CHAPTER – II
CONCEPTS, FUNDAMENTAL PRINCIPLES AND DEFINITIONS

Every discipline has certain basic concepts explained by specific terminology. The understanding of such concepts and terminology is highly desirable for the understanding of the subject matter and the study relating to that particular discipline. The Criminal Justice System, in general and the administration of juvenile justice, in particular, has certain basic concepts and terminology, the understanding of which is very crucial for the subject matter of this Research. It is in this context, the following concepts and principles relating to the administration of juvenile justice, the extent to which they are applied, the basis, the nature of such principles, definitions of important words and phrases, as defined in the Juvenile Justice Act, 2000, the definitions embodied in the Juvenile Justice Act, 1986, as a para-materia, the definitions used in the Cr.P.C., as mandated by the Juvenile Justice Act, 2000, and definitions defined in the relevant statutes which are mentioned in the Juvenile Justice Act, the definitions embodied in the relevant International Instruments and others are analyzed.

The basic maxim *actus reus* and *mens rea* is applicable even for the Juveniles. However, the mental maturity and the intellectual ability of the children cannot be compared with adults. That is the reason, the Criminal Law, such as Indian Penal Code, clearly exempts the children below the age of seven years from the operation of Criminal Law Per se. This legal principle is also supported by the Doctrine called Doli incapax. The Doctrine of Doli incapax gives total exemption from the criminal liability to children who are aged below seven and exemption to children who are unable to understand the nature and consequences of the act committed by them when they are aged between 7 and 12. However, as per the standards prescribed by the International Law, there is a need to increase this age limit. However, India has not done this. This has been severely criticized by many critics and the scholars. Anyhow, it is a policy matter to be decided by the legislature and it may not
be open to the Court to interfere in this, unless the Courts feels that it is a Constitutional mandate. The stages of Crime i.e., Act, preparation, attempt, completion, is also applicable to the offence committed by the Juveniles. It is important to understand that Juvenile Justice System though forms part of Criminal Justice System, it is separate and distinct and it treats certain terminologies used in the Criminal Justice System wholly as not applicable. This has been explained in the fundamental principles relating to the administration of Juvenile Justice. It should be applied by the competent authorities right from the Police, probationary officers and other stakeholders involved in the Juvenile Justice System up to the Supreme Court of India. The application of this fundamental principles relating to the Juvenile Justice System is not a mere legal mandate but it is also a constitutional mandate.

2.1 Fundamental principles relating to the administration of Juvenile Justice.

There are fourteen fundamental principles relating to the administration of the Juvenile Justice, which are universally applied by many countries across the territorial jurisdiction. These principles are followed as a matter of compliance to the standards prescribed by the International Law relating to Juvenile Justice, in general and the CRC, in particular.

India has an obligation to implement these principle, because it is one of the founder members to the CRC and ratified the same on 11th December 1992. Since all these principles have been embodied in the CRC, it gets the binding nature and the member states have obligation to implement the same depending upon their national legal system. India has carried out this obligation through the Juvenile Justice Act, 2000, and Juvenile Justice (Care and Protection of Children) Rules, 2007. These Rules have been notified by Government of

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1 Paragraph 2 of the preamble of the Juvenile Justice (Care and Protection of Children) Rules, 2007, made by the Central Government (hereinafter will be referred to as “The Model Rules, 2007”).
India, on 26th October 2007 and came into operation on the said date\(^2\). The Supreme Court of India has ruled that the Model Rules framed by the Government of India, under the Juvenile Justice Act, does not have the legal binding upon the State Governments to implement the same. The Government of India has taken steps to undo the judgment and to implement the afore stated principles, both in letter and spirit. It mandated the State Governments to formulate their Rules in addition to that, it also made it very clear through an Amendment\(^3\) in the Juvenile Justice Act that till the Rules are made by the State Governments the Rules made by the Central Government will be applicable and binding upon the State Governments\(^4\).

Therefore, the following fourteen principles have been made mandatory by virtue of the 2007 Rules read with Section 68 of the Juvenile Justice Act, 2000.

The following are the fundamental principles recognized and applied by the State in the form of Rules relating to Juvenile Justice made by the Central Government by virtue of the powers contained in the Juvenile Justice Act, 2000. They are as follows:-

(i) Principle of presumption of innocence.

(ii) Principle of dignity and worth.

(iii) Principle of Right to be heard.

(iv) Principle of Best Interest.

(v) Principle of family responsibility.

(vi) Principle of Safety (no harm, no abuse, no neglect, no exploitation and no maltreatment).

(vii) Positive measures.

(viii) Principle of non-stigmatizing semantics, decisions and actions.

(ix) Principle of non-waiver of rights.

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\(^2\) G.S.R.679 (E), Ministry of Women and Child Development.

\(^3\) 2006 Amendment Act relating to Juvenile Justice has incorporated a new Proviso to Section 68 in the parent Act.

\(^4\) Proviso to sub-section (2) of Section 68 of The Juvenile Justice Act, 2000.
(x) Principle of equality and non-discrimination.

(xi) Principle of right to privacy and confidentiality.

(xii) Principle of last resort.

(xiii) Principle of repatriation and restoration.

(xiv) Principle of Fresh Start\(^5\).

2.1.1 First Principle – Principle of Presumption of innocence

This is a basic principle embodied in all the criminal laws across the jurisdiction in general and common law in particular. For example, in the following jurisdictions this principle of presumption of innocence is being followed.

This right is so important that in modern democracies, constitutional monarchies and republics, this principle has been explicitly included in their legal codes and constitutions\(^6\):

- The Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe says (Art. 6.2): "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law". This convention has been adopted by treaty and is binding on all Council of Europe members. Currently (and in any foreseeable expansion of the EU) every country member of the European Union is also member to the Council of Europe, so this stands for EU members as a matter of course. Nevertheless, this assertion is iterated *verbatim* in Article 48 of the Charter of Fundamental Rights of the European Union.

- In Canada, Section 11(d) of the Canadian Charter of Rights and Freedoms states: "Any person charged with an offence has the right to be presumed

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\(^5\) Sub Rule 2 of Rule 3, Ibid.

