

**Juvenile Criminality in India : A Critical Analysis of
Juvenile Justice and Abuse of Justice**

**A DISSERTATION TO BE SUBMITTED IN PARTIAL
FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF
DEGREE OF MASTER OF LAWS**

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SESSION 2022-23

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I wish her success in life.

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ABBREVIATIONS

CAD	CONSTITUENT ASSEMBLY DEBATES
CA 60	CHILDREN'S ACT, 1960
CJM	CHIEF JUDICIAL MAGISTRATE
CMM	CHIEF METROPOLITAN MAGISTRATE
CPCR	COMMISSION FOR PROTECTION OF CHILD RIGHTS
CRC	COMMITTEE ON THE RIGHTS OF THE CHILD
CRPC	CODE OF CRIMINAL PROCEDURE
CWPO	CHILD WELFARE POLICE OFFICER
HAMA	HINDU ADOPTIONS AND MAINTENANCE ACT
ICDS	INTEGRATED CHILD DEVELOPMENT SERVICES
ICCPR	INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
IPC	INDIAN PENAL CODE
JJA	JUVENILE JUSTICE ACT
JJ (C&P)	JUVENILE JUSTICE (CARE AND PROTECTION)
JJB	JUVENILE JUSTICE BOARD
NCRB	NATIONAL CRIME RECORD BUREAU

NDPSA	NARCOTICS, DRUGS, AND PSYCHOTROPIC SUBSTANCES ACT
NAI	NATIONAL ARCHIVES OF INDIA
NCPCR	NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS
NGO	NON GOVERNMENTAL ORGANIZATION
NHRC	NATIONAL HUMAN RIGHTS COMMISSION
NISD	NATIONAL INSTITUTE OF SELF DEFENSE
NIPCCD	NATIONAL INSTITUTE OF PUBLIC CO-OPERATION AND CHILD DEVELOPMENT
POTA	PREVENTION OF TERRORISM ACT
PSC	PARLIAMENTARY STANDING COMMITTEE
SJPU	SPECIAL JUVENILE POLICE UNIT
TADA	TERRORIST AND DISRUPTIVE ACTIVITIES ACT
UN	UNITED NATIONS
UNCRC	UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD
UNICEF	UNITED NATIONS CHILDREN'S FUND

LIST OF CASES

A

Anjali v. State of West Bengal, AIR 1952 SC 825

Antaryami Patra v. State, 1993 Cri LJ 1908 (Ori)

Arnit Das AIR 2000 SC 2261

B

Bachpan Bachao Andolan Writ Petition (C) No. 51 of 2006

C

Court on its Own Motion v. Govt of NCT of Delhi, Writ Petition (CRL) 249/2009

G

Graham v. Florida 560 U.S. (2010)

I

In re Session Judge, Kalpetta, 1995 Cri LJ 330 (ker)

J

Jagdish Bhuyan v. State, 1992 Cri LJ 3194 (Assam)

K

Krishna Bhagwan v. State of Bihar AIR 1989 Patna 217

M

Miler v. Albama No. 10 9647

Maneka Gandhi v. Union of India 1978 AIR 597, 1978 SCR (2) 621

P

Pratap Singh (2005) 3 SCC 551

R

Roper v. Simmons 543 US 551 (2005)

S

Save the Childhood Foundation, Writ Petition (Cri) No. 2069/2005

Sampurna Behrua Writ Petition (civil) No. 473 of 2005

Salil Bali v. Union Of India and another, Writ Petition (c) 10 of 2013

Sheela Barse v. Union of India AIR 1986 SC 1773

Sk.Sajid @ Sk.Sagir @ Pancha v. State of West Bengal, C.R.A/718/2014

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CHAPTER 1
INTRODUCTION

INTRODUCTION

The word “juvenile” originates from juvenis, (in Latin) i.e young. The main object of juvenile justice is to protect all children including those who are in conflict with law and bring them within its domain. However, the word „conflict with law“ and delinquency is often interchangeable or can be used together which describes the children who are involved with the judicial system as a result of committing or being suspected of a crime. There has always been a clash between the protective approaches of juvenile justice and the traditional approach of criminal justice system which has a created a major problem in front of our juvenile justice system. Despite our Constitution has guaranteed various civil rights and child centric services, still an innumerable Indian children, face discrimination and deprivation on many grounds.

According to National Crime Record Bureau “a total of 60,539 juveniles were apprehended and produced before various juveniles boards during 2014.

And “the ratio of girls to boys apprehended for committing under special and local law (SLL) crimes during 2014 was about 5:95, whereas ratio during 2013 was nearly 9:91 which shows decline in number of female juveniles apprehended. In special and local law (SLL) crimes, maximum juveniles apprehended belong to age group 12 yrs. - below 16 years (11,220) whereas maximum girls apprehended were in age group 16 yrs. to below 18 years (451) under special and local law (SLL) crimes. Over 48,230 juveniles across whole India are mostly nearby the age group of 16 to 18, who have been prosecuted for serious crimes like sexual abuse and homicide in 2014”.

Now days approach towards the delinquents have changed, instead of treating them as bad individual either they are considered as a mentally diseased person or have been victimized by certain circumstances around them. In the earliest period small children were seriously punished for committing even petty crime. But in modern time psychologists proceeded to draw the awareness in the civilized world the causes of juvenile delinquency, the custom of punishing

children over by the time and to be replaced through rehabilitating them. Currently these days in every nation make efforts are made to redress the juvenile delinquent rather than punish him.

Abraham Lincoln said: “A child is a person who is going to carry on what you have started. He is going to sit where you are sitting, and when you are gone, attend to those things you think are important. You may adopt all the policies you please, but how they are carried out depends on him.

He is going to move in and take over your churches, schools, universities and corporations.

The fate of humanity is in his hands.

Problem of Juvenile delinquency is not new and it is prevailing in every society and nation. When social relations are affected leading to serious arguments between a groups of individuals give rise to the problem of juvenile delinquency. The issue of juvenile delinquency and neglect is comparably low in developing countries like India but it is increasing with the passage of time as per the National crime record bureau report 2014. The percentage of juveniles involved in crimes to the total crimes reported in the country has also increased in last four years is also a worrying factor for the nation.

Various theories and studies have shown and come to a conclusion that most of the factors which are responsible for delinquency and neglect are common and interrelated. Broken families, financial instability, physical or sexual abuse, family isolation, broken homes, deficient educational system, unhealthy environmental conditions, racial discrimination and various such other reasons are responsible for the problem of juvenile delinquency. The negligence of children shown by their parents, family and society have negative effects not only on their mental and social growth but it also effects their overall development. Even “UN Standard Minimum Rules for the Administration of Juvenile Justice, also known as Beijing Rules, 1985 and UN Convention on the Rights of Child, 1989, are based on global consensus and has articulated that special attention should be drawn towards the children who are in conflict with law”. In the above context, this research highlighted and focused on the growth and development of Juvenile Justice System in India, via various legislative and constitutional provisions.

Who is Juvenile

According to The Juvenile Justice (Care and Protection of Children) Act, 2015 under Section 2 (35), “A child who is below the age of 18 years”. It can be defined as a child who has not attained a certain age at which he should be treated like an adult under the law of the land and cannot be held legally answerable for his criminal acts. The juvenile is a child who is alleged to have contravened some law of land which declares the act or omission of the child as an offence.

In legal terms juvenile and minor are used in different context. Juvenile is used in reference made to a young criminal offenders and minor means legal capacity or majority.

What is Juvenile Delinquency

Delinquency is deviation in the behaviour of a child or the abnormal behavior of a child. Delinquent usually refers to a person who shows illegal behavior and has deviated from course of normal social life. Whenever a juvenile below an age defined under various standards exhibits such an illegal and antisocial behaviour which may be harmful to the society, may be called as a Juvenile delinquent. Juvenile delinquents are those who commit any offence and are under 18 years of age including both boys and girls. A Juvenile delinquent is a young person who is rebellious and non obedient.

Act of delinquency may include:

1. Absconding from residence without the parents’ permission.
2. Habitual misbehavior beyond control.
3. Use of bad languages
4. Wandering uselessly and Gambling
5. Indulging in Sexual offences
6. Shop-lifting/ Pick pocketing
7. Theft/stealing etc.

Juvenile can do such criminal acts alone or through a gang. There are few other factors which may lead them to be a delinquent. Some of the factors are listed below:

Dissatisfaction and Bunking At School

Some juvenile/students not dissatisfied with their school life. Lack of sports facilities in school, discrimination of the teachers towards them, irresponsible behaviour of parents toward them, unmanageable teachers students ratio are such examples. These disappointed students usually not come to school and become regular absentees from the classes and start wandering idly and become pick pockets, smokers and drug addicts, gamblers, eve teasers etc.

Films and pornographic literature –

Films, T.V and obscene literature generally provokes sexual and other impulses in teenagers. Hence they commit crimes while satisfying their desire and adventure.

Desire, Pressure and Temptation.

Juvenile get tempted and try to imitate the same on hearing the incidence of the illicit sex experiences or any other criminal experiences from others.

In accordance with psycho-analytical view, the delinquent “is a person who is governed by the pleasure principle. They wants to get immediate pleasure and satisfaction for his needs in short term. Thereby they become victim to his own impulses. Environmental factor also leads to delinquency”.

We have to accept that juvenile delinquency is a grave problem and it can't be sorted out by efforts and means of legislation and government alone. As much as India is concerned, Children Acts themselves have many shortcomings and neither have they been effectively enforced in many of the state"s due to which the government alone is not competently able to curb the problem of juvenile delinquency. Therefore the government as well as private agencies must work all together with all sincerity and seriousness to find out the reasons and the effective solution for the problem of juvenile delinquency which is increasing year by year in our society. And also the general behaviour of public towards these Juvenile delinquents should also be changed and people must treat them as normal children of any society.

Concept of Juvenile Justice System

Concept of juvenile justice system was emerged from a thought that the problems of juvenile delinquency and youth in abnormal situations are not amenable to resolution within the structure of the traditional processes of criminal law. The Juvenile Justice System is designed to respond to the needs of young persons who have been convicted for a crime and their rehabilitation with reforms. Main objective of the Juvenile Justice System is “to provide and preventive treatment services for children and young persons and then secondarily rehabilitation, and improved socialization”. During the Seventh United Nation Congress on prevention of Crime and the Treatment of Offenders, three approaches to juvenile justice were identified¹⁸, namely, firstly the due process model, secondly the welfare or parents partial model and last and third is the participatory model. The Juvenile Justice System is one of measure taken by the government to achieve the dream of the Constitution of India concerning to the welfare and care of children. The Constitution recognizes the special status to children through Articles 15(3), 21-A, 24, 39(e) and (f), and 45.

The treatment of offenders is recognized by three models of juvenile justice system on the basis of existing approaches to deal with juvenile delinquents;

- a) The due procedural model
- b) The social welfare model and
- c) The participatory process model

The approach of first model is based on “the notion of legality, role of the law and due process, the experienced/professional lawyers taking the main decisions”. The approach of second model is based on “concept of economic and social justice through State planning with administrators and professional from the „helping services“ taking the main decision”. The first two models are important for the proper development and protection of the juveniles. The approach of third and last model resolves the problem because juvenile justice can be more significantly take place at the international level, with more participation of general public in resolving of inconsistency at the narrow level with a minimum interference of the centralized power structure of the modern nation.

The third and last model exists still in the pre-industrialized nations and is also functional in the developing nations. Now hardly there is any nation in the world where juvenile justice system follows completely to one of these three models. The stability between all the three models has been achieved according to the culture and the phase of progress of a nation. Every nation juvenile justice system is related to the history and culture of that nation.

1.1 IMPORTANCE OF THE STUDY

In India juvenile delinquency is a huge problem and also to the world. There is the fact that “if today’s delinquent child not appropriately taken care then tomorrow he can be a hard-core criminal”. Criminal behavior or delinquency among the children can be controlled before they become serious danger to the society and nation. The data provided by various authorities/agencies from time to time show a rising trend in the incidents of crime by the juveniles. A thorough study needed based on various facts and causes leading to delinquencies also provide the answer to the problem of the delinquent child.

In India various acts passed by the parliament periodically for fulfilling the objectives to a substantial extent and still lot of work is required to be done in order to make juvenile justice system in India become a reality. For this purpose a number of questions arise in this system:-

- Are the authorities able to properly execute the law in favour of the juvenile delinquents?
- Are the existing laws sufficient in a way to tackle the problem of juvenile delinquency in India?
- Whether the society is responsible or not for the production of juvenile delinquent in India?
- Whether the reformative methods and rehabilitation institutions setup by the Government of India are sufficient to reform the criminal mind of the juvenile delinquent in India?

The different issues which have been raised in our minds over a period of time have been examined thoroughly in the light of judicial decision and statutory provisions.

1.2 OBJECTIVES OF THIS STUDY

- (a) To study the various laws related to Juvenile delinquency.
- (b) will study the significance of the Juvenile Justice System.
- (c) Will study the various offenses done by Juvenile delinquency.
- (d) will understand the care and protection needed by Juvenile delinquency.
- (e) To discuss the remedies for the Juvenile delinquent.

1.3 RESEARCH QUESTIONS

Research questions help to “narrow down the problem” to a “workable size” (Strauss and Corbin, 1998). The research questions for this study were:

- What is the profile and family background of the juvenile in conflict with law?
- What is the juvenile’s own understanding of an „offence“?
- What is the juvenile and family’s experience of the processes within the juvenile justice system?
- How do children view their current life situation, relationships and their future goals?
- What is the role played by different significant adults within the juvenile justice system?
- What is the perspective of the significant adults about the juvenile and the juvenile justice system?
- How do significant adults view rehabilitation of juvenile in conflict with law?
- What kind of rehabilitation measures can be possibly effective with juvenile in conflict with law?

1.4 RESEARCH HYPOTHESIS

- That juvenile criminality in India is constantly rising which is major cause of concern.
- That Juvenile Justice System in India is currently inefficient and is in need of major effective changes.

1.5 RESEARCH METHODOLOGY

Whereas the current study work of all the existing literature available in shape of reports, judgments, books, research papers, etc. has been consulted. An effort has been made to analysis the subject matter undertaken for study. The more stress has been given on the judgments/case law that has been decided by High Courts of different states and Supreme Court of India. In brief, Doctrinal approach has been adopted.

So here all aspect of the Juvenile Justice in India and Legislative Judicial Approach has been analysed to the possible extent.

1.6 REVIEW OF LITERATURE

In this section, some studies on the research area are presented to find out research gap to pursue this study. In terms of research, the greatest contribution to field of law has been made by the ecologists. The place, time and environment is closely associated with crime. A brief historical review is vital to a proper understanding of its modern manifestations. In this part of the research, an attempt has been made to review the selected literatures, which concentrate on different patterns and trends of Juvenile crime, studied by various sociologists and criminologists all over the world.

As early in 1977 Mitra, conducted a study of Juvenile delinquency. He found that, 50% of delinquents belonged to the age group 18-21 yrs. Most of the Juveniles came from families having income of lesser income. Economically backward people had no other option but to send their Children to odd jobs for earning their own livelihood. Generally 3650 persons of the Juvenile delinquents had no formal education. And 5808 Juveniles were new offenders. This research reveals that Children are usually compelled to commit offences due to subsistence³⁶.

A book on “Child and Adolescent social work Journal” done by Springer science and business media led by Chie Noyori-Corbett is published online. It contains around 25 pages wherein three significant problems of major delinquent behaviors in adolescents, substance abuse including alcohol, tobacco and violent behavior, are explored. Adolescents’ risk behaviors are considered to increase their chances of having problems in diverse phases of their life. Especially adolescents’ use of alcohol and other drugs have been discussed and it reviewed the prevalence of substance abuse in adolescents with several national samples.³⁷ The book has been authored by majority of sociologist and psychologist. The book is organized in ten chapters and the common causes and theoretical explanations for delinquent and violent behavior among youth and the last five chapters reviews various interventions and treatment strategies. The first chapter authored by Robert Googins provides an interesting history of troubled youth. The second chapter is authored by J,Mark Eddy and Lauries Swanson Gribkov provides an historical view of the theories and practice that had influenced the Juvenile Justice System. It provides an excellent background to understand the origin of Juvenile Justice and its influences to delinquent behavior. The factors that influence delinquency among youth such as family, peer, school and community are viewed. It largely provides a comprehensive overview of the history of the Juvenile Justice System and the current thinking. The next chapter has been authored by C.G.Leukfeld which speaks about the salient behavior problem frequently associated with drug and alcohol use. The next chapter penned by Robert D.Sege's Chapter is a brief summary of the history and research concerning adolescents and watching Television for hours together. It provides thoughtful insight and research findings to address these highly political and social concerns. The final Chapter defines adolescent behavior describing the epidemics and logical rates and outcomes of violence and introducing various treatments to address this problem.

A study on, Crime Victimization made by Thiru Chockalingam, has been referred. In his study a survey of the Major cities of Tamil Nadu like Chennai, Coimbatore, Madurai and Tiruchy were selected. Out of these cities he made a random study of around 1500 household samples. He noticed that the other cities are less urbanized than Chennai city. Chennai consists of higher class, higher middle class and middle class population. The other cities comprise mostly the middle class, and the lower class. He says that there is a significant relationship between victimization of burglary and residential area status. Burglary victims seem to be more in the

middle class residential area status respondents (53.66%) and the higher class (31.07%) probably because of the increased possessions at house when compared to the lower class³⁸.

A study was made on the criminal gangs in Chennai city by Mr. Gandhirajan, Thilagaraj et al. A base map for the city on a scale of 1:25000 was first compiled with the details of boundaries of Police districts, location of Police stations, and the city road network. The Software's Arc view Geographic Information System (GIS) 3.1 and PC Arcinfo are used for this purpose. The concentrations of criminal gang activity were calculated per Police boundary to give future directions to Police departments for the prevention of such gang activity. The study concluded that mapping was a useful research tool for data analysis and visualization of complex data relationships. This preliminary spatial exploration of criminal gangs revealed that using GIS to map criminal gangs was a much more compatible means of crime pattern analysis than current processes because of its geographic referencing capabilities.

The Statistics of National Crime Record Bureau (NCRB) reported that Tamil Nadu in India continued to enforce effectively the special and local laws against Juvenile offenders and reported highest number of cases (5335) in the country. Of the total reported the highest number of cases (55622) in the country.

Of the total reported Juvenile cases in the country, 75.5 Percentage were registered in Tamil Nadu. Out of the 5335 crimes reported in Tamil Nadu, 453 cases were theft cases. India on the whole was reported with 990 murder cases by Juveniles out of which 55 cases were from Tamil Nadu. Burglary was 162 and Robbery was 48. India had 4681 cases of hurt being reported in which 136 was from Tamil Nadu.

Juvenile Justice has been given some shape with Juvenile Justice (Care and Protection of Children) Act 2000 Act. Person dealing with Children need to sensitize themselves with this Act. One needs to know the provisions made, to understand whether it is being properly implemented. Only on observing it being implemented, can one get insight into the problems inherent in it, and if one knows the problems, one can suggest improvements in the Act. Even if the law gives adequate guidelines, institutions are still needed to look after the Children in distress or Children in conflict with law. For successful compliance of Court orders, and to punish violators, monitoring bodies need to be set up, who should be given legal powers as well. Effective Child

protection and development depends on skills, knowledge and judgment of all professionals, personnel and staff working with Children.

Undoubtedly, Juveniles in conflict with law and Children in need of care and protection are defenseless and they need special protection. The state guarantees special treatment to them through statutory law. However, in practice, they often get victimized by legal and procedural entanglements. They are more prone to violations of their rights at the hands of state agencies, their own family and community in the form of arbitrary detention, cruel punishments, torture and abuse. In recent years, the problems of Children in need of care and protection and those in conflict with law has been receiving considerable attention both of the government, NHRC, social activists and the civil society at large. But, the problems encountered by them are of gigantic nature and all that is being done is not sufficient. If the problems faced by them are not taken into account, we as a society would be failing in our duties. It is therefore of paramount importance that as a society we must devote full attention to ensure that they are properly cared for so that they have their rightful place in the society. For this to happen, there is need to spread awareness on the problems faced by them as well as build-up the capacities of all those dealing with them.

Scheme Of This Dissertation

Chapter-1 “**Introduction**”, the first chapter, contains information on the research's design, including its justification, scope of the study as defined by its aims, significance of the study, and research methods. This chapter does a great job of covering the theoretical methods to studying the phenomena, and assumptions as the benchmark for investigating the phenomenon, as well as the limitations of the investigation.

Chapter-2 The second chapter, “**Evolution Of Juvenile Justice System**”, provides a thorough analysis of the historical development and most recent evolution of India's juvenile justice system as it transitions from a formally rehabilitative social welfare organisation to a more modest justice system for reducing youth crime. The State's actions to ensure their welfare, protection, development, and rehabilitation are the main topic of discussion. The Juvenile Justice (Care & Protection of Children) Act of 2000, which was recently put into effect, carefully examines the services provided to the convicts, or the children housed in the Homes, as well as their effects on the children's survival, protection, development, and rehabilitation.

Chapter-3 “**Legislative Provisions of Trial and Punishments of Juveniles in India**”, The third chapter looks at how juvenile justice is administered, concentrating on the numerous steps and the standard of procedural fairness in Child Welfare Committees and Juvenile Justice Boards. The conflicts are investigated, explores the relationship between juvenile offenders' procedural rights, the conventional view of juvenile justice boards and child welfare committees as rehabilitation centres, and the actual situation to determine if it is consistent with the requirements of the revised juvenile justice act.

Chapter-4 is on “**Juvenile Justice International Perspective**”. This includes the United Nations convention on the Right of child, 1989, United Nations standard minimum Rule for the Administration of juvenile justice (the Beijing Rule), 1985, United Nations Rules for the Protection of Juvenile Deprived of their Liberty, 1990, United nations Guideline for the prevention of Juvenile Delinquency (the Riyadh Guidelines), 1990, Optional Protocol to the Convention on the Rights of the child on the Involvement of Children in Armed Conflict, 2000, Optional Protocol to the Convention On the Rights of the Child on the sale of children, child Prostitution and Child Pornography, 2000, Study of Juvenile Justice System of other Countries like The French (20)

Juvenile Justice System, Canada’s Juvenile Justice System, American Juvenile Justice System, and Juvenile Justice System in U.K. in reference to historical as well as present scenario.

Chapter-5 The fifth chapter, “**Abuse of Child Laws**”, deals with how come these strict laws which are made for the protection of the children by the legislature are misused by the general public to achieve ulterior and underlying motives or sometimes to just harass the other party.

Chapter-6 “**Conclusion and suggestion**”, The sixth and final chapter provides an analysis of the results and discusses some of the ongoing policy discussions on the future of the modified juvenile justice system. It extracts several recommended changes to the system from the viewpoints of the real beneficiaries as well as the many officials in the juvenile justice administration. The research's ultimate finding is included below, along with a few recommendations for enhancing India's juvenile justice system.

