CHAPTER VII

JUVENILE IN CONFLICT WITH LAW

The often-used term juvenile delinquent is currently known with the nomenclature ‘juvenile in conflict with law’ in the Indian context. ‘Juvenile in conflict with law’ means a juvenile who is alleged to have committed an offence.¹

The recognition of the fundamental principle that behind almost every adult persistent offender lies an earlier experience as a juvenile offender by the legal system points to the urgent need of tactfully handling juvenile offenders so as to mould them law-abiding and socially committed citizens. That is the very reason behind the penal philosophy towards juvenile offenders viz., juvenile in conflict with law. In India, the legal system is very careful to handle them and reforms are grounded on the belief that the blight caused by adult crime can better be reduced, if juvenile in conflict with law can be ‘nipped in the bud’ through effective intervention. In this regard, the international resolve and the British practice have much influenced the Indian legal system.

In England, the Crime and Disorder Act 1998 together with Part I of the Youth Justice and Criminal Evidence Act, 1999 has fostered themes in criminal justice, intended for the rehabilitation of young offenders based on an offender-centred criminal justice administration.²

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¹ Section 2(l), Juvenile Justice (Care and Protection of Children) Act, 2000
Justice towards Child in Conflict with Law

This encompasses all aspects of a complex issue, which involves the treatment of juveniles who commit offences. In other words, the entire proceedings including police investigations, pre-trial process, bail, remand, juvenile courts, trials, sentence etc. encircle a juvenile offender; at the same time the feeble mental state, tender age, vulnerability, mitigating circumstances, lack of care and affection, necessity of keeping children away from brutal criminals, need for correction, etc. reminds of a separate treatment towards conflicting juveniles.

In England, by the end of the nineteenth century the initial tentative attempts to increase the use of magistrate’s summary jurisdiction for juvenile offenders had culminated in the provisions of the Summary Jurisdiction Act, 1879 under which juveniles under the age of 16 could be tried summarily for nearly all indictable offences, keeping them away from the more serious adult criminals at quarter sessions and the assize courts. Subsequent history witnessed two other important developments: the introduction of some rudimentary child protection legislations and the setting up of reformatories and industrial schools. These institutions had accommodated a large number of children from the dangerous and perishing classes, thus substantially reducing the incidence of child imprisonment. In the next stage, the Children Act, 1908 was a remarkable move, which provided a foundation for future reforms by making separate courts for the hearing of most criminal proceedings against juveniles as well as for all child protection and vagrancy cases. The distinctive feature of the juvenile courts envisaged by the 1908 Act was the fact that hearing had to be held in a separate building or at a different time from adult courts and that public access was restricted. The development of a court for dealing with children, which was not only separate but also presided over by magistrates of both sexes selected on the basis of their interest and experience with children, was again an appreciable move in the slow process towards recognition of the interests to be protected of juvenile offenders. The first substantial reform came by the Juvenile Courts (Metropolis) Act 1920 which provided for police (stipendiary) magistrates to be nominated by the
Secretary of State to sit as presidents of juvenile courts on the basis of their previous experience and special qualifications. In 1933 by introducing the Children and Young Persons Act it was provided that the juvenile courts had to reach their decisions in criminal as well as care proceedings having regard to the welfare of the child. The Children and Young Persons Act, 1963 raised the age of criminal responsibility from 8 to 10 years. The Children and Young Persons Act 1969 raised the age of criminality as 16. The implementation of the Children Act 1980 in 1991 left the juvenile court with a solely criminal jurisdiction and without many welfare minded magistrates whose position were moved to the family proceedings court. In the family proceedings court the specially selected and trained magistrate dealt very beautifully, the child care issues. A year later, the Criminal Justice Act 1991 brought the 17 year old also within the jurisdiction of these courts. The diversion of juvenile offenders from the criminal process has been supported by the statement that delay in the entry of a young person into the formal criminal justice system may help to prevent his entry into that system altogether. The Crime and Disorder Act 1998 set out proposals for youth justice reform. The main duty of all persons carrying out function under the 1998 Act is to prevent offending by children and young persons. The Government intends that this should be achieved through the following objectives,

i. the swift administration of justice so that every young person accused of breaking the law has the matter resolved without delay;

ii. confronting young offenders with the consequences of their offending, for themselves and their family, their victims and their community, and helping them to develop a sense of personal responsibility;

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3 This was based on the Committee Report on the Treatment of Young Offenders, 1925 which provided:

“…… It may be said that the reformation of the offender has become ….. the key note of the administration of justice. If this is true of the adult, the same principle must be applied with even greater whose character is still plastic and the more readily moulded by wise and sympathetic treatment.”


5 National Standards for Youth Justice, Youth Justice Board, April 2000.
iii. intervention which tackles the particular factors (personal, family, social, educational or health) that put the young person at risk of offending and which strengthens “protective factors”

iv. punishment proportionate to the seriousness and persistence of offending;

v. encouraging reparation to victims by young offenders

vi. reinforcing the responsibilities of parents.\(^6\)

But the general opinion regarding the law relating to young offenders is that it is in a state of complexity which makes it inaccessible to lawyers, pre-sentence report writers and magistrates and incomprehensible to most defendants and families.\(^7\) The introduction of the Crime and Disorder Act 1998, the Youth Justice and Criminal Evidence Act 1999 etc. added further to the complexity. But the codification of sentencing powers under the Powers of Criminal Courts (Sentencing) Act 2000 was welcomed to a certain extent as at least all sentences could be found within a single statute!

