

CHILD CARE & PROTECTION – A MANUAL FOR SJPU / POLICE OFFICERS

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Foreword

Children in India have been variedly defined under multiple laws which directly deal with them. The age of childhood and minority could vary under the Indian Penal Code, 1860, Child Labour (Prohibition and Regulation) Act, 1986, the Child Marriage (Prohibition) Act, 2006 etc. However, India being a signatory to the United Nations Convention on the Rights of the Child (UNCRC) 1989/1992, the all-pervasive law for the children in the country, The Juvenile Justice (Care and Protection of children) (JJ) Act, 2000 defines the child as a person who has not completed 18 years of age. Such children constitute nearly 42% of India's population giving this country the unique distinction of being the youngest in the world.

Nearly 35 million among these children are officially reported by the Ministry of Women & Child Development, Govt. of India as '*the children in need of care & protection*', as defined under sec 2(d) of Juvenile Justice (Care and Protection of Children) Act 2000/2006. These children may be without homes or settled abode or having no means of subsistence; found begging; street or working children; under threat of life, injury, abuse or neglect; mentally and physically challenged or ailing; with parents and guardians incapacitated to look after them; exploited, sexually abused or subjected to illegal acts, drug abuse, trafficking, unconscionable gains or victims of conflicts, commotion or calamity.

Along with these children, there is another category of children, who are covered within the Juvenile Justice System i.e. the 'Juveniles in Conflict with Law', defined under sec 2(1) of the Act as someone alleged to have committed an offence. They are the concern and the direct responsibility of the state, civil society organizations and other stakeholders, including the parents, guardians and family.

This distinct system of law and justice, which is most comprehensively brought out under this law (JJ Act) for different categories of children and juveniles, is much more than merely a legal process, since it broadly connotes the fulfillment of their basic needs and rights. This system envisages, in addition to the legal processes, their care, protection, treatment, development, welfare, rehabilitation and social reintegration.

The institutional framework of the law provides for the competent authorities, namely, 'Child Welfare Committee' (CWC), 'Juvenile Justice Board' (JJB) as two legal bodies for proceedings to be carried out for the 'child in need of care and protection' and 'juvenile in conflict with law' respectively in all districts of the country.

Under the amended Act of 2006, another body, the 'Child Protection Unit' (CPU) has been created with the objective to ensure effective implementation of the Act and to ensure coordination between the associated child protection services for vulnerable and destitute children, including juveniles in conflict with law. The Act also provides for the creation of 'Special Juveniles Police Units' (SJPU) and duly trained and designated Juvenile/Child welfare officers in every district and police stations of India, who are legally required to exclusively deal with the said 'juveniles in conflict with law' and 'children in need of care and protection'.

The institutional framework of the law also provides for different categories of homes, shelter, safe places, fit persons and fit institutions as well for the conducive physical growth and mental development of such children in need of care and protection and juveniles in conflict with law. The said framework under the JJ Act, administrative and child protection mechanism, thus, includes the CWC, JJB, CPU, SJPU and the Homes/Shelters/ Drop-in Centres etc, are meant for all types of children who come in contact with the law in multiple situations. They provide services to all categories of children, namely, juveniles, children in need, children in difficult circumstances, victims of crimes etc. under various other laws in operation.

Responsibility is cast upon the government to create requisite number of JJBs, CWCs CPUs, SJPU's and Homes, either by itself or in association with the Voluntary Organizations, and ensure their smooth and integrated functioning. The Juvenile Justice System of India, as provided under the Juvenile Justice (Care and Protection of Children) Act, 2000/2006, is entirely different in letter and spirit to the basic criminal laws and Criminal Justice System. But, in practice, the criminal justice system tends to heavily influence the juvenile justice system, particularly in respect of the Police who remain the prime movers in almost all the cases under the Criminal Justice System and in a large number of cases under the Juvenile Justice System as well.

Criminal Justice System is meant for adults (18 years of age and above), the stakeholders being the victim of crime, complainant, accused/perpetrator, police, court, prison and correctional services, government, family, community and others affected by crime. The agencies concerned with investigation, enforcement and adjudication and trial, again, include the police and other law enforcement and investigating agencies, court, tribunal, and any other agencies which adjudicate/ conduct inquires and trials. The accused is taken to jail/prison systems. The system also provides for corrective and probation services.

On the other hand, Juvenile Justice (Care and Protection of Children) Act, 2000/2006, is meant for children below 18 years of age. The stakeholders involved are: the child in need, the child as victim or perpetrator of crime, police, social worker & case worker, probation officers, the other concerned government and non-government agencies, family and the community. The agencies concerned with them are—the Police/ Special Juvenile Police Unit, Voluntary Organizations /Fit Institutions / Childline (1098) as contact- points and stakeholders, besides Child Welfare Committee, Juvenile Justice Board & other agencies. The Child/Juvenile is taken to a Children/ Shelter/ Observation Home instead of police lock-up or jail. The Act provides for their social reintegration & rehabilitation through after care, adoption, foster-care and sponsorship.

The pro-active provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, are based on the (i) provisions of the Indian Constitution; (ii) United Nations Convention on Rights of the Child, 1989; (iii) United Nations Standard Minimum Rules for the administration of Juvenile Justice, 1985 (the Beijing Rules); (iv) United Nations Rules for the Protection of Juvenile deprived of their Liberty, 1990, besides the national policies.

These International instruments coupled with the Constitutional Provisions relating to children and the growing process of a distinct Juvenile Justice System form the basis for this latest enactment and amendments thereto. To ensure protection for all children and juveniles, and in particular, those with special needs and problems or in difficult circumstances, the National Charter for Children was adopted by the Government of India in 2003, which reiterates commitments towards the cause of the children through effective implementation of laws and to ensure that no child remains hungry, illiterate or sick.

The issue of child protection is also addressed by the government as a prime concern through the National and State Commissions for Protection of Child Rights constituted under the Commissions for Protection of Child Rights Act, 2005, which are focusing on monitoring the implementation of policies, legal provisions, obligations and programmes to create a protective environment for children including suo-motu cognizance of violations of the rights of children and the offences committed against children.

Taking a pioneering step, the Delhi Commission for Protection of Child Rights (DCPCR) took initiative for getting nine (9) district level Children's Courts created through the Hon'ble Delhi High Court and Government of NCT Delhi for the speedy trial of offences against children and cases of violation of their rights under the provisions of section 25 of the Commission of Protection of Child Rights Act, 2005. Since, the State Commissions are now required to be created in all States and Union Territories of India, both under the Commission for Protection of Child Rights Act, 2005 and under The Right of Children to Free and Compulsory Education Act, 2009, simultaneously, Children's Courts are to be created to take up the cases of offences against children and the violations of child rights across the country.

Recently, the Ministry of Women and Child Development, Government of India, had taken the historic initiative of formulating and implementing a multi-tiered 'Integrated Child Protection Scheme'(ICPS) within the eleventh five year (2007-12), which is intended to provide adequate resources for setting-up of the state and district level Special Juvenile Police Units (SJPU) , Child Protection Units (to be manned by trained Child Protection Officers) and the other institutional framework, as above, in all states and districts of the country. It is expected that during the 12th Five Year Plan (2012-2017) all districts of the country will have proper SJPU with appropriate components of social workers to assist them and all Juvenile/Child Welfare Officers would have been trained to undertake their envisaged role under the juvenile justice system.

SPECIAL JUVENILE POLICE UNIT AND THE POLICE MANUAL

The provision of SJPU and duly designated and oriented Juvenile Welfare Officers/ Child Welfare Officers under the Act at the level of districts and police stations, respectively, within the framework of Indian Police system is a significant development. Same as the juvenile justice system for the juveniles and children bring about a fundamental change in the approach and treatment of the children under the law, the SJPU and Juvenile/Child Welfare Officers are required to completely alter their attitude and functioning with regard to the children who come in contact with them. Despite the fact that the role of police has been increasingly changing under the Children's Act 1960, Juvenile Justice Act 1986 and now, under the Juvenile Justice (Care and Protection of Children) Act 2000/2006, the real change is yet to come. This compilation as a Manual and the Standard Operating Procedure (SOP) to facilitate the police functioning is a step in that direction.

Police Departments in India, created under the Indian Police Act, 1861, as by-product of 1857 Indian War of Independence, are traditionally trained to enforce the provisions of the Indian Penal Code (IPC), 1860, and other Local and Special Laws, in accordance with the Indian Evidence Act and Code of Criminal Procedure, 1973. Although, there are some provisions for children as well, these laws are primarily meant for adults. As such, only a few police officers are exposed to the modern concepts of the Juvenile Justice Systems, rights of the child, child protection, welfare and development, National Policy on Children, juvenile detention and institutional services, non-institutional alternatives, juvenile aftercare, public participation in juvenile correction and the like. They generally do not realize that the children/juveniles have to be treated differently from adults. Consequently, despite the multiple provisions relating to children in the Constitution and a plethora of laws, the attitude of police in India towards the children/ juveniles is generally indifferent, if not outright negative, with little compassion and understanding. Most of the time, the first contact that a child or juvenile has with the legal system is with a police officer, and more often than not, the experience is unpleasant since the policeman is not trained or sensitized to handle them. Since the police officer has relatively wide discretionary powers, he can help the child in distress and in need of care and protection a great deal and also wield a great influence on the child's future behavior while creating an indelible impression on the child and the society.

JUVENILE JUSTICE ACT 2000-PARADIGM SHIFT FOR POLICE

The legal situation stands vastly changed under the Juvenile Justice (Care and Protection of Children) Act, 2000. But, in practice, it remains much the same in most parts of the country. Besides the altered role of police under various provisions of the JJ Act 2000/2006, under section 63 of the Act a Special Juvenile Police Unit (SJPU) has to be constituted in every police district of India. SJPU, as provided under the new law, shall be set up to deal exclusively with 'juveniles in conflict with the law' and 'children in need of care and protection'. The unit at the district level may function under a Police Officer of the rank of Deputy Superintendent/ Assistant Commissioner of Police or Inspector of Police who may be assisted by at least two Social Workers, one of whom shall be a woman and another preferably a child expert or having relevant experience.

The Juvenile Justice (Care and Protection of Children), Act 2000/2006, along with the Model Rules formulated by the Union Government, adopted or modified by the State/UTs Governments provide detailed

provisions regarding the role of the Police vis-à-vis the Juvenile Justice Board/ Child Welfare Committee, Child Protection Unit(CPU),voluntary organizations, institutions and other stakeholders. **The JJ ACT and the Model Rules also provide in details the steps to be taken by the police to ensure care, protection, treatment and welfare, rehabilitation and social re-integration of the juvenile / child, the primary objective being to serve the best interest of the child in a more child friendly manner.** The provisions of the Act and Rules, besides other constitutional, legal, policy and Court Rulings, bind the police to give the juvenile/child an entirely different treatment by protecting her/his rights enshrined under the Constitution of India and the United Nations Convention on the Rights of the Child (UNCRC)1989/ Ratified by India in 1992.

NEED FOR A MANUAL FOR POLICE

The present Manual for the SJPU and the police in India elaborates the role of police based on the relevant provisions under the Juvenile Justice (Care and Protection of Children) Act, 2000/2006, other legal provisions, landmark judgments, case studies and the national and international good practices, laying due emphasis on the imperative needs of rehabilitation, re-integration and mainstreaming of juveniles/ children. It also gives answers to the Frequently Asked Questions (FAQ) in this regard. It has been made simple, usable and reader-friendly. It is also a practical guide and a ready –reckoner that would help the Police Officers and others assisting them, to be more confident of not only arriving at the correct judgment, but also adhere to the provisions and spirit of the law, while serving the best interest of the children. The manual covers all aspects of police functioning and their role vis-à-vis the children in need of care and protection, the juveniles in conflict with law, child victims of crime, missing and found, and those found under neglect, abusive and exploitative situations.

The document is meant to be a useful working manual, something in the nature of Standard Operating Procedure (SOP), defining step-wise actions to be taken as per legal provisions and practical requirements. Therefore, in the context of the role of police/SJPU, this manual would, in accordance with its given objectives, serve as a guide to enable the Police Officer to take appropriate action at every step- from the moment he comes across a child in need, a child victim or a juvenile in conflict or contact with law. This manual will enable the policeman to understand how to apply the laws while dealing with a child in the given circumstances, what precautions to be taken and how to interface approach and integrate the work together with other stakeholders and functionaries.

NIPCCD-PRAYAS COLLABORATION

The Manual is the outcome of the joint project between the National Institute of Public Cooperation and Child Development (NIPCCD), Ministry of Women and Child Development, Government of India, and the Prayas Institute of Juvenile Justice (PIJJ), the apex unit of the Prayas Juvenile Aid Centre Society, a national level organization, representing the quintessence of NGO-Government partnership. Prayas has been in the forefront of juvenile justice system for over two decades and has been active both at the policy and operational levels of child/ juvenile care, protection, development and rehabilitation. A consultative partner of the government on several issues, Prayas, with its vast experience of dealing with children, juveniles and the communities in eight (8) State/UTs of India, has worked extensively with the international and government agencies. NIPCCD has been cast special responsibility to train and orient the juvenile justice functionaries, including the police officers across the country, about how to enforce this law and be the nodal agency in this regard for the Integrated Child Protection Scheme (ICPS), the flagship program of the Government of India, being implanted by the states and the Union Territories. This project between NIPCCD and PIJJ has been carried out under the mutually agreed Terms of Reference (TOR) and the work of facilitation, manual preparation, field testing and dialogue with the stakeholders etc. was done in accordance with the same.

PROCESS

The Manual has been prepared through extensive consultations and finalized under the guidance of a Project Advisory Committee (PAC) after field trials and deliberations in the workshops held at Lucknow, Guwahati and Bangalore.

The Manual is a significant document, part of which is meant to be used as SOP, to be followed by the stakeholders of Juvenile Justice Systems, with special emphasis and detailed treatment on the police and its role. The user shall be the police and other enforcement officials dealing with juveniles in conflict with the law and the children in need of care and protection, across the country. Keeping in view this requirement and the practical need to elicit and incorporate the views and ground experience, wide ranging consultations were held with the concerned police officers from the senior most to cutting edge levels.

During the course of various consultations and discussions with the police functionaries and NGOs, it was widely felt that the Ministry of Home Affairs, Government of India, State Government Home Departments, besides the police leadership must also be associated in the formulation and implementation of this document, since, they are going to be the real users of this manual. As such, discussions were also held with the officials of the Ministry of Home Affairs, besides apprising the Ministry of Women and Child Development, Government of India and efforts were also made to ensure the association of the State Governments and the police leadership for appropriate implementation and the utilization of the Manual throughout the Country.

Although, presently, the language of the manual is English, it may be translated into Hindi and other regional languages at a later date for its wider dissemination and for use throughout the country.

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In this Manual, which is going to be entirely used in the larger public interest, serving the best interest of our most valuable assets, the children, we have borrowed pictures, graphics, sketches and designs from relevant documents and suitably modified them. We acknowledge the same and express our deep gratitude to the authors and artists.

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LIST OF ABBREVIATIONS

AFP	:	The Australian Federal Police
CASCADE	:	Creating alternative systems for children aiding Development experimentally
CEOPC	:	Child Exploitation and Online Protection Centre
CETS	:	Child Exploitation Tracking System
CIC	:	Crisis Intervention Centre
CJS	:	Criminal Justice System
CLPRA	:	Child Labour (Prohibition and Regulation) Act
CNCP	:	Children in Need of Care and Protection
CPCMEC	:	Canadian Police Centre for Missing and Exploited Children
CPU	:	Child Protection Unit
Cr. P.C. and Evidence Act:		Criminal Procedure Code and Evidence Act
CTS	:	Criminal Tracking System
CWC	:	Child Welfare Committee
CWO	:	Child Welfare Officer
DYFS	:	Division of Youth and Family Services
DCPC	:	District Child Protection Committees
DD	:	Daily Diary
FIR	:	First Information Report
GD	:	General Diary
I.A.H.T.U.	:	Integrated Anti Human Trafficking Unit
ICPS	:	Integrated Child Protection Scheme
IMR	:	Infant Mortality Rate
IPC	:	Indian Penal Code
ITPA	:	Immoral Trafficking Prevention Act

J/CWO	:	Juvenile/Child Welfare Officer
JAPU	:	Juvenile Aid Police Unit
JCWL	:	Juveniles in Conflict With Law
JJ ACT	:	Juvenile Justice Act
JJB	:	Juvenile Justice Board
JJF	:	Juvenile Justice Fund
MWCD	:	Ministry of Women & Child Development
NCECC	:	The National Child Exploitation Coordination Centre
NCPCR	:	National Commission for Protection of Child Rights
NCRB	:	National Crime Records Bureau
NCT	:	National Capital Territory
NGO	:	Non-Governmental Organization
NHRC	:	National Human Rights Commission
NMCS	:	National Missing Children Services
PCR	:	Police Control Room
POWC	:	Protection of Women and Children Cell
PRIs	:	Panchayati Raj Institution
RWA	:	Resident Welfare Association
SBR	:	Social Background Report
SC	:	Scheduled Caste
SIR	:	Social Investigation Report
SJPU	:	Special Juvenile Police Unit
SOP	:	Standard Operating Procedure
ST	:	Scheduled Tribe
Suptd.	:	Superintendent
TPAP	:	Traffic Police Assistance Programme

ULBs	:	Urban Local Bodies
UN	:	United Nations
UNCRC	:	United Nations Convention on the Rights of Child
UNICEF	:	The United Nations Children's Fund
VGT	:	Virtual Global Taskforce
VO	:	Voluntary Organization
WCPU	:	Women and Child Protection Unit
YJB	:	Youth Justice Board

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CHAPTER-1

INTRODUCTION

1.1. INTRODUCTION

The children are the future custodians of national sovereignty, rule of law, justice, equality, liberty and international peace and security. They are the potential embodiments of our ideals, aspirations and future hopes. They, however, by reason of their physical and mental immaturity, need special care and protection, including legal protection, besides opportunities for growth and participation.

1.2. JUVENILE JUSTICE SYSTEM— LEGISLATION

Children, defined under the Juvenile Justice (Care and Protection of Children) Act, 2000/ as amended in the year 2006 (called JJ Act, 2000), as “a person who has not completed eighteenth year of age”, form over 42 percent of India’s population. JJ Act, 2000, and Juvenile Justice (Care and Protection of Children) Rules, 2007 (called the Model Rules) framed there-under in the year 2007, provide a total framework of policy and procedure for handling of both juveniles in conflict with law and children in need of care and protection. They are supposed to be our ‘supreme assets’. Yet they are the most vulnerable segment of our society. Out of them, nearly 35 million children are officially reported by the Ministry of Women and Child Development, Government of India, to be ‘Children in Need of Care and Protection.

The distinct system of law and delivery of justice, which is most comprehensively brought out under the JJ Act, 2000, along with the Model Rules framed there under, for different categories of children/ juveniles, is much more than merely a legal process, since it broadly connotes the fulfillment of their basic needs and rights.

The system provides for justice in a much broader sense by catering to their developmental needs and prescribes a child-friendly approach in the adjudication and disposition of matters in the best interest of children, along with mechanism for their ultimate rehabilitation, and other matters connected therewith or incidental thereto. It also provides for special offences relating to exploitation of children.

The provisions under the JJ Act, 2000 and the Model Rules override all other Codes/Acts/other legal provisions in respect of any matters covered in the same as far as children below 18 years of age is concerned, which may prove to be handy tools for all CWO in dealing with Crime against children as well.





Figure 1 OBJECTIVES OF JUVENILE JUSTICE SYSTEM

The law provides for the Competent Authorities, namely, 'Juvenile Justice Board' (JJB) and 'Child Welfare Committee' (CWC), as two legal bodies for proceedings to be carried out for the 'juvenile in conflict with law' and 'child in need of care and protection' respectively, according to the provisions of the JJ Act, 2000 at least one JJB or CWC should be established in all districts of the country.

Under JJ Act, 2000 another body, i.e. State/District 'Child Protection Units'(CPUs) have been created to ensure effective implementation of the Act and carry forward the coordination of the associated child protection services for vulnerable and destitute children as the children in need of care and protection and the juveniles in conflict with law. The aforesaid institutions have been created under section 62(a) of the JJ Act, 2000 wide 2006 amendment in the present Act.

The Act also provides for the creation of 'Special Juvenile Police Units' (SJPU) in every District and duly trained and designated Juvenile/Child Welfare Officers in every police station of India, who shall exclusively deal with 'Juveniles in Conflict with Law' and 'Children in Need of Care and Protection'.

The institutional framework under the law provides for different categories of homes, shelters, drop-in-centers, place of safety, fit persons and fit institutions for the reception, care and protection, rehabilitation and social integration of children / juveniles brought by the police and other authorized individuals and agencies and to create conducive situation for them.

BOX-1.1. SOME ASPIRATIONS OF THE JJ ACT, 2000

- Lay down the basic principles for administering justice to juvenile/child.
- Make the Juvenile Justice System more appreciative of the developmental needs in comparison and distinct to the Criminal Justice System as applicable to adults
- Bring the juvenile law in conformity with the United Nations Convention on the Rights of the Child (UNCRC).
- Prescribe a uniform age of children to be eighteen years for both boys and girls across all statutes
- Ensure speedy disposal of cases regarding juvenile/child within a time limit of four months by the authorities envisaged under the Act .
- Spell out the role of the State as facilitator rather than doer by involving voluntary organizations and local bodies in the implementation of the legislation.
- Create Special Juvenile Police Units with a humane approach through sensitization and training of police personnel.
- Enable increased accessibility to the juvenile/child by establishing Juvenile Justice Boards and Child Welfare Committees and Homes in each district.
- Facilitate effective implementation of provisions for rehabilitation and social reintegration of abandoned, destitute, neglected child/juvenile, by providing for various alternatives such as, adoption, foster care, sponsorship and aftercare.

1.3 GUIDING PRINCIPLES

The guiding principles for the police and other stakeholders and agencies under the Juvenile Justice System are based mainly on the relevant (i) Constitutional provisions, (ii) UNCRC/ other International Instruments and (iii) Fundamental Principles of Juvenile Justice and Child Protection.

Best Interest of the Child is the basic guiding principle, as enunciated under: **Article 3** of the UN Convention on the Rights of the Child which reads:

“In all actions concerning children whether undertaken by public or private social welfare institutions, Courts of Law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration”.

The expression “*best interest of child*” finds a place in the Preamble to the JJ Act, 2000, and in the Model Rules, and needs to be interpreted harmoniously with all the central, local & special legislations in the country.

India ratified the United Nations Convention on Rights of the Child (UNCRC) December 11, 1992 and hence undertook the responsibility to further the best interest of the child.

Serving the ‘Best Interest’ can be in the form of care, protection, treatment, development and most importantly rehabilitation.

Several provisions of the Constitution, including clause (3) of Article 15, Article 21, Article 21A, clause (e) and (f) of Article 39, Article 45 and 47, impose on the State a primary responsibility of ensuring that all the needs of children are met and their basic human rights are fully protected.

1.4 JUVENILE JUSTICE ACT AND RULES

The Government of India, having ratified the Convention, found it expedient to amend the existing law relating to juveniles (Juvenile Justice Act, 1986), bearing in mind the standards prescribed in the:

- UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules),
- UN Rules for the Protection of Juveniles Deprived of their Liberty (1990),
- UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), and other relevant international instruments.

Box-1.2 CONSTITUTIONAL PROVISIONS ASSURING THE BASIC RIGHTS OF CHILDREN

1. **Article 15(3):** - The State can make special provision for children.
2. **Article 21A:** - The State shall provide free and compulsory education to all children in the age of six to fourteen years.
3. **Article 24:** - No child below the age of 14 years shall be employed to work in a factory, mine or any other hazardous employment.
4. **Article 39(e):** - The tender age of children is not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength.
5. **Article 39(f):** - Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that youth are protected against exploitation and against moral and material abandonment
6. **Article 45:** - The State shall endeavor to provide early childhood care and education for all children until they complete the age of six years.
7. **Article 51A:** - Whereas it is Fundamental Duty of a parent or guardian to provide opportunities for education to his/her child or ward between the age of six and fourteen years.

The JJ Act, 2000, was enacted in order to achieve the said objectives and to create a congenial environment for the realization of the UNCRC principles. The provisions of the Act are based on the provisions of the Indian Constitution and the International Instruments, as mentioned above, which refer to the four basic rights of the child under UNCRC, namely:

1. Right to Survival,
2. Right to Protection,
3. Right to Development and
4. Right to Participation

The standard of justice for children as set down under the Act was further enhanced in the Model Rules. Rule 3 of the Model Rules lays down certain Fundamental Principles to be followed in their administration. Chapter II of the Model Rules, which enunciates the ‘Fundamental Principles of Juvenile Justice and Protection of Children’, should be kept in mind by all concerned stakeholders while discharging their duties.

Box 1.3 FUNDAMENTAL PRINCIPLES OF JUVENILE JUSTICE AND PROTECTION OF CHILDREN

1. Presumption of Innocence
2. Dignity and Worth
3. Right to be Heard
4. Best Interest
5. Family Responsibility
6. Safety (no harm, no abuse, no neglect, no exploitation and no maltreatment)
7. Positive Measures
8. Non-stigmatizing semantics, decisions and actions
9. Non-waiver of Rights
10. Equality and non-discrimination
11. Right to privacy and confidentiality
12. Last Resort
13. Repatriation and Restoration
14. Fresh Start

Despite such a comprehensive legislation that also enshrines the most pro-active principles, the children’s Rights are found to be constantly violated. This can be attributed not only to weak implementation of the laws but also to poor awareness about the same amongst various stakeholders and the society at large. Time and again, many Committees formed to inspect Children’s institutions have found that ‘Children in Need of Care and Protection’ continue to suffer in poorly managed institutions, while ‘Juveniles in Conflict with Law’ continue to be treated as criminals. A large number of children are arrested and detained by the police, tried by magistrates, and sent to institutions, which include even the prisons that are meant for adults.

Enforcement is integral to the success of any policy and the law, without which the entire system remains ineffective. In the Juvenile Justice System, stakeholders viz. the competent authorities and the provided institutions and agencies -- Police, Probation Officer, JJB, Case Worker/Social Worker, CWC, State Governments, NGOs, Childline (1098), Advocates etc. are responsible for its working.

The Act basically covers two categories of children, namely, ‘Child in need of Care and Protection’ and ‘Juvenile in Conflict with Law’ as defined under section 2 (d) of the Act:

“child in need of care and protection” means a child —

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

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

(ii) who reside with a person (whether a guardian of the child or not) and such person—

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

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

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

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

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

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

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

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

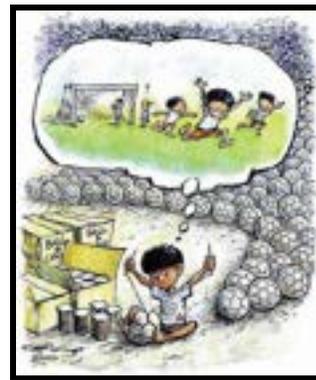
(ix) who is victim of any armed conflict, civil commotion or natural calamity;



Abandoned child



Street Child



Child Labour



Physical Abuse



Child Beggar



Trafficked Child

Picture 2 Categories of children in Need of Care and Protection

Along with these children, the JJ Act, 2000 also address another category of children, namely, ‘Juvenile in Conflict with Law’, defined under section 2(l) of the JJ Act, 2000 as:

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

The JJ Act, 2000 makes it clear that it is meant to provide for proper care, protection and treatment of children/juveniles by catering to their developmental needs, by adopting a child friendly approach in the adjudication and disposition of matters in their best interest and for their ultimate rehabilitation and reintegration in the society, and that India, in complete conformity with the International community, is committed to care and protect the innocence and dignity of both, the child in need of care and protection and the juvenile in conflict with law.

1.5 PSYCHOLOGY OF THE CHILD

What needs to be understood is that these children, whether in difficult circumstances or juveniles in conflict with law, are forced by circumstances and situations to get in conflict with law. Studies have shown association between childhood behavior problems and later criminality symptoms. Many factors, such as, family relationships, parents' mental state and, in particular, parental criminality are found to affect the psyche of the child.

It is also believed that many variations in behavior are passed down genetically. In addition to this genetic influence, the environment around the child also makes a difference in shaping the child's young mind. In their infancy, their environment is influenced almost entirely by their parents. Children tend to grow up with traits similar to their parents, because at young age, they imitate their parent's behavior as their role-model or idol. Some parents may lack the psychological or physical skill to cope and deal with a difficult child, and in consequence, they respond negatively and impulsively.

Most of anti-social behavior is seen shared between children and their parents. Many juveniles in conflict with law have parents with criminal record. Not only there are multiple biological and physical influences, but also environmental ones in abundance since the young children look up to their, parents, family members and other role models whom they want to emulate. Children are often seen imitating anti-social behavior observed in and practiced by their parents or others around them.

1.6 RISK FACTORS LEADING TO CONFLICT WITH LAW

Apart from this, some factors responsible for taking a stand in conflict with law are discussed in the following paragraphs. Such circumstances lead them to be involved in offences as the increase in abuse and negativity frustrates their tender minds and results in a change of their behavior and action in order to cope with the situation.

1.6.2 Individual Risk Factors

Several individual traits and factors are identified with juvenile in conflict with law. A minor who has a lower intelligence and who does not receive proper education is more prone to become involved in conflict with law. Other individual risk factors include impulsive behavior, uncontrolled aggression and an *inability to delay gratification*. Often, multiple individual risk factors can be identified as contributing to a juvenile's involvement in harmful, destructive and illegal activities.

1.6.3 Family Risk Factors

The family risk factors include lack of proper parental supervision, ongoing intra-parental conflict, neglect and abuse (emotional, psychological or physical). Parents who demonstrate lack of respect for law and social norms are likely to have children who think similarly. Finally, those children who display the weakest attachment to their parents and families are precisely the juveniles who engage in inappropriate activities, including conflict with law.

1.6.4 Mental Health Risk Factors

Several mental health factors are also seen as contributing to juvenile mis-conduct. It is important to keep in mind, however, that a diagnosis of certain types of mental health conditions, primarily personality disorders, cannot be made in regard to child. However, there are precursors of these conditions that may be exhibited in childhood that tend to end up in developing delinquent behavior. A common one is conduct disorder, defined as "a lack of empathy and disregard for societal norms."

1.6.5 Substance Abuse Risk Factors

Substance abuse is found in a majority of cases of juvenile mis-conduct. Two trends are noticed in regard to substance abuse among minors. First, juveniles are using more powerful drugs today than was the case as recently as 10 years ago. Second, the age at which juveniles begin using drugs is getting younger. Children in elementary schools are found to be using powerful illegal drugs. Rampant use of drugs and narcotics among children which culminates into addiction becomes a compulsion for such children and as a result of which many times children opt for illegal ways and many a times they are also forced into illegal activities, including drug peddling etc. by crime syndicates. Additionally, juveniles are far more likely to engage in destructive, harmful and illegal activities when using drugs and alcohol.

1.6.6 Other Risk Factors

The juveniles, just like adults, involve in all types of crimes. This does not, however, mean that they are hardened criminals warranting strict punitive action. Violence does not usually start at this point of age. It is a part of a long development process that begins in the childhood. Children come to adopt the same attitude and practices that they observe in the atmosphere they grow in. Moreover, they develop certain reservations on what they see in the society and that the present chaotic socio-cultural value system which faces the breakdown of traditional values gives an impression that what is bad, is strong and what is **good**, is necessarily weak. It is, thus, the social conditions and the psychological milieu in which the children are born and brought up that becomes the basic cause for the juveniles going astray. This is where the stakeholders have an important role to play in terms of providing proper care, protection and treatment to such children by catering to their developmental needs. The police are expected to stand as the front runners among them. Police in India, is getting increasingly exposed to such problems, and the course material relating to juvenile misconduct has to become not only a part of training curriculum but also their actual functioning. As of now, they investigate juvenile offences and deal with juveniles in conflict with law in the same manner as they do in the cases of offences committed by adults, which are need to change drastically.

1.7 POLICE IN INDIA

Police in India, established under the Indian Police Act, 1861, in the wake of the Sepoy Mutiny (First War of Indian Independence) in 1857, have little understanding of the issues concerning of juvenile delinquency and child protection. The object of the legislation was primarily the maintenance of law and order, regulation of public place, and, above all, to protect the interest of the State than British Empire, detection and prevention of crime. The policemen, accordingly, are trained basically to enforce the provisions of the Indian Penal

Code, 1860, and the local and special laws, in accordance with the, provisions of the Indian evidence Act, 1872, and the Code of Criminal Procedure, 1973.

While there are some provisions pertaining to the crimes involving children/juveniles (Table 1.4), these laws are primarily meant for adults.

Box 1.4 PROVISIONS UNDER THE INDIAN PENAL CODE, 1860, RELATING TO CHILDREN WHO HAVE COMMITTED AN OFFENCE

The Indian Penal Code, which underlines the substantive penal provisions relating to offences in India, under Chapter IV on **General Exceptions**, makes special provisions with regard to the child who has committed an offence, as under:

82. Act of a child under seven years of age. - *Nothing is an offence which is done by a child under seven years of age.*

83. Act of a child above seven and under twelve of immature understanding. – *Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.*

Initially, in the absence of any provisions in IPC, the children above the age group 12 years, in conflict with law, were treated parallel to adult offenders till the Children’s Act, 1960. Since for different States in India, there were different provisions under the Children’s Act, it was felt necessary that there shall be uniform law dealing with children in the whole of India. This created the ground for formulating and implementation of JJ Act 1986, which were later repealed by JJ Act, 2000 and also amended in the year 2006.

There are also some other laws relating to children which too involve the role of police for their administration and enforcement.

With the focus of the police primarily on handling of crime and maintenance of law and order, however, these legislations too, categorized as ‘Minor Acts’, do not, by and large, receive any serious attention from the police.

Besides prevention and detection of crime, maintenance of order and enforcement of laws and regulations, the functions of police also involve a host of other duties, such as, preservation of public peace, regulating assemblies and traffic, protection of life and property and safe-guarding the rights of the citizens (who include the children with some special rights). In all these activities too, the policemen, quite often, come in contact with children. Here also, usually, the children do not get any consideration for their age.

Police remain the prime movers of the Indian legal system including those affecting the juveniles or the children. In most cases, they are the first point of contact and responder in any situation of crisis or a case, particularly an incident of crime involving children/juveniles, in whatever capacity—as the perpetrators, victims or witness. They, as such, need to understand and keep in view, the basic premise that children cannot be treated like adults and other offenders and that, they have to deal with them differently under the special and comprehensive JJ Act, 2000 and Model Rules framed there-under..

As such, though the police are deeply involved in handling of children/juveniles, especially those involved in crimes, there is little effort on their part to understand the problem of delinquency and the conditions that lead to anti-social behavior among the juveniles. They usually look into the act only and not why the juvenile has committed the crime and the factors leading to his improper/delinquent behavior. They, sometimes, even presume the motives of the child for committing an offence in the light of their own thinking and stereotypes, often to the prejudice of the interest of the juvenile in the court of law.

The present Manual on the Police/SJPU contains the specifications of its constitution and functioning, the milieu and role of the police with legal provisions, case studies and, practical problems encountered in dealing with children/juveniles besides illustrations and graphics. In short, it aims to provide a reader-friendly practical guide and a ready-reckoner which would help the Police Officers and others assisting them in this work of handling the children/juveniles with confidence and arriving at correct judgment and course of action in their best interest in accordance with the provisions and spirit of the law. It thus, covers all aspects of police functioning and the role of Police vis-à-vis the children and juveniles.

1.8 RATIONAL FOR THE MANUAL

The provisions of JJ Act, 2000, coupled with the support under the umbrella “Integrated Child Protection Scheme (ICPS),” require major changes in the police set-up and role with regard to child protection related activities under the Juvenile Justice System that covers both the ‘Children in Need of Care and Protection’ and ‘Juveniles in Conflict with Law’.

The police, as also the other components of the Criminal Justice System, will need sensitization to understand that the whole range of substantive and procedural laws under the normal Criminal Justice System have to be applied differently while dealing with juveniles/children, keeping in view this distinct and holistic Juvenile Justice System and the basic altered jurisprudence there under and the fact that children cannot be treated like adults and other offenders.

It is for this reason that a need was felt to formulate a Manual for Special Juvenile Police Units (SJPU)/Police Officers through-out the country, having uniformity and basic performance parameters.

The objective of the Manual is to provide simple guidelines, more in the nature of Standard Operating Procedure (SOP), for police officers to deal with children in all circumstances -- as Juveniles in Conflict with Law, Children in Need of Care and Protection, children as victims of crime, abuse and exploitation and children as witnesses.

The objective is also to bring about a change in police treatment of the child ranging from the Criminal Justice System (CJS) as enshrined under the Criminal Procedure Code 1973 and Evidence Act, coupled with the Indian Penal Code and local and special laws, to the Juvenile Justice System (JJS), as provided under the JJ Act, 2000.

CHAPTER 2

INTERNATIONAL INSTRUMENTS AND NATIONAL POLICIES

2.1 Introduction

The preamble of the JJ Act, 2000 enshrines that the Act has been enacted to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.

It is imperative that Police Officials dealing with child protection and juvenile justice should be conversant with relevant International Instruments and National Policies. Accordingly, a brief description of some International Instruments and Policies announced by Government are elucidated in this chapter.

2.2 UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”,

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict.

The Convention on the Rights of the Child (UNCRC) was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. It entered into force on 2 September 1990, in accordance with Article 49. India ratified CRC on 11 December, 1992 with reservations to Article 32.

The child Rights included in the Convention are classified into the following categories of Rights:

1. *Right to Survival*
2. *Right to Protection*
3. *Right to Development*
4. *Right to Participation*

Article 1 (Definition of the Child): The Convention defines a 'child' as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger. The Committee on the Rights of the Child, the Monitoring Body for the Convention, has encouraged States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18 years of age.

Article 2 (Non-Discrimination): The Convention applies to all children, whatever their race, religion or abilities; whatever they think or say, whatever type of family they come from. It doesn't matter where children live, what language they speak, what their parents do, whether they are boys or girls, what their culture is, whether they have a disability or whether they are rich or poor. No child should be treated unfairly on any basis.

Article 3 (Best Interests of the Child): The best interests of children must be the primary concern in making decisions that may affect them. All adults should do what is best for children. When adults make decisions, they should think about how their decisions will affect children. This particularly applies to budget, policy and law makers.

Article 4 (Protection of Rights): Governments have a responsibility to take all available measures to make sure children's Rights are respected, protected and fulfilled. When countries ratify the Convention, they agree to review their laws relating to children. This involves assessing their social services, legal, health and educational systems, as well as levels of funding for these services. Governments are then obliged to take all necessary steps to ensure that the minimum standards set by the Convention in these areas are being met. They must help families protect children's Rights and create an environment where they can grow and reach their potential. In some instances, this may involve changing existing laws or creating new ones. Such legislative changes are not imposed, but come about through the same process by which any law is created or reformed within a country. Article 41 of the Convention points out that when a country already has higher legal standards than those seen in the Convention, the higher standards always prevail.

Article 5 (Parental Guidance): Governments should respect the rights and responsibilities of families to direct and guide their children so that, as they grow, they learn to use their rights properly. Helping children to understand their rights does not mean pushing them to make choices with consequences that they are too young to handle. Article 5 encourages parents to deal with rights issues "in a manner consistent with the evolving capacities of the child". The Convention does not take responsibility for children away from their parents and give more authority to Governments. It does place on Governments the responsibility to protect and assist families in fulfilling their essential role as nurturers of children.

Article 6 (Survival and Development): Children have the right to live. Governments should ensure that children survive and develop healthily.

Article 7 (Registration, Name, Nationality, and Care): All children have the right to a legally registered name, officially recognized by the Government. Children have the Right to Nationality (to belong to a country).

Children also have the Right to know and, as far as possible, to be cared for by their parents.

Article 8 (Preservation of Identity): Children have the Right to an Identity – an official record of who they are. Governments should respect children's Right to a Name, a Nationality and family ties.

Article 9 (Separation from Parents): Children have the Right to live with their parent(s), unless it is bad for them. Children whose parents do not live together have the right to stay in contact with both parents, unless this might hurt the child.

Article 10 (Family reunification): Families whose members live in different countries should be allowed to move between those countries so that parents and children can stay in contact, or get back together as a family.

Article 11 (Kidnapping): Governments should take steps to stop children being taken out of their own country illegally. This article is particularly concerned with parental abductions. The Convention's Optional

Protocol on the sale of children, child prostitution and child pornography has a provision that concerns abduction for financial gain.

Article 12 (Respect for the views of the Child): When adults are making decisions that affect children, children have the right to say, what they think should happen and have their opinions taken into account.

Article 13 (Freedom of Expression): Children have the Right to get and share information, as long as the information is not damaging to them or others. In exercising the Right to Freedom of expression, children have the responsibility to also respect the rights, freedoms and reputations of others. The freedom of expression includes the right to share information in any way they choose, including by talking, drawing or writing.

Article 14 (Freedom of Thought, Conscience and Religion): Children have the right to think and believe what they want and to practice their religion, as long as they are not stopping other people from enjoying their rights. Parents should help and guide their children in these matters. The Convention respects the rights and duties of parents in providing religious and moral guidance to their children. Religious groups around the world have expressed support for the Convention, which indicates that it in no way prevents parents from bringing their children up within a religious tradition. At the same time, the Convention recognizes that as children mature and are able to form their own views, some may question certain religious practices or cultural traditions. The Convention supports children's right to examine their beliefs, but it also states that their right to express their beliefs implies respect for the rights and freedoms of others.

Article 15 (Freedom of Association): Children have the right to meet together and to join groups and organizations, as long as it does not stop other people from enjoying their rights. In exercising their rights, children have the responsibility to respect the rights, freedoms and reputations of others.

Article 16 (Right to Privacy): Children have a right to privacy. The law should protect them from attacks against their way of life, their good name, their families and their homes.

Article 17 (Access to Information; Mass Media): Children have the right to get information that is important to their health and well-being. Governments should encourage mass media – radio, television, newspapers and Internet content sources – to provide information that children can understand and to not promote materials that could harm children. Mass media should particularly be encouraged to supply information in languages that minority and indigenous children can understand. Children should also have access to children's books.

Article 18 (Parental responsibilities; State assistance): Both parents share responsibility for bringing up their children, and should always consider what is best for each child. Governments must respect the responsibility of parents for providing appropriate guidance to their children – the Convention does not take responsibility for children away from their parents and give more authority to Governments. It places a responsibility on Governments to provide support services to parents, especially if both parents work outside the home.

Article 19 (Protection from all forms of violence): Children have the right to be protected from being hurt and mistreated, physically or mentally. Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them. In terms of discipline, the Convention does not specify what forms of punishment parents should use. However any form of discipline involving violence is unacceptable. There are ways to discipline children that are effective in helping children learn about family and social expectations for their behavior – ones that are non-violent, are appropriate to the child's level of development and take the best interests of the child into consideration. In most countries, laws already define what sorts of punishments are considered excessive or abusive. It is up to each government to review these laws in light of the Convention.

Article 20 (Children deprived of family environment): Children who cannot be looked after by their own family have a Right to special care and must be looked after properly, by people who respect their ethnic group, religion, culture and language.

Article 21 (Adoption): Children have the Right to care and protection if they are adopted or in foster care. The first concern must be what is best for them. The same rules should apply whether they are adopted in the country where they were born, or if they are taken to live in another country.

Article 22 (Refugee Children): Children have the Right to special protection and help if they are refugees (if they have been forced to leave their home and live in another country), as well as all the Rights in this Convention.

Article 23 (Children with Disabilities): Children who have any kind of disability have the Right to special care and support, as well as all the Rights in the Convention, so that they can live full and independent lives.

Article 24 (Health and health services): Children have the Right to good quality health care – the best health care possible, to safe drinking water, nutritious food, a clean and safe environment, and information to help them stay healthy. Rich countries should help poorer countries achieve this.

Article 25 (Review of treatment in care): Children who are looked after by their local authorities, rather than their parents, have the Right to have these living arrangements looked at regularly to see if they are the most appropriate. Their care and treatment should always be based on “the best interests of the child”.

Article 26 (Social Security): Children either through their guardians or directly – have the right to help from the government if they are poor or in need.

Article 27 (Adequate standard of living): Children have the right to a standard of living that is good enough to meet their physical and mental needs. Governments should help families and guardians who cannot afford to provide this, particularly with regard to food, clothing and housing.

Article 28: (Right to education): All children have the Right to a primary education, which should be free. Wealthy countries should help poorer countries achieve this right. Discipline in schools should respect children’s dignity. For children to benefit from education, schools must be run in an orderly way – without the use of violence. Any form of school discipline should take into account the child's human dignity. Therefore, Governments must ensure that school administrators review their discipline policies and eliminate any discipline practices involving physical or mental violence, abuse or neglect. The Convention places a high value on education. Young people should be encouraged to reach the highest level of education of which they are capable.

Article 29 (Goals of Education): Children’s education should develop each child’s personality, talents and abilities to the fullest. It should encourage children to respect others, human rights and their own and other cultures. It should also help them learn to live peacefully, protect the environment and respect other people. Children have a particular responsibility to respect the rights of their parents, and education should aim to develop respect for the values and culture of their parents. The Convention does not address such issues as school uniforms, dress codes, the singing of the national anthem or prayer in schools. It is up to governments and school officials in each country to determine whether, in the context of their society and existing laws, such matters infringe upon other rights protected by the Convention.

Article 30 (Children of Minorities/Indigenous groups): Minority or indigenous children have the right to learn about and practice their own culture, language and religion. The Right to practice one’s own culture,

language and religion applies to everyone; the Convention here highlights this right in instances where the practices are not shared by the majority of people in the country.

Article 31 (Leisure, Play and Culture): Children have the right to relax and play, and to join in a wide range of cultural, artistic and other recreational activities.