CHAPTER 2
EVOLUTION OF JUVENILE
JUSTICE SYSTEM

EVOLUTION OF JUVENILE JUSTICE SYSTEM

2.1 Introduction

Even while there were many laws in ancient India, there were very few that dealt specifically with juvenile delinquency. A necessity for such laws emerged as the issue of neglected children and juvenile criminality worsened over time. England, a British province, which by this time had already implemented its own juvenile legislation, served as an example for India. The Apprentices Act was India's first piece of juvenile legislation, and it was passed in 1850. According to the rules of this law, minors between the ages of ten and eighteen who were caught engaging in criminal activity were given an apprenticeship in a trade. Another ten years later, the Indian Penal Code came into effect. Despite not being a law specifically dealing with juvenile justice, it does have some provisions regarding juvenile offenders. A youngster under the age of seven who, *adoli incapax*, is given general immunity under Section 82 of the IPC. The word's direct translation from Latin is "incapable of crime." IPC makes the assumption that a kid under the age of seven is unable to develop the mental intent necessary to intentionally commit a crime. Section 83 of the IPC is a rider-added expansion of section 82. It offers a child between the ages of seven and twelve qualified immunity. The Reformatory School Act of 1876, which gave the government the authority to create reformatory schools and house young offenders there until they found employment, marked the following significant turning point in the evolution of juvenile justice in India. Following this, a jail committee was established in 1919, and on its advice, separate laws addressing juvenile delinquency were passed in various provinces, the first ones being in Madras, Bengal, and Bombay. The twin notions of juvenile delinquency and juvenile justice have since undergone a continuous process of modification and refinement, according to Professor B.B. Pande of Delhi University.

For instance, juveniles were not entitled to "bail, grand jury indictment, and right to a public trial." To comprehend reforms, comparative research with other nations is always vital. The history of the juvenile justice system in the US is explained in length here, along with a critique of the current situation. Given that India was a British colony and that Britain had already established its own juvenile legislation, the juvenile justice system in India took its lead from

British law. It will be interesting to examine how the juvenile justice system in England operates. In order to have a better understanding of juvenile laws across the African continent, we will also examine Uganda's experience with juvenile justice. This will help us understand how other jurisdictions handle children who are in trouble with the law.

2.2 Development of Juvenile Justice System in India

According to legislation or other significant changes, the history of the JJS in India has been split into five time periods in this article: (a) previous to 1773; (b) 1773–1850; (c) 1850–1918; (d) 1919–50; and (e) post–1950. The Regulating Act of 1773 gave the East India Company the authority to make laws and enforce them on a relatively limited scale, marking a historical shift in the Indian legal system. The Charter Act of 1833 was responsible for transforming the East India Company from a business entity to a governing body¹. Numerous committees examined the conditions of jails in India between 1773 and 1850, laying the groundwork for today's emphasis on juvenile detention. In 1850, the first piece of legislation aimed at keeping kids out of jails was passed. The All Indian Jails Committee's 1919–20 report marked the start of the complete separation of minors from the criminal justice system. Let's now look more closely at the advancements in each of these eras.

2.2.1 Before 1773

The upkeep of children was covered by both Hindu and Muslim law. It was mostly the family's and parents' job to raise the children.²

Under both Hindu and Muslim law, charity for the care of the poor and destitute has been a noble cause and indirectly provided for the care of children in the event that the family is unable to do so.³ Muslim law mandates that if someone discovers an abandoned child and has grounds

¹ Guide to the Records in the National Archives of India, Part V, 1–7, 1981.

² See Mayne's Treatise on Hindu Law and Usage, N. Chandrasekhara Aiyer (ed.), 11th ed., 1953, p. 285. C. Hamilton (Tr.), The Hedaya, or Guide : A Commentary on the Mussulman Law, 2nd ed., 1870, pp. 138, 146.

³ The principle of Dharma under Hindu law made it incumbent on the king to provide to each one in the society an opportunity to realize his ultimate goal of human existence. R. Lingat, The Classical Law of India, translated from

to believe that the infant may otherwise perish, they must take custody of the child.⁴The prevailing consensus is that neither set of laws included any mention of young offenders.⁵

A quick review of the Manusmriti and The Hedaya, however, reveals that different punishments are meted out to children for different infractions. For instance, according to Hindu law, a youngster who threw trash on a public road was only subject to warning and had to clean it up, whereas an adult in the same situation had to pay a fine and be forced to remove the trash.⁶

According to Islamic law, having sex with an adult woman who is willing to receive it is not illegal.⁷

These clauses demonstrate the adoption of the idea that youngsters are less responsible for their illegal behaviour. The two sets of legislation also contain general penological principles that permit individualization of punishment. The Kazi has the authority under Muslim law to choose the severity of Tazeer, or chastisement. The goal of punishment is to rectify behaviour, and various individuals have varying responses to punishment; some can be sufficiently rectified by reprimands, while others are more resistant and need detention or even blows⁸.

According to Hindu law, the way to punish was to identify the offense's cause, time, and location, take into account the offender's capacity for suffering, and make sure those who deserved it received it.⁹

French with additions by J.D.M. Derrett, 1973, p. 39. Zakat, i.e., contribution of a portion of 86 property assigned to the use of the poor is compulsory under specified circumstances under Muslim Law, Id., The Hedaya.

⁴ Id. The Hedaya at 206 ff.

⁵ S. Keshwar, 'Juvenile Injustice', The Lawyers, June 1987, p. 4 ; S.K. Bhattacharya, 'Juvenile Delinquency – Problems and Perspective', 61 Social Defence, 19 July 1980, p. 18 ; A. D. Attar, Juvenile Delinquency : A comparative Study, 1964, p. 54 ; United Nations, Comparative Survey on Juvenile Delinquency, Part IV, Asia and the Far East ; A Report on Juvenile Delinquency in India, Bureau of Delinquency Statistics and Research, Children's Aid Society, Bombay, 1956, p. 10

⁶ Manusmriti, Shloka, 283, p. 390.

⁷ The Hedaya, p. 187

⁸ Id., p. 203.

⁹ Manu, p. 126, VIII and 16 VII, cited in S.D. Sharma, Administration of Justice in Ancient India, 1988, pp. 61–2.

In accordance with Hindu law, the King was mandated to manage a child's property until the youngster reached adulthood and gained the capacity to do so, much like the equity court in England.

All of these laws demonstrate how children were understood to be distinct from adults, in need of particular care from others for their survival, and not entirely accountable for their actions. However, more research needs to be done to determine whether these laws had an extensive juvenile justice system, how the differential principles actually operate, or how much the punishment was personalised. Such studies may be helpful in illuminating the Indian culture's conception of children.

2.2.2 FROM 1773-1850

The East India corporation emerged as a governing organisation from a trading corporation in the years between 1773 and 1850, and the first laws pertaining to children were introduced at its conclusion. In this time, prisons were also changed from being places where prisoners were transported to being places where prisoners were kept, in accordance with recommendations made by the government and Bengal Jail's internal structures.¹⁰

In response to T.B. Macaulay's directives regarding prison discipline, a committee headed by Lord William Bentinck produced a report that was sent in in 1839.¹¹ It bravely exposed the flaws in the jail administration at the time. This was the period when the West was getting engulfed in an all-round reformation movement. India, as a British colony, did not remain unaffected. The colonial exploitation had eased out the indigenous rural economy, forcing many a class of people to slums in the suburbs. It also increased destitution and delinquency among their children. Concern for the welfare of children took many shapes. Krishna Chandra Ghoshal and Jai Narain

¹⁰ Till 1818 references to prisons in the archival material related to either the expense of transporting convicts or for repairing the jails. Capt. Puton, executive officer, reported the state of the jail and several other buildings attached to it and the estimates of repairing it. Cons. No. 2 and 3, date of letter 30 July 2003, Whatbones No. 4 August 1803, Law Index 1801–1810, p. 54 ; Report on Calcutta Jail, Cons. No. 2 and 3, 15 December 1809, Id., p. 167. For the recommendation for the erection of a prison for convicts, see. Marine Board reply for conveyance of convicts, Law proceedings, Cons. No. 3, 2 October 1818.

¹¹ Legislative, Cons. Nos. 5, 6, 7 B.S., 29 January 1838 and Cons. Nos 43 and 46, 8 October 1838.

Ghoshal in 1787 pleaded with Lord Cornwallis, the then Governor-General in India, for establishing a 'home' for destitute children in the vicinity of Calcutta¹². Dr. Buist, an Englishman who played a key role in the construction of the ragged school, Bombay, now known as the David Sassoon Industrial School, built the first "ragged school" for orphans and homeless children in India in 1843.¹³

The school's goals were to (i) rehabilitate young offenders who had been detained by the police and (ii) promote apprenticeship among the working classes. Together, these changes paved the way for the introduction of the Apprentices Act 1850.

2.2.3 FROM 1850-1919

During this time, a number of laws covering a variety of child-related issues were passed. "The Female Infanticide Act 1870, the Vaccination Act 1880, and the Guardianship and Wards Act 1890 created measures for the care and safety of infants going forward. The Factories Act of 1881 acknowledged the existence of child employment and the need for particular protections for it. Following the kidnapping of a 7-year-old girl out of personal retaliation, a law prohibiting the forcible abduction of children was proposed in the area of criminal justice in 1848. The seizing of girls forcibly without parental consent for the purpose of sale or prostitution was illegal under the existing law, and it was believed that this situation was not covered by the Regulation.

However, the proposed law was not approved, and it was claimed that the situation fell under the purview of illegal trespass.¹⁴

The Apprentices Act 1850 was passed in order to "improve the ability of children, particularly orphans and poor children raised by public charity, to learn trades, crafts, and employments by which they may gain livelihood when they reach full age."¹⁵ Instead of locking up young people for minor offences, it gave magistrates the authority to enlist them as apprentices to learn skills,

¹² NAI Original letter dated 17 June 1787, no. 280, quoted in Ibid.

¹³ A Report on Juvenile Delinquency in India, See note 43, supra at 10–11.

¹⁴ Original Legislative Consultation (Manuscript) Legislative Nos 8, 9, 8 January 1848.

¹⁵ The long title of the Apprentices Act 1850. The Act introduced with the object to meet an increasing demand for skilled craftsman, in the development of the country, has since been repealed by the Apprentices Act 1961.

crafts, and jobs. This Act introduced the idea of neglected children for the first time in a legislative context and offered a community-based alternative to incarcerating juvenile offenders for misdemeanour acts. The Apprentices Act of 1850 was the forerunner of numerous future laws that would establish specific child-related requirements. Children under the age of 7 were deemed to be *doli incapax* by the Indian Penal Code of 1860 (IPC), but children aged 7 to 12 might contest the presumption of *mens rea*.

In the interim, prison reports¹⁶ kept pointing to the need for a change in management and policies. The government requested further explanation and the names of jails with special facilities for juvenile offenders after observing the high incidence of recommitals and the startling rise in the number of juvenile offenders (Poona reported an increase from one in 1860 to sixty-five in 1861).

The Whipping Act of 1864 was the result. It was thought that the Whipping Act would prove to be extremely helpful in reducing the number of adolescent inmates in jails.

The fact that whipping is a valid punishment for the types of crimes that young people typically commit and the unique deterrent effects it is likely to have on them lead us to believe that juvenile offenders will no longer be a significant enough group to necessitate the establishment of reformatories.¹⁷

Following the passage of the Whipping Act in 1864, the Governor General issued a Minute creating the Indian Jail Committee. The Committee's charter was designed to imply that the Act did not supplant the need for more comprehensive prison reform measures.¹⁸

¹⁶ Bombay Governments Resolution on the Report on the Jails of that Presidency for 1861. Home Department, Judl. Con. No. 7–9(a), 12 January 1863. See also, Report on Criminal Justice in the Bombay Presidency for 1857, Home Department, Judl. 7 (6 August 1858) ; Annual Report on Criminal and Civil Justice in the Central Provinces for 1863 ; Id., p 8A, 1 November 1864 ; Report on Administration of Justice, Oudh Provinces for 1863, Id., pp. 37–40(A), 6 October 1864 ; Annual Report on Jails for 1861–62 in N.W. Province, Id., p. 52(13) (25 July 1864)

¹⁷ Indian Jail Committee Report, 1864, p. 19

¹⁸ Minute by the Governor General, p. 3, dated 3 March 1864

The Governor General noted the scant advancements made since the 1838 report in terms of either improving prisoner conditions or crime prevention. As of right now, 7% of individuals incarcerated in jails lose their lives each year, which is an extremely high death rate across all demographic groups. When compared to the less than 1% mortality rate in English prisons... And it appears that on this basis alone, we are forced to consider what actions should be made to lower the high mortality that significantly outweighs that among other classes of the population.

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The jail codes of Madras, Bombay, the North Western Provinces, and Bengal were modified to ensure the isolation of juveniles from adult offenders inside prisons. However, each of these codes used a different cutoff age to categorise children.

The Committee recommended using the method of classification used in the North-Western Provinces, which is reaching puberty as determined by a medical official.

Poona Juvenile Prison was reported to be operating successfully between 1872 and 1875, with juveniles in good health and conduct, academic and vocational education, and after-care facilities. However, at other facilities, the proportion of children to the total imprisoned was as high as 10%, necessitating segregation.²⁰

Due to the poor jail circumstances and the perceived necessity to separate juvenile offenders from adult offenders, the notion of a reformatory school for delinquent youngsters has been floating around for a while. The Government of Bengal's consideration was the immediate catalyst for passing the Reformatory Schools Act 1876. The 53rd Lieutenant Governor of Bengal, Sir Richard Temple, noted in 1874 that juvenile offenders in prison were literally growing up in sin and ignorance.²¹

¹⁹ Id., p. 1.

²⁰ Statement Exhibiting the Moral and Material Progress and Condition of India during the Year 1872–75, p. 12 (Presented Pursuant to Act of Parliament), 2 June 1874. In the only other reference to children, it pointed out that there were schools for the children of convicts, Id., p. 39.

²¹ Legislative Department, A proceeding, March 1876, nos 23–4, quoted in G. Chatterjee, see, supra note 6 on p. 5

He believed that reformatory and industrial training should be required of them "instead of bringing them into contact with older offenders in jail or being left to beg or live in the streets."

The proposed Bill was designed to cover both delinquent and other non-delinquent youths who were growing up on the streets and at risk of developing criminal habits. The Bombay administration and the British Indian Association strongly objected to the non-delinquents being included in the Bill during talks in the Governor General's Council. It was seen to run the risk of unfairness. "Moreover, accommodations could not be made for large Indian cities if the power is exercised without discrimination," the statement continued.

Raja Narendra Krishna of the British Indian Association observed that : "If the legislature had passed a law to punish and reform youth below the age of eighteen on the report of Police Officer that he had no means of honest livelihood and kept the company of bad characters, and directed that he must be confined in a reformatory school and there learn some handicrafts in course of few years, the government would create a class of men, who after release, would be regarded with distrust in this country."²²

The Reformatory Schools Act of 1876 did not apply to non-delinquents. The Act allowed for a juvenile offender (a kid under the age of 15) who was facing detention, transportation, or incarceration to receive a reformatory school sentence rather than being imprisoned.²³

In order to provide the local administration more flexibility in implementing the reformation, it was revised in 1897. A year later, the Code of Criminal Procedure 1898 included provisions for juvenile court trials and the ability for magistrates to send juvenile criminals to reformatories rather than prisons in certain instances.

Under the Criminal Tribes (Amendments) Act 1897, children of criminal tribe members also received special treatment at about the same time. The establishment of industrial, agricultural, and reformatory schools for minors who belonged to criminal tribes and fell between the age

²² Ibid.

²³ Section 8, 10 Reformatory Schools Act 1897. Report of the Indian Jail Committee, 1889, April 1889, p. 71.

range of 4 to 18 years was stipulated. This Act gave the local governments the authority to take such youngsters out of criminal tribal communities and put them in a reformatory.

The Indian Jails Committee's report from 1889 reaffirmed the necessity of classifying and isolating convicts based on their age and the length of their sentences. While highlighting the fact that younger juveniles should never be disciplined with diet restrictions, it suggested daily exercise and required education for them. It also emphasised that persistent juvenile offenders shouldn't be sent to reformatories since they "bring the worst traditions and practises of the convict prisons with them to the schools."²⁴

Some states during this time introduced changes to judicial procedure due to the expertise necessary of a magistrate to choose cases that should be sent to reformatory schools. In order to ensure that children receive more thoughtful care, the Government of the United Provinces enacted a resolution calling for the appointment of a special magistrate to try children's matters in each district.²⁵ The Bengal government established a juvenile court, despite the fact that minors accused of committing a crime alongside an adult who was over 15 years old were not eligible for its jurisdiction. Despite the fact that the court's operation needed improvement, it has been deemed the "most praiseworthy attempt to grapple with the question."

In many locations throughout India, including Madras, Burma, Bihar, Orissa, the Central Provinces, Bombay, and Delhi, reformatory schools were established; however, the majority of them were not deemed appropriate.

They are all made out of sizable, centrally located buildings, with little attempt to mimic the characteristics of a typical dwelling. Many times, such as in Madras, Burma, Bihar, and Orissa, they are housed in former jail structures, which are typically surrounded by a high wall. They are frequently situated next to jails, and the atmosphere of the former institution has not entirely vanished. The number of boys housed in these institutions is typically far too high for a single superintendent to be able to focus on individual cases; the lack of any female care is a clear flaw;

²⁴ Report of the Indian Jail Committee, 1889, April 1889, p. 71.

²⁵ Resolution No. 2985, dated 2 August 1913, cited in Report of the Indian Jail Committee, 1919–20, 30 Cmnd 1303, 1921, p. 197

and, overall, our impression was that, with the exception of one or two cases, the reformatory schools were more likely to resemble juvenile detention facilities than actual educational institutions. The individual in charge of them hasn't always been chosen based on prior expertise or suitability for handling people... The Delhi Reformatory School, which covers Delhi, the North West Frontier Province, and the Punjab, left us with the best impression. The upside of this is that there were only 106 people there on the day of our visit, vs 480 people at Hazaribagh, where there were actually 439 people.²⁶

2.2.4 FROM 1919-1950

The Report of Indian Jail Committee 1919–20 is among the most important advancements in the history of India's juvenile justice system. After touring several prisons and reformatory schools around the nation and abroad, it launched the most extensive exercise for revamping the entire prison system. Madras started working on a Children Act in 1917, and it was passed in June 1920.²⁷ The committee's recommendations gave other governments the impetus they needed to implement laws along similar lines.

The Jail Committee 1919–20 recognised that while prison administration had achieved significant strides in the practical areas of administration, health, food, labour, and so forth since 1889, the prospect of convicts' moral or intellectual development and reformation had received little attention. The Committee further stated that "if it is possible, all authorities, not least the courts, should recognise more clearly the primary duty of keeping people out of prison." Prison inmates who were released from custody frequently included juveniles. As they have been echoed in later reports, policy statements, and other fora, and are still relevant today, its recommendations regarding them merit some explanation.

The report made the point that a young criminal who is generally healthy is mostly a product of an unpleasant environment and that he is entitled to a second opportunity in better circumstances.

²⁶ See, *supra* note 63 on p 202.

²⁷ For Statement of Objects and Reasons, see Fort St. George Gazette, Part IV, 18 December 1917. Pp. 1156–8. For Report of Select Committee, see *Id.*, 26 December 1919, pp. 1213–16. For proceedings in Council, see *Id.*, 23 December 1919, p. 1367, and *Id.*, 8 June 1920, pp. 690–704.

There is a common understanding that the chances of habit reformation are greatest while people are young because habits have not yet set in. It has been determined that the minor offender should receive different treatment than the adult from both perspectives. The committee concluded that it was not advisable to expose children to images of jail life or to lessen their dread of prison, which is one of the most effective crime deterrents. The committee suggested creating new institutions designed and outfitted for the purpose because specialised training could not be delivered in prisons.

The committee also suggested creating children's courts with "as informal and elastic" of procedures as feasible. It advised that the normal magistrates should sit during specific hours and, if necessary, in a separate room to hear charges against juvenile offenders, taking notice of the practical challenge in forming children's courts in light of the tiny number of youngsters committing crimes. The main goal is to instill in the magistrate's mind a clear understanding that he is handling a case of a special kind in which he is expected to adopt a different standpoint, a more paternal attitude, to borrow an American idea, from that which he would employ in trying a case against an adult.²⁸

Bengal and Bombay both passed Children Acts in rapid succession in 1922 and 1924, respectively. The Madras Children Act 1920 was established in the Andhra region in accordance with the recommendations of the Indian Jail Committee, 1919–1920.

The Delhi Children Act 1941, the Mysore Children Act 1943, the Travancore Children Act 1945, the Cochin Children Act 1946, and the East Punjab Children Act 1949 were among the states that adopted similar legislation in the years that followed.

The Vagrancy Act of 1943, another piece of legislation, also addressed the care and instruction of children younger than 14 who begged for a living, were in unsuitable custody, were raised by parents who engaged in drug or alcohol abuse, frequently visited prostitutes, were destitute, or received poor treatment.

²⁸ Id., p. 197

Leaders of the Indian nationalist movement did not pay much political attention to juvenile justice in the legal sense, probably because it was obscured by jail segregation and special institutions for juvenile offenders. However, the All-party Conference in August 1928 and the Congress Declaration from 1933 particularly highlighted child labour, elementary education for children, and juvenile welfare. The issue of adolescent delinquency and poverty was made worse by the mass migration of people between India and Pakistan on the cusp of independence, sparking intermittent political actions.

The central government organised a Conference of Education Ministers of all provinces in August 1949 after realising that states had done very little to care for poor and troubled youngsters²⁹.

The Conference suggested the appointment of an expert group, which created a draught that the education ministry believed to be a Draught Bill after researching international advancements and local factors. The Bill was trimmed to concentrate on key and fundamental issues because it was designed to be a model, leaving the states to fill in the details in accordance with their needs. On September 14, 1953, the updated Bill was introduced in the Rajya Sabha, but it was later withdrawn due to the reorganisation of the Part C states to which it was to be extended.

Along with these advancements, there were a lot of volunteer activities in the area of child welfare during this time. The late Tara Ali Baig, a well-known social worker, pointed them facts simply³⁰.

Balkanjjai, which has its main office in Bombay, was possibly the first children's organisation to be founded in 1920. In that year, pioneers like Gijubhai, who founded the Nutan Bal Shikshan Sangh in Gujarat and Maharashtra, and the Guild of Service, which established five child welfare organisations throughout the South, began a number of trials.

²⁹ English translation of Maulana Abul Kalam Azad's Urdu Speech delivered on 19 December 1953,' Appendix VI, Annexure No. 125, Rajya Sabha Debates, 19 December 1952.

³⁰ T. A. Baig, *Our Children* 1979, p. 52 (hereinafter referred to as Baig).

The Children's Aid Society was established in Bombay in 1927 to remove homeless children from the streets and place them in residential care. The Moni Mela movement was launched in Bengal; the Kishor Dal, which continues to provide exceptional services and training activities for preschool children; the Maina Parijat; and the Balnanda Sangam in Assam and Andhra Pradesh. In Karnataka, Kanpur, and Dehradun, there were numerous small centres that handled some of the immediate problems of children but did not grow into a significant movement. This was a sign of the trend in public consciousness to engage in activities that enhanced the life and entertainment of children.