**Supervision of Children by the Police in English Legal System**

S. 16 of the Crime and Disorder Act, 1998 gave the police the power to remove school age children in certain circumstances from public places and take them to their school or other appropriate place. The aim here is not to take police or court action, but to deal with truancy and crime problems which sometimes accompany it\(^8\). The 1998 Act again allows local authorities and chief constables to introduce child curfew schemes and allows the police to remove any child unaccompanied by a responsible adult, found in breach of such a curfew to the

\(^6\) Parental responsibility is a mooted question in UK


child’s place of residence (unless the officer reasonably believes that the child would suffer significant harm if taken there).

‘Juvenile Warnings’ and ‘Conditional Cautioning’ in U.K

‘Doing Nothing’\(^9\) towards offenders is a relatively new concept of punishment jurisprudence which may be adopted in the case of juvenile delinquents. It is in the belief that the offence was ‘one-off’ that the offender will ‘grow out of crime’, that any kind of formal police intervention will be counter productive, or that the offence was so trivial that any official response would be an over-reaction\(^10\). This concept is applied not in making a decision whether to sentence or not; but to decide whether or not to prosecute. Most cautioning used to be on the ‘do nothing’ basis, as cautioning led to little or no further action. The Crime and Disorder Act 1998 permits juvenile warnings under this notion of Crime prevention. Every juvenile who is ‘warned’ should be assessed by a ‘youth offending team’ for a rehabilitative or restorative programme\(^11\).

Application of ‘Welfare Principle’

In England since 1933, the ‘Welfare principle’ became applicable in the case of neglected as well as delinquent children\(^12\). But in the early 1990s there was a growing moral panic perpetuated by the Government and the media about persistent young offenders being out of control and as a result section 1 of the Criminal Justice and Public Order Act 1994 introduced the secure training order

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\(^{9}\) Along with the old theories of punishment like punitive, retributive, expiatory, restorative and rehabilitative theories, this theory of doing nothing is also appreciated by the penologists and criminologists. See also, R( on the application of Guest) v. DPP 2009 Crim LR

\(^{10}\) Sanders Young Burton, Criminal Justice, Oxford, 4th Edn, 2010 at pp. 400-404

\(^{11}\) In 1933, the children and Young Persons Act by section 44 introduced this principle. “S. 44 Every court in dealing with a child or young person who is brought before it, either as being in need of care or protection or as an offender or otherwise, shall have regard to the welfare of the child or young person and shall in a proper case take steps for removing him from undesirable surroundings and for securing that proper provision is made for his education and training”.
for persistent offenders aged 12-14 who had been convicted of three imprisonable offences and who had failed to comply with non custodial penalties.  

US Supreme Court on Rights Pertaining to Juvenile Delinquents

In a very important case of *Roper v. Simmons*, the US Supreme Court stated that it is unconstitutional to impose capital punishment to juvenile convicts under the age of 18. Here the court overruled its own decision in *Stanford v. Kentucky*, where the court upheld capital sentence on offenders above or at the age of 16.

Again in *Graham v. Florida*, the US Supreme Court stated that a child cannot be sentenced to life imprisonment without parole for non-homicide offences. According to Kennedy J.:

“…The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit a homicide. A state need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term…”

In the case of *JDP v. North Carolina*, it was held that the juvenile suspects who are questioned by the police should be told of their rights and be given with a chance to consult with his parent. Again, in *Green v. Camreta*, the 9th Circuit of US court held that the police need a search warrant to interview a child suspect.

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14 543 US 551
15 492 US 361
16 No. 08-7412, decided on 17 may, 2010 available at http://www.law.cornell.edu/supct/html
17 In Us a child can receive life sentence if convicted for certain crimes.
18 Ibid
19 09-11121 decided on 16 June 2011: Here the US Supreme Court heard an appeal from a 13 year old child suspected of several burglaries in North Carolina.
20 588 F. 3d. 1011 (9th Circuit 2009)
The Legislative Framework in India

The Children’s Acts were replaced by the Juvenile Justice Act 1986, which in turn has been replaced by the Juvenile Justice (Care and Protection of Children) Act 2000.

Under the 1986 Act a delinquent juvenile\(^2\) is one who has committed an offence under any law of the land and comes in conflict with law. A delinquent juvenile was sent for accommodation, maintenance and facilities for education, vocational training and rehabilitation to ‘Special Homes’\(^2\).

While making an order, the Juvenile Court has to take into consideration the elements like the age of the juvenile, the state of physical and mental health of the juvenile, the circumstances under which the juvenile lives, the report made by the probation officer, the religion of the juvenile and any other circumstances to be taken into account in the welfare of the juvenile\(^2\). Section 21 provides for sanctions by the Juvenile Court. The court may order any of the following dispositions after explaining to the juvenile and the parent or guardian under whose care the juvenile has been placed, the terms and conditions of the order:

i. Direct the juvenile to be released on probation of good conduct and placed under the care and custody of any parent, guardian, or other fit person executing a bond with or without surety as required by the court for the well-being and good behaviour of the juvenile for a period not exceeding 3 years;

ii. Direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding 3 years;

iii. Order the juvenile to pay a fine if over 14 years of age and earning money; or

\(^2\) Section 2 (e)
\(^2\) Section 10
\(^2\) Section 33
iv. Order the juvenile to be released on probation of good conduct and placed under the supervision of a probation officer for any period not exceeding 3 years.