Article 32 (Child Labor): The Government should protect children from work that is dangerous or might harm their health or their education. While the Convention protects children from harmful and exploitative work, there is nothing in it that prohibits parents from expecting their children to help out at home in ways that are safe and appropriate to their age. If children help out in a family farm or business, the tasks they do be safe and suited to their level of development and comply with national labor laws. Children's work should not jeopardize any of their other rights, including the Right to education, or the Right to relaxation and play.

Article 33 (Drug Abuse): Governments should use all means possible to protect children from the use of harmful drugs and from being used in the drug trade.

Article 34 (Sexual Exploitation): Governments should protect children from all forms of sexual exploitation and abuse. This provision in the Convention is augmented by the Optional Protocol on the sale of children, child prostitution and child pornography.

Article 35 (Abduction, Sale and Trafficking): The Government should take all measures possible to make sure that children are not abducted, sold or trafficked. This provision in the Convention is augmented by the Optional Protocol on the sale of children, child prostitution and child pornography.

Article 36 (Other forms of Exploitation): Children should be protected from any activity that takes advantage of them or could harm their welfare and development.

Article 37 (Detention and Punishment): No one is allowed to punish children in a cruel or harmful way. Children who break the law should not be treated cruelly. They should not be put in prison with adults, should be able to keep in contact with their families, and should not be sentenced to death or life imprisonment without possibility of release.

Article 38 (War and Armed Conflicts): Governments must do everything they can to protect and care for children affected by war. Children under 15 should not be forced or recruited to take part in a war or join the armed forces. The Convention's Optional Protocol on the involvement of children in armed conflict further develops this Right, raising the age for direct participation in armed conflict to 18 and establishing a ban on compulsory recruitment for children under 18.

Article 39 (Rehabilitation of child victims): Children who have been neglected, abused or exploited should receive special help to physically and psychologically recover and reintegrate into society. Particular attention should be paid to restoring the health, self-respect and dignity of the child.

Article 40 (Juvenile Justice): Children who are accused of breaking the law have the Right to legal help and fair treatment in a justice system that respects their rights. Governments are required to set a minimum age below which children cannot be held criminally responsible and to provide minimum guarantees for the fairness and quick resolution of judicial or alternative proceedings.

Article 41 (Respect for Superior National Standards): If the laws of a country provide better protection of children's Rights than the Articles in this Convention, those laws should apply.

Article 42 (Knowledge of Rights): Governments should make the Convention known to adults and children. Adults should help children learn about their rights, too. (See also article 4.)

Articles 43-54 (Implementation Measures): These articles discuss how Governments and International Organizations like UNICEF should work to ensure children are protected in their Rights.

2.3 OPTIONAL PROTOCOLS TO THE CONVENTION ON THE RIGHTS OF CHILD (I) ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY AND (II) INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

The Protocols provides definitions for the offences of ‘Sale of Children’, ‘child prostitution’ and ‘child pornography’. It also creates obligations on Governments to criminalize and punish the activities related to these offences. It requires punishment not only for those offering or delivering children for the purposes of sexual exploitation, transfer of organs or children for profit or forced labour, but also for anyone accepting the child for these activities.

The Protocol on Involvement of Children in Armed Conflict calls on State Parties to undertake all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

The Protocol also protects the rights and interests of child victims. Governments must provide legal and other support services to child victims. This obligation includes considering the best interests of the child in any interactions with the criminal justice system. Children must also be supported with necessary medical, psychological, logistical and financial support to aid their rehabilitation and reintegration. As a complement to the Convention on the Rights of the Child, interpretation of the Optional Protocol’s text must always be guided by the principles of non-discrimination, best interests of the child and child participation.

The value of International cooperation and public education are also stressed in the Protocol. International cooperation is important as a means of combating these often transnational activities. Public awareness, information and education campaigns also help protect children from these serious violations of their rights.

The two Optional Protocols to UNCRC were ratified by India on 16th August 2005 and 30 November 2005 respectively.

2.4 UNITED NATIONS STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUVENILE JUSTICE (“THE BEIJING RULES”)

Adopted by General Assembly resolution 40/33 of 29 November, 1985

PART ONE

GENERAL PRINCIPLES

Box No: 2.1 FUNDAMENTAL PERSPECTIVE

- Member states shall seek to further **the wellbeing of the juvenile and her or his family.**
- Member states shall endeavor to **develop conditions that will ensure for the juvenile a meaningful life in the community** which will result in educational and personal development.
- Sufficient attention shall be given to **positive measures that involve the full mobilization of all possible resources**, to promote the wellbeing of the juvenile and fairly and effectively deal with juveniles in conflict with law.
- **Juvenile Justice shall be conceived as an integral part of the National Development** process of each country, within a comprehensive framework of social justice for all juveniles.
- These rules shall be **implemented in the context of economic, social and cultural conditions** prevailing in each member State.
- Juvenile Justice Services shall be **systematically develop and coordinated with a view to improving and sustaining the competence of personnel involved in the services**, including their methods, approaches and attitudes.

RIGHTS OF JUVENILES

The following Rights to be granted to the juvenile at all stages of proceedings:

- Presumption of innocence
- Right to be notified of the charges
- Right to remain silent
- Right to counsel
- Right to the presence of a parent or guardian
- Right to confront and cross-examine witness
- Right to appeal to a Higher Authority

PROTECTION OF PRIVACY

- The Juvenile's right to Privacy shall be respected at all stages, in order to avoid harm being caused to him or her by undue publicity or by the process of labeling.
- No information that may lead to the identification of a Juvenile offender shall be published.

SAVING CLAUSE

Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations and other Human Rights Instruments and Standards recognized by the International Community that relate to the care and protection of the young.

PART TWO

INVESTIGATION AND PROSECUTION

INITIAL CONTACT

- After the apprehension of a juvenile, his or her parents or guardian shall be immediately notified of such apprehension and where immediate notification is not possible they shall be notified within the shortest period of time.
- The judge or other competent official or body shall, without delay, consider the issue of release.

- Contacts between the law enforcement agencies and a juvenile offender shall be managed in such a way as to respect the legal status of the juvenile and to promote their well-being.

SPECIALISATION WITHIN THE POLICE

In order to best fulfill their functions, police officers who deal with juveniles are to be trained and specially instructed. In large cities SJPU's should be established for the following purpose:

DETENTION PENDING TRIAL

- Detention Pending Trial shall be used only as a measure of last resort and for the shortest possible period of time.
- Whenever possible it shall be replaced by alternative measure, such as close supervision, intensive care or placement with a family or in an educational setting or home.
- Juveniles under Detention Pending Trial shall be entitled to all Rights and guarantees of the Minimum Standard Rules for the Treatment of Prisoners adopted by the United Nations.
- Juveniles under Detention Pending Trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
- While in custody juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, physical and medical that may require in view of their age, sex and personality.

PART THREE

ADJUDICATION AND DISPOSITION

COMPETENT AUTHORITY TO ADJUDICATE

Where the case of a juvenile offender has not been diverted, he or she shall be dealt with by the competent authority (court, tribunal, board, council etc.) according to the principles of a fair and just trial.

The proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express her or himself freely.

LEGAL COUNSEL, PARENTS AND GUARDIANS

Throughout the proceedings, the juvenile shall have the Right to be represented by a legal advisor or to apply for a free legal aid.

The parents or guardians shall be entitled to participate in the proceedings in the interest of the juvenile. They may however be denied participation by the competent authority, if such exclusion is necessary in the interest of the juvenile.

SOCIAL INQUIRY REPORTS

Before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which a juvenile is living or the conditions under which the offence has been committed shall be properly investigated.

GUIDING PRINCIPLES IN ADJUDICATION AND DISPOSITION

The disposition of the competent authority shall be guided by:

- The reaction shall be taken in proportion to the circumstances and needs of the juvenile as well as to the needs of the society.
- Restrictions on personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the minimum possible.

- Deprivation of personal liberty shall not be imposed, unless the juvenile is adjudicated of a serious act.
- The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.
- Capital punishment shall not be imposed for any crime committed by juveniles.
- Juveniles shall not be subject to corporal punishment.
- The competent authority shall have the power to discontinue the proceedings at any time.

VARIOUS DISPOSITION MEASURES

A large variety of disposition measures shall be made available to the competent authority, so as to avoid institutionalization to the greatest extent possible. Such measures are:

- Care, guidance and supervision orders.
- Probation.
- Community service orders.
- Financial penalties, compensation and restitution
- Intermediate treatment and other treatment orders.
- Order to participate in Group Counselling and other such activities.
- Orders concerning foster care, living communities or other educational settings.
- Other relevant orders.
- No juvenile shall be removed from his parental supervision, whether partly or entirely, unless the circumstances make this necessary.

LEAST POSSIBLE USE OF INSTITUTIONALISATION

Institutionalization of Juveniles shall always be a disposition of last resort and for the minimum necessary period.

AVOIDANCE OF UNNECESSARY DELAY

Each case shall be handled expeditiously without any unnecessary delay.

RECORDS

Records of juvenile offenders shall be kept strictly confidential and closed to third parties. Records of Juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender.

NEED FOR PROFESSIONALISM AND TRAINING

Professional education, in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases.

Juvenile Justice Personnel shall reflect the diversity of the juveniles who come into contact with the Juvenile Justice System. Fair representation of women and minorities in Juvenile Justice Agencies should be made.

PART FOUR

NON-INSTITUTIONAL TREATMENT

EFFECTIVE IMPLEMENTATION OF DISPOSITION

Provisions shall be made for the implementation of orders of the competent authority, by that authority itself or by some other authority, as circumstances may require.

Such authority may include the power to modify the orders, as the competent authority may deem necessary from time to time, provided that such modifications shall be determined in accordance with the principles contained in these rules.

PROVISION OF NEEDED ASSISTANCE

Efforts shall be made to provide the juveniles with all needed assistance such as lodging, education or vocational training, employment or any other assistance helpful and practical in order to facilitate the rehabilitative process.

MOBILISATION OF VOLUNTEERS AND OTHER COMMUNITY SERVICES

Volunteers, Voluntary Organizations, Local Institutions and other Community resources shall be called upon to contribute effectively to the rehabilitation of juvenile in a community setting and as far as possible, within the family unit.

PART FIVE

INSTITUTIONAL TREATMENT

OBJECTIVES OF INSTITUTIONAL TREATMENT

- The objectives of training and treatment of Juveniles placed in institutions is to provide care, protection, education and vocational skills with a view to assisting them to assume socially constructive and productive roles in the society.
- Juveniles in institutions shall receive care, protection and all necessary assistance according to their age, sex and personality and in the interest of their wholesome development.
- Juveniles in institutions shall be kept separate from adults.
- Young female offenders placed in institution deserve special attention according to their personal needs and problems.
- In the interest and wellbeing of the institutionalized juvenile, the parents or guardians shall have a right to access.
- Inter-ministerial and inter-departmental cooperation shall be fostered for the purpose of providing adequate academic and appropriate vocational training to the institutionalized juveniles with a view to ensuring that they do not leave the institution at an educational disadvantage.

2.5 UN GUIDELINES FOR THE PREVENTION OF JUVENILE DELINQUENCY (THE RIYADH GUIDELINES)

FUNDAMENTAL PRINCIPLES

The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful and socially useful activities young persons can develop non-criminogenic attitudes.

The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents.

For the purpose of the interpretation of the present Guidelines, a Child Centered Orientation should be pursued. Young people should play an active role in society.

In the implementation of the present Guidelines, the wellbeing of young persons from their early childhood should be the focus.

The need for and importance of progressive delinquency prevention, policies and systematic study and the elaboration of measures should be recognized. Such policies and measures should involve:

Community based services and programmes should be developed for the prevention of juvenile delinquency.

- The provision of opportunities, in particular educational opportunities.
- Specialized philosophies and approaches for delinquency prevention
- Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity.
- Safeguarding the wellbeing, development, rights and interest of all young persons.
- Consideration that youthful behaviour or conduct that does not conform to overall social norms and values is often a part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood.
- Awareness that, in the predominant opinion of experts, labeling a young person as “deviant”, “delinquent” or “pre-delinquent” often contributes to the development of a consistent pattern of undesirable behaviour by young persons.

SOCIALISATION PROCESSES

Emphasis should be placed on preventive policies facilitating the successful socialization and integration of all children and young persons in particular through family, community, peer groups, schools etc.

Box No 2.2

- Where the child or the young person has suffered harm that has been inflicted by the parents or guardians.
- Where the child has been sexually, physically or emotionally abused by parents or guardians.
- Where the child has been neglected, abandoned and exploited by parents or guardians.
- Where the child has been threatened by physical or moral danger by parents or guardians.
- Where a serious physical or psychological danger to the child has manifested itself in his or her own behaviour and neither the parents, guardians nor the juvenile himself can meet the danger by means other than institutionalization

LEGISLATION AND JUVENILE JUSTICE ADMINISTRATION

Box No 2.3

- Government should enact specific laws to promote and protect the Rights and wellbeing of all young persons.
- Legislation preventing the victimization, abuse, exploitation and the use for criminal activities of children and young person should be enacted and enforced.
- No child or young person should be subjected to corporal punishment.
- Legislation and Enforcement aimed at restricting and controlling accessibility of weapons of any sort to children and young person should be pursued.
- In order to prevent stigmatization, victimization and criminalization of young persons, legislation should be enacted.
- Consideration should be given to the establishment of an office of ombudsman or similar independent organ, which would ensure that the status, rights and interest of young persons are upheld and that proper referral to available services is made.
- Law enforcement and other relevant personnel of both sexes should be trained to respond to the special needs of young persons.
- Legislation should be enacted and strictly enforced to protect children and young persons from drug abuse and drug traffickers.

2.6 UN RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY

The juvenile justice system should uphold the rights and safety and promote the physical and mental well-being of juveniles.

FUNDAMENTAL PERSPECTIVES:

- Juvenile Justice System should uphold the Rights and safety and promote physical and mental well-being of juveniles.
- Deprivation of the liberty of a juvenile should be a disposition of last resort and should be in accordance with the principles and procedures set forth in these rules and in the Beijing Rules.
- The rules are intended to establish minimum standards accepted by the UN for the protection of juveniles deprived of their liberty in all forms consistent with Human Rights and Fundamental freedoms with a view to fostering integration in society.
- The rules should be applied impartially, without discrimination of any kind as to race, color, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth, or family status ethnic or social origin and disability.
- The rules are designed to provide encouragement and guidance to professionals involved in the management of Juvenile Justice System.
- The Rules should be made readily available to Juvenile Justice Personal in their National languages.
- Where appropriate, States should incorporate the rules into their Legislation or amend it accordingly and provide effective remedies for their breach.
- The competent authorities should constantly seek to increase the awareness of the public, that the care of detained juveniles and preparation for their return to society is a great social importance and to this active steps should be taken.
- Nothing in the rules should be interpreted as precluding the application of the relevant a United Nations and Human Right instruments and standard that could be more conducive to ensuring the rights of care and protection of the juveniles/children and all young persons.
- In the event that the practical application of particular rules contained in sections II to V inclusive presents any conflict with the rules contained in the present section, compliance with the later shall be regarded as the predominant requirement.

JUVENILES UNDER APPREHENSION OR AWAITING TRIAL

The condition under which an untried juvenile is detained should be consistent with the rules set out below with additional provisions as a necessary and appropriate, given the requirements of the presumption of innocent, the duration of the detention and the legal status and circumstances of the juveniles, these provisions would include, but not necessarily be restricted to the following:

- Juvenile should have the Right of legal counsel and be enabled to apply for free legal aid.
- Juvenile should be provided with opportunist to pursue with remuneration and continue education or training, but should not be required to do so.
- Juveniles should receive and retain materials for their leisure and recreation as are compatible with the interest of the administration of the justice.

Juvenile who are detained under apprehension or waiting trial (untried) is presumed innocent and shall be treated as such. Untried detainees should be separated from convicted juveniles

The UN Rules also prescribed the management of juvenile facilities in terms of records, admission, registration, movement and transfer, classification and placement, physical environment and accommodation, education, vocational training and work, recreation, religion, medical care, notification of illness, injury and death, contacts with the wider community, limitations of physical restraint and the use of force disciplinary procedure, inspection and complaints, return to the community.

PERSONNEL

The UN Rules emphasize the need for personnel dealing with juveniles to be qualified and include a sufficient number of specialists such as educators, vocational instructors, counselors, social workers, psychiatrists and psychologists.

2.7 FUNDAMENTAL RIGHTS ENSHRINED IN INDIAN CONSTITUTION

Fundamental Rights guaranteed under the Indian Constitution are:

Article 14 — Equality before the law or the equal protection of laws within the territory of India.

Article 15—The State shall not discriminate against any citizen.....Nothing in this Article shall prevent the State from making any special provisions for Women and Children.

Article 21—No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 21A —Free and compulsory education to all children between of the age of 6-14 years in such manner as the State may, by law, determines. Consequently, the Rights of Children to Free and Compulsory Education Act, 2009 has been legislated for all children in India for the age group 6-14 years.

Article 23—Traffic in human beings and begar and other forms of forced labour is prohibited and shall be an offence punishable in accordance with the law.

Article 24—No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Article 29- No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

Article 243G read with Schedule 11 – provide for institutionalization of child care by seeking to entrust programmes of Women and Child Development to Panchayat (Item 25 of Schedule 11), apart from education (item 17), family welfare (item 25), health and sanitation (item 23) and other items with a bearing on welfare of children.

2.8 DIRECTIVE PRINCIPLES OF THE STATE POLICY

The Directive Principles of State Policy (Article 36 – 51) in the Indian Constitution are policy guidelines for Government. Two key Directive Principles deserve mention. They are Article 39 – Children of tender age are not abused and are not forced to enter into any job unsuited to their age or strength. They are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity are protected against exploitation. Article 45 calls upon the State to provide free and compulsory education for all children upto 14 years.

2.9 NATIONAL POLICIES

NATIONAL POLICY FOR CHILDREN, 1974

The National Policy for Children 1974 is a pioneering document of the Government, which incorporated some of the Rights issues that found place in the UNCRC of 1989. Recognizing the Nation's children as a supremely important asset, their nurture and solicitude are the responsibility of the State. The children's programme should find a prominent place in our National plans for the Development of Human Resources, so that our children grow up to become good citizens, physically fit, mentally alert and morally healthy endowed with skills and motivations, provided by the society.

Equal opportunities for development should be provided to all children during the period of growth; this would reduce inequality and bring Social Justice.

Currently, the National Policy for Children is under review with wide-ranging consultations with various stakeholders.

Policy and Measures:

It shall be the policy of the State to provide adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental and social development. Thus, the State shall increase the scope of such services so that within a reasonable time, all the children in the country enjoy optimum conditions for balanced growth. Few of them are enshrined below,

- Special facilities for Socially Handicapped and Delinquent children
- Protection
- Prohibition of children in hazardous work
- Protection and Relief

NATIONAL POLICY ON CHILD LABOUR – 1987

Introduction

The Constitution of India, both in the Directive Principles of State Policy and as a part of the Fundamental Rights, has laid down that the State shall direct its policy towards securing health and strength of workers, men and women, and the tender age of children are not abused.

The National Policy for Children Resolution, adopted in August 1974, further developed the above ideas and set out a policy framework and measures aimed at providing adequate services for children.

The Committee on Child Labour (Gurupadaswamy Committee) which submitted its report in December 1979 examined the problems of child labour in detail. India is one of the countries where the problems of child labour are quite openly manifested and the widespread existence of child labour has been viewed by the Government of India with concern.

Government has given consideration to these aspects of the problems of child labour, i.e. the need to protect child labourers from exploitation or from being subjected to work in hazardous conditions which endanger such children's physical and mental development; the need to ensure safety and health at their working places; that they should be protected from excessively long working hours and from night work, and that there should be regulated work even in non-hazardous occupations, and that all child labourers have to be provided with sufficient weekly rest periods and holidays in their employments

The Child Labour (Prohibition and Regulation) Act, 1986, is the culmination of the process of consideration that Government has been giving to this pervasive problem figuring in the economic and social landscape in the country. Both, in enacting the legislation, and thereafter in proceeding to lay down the policy and the outline of the policy and the outline of the program of action, Government have had to keep in mind the economic and social aspects of Child Labour in the country.

The Action programme, therefore, has to be viewed against the above background. Specifically, the attempt is to deal with a situation where children work or are compelled to work, on a regular or a continuous basis, to earn a living for themselves and/or for their family, and where their conditions of work result in their being severely disadvantaged and exploited, and where abuses connected with such factors impacting on wage-employed children need to be given close attention by the State for rectification, amelioration and regulation through specific legal and administrative instruments and measures.

The future Action programme as per the Policy is set out under the following three heads:-

1. The legislative Action Plan;
2. The focusing of general development programs, for benefiting child labour wherever possible; and
3. Project-based Plan of Action in areas of high concentration of child labour engaged in wage/quasi-wage employment.

NATIONAL CHARTER FOR CHILDREN, 2003

Recalling the Constitution of India which enshrines both in Part III and IV the cause and the best interest of children, (Art.15 (3)), (Art. 21A), (Art. 24), (Art. 39 E), (Art. 39 F), (Art. 45), (Art. 51A) and the **National Policy for Children, 1974**, which had committed to provide **adequate services to children, both before and after birth and throughout the period of growth**, to ensure their full physical, mental and social development.

The National Charter affirmed that the **best interest of children must be protected** through combined action of the State, civil society, communities and families, and that as the State, Society, Community and Family have obligations towards children, thus a sound sense of values directed towards **preserving and strengthening the Family, Society and the Nation** should be built up in children. The Charter advocated that the society, by **respecting the child was indeed respecting itself**.

This **National Charter** intended to:

- secure for every child its inherent right to be a child,
- provide a healthy and happy childhood,
- address the root causes that neglect the healthy growth and development of children, to awaken the conscience of the community in the wider societal context
- to protect children from all forms of abuse while strengthening the family, society and the Nation.

Survival, Life and Liberty

- ❖ The State and community shall **ensure and protect the survival, life and liberty** of all children.
- ❖ The State and Community shall address the **problems of infanticide and foeticide, especially of female child** and all other emerging manifestations that deprive the girl child of her right to survive with dignity.

Promoting High Standards of Health and Nutrition

- ❖ The State shall ensure that all children **enjoy the highest attainable standards of health**, and provide for preventive and curative facilities at all levels especially through **immunisation and prevention of micronutrient deficiencies** for all children.
- ❖ The State shall provide **primary health facilities and specialised care and treatment** to all children of families below the poverty line.
- ❖ The State shall provide **adequate pre-natal and post-natal care for mothers** along with immunization against preventable diseases.
- ❖ The State shall provide for a **National Plan** that will ensure that the mental health of all children is protected.
- ❖ The State shall ensure protection of children from all practices that are **likely to harm the child's physical and mental health**.
- ❖ The State shall provide all children below the poverty line with adequate **supplementary nutrition and access to safe drinking water and environmental sanitation and hygiene**.

Assuring Basic Minimum Needs and Security

- ❖ The State recognizes that the **basic minimum needs of every child must be met** for full development of the child.
- ❖ In order to ensure this, the State shall **provide Social Security for children**, especially for abandoned children and street children.
- ❖ State and Community shall try and **remove the fundamental causes** which result in abandoned children and children living on streets, and **provide infrastructural and material support** by way of
 - Shelter,
 - Education,
 - Nutrition and
 - Recreation

Play and Leisure Facilities

- ❖ The State shall recognise that all children require adequate play and leisure for their healthy development and must provide for **recreational facilities and services** for children of all ages and social groups.

Early Childhood Care for Survival, Growth and Development

- ❖ The State and Community shall provide **early childhood care** for all children and **encourage programmes** which will stimulate and develop their physical and cognitive capacities.
- ❖ The State shall provide a child **care centre in every village** where infants and children of working mothers can be adequately cared for.
- ❖ The State shall provide **facilities to children from SCs/STs and marginalised sections of society**.

Free and Compulsory Primary Education

- ❖ The State should provide **free and compulsory education** for all children and **special incentives for children from disadvantaged social groups** so that they are enrolled, retained and participate in schooling.
- ❖ At the secondary level, the State shall provide access to **education for all and provide supportive facilities** from the disadvantaged groups.

- Universal enrolment
- Universal retention
- Universal participation
- Universal achievement

- ❖ The State shall ensure that all the **educational institutions function efficiently** and are able to reach.
- ❖ The State and Community recognise that a child be **educated in its mother tongue**.
- ❖ The State shall ensure that education is **child-oriented, meaningful and sensitive** to the healthy development of the girl child and to children of varied cultural backgrounds.
- ❖ The State shall ensure that **school discipline and related matters do not result in physical, mental, psychological harm or trauma to the child**.
- ❖ The State shall **formulate special programmes** to spot, identify, encourage and assist the gifted children for their development in the field of their excellence.

Protection from Economic Exploitation and All Forms of Abuse

- ❖ The State shall **provide protection to children from economic exploitation** and from performing tasks that are hazardous to their well-being.
- ❖ The State shall ensure **regulation of conditions of work** in occupations and processes where children perform work of a non-hazardous nature and that their Rights are protected.
- ❖ The State shall move towards a total **ban of all forms of Child labour**.
- ❖ All Children have a **Right to be Protected** against neglect, maltreatment, injury, and trafficking, sexual and physical abuse of all kinds, corporal punishment, torture, exploitation, violence and degrading treatment.
- ❖ The State shall take **legal action against those committing such violations** against children even if they be legal guardians of such children.
- ❖ The State and Community shall **set up mechanisms** for identification, reporting, referral, investigation and follow-up of such acts while respecting the dignity and privacy of the child.
- ❖ The State and Community take up steps to **draw up plans** for the identification, care, protection, counselling and rehabilitation of child victims and ensure that they are able to recover, physically, socially and psychologically, and re-integrate into society.
- ❖ The State shall take strict measures to ensure that children are **not used in the conduct of any illegal activity**, namely,
 - Trafficking of narcotic drugs and psychotropic substances,
 - Begging,
 - Prostitution,
 - Pornography or
 - Violence.
- ❖ The State and Community shall ensure that such **children are rescued and immediately placed** under appropriate care and protection.
- ❖ The State and community shall ensure **protection of children in distress** for their welfare and all round development.
- ❖ The State and community shall ensure **protection of children during the occurrence of natural calamities** in their best interest.

Protection of the Girl Child

- ❖ The State and Community shall ensure that crimes and atrocities committed against the girl child, including:
 - Child marriage,
 - Discriminatory practices,
 - Forcing girls into prostitution and trafficking are **speedily eradicated**.
- ❖ The State and Community shall undertake measures, to ensure that there is greater **respect for the girl child** in the family and society.
- ❖ The State shall take measures to ensure that the practice of **Child marriage is speedily abolished**.

Empowering Adolescents

- ❖ The State and Community shall take all steps to provide the necessary **education and skills** to adolescent children so as to equip them to become economically productive citizens.
- ❖ Special programmes will be undertaken to **improve the health and nutritional status** of the adolescent girls.

Equality, Freedom of Expression, Freedom to Seek and Receive Information, Freedom of Association and Peaceful Assembly

- ❖ The State and Community shall ensure that all children are **treated equally without discrimination** on grounds of the child's or the child's parents' or legal guardian's race, colour, caste, sex, language, religion, political or other opinion, National, ethnic or social origin, disability, birth, political status, or any other consideration.
- ❖ All children shall be given every opportunity for **all round development of their personality**, including expression of creativity.
- ❖ Every child shall have the **freedom to seek and receive information and ideas**. That will contribute to the child's development.
- ❖ The State and Community shall ensure that the **linguistic needs** of children are taken care of and encourage the production and dissemination of **child-friendly information and material** in various forms.
- ❖ The State and community shall be responsible for **formulating guidelines for the mass media** in order to ensure that children are protected from material injuries to their well-being.
- ❖ All children shall **enjoy freedom of association and peaceful assembly**, subject to reasonable restrictions and in conformity with social and family values.

Strengthening Family

- ❖ Every child has **Right to a family**. In case of separation of children from their families, the State shall take measures to re-unifying the child with its parents, keeping in mind the best interests and the views of the child.
- ❖ All children have a **Right to maintain contact with their families**, even when they are within the custody of the State for various reasons.
- ❖ The State shall undertake measures to ensure that **children without families** are either placed for adoption, preferably intra-country adoption, or foster care or any other family substitute services.
- ❖ The State shall ensure that appropriate rules with respect to the **implementation of such services** are drafted in a manner that are in the best interest of the child and that regulatory bodies are set up to ensure the strict enforcement of these rules.
- ❖ All children shall have the **Right to meet their parents and other family members** who may be in custody.

Responsibilities of Both Parents

- ❖ The State recognises the **common responsibilities of both parents** in rearing their children.

Protection of Children with Disabilities

- ❖ The State and Community recognise that all children with disabilities must be **helped to lead a full life with dignity and respect** and should be encouraged to be integrated into the mainstream society and actively participate in all walks of life.
- ❖ State and community shall also provide for their Education, Training, Health care, Rehabilitation, Recreation in a manner that will contribute to their **overall growth and development**.
- ❖ State and Community shall launch **Preventive Programmes against disabilities and early detection of disabilities** so as to ensure that the families with disabled children receive adequate support and assistance in bringing up their children.
- ❖ The State shall **encourage Research and Development** in the field of prevention, treatment and rehabilitation of various forms of disabilities.

Care, Protection, Welfare of Children of Marginalized and Disadvantaged Communities.

- ❖ The State and community shall **provide Care, Protection** and ensure the welfare of children from marginalized and disadvantaged communities.
- ❖ Support them in preserving their identity, and encourage them to adopt practices that promote their best interest.
- ❖ The State recognises that children from disadvantaged communities and weaker/vulnerable sections of the society are in need of **special intervention and support** and thus shall make adequate provisions for providing such groups with **special attention in all its policies and programmes.**

Ensuring Child Friendly Procedures

- ❖ All matters and procedures relating to children, viz. judicial, administrative, educational or social, **should be child friendly.**
- ❖ All procedures lay down under the **Juvenile Justice System** for ‘juvenile in conflict with law’ and for ‘child in need of special care and protection’ shall also be child-friendly.

NATIONAL PLAN OF ACTION FOR CHILDREN, 2005

Introduction

India’s commitment to children is clearly manifested in its **Constitution** wherein several articles are dedicated to children, viz., Article 14,15, 21,21A, 23, 24, 45, 243G read with Schedule 11.

Recalling **the National Policy for Children, as adopted in 1974, UN Convention on the Rights of the Child (UNCRC), The Constitution (86th Amendment) Act** which was notified on 13th December 2002, making free and compulsory education a Fundamental Right for all children in the age group of 6-14 years, **The National Commission for Protection of Child Rights, the National Charter for Children, adopted on 9th February 2004, the National Plan of Action for Children, 2005** will be implemented throughout the country through National measures and through State Plans of Action for Children. In all **actions concerning children, whether undertaken by Public or Private Institutions**, Courts of law, Quasi-judicial bodies, Executive or Legislative bodies, the best interests of the child shall be a primary consideration. In recognition of the fact that **41% of India’s population is below 18**, constituting a significant National asset, this Plan re-affirms the Nation’s commitment to wisely, to invest its national resources to fulfill its commitments to children.

The **National Plan of Action for Children, 2005** is divided into following four sections; and all categories of rights apply to all age groups, including before birth.

- **Child Survival**
- **Child Protection**
- **Child Development**
- **Child Participation**

The **guiding principles of the National Plan of Action for Children, 2005** are:

- To regard the child as an asset and a person with Human Rights.
- To address issues of Discrimination on the ground of gender, class, caste, race, religion and legal status in order to ensure equality.
- To accord utmost priority to the most disadvantaged, poorest of the poor and least served child in all policy and programmatic interventions.
- To recognize the diverse stages and settings of childhood, and address the needs of each, providing to all children the entitlements that fulfill their rights and meet their needs in each situation.

The **Plan had identified twelve key areas** keeping in mind priorities and the intensity of the challenges that require utmost attention in terms of Outreach, Programme interventions and Resource allocation, so as to achieve the necessary targets and ensure the rights and entitlements of children at each stage of childhood. These twelve key areas are:

- Reducing **Infant Mortality Rate (IMR)**.
- Reducing **Maternal Mortality Rate(MMR)**.
- Reducing **Malnutrition** among children.
- Achieving **100% civil registration** of births.
- **Universalization of early childhood care and development** and **quality education** for all children, achieving 100% access and retention in schools, including pre-schools.
- Complete **abolition of female foeticide, female infanticide** and **child marriage** and ensuring the survival, development and protection of the girl child.
- Improving **Water and Sanitation** coverage both in rural and urban areas.
- Addressing and upholding the rights of **Children in Difficult Circumstances**.
- Securing for all children **legal and social protection** from all kinds of abuse, exploitation and neglect.
- Complete **abolition of child labour** with the aim of progressively eliminating all forms of economic exploitation of children.
- **Monitoring, Review and Reform** of policies programmes and laws to ensure protection of children's interests and rights.
- Ensuring **child participation and choice** in matters and decisions affecting their lives.

With above key areas mentioned, the National Plan of Action for Children, 2005 aims to work towards:

CHILD SURVIVAL

To ensure Child Survival through holistic care and protection and through healthy and violence free environment for all children up to 18 years.

1. CHILD HEALTH

GOALS

- To **reduce Infant Mortality Rate** to below 30 per 1000 live births by 2010.
- To **reduce Child Mortality Rate** to below 31 per 1000 live births by 2010.
- To **reduce Neonatal Mortality Rate** to below 18 per 1000 live births by 2010.
- To explore possibilities of **covering all children with plan for health insurance**.

2. NUTRITION

GOALS

- To **eliminate malnutrition amongst children** as a National priority.
- To **reduce under five malnutrition** and low birth weight by half by 2010.
- To ensure **adequate neo-natal and infant nutrition**.
- To reduce moderate and severe **malnutrition among preschool children** by half.
- To **reduce chronic under nutrition** and stunted growth in children.
- To **effectively implement** the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 as amended in 2003.

3. EARLY CHILDHOOD CARE AND EDUCATION

GOALS

- To universalize **early childhood services** to ensure children's physical, social, emotional and cognitive development.
- To ensure that **care, protection and development opportunities** are available to all children below 3 years.
- To ensure **integrated care and development and pre-school learning opportunities** for all children aged 3 to 6 years.
- To provide **day care and crèche facilities** to parents in rural and urban areas.

4. RIGHTS OF THE GIRL CHILD

GOALS

- **Assurance of equality of status** for girl child as an individual and a citizen through promotion of special opportunities for her growth and development.
- To **ensure survival, development and protection** of the girl child and to create an environment wherein, she lives a life of dignity with full opportunity for choice and development.
- To **stop sex selection, female foeticide and infanticide**.
- To **eliminate child marriages**.
- To ensure the **girl child's security and protect** her from abuse, exploitation, victimization and all other forms of violence.
- To **protect the girl child from deprivation and neglect** and to ensure the girl child equal share of care and resources in the home and the community and equal access to services.
- To take **measures to protect girl children** from any treatment which undermines their self-esteem and causes their exclusion from social mainstream and also to break down persistent gender stereotype.
- To **eliminate all obstacles that prevent girls from full enjoyment of human rights** and fundamental freedom including equal rights in succession and inheritance.
- To **ensure equal opportunity for free and compulsory elementary education** to all girls.

5. CHILDREN WITH DISABILITY

GOALS

- To **ensure Right to Survival, Care, Protection and Security** for all children with disability.
- To **ensure the Right to Development with Dignity and Equality**, creating an enabling environment where children can exercise their rights, enjoy equal opportunities and full participation.
- To ensure **inclusion and effective access to education, health, vocational training along with specialized rehabilitation** services to children.
- To **ensure the Right to Development** as well as recognition of special needs and of care and protection to children with disabilities who are vulnerable.
- To **eliminate disability due to poliomyelitis** by 2007.

6. EDUCATION

GOALS

- To **provide free and compulsory education** of good quality to all children in the 6-14 years age group.
- To achieve **Universal Elementary Education** through school system for all children, through provision of free and compulsory services.
- Progressively provide **compulsory secondary education to all children**. All children to be in school by 2005 and Universal retention by 2010.
- **Bridging gender and social gaps in primary education** by 2007, and elementary education by 2010.

- To **introduce the syllabus for environment education** prepared by NCERT for classes 1 to 12 by every State in their respective schools.

CHILD PROTECTION

1. CHILDREN IN DIFFICULT CIRCUMSTANCES

GOALS

- To **ensure that best interest of children is upheld** in all policies, plans, programmes, interventions and in strategies for children in difficult circumstances.
- To **create and uphold a safe, supportive and protective environment** for all children within and outside the home.

2. CHILDREN IN CONFLICT WITH LAW

GOALS

- To **prevent children from getting into conflict with law**.
- To **recognize, promote and protect the Rights of children** in conflict with law.

CHILD PARTICIPATION

GOALS

- To promote within the family, community, schools and institutions, as well as in judicial and administrative proceedings, respect for the views of all children, including the views of the most marginalized, especially girls, and facilitate their participation in all matters affecting them in accordance to their age and maturity.
- To make all children aware of their rights and provide them with opportunities to develop skills to form and express their views, build self-esteem, acquire knowledge, form aspirations, build competencies in decision-making and communication, and gain confidence which will empower them to become actively involved in their own development and in all matters concerning and affecting them.
- To empower all children as citizens by promoting their participation in decisions that affect their lives, the lives of their families and communities and the larger society in which they live.

2.10 SUMMARY

- In all actions concerning children, whether undertaken by public or private institutions, courts of law, quasi-judicial bodies, executive or legislative bodies, The best interests of the child shall be a primary concern.
- The Convention on the Rights of the Child emphasizes social reintegration of child victims, to the extent possible, with or without resorting to judicial proceedings.
- In recognition of the fact that 41% of India's population is below 18 years, constituting a significant National asset, the National Plan of Action for Children, 2005 re-affirms the Nations commitment to wisely invest its National resources to fulfill its commitments to children.
- The Constitution of India, both in the Directive Principles of State Policy and as a part of the Fundamental Rights, has laid down that the State shall direct its Policy towards securing that health and strength of workers, men and the tender age of children are not abused.

[Note: The Right of children to free and compulsory Education Act, 2009 enacted and enforced with effect from 1st April, 2010 entitle all children from the age of six to fourteen years to free education.]

CHAPTER - 3

SPECIAL JUVENILE POLICE UNIT AND JUVENILE/ CHILD WELFARE OFFICER

3.1 INTRODUCTION

The four basic components of the Adult Criminal Justice System are-- Lawyers in prosecution and defense, Police, Courts and Correctional Services. One can easily figure out the reflection of these components in the routine functioning of Juvenile Justice System (JSS) as well, though, none of them are supposed to perform their duties in their traditional stereotype. The attitude of Indian police, too, has generally not been empathetic towards children/juveniles, if not outright negative, and they are treated, more or less, as in case of adult offenders under the Criminal Justice System. The juveniles/children are treated by the police, who happen to be the prime-movers under the Indian legal system, with lack of compassion and understanding.

The police do not seem to appreciate the fact that, juveniles/children need an entirely different system of legal process which provides them with care, protection and treatment and helps to connect them to the family, community, social workers and voluntary organizations and with multiple other children-related agencies and institutions. This conflict between correctional values and welfare values is a usual feature of the legal systems and has to be kept in view while handling children/juveniles. In fact, the changing paradigm goes beyond the correction, welfare and adopts a rights-based approach of development and empowerment. Accordingly, the role of police too would require a radical change.

The Juvenile Justice System in India, as provided under the JJ Act, 2000 is entirely different in letter and spirit from the basic criminal law and the Criminal Justice System, though in practice, the latter tends to heavily influence the former. As per Recommendation 21 of the NHRC's 'Report on Detentions', the Juvenile Justice System should be distinct from the Criminal Justice System in adjudication and in terminology.

DISTINCTION BETWEEN CRIMINAL JUSTICE SYSTEM AND JUVENILE JUSTICE SYSTEM

Box No: 3.1

Criminal Justice System	Juvenile Justice System
For Adults (above 18 years of age).	For 'Children in Need of Care and Protection' and 'Juveniles in Conflict with Law' (not completed 18 year of age).
Stakeholders: crime victim, complainant, accused/perpetrator, police, court, prison and correctional services, Government, family, community and others affected by crime.	Stakeholders: child/ juvenile, victim, police, social worker and case worker, probation officer, Government and Non-government agency, family and community.
Agencies concerned with investigation, enforcement, adjudication and trial: Police and other law enforcement agencies, investigating agency, court, tribunal, any other agency which adjudicates/ conducts inquiry.	Agencies concerned with justice/ inquiry: points of contact, police/ special juvenile police unit/ Child/Juvenile Welfare Officer, voluntary organizations/ fit institutions/ 1098 Child line, Child Welfare Committee, Juvenile Justice Board/ Child Protection Units and any other agencies.
Accused taken to Jail/ prison system.	Child taken to Children/ Juvenile / Shelter Homes and After Care homes instead of police lock-up and jail.
Corrective and Probation services also provided.	Social Reintegration and Rehabilitation through Adoption, Foster-Care, Sponsorship and foster-care services.

Whether or not a juvenile or a child is to be brought into this system depends primarily upon the outcome of his/her encounter with the police. Police are the first major point of contact in the Justice System for juveniles or children and, thus, they serve as the 'Gatekeepers'. Since, the police officer has relatively wide discretionary powers; he can exercise a great influence on the child's future behavior and can also create a permanent impression on the child and the society. The concern, no doubt, needs to be of higher degree and the space for trained and sensitized police which has been provided under Section 63 of the JJ Act, 2000 in the form of Special Juvenile Police Unit (SJPU).

As mentioned earlier, the police in India are traditionally trained and oriented to behave as the 'strong arm of the Government', while they enforce the law, control crime and treat the offenders and violators with penalty and retributive justice. Although, there are some special provisions for the children, the basic criminal laws i.e. IPC, Cr. PC and Evidence Act, besides the local and special laws, are primarily meant for the adults. Special legislation was called for to address this lacuna in the adult justice system while dealing with the juveniles and children and to provide a different system of law and justice suitable for them. Significant changes were also imperative with regard to the role of police. The system requires a change in the outlook of police to deal empathically with the problems of juveniles coming in conflict with law and the children in immediate need of care and protection. Such differential and specialized handling needs specially trained and oriented police officers, familiar with the dynamics of child development and psychology, besides social welfare approach to juvenile justice, and also well grounded in dealing with juveniles and children in difficult circumstances.

3.2 SPECIAL JUVENILE POLICE UNIT (SJPU)

Under section 2(w) of JJ Act, 2000, Special Juvenile Police Unit means a unit of the police force of a State designated for handling of Juveniles or Children.

Section 63 of the JJ Act, 2000 provides as under:

Box No 3.2

SPECIAL JUVENILE POLICE UNIT

- (1) In order to enable the police officers who frequently or exclusively deal with juveniles or are primarily engaged in the prevention of juvenile crime or handling of the juveniles or children under this Act to perform their functions more effectively, they shall be specially instructed and trained.
- (2) In every police station at least one officer with aptitude and appropriate training and orientation may be designated as the 'juvenile or the child welfare officer' who will handle the juvenile or the child in co-ordination with the police.
- (3) Special Juvenile Police Unit, of which all police officers designated as above, to handle juveniles or children will be members, may be created in every district and city to co-ordinate and to upgrade the police treatment of the juveniles and the children.

Apart from section 63 of the JJ Act, 2000, there is a host of other provisions relating to police under the JJ Act, 2000 as well as under the Model Rules, for better implementation and administration of these provisions in true spirit and substance.

Box No.3.3
RELEVANT PROVISIONS AS REGARDS SJPU UNDER JJ ACT, 2000

Section	Content
2(w)	“Special Juvenile Police Unit” (SJPU) defined
10.	Steps to be taken on apprehension of juvenile in conflict with law by police.
13.	Information of apprehension / detention of the juvenile by police to parent, guardian or probation officer.
22.	Provision in respect of escaped juvenile.
32 (1) (i)	Provision relating to the production before Committee.
63.	Constitution of Special Juvenile Police Unit to deal with juvenile.

Box No 3.4
RELEVANT PROVISIONS AS REGARDS SJPU UNDER MODEL RULES

Rules	Content
11.	Provision relating to the Pre and Post production action of police.
13 (2)(d)	Exercise of disposition by police as regards the petty offences committed by the juvenile.
75.	Police Officers to be in plain clothes.
76.	Prohibition on the use of handcuffs and fetters.
84.	Conceptualization and functioning of Special Juvenile Police Unit.

The legal position and role of police is vastly changed under the JJ Act, 2000/ Model Rules. The police are called upon to go beyond crime prevention, crime investigation and maintenance of law and order. They are expected to act as social workers whenever the occasion demands. In partnership with citizens and civil society organizations, they are expected to stand by those who have run into any difficult circumstances. Such expectations, which figure prominently with regard to the rights of the child and juvenile justice, in effect, become synonymous with the fulfillment of basic rights and needs of juveniles/children. Existing laws, especially the JJ Act, 2000, clearly outline this legal, procedural and administrative concept, while prescribing respective roles of the functionaries, agencies and stakeholders. This section takes a closer look at the composition and role of the Special Juvenile Police Unit.

Box No. 3.5

WHO ARE CHILD FRIENDLY POLICE?

