

CHAPTER – II

JUVENILES AND HUMAN RIGHTS: INTERNATIONAL PERSPECTIVE

CHAPTER – II

JUVENILES AND HUMAN RIGHTS: INTERNATIONAL PERSPECTIVE

There are certain rights which every human being possesses as for example – right to life, right to freedom, right to marry etc. These rights are inherent in all of us and it is not possible to live a dignified life without these rights. These rights known as human rights are also important because they affect our life in a daily basis.

Looking at the history of human rights it is said that these rights are not new. History shows that since hundreds of years people have been thinking about human rights. In most of the world's religions and philosophies the roots of human rights can be found. Inspite of the cultural difference the human rights of the individual person have been emphasized by some cultures whereas the rights of the group like clan tribe or community have been emphasized by others though there is a general agreement among them regarding certain basic values which include respect for life and human dignity.

It is said that the concept of human rights in the form has evolved in the present century and has become very significant aspect of contemporary international relations. Human rights are currently a matter of great international interest. The present concern for formulation and protection of human rights is said to be the result of gross violation of the same during the two world wars. The world community realized that it was unrealistic to expect protection of human rights solely by national governments. It was felt that for effective protection of human rights, international community also needs to take steps. It was considered a necessary condition for international peace.¹

1. B.N. Tripathi, *Jurisprudence – Legal Theory*, 14th Edition (1999) at 411-412.

A mechanism to maintain international peace and security especially after the Second World War the United Nations lays great emphasis on the need for safeguarding basic human rights because it was realized that protection of human rights is closely linked to international peace and security. Thus the charter of United Nations reaffirmed faith in the fundamental human rights and in dignity and worth of the human person and made promotion and encouragement of respect for human rights and fundamental freedoms responsibility of the world body. The charter imposes an obligation on the member states regarding observation of human rights and makes human rights and fundamental freedom an important norm of international law.²

The various international instruments containing the universal rights are basically focused against human beings and generally available to all persons including juveniles. However, at the world level special attention has been given with respect to the rights of the child because children are special and they need special protection. There is a great need to protect the human rights of the child specially because children are the future citizens of tomorrow and also because they are vulnerable to all forms of abuse and exploitation. If proper and adequate protection is not afforded to children then there is every possibility of them being invisible to the world. But this we cannot afford as this would mean exposing children to more abuse neglect and exploitation.

Apart from this it is also said that there is a great need to protect the human rights of the child specially because children are the future custodians of sovereignty, rule of law, liberty, equality, fraternity and lastly international peace and security. They are said to be the potential embodiment of our ideals, aspirations, ambitions and future hopes. In fact, they are the only messengers of our ideologies, philosophies, knowledge and culture heritage. Undoubtedly, the child by reasons of his physical and mental immaturity needs special care and protection including adequate legal protection³. In order to do

2. *Id.* at 412.

3. Srinivas Gupta, *Human Rights of the Child and Judicial Activism in India*, III CILQ (1994) at 133.

so the protection of the child became the thrust area of the human rights organizations and independent conventions on the subject was also prepared.

Therefore, through various provisions in the UN charter 1945 the members of the United Nations reaffirmed their faith in fundamental rights and in the dignity and worth of human person.⁴ It is noteworthy here that the dignity and worth of human person would definitely include children as well. The UN Charter also contains a provision for international cooperation in solving international problems including promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.⁵ It is important to note that here too the guarantees envisaged includes children as well.

It is submitted that the basic concern for children and their rights initially was almost negligible in almost most of the countries. However, the beginning of the movement for the rights of the child can be traced back to the mid – nineteenth century with the publication of an article in June 1852 by Slagvolk, which was titled “*The Rights of the children*”, and later by Kate Kliggins titled “*Children’s Rights*”, in 1892. There after, with the attention gradually shifting to the working conditions of children, the legal position of children in England began to change with the introduction of factory laws which concentrated on the amelioration of the working employees specially children.⁶

The situation of children received international attention in 1923 when the council of the newly established non – governmental organization “Save the Children International Union” adopted a five point declaration on the rights of the child. In 1924, this Geneva Declaration was endorsed by the fifth Assembly of the League of Nations. In 1948, the General Assembly of the United Nations approved an expanded version of that text and

4. Preamble of the UN Charter, 1945.

5. Article 1(3) of the UN charter says. “*to achieve international cooperation in solving international problems of an economic, social, culture or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion*”.