If none of the above alternative were found suitable the juvenile may be sent to a special home established or recognized within the State.

One of the objectives of the 1986 Act was to lay down a uniform framework to ensure that no child is lodged in jail or police lock-up. In spite of this mandate, there have been several instances where children have been taken overnight for interrogation by the police and tortured severely. As the concerned magistrate does not insist on age verification, the juvenile delinquent may also be sent to adult lock-ups and treated like adult offenders. If later any of his parents or guardians manages to produce the evidence of age, he is released; otherwise he will be dealt with by the ordinary penal system.

The juvenile courts were also under the clutches of ‘arrest’, ‘charge sheet’, ‘bail’, ‘bail bond’, ‘public prosecutor’ etc. Though they were called special courts, assigned with an esteemed duty of re-moulding a delinquent child, the personnel in these courts are not aware of the specialized approach which they are bound to follow. The atmosphere in the juvenile court is generally very intimidating. The judges sit in front of the table and the child stands like an ‘accused’ in front of them. The adult criminal justice system, terminology, functioning style and attitudes are prevalent in practice. Other days when juvenile courts are not sitting, the juveniles may be taken to the ordinary courts for remand.

The lack of clear laws, rules and standards articulating how the court process is supposed to work has also contributed to the problem.

As the caseload is so high, the judge cannot make an individual assessment on the basis of best interest principle.

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A child in extremely difficult circumstances, who is already a victim of his circumstances when he comes in conflict with the prevalent system, is subjected to secondary, in fact multiple, victimization. It is quite interesting to note the debate on Children Bill, 1959 on the discussion of the term ‘delinquent juvenile’\textsuperscript{25} The use of both the terms ‘neglected’ and ‘delinquent’ was objected to during the debate as it means that ‘you have bracketed them with the prisoners.’ Though the use of the terminology remained in the Act, the concept behind the suggestion that the stigma of offenders for all the time may remain, ought to have been considered.

It was meant that a juvenile court under Section 5 should differ from other courts in its philosophy, objectives and functioning.\textsuperscript{26} With the concept of *parens patriae*, it is for providing protection like parents to the child found deviating from the norms legally accepted in the society; *i.e.*, the juvenile court was meant to provide a family like environment to the delinquent children for their future well-being. A lawyer, in principle, was considered unnecessary in a juvenile court as the proceedings before it were not considered as adversarial.

The Special Homes established under Section 10 of the 1986 Act was meant for providing reformation to delinquent juveniles admitted therein. A juvenile delinquent ought to be sent to a special home only when no other measure is found suitable\textsuperscript{27} and therefore it should be remembered and treated likewise that such a children sent to the special home is a person who could not have a suitable place for reformation and rehabilitation.

Moral education, counselling, group interaction and responsibility building may be sufficient for reformation of a delinquent juvenile who is not suffering from serious behavioural disorders. But medical and psychological assistance is necessary for drug addicts, violent and mentally ill juveniles. An individualised training programme for reformation may be evolved to meet the varied needs of

\begin{itemize}
\item \textsuperscript{25} Lok Sabha Debates, 28-4-1960
\item \textsuperscript{26} Ved Kumar, *Treatise on The Juvenile Justice Act*, 1986, Indian Law Institute, 1993 at p. 50
\item \textsuperscript{27} Rule 19, Beijing Rules; Article 37 of the Convention on Rights of the Child, 1989
\end{itemize}
each juvenile. The requirements of each juvenile may be ascertained through interview, social information and observation of the juvenile.\(^\text{28}\)

Any programme carried out in a home alone may not automatically result in the rehabilitation of a juvenile. A careful after-care facility is necessary for protecting the delinquent child from the environment of custody, all kinds of doubts, hesitations and handicaps and to enable him to enjoy resettlement and rehabilitation and thereby to attain the goals of ideal citizenship. But the following problems could have enumerated against the proper results of after-care institutions.\(^\text{29}\)

1. lack of finances
2. lack of employment opportunities
3. unwillingness and indifference of juveniles towards rehabilitation efforts
4. sub-standard training in trades
5. trades not oriented towards job-market
6. stigma of institutionalisation
7. apathy and unawareness of society towards the after-care training programme
8. non-cooperation of parents in the after-care plans
9. fewer number of after-care homes and organisations than required for finding a temporary shelter to all the juveniles discharged in need of one
10. a little interaction between the juveniles and after-care workers

\(^{28}\) In the observation homes where the under trial juveniles are temporarily received also, the same treatment should be made available.

11. heavy case load on the after-care workers

12. lack of governmental assistance in providing job opportunities to such trained juveniles leave the premises

13. refusal of ex-inmates to leave the premises

14. absence of evaluation of the work done by after-care organisations

15. the suspicious attitude of the society towards juveniles released from such homes

The failure of JJ Act 1986 in achieving the goals set out by the draftsmen and the subsequent developments in the international sphere and governmental policies and moreover the obligation of the Government of India being acceded to the Convention on the Rights of the Child 1989 led to the Juvenile Justice (Care and Protection of Children) Act 2000.

The 2000 Act abandoned the term juvenile delinquent in place of which it inserted the term ‘juvenile in conflict with law’ and provided special provisions to deal with the ‘juvenile in conflict with law’.