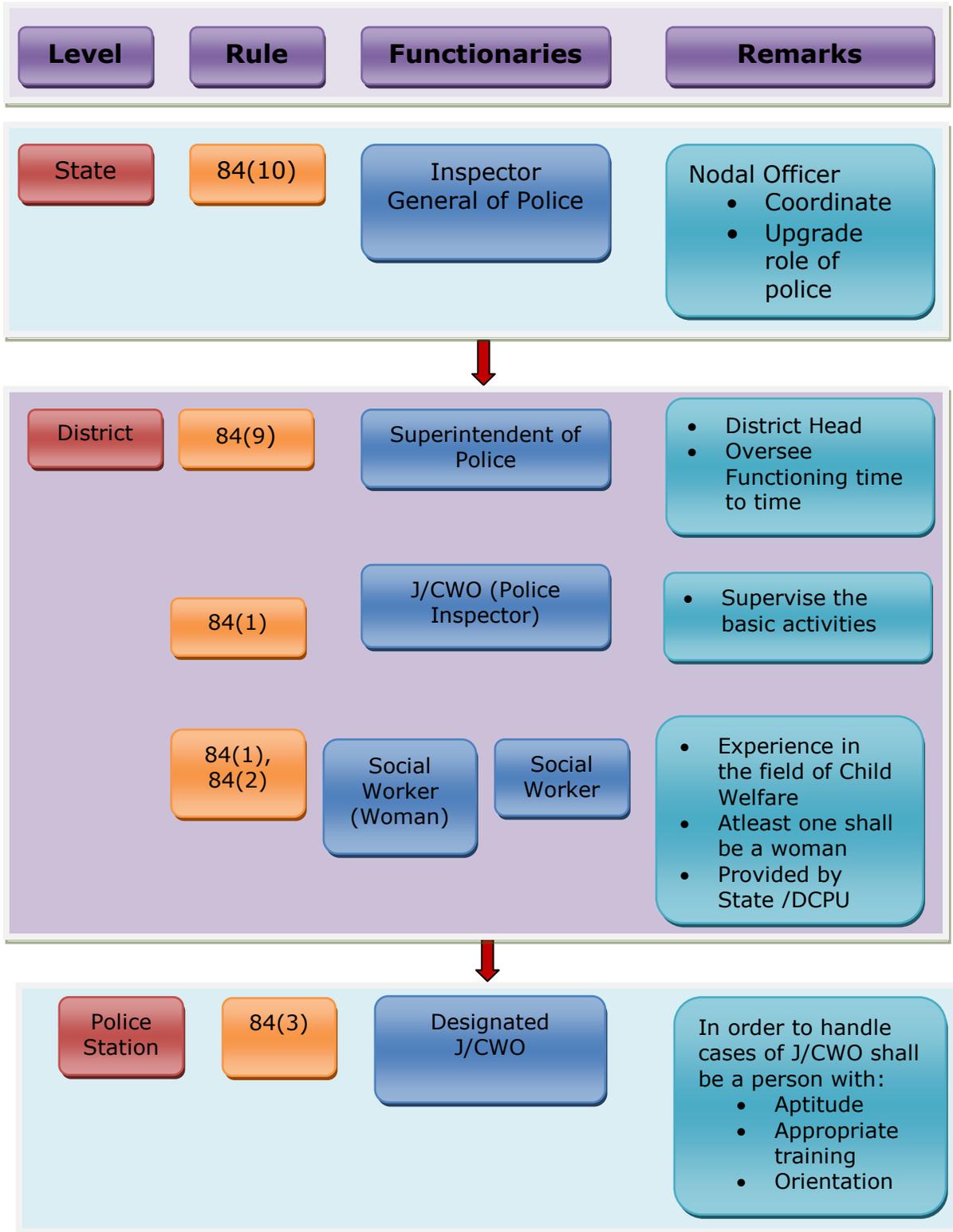
1. Not in uniform
2. Recognizes and protects “child rights”
3. Sensitive to needs and rights of children
4. Sees the child with a “rehabilitative approach”
5. Sees a juvenile in conflict with law as “victim of circumstances”
6. Knows the JJ Act

3.3 STRUCTURE

Elaborating the provisions of the JJ Act, 2000, Rule 84 of the Model Rules, lays down the concept and functioning of Special Juvenile Police Unit, as under:

- The State Government shall appoint a Special Juvenile Police Unit at the District level and the unit shall consist of a “Juvenile/Child Welfare Officer” of the rank of Police Inspector and two paid Social Workers having experience of working in the field of child welfare, of whom one shall be a woman.

Figure 3.1 STRUCTURE OF SPECIAL JUVENILE POLICE UNIT



Special Juvenile Police Unit has been introduced under the Juvenile Justice System (JJ Act, 2000) to play the role of savior for children. Although, the police consider dealing with children/juveniles under the provisions of the Act to be an additional burden in view of their existing workload in connection with enforcement of other more pressing legislations for which they are basically trained also, they need to realize the importance of their responsibility, not only legal but also social, towards protecting, reintegrating and rehabilitating the children/juveniles in difficult circumstances. They are required under the JJ Act, 2000 to function as the primary unit to enforce the more holistic Juvenile Justice System that alone would apply on the persons below 18 years of age. It is also their legal responsibility to uphold, advocate and implement the principles of Juvenile Justice, in the large interest of the civil society.

The JJ Act, 2000 also assigns the police/SJPU the responsibility to function as a watch-dog for providing legal protection against all kinds of injustice, cruelty, abuse and exploitation of children/juveniles. For this purpose, they have to take cognizance of the adult perpetrators of such misdeeds, to detain apprehend and book offenders under specific provisions of the IPC, other laws and the special offences incorporated in this regard in the JJ Act itself. In due-course of time, when Children's Courts are constituted (as already done in Delhi) under Section 25 of the Commission for Protection of Child Rights Act, 2005, all cases of the child victims shall be transferred to them.

Therefore, there is a definite need to train, sensitize and upgrade the skills of police in matters relating to 'Children in Need of Care and Protection' and 'Juveniles in Conflict with Law', in order to carry out their roles and responsibilities effectively.

3.4 SUMMARY

- Police are the first major point of contact in the justice system for Juveniles or children and thus, they serve as the "Gatekeepers".
- A Special Juvenile Police Unit has been introduced under the Juvenile Justice System (JJ Act, 2000) with the purpose to play a role of savior for the children.
- Under Section 2(w), Special Juvenile Police Unit means a specialized and sensitized unit of the police force of a state designated for handling of juveniles.
- The Juvenile/Child Welfare Officer at the Police station shall be a person with aptitude and appropriate training and orientation to handle the cases of juveniles or children in terms of provisions of the JJ Act, 2000.
- A Nodal Officer from Police Department not less than the rank of Inspector General of Police shall be designated in each State to coordinate and upgrade role of police on all issues pertaining to care and protection of children or Juveniles.
- The Act assigns the Police/SJPU the duty to function as a watch-dog for providing legal protection against all kinds of injustice, cruelty, abuse and exploitation of the children.

CHAPTER 4

ROLE OF POLICE/SJPU UNDER THE JUVENILE JUSTICE SYSTEM

4.1 INTRODUCTION

The JJ Act, 2000 provides for a uniform and comprehensive legal framework in the country to ensure that every child – either in Conflict with Law or in Need of Care and Protection - receives proper care, protection and treatment, and is looked after for his/her developmental needs and ultimate rehabilitation and social reintegration. This calls for adopting a child-friendly approach in the legal process, adjudication and disposition of matters in the best interest of juveniles/children by all stakeholders of the Juvenile Justice System, including the police – who play a crucial role in the process.

The Act imposes certain duties on police and envisages creation of certain closely inter-related institutions like, Juvenile Justice Board, Child Welfare Committee, Child Protection Unit, Special Juvenile Police Unit/Juvenile or Child Welfare Officers, Probation Officers etc. to ensure the attention of State machinery towards these vulnerable children.

This chapter is an effort to spell out the responsibilities of the police and other agencies in association with which the police officers, supposed to discharge their duties and functions as laid down under the JJ Act, 2000.

4.2 JUVENILE IN CONFLICT WITH LAW

‘A Juvenile in Conflict with Law’, under the provisions of the JJ Act, 2000, is a person who is alleged to have committed an offence and is below eighteen years of age, as on the date of commission of such offence. Mostly, these children are considered to be at risk and often exposed to abusive and harmful situations, which may lead them to commit such offences. A child observes closely the daily happenings around him/her and these incidents may create unhealthy influences on his/her life and conduct.

In view of this, the concerned police officer, who holds the control or custody of the juvenile, needs to take extra care not to embarrass the juvenile and, instead, treat him/her with sympathy and understanding so as to give the feeling to the juvenile that the officer is mainly interested in his/her welfare and proper development.

However, the differing circumstances, background and nature of offences etc. of the case may require differential treatment in each case. In this, the other stakeholders like the Child/Juvenile Welfare Officers, Probation Officers, Competent Authorities concerned, fit persons/institutions, institutional homes personnel etc. all have an important supportive role to perform. Proper coordination and networking with them, as such, is of vital help, who may assist the police officers at different stages in the process.

4.3 CLASSIFICATION OF ADJUDICATION IN RESPECT OF JUVENILES

For proper understanding of each case an effective and focused attention, proper classification of juveniles is necessary. The juveniles, for this purpose, may be classified under the following parameters:

- Based on age
- Based on the seriousness of the offence
- Based on gender

4.3.1 Based on Age:

4.3.1.1 Under seven years of age: According to section 82 of the Indian Penal Code, 1860, “Nothing is an offence which is done by a child under seven years of age.” This lays down an absolute presumption in case of children below seven years that they do not have the mental capacity to have the requisite ingredient of crime, a guilty mind. Thus, no proceedings shall follow in case of children under 7 years of age.

4.3.1.2 Between seven and twelve years of age: According to section 83 of the Indian Penal Code, 1860, “Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion.”

Thus, depending on the seriousness of the offence, the child may be apprehended and produced before the Juvenile Justice Board, where, if it is proved that the juvenile is not only less than twelve but has also not attained sufficient maturity of understanding, the proceedings will be closed. If no evidence or circumstance to this effect is brought to the notice of the Board, it will be presumed that the juvenile intended to do what he really did and inquiry under section 14 of the JJ Act, 2000, by the Board may follow.

4.3.1.3 Between twelve and eighteen years of age: According to section 2 (k) of the JJ Act, 2000, “juvenile or child means a person who has not completed eighteen years of age” and the juvenile who is alleged to have committed an offence is a “juvenile in conflict with law” [section 2 (l)]. The requisite proceeding against all such juveniles shall follow in accordance with the Act considering the seriousness or gravity of the offence that he/she has been alleged to have committed.

4.3.1.4 Juvenile who has ceased to be a juvenile: Section 3 of the JJ Act, 2000, provides for the continuation of inquiry in respect of juvenile who has ceased to be a juvenile. **Section 3 of JJ Act, 2000,** provides:

“Where an inquiry has been initiated against a juvenile in conflict with law or a child in need of care and protection and during the course of such inquiry the juvenile or child ceases to be such, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued and orders may be made in respect of such person as if such person had continued to be a juvenile or a child.”

4.3.2 Based on the Seriousness of the offence

4.3.2.1 Petty Offences: Petty offences are those offences which incur a maximum punishment in the form of fine up to Rs. 1000/- only. According to Rule 13 (2) (d) of the Model Rules, the cases of petty offences need to be disposed of by the Special Juvenile Police Unit or at the Police Station itself, and if not done by them, this may be done so by the Juvenile Justice Board through summary proceedings or inquiry.

4.3.2.2 Non-serious Offences: Non-serious offences are those offences which are punishable with imprisonment up to seven years. According to Rule 11(9) of the Model Rules, the juvenile may be apprehended only if it is in his/her interest. If the apprehension is not in his/her interest, the police or the Juvenile/Child Welfare Officer from the nearest police station, shall intimate the parents or guardian of the juvenile about forwarding the information regarding nature of offence and circumstances of apprehension, along with the socio-economic background, to the Juvenile Justice Board, which may call the juvenile for subsequent hearings.



Raju has stolen bread from a hotel as he was very hungry and didn't have money to pay.

Children who are often alleged to commit such offences need to be adjudged carefully as they are actually 'children in need of care and protection' and not 'juveniles in conflict with law'. The police should treat such children in an affectionate manner and not in the way as shown in the picture and, in such a case, mention in his report that the child needs care and protection.

Picture No 3

Example: Raju was caught pelting stones at a house and threatening the inmates publicly of dire consequences. The policeman is expected to explain the actual circumstances and the background of the juvenile conduct.....

4.3.2.3 Serious Offences: Serious offences are those offences which are punishable with imprisonment for more than seven years. Such offences fall in the category of heinous offences. According to Rule 11 (7) of the Model Rules, the police or the J/CWO from the nearest police station shall exercise the power of apprehending the juvenile who has been alleged to have committed such offence.

Example: - 16 years old Minu's mother was not happy with her daughter's affair; and insisted upon her to break it up. Because of her mother's regular prohibition, Minu was unhappy and stabbed her mother with a 'Knife', that amounted to 'Attempt to Murder'.

4.3.3 Based on Gender

The categorization based on gender seems obvious considering the extra-sensitive case of a female juvenile. While a female juvenile can be taken into protective custody under the JJ Act, 2000, she needs to be attended to with special care in the manner given as under:

- No juvenile, including a female, shall be taken into custody between sunset and sunrise, unless extraordinary circumstances warrant it.
- The Juvenile Justice Board shall ensure that the female juvenile is kept under the care of a female or a relative in a place of safety or in an observation home for girls.
- A female juvenile shall be searched only by a female police staff.

4.4 ROLE OF POLICE VIS-À-VIS JUVENILE IN CONFLICT WITH LAW

Police is a law enforcement agency and, being the first contact point, serves as the 'Gatekeeper' to any justice system. Likewise, in the Juvenile Justice System, standing at the threshold, Police plays a major role. Whether or not a juvenile is processed into this system it is dependent upon the outcome of their encounter with the

Police. Police, in fact, begins the process by making initial decisions about how to handle incidents involving juveniles.

The Juvenile Justice System is based on the conception of rehabilitation and reintegration through proper care and treatment and not on punishment. For this reason, the stakeholders under this system have been allowed enormous amount of discretion while making decisions about the juveniles. The idea behind awarding such wide discretion and relief in following the formal procedures is solely for acting freely in the “**best interest of the juvenile**”.

Thus, the Juvenile Justice System contemplates that the Police deal with the ‘juveniles in conflict with law,’ who come in contact with them through the system, in a child friendly manner with special care and, shall not treat them as criminals. The provisions as laid down under the JJ Act, 2000/ Model Rules and the behavioral outline of police at different stages of contact with the juvenile are as under:

4.4.1 Adjudging the Juvenile

Adjudging whether a child is a Juvenile is in ‘Conflict with Law’ or in ‘Need of Care and Protection’ is the first and foremost decision that a police officer must take immediately after he comes in contact with the juvenile/child. Primarily, the Juvenile/ Child Welfare Officer shall on the basis of his/her fair judgment, decide whether the child produced before him/her is apparently juvenile or not. If the J/CWO on the basis of his judgment finds the child presented before him is below 18 years of age or was below 18 years of age on the date of incidence, the child shall be treated under Juvenile Justice System. In order to adjudge the state of the juvenile, the concerned police officer needs to examine the juvenile with care and, also, enquire in depth the social background of the juvenile. Additionally, the officer may look for the rehabilitative and restorative options available to the juvenile. If, on analysis of the findings, the officer discovers that:

- ✓ The offence which the juvenile is alleged to have committed is not grave in nature
- ✓ As regards the background, his/her physical, emotional, intellectual, social, and moral development is not sound
- ✓ Release is believed to be likely to bring him/her in association with a known criminal or expose him/her to moral, physical or psychological danger

In such cases, where apprehension apparently seems to be in the interest of the juvenile, the Police or the J/CWO from the nearest police station shall rather treat the juvenile as a child in need of care and protection and produce him/her before the Board, clearly explaining the juvenile’s need for care and protection in its report and seek appropriate orders from the Board [Rule 11(8) of the Model Rules].

The Board, on production, shall hold a summary inquiry and transfer the matter concerning the juvenile to the Child Welfare Committee, after reviewing the report which clearly should state the juvenile to be in need of care and protection [Rule 13 (1) (b) of the Model Rules].

4.4.2 Apprehension

When a ‘juvenile in conflict with law’ is apprehended by police, S/he shall be placed under the custody of the Special Juvenile Police Unit, or the designated police officer, who shall immediately produce the juvenile before the Board. Section 10 of the JJ Act, 2000, thus, states:

Apprehension of a juvenile in conflict with law:

(1) As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the Special Juvenile Police Unit or the designated police officer, who shall produce the juvenile before the Board without any loss of time but within a period of twenty-four hours of his apprehension excluding the time necessary for the journey, from the place where the juvenile was apprehended, to the Board:

Provided that, in no case, a juvenile in conflict with law shall be placed in a police lock-up or lodged in a jail.

(2) The State Government may make rules consistent with this Act,-

- (i) To provide for persons through whom (including registered voluntary organizations) any juvenile in conflict with law may be produced before the Board;*
- (ii) To provide the manner in which such juvenile may be sent to an Observation Home.*

Apprehension in respect of a juvenile is made only when the offence, which he is alleged to commit, is of a serious nature. [Rule 11 (7) of the Model Rules]

In cases where the act of coming in conflict with law is non-serious in nature, as mentioned earlier, the juvenile will be apprehended only when it is in his/her interest and, in such cases, shall, rather, be treated as a child in need of care and protection and produce before the Board to seek appropriate orders [Rule 11 (8) of the Model Rules].

If it is not in his/her interest to be apprehended, the police or the J/CWO from the nearest police station with whom the control of the custody of the juvenile for the time being vests, shall intimate the parents or guardian of the juvenile about forwarding the information regarding nature of offence along with the socio-economic background report to the Board, which may call the juvenile for subsequent hearings [Rule 11 (9) of the Model Rules].

Apprehension is a term used in place of arrest for the purpose of avoiding the stigma attached to it. Rule 3 (VIII) of the Model Rules provides for strict adherence to the non stigmatizing semantics of the Act and prohibits the use of adversarial or accusatory words in the processes pertaining to the juvenile under the Act.

Apart from the juvenile being produced before the Board on an urgent basis, the information regarding the apprehension of the juvenile shall be given to parent/guardian and probation officer, as mentioned in Section 13 of the JJ Act, 2000. Section 13 states as under:

Information to parent, guardian or probation officer: Sec.13)

Where a juvenile is apprehended, the officer-in-charge of the police station or the Special Juvenile Police Unit to which the juvenile is brought shall, as soon as may be after the apprehension, inform-

- (a) the parent or guardian of the juvenile, if he can be found, of such apprehension and direct him to be present at the Board before which the juvenile will appear; and*
- (b) the probation officer of such apprehension to enable him to obtain information regarding the antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the Board for making the inquiry.*

Thus, immediate information to the parent or guardian and the probation officer regarding the apprehension of the juvenile shall be given so that they can be present and assist the Board respectively during the process of inquiry. ***(A format of the Apprehension Memo is given in Annexure).***

4.4.3 Registering an FIR/DD Entry

In general, no registration of FIR or filing of Charge Sheet in relation to a 'juvenile in conflict with law' shall be done.

However, the circumstances in which an FIR, while dealing with a juvenile, shall be registered are:

- i. Where the offence alleged to have been committed by the juvenile is of a serious nature, such as, rape, murder etc., wherein the punishment under IPC is of more than 7 years or
- ii. When such offence is alleged to have been committed jointly with adults.

In matters involving simple offences, the police or the J/CWO shall record the information regarding the offence alleged to have been committed by the juvenile in the general Daily Diary (DD). Also, that a report containing the social background and circumstances of apprehension and a mention of the alleged offence has to be made so that it can be forwarded to the Board before the first hearing.

In case, an FIR has already been registered in matters involving simple (non-serious) offences, where the punishment as prescribed in the Indian Penal Code (IPC) is below seven years, and, after investigation, the offender was found to be a juvenile, then, police has to submit a Social Background Report before the Board.

The Social Background Report (SBR) of the juvenile shall be prepared on the basis of background, source of income, education, social status etc. of the parents or guardian of the juvenile. The details of circumstances of apprehension and the alleged offence have to be attached with the Social Background Report in order to file it before the Board.

In case, an FIR has been registered for an offence that the juvenile is alleged to have committed jointly with adults, the juvenile, with immediate effect, shall be taken under the cognizance of the Board and the Board shall direct for separate trials under Section 18 of the Act, which states as under:

No joint proceedings of juvenile and person not a juvenile;

- (i) *Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, no juvenile shall be charged with or tried for any offence together with a person who is not a juvenile.*
- (ii) *If a juvenile is accused of an offence for which under section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, such juvenile and any person who is not a juvenile would, but for the prohibition contained in sub-section (1), have been charged and tried together, the Board taking cognizance of that offence shall direct separate trials of the juvenile and the other person.*

Thus, the Court, where such a case is pending trial, shall without any delay, forward the juvenile and the record of the proceedings to the Board having jurisdiction over the proceedings. The Police shall come up with another copy of the FIR and accordingly submit a Social Background Report along with the detail of circumstances of apprehension and the alleged offence.

Thus, a juvenile cannot be tried for an offence along with a person who is not a juvenile. They must be tried separately.

4.4.4 Bail of Juvenile

In adult Criminal Justice System, bail generally comes as an exception in favour of the imprisoned person. But, in Juvenile Justice System, bail comes as a rule and whosoever produced before the Board apparently seems to be a juvenile shall be released on bail or placed under the supervision of a Probation Officer or under the care of a Fit Institution or Fit Person. Section 12 of the JJ Act, 2000, lays down provision for the bail of a juvenile, and, is as under:

- (1) *When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is apprehended or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a Probation Officer or under the care of any fit institution or fit person but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of Justice.*
- (2) *When such person having been apprehended is not released on bail under sub-section (1) by the officer in charge of the police station, such officer shall cause him to be kept only in an Observation Home in the prescribed manner until he can be brought before a Board.*
- (3) *When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an Observation Home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.*

In reply to the bail application, **it shall never be mentioned that the juvenile is a criminal** but just a specific mention of grounds should be made. In order **to extend the custody of a juvenile, pending investigation can never be made a ground. The only ground in such a case can be the danger of an apparent exposure to moral, physical or psychological harm to the juvenile.**

Additionally, (*Amendment Act, 2006, now called principal Act, 2000*) inserted the provision that the juvenile may be placed under the supervision of a Probation Officer or under the care of any Fit institution or Fit person, if not granted bail.

4.5 PRODUCTION BEFORE THE BOARD

As soon as the juvenile is apprehended by police, he shall be placed under the charge of the Special Juvenile Police Unit or the designated J/CWO from the nearest police station, who shall produce the juvenile before the Board without any loss of time. The period within which the juvenile needs to be produced before the Board shall not exceed twenty-four hours. The time necessary for journey may be excluded [Section 10 (1) of JJ Act, 2000]. The Board, on production of the juvenile following the apprehension, shall hold summary inquiry and may pass certain orders on the day itself.

- a) In case the Board is not sitting, the juvenile shall be produced before a single member of the Board.
- b) The juvenile shall not be hand-cuffed or chained.
- c) The police officer or the J/CWO shall, as far as possible, wear plain clothes unless the circumstances, like, during the time of apprehension, require him to wear his uniform in the interest of the juvenile [Rule 75 of the Model Rules].
- d) The concerned police officer or the J/CWO shall produce the copy of the FIR/DD entry along with the police report, which shall describe the background of the juvenile and the circumstances and nature of the offence and any other such document(s), which he considers relevant to be brought before the notice of the Board. Attested copies of the document(s) may be attached, if original ones are not available.

- e) On production of the juvenile before the Board, it shall hold a summary inquiry and may pass certain orders on the same day, which are as under:
- (i) **Disposal of the case:** The case may be disposed off in the first instance, if the allegation on the juvenile being involved in the commission of the offence has no evidentiary support to it. Also, the case against the juvenile may be set aside if the Act of law breaking by the juvenile is found to be trivial. [Rule 13 (1) (a) of the Model Rules]
 - (ii) **Transfer of cognizance to Child Welfare Committee:** In case the Police or the J/CWO adjudges the juvenile to be in need of care and protection and in his report he mentions the same, the Board after hearing may transfer the juvenile to the Child Welfare Committee. [Rule 13 (1) (b) of the Model Rules].
 - (iii) **Release:** An order for the release of the Juvenile under the supervision or custody of fit person/Fit institution or of a Probation Officer may be passed in the format as prescribed in Form-I. A direction to the juvenile, however, must be given in the process to appear or be present for an inquiry on a next date. [Rule 13 (1) (c) of the Model Rules]
 - (iv) **Detention:** Where the juvenile is found to have been involved in an offence of serious nature, the Board may pass an order as per Form-II in order to detain the juvenile pending inquiry in an Observation Home or fit institution. [Rule 13 (1) (d) of the Model Rules]
 - (v) **Social Investigation Report:** The Board may seek the Social Investigation Report from the concerned Probation Officer through an order in Form-III in all cases of release pending inquiry after notifying the next date of hearing within 15 days from the first summary inquiry. [Rule 13 (1) (e) of the Model Rules]

The police shall act in accordance with the orders made as above and initiate the process of investigation as and when required within the period as provided under the JJ Act, 2000 or as the case may be.

4.6 INQUIRY

The Board, while holding an inquiry, shall take care of the fact that the inquiry be done in accordance with the provisions of the JJ Act, 2000 and completed within a period of four months from the date of its commencement. In case of any unavoidable delay, the Board may extend the period having regard to the circumstances of the case and may also record the reasons in writing, for such extension. Section 14, which provides for inquiry by Board regarding juvenile states as under:

4.6.1 Inquiry by Board regarding juvenile;

(1) Where a juvenile having been charged with the offence is produced before a Board, the Board shall hold the inquiry in accordance with the provisions of this Act and may make such order in relation to the juvenile as it deems fit:

Provided that an inquiry under this section shall be completed within a period of four months from the date of its commencement, unless the period is extended by the Board having regard to the circumstances of the case and in special cases after recording the reasons in writing for such extension.

(2)The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board at every six months and shall direct the Board to increase the frequency of its sittings or may cause the constitution of additional Boards.

The Board while holding any inquiry shall follow the procedure of 'trial in summons cases' as far as may be pertaining to non-serious offences [Section 54 (1) of the JJ Act, 2000]. In summons cases, as laid down in

Chapter XX of the Code of Criminal Procedure, 1973, the particulars of the offence of which he is accused is stated to him and he is asked whether he pleads guilty or has any defence to make. Also that it is not necessary to frame a formal charge. Proceedings based on the seriousness of offences:

- **Petty Offences** – Summary Proceedings [Rule 13 (2) (d) of the Model Rules];
- **Non Serious Offences** – Procedure for trial in Summons Cases, as far as may be [Rule 13 (2) (d) of the Model Rules];
- **Serious Offences** – Procedure for trial in Summons Cases [Rule 13 (2) (e) of the Model Rules]

The purpose behind following the procedure of trial as in summons cases is to ensure fair and speedy inquiry. Moreover, while holding such an inquiry, the Board must ensure that:

- (i) The juvenile has not been subjected to any ill-treatment after apprehension [Rule 13 (2) (a) of the Model Rules].
- (ii) The proceedings shall be conducted in a child-friendly atmosphere [Rule 13 (2) (b) of the Model Rules].
- (iii) Every juvenile shall be given the opportunity to be heard and participate in his inquiry [Rule 13 (2) (c) of the Model Rules].
- (iv) The inquiry shall not be conducted in the spirit of adversarial proceedings [Rule 13 (3) of the Model Rules].
- (v) Presumptions during the proceedings that favour the juvenile's right to be restored [Rule 13 (3) of the Model Rules].
- (vi) Police report containing the circumstances of apprehension and offence alleged to have been committed [Rule 13 (5) of the Model Rules].
- (vii) Parents/Guardian have been informed about the apprehension and production before the Board supplied with the copy of Police Report informed regarding personal bond or surety for the purposes of grant of bail.
- (viii) Parents/Guardian be present at the proceedings [Section 46 of JJ Act, 2000].
- (ix) Police has informed the probation officer about the apprehension of the juvenile in order to obtain information relating to the juvenile's background and other necessary material circumstances [Rule 11 (1) (c) of the Model Rules].
- (x) The concerned probation officer shall prepare the Social Investigation Report [Rule 13 (1) of the Model Rules].
- (xi) It takes into account Social Investigation Report prepared by the Probation Officer [Section 15 (2) of the Model Rules].
- (xii) Grant of Free Legal Aid [Rule 14 of the Model Rules].

The police have an important role to play in the whole inquiry process, specially the investigation of the offence which the juvenile is alleged to have committed.

The police shall complete the investigation at the earliest having regard to the requirement of the JJ Act, 2000 to complete the inquiry by the Board within four months.

“Where an FIR is lodged against the juvenile, who is alleged to have committed an offence punishable with imprisonment of seven years or more, the investigation shall be completed within a period of four months from the date of lodging of the FIR and if the investigation is not completed within the prescribed period, the case against the juvenile shall be treated as closed. Investigation is said to be completed only when the final report/charge sheet is filed with the concerned Board”. [*Sheela Barse vs. Union of India (1986) 3 SCC 632*]

In case the juvenile has been sent to an Observation Home, the period of investigation shall be regulated as per section 167 of the Code of Criminal Procedure, which is as under:

Section 167, Code of Criminal Procedure-

- a) 90 days, when the offence under investigation is punishable with death, imprisonment for life, or imprisonment for a term not less than 10 years;
- b) 60 days, when any other offence is under investigation

Investigation is said to be completed only when the final report is filed with the concerned Board. Moreover, when the juvenile is on bail, the report needs to be filed within 90 days.

The Board shall complete every inquiry within a stipulated time of four months and on recording a finding about juvenile's involvement in the alleged offence, pass one of the seven dispositional orders enumerated in section 15 of the JJ Act, 2000 [Rule 15 (1) of the Model Rules].

4.7 DISPOSITIONAL ORDERS THAT CAN BE PASSED BY JJB

The seven dispositional orders under **section 15** of the JJ Act, 2000, are as under:

- a) The juvenile may be allowed to go home after advice or if necessary a warning to the juvenile regarding his behaviour. Also that the parent/guardian may get a session of counseling.
- b) The juvenile may be directed to participate in group counseling and similar activities.
- c) The juvenile may be ordered to perform community service.
- d) The parent of the juvenile or the juvenile himself (if he is above fourteen years of age and earns money) may be ordered to pay a fine.
- e) The juvenile may be placed under the care of his parent, guardian, or any fit person on execution of a bond for the good behaviour and well being of the juvenile and is directed to be released on probation of good conduct. The bond may be executed, with or without surety, as required by the Board for a period which shall not exceed three years.
- f) The juvenile may be placed under the care of any fit institution for a period which shall not exceed three years for the good behaviour and well being of the juvenile and is directed to be released on probation of good conduct.
- g) The juvenile may be ordered to be sent to a special home for a period of three years. However, this period of stay may be reduced by the Board if it thinks fit taking the nature of offence and the circumstances of the case into account.

Before passing such orders, the Board shall take into account the findings of the Social Investigation Report prepared by the probation officer.

In the interest of the juvenile and of the public, if the Board thinks fit, it may also order the juvenile to be under the supervision of a probation officer for the period he/she has to stay under the care of parent, guardian, and fit person or fit institution. A copy of this supervision order explaining the terms and conditions of that order shall be furnished to the juvenile and to other persons under whose control the custody of the juvenile lies.

In case, the probation officer reports to the Board about the behavior of the juvenile being not good and the parent/guardian/fit person or fit institution, with whom the juvenile stays for the time, being not able or willing to ensure good behavior and well being of the juvenile, the Board may have no other option but to send the juvenile to a Special Home.

In case of release of the juvenile, if the parent or the guardian of the juvenile fail to come and take charge of the juvenile on the appointed date, the juvenile shall be taken by the escort of the institution and, in case of a girl, she shall be escorted by a female escort [Rule 17 (6) of the Model Rules]. The escort of the institution may include police in order to ensure the safety of the juvenile.

Though, orders and the role of JJB may appear to be outside the purview of the Police, they are very much relevant since juvenile care and delinquency is a police concern. The police will always be expected to maintain 'caring approach and a watchful eye' on juveniles/children in need of care and protection.

4.8 PROVISIONS IN RESPECT OF ESCAPED JUVENILE

Section 22 of the JJ Act, 2000 lays down provision in respect of escaped juvenile, as under:

Notwithstanding anything to the contrary contained in any other law for the time being in force, any police officer may take charge without warrant of a 'juvenile in conflict with law' who has escaped from a Special Home or an Observation Home or from the care of a person under whom he was placed under this Act, and shall be sent back to the Special Home or the Observation Home or that person, as the case may be; and no proceeding shall be instituted in respect of the juvenile by reason of such escape, but the Special Home, or the Observation Home or the person may, after giving the information to the Board which passed the order in respect of the juvenile, take such steps in respect of the juvenile as may be deemed necessary under the provisions of this Act.

From the reading of the above section, we deduce the following points:

- (i) Any police officer may take charge of the escaped juvenile without warrant and shall send him/her back to the place from where he/she escaped.
- (ii) No proceeding shall be instituted in respect of the juvenile for the reason of such escape.
- (iii) The Special Home, or the Observation Home, or the person from whose custody the juvenile escaped, may, after giving information to the concerned Board, take necessary steps in respect of the juvenile as mentioned under [Rule 18 (2) of the Model Rules].

The police shall also take certain immediate actions, apart from what the informant is directed to take in Rule 18 (2) of the Model Rules, which are as under:

- (i) On information obtained from the Officer-in-Charge of the institution from which the juvenile/child has escaped, it shall be ensured that the intimation report contains the identification marks and a photograph along with the details and description of the juvenile/child.
- (ii) An entry in the Daily Diary/General Diary should be made immediately in this regard.
- (iii) The Police Control Room must be informed at once.
- (iv) A copy of the report must be sent to the Missing Persons Squad through the District Missing Persons Unit.
- (v) If the parent of the juvenile/child is known, they must be informed about such escape.
- (vi) A team shall be sent in search of the juvenile/child, to places like railway stations, bus stands and any such other places where the juvenile/child is likely to go.

Procedure to be followed in respect of Sections 23, 24, 25 and 26 of the JJ Act, 2000:

Sec.23 Punishment for cruelty to juvenile or child. - *Whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or willfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.*

Sec.24 Employment of juvenile or child for begging.-(1) *Whoever employs or uses any juvenile or the child for the purpose or causes any juvenile to beg shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.* (2) *Whoever, having the actual charge of, or control over, a juvenile or the child abets the commission of the offence punishable under sub-section (1), shall be punishable with imprisonment for a term which may extend to one year and shall also be liable to fine.*

Sec.25 Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to juvenile or child. - *Whoever gives, or causes to be given, to any juvenile or the child any intoxicating liquor in a public place or any narcotic drug or psychotropic substance except upon the order of duly qualified medical practitioner or in case of sickness shall be punishable with imprisonment for a term which may extend to three years and shall be liable to fine.*

Sec.26 Exploitation of juvenile or child employee.- *Whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall be liable to fine.*

According to **Section 27 of JJ Act, 2000**, the offences punishable under the sections mentioned above are cognizable. Rule 18 (3) of the Model Rules, states that the offences against a juvenile in conflict with law or a child specified in sections 23, 24, 25 and 26 shall be either bailable or non-bailable, besides being cognizable, under the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), and the procedures shall apply on the Police, the Board and the concerned authorities and functionaries accordingly.

4.9 ALTERNATIVE PUNISHMENT

Also, **Section 28** of the JJ Act, 2000 provides for alternative punishment which is as under:

Where an act or omission constitute an offence punishable under this Act and also under any other Central or State Act, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offences shall be liable to punishment only under such Act as provides for punishment which is greater in degree.

4.10 CHILDREN IN NEED OF CARE AND PROTECTION

A child in need of care and protection is a person under eighteen years of age who is left helpless and uncared for, either due to incapacitated, or no custodian, or because of being exposed to abusive and negative circumstances by the society. Such subjection to abuse could cause delinquent behavior in children. A majority of them succumb to such effect.

As a matter of fact, children happen to be the most vulnerable section of the society because they hardly exercise any control over their own lives as the control of their custody vests in their parent, guardian or as the case may be, in persons, known or unknown. In case of no custodian, the degree of vulnerability increases depending upon the circumstances faced by the child and their immaturity to deal with those circumstances. Such children need immediate care and protection and have been enlisted as under according to the JJ Act, 2000.

Box 4.1 CHILDREN IN NEED OF CARE AND PROTECTION

- Homeless Children
- Children found Begging
- Working Children
- Street Children
- Physically and mentally challenged
- Victims of armed conflict
- Victims of natural calamities
- Victims of sexual abuse
- Abandoned, Missing or run away children
- Having incapacitated parents
- Drug abused or trafficked

4.10.1 Homeless Children: Children either living on streets with their families or have been abandoned by their parents/relatives to lead a miserable life. Some of them are even missing children who have lost their way to home or the runaway children, who in order to avoid situations, which they might have found unbearable or due to some temptation/allurement leave their home. Such children, can be seen wandering on railway platforms, sleeping on pavements, or begging on the streets etc.

4.10.2 Working Children: Working children are those children who are forced to work in any occupation or establishment e.g. Dhaba, shop, workshop etc., wherein any process is carried out which are either scheduled under the Child Labour (Prohibition & Regulation) Act, 1986 or any other work which is not there either in Schedule A or B. The Child Labour Act, however, caters only to children who are under the age of 14 years. For those who are between 14 and 18 years of age, the provisions of JJ Act, 2000 will be applicable. Poverty, unemployment of parents, trafficking etc., are some of the factors which are responsible behind forcing children to work. Extracting labour from the children is very cheap and that's why such children are preferred over adults. (Often as bonded labour)

4.10.3 Street Children: Street children are such children, who lead their life on the streets without any shelter, supervision and care. These children are primarily engaged in begging, vending, rag-picking, working on road side dhabas (food stalls) etc. They are hardly in contact with their families as most of them either are runaway children or trafficked from a remote area. These children are highly vulnerable and wander on the streets in the daylight for their living and sleep on the pavements in the night.

4.10.4 Mentally-ill Children: Mental illness is a disability which afflicts a child either genetically, in circumstances which had a shocking effect on the mental stability of the child or the child being subjected to acute traumatic conditions. Such children, need to be admitted into special hospitals or child guidance clinics immediately and frequent counselling of these children by trained psychiatrist should be done. Sometimes, counselling does not serve the purpose and in such cases the child should be treated through the sessions of psychotherapy.

4.10.5 Victims of Armed Conflict: Children are the most affected ones, when any situation of conflict like war or insurgency occurs. Such situations have a direct effect on their Basic Rights of Survival and Protection. Children get caught in such situations very easily as they are not that capable of avoiding such situations.

4.10.6 Victims of Natural Calamities: Such children have faced the wrath of nature to the worst. The aftermath of the calamities may be loss of family, property, acquaintances etc. which adds to the miseries of the child. These children are left helpless and tested through a series of ordeal and are often forced to move to some other place which cuts the child from his share of access to the basic provisions of health and nutrition.

4.10.7 Victims of Sexual Abuse: Child sexual abuse can be any kind of physical or mental abuse. Victims of such situations are usually violated by persons who are in a position of trust or power with respect to the child. The abuse has risen even to the extent of commercial exploitation and children especially the girls are forced into prostitution or abusive audio-visuals involving the child. Sexual abuse of a child is not just physical abuse but psychological as well as emotional abuse, which traumatizes the child. Such children need immediate intervention and shall be rescued from the place of abuse to a place of safety.

4.10.8 AIDS/HIV affected: There has always been a threat of exclusion from the society on persons affected by HIV/AIDS. Children who are affected need immediate medical care and protection. Such children are even denied a place in schools and are forced to face the hatred of the society for no fault on their part. This adds to the vulnerability of the infected child and disturbs them emotionally. Such children being outcaste or excluded from their society need an immediate intervention and shall be provided with shelter and proper medical care.

4.10.9 Trafficked children: Trafficking can be considered at the root of most of the situations discussed above, which ultimately land the children in abusive traumatic circumstances. A trafficker is often very close to the parents of the children who assures them of arranging good jobs for their children and out of poverty and ignorance. They send their children to remote cities and towns with the trafficker to earn money. The trafficker usually plays a role of middleman or agent and sells the child to brothels, factory owners; road side foods stall or employ them into begging etc.

Such children need serious and concerted efforts on the part of all stakeholders concerned -- Child Welfare Committee, Police/SJPUs, Social Workers, NGOs etc. -- to rehabilitate them for ultimate mainstreaming. In this context, the Act lays down the structure of the system of welfare for such vulnerable children, embracing all activities and programs, having a bearing on their development. Police has a very important role to play in this system, from the point of contact till the conclusion of the mainstreaming process, which may include rescue.

4.11 ROLE OF POLICE VIS-À-VIS CHILD IN NEED OF CARE AND PROTECTION

Role of police as regards the ‘child in need of care and protection’ becomes all the more important considering the condition of the child and circumstances under which he/she has been found or rescued. The intervention shall start when any police officer or the J/CWO comes in contact with the child or, even before that, when information regarding such a child is received at the Police Station.

Official formalities at this stage are needless unless it is in the best interest of the child. The rationale behind dilution of the operational procedure is to meet the ends of justice expeditiously. Apart from the process being speedy and informal, what is most important is the child-friendly approach which every police officer concerned has to keep in mind while dealing with a child.

4.11.1 Rescue Operations:

Rescue operations may be required where information is received by the Police/J/CWO about a child being confined after having been trafficked; being abused physically or sexually by anybody—parent/guardian/family member/ acquaintance/employer etc.; working as ‘*Bandhua Mazdoor*’ in any establishment or otherwise in any establishment/occupation in contravention of the provisions of the Child Labour (Prohibition & Regulation) Act, 1986, JJ Act, 2000 or any other local or State law, and similar other situations of abuse and exploitation. Such information may be received through the Childline or a NGO getting to know about such a case and may seek police help, or from the child him/herself directly in a clandestine manner on telephone or message, or his/her parents/ guardian, or from a public person etc.

Rescue operations for children in situations of abuse and exploitation, can be initiated by the police, public servant, Childline, voluntary organizations etc. Proper legal and follow-up actions are to be taken, as required according to the facts and circumstances of each case. The methodology to be adopted in conducting a rescue operation involves a series of processes and activities, which should be followed strictly for successful accomplishment of the task. In this regard, an important judgment of the Hon’ble Delhi High Court has become a standard document defining respective roles and responsibilities, including that of the police, under the existing legal framework, which can be introduced elsewhere.

Box No. 4.2

ROLE OF POLICE AS PER DELHI HIGH COURT ORDER

The Delhi High Court in “*Court on its own motion vs. Govt. of NCT of Delhi, 9767/2009*” gave an order dated 15.07.2009, in relation to Child Labour, wherein it emphasizes on roles played by different departments. The roles of Police are as follows:

The concerned Deputy Commissioner of Police should:

- a. Make all necessary arrangements of police force for raids as per the demand and requirement of Action Force;
- b. Personally participate in the raids conducted by the Action Force;
- c. Should take charge of the child liberated by the Action Force;
- d. Should take steps to arrest the owners/employers of the child labour, as per provisions of Indian Penal Code Sec. 331, 370, 374 and 34, as well as provisions of Sec. 23, 24, 25 and 26 of JJ Act, 2000. They should register the crime and take all the necessary future steps to conduct further criminal proceedings.

As regards registration of crime, the court further laid as under:

“...we direct that the responsibility of lodging a police complaint against an employer employing child labour would lie with the Police and not the Labour Department...”

NOTE: *The directions casting responsibilities upon the police and other agencies were given by the Hon'ble High Court of Delhi in the context of a child labour case in Delhi. These may not be adhered to in other places in the country under different conditions. However, as a model of such experience, particularly in large scale operations, the Delhi Action Plan could be considered.*

4.11.1.1. Pre Rescue Process

Collection and sharing of information; – The source for collection of information regarding the child in need of care and protection could be anybody. It may even be anonymous. It may be given voluntarily by a general public or generated by deputing informers at the suspected places. NGOs and Childline (1098) can also provide information regarding identification of points where children who are forced into labour or prostitution or employed for the purpose of begging etc. are kept.

However, for maximum utilization of sources, as discussed above, the concerned agencies need to have a clear picture of such points, proper assessment about the time and manner of conducting the raid for complete success, and, most importantly, the nearest transit locations. Proper but discrete verification regarding the veracity of the information may also be done, especially, in case of information from an anonymous, unknown or doubtful source in order to determine the reliability of the information.

The information so obtained, has to be shared with the authorities/ government departments concerned without any delay so that immediate and appropriate action can be taken. Also, while sharing such information, the anonymity of the source and the location shall be maintained.

4.11.1.2. Formation of a Rescue Team

Representatives from the concerned government departments (concerned Ministry, CWC, Municipal Corporation, local self-government, panchayat etc.), police (both male and female), NGOs, public spirited citizens, doctor with first aid kit etc., shall comprise the team meant to undertake the rescue operation. In case the presence of all the members cannot be ensured for any reason, at least four of them shall be present to carry out the rescue operation. The strength of the team, however, would depend on factors like:

1. Number of children estimated to be rescued
2. Apparent danger to the safety of the team
3. Geographical area of operation

Apart from the rescue team, which is supposed to raid and rescue the children, another team, constituted as a back-up to the main team, should be detailed strategically around the location of raid, to check any escape. The Police has, no doubt, the most important role to play in initiating a rescue operation. It is an integral part of both the main rescue team as well as the back-up team. The reason is the fear factor that the raid carries with it. The role of police becomes all the more important and difficult because while the police need to act strictly against the abuser/exploiter, its behavior with children to be rescued, has to be much softer so as not to add to the trauma of such children.

4.11.1.3. Plan of Action

A planned operation always has an edge and is more likely to deliver positive results. Thus, in order to carry out a safe and effective rescue operation, a plan of action shall always be prepared. Certain points should be kept in mind while preparing the plan of action:

- (i) Minimum involvement of members from the rescue team shall be ensured so that the confidentiality with regard to the information gathered may be maintained.
- (ii) It is advisable to prepare and follow a map of the location at the time of carrying out the rescue operation to avoid any confusion or delay in spotting the exact place.
- (iii) Proper role of each and every team member should be planned and communicated to ensure best possible outcome of the operation.
- (iv) Physical as well as psychological safety of the child to be rescued shall always be the top priority in the plan of action.

