CHAPTER V

DIMENSIONS OF JUVENILE JUSTICE

A thematic engagement into the present International framework of juvenile justice would help understand various dimensions of juvenile justice in the contemporary models and discourses. This is significantly important to understand the nature and substance of juvenile justice as it fundamentally revolves around the way of Indian state’s response to children who are in conflict with criminal laws. Therefore, there is an apparent need to make a thread bare analysis of International standards on the subject of juvenile justice.

Broadly in this chapter an attempt has been made to trace juvenile justice framework from the present standards prescribed under various international instruments available on juvenile justice like the United Nations Standard Minimum Rules for the Administration of Juvenile Justice 1985 – The Beijing Rules, the United Nations Guidelines for the Prevention of Juvenile Delinquency 1990 – The Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty 1990 along with the provision in respect of children in conflict with law as envisaged under the United Nations Convention on the Rights of the Child to understand the contents of juvenile justice standard in the present context. These instruments are the child focused norms currently regulating juvenile justice as minimum international standard.

While in the present context the above Guidelines and Convention enumerate the framework for juvenile justice, relevant international standards have existed for several decades. The Standard Minimum Rules for the Treatment of Prisoners, 1955, themselves inspired by standards endorsed by the League of Nations in 1934, already set out the principle of separation of young prisoners from adults in custodial facilities and for adults and juvenile alike, the separation of accused and convicted detainees. The 1966 International Covenant on Civil and Political Rights (ICCPR) reiterates this principles in the form of hard law as well as prohibiting the death penalty for person found guilty of a crime committed when they were under the age of 18 (Article 6.5 of ICCPR). The Covenant consisted of safeguards for all persons brought to trial and detained, and specifically states that in case of juvenile persons the court procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation (Article 14.4 of ICCPR).\(^\text{243}\)

\(^{241}\) (Resolution 45/112).
\(^{242}\) (Resolution 45/113).
\(^{243}\) Innocenti Digest 3, January 1998, Juvenile Justice, page-2, UNICEF International Child Development Centre, Italy.
In this chapter an attempt has been made to review the 3 major international instruments concerning juvenile justice. In the previous chapter a detailed discussion pertaining to the provision in relation to children in conflict with law as envisaged under UNCRC has been attempted. Therefore, in order to avoid repetition of the subject, the provisions of UNCRC have not been discussed here again. However, occasional references to UNCRC and other existing human right instruments have been made in course of discussion of the theme. At the end of the chapter, however, a brief discussion about the UN Standard Rules on Juvenile and UN Convention has been made in order to come to a reasonable conclusion. Broadly while the UNCRC recognises certain principles envisaged under it as rights of the child, the Rules under 3-United Nations instruments contemplate minimum standards for administration of juvenile justice and the manner in which juvenile deprived of liberty shall be dealt with.

It is in this regard important to mention that the present literature on the subject frequently refers to the three international instruments concerning juvenile justice, however, most of the literature is conspicuous with absence of thorough investigation into the instruments. This research, therefore, has made a modest attempt to figure out the present understanding of juvenile justice as envisaged under international instruments from the perspective of UNCRC and Indian legal framework for juvenile justice. This analysis, apart from giving us a space for carving out juvenile justice in India shall also contribute to enrichment of knowledge concerning juvenile justice as envisaged under international law in the present context.
Provision under Beijing Rules±

In September 1980, the United Nations held its Sixth Congress on the Prevention of Crime and the Treatment of Offenders. In this Congress an idea emerged with a need for a bill of rights for young offenders. The United States delegation supported the idea. Much drafting of the policy took place at a conference in Beijing, China. It was originally proposed as a Bill of Rights for Young Offenders, but was eventually renamed the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. The proposed draft was then discussed at length at the United Nations Seventh Congress on the Prevention of Crime and the Treatment of Offenders. Consequentially it was adopted on 29 November 1985 by the United Nations General Assembly. It is pertinent to mention here that the United Nations also proclaimed the year 1985 as the International Year of Youth.

The General Assembly Adopted the United Nations Standard Minimum Rules for the Administration of Juvenile Justice recommended by the Seventh Congress. It also approved the recommendation of the Seventh Congress that the Rules should be known as "the Beijing Rules".

While adopting the Rule the General Assembly of the United Nations proclaimed in the Resolution that the young, owing to their early stage of human development, require particular care and assistance with regard to physical, mental and social development, and require legal protection in

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245 It was held in Caracas/Venezuela.
246 It was held in Milan, Italy, in September 1985.
conditions of peace, freedom, dignity and security. The Rules framed by UN therefore serve as a minimum standard to accomplish protection of rights of young. Of course it was understood then that the national legislation, policies and practices requires review and amendment in view of the standards contained in the rules. Although such standards seemed difficult to achieve at that time in view of the then existing social, economic, cultural, political and legal conditions, they were nevertheless intended to be attainable as a policy minimum. It urged Member States to adapt, wherever this is necessary, their national legislation, policies and practices, particularly in training juvenile justice personnel, to the Beijing Rules and to bring the Rules to the attention of relevant authorities and the public in general. The Standard Minimum Rules applies to juvenile offenders impartially, without distinction of any kind, for example as to race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other status. Efforts were required to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed to meet the varying needs of juvenile offenders, while protecting their basic rights and to meet the need of society. Such legislative and administrative arrangement should require to be made in conformity with this Rule. Here it can be mentioned that in India the first uniform central legislation was enacted in 1986 by the Indian Parliament consequent upon adoption of the above mentioned guideline. To refer Ved Kumari in this regard, she observes that with the adoption of the Beijing Rules by the General Assembly of the United Nations, a recommendation for uniform law was made by the

The fundamental perspective under Rules 1.1 to 1.3 of the Beijing Rules indicates the importance of a constructive social policy for juveniles by holding that such a policy would help, inter alia, in the prevention of juvenile crime and delinquency. Rule 1.4 defines juvenile justice as an integral part of social justice for juveniles. Rule 1.5 seeks to take account of existing conditions in Member States which would cause the manner of implementation of particular rules necessarily to be different from the manner adopted in other States. Rule 1.6 refers to the necessity of constantly improving juvenile justice, without falling behind the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services. These endeavours should be aimed at development of the well being of the juvenile and her/his family. Juvenile Justice shall be conceived as an integral part of the national development process within a comprehensive framework of social justice (Rule 1.4.).

The provision under Rule 2.3 is addressed to the necessity of specific national legislation for the optimal implementation of these Standard Minimum Rules, both legally and practically. Rule 3 extends the protection afforded by the

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Standard Minimum Rules for the Administration of Juvenile Justice covering the areas like:

(a) The "status offences" prescribed in various national legal systems where the range of behaviour considered to be an offence is wider for juveniles than it is for Adults for example, run away from family, truancy, school and family disobedience as well as public drunkenness, etc. It provides minimum guarantees in those fields. (Rule 3.1);

(b) Juvenile welfare and care proceedings. It is considered a step in the direction of more fair, equitable and humane justice for all juveniles in conflict with the law. (Rule 3.2);

(c) Proceedings dealing with young adult offenders, depending of course on each given age limit. (Rule 3.3).

The Standard Minimum Rules are formulated in such a manner that it can be applicable in the domestic sphere of various nation-state and within different legal systems. It suggests minimum standards to be adhered to while dealing with juvenile offences.