**Juvenile Justice Board**

The Act provides for the establishment of Juvenile Justice Boards\(^{30}\) to exercise powers in relation to juveniles in conflict with law. This is by replacing the existing juvenile courts.

**Observation Homes**

The State Government may also establish and maintain either by itself or under agreement with voluntary organisations, observation homes for the temporary reception of any juvenile in conflict with law during the pendency of

\(^{30}\) Section 4 and Section 6
any enquiry under the Act. If the State Government is of the opinion that any institution other than a home established or maintained under an agreement with voluntary organisations, is fit for the purpose, the same also may be certified as an observation home.\textsuperscript{31}

\textbf{Special Homes}

The Act provides for the establishment of special homes in every district or a group of districts.\textsuperscript{32}

\textbf{A Study on the Homes established under the Act with respect to the State of Kerala}

\textbf{Observation Homes of Kerala}

Fourteen Government Observation Homes are functioning in Kerala; [Mayithare (Alappuzha), Thiruvanchoor (Kottayam), Kakkanad (Ernakulam), Ramavarmapuram (Thrissur), Mancheri (Malappuram), Thalassery (Kannur), Vellimadukunnu [Boys] (Kozhikode), Vellimadukunnu [Girls] (Kozhikode), Kalanad (Kasargode), Muttikkulangara (Palakkad), Poojappura (Thiruvananthapuram), Kaniyampatta (Wayanad), Beach Road (Kollam)]. Among these the observation home at Vellimadukunnu, Kozhikode is the only observation home for girls and in other districts, Mahila Mandir of the Government shall function as observation homes for girls.\textsuperscript{33}

Despite the fact that the time limit for the completion of inquiry by the Board is fixed as four months\textsuperscript{34}, there are instances wherein the juveniles remain in observation homes for more than four months and in some cases it runs into years. It is told by the authorities that this is largely due to the unwillingness of the

\textsuperscript{31} Section 8 (2)
\textsuperscript{32} Section 9
\textsuperscript{33} Kerala Rule 14(a)(1)
\textsuperscript{34} S.14
parents to take juveniles with them. They often deny the responsibility towards the child which may lead him to commit further offences thereby ending up their lives in jails. Counselling to parents and juveniles at the stage of admission to Observation Homes is a must, of which the Act is silent.

It is miserable to note that the majority of the juveniles in conflict with law hails from broken families. Many Criminologists have established the connection of delinquency with undesirable home conditions of the delinquents. Show and Mc Kay (1932), Wecks and Smith (1939), Carr Saunders (1944), Sliceck and Gluede (1950), Nyne (1958), Browning (1960), Hardist (1965), Tennyson (1967) and Rosen (1968) are the distinguished criminologists who have investigated the relationship of broken homes, disorganized and unhappy families etc to delinquencies and tried to establish a sort of causal nexus between the two.\(^{35}\)

Juvenile in conflict with law is placed in Observation Home till he is released. Since Observation Homes are meant for the temporary reception of juveniles, the prolonged detention of juveniles in these institutions is not sensible as the facilities provided is limited to reading and watching television.

The Supreme Court in *Sheela Barse v. Secretary, Children’s Aid Society*\(^{36}\) held that children should not be made to stay in the Observation Homes for too long and as long as they were there, they should be kept occupied.

Section 3 of the Juvenile Justice(Care and Protection) Act states that during the course of an inquiry the juvenile or the child ceases to be so, the inquiry may be continued and orders may be made as if such person had continued to be a juvenile. By the application of ‘deeming fiction’, when persons above 18 years are detained in Observation Homes, the authorities face difficulty in handling them along with juveniles who are below 18 years. Often they subdue the staffs and escape from these Homes. Two of such instances were reported in

\(^{35}\) James Vadakkuncheri, *The police and delinquency in India*, at p.35.

\(^{36}\) AIR 1989 SC 1278
Observation Home at Kollam and one at Vellimadukunnu (girls) in the year 2004-2005.37

**Special Homes of Kerala**

Section 9 of the Act provides for the establishment and maintenance of Special Homes for the reception and rehabilitation of juvenile in conflict with law. Kerala Rules (15) provides for education inside and outside the detention homes and whenever possible it shall be in community schools. Vocational training under the guidance of trained instructors is also guaranteed.

Two Special Homes have been established in Kerala viz;

- Poojappura, Thiruvananthapuram for boys and
- Vellimadukunnu, Kozhikode for girls.

At Poojappura, presently there are four inmates all of them undergoing detention for two years each. At Vellimadukunnu, there are no inmates for the past few years.

**Children’s Homes in Kerala**

The Directorate of Social Welfare is empowered to admit the children in need of care and protection to the superintendents of the respective Children’s Home, even in the absence of functioning of Child Welfare Committee. The circular dated 26/07/2002 also requires the superintendents of the Observation Homes to admit those children if there is no children’s homes in that district. As per the information the children who are brought by the parents owing to poor financial capability and street children constitute the bulk of inmates of Children’s Homes.