\(^6\) Wikipedia, the free encyclopedia.
innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal”.

- In Iran, Article 37 of the Constitution of the Islamic Republic of Iran states: "Innocence is to be presumed, and no one is to be held guilty of a charge unless his or her guilt has been established by a competent court”.

- In the South African Constitution, Section 35(3)(h) of the Bill of Rights states: "Every accused person has a right to a fair trial, which includes the right to be presumed innocent, to remain silent, and not to testify during the proceedings."

- In France, Article 9 of the Declaration of the Rights of Man and of the Citizen, 1789, which has force as constitutional law, begins: "Any man being presumed innocent until he has been declared guilty ...". The Code of Criminal Procedure states in its preliminary article that "any person suspected or prosecuted is presumed innocent for as long as their guilt has not been established" and the jurors’ oath repeats this assertion (article 304).

- Although the Constitution of the United States does not cite it explicitly, presumption of innocence is widely held to follow from the 5th, 6th, and 14th Amendments as held in Coffin v. United States and In re Winship.

- In the 1988 Brazilian constitution, Article 5, Section LVII states that "no one shall be considered guilty before the issuing of a final and unappealable penal sentence".

- In the Colombian constitution, Title II, Chapter 1, Article 29 states that "Every person is presumed innocent until proven guilty according to the law".

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7 Code de procédure pénale, article préliminaire (French).
8 Code de procédure pénale, article 304 (French).
9 156 U.S. 432 (1895).
The Constitution of Russia, in Article 49, states that "Everyone charged with a crime shall be considered not guilty until his or her guilt has been proven in conformity with the federal law and has been established by the valid sentence of a court of law". It also states that "The defendant shall not be obliged to prove his or her innocence" and "Any reasonable doubt shall be interpreted in favor of the defendant".

The Universal Declaration of Human Rights, Article 11, states: "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which they have had all the guarantees necessary for their defence".

This principle has been recognized, defined and enforced by the Juvenile Justice (Care and Protection) Rules 2007, hereinafter 2007 Rules. This principle presumes that anything done by the child or the juvenile in conflict with law has been done without mens rea or malafide intention. This is a presumption laid down by the Rules. This principle operates right from the initiation of the proceedings and ends at the after care programme as embodied under the Juvenile Justice Act, 2000. The word ‘initiation of proceedings’ means right from the stage of FIR not necessarily a judicial proceedings before the court as interpreted by the Supreme Court in Nandhini Satpathi’s case. The rule also lays down what are all the Acts to which the principle of presumption to be applied. It simply states that whatever be the act committed and whatever be the circumstances and whether it is done by himself or under the control of the adults or with the influence of peer group should always be considered that the said Act has been committed without mens rea i.e., the Principle of

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11 Principle 1 (a) to (d) contained in sub rule 2 of Rule 3 of the 2007 Rules.
12 para (a) of Principle 1 of Ibid.
13 para (b) of Principle 1 of Ibid.
14 AIR 1978 SC1025.
presumption of innocence should be applied for all those activities which has been covered or explicitly stated in the Rules.\(^{15}\)

The basic components relating to presumption of innocence has also been laid down by the Rules\(^{16}\) and they are as follows:-

(i) **Age of innocence**

(ii) **Procedural protection of innocence**

(iii) **Provisions of Legal aid and Guardian Ad Litem**

**Age of innocence:**

The concept of Age of innocence has been adopted from the Beijing Rules\(^{17}\) and the same has been embodied, applied and enforced by the 2007 Rules\(^{18}\) which clearly explains the fixation of criminal responsibility upon the Juveniles\(^{19}\) i.e. a person who is below the age of 18 is considered to be incapable throughout the world. However, the Rule states only the maximum age i.e. 18 for non-liability of criminal responsibility. However, it does not absolve the entire criminal responsibility below the age of 18. But the concept of criminal responsibility has been modified and governed by the Juvenile Justice Act between 12 to 18 years which has been severely criticized by many scholars\(^{20}\). The Juvenile Justice Act presumes that below the age of 18, Juveniles, who is in conflict with law is innocent.

**Procedural protection of innocence:**

The Rule also prescribes the procedural protection relating to presumption of innocence. The Rule simply prescribes whatever be the procedural safeguard which has been made available under the Constitution and of the law\(^{21}\) should be applied mutandis mutandis

\(^{15}\) para c of Principle of Juvenile 2007 Rules .
\(^{16}\) Sub paras 1 to 3 of para (b) of Principle 1 *Ibid.*
\(^{17}\) Rule 4 of Sub-Rule 1 of Beijing Rules, 1985.
\(^{18}\) Sub para (1) of para b of Principle 1 of 2007 Rules.
\(^{19}\) Section 2(l) and 2(k) of the Juvenile Justice Act, 2000.
\(^{20}\) Generally Audenwalla on Child Supra and UNICEF South Asian Report Supra.
\(^{21}\) Sub-para 3 para (d) of Principle 1 of 2007 Rules.
to the Juveniles, who are in conflict with law. It goes without saying that the procedures embodied under Articles 20 and 21 of the Constitution of India, The Indian Evidence Act\textsuperscript{22} and the Criminal Procedure Code\textsuperscript{23} will also applicable under the Juvenile Justice Act to the Juveniles, who are in conflict with law. It is very clear from the language used in the Juvenile Justice Act that this Act is in addition to and not in derogation.