**Definition:**
A juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult. An offence is any behaviour which includes act or omission, which is punishable by law under the respective legal systems. A juvenile offender is a
child or young person who is alleged to have committed or who has been found to have committed an offence.

Rule 2.2 defines "juvenile" and "offence" as the components of the notion of the "juvenile offender". The age limits is to be determined by the respective legal systems. It thereby recognises the importance of the economic, social, political, cultural and legal systems of Member States. This makes for a wide variety of ages coming under the definition of "juvenile", ranging from 7 years to 18 years or above. In case of India the age of juvenile delinquent was 16 for boys and 18 for girls under the Juvenile Justice Act 1986 whereas with amendment of this Act a uniform age group of 18 has been accepted as a fundamental norm without making any distinction on the basis of sex. As the Beijing Rules leave the scope for decision about fixation of the age of child who can be considered as juvenile to its Member States independently, there has been a uniformity of age of 18 recognised by States across the globe based on the definition given under UNCRC.

**Age of Criminal Responsibility:**

The Beijing Rules does not specify any age limit for criminal responsibility. It desires that the beginning of age of criminal responsibility for juvenile should not be fixed at too low an age level. In this regard, efforts should therefore be made to agree on a reasonable lowest age limit that is applicable internationally. The minimum age of criminal responsibility differs widely owing to history and culture of different society and state. The modern approach would be to consider whether a child can live up to the moral and psychological components of criminal responsibility; that is, whether a child,
by virtue of her or his individual discernment and understanding, can be held responsible for essentially antisocial behaviour. If the age of criminal responsibility is fixed too low or if there is no lower age limit at all, the notion of responsibility would become meaningless. In general, there is a close relationship between the notion of responsibility for delinquent or criminal behaviour and other social rights and responsibilities such as marital status, civil majority, etc.

From the perspective of law, it understands juvenile in a specific way on the basis of capacity. By virtue of their chronological age, individuals either fall below or above a particular cut off point. If they fall below it, they are presumed by law to be incapable of forming criminal intent and therefore, are not believed to be legally liable for their actions. If they fall above it, they are, in contrast presumed by law to be capable of forming criminal intent. Therefore, they may be held legally liable for their actions or omissions (Owen 2006).

Diwan (1996) observes that for imposing criminal liability, the child is not defined in terms of minority. From the point of view of criminal liability the term used is juvenile. The law makes three distinctions for purposes of imposing criminal liability or for considering a person as innocent. The age of complete innocence or age of no criminal liability is based on lack of mental capacity or the other side of the doctrine of mens rea – a guilty mind. Child cannot be liable for his act under the notion of doli incapax. The law lays down an absolute rule that such a person is incapable of committing any crime. Under
Indian laws the age of total innocence is up to completion of 7 years.\textsuperscript{250} The age of criminal responsibility or innocence is raised up to 12 years if the child is found to have not attained the ability of understanding the nature and consequences of his/her act.\textsuperscript{251} The second gradation of age is based on the concept of age of quasi responsibility. Above the age of 12 is the age of quasi responsibility or juvenile age. At this age law ascribes criminal responsibility yet heavy punishment is not awarded.

Scott (n.d) observes that the criminal law assumes that most offenders make rational autonomous choices to commit crimes. Thus a person whose decision making is grossly distorted by immature capacity or mental illness may be fully excused from responsibility. In case of person with mental illness the benefit insanity defence is granted. The evidence from developmental psychology suggests that youthful choices may be based on immature capacity to make decisions or shaped by transient developmental influences. Scott further argues that in general youth are likely to have less knowledge and experience to draw on making decisions than adults. Peer conformity is a powerful influence on adolescent behaviour and may lead teens to become involved in criminal activity. Juvenile criminal activity, therefore, mostly occurs in group.

\textsuperscript{250} Section 82 of Indian Penal Code. It says nothing is an offence which is done by a child under 7 years. 
\textsuperscript{251} Section 83 of Indian Penal Code. It says nothing an offence which is done by a child above 7 years and under 12 who has not attained sufficient maturity of understanding to judge the nature and consequence of his conduct on that occasion. This is also called as doubtful age.
Aims of Juvenile Justice:

The provision under Rule 5 seeks to achieve the following two most important objectives concerning juvenile justice. The first objective is the promotion of the well-being of the juvenile. This is the main focus of those legal systems in which juvenile offenders are dealt with by family courts or administrative authorities. The well-being of the juvenile should also be emphasized in those legal systems that follow the criminal court model, thus contributing to the avoidance of merely punitive sanctions. (See also rule 14.)

The second objective is application of "the principle of proportionality". This principle is well-known as an instrument for curbing punitive sanctions, mostly expressed in terms of just deserts in relation to the gravity of the offence. The response to young offenders should be based on the consideration not only of the gravity of the offence but also of personal circumstances. The individual circumstances of the offender for example social status, family situation, the harm caused by the offence or other factors affecting personal circumstances should influence the proportionality of the reactions for example by having regard to the offender's endeavour to indemnify the victim or to her or his willingness to turn to wholesome and useful life. The core criminal law principle of proportionality requires that punishment always be proportionate to blameworthiness, which in turn is mitigated if the individual's decision making capacity is deficient (Scott).

In essence, rule 5 calls for a fair response in any given cases of juvenile delinquency and crime. The commentary of the United Nations High Commissioner for Human Right observes that the issues combined in the rule
may help to stimulate development in both regards: new and innovative types of reactions are as desirable as precautions against any undue widening of the net of formal social control over juveniles.

**Discretion of Juvenile Justice Administration:**

On the lines of the fundamental perspectives of the Beijing Rules\textsuperscript{252}, the provision in Rules 6.1, 6.2 and 6.3 recognises the special need of juveniles and for that it argues for measures for effective, fair and humane juvenile justice administration. It extends scope for use of discretionary power at all levels of investigation, prosecution, adjudication and follow-up of dispositions. However, it also imposes condition of accountability and professionalism in matters of using discretion. Thus, professional qualifications and expert training are emphasized here as a valuable means of ensuring the judicious exercise of discretion in matters of juvenile offenders\textsuperscript{253}. The formulation of specific guidelines on the exercise of discretion and the provision of systems of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context. Such mechanisms are not specified here, as they do not easily lend themselves to incorporation into international standard minimum rules, which cannot possibly cover all differences in justice systems.

\textsuperscript{252} Rule 1.3 of Part One delineates that sufficient attention shall be given to positive measures like effectively, fairly and humanly dealing with juvenile in conflict with law.

\textsuperscript{253} See also rules 1.6 and 2.2.
Rights of Juveniles:

Rule 7.1 emphasizes some important points that represent essential elements for a fair and just trial. These are also internationally recognized as fundamental standards under existing international human rights instruments. The Rules prescribe basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings. Juveniles offenders are entitled to these fundamental rights.

The presumption of innocence, for instance, is also to be found in Article 11 of the Universal Declaration of Human Rights and in Article 14 of the International Covenant on Civil and Political Rights. The Universal Declaration of Human Rights, 1948 vividly declares that all human beings are born free and equal in dignity and right. The Declaration contains (a) the Right to equality before the law, (b) Right against cruelty and inhuman punishment, (c) presumption of innocence and (d) Right against ex-post facto laws.