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37 Information obtained directly while visiting these homes as a part of collecting research information.
Children’s Home is established for the care and protection of children during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation. Once a new child is brought to Home, he/she shall be given with a brief orientation to remove any inhibition from the mind of the child. The officer in charge of the Children’s Home shall see that the personal belongings of every child received by him is kept in safe custody and recorded in the Personal Belonging Register and it shall be returned to the child when he is released from the Home. In the entire Children’s Homes, Balasabhas are constituted and are functioning well. Suhrit Samitis also play a leading role in giving support to these institutions.\(^{38}\)

The Act stipulates the number of caretakers in each institution as 10 (one for each 10 inmates). However in Children’s Homes at Vellimadukunnu, Kozhikode (sole Children’s Home for girls), having a strength of 268 inmates against the capacity of 200, have only 4 caretakers out of sanctioned 7, making the ratio of 67:1 as against required ratio of 10:1.\(^{39}\) The caretakers are often appointed through employment exchanges for a period of six months who lack the necessary training as stipulated under Rule 65.

**Vocational Training given in Children’s Homes\(^{40}\)**

- Weaving units
- Carpentry
- Tailoring, embroidery units
- Book binding
- Auto repairing
- Agricultural instruction

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\(^{38}\) Primary information obtained from the superintendents of the Homes.

\(^{39}\) Data collected directly from various Children’s Homes.

\(^{40}\) Rule 29
Educational Training

In all government children’s homes of the state of Kerala, Certified U.P. Schools are functioning where education is imparted up to 7th standard. Lack of teachers is one of the major problems faced by these institutions. The children are sent to community schools from 8th standard onwards. Apart from this the children who perform commendably well in their academic field are sent to Residential Schools with the financial support from the government. In the year 2007, it is reported that almost 50 children are undergoing education in various Residential Schools from Kozhikode Children’s Home for girls; about 15 each from Thiruvananthapuram and Kottayam; 25 from Kozhikode (Boys); 23 each from Kollam and Thrissur.  

Nature of Protection Given to Child in Conflict with law under the 2000 Act

i. No juvenile in conflict with law shall be sentenced to death or life imprisonment, or committed to prison in default of payment of fine or in default of furnishing security.

ii. Proceedings under Chapter VIII of the Code of Criminal Procedure is made not competent against the juvenile.

iii. No juvenile shall be charged with or tried for any offence together with a person who is not a juvenile.

iv. The disqualification attaching to conviction is removed.

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41 Data obtained on visiting these Homes
42 Section 16(1); but there is an exception that if the juvenile who has attained the age of 16 has committed an offence and the Board is satisfied that none of the measure in the Act is sufficient or suitable as
   i. the offence committed is of so serious in nature or
   ii. his conduct and behaviour have been such that it would not be in his interest or in the interest of other juveniles in a special home to send him to such special home
43 Section 17; Chapter VIII of the Code of Criminal Procedure 1973
44 Section 18; Section 223 of the Cr.P.C
45 Section 19
v. Protection in pending cases: In the matter of pending criminal proceedings, it shall be continued in the same court where it was instituted, as if the 2000 Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding; but instead of passing any sentence in respect of the juvenile, the juvenile shall be forwarded to the Board which shall pass orders in accordance with the 2000 Act as if it had been satisfied on inquiry under the 2000 Act that the juvenile has committed the offence.\textsuperscript{46}

vi. Publication of reports in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law under the Act is prohibited in so far as it discloses the name, address or school or any other particulars calculated to lead to the identification of the juvenile. The publication of any picture of such juvenile is also prohibited.\textsuperscript{47}

vii. Cruelty to juvenile\textsuperscript{48}, employment of juvenile for begging\textsuperscript{49}, giving intoxicating liquor or narcotic drugs or psychotropic substance to juvenile\textsuperscript{50}, exploitation of juvenile employee\textsuperscript{51} are made cognizable offences.\textsuperscript{52}

viii. The juvenile offender, under going imprisonment at the commencement of the Act, shall, in lieu of undergoing such sentence, be sent to a special home or be kept in a fit institution for the remainder of the period of the sentence and the provisions of the Act

\textsuperscript{46} Section 20
\textsuperscript{47} Section 21; The proviso says that for reasons to be recorded in writing the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile.
\textsuperscript{48} Section 23
\textsuperscript{49} Section 24
\textsuperscript{50} Section 25
\textsuperscript{51} Section 26
\textsuperscript{52} Section 27
shall be applied as if he had been ordered by the Board to be sent to such special home or institution.\textsuperscript{53}

Though the 2000 Act provides provisions for a fair treatment towards juvenile delinquents, viz., children in conflict with law, there are a number of drawbacks regarding the Act. At the very outset itself, the Act fails to lay down the age of innocence, \textit{i.e.}, the minimum age below which the Act would not be applicable. It is claimed by the framers that the Act is intended to provide a treatment free from procedures and technicalities to the juvenile delinquents; the Act still retains a high degree of dependence on adult criminal justice agencies and procedures.

Again, it is quite obvious that the Act has not taken into account the orders and directions of the Supreme Court and the various High Courts on the issues relating to juvenile justice. The Act, fails to provide for procedural guarantees including the right to counsel and right to speedy trial.

Section 16 also leaves certain doubts. It provides for separation of a juvenile who has attained the age of 16 and has committed a serious offence. But this will not result in solitary confinement, which violates the basic human rights of a child as a human being.

Even the provisions of the Juvenile Justice Act, 1986 were not complied with by many states. Therefore a mandatory time frame should be set up for the better compliance with the provisions of the Act.