2.2.5 Post1950

Since 1950, a variety of official and unofficial developments have influenced the growth of juvenile justice. The next section focuses on a few procedures, including legal ones, that have helped foster the growth of child welfare and care policies during this time.

2.3 FIVE YEAR PLANS

The Five Year Plans were established with the foundation of the Planning Commission in 1951, and provisions for children were made under these Plans, despite the fact that the implementation of juvenile justice services has not been a designated head of spending in the Five Year Plans. State governments continue to be responsible for carrying out both local and federal laws pertaining to neglected and troubled children.

For the programmes it suggested for the care of children alone, the Ganga Sharan Sinha Committee anticipated non-recurring costs of Rs. 160 crore and recurrent costs of Rs. 4866 crore in 1968. The Seventh Five Year Plan set aside Rs. 799.97 crore exclusively for central and centrally sponsored schemes like the Integrated Child Development Services (ICDS), services for children in need of care and protection, prevention and control of juvenile maladjustment,

crèches and daycare facilities for children of working/ill mothers, and training of ICDS and non-ICDS functionaries.³¹

The focus of the Ninth Plan is on enhancing the early, carefree era of play and learning, particularly for girls. To this end, day care services are being effectively expanded, and links between these services and primary schools are being made to help girls have more possibilities for development. To do this, specific connections between the ICDS and elementary education must be created in an effort to strengthen timing and location coordination based on community assessment and grassroots microplanning.

The Ninth Plan recognises the pervasive discrimination against girls and strives to implement concerted measures to end all forms of discrimination and violations of girls' rights. Prenatal sex selection, female foeticide, female infanticide, child marriage, child abuse, child labour, and child prostitution are among those that must be strictly prohibited by law. By offering special incentives to the mother and the girl child, long-term measures will also be taken to end all forms of discrimination against girls, ensuring that the birth of a girl child is celebrated and the family is confident in the state's support for the girl child's future.³²

The Ministry of Social Justice and Empowerment's draught Tenth Five Year Plan highlights the ministry's duty to reach out to every child in need of care and protection and to make sure that his or her fundamental rights are upheld. The ministry's vision is to guarantee a childhood for every kid, and it seeks to;

- Ensure that the spirit and letter of the Convention on the Rights of the Child are upheld in every document, policy, and programme developed by the ministry.
- Ensure that the spirit and letter of the Convention on the Rights of the Child are adhered to by every document, policy, or plan developed by the ministry.
- Assure that children at all levels actively participate in the planning and execution of all programmes.

³¹ The Seventh Five Year Plan 1985–90, vol. II, Annexure 13.1

³² Id., para 3.8.96.

- Consider the child as a person with rights under the Constitution rather than just as a benefit.
- Implement programming that encourage youngsters to be independent and self-reliant rather than making them dependent on outside supports.
- Improve interministerial coordination and communication on matters pertaining to child protection.

Other government-developed schemes for children's development include the ICDS's supplemental nutrition programme, children homes, bal bhawans, remand 65 homes, observation homes, services for abandoned children and kids who require care and protection,⁹⁷ as well as CHILDLINE.

2.4 GOVERNMENT BODIES

The Indian Council for Child Welfare was founded in 1952 and was the first national organisation to mobilise volunteer involvement in every state in support of all facets of children's welfare.

This Council deserves praise for the Third Five Year Plan's first implementation of a particular child welfare plan.³³

The Central Social Welfare Board, which was entirely funded by the government, was founded in 1953. Its programmes for enhancing the lives of women and children finally included child care initiatives and projects like rural Balwadis, vacation houses, grants to more than 7000 non-governmental organisations, orphanages, crèches, women's homes, etc.³⁴

At the same time, two additional institutions of equal importance were also established. The National Institute of Social Defence (NISD) was tasked with tackling social defence issues, while the Institute of Public Co-operation and Child Development (NIPCCD) handled child-

³³ See Baig, p. 56.

³⁴ T. A. Baig, 'Overview of Child Welfare', in Profile of the Child in India Policies and Programmes, ministry of social welfare, Government of India, 1980, pp. 5–6.

related research, training, seminars, and studies. The NIPCCD is still the major organisation for conducting research on child welfare and development as well as educating social workers. The NISD is in charge of, among other things, training institutional staff, convincing the states to put infrastructure and provisions into place for child welfare, and gathering statistics across the country.

A National Commission for Children, made up of seven members and led by a retired Supreme Court judge, would be established, according to the Union HRD Minister, to carry out the constitutionally guaranteed rights of children.

But that still falls under the category of promises.³⁵

2.5 Legal Provisions

Since the 1950 passage of the Constitution, children in the Indian polity have been granted special status. The chapters on fundamental rights and guiding principles of state policy, which are both essential to the nation's government, include children.

The draught provisions recognised, among other things, the following principles: (i) free elementary education without regard to caste or creed; and (ii) Articles 15(3) and 24 were inserted later on during the Constituent Assembly Debates (CAD), but they elicited no discussion. The draught provision preceding Article 24 was added in accordance with the Congress Declaration of 1933, however there is no reason for the introduction of "children" in the draught provision prior to Article 15(3).³⁶

Age is not one of the many factors for which discrimination is prohibited under Article 15(1) of the Constitution. Therefore, the state would not have refrained from creating special arrangements for them despite the word "children" not being present in Article 15(3).

But the Constitution's emphasis on children's unique needs is evident in the fact that they are still mentioned there.

³⁵ 'Panel to protect rights of children on the anvil', The Times of India, 26 March 2002.

³⁶ Anjali v. State of West Bengal, AI 1952 (SC) 825.

Article 15(1) of the Constitution forbids discrimination based on a variety of characteristics, although age is not one of them. Therefore, even if the phrase "children" is absent from Article 15(3), the state would not have been prohibited from making special accommodations for them.

However, the fact that children's special needs are still recognised in the Constitution shows how important that topic is.

According to the Constitution, the state is required to safeguard young children from abuse and to make sure they are not coerced into careers that are too physically demanding for them or too old for them.

According to Article 45 of the Constitution, the state must make every effort to offer all children free and required education up until the age of 14.

A wave of child-related laws were passed in the years leading up to and immediately after the Constitution's entry into force due to the rise in the number of neglected and troubled young people after the partition and the Constitution's special status for children. A number of states also passed the Children Acts³⁷, in addition to a number of bills that were submitted in Parliament for the care and protection of children.³⁸

At about the same time, Dr. W. C. Reckless, a UN expert on criminology and correctional administration, offered his suggestions for India's developing prison system. He advocated making juvenile courts, remand homes, probation, accredited schools, and aftercare the primary priorities in order to remove juvenile offenders from adult jails, adult courts, and police holding facilities³⁹.

The UN Declaration of the Rights of the Child, which was adopted in 1958, gave lawmakers further motivation to pass a separate law for kids. The Children Act of 1960, often known as CA

³⁷ Namely, Bombay 1948, East Punjab 1949, Hyderabad (Telengana area) 1951, Uttar Pradesh 1951, Saurashtra 1954, West Bengal 1959.

³⁸ Children Protection Bill 1949–53, Prevention of Juvenile Vagrancy and Begging Bill 1952, Children Bill 1953, Women and Children Institutions Licensing Bill 1953. Young Persons Harmful Publication Act 1956, Children Bill 1959. See Chapter Three, Part 1.

³⁹ Jail Administration in India, United Nations Technical Assistance Programme, 1953, p. 35.

60, was the country of India's first national law, and it only applied to the Union Territories. It was passed as a template for the states to use when passing their own Children Acts.

For the first time ever in India, the CA60 outlawed the detention of children in any setting. It also introduced a definition of "child" that is biased towards women. It established two distinct adjudicatory bodies, a child welfare board and a children's court, to handle neglected and errant children, respectively.

People with specialised understanding of child psychology and welfare were to serve on these adjudicatory committees. This Act established a system of three-tiered institutions, including an observation house for children to stay in while legal proceedings are ongoing, a children's home for neglected children, and a special school for troubled youth. Following the CA60, all states passed Children Acts with comparable provisions.

The Beijing Rules were adopted by the UN General Assembly in 1985, a uniform law was recommended in the 69th Report of the Committee on Subordinate Legislation that was presented to Parliament on May 12, 1986, and the Supreme Court suggested starting parliamentary legislation on the issue in 1986, setting the stage for uniformity in juvenile justice laws across the nation.

It is important to emphasise Sheela Barse's alone campaign for children's rights at this time. Through her journalistic writings, meetings with a number of individuals in various ministries and the prime minister, discussions in seminars and workshops, and ultimately filing a public interest litigation for the release of 72 children held in jails as well as for information on their detention conditions, she persisted in following the issue of the illegal detention of children in jails and a uniform code for children.

In the end, the petition did lead to several other changes as well as the removal of all kids from jails. As a result of a court order, the Supreme Court Legal Aid Committee later took her place⁴⁰.

The Juvenile Justice Act, 1986 was passed by Parliament and went into effect on October 2, 1987, in all the jurisdictions it was expanded to. Although the JJA applied to all of India with the

⁴⁰ See, Chapter 7.

exception of the state of Jammu and Kashmir, it essentially created a consistent juvenile justice system throughout the whole nation.⁴¹

The JJA also prohibited the confinement of children in police cells or jails, established separate institutions for the processing, treatment, and rehabilitation of neglected and troubled children, offered a variety of alternatives to family- and community-based placement, and encouraged the active participation of voluntary organisations at various stages of the juvenile justice system.

Dr. Hira Singh expressed the widespread worry that there was a significant discrepancy between the JJA's treasured beliefs and real practises. The majority of states have not yet established the fundamental framework that consists of juvenile welfare boards, juvenile courts, observation houses, juvenile homes, special homes, and after care facilities. Because there were insufficient alternatives, such as non-institutional probation, foster care, sponsorship, etc., institutionalisation persisted, with all of its negative consequences. Despite being required, most states did not specify the basic needs for institutional care in terms of housing, maintenance, education, vocational training, or rehabilitation. The growth of the juvenile justice workforce was not specifically addressed by any policy. The ratification of the Convention on the Rights of the Child widened the chasm between rhetoric and reality even more.⁴²

In light of this, Justice Krishna Iyer was chosen as the chairman of the committee that was formed to draught the Children Code. On November 14, 2000, this committee delivered the Children's Code Bill 2000 to Prime Minister Atal Bihari Vajpayee.

"The Children's Code Bill 2000 was not mentioned when the Juvenile Justice (Care and Protection of Children) Bill 2000 was introduced in the Lok Sabha and Rajya Sabha, though Maneka Gandhi did mention Justice Krishna Iyer as one of the many people who were consulted before the proposed Bill was finalised. According to the JJ(C&P) Act of 2000, when dealing with children, it is important to consider the child's family as a whole. In addition to fining the parents and offering counselling to the family of a kid in trouble with the law, it expands the range of

⁴¹ The provisions of the Jammu and Kashmir Children Act 1970, in force in Jammu and Kashmir, were more or less similar in approach to the JJA.

⁴² 'Current Issues in Juvenile Justice Administration', paper presented at the National Consultation on Juvenile Justice held at the National Law School of India University, Bangalore, during 11–13, February 1999.

community placement alternatives available, including adoption, foster care, shelter homes, and sponsorship.

Responses to the new Act have been inconsistent. Children's advocacy groups and others came to the conclusion that this Act was not in their best interests at a meeting. The entire Act was infused with a sense of criminal justice administration. The youngsters who would be impacted by the law were not involved in the act's hasty and secretive drafting⁴³.

Another gathering praised the new legislation as the UN Convention on the Rights of the Child's model for child welfare⁴⁴.

The Delhi High Court has previously received a petition contesting the legality of some JJ (C&P) Act provisions.

2.6 The Juvenile Justice (Care and Protection of Children) Amendment Act 2006

Civil society's ongoing monitoring of the concerns with the JJA's appropriate implementation in 2000 resulted in significant changes to the JJA in 2006 that put to rest a number of legal disputes that had arisen in various instances before the Supreme Court and the High Courts⁴⁵.

The addition of new Sections 1(4) and 7A and the revisions to Sections 2(1), 20, 64, and 68 represented the 74 most significant changes made in 2006.

The JJA 2000 provisions took precedence over any conflicting provisions in any other currently in effect statute with the addition of sub-section (4) to Section 1.⁴⁶

This modification put an end to the situations where the JJA of 1986 applied to children who had broken the terms of special laws like the Prevention of Terrorism Act (hereinafter referred to as POTA) and the Terrorist and Disruptive Activities Act (hence referred to as TADA). It was

⁴³ Rema Nagarajan, 'Juvenile Justice Act not good for children', The Hindustan Times, 21 March 2001.

⁴⁴ 'New Juvenile Justice Act is blueprint of child welfare', Indian Express, 30 September 2001

⁴⁵ 'Juvenile Justice Act ; High Court seeks AG's opinion', The Times of India, 16 February 2002.

⁴⁶ S. 1(4) reads : Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under such other law

argued against the Narcotics, Drugs, and Psychotropic Substances Act (hence referred to as NDPSA), which established special courts and a procedure for such offences⁴⁷.

As a result of ongoing litigation, several dates have been set by various courts as the pertinent date on which the child alleged to have committed an offence should have been a child. Before the five-judge court in Pratap Singh ⁴⁸made its final decision and ruled that the age at the time the offence was committed determined the applicability of the Act, the Supreme Court had at least three times previously ⁴⁹studied the issue. According to the updated definition of "juvenile in conflict with the law," this term "means a juvenile who is alleged to have committed an offence and had not attained the age of eighteen as on the date of such offence."⁵⁰

A claim of juvenility may be filed before any court and it shall be recognised at any time, even after the matter has been decided, according to Section 7A, which was included to set forth the process for determining age. This rule put to rest the inconsistent attitude taken by courts in various situations, sometimes allowing and other times rejecting the plea of juvenility when brought at a later point.

By holding that the JJA 2000 was to apply to the pending case of a body who was over the age of 16 but under the age of 18, if such boy remained under the age of 18 on the date on which the JJA 2000 came into force, i.e., 1 April 2001, the Supreme Court gave a narrow interpretation to Section 20 of the JJA, which had provided for application of the JJA to pending cases. That choice was explicitly overruled by the explanation¹³⁴ that was added to Section 20.

In light of the Pratap Singh decision, Section 64, which provided for the release of people serving prison sentences if they were over 16 but under 18 on the date of the offence in accordance with the JJA 2000, would have been subject to similarly limited application. The explanation added to

⁴⁷ For example, Jagdish Bhuyan v. State, 1992 Cri LJ 3194 (Assam) ; Antaryami Patra v. State, 1993 Cri LJ 1908 (Ori) ; In re Session Judge, Kalpetta, 1995 Cri LJ 330 (Ker).

⁴⁸ (2005) 3 SCC 551.

⁴⁹ In Umesh Chandra, 1982 Cri LJ 994 (SC), the Supreme Court held that date of commission of offence as relevant ; In Arnit Das, AIR 2000 SC 2261, it held the date of first production before the court as decisive ;in Arnit Das 2001 (6) Supreme 461, the five judge bench refused to give its opinion as the matter was of academic interest in the case.

⁵⁰ S. 2(I), JJA 2000 as amended in 2006.

Section 64135 broadened the section's application to cover all situations involving minors who were older than 16 but younger than 18 on the date of the offence, regardless of their age on the JJA 2000's effective date.

2.7 The Juvenile Justice (Care and Protection of Children) Amendment Act 2011

Another change to the JJA was made in 2011 to ensure inclusive and non-discriminatory treatment of children with leprosy, TB, mental disability, and other impairments.

Despite enactment of two Central Acts governing the field of juvenile justice in 1986 and 2000 applicable to the whole of India expanding the scope of protection for children post Sheela Barse, the state of their implementation remained lackadaisical. The Supreme Court was approached again through two writ petitions filed in public interest, namely, Bachpan Bacho Andolan⁵¹ and Sampurna Behrua⁵² seeking direction for implementation of the JJA 2000. Bachpan Bachao Andolan was filed “in the wake of serious violations and abuse of children who are forcefully detained in circuses, in many instances, without any access to their families under extreme inhuman conditions.” Sampurna Behrua was filed in view of the non-implementation and mal-implementation of the JJA.

The Chief Justices' Conference also included a discussion on the Juvenile Justice Act's implementation on its agenda. It reaffirmed the 2006 Chief Justices' Conference Resolution in 2009, specifically.

- (a) "That High Courts will urge State Governments to establish Juvenile Justice Boards wherever none are already in place. To oversee the state and operation of the remand/observation houses established under the Juvenile Justice (Care and Protection of Children) Act, 2000, the Chief Justices may designate a High Court Judge.

⁵¹ Writ Petition (C) no. 51 of 2006.

⁵² Writ Petition (Civil) No. (s) 473 of 2005.

- (b) Wherever juvenile justice boards have not yet been established, the Chief Justices of the High Courts will expedite the issue with the respective State Governments.
- (c) The Chief Justices of the High Courts shall appoint a Judge to visit Juvenile Homes on a regular basis, wherever they may be located, and the learned Judge may recommend corrective actions to improve the conditions of the Juvenile Homes and of the residents.
- (d) It is requested that the topic be discussed at the Joint Conference of Chief Ministers and Chief Justices, which will be convened on August 16, 2009."

In accordance with this Resolution, each High Court established a Juvenile Justice Committee to supervise the JJA's implementation, give it further momentum, and evaluate the calibre of services rendered under it. The sessions of this Committee 78 took place once every two months in Delhi. The creation of three JJBs in response to the numerous child-related cases that were pending before Delhi's single JJB was one of the clear results of its discussions.

In addition to several writ petitions submitted by various NGOs, the High Court of Delhi had taken suo motu cognizance of numerous cases involving violations of children's rights after receiving news reports or letters from social workers. These issues include the police practise of coercing and forcing children to make statements before the JJB⁵³, child trafficking by placement agencies, attacks ⁵⁴on NGO during child labour rescue⁵⁵, missing and runaway children⁵⁶, and maternity homes.

Each High Court still has a juvenile justice committee, and it is anticipated that they will continue to play a leading and overseeing role in the execution of the current juvenile justice (care and protection of children) act 2015.

⁵³ WP (C) No. 8801/2008

⁵⁴ Bachpan Bachao and others, WP (Cri) No. 82 of 2009 with WP (Crl.) No. 619 of 2002 and WP (Crl.) No. 879 of 2007.

⁵⁵ Save the Childhood Foundation, WP (Cri) No. 2069/2005.

⁵⁶ Court on its Own Motion, WP (CRL) 249/2009.

2.8 The Juvenile Justice (Care and Protection of Children) Bill 2014

The most noteworthy aspect of every law passed since 1850 is that it all moved in the same direction, placing an increasing number of kids under the juvenile justice system's watchful eye. However, the gang rape of Delhi girl Jyoti Pande (also known as Nirbhaya by the media) on December 16, 2012, sparked impromptu demonstrations on social media. Different regions of India responded to it. The emphasis of media attention quickly turned from the protection of women to the involvement of a 17-year-old juvenile in this gang rape. The 'juvenile' was 'the most savage' of all the accused in this rape, the newspapers and mass media shrieked with blazing headlines. Although the order of the JJB had explicitly underlined that neither the victim woman nor her male friend had singled the juvenile out as being the most cruel in various statements made to different persons, the media nonetheless manufactured and amplified the frenzy around this untruth⁵⁷.

The Criminal Law Amendment Act of 2013 was passed with the intention of strengthening the rape law, but the media continued to focus on every single case involving children and spread the misconception that "juveniles" were getting away with serious crimes under the JJA.

Even petitions questioning the legitimacy of the definition of child⁵⁸ and calling for a lowering of the cut-off age for defining child¹⁵⁸ were filed with the Supreme Court, but they were dismissed with good reason.

Despite these advancements, the Juvenile Justice Bill 2014, which took a significant step backward¹⁵⁹ by allowing 16 to 18-year-old juveniles to be imprisoned in rare cases, was introduced in Lok Sabha on August 8, 2014. This stance was the same as that expressed in the

⁵⁷ Smriti Singh & Manoj Mitta, Nirbhaya case juvenile wasn't most brutal?, Times of India, 3rd October 2013, available at 93 <http://timesofindia.indiatimes.com/city/delhi/Nirbhaya-case-juvenile-wasnt-mostbrutal/articleshow/23426346.cms>, last visited on 15th March 2014.

⁵⁸ Salil Bali v. Union of India and another, Writ Petition (C) 10 of 2013 decided on 17th July 2014, available at : <http://judis.nic.in/supremecourt/imgs1.aspx?filename405777>, last visited on 20th July 2014

Children Acts of the 1920s, which were passed by various State Governments and allowed for the selective transfer of children to jails while generally recommending that they be held in detention homes for children. The Government decided to ignore all the knowledge created in the last 100 years in fields like criminology, penology, psychology, psychiatry, social behavioural sciences, and more significantly the findings of the neuroscientists regarding the adolescent brain that changed the course of juvenile justice in America since 2005 when it proposed and ensured its passage by the Parliament in 2014–16. The team of neuroscientists under the direction of Laurence⁵⁹ produced uncontested evidence in 2005 that the adolescent brain differed materially in form and function from that of children and adults. They were successful in arguing that treating teenagers like adults violated the constitution's guarantee of equality.

The United States Supreme Court acknowledged the evidence, which led it to rule in *Roper v. Simmons* that the imposition of the death penalty for any crime committed by a person while they are still a juvenile is unconstitutional⁶⁰.

In *Graham v. Florida*, the American Supreme Court ruled that the imposition of life imprisonment without the prospect of release for all non-homicide actions was unconstitutional⁶¹.

Since this punishment prevented kids from showing any proof of their development and maturity, it was deemed arbitrary and unconstitutional. The American Supreme Court banned life without parole for any crimes committed by minors under the age of 18 in *Miller v. Alabama*⁶²

On June 18, 2014, the JJ Bill 2014 was posted on the Ministry of Women and Child Development website, asking opinions within just 15 days⁶³. Different concerned individuals and

⁵⁹ See, Laurence Steinberg, "Should the Science of Adolescent Brain Development Inform Public Policy?" *Issues in Science and Technology*, Spring 2012, available at <http://www.issues.org/28.3/steinberg.html>.

⁶⁰ 543 U.S. 551 (2005), available at <http://www.csustan.edu/cj/jjustice/CaseFiles/ROPERvSimmons.pdf>, last visited on 24th March 2014.

⁶¹ 560 U.S. (2010), available at http://www.njdc.info/njdc_members/images/pdfs/graham_decision.pdf, last visited on 24th March 2014.

⁶² No. 10–9646 with No. 10–9647, *Jackson v. Hobbs*, Directors, Arkansas Department of Correction on certiorari to the Supreme Court of Arkansas, decided on 25th June 2012, available at <http://www.supremecourt.gov/opinions/11pdf/10-9646g2i8.pdf>, last visited on 23rd March 2014.

groups submitted comments in favour or opposition to the Bill. The Ministry's website does not contain these comments, and the JJ Bill was tabled in Lok Sabha with no revisions made since it was first posted there.

