The International instruments and conventions have contributed considerably to the issue of child rights and prevention of child abuse. The International Law lays emphasis upon participation as a core value along with survival, protection and development. It also expects that laws and legal strategies must be derived to encourage these values. The United Nations Conventions on the Rights of Child, 1989, has been ratified by India in 1992. There is a worldwide recognition to the rights of children. The following are the conventions and treaties:

I. **International Instruments for Protection of Children before 1989.**

(a) Declaration of the Rights of Child, 1924 (Human Rights Instrument Specific to the Rights of the Child).

(b) Universal Declaration of Human Rights, 1948.

(c) Geneva Convention, 1949.


(g) International Covenant on Civil and Political Rights, 1966.


(j) Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.
II. **International Instruments for Protection of Child after 1989.**


(c) UN Rules for the Protection of Juveniles Deprived Of their Liberty: Havana Convention, 1990.

(d) International Convention Concerning the Prohibition and Immediate action For the Elimination of worst form of Child Labour, 1991.


The important instruments alone are discussed here under:-

3.1 International Instruments for Protection of Children before 1989.

3.1.1 Declaration of the Rights of Child, 1924.

This is a historic document that recognised and affirmed for the first time the existence of rights specific to children and the responsibility of adults towards children. It declares that “the mankind owes to the child, the best it has to give”. This declaration highlights the social and economic entitlement of the children and it laid the foundation for the setting up of future International standards in the fields of rights of children. The declaration discussed the well-being of children and recognised their right to development, assistance, relief and protection\(^1\). The fundamental needs of children were summarised in five points. They are as follows:-

(i) The child must be given the mean requisite for its normal development, both materially and spiritually.

(ii) The child, who is hungry must be fed, the sick must be nursed, the backward must be helped, the delinquent must be reclaimed, and the orphan and the waif must be sheltered and scourged.

(iii) The child must be the first to receive relief in times of distress.

(iv) The child must be put in a position to earn livelihood and must be protected against every form of exploitation.

(v) The child must be brought up in the consciousness that its talent must be developed to the service of its fellow men.

3.1.2 Universal Declaration of Human Rights, 1948.

Children are covered by the all-inclusive language of the UDHR which guarantees specific rights to “everyone.” The UDHR does not, however, clearly espouse the idea of children as rights holders but merely draws attention to their need for special protection. Article 25(2) provides that “motherhood and childhood are entitled to special care and assistance” and that “all children, whether born in or out of wedlock, shall enjoy the same social protection.” Article 16(3) declares that “the family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” The UDHR does not define what “special care and assistance” childhood deserves or the protection that the family requires. Article 26 is also of paramount importance to children with its guarantee of the right to education and declarations that “education shall be free, at least in the elementary and fundamental stages,” and that “elementary education shall be compulsory.” In a continent where illiteracy is widespread and where the promise of universal primary education remains but a distant dream for millions of children, Article 26 continues to provide a basis for deep introspection and soul-searching. Article 26 no doubt inspired the inclusion of a right to education in the United Nations Convention on the Rights of the Child, and the International Covenant on Economic and Social Rights. Although minimalist in its pronouncement on children’s rights, the UDHR in three articles creates a solid foundation for child protection in the ensuing years. The UDHR also continues to give hope to children and lovers of children in the continent that, because the UDHR represents “a common standard of achievement for all peoples and all nations,” the struggle must continue and victory will one day be won.

3.1.3 Geneva Convention, 1949.

---

The Fourth Geneva Convention contains a number of articles which provide special protection to children\(^3\). Protocol I states in Article 77 that “children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason”. Attention is invited to the use of terms ‘shall be object of special respect’, and ‘shall be protected against any form of indecent assault’. The use of the word ‘shall’ makes it a mandatory provision in the form of ‘duty’ and casts an obligation on the parties to carry out the provision in letter and spirit. Protocol II makes a somewhat similar provision in Article 4 for application in non-international armed conflicts. It provides that ‘children shall be provided with the care and aid they require’.

For the purpose of protection of children from the effects of war, it is provided (Art. 14 of IV Gen. Con.) that in time of peace, the Contracting Parties to the Geneva Conventions, and the parties to the conflict, after the outbreak of hostilities, may establish in their own territory and if the need arises, in occupied areas, hospital and safety zones and localities so organised as to protect from the effects of war children under fifteen, expectant mothers and mothers of children under seven.