254 See also Rule 14 regarding adjudication and disposition.
255 Paragraph 2.
256 Article 1 of UDHR.
257 Article 7 of UDHR.
258 Article 5 of UDHR.
259 Article 11 (1) of UDHR.
260 Article 11 (2) of UDHR.
Jaiswal\textsuperscript{261} pointed out that the concept that a human being "has the right to be respected" is basically derived from the natural law. In Europe the maxim "\textit{nulla poena sine lege}", in England the principle of "\textit{natural justice}", couched in the maxim "\textit{audi alteram partem}" and in United States the rule of "\textit{due process of law}" provide focal points in natural law with regard to the protection of rights of an accused. An accused person cannot to be denied to enjoy the 'right to life' and 'personal liberty'.

With regard to the right of accused, Article 14 (Right to equality before the law), 19 (Right to freedom) and 21 (Right to life and personal liberty) are relevant provisions in the Constitution of India. The Supreme Court of India also laid down guidelines regarding the Right of an accused and the manner in which it shall be implemented in D.K. Basu vs. State of West Bengal\textsuperscript{262} and in Joginder Kumar vrs. State of U.P\textsuperscript{263}. In case of juvenile justice law in India the above rights are guaranteed in the form of statutory provision both in Juvenile Justice Act 1986 and Juvenile Justice Act 2000. The 2000 Act prescribes that when a juvenile is arrested, the Officer-in-charge of the Police Station or the Special Juvenile Police Unit to which the juvenile is brought shall as soon as may be after arrest informed the parents or guardian of the juvenile (Section 13)\textsuperscript{264}. However, the Act does not explain in detail about the procedure of trial and merely provided that where a juvenile having been charged with the offence is produced before a Board; the Board shall hold inquiry in accordance with the provisions of this Act (Section 14).

\textsuperscript{262} AIR 1997 614.
\textsuperscript{263} (1994) 2 SCJ 230 at p. 237.
\textsuperscript{264} Juvenile Justice (Care and Protection of Children) Act 2000.
Protection of Privacy:

The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling (Rule 8.1).

In principle, no information that may lead to the identification of a juvenile offender shall be published (Rule 8.2).

Disclosure of identity has always an adverse effect. Young persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects resulting from the permanent identification of young persons as "delinquent" or "criminal".

The Juvenile Justice Act 2000 emphatically stresses this principle by holding that no report in any newspaper, newssheet or visual media shall disclose the name, address or school or any other particulars calculated to lead to the identification of juvenile or child. It also prohibited publication of picture (Section 21). An analogous provision could also be found in the Juvenile Justice Act of 1986.

Initial Contact:

Upon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter (Rule 10.1). An analogous provision can be found in principle in the United Nations Standard Minimum Rules for the
Treatment of Prisoners\textsuperscript{265}. The Juvenile Justice Act 2000 lays down that it is the responsibility of law enforcement officials to inform the parents forthwith after apprehension of the juvenile\textsuperscript{266}.

Further a judge or other competent official or body shall, without delay, consider the issue of release (Rule 10.2). It refers to any person or institution in the broadest sense of the term, including community boards or police authorities having power to release an arrested person\textsuperscript{267}. In India the Juvenile Justice Act 2000 provides that any accused who is apparently a juvenile when arrested or detained or appears or brought before a Board be released on bail with or without surety whether the allegation is a bailable or non-bailable offence unless such grant of bail pose a threat in any manner to the juvenile himself/herself.

Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile, promote the well-being of the juvenile and avoid harm to her or him, with due regard to the circumstances of the case (Rule 10.3). It deals with fundamental aspects of the procedures and behaviour on the part of the police and other law enforcement officials in cases of juvenile crime. "Harm" admittedly be caused by use of harsh language, physical violence or exposure to the criminal justice system environment and also when they come in contact with adult harden criminals etc. Involvement in juvenile justice processes in itself can be "harmful" to juveniles. Therefore, the term "avoid harm" should be

\begin{itemize}
\item 265 Rule 92 of the Standard Minimum Rules for the Treatment of Prisoners.
\item 266 Section 13 of Juvenile Justice Act 2000 on Information to Parents, Guardian or Probation Officer.
\item 267 See also the International Covenant on Civil and Political Rights, article 9, paragraph 3.
\end{itemize}
broadly interpreted, as doing the least harm possible to the juvenile in the first instance, as well as any additional or undue harm. This is especially important in the initial contact with law enforcement agencies, which might profoundly influence the juvenile’s attitude towards the State and society. Moreover, the success of any further intervention is largely dependent on such initial contacts. Compassion and kind firmness are important in these situations. These principles are inbuilt in Juvenile Justice Act 2000 in various provisions. The Act even substituted the word 'delinquent' which was used in Juvenile Justice Act 1986 by 'juvenile in conflict with law' as the former was considered derogatory. Similarly, cruelty in any form is made an offence (Section 23).

Diversion:
Rules 11.1 says consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority. Where the case of a juvenile offender has not been diverted it shall be dealt with by competent authority like Juvenile Justice Board in India. Diversion, involving removal from criminal justice processing and, frequently, redirection to community support services, is commonly practised on a formal and informal basis in many legal systems. This practice serves to hinder the negative effects of subsequent proceedings in juvenile justice administration. In many cases, non-intervention would be the best response. Thus, diversion at the outset and without referral to alternative (social) services may be the optimal response. This is especially the case where the offence is of a non-serious nature and where the family, the school or other informal social control institutions have already reacted, or are likely to react, in an appropriate and constructive manner.
The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules (Rule 11.2). It may be exercised by one authority or several or all authorities, according to the rules and policies of the respective systems and in line with the present Rules. It need not necessarily be limited to petty cases, thus rendering diversion an important instrument.

Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application (Rule 11.3). It stresses the important requirement of securing the consent of the young offender or the parent or guardian to the recommended diversionary measure.

In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims (Rule 11.4). It recommends the provision of viable alternatives to juvenile justice processing in the form of community-based diversion. Programmes that involve settlement by victim restitution and those that seek to avoid future conflict with the law through temporary supervision and guidance are especially commended. The merits of individual cases would make diversion appropriate, even when more serious offences have been committed for
example first offence, the act having been committed under peer pressure, etc.

**Specialization within the Police:**
In order to best fulfil their functions, police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained (Rule 12.1). In large cities, special police units should be established for that purpose. Rule 12 draws attention to the need for specialized training for all law enforcement officials who are involved in the administration of juvenile justice. As police are the first point of contact with the juvenile justice system, it is most important that they act in an informed and appropriate manner. While the relationship between urbanization and crime is clearly complex, an increase in juvenile crime has been associated with the growth of large cities, particularly with rapid and unplanned growth. Specialized police units would therefore be indispensable, not only in the interest of implementing specific principles contained in the present instrument (such as rule 1.6) but more generally for improving the prevention and control of juvenile crime and the handling of juvenile offenders. In India a provision for establishment of Special Juvenile Police Unit has been made in the Juvenile Justice Act 2000 (Section 63).