**Provisions of Legal aid and Guardian Ad Litem**

The Rule mandates that the accusations / allegations should be clearly explained and be made understandable to the Juvenile, so that the juvenile, who is in conflict with law will be able to present his case before the competent authority on his own through appropriate legal aid. The relevant part of the Rules reads as follows:-

“Juveniles in conflict with law have a right to be informed about the accusations against them and a right to be legally represented. Provisions must be made for guardian ad litem, legal aid and other such assistance through legal services at State expense. This shall also include such juveniles right to present his case before the competent authority on his own.”\textsuperscript{24}

**2.1.2 Second Principle – Principle of dignity and worth**

This Principle contains two paras – Para (a) explains and defines the meaning of what is dignity and worth. It provides an inclusive definition rather than an exclusive one, which means the concept is a flexible one. The definition can be expanded depending upon the requirement of the time. It includes the following :-

\textsuperscript{22} Section 25, 26, 30, 31 and other provisions .
\textsuperscript{23} Section 300, 304, 310, 313 and other provisions.
\textsuperscript{24} Sub-para 4 of para (d) of Principle 1 of 2007 Rules.
“Respect of dignity includes not being humiliated, personal identity, boundaries and space being respected, not being labeled and stigmatized, being offered information and choices and not being blamed for their acts.”\textsuperscript{25}

This definition includes the positive aspect as well as the negative aspect. It mandates the agencies involved in the Juvenile Justice Act not to humiliate the child and not to label or stigmatize the child as well as it also mandates the authorities to respect the personal identity and such other things relating to the child. This definition also makes it very clear that this principle is in line prescribed by the UDHR which mandates that “all the human beings born free and equal in dignity and rights”\textsuperscript{26}

This principle mandates the agencies and authorities involved in the Juvenile Justice Act to respect this principle apply and observe it in the entire process relating to the Juvenile right from their initial apprehension till the aftercare is over.\textsuperscript{27}

\textbf{2.1.3 Third Principle – Principle of Right to be heard}

The Hon’ble Supreme Court of India, in the celebrated case of \textit{Maneka Gandhi v. Union of India},\textsuperscript{28} explained this natural justice principle of right to be heard in the following language:-

“Natural justice is a great humanising principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. Lord Morris of Borth-y-Gest spoke of this rule in eloquent terms in his address before the Bentham Club :

\textsuperscript{25} para a of Principle 2 of sub rule(2) of Rule 3 of \textit{Ibid.}
\textsuperscript{26} Article 1 of Universal Declaration of Human Rights.
\textsuperscript{27} para (b) of Principle 2 of 2007 rules.
\textsuperscript{28} 1978 AIR 59, 1978 SCR (2) 621.
"We can, I think, take pride in what has been done in recent periods and particularly in the field of administrative law by invoking and by applying these principles which we broadly classify under the designation of natural justice. Many testing problems as to their application yet remain to be solved. But I affirm that the area of administrative action is but one area in which the principles are to be deployed. Nor are they to be invoked only when procedural failures are shown. Does natural justice qualify to be described as a "majestic" conception? I believe it does. Is it just a rhetorical but vague phrase which can be employed, when needed, to give a gloss of assurance? I believe that it is very much more. If it can be summarised as being fair play in action-who could wish that it would ever be out of action? It denotes that the law is not only to be guided by reason and by logic but that its purpose will not be fulfilled; it lacks more exalted inspiration."

What is mean by Right to be heard from the context of Juvenile Justice has been clearly defined by this principle. The term ‘right to be heard’ has to be defined in the following words:-

“Children’s right to be heard shall include creation of developmentally appropriate tools and processes of interacting with the child, promoting children’s active involvement in decisions regarding their own lives and providing opportunities for discussion and debate.”

2.1.4 Fourth Principle - Principle of Best Interest

The term ‘Best Interest of the child’ has been clearly defined in this principle. This principle contains three parts each one as a specific function to be performed by the concerned authorities functioning under the Juvenile Justice Act. For eg.,
Firstly, it mandates that this principle shall be the primary concern in the entire context of administration of juvenile justice relating to juvenile in conflict with law.\textsuperscript{29}

Secondly, the best interest of the child means “that the traditional objectives of criminal justice, retribution and repression, must give way to rehabilitative and restorative objectives of juvenile justice\textsuperscript{30}.” It clearly and exhaustively defines that the best interest of the child means the application of the concept of reformation and rehabilitation.

Thirdly, the principle also explains the objectives to be achieved by the application of the principle of best interest. It seeks to achieve the following objectives in the process of Juvenile Justice through the application of best interest of the child the relevant part of the rule reads as follows:-

\begin{quote}
“This principle seeks to ensure physical, emotional, intellectual, social and moral development of a juvenile in conflict with law or child so as to ensure the safety, well being and permanence for each child and thus enable each child to survive and reach his or her full potential.”\textsuperscript{31}
\end{quote}

\textbf{2.1.5 Fifth Principle - Principle of family responsibility}

The significance of the family will be more apparent if we think of children of broken homes or destitute.

The child takes birth in a family. Here the child is introduced to emotions like love and security. The child opens its eyes and is introduced to the outside world through mother's love, sibling's affection and father's authority. The social values and cultural aspects of the community are inculcated in the child within the family background.

\begin{footnotes}
\item[29] para (a) of Principle 4 of 2007 Rules.
\item[30] para (b) of Principle 4 \textit{Ibid}.
\item[31] para (c) of Principle 4 of 2007 Rules.
\end{footnotes}
A family is the place where the society starts its development and progress. The institution of family performs variety of functions as already described. These functions are important to the well being of the individual as well as the society.

The children of broken home are psychologically unstable and emotionally insecure. They generally grow upon to become unbalanced personalities which are misfits in the society. They are maladjusted and may even become unsocial elements of society.

Though it may be argued that since many functions of family like education, health, recreation etc. are being taken up by other social institutions, the importance of family is decreasing, but it is not true. Because a family retains its importance as a constituent entity and building block of all societies and communities and will continue to do so in future also. Thus the Principle of Family Responsibility plays a vital role in the administration of Juvenile Justice as an informal care.