**Children and their need for family**

Article 82 of the IV Gen. Con. provides that throughout the duration of their internment, members of the same family, and in particular parents and children, shall be lodged together in the same place of internment, except when separation of a temporary nature is necessitated for reasons of employment or health. Further Art. 49 of IV Gen. Con. provides that if an Occupying Power undertakes evacuation of an area for certain reasons

specified therein, it shall see that members of the same family are not separated. Thus the unity of the family is maintained.

**Care of Children**

Art. 50 of IV Gen. Con. prescribes that the Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children. This obligation is very general in scope. This is intended to cater to a wide variety of institutions and establishments of a social, educational or medical character which exist under a wide variety of names.

**Orphaned or Separated Children**

Articles 24 and 50 of IV Gen. Con. lays down very important rules for the protection and care of orphaned or separated children from their families as a result of war. It is provided that the Parties to the conflict shall take necessary measures to ensure that children under fifteen who are orphaned or are separated from their families are not left to their own resources and that their maintenance, the exercise of their religion and their education are facilitated in all circumstances. Their education shall, as far as possible, be entrusted to persons of a similar cultural tradition.

**No change of Personal Status of Children**

Article 50 of IV Gen. Con. expressly prohibits the occupying power to change the ‘personal status’ of children in any case. In the present context, the term ‘personal status’ denotes the personal attributes of a particular person which would include, nationality, ethnic origin, family and religion of children.

**Right to Family News**

Art. 25 of IV Gen. Con. prescribes that all persons, which includes children, in the territory of a party to the conflict, or in its occupied territory shall be enabled to give and to
receive news of a strictly personal nature to members of their families, wherever they may be, speedily and without undue delay.

**Detention or Internment of Children**

During an armed conflict children can be interned for security reasons or can be detained for violating the penal code. But Children under fifteen years of age shall be given additional food, in proportion to their physiological needs (Art. 89, IV Gen. Con.). All possible facilities for the education of children shall be ensured. They shall be allowed to attend schools either within the place of internment or outside. Special playing grounds shall be reserved for children and young people.

**Penal and Disciplinary Sanction and Release of Interned Child**

The parties to the conflict shall release the internee as soon as possible. They shall endeavour, during the armed conflict, to conclude agreements for the release, the repatriation, the return to places of residence or the accommodation in a neutral country of certain classes of internees in particular children, pregnant women, and mothers with infants and young children among others (Art. 132 of IV Gen. Con.). With regard to enlistment for work, it is prescribed that a protected person may not be compelled to work unless over the age of 18 years. (Art. 51 of IV Gen. Con.) Therefore the children under 18 years cannot be compelled to work during internment.

**Children and the Death Penalty**

The Diplomatic Conferences which concluded the Geneva Conventions regime deliberated on this subject and came out with the prescription making eighteen years the absolute age limit below which the death penalty may not be pronounced even if all the other conditions which make that penalty applicable are present. (Art. 68 of IV Gen. Con.) Art. 77 of Prot. I reaffirms this principle by stating that the death penalty for an offence related to the
armed conflict shall not be executed on persons who had not attained the age of eighteen years when the offence was committed. As to non-international armed conflicts, Art. 6, of Prot. II states that death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of offence and shall not be carried out on pregnant women or mothers of young children.


In 1959, the United Nations General Assembly adopted the Declaration of the Rights of the Child. It marked the first major international consensus on the fundamental principles of children’s rights. On 20 November 1959, the Declaration of the Rights of the Child was adopted unanimously by all 78 Member States of the United Nations General Assembly in Resolution 1386 (XIV). This declaration reiterates the pledge of the declaration of the Rights of Child, 1924 that the mankind owes to the child the best it has to give. The Preamble to the Declaration of the Rights of the Child highlights children’s need for special care and protection, “including appropriate legal protection, before as well as after birth.” It also places a specific duty upon voluntary organizations and local authorities to strive for the observance of these rights. The rights of child with reference to a name, nationality, nutrition, housing, recreation and medical services are emphasized. It also deals with the special needs of the physically, mentally and socially challenged children and the children who are without family.

The Indian Judiciary in the case of Lakshmikanth Pandey v. Union of India\(^4\), have shown great concern for the welfare of the children, at the International level culminating in the declaration of rights of child adopted by General Assembly of the United Nations on November 20, 1959. The Declaration of the Rights of the Child lays down ten principles:-

1. The right to equality, without distinction on account of race, religion or

\(^4\) AIR 1984 SC 469.
national origin.

