of care and protection” and those who are “in conflict with the law”. In my view, all children need care and protection even if they are in conflict with the law. Separating the two and
enacting different ways of dealing with these two categories of children, strengthens the stigmatizing of children who are charged with an offence.

The age of commission of crime occurs within the imprisonable early and late adolescent period. This indicates that till child protection is not given the same emphasis as other issues concerning children and unless it is integrated with every other sectoral intervention for preventing children from falling into vulnerable situations and protecting them when required, all rights for all children can never be met.

Juvenile Justice has been given some shape with Juvenile Justice Act 2000. Persons dealing with children need to sensitize themselves with this Act. One needs to know the provisions made, to understand whether it is being properly implemented. Only on observing it being implemented, can one get insight into the problems inherent in it, and if one knows the problems, one can suggest improvements in the Act. Even if the law gives adequate guidelines, institutions are still needed to look after the children in distress or children in conflict with law. For successful compliance of court orders, and to punish violators, monitoring bodies need to be set up, who should be given legal powers as well. Effective child protection and development depends on skills, knowledge and judgment of all professionals, personnel and staff working with children.

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