Proper briefing about the respective role of each member of the task force should necessarily be given before the commencement of the actual operation. Each member should be apprised of the legal provisions which may be associated while dealing with the issue. It shall also be ensured that the operation is child-centric and the approach is friendly towards the child so as to minimize the risk of any fear or trauma developing in his/her mind.

4.11.1.4. Actual Rescue Process

The role of police as regards the rescue process is very important, which is as under:

- The police shall provide for adequate force to conduct the raid successfully and also for the support team manning the possible exits to prevent anybody, especially, the employer, escaping.
- Wherever necessary, it shall obtain a search warrant under section 166 of the Code of Criminal Procedure.
- Wherever necessary, women police officers shall accompany the rescue team, especially where rescue of girls is involved or there is likely presence of women in the premises to be raided.
- The police shall take charge of the liberated/rescued children as the result of the raid and escort them to a safe(r) place.

The police shall separate the offender(s) from the children immediately and prevent any communication between them so that the children cannot be threatened or influenced to misguide the rescue team regarding their age and condition.

- The police shall ensure collection of evidence and material objects from the raided locations, which may be of help in prosecuting crime.
- The police shall treat the rescued children with respect and hand them over to the Children's Home according to the orders passed by the Child Welfare Committee. In case the Committee is not sitting,

it may produce the child before a single member of the Committee, as per the provisions under section 30 (2) of the JJ Act, 2000, for being placed in safe custody.

- The police should arrest the offender and register the crime under the relevant provisions under Indian Penal Code and other Local and Special Legislations, including JJ Act, 2000, Child Labour (Prohibition and Regulation) Act, Immoral Trafficking Prevention Act etc., and take all necessary action in order to prosecute the accused.
- The police shall also make efforts to trace out the middle men (traffickers) in case the children hail from a different State and are being trafficked and forced into such situations. The police shall invariably take proper legal action against them by booking them under relevant provisions of law.
- The police, during the whole process, must not take any step or behave in a manner, which may traumatize the child. A humane approach and care for the **best interest of the child** must form the core of police action.

4.11.1.5. Production before the Committee

According to section 32 of the JJ Act, 2000, the concerned police officer or SJPU or the designated J/CWO has to produce the rescued/found child, as above, before the Committee within 24 hours. This period of 24 hours is the maximum period for which the police may have the control over the child's custody, excluding the reasonable time required for traveling. Other persons, apart from police, who may also produce the child before the Committee under section 32 of the JJ Act, 2000, are:

- (i) Any public servant,
- (ii) Childline,
- (iii) Registered Voluntary Organizations or agency recognized by the Government,
- (iv) Any Social worker,
- (v) Any public spirited citizen,
- (vi) The Child herself /himself.

When the Committee is not sitting, the child may be produced before a single member of the Committee [section 30 (2) of the JJ Act, 2000]. In case a single member is also not available or accessible, the child may be taken to any NGO or Childline or any recognized institution for children, with all the necessary documents, for being kept till the time of production before the Committee. Information in this regard, must be given to the Chairperson or any Member of the Committee.

A report describing the circumstances under which the child came into notice and the efforts made for tracing the family of the child has to be submitted at the time of production of the child before the Committee.

A majority of children in need of care and protection being victims of crimes, abused and exploited, missing or abandoned, the police shall be required to always them intervene through Juvenile/Child Welfare Officers and SJPUs.

The Child Welfare Committee shall also facilitate the filing of a police complaint/FIR in matters involving violence, exploitation and abuse of children.

4.11.1.6. Registration of Offences against the Exploiters

In matters involving violence, exploitation and abuse of children, the concerned police officer shall register the offences against the exploiter/abuser in order to initiate the investigation and preparation of charge sheet.

The police officer, who is part of the rescue operation, shall, on his own, register the FIR or on complaint made by:

- ✓ Child himself,
- ✓ Parent, guardian or any relative of the child,
- ✓ Voluntary Organization,
- ✓ Child Welfare Committee,
- ✓ Labour Department (in case of rescue of a child labour),
- ✓ Any other public spirited person having the knowledge of the offence.

The FIR shall contain all the necessary information in order to initiate the investigation process. The offences shall be clearly specified with the appropriate sections from the JJ Act, 2000 as well as the Indian Penal Code and other relevant laws, as applicable. For instance, in case of a complaint made against a trafficker, he may be booked under IPC for kidnapping as well as under ITPA and CLPRA depending on whether the child was trafficked and forced into prostitution or child labour.

The details of every child so rescued shall be included in the FIR. Such details may be obtained from the child while recording his/her statement or from the Social Worker/NGO and others coming in contact or knowing the facts, including the offenders. Similar exercise may be followed, besides adopting the laid down procedure, for determining the age and status of the child.

4.11.1.7. Medical Examination

As soon as a child is rescued or found, the concerned police officer or the J/CWO should ensure that the child undergoes proper medical examination to be conducted by any authorized medical officer within 24 hours, depending on the circumstances such as:

- The child found to be injured/hurt, or
- The child suspected to be sexually abused.

However, the requirement of Medical Examination should not be taken as a prior condition for the admission of the child to a Children's Home/Shelter Home- cum Drop-in Centre. The child may be directly placed in a place of safety, where the medical expert(s) shall later visit and examine him/her.

The Medical Officer needs to undertake the physical examination carefully and make a detailed report which should describe the physical as well as mental condition of the child. A counselor shall be arranged in situations of adverse mental health condition. Medical report prepared by medical officer shall be used as evidence against the exploiter/abuser.

A girl child shall always be examined under the supervision of a female doctor. In the absence of a female doctor, any female police officer under whose control of custody the child has been placed shall be present at the time of examination. The officer concerned should advise the person examine the child and ensure that the dignity of the child is respected while undertaking the examination.

4.11.1.8. Recording of Statement u/s. 161 of the Code of Criminal Procedure

The concerned police officer involved in the rescue operation, or the J/CWO from the nearest police station, shall record the statement of the child under section 161 of Cr. PC. The officer, at the time of recording the statement, shall ensure that:

- (i) The child is fit, both physically as well as mentally, and not in a traumatized state of mind that he/she is unable to make a cogent statement,
- (ii) Counselling session for the child is arranged, if the child is found not fit to make such a statement,
- (iii) The environment in which he/she is making the statement shall be child-friendly and non-coercive,
- (iv) The Statement shall be recorded in the Case Diary in the language of the child,

- (v) The Statement, as recorded, shall be attached with the report of his/her medical examination, in order to produce the same before the Court as evidence.
- (vi) The place of recording the statement need not be a police station as it is likely to add to the trauma of the child. It may be a Children's Home, a place of safety or as chosen by the child.

4.11.1.9. Social Background Report (SBR)

Social Background Report (SBR) is an integral part of the inquiry process. The basic objective behind the preparation of SBR is to assess the socio-economic background of the child. The evaluation of the family situation of the child and an explanation on whether it is in the interest of child to restore him/her back to his family or not, form the basic content of an SBR.

The Committee assigns the case of the child to a Social Worker, Case Worker or Juvenile/Child Welfare Officer (J/CWO) through an order made under rule 28 (1) of the Model Rules. The J/CWO, when assigned, shall complete the inquiry and submit the report before the Committee within a period of four months.

The J/CWO needs to interview the child, family, social agencies or other sources personally. An SBR contains:

- ✓ Family history [education, occupation, earning etc. of the bread-earner in the family].
- ✓ Child's History [habits, moral or recreational interests, company, school/work record etc.].
- ✓ Socio-economic status.
- ✓ Other relevant information etc.

4.12 CHILD AS A VICTIM

In common parlance, a victim of crime is a person (child or an adult) who has suffered harm because of a criminal act. That harm can be physical/mental/emotional injury, sexual assault or abuse and exploitation attracting legal action, or financial loss. For example, a person who is injured in a violent attack or someone who has experienced a sexual assault or robbery is a victim of crime. Family members of a person killed or injured because of a crime may also be victims. It is common for people who witness a crime to suffer emotional distress. These people are victims, even though they may not have been physically harmed.

Whereas, under the JJ Act, 2000, the two categories of children as offenders and children in need of care and protection are fully covered, quite often the police expected to handle the child victim and witnesses of crimes. Considering the sensitivity, immaturity and special requirements of children, the role of police has to be very different to these children:

4.12.1 Children as Victims under JJ Act, 2000 and other Laws

Children as victims also figure in JJ Act, 2000 under Section 2 (d) (vi), (vii), (viii), and (ix) have been defined as:

- Who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,
- Who is found vulnerable and is likely to be inducted into drug abuse or trafficking,
- Who is being or is likely to be abused for unconscionable gains,
- Who is victim of any armed conflict, civil commotion or natural calamity;

While every person's reaction to crime is unique, it is not unusual for people who have experienced serious crimes to immediately feel shocked, fearful or angry. Later, it is quite normal for some victims to experience depression or anxiety. These reactions are natural and part of the process of dealing with a traumatic event. In most cases, they are also temporary. With support from family, friends and colleagues, most people recover from the effects of the incident within a short period. For other people, the recovery process is more difficult, especially when the harm has occurred over a long period of time or a crime has been especially traumatic.

Sexual assault and abuse of women and children are some of the most common and heinous atrocities committed on women and children. More and more people are becoming vulnerable targets of such abuse and their numbers are increasing at a frightening pace. These cases rarely get reported because of social stigma attached to such situations etc., and, even if reported, with normal delays in trials, non-availability of witnesses or their turning hostile due to being won over or influenced otherwise and similar other factors, rarely result in conviction.

Besides, the various provisions under sections 23 to 27 of the JJ Act, 2000 that are exclusively meant to deal with crimes against the children, there are multiple forms of offences against the children under the IPC and other laws. These offences are to be taken up by the Police and the Prosecutors in the ordinary courts having jurisdiction if committed by the adults, and in the Juvenile Justice Board if committed by the juveniles. Now, under section 25 and 26 of the Commissions of Protection of Child Rights Act (CPCR), 2005 wherein the victim of an offence is a child or their rights have been violated, the cases will be taken up by the Children's Courts and dealt with by the special prosecutors. In Delhi, such Courts have been formed by the Delhi Government under the direction of the Delhi High Court at the initiative of the Delhi Commission for Protection of Child Rights (DCPCR) under the CPCR Act, 2005, and the cases are being taken up. Once the Children's Courts are constituted in other parts of the country all cases pertaining to child victims shall be taken up accordingly.

4.13 MECHANISMS FOR CHILD AS VICTIM

A crime victim requires support from the family and society to normalize, and a child victim also requires special care to deal with his/her well-recognized special needs. To this end, Crisis Intervention Centers (CIC) have been developed to help the child victims of crime, assault and abuse, as a network between NGOs and Police department, for counselling, legal aid, medical examination, rehabilitation and reintegration of the victim.

- **'Crisis Intervention Centre'**: In 1999, Delhi Police took the initiative to deal with the cases of rape and child abuse in a more scientific, compassionate and professional manner. Through a Standing Order issued by the Commissioner of Police Delhi that was duly approved by the Home Department, Crisis Intervention Centres(CIC) were set up in all districts in which Delhi Commission of Women, and Central Social welfare Board and the Directorate of Prosecution besides other concerned agencies were associated. In Delhi, the Non-government Organizations (NGOs) like Prayas Juvenile Aid Centre Society-which had taken the initiative, were appointed in all districts to undertake all the cases of child rape and sex abuse. Once a case was registered at the police station, simultaneously, information was given to the concerned NGO which carried out family and social investigations to help the victim and the family, ensure immediate counseling, medical and legal help, besides taking steps to provide safety and rehabilitate the victim. Over the years, the CICs became established institutions as integrated programs of Delhi police, Delhi Commission of Women and the partner

NGOs to take up majority of child rape and sex abuse cases in Delhi. Duly recognized in its official role and nurtured by the Delhi Commission of Women, recently, the High Court of Delhi went into great detail about the functioning of CIC and issued guidelines that are required to be followed.

While various provisions of the JJ Act, 2000/ the Model Rules generally take care of the victimized children, there is always a need to develop a protocol and mechanism, the Crisis Intervention Centre is one such good practice that could be replicated elsewhere.

4.13.1 Objectives of Crisis Intervention Centre (CIC)

- To extend socio-economic, medical, legal aid and counseling services to the victims for whom the trauma of rape and abuse becomes a permanent scar on their psyche and to work with the family and the victim and give necessary support.
- To handle the investigation of rape/child abuse cases professionally and with sensitivity and to help the needy ones rehabilitate in association with other NGOs.
- To ensure professional and sensitive investigation of such cases and meaningful prosecution.
- To keep track of the victims who tend to pack up and leave the locality or the place of occurrence due to the causes behind this incidence. More than social ostracism, the likely cause might be threats and further insecurity from the rapist/abuser/perpetrators of crime.
- To provide legal guidance to the investigating officer & to provide support structure to minor victims of rape/abuse in handling the crisis.
- To focus on the healing of child and to overcome trauma as early as possible.
- Reintegration in society, including acceptance in family, institution and society.
- To Provide a 24- hour Help Line Service and the integrated and follow-up service.
- Launch campaign to sensitize society at large on the issue.
- Sensitization of the Police force.

4.13.2 Guidelines for police for handling sexual offences

Every Police station shall have available, round the clock, a lady police official/officer not below the rank of Head Constable.

- a) As soon as a complaint of the offence is received, the duty officer receiving the complaint/information shall call the lady police official/officer present at the police station and make the victim and her family comfortable.
- b) The duty officer, immediately, upon receipt of the complaint/ information, shall intimate the “Rape Crisis Cell” (which is supposed to work in coordination of CIC) on its notified helpline number.
- c) After making preliminary inquiry/investigation, the Investigation Officer, along with the lady Police official/officer available, shall escort the victim for medical examination.
- d) The Assistant Commissioner of Police shall personally supervise all investigation into the offence.
- e) The statement of victim shall be recorded in private. However, the presence of family member, while recording statement, may be permitted with a view to make the victim comfortable. In incest cases, where there is a suspicion of involvement of family members in the crime, such family members should not be permitted, while statement is being recorded.
- f) The Investigation Officer shall bring the cases relating to “child in need of care and protection” and the child victim involved in incest cases to the Child Welfare Committee.
- g) The accused should not be brought in the presence of victim except for identification.
- h) Excepting the offences which are reported during night, no victim of sexual offence shall be called or made to stay in the police station during night hours. The Social Welfare Department of the government of NCT of Delhi shall ensure that Superintendents of the Foster Home for Women will provide necessary shelter till formal orders are secured from the concerned authorities.
- i) The Investigation Officer shall endeavor to complete the investigation at the earliest and S/he shall ensure that in no case the accused gets undue advantage of bail by default, as per the provisions of

section 167 CrPC It is desirable that in cases of incest, the report under Section 173 CrPC is filed within 30 days.

- j) Periodically, training to deal with rape case should be provided to the Police Officers, Juvenile Police Officers, Welfare Officers, Probation Officers and Support Persons.
- k) The Police should provide information to the Rape Crisis Cell regarding the case including the arrest and bail application of the accused, the date of filing of the investigation report before the Magistrate.
- l) The Police should keep the permanent address of the victim in their file in addition to the present address. They should advise the victim to inform them about any change of address in future.

4.14 CHECKLIST FOR ACTION UNDER JJ ACT, 2000 BY POLICE

This refers to the role of police in handling children who are covered under the JJ Act, 2000.

The two categories of children included are 'child in need of care and protection, and 'juvenile in conflict with the law' [Sec 2(d) & (l) of the JJ Act, 2000]

Both the categories of children have:

- a) An interface with police but in different circumstances.
- b) To be produced before the respective 'Competent Authorities' [Sec-2 (g) of the JJ Act, 2000] as follows:

- In case of Children in Need of Care and Protection (CNCP), before the Child Welfare Committee (CWC) [Sec2 (f) of the JJ Act, 2000]
- In case of Juveniles in Conflict with Law, before Juvenile Justice Board (JJB). [Sec. 2 (c) of the JJ Act, 2000]

Whenever, a child has an interface with the police, s/he shall be placed under the charge of SJPU (Special Juvenile Police Unit) or the designated Juvenile/Child Welfare Officer.[Sec 63 of the JJ Act, 2000]

She/he must be produced before the Board/CWC within twenty-four hours excluding journey time [Sec.32 of the JJ Act, 2000].

Where the Juvenile or the Child Welfare Officer has not been designated or is not available for some official reasons, the police officer who apprehended the juvenile shall produce him/her before the Board.

Special Juvenile Police Unit

- The Juvenile or the Child Welfare Officer at the police station shall be a person with aptitude and appropriate training and orientation to handle the cases of juveniles or children in terms of the provisions of the JJ Act, 2000.
- The Unit at District level shall coordinate and function as a watchdog for providing legal protection against all kinds of cruelty, abuse and exploitation of the child or juvenile.
- The Unit shall take serious cognizance of adult perpetrators of crimes against children and see to it that they are without delay apprehended and booked under the appropriate provisions of the JJ Act, 2000.
- The Deputy Commissioner of Police/Superintendent of Police shall in the District supervise the Special Juvenile Police Unit and impact its functioning from time to time.

4.14.1 ACTION TO BE TAKEN

- All Police Stations shall have two (2) officers designated as Juvenile/Child Welfare Officers who should have undergone a training course in handling juvenile in conflict with law.

- District DCP/SP would ensure that the details of such officers appointed in each police station are informed to the JJB.
- All police stations should have at least 2 copies of the “Juvenile Justice (Care and Protection of Children) Act 2000”, one for the SHO and the other for the Child/Juvenile Welfare Officer.
- The names, addresses and telephone numbers of the following should be available with the duty Officers of all Police Stations:-
 - ✓Members of the Child Welfare Committee.
 - ✓Observation Home.
 - ✓Juvenile Justice Board.
 - ✓Probation Officer.
- A list of all designated juvenile or Child Welfare Officers in a District and members of Special Juvenile Police Unit with contact details shall be prominently displayed in every Police Station.
- The juvenile is not to be produced before the regular Criminal Court.
- No child shall be handcuffed or fettered.
- The officials while handling/escorting juveniles shall not wear police uniform.
- The safety and basic amenities for the juvenile are to be taken care of.
- Neither Information Sheet shall be issued nor shall the Search slip be prepared.
- No personal Dossier of the juvenile in conflict with law shall be prepared, neither photograph nor finger prints shall be taken.
- A separate year-wise Non-PPR register shall be maintained in each Police station containing the following details:-
 - ❖ SI. No.
 - ❖ Daily Diary No.
 - ❖ Date
 - ❖ Time
 - ❖ Details of receipt of complaint whether in person/ telephone/through PCR
 - ❖ Complainant details
 - ❖ Type of offence
 - ❖ Gist of complaint
 - ❖ Details of Juvenile Welfare Officer handling complaint
 - ❖ Details of juvenile in conflict with law
 - ❖ Details of age proof
 - ❖ Social Report
 - ❖ Education Standard
 - ❖ Details (including telephone no.) of parents/ guardian to whom the information be given about the juvenile
 - ❖ Details (including telephone no.) of the Probation Officers to whom the information be given about the juvenile
 - ❖ Date and time of producing juvenile before the Board and gist of the order of Board
 - ❖ Details of FIR if registered, with reason
 - ❖ Final disposal of FIR/ Complaint
 - ❖ A separate pink color file cover for each incident involving ‘juvenile in conflict with law’ shall be prepared with following columns as check list of the top:-
 - (1-18 same as above)
 - Whether Juvenile Welfare Officer accompanied the juvenile in conflict with law for producing before the Board
 - Conveyance used
 - Next date of hearing, if any
 - FIR NO., Date and Under Section

4.14.2 ACTION PROPOSED

4.14.2.1 Juveniles in Need of Care and Protection

- The police control room must be informed.
- Physical needs of the juvenile, like hunger or thirst or the need to go to toilet should be properly attended to.
- An entry in Daily Diary/ General Dairy should be made giving particulars of the juvenile and reasons for coming to the police.
- A Report on the prescribed Performa must be sent to the Missing Persons Squad through District Missing Persons Unit.
- Women Police must accompany a girl to be produced before the Committee.
- If the parent is known, the child is to be restored.
- The juvenile shall not be kept in the Police station.

4.14.2.2 While handling the Juvenile in Conflict with Law, the following points should be kept in mind:-

- Physical needs of the juvenile, like hunger or thirst or the need to go to toilet should be properly attended to.
- Extra care should be taken to create an impression when the juvenile is being questioned that he is not being interrogated as a thief or as a liar but that effort is being made to find out the truth in order to help him.
- The officer should not lose temper and make false promises.
- No bullying should be done during questioning.
- Display of sympathy and understanding so as to give the impression that the police officer is mainly interested in the welfare or good of the juvenile.
- Enquiries from the juvenile should be in privacy and in a comfortable environment.
- It should be ensured that there is no distraction when the juvenile is being questioned.
- The parents and guardians may be allowed to be present when the juvenile is being questioned.
- As far as possible, the juvenile should not be called to the Police Station but should be questioned either at his own home or some other premises which does not give too much of an official look.
- Care should be taken not to embarrass the juvenile. Girls should be handled by Women Officer.
- Statement made by a juvenile should be verified from independent sources as there is a possibility of exaggeration and distortion of facts.

4.14.2.3 Process in case of Non- Serious Offences

- The Police or the Juvenile or Child Welfare Officer shall not be required to register an FIR or file a charge sheet.
- Instead, he shall record information regarding the offence alleged to have committed by the juvenile in the Daily Diary followed by a report on the juvenile's Social Background and the circumstances of apprehension and the offence and forward it to the Board.
- The Social Investigation Report shall be attached with the Kalandra (Report to the Magistrate-like in the Preventive Proceedings).

4.14.2.4 Information to Parent, Guardian or Probation Officer

Although, Police is not responsible for determination of age under Juvenile Justice System but as discussed earlier, J/CWO is supposed to adjudge the age on the basis of physical appearance of the child, keeping in view whether the child produced is apparently juvenile or not.

- The Officer in-charge of the Police Station or Juvenile Welfare Officer or the Special Juvenile Police Unit shall inform the parent or guardian of the juvenile, direct him to be present at the Board /CWC.
- He shall inform the Probation Officer of such juvenile to enable him to obtain information regarding the juvenile's Family Background.

4.14.2.5 Period for the Completion of Investigation of Cases

- Where a complaint is filed or FIR is lodged against a child below the age of 18 years for an offence punishable with imprisonment of 7 years and more, the investigation shall be completed within a period of 3 months from the date of filing of the complaint or lodging of the FIR and if the investigation remains incomplete, the case is treated as closed.
- 60 days, where the investigation relates to any other offence.

4.14.2.6 Determination of Age (Sec.49 of the JJ Act, 2000/Rule12 of the Model Rules)

- In case of doubt, the benefit of doubt shall be in favour of the child in conflict with law for treating him/her as juvenile.
- In order to collect age proof, efforts should be made to collect his school certificate, municipal certificate, copy of ration card etc.
- If no document is available, ossification test may be conducted to ascertain the age.
- Age to be determined within a period of 30 days from the date of application before the Committee.

DCP/SP, Constable, Inspector shall personally ensure compliance of this. The juvenile shall not be taken to Juvenile Justice Board in police marked vehicles.

Practice of beating/ slapping street children/ rag pickers should be discontinued.

All expenses in handling juveniles in conflict with law or neglected children shall be claimed under the head "Investigation expenses".

DCP/SP shall ensure that all the Juvenile Welfare Officers are periodically trained and well versed with the provisions of the JJ Act, 2000, the Model Rules and instructions.

DCP/SP shall ensure that in case the officer attending the proceedings at Juvenile Justice Board is not the nominated officer, then the official shall carry necessary certificates issued by SP/Inspector/SHO concerned that the officer is well versed with the provisions of the JJ Act, 2000 and the Model Rules on the subject.

Juvenile/Child Welfare Officer during their visits to Police Station will check the files relating to juveniles to ensure the JJ Act, 2000, the Model Rules and instructions on the subject are being complied with.

4.15 SUMMARY

- Adjudging whether the Juvenile is in conflict with law or in need of care and protection is the first and foremost decision that a police officer must take immensely after he comes in contact with juvenile/child.
- Juvenile or Child Welfare Officer from the nearest police station, shall intimate the parents or guardian of the Juvenile about forwarding the information regarding nature of offence and circumstances of apprehension along with the socio-economic background to the board, which may call the Juvenile for subsequent hearing.
- No juvenile, including female shall be taken into custody between sunset and sunrise unless the extraordinary circumstances warrant it.
- The Juvenile shall not be hand-cuffed or chained. The police officer or the J/CWO shall as far as possible only wear plain clothes unless the circumstances, like, during the time of apprehension, require him to wear his uniform in the interest of the Juvenile [Rule 75 of the Model Rules]
- The Proceedings shall be conducted in a child friendly atmosphere.
- The Police shall complete the investigation at the earliest having regard to the requirement of the JJ Act, 2000 to complete the inquiry by the Board within four months.
- Any police officer may take charge of the escaped juvenile without warrant and shall send him/her back to the respective place from where he/she escaped.
- In case of children in need of care and protection, they are to be produced before the Child Welfare Committee.
- Since, majority of children who are in need of care and protection either being victims of crimes, abuse and exploitation or missing or abandoned children, the police shall always be required to intervene through Juvenile/Child Welfare officers and SJPU.
- The Committee shall also facilitate the filing of a police complaint/FIR in matters involving violence, exploitation and abuse of children besides their proper rehabilitation.

CHAPTER 5

REINTEGRATION & MAINSTREAMING JUVENILES/CHILDREN

5.1 INTRODUCTION

The primary aim of this chapter is to make the readers aware about the importance of rehabilitation in terms of social reintegration and mainstreaming of children/juveniles. Perhaps, the police officers in India are under an impression that they are not concerned with the children/juveniles only in respect of their protection or in performing their legal duties as provided under the juvenile justice and other laws in which their roles are clearly laid down. They have yet to understand their preventive, curative and rehabilitative roles that have far-reaching consequences in the fast-changing Indian scenario having huge number of children, estimated to be nearly 17 million, who need protection from crimes, neglect, delinquency, destitution and vagaries

JJ Act, 2000 as the Central Act enacted for the Care, Protection, Development and Rehabilitation of 'Children in Need of Care and Protection' and 'Juveniles in Conflict with Law' practically formulates the blueprint in which police is among the most important stakeholders. The JJ Act, 2000 seeks to achieve a uniform legal frame work for Juvenile Justice and child protection in the country as a whole so as to ensure that no child in any circumstance is lodged in Jail or police lock-up, or generally, subjected to the harsh legal processes of the adult criminal justice system.

The JJ Act, 2000 envisages a new approach towards proper rehabilitation of both the juveniles in conflict with law and the children in need of care and protection. As envisaged under the JJ Act, 2000, the aim of reintegration and rehabilitation is to help children in restoring their dignity and self-worth and mainstream them through rehabilitation within the family wherever possible or otherwise through alternate care programs and long-term institutional care shall be of last resort.

5.2 SOCIAL REINTEGRATION AND REHABILITATION OF CHILD

The Rehabilitation and Social integration of a child shall begin during the stay of a child in a Children's Home or Special Home and the Rehabilitation and Social integration shall be carried out alternatively by

1. Adoption
2. Foster Care
3. Sponsorship
4. Sending the child to an After-Care Organization

According to JJ Act, 2000 and Model Rules, the following provisions have been laid down for Rehabilitation and Social Reintegration of Children.

Box No.5.1: RELEVANT PROVISIONS IN RELATION TO SOCIAL REINTEGRATION AND REHABILITATION OF JUVENILE/CHILDREN UNDER JJ ACT, 2000 AND MODEL RULES

A. JJ Act, 2000

Section 40 -Process of Rehabilitation and Social Reintegration

Section 41 -Adoption

Section 42 -Foster Care

Section 43 -Sponsorship

Section 44 -After Care organization

Section 45 -Linkages and Co-ordination

B. Model Rules

Rule 2(h) - 'Individual Care Plan' define

Rule 32 - Rehabilitation and Social Reintegration

Rule 33 - Adoption

Rule 34 - Foster Care

Rule 35 - Criteria for selection of Families for Foster Care

Rule 36 - Pre-adoption Foster Care

Rule 37 - Sponsorship

Rule 38 - After Care Organization

Rule 39 - Linkages and Co-ordination

Rule 46(7) - Mental Health

Rule 47 - Education

Rule 48 - Vocational Training

Rule 49 - Recreational Facilities

Rule 50 - Institutional Management of Juvenile or Children

Rule 55 (6) (a) (x) - Management Committee

Rule 57 - Rewards and Earnings

Rule 65 - Restoration and Follow-up

Rule 8(2)(g) - District Child Protection Unit to facilitate restoration and rehabilitation of children

Rule 87(1)(h) (j) - Duty of Probation Officer to participate in pre-release program and establish linkage with Voluntary Organization.

Form XIV - Declaration regarding child legally free for Adoption

Form XVI - Foster Care's Assessment

Form XVII - Order of Foster Care Placement

Form XVIII - Order of Sponsorship Placement

Form XIX - Order of After Care Placement

Form XXI - Individual Care Plan

5.2.1 Rule 33 of the Model Rules - Adoption

- (1) The primary aim of Adoption is to provide a child, who cannot be cared for by his biological parents with a permanent substitute family.
- (2) For all matters relating to Adoption, the guidelines issued by the Central Adoption Resource Agency and notified by the Central Government under sub-section (3) of section 41 of the Act, shall apply.
- (3) In case of Orphaned and Abandoned children the following procedure shall apply, namely:-
 - (a) Specialized Adoption Agencies shall produce all orphaned and abandoned children who are to be declared legally free for adoption before the Committee within twenty-four hours of receiving such children, excluding the time taken for journey;
 - (b) A child becomes eligible for adoption when the Committee has completed its inquiry and declares the child legally free for adoption;

- (c) Such Declaration shall be made in Form XIV;
- (d) A child must be produced before the Committee at the time of declaring such child legally free for adoption;
- (e) Whenever intimation is received by the Police about an abandoned Infant, the police shall take charge of the infant and arrange to provide immediate Medical Assistance and Care;
- (f) Subsequently, the child shall be placed in a Specialized Adoption Agency or recognized and certified Children's Home or in a Pediatric Unit of a Government hospital followed by production of the child before the Committee within twenty-four hours;
- (g) Procedure for declaring a child abandoned and certifying him legally free for adoption:

- i. In case of an abandoned child, the recognized agency shall within twenty four hours, report and produce the child before the Committee with the copy of the Report filed with the police station in whose jurisdiction the child was found abandoned;
- ii. The Committee will institute a process of inquiry, which shall include a thorough inquiry conducted by the Probation Officer or Child Welfare Officer, as the case may be and who shall give report in Form XIII to the Committee containing the findings within one month;
- iii. There shall be a declaration by the Specialized Adoption Agency, stating that there has been no claimant for the child even after making notification in at least one leading National newspaper and one regional language newspaper for children below two years of age and for children above two years, an additional television or radio announcement and notification to the Missing persons squad or Bureau shall be made;
- iv. The steps stated in (iii) shall be taken within a period of sixty days from the time when the child is found in case of a child below two years of age and in case of children above two years of age, this period shall be four months;
- v. The period of notification shall run concurrently with the inquiry to be conducted and report submitted under clause (ii) of this sub-rule;
- vi. the Committee shall declare the child legally free for adoption on completion of the process of inquiry, including declaration of the Specialized Adoption Agency made under clauses (ii) and (iii) of this sub-rule;
- vii. No child above seven years who can understand and express his opinion shall be declared free for adoption without his consent.

(4) In case of surrendered children the following procedure shall apply, namely:-

(a) A surrendered child is one who had been declared as such after due process of inquiry by the Committee and in order to be declared legally free for adoption, a 'surrendered' child shall be any of the following:

- (i) Born as a consequence of non-consensual relationship;
- (ii) Born of an unwed mother or out of wedlock;
- (iii) A child, whose one of the biological parents is dead and the living parent is incapacitated to take care;
- (iv) A child where the parents or guardians are compelled to relinquish him due to physical, emotional and social factors beyond their control;

(b) Serious efforts shall be made by the Committee for counselling the parents, explaining the consequences of adoption and exploring the possibilities of parents retaining the child and if, the parents are unwilling to retain, then, such children shall be kept initially in Foster Care or arranged for their Sponsorship;

(5) For the purpose of section 41 of the JJ Act, 2000 'Court' implies a Civil Court, which has Jurisdiction in matters of adoption and guardianship and may include the Court of the District Judge, Family Courts and City Civil Court.

5.2.2 Rule 34 of the Model Rules - Foster Care

- (1) For children who cannot be placed in adoption, order shall be issued by the competent authority in Form XVII for carrying out Foster Care, as given in sub-section (2) of section 42 of the JJ Act, 2000 and rule 35 (1) of the Model Rules, under the supervision of a Probation Officer or Case worker or Social worker, as the case may be, and the period of Foster Care shall depend on the need of the child.
- (2) Every State Government shall design its own Foster Care program to reduce institutionalization of children and enable a nurturing family environment for every child.
- (3) The State Government shall consult the Boards or Committees, Non-Governmental Organizations, Academicians and Organizations working on Alternative Care for children in developing the Foster Care Program.

5.2.3 Rule 37 of the Model Rules – Sponsorship

- (1) The State Government shall prepare sponsorship program in consultation with the Non-Governmental Organizations, Child Welfare Committees, other relevant Government agencies and the corporate sector.
- (2) The State Government, with the help of District or State Child Protection Units shall identify families and children at risk and provide necessary support services in the form of sponsorship for child's education, health, nutrition and other developmental needs.
- (3) The Children's Homes and Special Homes shall promote sponsorship programs as laid down in section 43 of the JJ Act, 2000.
- (4) The institutions receiving sponsorship, shall maintain proper and separate accounts of all the receipts and payments for the program.
- (5) The Board or the Committee shall make an order in Form XVIII for support to a juvenile or child through Sponsorship and send a copy to the District or State Child Protection Unit or the State Government for appropriate action.

5.2.4 Rule 38 of the Model Rules - After Care Organization

- (1) The State Government shall set up an After Care Program for care of juveniles or children after they leave Special Homes and Children's Homes with the objective to facilitate their transition from an institution-based life to mainstream society for social reintegration.
- (2) After Care programs shall be made available for 18-21 year old persons, who have no place to go to or are unable to support themselves, by the District or State Child Protection Units in collaboration with Voluntary organizations for the purpose of section 44 of the Act and this rule.
- (3) Once the Board or the Committee passes an order in Form XIX for placing a juvenile or a child completing 18 years of age under the After-care program, a copy of such order shall be sent to the District and the State Child Protection Unit and the State Government, who shall be responsible for arranging after care.
- (4) The Board or the Committee shall have Jurisdiction over persons placed in after care program.
- (5) The objective of these organizations shall be to enable such children to adapt to the society and during their stay in these transitional homes these children will be encouraged to move away from an institution-based life to a normal one.
- (6) The key components of the program shall include:-
 - Community group housing on a temporary basis;
 - Encouragement to learn a vocation or gain employment. During the course of Vocational training a stipend may be provided;
 - Encouragement to gradually sustain themselves;
 - Provision for a peer counselor;
 - Payment of stipend during Vocational training till the youth gets employment.
 - Arrangement of loan to set up Entrepreneurial activities;

5.2.5 Rule 39 of the Model Rules - Linkages and Co-ordination

The State Government shall

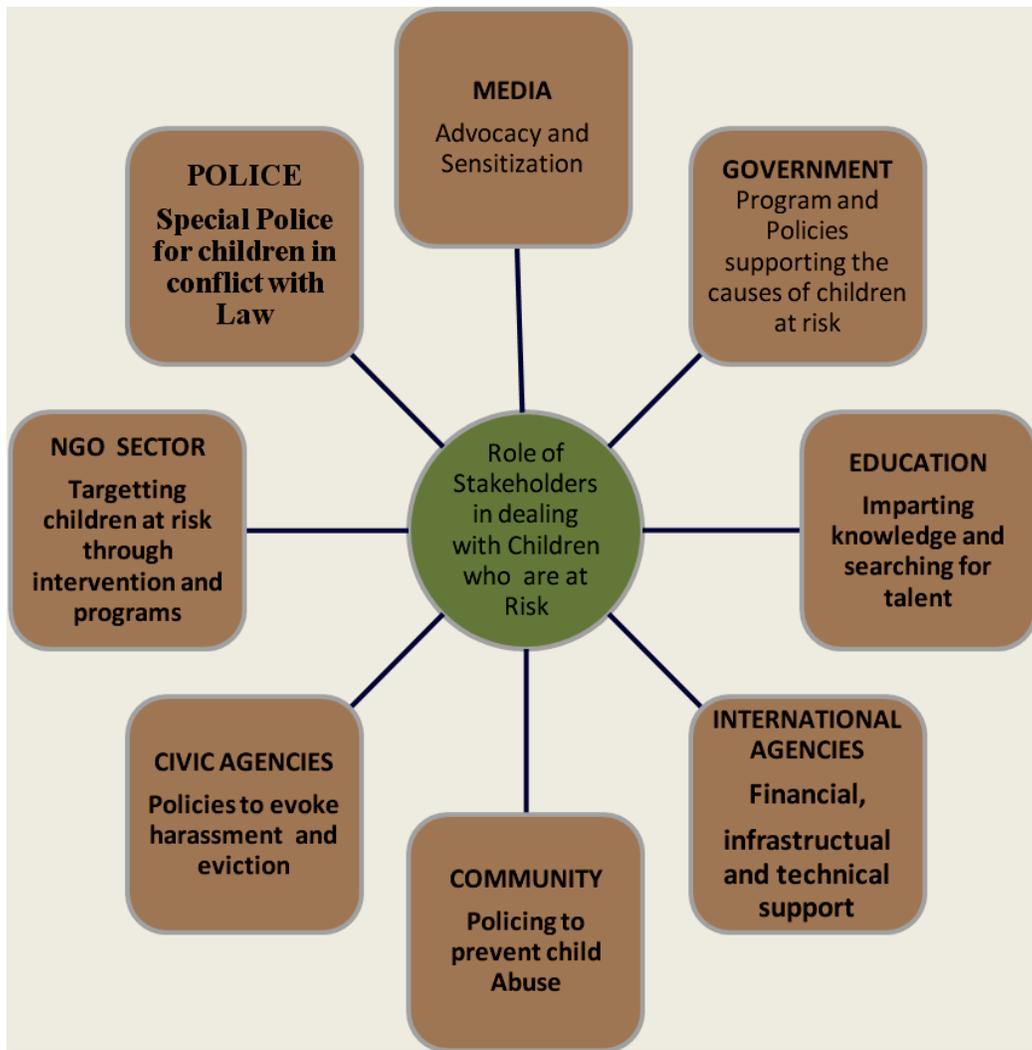
- Circulate a copy of the JJ Act, 2000 and the Model Rules framed to establish effective linkages between various Governments, Non-government, Corporate and other Community agencies for facilitating the rehabilitation and social reintegration of juveniles or children through the Board or the Committee as the case may be.
- Identify the roles and responsibilities of each department at State or District levels for effective implementation of the Act and the rules and inform them through a notification.
- Arrange for appropriate training and sensitization of functionaries of these departments from time to time in coordination with National Institute of Public Cooperation and Child Development and its Regional Centers.
- Develop effective networking and linkages with local Non-governmental organizations for specialized services and technical assistance like vocational training, education, health care, nutrition, mental health intervention, drug de-addiction and legal aid services.

However, there are certain guiding principles, which need to be taken care of in order to make reintegration successful namely:

1. Ensuring that the best interests of the child are given primary consideration.
2. Guaranteeing fair and equal treatment of every child, free from all kinds of discrimination.
3. Advancing the Right of the child to express his or her views freely and to be heard.
4. Protecting every child from abuse, exploitation and violence
5. Treating every child with dignity and compassion.
6. Respecting legal guarantees and safeguards in all processes.
7. Preventing conflict with the law as a crucial element of any Juvenile Justice Policy.
8. Using deprivation of liberty of children only as a measure of last resort and for the shortest appropriate period of time.
9. Mainstreaming children's issues in all rules of law efforts.

In this entire process of Reintegration and Mainstreaming of Children/Juveniles, the Family, the Police, the Media and NGOs play a very important role.

FIGURE 5.1 ROLES OF STAKEHOLDERS IN DEALING WITH CHILDREN AT RISK



5.3 ROLE OF VOLUNTARY ORGANIZATIONS

The JJ Act, 2000 and Model Rules provide for involvement of NGOs in a big way. It also contemplates a larger involvement of the family, voluntary organizations and community.

Role of NGOs is many folds. Their involvement helps in promoting a child- centric Juvenile Justice System. Some of the key roles that Voluntary Organizations play are as follows:

- To undertake the responsibilities cast upon the voluntary organizations under the JJ Act 2000, such as, managing Children's Homes, Shelters and Drop-In Centres, even Observation and Juvenile Homes in association with the Government.
- To provide the services of social workers, case workers, probation officers, educators, vocational trainers etc. to JJB, CWC,CPU, SJPU, Homes and other institutions run by the Government and Voluntary organizations.
- Research and Documentation on issues pertaining to children/youth and related issues.
- Advocacy and awareness on issues relating to children and their rights, juvenile justice etc.
- Action plan for care, protection, welfare, development, rehabilitation etc. (Individual care plan).

- Provide escorts to children when repatriating or transferring the child to another Home or to a place of safety or family.
- Networking with allied systems like CWC, JJB, Police and other NGOs.
- Programs for specially challenged children by ensuring their medical care, education, employment, rehabilitation and creating barrier free environment to remove discrimination.
- To function as adoption and voluntary coordinating agencies, besides running foster care and sponsorship programs.
- Establish Institutions for HIV/AIDS/Sexually abused.
- Long term care and follow up of the children in need of care and protection
- Reports on development to the JJB/CWC on the children under programs.

However, besides serving as associated social workers in the SJPU's for which funding can be done under the Integrated Child Protection Scheme (ICPS), there is a considerable scope for Non-Governmental Organizations (NGOs) along with police to work in the field of treatment, after-care and rehabilitation of 'juveniles in conflict with law' and 'children in need of care and protection'. Voluntary Organizations have been playing a very important role for the welfare and development of marginalized and vulnerable group of society viz., Persons with Rehabilitation Disabilities, Child Beggars, Alcoholics and Drug Addicts, Sex Workers/Child Sex Workers, Working Children, Street Children, Destitute/Deserted Women and Girls in social/ moral danger, Older Persons etc. who have special problems or living in difficult situations. In handling/reforming/rehabilitating/caring these special groups, the contribution of the Voluntary organizations, which are in direct contact with these target groups, have been proved to be very vital.

Since, a child-centered Juvenile Justice System demands quality care for children/juveniles in institutions, the voluntary organizations play a very important role. The JJ Act, 2000 envisages the role for NGOs all through the process of a child's journey from production of the child or juvenile in CWC or JJB to the final rehabilitation. The most important step forward in this direction is to make an individual care plan for child/juvenile. The Individual Care Plan is a comprehensive plan to restore the self-esteem of the juvenile or child, dignity and self-worth and nurture him into a responsible citizen. It is prepared by a Probation Officer or Voluntary Organization on the basis of interaction with the juvenile and his family, neighbourhood etc.

Individual care plan is based on age specific and gender specific needs and the case history of the juvenile and child. It addresses the following –

- (i) Health needs;
- (ii) Emotional and Psychological needs;
- (iii) Educational and Training needs;
- (iv) Leisure, creativity and play;
- (v) Attachments and Relationships;
- (vi) Protection from all kinds of abuse, neglect and maltreatment;
- (vii) Social mainstreaming; and
- (viii) Follow-up post release and restoration. *[Rule 2 (h) of the Model Rules]*

Box No.5.2: RELEVANT STATUTORY PROVISIONS IN RELATION TO STAKEHOLDERS DEALING WITH CHILDREN/JUVENILES UNDER JJ, ACT, 2000/ MODEL RULES

A. JJ Act, 2000

Section 2 (h), (o) and (v) - Fit Institution', 'Observation Home' and 'Special Home' defined including those run by NGO and certified/recognized by State Government

Section 8 - Establishment of Observation Homes

Section 9 - Establishment of Special Homes

Section 12 - Release of juvenile on Bail under care of Fit Institution or Fit person pending inquiry placed under care of fit institute

Section 15 (1) (f) - Order that may be passed regarding juvenile

Section 15(2) - SIR through a Voluntary Organization

Section 44 - After Care Organizations

Section 45 - Linkage and Co-ordination

Section 51 - Report of Probation Officer/Social Worker treated as confidential

Section 62 - Central, State, District and City Advisory Boards to include Social workers and Voluntary organizations

Section 67 - Protection of action taken in good faith

B. Model Rules

Rule 2(h) - 'Individual Care Plan' define

Rule 15(3) - All final order of the Board shall include individual care plan

Rule 17 - Release of Juvenile.

Rule 32 - Rehabilitation and Social Reintegration

Rule 33 - Adoption

Rule 34 - Foster Care

Rule 35 - Criteria for selection of Families for Foster Care

Rule 36 - Pre-adoption Foster Care

Rule 37 - Sponsorship

Rule 38 - After Care Organization

Rule 39 - Linkages and Co-ordination

Rule 69 - Recognition of Fit Person and Fit Institution

Rule 70 - Certification/recognition of Voluntary Organizations and transfer of management of State- run institutions to Voluntary Organizations

Rule 72 - Grants-in-aid

Rule 87 - Duties of Case worker

Form IV - SIR (Social Investigation Report)

Form XXI - Individual Care Plan

FIGURE 5.2: AREAS OF OPERATION FOR AN NGO



5.3.1 Role of NGO in rehabilitating the lives of Children

5.3.1.1 ECHO

ECHO is a Non-government Organization working for the children in difficult circumstances in the city of Bangalore, India. Their main aim is to empower 'juvenile in conflict with law' and 'children in need of care and protection'. ECHO believes that, with proper care, all children can grow into responsible and self-sufficient citizens of our society.