2. The right to special protection for the child’s physical, mental and social development.

3. The right to a name and a nationality.

4. The right to adequate nutrition, housing and medical services.

5. The right to special education and treatment when a child is physically or mentally handicapped.

6. The right to understanding and love by parents and society.

7. The right to recreational activities and free education.

8. The right to be among the first to receive relief in all circumstances.

9. The right to protection against all forms of neglect, cruelty and exploitation.

10. The right to be brought up in a spirit of understanding, tolerance, friendship among peoples, and universal brotherhood.

This declaration has formulated several principles of which principles 2, 6 and 9 are very relevant.

Principle 2 of the declaration states, the child shall enjoy special protection and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose the best interest of the child shall be of paramount consideration. Further Principle 3 states, the child shall be entitled from his birth to a name and to a nationality.

Principle 6 states, the child, for the full and harmonious development of his personality, needs love and understanding. He shall, whenever possible, grow up in the care and under the responsibility of his parents, and in any case in an atmosphere of affection and
moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. The society and the public authorities shall have a duty to extend particular care to children without a family and to those without adequate means to support and make payment and other assistance towards the maintenance of children of large families if desirable.

Principle 9 states, the child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic in any form. Principle 10 states, the child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, and friendship among peoples, races and universal brotherhood and in full consciousness that his energy and talents should be devoted to the service of his fellow men.


On December 16th 1966, the United Nations General Assembly adopted two covenants in its resolution 2200 A (XXI) : the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). These covenants are reinforcements concerning the Universal Declaration of Human Rights (1948). Both International Covenants refers to the Rights of the Child.

The Article 24 in the International Covenant on Civil and Political Rights maintain the Rights of the Child to protection, the right to have a name and a nationality.

“Every child, with no discrimination based on his race, colour, sex, language, religion, national or social origin, fortune or birth, has a right, from

his family, his society and his state, to protection accorded to its status as a minor”.

Article 10 in the International Covenant on Economical, Social and Cultural Rights maintain the Rights of the Child to benefit from a protection against victimization and the obligation for the state to set a minimum age for work. Article 10 recognises the family as the natural and fundamental group of the society and therefore, accords the widest possible protection and assistance to the family. Article 10 (3) provides for separation of juvenile delinquents from adult offenders. Quick and speedy adjudication procedure is contemplated.

Article 12 of this same Covenant maintains the right for the child to be nursed if sick. Finally, Article 13 maintains the right to education and the free universal primary education for every child.

“[...] the education must aim to the full development of the human personality and its dignity, and reinforce the respect of Human Rights and its fundamental liberties”.

As per Article 14 (1), there shall not be a public hearing when it is in the interest of the juvenile or if it is in the interest of the guardian.

The reassertion of these rights is an important advancement in the protection of the Rights of the Child. Indeed, the right to a protection, the right to an identity, the right to a decent education and the right to a protection against victimization are the most fundamental rights for children.

Before the adoption of these international covenants, these rights were approved only by declarations. The covenants gave a restrictive worth to these rights. Since then, all the
States that signed the Declaration are legally bound to respect these rights for all children under their jurisdiction.


Beijing Rules are divided into six parts covering the whole of juvenile justice process and they are, (i) General Principles, (ii) Procedure of Investigation and Prosecution, (iii) Adjudication and Disposition, (iv) Non-Institutional Treatment, (v) Institutional Treatment, Research and Planning, and (vi) Policy Formulation and Evaluation.

The concept of juvenile under the Beijing Rules is very important. In International legal system, the definition of child, in general, is directly or indirectly related to age. According to Beijing Rules, Rule 2(2)(a), ‘the juvenile’ is a child or young person, who under the respective legal system, may be dealt with for an offence in a manner which is different from an adult, which means the term ‘juvenile’ does not necessarily correspond to the concept of child.

This definition of juvenile is critical because the standards spoken to by the Beijing Rules apply only to juvenile and not to all children. It is a manner in which a child is treated for an offence determines whether the child is also juvenile.

The aim of juvenile justice system is the wellbeing of the juvenile and any reaction to juvenile offender shall always be in proportion to the circumstances of both offenders and the offence.

Guiding Principles in Adjudication and Disposition

(i) The disposition of the competent authority shall be guided by the following principles:-
(a) The action 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 minimum possible;

(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 his or her case.