The Institutionalization of the Juvenile should be the last resort. The care shall be taken to sort out the problems of the Juvenile at the family level. Why the law believes in the family and fixes the responsibility upon the family is the question. As explained earlier, it is the family which gives all kinds of support to a child. The word “family” includes (a) biological parents, (b) willing adoptive parents and (c) willing foster parents. All these concepts have been recognized by various provisions of the Juvenile Justice Act. The biological parents should be given the first priority only when they are not available, then the responsibilities shifts upon the other two alternatives. Always the primary responsibility lies upon family preferably with biological parents. It is only the rule, but there is an exception to this. This Principle also recognizes the exception in the sense that unless the best interest

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32 Section 2a(A) and Section 43 of JJ Act.
33 para (a) of Principle 5 of 2007 Rules.
of the child dictates otherwise, the responsibility will be only on the family. If the context requires otherwise, the family may not be involved. This discretionary power vested upon the authorities functioning under the Juvenile Justice Act should be applied very sparingly, cautiously and the paramount consideration should be the interest of the Juveniles, who are in conflict with law. The principle mandates the authorities functioning under the Juvenile Justice Act to take all the necessary decisions of the child with the active involvement of the original family of the Juveniles, who are in conflict with law. This principle also prescribes the order upon which the responsibility should be fixed by the authorities functioning under the Juvenile Justice Act, viz., the first priority goes to the biological parents and in their absence on the willing adoptive parents or as a last resort to the willing foster parents.

2.1.6 Sixth Principle – Principle of Safety

The Principle of safety applies throughout the process of Juvenile Justice. It mandates the relevant authorities that extreme care should be taken in ensuring the safety of the Juvenile because of the fragile nature of the Juvenile. This Principle means and includes “no harm, no abuse, no neglect, no exploitation and no maltreatment”. It also mandates the state that the state shall not use restrictive measures in the name of safety of the Juvenile.

2.1.7 Seventh Principle - Positive measures

This Principle of Positive measures runs throughout the process of Juvenile Justice Delivery. The term positive measures have been defined in this principle. The core theme of the Principle is the promotion of the well-being of the juvenile. The term positive measures include the “avenues for health, education, relationships, livelihoods, leisure, creativity and

34 para (b) of Principle 5 of Ibid.
35 para (c) of Principle 5 of 2007 Rules.
36 para (a) of Principle 6 Ibid.
37 para (b) of Principle 6 Ibid.
play”. It also mandates to involve and to mobilize all the informal resources such as family volunteers community schools other main stream institutions, who are the key stakeholders in promoting the well-being of the juveniles recognized under the Juvenile Justice Act.

The aim of the principle is to reduce the vulnerability of the Juvenile and the reduction of intervention of the legal agencies in the process of promoting the well-being of the Juvenile. The Principle wants to achieve the objective of facilitation in establishing the personal identity of the child and to enable the child to equip himself to achieve the developments in all the process relating to the individual growth.

2.1.8 Eighth Principle-Principle of non-stigmatizing semantics, decisions and actions

The Principle of non-stigmatization has been defined in the negative terms which simply mandate to avoid certain expressions which are normally used in the Criminal Proceedings involving the adults. For eg., it mandates to avoid the following wordings in the process of administration of Justice relating to Juveniles, who are conflict with law. It includes the following “arrest, remand, accused, charge sheet, trial, prosecution, warrant, summons, conviction, inmate, delinquent, neglected, custody or jail”

2.1.9 Ninth Principle-Principle of non-waiver of rights

The Constitution of India strictly prohibits the waiver of fundamental rights. The same has been embodied in the 2007 Rules. The Rules makes it very clear that whatever rights have been guaranteed by this Act cannot be waived either by the juvenile himself or by the competent authority or any other stake holders recognized under this Act acting on behalf

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38 para (c) of Principle 7 Ibid.  
39 para (a) of Principle 7 Ibid.  
40 para (b) of Principle 7 Ibid.  
41 para (d) of Principle 7 Ibid.  
42 Principal 8 of 2007 Rules.
of the juvenile in the process relating to the administration of Juvenile Justice. This principle also makes it very clear that the non-exercise of Fundamental Rights cannot be treated as a waiver of the same.\(^\text{43}\)

2.1.10 Tenth Principle—Principle of equality and non-discrimination

This Principle is equivalent as that of the Security Clause contained in the Constitution of India. It embodies both the positive as well as the negative connotations relating to the equality and non-discrimination of the Juveniles in the process of Juvenile Justice Delivery mechanism. Part 1 of the principle strictly prohibits the discrimination of the juvenile on any of the following grounds. It includes the following grounds based on which no discrimination is permissible. They are – “basis of age, sex, place of birth, disability, health, status, race, ethnicity, religion, caste, cultural practices, work, activity or behaviour of the juvenile or child or that of his parents or guardians, or the civil and political status of the juvenile”.\(^\text{44}\) Part 2 of the Principle mandates the State to promote Equality in the following matters for the purpose of doing complete justice to the Juvenile. They are – “Equality of access, equality of opportunity, equality in treatment under the Act shall be guaranteed to every child or juvenile in conflict with law.”\(^\text{45}\)

2.1.11 Eleventh Principle – Principle of right to privacy and confidentiality

The right to privacy has been embodied in the Constitution of India. It has been expanded by the judiciary so as to protect the victim from the undue publicity which will prejudicially affect the interest of the victim. For example, it has prohibited the identity of the rape victim, HIV people and others. The same has been incorporated in the 2007 Rules in the process of administration of Juvenile Justice. In fact, the Act provide two-fold guarantee

\(^{43}\) Principle 9 of Ibid.  
\(^{44}\) para (a) of Principle 10 Ibid.  
\(^{45}\) para (b) of Principle 10 Ibid.
prohibiting the media to publish the details of the juveniles, who are in conflict with law in connection with the proceedings faced by the Juveniles and also mandates to keep the records confidential and to destroy the same after a particular period. The 2007 Rules simply mandate that the principle of privacy and confidentiality has to been maintained throughout the process relating to the Juvenile Justice Delivery Mechanism\textsuperscript{46}.