ECHO's Centre for Juvenile Justice stands for juvenile rights and specifically aims at implementing the JJ Act, 2000. This JJ Act, 2000 consolidates the laws relating to children in difficult circumstances by providing care and protection. Some of the unique programs include:

- a) **TPAP (Traffic Police Assistant Program):** This program, initiated by ECHO in cooperation with the Dept. of Police, aims at metamorphosing juvenile delinquents and neglected children into responsible members of society. ECHO has trained more than 375 TPA's since the launch of the program in 2002. Children in the age group of 16 to 20 years are given intensive orientation and training in traffic rules and regulations, basic information of the city, first aid and community dynamics.
- b) **Child to Child Program:** A program of the children, by the children and for the children is a novel concept developed by Traffic Police Assistant of ECHO centre for Juvenile Justice.
- c) **Community service under JJ Act, 2000:** These juveniles are doing their dedicated community service in HIV/AIDS Hospital, Leprosy Hospital, Old Age Home, Child Care Rehabilitation Center and NIMHANS Hospital. Presently 15 (Fifteen) juveniles are doing community service in the above mentioned places.

5.3.1.2 RELIEF FOUNDATION

Relief Foundation is based in Chennai, Tamil Nadu, India. In order to prevent exploitation of children, the Relief Foundation was founded by members of Su Datta Adoptive Families Association in September 1998. In its early years, the organization provided counseling and direct support for children in Transit and Juvenile Homes.

- a) **CASCADE (Creating Alternative Systems for Children Aiding Development Experientially):** It is a resource centre at Relief Foundation. It houses a library, computer centre and lab facilities. The library has a fiction section for children of ages 3 to 15 years; a non-fiction and a teacher/parent resources section. The resource centre maybe utilized by schools and registered members. Relief Foundation conducts pre-service and in-service teacher education courses. The focus of these is to establish respect for the child, creativity in the classroom and a professional attitude in educators. These programs are rigorous, emphasizing the development of reflection and critical thinking in educators.

5.3.1.3 PRAYAS

Prayas, a registered National level Voluntary Organization (NGO) which started functioning in 1988 in collaboration with the Delhi Police, Delhi School of Social Work (University of Delhi), erstwhile Shramik Vidyapeeth, now Jan Shikshan Sansthan (under the Ministry of Human Resource Development, Government of India) was later joined by various governmental, bilateral and international agencies, corporate and non-governmental organizations. Prayas is working for empowerment of marginalized population in 8 States/UTs

of India. The Organization pursues a holistic, participative and partnership approach to contribute to socio-economic transformation of the marginalized groups.

Prayas, today undertakes various programs and functions through 231 community-based centers, with an outreach of 50,000 beneficiaries, marginalized children and over 10,000 youth and women addressing the multiple issues and programs relating to Child Protection and Juvenile Justice, Trafficking of Children and Women, Vocational and life skills training, empowering women through Self-Help Groups and Income Generation Programs, promotion of Entrepreneurship, facilitating credit through bank linkages and also direct micro finance operations. It deals with both categories of children i.e. 'Child in Need of Care and Protection' and 'Juvenile in Conflict with Law'. Prayas has also socially rehabilitated more than 5500 victims of commercial sexual exploitation through its various empowerment programs.

It has major networking and linkages with Special Juvenile Police Units, CWC, JJB, Delhi Child Labour cum Welfare Society, Nodal agency in Sarva Siksha Abhiyan in two states.

With its 23 years of experimentation and successful interventions, Prayas has evolved a four level program strategy. It comprises:

- Rescuing children in situations of exploitation, abuse and hazardous labour and providing rehabilitative services.
- Providing vocational training and livelihood opportunities to adolescents between the ages of 14-20 yrs and, thereby, laying the foundation to prevent the cropping up of yet another generation of child labour (when these trainees become adults and bring up their own families)
- Providing livelihood and economic empowerment opportunities to the families of child labour for effective rehabilitation.
- Developing child labour, trafficking, homeless/destitute programs coupled with the monitoring system and various measures aimed at curbing / eliminating child labour and related maladies.

5.3.1.4 DON BOSCO

Shelter Don Bosco is a Non Governmental Organization working with the Roofless and Rootless 'Street Children' of the city of Mumbai since 1987. Initiated by the Salesian Society in the Province of Mumbai, Shelter Don Bosco is a part of the Don Bosco family of institutions that work with and for youth, especially the emarginated ones. Its aims and objectives include reaching out to the unreached, empowering them by imparting education, skill training and holistic personality development programs, integrating into the larger society and settling down with dignity and independence and protecting and promoting the Rights of Children.

There are some other excellent organizations for children across the country whose contributions are most significant from the point of view of child care, protection and rehabilitation. These organizations have worked with the government and independently while running multiple institutional and non-institutional services under the framework of the law. A major part of child-care activities in the country having been run by the private charities and this country having the tradition of such services, the various government agencies, including the police, have been dependent on them.

The national framework of law in respect of the neglected children, now described as 'the children in need of care and protection' under the JJ Act 2000/ 2006, has now created elaborate mechanism for the basic standards and systems of managing the voluntary organizations for the entire country. This, however, does not take away the value of the work so far done, or now being done innovatively, by the voluntary and charitable organizations which are becoming the part of the national, state, district and local level child care and protection, juvenile justice and child rights programs. They are required to be broadly managed within the provisions of the JJ Act and Rules, and now, they need to be dove-tailed under the national level umbrella

Integrated Child Protection Scheme (ICPS). While we integrate the various agencies of the Indian Police with the child protection systems in different parts of the country, these organizations will have to be taken as partners in multiple activities wherein the civil society participation is necessary.

5.4 ROLE OF MEDIA

5.4.1 Coverage of Children issues:

There is a general feeling amongst the people that Media has tremendous impact on their thinking in promoting ethical values and also influencing the behavior on children/juveniles. The technological advancement has led to upgrading of skills and knowledge of adults as well as of the children. However, media and the use of Information technology are viewed critically when we talk of the violence, vulgarity and adoption of western culture which are being made available through various media, including newspapers, cinema, foreign television channels and internet etc.

This is where the police needs to play the role of a watchdog in monitoring the impact of media.

Box No. 5.3 Connection between Cinema and Crime

One of such examples, as reported in the Hindustan Times (17th January 1995, New Delhi), a teenager along with his conspiring classmate was arrested by the police for faking his own abduction and demanding a ransom of Rs 20 lakh from his parents. They were inspired by a Hindi film Khiladi, which dealt on a similar theme. Some researchers have shown that movie watching is one of the main activities of the present day youth. Viewing violent films in the privacy of their home seems to have grown into an addiction. One out of every five boys, admitted to aggressive behavior as a result of watching such films. Almost all of them said that they felt restless if they were unable to watch violent movies for at least an hour every day on most days of a week. However, it is not suggestive that those with such aggressive behavior became criminal.

Though, television is very good source of learning, it has changed the lifestyles, attitudes and opinions for generations, as it is easily accessible to all people including the children. There is a lot for everybody, including the children to acquire knowledge about different parts of the world, improve vocabulary through television and internet facilities by way of contests, quizzes, competitions, reality shows and news. At the same time, it has negative effects also on their psyche, values and overall development. Instances of children imitating violent acts from television serials, picking up of foul language, creating artificial demands in poor homes, creating barriers in interpersonal relationship and even behaviour problems due to television are now not rare.

The JJ Act, 2000 also enlists two provisions that act as a guiding principle namely:

Sec. 21: Prohibition of publication of name, etc., of juvenile involved in any proceeding under the JJ Act, 2000. - (1) No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile nor shall any picture of any such juvenile be published.

Rule 18 of Model Rules: (1) In the event of violation of provisions laid down under section 21 of the JJ Act, 2000-

- (a) the Board shall take cognizance of such violation by print or electronic media and shall initiate necessary inquiry and pass appropriate orders as per provisions contained in sub-section (2) of section 21 of the JJ Act, 2000; and

(b) Where the National or the State Commission for Protection of Child Rights takes *suo motu* cognizance of violation under section 21 of the JJ Act, 2000, it shall inform the District or the State Child Protection Unit of the concerned District and the State directing them to initiate necessary action through the Board. It becomes the duty of police to ensure that it does not happen.

Media can play an important role in highlighting the issues relating to the children in the newspapers.

- Media can create awareness on Rights of the child, Judicial rules regarding the protection of their Rights and rehabilitation, policy and planning of the Government etc. The media can also help the community in the implementation of rehabilitation strategy for the children coming in conflict with law.
- Reporting cases of Child Abuse and exploitation.
- Coordination with NGOs, Police and Civil Society members in promoting the Child Rights in the State.
- Limitation to be drawn on the Role of media while giving details of the child in a particular incident.
- Accountability.
- Bringing out illegal/black listed NGOs to the public.
- Highlighting best practices of NGOs working in the field of Child Rights.
- Creating awareness on functioning of various child care agencies.

5.4.2 Responsive and Responsible Media for Children/Juveniles

A look at the world media landscape for children and youth immediately presents two opposing themes: opportunities and risks.

For example, Globalization of Media brings opportunities to broaden children’s outlooks and provide more equal access to information, but it also threatens cultural identification and values.

Technological advances bring the promise of new skills and greater youth participation in society, but also increase the risk of child exploitation and informational divides.

A more effective use of the vast positive potential of Mass Media and new technologies to advocate for, and enrich the lives of, children and young people worldwide is needed.

The prominence of television in young people’s daily lives makes it one of their major information sources about the world around them.

In industrialized countries, there have been recent outcries over rising levels of aggression, obscenity, substance abuse, eating disorders and unsafe sexual behavior among youth, increasingly attributed to commercial media aimed at children and youth. In developing countries, where resources limit domestic productions, a majority of programs for children and youth are imported. Unfortunately, much of the content contains characters and messages that, at best, are simply not relevant to local cultures, and at worst convey violent images and mass marketing messages.



Picture 4: Prominence of Television in young people’s daily lives

Another instrument of Information technology is computer, which has become a necessity of our life. It is more interactive and has unlimited positive and negative effects. Computer has opened new world of rich learning experiences to children through internet, also referred to as “infotainment”. Young people use the internet primarily for communication (email and chat

rooms); downloading (computer games, software and music); and obtaining information (about education, entertainment, sports, “taboo” topics not addressed by adults, and news that may be censored for political motives). There is a lot of useful content on the internet, but parental guidance and involvement are essential to help children towards the safe and useful sites and away from potential troubles.

Clear ground rules should be established for the Internet use for children by parents. Studies indicate that the impact of television/media violence could be manifold.

5.4.3 IT Act Ramifications on Children and use of technology

Section 67B

Offences

Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc in electronic form, whoever;

- a) Publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct, or
- b) Creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner, or
- c) Cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or
- d) A manner that may offend a reasonable adult on the complete or
- e) Facilitates abusing children online or
- f) Records in any electronic form own abuse or that of others pertaining to sexually explicit act with children,

Shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with a fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.

Provided that the provisions of Section 67, Section 67A and this Section does not extend to any book, pamphlet, paper, writing, drawing, painting, representation or figure in electronic form-

- i) The publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or,
- ii) This is kept or used for bonafide, heritage or religious purposes.

Explanation; For the purpose of this Section, “Children” means a person who has not completed the age of 18 years.

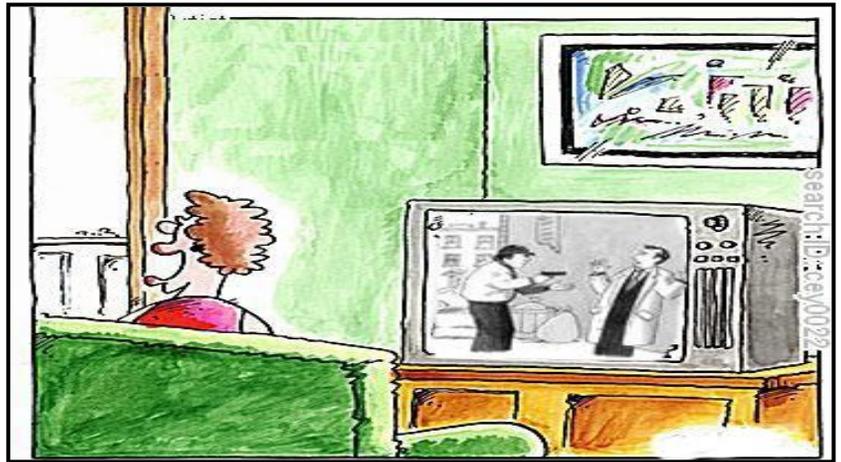
5.4.4 Adverse Effects of Media on Children

As media options for most children have grown in recent decades, so too have concerns about the quality of media aimed at children. Growing numbers of Parents, Educators, Researchers and Policy-makers around the world are alarmed about the lack of quality media for children and young people and the growing availability of low-quality entertainment featuring violence, sexual content, undesirable role models and lack of diversity. There are also serious questions about the short- and long-term effects of the material.

Picture No: 5 Adverse effects of Mass Media on Children and Young People

Mass media has the following adverse effects on children and young people:

- Growing influence of entertainment media on youth style and identity.
- Decreasing role of traditional sources of influence: family, school, community, religion.
- Appeal of individualism and personal, as opposed to collective or societal achievement.
- Some confusion in values (misguided sense of right and wrong, of human relations).
- An increasingly blurred line between advertisements and program content.
- Distortion of reality and rising expectation gaps.
- Newfound culture of “glamour” and “celebrity”.
- Creation of harmful or unrealistic stereotypes; a promotion of intolerance or apathy.
- Emphasis on the banal and trivial; de-emphasis on education, creativity and culture.
- Tendency for young people to think less for themselves and to follow media-set agendas.
- Getting involved in anti-social activities.



One of the largest problems regarding Media Rights for youth is lack of coverage of children and young people in the news. Whatever little coverage there is, it portrays youth in the context of sensational issues, e.g., child abuse, exploitation and violence, with little respect for the dignity and privacy of the children and scant opportunity for young people to speak for themselves. Young people around the world feel excluded by the media when they are portrayed simplistically as superficial, apathetic, poverty stricken or delinquent. They feel to be a part of the larger context of media, where they have opportunity to participate.

5.4.5 Advocacy through Media

There is a need for a broad range of Governmental and Non-governmental initiatives and activities to realize Children’s Rights through the media. Guidelines have to be written on how to report on children’s issues as well as how to ensure effective youth participation in media. Broadcasters and advertisers have to adopt voluntary codes to ensure that inappropriate material isn’t aired during hours when young people watch or listen. Numerous Media consumer and watchdog groups should hold the media to account when they do not live up to minimum standards and their social responsibilities toward the public, including children. These efforts must continue to harness the enormous positive potential of the increasingly powerful Global Media, to make a real difference in children’s lives around the world by informing them, listening to them and ultimately empowering them.

5.5 ROLE OF POLICE IN REINTEGRATION OF CHILDREN/JUVENILES

Prevention of crime is one of the basic duties of police and there is no other better way of preventing the crime than preventing neglected and truant juveniles from becoming hardened criminals. In ancient days, the police was regarded as an agency of the State to suppress those who were against it. But with the passage of time, the role of the State and the police has undergone a sea-change. After Independence, India became a welfare State and various basic Rights were embodied in the Constitution for the protection of Human Rights

and Development of citizens, including the Children. The role of Police has also changed. Being, the primary agency to control the crime, they have been assigned the responsibilities of enforcing various Social legislations, including the Juvenile Justice Act. The police have to protect the society not only from the adult criminals but also from juvenile offenders. The role of police can be seen in the three stages:

- i) At the pre-delinquency stage, ii) with delinquent children. iii) The rehabilitation of released juvenile.

5.5.1 at the Pre-delinquency Stage

- (i) Identifying geographical areas that are breeding grounds of delinquency;
- (ii) Patrolling areas susceptible to delinquencies;
- (iii) Identifying young persons in moral danger;
- (iv) Reclaiming 'stray' and 'runaway' children with a view to restore them to their guardians or the institutions, as the case may be;
- (v) Communicating civic sense, traffic sense etc. to juveniles through lectures, advocacy campaigns.
- (vi) Bringing undesirable company, petty acts of delinquency etc. to the notice of parents in time. The parents may also be advised to consult child guidance clinics or a psychologist in special cases;
- (vii) Organizing police recreational programs like boys clubs, sports clubs, youth camps, Bal Melas, Excursions tour etc.;
- (viii) Dealing with all cases of juveniles who are uncontrollable, destitute, neglected, victimized, exploited etc.

5.5.2 With Delinquent Children-

- (i) Implementation of laws relating to children;
- (ii) Spotting and identification from the gangs of kidnapers;
- (iii) Friendly warning and advice to juvenile delinquents, instead of prosecution for small acts of delinquencies;
- (iv) Investigation of cases of juvenile offenders with special emphasis on need to:
 - conduct investigation into psycho-social and family background of the juvenile delinquent;
 - take the help in this regard of child guidance clinics, social care workers, probation officers etc.;
 - place such background material before the juvenile court or other relevant child care bodies;
 - utilize special methods of handling juvenile offenders after detention;
 - Adopt sympathetic and humane techniques of interviewing juvenile offenders; and use of liberal bail provisions.

5.5.3 In the Rehabilitation of Released Juvenile

- (i) Helping and giving all possible assistance in the rehabilitation of released juveniles;
- (ii) Maintaining benevolent and obstructive supervision over the released juvenile offenders in co-operation with probation officers; and
- (iii) Affording protection to released juveniles, especially juvenile probationers, against threats and victimization by their erstwhile associates in crime;
- (iv) Making follow up visits after restoration;
- (v) Protect the juvenile from the hard core criminal on release from Homes;
- (vi) Provide necessary assistance to Non-Governmental Organizations in order to rehabilitate the juveniles;
- (vii) Resource directory of local organization should be created in order to help and ease out the problem of children/juveniles;

Table- 5.1

DO'S AND DON'TS OF INTERVIEW/INTERROGATION

Do's	Don'ts
Treat the Juvenile with consideration.	Don't resort to Vulgarity, Profanity or Obscenity.
Be Friendly like a father or elder brother.	Don't brand the Juvenile lose temper.
Discover the Juvenile's problem if it can be.	Don't lie to gain a Point.
Be patient and positive in attitude.	Don't ask embarrassing questions.
Interview the Juvenile in the presence of the parent.	Don't ask leading or suggestive questions.
Encourage for more talking.	Don't send the juvenile in lock up.
Discuss a Common Interest.	Don't handcuff the child or juvenile.
Identify yourself properly.	The word "juvenile Delinquent" should not be used instead "the Juvenile in Conflict with Law" should be used for those Juveniles who are involved in any offence.
Encourage to tell all the facts.	Expect at the time of apprehension, no police officer should deal with the juvenile while in uniform.
Talk in the language of the Juvenile.	Photograph, address and other particulars of the juvenile (in conflict with law) should not be published in any newspaper or magazine.
Respect the Juvenile's Personality.	The juvenile should not be subjected to physical or mental torture at any stage.
Allow the interviewee to write his story.	No security proceedings (107 to 110 Cr.PC) under Chapter VIII of CrPC shall be instituted against Juvenile.
Explain why the Information is necessary.	No juvenile shall be charged with or tried for any offence together with a person who is not a juvenile.
Express appreciation for settlement of the Case.	Don't ask unnecessary questions from the juvenile.
Help the Juvenile to tell the truth in neglect cases.	Don't humiliate the child in front of other officers.
Conducting Home visits.	Don't use harsh words while dealing with juvenile.
Physical needs of the juvenile like hunger or thirst or the need to go to the toilet should be properly attended.	Don't bully the child during seeking information from him/her.
Lady constable shall be provided in case of dealing with girl child.	Don't question the child as if he or she is a thief or liar.

CRITERIA MAY BE USED WHILE EXERCISING DISCRETION TO RELEASE THE JUVENILE AFTER ADVICE OR ADMONITION

- After thorough investigation of the case, the release to parents/guardians might be a logical disposition;
- When the case study reveals that there is an emotionally healthy atmosphere in the family members and the release of juvenile would not invite high risks;
- Where parents are aware of basic emotional needs of their children and are fulfilling them in a satisfactory way and there are minimum chances for a juvenile to develop a pattern of delinquency.
- When parents are living a happy married life, they would not unconsciously display their hostilities towards each other and on their children;
- Release of juvenile may be logical when the parents are intelligent, emotionally mature, co-operative and willing to accept their responsibility for the behaviour of their child;
- Most offences permit release of juveniles if other factors such as the personality and environmental, were satisfactory. If this is the first or second offence and the investigation reveals positive personality and environmental factors, the release of juvenile can be considered. Thus, the type and nature of offences committed by the juvenile play an important role for release of juveniles by the police. This stands true even in cases of victim of circumstances.
- In-charge of Presentation before the Juvenile Justice Board/Child Welfare Committee-
 1. Study the case thoroughly.
 2. Present the case and suggest the ways with a view to prevent the recurrence of crimes.
 3. Methods of rehabilitation may be suggested.

IMPORTANT INFORMATION

Dealing with girl child

In any case, involving a girl child whether a child is in difficult circumstances or in conflict with law, a woman constable should be provided for. Care should be taken not to embarrass the child/juvenile. If a Girl child (in need of care & protection or in conflict with law) has to be escorted from one place to another, the Police Officer should see that the child is escorted by a female. She should be properly dressed and should travel only during day time, unless she is taken by rail. Arrangements should be made for her stay in an institution. Before taking her from one place to another, it should be ascertained that she would be properly received at the other end.

Handling Juveniles who lie

The attitude of police should convey a combination of courtesy, respect and firm commitment in enforcing the law. No matter what the circumstances, be an active listener to what he or she is saying. If the child/juvenile appears to be making poor excuses, take them seriously and explain why their reasons are not accepted. The police also needs to be very careful about making any innocent, well-meaning jokes which may be taken as an insult by the child/juvenile and lead him/her to disrespect any officer. However, in most cases the policeman should use his/her judgment and experience while dealing with children.

Thus, prevention of juvenile crime can be facilitated by improving the attitudes of the police towards the youth. If law enforcement can generate and instill a positive attitude toward youth, they may be able to reduce the disproportionate amount of juveniles involved in the criminal justice system. While interrogating the juvenile offender, the police must adopt a helpful and humanitarian attitude of sympathy and understanding rather than one of confrontation. A fatherly and friendly tone should be used to create self confidence in them.

5.6 ROLE OF FAMILY

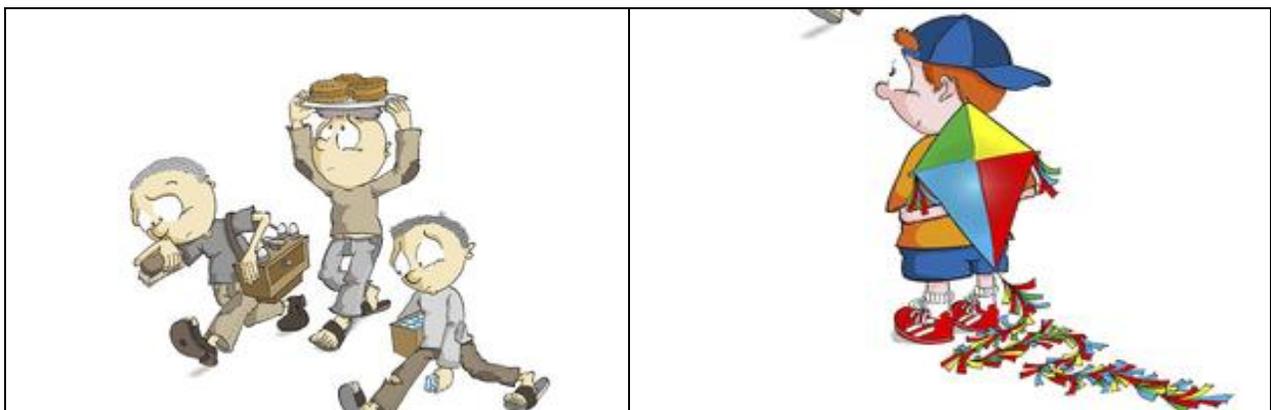
7.5.1 Family Composition and Environment: Family composition and environment play a very critical role in determining the way children are treated. Children living in family environment are less vulnerable to abusive situations vis-à-vis. those living on the streets or with other adults or peers.

Poffenburger (1981) refers to the 'son syndrome', leading to discriminatory attitude and treatment in a household environment. A vast majority of children live with parents or immediate family members- brothers and sisters. More than one-fifths live with others, which included peers, other adults, and strangers. The reasons for living with others can be attributed to the fact that either the parents are not alive or there is a parental discord. Children who are orphans or not living with parents because of other reasons are definitely subjected to some form of psychological trauma, but may manifest in some form of psychological behavior causing harm to the mental growth of the child in the formative years of the child's life.

Thus, the welfare and interests of the child or young person is the first and paramount consideration of the family. The family is the major source of development for children. It provides nurturance, emotional bonding and socialization to the child. An enriching and nurturing family life is essential to development of child's potential personality.

The Convention on Rights of Children envisages a Child's Right to grow in family environment and be cared for by his own parents. When this is not possible, due to compelling circumstances, all appropriate efforts must be made to provide alternative family care. Long term institutionalization should be the last resort for a child without family.

Sometimes, families have found to be at risk-situations; where they have either disintegrated or broken due to economic, cultural, social, emotional or psychological crises. Children of such families are more prone to being subjected to neglect, abuse, and abandonment.



Picture 6 Depicting a child (in the right) free from labour, enjoying his childhood, on the other hand (in the left) children engaged as laborer deprived of education.

All aspects of life of Human Beings - his character, sense of responsibility, good and bad habits, ability to cope with difficulties, and his piety - are shaped primarily during childhood. The bright memories of his childhood can strengthen and warm a man during trying times, and, contrarily, those who have not had a

happy childhood can in no way remake it. When, we meet an orphan, who has never had parental affection, or a step-son or step-daughter whose broken spirits are a result of difficulties at home, or those left to the care of strangers, we can sense in them the imprint of painful impression.

Family behaviors, particularly parental monitoring and disciplining, seem to influence association with deviant peers throughout the adolescent period, among social circumstances, which have a hand in determining the future of the individual. Lack of monitoring is reflected in the parent often not knowing where the child is, whom the child is with, what the child is doing or when the child will be home. Monitoring becomes increasingly important as children move into adolescence and spend less time under the direct supervision of parents or other adults and more time with peers. Communication also plays an important role in how the family functions. Lack of proper communication can also lead to anti-social behavior in children.

Family plays a primary role in:

- a. Foster care.
- b. Making community more aware and sensitive.
- c. Maintaining contact with Anganwadis.
- d. Encouraging youth participation in Children's Homes/Observation Homes.
- e. Networking with local community associations.

5.6 NEED FOR INTER-PARTNERSHIP BETWEEN POLICE, NGO, MEDIA & FAMILY

It is very essential for all the four NGO, Police, Media and Family to work in coordination. Some of the ways, in which coordination can take place, are as follows:

- Co-ordination amongst Police and General Public. Police should play parental role (Sec 11 of the JJ Act, 2000: Control of custodian over Juvenile).
- Separate rooms, Medical facilities, food, should be provided to Juvenile in the police station.
- Parent meetings, free legal aid & counseling facilities must be provided to the juvenile through NGO's at Police Station.
- Police plays an important role in repatriation and restoration to family in their respective native states.
- Co-ordination by police with resident commissioner of the respective State.
- Co-ordination with interstate police and NGOs to find out the whereabouts of the child/juvenile's family.
- Before handing over the child to the parent police should verify address, identification of parents.
- Police shall maintain a list of approved NGOs functioning in their Jurisdiction and shall monitor the activities of potential traffickers and anti-social elements at railway station streets, red light, bus terminals etc. to prevent child trafficking, illegal adoption, child labour etc.
- The media should play a sensitive role in dealing with cases of rescuing child labour.

A healthy relationship is only conceivable when all the parties share common objectives. Coordination among NGOs, Police, and Media and Civil Society members in promoting the child rights in the State is equally important. In crises situations like illness, death, unemployment and dissatisfaction there are few social support systems resulting in children being affected the most, proper intervention strategy should be adopted to tackle the situation.

If a child is found in distress it is the responsibility of State to meet his immediate needs. Not only Police, Media, Voluntary organizations but families also have to make efforts collectively towards the welfare of these vulnerable children.

Thus, to conclude, though rehabilitation and reintegration of children/juveniles is very important, the role of different stakeholders is equally important to help these children to attain a better life and future. The aim of reintegration and rehabilitation is to help children in restoring their dignity and self-worth and mainstream them through rehabilitation within the family wherever possible or otherwise through alternate care programs and long-term institutional care should be the last resort.

5.7 SUMMARY

- The aim of reintegration and rehabilitation is to help children in restoring their dignity and self-worth and mainstream them through rehabilitation within the family wherever possible or otherwise through alternate care programs and long term care should be the last resort.
- The JJ Act, 2000 and Model Rules also provide for involvement of NGOs in a big way. Their involvement helps in promoting a child centric Juvenile Justice system.
- The role of NGOs remains all throughout the process of a child's journey from production of the child or Juvenile in CWC or JJB to the final rehabilitation.
- Media can play an important role in highlighting the issues relating to the children in the newspapers.
- Clear ground rules should be established by parents for the Internet use for children. Studies indicate that the impact of television/media violence could be manifold.
- There is a need for a broad range of governmental and non-governmental initiatives to realize Children's Rights through the media.
- Guidelines have to be written on how to report on children's issues as well as how to ensure effective youth participation in media.
- Children living in family environment are less vulnerable to abusive situations vis-à-vis, those living on the streets or with other adults or peers.
- The CRC envisages a child's right to grow in family environment and be cared by his own parents when this is not possible, due to compelling circumstances, all appropriate efforts must be made to provide alternative family.

CHAPTER 6

INITIATIVES OF CHILD/JUVENILE POLICE INTERFACE

6.1 INTRODUCTION

This chapter is intended to serve as a guide for the police leaders to set up and improve upon the existing legal and departmental institutions and systems and to help through examples and replicable models for the ground-level officers dealing with the 'Children in Need of Care and Protection' and 'Juveniles in Conflict with Law'. Its purpose is to distill the existing knowledge and experience based on innovative steps taken by the police, both nationally and internationally, involving children and to serve as a resource tool for use by various other police organizations. While carrying out activities related to children, several good initiatives undertaken by many police officials in the various states at National and International level came to light some of which have been documented here.

This chapter is an effort to record and acknowledge the positive actions undertaken by the State police officials in India while dealing with different categories of children and juveniles who come in contact with them on day to day basis.

This chapter will also help the stakeholders to understand the strengths and weaknesses of each system and incorporate some of strong points into their own working systems.

SECTION 1

6.2 INITIATIVES OF INTERNATIONAL POLICE IN DEALING WITH CHILDREN / JUVENILES

6.2.1 PENNSYLVANIA

Pennsylvania's approach to Juvenile Justice combines the strength of State leadership with the flexibility of local control and ownership, creating a system that is widely regarded as a model for the Nation. Besides these structural strengths, other characteristics include a historically rational funding strategy and a commitment to prevention. Most notable, however, is the success of balanced and restorative justice implementation, which changed the path of Juvenile Justice in Pennsylvania beginning with a clear legal mandate a decade ago.

The Policy for the Implementation of Police and Child Abuse Background Checks (the "Background Checks Policy" or the "Policy") is intended to make clear that all priests, deacons, religious, pastoral ministers, administrators, staff and volunteers in the District of Philadelphia who have or will have regular contact with minors in the course of their work are required to undergo police and child abuse background checks. The Policy is also intended to provide clear direction on screening church personnel whose background checks contain reports of enumerated offences.

6.2.2 CANADA

6.2.2.1 Canadian Police Centre for Missing and Exploited Children

The Canadian Police Centre for Missing and Exploited Children is comprised of two distinct yet supportive Centers: the National Child Coordination Exploitation Centre (NCECC) and National Missing Children Services (NMCS). These supportive centers work together to provide investigative assistance to Local, Municipal, Regional, National and International policing partners. The NCECC and NMCS also work together with the Non-government, Government, and Industry partners who are dedicated to assisting youth.

They are committed to reducing the vulnerability and exploitation of children by identifying victimized children; investigating and assisting in the prosecution of offenders; and, strengthening the capacity of municipal, territorial, provincial, federal, and international policing partners through training, education, and investigative support.

6.2.2.2 National Child Exploitation Coordination Centre (NCECC)

The NCECC was established in 2003 as the law enforcement component of Canada's National Strategy to Protect Children from Sexual Exploitation on the Internet. The Centre was created in response to the recognition that the Internet is more frequently used to facilitate sexual exploitation, crimes against children including the exchange of child sexual abuse images and child luring. The NCECC is Canada's contact point for files involving Canadian victims and suspects. The Centre provides a number of services to law enforcement including the ability to respond immediately to a child at risk, the coordination of investigative files, expertise in victim identification techniques, management of multi-jurisdictional cases, operationally relevant research, and training specific to online child sexual exploitation investigations. The NCECC also manages and provides training for the Child Exploitation Tracking System (CETS), an intelligence tool that enhances information sharing among Canadian investigators.

6.2.2.3 National Missing Children Services (NMCS)

National Missing Children Services is a national service created to assist law enforcement agencies in the investigation, location, and return of a missing child to their parent(s) or legal guardian(s). It also provides information and assistance to non-profit agencies and parents with respect to missing children. The mission of NMCS is to prevent child abductions, find missing children and assist parents, law enforcement agencies, and non-governmental organizations dedicated to finding missing children through partnership and collective dedication.

6.2.3 NEW YORK

The Juvenile Aid Division handles all incidents and issues that involve persons who are under the age of sixteen. This includes all criminal incidents with juvenile offenders or victims and also many non-criminal matters that require police intervention. Juvenile investigators are trained to investigate crimes with a particular emphasis on prosecution when indicated and rehabilitation when possible. Youthful offenders are treated with special safeguards and procedures that assess the seriousness of each offense and determine the precise course of action that best suits the offenders and the community.

Some of their initiatives include:

- (i) There exists a **Police Department Child Passenger Safety Program** which enables trained/certified officers to check citizen's personal vehicles for the proper installation and fit of child safety seats.
- (ii) They have established a **'Crime Prevention Unit'** that records and recognizes crimes taking place in hands of juveniles and build mechanisms to deal effectively with it. The mission being to increase community awareness and to educate the public on how to report and prevent crime and how to protect their property. This Unit continues to promote safety and crime prevention with special reference to juveniles.

6.2.4 NEW JERSEY

The Juvenile Aid Bureau handles all incidents and issues that involve persons who are under the age of eighteen and un-emancipated. This includes all criminal incidents with juvenile offenders or victims, and also many non-criminal matters that require police intervention. Child Advocacy is also handled through the Juvenile Aid Bureau, and detectives assigned are trained to interact with agencies such as the New Jersey Division of Youth and Family Services (DYFS) and the Essex County Prosecutor's Juvenile Justice Unit.

Juvenile detectives are trained to investigate crimes with a particular emphasis on prosecution when indicated and rehabilitation when possible. Youthful offenders are treated with special safeguards and procedures that assess the seriousness of each offence and determine the precise course of action that best suits the offenders and the community.

Juvenile Aid detectives focus their work on duties such as:

6.2.4.1 Criminal Investigations involving juveniles

These crimes require all of the same skills as those involving adults, with the added burdens of safeguarding the juveniles within the laws pertaining to them. Juvenile incidents have a far greater expectation of privacy and anonymity under New Jersey Law, and these Rights are scrupulously protected at all times. Young offenders, especially first-time offenders, require extensive oversight and protection to divert them from future recidivism. Youthful victims need clear and visible support from law enforcement, especially if issues exist concerning their immediate family and guardianship. The Procedures and Courts related to Juvenile Justice are separate and distinct from adult venues, and juvenile detectives must be completely acquainted with these to effectively perform their duties.

6.2.4.2 Child Abuse

All incidents involving allegations of abuse toward children are investigated fully and completely. DYFS and the Prosecutor's Office are involved in all such cases, and specialized methods of investigation are employed as prescribed by law. The well-being of each child is the paramount concern of investigators.

6.2.4.3 Juvenile Conference Committee

Juvenile offences that would not meet the criteria of serious crimes if committed by an adult are handled within the municipality where the juvenile offenders reside. Therefore, the South Orange Police Department oversees all minor offences committed by South Orange residents regardless of where the violation occurs. The State of New Jersey created the function of the Juvenile Conference Committee so that each community may appoint qualified members to hear such matters and resolve them locally. Juvenile Committee members are selected by the Chief of Police and his designated juvenile officers based upon their various credentials and expertise, and the committee meets several times annually as needed.

6.2.4.4 Stationhouse Adjustment Program

This program was developed recently by the Attorney General's Office to encourage all Police agencies to divert juvenile offenders with minor infractions from the Justice System. Stationhouse adjustments are made when investigating police determine that a juvenile has been involved in a minor incident and have little or no prior history of delinquent behavior. Juvenile detectives review all such cases and attempt to resolve them through means other than the signing of complaints of juvenile delinquency. Methods involve the use of community service, assignment of restitution, referral to qualified counseling or youth associations and direct interaction between detectives and the juveniles. Records and Reports are kept internally and forwarded to the Prosecutor's Office as prescribed by the Attorney General's guideline.

6.2.4.5 School Resource Officer

A trained, certified juvenile detective is assigned full-time to South Orange Middle School as a police liaison and youth specialist for daily interaction with students, faculty and staff. This program places the Juvenile Aid Bureau in direct contact with school children at a critical age, and is designed to address issues and intervene positively at the earliest stages of potential conflict. The officer also creates and promotes a positive image of law enforcement that aspires to attain optimal acceptance and cooperation with the community's younger member.

6.2.5 SWEDEN

In Sweden, the responsibility for handling children and juveniles is shared by Social Authorities and the Judicial System. In Swedish language, there is no equivalent concept for 'Juvenile Delinquent'. Instead they speak of juvenile criminality. This system does not formally recognize status offences. Such behaviors are dealt with through Social Welfare measures. All juvenile crime falls under the Swedish Penal Code of 1990. By Law, the juveniles receive special consideration when found committing a crime. Social authorities, rather than police handle children under the age of 15 years. Over 80% of all juvenile crimes are not prosecuted but dealt with informally, such as by cautioning. Nearly 50% are resolved through the use of fines without a trial procedure being used. Less than 10% of juveniles are placed on probation. Thus, it's the most treatment-oriented model.

6.2.6 UNITED KINGDOM

The English Criminal Justice System response to youth crime has undergone significant changes in recent years, with the development of multi-agency Youth Offending Teams, and a Policy shift towards preventing youth crime as the primary purpose of professional intervention with young offenders. These developments have led to a twin-track approach, with a focus upon early identification and intervention with young people at risk, and intensive intervention with persistent young offenders who commit a disproportionate amount of youth crime. All of these policy developments encourage a more holistic approach in dealing with young offenders. Rather than considering the individual and their behavior in isolation from other factors, this approach appreciates that critical elements of an individual's relationships and social environment interact with individual qualities to make one more susceptible to involvement in offending.

There have been many UK crime prevention initiatives in recent years (Welsh & Farrington, 2004), following the establishment of the Home Office Crime Reduction Programme. Yet, most of the initiatives were secondary and situational (e.g. focusing on burglary reduction through target hardening) or based on the tertiary level (probation/prison oriented). [Early intervention approaches, such as the on Track programme (see Inventory) which was launched in 1999, provided services for children aged 4-12 years who were identified as at risk of being involved in crime in highly deprived communities are based on the secondary level]. As Welsh and Farrington (Ibid) conclude, nationally and locally, there is no agency whose primary mandate is the prevention of crime. Worthwhile intervention programmes implemented by Youth Offending Teams are targeted on detected offenders. Hence, the responsible agency in those European States who (still) follow a Welfare Approach – such as the Ministry for Youth and Family (e.g. in Germany and Austria) – and which concentrates on early prevention by following a public health approach is missing. Specific (secondary) community based prevention work is nearly exclusively targeted on children at risk and includes mostly leisure activities, mentoring or educational training (e.g. Gray & Seddon, 2005, see Inventory).

Nevertheless, the Youth Justice Board (YJB), which is the body responsible for dealing with young offenders in England, has developed a focus on prevention. Its prevention efforts include various programmes to include young people in sports and other diversionary activities. Work is targeted on young people who are considered likely to offend through the work of Youth Inclusion Programmes (YIPs, for 13-16 year olds) and Youth Inclusion and Support Panels (YISPs, for 8-13 year olds). Others, including the NGO- NACRO, have criticized the involvement of Criminal Justice agencies, such as the Youth Offending Teams, in work (e.g. YISPs) with young children, pointing to the dangers of labeling that this entails.

In all this System, the police play a very important role. Some of the noteworthy initiatives include:

6.2.6.1 Child Exploitation and Online Protection Centre

The Child Exploitation and Online Protection (CEOP) Centre is part of UK police and is dedicated to protecting children from sexual abuse wherever they may be. The CEOP Centre is dedicated to eradicating the

sexual abuse of children. At the CEOP Centre, a dedicated unit has been set up to provide a specialist, child-focused and protective approach to tackle child trafficking.

Working alongside law enforcement partners, the UK Human Trafficking Centre, the Serious Organized Crime Agency, the UK Border Agency, Specialist Charities and NGOs, the CEOP Child Trafficking Unit provides a focal point for the production and dissemination of knowledge, information and understanding on the nature and scale of the trafficking of children in the UK, along with Policy, guidance and training on the best responses to the problems identified.

6.2.7 GERMANY

In Germany, the prevention of juvenile crime is largely concentrated on serious and intensive offenders (DJI, 2002). Primary prevention – as well as scientific evaluations - is still underdeveloped and largely limited to the traditional (and decreasing) welfare state-based social interventions and youth work. Crime prevention in general is still largely coordinated and initiated by the police on a secondary and tertiary level (Kahl & Seitz, 2005), but increasingly, the municipalities take – in the framework of “Kommunale Criminal prevention” - responsibility for creating and implementing multi-agency based crime prevention projects, mostly on the secondary level (van den Brink, 2005) which despite proclaiming a “ multi-cultural society” nevertheless increased the social gap and did not prevent social exclusion and estrangement.

Wolke et al. (2001) reviewed several police-based projects throughout Germany and concluded that the focus is either put on the acceleration of the procedure, concrete agreements between the police and the Judiciary, namely, the youth attorney and the youth judge, or the accumulation of all agencies and services involved in the juridical procedure at one setting (see Inventory “Haus des Jugendrechts”). Other police authorities also try to intensify the collaboration with social services, schools or the youth help centres. Also, improved recording and accessibility of data is seen as an important tool to develop targeted interventions (see Inventory project “Gefahrdungsansprache”). Another focus is on primary prevention within schools (Wagner, Christ, & Lemmer, 2005).

6.2.8 AUSTRALIAN MODEL

The Australian Federal Police (AFP) is a progressive and multi-faceted law enforcement organization, taking a strong lead in the fight against 21st century crime.

6.2.8.1 Child Protection Operations

The AFP has a significant role to play in ensuring children and young people are safe, no matter what environment they are in. In fulfilling this role, the AFP has forged strong partnerships with all Australian law enforcement agencies as well as many International Agencies. In addition to community activities conducted by ACT Policing, the AFP is involved in many crime prevention and awareness raising initiatives, particularly in relation to keeping young people safe online. The AFP, through its High Tech Crime Operations unit, is responsible for the investigation of crimes associated with Online Child Sex Exploitation and Child Sex Tourism. The AFP is also a member of the Virtual Global Taskforce, an alliance made up of law enforcement agencies around the world who are working together to fight online Child Abuse.

6.2.9 VIRTUAL GLOBAL TASKFORCE –A Collaborative Initiative to fight Child Abuse on line

The VGT is made up of the **Australian Federal Police**, the **Child Exploitation and Online Protection Centre** in the UK, the **Italian Postal and Communication Police Service**, the **Royal Canadian Mounted Police**, the **US Department of Homeland Security**, **Interpol**, the **Ministry of Interior for the United Arab Emirates** and **New Zealand Police** to fight Child Abuse online.

The aim of the VGT is to build an effective, international partnership of law enforcement agencies that helps to protect children from online child abuse.

The Objectives of the VGT are:

- (ii) To make the Internet a safer place;
- (iii) To identify, locate and help children at risk; and
- (iv) To hold perpetrators appropriately to account

6.2.9.1 Operation PIN

Operation PIN involves the creation of a website that purports to contain images of child abuse but which, in fact, is a law enforcement site. Anyone who enters the site and who attempts to download images is confronted with an on-line law enforcement presence. The individual is informed that he has entered a Law Enforcement Website, has committed an offence and that his details may have been captured and passed to the relevant national authorities.

SECTION 2

6.3 SOME BEST PRACTICES OF THE INDIAN POLICE IN DEALING WITH CHILDREN/JUVENILES

6.3.1 ANDHRA PRADESH

In Andhra Pradesh, the Integrated Anti Human Trafficking Unit was established to prevent and combat human trafficking. The unit is constituted of a group of trained sensitive officials and NGOs who are the first responders. They function as a coherent unit. The IAHTU has been provided with 1 vehicle, 1 computer system, 3 cell phones and grants for important activities like honorariums to NGOs as well as funds for post-rescue, care and attention of victims of trafficking by UNODC. The IAHTU is mandated to attend to all 3 major aspects of anti trafficking, viz, prevention, protection and prosecution. In addition, it will also develop database on traffickers, network with all agencies and link up with media, as and when required. Essentially, IAHTU is a field functional unit to address human trafficking in a holistic manner.