(ii) Capital punishment shall not be imposed for any crime committed by the juveniles.

(iii) Juveniles shall not be subject to corporal punishment.

**Various Dispositional Measures**

(i) A large variety of disposition 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 counseling and similar activities;
g. Orders concerning foster care, living communities or other educational settings;
h. Other relevant orders.

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

3.2. International Instruments for Protection of Child after 1989


The recognition of the child’s interest and his rights becomes real on 20 November 1989 with the adoption of the International Convention on the Rights of the Child which is the first international legally binding text recognizing all the fundamental. India became signatory to the Conventions on the Rights of Child (hereinafter will be referred to ‘CRC’), on 02.09.1990, in accordance with Article 49 of the CRC. It is the turning point. The Convention on the Rights of the Child of 1989 defines more precisely the term “child”:

“[...] a child is any human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier”

The idea, through this definition and all the texts concerning child welfare, is that the child is a human being with rights and dignity. What characterizes the child, it is his youth and vulnerability. Indeed, the child is growing, a future adult, who has no means to protect himself. So, the child has to be the object of a particular interest and a specific protection. In this perspective, texts proclaiming the protection of the child and his rights were adopted.

Children’s rights are human rights. As human rights, children’s rights are constituted by fundamental guarantees and essential human rights. This convention provides children
with basic human rights (civil, economic, social, cultural and political) which enables the children to acquire full potential. They are as follows:

- Children’s rights recognize fundamental guarantees to all human beings: the right to life, the non-discrimination principle, the right to dignity through the protection of physical and mental integrity (protection against slavery, torture and bad treatments, etc.)

- Children’s rights are civil and political rights, such as the right to identity, the right to a nationality, etc.

- Children’s rights are economic, social and cultural rights, such as the right to education, the right to a decent standard of living, the right to health, etc.

- Children’s rights include individual rights: the right to live with his parents, the right to education, the right to benefit from a protection, etc.

- Children’s rights include collective rights: rights of refugee and disabled children, of minority children or from autochthonous groups.

This Convention provides rights adapted to children. They are as follows:-

- Children’s rights are human rights specifically adapted to the child because they take into account his fragility, specificities and age-appropriate needs.

- Children’s rights take into account the necessity of development of the child. The children thus have the right to live and to develop suitably physically and intellectually.

- Children’s rights plan to satisfy the essential needs for a good development of the child, such as the access to an appropriate alimentation, to necessary care, to education, etc.
Children’s rights consider the vulnerable character of the child. They imply the necessity to protect them. It means to grant a particular assistance to them, and to give a protection adapted to their age and to their degree of maturity.

So, the children have to be helped and supported and must be protected against labour exploitation, kidnapping, and ill-treatment, etc.

Article 3 (1) recognizes the policy of the best interest of the child, in all actions concerning children.


These Guidelines were adopted in 1990 --one year after the CRC was adopted, and they are considered to be supplementary to the CRC. The first phase in the child justice system is the area of prevention. Prevention, as expressed in the Guidelines, is not a negative prevention and it is positive in the sense of upgrading the quality of life, the overall well-being, and not merely on the immediate restriction of well-defined but partial problems. It is relevant to mention Article 2 here:-

"Prevention of juvenile delinquency requires efforts by the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood".

Apart from prevention programmes for all children, the Guidelines emphasize the holistic nature of child justice by pointing to the important role that civil society can play in preventing all children from coming into contact with the law. This guidelines deal with almost every social area; the three main environments in the socialization process (family, school and community); the mass media; social policy; legislation and Juvenile Justice
Administration. The Guidelines stress the need for a multi-disciplinary approach and for proper recruitment and training of personnel who work with children.

The general prevention policies are based on the following principles:

- The institution of comprehensive prevention plans at every level of government.
- In-depth analysis of the problem and preparing lists of programmes, services, facilities and resources available.
- A definition of responsibilities for all role players.
- The coordination of prevention efforts between government and civil society groups.
- Continuous monitoring.
- A reduction in the number of opportunities for committing offences.
- The involvement of the community.
- Inter-disciplinary collaboration.
- The participation of children; and
- Trained personnel who specialise at all levels.