**Detention Pending Trial:**
Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time (Rule 13.1). Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational
setting or home (Rule 13.2). Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations (Rule 13.3). Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults (Rule 13.4). While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical—that they may require in view of their age, sex and personality (Rule 13.5). The danger to juveniles of "criminal contamination" while in detention pending trial must not be underestimated. It is therefore important to stress the need for alternative measures. Varying physical and psychological characteristics of young detainees may warrant classification measures by which some are kept separate while in detention pending trial, thus contributing to the avoidance of victimization and rendering more appropriate assistance. The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 4 on juvenile justice standards, specified that the Rules, inter alia, should reflect the basic principle that pre-trial detention should be used only as a last resort, that no minors should be held in a facility where they are vulnerable to the negative influences of adult detainees and that account should always be taken of the needs particular to their stage of development.
Competent authority to Adjudicate:

Where the case of a juvenile offender has not been diverted (under rule 11), she or he shall be dealt with by the competent authority (court, tribunal, board, council, etc.) according to the principles of a fair and just trial (Rule 14.1). The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely (Rule 14.2). It is difficult to formulate a definition of the competent body or person that would universally describe an adjudicating authority. "Competent authority" is meant to include those who preside over courts or tribunals composed of a single judge or of several members, including professional and lay magistrates as well as administrative boards for example the Scottish and Scandinavian systems or other more informal community and conflict resolution agencies of an adjudicatory nature. In India Juvenile Justice Board is the competent authority for purposes of dealing with matters connected with juvenile in conflict with law. The procedure for dealing with juvenile offenders shall in any case follow the minimum standards that are applied almost universally for any criminal defendant under the procedure known as "due process of law". In accordance with due process, a "fair and just trial" includes such basic safeguards as the presumption of innocence, the presentation and examination of witnesses, the common legal defences, the right to remain silent, the right to have the last word in a hearing, the right to appeal, etc. (See also rule 7.1.)
Legal Counsel, Parents and Guardians:
Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country (Rule 15.1). The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile (Rule 15.2). Rule 15.1 uses terminology similar to that found in rule 93 of the Standard Minimum Rules for the Treatment of Prisoners. Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in rule 15.2 should be viewed as general psychological and emotional assistance to the juvenile. In India children are legal aid eligible without a means test under the Legal Services Authority Act 1987. However, the Juvenile Justice Act 2000 does not incorporate any provision in relation to appointment of lawyers for legal representation.

Social Inquiry Reports:
In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority (Rule 16.1). Social inquiry reports (social reports or pre-sentence reports) are an
indispensable aid in most legal proceedings involving juveniles. The competent authority should be informed of relevant facts about the juvenile, such as social and family background, school career, educational experiences, etc. For this purpose, some jurisdictions use special social services or personnel attached to the court or board. Other personnel, including probation officers, may serve the same function. The rule therefore requires that adequate social services should be available to deliver social inquiry reports of a qualified nature. The Juvenile Justice Act 2000 empowers the Juvenile Justice Board to seek a social enquiry report from social workers or Probation Officers of the State.

**Guiding Principles in Adjudication and Disposition:**

According to Rules 17.1 the disposition of the Competent Authority shall be guided by the following principles: (a) The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society; (b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum; (c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response; (d) The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

Capital punishment shall not be imposed for any crime committed by juveniles (Rule 17.2). Juveniles shall not be subject to corporal punishment (Rule 17.3).
The competent authority shall have the power to discontinue the proceedings at any time (Rule 17.4).

The commentary of the United Nations Commission for Human Rights views the main difficulty in formulating guidelines for the adjudication of young persons stems from the fact that there are unresolved conflicts of a philosophical nature, such as the following: (a) Rehabilitation versus just desert; (b) Assistance versus repression and punishment; (c) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general; (d) General deterrence versus individual incapacitation. The conflict between these approaches is more pronounced in juvenile cases than in adult cases. With the variety of causes and reactions characterizing juvenile cases, these alternatives become intricately interwoven. It is not the function of the Standard Minimum Rules for the Administration of Juvenile Justice to prescribe which approach is to be followed but rather to identify one that is most closely in consonance with internationally accepted principles. Therefore the essential elements as laid down in rule 17.1, in particular in subparagraphs (a) and (c), are mainly to be understood as practical guidelines that should ensure a common starting point; if heeded by the concerned authorities (see also rule 5), they could contribute considerably to ensuring that the fundamental rights of juvenile offenders are protected, especially the fundamental rights of personal development and education. Rule 17.1 (b) implies that strictly punitive approaches are not appropriate. Whereas in adult cases, and possibly also in cases of severe offences by juveniles, just desert and retributive sanctions might be considered to have some merit, in juvenile cases such
considerations should always be outweighed by the interest of safeguarding the well-being and the future of the young person. In line with resolution 8 of the Sixth United Nations Congress, rule 17.1 (b) encourages the use of alternatives to institutionalization to the maximum extent possible, bearing in mind the need to respond to the specific requirements of the young. Thus, full use should be made of the range of existing alternative sanctions and new alternative sanctions should be developed, bearing the public safety in mind. Probation should be granted to the greatest possible extent via suspended sentences, conditional sentences, board orders and other dispositions. Rule 17.1 (c) corresponds to one of the guiding principles in resolution 4 of the Sixth Congress which aims at avoiding incarceration in the case of juveniles unless there is no other appropriate response that will protect the public safety. The provision prohibiting capital punishment in rule 17.2 is in accordance with article 6, paragraph 5, of the International Covenant on Civil and Political Rights. The provision against corporal punishment is in line with article 7 of the International Covenant on Civil and Political Rights and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the draft convention on the rights of the child. The power to discontinue the proceedings at any time (rule 17.4) is a characteristic inherent in the handling of juvenile offenders as opposed to adults. At any time, circumstances may become known to the competent authority which would make a complete cessation of the intervention appear to be the best disposition of the case.
Various disposition measures:

For purposes of disposition Rule 18.1 suggests a large variety of disposition measures. These measures shall be made available to the competent authority, allowing for flexibility so as to avoid institutionalization to the greatest extent possible. Such measures, some of which may be combined, include: (a) Care, guidance and supervision orders; (b) Probation; (c) Community service orders; (d) Financial penalties, compensation and restitution; (e) Intermediate treatment and other treatment orders; (f) Orders to participate in group counselling and similar activities; (g) Orders concerning foster care, living communities or other educational settings; (h) Other relevant orders.

No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary (Rule 18.2).

The commentary of the United Nations High Commission for Human Rights states that Rule 18.1 attempts to enumerate some of the important reactions and sanctions that have been practised and proved successful thus far, in different legal systems. On the whole they represent promising opinions that deserve replication and further development. The rule does not enumerate staffing requirements because of possible shortages of adequate staff in some regions; in those regions measures requiring less staff may be tried or developed. The examples given in rule 18.1 have in common, above all, a reliance on and an appeal to the community for the effective implementation of alternative dispositions. Community-based correction is a traditional
measure that has taken on many aspects. On that basis, relevant authorities should be encouraged to offer community-based services. Rule 18.2 points to the importance of the family which, according to article 10, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, is "the natural and fundamental group unit of society". Within the family, the parents have not only the right but also the responsibility to care for and supervise their children. Rule 18.2, therefore, requires that the separation of children from their parents is a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this grave step (for example child abuse).