6.3.2 RAJASTHAN

Rajasthan Police initiated several measures to make the police more pro-active and responsive to the needs of the community. The objective is enshrined in the motto which stated – *faith among the public and fear amongst the law breakers*. Several initiatives taken by them include:

6.3.2.1 Outreach Programme

A *Jansahbhagita (partnership with public)* campaign was started in Dec 2004 to win public confidence through better response mechanism, improved service delivery, better flow of criminal intelligence and providing solution to local problems on the spot. This envisaged the SHO visiting the villages/wards after prior information and listening to their complaints and thereafter taking steps to solve such problems. This programme has built up trust, has resulted in better police – public cooperation and has now been incorporated as a regular feature of police working.

6.3.2.2 Women & Child Counseling Centers

Women and Child Counselling Centers have been set up in all Districts and in a number of Sub Divisional Headquarters in the State. Some of these centers are managed by trained personnel of NGOs while others are run by Social workers, teachers etc. Complaints brought by women, children including cognizable and non-cognizable ones, are referred to these centers for counseling and amicable settlement.

6.3.2.3 Aastha

Under this Scheme, policemen and Social workers go to different localities, schools and colleges and learn about the problems being faced by them and then make them aware of their rights and privileges. They also inform about the various laws and legal provisions which can be taken recourse in case someone tries to take liberty with them. Young girls, housewives and children are all covered under this Scheme.

6.3.3 MAHARASHTRA

The Special Cell for women & children was established in 1984 as collaboration between Maharashtra State Police and Tata Institute of Social Sciences to provide professional support services to women and children facing violence. In the last two years, the Cell has provided support to countless women, being a social training site for young children, and has shown that a strategic alliance with the police can make a significant impact in women's search for Justice and Child Rights.

6.3.3.1 Juvenile Aid Police Unit (JAPU)

Juvenile Aid Police Unit (JAPU) of Mumbai Police is also known as SOCIAL SERVICE BRANCH. It has three branches viz., the Anti Trafficking Cell, the Social Counselling Cell, Copy Right Violation and the Anti-Gambling Cell.

i) Anti-trafficking Cell

This branch initiates action under the PITA Act on organized prostitution rackets carried out in hotels, guest houses and beauty parlors.

ii) Social Counselling Cell

This branch deals with problems amongst the married couples by counseling them. Especially domestic violence matters

iii) Copyright Violation & Anti Gambling Cell

This branch deals with Copy Right Acts and piracy of Audio-video cassettes, CDs etc. It also initiates action against illegal lotteries and illegal betting on horse racing, cricket, obscenity & vulgarity.

It has the following Duties:

- Registering the cases under Juvenile Justice Act 1986 (amendment 2000), Child Marriage Prevention Act.
- Investigation of the cases regarding Missing Children.
- Producing the Missing Children before the Suptt. Juvenile Justice Board and sending them to Observation Home for protection. Tracing the parents / relatives of the children and hand over the children to them.
- Maintain the registers of the information regarding the Missing Children.
- Producing Juveniles before the Superintendent. Child Welfare Board and by the order of board keep the children in shelter home and trace the parents / guardians and handover the children to them.
- Help for shelter for a children from destroyed families, shelterless children and newly born babies with the co-ordination of NGO's.
- Give medical aid to needful children and follow the legal procedure for the rehabilitation of such children.
- Preventing child marriages and follow the legal procedure for it.

6.3.4 WEST BENGAL

6.3.4.1 Protection of Women and Children Cell (POWC)

The POWC looks into all crimes against women in addition to crimes against children as prescribed under JJ Act, 2000. It also implements the direction given earlier vide Police Order No 6/05 of PD, Govt. of West Bengal.

The POWC acts as the Anti Trafficking Cell for the District. It keeps intelligence on the traffickers and coordinates raid and rescue operations with the help of local Police Station and authorized NGOs.

The POWC operates as a Nodal Agency for crime against Women and Children in the State and coordinates with West Bengal Commission for Women, West Bengal Human Rights Commission and other agencies.

The Kolkata Police has adopted a **Child Protection Card**, jointly issued by the Police and an NGO acting as guarantor for the child. The card can be issued for any child of Kolkata, but is particularly useful to children who live on streets, stations, markets with inadequate family support. Over the past four years, the City Level Program for Action has coordinated with Kolkata Police in conducting training courses for Police officers with the aim of sensitising them to the Rights and Needs of deprived children and juvenile offenders, and link them with social and protection services. The Police also impart self-defence training to vulnerable children. Today, each Police station co-ordinates with a set of NGOs operating in its area of Jurisdiction and hosts health services every Sunday morning. Today, as many as 42 police stations in the city are involved in activities aimed to protect children at risk.

6.3.5 CHANDIGARH

6.3.5.1 Women and Child Support Unit

Women and Children are amongst the most vulnerable sections in any social order. A large number of them face violence at the hands of the strangers, family members and others known to them. Such abuse may take place even at homes and work places. **Women and Child Support Unit has been established** to provide support to women and children who are vulnerable and victim of such abuse. For this purpose, a round the clock 'Women Helpline' had been set up at the Police Control Room (PCR) at Chandigarh Police Headquarter. In order to streamline its functioning, this facility has been shifted to the Woman & Child Support Unit. Its scope was further expanded and is re-designated as 'WOMEN AND CHILD HELPLINE'.

It primarily provides:

- Assistance to women/children in distress
- Coordinate with civil society to provide relief to such victims;
- Ensure protection of legal rights of women and children;
- Act as a Nodal point for pooling resources of police and civil society so as to facilitate relief and rehabilitation of victims approaching the Help line; and
- Sensitize police personnel and others about the need for special care of two important constituents of our society (women and children), related agencies and formulate necessary interventions strategies.
- 'Woman & Child Helpline' also creates awareness among the masses in general and women and children in particular by:
 - Slide shows in Cinema Houses;
 - Periodic meeting/workshops and Seminars involving NGOs;
 - Through the field staff of the Chandigarh Police;
 - Through Internet at the Web page of Chandigarh Police www.chandigarhpolice.nic.in

6.3.6 KARNATAKA

The Gender Sensitization and People-friendly Police Project was mooted to the Karnataka Police by UNICEF in 2001, as an opportunity to enhance the attitudes, skills and knowledge of police station level personnel, particularly in their treatment of women and children. Ten police stations have entered into partnership with local women's and children's organizations (APSA, BOSCO, CISRS, ECHO, Kaveripuram Mahila Sangha, Mahila Dakshata Samiti and Paraspara) in order to create a support system for women and children in distress.

6.3.6.1 The Anti Trafficking Cell

Considering the need to address Human Trafficking in TN, an Anti Vice Squad (AVC) was established in the CID during the year 2002. The GO declared AVC a police station with Jurisdiction all over the state to curb the menace of trafficking in women and children in an organized manner within the State and also Inter-state. It was also declared that AVC would also be instrumental in identifying organized rackets that are responsible for running the State/ Interstate trafficking network.

6.3.7 DELHI

With the purpose of upholding the law fairly and firmly and to prevent crime; to pursue and bring to justice those who break the Law; to keep peace in partnership with the Community, to protect, help and reassure the people; and to be seen to do all this with integrity, common sense and sound judgment, the Delhi Police has come up with several initiatives. They included different aspects of Community Policing that concerned prevention of crimes and maintenance of law and order, regulations and traffic management etc., but the most talked-about projects relating to Delhi Police which have sustained and rendered valuable services are Prayas, Navjyoti and Pratidhi. Prayas Juvenile Aid Society, that was set up in 1988 to take care of the missing and found and street children, has developed into a national level organization running over 200 Centres for education and vocational Training. Juvenile, children and shelter homes besides thematic projects on child trafficking, child labour, disaster-related projects, economic empowerment programs etc. Similarly, under the direct patronage of Delhi police, Navjyoti has worked seriously for drug rehabilitation and Pratidhi for the victims of crimes.

As an organization and purely in connection with the legal and practical requirements of policing, Delhi police took first initiative in the country to set up Crime Against women (CAW)Cell at the level of the entire force initially, which got extended to become the District level Crime Against Women Cells serving thousands of women every year, both at the level of police stations and districts and at the central level CAW Cell that also supervised the complaints, cases and functioning of the entire Delhi Police. Except the Juvenile Aid Centre that got associated with Missing Persons Squad of the Crime Branch and there was no Unit in Delhi Police for the Children, hence the CAW cell started functioning, to supervise this activity. Now, recently, the CAW Cell got renamed to become the 'Women and Child Unit of Delhi police giving better identity to the activities relating to the Juveniles and Children in need of care and protection and in difficult circumstances, coupled with the Units like Crisis Intervention Centres(CIC) which operate in all districts of Delhi under the Women and Child Unit, supervised by a joint Commissioner of Police. The Delhi Police-NGO partnership has created a unique model in this field of policing.

In compliance with the JJ Act, 2000, 11 Special Juvenile Police Units (SJPU) have been set up in 11 Districts of Delhi which work in collaboration with the NGOs. In the absence of Social workers who are yet to be appointed by the State Govt., the SJPU have sought assistance from Voluntary Organizations/NGOs working in the field of Child Rights. These NGOs have been proactively working at the District as well as police station level in educating the police personnel about the law relating to juveniles as well as the need of sensitivity in handling children in difficult situations.

In its recent observations on non-availability of Social Workers with the SJPUs, the High Court's Committees on Juvenile issues has suggested that the assistance from the civil society be taken. The efforts are now on to associate the pro-active members of the society, be it from the RWAs, Voluntary agencies, who are willing to work for the cause of children and extend help in identifying Juveniles in Conflict with Law as well as reporting cases of violence against Children, Child Abuse etc.

In a bid to check the increasing incidents of Juvenile crimes and violence, Delhi Police has joined hands with Delhi Commission for Protection of Child Rights and Prayas JAC Society- run Ferozshah Kotla Juvenile Observation Home to conduct an After-Care project 'Yuva-Connect' with about a hundred juveniles. The Delhi Police has also launched a new website to reach out to the net-savvy new generation and make them aware of their Rights and responsibilities. The website www.Navchetan.com is aimed at gathering opinion of children on relevant issues related to them. The Website gives information about legal help that the children and their parents can avail in case of any violation of Child's Right. It also carries short informative movies and documentary films on Child's Rights along with the addresses of police stations in Delhi and phone numbers of respective SHOs. It also provides a forum on which children would be able to express their opinions on important topics relating to them. The website will enable the children to consult online the psychological and legal experts to discuss their problems.

6.3.8 ORISSA

Orissa Police has successfully handled major law and order situations and ensured safety of its citizen and security of public properties. Some of its initiatives include:

The Women Child Help Desk at every police station:

- Lays great stress on Community Forum where the police interacts with the public.
- It conducts meetings with Gram Kalyan Samitis, Village education committees, mother teacher associations, children club, balika mandala etc. under PRIs, ULBs, and District Child Protection Committees (DCPC).
- Disseminates information on Registration of Birth, Migration, and Marriage etc. with the help of DCPC.
- Anti-Trafficking units: District level coordination between State and Civil Society Organization.

6.3.9 HARYANA

With an aim to provide help, security, and protection to its citizens including children and to uphold the Rule of law, prevent crime and maintain law and order, the Haryana Police has come up with certain initiatives.

Community Policing is one of the several initiatives taken up by Haryana Police. It was initiated for the purpose of dealing with crime and providing better services to the community at large including victims of crime children. Under this, Special Cells have been created in each Police District, that is headed by an officer of not below the rank of Inspector. The Superintendent of Police of a District has also constituted a Community Liaison Groups that comprise respectable local residents of the area including the representatives of the weaker sections, children and women with unimpeachable character and antecedents and aptitude for community service to aid and advise the police in its functioning. This has helped in curbing a lot of anti-social activities in the community.

6.3.10 GOA

The Women & Children Protection Unit (WCPU) in Goa was established for the purpose of:

- Monitoring and implementation of JJ Act, 2000 and other laws related to children and women.
- Help in providing support structure to victims of:
 - Rape & Child Sexual Abuse

- Crime against Women & Domestic Violence
 - Child victims of other crimes
 - Children in need of Care and Protection
 - Juveniles in Conflict with Law.
- Facilitate care, protection, rehabilitation & re-integration.
 - Help extending socio-economic, medical & legal aid, counseling services.

Its functions involve monitoring and implementation of Goa Children's Act 2003, and JJ Act, 2000 and other laws relating to Women and Children, providing immediate support, e.g. Shelter and Counselling to marital discords and trauma victims and liaising with Police stations to act as a databank of relevant information/crimes against Women and Children.

6.3.11. RAILWAY PROTECTION FORCE

Children on the platforms undergo multiple forms of abuse, exploitation and torture. Railway Protection Force (RPF) has been actively engaged in the protection of passengers in general and the Vulnerable / Missing children in particular in many parts of the country. In this context, RPF initiated a scheme called RPF Mitra Yojana. This Scheme appropriately highlights the need to establish a mechanism for rescue and follow-up of children either found in the trains or on the platforms.

Objectives of the RPF Mitra Yojana are as under:

- Ensuring a child-friendly outreach programmes at Railway Stations for the new arrivals and reaching out to the vulnerable among the Children.
- Providing rescue, support and early intervention to meet the immediate needs of the railway platform children comprising of health, shelter, emotional support etc.
- Develop a model integrated child protection services with the involvement of recognized NGOs
- Establishing a cadre of support team within and outside RPF, comprising of the TTs, TCs and other working organizations at Railway Stations.
- Follow-up of rescued children who have been restored to their families

6.4 SUMMARY

- This chapter was aimed to help police personnel to understand and replicate good practices model.
- Pennsylvania's approach to Juvenile Justice combines the strength of State leadership with the flexibility of local control and ownership, creating a system that is widely regarded as a model for the Nation.
- The Child Exploitation and Online Protection (CEOP) centre is part of UK police and is dedicated to protecting children from sexual abuse wherever they may be.
- The Virtual Global Taskforce (VGT) is made up of law enforcement agencies from around the world working together to fight child abuse on line.
- Anti Human Trafficking Unit of Andhra Pradesh is an integrated task force to prevent and combat human trafficking.
- The Calcutta Police has adopted a Child Protection Card, jointly issued by the police and an NGO acting as guarantor for child.
- In a bid to check the increasing incidents of Juvenile crime and violence, Delhi police has associated in a project 'Yuva Connect' and also launched a new website to reach out to the net-savvy new generation and make them aware of their rights and responsibilities.
- Railway Protection Force (RPF) has been actively engaged in the protection of passengers in general and the vulnerable/missing children in particular in many parts of country.

CHAPTER 7

INCIDENCE AND MAGNITUDE OF JUVENILE OFFENCES

7.1 INTRODUCTION

The basic idea behind the present chapter is to portray an exact picture with regard to the extent of the problem. Despite the unbridled efforts of the enforcement agencies and other Stakeholders involved in the Juvenile Justice System, the crimes committed by the children and those committed against them are on a rise. A reference to the statistics in this regard reveals a bitterly acute picture as compared to what is apparent.

Before going through the statistics, which is to be found at hand in this chapter, it should be kept in mind that these statistics do not reveal the true scenario, as many of the offences are unreported. However, the official figures will have to be relied upon for the present purposes. For this, the latest data available with the National Crime Records Bureau (NCRB) and other reliable sources viz. the Registrar General of India, Census Report (2001) etc. have been brought in use.

As per the observation which has been brought forth here in this chapter, a comparative study of the data available from the year 2000 till 2007 have been analyzed. Although, for the purpose of depicting a pattern, data from the last five years only would have been sufficient, but due to the change in laws i.e, the repealing of the 1986 Act and the passing of a new Act in place in the year 2000 made us to put figures from 2000 under scrutiny. The change in the incidences of crime, as we compare the years 2000 and 2001, were quite evident.

The latest 'Crime in India -2010' report has been published by the National Crime Records Bureau, parts of which are yet to be analyzed. However, we decided to include the 2010 figures of the juvenile offences which indicate the increasing trends and warrant the treatment of the juvenile offenders with a sense of urgency and within the framework of the vastly altered laws and principles that guide them.

7.2 PROFILE OF JUVENILE OFFENDERS

Table 7.1 Juveniles Apprehended by Age Group and Sex

Year	7-12 years		12-16 years		16-18 years		Overall age groups		Total
	Boys	Girls	Boys	Girls	Boys	Girls	Boys	Girls	
2000	3136	156	10718	671	-	3301	13854	4128	17982
2001	3591	105	12131	598	15573	1630	31295	2333	33628
2002	4221	267	13283	581	16047	1380	33551	2228	35779
2003	3414	170	11053	634	16518	1531	30985	2335	33320
2004	1966	141	11627	788	15285	1136	28878	2065	30943
2005	1526	119	12332	758	16748	1198	30606	2075	32681
2006	1508	87	11883	652	16984	1031	30375	1770	32145
2007	1338	122	11537	577	19796	1157	32671	1856	34527
2008	1146	135	11687	585	19962	992	32795	1712	34507
2009	1015	118	10079	662	20456	1312	31550	2092	33642
2010	832	95	9597	526	18334	919	28763	1540	30303

* Source: *Crime in India 2010*

The data presented, as above, reveal that a large proportion of apprehended juveniles are between 16 and 18 years of age. Perhaps, the period of 16 to 18 years is very close to the attainment of majority and hence most vulnerable age group. The adolescence is, no doubt, the most fertile stage for budding social, anti-social or illegal behaviour.

Gender wise classification the data also throws light on the significant personality characteristics. It may be found from the data given above that the likelihood of committing an offence among boys is higher compared to girls. However, the juvenile crimes committed by girls are also not negligible and hence, cannot be overlooked. The cases of crimes committed by girls in the past 5-6 years were reported to be around 2000 each year, which comprises of a 6-7% share of the total juvenile crimes committed in the country during these years.

Table 7.2 Juvenile Offences across the country during 2000-2010

Sl. No.	Year	Juvenile offences		
		Under IPC 1860	Under SLL	Total
1	2000	9267	5154	14421
2	2001	16509	8332	24841
3	2002	18560	8981	27541
4	2003	17819	7867	25686
5	2004	19229	5756	24985
6	2005	18939	6662	25601
7	2006	21088	4729	25817
8	2007	22865	4163	27028
9	2008	24535	3156	27691
10	2009	23926	4321	28247
11	2010	22740	2558	25298

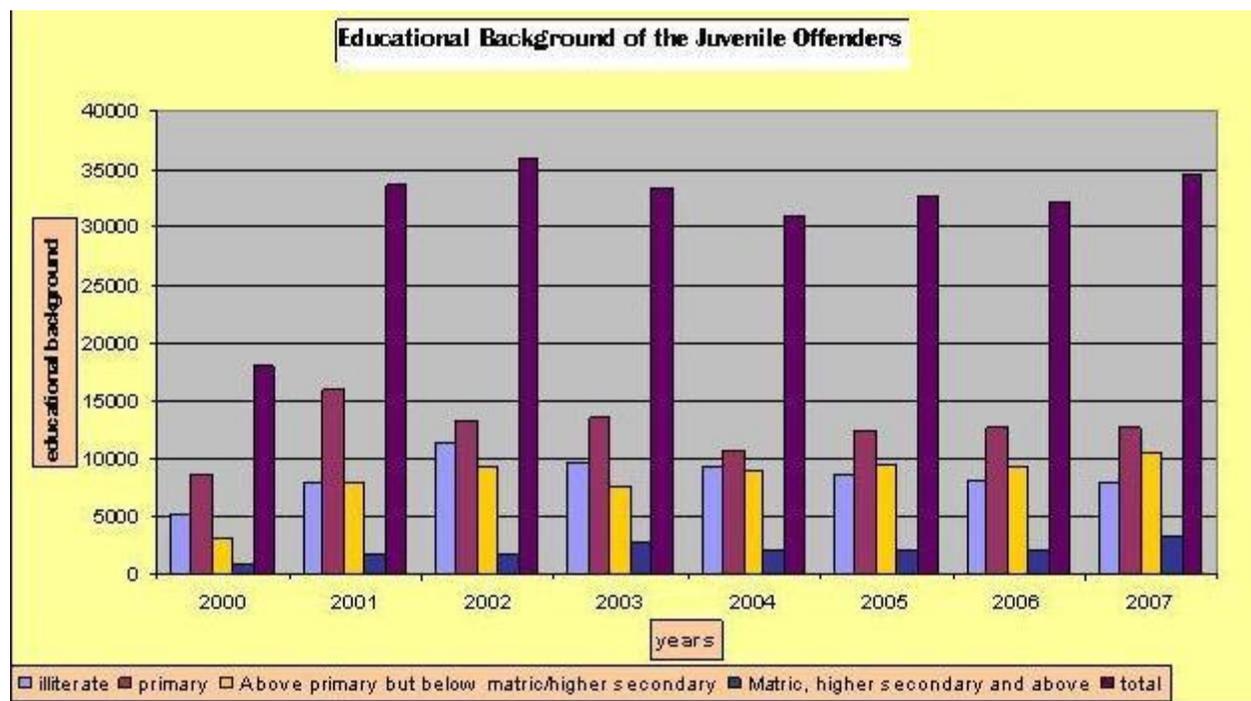
Source: Crime in India 2010

The crimes as alleged to have been committed by the juveniles are continuously on the increase and have assumed alarming proportions thereby posing danger to the society. It is a known fact that the actual number of crimes committed by the juveniles is much higher than those registered by the police and reflected by the police stations, district, state and national crime records bureaux in their records, the national level aggregated figures up to the year 2010 as tabulated above. Recently, following the amendments in the JJ Act and the Rules that permit discretion to the police to register or not to register FIRs about the non-serious crimes allegedly committed by the juveniles carrying sentence less than 7 years, has led to major non-registration of juvenile crimes. It is a dangerous trend sine by non-registration of crimes alone the juvenile crimes can neither be prevented, nor detected or controlled. The need is to honestly record the juvenile crimes and deal with them in the letter and spirit of the law. The details of the crimes and trends have been brought out here as per the analysis under the 'Crime in India' published by the National Crime Records Bureau.

Table 7.3 Educational background of the Juvenile offenders

Year	Illiterate	Primary	Above primary but below matric /higher secondary	Matric, higher secondary and above	Total
2000	5265	8696	3179	842	17982
2001	7898	15943	7937	1850	33628
2002	11323	13273	9350	1833	35779
2003	9618	13505	7581	2616	33320
2004	9273	10771	8848	2051	30943
2005	8660	12394	9508	2119	32681
2006	7975	12688	9405	2077	32145
2007	7926	12659	10620	3322	34527

Graph: 7.1 Educational Background of Juvenile Offenders



Source: Crime in India 2007

Education, plays an important role in the development and well being of a child and creates an environment best suited for the Child's overall Growth. The above given table and graph depicts the education level of juveniles for the year 2000-2007. It can be seen that there is connection between level of education and no. of juveniles who committed crime. Those who are either Matriculate or have gone for Higher Secondary were reported to have been alleged in less than 10% of cases.

Table 7.4 Economic Background of the Juvenile offenders

Year	BPL	Lower income	Low/middle income	Middle income	Upper middle income	Upper income	Total
2000	12979	3422	1124	319	108	30	17982
2001	23420	5325	4082	569	150	82	33628
2002	27249	5756	2113	540	85	36	35779
2003	24593	5981	2150	450	130	16	33320
2004	22387	5759	2142	549	101	5	30943
2005	23276	6255	2223	746	140	41	32681
2006	23268	6353	1913	499	52	60	32145
2007	23626	7296	2339	1037	136	93	34527
Total	180798	46147	18086	4709	902	363	251005

*Notes: Below poverty line: up to Rs 25,000 per year.
Lower income: up to Rs. 25001 to Rs. 50000 per year.
Low middle income: Rs. 50,001 to Rs. 1, 00,000 per year.
Middle income: Rs. 1, 00,001 to Rs. 2, 00,000 per year.
Upper middle income: Rs.2, 00,001 to 3, 00,000 per year.
Upper income: Rs. 3, 00,000 per year and above.*

Source: Crime in India 2007

Apart from Educational factor, economic factor also play greater role in the lives of children who committed crime. The data on economic status as given above indicates that majority of the juvenile offences are committed by juveniles belonging to the BPL families. There were total 251005 juvenile offenders between the year 2000-2007, out of which 180798(72.02%) were juvenile offenders belonging to BPL as compared to 46147(18.38% approx) were from lower Income Group, 18086(7.20%) were from Low/Middle Income Group, 4709(1.88%) were from Middle income, 902(0.36%) were from upper middle income group, 363(0.14%) were from upper income group of family. It can be seen that there is fall in number of juvenile offender as the level of family income increase.

Table 7.5 Family Background of Juvenile Offenders (2000-2007)

Year	Living with parents	Living with guardians	Homeless	Total
2000	12562	2679	2741	17982
2001	27020	4075	2533	33628
2002	27891	5692	2196	35779
2003	26435	4729	2156	33320
2004	23701	4922	2320	30943
2005	25398	4564	2719	32681
2006	24990	4958	2197	32145
2007	27074	5099	2354	34527
Total	195071	36718	19216	251005

Source: Crime in India 2007

As per the data available in table 9.3 on Family Background of Juveniles offenders for the year 2007, 77.71% of the juveniles alleged to have committed an offence were found to have been residing with their parents, which is an alarming figure. Only 7-8% of juveniles involved in such activities were found homeless and rests were residing with their guardians. So it can be concluded that the unsound environment in the family makes them vulnerable and they get indulged in some delinquent activities.

Table: 7.6 Percentage of variation in the commission of crime in each consequent year

Sl. No.	Year	No. of offences committed by juveniles	Remarks (percentage wise comparison as per the data availed last year)
1.	2000	14421	information taken for the first time
2.	2001	24841	72.3 % increase over 2000*
3.	2002	27541	10.9 % increase over 2001
4.	2003	25686	-6.7 % decrease over 2002
5.	2004	24985	-2.7 % decrease over 2003
6.	2005	25601	2.5 % increase over 2004
7.	2006	25817	0.8 % increase over 2005
8.	2007	27028	5.4 % increase over 2006

Source: Crime in India 2007

Increase in the age of male juveniles from 16 years to 18 was partly a factor behind the noted

The above given table 9.6 depicts the Percentage of variation in the commission of crime in each consequent year. It can be seen that there was 72.3% increase in offence committed by Juveniles over the year 2000, whereas it was only 10.9 % in the year 2002 over 2001 and no major variation in offence committed by Juveniles in each successive year.

It can be resulted due to change in laws, as the new Act Juvenile Justice (Care and Protection of Children) Act, 2000 was passed, which rose the age of juvenile up to 18 years of age.

Increase in the age of juvenile lead to addition of more cases of juvenile between the age group 16-18 (male), which is an important factor in constituting 72.3% of increase in offence committed by Juveniles over the year 2000.

The table 9.7 provides the information about the share of crimes committed by Juveniles under IPC (1998-2007). The juveniles to total IPC crimes as reported during the years 1998 to 2007, as above, is worth a perusal. From 1998 to 2000 it was reported to be 0.5%. This share has increased to 0.9% in 2001 and further marginally increased to 1.0% in 2002. As per the latest 2010 figures, the share of juvenile crimes is reported at 1.0%. The increase in the share of crime is clear and can be attributed partly to the increase in age of the male juvenile. Almost a similar pattern is observed in juvenile crime rate also. The rate, which was 0.9 during 1999 and 2000, observed a steep rise to 1.6 in 2001. From 2002 till 2007, not many variations were recorded.

Table 7.7 Incidence and Rate of Juvenile Offences under IPC (1998-2010)

Sl. No.	Year	Incidence of		Percentage of juvenile crimes to total crimes	Estimated mid year population* (in Lakh)	Rate of crime by juveniles
		Juvenile crimes	Total cognizable crimes			
1	1998	9352	1778815	0.5	9709	1.0
2	1999	8888	1764629	0.5	9866	0.9
3	2000	9267	1771084	0.5	10021	0.9
4	2001#	16509	1769308	0.9	10270**	1.6
5	2002	18560	1780330	1.0	10506	1.8
6	2003	17819	1716120	1.0	10682	1.7
7	2004	19229	1832015	1.0	10856	1.8
8	2005	18939	1822602	1.0	11028	1.7
9	2006	21088	1878293	1.1	11198	1.9
10	2007	22865	1989673	1.1	11366	2.0
11	2008	24535	2093379	1.2	11531	2.1
12	2009	23926	2121345	1.1	11694	2.0
13	2010	22740	2224831	1.0	11858	1.9

* Source: The Registrar General of India.

** Actual population as per 2001 Census

The boy's age group of 16-18 years has also been considered as Juveniles since 2001 onwards as per revised definition of Juvenile Justice Act

Table 7.8 Cases reported under different heads of Crime (1998-2007)

Sl. No.	Heads of Crime	No. of cases Reported during 2007	No. of cases Reported during 2006	Change in the year 2006-2007	
				Numeric Change	Percent Change
1.	Total cognizable crimes	22865	21088	+1777	+ 8.4
2.	Murder	672	605	+67	+ 11.1
3.	Kidnapping and Abduction	301	271	+30	+ 11.1
4.	Dacoit	144	99	+45	+ 45.4
5.	Robbery	409	321	+88	+ 27.4
6.	Burglary	2603	2675	-72	- 2.7
7.	Thefts	5606	5316	+290	+ 5.4
8.	Riots	1440	988	+452	+ 4.6
9.	Criminal Breach of Trust	40	15	+25	+166.7
10.	Cheating	111	94	+17	+ 18.1
11.	Counterfeiting	12	8	+4	+ 50.0
12.	Miscellaneous	11527	10696	+831	+ 7.8
Total increase in number of reported crimes				+3589	

Source: Crime in India 2007

The Table 9.8 present the cases reported under different heads of crimes (2006-2007). It can be seen that the total number of cognizable crimes as committed by the juveniles in the year 2007 has increased by 8.4% over the year 2006 as 21,088 crimes were registered during the year 2006 which went up to 22, 865 in 2007. Except for Burglary, which has been reported to have declined (2.7%) in the year 2007 over 2006, rest of the offences were observed to have registered an increase. The total increase in number of reported crimes in the year 2007 over 2006 is 3,589.

7.3 Profile of Police

One of the major factors, which may be attributed to as being partly behind the problem, is the Indian Police Act, 1861, which did not take into account the problem of delinquency seriously, as the objective of the Act was primarily maintenance of law and order and the detection and prevention of adult crimes. Thus, the police were not at all bothered about the problem until the provision of Special Juvenile Police Unit was introduced to the system. However, it will require more time for the police to be adequately sensitized to deal with the problem.

In order to understand the relationship of juvenile offences with police strength in a better way, one may have to look at the following Table (9.9) which is depicting the actual strength of police, the total number of reported crimes and offenses committed by juveniles.

Table 7.9 Actual strength of police, total crimes and Juvenile Offences across the country

Sl. No.	Year	Actual police strength (armed police + armed reserve)	Total number of crimes	Total number of juvenile offences
1	2000	1026917	5167750	17982
2	2001	1030969	5344538	33628
3	2002	1015416	5526528	35779
4	2003	1025777	5494814	33320
5	2004	1042844	6028781	30943
6	2005	1046575	5026337	32681
7	2006	1091899	5102460	32145
8	2007	1095818	5733407	34527

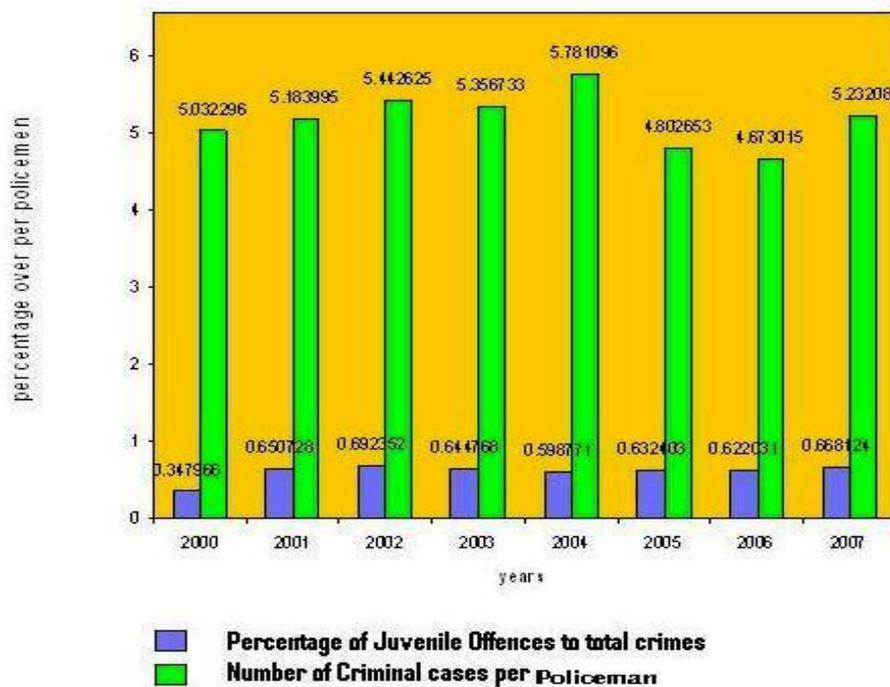
Source: Crime in India 2007

The table (7.9) as above clearly shows that Police were keen in registering adult crimes but an indifference towards registering juvenile offences is always noticeable. A total sum of 57, 33,407 crimes were reported in the year 2007 as against a mere count of 34,527 cases involving juveniles. This means that the percentage of juvenile offences to total crimes is 0.67 only (graph 7.2) which is a very demoralizing figure. The indifference of the police towards the registration of juvenile offences, undoubtedly, is an act of being negligent towards these children which is certainly going against them. The more the problem will be overlooked, the more will be the rise in the level of problem.

However, the data as above indicates that practically there is a little or no problem regarding juveniles in India when compared with total number of crimes. Most of such incidences go unreported and, thus, hardly feature in the data obtained from the field. As a result, we find ourselves contented with activities planned accordingly to deal with the virtual figures, whereas the actual figure keep on rising.

A comparative study of the data in Graph 7.2 also hammers the point that out of 5.23 reported crimes per policeman in the year 2007 only 0.67 incidences were reported to have involved juveniles. Had this been the real picture, dealing with cases juvenile would not have been a tough task. But, the actual picture is far ahead from what has been entered in the record books. Police need to know that the actual cause for adult criminality lies in the delinquency, seeded in the juvenile and hence it shall not be neglected.

Graph: 7.2 Percentage of Juvenile Offences to total Crimes



Source: Crime in India 2007

The graph 7.2 gives the percentage of juvenile offences to total crimes (inclusive of offences under The Indian Penal Code, 1860 and various Special and Local Laws) together with the number of criminal cases reported by per Policeman across the country during the period of 2000-2007.

7.4 CRIME AGAINST CHILDREN

Crime against children is not a separate classification of offences, as the only specification is the victim being children, rest are same as defined under IPC and SLL. Thus, the offences that are being talked about under this head do not form an exclusive block of offences that are reported in the country.

Table 7.10 CRIMES AGAINST CHILDREN PUNISHABLE UNDER INDIAN PENAL CODE (IPC)

- Murder (S. 302)
- Foeticide/ Infanticide (Ss. 315 & 316)
- Abetment to Suicide (S. 305)
- Exposure & Abandonment (S. 317)
- Kidnapping & Abduction (Ss. 359 - 369)
- Procurement of minor girls (S. 366-A)
- Selling/Buying of girls for prostitution (Ss. 372 & 373)
- Rape (S. 376)
- Unnatural Offences (S. 377)

Table 7.11 CRIMES AGAINST CHILDREN PUNISHABLE UNDER SPECIAL AND LOCAL LAWS (SLL)

- Prohibition of Child Marriage Act, 2006 [PCMA]
- Immoral Traffic Prevention Act, 1956 [ITPA]
- Child Labour (Prevention and Regulation) Act, 1986 [CLPRA]

Figure 7.1 Incidences of crime against Children during the year 2007

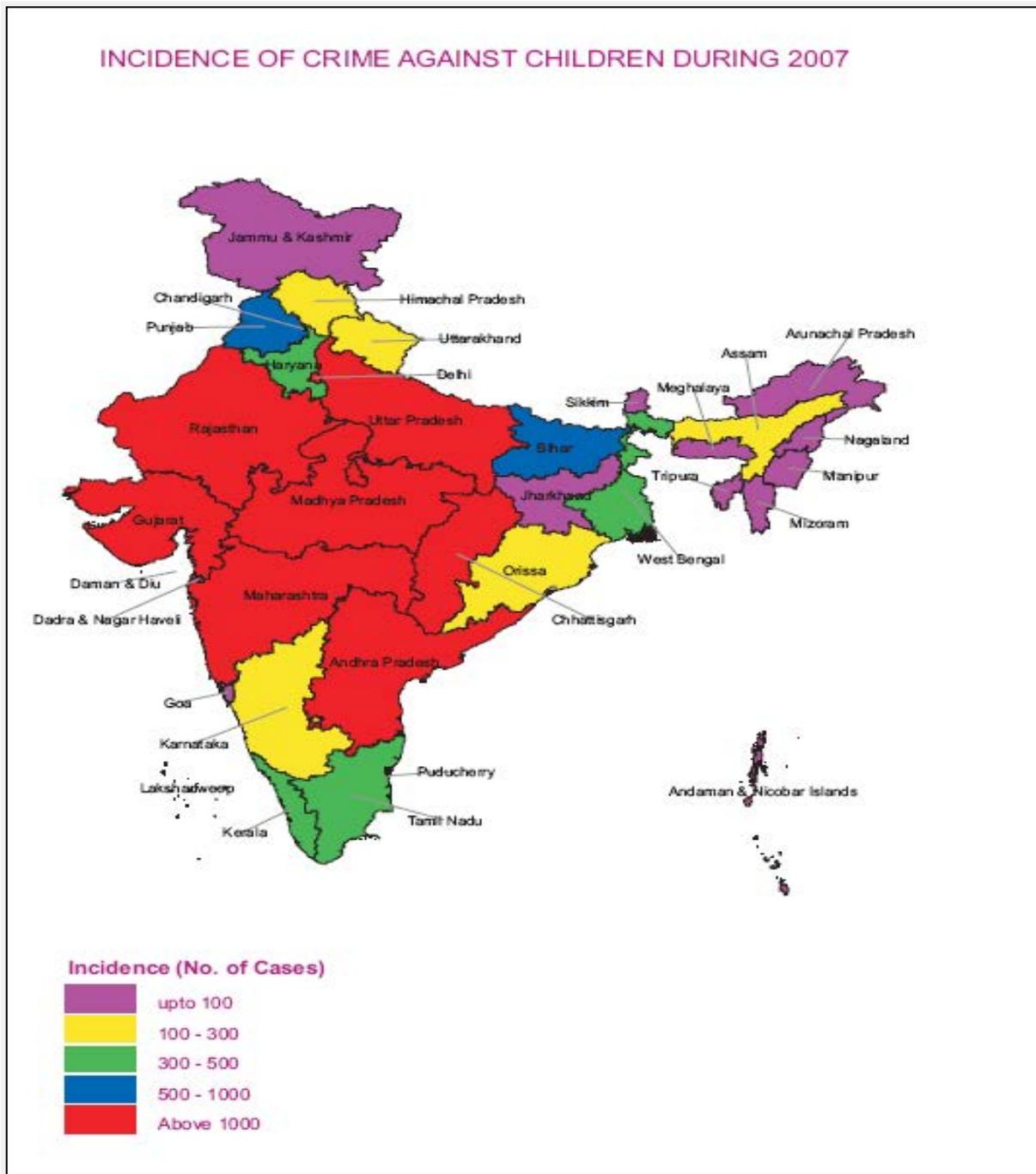


Figure 9.1 depicts the State/UTs wise incidence of Crime against Children in India into five ranges. It can be seen that Delhi, Rajasthan, Madhya Pradesh, Maharashtra, Andhra Pradesh, Chhattisgarh, Uttar Pradesh, Gujarat are those States/UT having more than 1000 number of incidences of crime against children followed by Punjab and Bihar where incidence range was between 500-1000.

Table 7.10 Crimes against Children in the country and % variation in 2007 over 2006

Sl. No	Crime Head	Year			Percentage variation in the year 2007 over 2006
		2005	2006	2007	
1.	Murder	1219	1324	1377	4.0
2.	Infanticide	108	126	134	6.3
3.	Rape	4026	4721	5045	6.9
4.	Kidnapping & Abduction	3518	5102	6377	25.0
5.	Foeticide	86	125	96	-23.2
6.	Abetment of Suicide	43	45	26	-42.2
7.	Exposure & Abandonment	933	909	923	1.5
8.	Procuration of minor girls	145	231	253	9.5
9.	Buying of Girls for Prostitution	28	35	40	14.3
10.	Selling of Girls for Prostitution	50	123	69	-43.9
11.	Child Marriage Restraint Act*	122	99	96	-3.0
12.	Other Crimes	4697	6127	5974	-2.5
	Total	14976	18976	20410	7.6

* Prohibition of Child Marriage Act, 2006 is the present law which is governing Child Marriages

Source: Crime in India 2007

Despite the laws for the child offenders and efforts put for the implementation of these laws, the year 2007 recorded an increase by 7.6 % over 2006. The reason which has been attributed to such increase by the National Crime Record Bureau (NCRB) is the decrease in charge sheet rate for all the crimes (IPC & SLL), which came down from 87.2% to 85.8% in the year 2007 and that the rate of conviction in such cases at the national level is really low i.e. 36.6%.

Among IPC crimes, kidnapping and abduction registered a 25% increase in the year 2007 over 2006, buying of girls for prostitution increased by 14.3% and 9.5% increase in the cases of Procuration of minor girls was also reported. The rate of crime thus marginally increased from 1.7% in the year 2006 to 1.8% in the year 2007.

Table 7.11 Disposal of cases by Police of crimes committed against children during 2007

S. No.	Crime	Total no. of cases for investigation including pending cases from 2006	No. of cases in which Investigation completed					No. of cases in which Investigation is pending at the end of the year 2007
			Investigation refused	Charge found False/ Mistake of Fact or Law etc.	Final report submitted	Charge sheets submitted	Total	
1.	Infanticide	154	1	6	36	87	129	24
2.	Murder	1722	5	54	159	972	1185	532
3.	Rape	1615	10	166	168	4418	4752	1653
4.	Kidnapping & Abduction	8126	16	1046	826	3419	5291	2819
5.	Foeticide	146	1	6	54	27	87	58
6.	Abetment of suicide	47	0	1	2	29	32	15
7.	Exposure & abandonment	1175	5	23	745	132	900	270
8.	Procuration of minor girls	385	0	18	33	160	211	174
9.	Buying of girls for Prostitution	73	0	0	0	45	45	28
10.	Selling of girls for Prostitution	144	0	2	10	47	59	85
11.	Child Marriage Restraint Act, 1978	133	0	9	11	69	89	44
12.	Other crimes	6790	11	80	389	5273	5742	1037
	Total	25310	49	1411	2433	14678	18522	6739

Source: Crime in India 2007

The table 9.10 given above depicts the disposal of cases by Police, of crimes committed against children during the year 2007. There were total 25310 numbers of cases for investigation including pending cases from the year 2006 -2007, out of which 18522(73.18%) cases were investigated.

7.5 CHILDREN'S COURT

There is a provision under the Commission for Protection of Child Rights (CPCR) Act 2005 to set up Children's Courts for the speedy trial of offences against children or of violation of child rights.

Commission for Protection of Child Rights Act 2005

Section 25: Children's Court

For the purpose of providing speedy trial of offences against children or of violation of child rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify at least a court in the State or specify, a Court of Session to be a Children's Court for each district for speedy trial of the said offences.

Section 26: Special Public Prosecutor

For every Children's Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate as a Special Public Prosecutor who has been in practice, as an advocate for not less than seven years, for the purpose of conducting cases in that Court.

Delhi Commission for Protection of Child Rights Initiative-

- The Delhi Commission for protection of Child Rights (DCPCR) took initiative to get nine (9) Additional Session Judge Courts designated as Children's Court and notified. Other States /UTs may follow suit.
- All criminal cases of offences against children and the cases relating to the violations of their rights are to be transferred by the Magistrates /JJBs'/ Judges taking cognizance and forwarded to the judges of Children's Court for speedy and appropriate trial.
- It is yet another set of responsibilities being cast on the stakeholders of the Criminal Justice System and the Juvenile Justice System, including the Police, to safeguard the juveniles/children.

7.6 SUMMARY

- The crimes as alleged to have been committed by the Juveniles are continuously on the increase and have assumed alarming proportions thereby posing danger to the society.
- The total number of cognizable crimes as committed by the Juveniles in the year 2007 has increased by 8.4% over 2006 as 21,088 crimes were registered during the year 2006 which went up to 22,865 in 2007.
- The majority of Juveniles who commit crime come from an illiterate or less educated background.
- Almost 60% of the Juveniles who have been reported to commit certain offences were either illiterate or had taken primary education only.
- One of the major factors, which may be attributed to as being partly behind the problem ,is the Indian Police Act,1861, which did not take into account the problem of delinquency seriously as the objective of the Act was primarily the detection and prevention of adult crimes.
- The police were not at all especially bothered about the problem until the provision of Special Juvenile Police Unit was introduced to the system

CHAPTER 8

LANDMARK JUDGMENTS AND THEIR APPLICATION

8.1 INTRODUCTION

Although, the interpretation of law is not the concern of Police, who are expected to enforce the legal provisions of the JJ Act, 2000 and the Model Rules as simply stated, the Senior Police Officers are often required to understand the implications of various rulings that substantially affect the functioning and provide guidance. It is all the more needed since the Indian Police across the country is heavily under the influence of the criminal justice system and even the senior officer do not appreciate that juvenile justice system deals both with the juveniles in conflict with law and children in need of care and protection, and it is a separate system of law and justice that prevails over the other laws and system while dealing with all children below 18 years of age.

The present chapter lays down some relevant landmark judgments by the various Hon'ble High Courts in India and the Hon'ble Supreme Court of India.