The prevention measures are aimed at promoting human rights in general and children’s rights in particular. The general aim is to promote the well-being of children, which is expected to prevent juvenile delinquency. The Guidelines point to the need to make specialized programmes available for children who are: “at social risk” (article 24); “school drop-outs” (article 30), and for street children (article 38). The term ‘social risk’ denotes children who are demonstrably endangered and in need of non-punitive measures because of the effect of their circumstances and situations on health, safety and education as determined by the competent authority. Part IV of the Guidelines emphasise the importance of “the
successful socialization and integration” of children through the family, school, vocational training, peer groups and community-based organisations.

Family, including the extended family, is viewed as the central unit responsible for the socialization of children. The society has a responsibility to assist the family with providing care and protection, including day-care facilities for young children. At the same time, families must be provided with opportunities to learn about parental roles and obligations, and to promote positive relationships between parents and children.

Article 46 points out that institutionalisation must always be a last resort and for the shortest possible time. Institutionalisation is limited to cases when the child has suffered harm; has been sexually or physically abused; has been neglected, abandoned or exploited; or has been threatened by physical or moral danger by the parents/guardians.

Article 50 emphasis on a multi-disciplinary approach for prevention programmes, which requires collaboration with schools, vocational training centres, faith-based and community based organisations, health centres, substance abuse programmes, and the media. It is important to note that participation in these programmes needs to be voluntary.

Governments are also expected to enact and enforce specific legislation and procedures to ensure the promotion and protection of the rights and well-being of children.

Participation

The normal tendency of human being is to take the decision, pertaining to others life and interest without even consulting them and to impose those decisions upon them irrespective / unmindful of their wishes. This is more so in case the person is a child, presuming that child is incapable of taking any decision. This has been proved to be foolish in several cases. Taking into account, this attitude of the people, Article 3 emphasizes upon participation of the juvenile.
It is relevant to quote Article 10, which speaks about socialization reads, “Due respect should be given to the proper personal development of children and young persons, and they should be accepted as full and equal partners in socialization and integration processes”. Article 31, which states, “School policy should be fair and equitable, and students should be represented in school policy, including policy on discipline and decision-making”.

Lastly, Part VII points to the need for the exchange of information, experience and expertise; for regional and international cooperation on issues of delinquency prevention and child justice, and technical and scientific co-operation on issues of policy and training.

3.2.3 UN Rules for the Protection of Juveniles Deprived Of their Liberty: Havana Convention, 1990.

These Rules were adopted by the United Nations in 1990 and have come to be known as the JDL Rules or the Havana Rules since they were adopted in Havana, Cuba. It is important to note that these Rules are not only applicable to custodial settings, but to police stations where children are often held in custody. The instruments set-out standards applicable, when the child is confined to any institution or facility by order of any judicial administrative or other public authority. The major purpose of the Rules is to ensure that the rights of the detainee are respected at all times. Deprivation of liberty must be a last resort, for the shortest possible period of time and limited to exceptional cases. Juveniles can be deprived of their liberty only in accordance with principles and procedures of international law.

Section III applies to children under arrest or awaiting trial ‘who are presumed innocent and should be treated as such”. As a general rule, detention before trial should be

---

avoided, and is limited only to exceptional circumstances. Rule 12 specifies that the “deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles”.

Section V also addresses the need for cells to be in proper condition and for general hygiene to be maintained – clean bedding, adequate medical and health care to be provided. Importance is given to the need for the rights of the detained child to be respected and for them treated with dignity at all stages of the child justice system. As such, the application of physical force is restricted, and cruel and degrading treatment or punishment is prohibited. In an effort to monitor the treatment of children in custody, it is proposed that qualified, independent inspectors conduct inspections “unannounced”. Qualified medical officers who are “attached to the inspecting authority or the public health service” are also expected to participate in the inspections.

Section VI addresses the need to have qualified personnel, and a sufficient number of specialists working at the facilities where children are held in custody. It calls on personnel to: minimize differences “between life inside and outside the detention facility”; to respect the Rules and to report any violations to their superior officers or organs “vested with reviewing or remedial power”; to ensure the full protection of the physical and mental health of children; and for personnel to continuously improve their knowledge and professional capacity by attending in service training courses.


---

This guidelines deal with children in the criminal justice system in the capacity both as perpetrators and as victims and witnesses. States are to ensure that the measures should be based on rights and it should be compatible with four general principles underlying the children’s convention, namely, non-discrimination, best interest of the child, right to life, survival and development and respect for the views of the child.