The Department-Related Parliamentary Standing Committee on Human Development Resources, which was composed of 32 members of the Lok Sabha and 11 members of the Rajya Sabha from various political parties and was presided over by BJP leader Dr. Satyanarayan Jatia, investigated this bill. The PSC rejected the Juvenile Justice (Care and Protection of Children) Bill 2014 as being unconstitutional and unwarranted in its 264 Report on Juvenile Justice (Care and Protection of Children) Bill 2014 after considering all the submissions made to it in person and in writing:

In addition to being reformative and rehabilitative in nature, the current juvenile system acknowledges that the age range of 16 to 18 is one that requires additional protection. Thus, it is unnecessary to submit minors to a distinct or adult court system because doing so would violate Articles 14 and 15(3) of the Constitution.⁶⁴

However, despite the highly persuasive reasons put out by the Members of Parliament who were in the tiny minority there, the JJ Bill 2014 was enacted in Lok Sabha. It was not discussed in Rajya Sabha for a considerable amount of time due to disruptions caused by other issues that had nothing to do with juvenile justice. To the Secretary General of the Rajya Sabha, Shantaram Laxam Naik, a Rajya Sabha Member of Parliament from the Indian National Congress, submitted a motion on December 7th, 2015, to refer the Bill to a Select Committee⁶⁵.

After the JJA 2015 came into effect, it is crucial to comprehend the new Act's structure and the difficulties that its many provisions would offer as the law is put into practise. All of the crucial

⁶³ It was contrary to the 30-day time-period prescribed by the Pre-Legislative Consultation Policy adopted in the meeting of Committee of Secretaries held on 14th January 2014.

⁶⁴ Para 32 of the 264 Report on the Juvenile Justice (Care and Protection of Children) Bill 2014 of the Department-Related Parliamentary Standing Committee on Human Resource Development presented to Rajya Sabha on 25th February 2015 and laid on the Table in Lok Sabha on 25th February 2015.

⁶⁵ Names of 11 Members of Parliament were included in the motion who were to constitute the Select Committee, namely, Shri Shantaram Naik, Shri Parvez Hashmi, Smt. Wansuk Syiem, Dr. Vijayalaxmi Sadho, Shri D. Raja, Shri Naresh Agrawal, Smt. Jharna Das Baidya, Shri K.C. Tyagi, Dr. K.P. Ramalingam, Shri D.P. Tripathi, and Smt. Viplove Thakur

Act's provisions are discussed in this book. In order to provide interpretations that advance the Act's goals while upholding the fundamental JJA 2015 principles that must be remembered by all agencies involved in the Act's implementation at all times, these provisions have been looked at and analysed.

2.9 Conclusion

The JJA 2015 is a significant step backward from the progressive and futuristic approach to juvenile justice that was first established with the passage of the Apprentices Act 1850. By allowing the use of jails in specific situations, it has brought India back to 1920, when the original Children Acts allowed the use of prisons for the retention of children only in extremely rare situations. In 1920, the policy of reversing the exceptional use of reformatories and Borstal to the exceptional use of prisons was as progressive as sending children to jail in extraordinary circumstances. The same cannot be said for the JJA 2015, which continued to use that strategy despite advances in knowledge in fields like criminology, victimology, psychology, psychiatry, neuroscience, rehabilitation, and restorative justice that have improved our ability to deal with offenders and victims of offenders.

While restorative justice is successfully used in many nations, even for serious crimes like murder and rape committed by adults, reducing the likelihood that they will commit similar offences again, the Indian Parliament capitulated under the political and emotional pressure brought on by one particularly bad instance of barbaric gang rape in which one of the accused happened to be a young child on the cusp of becoming an adult. It is generally agreed upon that a terrible case will never result in a good law. In defiance of that good practise, India made the most retrograde decision to introduce retributive measures for young children as a knee-jerk reaction, despite reports from nations like the United States of America and the United Kingdom that children who are tried as adults end up committing more crimes in adulthood than children who are handled by the juvenile justice system. This book aims to pinpoint the issues brought about by the new Act and suggest remedies that would advance its goals of assuring the care, protection, development, and rehabilitation of children falling under its scope.

CHAPTER 3
LEGISLATIVE PROVISIONS
TRIALS AND PUNISHMENTS OF
JUVENILES IN INDIA

LEGISLATIVE PROVISIONS OF TRIAL AND

PUNISHMENTS OF JUVENILES IN INDIA

Because the welfare and growth of society depend on the development of children, it is crucial in a civilised society to prioritise the protection and wellbeing of children. Children are the most valuable national resource, and the future of the country depends on how its children develop and mature.

Many laws pertaining to children have been passed with the purpose of protecting children. The goals of the law are to uphold and advance children's rights. According to the legislation, children have a right to special attention, support, and basic necessities, and they should be given top priority when allocating resources. The challenging issues of child labour, child trafficking, and child exploitation are all directly tied to illiteracy and poverty, and parents frequently want their kids to work to help them out financially.

3.1 CONSTITUTIONAL PERSPECTIVE

The Fundamental Rights and Directive Principles of State Policy, Parts III and IV of the Indian Constitution, respectively, contain various provisions concerning the growth, survival, and protection of children. Children are given special protection under the Indian Constitution, which also states in Article 15(3) that the State must not be precluded from enacting any special provisions for women and children. Every person has the right to life, and the State is not permitted to take anyone's life without following the legal process, according to Article 21 of the Constitution. Children and adults alike are entitled to the right to life, the right to a dignified existence, the right to health and access to healthcare, and the right to a clean environment. Every child has a fundamental right to education up until the age of fourteen, and that right to education must be both free and mandatory, according to Article 21-A, which was added to the Constitution by the 86th Amendment in 2002.

The authors of the Constitution included specific safeguards to protect youngsters from being exploited because they were aware of the risks. According to Article 23 of the Constitution, all forms of forced labour, including beggar work and other similar forms of forced labour, are forbidden, and those who engage in such behaviour will be subject to legal sanctions.

The Indian Constitution's authors recognised the prevalence of child employment there and included a unique provision to end it. No child under the age of fourteen may be employed to work in a factory, mine, or in any other dangerous occupation, according to Article 24 of the Constitution.

According to Article 39(e) of the Constitution, the State shall direct its policy towards securing the health and strength of workers, men and women, and the children of tender age will not be abused. Citizens also should not be forced by economic necessity to engage in a profession that is inappropriate for their age or strength. The State shall direct its policy towards ensuring that children are given the chance and facilities to develop in a healthy way, in conditions of freedom and dignity, and that children are protected against exploitation and moral and material abandonment, according to Article 39(f) of the UNCRC. According to Article 45, the State must make every effort to provide all children with free and required education up until the age of fourteen. Therefore, according to the Constitution, all children must have equal access to health, happiness, education, and social protection, free from discrimination based on caste, birth, colour, sex, language, religion, social origin, property, or birth.

According to Article 51A (k), which was added to the Constitution by the 86th Amendment in 2002, it is the parents' or guardian's responsibility to give their child, who is between the ages of six and fourteen, the chance to pursue an education.

The Constitution's aforementioned provisions provide the right to life, the right to education, and special protection against child trafficking, begging, and forced labour.

3.2 The Juvenile Justice Legislations in India

In the post-independence era, there were three different sets of laws that were applied to socially handicapped children in India, including those who are alleged to have committed crimes and those who have been neglected. Some states did not have Children Acts, so the Cr.P.C. was applicable in those states, and the Children Act 1960 was applicable in the Union Territories. distinct enactments of these Acts had distinct concepts, processes, and effects, which led to unequal treatment of children from various states. As a result, there was a perceived need for national legislation that was consistent across the board and adhered to international norms. This law was deemed necessary since the adult legal system is deemed unsuitable for youngsters.

However, by the 1980s, the juvenile justice theory had made the much-needed move in the correct direction in light of India's international obligations. Many of the aforementioned Acts are studied in detail in Chapter II's conceptual analysis of the juvenile justice system in India, hence this chapter's analysis starts with The Juvenile Justice Act of 1986.

3.2.1 The Juvenile Justice Act, 1986

In *Sheela Barse v. Union of India*⁶⁶, the Hon. Supreme Court of India ordered that, rather than each State having its own children Act with a varied procedure and content, it would be preferable to adopt a central piece of legislation on children that would be applicable across the all of India. In accordance with the aforementioned directive, the Parliament passed the Juvenile Justice Act, 1986⁶⁷, which took effect on October 2, 1987. The law was intended to accomplish a number of goals, including bringing the country's juvenile justice system into compliance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice⁶⁸.

⁶⁶ AIR 1986 SC 1773

⁶⁷ Received the assent of the President of India on 1-12-1986 and published in the Gazette of India, Extraordinary, Part II, Section 1, dated 3-12-1986

⁶⁸ Vide G.S.R. 710(E) dated 13-8-1987

According to the Preamble of the Act, it is designed to provide for the care, protection, treatment, development, and rehabilitation of neglected or delinquent adolescents as well as the adjudication of specific concerns relating to and disposition of delinquent juveniles.

In Sheela Barse's case, the court ordered the central government to pay Rs. 10,000 and provide all necessary support to the petitioner, a social worker who offered to personally travel to various locations across the nation to confirm the accuracy of the information provided by the authorities regarding minors detained in jails in various States of the union. The Court ordered that the individual States' enacted Children Acts be brought into effect and that their provisions be forcefully carried out.

3.2.2 Statement of Objects and Reasons

An analysis of how the then-current Children Acts functioned would suggest that considerably more attention has to be paid to kids who might be located in settings of social maladjustment, delinquency, or neglect. Additionally, a national juvenile justice system that is uniform and has enough provisions for addressing all facets of the nation's shifting social, cultural, and economic conditions is required. Additionally, there is a need for greater participation of informal networks and community-based welfare organisations in the development, care, treatment, and rehabilitation of such juveniles.

In this regard, the Act attempted to accomplish the following goals:

- i) To establish a consistent framework for juvenile justice in the nation in order to ensure that no kid is ever detained in a jail or a police cell. Juvenile Welfare Boards and Juvenile Courts have been established to ensure this.
- ii) To provide for a specialised approach to the prevention and treatment of juvenile delinquency in its full range while taking into account the child's developmental needs found in any situation of social maladjustment.

iii) To describe the equipment and infrastructure needed for the protection, development, care, treatment, and rehabilitation of the various types of children falling under the jurisdiction of the juvenile justice system. Observation homes, juvenile homes for neglected children, and special homes for delinquent children are proposed as ways to accomplish this.

iv) To establish norms and standards for the administration of juvenile justice in terms of investigation and prosecution, adjudication and disposition, and care, treatment, and rehabilitation;

v) To establish effective connections and coordination between the formal juvenile justice system and non-profit organisations working to improve the welfare of neglected or socially maladjusted children, and to specifically outline their areas of accountability;

vi) To bring the functioning of the juvenile justice system in the nation into compliance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

vii) To create unique offences relating to juveniles and provide for punishments accordingly.

The Children Act of 1960 and other State enactments on the issue would be replaced when its varied provisions took effect in various regions of the country.

3.2.3 Scheme of the Juvenile Justice Act, 1986

The Act's 7 Chapters, which cover 63 provisions, are summarised as follows:

Sections 1 to 3 of Chapter I, Preliminary, deal with the Act's short title, its scope and beginning, definitions of various terms and expressions used in the Act, and the continuance of the investigation into a juvenile who was no longer a juvenile.

Sections 4 to 12 of Chapter II, "Competent Authorities and Institutions for Juveniles," deal with the State Government's authority to establish Juvenile Welfare Boards, Juvenile Courts, Juvenile Homes, Special Homes, Observations Homes, and after-care organisations and specify their duties, responsibilities, and procedures.

Sections 13 to 17 of Chapter III, "Neglected Juveniles," deal with custody, producing neglected juveniles, specific procedures for neglected adolescents who have parents, etc.

Chapter IV: Delinquent Juveniles contains Sections 18 to 26 that deal with regulations for juvenile offenders' bail and custody as well as provisions for disclosing information to their parent or guardian. The following list includes the penalties for offences committed by juvenile offenders.

Sections 27 to 40 of Chapter V, "Procedure of Competent Authorities Appeal and Revisions," which covers specific provisions for the institution of inquiries for establishing the age of delinquent juveniles, deal with the general procedure of competent authorities as well as appeals and revisions from orders made by such authorities.

Sections 41 to 45 of Chapter VI, "Special Offences in Respect of Juveniles," list the penalties for specific juvenile offences.

Sections 46 to 63 of Chapter VII, "Miscellaneous," deal with the State Government's authority to release a juvenile from juvenile homes or special homes, discharge him, give him permission to live with or under the supervision of any responsible person, make provisions for escaped juveniles, parents' financial support for the maintenance of the juvenile, establish a fund for the welfare and rehabilitation of the juveniles, and establish an advisory board.

3.2.4 Definitions

The term "juvenile" is defined as a boy under the age of 16 and a girl under the age of 18, hence the age of juvenility is set differently using a gender-oriented approach. The term "juvenile" is divided into three categories by the Act: "neglected juvenile," "delinquent juvenile," and "uncontrollable juvenile."

The term "delinquent juvenile"⁶⁹ refers to a minor who has been found guilty of a crime.

A juvenile who is

- i) found begging or
- ii) without a home or settled place of abode and without any ostensible means of subsistence and is destitute or
- iii) has a parent or guardian who is unfit or incapable of exercising control over the juvenile or
- iv) a person who frequents brothels, lives with prostitutes, is discovered to be associated with any prostitute, is living an immoral, inebriated, or depraved lifestyle, or
- v) a person who is being abused or exploited for improper, illegal, or unconscionable gain.

is classified as a "neglected juvenile"⁷⁰

A person who cannot be properly cared for or controlled by a parent or guardian is referred to as a "uncontrollable juvenile"⁷¹, and when the Board is convinced of this, the juvenile may be moved to an observation home or other safe location.

According to Section 3 of the Act, even if a person ceases to be a juvenile during the course of an investigation under the Act, the investigation may be continued, and orders may be made as if he continues to be a juvenile, despite anything else stated in the Act or in any other law currently in effect.

The Patna High Court ruled in *Krishna Bhagawan v. State of Bihar*⁷², that the deeming provision under Section 3 was introduced by the legislature and requires the court to treat the accused as a juvenile even when he has ceased to be one during the investigation.

⁶⁹ Section 2(e) of the 1986 Act.

⁷⁰ Section 2(l) of the 1986 Act.

⁷¹ Section 17 of the 1986 Act

⁷² AIR 1989 Patna 217.

"Board" refers to a Juvenile Welfare Board established in accordance with Section 4 of the Act with regard to the neglected child. In relation to neglected children, the term "competent authority"⁷³ is defined as a Board, and in reference to delinquent children, as a Juvenile Court.

3.2.5 Juvenile Welfare Boards

According to section 4 of the Act, state governments must establish juvenile welfare boards for neglected children by publishing a notice in the official gazette. Its membership has also been specified, consisting of a Chairman and such other members, at least one of whom must be a woman, and they are given magistrate-like powers under the 1973 Code of Criminal Procedure⁷⁴. No one may be appointed to the Board unless the State Government believes that person has unique expertise in child psychology and welfare⁷⁵.

The absence of any member at any phase of the action shall not render any order of a Board invalid.⁷⁶ In the event of a disagreement among the Board members, the opinion of the majority shall govern; nevertheless, in the absence of such a majority, the Chairman's opinion shall govern⁷⁷. When the case is brought before them in an appeal, revision, or other procedure, the High Court and the Court of Session may also use the powers granted to the Board.⁷⁸

According to section 13, any police officer or other person or organisation authorised by the government may take custody of a person and present him before the Board if they believe that the individual is a neglected juvenile. The young person must appear before the board within 24 hours after being taken into custody, not including travel time. Such a child cannot be detained or transported to a police station. He may, however, stay with his parents or legal guardians or go to an observation home⁷⁹.

⁷³ Section 2(d) of the 1986 Act.

⁷⁴ Section 4(2) of the 1986 Act

⁷⁵ Section 6(3) of the 1986 Act.

⁷⁶ Section 6(2) of the 1986 Act.

⁷⁷ Section 6(1) of the 1986 Act

⁷⁸ Section 7(3) of the 1986 Act.

⁷⁹ Section 13 (3 and 4) of the 1986 Act.

3.2.6 CRITICAL ANALYSIS OF JUVENILE JUSTICE (CARE AND PROTECTION) ACT, 2015

On December 31, 2015, the President gave his approval to the Juvenile Justice Act of 2015. After that, it was declared to be law and published in the Indian Gazette⁸⁰. According to section 1(2) of the JJA 2015, which the parliament extended for the State of Jammu and Kashmir, juveniles in that state will continue to be governed by the Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013, until that time the state's legislature passes a new law.⁸¹

3.2.7 DEFINITIONS

The definitions of the Juvenile Justice Act of 2015 of all the key terminology are quite logical, and some of the definitions have fresh perspectives added to them. Only twenty-five definitions were included in Section.2 of the JJ Act from 2000; however, the Juvenile Justice Act of 2015 includes sixty definitions. The definitions of "child" and "juvenile" are among the most colourful. The term "child" has been contested, but the JJ Act of 2015 makes an extremely logical attempt to define it.

3.2.8 Child and Juvenile

According to the definition in section 2 (12) of the JJA 2015, a "child" is defined as "a person who has not reached the age of eighteen⁸²." Additionally, it defines "juvenile" as "a child under the age of eighteen⁸³." This definition and the justification for the differential formulation were not necessary and should be disregarded because they have no relevance to the JJA 2015. As is well known, different Acts have varied standards for determining a child's age.

⁸⁰ 1 Gazette of India, Extraordinary, Part II, Section (3) sub-section (ii) dated 13th January 2016.

⁸¹ It reads, "(2) It extends to the whole of India except the State of Jammu and Kashmir"

⁸² S.2(12) "child" means a person who has not completed eighteen years of age;

⁸³ S.2(35) "juvenile" means a child below the age of eighteen years;

3.2.9 Child in conflict with Law

"Child in conflict with law" is defined in the juvenile justice act of 2015 as "a child who is alleged to have committed an offence and who has not reached the age of eighteen on the date of such offence" with sufficient emphasis being placed on this definition⁸⁴.

Regarding the definitions below, two changes exist between the Juvenile Justice Act of 2015 and the Juvenile Justice Act of 2000 in this context. There are two changes between this definition and its equivalent in the JJA 2000.

The word "child" was used in the juvenile justice legislation of 2000, but the juvenile justice act of 2015 replaced that word with "juvenile." The juvenile justice act of 2000 only mentioned children who were claimed to have committed crimes; however, the juvenile justice act of 2015 also includes minors who have been proven to have broken the law. Therefore, we can conclude that the juvenile justice legislation of 2015 has a wider scope than the juvenile justice act of 2000.

3.2.10 Child in need of care and protection

Many of the JJA 2000's clauses from the definition of "child in need of care and protection"⁶ have been kept, with minor deletions, additions, and adjustments. There are twelve clauses in it.

- i. A child "found without any home or settled place of abode and without any ostensible means of subsistence" is included in clause (i). This definition, which includes children found without a home or other regular location to live and without any apparent means of subsistence, is the same as that in the JJA 2000.
- ii. Child "found working in contravention of labour laws for the time being in force or found begging or living on the street" is included in clause (ii). However, it excludes

⁸⁴ 5S.2(13) "child in conflict with law" means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of Commission of such offence.

all minors who work and only includes those who do so in violation of the labour rules.

- iii. The definition of "child" in clause (iii) includes a child who resides with a person (whether or not that person is the child's guardian) who has:
 - a. injured, exploited, abused, or neglected the child;
 - b. threatened to kill, injure, exploit, or abuse the child and there is a reasonable likelihood that the threat will be carried out; or
 - c. killed, abused, neglected, or exploited some other
- iv. A child who is "mentally ill, mentally or physically challenged, or suffering from a terminal or incurable disease, having no one to support or care for him or her, or having parents or guardians unfit to provide for him or her, as determined by the Board or the Committee," is covered under clause (iv). All children who have no one to care for or support them must get care and protection from the State. This is especially true if the youngster in question also has mental health issues or physically impaired, or afflicted with a fatal or incurable illness.
- v. v. Clause (v) addresses a child "whose parent or guardian is found by the Committee or the Board to be unfit or incapacitated to provide for and protect the safety and well-being of the child." The term "unfit" under this clause, as interpreted in light of Section 76(2), refers to a parent or guardian who deliberately abuses and exploits the child for unlawful purposes. Incapacitated, however, is not always a fault-worthy state, and this incapacity may result from the parent's medical or mental disease, infirmity, or jail.
- vi. A kid who "does not have parents and no one is willing to care for him, or whose parents have abandoned or handed him over," is referred to in clause (vi). It is important to read this definition in connection with the definitions of an orphan and an abandoned kid.
- vii. The phrase "missing or runaway child" as well as "whose parents cannot be found after making reasonable inquiry in such manner as may be prescribed" are included in clause (vii). This section expands the definition of "children in need of care and protection" to include a new group of kids. In this phrase, the 'missing' child faces the distinct issue of not being present or traceable. A child can only be considered

"missing" after being located. They cease to be missing once they are discovered. No action may be taken by anyone for the purposes of this Act until the child is located. Perhaps the idea was to distinguish between youngsters who run away from home and those who are lost. If the parents of a missing child cannot be located despite reasonable efforts, the youngster will need to be treated as a child in need of care and protection.

- viii. A child "who is victim of or affected by any armed conflict, civil unrest, or natural calamity" is included in clause (xi) of section viii. This clause is similar to the JJA 2000's preceding clause, with the exception that "civil unrest" has been used in place of "civil commotion."
- ix. The phrase "who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnising such marriage" is used in clause (xii) of Section 2(14). This is a brand-new category that has been added to the definition of "children in need of care and protection," and it acknowledges the problem of child marriage⁸⁵.

3.2.11 Best interest of the child and child friendly

The juvenile justice act of 2015 defines "best interest of the child" in section 2(9). "Decisions taken regarding the child in order to ensure the basic rights and needs, identity, social well-being, and physical, emotional, and intellectual development" are what the word denotes and encompasses.⁸⁶

The phrase "child friendly" as used in section 2(15) refers to kind actions, attitudes, practises, and environments⁸⁷. These elements are crucial because they affect a person's personality. In light of the above, it is safe to declare that the juvenile justice act of 2015 is more child-

⁸⁵ Ved Kumari, The juvenile justice (care and protection of children) Act, 2015-critical analysis, 7 (Universal Law Publication, New Delhi, 1stedn. 2017).

⁸⁶ 8 S.2 (9) "best interest of child" means the basis for any decision taken regarding the child, to ensure fulfillment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development.

⁸⁷ 9 Section 2(15) means "any behavior, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child". This definition has widened the scope of operations that should be child friendly.

friendly than the juvenile justice act of 2000 since it is more comprehensive and logical. Rule 2(d) of the juvenile justice model rules from 2007 takes these things into account.