**Least possible use of institutionalization**

The Beijing Rules makes the placement of a juvenile in an institution as a disposition of last resort and for the minimum necessary period (Rule 19.1). Progressive criminology advocates the use of non-institutional over institutional treatment. Little or no difference has been found in terms of the success of institutionalization as compared to non-institutionalization. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles, who are vulnerable to negative influences. Moreover, the negative effects, not only of loss of liberty but also of separation from the usual social environment, are certainly more acute for juveniles than for adults because of their early stage of development.

Rule 19 aims at restricting institutionalization in two regards: in quantity ("last resort") and in time ("minimum necessary period"). Rule 19 reflects one of the basic guiding principles of resolution 4 of the Sixth United Nations Congress:
a juvenile offender should not be incarcerated unless there is no other appropriate response. The rule, therefore, makes the appeal that if a juvenile must be institutionalized, the loss of liberty should be restricted to the least possible degree, with special institutional arrangements for confinement and bearing in mind the differences in kinds of offenders, offences and institutions. In fact, priority should be given to "open" over "closed" institutions. Furthermore, any facility should be of a correctional or educational rather than of a prison type.

**Avoidance of unnecessary delay:**

Right to speedy trial or accelerated hearing including speedy investigation is a established human right. Article 3 of the Universal Declaration of Human Rights even recognises this right by holding that everyone arrested or detained shall be entitled to trial within reasonable time or to release pending trial. In case of Beijing Rule it reiterates that each case shall from the outset be handled expeditiously, without any unnecessary delay (Rule 20.1). The speedy conduct of formal procedures in juvenile cases is a paramount concern.

**Records:**

Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Access to such records shall be limited to persons directly concerned with the disposition of the case at hand or other duly authorized persons (Rule 21.1). Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender (Rule 21.2).
Need for professionalism and training:

It is a requirement under Rules 22.1 that professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases. Juvenile justice personnel shall reflect the diversity of juveniles who come into contact with the juvenile justice system. Efforts shall be made to ensure the fair representation of women and minorities in juvenile justice agencies (Rule 22.2). For all these authorities, a minimum training in law, sociology, psychology, criminology and behavioural sciences would be required. This is considered as important as the organizational specialization and independence of the competent authority.

For social workers and probation officers, it might not be feasible to require professional specialization as a prerequisite for taking over any function dealing with juvenile offenders. Thus, professional on-the-job instruction would be minimum qualifications. Professional qualifications are an essential element in ensuring the impartial and effective administration of juvenile justice. Accordingly, it is necessary to improve the recruitment, advancement and professional training of personnel and to provide them with the necessary means to enable them to properly fulfil their functions. All political, social, sexual, racial, religious, cultural or any other kind of discrimination in the selection, appointment and advancement of juvenile justice personnel should be avoided in order to achieve impartiality in the administration of juvenile justice. This was recommended by the Sixth Congress. Furthermore, the Sixth Congress called on Member States to ensure the fair and equal treatment of women as criminal justice personnel and recommended that special
measures should be taken to recruit, train and facilitate the advancement of female personnel in juvenile justice administration.

**Effective implementation of disposition:**

Appropriate provisions shall be made for the implementation of orders of the competent authority, by that authority itself or by some other authority as circumstances may require (Rule 23.1). It should be made in accordance with Rule 14.1. Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these Rules (Rule 23.2). Disposition in juvenile cases, more so than in adult cases, tends to influence the offender's life for a long period of time. Thus, it is important that the competent authority or an independent body (parole board, probation office, youth welfare institutions or others) with qualifications equal to those of the competent authority that originally disposed of the case should monitor the implementation of the disposition. In some countries, a juge de l'exécution des peines has been installed for this purpose. The composition, powers and functions of the authority must be flexible; they are described in general terms in rule 23 in order to ensure wide acceptability.

**Provision of needed assistance:**

Efforts shall be made to provide juveniles, at all stages of the proceedings, with necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, in order to facilitate the rehabilitative process (Rule 24.1). The promotion of the well-being of the
juvenile is of paramount consideration. Thus, rule 24 emphasizes the importance of providing requisite facilities, services and other necessary assistance as may further the best interests of the juvenile throughout the rehabilitative process.

**Mobilization of volunteers and other community services:**

Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit (Rule 25.1). Rule 25 emanates from the principles laid down in rules 1.1 to 1.6 and follows the relevant provisions of the International Covenant on Civil and Political Rights. This rule reflects the need for a rehabilitative orientation of all work with juvenile offenders. Co-operation with the community is indispensable if the directives of the competent authority are to be carried out effectively. Volunteers and voluntary services, in particular, have proved to be valuable resources but are at present underutilized. In some instances, the co-operation of ex-offenders (including ex-addicts) can be of considerable assistance.

**Objectives of institutional treatment:**

The objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society (Rule 26.1). Juveniles in institutions shall receive care, protection and all necessary assistance-social, educational, vocational, psychological, medical and physical-that they may require because of their age, sex, and personality
and in the interest of their wholesome development (Rule 26.2). Juveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults (Rule 26.3). Young female offenders placed in an institution deserve special attention as to their personal needs and problems. They shall by no means receive less care, protection, assistance, treatment and training than young male offenders. Their fair treatment shall be ensured (Rule 26.4). In the interest and well-being of the institutionalized juvenile, the parents or guardians shall have a right of access (Rule 26.5). Inter-ministerial and inter-departmental co-operation shall be fostered for the purpose of providing adequate academic or, as appropriate, vocational training to institutionalized juveniles, with a view to ensuring that they do no leave the institution at an educational disadvantage (Rule 26.6). The objectives of institutional treatment as stipulated in rules 26.1 and 26.2 would be acceptable to any system and culture. However, they have not yet been attained everywhere, and much more has to be done in this respect. Medical and psychological assistance, in particular, are extremely important for institutionalized drug addicts, violent and mentally ill young persons. The avoidance of negative influences through adult offenders and the safeguarding of the well-being of juveniles in an institutional setting, as stipulated in rule 26.3, are in line with one of the basic guiding principles of the Rules, as set out by the Sixth Congress in its resolution 4. The rule does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule. (See also rule 13.4.) Rule 26.4 addresses the fact that female offenders normally receive less attention
than their male counterparts, as pointed out by the Sixth Congress. In particular, resolution 9 of the Sixth Congress calls for the fair treatment of female offenders at every stage of criminal justice processes and for special attention to their particular problems and needs while in custody. Moreover, this rule should also be considered in the light of the Caracas Declaration of the Sixth Congress, which, inter alia, calls for equal treatment in criminal justice administration, and against the background of the Declaration on the Elimination of Discrimination against Women and the Convention on the Elimination of All Forms of Discrimination against Women. The right of access (rule 26.5) follows from the provisions of rules 7.1, 10.1, 15.2 and 18.2. Inter-ministerial and inter-departmental co-operation (rule 26.6) are of particular importance in the interest of generally enhancing the quality of institutional treatment and training.