2.1.12 Twelveth Principle- Principle of last resort

This Principle clearly mandates that only as a last resort the Juvenile should be kept within the Institutional Mechanism prescribed by this Act and the Rules\textsuperscript{47} relating to juvenile justice that too only for the minimum duration as prescribed under this Act\textsuperscript{48}. This Principle should be read together with the principle of family responsibility.\textsuperscript{49} Involvement of informal agencies is highly encouraged. Intervention of legal institutions is highly discouraged by Juvenile Justice Act in the process of Juvenile Justice Delivery system.\textsuperscript{50}

2.1.13 Thirteenth Principle-Principle of repatriation and restoration

This Principle recognizes and enforces the right to have a family life as embodied under the UDHR\textsuperscript{51}. It mandates the State to assist the Juvenile to repatriate or to restore the original family status as it was enjoyed by the Juvenile immediately prior to the commencement of the proceedings under the Juvenile Justice Act.\textsuperscript{52} The Principle also makes it very clear that repatriation is the rule and the exception is permissible only in the best interest of the child i.e., if the best interest of the juvenile dictates otherwise. The State

\textsuperscript{46} Principle 11 of Juvenile Justice Rules, 2007.
\textsuperscript{47} Principle 12 of Ibid.
\textsuperscript{48} Section 15 of Ibid.
\textsuperscript{49} Principle 5 of Ibid.
\textsuperscript{50} Preamble of the J.J.Act, 2000.
\textsuperscript{51} Article 12 UDHR.
\textsuperscript{52} para (a) of Principle 13 of Ibid.
should make alternate arrangements in the place of repatriation of the family.\textsuperscript{53} The relevant rule reads thus:

Every juvenile or child or juvenile in conflict with law has the right to be re-united with his family and restored back to the same socio-economic and cultural status that such juvenile or child enjoyed before coming within the purview of the Act or becoming vulnerable to any form of neglect, abuse or exploitation."

2.1.14 Fourteenth Principle - Principle of Fresh Start

The principle of fresh start signifies a new beginning in the life of the juvenile in conflict with law. The Rule also postulates the mandate embodied in the Juvenile Justice Act to destroy all the past records relating to the Juveniles for the purpose of enabling the Juvenile to have a fresh start. The Principle also emphasizes an alternate settlement of the dispute rather than resorting to the judicial proceedings provided under the Juvenile Justice Act\textsuperscript{54}.

2.2 Certain Important Definitions

The understanding of certain important definitions in the Juvenile Justice legislation is highly desirable for the understanding of the subject matter of this study. They are as follows:

2.2.1 Juvenile

The term juvenile and the child have been used synonymously for many purposes under this Act, but it is not correct always. For example, the term “juvenile home”\textsuperscript{55} is

\textsuperscript{53} para (b) of Principle 13 of \textit{Ibid.}.
\textsuperscript{54} para (b) of Principle 14 of \textit{Ibid.}.
\textsuperscript{55} Section 57 and the concepts relating to the special home, observation home, place of safety and other related provisions to the Institutions relating to the Juvenile.
different from “children home”. The term ‘juvenile’ is different from the term ‘child’, because both constitute distinct category under this Act. Sometimes, the Act qualifies the term juvenile in conflicting with law. It is, in this context, the understanding of the term juvenile or child assumes more importance. The relevant part of the statute reads as follows:-

“"Juvenile" or "child" means a person who has not completed eighteenth year of age.”

For understanding the term ‘juvenile’ precisely, the definition of juvenile must be read together with juvenile, who is in conflict with law.

2.2.2 Juvenile in conflict with law

The understanding of the term juvenile, who is conflict with law, is more important for the subject matter of this research. The relevant part of the statute reads as follows:-

“Juvenile in conflict with law" means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence.”

To call a person a juvenile, who is in conflict with law, he or she should fulfill necessarily the following two conditions:-

(i) He should have been alleged to have committed an offence.

(ii) He should not have completed the age of eighteenth year on the date of the commission of the offence.

These two conditions must coincide to bring a person under this Act. In case, the person who has completed the age of eighteenth year at the time of the commission of the

56 Sections 2 (e) and 34 and other related provisions relating to the children, who are in need, of care and protection.
offence, then he will not be called as a juvenile, who is in conflict with law. This has been made explicit because of number of judicial decisions which caused shifting the pendulum from the date of commission of the offence to the date of the trial of the offence and the Parliament has intervened and made an explicit Amendment that the juvenile should have not completed the eighteenth year of age at the time of commission of the offence. The word ‘alleged or allegation’ has not been defined in this Act.

2.2.3 Offence

However, the term ‘offence’ has been defined in this Act. The relevant part of the Act reads as follows:-

“"Offence" means an offence punishable under any law for the time being in force.”

Though the principles relating to Juvenile Justice prohibits the usage of charge, offence, allegation and others in the process of administering justice to the juvenile who are in conflict with law, the Act uses the word ‘offence’. One may raise a question as to why this is so? The reason could have been that this Act not only prescribes the punishment for the juveniles, who are conflicting with law, but also declares certain activities done by others against the juveniles/child as an offence and prescribes punishment for the offenders who are committing the offence prescribed under this Act. For example, the following things have been declared as specific crimes against the juveniles:-

(a) Prohibition of publication of name, etc., of juvenile involved in any proceeding under the Act.

(b) Punishment for cruelty to juvenile or child.

(c) Employment of juvenile or child for begging.

62 Section 21 ibid.
63 Section 23 ibid.
(d) Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child.\textsuperscript{65}

(e) Exploitation of juvenile or child employee.\textsuperscript{66}

These crimes have been declared as a special offence and cognizable. However, the term ‘cognizable’ has not been defined under this Act. One has to resort either to Criminal Procedure Code or to the General Clauses Act, for understanding the term ‘cognizable’. This has been specifically made very clear by the provision of this Act itself. It simply mandates that whatever expression has not been defined under this Act, the expression used in the Criminal Procedure Code shall be applicable to this Act.\textsuperscript{67}

2.2.4 Law

The term ‘law’ has not been defined in this Act. However, it uses the word ‘any law’. The word ‘any law’ will necessarily include a local law and the special law and the juvenile is entitled to the benefits arising out of the Juvenile Justice Act, irrespective of the offence/punishment prescribed by a local law or a special law. For example, MOCOCA (Maharashtra Control of Organised Crime Act) is a local law, Prevention of Terrorism Act is a special law. Notwithstanding that one is local law and another is special law, Juvenile Justice Act will be applicable for both the crimes, punishable under the local laws as well as special laws.