3.2.12 CLASSIFICATION OF OFFENCES

According to the JJ Act of 2015, the crime can be divided into three types: minor, major, and heinous. The JJ Act, 2015's definitions of minor, major, and heinous acts are found in Section 2. The JJ Act of 2015 defines the terms "petty, serious, and heinous offences" as follows in Section 2 :

- a) The term "petty offences" refers to offences for which the Indian Penal Code or any other currently in effect statute imposes a maximum sentence of three years in jail⁸⁸.
- b) The term "serious offences" refers to offences for which the Indian Penal Code or any other currently in effect law imposes a sentence of imprisonment ranging from three to seven years⁸⁹.
- c) "Heinous offences" refers to offences for which the Indian Penal Code or any other currently in effect statute mandates a minimum sentence of seven years in jail or longer⁹⁰.

The phrase "petty offences" is used to describe only those crimes that have a maximum sentence of three years in jail. However, Indian Penal Code Section 95 refers to those disputes that parties settle outside of court as "petty matters." The purpose of Section 95 I.P.C. is to avoid penalising minor acts or minor wrongdoings. The provision offers a defence against criminal prosecution for actions that, while they may violate the letter of the law, do not comply with its intent and are regarded as innocent. The I.P.C. concept of a minor infraction can also be used to juvenile justice

⁸⁸ 0 S.2(45) of JJ Act, 2015

⁸⁹ 1 S.2(54) of JJ Act, 2015

⁹⁰ S.2(33)of JJ Act, 2015

in terms of the presumption of innocence. In circumstances where the juvenile would be deemed innocent, as in the JJ Act of 2015, the juvenile shall be treated as having no mens rea. Maximum incarceration of three years is a qualification in this definition. Therefore, notwithstanding the fact that crimes punished by three years in jail are included in the category of serious crimes, this term must be interpreted as referring to crimes punishable by more than three years in prison.

The inclusion of offences punishable by up to seven years in prison in the classification of serious offences presents a second issue. All offences punishable with a sentence of more than seven years in prison are not considered serious offences because of this restriction in the definition of a serious offence. Any crime must carry a minimum sentence of seven years in jail or more to qualify as a terrible offence. The JJA 2015's definition of an offence as heinous has the effect of subjecting any kid between the ages of 16 and 18 who is accused of committing it to the potential of being prosecuted as an adult, thereby increasing their criminal responsibility. Consequently, it is prohibited to contain

offences that carry a sentence of more than seven years in prison but don't mandate a statutory minimum of seven years in jail within the category of abhorrent crimes.

3.2.13 CHILD CARE INSTITUTION

The term "child care institution"⁹¹ refers to a variety of locations where kids may be kept, and it includes things like "Children Homes, Open Shelters, Observation Homes, Special Homes, Places of Safety, Specialised Adoption Agencies, and Fit Facilities Recognised Under This Act for Providing Care and Protection to Children Who Are Need Such Services."

The JJ Act, 2015 adheres to the same guidelines as those set forth in the JJ Act, 2000 with regard to Observation Homes, Special Homes, and Observation Homes. When not freed on bail, children who are in trouble with the law may be kept in an observation home⁹² while the Board

⁹¹ S.2(21).

⁹² Under S.2(40) "observation home" means an observation home established and maintained in every district or group of districts by a State Government, either by itself, or through a voluntary or nongovernmental organisation, and is registered as such, for the purposes specified in sub-section (I) of section 47

decides their case. An observation home is a house built and kept up by the government or a house administered by an NGO that has registered as one under the JJA.

3.2.14 FOSTER CARE

According to the JJ Act of 2015, "Foster care" is defined as "placing a child for the purpose of alternate care in the domestic environment of a family, other than the child's biological family, that has been selected, qualified, approved and supervised for providing such care."⁹³ Foster care's primary goal is to give children family-like care as they develop into family members.

3.2.15 ADOPTION

In contrast to the definition provided by the JJ Act of 2000, the term "adoption" has been defined in the JJ Act of 2015. According to the JJ Act of 2000, an adopted child is a legitimate offspring of the person who adopted the child. However, the JJ Act of 2015 has a different definition, referring to such children as "lawful children." The term "illegitimate child" should be substituted for "legitimate child" to indicate a legal child⁹⁴.

Additionally, according to Section 2(42) of the JJA, 2015, a "orphan child" is a child who is: When a kid's legal guardian refuses to care for the child or is unable to do so, they are considered to be without biological or adoptive parents or a legal guardian⁹⁵.

It is evident from the definition of the term "orphan" provided above that it refers to a child who does not have either biological, legal, or adoptive parents. The same proposition holds true for

⁹³ Section 2(29)

⁹⁴ S.2 (2) "adoption" means the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child;

⁹⁵ S. (42) "orphan" means a child— (i) who is without biological or adoptive parents or legal guardian; or (ii) whose legal guardian is not willing to take, or capable of taking care of the child;

children whose parents are willing to care for them, but who are compelled to give up custody of the child because they are unable to do so.

When putting the Act's provisions into practise, this section of the JJ Act, 2015 is crucial for the federal government, state governments, the JJ board, and other authorities. The provisions established under adoption are comparable to the Indian Constitution's directive premise of state policy.

3.2.16 CHILDREN'S HOME

The phrase "Children's Home" refers to a children's home that the state government has founded or is maintaining in each district or set of districts, either directly or through a non-profit entity, and that is registered as such for the purposes outlined in section 50⁹⁶.

3.2.17 SPECIAL JUVENILE POLICE UNIT

A unit of the district or city police force, or, as the case may be, any other police unit, such as the railway police, dealing with children and designated as such for managing minors under section 107, is referred to as a "special juvenile police unit"⁹⁷.

3.2.18 SPECIAL HOME

The phrase "special home" refers to a facility created by a State Government or by a nonprofit registered under section 48 for housing and offering rehabilitation services to children in conflict with the law who are discovered through investigation to have committed an offence and are sent to such facility by a Board order.⁹⁸

⁹⁶ Section 2(19)

⁹⁷ Section 2(55)

⁹⁸ Section 2(56)

3.3 PROVISIONS FOR EFFECTIVE IMPLEMENTATION OF THE JUVENILE JUSTICE ACT

The JJ Act, 2015 advocated the creation of the State Child Protection Society, District Child Protection Unit, Special Juvenile Police Unit, and Commissions for Protection of Child Rights in order to effectively implement its requirements. The commission for the protection of child rights has been granted extra duties in order to safeguard the interests of children.

The Act also allows for the review of how well the various structures covered by the Act are working. The State Child Protection Society and District Child Protection Unit are significant organisations that play a major part in the JJ Act, 2015, implementation process.

According to Section 106,²¹ the SCPS and DCPU would be made up of all officers and other staff members chosen by the government to handle all child-related issues in the execution of the Act.

These issues include the creation and upkeep of institutions covered by the Act, notice of the appropriate authorities regarding children, child rehabilitation, and coordination amongst numerous parties.⁹⁹

The National Commission for the Protection of Children's Rights and the State Commission for the Protection of Children's Rights have been charged with

monitoring the Act's application. In accordance with Section 109 of the JJ Act of 2015, these Commissions have a specific duty to oversee the application of the Act.

3.3.1 SPECIAL JUVENILE POLICE UNIT AND CHILD WELFARE POLICE OFFICER

⁹⁹ Ved Kumari, *The Juvenile Justice (care and protection of children) Act, 2015-Critical Analysis*, 215 (Universal Law Publication, New Delhi, 1st edn. 2017).

A welfare police officer and the special juvenile police unit were described in Section 10724 of the JJ Act of 2015. It established the following rule:

Each district establishes a Special Juvenile Police Unit made up of Child Welfare Police Officers from each local police station and two social workers, one of whom must be a woman.

Its job is to coordinate all police activities involving children.

The JJ Act of 2015 places a crucial emphasis on these police units. To help them carry out their duties more successfully, all police officers assigned to the specific Juvenile Police Units must undergo specific training, particularly when they are first hired as child welfare officers.

In the special juvenile police unit, at least one officer, not below the rank of assistant sub-inspector, who possesses the necessary skills, aptitude, and orientation may be chosen to serve as the child welfare police officer, who will only deal with children, whether they are the victims of crimes or the perpetrators of them, in coordination with the law enforcement, community groups, and non-profit organisations.

3.3.2 EVALUATION OF FUNCTIONING OF STRUCTURES

The JJ Act of 2015 gives the Central and State Governments the freedom to freely evaluate the performance of a number of institutions, including the Board, the Committee, special juvenile police units, registered institutions, and others. The evaluation procedure has been left to the government's discretion. In such a situation, both the government and an independent evaluation are carried out, and it is established that the Central Government's evaluation will take precedence.¹⁰⁰

3.3.3 CONSTITUTION OF THE JUVENILE JUSTICE BOARD

¹⁰⁰ S.55 Evaluation of functioning of structures: (1) The Central Government or State Government may independently evaluate the functioning of the Board, Committee, special juvenile police units, registered institutions, or recognized fit facilities and persons, at such period and through such persons or institutions as may be prescribed by that Government. (2) In case such independent evaluation is conducted by both the Governments, the evaluation made by the Central Government shall prevail.

As a result of the JJ Act of 2000, the juvenile court was renamed as the juvenile justice board, which now consists of three members:

- a. one magistrate who serves as the Principle Magistrate;
- b. two social workers who are members of the Board and have magistrate-like authority.

Similar rules were also included in the JJA of 2015.

The JJ Act of 2015 likewise incorporated the same provision. JJ Act, 2015, notably addresses the constitution, method, powers, and function of the board when the board's handling of a child conflicts with the law in Chapters 3 and 4. Section 426 specifically addresses the board's constitution and mandates that at least one juvenile justice board be established for each district to exercise the authority and performing its duties in relation to kids who are in legal trouble.

- a. Section.4(2) established the following requirements to be met in order to be appointed as a member of the Board:
 - i. Not being a Chief Metropolitan Magistrate or Chief Judicial Magistrate with at least three years of experience, but being a Judicial Magistrate of First Class. It is proper to address him as the Principal Magistrate.
 - ii. Two social workers who were chosen in accordance with the rules' specifications. The social workers must include at least one woman.
 - b. Section 4's Subsection (3) specifies the requirements for social workers to be appointed as Board members. It stipulates that social workers can be appointed from one of two groups of people: either those who have been actively involved in children's health, education, or welfare activities for at least seven years, or those who are working professionals with degrees in child psychology, psychiatry, sociology, or law.
- c. Section 4(4) prohibits the appointment of the following four groups of people as Board members:

- i. Who have been removed or dismissed from service with the Central Government, a State Government, an undertaking or corporation owned or controlled by the Central Government or a State Government;
- ii. Who have any history of violating human rights or child rights;
- iii. ii. Who have been convicted of an offence involving moral turpitude, and such conviction has not been reversed or has not been granted full pardon in respect to such offence;

3.3.4 Functions, Powers and Responsibilities of the Board

- A. Section 8 and Section 1(4) make it plain that all offences brought forth by a kid who was under 18 years old on the day of the offence must be handled by the board. According to Section 8(2), the High Courts and the Children's Court may use equivalent powers in any appeal, revision, or other procedure that involves Section 19 proceedings.
- B. In addition, Section 8(3) outlines the duties and obligations of the board, but these are not all-inclusive and may be supplemented by other duties. Its components ensure:
 - i. The child's parent or legal guardian must be included in every stage of the procedure;
 - ii. Children's rights must be upheld during the investigation, follow-up care, and rehabilitation;
 - iii. The attorney must provide legal aid;
 - iv. If he is unable to understand the language being used in the proceedings, the Board will provide an interpreter.
 - v. The Probation Officer, or if one is not available, the Child Welfare Officer or a social worker, will be instructed to conduct an investigation into the social setting in which the alleged crime was committed and submit a report to the Board within 15 days of receiving it.
 - vi. Determine how to resolve cases involving children who are in conflict with the law.

- vii. Transferring to the Committee matters pertaining to the child allegedly in conflict with the law, stated to be in need of care and protection at any time, recognising that a child in conflict with the law can also be a child in need of care at the same time and that there is a need for the Committee and the Board to be both involved;
- viii. Resolving the situation and approving a final order that includes a personalised care plan for the child's rehabilitation, as well as any necessary follow-up by the probation officer, the D.C.P.U., or a non-governmental organisation.
- ix. Board, conducting at least one inspection visit per month of residential facilities for children in conflict with the law and recommending action for improvement in service quality to the District Child Protection Unit and the State Government;
- x. ordering the police to register F.I.R.s for offences committed against any child in conflict with the law;
- xi. ordering the police to register F.I.R.s for offences committed against any child in conflict with the law
- xii. Any other tasks that may be required.

3.3.5 Duties of the Board

According to the JJ Act, 2015's Section 8(3)(a) provisions, the board's obligations are to ensure that the child and their parent or guardian participate in all stages of the proceeding and to protect the child from harm at all times, including during the investigation, aftercare, and rehabilitation. In accordance with Section 8(3)(c), the board also makes sure that solicitors or other legal professionals provide free legal aid to kids who have legal issues.

3.3.6 Powers of the Board

The board has the authority to instruct the probation officer or social worker to complete and submit the report within 15 days of the child's initial prosecution before the board. The circumstances under which the child committed the offence must be included in the report.

It has the authority to order a social worker or probation officer to complete and submit it within fifteen days of the child's initial appearance before it. According to clause (c), this report must include the circumstances surrounding the alleged offence. The phrase "circumstances in which the alleged was committed" has a different meaning in connection to the social investigation report than it does in relation to the police investigation report, and this must be made abundantly apparent.

The former focuses on the child's social environment at the time of the alleged crime, whereas the latter seeks to determine whether the criminal was actually committed.

3.3.7 RESPONSIBILITIES AND FUNCTIONS OF POLICE

Every police station must have a police officer who has been properly designated and trained to serve as the child welfare police officer in order to handle any concerns relating to children, according to the JJ Act of 2015. The police officer chosen to serve as a child welfare officer must have at least the level of assistant sub inspector and must have a child-friendly attitude. Children's welfare

To coordinate with other NGO's and the police, police officers need receive training and orientation. Furthermore, if the state had a duty to set up a specific juvenile police. According to Section 10 of the JJ Act of 2015, once a kid is apprehended for committing an offence, they must be given to the special juvenile police, also known as CWPO. Additionally, Section 13 of the JJ Act, 2015, makes it explicit what the Special Juvenile Police Unit (SJPU) is responsible for doing in the event of an offence being committed. When the child is brought before the board, the SJPU must notify the board in order to notify the child's parents or legal guardian, if they can be located.

3.3.8 Placements during Proceedings

According to Section 5 of the JJ Act, 2015, a child who was younger than 18 at the time of the proceeding's initiation but turned 18 while it was still pending must be treated as a kid. The same line also passes through Section 6. It refers to kids who are brought before the Board for the first time after turning 18 for a crime they committed while they were younger. For the purposes of the investigation, the person must also be treated as a minor in these situations¹⁰¹.

3.3.9 Bail to Children in Conflict with law

All children who were in trouble with the law when they were detained had to be freed on bail, with the exception of the following three situations:

- a. When it is believed that releasing the child will put them in contact with criminals.
- b. When a threat to morals, physical safety, or society's stability is suspected.
- c. When it is believed that releasing a person will undermine justice.

3.3.10 Procedure to be followed by board

Sections 7 and 9 of the Juvenile Justice Act of 2015 deal with the steps a board must take and what a magistrate who lacks the authority to deal with juvenile offenders should do, respectively.

- a. Section 7 specifically addresses the requirement that the board meet as often as required and adhere to the norms established for the conduct of business at its meetings.
- b. Section 16 specifically calls on the Board to report to the Chief Judicial Magistrate, Chief Metropolitan Magistrate, or District Magistrate on the status of cases every three months. These reports will be examined by the CJM and CMM. In the event that the board does not meet, a kid may be brought before a board member individually. The board must meet in a place that is not threatening and does not resemble a regular court. Even a single board member has the authority to lead proceedings and make decisions.

¹⁰¹ 9S.5. Placement of person, who cease to be a child during process of inquiry- Where an inquiry has been initiated in respect of any child under this Act, and during the course of such inquiry, the child completes the age of eighteen years, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued by the Board and orders may be passed in respect of such person as if such person had continued to be a child

c. Section 14(4) makes it crystal clear that if the investigation into small violations is not finished within six months, the case will be dismissed. This is true even if the Board does not issue a dismissal decision.³³ Different procedures must be followed in cases of minor, serious, and heinous acts under sections 14(5)(d),(e), and (f) of the JJ Act, 2015. For minor crimes, the board uses a summary trial following the CrPC's guidelines for action. The board monitors summons trial³⁵ procedures in cases of serious offences committed by juveniles or heinous offences committed by juveniles younger than 16 years, and in cases of adults who are claimed to have committed heinous offences after the age of 16. Board must begin the preliminary evaluation before deciding whether to transfer or not. But it is regrettable that the JJ Act of 2015 is silent regarding the steps the children's court must take when it decides to try the juvenile as an adult.

3.3.11 SPECIAL PROCEDURES

Similar to past laws, the JJ Act of 2015 forbids joint trials of juveniles in trouble with the law with anyone who is not a juvenile.³⁶ This rule applies to cases going before the children's court as well as those against the board. Section 23(2) mentions it, however the rules set forth therein are not quite clear. In accordance with this clause, the board must establish the age of anybody who is brought before it at the very beginning, and the age once established is considered to be the person's actual age for Act purposes.

3.3.12 PROCEDURE IN RELATION TO 16-18 YEARS OLD CHILDREN IN CONFLICT WITH LAW

The JJ Act, 2015's Section 15 deals explicitly with the steps that must be taken when a minor between the ages of 16 and 18 is accused of committing a heinous crime. It instructs the Board to begin an initial evaluation in the instance of a kid between the ages of 16 and 18 who is accused of committing a horrific crime to evaluate whether the juvenile should be sent to the Children's Court to be tried as an adult. The Board must take a few actions in advance in order to make that choice. First and foremost, the Board must affirmatively find that the minor in trouble with the law at the time of the offence was older than 16 but younger than 18.

If the board determines that the kid was at least 16 years old but under 18 years old on the day of the incident, then it moves on to evaluate whether the claimed crime was committed by the child was a heinous crime or not.

If the board determines that the offence is heinous in nature, it takes the following three straightforward actions:

First, the Board will determine which division the child has been placed in.

Second, who is believed to have committed the crime, and what is the minimum mandatory sentence for the crime?

If the results are positive, check to see if the crime carries a minimum sentence of seven years in prison or more. Additionally, if the crime carries a minimum sentence of seven years in jail or more, move on with the preliminary investigation. If not, according to the guidelines for handling significant violations committed by juveniles.

The JJ Act, 2015 mandates that the JJBs conduct the initial evaluation to establish the suitability of transfer of the 16–18 year old child within three months. This schedule raises severe concerns regarding the timeline's practicality as well as the legality of the method. The assessment need not be completed after the police submit their final report in the case, which confirms that the child is the subject of a case of heinous offence at least on the surface.

3.3.14 CHILDREN'S COURT

According to the JJ Act of 2015's provision, a "Children's Court" is a special court created to deal with juvenile offenders. The ideology of child care, protection, development, and rehabilitation served as the foundation for the creation of Children's Court. The JJ Act, 2015's Section 19 precisely outlined the steps the children's court must take after receiving the case from the board.

It's also crucial to remember that the children's court's primary function is to take care of kids' needs and keep a kid-friendly environment. Because of this, Section 19 does not order the juvenile court to apply the appropriate sentence for the offence.

In conclusion, it can be argued that the children's court is a special criminal court presided over by a session judge that deals with crimes against children committed by adults. However, the laws are deceptive and malicious because they do not specify the criteria by which the children's court should make decisions. As a result, there is always a chance that the children's court may rule on cases arbitrarily¹⁰².

3.3.15 Disposal by the Children's Court

It is crucial to keep in mind the intent behind Section 19(1)(i) of the JJ Act, 2015 when discussing how the children's court will handle a case. According to this provision, if the children's court determines that the child needs to be tried as an adult, it must pass the necessary orders following the trial, subject to the restrictions of Section 19(1)(i). Additionally, the court must evaluate the child's specific requirements, the foundation of a fair trial, and the courtroom's kid-friendly environment.

The children's court is not required by Section 19 to impose the sentence that is specified for the offence in the IPC or any other applicable laws. To comply with the provisions of the convention on the rights of the child, these measures have been added.

Four instructions are provided for the children's court to follow in the context of passing the final decision under Section 19 of the JJ Act, 2015, for this purpose.

The youngster must be deported to a safe location, but Section 19 omitted the time frame. Additionally, the court has been instructed to make sure that the child receives reformative services during his stay in the place of safety. These services include educational services, skill development, and alternative therapies like counselling, behaviour modification therapy, and

¹⁰² S.19 Powers of Children's Court-(4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no illtreatment to the child in any form

psychiatric support. The task of directing the probation officer, district child protection unit, or social worker as necessary "to assess the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form" has been delegated to the children's court. According to Section 19 of the JJA 2015, the youngsters must be sent to jail once they reach the age of 21.

3.3.16 CONSTITUTION OF THE CHILD WELFARE COMMITTEE

The Juvenile Justice Act of 2015's Section 27 mandates the creation of a child welfare committee in each district for the benefit of children who need care and protection. There will be a chairperson and four other members on this committee, making a total of five people. All committee members are required to undergo training beginning on the date they were notified. There shall be at least one woman and one kid affairs specialist.

Power, Functions and Responsibilities of the Committee

The Act's provision for committee powers is found in Section 29. All decisions regarding children in need of care and protection must be made by the committee. The protection, care, development, and rehabilitation of children in need of care and protection should be taken into consideration when using such power.

Procedure of the committee relating to children in need of care and protection

According to Section 28, there must be at least one meeting every 21 days to assess the institution's operation and the welfare of the children. Even when the committee is not in session, a kid might be brought before any individual member. The committee has the right to make decisions and carry out its duties without a member present. The majority of the committee will decide, but if there is a tie, the chairperson's decision is final.

Inquiry

The committee is responsible for two inquiries; the first is to determine the child's age, and the second is to determine whether the child needs an investigation. Juvenile's age will be determined in accordance with section 94 of the Act.

Orders

The committee is required to issue interim and final orders for the production of children while the investigation is ongoing. If the committee determines that a child needs care and protection, it may issue interim orders; if the child is younger than six years old, it may send the child to a specialised adoption agency; and in other situations, it may order that the child be kept in a children's home, a suitable facility, a suitable individual, or a foster family until suitable means for providing that care become available.

ADOPTION

According to the act, "adoption" refers to "the process by which the adopted child is permanently divided from his biological parents and becomes the legal child of his adoptive parents with all the rights, privileges, and obligations that are attached to a biological child." The impact of adoption is described in Section 63 as follows:

Following the adoption, the adoptive father will become the child's parent. With effect from the date the adoption order takes effect, the child will be treated as though they had been born to the adoptive parents for all intestacy-related purposes. Additionally, as of the adoption date, all ties to the child's biological family will be severed and replaced by those resulting from the adoption that any property that belonged to the adopted child prior to the date the adoption order went into effect will continue to belong to them, subject to any conditions attached to their ownership of the property, such as any maintenance requirements for their biological relatives.