**Application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations:**

The Standard Minimum Rules for the Treatment of Prisoners and related recommendations shall be applicable as far as relevant to the treatment of juvenile offenders in institutions, including those in detention pending adjudication (Rule 27.1). Efforts shall be made to implement the relevant principles laid down in the Standard Minimum Rules for the Treatment of Prisoners to the largest possible extent so as to meet the varying needs of juveniles specific to their age, sex and personality (Rule 27.2). The Standard Minimum Rules for the Treatment of Prisoners were among the first instruments of this kind to be promulgated by the United Nations. It is generally agreed that they have had a world-wide impact. Although there are
still countries where implementation is more an aspiration than a fact, those Standard Minimum Rules continue to be an important influence in the humane and equitable administration of correctional institutions. Some essential protections covering juvenile offenders in institutions are contained in the Standard Minimum Rules for the Treatment of Prisoners (accommodation, architecture, bedding, clothing, complaints and requests, contact with the outside world, food, medical care, religious service, separation of ages, staffing, work, etc.) as are provisions concerning punishment and discipline, and restraint for dangerous offenders. It would not be appropriate to modify those Standard Minimum Rules according to the particular characteristics of institutions for juvenile offenders within the scope of the Standard Minimum Rules for the Administration of Juvenile Justice. Rule 27 focuses on the necessary requirements for juveniles in institutions (rule 27.1) as well as on the varying needs specific to their age, sex and personality (rule 27.2). Thus, the objectives and content of the rule interrelate to the relevant provisions of the Standard Minimum Rules for the Treatment of Prisoners.

**Frequent and early recourse to conditional release:**

Conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time (Rule 28.1). Juveniles released conditionally from an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community (Rule 28.2). The power to order conditional release may rest with the competent authority, as mentioned in rule 14.1, or with some other authority. In view of this, it is adequate to refer here to the "appropriate" rather than to the "competent" authority. Circumstances
permitting, conditional release shall be preferred to serving a full sentence. Upon evidence of satisfactory progress towards rehabilitation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible. Like probation, such release may be conditional on the satisfactory fulfilment of the requirements specified by the relevant authorities for a period of time established in the decision, for example relating to "good behaviour" of the offender, attendance in community programmes, residence in half-way houses, etc. In the case of offenders conditionally released from an institution, assistance and supervision by a probation or other officer (particularly where probation has not yet been adopted) should be provided and community support should be encouraged.

**Semi-institutional arrangements:**

Efforts shall be made to provide semi-institutional arrangements, such as half-way houses, educational homes, day-time training centres and other such appropriate arrangements that may assist juveniles in their proper reintegration into society (Rule 29.1). The importance of care following a period of institutionalization should not be underestimated. This rule emphasizes the necessity of forming a net of semi-institutional arrangements. This rule also emphasizes the need for a diverse range of facilities and services designed to meet the different needs of young offenders re-entering the community and to provide guidance and structural support as an important step towards successful reintegration into society.
Research as a basis for planning, policy formulation and evaluation:

Efforts shall be made to organize and promote necessary research as a basis for effective planning and policy formulation (Rule 30.1). Efforts shall be made to review and appraise periodically the trends, problems and causes of juvenile delinquency and crime as well as the varying particular needs of juveniles in custody (Rule 30.2). Efforts shall be made to establish a regular evaluative research mechanism built into the system of juvenile justice administration and to collect and analyse relevant data and information for appropriate assessment and future improvement and reform of the administration (Rule 30.3). The delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts (Rule 30.4).

Rule 30 thus establishes standards for integrating research into the process of policy formulation and application in juvenile justice administration. The rule draws particular attention to the need for regular review and evaluation of existing programmes and measures and for planning within the broader context of overall development objectives. A constant appraisal of the needs of juveniles, as well as the trends and problems of delinquency, is a prerequisite for improving the methods of formulating appropriate policies and establishing adequate interventions, at both formal and informal levels. In this context, research by independent persons and bodies should be facilitated by responsible agencies, and it may be valuable to obtain and to take into account the views of juveniles themselves, not only those who come into contact with the system. The process of planning must particularly emphasize
a more effective and equitable system for the delivery of necessary services. Towards that end, there should be a comprehensive and regular assessment of the wide-ranging, particular needs and problems of juveniles and an identification of clear-cut priorities. In that connection, there should also be a co-ordination in the use of existing resources, including alternatives and community support that would be suitable in setting up specific procedures designed to implement and monitor established programmes.

The UN Standard Minimum Rules for Administration of Juvenile Justice 1985 emphasises on the accountability of exercise of discretion relation to children and observance of basic procedural, safeguards at all stages of proceedings, along with the aim of promoting juvenile welfare to the greatest possible extent (Ved Kumari; 2004, page 52)\textsuperscript{268}.

**United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990:**

The United Nations adopted Standard Minimum Rules for the Treatment of Prisoners in 1955. However, these Rules do not seek to regulate the management of institutions for young people as its primary goal. Hence the Rules do not take into account the special entitlements of juvenile\textsuperscript{269}. On the contrary Juveniles deprived of their liberty are highly vulnerable to abuse, victimization and the violation of their rights. Many systems do not differentiate between adults and juveniles at various stages of the administration of justice and that juveniles are therefore being held in gaols and facilities with adults.

\textsuperscript{268} Based on Rule 6, 7.1, 14.1, and Rule 1.

The UN Rules for the Protection of Juveniles Deprived of their Liberty\textsuperscript{270}, however, are intended to establish minimum standards accepted by the United Nations for the Protection of Juveniles Deprived of their Liberty in all forms\textsuperscript{271}. The Rules envisage that juvenile justice system should uphold the rights and safety and promote the physical and mental wellbeing of juveniles. Imprisonment should be used only as a matter of last resort. Usually recourse to instruments of restraint and to force for any purpose is prohibited. However, in exceptional cases like where all other control methods have been exhausted and failed instruments of restraint and force can be used\textsuperscript{272}. On the other hand carrying and use of weapon by juvenile justice personnel in any facility should not be allowed.

The Rules are only intended to establish minimum standards with a view to counteracting the detrimental effects of all types of deprivation of liberty and to foster the integration of juveniles into society. In order to ensure the most effective implementation of the Rules, States should monitor the application of these Rules in their domestic sphere. They should also be incorporated into national legislations or, where appropriate, the relevant legislation should be amended. National legislation should also provide effective remedies for breach of the Rules. In response to this provision in India, the Juvenile Justice Act 1986 has been amended. It is replaced by the Juvenile Justice (Care and Protection of Children) Act 2000. The Preamble of this amended Act contains

\textsuperscript{270} Adopted by United Nations General Assembly by Resolution No. 45/113, 14th December 1990 in the 68th Plenary Session.
\textsuperscript{271} Fundamental Perspectives – I, United Nations Rules for the Protection of Juvenile Deprived of their Liberty, 1990.
\textsuperscript{272} Limitations of Physical restraint and force, Rule 63, 64 and 65 of United Nations Rules for the Protection of Juvenile Deprived of their Liberty, 1990.
among other statements of objectives that "it is expedient to re-enact the existing law relating to Juvenile bearing in mind the standards prescribed in the United Nations Rules for the Protection of Juveniles Deprived of the Liberty, 1990". Thus in India, the subject of law is amended to bring it in conformity with the provisions of these Rules.