Child victims and witnesses are to be provided with access to justice and fair treatment, restitution, compensation and social assistance. The persons and personnel operating the criminal justice system, namely, police, prosecutors, lawyers and the judiciary should receive special training to deal with cases involving child victims and the suggestion was also made that specialized unit should be set-up.

The guidelines suggest rehabilitation should be primarily family based / community based rather than institutional base. Number of measures dealing with compensation for child victims have been suggested. States were expected to review substantive, evidentiary and procedural laws to ensure that children rights are fully protected. The identification of child victim in media should be prohibited. The States were expected to consider amendments to allow for video taping of the child’s testimony and its presentation in Court as official piece of evidence. Child witness preparation scheme were expected to be developed to familiarize the children with criminal justice process, allow children’s views to be considered, minimize the delay and ensure safety from intimidation.

These guidelines were created to make sure that the children, who have been harmed / who have seen other children being harmed, are protected and treated fairly when they speak about the incident in a Court of law. The document will also help protect children when they talk to the police, lawyers, social workers and anyone else they meet before and after they go to court. Normally, the children who are expected to depose in the Court remain frightened or worried because they don’t have the experience of either attending the Court or accustom to the atmosphere prevailing in the Court. The guidelines provide a practical framework for achieving the following objectives:

(i) To assist in the design and review of national laws, procedures and practices with a view to ensuring full respect for the rights of child victims and witnesses of crime and to furthering the implementation of the Convention on the Rights of the Child by the parties to that Convention;

(ii) To assist Governments, international organizations providing legal assistance to requesting States, public agencies, non-governmental and community-based organizations and other interested parties in designing and implementing legislation, policy, programmes and practices that address key issues related to child victims and witnesses of crime;

(iii) To guide professionals and, where appropriate, volunteers working with child victims and witnesses of crime in their day-to-day practice in the adult and juvenile justice process at the national, regional and international levels, consistent with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power;

(iv) To assist and support those caring for children in dealing sensitively with child victims and witnesses of crime.

3.2.6 **Children’s Rights in Juvenile Policy Adopted By United Nations General Assembly, 2007.**

This policy seeks to achieve the following objectives:-

(i) To promote the integration of the International instruments and in particular-
   (a) United Nations Standard Minimum Rules, for the administration of Juvenile Justice (Beijing Rules),
   (b) United Nations Rules for Protection of Juveniles, who are deprived of their liberty (HAVANA Rules) and
   (c) United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines).

(ii) To provide State parties with guidance and recommendations for the content of the Juvenile Justice Policy with special attention to prevention of juvenile delinquency, the introduction of alternative measures allowing for responses to juvenile delinquency without resorting to judicial procedures, and for the interpretation and implementation of all other provisions contained in Articles 37 and 40 of CRC.

(iii) To encourage the state parties to develop and implement a comprehensive Juvenile Justice Policy and address the juvenile delinquency based on and in compliance with CRC, and to seek advise and support from the Interagency Panel on juvenile justice with representatives of the Office of the United Nation High Commission for Human Rights, United Nation Children’s Fund and United Nations Office on Drugs and Crime and Non-Governmental Organization.

3.2.7 **Crime Prevention For Children: Developments And Good Practices, 2009.**
Children are more often victims of crime than perpetrators. Children are often seen as being a problem in terms of crime and violence, even if the evidence shows that they are more often victims of crime than perpetrators. Crime prevention is more cost-effective than criminal justice system. Children are considered vulnerable for reasons such as poverty, violence, deprivation, abuse, neglect, lack of education, lack of social support, general marginalization, ethnic minorities or migrant background and being in situations of war or conflict.

Towards prevention efforts, community programmes focusing on group activities like outdoor pursuit, wild side afternoons and parental work are organized. The objective of these activities are to teach children to keep to the rules, give consideration to others, engage in meaning leisure activities and develop self esteem. Other activities which are targeted at the children over 14 include role playing, self reflection, biographical work and promoting cooperation.

The Inter-Agency Panel on Juvenile Justice is a group mandated to coordinate technical advice and assistance in Juvenile Justice, in accordance with United Nations Economic and Social Council (ECOSOC) Resolutions 1997. This is a report of a side-event on Crime Prevention for Children, organized by Panel Secretariat in collaboration with the United Nations Office on Drugs and Crime (UNODC), Defence for Children International (DCI), International Secretariat and Panel Reform International (PRI) in parallel to the 18th Session of the Commission on Crime Prevention and Criminal Justice (CCPCJ).