Inapplicability of the Hindu adoptions and maintenance act

The Juvenile Justice Act of 2015 is exempt from the restrictions of the Hindu Adoptions and Maintenance Act of 1956, according to Section 56 of the Act. This indicates that Hindus have a choice between the Juvenile Justice Act and the Hindu Adoption and Maintenance Act. It does not imply that Hindus cannot adopt children as a result of this Act.

The JJA does not contain this restriction; adoptive parents are free to adopt the child of the same sex if they already have a natural born child of the same sex. The HAMA forbids the adoption of a child of the same sex if the adoptive parents already have a child of the same sex. If adoption is the most effective way to safeguard a child's interests, the JJA applies.

Declaring orphan, surrendered and abandoned children free for adoption

The Act divides children who can be declared as being suitable for adoption into three categories. Which are:

- a. Orphan: The term "orphan" refers to both youngsters who do not have parents and those whose parents are unable to care for them.
- b. Surrendered: If a child's parents refuse to care for them, it is likely that they can be located. No parent may be removed from custody without first having their unfitness deemed, although the Act makes no provision for such a process.
- c. Abandoned: Children will be considered abandoned if their parents can be located but do not want to care for them.

The Act contains provisions for abandoned children and children who have been turned in. See sections 38 and 35.

Eligibility of prospective adoptive parents

The provisions for eligibility to become prospective adoptive parents are found in Section 57 of the JJA. These include:

The potential adoptive parents must be intellectually aware, financially stable, physically fit, and very eager to adopt a child in order to provide him a proper childhood.

- b. In the event of a marriage, the adoption must have the approval of both spouses.
- c. If the requirements are met and the adoption procedures established by the Authority are followed, a single or divorced individual may also adopt.
- d. A male adopting a child who is not a girl is not permitted.
- e. Any additional requirements that might be listed in the adoption regulations developed by the Authority.

Procedure for adoption

There are three types of adoption under the JJA:

- a. Adoption amongst Indians took place within the country.
- b. NRI adoption takes place between two Indians who are not residents of the same country.
- c. Adoption between Indian and Foreigner: This adoption took occurred between Indian and Foreigner.

Regarding religion, there are no restrictions.

RESIDENTIAL CARE

A variety of residential care categories are covered under the JJA.

These housing possibilities can be classified into two main types. The first category includes all "Homes," i.e., observation homes, special homes, places of safety, and children's homes, which were built and run to provide institutional care either while the Board or Committee's proceedings were pending or in accordance with the Board or Committee's order to keep the residents there.

The second category consists of community-based residential care providers, fit facilities, and open shelters.

Compulsory registration of child care institutions

In accordance with the JJA 2015, all child care facilities must be compulsorily registered within six months of the law's implementation.⁴⁹ No matter whether a facility is administered by the government, a non-profit organisation, or a non-governmental organisation, it must be registered if it houses children who need care and protection or who are in legal trouble.

3.3.17 OFFENCES AGAINST CHILDREN

The problem of offences against children has been recognised for long but offences against children have been increasing at an alarming rate. Reporting of offences under the JJA 2000 has been miniscule¹⁰³ even after all offences included in the JJA 2000 were made cognizable recognising the problem of initiating action as child victims rarely had the familial support to file complaints before the Courts.

According to Section 89 of the JJA 2015, a kid is regarded to be in conflict with the law if they commit any of the crimes against children listed in Chapter IX of the JJA 2015.⁵¹ It would have been preferable if this section had included a clarifying phrase that expressly stated that the Board would handle any such children who had legal issues in accordance with the Act's general provisions.¹⁰⁴

Punishment for cruelty to child

The provisions for the punishment for cruelty to children are found in Section 75 of the Act. Cruelty consists of According to this provision, being cruel to a kid involves assault, abandonment, abuse, exposure, or neglect in which the child is likely to endure unnecessarily painful physical or mental conditions. Anyone who actually has charge or authority over the youngster is subject to punishment for this crime. The obligation outlined in this section does not apply to biological parents who leave their child behind, however.

¹⁰³According to Crime in India 2014, there were 89423 offences against children overall (down from 14423 in 2004), whereas there were 1315 incidents of crimes against children overall (under the JJA 2000). 3.1% of all crimes in India were these. On average, 20.1 out of every 10,000 children had some type of documented crime committed against them. In 87.6% of cases, charge sheet was filed. Only 33-1 % of these led to the accused being found guilty.

¹⁰⁴ Ved Kumari, *The Juvenile Justice (care and protection of children) Act, 2015-Critical Analysis*, 252 (Universal Law Publication, New Delhi, 1st edn. 2017).

Employment of child for begging

By virtue of section 76 of the Act, it is a crime to employ a kid for begging. This offence carries a five-year prison sentence and a fine that can reach one lakh rupees.

Giving intoxicating liquor or narcotic drug or psychotropic substance to a child

Giving intoxicating, liquor or narcotic drugs are punishable offence. It is cognizable and non-bailable offence punished with seven years imprisonment and fine up to one lacs rupees.

Use of children for vending, peddling etc., of liquor, narcotic drug or psychotropic substance

A new offence is made into a cognizable, non-bailable offence under Section 78. It forbids the employment of kids in sales, the sale of alcohol, the distribution of narcotics, etc. This offence carries a seven-year jail sentence and a \$1,000,000 fine.

Exploitation of child employee

The exploitation of a child employee is become a cognizable and non-bailable offence under Section 79. The Indian Constitution's Articles 23 and 24 are in compliance with this requirement.

Corporal punishment

Physical abuse of children receiving child care instructions is a relatively widespread practise. The JJA's Section 82 makes it a crime.

CHAPTER 4
INTERNATIONAL PERSPECTIVE
OF JUVENILE JUSTICE

INTERNATIONAL PERSPECTIVE ON JUVENILE

JUSTICE

The goal of international juvenile justice instruments is to identify the most effective means of defending and advancing juvenile rights. Since the start of the twentieth century, worldwide instruments focusing on the development, care, and protection of children have been created. It was the League of Nations that issued the Declaration on the Rights of the Child in 1924. The fulfilment of children's economic, social, and psychological needs as well as their welfare were its main concerns. Following the Second World War, the international community developed a set of universal human rights for all people, which were enshrined in the 1948 Universal Declaration of Human Rights. It declares that all people have a right to all human rights. The 1959 Declaration on the Rights of the Child is a thorough development in the area of safeguarding children's rights. It is concerned with the upkeep, defence, and development of children's rights and well-being. The Geneva Declaration has been replaced by the Declaration of the Rights of the Child of 1959. These aforementioned declarations do not contain any provisions relating to juvenile justice.

The importance of separating children from adults charged is first acknowledged in the 1966 International Covenant on Civil and Political Rights. Children's economic, social, and cultural rights are recognised by the 1966 International Covenant on Economic, Social, and Cultural Rights. State parties are not required to abide by the Declaration and Covenant mentioned above. A thorough document for the defence of children's rights is the 1989 Convention on the Rights of the Child.

All State Parties are required to abide with the CRC's requirements. The complete range of a child's civil, political, social, economic, and cultural rights are protected under the Convention on

the Rights of the Child. The administration of juvenile justice is covered under the requirements of the Convention on the Rights of the Child.

The Beijing Rules, the Riyadh Guidelines, the Havana Rules, and the Guidelines for Action on Children in the Criminal Justice System are the four main international instruments supporting juvenile justice.

The creation of uniform minimum standards for the administration of juvenile justice was mandated by the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, held in 1984. The UN General Assembly enacted the United Nations Standard Minimum Rules for Administration of Juvenile Justice in 1985 as a result of this directive. The Beijing Rules offer a framework for a national juvenile justice system's operation as well as a guide for States to respond to children who come into confrontation with the law in a fair and compassionate manner.

State Parties are not required to abide by the Beijing Rules, but some of them have become so after being included into the Convention on the Rights of the Child. The General Assembly recognised the necessity for the creation of regional, national, and global plans to combat juvenile delinquency. The United Nations Guidelines for the Prevention of Juvenile Delinquency, also known as the Riyadh Guidelines, were established by the General Assembly as a result of this need. The goals of the guidelines are to stop juvenile delinquency by giving opportunities and support to those who are committing crimes. The States are not required to abide by the Riyadh Guidelines.

The General Assembly of the United Nations established the Havana Rules, also known as the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, in 1990. It was applicable to all minors and kids who were denied their freedom. They lay out the conditions that permit depriving children of their liberty. It outlines the circumstances in which a juvenile may be imprisoned and mandates that such confinement only be used as a last option. The State Parties are not required to abide by the Havana Rules.

The 1997 General Assembly, which met in Vienna, established the Guidelines for Action on Children in the Criminal Justice System. The principles of nondiscrimination and upholding the best interests of children are emphasised in the rules for action.

These four documents, which represent internationally recognised minimum standards for the administration of juvenile justice, instruct State Parties to establish or modify their current juvenile justice system, as well as to establish policies and propose laws, in order to fulfil their commitments under the CRC.

4.1 UNITED NATIONS UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

A global charter protecting human rights is known as the Universal Declaration of Human Rights. On December 10, 1948, the General Assembly of the United Nations approved it. It acknowledges the idea of the intrinsic worth, equality, and unalienable rights of all people. It serves as the cornerstone of global freedom, justice, and peace. The Declaration affirms that everyone has the right to all of the freedoms and rights listed in the Declaration¹ and that all people are born free and equal in dignity and rights.¹⁰⁵

Right to Life

No matter their age, both children and adults have the right to life, liberty, and security. Everyone has the inherent right to life, and only the legal process can result in that right being denied.¹⁰⁶ The principles and procedures set forth by law must be followed when a person's freedom is restricted.

Right to Protection form Slave and Torture

No one shall be subject to slavery, servitude, or the slave trade; everyone has a right to protection against such practises. In addition, the proclamation states that all forms of slavery, servitude,

¹⁰⁵ Article 1 of Universal Declaration on Human Rights 1948 (UDHR)

¹⁰⁶ Article 3 UDHR

and slave trade are forbidden.¹⁰⁷No one shall be subjected to torture or other cruel, inhumane, or degrading treatment or punishment. Everyone has the right to be protected from such treatment¹⁰⁸. The phrase "torture" refers to any act that purposefully causes a person great pain or suffering, either physically or mentally, for such goals, and any treatment that is demeaning to people is considered harsh, inhumane, or otherwise cruel treatment.

Right to Protection of Law

Equal rights apply to all people. Everyone is recognised as a person before the law under Article 6 of the UDHR. It states that everyone is treated equally by the law and has a right to protection against discrimination. According to Article 7 of the UDHR, everyone has the right to equal protection from any discrimination that violates the Declaration as well as from any incitement to such discrimination. It once more mandates that everyone has the right to an effective remedy from the appropriate national tribunals in the event that his fundamental rights under the Constitution or the law are violated¹⁰⁹. No one shall be subjected to arbitrary arrest, detention, or exile, as stated once more in the Declaration.¹¹⁰

Right to Fair Hearing

Every person has the entire right to a fair hearing before an impartial, independent tribunal whether it comes to the determination of their rights and obligations or when they are being accused of a crime.¹¹¹ Among them are the right to be presumed innocent, the right to prompt notification, the right to have charges decided by a competent and impartial judicial body, the right to counsel and other suitable assistance, the right to a defence, the right to be shielded from admitting guilt, and the right to appeal. It also emphasises the legal need that everyone accused of a crime must be presumed innocent until and until proven guilty. No one shall be deemed guilty of a criminal offence for any conduct or omission that, at the time it was performed, did not

¹⁰⁷ Article 4 UDHR

¹⁰⁸ Article 5 UDHR

¹⁰⁹ Article 8 UDHR

¹¹⁰ Article 9 UDHR

¹¹¹ Article 10 UDHR

constitute a criminal offence under national or international law. A harsher punishment shall not be imposed in addition to the penalty that was in place at the time the criminal conduct was committed¹¹².

Right to Privacy

According to the UDHR, everyone has the right to privacy, and no one shall be the target of arbitrary interference with their right to private, their family, their home, or their correspondence, as well as attacks on their honour and reputation.

Everyone has a right to legal protection from these types of interference or assaults¹¹³. According to international standards, both children and adults have the right to have their privacy protected throughout the entire legal process.

Right to Thoughts and Expression

According to the Declaration, everyone has the right to freedom of speech, of the press, and of the exercise of religion. They also have the freedom to alter their religion, their beliefs, and their freedom, either alone or in community with others, and to express their religion or their beliefs through teaching, practise, worship, and observance. Everyone has the right to freedom of expression, according to the Declaration of Independence. This freedom encompasses the ability to express opinions freely, as well as the freedom to look for, acquire, and import knowledge and ideas across boundaries and through any media.¹¹⁴

Right to Nationality

According to the UDHR, everyone has the right to be a citizen from birth and cannot be arbitrarily denied that right or the ability to change that nationality¹¹⁵. Everyone has the right to own property, and no one shall be arbitrarily deprived of his or her property, according to the

¹¹² Article 11 UDHR

¹¹³ Article 12 UDHR

¹¹⁴ Article 19 UDHR

¹¹⁵ Article 15 UDHR

UDHR¹¹⁶. Only in conformity with the laws that are in place in the country may the right to property be denied.

Right to Public Service and Social Security

Everyone has the right to equal participation in public life and in the governance of his or her nation, whether directly or through representatives of their choosing. The will of the people shall be the foundation of the authority of government, and this shall be expressed in regular, sincere elections, held by secret ballot or by comparable free voting processes, and conducted by universal and equal suffrage¹¹⁷. Everyone has the right to social security as a member of society, and this right must be realised via national effort, international cooperation, and in accordance with the structure and available resources of each State. The economic, social, and cultural rights crucial to his dignity and the unrestricted development of his personality¹¹⁸.

Right to Leisure and Health

Every person has the right to leisure time, which includes a justifiable cap on working hours and regular paid holidays¹¹⁹. Children have the right to breaks and rest as needed if they are participating in any activities or jobs. Everyone has the right to an adequate standard of living, which includes food, clothing, and housing as well as access to medical care and essential social services. They also have the right to security in the event of unemployment, illness, disability, widowhood, old age, or other loss of livelihood due to factors beyond their control. Children and mothers are entitled to special attention and support.

All children should have the same social protection, regardless of whether they were born married or not¹²⁰.

¹¹⁶ Article 17 UDHR

¹¹⁷ Article 21 UDHR

¹¹⁸ Article 22 UDHR

¹¹⁹ Article 24 UDHR

¹²⁰ Article 25 UDHR

Right to Education

Education is a right for everyone. At the very least, the fundamental and elementary levels of education must be free. The first grade must be completed. Generalised technical and professional education must be provided.

On the basis of merit, all people should have equal access to higher education. Education must focus on the whole development of the human being individuality as well as to the promotion of respect for basic liberties and rights. It will support the United Nations' efforts to maintain peace by fostering mutual respect, tolerance, and goodwill among all nations, racial or religious groups. The type of education that will be provided to children is a choice that parents can make in advance¹²¹.

Right to Participate in Cultural Life

Everyone has the right to freely engage in community cultural activities, appreciate the arts, and benefit from scientific advances. Everyone has the right to the defence of the material and moral interests coming from any creative, literary, or scientific work that they have contributed to¹²². Everyone has the right to a social and international system that allows them to fully exercise their constitutionally guaranteed freedoms¹²³.

The Declaration further states that each person has obligations to the community because it is only within this community that a person can fully and freely develop their self. Everyone's rights and freedoms may only be limited in the ways specified by law, and only in ways that are necessary to ensure the due respect and recognition of others' rights and freedoms as well as to uphold the just standards of morality, public order, and the general welfare in a democratic society. These freedoms and rights may never be exercised in a manner that is at odds with the objectives and guiding principles of the United Nations¹²⁴. Nothing in this Declaration should be

¹²¹ Article 26 UDHR

¹²² Article 27 UDHR

¹²³ Article 28 UDHR

¹²⁴ Article 29 UDHR

used to indicate that any State, group, or individual has the authority to act in a way that would undermine any of the freedoms and rights stated here.¹²⁵

4.2 UNITED NATIONS DECLARATION OF THE RIGHTS OF THE CHILD, 1959

The international community's first comprehensive step towards a statement of children's rights was the statement of the Rights of the Child of 1959. On November 20, 1959, the United Nations General Assembly approved it. The Geneva Declaration of 1924 has been replaced by this Declaration. The Declaration reiterated their commitment to advancing higher standards of living and wider freedoms as well as their belief in fundamental human rights and the dignity of the human person. It has 10 fundamental principles for the defence and advancement of children's rights.

Right to enjoy all Rights

Every child has the right to exercise all of the freedoms guaranteed by the Declaration of the Rights of the Child, without exception, distinction, or discrimination on the basis of race, colour, sex, language, religion, political opinion, national or social origin, property, birth, or any other status, whether it be personal or familial.¹²⁶

Right to Special Protection

Every child shall enjoy special protection, and shall be provided with opportunities and facilities by law and by other means, according to the Declaration, so that he or she may develop physically, mentally, morally, spiritually, and socially in a healthy and normal manner, in an environment of freedom and dignity. The best interests of the child must come first in the drafting of laws with this goal in mind.¹²⁷

Right to Name and Nationality

¹²⁵ Article 30 UDHR

¹²⁶ Principle 1 of United Nations Declarations of the Rights of the Child 1959

¹²⁷ Principle 2

The Declaration recognises that every child has a right to a name and a nationality from birth¹²⁸. A child's name and nationality are inherent rights that the state cannot take away. A child's right to nationality and name must be denied in accordance with local legislation.

Right to Social Security

The Declaration guarantees that all children will receive social security benefits. He has the right to grow and develop in good health, and to that purpose, both his mother and he must get special care and protection, including proper prenatal and postnatal care. The young person has the right to sufficient nutrition, housing, leisure, and medical care.¹²⁹

Rights of Handicapped Child

Every child who is physically, psychologically, or socially challenged shall get the specialised treatment, education, and care required by his unique condition, according to the Declaration of Human Rights.¹³⁰

Right to Harmonious Development

Every kid has the right to a healthy development of their personality, needs, affection, and understanding, according to the Declaration. He or she will develop while being looked after by his or her parents, in a setting of love and devotion, as well as of material and moral stability. A young child who is not kept with his mother in special circumstances will be separated from her. Children without families and those who lack sufficient resources must receive special attention from society and the government. It is desirable to provide State and other help for the upkeep of children in large households¹³¹.

¹²⁸ Principle 3

¹²⁹ Principle 4

¹³⁰ Principle 5

¹³¹ Principle 6

Right to Education

Every child has a right to free and compulsory education at least through the basic levels, according to the Declaration. He or she will receive an education that will advance their general culture, help them develop their skills, sense of morality, and social responsibility, and help them become contributing members of society. The guiding premise for those responsible for the child's education and direction must be what is in his best interests with his parents, first place. The kid shall have unrestricted access to play and recreational opportunities, which shall be used for the same reasons as education. The goal of society and the government is to encourage the exercise of this freedom.¹³²

Right to Relief

According to the Declaration, every child has the right to protection and assistance at all times¹³³. The child's difficulties should be resolved by the relief.

Rights to Protection from Exploitation

According to the Declaration, all children must be protected from all types of abuse, neglect, and exploitation and must never be involved in any kind of trafficking. The child must wait until they are of a legal minimum age before being allowed to work, and they must never be forced or allowed to engage in any occupation or employment that might harm their health or education or hinder their growth on the inside.¹³⁴

Rights against Discrimination

Every child must be protected from activities that could encourage racial, religious, or other forms of discrimination, according to the Declaration. He or she must be raised with the

¹³² Principle 7

¹³³ Principle 8

¹³⁴ Principle 9

knowledge that his or her time and talents should be used to benefit fellow humans, and in an environment that promotes tolerance, understanding, and friendship between all peoples¹³⁵.

4.3 INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, 1966

On December 16, 1966, the international community adopted the International Covenant on Civil and Political Rights. It is a thorough treatise with a strong emphasis on peoples' civil and political rights. The State Parties to the Covenant take into account the values outlined in the United Nations Charter and agree that the inherent worth and unalienable rights of every human being serve as the cornerstone of freedom, justice, and peace in the world. All people have the right to enjoy civil and political freedom, fearlessness, economic, social, and cultural rights, according to the Universal Declaration of Human Rights. The promotion of universal human rights and freedoms is required of States, and it is the responsibility of every person to advance the rights enshrined in the current covenant. The State Parties to the Covenant shall guarantee and provide for the rights listed below in relation to protecting children's rights.

Right to Self Determination

All peoples have the right to self-determination, the Covenant emphasises. By virtue of that right, they are free to choose their political status and to build their economies, societies, and cultures. Without compromising any commitments resulting from the mutual benefit concept of international economic cooperation and international law, all peoples are free to dispose of their natural resources and riches for their own purposes. A person must never be denied their own means of support. The States Parties to the present Covenant are required to support and uphold the right to self-determination in accordance with the provisions of the United Nations Charter¹³⁶.

¹³⁵ Principle 10

¹³⁶ Article 1 of the International Covenant on Civil and Political Rights 1966 (ICCPR)

Right to Non Discrimination

According to the Covenant, a State is required to respect and protect every person residing on its territory and under its legal authority. The State is not permitted to discriminate on the basis of any factor, including race, colour, sex, language, or religion, political or other beliefs, racial or socioeconomic background, wealth, and other statuses. Insofar as not already covered by current legislation or other

Each State Party to this Covenant agrees to take the necessary steps to adopt the legislative or other measures that may be required to give effect to the rights recognised in the present Covenant¹³⁷, in accordance with its constitutional procedures and the provisions of the Covenant.

4.4 United Nations standard minimum Rule for the Administration of juvenile justice (the Beijing Rule), 1985

In order to safeguard the fundamental human rights of young people who are in legal trouble, the sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which met in Caracas, Venezuela, in 1980, outlined a number of fundamental principles that it felt should be reflected in the rules that would be created for the administration of juvenile justice. The regulations might then act as a guide for how the member states of the United Nations approach young offenders. The Congress proposed that the Economic and Social Council ask the group on Crime Prevention and Control, a permanent group, to create such regulations¹³⁸.

The committee worked with the United Nations regional institutes, the United Nations secretariat, and the United Nations Social Defence Research Institute to develop the draught regulations during the ensuing years. Regional preliminary meetings for the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders approved them in

¹³⁷ Article 2 ICCPR

¹³⁸ <https://www.ncjrs.gov>.visited on 14-9-2015

principle; they were modified and approved during an interregional preparation meeting held in Beijing, China, from May 14 to May 18, 1984.

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (also known as the "Beijing Rule"), which were presented to the seventh congress by the economic and social council and held in Milan, Italy, in August and September 1985, were approved on September 6 by the congress, which then recommended that the General Assembly adopt them. The rule was accepted by the Assembly on November 29 and added to its resolution 40/33.

The rules laid out what was considered to be good general principle and practise in the administration of justice for juveniles and were adjusted to the goals and spirit of juvenile justice systems throughout the world, including systems within varied nations' settings and legal structures. They serve as the bare minimum that is deemed acceptable by the For the treatment of juvenile criminals under any system for dealing with such people, the United Nations. The accompanying commentary was meant to be read as an The rules and commentary, which are a crucial element of the document, are copied here¹³⁹.