The Rules apply to all juveniles. It defines a juvenile as any person under the age of 18\(^{273}\). Deprivation of liberty is defined in terms of any form of detention or imprisonment or the placement of a person in a public or private custodial setting from which a person under the age of 18 is not permitted to leave at will, by order of any judicial, administrative or other public authority\(^{274}\). Hence the Rules apply to juveniles deprived of their liberty who come in conflict with the penal law and also to those under 18 deprived of liberty such as placement of child in a welfare institution\(^{275}\). The Rules should be applied impartially without discrimination of any kind as to colour, sex, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth, or family status, ethnic or social origin and disability. In interpreting the Rules the religious and cultural beliefs, practices and moral concepts of the juvenile should also be respected\(^{276}\).

Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law and which are compatible

\(^{273}\) Rules 11 (a).

\(^{274}\) Rules 11 (b).


\(^{276}\) Rules 4 under Fundamental Perspectives of the JDL Rules.
with the deprivation of liberty\textsuperscript{277}. The Rules are intended to counteract the detrimental effects of deprivation of liberty by ensuring respect for the human rights of juveniles. They serve as an internationally accepted framework within which states can regulate the deprivation of liberty of all those under 18 years of age.

Although the UN Rules for the Protection of Juveniles Deprived of their Liberty incorporate standards regulating the entitlements of juveniles under arrest or awaiting trial, as a general rule detention before trial should be avoided and limited to exceptional circumstances. In this regard the Juvenile Justice Act 2000 in India provides that when a juvenile is arrested or detained being an accused of bailable or non-bailable offence shall be released on bail\textsuperscript{278}. Where juveniles are detained the highest priority should be given to a speedy trial. It is a matter of Personal liberty of a human being which is also guaranteed under Article 3 of the Universal Declaration of Human Rights, 1948 which provides that "Everyone arrested or detained shall be entitled to trial within reasonable time or to release pending bail". The Right to speedy trial has also been held implicit in the broad sweep and ambit of Article 21 of the Indian Constitution by the Supreme Court of India in case of Meneka Gandhi vs. Union of India\textsuperscript{279}. In the case of Abdul Rehman Antulay and others vs. R.S. Nayak\textsuperscript{280} the Supreme Court pronounced that "Speedy trial flowing from Article 21 of the Indian Constitution, encompasses all the stages namely the stages of investigation, inquiry, trial, appeal, revision and retrial".

\textsuperscript{277} Rules 13.
\textsuperscript{278} Section 12(1) of Juvenile Justice (Care and Protection of Children) Act 2000.
\textsuperscript{279} AIR, 1978 S.C. 597.
Speedy inquiry is a part of Juvenile Justice Act 2000 which desires that the inquiry shall be completed within a period of four months from the date of its commencement\textsuperscript{281}. It seems the provision is made in accordance with the Juvenile Deprived of their Liberty Rules.

The presumption of innocence is applicable in all cases of juvenile. The Rules says that juveniles who are detained under arrest or awaiting trial are presumed innocent and shall be treated as such. It is a basic tenet of criminal justice that a person shall be presumed innocent until proved guilty. It is also a cardinal principle of the fundamental human right\textsuperscript{282}. The principle of presumption of innocence is an essential attribute of fair trial\textsuperscript{283}. This is also applicable in case of juveniles who are deprived of their liberty due to accusation.

As per the Rules all juveniles are entitled to unimpeded access to legal counsel\textsuperscript{284}. Juveniles should also be eligible to apply for free legal aid, where such aid is available. Although the Juvenile Justice Act 2000 does not speak in terms of engagement of lawyers, access to justice is considered in India as a fundamental right within the extended meaning of Right to Life under Article 21 of the Indian Constitution. The Legal Services Authorities Act 1987 identifies children among other beneficiaries as legal aid eligible. Besides the Code of Criminal Procedure 1973 also makes provision for legal aid to

\textsuperscript{281} Section 14(1) of the Juvenile Justice (Care and Protection of Children) Act 2000.
\textsuperscript{282} Article 11(1) of the Universal Declaration of Human Rights 1948, Article 14(2) of the International Covenant on Civil and Political Right, 1966 and Rule 84(2) of the Standard Minimum Rules for the Treatment of Prisoners, 1955 focus on pre-trial detention and presumption of innocence.
\textsuperscript{284} Rule 18(a) of United Nation Rules for the Protection of Juveniles Deprived of their Liberty, 1990.
accused at the State's expenses where the accused is not represented by a pleader particularly because of insufficient means to engage a lawyer\textsuperscript{285}.

As a pre-condition to juveniles being deprived of their liberty, they should not be detained in any facility without a valid commitment order or in any institution which does not maintain a proper register. This is the starting point for ensuring that all juvenile facilities should be managed in a manner which is consistent with respect for the juveniles' human rights and dignity. Hence all reports on juveniles should be placed in confidential files which are accessible only to authorised persons. The reports should also be classified in such a way as to be easily accessible. Where possible every juvenile should have the right to contest any fact or opinion in her or his file so as to permit rectification\textsuperscript{286}.

In every place where juveniles are detained a complete and secure record of information should be kept including information on the identity of the juvenile, the fact, reasons and authority for the commitment, the day and hour of admission, transfer and release and details of notifications to parents and guardians. Any details of known physical and mental health problems should also be included in the record. It includes known case of use of drug or alcohol\textsuperscript{287}.

The Rules place much emphasis on the training and skills of the personnel engaged in delivering services as the proper management of the facilities

\textsuperscript{286} Rules 19 & 20.
\textsuperscript{287} Rules 21.
depend upon their integrity, humanity and professional ability. Adequate remuneration should be provided to attract personnel capable of providing juveniles with positive role models and perspective. These quality of personnel was also highlighted in a number of cases by the Supreme Court of India. In Sheela Barse vrs. Union of India the Supreme Court observed that the personnel engaged in homes for children must be motivated and they should have knowledge in psychology. Training of personnel like the Members of Juvenile Justice Board and Special Juvenile Police Unit is now a part of Juvenile Justice Act 2000. All personnel should conduct themselves at all times in such a way as to gain the respect of the juveniles. They should also seek to minimise the differences between life inside and outside the facility. To be effective the personnel should receive training in child psychology, child welfare, human rights and the rights of the child. Personnel are prohibited from inflicting torture, cruel, inhuman and degrading treatment and also harsh treatment and punishment. The personnel should respect the juvenile's right to privacy and should protect juveniles from any form of abuse or exploitation. The Rules should be made available to juvenile justice personnel in their national languages. Access to information about the Rules can be guaranteed in this process. It is possibly intended at recognition of cultural and language diversity as the Rules apart from making provision for access to readily available copies of this Rules also seek to provide the facility of an interpreter for juveniles where the language used by juvenile justice personnel is different from the language that is known to juveniles. Such

288 AIR 1986, SC 1773 at 1778.
interpreter is essentially to be made available in course of medical examination and disciplinary proceedings. They should also serve as guidance to all professionals involved in the management of the juvenile justice system. States should also make efforts to establish an independent office (ombudsman) to receive and investigate complaints made by juveniles deprived of their liberty.  