2.2.5 Competent authority

The term ‘competent authority’ has been defined under this Act, but it is context based. In the case of the juvenile, it is the Juvenile Justice Board and related bodies created by this Act. In the case of a child, who is in need of care and protection, the Act has declared

\textsuperscript{64} Section 24 \textit{ibid.}  
\textsuperscript{65} Section 25 \textit{ibid.}  
\textsuperscript{66} Section 26 \textit{ibid.}  
\textsuperscript{67} Section 2 (i) \textit{ibid.}
the Child Welfare Committee as the competent authority for the purposes of this Act. The relevant part of the Act reads as under:

“competent authority” means in relation to children in need of care and protection a Committee and in relation to juveniles in conflict with law a Board.68

The definition simply says that the Board in relation to the juvenile, but it is not merely the Board and it includes many bodies. The Board itself comprises three officials, namely, the social workers as the Magistrate and the Chairman as the Principal Magistrate, besides which Probation Officer also plays a vital role in the process of submitting Social Investigation Report (hereinafter will be referred to as to “SIR”) which determines the fate of the juveniles in many ways and beyond the Board the Sessions Court, the High Court and the Supreme Court have also been empowered to look into the affairs relating to the juveniles in the process of administration of juvenile justice.

2.2.6 Board

"Board" means a Juvenile Justice Board constituted under Section 4.69

It simply says that Board means Board constituted under Section 4. Section 4 provides the mandate for the constitution of the Boards. It also prescribes the qualification, composition and other matters pertaining to the Board. Of course, the procedures, powers and functions have also been prescribed by the Act through various provisions. The exercise of the powers, functions and the proper administration of the Board are monitored by the Chief Judicial Magistrate (CJM) and the Chief Metropolitan Magistrate (CMM), in the non-metropolitan areas and the metropolitan areas, respectively. Besides which, the Act also provides a mechanism to guide the entire agencies involved in the administration of Juvenile

68 Section 2 (g) Ibid.
69 Section 2 (c) Ibid.
Justice in the form of Advisory Board. The recommendations made by the Advisory Board can be used as good inputs for the improvement of efficacy of the administration of the Juvenile Justice.

2.2.7 Advisory Board

"Advisory board" means a Central or a State advisory board or a district and city level advisory board, as the case may be, constituted under Section 62.70

The term ‘advisory board’ has not been defined exhaustively, but the Act simply says the Advisory Board constituted under Section 62 of the Act. Infact, Section 62 makes it very clear that the Inspection Committees constituted under Section 35 shall be deemed to be the City Advisory Board or the District Advisory Board, as the case may be. It also prescribes the composition, the powers and functions of the Advisory Board. The Advisory Board is distinct from the Juvenile Board constituted under Section 4. The later is a judicial body, whereas the former is a statutory body, performing regulatory, monitoring and coordinating and supervisory functions under this Act. Unlike the Juvenile Justice Board, the Advisory Board is a three tier structure.

2.7.8 Begging

Begging has been declared as an offence under the Indian Penal Code. However, the Juvenile Justice Act defines the term begging and makes it punishable only against the person who enlarges the juvenile or child for begging. The definition simply states that any person exhibits or pretends to show any of his injury or wound, or any deformity of himself or of another or of any other animal in the primary object of extracting alms in a public place or enters into the private premises for the afore stated object. The relevant part of the Act reads as follows:-

70 Section 2 (a) Ibid.
"begging" means -

(i) soliciting or receiving alms in a public place or entering into any private premises for the purpose of soliciting or receiving alms, whether under any pretence;

(ii) exposing or exhibiting with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal.”71

The word ‘private premises’ has not been defined. It becomes obvious if any place which is not coming under the ambit of the public place, probably would come within the ambit of private place.

2.2.9 Public Place

The Juvenile Justice Act did not directly define the term public place but it simply adopts the definition as it has been embodied in the Immoral Traffic (Prevention) Act, 1956.72 The relevant part of the statute reads as under:-

"public place" shall have the meaning assigned to it in the Immoral Traffic (Prevention) Act, 1956 (104 of 1956).”

The Act adopts the same approach in defining the following terms such as, "narcotic drug" and "psychotropic substance".73 The same has not been directly defined by this Act, but it simply adopts the definition embodied in the Narcotic Drugs and Psychotropic Substances Act, 198574.

2.2.10 Probation Officer

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71 Section 2(b) Ibid.
72 (104 of 1956).
73 Section 2(l) of JJ Act.
74 (61 of 1985).
The term “Probation Officer” has not defined in this Act. But the Act mandates\textsuperscript{75} to follow the definition given in the Probation of Offenders Act, 1958.\textsuperscript{76}

"probation officer" means an officer appointed by the State Government as a probation officer under the Probation of Offenders Act, 1958 (20 of 1958).

### 2.2.11 Child in need of care and Protection

The understanding of the term "child in need of care and protection" is crucial for the better understanding of “juvenile in conflict with law”. The Juvenile Justice Act, 1986 did not use the same term, ‘child in need of care and protection’, but embodies the same concept to certain extent. It defined this sort of juveniles or child as a neglected juvenile / as a neglected child, but did not elaborate in detailing what is needed for the neglected child. In other words, though it recognized the status of the child as a neglected one, but it did not directly recognize the further need of protection. However, the new Act positively recognizes the need of the child, who is in need of care of protection. Whoever has been declared as neglected juvenile / neglected child in the old Act has been declared as a Child in need of care and protection. The new Act uses more polished and parliamentary way of expression in declaring, which child is entitled to be treated, as a child in need of care and protection. This Act also takes into many factors such as armed conflict, natural calamity, abandoned child, street child, working child, missing child, run away child, child who has been affected with incurable diseases and child with special needs, both physically and mentally challenged. However, the Act does not designate them so, as it has done in the case of Narcotic Drugs and others. For eg., the Act should have explicitly designated that disabled child can be understood in the context of Personal Disability Act, 1995. However, it did not do so. It defines the term as follows:-

\textsuperscript{75} Section 2(s) of JJ Act.
\textsuperscript{76} (20 of 1958).
"child in need of care and protection" means a child -

(i) who is found without any home or settled place of abode and without any ostensible means of subsistence,

(ia) who is found begging, or who is either a street child or a working child,

(ii) who resides with a person (whether a guardian of the child or not) and such Person:-

(a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or

(b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person.

(iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,

(iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,

(v) who does not have parent and no one is willing to take care of or whose parents have abandoned or surrendered him or who is missing and run away child and whose parents cannot be found after reasonable inquiry,

(vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,

(vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking,

(viii) who is being or is likely to be abused for unconscionable gains,

(ix) who is victim of any armed conflict civil commotion or natural calamity;
The terms “begging” has been defined in this Act, whereas it does not define ‘missing child’ or the ‘street child’ and the “abandoned child”, whereas the Juvenile Justice Rules, 2007 defines the street child, abandoned child and surrendered child.

2.2.12 Street Child

Any child who does not have any settled place or home is deemed to be the “Street child” under the Juvenile Justice Rules, 2007. In a way the “Street child” is also an abandoned child, the abandoned child may also become a street child. The relevant part of the rule reads as under:-

“street and working children” means children without ostensible means of livelihood, care, protection and support in accordance with the provisions laid down under clause (d) (1) of section 2 of the Act;\(^{77}\)

2.2.13 Abandoned Child

The term abandoned used in the Act as part of the definition of child in need of care and protection. The term abandoned has been defined in the Juvenile Justice Rules, 2007 which reads as follows:-

“abandoned” means an unaccompanied and deserted child, who is declared abandoned by the Committee after due inquiry;\(^{78}\)

2.2.14 Surrendered child

The term surrendered child has also been used with the definition of the child, who is need of care and protection. However the Act did not define the same, but it has been defined by the Juvenile Justice Rules, 2007. The term surrendered child has been defined in the following words:-

\(^{77}\) Principle 2(p) of JJ Rules, 2007.

\(^{78}\) Principle 2(a) of JJ Rules, 2007.
“surrendered child” means a child, who in the opinion of the Committee, is relinquished on account of physical, emotional and social factors beyond the control of the parent or guardian.”\(^79\)

### 2.2.15 Best interest of the Child

The best interest of the child is a primary and essential objective of the Juvenile Justice Act. In fact, it is one of the Constitutional mandates also. It should be appreciated that the framers of the Juvenile Justice Rules, 2007, has taken a great amount of pain in defining the term ‘best interest of the child’ for the purposes of this Act. The relevant part of the Rules reads as follows:-

“best interest of the child” means a decision taken to ensure the physical, emotional, intellectual, social and moral development of juvenile or child”\(^80\)

In fact, these are all some of the important elements to be kept in mind by the various agencies involved in the administration of Juvenile Justice. For example, these elements must be given highest importance in preparing the individual care plan which is part and parcel of pre-release and post-release of the juvenile in question. The term ‘individual care plan’ has been defined by the Rules, in the following words:-

“‘individual care plan’ is a comprehensive development plan for a juvenile or child based on age specific and gender specific needs and the case history of the juvenile or child, prepared in consultation with the juvenile or child, in order to restore the juvenile’s or child’s self-esteem, dignity and self-worth and nurture him into a responsible citizen and accordingly the plan shall address the following needs of a juvenile or a child:

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\(^{79}\) Principle 2 (q) of JJ Rules, 2007.
\(^{80}\) Principle 2 (c) of JJ Rules, 2007.
(i) Health needs;
(ii) Emotional and psychological needs;
(iii) Educational and training needs;
(iv) Leisure, creativity and play;
(v) Attachments and relationships;
(vi) Protection from all kinds of abuse, neglect and maltreatment;
(vii) Social mainstreaming; and
(viii) Follow-up post release and restoration.” 81

Though, we often use the word ‘he’ in the process of administration of Juvenile Justice, the word ‘he’ shall always be construed as including ‘she’ subject to certain conditions, that is the reason, the word gender and age has been used specifically in this individual care plan, and this is also supported by the Act that whatever expression has not been explicitly defined, the Act mandates to refer Criminal Procedure Code, 1973. In fact, the Criminal Procedure Code mandates that whatever expressions or words have not been defined by the Criminal Procedure Code then one should refer to the Indian Penal Code. The Indian Penal Code clearly defines that the word ‘he’ also includes ‘she’ in appropriate context. The same approach has been taken in the process of administration of Juvenile Justice too.

2.2.16 Child Friendly

The entire Juvenile Justice delivery mechanism must be child friendly one. This approach makes the juvenile justice delivery mechanism fundamentally different from the criminal justice delivery mechanism which is applied for normal adult criminals. The competent authorities such as the Juvenile Justice Board and the Committee and all other agencies involved in the process of administration of Juvenile Justice has been mandated not

81 Principle 2 (h) of JJ Rules, 2007.
only to promote the best interest of the child, but the same should be done in a child friendly manner. The term ‘Child Friendly’ has also been defined by the Rules, 2007. The relevant part of the Rules reads as follows:-

“child friendly” means any process and interpretation, attitude, environment and treatment, that is humane, considerate and in the best interest of the child”82

2.2.17 Guardian

The Act uses the term ‘parent’, foster parent, guardian in many places. In addition to that, it also uses the word ‘biological parents’, and ‘adoptive parents’. However, the Act did not define those terms. It defines the terms ‘guardian’, which reads as under:- 83

"Guardian", in relation to a child, means his natural guardian or any other person having the actual charge or control over the child and recognized by the competent authority as a guardian in course of proceedings before that authority;”

It includes the term ‘natural guardian” as well as “deemed guardian”. For eg., a fit institution can be treated as a deemed guardian for the purposes of this Act, only during the process of application of Juvenile Justice Act, in relation to the Juvenile, who is in conflict with law as per the mechanism embodied under the Juvenile Justice Act. Both the terms have been defined in this Act.

2.2.18 Fit Institution

The definition includes three types of organizations (1) the governmental organization (2) the registered non-governmental organization or (3) the voluntary organization. But this

82 Principle 2 (d) of JJ Rules, 2007.
83 Section 2(j) of JJ Act, 2000.
is relating to only an institution. The term fit institution has been defined in the following words:-

"Fit institution" means a governmental or a registered non-governmental organization or a voluntary organization prepared to own the responsibility of a child and such organization is found fit by the State Government on the recommendation of the competent authority;”

2.2.19 Institution

The rules define the term ‘institution’ apart from the term the ‘fit institution’ defined by the Act. The relevant part of the Rule reads as follows:-

"Institution" means an observation home, or a special home, or a children's home or a shelter home set up, certified or recognized and registered under Sections 8, 9, 34, sub-section (3) of section 34 and Section 37 of the Act respectively”

To be a fit institution, institution such as the homes, the probation officer and other agencies must be recognized as well as registered under this Act. The terms ‘recognised’ as well as ‘registered’ have been defined by the Rules.