The general Assembly

Considering the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, as well as other international documents on human rights relevant to the rights of children and adolescents, Consideration should also be given to the fact that 1985 was declared the International Youth Year for Participation, Development, and Peace and that the international community has prioritised the defence and advancement of youth rights, as evidenced by the importance given to the Declaration of the Rights of the Child¹⁴⁰.

Recalling resolution 4, which was passed by the sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, called for the creation of minimum standards for the

¹³⁹ <https://www.ncjrs.gov>. visited on 14-9-2015.

¹⁴⁰ General Assembly resolution 40/33 adopted on 29 November, 1985.

administration of juvenile justice and the care of juveniles that could serve as a guide for other member States. Remembering also Economic and Social Council Decision 1984/153 of May 25, 1984, by which the draft rule was sent to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offence, held in Milan, Italy, from August 26, 1985, to September 6, 1985, through the Interregional Preparatory Meeting, held in Beijing from May 14, 1984, to May 18, 1984.¹⁴¹

Recognising that children and teenagers require special attention and support for their physical, mental, and social development as well as legal protection in settings of peace, freedom, dignity, and security due to their early stage of human development,

Considering that current national laws, policies, and practises may need to be reviewed and modified in light of the standards set forth in the regulations, as well as the fact that, despite the standards' apparent impossibility in the current social, economic, cultural, political, and legal climate, they are nonetheless important, meant to be attained as a minimal standard for policy¹⁴²

4.5 United Nations Rules for the Protection of Juvenile Deprived of their Liberty, 1990

On December 12, 1990, the General Assembly of the United Nations adopted these regulations. In accordance with human rights and fundamental freedoms, it seeks to define the minimal level for the protection of juveniles who are deprived of their liberty in whatever way. These guidelines are also implemented in an effort to neutralise the negative impacts of all detention practises without exception. in order to protect society's integrity. The goal and purpose of these regulations is to create fair and humane process to prevent denying the child their freedom. Here are a few of the guidelines¹⁴³:-

Rule 1: Imprisonment should only be used as a last choice. The juvenile justice system should preserve the rights, safety, and promote the physical and emotional well-being of juveniles.

¹⁴¹ General Assembly Resolution 40/33 adopted on 29 November 1985.

¹⁴² General Assembly Resolution, 40/33, Adopted on 29 November, 1985

¹⁴³ UN General Assembly Resolution 45/113 of December 14, 1990.

Rule 2: Juveniles should only be deprived of their liberty in conformity with the guidelines and practises outlined in these rules and the Minimum Standard for the Administration of Juvenile Justice established by the United Nations. Juvenile liberty deprivation should only be used as a last resort, last only as long as is absolutely necessary, and only in the most extreme circumstances.

Rule 16: The rule should be applied in light of the economic, social, and cultural circumstances that each member state is currently experiencing.

Rule 29: Juveniles and adults shall always be separated in detention institutions, unless they are related by blood.

Rule 30: Facilities for open custody of juveniles should be developed.

Rule 72: Qualified inspectors or an equivalent duly formed body that isn't affiliated with the facility's management should be given the authority to conduct inspections on a regular basis and should be given full freedom in doing so.

Rule 73 states that competent medical officers who are employed by the inspecting agency or the public health service should take part in the inspection.

Rule 74: The inspector must submit a report on findings following a competitive inspection.

4.6 United Nations Guideline for the prevention of Juvenile Delinquency (The Riyadh Guidelines), 1990

The successful prevention of juvenile delinquency requires work on the part of the entire society to ensure the harmonious development of adolescents with respect for and promotion of their personalities from every stage of childhood because young people can develop their own personalities. a non-criminogenic outlook. As a result, on December 14, the General Assembly of

the United Nations adopted the Riyadh principles, which are principles for preventing juvenile delinquency.

The current rules provide that for the purposes of interpreting the principles, a child-centered perspective should be pursued. At every level of government, comprehensive preventative plans should be implemented¹⁴⁴. These plans should include the following¹⁴⁵:-

- (A) Weill outlined duties for the appropriate institutions, agencies, and persons in preventive measures.
- (b) The implementation of policies, programmes, and initiatives based on prognostic studies would be closely and painstakingly monitored.
- (c) Techniques for successfully lowering the likelihood that a delinquent act would be committed.
- (d) Close inter-national collaboration among many disciplines. State, provincial, and local governments will work together to prevent juvenile delinquency with the help of the private sector, community representatives, and organisations that provide child care, health education, social law enforcement, and judicial services.
- (e) Special employees of all ranks.

The focus of any preventative programme should be on the wellbeing of children from an early age when implementing these principles in accordance with the national legal framework. The media should be encouraged to represent young people as making constructive contributions to society and to make sure that children and teenagers have access to educational materials from a variety of national and international sources. It is important to encourage the mass media and the film industry to downplay the amount of pornography, drugs, and violence depicted and to portray exploitation and violence negatively¹⁴⁶.

Government agencies should place a high value on youth plans and programmes, and they should allocate enough money and other resources to effectively deliver services. They should also hire

¹⁴⁴ Riyadh Guidelines, 1990 Rule 3

¹⁴⁵ UN General Assembly Resolution 45/112 of December 14, 1990

¹⁴⁶ Riyadh Guidelines, 1990, Rule 9.

enough staff to provide adequate housing, food, and other relevant services, as well as other medical and mental health care should be optional.

4.7 Optional Protocol to the Convention on the Rights of the child on the Involvement of Children in Armed Conflict, 2000

Children's rights require special protection, and in order to ensure that they are fully protected during armed conflicts and foreign occupation, the General Assembly of the United Nations adopted the Optional Protocol to the Convention on the Right of the Child on the Inclusion of Persons with Disabilities to the Convention on the Right of the Child on the Inclusion of Persons with Disabilities. The parties to the conflict should take all reasonable measures to prevent children under the age of 18 from being involved in hostilities, with a special focus on raising the minimum age for recruiting and limiting their actual participation. Although it is impossible to go into detail about the entire article, a few are given below:

According to the article, state parties must take all reasonable steps to guarantee that any enlistees in their armed forces are at least 18 years old. do not directly participate in hostilities, and State Parties shall ensure that individuals under the age of 18 are not compelled to enlist in their armed services¹⁴⁷.

Articles 38, paragraph 3 of the Convention on the Rights of the Child states that States Parties shall increase their National Armed Forces. If any State Party permits voluntary recruitment into their National Armed Forces of persons under the age of 18, they shall maintain safeguards to ensure, at a minimum,

In order to be accepted into the national service, a person must:

- (a) be genuinely voluntary in their recruitment;
- (b) have their legal guardian's informed consent;
- (c) be fully informed of the responsibilities involved in their military service; and
- (d) supply valid identification of their age.

¹⁴⁷ United Nations General Assembly Resolution 54/84 of May 16, 2000.

Upon ratification or accession to this proposal, State parties shall be required to submit a legally enforceable declaration that specifies the minimum age at which It will let its armed forces serve voluntarily.

According to Article 8, each State Party is required to submit a report to the Committee on the Rights of the Child (CRC) within two years of the Protocol's entry into force, outlining all the steps it has taken to carry out the Protocol's provisions. The CRC may also make further information requests of States Parties.

4.8 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child Prostitution and Child Pornography 2000

Children are being transported internationally more frequently for the purposes of prostitution, commerce, and pornography. The amount of child pornography on the internet and in other developing technologies is rapidly rising. Children, especially girls, are more likely to be sexually exploited, and girls' children, especially girls, are more likely to be sexually exploited. Additionally, girls' children are disproportionately represented among those who are sexually exploited.

The United Nations adopted the Optional Protocol to the Convention on the Right of the Child on the sale of children, child prostitution, and child pornography by resolution on May 16, 2000 as a result of the growing concern of the international community regarding these allegations and exploitation¹⁴⁸.

The convention defines the offences of child pornography, child prostitution, and child sales. It establishes guidelines for how domestic law violations should be handled, including with regard to offenders, victim protection, and proactive measures. Additionally, it serves as a foundation for increasing international collaboration in the fields, particularly with regard to the prosecution of offenders.

¹⁴⁸ United Nations General Assembly Resolution, 54/84 of May 16, 2000.

In accordance with protocol Child pornography refers to the depiction of children engaging in real or simulated explicit sexual activities for payment or any other form of consideration, and the sale of children refers to any act or transaction where a child is transferred from one person or group of people to another. Pornography is any depiction of a child's sexuality that is primarily intended for sexual motives¹⁴⁹.

According to Article 3, each State party is required to make sure that, at the very least, the following behaviours are completely covered by their criminal or penal laws, whether they are committed domestically, abroad, by one person or a group;

- (1) Offering, delivering, or accepting a child by any means for the purpose of sexual exploitation, the sale of a child's organs, or the use of a child as forced labour are all examples of child sales.
- (2) Promoting and facilitating child prostitution.
- (3) Making, destroying, disseminating, importing, exporting, offering, selling, or possessing child pornography for the aforementioned use.

Each State Party is required by Article 4 to establish its jurisdiction over the offences listed in Article 3 Paragraph I when the offence is committed on its territory, on board a ship, or on an aircraft that is fully registered in the State. Additionally, the State Party is required to submit a report to the Committee on the action it has taken to implement the Protocol within two years of the entry into force of the Protocol for that State Party¹⁵⁰. It should be mentioned that UNICEF may host an international children's conference on Saturday, May 21, 2002.

As was previously stated, juvenile justice must be viewed as an essential component of each nation's process of national development, within a broad framework of social justice for all juveniles, including those who are in legal trouble. Any method designed for juvenile justice

¹⁴⁹ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000, Article 3.

¹⁵⁰ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000, Article 4.

must put the juvenile's overall growth and wellbeing as its top priority. It must be impartial and kind.

After briefly going over the concepts of juvenile justice in international law, it is suggested to discuss the statutory framework, which includes the juvenile Justice Act of 1986 and the juvenile justice (care and protection of children) Act of 2000, in the following chapter. These acts address issues like determining the age of juveniles and juvenile bail, among others.

CHAPTER 5
ABUSE OF CHILD LAWS

ABUSE OF CHILD LAWS

“Better that ten guilty persons escape than that one innocent suffer.” –William Blackstone

Laws for protection of children in India are stringent and are made even severe by ensuing amendments in child protection acts. These laws are preventive as well as punitive in nature .i.e. these laws provide harsh punishments for all the offences committed against children and also provide measures regarding prevention of certain offences. India has a variety of regulations in place to safeguard children, and it is becoming more and more widely recognised that societal progress depends on it. Due to a lack of qualified preventative and rehabilitation services and enough human resource capability on the ground, enforcing the laws is difficult. Millions of kids are thereby vulnerable to assault, abuse, and exploitation.

There are chances to ensuring that all children have equal access to high-quality protection services thanks to India's reasonably extensive policy and legislative framework addressing children's rights and protection. Four fundamental laws serve as the foundation of child protection legislation:

- The Juvenile Justice (Care and Protection) Act (2000, amended in 2015);
- The Prohibition of Child Marriage Act (2006);
- The Protection of Children from Sexual Offences Act (2012), and
- The Child Labour (Prohibition and Regulation) Act (1986, amended in 2016).

Significant efforts have been undertaken over the past five years to establish fast track courts to address cybercrime against women and children. The Protection of Children from Sexual Offences Bill was revised in 2019 to include harsher penalties for sexual offences committed against children.

Although there is a lack of precise data on violence, abuse, and exploitation, overall public awareness of child abuse, particularly sexual abuse, is growing. A number of incidents that may have gone unreported in the past are now being reported.

It is clear from the examples that have been documented that sexual offenders tend to be male and frequently people the child knows. According to the National Family Health Survey (2019–21), 1.5% of young women between the ages of 18 and 29 said they had been sexually assaulted before turning 18.

But often these laws which are meant for protection of minors are misused by some people for ulterior motives. Fake allegations are levelled on innocent people, time and again, for fulfilment of various motives and intentions including vengeance, property dispute, extortion of money or property or even for some amount of compensation.

Unjust convictions that result in the conviction of innocent people are referred to as "wrongful convictions." Such organisational accidents occur when minor errors compound to produce catastrophes. They are aberrations in a generally effective criminal justice system, and the repercussions for exonerees can be enormous. A false conviction occurs when an innocent person is punished for a crime they did not commit while the true offender gets away with it. Sometimes the innocent person's conviction is overturned after they have already been put to death.

All of this contributes to the public's loss of faith in the legal system. A victim of a false conviction in our criminal justice system suffers in two different ways. In the beginning, it is psychological since he is suffering from being imprisoned for a crime he did not commit. Second, because of the failures of the criminal justice system, he has to endure a lifetime of societal rejection and contempt.

Fundamental human rights are violated by wrongful convictions. It is further explained in Article 14 of the International Covenant on Civil and Political Rights (ICCPR). It imposes a

responsibility on the state to fairly recompense the victim of the punishment resulting from the conviction.

According to Article 14(6) of the ICCPR, if a person is found to have been wrongfully convicted after being found guilty of a crime by a final judgement. The State is then required by law to make amends to the person who was punished as a result of that conviction. Following the aforementioned recommendations, many States, excluding India, have changed their laws. The Constitution's Articles 21 and 22 are likewise broken by wrongful convictions. The purpose of Article 21 is to prohibit interference with a person's life or personal freedom that is not authorised by the law. When the State, as defined in Article 12 of the Constitution, takes away a person's personal life and freedom, Article 21 steps in to save the day. The Supreme Court provided Article 21 fresh depth in *Maneka Gandhi v. UOI*¹⁵¹. The court determined that this right encompasses not only the physical but also the right to a life of human dignity free from exploitation.

In certain circumstances, Article 22 safeguards a person from unlawful arrest and detention. A person who has been arrested and detained must appear before the relevant Magistrate within 24 hours, according to Clause 2 of Article 22. A person cannot be held in detention for longer than three months without the consent of the relevant authorities, according to clause 4. A person who has been arrested must be informed of the circumstances and given the opportunity to get competent legal counsel, according to clause 5.

The victims of child abuse are one of the primary witnesses and their testimony, be it false, regarding offences, especially sexual, can prove to be disastrous for the person wrongly accused. As a result of such malicious prosecution, the innocent gets convicted and they are then imposed to spend their significant amount of time if their life in prison.

An accused person is deemed innocent unless and unless proven guilty in criminal cases in India. But undertrials are in a very odd predicament because they are frequently imprisoned for years before discovering their innocence. Throughout their detention, they are subjected to cruel living circumstances and are tortured physically and mentally. Due to the social stigma that society has

¹⁵¹1978 AIR 597, 1978 SCR (2) 621

associated with them as people and members of the community, the undertrials frequently lose touch with their friends and relatives. They are classified as criminals despite having done nothing wrong. Their relatives are repeatedly humiliated and degraded as well. Even if the court finds them not guilty, their ability to get employment is severely compromised. The undertrials' physical and emotional wellbeing are harmed by their estrangement from their families and society. Additionally, procedural delays cause the convicts awaiting trial to feel forlorn and helpless for an extended period of time. These factors frequently combine to cause serious mental health issues like stress, anxiety, and depression.

According to data on crimes committed in India in 2016 compiled by the National Crime Records Bureau, Ministry of Home Affairs, 5347 cases out of the cases investigated by the Scheduled Castes and 912 cases out of the cases of the Scheduled Tribes were found to be false cases.

In India, there were 28,046 reports of rape in 2020. In all, 5,015 cases were dismissed by police due to either being false, factual or legal errors, civil disputes, or other reasons. Of these, 3,375 were closed by police stating as false. Police closed 17% of rape charges because they did not believe the case had merit.

Police closed a massive 37,897 (60%) of the 62,300 incidents of kidnapping and abduction of women that were recorded in 2020 by filing a final report in the same. Police deemed 9,247 of them to be fake, while 18,878 of them were closed due to factual, legal, or civil disputes. The police's decision to close more than 60% of the cases under this section portrays yet another regrettable picture of the carelessly filed accusations that are so serious.

Studies have shown that these accusations, along with rape accusations, are frequently used in cases of elopement involving teenage couples or even adult couples, where the girl's family accuses the boy of rape, kidnapping, and abduction even when the girl agrees to accompany the boy. Many young males in our juvenile facilities are being prosecuted only for the crime of being in love with a girl. The charge sheeting rate for all offences against women, which is often above

85% in most sections, is reduced by this section alone, which has a charge sheeting rate of just 38.6%. This section's conviction rate is likewise dismal.

A mutual compromise between the accused and the complainant cannot be used to close these cases by the parties under the Indian Penal Code's nearly all sections dealing with Crime Against Women. The notion is that these crimes affect society as a whole in addition to the victim, and because they are so terrible, the accused cannot escape punishment by a compromise. Law, however, is not the same as it is in practise.

103 rape cases were be compounded or compromised in 2020.

A minor girl will not be considered to have been kidnapped under section 363 of the IPC if she went with another person on her own initiative, was not coerced, and was dating him. In the matter of Sk.Sajid @ Sk.Sagir @ Pancha Vs. State of West Bengal ¹⁵²this was resolved by the High Court of Calcutta's Honourable Judge Bibek Chaudhuri.

According to the case's facts, the accused was charged with kidnapping a young child. The situation was such that the minor had left under the pretence of viewing a deity immersion and then vanished. The appellant has custody of the young girl, and the father was advised that he would only give her back to the family if she got married to him. The father declined his request and made a complaint in accordance with Section 366A of the IPC.

A complainant who makes false accusations and files a fraudulent police report will be punished with either one of the following: two years in prison, a fine, or both.

The complainant who made the false accusations will be punished with imprisonment of either description for a term that may extend to seven years, as well as being liable to a fine, if the criminal proceeding is instituted on the false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards.

¹⁵²[C.R.A./718/2014]

Anyone who fabricates false evidence to be used in any stage of a legal proceeding or intentionally gives false testimony in any stage of a legal proceeding will be punished with imprisonment of either description for a term that may last up to seven years in addition to a fine; in all other cases, they will be punished with imprisonment of either description for a term that may last up to three years¹⁵³.

Anyone who fraudulently presents evidence that they know to be false or fabricated as real or makes an attempt to do so will be penalised in the same way as if they presented or created the false evidence¹⁵⁴.

According to section 199 of the Indian Penal Code, whoever makes any false statements in any declaration made or subscribed by them, which declaration any Court of Justice, any public servant, or other person, is bound or authorised by law to receive as evidence of any fact, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

Sometimes, the judge too is aware about the falseness of the victim's statements yet he is bound by law to deliver sentence on the innocent.

¹⁵³ Section 193 of Indian Penal Code, 1860

¹⁵⁴ Section 196 of Indian Penal Code, 1860

CHAPTER 6
CONCLUSIONS AND
SUGGESTIONS

CONCLUSIONS AND SUGGESTIONS

The nation's priceless human resources are developed by children. The performance and execution of the nation's youth will determine its future success. Milton, a famous poet, once said: "Youth Shows the Man as Morning Presents the Day." Therefore, it is the commitment of the general public to approach every pre-adult with the goal of ensuring the complete development of its personality. Children are the future leaders and torchbearers of society; they are the building blocks of our knowledge, cultural legacies, religious convictions, and rationalities.

Children are actually the society's future leaders in the capacities of astonishing educators, experts, judges, rulers, authorities, coordinators, engineers, and politicians. Sadly, many children are prevented from ensuring their childhood and right to procreation, and as a result, they are vulnerable to exploitation, abuse, and misuse.

6.1 Criminal Justice (Reformatory or Punitive) and Juvenile

According to the Indian Legal System, juvenile justice refers to the legal system that establishes justice for children and adolescents. This method protects juvenile crime or delinquency in addition to giving the adolescent a specific treatment. Juvenile Delinquency refers to crimes or wrongdoings committed by someone under the age of 18.

Juvenile crime rates are currently rising, which has sparked a national discussion on the need to change how age is determined for juvenile justice cases. The suspected juvenile's age is a key

factor in assessing his or her maturity level. Furthermore, the subject of whether or not juvenile offenders should be handled as adult offenders has been addressed in light of the rise in crime rates. The JJ act is the appropriate response to this query.

The juvenile offenders under Section 2 of the Act's Subsection 13 should not be tried as an adult by the law and should instead be sent to a child care centre or other rehabilitation facility until the juvenile turns 21 years old, at which point he can be transferred to a juvenile detention facility.

Therefore, it can be said with certainty that the current juvenile act considers the accused person's age when determining whether the case falls under the ambit of the Juvenile Justice Act.

According to the JJ Act, the maximum penalty that can be given to juvenile offenders is three years, and this rule is also applicable to severe acts. If the criminal is an adult, the penalty is increased to seven years in jail, life in prison, or the death sentence. However, rather than only punishing juveniles, this Act emphasises their reformation. Sending juveniles to rehabilitation centres, juvenile schools, and other vocational programmes provided by the government or non-governmental organisations are among the sanctions for reforming them.

However, the author believed that in light of the current situation, severe penalties—regardless of age—should be created. The age determination factor cannot be used as a defence in the case of a horrifying crime like rape.

The JJ Act is changing the way that juvenile criminals and other teenagers think. They view the current Age Determination clause of this Act as a justification for avoiding punishment in the interest of reformation. Additionally, it is having a detrimental impact on how today's youth behave in social situations.

This reformative law gives young people an opportunity to take unfair advantage of it to commit crimes without worrying about severe repercussions. Therefore, while the reformation idea is good, it cannot be applied to every case of a juvenile delinquent. The author of this thesis also

suggests that, since the JJ Act offers reformatory programmes for offenders, there ought to be some provisions for the victims' cases as well.

In other words, the JJ Act's reformatory legislation does not take the perspective of the victim into account and instead primarily focuses on offenders. The court holds that, in accordance with India's juvenile law system, criminals should be sent to correctional facilities for reformation and rehabilitation rather than to 'Criminals' is the tagline. Nobody, however, can guarantee that they won't do or display any sort of antisocial behaviours in the future.

In this instance, the author wants to emphasise the idea that reformation rather than punishment is currently the main focus. Penalization can be shown to be a more effective penalty than both reformation and jail, leading to the minors' self-realization for the offence they have committed. In time, this might lead to a decline in the number of adolescent offences.

6.2 THE CURRENT SCENARIO OF THE JUVENILE JUSTICE SYSTEM IN INDIA

All Indian citizens enjoy the right to equality under Article 14 of the Indian Constitution since they are all considered equal before the law, regardless of their gender, caste, or age. Therefore, young people are the generation that the future of the nation depends on. However, the frequency of adolescent crime is rising daily.

The word "juvenile" comes from the Latin word "juvenis," which means "young." In general, people under the age of 18 are referred to as juveniles. They represent a nation's future.

The Juvenile Justice Act of 2015 governs how juvenile offenders under the age of 18 are tried and sentenced in India. There are ongoing debates around this statute that cast doubt on its legitimacy and ability to deliver justice.

The Juvenile Justice (Care and Protection of Children) Act, 2015 was passed by the Indian Parliament as an update to the prior JJ Act. Its primary goal was to replace the JJ Act 2000's

juvenile delinquent provisions in India and permit juvenile offenders between the ages of 16 and 18 to continue living in society as adults.