Contact with the community outside of the facilities is an integral part of the right to fair and humane treatment and is essential to the preparation of juveniles for release. Juveniles should be allowed to communicate with their families, friends, and representatives of organisations. Every juvenile is entitled to receive regular and frequent visits in principle once a week and not less than once a month. All visits should respect the juvenile's right to privacy. Juveniles should also be permitted to leave the facilities for visits to their family homes and with special permission to leave the detention facilities for educational, vocational or other important reasons. Every juvenile should also have the right to communicate in writing or where appropriate by telephone at least twice a week with the person of the juvenile's choice, unless legally restricted. To increase their contact with the outside world, juveniles should be given the opportunity to keep themselves regularly abreast of the news. These benefits do not find in explicit term in the Juvenile Justice Act 2000, however, the amended Central Model Rules framed by Govt. of India. All juveniles should benefit from arrangements designed to assist them in

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returning to the community including early release. They should be provided with suitable shelter, clothing, employment and sufficient means to facilitate successful reintegration in the community. The representative of agencies providing such services should be consulted and have access to juveniles while they are detained. The competent authorities should take steps to prevent the prejudice against juveniles\textsuperscript{292}. In this regard provisions like adoption, foster care, sponsorship and aftercare have been envisaged under the Juvenile Justice Act 2000. The predecessor Act enacted in 1986 also had provision for after care organisation for purposes of taking care of juveniles after they leave Juvenile Homes or Special Homes and for the purpose of enabling them to lead an honest, industrious and useful life.

\textbf{The Riyadh Guidelines:}

The United Nations Guidelines for the Prevention of Juvenile Delinquency, also called the Riyadh Guidelines, were first elaborated at a meeting held by the Arab Security Studies and Training Centre in Riyadh. Accordingly it is designated as the Riyadh Guidelines. It was adopted and proclaimed by the General Assembly of the United Nations in 1990\textsuperscript{293}. It stated prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society as well as outlook on life, young person can develop non-criminogenic attitude\textsuperscript{294}. The Guidelines believe that the successful prevention of juvenile delinquency requires efforts on the part of

\textsuperscript{292} Bueren, Geraldine Van, \url{http://child-abuse.com/childhouse/childrens_rights}.
\textsuperscript{293} Resolution 45/112 of 14 December 1990.
\textsuperscript{294} Rule 1, I. Fundamental Principles, Riyadh Guidelines.
the entire society to ensure the harmonious development of adolescents, with respect for promotion of their personality from early childhood\textsuperscript{295}.

The Guidelines set forth standards for the prevention of juvenile delinquency who are abandoned, neglected, abused or in marginal circumstances - in other words, at "social risk". The Guidelines cover the pre-conflict stage, i.e. before juveniles come into conflict with the law. They have a "child-centred" orientation and are based on the premise that it is necessary to offset those conditions that adversely influence and impinge on the healthy development of the child. To this end, comprehensive, multi-disciplinary measures are suggested in order to ensure to the young a life free from crime, victimization and conflict with law. The Guidelines focus on early preventive and protective intervention modalities and aim at promoting in a various social agencies, including the family, the educational system, the mass media and the community, as well as the young persons themselves\textsuperscript{296}.

The Guidelines take into account the predominant opinion of experts that labelling a young person as "Deviant", "Delinquent" or "Pre-delinquent" often contributes to the development of a consistent pattern of undesirable behaviour by young persons. In this direction the Guidelines desires that the need for and importance of progressive delinquency prevention policy and systematic study and the elaboration of measures should be recognised. These should avoid criminalising and penalising a child for behaviour that does not cause serious damage to the development of the child or harm to

\textsuperscript{295} Rule 2, I. Fundamental Principles, The Riyadh Guidelines.

\textsuperscript{296} Source: http://www.uncjin.org.
others. It emphasises on the opportunity for education for young persons who are demonstratively endangered or at social risk and are in need of special care and protection. Official intervention, it says, should be pursued primarily in the overall interest of young person and guided by fairness and equity principle.

The Guidelines reveal for example a rather positive, pro-active approach to prevention and are, perhaps for that reason, very comprehensive. The Guidelines certainly express a growing awareness that children are full-fledged human beings, an attitude which was far from dominant in Western countries in the 19th century.\textsuperscript{297}

The Riyadh Guidelines envisage a comprehensive approach for its implementation. Therefore, it seeks to be interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Declaration of Rights of the Child along with Convention on the Rights of the Child and also in the context of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) as well as other instruments and norms relating to rights, interests and wellbeing of all children and young person. It should be implemented taking into consideration the context of economic, social and cultural conditions prevailing in the state, where it is being implemented\textsuperscript{298}.


\textsuperscript{298} Scope of the Guidelines, II Rule 7 of the Riyadh Guidelines.
The provision of social justice for all children was strongly emphasised as a factor of prevention. Indeed, prevention was considered to be more than just tackling negative situations, but to be rather the promotion of welfare and well-being. The Riyadh Guidelines is a concrete step in this direction.

The Guidelines desires the Governments to enact and enforce specific laws and procedures to promote and protect the rights and wellbeing of all young persons. Legislation preventing victimisation, abuse, exploitation and the use for criminal activities of children and young person need to be enacted and enforced to provide opportunity for children and young persons. In India, perhaps this aspect influenced the Juvenile Justice Act 2000 as a result of which there is a special provision for Children in Need of Care and Protection inbuilt in the normative structure. It has identified a number of ‘at risk’ circumstances like homeless children, abused, refugee, victims of disaster and physically challenged whom the law proposes to provide facilities and opportunities for their rehabilitation and social reintegration.

A fundamental consideration is set out in the Riyadh Guidelines; that ‘Youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood’ (5.e). Response to such behaviour when discovered, however, is necessary in the interest of both the community and the perpetrator. At the same time, the form of that response must reflect the fact that, in most cases, it is in no way
represents society's last chance to try to dissuade the young person from a life of increasingly serious crime.299

Conclusion:

The United Nations Convention on the Rights of the Child 1989 was the first international instrument to adopt a coherent child rights approach to the international legal regulation of the deprivation of liberty for children. It operates as an umbrella for a set of three rules concerning child justice; the UN Guidelines for the Administration of Juvenile Delinquency (the Riyadh Guidelines), the UN Standard Minimum Rules for the Protection of Juvenile Justice (the Beijing Rules), and the UN Rules for the Protection of Juveniles Deprived of their Liberty. Neither the Declaration of the Rights of the Child 1924 nor the Declaration of the Rights of the Child 1959 refers directly either to juvenile justice or to the deprivation of liberty of children. Therefore the present position regarding juvenile justice must be viewed from the consideration of rights of the child framework. The Indian legal framework concerning juvenile justice follows the fundamental norms of rights of the child. Of course it requires further review in the backdrop of the 'best interest of the child' principle. The review of law should also be made to bring this law in conformity with the United Nations Guidelines and Standards relating to juvenile justice. The significant aspect is the actual implementation of law. Although our study of legal framework in India makes us believe the law accepted fundamental norms to a moderate level in practice it has no impact.

The interface between the right standards and the state of juvenile justice at the operational level in India provides a gloomy picture. The witnesses collected through the empirical study desires that the process of legal reform must consider the operational issues. The amendment of Juvenile Justice Act in 2000 has not at all considered the operational issues for which the Juvenile Justice Act 1986 could not deliver any result. Had there been any lessons learnt from the historical failure of juvenile justice system in India, the reform process must have considered those aspects first. On the other hand the reform mostly was based on conceptual issues. If the nation really desires to come up to the aspiration of its citizen and children then it must consider the actual state of laws in the operational level. The discussion in this chapter revealing various dimension of juvenile justice should, therefore inform the legal framework for making juvenile justice system work for children.