Recognised. ‘Recognized’ means a person found fit by the competent authority or an institution found fit by the State Government on the recommendation of the competent authority as per clauses (h) and (i) of Section (2) of the Act; or recognition of an institution or agency or voluntary organisation by the State Government to operate as a children’s home, observation home and special home; or a shelter home, specialized adoption

84 Section 2(h) of JJ Act, 2000.
agency or after care organization under sub-section (1) of Section 37, sub-section (4) of Section 41 and clause (a) of Section 44 of the Act”86

Registered. Registered means –all institutions or agencies or voluntary organizations providing residential care to children in need of care and protection registered under sub-section (3) of Section 34.”87

2.2.20 Fit Person

The fit person may also be a natural person and the same responsibility shall be entrusted to a natural person, when such person is called a fit person. No doubt whether it is a fit person or fit institution both should fulfill certain conditions as stipulated by this Act. They shall be recognized by the competent authority. The term ‘fit person’ has been defined in the following manner:-

"Fit persons" means a person, being a social worker or any other person, who is prepared to own the responsibility of a child and is found fit by the competent authority to receive and take care of the child.”88

In the natural person category, the priority goes to the social worker. The word ‘any other person’ may also include a probation officer. That is why, the Juvenile Justice Rules, 2007 calls the Non-Government Organization or social worker as honorary Probation officers. The Act also defines certain institutional mechanisms relating to the Juveniles, who are in conflict with law and also the place in which they ought to be provided care, shelter, rehabilitation and development of the individual. These types of mechanisms can be divided into two:- Pre-trial stage and Post trial state. Under the Pre-trial stage, Juvenile homes and Observation homes has been created. In the post trial stage, special homes and after care

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86 Principle 2 (m) of JJ Rules, 2007.
88 Section 2(i) of JJ Act 2000.
homes has been created by this Act. The aforestated terms have also been defined by this Act.

Observation Home means a home established by a State Government or by a voluntary organization and certified by that State Government under Section 8 as an observation home for the juvenile in conflict with law; 89

2.2.21 Place of Safety

"Place of safety" means any place or institution (not being a police lockup or jail), the person in charge of which is willing temporarily to receive and take care of the juvenile and which, in the opinion of the competent authority, may be a place of safety for the juvenile; 90

The place of Safety is meant exclusively for delinquent juvenile, who have committed some heinous crimes. Generally, this place will be assigned to them during the pre-trial stage. Some times, it will be assigned to them even in the post-trial stage. The Rule is that in the post trial stage the convicted juvenile should be sent to the Special Home. However, the Act mandates 91 the State Government to separate the hard core delinquent juveniles and put them in a separate place of safety.

2.2.22 Special Home

The term "special home" means an institution established by a State Government or by a voluntary organization and certified by that Government under Section 9; 92 It should be noted that the Special Home and Observation home is meant exclusively for the Juveniles in conflict with law. On the hand, the shelter home is exclusively meant for the child in care and protection. The after care home is meant for both the categories. However, the Act

89 Section 2(o) of JJ Act, 2000.
90 Section 2(q) of JJ Act, 2000.
91 Section 10 (5) and Section 16(2) of JJ Act, 2000.
92 Section 2(v) of JJ Act, 2000.
provides several informal measures for the purpose of rehabilitation for the juveniles and to provide care and protection for the Juveniles. For eg., it provides for adoption, sponsorship including corporate sponsorship and other measures for the rehabilitation of the Juveniles, who are in conflict with law.

2.2.23 Adoption

The Act provides, Adoption as a measure of rehabilitation for the juvenile, who is in conflict with law and of the abandoned and orphaned child. However, this adoption is purely secular and it has nothing to do with the religion as it has been embodied under the Hindu Adoption Act, 1956. The term adoption has been defined in this Act in the following words:-

"Adoption" means the process through which the adopted child is permanently separated from his biological parents and become the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship."\(^{93}\)

2.2.24 Special Juvenile Police Unit

This is an unique feature of the Juvenile Justice Act. The police unit has been mandated to do a different function in the administration of Juvenile Justice as part of investigative machinery. In many of the instances, normal Criminal Procedure Code may not be applicable and this police unit is a trained one the name itself shows ‘Special’ and the Act simply defines that this is an unit constituted under Section 63, which deals with children, who are conflict with law. The term ‘special juvenile police unit’ has been defined in the following words:-

"Special juvenile police unit" means a unit of the police force of a State designated for handling of juveniles or children under Section 63"\(^{94}\)

\(^{93}\) Section 2(aa) of JJ Act, 2000.
\(^{94}\) Section 2 (w) of JJ Act, 2000.
2.2.25 Detention

The term ‘detention’ normally means that the person has been detained in the police lockup or jail, whereas in this Act, the term detention has been used in a different context. It defines the term ‘detention’ in the following words:-

“Detention in case of juveniles in conflict with law means “protective custody” in line with the principles of restorative justice.”

2.2.26 Community Service

Community service has been provided as one of the punishment by the Juvenile Justice Act to the juvenile, who is in conflict with law and who has been duly dealt by the competent authority in accordance with the due process of law under Section 15 of the Juvenile Justice Act. The term ‘community service’ has been defined by the Rules in the following words:-

“Community service implies service rendered to the society by juveniles in conflict with law in lieu of other judicial remedies and penalties, which is not degrading and dehumanizing. Examples of this may include:

(i) cleaning a park;

(ii) getting involved with Habitat for Humanity;

(iii) serving the elderly in nursing homes;

(iv) helping out a local fire or police department;

(v) helping out at a local hospital or nursing home; and

(vi) serving disabled children”

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