\textbf{Special Juvenile Police Unit}

In the history of police force, the juvenile aid bureaus of 1930s instituted by August Vollmer may be the first organised special police service for juvenile offenders.\textsuperscript{54}

Under the 2000 Act also, realising the need for specially trained officers, it is provided to establish a ‘special juvenile police unit’.\textsuperscript{55}

\textsuperscript{53} Section 64

\textsuperscript{54} Joseph G. Weis, Robert D. Crutchfield, George S. Bridge, \textit{Juvenile Delinquency}, 2nd Edn., 2000 at p.478
Judicial Response towards Juvenile Justice

The judiciary is always keen about the lawless attitude of the society as well as the executive towards juvenile offenders. The Supreme Court ordered the release of juvenile undertrial prisoners taking notice of the news reports, brought before the Court in public interest litigation.\textsuperscript{56} The apex judiciary called upon the magistrates and trial judges to specify the age of the person ordered to be detained. The judgement also emphasized that the jail authorities shall not accept the fact of age of the juvenile as a valid one unless the age of the detainee is specifically shown in the documents supporting detention. The warrant may be returned to the issuing court for rectifying the defect.

In \textit{Jayendra v. State of U.P.},\textsuperscript{57} the order of the High Court sending a child found to have committed an offence punishable with imprisonment, to jail was challenged before the Supreme Court. The Supreme Court called for a report from the doctor in charge of the jail hospital as regards the age wherein the age of the convict based on various tests was found to be about 23 years at the time of the report in 1981. that would mean that in 1974, at the time of offence, he was about 16 years and 4 months old. It was held that in the normal course, the court would have sent the convict to an approved school. Therefore, though the conviction was upheld, the sentence of imprisonment was quashed; and the immediate release of the convict was ordered.

In \textit{Munna v. State of U.P.},\textsuperscript{58} the Supreme Court was actually shocked on the reports of sexual abuse of child offenders in Kanpur Central Jail. The apex judiciary passed certain general directions regarding children in jails. The Supreme Court pointed out that if the allegations were true, it showed to what utter depths of depravity man can sink. The court declared that even if it was

\textsuperscript{55} section 63  
\textsuperscript{56} \textit{Sanjay Suri v. Delhi Administration}, AIR 1986 SC 414  
\textsuperscript{57} AIR 1982 SC 685  
\textsuperscript{58} AIR 1982 SC 806
found that the youths were guilty, they could not be maltreated. They do not shed their fundamental rights when they enter the jail.

Following the decision in *Jayendra v. State of U.P.*, in *Bhoop Ram v. State of U.P.*, also the Supreme Court held that it is the time of the commission of the offence that is material to determine the age of a person.

Another notable decision of the Supreme Court was rendered in *Sheela Barse v. Secretary, Children’s Aid Society* Here, the petitioner, a freelance journalist sent a letter to the Bombay High Court making certain allegations about the observation homes managed by the Children’s Aid Society. The letter was treated as a writ petition; the court held that children should not be made to stay in the observation homes for too long. The occupations offered to the child in such homes should be intended to bring about adaptability in life, self-confidence, and development of human values.

Again, the controversial issue regarding the determination of the age of the juvenile was discussed by the Supreme Court in *Raj Singh v. State of Haryana* where it was held that the trial of the delinquent juvenile in the Sessions Court would stand vitiated as at the time of occurrence of the offence, the accused was a juvenile. But this decision was overruled in *Armit Das v. State of Bihar*. In this case, R.C Lahoti, J. reminds that it is pertinent to note that neither the definition of juvenile, nor any other provision contained in the Act specifically provides the date by reference to which the age of a boy or a girl has to be determined so as to find out whether he or she is a juvenile or not. It was held:

59 AIR 1987 SC 1329
60 AIR 1989 SC 1278
61 2000 (6) SCC 759
62 AIR 2000 SC 2264; See, Bhola Bhagat v. State of Bihar with Prabhu Nath Prasad & Ors., (1997) 8 SCC 720 at p. 729 “... Since the plea had been raised in the High Court and because the correctness of the estimate of their age has not been assailed, it would be fair to assume that on the date of the offence, each one of the appellants squarely fall within the definition of the expression of ‘child’”
63 *Id.*, p. 2267
“…… The Juvenile Justice Act provides for justice after the onset of delinquency. The societal factors leading to birth of delinquency and the preventive measures which would check juvenile delinquency legitimately fall within the scope of social justice. Once a boy or a girl has assumed delinquency, his or her treatment and trial at the hands of justice delivery system is taken care of by the provisions of the Juvenile Justice Act. …. The Act aims at laying down a uniform juvenile justice system in the country avoiding lodging in jail or police lock-up of child; and providing for prevention and treatment of juvenile delinquency, for care, protection, etc. post-juvenility. In short the field sought to be covered by the Act is not the one, which had led to juvenile delinquency but the field when juvenile having committed a delinquency is placed for being care of post delinquency. ….. We are, therefore, clearly of the opinion that the procedure prescribed by the provisions of the Act has to be adopted only when the competent authority finds the person brought before it or appearing before it is found to be under 16 years of age if a boy and under 18 years if a girl on the date of being so brought or such appearance first before the competent authority. The date of commission of offence is irrelevant for finding out whether the person is a juvenile within the meaning of clause (h) of section 2 of the Act. If that would have been the intendment of the Parliament, nothing had prevented it from saying so specifically….. so far as the present context is concerned we are clear in our mind that the crucial date for determining the question whether a person is juvenile is the date when he is brought before the competent authority.”