The Charter guarantees the right to such protection and care as is necessary for the well-being of children (Article 24 of the Charter). The Charter recognises children as bearers
of autonomous rights, not just as subjects in need of protection. It recognises the need to protect children from abuse, neglect, violations of their rights and situations which endanger their well-being. The Charter provides that best interests of the child must be a primary consideration in all actions relating to children. This principle applies to all actions concerning children. It includes children’s right to maintain contact with both parents in case of a divorce, the right to express their views freely and for their views to be taken into consideration on matters which concern them\textsuperscript{10}. An important principle of the Charter is that when decisions are being made on what is in the best interests of children, children should have the opportunity to express their views and these views should be taken into account.

### 3.2.9 Implementation of SAARC Convention: The Way Forward.

1. Rights in the SAARC Convention are defined as CRC rights and it defines child as a national of any Member State of the South Asian Association for Regional Cooperation (SAARC), below the age of 18 years unless under the national law, majority is attained earlier.

2. It recognizes the family as the best place for the well being of children and the need for State Parties to afford necessary support to that role.

3. It directs the Juvenile Justice in a reliable way to promote child’s sense of dignity and value with the primary objective of promoting the child’s reintegration in the family and society.

4. States Parties are expected to provide care and treatment to children in a country.

State Parties are expected to make arrangements for appropriate mechanisms at appropriate levels to provide various opportunities to child understanding his / her developing capacity.

It directs the State to enable the child to participate fully without any discrimination in the school, family and community life.

With reference to crime involving transnational nature which is committed by organized crime syndicates, steps were taken which will ensure Regional Cooperation. Regional taskforce was sought to be established.

3.2.10 Guidelines For Legislative Reforms On Juvenile Justice, 2011.

This guideline, as the name goes, was intended to be a guide for parliamentarians and the Governmental authorities involved in drafting or reviewing Juvenile Justice Laws / Chapters / Sections, in general laws as well as Non-Governmental organizations, United Nation entities and other partners, providing assistance in the partners. It has set out the principles, standards and the norms that the states need to consider while drafting / amending legislations. It also adopts a rights based approach. It has used international and regional human rights instruments and particularly, CRC, United Nations Conventions on the Rights of Child, the International Covenant on Civil and Political Rights, the United Nations International Minimum Standard Norms on Juvenile Justice and the conventions on Elimination of all forms of Discrimination against women, as the basic frame work within which a juvenile justice system should be developed.

This guidance is not final, but it is an evolving guide shaped by the experience of countries and by a growing understanding of what works and what does not. International Instruments / covenants / conventions and guidelines incorporate a number of basic principles, upon which a Juvenile Justice System should be based.
Article 51(c) of the Indian Constitution provides that the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with one another. Article 37 of Part IV reads as under: "Application of the principles contained in this Part.- The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws".

A conjoint reading of Articles 51(c) and 37 implies that principles laid down in international conventions and treaties must be respected and applied in governance of the country.

In *Vishaka v. State of Rajasthan*¹¹, Justice Verma opined that any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and the enabling power of Parliament to enact laws for implementing the international conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution.

In *People's Union for Democratic Rights v. Union of India*¹², the Court followed the International Covenant of Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Universal Declaration of Human Rights (UDHR) and International Labour Organization's conventions, to interpret and expand the ambit of Article 21 of the Constitution.

¹¹ (1997) 6 SCC 241 at 249.
¹² AIR 1982 SC 1473 at 1487.
It is thus settled that the Article 51(c) is to introduce and implement various international instruments particularly the UDHR, ICCPR, ICESCR and the other international treaties in the interpretation of fundamental and legal rights.

A proper reading of Constitutional Law would make it clear that International Conventions can be enforced by Indian Parliament, by making laws and by the judiciary to grant relief under certain circumstances, even in the absence of Statute. The Constitution also states that the Parliament has power to make laws for the whole or any part of the territory in India for implementing any treaty agreement or convention with any other country or countries or international decisions made at conferences, associations or any other body (Article 253). It is relevant to quote the decision of the Indian Supreme Court, in the case of Visaka vs. State of Rajasthan\(^\text{13}\), which reiterated the principle that in the absence of domestic law the contents of International Conventions and Norms are relevant for the purpose of interpretation of the fundamental rights.

\(^{13}\text{Supra note 11.}\)