8.2 OVERRIDING EFFECT OF JJ ACT, 2000 OVER OTHER ACTS

The provisions of the JJ Act, 2000 have an overriding effect on all other legislations irrespective of the nature of offence committed by a child who is less than 18 years of age on the date of commission of offence. Thus, the juvenile legislation shall reign supreme in juvenile cases no matter the nature of offence committed [*Raj Singh vs. State of Haryana, (2000) 6 SCC 759*].

Section 1(4) of the JJ Act, 2000 itself says that, “*Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all cases...*” In the light of this, two recent judgments, viz.-

Court on its own motion v. Government of NCT of Delhi, WP(C) – 9767/09 [Delhi HC], and Indian Adoption Petition No. 31/09 with Judge's Order, 298/09 [Bombay HC] have reiterated that the JJ Act, 2000 expressly overrides a limited class of conflicting laws.

In the former case, the Hon'ble Court was of the view that, “*the Juvenile Justice (Care and Protection of Children) Act, 2000, would apply to children between the age of 14 and 18 years as well as to those children employed below the age of 14 years in non-scheduled occupations and processes. Consequently, the said children would be governed by the Juvenile Justice (Care and Protection of Children) Act, 2000 as well as Bonded Labour System (Abolition) Act, 1976, if applicable and not by Child Labour (Prohibition and Regulation) Act, 1986*”

The latter, however, found it “... *necessary to emphasize that the provisions of Section 11(i) and (ii) of the Hindu Adoptions and Maintenance Act, 1956 can be harmonized with those of the Juvenile Justice Act, 2000. The later Act of 2000 carves out special provisions for dealing with the rehabilitation and integration of juveniles in conflict with law and children in need of special care and protection. Adoption of surrendered, abandoned and orphaned children is the mission of the law. That mission has to be achieved by allowing the adoption of children within the subclass, irrespective of the number of living biological children of the same gender. To that extent there is an exception to the embargo under clauses (i) and (ii) of Section 11 of the Act of 1956. The embargo is to that extent lifted.*”

In **Manish Tyagi vs. State of U.P. 2007** Cri LJ 3165, it was stated that:

The Act was incorporated for the benefit of juvenile offenders providing for proper care, protection, treatment and rehabilitation for them. The purpose of enactment is "*An Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection by providing proper care, protection and treatment by catering to their development needs and by adopting a child - friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.*"

With such an avowed objective, the provisions of the JJ Act, 2000 have to be construed in such a manner that its object is projected glaringly and the provisions have to be interpreted keeping the purpose of enactment in forefront. It is because of this reason that Sub-section (2) of section 6 has been incorporated so that at any stage of the trial up to the High Court no juvenile is denied benefit of the JJ Act, 2000. The intention of legislature for enacting such a provision seems to be that in a long drawn procedure of trial and finality of judgment and order delay in raising plea of being a juvenile up to the stage of High Court should always be available with a juvenile offender and he should not be denied benefit of the same merely on the reason of lapse of time and advance stage of trial. It should not be forgotten that the JJ Act, 2000 is a beneficial Legislation for the most vulnerable section of our society who are by and large dependant on somebody else generally on their parents. Thus a narrow construction, as has been done in this case by the Board, of Sections (1) and (2) of the JJ Act, 2000 will probably frustrate the very object of the Act which cannot be sanctified

Moreover, Section 6 (2) of the Act states that, "The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Court of Session, when the proceeding comes before them in appeal, revision or otherwise.

The interpretation of the above can be found in Manish Tyagi (*supra.*) where it was stated that,

"A perusal of Section 6(1) of the Act clearly indicates that Board under the Act had got the power to deal with juvenile offenders notwithstanding anything contained in any other law for the time being in force but save as 'otherwise expressly provided under this Act'". Thus even though Board under the Act has got superintendence over any other law for the time being in force but its powers are subject to other express provision under the Act. Power of the Board thus is not absolute but it is subject to other express provision under the Act. Sub-section (2) of Section 6 of the Act thus assumes much importance as it provides that High Court or Court of Session's may also exercise power conferred on the Board in Appeal, Revision or otherwise. Thus the power which has been conferred on Juvenile Justice Board through Section 6(1) of the Act has also been conferred on the High Court and Court of Sessions through Section 6(2) of the Act.

8.3 AGE AND THE APPLICABILITY OF THE ACT

Although, the age of the child in need of care and protection or a juvenile in conflict with law should not be such a matter of concern that the proceedings get delayed for this reason, it has been found that in both types of cases, the CWCs and JJBs exceed much beyond the statutory four (4) months period to complete the proceedings. Secondly, the authorities concerned, including the competent authorities and the police are empowered and protected for bonafide errors of judgment if they 'apparently' find a child or a juvenile to be so; yet, they prefer to get into the entire prolonged process of age determination and, thus, adding to the suffering or undue detention of the child or the juvenile. Thirdly, in case of the juvenile there was a serious lacuna about the age on the day of occurrence or on the day production, which has since been corrected under the following Supreme Court judgment.

It was held by the Hon'ble Supreme Court in **Umesh Chandra vs. State of Rajasthan AIR 1982 SC 1057** that, "*As regards the general applicability of the Act, we are clearly of the view that the relevant date for the applicability of the Act is the date on which the offence takes place. Children Act was enacted to protect young children from the consequences of their criminal acts on the footing that their mind at that*

age could not be said to be mature for imputing men's area as in the case of an adult. This being the intendment of the Act, a clear finding has to be recorded that the relevant date for applicability of the Act is the date on which the offence takes place...We are clearly of the view that the relevant date for applicability of the Act so far as age of the accused, who claims to be a child, is concerned, is the date of the occurrence and not the date of the trial."

The Hon'ble Supreme Court in **Pratap Singh vs. State of Jharkhand and others**, AIR 2005 SC 2731 settled various issues related to Juvenile Justice (Care and Protection of Children) Act, 2000, which later became compelling reasons for the 2006 Amendment of the JJ Act, 2000. However, the Hon'ble Supreme Court for all time to come decided the following two questions:

(a) Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as Juvenile offender or the date when he is produced in the Court/competent authority, wherein the age limit for juvenile both boy and girl was amended to less than 18 years.

(b) Whether the Act of 2000 will be applicable in the case a proceeding initiated under 1986 Act where the age limit for juvenility in respect of boy was below 16 years and that for girl was below 18 years and pending when the Act of 2000 was enforced with effect from 1.4.2001.

As an answer to Question (a), the Hon'ble Court held:

"As already noticed the decision rendered by a three-Judge bench of this Court in Umesh Chandra (supra) was not noticed by a two-Judge bench of this Court in Arnit Das (supra). We are clearly of the view that the law laid down in Umesh Chandra (supra) is the correct law and that the decision rendered by a two-Judge bench of this Court in Arnit Das (supra) cannot be said to have laid down a good law. We, accordingly, hold that the law laid down by a three-Judge bench of this Court in Umesh Chandra (supra) is the correct law."

Coming to Question (b), the Hon'ble Court was of the view that,

"...the provisions of 2000 Act would be applicable to those cases initiated and pending trial/inquiry for the offences committed under the 1986 Act provided that the person had not completed 18 years of age as on 1.4.2001."

The net result, thus, which came out after a long debate in Pratap Singh (*supra*.) is as under:

(a) The reckoning date for the Determination of the Age of the juvenile is the date of an offence and not the date when he is produced before the authority or in the Court.

(b) The 2000 Act would be applicable in a pending proceeding in any Court/Authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the person had not completed 18 years of age as on 1.4.2001.

This ruling was also followed in the case of **Bijender Singh vs. State of Haryana**, 2005 AIR (SC) 2262, where it was held that provisions of 2000 Act would be applicable to those cases which were initiated and pending trial/inquiry for offences committed under 1986 Act provided that person had not completed 18 years of age as on 01.04.01.

In **Jameel vs. State of Maharashtra**, 2007 AIR (SC) 971, it was found that the appellant was above eighteen years of age on 01.04.2001. The JJ Act, 2000, therefore, cannot have any application whatsoever in the instant case, which was followed as it is in **Ranjeet Singh vs. State of Haryana**, 2008(3) SCC (Cri) 784.

It was after Pratap Singh (*supra.*) only that the definition of 'Juvenile in Conflict with Law' was amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. Through the said amendment the following clause has been substituted for Section 2 (1):

'Juvenile in Conflict with Law' means a juvenile who is alleged to have committed an offence and has not completed eighteenth years of age as on the date of commission of such offence.

This amendment, thus, put an end to all the debates relating to the applicability of the Act and hence removed all the doubts as regards the of age of the juvenile alleged to have been committed an offence.

Also that an explanation to Section 20 has been appended which states that:

"In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any Court, the determination of juvenility of such a juvenile shall be in terms of clause (1) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed."

"This shows that Section 20 refers to cases where a person had ceased to be a juvenile under the 1986 Act, but had not yet crossed the age of 18 years then the pending case shall continue in that Court as if the 2000 Act, has not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, shall forward the juvenile to the Board which shall pass orders in respect of that juvenile...such an interpretation does not offend Article 20 (1) of the Constitution of India and the juvenile is not subjected to any penalty greater than that which might have been inflicted on him under the 1986 Act." [R. N. Choudhry, *Law Relating to Juvenile Justice in India*, Page 261.]

Moreover, Section 7A has also been inserted which provides that a claim of juvenility may be raised before any Court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made there under, even if the juvenile has ceased to be so on or before the date of commencement of this Act. Also, Clause (2) puts an obligation on the court to conduct an inquiry to ascertain such person's age as on the date of offence and if found to be a juvenile on that day, to transfer the case to the Juvenile Justice Board for appropriate orders.

In Jitendra Ram vs. State of Jharkhand (2006) 9 SCC 428, the Court came up with the view that where such a plea is raised having regard to the beneficial nature of the socially-oriented legislation, the same should be examined with great care. Thus, the plea of juvenility for the first time can be raised even in the appellate court (may be Apex Court) and be examined considering the beneficial nature of the socially oriented legislation.

However, the same would not mean that a person who is not entitled to the benefit of the said Act would be dealt with leniently only because such a plea is raised. Each plea must be judged on its own merit. Each case has to be considered on the basis of the materials brought on records.

Also, section 64 of Act extended the benefit to those persons who were undergoing sentence of imprisonment at the commencement of the Act and who were below 18 years of age as on the date of offence.

Acc. to Section 64: In any area in which this Act is brought into force, the State Government shall direct that a juvenile in conflict with law who is undergoing any sentence of imprisonment at the commencement of this Act, shall in lieu of undergoing such sentence, be sent to a special home or be kept in fit institution in such manner as the State Government thinks fit for the remainder of the period of the sentence; and the provisions of the Act shall apply to the juvenile as if he had been ordered by the Board to be sent to such special home or

institution or, as the case may be, ordered to be kept under the protective care under sub-section (2) of section 16 of this Act.

Provided that the State Government, or as the case may be the Board, may, for any adequate and special reason to be recorded in writing, review the case of a juvenile in conflict with law undergoing sentence of imprisonment, who has ceased to be so on or before the commencement of this Act, and pass appropriate order in the interest of such juvenile.

Explanation – In all cases where a juvenile in conflict with law is undergoing a sentence of imprisonment at any stage on the date of commencement of this Act, his case including the issue of juvenility, shall be deemed to be decided in terms of clause (1) of section 2 and other provisions contained in this Act and the rules made there under, irrespective of the fact that he ceases to be a juvenile on or before such date and accordingly he shall be sent to the special home or a fit institution, as the case may be, for the remainder of the period of the sentence but such sentence shall not in any case exceed the maximum period provided in section 15 of this Act.

All the doubts in relation to the computation of age for “juvenility” have now been put to an end by **Hari Ram vs. State of Rajasthan & Anr**, CRIMINAL APPEAL NO. 907 OF 2009 (Arising out of S.L.P. (Crl.) No. 3336 of 2006) where it was held that -

“The law as of now crystallized on a conjoint reading of Sections 2(k), 2(l), 7A, 20 and 49 read with Rules 12 and 98, places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1st April, 2001, would be treated as juveniles, even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted.”

8.4 AGE DETERMINATION: RELEVANT DOCUMENTS

Determination of Age is where the inquiry starts in substance. This stage of inquiry has got much significance for the whole process of inquiry because the outcome of this age determination is only going to decide whether the inquiry regarding the juvenile will continue with the Board or the cognizance in the matter will be taken over by the adult Criminal Justice System.

Rule 12 (3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 provides for an exhaustive list of documents that can be considered for the purposes of computation of age of a juvenile. Rule 12 (3), thus, states that –

In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining -

- (a) (i) The matriculation or equivalent certificates, if available; and in the absence whereof;
 - (ii) The date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
 - (iii) The birth certificate given by a corporation or a municipal authority or a panchayat;
- (b) And only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

While passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a) (i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

Before these rules were framed, the process of determination of age used to take place as per the relevant guiding principles laid down by the Courts.

Thus, in **Shantanu Mitra vs. State of West Bengal, 1999 AIR (SC) 1587**, *it was held that entry in register of Births and Deaths, recorded by an official in performance of his duties cannot be doubted merely on ground that it was not contemporaneous with the suggested Date of Birth. LIC Policy and Matriculation Certificate also mentioned the same date of birth as mentioned in register of births and deaths though an application form filled by father of the appellant at the time of admission in school was different. The entry recorded by an official in performance of his duties was given preference over the application form filled in by the father of the appellant.*

It is to be noted that exact assessment of the age cannot be done. Here, the Board, for reasons to be recorded, may give benefit to the juvenile by considering his/her age on lower side within the margin of one year. Also that, the documentary evidences sought by the Board as listed above under Rule 12 (3) is in order of their authenticity. The lower ones in the list will only be asked for if the documents listed above are not available.

In **Arnit Das v. State of Bihar 2000 CriLJ 2971**, the Hon'ble Court, on a review of Judicial opinion, *held that while dealing with question of determination of the age of the accused for the purpose of finding out whether he is juvenile or not, a hyper-technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the said evidence, the court should lean in favor of holding the accused to be a juvenile in borderline cases.*

In case, none of the documentary evidences are available, then only the Board can seek for a Medical opinion. Rule 22 of the Act, however, made it clear that although the Board is bound to obtain the opinion of the Medical Board but the opinion per se is not a conclusive proof of age of the person concerned.

In **Babloo Pasi vs. State of Jharkhand 2008 (13) SCALE 137**, the Court held that – *The Date of Birth is to be determined on the basis of material on record and on appreciation of evidence adduced by the parties. The Medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other cogent evidence.*

Commenting on the evidentiary value of the opinion of a doctor, based on x-ray tests, as to the age of a person, in **Ramdeo Chauhan alias Raj Nath v. State of Assam 2001CriLJ 2902**, R.P. Sethi, J., speaking for the majority in a three-Judge Bench, had observed that:

...An X-ray ossification test may provide a surer basis for determining the age of an individual than the opinion of a medical expert but it can by no means be so infallible and accurate a test as to indicate the exact date of birth of the person concerned. Too much of reliance cannot be placed upon textbooks, on medical jurisprudence and toxicology while determining the age of an accused. In this vast Country with varied latitudes, heights, environment, vegetation and nutrition, the height and weight cannot be expected to be uniform.

In **Kailash Singh vs. Ramveer Singh (Raj.) 2008 CriLJ 290** it was observed that *Medical evidence regarding the age can be considered only after rejecting the case of birth mentioned in the school record.*

As regards the genuineness of the school certificate declaring the age, the Hon'ble Court in the case of *Ajay @ Monu, son of Ramdhan (in Jail) vs. State of U.P. (Allah.) 2006 CriLJ 3326*, held that the Board must ensure that the school certificate regarding his age is not a fake certificate or is not a certificate based on fictitious entries managed by the accused by his influence. For this purpose, it is necessary to summon and peruse, with great caution and care, all the relevant registers of the school showing his admission and attendance in the said school in the relevant years. If such admission registers and the attendance registers corroborate that the accused has been the student of the relevant school in the relevant year, the Board must not hesitate in declaring the accused as juvenile.

8.5 JUVENILES/CHILDREN IN PRISON/LOCK UP

At present, the Law of the land does not allow any child to be kept in prison. The Court has intervened on many occasions, which had concern with the detention of children and that it has reiterated the point that such children who have been alleged to commit certain offences, should have separate homes which can be treated as a place of safety and are in a position to provide proper care, protection and treatment by catering to their developmental needs. However, it was not unusual to see children in prisons even if the Children Act of 1960 was in place. It was in this wake that Sheela Barse, a celebrated Child Rights activist, filed a series of cases on this aspect.

In Sheela Barse vs. Union of India 1986 (3) SCC 596 an application under Article 32 of the Constitution of India asked for a release of children below the age of 18 years detained in jails within different States of the country, production of complete information as existence of Juvenile courts, homes and schools and for a direction that the District Judges should visit jails or sub-jails within their jurisdiction to ensure that the children are properly looked after when in custody.

The Hon'ble Court directed the District Judges to nominate the Chief Judicial Magistrate or any other Judicial Magistrate to visit the prisons to ascertain as to how many children below the age of 16 years are kept in prisons. The Court further directed the State Legal Board to give legal aid to under trial children. The Court also directed the strict compliance with the Children Acts in all states.

In Sheela Barse vs. Union of India 1986 (3) SCC 632, the Hon'ble Court in an act of following up on its previous judgment relating to 'Safe Custody' of children said that children are supremely important asset to any Nation and they should not be kept in jail. It is the duty of the State to look after the child with a view to ensuring full development of its personality.

The Court further held that the problem of detention of children accused of an offence would become much more easy of solution if the investigation by the police and the trial by the magistrate could be expedited. Really speaking, the trial of children must take place in the Juvenile Courts and not in regular Criminal Courts...they must have proper and adequate training for dealing with cases against juveniles, because these cases require a different type of procedure and qualitatively a different kind of approach.

"We would also direct that where a complaint is filed or First Information Report is lodged against a child below the age of 16 years for an offence punishable with imprisonment shall be completed within a period of three months from the date of filing of the complaint or lodging of the First Information Report and if the investigation is not completed within this time, the case against the child must be treated as closed..."

In Master Saleem Ikramuddin Ansari vs. Officer-in-charge 2005 CriLJ 799, it was observed that, "the main objective of the Act is to secure the best interest of the juvenile offender and properly reform and rehabilitate him." The main purpose of sending a juvenile to the Observation Home is to keep the juvenile away from the hardened criminals. The basic philosophy of the Act is to give a speedy trial in cases of the juveniles.

The Court was shocked to find that a 15-year-old boy had to remain behind the bars for almost three years because of the sheer negligence, indifference and inhuman attitude adopted by the respondents. The Hon'ble Court, thus, held that on consideration of the totality of the facts and circumstances of this case, the first petitioner is entitled to compensation of Rs. one lakh (Rupees one lakh only).

Thus, the above judgment set a mark by putting forward the point that if a juvenile has been kept in jail or police lock up, he can be awarded monetary compensation.

8.6 BAIL

Bail generally comes as an exception in favor of the imprisoned person so far as the Adult Criminal Justice System is concerned. But, in Juvenile Justice System, bail comes as a Rule and whosoever produced before the Board apparently seems to be juvenile shall be released on Bail or placed under the supervision of a Probation Officer or under the care of a Fit Institution or Fit Person.

Section 12 of the Act reads as under:-

Bail of juvenile.--(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been apprehended is not released on bail under Sub-section (1) by the officer in charge of the police station, such officer shall cause him to be kept only in an Observation Home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under Sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an Observation Home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

However, section 12 does not indicate that the juvenile has to be granted bail in every case. The Boards have to exercise judicial discretion while granting or refusing bail.

In **Mohd Firoz @ Bholu vs. State 2005** (4) RCR (Crl.) 205, *it was held that the section makes it mandatory for a person to be released where such person is apparently a juvenile, unless, of course, there are reasonable grounds for believing that the release of such person is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of Justice. It was further held that the question of bail was not a question of mercy insofar as the aforesaid provision was concerned.* It was mandatory and stipulates that such a person, who is apparently a juvenile, shall be released on bail.

In **Shashi Kumar Saini vs. the State 2005** VI AD Delhi 200, *the Court granted bail to the juvenile considering the Social Investigation Report (SIR). In this case also, it was indicated that the provisions of Section 12 of the said Act are mandatory.*

In **Master Niku Chaubey v. State 2006** [2] JCC 720, *it was observed that the nature of the offence is not one of the conditions on which bail can be granted or refused to the juvenile. It was held that bail in respect of the juvenile has to be considered purely under the parameters of Section 12 of the said Act which requires bail to be granted mandatorily unless the court feels that the release of the juvenile is likely to bring him into*

association of any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

Earlier also, in **Arvind v. State 1999** (2) JCC311, *this Court had observed that the gravity of the offence is not a criteria or impediment for the release of the juvenile on bail.*

What exactly is the meaning of the expression defeat the ends of Justice has been indicated in **Master Abhishek (Minor) v. State 2005** VI AD Delhi 18, *where it has been held that the factors for determining as to what amounts to defeat of the ends of justice in the context of Section 12 of the said Act have also to be located in the context of the purpose of the Act. In the said decision, the Preamble was quoted which clearly states that the Act is one to consolidate and amend the law relating to Juveniles in Conflict with Law and Children in Need of Care and Protection, by providing for proper care, protection and treatment, by catering to developmental needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment. The court observed that while dealing with an application for bail, these factors have to be kept in mind. The Court concluded that, therefore, if there is a factor which requires the Court to keep the child in custody for meeting the developmental needs of the child or for his rehabilitation, or for his care and protection, then it can be said that his release would defeat the ends of justice.*

Considering all that was observed in the judgments as above, the Hon'ble Court in **Manoj @ Kali vs. State (Del) 2006** CriLJ 4759 *it was held that a juvenile has to be released on bail mandatorily unless and until the exceptions carved out in the section itself are made out. The exceptions being:-*

- a) A reasonable ground for believing that the release is likely to bring the juvenile into association with any known criminal;*
- b) His release is likely to expose him to any moral, physical or psychological danger; and*
- c) His release would defeat the ends of Justice.*

8.7 WP (c) 9767/2009 High Court of Delhi (Rescue of Child Labour)-

- 1. 'Court on its own motion V/s. Government of NCT Delhi'**
- 2. WP (crI) 2069/2005. Save the Children Foundation V/s Union of India and others.**
- 3) WP(c) 15095/2006 JJ Act V/s. Ministry of Labour and Employment and others, etc.**

To eliminate the menace of Child Labour and to effectuate the mandate of Articles 23,24,39,45 and 47 of the Indian Constitution, the Supreme Court had given a large number of monitoring directions in **MC Mehta V/s. State of Tamil Nadu** case reported in AIR 1997 SC699. It provided compensation of Rs. 20,000/- to be paid by the employer for employing a child below the age of 14 years in hazardous work in contravention of the Child Labour (Prohibition and Regulation) Act, 1986, besides a grant / deposit of Rs. 5,000 in each case by the appropriate Government. This matter was taken up in the Hon'ble High Court of Delhi that resulted in the preparation of 'Delhi Action Plan for total abolition of Child Labour' to be monitored by the National and the State Commissions for Protection of Child Rights (DCPCR/NCRCR).

The Action Plan envisaged a pilot project and the strategy, including multiple programmes, such as, Transitional Education Centers, non-residential and residential bridge courses besides implementation of the protocol on provision of rescue, repatriation and rehabilitation of trafficked and migrant child labour issued by the Ministry of Labour and Employment, Government of India 2008.

A 'Steering Committee' on child labour and 'District Level Task Forces' on child labour were constituted and the responsibilities of respective departments, namely, Delhi Police, Department of Labour, Women and Child Welfare, Education, Health, Govt. of NCT of Delhi, besides the Municipal Corporation of Delhi. Deputy Commissioner of Districts as the heads of the task forces to implement the same.

In this path-breaking judgment, while defining the responsibilities of the respective departments, including the police, the Hon'ble High Court directed legal steps to be taken, such as, arrest of the owners/employers of the Child Labour u/s 331,370,374 of the Indian Penal Code (IPC) and section 23,24,26 of the Juvenile Justice (Care and Protection of Children) Act 2000, while registering an appropriate FIR for investigation and criminal procedures direction was also given for production of child labour u/s 32 of the JJ Act before the Child Welfare Committee for restoration to parents and rehabilitation/repatriation to other states through JAPU (Juvenile Aid Police Unit), meant SJPU under JJ Act,2000).

While casting responsibility on the Department of labour and others, the Hon'ble Court also made it clear that "as per the definition in sections 2(K) of, the JJ Act, 2000", an individual who is below 18 years of age should be considered as a juvenile/child. Therefore, in the case, if child above 14 years of age is found then, he/she should also be liberated from the clutches of the employer (s) and placed before CWC as a working Child u/s 2(d) of the JJ Act, 2000, which fall under the category of Children in Need of Care and Protection. This direction of the Court, thus, increases age of the child labour up to 18 years has also defined u/s 2(d), which also includes the child who is found begging or who is either on street or a working child. The police are expected to take all necessary steps, including the obligation of relevant laws listed out in judgment besides the protection, production save custody, transit and care of the child has enumerated under JJ Act, 2000 and the Model Rules.

Thus, the sum and substance of all these land mark judgments is that while dealing with the issue of grant of bail to a juvenile the seriousness of allegations or the gravity of alleged offence by themselves are not a relevant consideration unless the case falls within any of the three exceptions mentioned in Section 12 of the JJ Act, 2000.

8.8 SUMMARY

- The Provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 have an overriding effect on all other legislations irrespective of the nature of the offence committed by a child who is less than 18 years of age, on the date of commission of offence.
- The 2000 Act would be applicable in a pending proceeding in any court/authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the person had not completed 18 years of age on 1.4.2001.
- In Kailash Singh vs. Ramveer regarding the age can be considered only after rejecting the case of birth mentioned in the school board.
- In Shashi Kumar Saini vs. the State 2005 VI AD Delhi 200, the court granted bail to the juvenile considering the Social Investigation Report(SIR).
- The sum and substance of all these Landmark Judgments is that while dealing with the issue of grant of bail to a Juvenile the seriousness of allegations or the gravity of alleged offence by themselves are not a relevant consideration unless the case falls within any of the three exceptions mentioned in section 12 of the Act, et.al.

CHAPTER 9 FREQUENTLY ASKED QUESTIONS

9.1 INTRODUCTION

This chapter aims to answer some situation faced by the police in dealing with ‘children in need of care and protection’ and ‘juveniles in conflict with laws’.

9.2 JUVENILES IN CONFLICT WITH LAW

How can I deal with a child offender?

Ans The responsibility for dealing with and managing, child offenders rests unequivocally with the Police.

When a child is offending, a Social worker, School, or Health service provider should refer the matter to the Police. The Police then have sole responsibility for actioning the referral, and reporting to the Juvenile Justice Board.

Remember: *child offenders are to be held accountable for their offending. Most can be dealt with by way of warning or alternative action plans.*

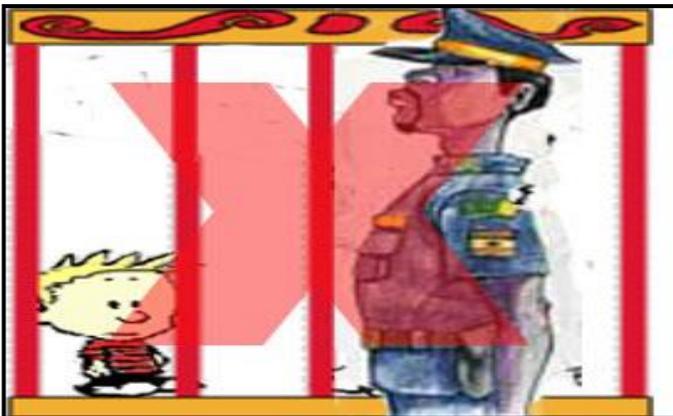
Who should be informed after apprehension of juvenile by police?

Ans: Pre and post-production action of police and other agencies is mentioned in Rule 11 of the Model Rules.

According to the Rule 11(1) of the Model Rules:

The concerned police officer shall inform:

- The designated Juvenile or the Child Welfare Officer;
- The parents or guardian of the juvenile;
- The concerned Probation Officer.



Picture 7 Depicts a juvenile should be treated with dignity (as shown in the right), instead of putting him behind the bar (in the left)

Q. Would the juvenile be sent to the jail immediately after the apprehension?

Ans: No, As per sub-section 10 of JJ Act, 2000, the police apprehending a juvenile in conflict with law shall in no case send the juvenile in lock-up or delay his charge being transferred to the Juvenile or the Child Welfare Officer from the nearest police station, if such an officer has been designated.

Q. What would be the Boards plan to ensure the fair and speedy investigation/enquiry?

Ans: The Board shall take the following steps to ensure fair and speedy enquiry, namely:-

- a. At the time of initiating the inquiry, the Board shall satisfy itself that the juvenile in conflict with law has not been subjected to any ill-treatment by the police and take corrective steps in case of such ill-treatment;
- b. In all cases, under the JJ Act, 2000 the proceedings shall be conducted in simple manner as possible and care shall be taken to ensure that the juvenile, is given child-friendly atmosphere during the proceedings;
- c. Every juvenile brought before the Board shall be given the opportunity to be heard and participate in his inquiry;
- d. Cases of petty offences, if not disposed off by the Special Juvenile Police Unit or at the police station itself, may be disposed off by the Board through summary proceedings or inquiry, while in cases of heinous offences entailing punishment of 7 years or more, due process of inquiry in detail may follow.

Q. Would the juvenile be stigmatized lifelong after it has been proved that s/he has involved in the offence?

Ans: No, according to the section 19 of the JJ Act, 2000, a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law. The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be.

Q. What is Alternative punishment?

Ans: According to the section 28 of the JJ Act, 2000, Where an act or omission constitute an offence punishable under this Act and also under any other Central or State Act, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offences shall be liable to punishment only under such Act as provides for punishment which is greater in degree.

For example - According to the section 24 of the JJ Act, 2000, Whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall be liable to fine.

But according to section 363k of IPC, Whoever ostensibly procures a juvenile or the child for the purpose of any hazardous employment keeps him in bondage and withholds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for ten years and shall be liable to fine.

Q. What is Special Juvenile Police Unit?

Ans: (1) Under Section 63 of the JJ Act, 2000, the State Government shall appoint a Special Juvenile Police Unit at the District level within four months of the notification of these rules and the unit shall consist of a juvenile or child welfare officer of the rank of police inspector and two paid social workers having experience of working in the field of child welfare, of whom one shall be a woman.

(2) The District Child Protection Unit or the State Government shall provide services of its two social workers to the Special Juvenile Police Unit for discharging their duties.

(3) The Juvenile or Child Welfare Officer at the police station shall be a person with aptitude and appropriate training and orientation to handle the cases of juveniles or children in terms of the provisions of the JJ Act, 2000.

Q. Can police use its power to apprehend juvenile even in petty offences?

Ans: No, according to the section 11(9) of Model Rules, For all other cases involving offences of non-serious nature (entailing a punishment of less than 7 years imprisonment for adults) and cases where apprehension is not necessary in the interest of the juvenile, the police or the Juvenile or the Child Welfare Officer from the nearest police station, shall intimate the parents or guardian of the juvenile about forwarding the information regarding nature of offence alleged to be committed by their child or ward along with his Socio-Economic Background to the Board, which shall have the power to call the juvenile for subsequent hearings.

Q. Is it mandatory for police to lodge FIR (First Investigation Report) or file Charge-Sheet in case of Juveniles?

Ans: According to the Section 11(11) of Model Rules, in dealing with cases of juvenile in conflict with law, the Police or the Juvenile/Child Welfare Officer from the nearest police station, shall not be required to register an FIR or file a charge-sheet, except

where the offence alleged to have been committed by the juvenile is of a serious nature such as rape, murder or when such offence is alleged to have been committed jointly with adults;

Q. Can I keep a child in Police custody?

Ans: No, under no circumstances the juvenile can be keep in custody. The juvenile needs to be sent to Observation Home till the time he is produced before the JJB within 24 hours.

Q. Who shall produce a juvenile before the Juvenile Justice Board and by when?

Ans: A designated police officer known as the Juvenile/child Welfare Officer should produce a juvenile before the Juvenile Justice Board within 24 hours. Production before the Board should be immediate and in no case later than 24 hours.

Q. Are the police supposed to produce all juveniles before the Juvenile Justice Board?

Ans: In all cases, where a juvenile is apprehended, production before the Board is mandatory.

Q. What are the specific circumstances where the police may or may not apprehend a juvenile?

Ans: In serious offences involving punishment of more than seven years the juvenile will have to be necessarily apprehended.

In cases where the punishment is less than seven years but it appears that the apprehension is in the interest of the juvenile or the juvenile is in the dual category of CNCP and CICL, the juvenile may be apprehended.

In petty offences, the cases can be disposed off at the police station level itself e.g. by way of advise or admonition. No apprehension is required in such cases, except where, unless the child has no parent/guardian or the parent/guardian are not fit to take care of the child and the child can be treated as CNCP.

Q. What should the police do if a child is apprehended for a crime that is punishable by a sentence of less than seven years?

Ans: In such cases, the police should not file an FIR. These are cases where only a DD entry is supposed to be made by the police.

However, if an adult is the co-accused, the FIR has to be registered. There can be no joint proceedings. The file of juvenile has to be produced before the JJB and not the regular court.

Q. What is a Social Background Report (SBR)?

Ans: A Social Background Report (SBR) is a report prepared by the designated police officer about the social and economic condition of the juvenile apprehended by the police, and his family.

A SBR has to be prepared by the police for every juvenile, irrespective of whether the alleged offence committed by the juvenile is punishable with a sentence of less than seven years or more.

Note: *The SBR meant to be prepared by the police. It is not the same as the SIR (Social Investigation Report) that the Probation Officers are required to prepare.*

Q. Where should the police keep the apprehended juveniles before being produced in front of the Juvenile Justice Board?

Ans: Apprehended juveniles cannot be kept in a police lock-up or jails. Whatever time a juvenile has to spend in a police station, must be in the presence of his/her parents/guardians or the social worker members of the SJPU. In case of a girl, a female police officer must be present.

Even if, a written order is not possible, the police should take a verbal order of a member of the Board to keep the juvenile in an Observation Home; till such time that he/she can be produced before the Board.

Q. Who is supposed to determine the age of the person allegedly accused of committing an offence and on what basis?

Ans: The law is very clear on this. It is for the Board to determine the age of a person produced before it.

The Age of an offender must be determined with reference to the date on which the offence was committed and not the date on which he/she is produced before the competent authority. (*Pratap Singh vs. State of Jharkhand, JT 2005(2) SC 271*)

Q. What evidence does the Board rely upon for age determination?

In order to determine whether the person brought before the Board is indeed a juvenile, the Board will rely upon the following evidence:

- The person's Birth Certificate.
- Entry in the school registers at the time of admission.
- High school mark sheets.
- The Board can ask medical experts to give their opinion as to the age of the accused.
- An X-ray bone-ossification test.

Q. What should do if the accused person’s exact age cannot be determined?

Ans The Board has the authority to grant the benefit of doubt to the accused and declare him/her a juvenile in cases where the age margin is too close to determine whether the person is a juvenile or an adult.

Q. Who can release a child on Bail?

Ans: In bailable matters, the police can release a child on bail. But in all non-bailable matters involving juveniles, the Juvenile Justice Board is authorized to release a child on bail.

Q. When can the Board deny Bail?

Ans Bail can only be denied if there is substantial reason to believe that after release –

- The juvenile is likely to get associated with a known criminal; or
- There is moral, physical and psychological danger to the Juvenile; or
- The ends of Justice stand defeated.

Q. Where a juvenile should be kept when he/she is not released on bail?

Ans: Juveniles who have not been granted bail due to special circumstances must be kept in places where they will remain safe.

Any place or Institution, where the person incharge, is willing to receive and take care of the concerned juvenile for the specified period, can be considered to be a place of safety. This can be a Home for juveniles run by an NGO, or a charitable organization.

Q. By when should the police file the ‘Final Report/Police Investigation Report’?

Ans: The Police Investigation Report should be filed within sixty days (60 days) in cases where the alleged offence is liable for a punishment of less than seven years and, within ninety days (90 days) in cases involving a punishment of seven or more years.

In case of petty offences, there is no question of Police Investigation Report as the juvenile is not apprehended.

Q. Where a child should be kept once the commission of the offence is proved?

Ans: Children found guilty of commission of an offence through due process of law are placed in a ‘Special Home’ or a ‘Place of Safety’, by an order of the Board.

Q. What is a “Place of safety”?

Ans: A juvenile whose guilt for committing an offence is proved beyond reasonable doubt can also be placed in a ‘Place of Safety’.

A ‘Place of Safety’ is a facility established and maintained by the concerned State Department for receiving and rehabilitating juveniles held guilty for commission of an offence by an inquiry of the Board.

Q. How can the Police maintain records of juveniles held guilty for commission of an offence?

Ans: According to the law, all relevant records of a juvenile held guilty by the Board are supposed to be removed after:

- The period prescribed for an appeal has lapsed; or
- The period prescribed by the Model Rules framed under The JJ Act, 2000 has lapsed (The Model Rules prescribe a maximum period of seven years).

At all stages of the proceeding, the juvenile's Right to privacy and confidentiality must be protected.

Q. Can the police share any previous record of commission of an offence by a juvenile or information about any ongoing case against a juvenile for public consumption e.g. police verification of passport or police verification of domestic servants?

Ans: The police may share information about the previous proven commission of an offence by a juvenile or an ongoing case against a juvenile with public authorities for purposes other than those that would affect the employment of a juvenile.

Q. What happens to cases pending prior to the Enforcement of the JJ Act, 2000?

Ans: The provisions of JJ Act of 2000 as amended in 2006 have retrospective effect.

Therefore, in cases involving juveniles, which are pending in any Court on the date of enforcement of this Act i.e. on 1.4.2001, including trials and subsequent proceedings by way of revision or appeal, the matter shall proceed on the basis of the JJ Act, 2000 (including amendment), 2006 and the Model Rules/State Rules made in this regard.

9.3 CHILDREN IN NEED OF CARE AND PROTECTION

Q. Who is a child in distress?

Ans: A child in distress is one:

- who is found without any home or settled place or abode and without any ostensible means of subsistence,
- who resides with a person (whether a guardian of the child or not) and such person has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,
- who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,
- Who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,
- Who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and run away child and whose parents cannot be found after reasonable inquiry,
- Who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,
- Who is found vulnerable and is likely to be inducted into drug abuse or trafficking,
- Who is victim of any armed conflict, civil commotion or natural calamity;

Q. What to do when an abandoned child/infant is found?

Ans: The child should be put in the nearest Govt. Hospital, for required medical care. The report and information should be sent to CWC within 24 hrs for necessary orders. As far as possible, call NGO/ Social worker/ Child Line /SJPU unit for assistance.

Q. In whose presence the police should interact with the child?

Ans. The police shall interact with the child/Juvenile only in presence of a Social Worker/ NGO/ Counsellor including apprehension.

9.4 SUMMARY

- The responsibility for dealing with, and managing child offenders rests unequivocally with the police.
- The police apprehending a Juvenile in conflict with law shall in no case send the Juvenile in lock-up or delay his charge, being transferred to the Juvenile or the child welfare officer from the nearest police station, if such an officer has been designated.
- In all cases where a Juvenile is apprehended, production before the Board is mandatory.
- The age of an offender must be determined with reference to the date on which the offence was committed and not the date on which he/she is produced before the competent authority.
- A Social Background Report (SBR) about the social and economic condition of the Juvenile apprehended by the police, and his family has to be prepared by the police for every Juvenile, irrespective of whether the alleged offence committed by the Juvenile is punishable with a sentence of less than seven years or more.
- The Police shall interact with the child/Juvenile only in presence of a social worker/NGO/Counselor including apprehension.

CHAPTER 10

STANDARD OPERATING PROCEDURE FOR CHILD CARE & PROTECTION FOR SJPU/POLICE OFFICER

10.1 Introduction

- i) This chapter mainly explains the standard operating procedures for police/SJPUs/J/CWOs and not for other concerned stake-holders/competent authorities etc.
- ii) A reference to 'Section' relates to Section under the JJ Act, 2000/2006, unless otherwise specified, and a reference to 'Rule' relates to rule under the Model Rules, 2007.)

10.2 SOME SALIENT INFORMATION ABOUT JUVENILE JUSTICE SYSTEM

10.2.1 Objective of Juvenile Justice System

The main objective of the system is to provide the children/juveniles with total care, protection, treatment, development, welfare, rehabilitation and social reintegration.

10.2.2 Basic Principles in dealing with Children/Juveniles

- A child/juvenile has special rights. The basic rights under the UNCRC being the: 'Right to Survival', 'Right to Protection', 'Right to Development' and 'Right to Participation'
- S/he should be dealt with in a child friendly manner serving his/her 'BEST INTEREST'

10.2.3 Basic legislation for child care & protection

- The Juvenile Justice (Care and Protection of Children) Act, 2000, (amended in the year 2006)
- Juvenile Justice (Care and Protection of Children) Rules, 2007, (Model Rules)
- State Rules, if framed, to apply to that State; till the framing of such Rules, the Model Rules shall apply. (Section 68)

10.2.3.1 Objectives of the Legislation

- Both, the JJ Act, 2000 and the Model Rules, 2007, together lay down the framework for juvenile justice system – philosophy, policy, procedure, infrastructure for administration/enforcement, for handling a child/juvenile coming to its notice, whether 'juveniles in conflict with law' for commission of an offence under IPC, or any other law for the time being in force, including special offences under JJ Act, 2000, or 'a child in need of care and protection' or in a situation of abuse or exploitation, from the initial contact to correction, development, ultimate rehabilitation and social reintegration.
- Their provisions regarding procedure with regard to adjudication and disposition of 'children in conflict with law' over ride those of the CrPC. and any other law, which is applicable only where not specifically provided for under the JJ Act, 2000/the Model Rules (Section 1(4)).

10.2.4 Definition of child/juvenile

The definition of a child/ juvenile refers to a person who has not completed eighteenth year of age.

10.2.5 Categories of Children in Need of Care and Protection

Under section 2 (d) of the JJ Act, 2000, means a child

- (i) who is found without any home or settled place or abode and without any ostensible means of subsistence,
 - (a) who is found begging, or who is either a street child or a working child,
- (ii) who reside with a person (whether a guardian of the child or not) and such person—
 - (a) has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or
 - (b) has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person,
- (iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after,
- (iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,
- (v) who does not have parent and no one is willing to take care of or whose parents have abandoned [or surrendered] him or who is missing and run away child and whose parents cannot be found after reasonable injury,
- (vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,
- (vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking,
- (viii) who is being or is likely to be abused for unconscionable gains,
- (ix) who is victim of any armed conflict, civil commotion or natural calamity.

10.2.6 Juvenile in Conflict with Law

Under section 2(l) of the JJ Act, 2000 a juvenile in conflict with law is:

- ‘A juvenile, who is alleged to have committed an offence and has not completed eighteenth year of age, as on the date of commission of such offence’.
- In this connection, it has to be remembered that the relevant date with regard to age of the person to be dealt with under JJ Act, 2000 is the “date of commission of the offence” and not the date of arrest or the date on which the offence or the offender comes to notice or the complaint or the Charge Sheet is filed. Even if a person has crossed the age of majority (18 years), he would be dealt with under the JJ Act, 2000 if the offence was committed when he was a minor.

10.2.7 Competent authorities under JJ Act, 2000

- The competent authority for Child in Need of Care and Protection is Child Welfare Committee (CWC) (Section 29)
- The competent authority for Juvenile in Conflict with Law is Juvenile Justice Board (JJB) (Section 4)

10.2.8 Institutions under JJ Act, 2000:

10.2.8.1 For child in need of care and protection:

- Children's Homes (Section 34)
- Shelter Homes as Drop-in-Centres (Section 37)
- Fit Institutions/Persons (Section 2 (h)/(i))

10.2.8.2 For Juvenile in Conflict with Law:

- Observation Homes (Section 8) for reception of juveniles, if not released on bail, during pendency of the inquiry.
- Special Homes (Section 9) for reception and rehabilitation of juveniles, sent under orders of JJB under section 15(g) of the JJ Act, 2000, on completion of enquiry.
- Places of safety (Section 2 (q)): A person/institution, other than a police lock up or jail or Special Home, willing and considered suitable by the competent authority, to temporarily receive and take care of a juvenile.

10.2.8.3 For all juveniles/children after learning Special Home and Children Home

- After Care Organisations (Section 44) for rehabilitation (age group 18-21 years).

10.2.9 Other Stake-holders

- Probation Officer Section 2 (s) for pre-inquiry 'Social Investigation Report (SIR)' and pre/post-dispensation supervision.
- State and District Juvenile/Child Protection Units (Sections 80-81).
- Central/State Commissions for Protection of Child Rights.
- Childline.

10.2.10 Special Juvenile Police Unit (SJPU)/Juvenile/Child Welfare Officer (J/CWO) (Sections 2(w)/63 read with Rule 84)

10.2.10.1 Structure:

- **At the Police Station level:**
 - At least one police officer, with aptitude and appropriate training and orientation to handle the cases with regard to children/juveniles, shall be provided to function as "Juvenile/Child Welfare Officer" at Police Station. It is, however, advisable to have a minimum of two such officers at a Police Station, instead of one required under law, so that at least one is available all the time. Where such officer has not still been detailed or is not available for any reason (leave, training etc.), the Station House Officer should designate selected officer with aptitude for handling children to work as such for the time being.
 - Special Juvenile Police Units shall particularly seek assistance from Voluntary Organizations, recognized as protection agencies by the State Government, for the purpose of assisting Special Juvenile Police Units and local police stations at the time of apprehension, in preparation of necessary reports, for taking charge of juveniles until production and at the time of production before the Board as per rule 11 (12).