The issue regarding the determination of age was considered by the court; viz., by reference to which date, the age of the petitioners is required to be

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64 Id., pp. 2269, 2271.
determined for finding out whether he is a juvenile or not? Is it the date of offence or the date on which the person is brought before the competent authority? And so far as the present context was concerned, it was held that the crucial date for determining the question is the date when he is brought before the competent authority. The apex court in several occasions has identified the problem that many children happened to be lodged in adult jails because they had no evidence to prove their age; and it is recommended that the benefit of doubt should always be in favour of the child.

In Raj Singh v. State of Haryana,65 for a charge under section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985, at the date of committal the juvenile was less than 16 years of age. He was sentenced to undergo imprisonment. But the Supreme Court held that section 2 (e) of the Juvenile Justice Act, 1986 defines that a juvenile who has been found to have committed an offence is a delinquent juvenile and thus the entire trial was quashed.66

In Bhola Bhagat v. State of Bihar67 also the issue was the age of the accused, where it was held that in case the court entertains any doubt about the correctness of the plea it must make due enquiry by giving opportunity to the parties to established their claims and record a positive finding regarding age of the accused.

The Supreme Court has made it clear in another case68 that if it is proved that on the date of occurrence, the appellants had not completed 16 years of age, they could be treated as juveniles. But in State of Haryana v. Balwant Singh,69 the Supreme Court had warned the unnecessary judicial enthusiasm to bring the delinquents under the juvenile justice system. It was held: “When it is not the case of the respondent that he was a child both before the committal court as well as

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65 (2000) 6 SCC 759 (per S Rajendra Babu & Syed Shah Mohammed Quadri, JJ)
66 In Raghbir v. State of Haryana (1981) SC 2037 also a three judge Bench consisting of Chinnappa Reddy, A.P Sen and Baharul Islam, JJ quashed the entire trial which led to life imprisonment of a juvenile accuse who was under 16 years of age at the time of commission of the offence.
67 (1997) 8 SCC 720
69 1993 Supp. (1) SCC 409
before the trial court, it is very surprising that the High Court, based merely on the entry made in section 313 statement mentioning the age of the respondent as 17 has concluded that the respondent was a ‘child’ …. on the date of occurrence.”  

In *Santenn Mitra v. State of West Bengal*, also the Supreme Court extended its most favorable attitude towards the appellant who raised the plea that he was a child on the date of the commission of the offence.

The idea of making juvenile justice system free from procedural formalities does not mean that the basic principles of fairness can be undermined under the pre-text of non-observance of technicalities or formalities. The U.S decisions in this regard also deserve mention. The decision in *Gault, In re* established that juvenile court procedures must include the most basic procedural rights and evidentiary rules. Here, the juvenile offender of 15 years age was committed to state industrial school till his 18th birthday, whereas the punishment to an adult for the same offence was 50 $ fine and 2 months’ imprisonment. In this appeal, it was argued that the Arizona Juvenile Code was unconstitutional on its face because it gives the judge almost unlimited discretion to take juveniles from their parents and commit them to an institution without notice of the charge, the right to counsel, the right to confront and cross-examine witnesses, the right to have transparency of the proceedings, or the right to an appeal. Arizona argued that because the main purpose of juvenile proceedings it to protect juvenile defendants from the full rigour and consequence of the Criminal Law, informal procedures are required. In Arizona’s view, Gault’s commitment to a state institution was protective rather than punitive. The court held that the due process clause of the 14th Amendment requires that juvenile defendants are at least entitled to notice of the charges, right to counsel, right to confrontation and cross-examination of witness, the privilege against self-incrimination, a transcript of the

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70 Id., p. 410
71 (1998) 5 SCC 697
72 Decided by U.S Supreme Court, May 15, 1967,
73 The Due Process clause of the 14 Amendment provides : …..
proceedings and appellate review. The guarantees would not unduly interfere with any of the benefits of less formal procedure for juveniles.

In a discussion on preventive detention of juveniles, the U.S Supreme Court again pointed out the application of due process clause. New York State had enacted a Family Court Act pertaining to juvenile delinquents and juveniles arrested and remanded to the Family Court prior to trial. If the Family Court determined that pretrial release of juveniles might result in their disappearance or place them in general public at risk, it was authorized to detain the juveniles in question. In Schall’s case, detention occurred only after notice was given to parents and other authorities, a hearing was held, a statement of facts and reasons was presented and the probable cause that release might be harmful was on the ground that the detention of the juveniles deprived them of a writ of habeas corpus and violated the due process clause of the 14th Amendment. Justice William Rehnquist acknowledged that the due process clause of the 14th Amendment was indeed applicable to the pre-trial detention of juveniles. He, however, agreed that when there was “serious risk” involved to both the juveniles and the public by their release, the New York law was compatible with the fundamental fairness demanded by the due process clause.