6.3 NEED OF IMPROVEMENT IN THE JUVENILE JUSTICE SYSTEM OF THE COUNTRY

Work of Juvenile Justice Board

- According to Section 4 of the JJ Act, a particular training programme on child psychology and welfare should be organised for JJ Board officers, including the Principal Magistrate.
- The Board should make the environment at its meetings and inquiry sites kid-friendly. Attorneys should refrain from using raised podiums and dark coats during sessions. The young person shouldn't be forced to stand before the Board like an adult criminal.
- The juvenile should instead be made comfortable by removing any pressure and worry from them. The sittings should only take place in the observation homes, please. For the Board's functions to be carried out efficiently, basic conveniences including computers, typewriters, steno, and other necessary furniture should be made available.
- The case records and files should be kept up to date.
- The Board should recruit at least two social activists with a minimum educational qualification in law. • The Board should place the children living in the observation houses under the CCTV monitoring of the Board to record in case any action is conducted against the best interests of the children.
- a list of specialists' names from many professions, such as psychologists, counsellors, clinical psychiatrists, NGOs, members of the panel of advocates, observation homes, special shelters, and other non-profits. The primary goal of this list is to make use of their services, should a need arise.
- To effectively explain the case of the juvenile offender in relation to societal concerns, probation officers should have a thorough understanding of recent developments and interventions in the social sciences and child psychology.
- In conjunction with a psychiatrist, the juvenile and his or her parents should get psychiatric counselling. Therefore, the JJ Board should hire a psychologist and a social

worker who are both familiar with the pertinent laws in order to carry out this counselling portion.

- In addition to the probation officers and the special juvenile police unit, the JJ Board may also go to NGOs and other social organisations for assistance.
- These officials had to have received the necessary instruction in how to efficiently prepare the social investigation report that would be useful to the JJ Board members. Typically, female probation officers are chosen to prepare the social investigation report.
- A government welfare officer should be employed to serve as the point of contact between the NGOs and the JJ Board's child welfare committee. In an effort to do this, the state's department of welfare should arrange lectures and programmes for all probation and police personnel, who are responsible for delivering greater justice to children and juveniles.

Treatment of Juvenile

- After being arrested, the juvenile offenders must appear before the JJ Board within 24 hours. When bringing a juvenile offender to the Board, it is important to ascertain the perpetrator's age on the day the offence was committed.
- If the essential age-proofing documentation are on hand, a full scientific inquiry report is not necessary.
- To ensure that the juvenile's privacy rights are not compromised, the JJ Board members must take special precautions. They must also keep an eye on the rigorous adherence to the JJ Act's Section 21.
- The juvenile offenders share the same constitutional protections as adult offenders. Therefore, the juvenile statement shall be documented in accordance with Section 313 Cr PC's instructions. Additionally, he or she has the right to offer the pertinent proof in support of their claim.
- No of the circumstances, the juvenile cannot be imprisoned if the fine or security deposit is not paid. Magistrates are permitted to record the statement and then send both the juvenile and the statement directly to the JJ Board. However, they are not permitted to use

the JJ Board's authority in juvenile matters. However, the juvenile is introduced to the Board as a brand-new being.

- Juvenile court judges should receive training so they are aware of all the needs of the kids going through a crisis. There may be medical, social, or educational needs.
- To prevent such juvenile crimes, India's adoption system should be strengthened and in accordance with the nation's adoption law. • Proper infrastructure and implementation of all policies should be monitored by both the concerned governmental and non-governmental agencies. When it comes to adoption procedures based on religion, extra scrutiny is needed.
- The JJ Act can be applied to minors most effectively if the birth certificate or other document used to determine their age is created from the time of their birth. Therefore, stricter enforcement of the rule requiring birth registration is needed.

Procedure of Inquiry

- Any further legal cases should be assigned to the JJ Board's principal magistrate because the board is required to wrap up the juvenile inquiry within 4 months.
- The Board should develop some uniform regulations that will be applied across India in order to minimise the uncertainty in variations occurring in the JJ Act due to the variance occurring in the laws from one state to another.
- In extraordinary circumstances, the Board may order the juvenile offender to remain in the observation home. Only when there are good and convincing reasons can the same be watched over by CCTV.
- Independent and confidential enquiries with the young offenders should be made to rule out any chance of abuse, whether sexual or not. If confirmed, he or she should be taken to the government medical facilities for thorough physical examinations.
- The JJ Board members should also see to it that any juvenile being arrested by the police has his or her guardians informed prior to the arrest.
- The JJ Board members ought to render the final judgement in the case without first reading the probation officer's case report.

- During the investigation, the Board shall ensure that the summary submission method is followed.
- Whether the child admits to the charges or not, the child shouldn't be questioned.
- To discuss concerns pertaining to children's and juvenile welfare, all members of the many departments involved in child welfare, such as the District Judge, Welfare Officer, JJ Board members, and supervisor of observation, should be invited to a group meeting on a monthly basis.
- The JJ Board needs to run educational programmes through legal aid campaigns on the many crimes that are committed nearby so that residents are equipped to deal with them and are discouraged from committing juvenile crimes in the future.
- When someone in charge of a minor is found to have violated Sections 21, 23, 25, or 26 of the JJ Act, the Board may file complaints on the minor's behalf against that person.

Rehabilitation/ Shelter Home/ Observation Home

- Separate housing should be provided for young people and the impoverished and homeless. Additionally, they shouldn't be built similarly to prisons. The Board members should pay unannounced visits to special homes, juvenile facilities, and observation houses. The researcher wants to make the suggestion that these youngsters can be raised and cared for by senior folks or residents of nursing facilities for the elderly.
- Up until the age of 14, special-needs children should be required to attend school. The best and most basic amenities, as well as additional options like boarding schools, should be made available to the minors. They ought to be enrolled in civics and moral science classes. Additionally, they ought to be let to take a holiday while taking their tests so they can continue their studies once they are let out of the observation homes. They ought to be enrolled in the courses for personality development as well. Sponsorships ought to be granted for young people's education in recognised institutions.

- Youth organisations should organise sports, games, and other physical activities to foster relationships between them and other children in the community. Additionally, the children in the observation and correction homes can participate in festive programmes so that the connection between them and their cultural beliefs can be preserved in them.
- To prevent conflicts, the adoption system should be handled in accordance with Section 41.
- The author of this thesis suggests that the JJ Act's adoption statute be amended to include the adopted child's property rights.

Police

- The state governments should create a dedicated youth police unit in each city and district. Each unit needs to have specialised training in child psychology and welfare. Moreover, with the assistance of probation and police personnel, public prosecutors should receive training on how to manage delicate issues in juvenile cases.
- Shortly after the arrest procedure is complete, the child should be turned over to the special juvenile police. Depending on the type of offence committed, the juvenile trial or inquiry must be finished within a set amount of time, usually 60 or 90 days, from the date of the offence.

The juvenile examination ought to be carried out with a social worker present. The police department makes sure that young people are protected. As a result, they need to be informed about all of the JJ Act's provisions, which is why awareness campaigns should be held at police stations with the help of the Principal Magistrate, JJ Board members, child welfare committees, and NGOs.

- The Apex Court should take the necessary steps to establish special JJ Boards in order to investigate and adjudicate juvenile cases within the allotted time frame.
- Every working day, juvenile cases should be heard by the JJ Board, which should also have the authority under the JJ Act to file complaints against child offenders instead of taking them to the police station where they might be intimidated into making a statement.

- The Juvenile Justice Act of 2015 does not apply to gender-based discrimination in trial procedures. However, the JJ Act of 2015 should take into account the possibility that girls may be more susceptible to exploitation and abuse in a more comfortable or easy way. Because of this, the female youngster should receive additional attention and care when staying in the observation homes or safe houses. Additionally, this JJ Act must have a built-in safety feature for young girls.

- The JJ Act 2015 should provide the use of 25% of the fines levied by the criminal courts in order to best support the fund for the care and rehabilitation of juveniles and child offenders. The JJ Board needs to keep an eye on this.

- In accordance with the legislative objective of Section 16 (2) of the JJ Act, the term "life imprisonment" in Section 16 (1) of the JJ Act should be replaced with the term "any-form of imprisonment."

- The prospect of a juvenile being released on bail under the Terrorism and Disruptive Activities (TADA), Prevention of Terrorism (POTA), and Narcotic Drugs and Psychotropic Substances (NDPS) Act is not addressed in this Act. Therefore, it should be incorporated in this Act to prevent any confusion or delays in the aforementioned types of juvenile situations. On the other hand, the JJ Act of 2015 hasn't done anything to ensure that victims of child crimes receive justice, which necessitates the addition of fresh measures or revisions to the Act right away.

- The phrase "Protective Custody" should be defined in the JJ Act in a precise and detailed way to avoid any confusion.

Section 14 of the JJ Act causes confusion throughout the investigation, necessitating a prior explanation.

- In order for juveniles to be skilled and competent enough to land good jobs after being released from observation homes, provisions should be established to enrol them in voluntary social organisations under the supervision and support of the government.

- In order for justice to be administered fairly and honestly, it is crucial for the Board members to operate honestly, free from all forms of fear, and without showing favouritism to anyone in particular.

- The juvenile should be encouraged more to take part in community programmes, which should be run under the careful supervision of the case in charge officers, the probation officer, and/or

social workers. The primary goal of the inspection is to confirm that the contract between the kids and the person tasked with taking care of them has been fulfilled.

- In order to better provide a family replacement for the kids without families and relatives, NGO employees should be more focused with rehabilitating juvenile offenders.
- The SOS children's villages should be implemented in accordance with the Indian Jail Committee's 1919–20 recommendation in order to properly place the children in a variety of community services for education, vocational training, and enjoyment. The primary goal is to offer institutionalised children training and educational opportunities on par with those available to children in the general population.
- The National Commission for Protection of Child Rights (NCPCR) was founded in March 2007 in accordance with the Commission for Protection of Child Rights Act 2005. In order to ensure that all laws, policies, programmes, and administrative processes are in line with the child rights perspective, the CPCR Act 2005 was passed by the Parliament in December 2005.
- There should be a clear connection made between the JJ Act and other laws that either directly or indirectly affect the lives of the children covered by this Act.
- The children under this Act will not gain from merely renaming the current laws or policies. It may be beneficial to develop new, alternate approaches to dealing with juveniles. Therefore, new ventures should be launched with an experimental mindset. If successful, they may be implemented as a new legislation under the Act. The community-based and probationary programmes must to be both affordable and capable of providing the juveniles with better care and rehabilitation.

6.4 MEASURES TO MAKE JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT 2015 MORE EFFECTIVE

India has close to 30 million families with extremely inadequate and distressing living conditions for their children. The number of reports on topics like violence against girls, child labour, street children, violence against school children, etc., is growing daily. Only in certain circumstances do specific guidelines to address such challenges become necessary. However, the Article 15 provisions of the Indian Constitution, which guarantee that juveniles or child offenders receive special attention while having their rights protected, govern the JJ policy in India. The

fundamental rights are described in Articles 14, 15, 16, 17, 21, 23, and 24 under the headings "Right to equality," "Protection of life and personal liberty," and "Right against exploitation." Therefore, it may be claimed that the Indian Constitution is cognizant of the societal situation of children and the reasons why they require protection.

6.5 FLAWED APPROACH

The criminal system described in the Indian Constitution includes the JJ System. The tension between the JJ system's protective attitude and traditional methods of treating criminal cases is always present in the measures taken in the direction of dealing with juvenile offences. Due to its complexity and need for extensive discussion, the JJ Act, 2015, according to Supreme Court Judge Madan B Lokur, is complex.

According to court Lokur, "Determining whether a person must be condemned to death, life in prison, or the amount of years as punishment is a very complicated business in the adult criminal court system. With the introduction of the new Juvenile Justice Act, it has become more difficult. Justice Lokur also mentioned the option of determining whether a minor should be tried as an adult. Since it will have long-term effects, a detailed and exhaustive discussion is required.

He warned that the boy would be in serious problems if he were to be sent to the adult criminal court system.

The JJ committee of the Supreme Court and the Bombay High Court organised a discussion event to draw attention to the problems with juvenile rehabilitation and restoration. UNICEF and the Maharashtra Ministry for Women and Child Development sent some of their representatives to the event. The JJ Act's most recent revision from last year replaced the old law's requirement that anyone arrested under the age of 18 face a mandatory trial. However, the modified statute

mandates that a youngster under 18 and older than 16 years old who commits heinous crimes shall have his or her physical and mental capabilities evaluated.

With the use of this modification, the Board is now able to decide whether to sentence the juvenile to a reassessment at age 21 or to an observation home for reformation or monitoring. Reassessment after the age of 21 may result in jail; for this reason, it should be carried out with the help of an experienced psychologist or social worker. Concerns regarding the problems brought on by the absence of such professionals at the rural levels have been voiced by several activists.

The last Act was passed in 2000 and was in effect for 15 years, according to Justice Lokur. A few issues that have been brought up by the new Act need to be named and explored. Like it would with any new Act, several problems may arise throughout implementation.

Although the Act was approved during the most recent session of the Parliament, the rule book has not yet been created and may take three to four months to be finished.

The guidelines will also be updated to reflect the recommendations made by the ministry's representatives for women and children's development. Since the first regional consultation, which was held in Delhi last year, an assessment of the developments in the juvenile rehabilitation concerns has been made. Maharashtra was successful in establishing JJ Boards and child welfare committees in each of its districts. It still needs to carry out kid-friendly procedures, make infrastructural improvements, and lower the number of juvenile cases still pending.

The laws in this article are not entirely helpful in resolving the challenges of the children because the JJ Act did not recognise the problems of child exploitation and delinquency.

Additionally, the disparities and irritants found in some states have an impact on how uniformly the Act is applied nationwide. The Act has made it possible to set up institutions for minors' proper treatment, trial, and custodial inquiry. But failure to follow through on the same can seriously hamper the Act's ability to function. The ineffectiveness of the revised laws may be

caused by inadequate on-the-job instruction and training for the officials at the ground level and by financial constraints non the rural level organisations.

Model rules for implementation of Juvenile Justice Act:

The draught regulations for development in terms of children's needs and child-friendly court proceedings were published by Smt. Maneka Gandhi, the Minister of Women and Child Development. These JJ Act 2015 regulations can be applied in situations like the Mercedes hit-and-run incident in Delhi in April that resulted in the death of a marketing executive from a reputable company.

For their insightful suggestions and comments, these draught regulations are being given to NGOs, members of the public, state and union territory government administrations, and ministries. These regulations were primarily developed with the psychology of the young people who need reformation in mind.

According to a top ministry official, "the state governments may, if they wish, adopt or adapt these rules as per their requirements." The 2015 JJ Act's draught regulations were developed by a multidisciplinary team made up of senior judges, attorneys, JJB and child welfare committee members, state government representatives, mental health professionals, and organisations that represent the general public. Following a public outcry over the rise in crime committed by young people under the age of 18, it went into force on January 15, 2016.

6.6 Bottlenecks

- The prevalence of juvenile infractions has increased as a result of factors like parental involvement, familial histories, and other contextual factors. Sometimes parents themselves unintentionally or willfully create specific circumstances that result in exploitation and abuse.
- According to the provisions of this Act, the fundamental facilities for instruction, training, and reformation have not yet been established.

- There are no guarantees for procedural rights like the right to counsel or a quick trial. The Supreme Court's rulings and directives are not required to be followed in accordance with this Act.
- The Child Welfare Committee is permitted to handle child adoption cases, but the Act gives the JJ Board the authority to make this choice.
- The cases of international adoption are not discussed. • The law is silent in terms of reaching out to children who need specialised care and protection that can keep them from developing into potential juvenile offenders. The JJ Act 2015 is not related to other legal provisions for issues like child labour, primary education, sexual abuse, disabilities, and health.

Juvenile Homes Are Hell Holes Rather Than Reform Centres: Understaffed and Overcrowded
 Children in confrontation with law are anyone under the age of 18 who have interacted with the judicial system as a result of committing a crime or being accused of doing so, as defined by the Juvenile judicial Act of 2000. The Juvenile Court System places children in legal trouble in institutionalised care. Their rehabilitation and reformation into society are the objectives of the Justice Board.

In India, most governmental organisations serve as special housing and observational facilities. Because of this, even though the law forbids it, children in need of care and protection and those in dispute with the law are frequently housed together. Senior social worker Sameer Shaikh thinks that it's important to keep these two groups apart and further divide kids into age-appropriate subgroups.

There are several problems when these two groups are combined. To begin with, staff employees have a very contemptuous attitude towards youngsters who are in legal trouble and adopt a more sympathetic outlook when speaking with children who require care and protection. The adolescents who are in trouble with the law are understandably incensed by this disparity in treatment, and they vent their resentment on the kids who have been sent to the special home for their care and protection. Thus, the fundamental reason for bringing the kids home is defeated!

Infrastructure that is in disrepair characterises the majority of special houses in India. These locations exhibit poor hygienic standards. Basic amenities like restrooms and laundry facilities are appalling. The offered food and clothing are of poor quality.

When a child's fundamental needs are not being satisfied, how can reformation take place?

Most special or observation houses have between 12 and 20 kids sharing one room.

Due to overpopulation, the rooms are typically small and seem cramped. There is no privacy, and because the areas are small, there is a lot of aggravation and annoyance because someone is always present to cause some sort of disturbance. Overcrowding frequently causes violent altercations over unimportant matters.

India's special residences require a quick renovation. Counselling needs to be made required. Because they are frequently overworked and stressed out, the crew needs regular training. The issue of financial misuse is another. As a result, regular monitoring and inspection are required. The juvenile justice system's main goal is to make sure kids have access to a better standard of living, a good education, and a smooth social integration. Unless effective measures are taken, If actions are implemented to improve educational programmes, counselling and therapeutic interventions, health and hygiene, vocational training, and extracurricular activities, this vision will not come to pass. Therefore, it is important to critically evaluate our behaviour and consider whether our system is actually encouraging children to develop into the exact version of themselves that we do not desire.

The primary goal of the legislation in this regard has been compromised by a lack of infrastructure and skilled personnel. Since the JJ Board and Child Welfare Committees are not fully operational, a large number of cases have built up, delaying the delivery of justice to the victims and innocent accusers. Juvenile crime rates have increased as a result of improper enforcement of these rules.

One of the factors contributing to the rise in juvenile crime is the way police officers handle cases involving minors. When managing the youngsters, the police department to some extent shown a lack of knowledge of the Act's processes. The fundamental goal of this Act is to

rehabilitate and reintegrate juvenile offenders with their families. As a result, a comprehensive network structure of post-offense treatment and rehabilitation is needed. But there are no preventive measures in the JJ Act's current configuration. Although youth crime rates are rising, no concrete steps have been taken to reduce them.

Looking Ahead –

According to a ruling by the Supreme Court, if a state government passes a law, the state administration must be prepared to carry it out. However, it accomplishes little other than adding to the system's stress and anger. In my judgement, the revision was required in light of the rise in crimes against women, girls, and perhaps even young children. The legislation will have a significant deterrent effect on juvenile criminals. Sensitization to these issues is required for the session's judge, who has the authority to try these offences.

6.7 IN INDIAN PERSPECTIVE:

Measures for Efficient Juvenile Realignment-

- To create a better funding strategy that boosts innovation and effectiveness.
- To create a better strategy for assuring a seamless transition.
- To consistently lend technical assistance and foresight to the state administration
- To take appropriate actions to reduce the trial of juvenile offenders in adult court.
- To offer proper housing facilities to the juveniles who are condemned by the state to be placed to the observation home until they become 18 years old.

The JJ Act must be implemented correctly in order to fully regulate delinquencies. This requires complete public oversight, professional training, and coordination with law enforcement organisations. Rules agreed by the UN and their practical application for 1990's Juveniles Deprived of Liberty. The legal protections for minors need to be discussed, as well as any potential modifications.

The probation or police officers handling juvenile cases should be of reformatory philosophies rather than purely penal, i.e. to punish the offender.

The needs and requirements of the juveniles should be examined on a regular basis. The current JJ System continues to prioritise rehabilitation over penalising the offender.

The JJ System takes special care to ensure that the Board members and the child's parents are present during all hearings. Their case summaries and records are preserved in private locations, which is never the case in adult courts.

BIBLIOGRAPHY

BOOKS

1. Agnew Robert and Brezina, Juvenile Delinquency Causes and Control, 5th ed. 2014, Oxford publication.
2. Carmen Rolando V. Del and Trulson Chad R., Juvenile Justice, The System Process (2007), oxford publication.
3. Champion Dean J., The Juvenile Justice System Delinquency, Processing, and the law, 3rd ed., 1999, Warner Bros Global Publishing.
4. Choudhry R. N., „Law relating to juvenile justice in India“ being Commentary on The Juvenile Justice (Care and Protection Act 2000 as amended by Act No. 33 of 2006 along with Central and State Rules), (3rd ed. 2009)
5. Deming Richard, Juvenile Delinquent, (1958), Prologue Books publications.
6. Dr. Agarwal H.O., Human Rights, (15th ed., 2014)
7. Dr. Kumar A. Selva and Dr. Kaurnanithi G., Child Rights: Issue and Problems, in Human Rights and Gender Justice (S. Gurusamy, 1st ed., 2010).
8. Burt Cyril, „The Young Delinquent“, University of London Press, available on Digital Library of India. Item 2015.57941.
9. Bikram Kumar Das, Dr., „Juvenile Justice in India“, Published by Smt. Mamata Das, Jeypore, 2008.
10. Mayne, „Hindu Law“, Bharat Law Publications, New Delhi, 13th Edition, 1989.
11. Nagarathnam, R., „Code of Criminal Procedure“, The Law Book Company (Pvt.) Limited, Delhi, 19th Edition, 1995.

12. Ratanlal and Dhirajlal, „The Indian Penal Code“ , Revised by Justice Y V Chandra Chud and V R Mahohar , Lexis Nexis Butterworks, Wadhwa, Nagpur. 13th Edition, 2009.
13. Ratanlal and Dhirajlal, „The Indian Penal Code“ , Revised by Justice Y V Chandra Chud and V R Mahohar , Lexis Nexis Butterworks, Wadhwa, Nagpur. 13th Edition, 2009.
14. Srinivas. S.K.P., „Juvenile Justice Laws in India - An Exclusive Commentary on The Juvenile Justice (Care and Protection of Children) Act 2015.“ Premier Publishing Co, Allahabad, 2017.
15. Subhash Chandersingh, Dr. „Justice for Victims of Crime“, Universal Law Publishers, New Delhi. 8th Edition, 2005.
16. Reckless Walter C., „The Crime Prevention Problem“, Bombay, Vakils Feffer and Simons,1971.
17. Kumari Ved, „The Juvenile Justice (Care and Protection of Children) Act, 2015 Critical Analyses“. 2017 Universal Law Publishing, Gurugram, India.

NEWSPAPERS AND MAGAZINES

1. COMPETITION WIZARD
2. FRONTLINE
3. HINDUSTAN TIMES
4. THE HINDU
5. THE INDIAN EXPRESS
6. THE NATION
7. THE STATESMAN