- **At the District level:**
 - A “Juvenile/Child Welfare Officer” of the rank of Police Inspector, with two paid Social Workers having experience of working in the field of child welfare, of whom one shall be a woman, to be provided by the District Child Protection Unit or the State Government.
 - The Superintendent of Police in a District to head the Special Juvenile Police Unit and oversee its functioning from time to time.
 - The Special Juvenile Police Unit at the District level and the Juvenile/Child Welfare Officer at the police station level may create a team of integrated, duly selected, trained and designated police officers and the Social Workers drawn from the community.
 - They shall also seek assistance from Voluntary Organizations, Panchayats and Gramsabhas or Resident Welfare Associations in identifying ‘juveniles in conflict with law’ as well as reporting cases of violence against children, child neglect and child abuse.
- **At the State level**
 - A Nodal Officer from the Police Department, not less than the rank of Inspector General of Police, shall be designated in each State to coordinate and upgrade the role of police on all issues pertaining to care and protection of children or juveniles under the JJ Act, 2000.

10.2.10.2 Functions of Special Juvenile Police Unit (SJPU)

- The SJPU, especially the J/CWO at the Police Station level, is responsible to handle all juveniles/children, of whatever category – those in need of care and protection, abused or exploited, or in conflict with law under the JJ Act, 2000, or those coming as victim of crime or as witness – s/he comes in contact with. In case of a juvenile coming in contact with any other police officer initially, s/he shall be made over promptly to the SJPU/J/CWO.
- The police/J/CWO shall be responsible for the safety and looking after the basic physical needs – food, toilet etc of the juveniles apprehended or kept in their charge during the period such juveniles are with them. (Rule 11(13))
- This is the primary duty of the JWO/CWO to declare a person produced before him as a juvenile/child on the basis of their judgment, based on the fact that the person produced before him is whether “apparently” a juvenile/child (less than 18 year of age) on the date of apprehension; when apprehended just after commission of offence or was below 18 years of age on the date of incidence.
- It is also his/her primary responsibility to take all measures to check and prevent juvenile crime.
- For smooth functioning of SJPUs/J/CWOs, following actions should be taken:
 - Details of SJPUs/J/CWOs with contact numbers should be informed to the JJB. Similar details about J/CWO at the Police Station and District SJPU should be kept also.
 - At least 2 copies of the “Juvenile Justice (Care and Protection of Children) Act 2000”, one for the SHO and the other for the Child/Juvenile Welfare Office, should be available.
 - The names, addresses and telephone numbers of the following should be available with the Duty Officer.:-
 - Members of the Child Welfare Committee.
 - Observation Home.
 - Juvenile Justice Board.
 - Probation Officer.
 - Childline.
 - Crisis Intervention Center, if functioning in the area.

- A list of all designated J/CWOs in a district and members of SJPU, with contact details shall be prominently displayed at every police station. (Rule 11(4))

10.2.10.3 Conduct

- The SJPU/J/CWO shall always handle juveniles/children in a child-friendly and humane manner, with empathy, keeping in view his/her child rights, and also act ‘IN THE BEST INTEREST’ of the child/juvenile. He shall never mal-treat, manhandle or intimidate a child or a juvenile in conflict with law, who shall to be considered a “victim of circumstances”.
- The use of adversarial or accusatory words, such as, arrest, remand, accused, charge sheet, trial, prosecution, warrant, summons, convictions, delinquent, neglected, custody or jail, shall be strictly prohibited under Section 3 (2)(VIII) relating to “Principle of non-stigmatizing semantics, decisions and actions”.
- A juvenile shall not be put in police lock up or jail (Section 10).
- Police Officers/J/CWOs shall be in plain clothes, except at the time of apprehension (Rule 75).
- Use of handcuffs/feters shall not be done. (Rule 76).
- Punishment for cruelty to juvenile/child – whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or willfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.(Section 23)
- Any police officer found guilty of torturing a child, mentally or physically, shall be liable to be removed from service, besides being prosecuted for the offence.(Rule 84 (11))

10.2.11 HANDLING A JUVENILE IN CONFLICT WITH LAW

- All cases of juveniles, on apprehension, by police, are to be taken charge of by J/CWO of the Police Station/nearest Police Station, who shall be informed by the concerned police officer (in case the apprehension is not by the J/CWO him/herself), as soon as the juvenile is apprehended (Rule11(1)(a)).
- Further procedure to be followed would depend on the basis of age and seriousness of the alleged offence.
- On the basis of age, as on date of alleged commission of offence:
 - A person is to be treated by the police/SJPU as juvenile (under 18 years of age) on the basis of his/her *prima facie* physical appearance or available documentary evidence. The question of age shall be decided by the court/JJB/CWC before which s/he is produced (Section 49 and Rule 12). The police/SJPU shall, assist the court/competent authority during their investigation, collecting and bringing on record, any relevant evidence, for example, birth certificate from school first attended birth record by municipal authority/ panchayat/ a corporation etc. (but not an affidavit), available about age.
 - The following procedure shall be followed on the basis of age:
 - **Under seven years of age:** According to section 82 of the Indian Penal Code, 1860, “Nothing is an offence which is done by a child under seven years of age.” This being absolute presumption, no proceedings shall follow in case of children under 7 years of age.
 - **Between seven and eighteen years of age:** While under section 83 of the IPC., the criminal liability of a child/juvenile between ages of seven to twelve years is determined on the basis of his/her maturity to understand and judge the nature

and consequences of his/her conduct, section 2 (k) does not make any such distinction. The requisite proceedings against all such juveniles, as such, shall follow in accordance with the provisions of the JJ Act, 2000, depending on the seriousness/gravity of the alleged offence, the question regarding maturity and understanding of a juvenile under 12 years being decided by the Board.

- **Juvenile who has ceased to be a juvenile:** If a person, who is not a juvenile, comes to notice, or is apprehended, for commission of an offence, the matter shall be dealt with under the normal provisions of CrPC. for production before the competent court. If the plea of juvenility is raised before such court or the court is of the opinion that the person was a juvenile at the time of commission of the alleged offence, and the claim of juvenility is found correct after due enquiry, the case would be transferred to the concerned JJB for further action under the provisions of the JJ Act, 2000 (Section 7A).

Where a juvenile or child ceases to be a juvenile/child during the course of an inquiry under the provisions of JJ Act, 2000, the inquiry may be continued and orders made in respect of such person as if the person had continued to be a juvenile or a child (Section 3).

- **On the basis of seriousness of the alleged offence:**

- **Petty Offences:** Petty offences are those offences which incur a maximum punishment of fine up to Rs.1000/- only. Cases of petty offences need to be disposed of by the Special Juvenile Police Unit or at the Police Station itself, and if not done by them, this may be done so by the Juvenile Justice Board through summary proceedings or inquiry (Rule 13 (2) (d)).
- **Non-serious Offences:** Non-serious offences are those offences which are punishable with imprisonment up to seven years and are dealt with through summons procedure.
- **Serious Offences:** Serious offences are those offences which are punishable with imprisonment for more than seven years, e.g. murder, rape, which fall in the category of heinous offences. The police or the J/CWO shall exercise the power of apprehending the juvenile who is alleged to have committed such offence (Rule 11 (7)). In such cases, the procedure of trial of summons cases is followed.

10.2.11.1 Pre-production and Post production Procedure

10.2.11.1.1 Pre production Procedure

1. Registration of FIR/DD Report:

- In general, no registration of FIR or filing of Charge Sheet in relation to a ‘juvenile in conflict with law’ shall be done. However, the circumstances in which an FIR, while dealing with a juvenile, shall be registered are:
 - Where the offence alleged to have been committed by the juvenile is of a serious nature such as rape, murder etc. or
 - When such offence is alleged to have been committed jointly with adults.In such cases, however, there shall be no joint trial of a juvenile with any person who is not a juvenile and the juvenile, with immediate effect, shall be taken under the cognizance of the Board and the Board shall direct for separate trials (Section 18).

In case the accused is found to be a juvenile during the course of a trial pending in any court, the court, where such a case is pending trial, shall without any delay, forward the juvenile and the record of the proceedings to the Board having jurisdiction over the proceedings. The Police shall submit another copy of the FIR to the Board and also a Social Background Report, along with the details of the alleged offence and circumstances of apprehension.

- In matters involving simple offences, the information regarding the offence alleged to have been committed by the juvenile shall be record in the general Daily Diary (DD) and report along with the Social Background Report (SBR) (as given below) shall be forwarded to the Board before the first hearing; the Board may call the juvenile for subsequent hearings. (Rule 11(11)).
- In case an FIR has been registered for an offence that the juvenile is alleged to have committed jointly with adults, the juvenile, with immediate effect, shall be taken under the cognizance of the Board and the Board shall direct for separate trials (Section 18).
- Similarly, in case an FIR has already been registered in matters involving simple (non-serious) offences, and,after investigation, the offender is found to be a juvenile, a report to that effect shall be submitted to the Board along with the Social Background Report.

[As per Rule 11 (6) of the Model Rules - In all cases involving a juvenile in conflict with law, whether dealt with under a FIR or DD report or apprehended or not, the J/CWO handling the case shall prepare a Social Background Report (SBR) of the juvenile. The SBR should contain all relevant information on the basis of background, source of income, education, social status etc. of the parents or guardian of the juvenile and the juveniles own status -- habits, moral or recreational interests, company, school/work record etc., and forwarded to the Board forthwith along with report regarding offence alleged to behave been committed and, in case of apprehension, the circumstances there for]

2 Apprehension:

- Apprehension shall be done only:
 - When the offence alleged to have been committed by the juvenile is of a serious nature (involving punishment of 7 years or more under the provisions of the IPC)(Rule 11(7))
 - If it is in the interest of the juvenile (Rule 11(8)), e.g. the background his/her physical, emotional, intellectual, social, and moral development is not sound, or the release is believed to be likely to bring him/her in association with a known criminal or expose him/her to moral, physical or psychological danger.

For making a proper assessment in this regard, the juvenile will need to be examined with care, besides an in depth enquiry into the family and social background of the juvenile. Additionally, the rehabilitative and restorative options available to the juvenile may also be looked into.

In case of apprehension under the above circumstance, the juvenile shall, rather, be treated as a child in need of care and protection and produced before the Board, with a report clearly (i) explaining the circumstances of apprehension, (ii) the social background (SBR) and (iii) the need for care and protection, for appropriate orders [Rule 11(8)]. (The Board, on production, shall hold a summary inquiry and transfer the matter concerning the juvenile to the Child Welfare Committee [Rule 13 (1) (b)].

The parents or guardian of the juvenile shall also be informed about the nature of the alleged offence and the fact of a report in that regard being forwarded to the JJB along with the social-economic background report, and, in case of apprehension, about the circumstances of apprehension.

- Limitations during apprehension/production:
 - Besides the general guidelines about conduct during handling of children/juveniles and prohibitions on handcuffing, lodging in lock-up/jail and wearing of uniform, already elaborated earlier, in connection with the 'Conduct' of Police/J/CWO, special care needs to be taken on the following points with regard apprehension of juveniles.
 - No juvenile, including a female, shall be taken into custody between sunset and sunrise, unless extra-ordinary circumstances warrant it.
 - A female juvenile shall be searched only by a female, police staff or any other suitable female in case no women police is available.
 - The juvenile is not to be produced before the regular Criminal Court.
 - Neither Information Sheet nor a Search slip should be issued for a juvenile.
 - No personal Dossier of the juvenile in conflict with law shall be prepared, neither photograph nor finger prints shall be taken.

- Information regarding Apprehension (Section 13):
 - The officer-in-charge of the police station or the Special Juvenile Police Unit to which the juvenile is brought shall, as soon as may be after the apprehension has to inform:
 - ✓ The parent or guardian of the juvenile, if he can be found, of such apprehension and directing him to be present at the Board before which the juvenile will appear;
 - ✓ The probation officer to enable him to obtain information regarding the antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the Board for making the inquiry.

(Note: A format of the Apprehension Memo is given in Annexure II, which shall be filled up by the police officer/J/CW apprehending the juvenile)

10.2.11.1.2 Post Production Procedure (Section 10, Rule 11):

- As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the Special Juvenile Police Unit or the designated police officer, who shall produce the juvenile, if not released on bail, before the Board without any loss of time, but, within a period of twenty-four hours of his apprehension, excluding the time necessary for the journey, from the place where the juvenile was apprehended, to the Board. In case a J/CWO has not been designated, or is not available for some official reasons, the police officer who had apprehended the juvenile shall be responsible for this.
- In case the Board is not sitting, the juvenile shall be produced before an individual member of the Board (Section 5(2), Rule 11(10)).

- The concerned police officer or the J/CWO shall produce the copy of the FIR/DD entry along with the police report, which shall describe the background of the juvenile and the circumstances and nature of the offence and any other such document (s), which he considers relevant to be brought before the notice of the Board. Attested copies of the document(s) may be attached, if original ones are not available.
- On production of the juvenile before the Board, it shall hold a summary inquiry and may pass certain orders on the same day. The police shall act in accordance with the orders made as above.

10.2.11.1.3 Bail (Section 12)

- When any person accused of an offence, whether bailable or non-bailable, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall be released on bail, with or without surety, or placed under the supervision of a Probation Officer or under the care of any Fit Institution or Fit Person.
- S/he shall not, however, be so released if there appear reasonable ground for believing that the release:
 - Is likely to bring him into association with any known criminal, or
 - Is likely to expose him to moral, physical or psychological danger, or
 - Would defeat the ends of justice.

As such, the grant of bail cannot be opposed on any other grounds, for instance, juvenile's criminal background or pendency of investigation etc.

- When such person, having been arrested, is not released on bail under sub-section (1) by the officer in charge of the police station, such officer shall cause him to be kept only in an Observation Home in the prescribed manner till he can be produced before the Board.
- When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an Observation Home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

10.2.11.1.4 Investigation by Police

The police have an important role to play in the inquiry process with regard to investigation of the offence which the juvenile is alleged to have committed, especially in cases of serious offences. It is essential that the investigation is done with proper care, particularly in examining the juvenile and for timely completion.

- For examining the juvenile, extra care needs to be taken with regard to the following matters:
 - The questioning should be done in an empathic manner, without any bullying or threats or losing temper, to appear more as an effort to ascertain the truth rather than as interrogation of a criminal,
 - This should be done in privacy and in a comfortable environment without any distraction and, as far as possible, at his/her home without being called to the Police Station; the parents/ guardians may be allowed to be present.
 - Girls should preferably be handled by women officers or in the presence of some responsible female.

- The process of investigation, when required, shall be started promptly and completed well within the prescribed time. As the Board has to normally complete its inquiry within a period of four months (Section 14), the police investigation should be completed and report submitted well before that. As per S.C. judgment [*Sheela Barse vs. Union of India (1986) 3 SCC 632*], in cases of serious offences, the investigation shall be completed within a period of three/four months from the date of lodging of the FIR, and “if the investigation is not completed within the prescribed period, the case against the juvenile shall be treated as closed. Investigation is said to be completed only when the final report is filed with the concerned Board”.
- In any exceptional case where the investigation cannot be completed due to any unavoidable circumstance (but not a routine ground like the investigation officer being too busy otherwise), a proper report explaining the circumstances should be submitted well in time to the Board so that the period of inquiry could be extended.
- In case the juvenile has been sent to an Observation Home, the period of investigation shall be regulated as per section 167 of the CrPC., that is, within 90 days, in case of offences punishable with death, imprisonment for life, or imprisonment for a term not less than 10 years, and 60 days in case of any other offence.

10.2.12 ESCAPED JUVENILES

- **Provisions under the JJ Act, 2000 (Section 22):**
 - Any police officer may take charge, without warrant, of a 'juvenile in conflict with law' who has escaped from a Special Home or an Observation Home or from the care of a person under whom he was placed under this Act.
 - The juvenile shall thereafter be sent back to the Special Home or the Observation Home or that person, as the case may be.
 - No proceeding shall, however, be instituted in respect of the juvenile by reason of such escape.
- **Search of the juvenile:**
 - On receipt of information about the escape of a juvenile, action on the following lines shall be taken promptly:
 - Entry will be made immediately in the Daily Diary/General Diary.
 - Identification marks and a photograph along with the details and description of the juvenile/child shall be obtained, if not received.
 - The Police Control Room shall be informed.
 - The Missing Persons Squad shall be informed.
 - If the parent of the juvenile/child is known, they shall be informed.
 - Search will be organized at likely places where the juvenile/child could go, parents/guardians, friends, railway stations, bus stands etc.

10.2.12 Special offences under JJ Act relating to cruelty, neglect, exploitation, abuse etc. of the Child/juvenile (Sections 23, 24, 25 & 26)

- These sections provide for the following special offences against children/juveniles by a person in actual charge or control:
 - **Section 23: Cruelty to juvenile or child:** Covers assaulting, abandoning, exposing or willfully neglecting, including causing or procuring any such action. (Imprisonment upto six months, or fine, or both)
 - **Section24: Employment of juvenile or child for begging:** Covers employing, using or causing any juvenile or the child for the purpose.(Imprisonment upto three years with fine; abetment—upto one year with fine)
 - **Section25:** Giving, or causing to be given, intoxicating liquor or narcotic drug or psychotropic substance in a public place, except upon the order of duly qualified medical practitioner or in case of sickness:(Imprisonment upto three years with fine)
 - **Section26: Exploitation of juvenile or child employee:** Procuring for any hazardous employment, keeping him in bondage and withholding earnings or using such earning for his own purposes.(Imprisonment upto three years with fine)
- The offences under these sections are cognizable (Section 27) and either bailable or non-bailable, as per provisions of Cr.PC and the procedures shall apply on the Police, the Board and the concerned authorities and functionaries accordingly (Rule 18 (3)).
- The police/SJPU are required to take proper interest and initiative for effectively preventing such offences against children/juveniles. Rescue of children/juveniles in such conditions may often be required. Modalities in this regard, as well as, with regard to registration and investigation etc. of cases registered in this connection, are elaborated later under 'Police Role vis-à-vis A Child in Need of Care and Protection'. Besides taking prompt action on any complaints/information, the police/SJPU shall also develop their own intelligence. Help could be sought from voluntary organisations and proper assistance also given to them in this regard.

10.2.14 ROLE VIS-À-VIS A CHILD IN NEED OF CARE AND PROTECTION

10.2.14.1 Police intervention:

- Such children need serious and concerted efforts on the part of all stakeholders concerned Child Welfare Committee, Police/SJPUs, Social Workers, NGOs etc. to rehabilitate them for ultimate mainstreaming. Police has a very important role to play in this regard, from the point of contact till the conclusion of the mainstreaming process, which may include rescue. Action in this regard should be speedy and informal, in child-friendly manner keeping the best interest of the child in view and procedural formalities kept to bare minimum.

10.2.14.2 Line of action:

- A child in need of care and production may be found by a policeman during his/her normal work, produce him/ herself or be reported or brought to the police by a voluntary organization, Child line or a public person. In all such cases, the child shall promptly be taken over by the J/CWO for further action. The J/CWO, in case of his unavoidable non-availability the I/c police station, shall take for proper care of the child and further handling as follows:
- The child should be handled in a child friendly environment and immediate comfort and assurance to the child and attention to his/her basic needs, food, water, toilet etc., shall be looked after. As far as possible, a girl child should be handled by a women officer.

- Proper report shall be recorded in the Daily Diary/General Dairy giving particulars of the child and circumstances of his/her coming to the police.
- All efforts will be made to trace out the parents/guardians for restoration of the child.
- The Control Room shall be informed and report with all particulars sent to the Missing Persons Squad.
- In case of a lost child found or brought to the police, the child should be restored to the parents/guardian under proper record. If the parents/guardian cannot be traced immediately, the child should be placed in a Children's Home/Drop-in-Centre or in the charge of a responsible person/institution (place of safety). Special care needs to be taken in case of a girl child. Proper publicity should also be made through the media in such cases.

- **Production before the Committee:**

- In case a child in need of care and protection is brought or comes to the notice of the police, the concerned police officer or SJPU or the designated officer, shall produce the rescued/found child before the CWC without any loss of time, but within 24 hours, excluding the time necessary for the journey (Section 32). As far as possible, a girl child should be produced by a woman officer
- When the Committee is not sitting, the child may be produced before a single member of the Committee [section 30 (2)].
- In case a single member is also not accessible or the hours are odd, the child may be taken to any NGO or Childline or any recognized institution for children, with all the necessary documents, for being kept till the time of production before the Committee. Information in this regard, must be given to the Chairperson or any Member of the Committee [Rule 27(5)].
- A report describing the circumstances under which the child came into notice (with copy of FIR, if any registered against an abuser/exploiter), and the efforts made for tracing the family of the child has to be submitted at the time of production of the child before the Committee [Rule 27 (7)].
- While any general medical or gynecological examination of children is not a pre-requisite for production of the child before the Committee or admission in an institution [Rule 27 (8)], it is advisable to get such examination done in case of the child having any injuries or suspected to have been sexually abused.
- The Child Welfare Committee shall facilitate the filing of a police complaint/FIR in matters involving violence, exploitation and abuse of children. In case of the child found/rescued or reported to be victim of exploitation, physical or sexual abuse, trafficking or any other crime, the police, if necessary shall register on its own.

10.2.15 Rescue Operations:

- Rescue operations may be required in cases of a child being confined after having been trafficked; being abused physically or sexually by anybody—parent/ guardian/ family member/ acquaintance/ employer etc.; working as bonded labour (Bandhua Mazdoor) or otherwise in contravention of the provisions of Child Labour (Prohibition & Regulation) Act, 1986, JJ Act, or any other local or State law; and similar other situations of abuse and exploitation.

10.2.16 Modalities:

- **Information:** The police should, on its own, collect **information** about any such activities in their area. Watch should particularly be kept over places where children who are forced into labour or prostitution or employed for the purpose of begging etc. may be kept. Information in such cases may also be received through the Child line or a NGO seeking police help, or from the child him/herself directly in a clandestine manner on telephone or message, or his/her parents/ guardian, or from a public spirited person etc., or even from anonymous or unknown or doubtful source.

Proper verification regarding the reliability of the information, but discretely so as not to alert the culprits should be done, especially in case of information from anonymous or doubtful source. The information may need to be shared with the authorities/government departments concerned for coordinated action. In doing so, however, the anonymity of the source and the location shall be maintained.

- **Planning:** Rescue raid should be properly planned to ensure successful accomplishment of the task. It is necessary to have:
 - A clear picture of the place and its lay-out, access points, nearest transit locations, with a site map/plan.
 - Proper assessment about the force requirements, including for back up team to cover any possible escape points for the culprits.
 - Proper assessment of time and manner of conducting the raid.
- **Rescue Team:**
 - The Rescue Team should normally comprise representatives from the concerned government departments (concerned Ministry, CWC, Municipal Corporation, local self-government, *panchayat* etc.), police, NGOs, public spirited citizens, doctor with first aid kit etc. Wherever necessary, women police officers shall accompany the rescue team, especially where rescue of girls is involved or there is likely presence of women in the premises to be raided.
 - The strength of the team would depend on the factors like the number of children estimated to be rescued, the geographical area of operation and possible threat to the safety of the team etc.. At the same time, it should be kept to the bare essential minimum to ensure confidentiality with regard to the information and also not to raise an alarm about the approaching raid.
 - Police has the most important role to play in planning, organisation and conduct of the rescue operation, as well, as from the point of safety, both of the children to be rescued and the team itself. The force as such, should be adequate to conduct the raid successfully, ensure safety of the children and also to prevent anybody, especially the employer, escaping.
- **Briefing:** Proper briefing of the task force, about the area layout, plan of approach and action, preventing any escape, respective role of each member, precautions for avoiding any alarm about the ensuing raid and safety of the rescued children, as well as the team members, and need to ensure child-centric and affectionate approach to avoid any fear or trauma to the children, should invariably be given before the commencement of the actual operation. Each member should also be apprised of the relevant legal provisions.
- **Action:**
 - Wherever possible, without causing delay or compromising the confidentiality, a search warrant shall be obtained.
 - Thorough search of the premises should be carried out, including for any possible secret places where the children might be concealed, for rescue of all the children, apprehension of all the culprits and collection of evidence.
 - All the offenders shall be arrested, searched properly and kept under safe custody.
 - The offender(s) and the children shall be separated immediately to prevent any harm to the children or communication between them to prevent the children being threatened to misguided regarding giving correct information regarding their age and condition.
 - The liberated/rescued children shall be taken charge of and escorted to a safe(r) place.

- All material and other evidence, relevant to successful prosecution, shall be collected under proper recovery memos, and safely packed under due procedure.
- Proper medical aid shall be provided to any person, a child, an accused or a member of the team, injured.
- Medical examination of a rescued child may be got done, if required for purposes of investigation, for example, in a case of sexual exploitation, rape, physical assault etc. However, the requirement of Medical Examination should not be taken as a prior condition for production before the CWC or admission of the child to a Children’s Home/Shelter Home-cum Drop-in Centre. In case of medical examination being not possible within the time available for production, the need for medical examination may be specified in the report for production before CWC. The child may be directly placed in a place of safety, where the medical expert(s) shall later visit and examine him/her.
- The crime shall be registered under the relevant provisions under relevant provisions of law IPC and other Local and Special Legislations, including JJAct, Child Labour (Prohibition and Regulation) Act, ITP Act etc. If necessary, the case shall be registered by the police themselves without waiting for or insisting upon a formal complaint from the Labor Deptt., children or any other informant.
- The rescued children shall be produced before the CWC as per procedure for production of ‘children in need of care and protection’.
- During investigation, proper efforts shall also made to trace out the organizers, employers and middle men (traffickers), particularly in case the children hail from a different State and are being trafficked and forced into such situation, and registered them under relevant provisions of law.
- In examining the child, parents/guardians/family members, social agencies or any other persons u/s. 161 of the Code of Criminal Procedure during investigation of the case registered, extra care needs to be taken with regard to the following matters:
- For examining the juvenile, family, social agencies or other concerned persons under Section 161 of CrPC besides following the basic guidelines given earlier for examining juveniles during ‘Investigation by Police’ in cases against juveniles in conflict with law, extra care needs to be taken with regard to the following matters:
 - The child should be interviewed personally by the J/CWO.
 - It should be ensured that the child is fit, both physically, as well as emotionally, and not in such a traumatized state of mind that he/she is unable to make a cogent statement.
 - Counseling of the child is organized, if the child is found not fit to make such a statement. Help of CIC, where available, or a trained child psychologist should be taken for the purpose.
 - The environment in which he/she is making the statement shall be child-friendly and non-coercive. For this purpose, the child should, preferably, be examined at a place other than the police station, such as, a Children’s Home, a place of safety or any other place convenient or chosen by the child.
 - The statement shall be recorded in the Case Diary in the language of the child.
 - The medical examination report of the child shall be submitted along with the statement of the child proceedings in the court.

=====

ANNEXURES

Laws Related to Children in India

- The Right of Children to Free and Compulsory Education Act, 2009
- The Child Labour (Prohibition and Regulation) Act, 1986
- The Juvenile Justice (Care and Protection of Children) Act, 2000
- The Juvenile Justice (Care and Protection of Children) Rules, 2007
- Prohibition of Child Marriage Act, 2006
- Infant Milk Substitutes Act, 1992
- Infant Milk Substitutes, Feeding Bottles & Infant Foods (Regulation of Production, Supply & Distribution) Act, 1992
- Young Persons (Harmful Publications) Act, 1956
- Bonded Labour System (Abolition) Act, 1976
- Beedi and Cigar Workers (Conditions of Employment) Act, 1966
- Commissions for Protection of Child Rights Act, 2005
- Contract Labour (Regulation and Abolition) Act, 1970
- Medical Termination of Pregnancy Act, 1971
- Pre –conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994
- Bombay Prevention of Begging Act, 1959
- The Factories Act, 1948

Sections/Rules of Special Relevance and Importance for Police/SJPU:

- **Sections of JJ Act:**
 - **Section 2(2) & 30(2): Production of child/juvenile Board/CWC not sitting.**
 - **Section 10: Apprehension of juvenile in conflict with law.**
 - **Section 12: Bail of juvenile.**
 - **Section 13: Information, on apprehension, to parent/guardian and probation officer.**
 - **Section 17: No proceeding or order under Chapter VIII of the Cr. P.C. against a juvenile.**
 - **Section 18: No joint proceeding of juvenile and person not a juvenile**
 - **Section 19: Removal of disqualification attaching to conviction.**
 - **Section 21: Prohibition of publication of name etc. of juvenile in conflict with law or child in need of care and protection involved in any proceeding under the Act.**
 - **Section 22: Provisions in respect of escaped juvenile.**
 - **Sections 23-27: Special offences relating to cruelty or exploitation etc. of child/juvenile.**
 - **Section 32(i): Power of any police officer, SJPU or designated police officer to produce a child before CWC.**
 - **Section 63: Special Juvenile Police Unit.**
 - **Section 67: Protection of action taken in good faith.**

- **Rules (Model Rules, 2007):**
 - **Rule 11: Pre and Post-Production action of police and other agencies**
 - **Rule 18(2): Action in case of escape of child/juvenile.**
 - **Rule 18(3): Procedure with regard to special offences under Sections 23-26.**
 - **Rule 27: Production of child before the Committee (especially sub-rules (1), (4), (5), (7), (9), (13),and (15)).**
 - **Rule 30(6): Powers to refer child to shelter homes.**
 - **Rule 59: Death of a juvenile or child.**
 - **Rule 60: Abuse and exploitation of child/juvenile (especially sub-rules (iii) and (vii).**
 - **Rule 65: Restoration and follow up (especially sub-rules (4), (50 and (6).**
 - **Rule 75: Police Officers to be in plain clothes**
 - **Rule 76: Prohibition on the use of handcuffs and fetters**
 - **Rule 84: Special Juvenile Police Unit**

APPREHENSION MEMO

FIR No. /D.D. No..... U/S.....
Date.....
Police Station.....
.....
District

1. Name of the child with alias (if any).....
2. Present address of the child.....
.....
3. Permanent address of the child
.....
4. FIR/DD No. & Section (s) of Law
.....
5. Place of apprehension
.....
.....
6. Date & time of apprehension
.....
7. Name, address & telephone number of the person informed about apprehension.....
.....
.....
8. Relation of the person with juvenile.....
.....
9. Name, Rank and No. of the officer making apprehension.....
10. Name, Rank and No. of the Juvenile Welfare Officer.....

Witnesses with Address

- 1.....
- 2.....
- 3.....

Signature of Juvenile Welfare Officer

PS.....Delhi/New Delhi

Signature by Parent/guardian/
Probation Officer/Social Worker

ANNEXURE –IV

Undertaking to be given by parent/guardian/fit person in whose custody child has been found to be in conflict with law/in need of care and protection, and has been placed under the supervision of Juvenile/Child in Conflict with Law (JCL) /Child in Need of Care and Protection.

Case

No.....of.....20.....

WHEREAS (Name of the child) has been found to be in conflict with law/in need of care and protection, and has been placed under the care and supervision of

(Name).....

(Address).....

.....

Subject to following conditions, that:-

- 1.The child shall be produced before the Juvenile Justice Board (JJB) / Child Welfare Committee (CWC) as and when required by me.
2. The child shall remain under my supervision
3. The child shall reside at and address of child shall not be changed without information to the JBO/JJB/CWC.
4. The child shall go to school regularly.
5. I shall arrange for the proper care, education and welfare of the child.
6. The child shall not be allowed to associate with undesirable characters and shall be prevented from coming in conflict with law again.
7. The child shall be prevented from taking Narcotic Drugs or Psychotropic Substances or any other intoxicants.

Thisday of.....20.....

Signature of parent/guardian/fit person

Counter signed by JWO

PS.....

Delhi/New Delhi

Format for Medical Examination

Case FIR /D.D

No.....Date.....U/S.....

P.S.....Distt.....Delhi.

To,

The Chief Medical Officer

.....

.....Delhi

Subject: Request for Medical Examination.

Sir,

With due respect I am sending Master/Ms.....

S/o. D/o, W/o Sh.....

R/o.....

.....Age.....in the custody / protection of 1. Const..... No.

2. W/Const. No.

It is therefore, requested that the child/patient may kindly be medically examined and opinion regarding his/her injuries/ailment may be furnished.

Thanking you,

Name of JWO

P.S.....

Distt.....Delhi/New Delhi

Date.....

PERSONAL SEARCH MEMO

Case.....FIR/D.D. No.....
Date.....U/s.....P.S.....
.....Distt.Delhi.

In the presence of the following witnesses the personal search of
Master/Ms.....S/o.....
Address.....
..... Telephone No.....

was conducted as per law under the provisions of Sec.51 of Cr. PC and following articles have
been recovered from his/her possession and the same have been taken into the police possession,
through this memo.

1.
2.
3.
4.
5.

Witness (with name & address) :-

1.
2.

Sd Juvenile or Child Welfare Officer
P.S.....
Date.....

SOCIAL BACKGROUND REPORT
Under Juvenile Justice (Care and Protection of Children) Rules, 2007
For Under Rule 11 (6)

PERSONAL HISTORY

1. Name of the child.....
2. Age (attach proof/documents).....
3. Sex.....
4. Religion.....
5. Caste.....
6. Educational Qualification(Child studying in school):
Name of the school
-
-
- Name of the school last attended (in case child is a school drop-out).....
-
-
7. Whether child is working (if yes, mention details):.....Yes/No.....
Nature of work.....
- Place of work
- Address of work place
- Name of the Employer/Firm/Company
- Telephone No
8. Residential address/contact number (with landmark):
Present Address
- Telephone No.
- Permanent Address
-
- Telephone No. (Landmark)
9. Does the child have any history of addiction to Drugs/Alcohol/Tobacco items
If yes, Specify the same

FAMILY BACKGROUND

Members of the family	Name/age	Health (Disability, if any)	Education	Occupation	Monthly income	Any habit of Drugs, Alcohol, Tobacco and criminal history if any
Father						
Mother						
Siblings (if married, please specify)						
Any other legal guardian						

10. Date, time and place of apprehension along with circumstances of the apprehension and criminogenic factors

11. Date, time and place of sharing information with the parents/guardian/fit person:

PS Reference..... DD No.

12. Where was the child kept during custody of police/JWO

.....

.....

.....

Name of Juvenile Welfare Officer /Police officer in whose custody the child was kept

.....

.....

.....

.....

CASE BACKGROUND

DD Entry No. FIR No..... Police Station

Section of law.....

Any adult involved in this case: (if yes, give details).....
.....
.....

Name of Investigation/Handling officer with contact number:
.....
.....

PIS No. Telephone No.

Name of Juvenile Officer with contact number.....

PIS No. Telephone No.

Name & Signature of JWO

Date

PROFILE OF JUVENILE IN CONFLICT WITH LAW

S.NO.		FN	UP TO DATE
1.	No. of cases registered		
2.	Only DD entry made		
3.	No. of juvenile involved Male Female		
4.	Age proof collected		
	a.Ration Card		
	b.MCD Certificate		
	c. School Certificate		
	d. Bone X Ray		
	e. Any other		
5.	No. of juvenile involved		

Heads	No. of	AGE GROUP					EDUCATION STANDARD								
		FN		UPTO DATE			FN			UPTO DATE					
		Up to 12 yrs.	13 to 16 yrs.	17 to 18 yrs.	Up to 12 yrs.	13 to 16 yrs.	17 to 18 yrs.	Illiterate	Up to 10	Up to 12	Graduate	Illiterate	Up to 10	Up to 12	Graduate
Dacoity															
Robbery															
Murder															
Att. To murder															
Riot															
Rape															
Extortion															
Snatching															
Hurt															
M.O.															
Women															
Burglary															
NV Theft															
Other Theft															
Other PC															
Total IPC															
Total Act															
Grand Total															

SOCIAL REPORT OF JUVENILES IN CONFLICT WITH LAW

- 1. DD No. and Date :
- 2. Name :
- 3. Parentage/guardian & occupation :
- 4. Sex :
- 5. Age :
- a) As per appearance :
- b) As per any documents :
- I. Birth Certificate :
- II. Education Certificate :
- III. Parent's version :
- IV. Sarpanch's statement :
- V. Any other Document / statement :
- VI. Ossification test report :
- c) Detail of effort made to collect :
- 6. Present address :
- 7. Permanent address :
- 8. Details of place of birth and religion :
- 9. Personal particulars :

ID	Mother tongue	Tattoo marks If any	Educational qualification, if any
----	---------------	------------------------	--------------------------------------

Occupation, if any	Income source, if any	Addiction / if any
--------------------	-----------------------	--------------------

10. How the juvenile started committing crime and how he got into bad company and details of association / friends and their criminal activities?

.....

.....

.....

.....

11. **Family composition of juvenile.**

<u>Relation</u>	<u>Name</u>	<u>Age</u>	<u>Remarks</u>
Father	_____	_____	_____
Mother	_____	_____	_____
Sister	_____	_____	_____
Brother	_____	_____	_____

12. Social economic status of the family

13. Neighbor and other known people's attitude toward the juvenile

14. Family attitude towards the juvenile

15. Future plan of the juvenile

16. Analysis and evaluation of the social background of the juvenile

Signature & Name of SHO

**Signature &
Name of JWO**

FORM – V
[Rules 15(5) and 79(2)]
UNDERTAKING/ BOND TO BE EXECUTED BY A PARENT/GUARDIAN/ RELATIVE
/FIT PERSON IN WHOSE CARE A JUVENILE IS PLACED

Whereas I _____ being the parent, guardian, relative or fit person under whose care _____ (name of the juvenile) has been ordered to be placed by the Juvenile Justice Board _____, have been directed by the said Board to execute an undertaking/ bond with surety in the sum of Rs._____/ (Rupees _____) or without surety. I hereby bind myself on the said _____ being placed under my care. I shall have the said _____ properly taken care of and I do further bind myself to be responsible for the good behaviour of the said _____ and to observe the following conditions for a period of _____ year's w.e.f _____.

- 1) that I shall not change my place of residence without giving previous intimation in writing to the Juvenile Justice Board through the Probation Officer/Case Worker;
- 2) that I shall not remove the said juvenile from the limits of the jurisdiction of the Juvenile Justice Board without previously obtaining the written permission of the Board;
- 3) that I shall send the said juvenile daily to school/to such vocation as is approved by the Board unless prevented from so doing by circumstances beyond control;
- 4) that I shall send the said juvenile to an Attendance Centre regularly unless prevented from doing so by circumstances beyond my control;
- 5) that I shall report immediately to the Board whenever so required by it;
- 6) that I shall produce the said juvenile in my care before the Board, if he/she does not follow the orders of Board or his/her behaviour is beyond control;
- 7) that I shall render all necessary assistance to the Probation Officer /Case Worker to enable him to carry out the duties of supervision;
- 8) In the event of my making default herein, I undertake to produce myself before the Board for appropriate action or bind myself, as the case may be, to forfeit to Government the sum of Rs._____ (Rupees _____).

Dated this _____ day of _____ 20.....

Signature of person executing the Undertaking/Bond.

(Signed before me)
Principal Magistrate, Juvenile Justice Board

Additional conditions, if any, by the Juvenile Justice Board may be entered numbering them properly; (Where a bond with sureties is to executed add)

I/We _____ of _____

(Place of residence with full particulars) hereby declare myself/ourselves as surety/sureties for the aforesaid _____ (name of the person executing the undertaking/bond) to adhere to the terms and conditions of this undertaking/bond. In case of _____ (name of the person executing the bond) making fault therein, I/We hereby bind myself/ourselves jointly or severally to forfeit to government the sum of Rs. _____ /-(Rupees _____) dated this the _____ day of _____ 20 _____ in the presence of _____.

Signature of Surety (ties)

(Signed before me)
Principal Magistrate,
Juvenile Justice Board

FORM VI
[Rules 15(6) and 79(2)]
PERSONAL BOND BY JUVENILE/CHILD

Personal Bond to be signed by juvenile/child who has been ordered under Clause _____ of Sub-Section _____ of Section _____ of the Act. Whereas, I _____ inhabitant of _____ (give full particulars such as house number, road, village/town, tehsil, district, state) _____ have been ordered to be sent back/restored to my native place by the Juvenile Justice Board/Child Welfare Committee _____ under section _____ of the Juvenile Justice (Care and Protection of Children) Act, 2000 on my entering into a personal bond under sub-rule _____ of rule _____ and sub-rule _____ of rule _____ of these Rules to observe the conditions mentioned herein below. Now, therefore, I do solemnly promise to abide by these conditions during the period _____.

I hereby bind myself as follows:

- 1) That during the period _____ I shall not ordinarily leave the village/town/district to which I am sent and shall not ordinarily return to _____ or go anywhere else beyond the said district without the prior permission of the Board/Committee;
- 2) That during the said period I shall attend school/ vocational training in the village/town or in the said district to which I am sent;
- 3) That in case of my attending school/ vocational training at any other place in the said District I shall keep the Board/Committee informed of my ordinary place of residence.

I hereby acknowledge that I am aware of the above conditions which have been read over/ explained to me and that I accept the same.

(Signature or thumb impression of the juvenile/child)

Certified that the conditions specified in the above order have been read over/explained to (Name of juvenile/child) _____ and that he/she has accepted them as the conditions upon which his/her period of detention/ placement in safe custody may be revoked. Certified accordingly that the said juvenile/child has been released /relived on the _____

Signature and Designation of the certifying authority
i.e. Officer-in-charge of the institution

FORM XXI
[Rules 50(12) (a), 54(1) (o) and 87(1) (k)]

INDIVIDUAL CARE PLAN

Individual care plan for each child shall be prepared following the principle of the best interest of the child. In preparing individual care plan the care options in the following order of preferences shall be considered:-

- (i) Preserving the biological family
- (ii) Kinship Care
- (iii) In-country adoption
- (iv) Foster Care
- (v) Inter-country Adoption
- (vi) Institutional Care

Case/Profile No. of 20____(year) of the Board/Committee
Admission No.
Date of Admission:

A. PERSONAL DETAILS

1. Name of the Child:
2. Age:
3. Sex: Male/Female
4. Father's/Mother's name:
5. Nationality:
6. Religion/caste:
7. Educational Attainment:
8. Summary of Case History:
 - Health needs
 - Emotional and psychological support needed
 - Educational and Training needs
 - Leisure, creativity and play

 - Attachments and Relationships
 - Religious beliefs
 - Protection from all kinds of abuse, neglect and maltreatment
 - Social mainstreaming
 - Follow-up post release/restoration

B. FORTNIGHTLY PROGRESS REPORT OF PROBATIONER

Part One

1. Name of the Probation Officer/Case Worker
2. For the month of
3. Registration No.
4. Competent Authority

9. Recommended rehabilitation plan including possible placements
10. Sponsorship requirement and report, if applicable
11. Identification of Probation Officer/Case worker/social worker/non-governmental organization for post-release follow-up
12. Memorandum of Understanding with non-governmental organisation identified for post release follow-up
13. Identification of sponsorship agency/individual sponsor for the child post-release, if any
14. Memorandum of Understanding between the sponsoring agency and individual sponsor
15. Details of Savings Account of the child, if any
16. Details of child's earnings and belongings if any
17. Details of awards/rewards due to the child if any
18. Opinion of the child
19. Any other information

Note: Pre-release report shall be prepared 6 months prior to the date of release/transfer of juvenile /child and shall take into account the recommendations of the last review report and all other relevant information.

D. POST-RELEASE REPORT

1. Status of Bank Account: Closed / Transferred
2. Earnings and belongings of the child: handed over to the child or his/her parents/guardians – Yes/No
3. First interaction report of the probation officer/child welfare officer/case worker/social worker/non-governmental organisation identified for follow-up with the child post-release
4. Placement of the juvenile/child if any
5. Family's behaviour towards the child
6. Social milieu of the child, particularly attitude of neighbours/community
7. How is the child using the skills acquired?
8. Whether the child has been admitted to a school or vocation? Give date and name of the school/institute/any other agency
9. Report of second and third follow-up interaction with the child after two months and six months respectively

FORM XXII

[Rule 65(2)]

ESCORT ORDER

Case No..... In the matter of Boy/Girl Child.....

Aged about.....year taken

Charged for sole custody under Section 33(3) of the Juvenile Justice Act 2000

The Parents of the boy/girl child are reported to be residing at:

He/ She therefore be sent under supervision of a proper police/ non-governmental organization escort to the_____.

For tracing and for handing over to the parents or close relatives of the said Boy Child/Girl Child residing at the aforesaid address or at other Place which may be shown by the Child, if no such parents or relative are traced or if traced but they are unwilling to take charge of the boy/girl be kept in the custody of the Superintendent.....Children’s Home and the said Boy/Girl child be produced before the concerned Child Welfare Committee for further orders.

Orders

Pending Escort, the said Boy/Girl Child shall remain in Children’s Home, residing at present.at_____. The State/District Child Protection Unit, or Police Department or non-governmental organisation/ Childline shall positively make immediate arrangement not less than 15 days from the date of receipt of this order by him and send the said Boy Child/Girl Child at his/her aforesaid place of residence.

Dated this.....day of.....200

Chairperson/Member
Child Welfare Committee

CC to:

1. The Superintendent, Children Home,.
- 2.The State/District Child Protection Unit or non-governmental organisation or Childline

Ref.: 1. Order of admission of minor.....born on.....Profile No

**National Institute of Public Cooperation and Child Development, New Delhi
And
Prayas Institute of Juvenile Justice, New Delhi**

**First Workshop on Manual for SJPUs / Police at Regional Centre, Lucknow
(24 – 25 July 2009)**

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- Mr. Sony Kutty George,
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- Mr. M. M. Vidyarthi, Member,
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And
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**Second Workshop on Manual for SJPU's / Police at Regional Centre, Guwahati
(27 – 28 August, 2009)**

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**National Institute of Public Cooperation and Child Development, New Delhi
And
Prayas Institute of Juvenile Justice, New Delhi**

**Third Workshop on Manual for SJPUs / Police at Southern Regional Centre, Bangalore
(14th – 15th September 2009)**

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