**International Community Asserts the Need for a Juvenile Justice System**

The legal framework for juvenile justice shall be based on the basic principles incorporated in International Law, which can mainly be identified as follows:

i. The well-being of the children in the administration of justice need to be maintained;\(^75\)

ii. The fixing of criminal responsibility shall be made at an age at which the children are able to understand the consequences of their acts;\(^76\)

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\(^75\) Beijing Rules, Convention on Rights of the Child

\(^76\) Article 40 (3) (b), Convention on Rights of the Child, Rule 4, Beijing Rules
iii. The juvenile shall not be posed to the formal adult trial procedures.\textsuperscript{77}

iv. The adjudicatory measures shall be as speedy as possible;\textsuperscript{78}

v. The arrest, detention or imprisonment should only be imposed on children as a measure of last resort;\textsuperscript{79}

vi. The rights of children prior to the determination of charges include the duty to inform parents or guardians and all children should be presumed innocent until proven guilty according to law.\textsuperscript{80}

vii. The principles of natural justice are equally applicable to children also

viii. The children should be provided with alternatives to institutional care.\textsuperscript{81}

ix. Early protection and preventive intervention paying particular attention in situations of social risk deserves more attention.\textsuperscript{82}

x. The prevention of juvenile delinquency should utilize both the child’s family and the school.\textsuperscript{83}

xi. The delinquent child shall be socialized and socially integrated through the family and through the active involvement of the society.

xii. The schools shall be used as resource and referral centres for the provision of counselling, particularly for the dissemination of information on the prevention of drug, alcohol, abuses etc.\textsuperscript{84}

\textsuperscript{77} Rule 11.1, Beijing Rules; Art. 40 (3) (b) UNCRC
\textsuperscript{78} Art 10 (2) (b), ICCPR; Rule 20, Beijing Rules
\textsuperscript{79} Rule 30, Rules for the Protection of Juvenile Deprived of their Liberty; See also, UN Standard Minimum Rules for Non-Custodial Measure; Tokyo Rules, 1990
\textsuperscript{80} ICCPR
\textsuperscript{81} Art. 40 (4) UNCRC
\textsuperscript{82} Children at ‘social risk’ denotes children who are demonstrably endangered; See UN Guidelines for the Prevention of Juvenile Delinquency, 1991 (Riyadh Guidelines)
\textsuperscript{83} Ibid
\textsuperscript{84} Ibid
Need for Reform

The children in conflict with law are also persons entitled to have a decent life, which is a human right envisaged by several International Declarations and Conventions. The ideal step to reform the conflicting children is to formulate an effective policy for administration of juvenile justice and implement the same.85 Again, for the attainment of all the child-rights, the significance of family stands in the first place.86 The primary goal of a juvenile justice system can be attained only by preserving the families. Hence the government should formulate legal measures for the protection of individual family units. The intervention shall be limited and to the maximum extent possible, the delinquent juvenile should have the opportunity to be in a peaceful and caring family atmosphere. The separation of the conflicting child from his parents shall be taken place only when it is necessary for his welfare or in the interests of public safety.87

The involvement of the community shall also be made available on an increased level to provide more shelter, foster care and services for street children.

The family and child welfare legislations must attempt to resolve the family problems so as to serve the best interests of children. The statutory

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84 Guidelines 25, 26, Riyadh Guidelines 1991
85 The difficulty in planning criminal justice and the problems of making a criminal justice policy even for the general public is depicted by Joshua Rozenberg. See, Joshua Rozenberg, The Search for Justice; An Anatomy of the Law, Hodder & Stoughton, 1994 at p.275
86 The recognition of this significance is reflected in the UN Declaration of 1994 as the International Year of the family.
87 See the Community Juvenile Services Act of State of Oregon, United States, the objectives of which are described as follows:
i. The family unit shall be preserved;
ii. Intervention shall be limited to those actions which are necessary and utilize the least restrictive and most effective and appropriate resources;
iii. The family shall be encouraged to participate actively in whatever treatment is afforded to a child;
iv. Treatment in the community rather than commitment to a state Juvenile Training School shall be provided whenever possible;
v. Community shall be encouraged and assisted in the development of alternatives to secure temporary shelter for children who are not eligible for secure detention.
framework should also provide measures to improve parenting skill including their financial stability to maintain children.

The juvenile court system also needs to be reformulated. Though the 2000 Act has replaced the present juvenile courts by Juvenile Justice Boards, no such Board has started functioning. The proposed Boards have to be revitalized with the deeper understanding of the psychological and social forces including the differential associations,\(^8\) which bring children before the juvenile justice system. The Board, which is to handle the conflicting child, should be flexible enough to respond towards his developmental needs in the light of new discoveries in social science researches.

The intervention of the Board should have educational, health wise and psychological phases. The Board should be equipped with highly trained personnel in all such fields. These officials should be trained to recognize the educational, social and treatment needs of children. The Juvenile Justice Board shall be an inter-disciplinary body with a variety of professionals like lawyers, medical men, psychiatrists, psychologists etc.

The propositions towards speedy disposal of cases shall be with a motive to ensure that the developmental needs of the child are addressed and the child continues to live in his growth and development.

The basic human rights of the child must be protected, including notice of charges, right to counsel, right to confrontation and cross-examination, privilege against self-incrimination, right to transcript of proceedings, right to appellate review.

The practice of ‘plea-bargaining’ shall be strictly scrutinised. The child brought before the court is usually asked to choose between going to a trial and pleading guilty. The child’s response to plea bargaining may be influenced by various factors like compulsion of police/ authorities of the institution where he is detained, lack of understanding,……. So the plea-bargaining shall not be

\(^8\) See, the theory of differential association.
exercised without the presence of a representative of the child who is found fit to protect the best interests of the child.

The institutions dealing with the conflicting child should be guided by set standards and the Boards should be able to supervise the services provided to the child therein.