6. Mamta Rao, *Law relating to women and children*, 2005, Eastern Book Company, at 389.

in 1959 adopted a new declaration for child welfare and protection. However before discussing The Declaration of the Rights of the Child, 1959 and The Convention on the Rights of the Child, 1989, which marked the culmination of the efforts to bring the international community to recognize the needs of children.⁷ It is desirable to mention the various international human rights instruments where specific provisions have been incorporated for care and protection of children which are as follows :-

[A] UNIVERSAL DECLARATION OF HUMAN RIGHTS:-

The Universal Declaration of Human Rights was adopted and proclaimed by General Assembly Resolution 217A (III) of 10th December, 1948. This Declaration embodies some more measures to protect the child. Through it, a “*common standard*” of achievement for all people and all nations were adopted.⁸ Then it provides that everyone is entitled to all the rights and freedoms set forth in this Declaration without any distinction of any kind.⁹ It is notable that the word “*all*” used in Article 1 and the word ‘everyone’ used in Article 2 obviously and necessarily includes the child also. Besides, this declaration also deals with the protection of family.¹⁰ The Declaration recognized several rights of the child including the right to life and liberty¹¹ as

7. *Id.*

8. Article 1 of the UDHR says, “*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood*”.

9. Article 2 of the UDHR says, “*Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*.”

Furthermore no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which person belongs, whether it be independent trust, non – self – governing or under any other limitation of sovereignty.”

10. Article 16(3) of the UDHR says, “*The family is the natural and fundamental group unit of society and is entitled to protection by society and the state*”.

11. Article 3 of the UDHR says, “*Everyone has the right to life, liberty and security of person*”.

also right to education.¹² The Declaration while dealing with the question of social security gives special assistance to motherhood and childhood and special protection to all children born out of wedlock.¹³

[B] INTERNATIONAL COVENANT ON THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 1966 AND THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 1966:-

Both the above mentioned Covenants were adopted by the United Nations General Assembly on December 16, 1966. The International Covenant on Economic, Social and Cultural Rights provides protection and assistance to the family measures and special measures of protection and assistance to all children without discrimination of any kind.¹⁴ The covenant also recognizes the right of everyone to health and

12. Article 26(1) of the UDHR says, “*Everyone has the right to education. Education shall be free at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.*”

Article 26(2) of the UDHR says, “*Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, social or religious groups, and shall further the activities of the United Nations for maintenance of peace.*”

Article 26(3) of the UDHR says, “*Parents have a prior right to choose the kind of education that shall be given to their children*”.

13. Article 25(2) of the UDHR says, “*Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock shall enjoy the same social protection*”.

14. Article 10(1) of ICESCR says, “*The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children*”.

Article 10(3) of ICESCR says, “*Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their moral development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law*”.

development of the child.¹⁵ The Covenant also recognizes the right of everyone to education. Education shall be directed to the full development of the human personality and shall enable all persons to participate effectively in a free society and promote peace among all nations. Parents and legal guardians are given the liberty to choose schools for their children.¹⁶

Similarly, the International Covenant on Civil and Political Rights also deals with various provisions for the protection and development of children. The Covenant provides that accused juvenile persons shall be separated from adults and shall be accorded treatment appropriate to their age.¹⁷ No death sentence shall be imposed for crimes committed below 18

15. Article 12(1) of ICESCR says "*The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*"

Article 12(2) of ICESCR says, "*The steps to be taken by the state parties to the present covenant to achieve the full realization of this right shall include those necessary for –*

- a) *the provision for the reduction of the still – birth rate and of infant mortality and for the healthy development of the child;*
- b) *the improvement of all aspects of environmental and industrial hygiene;*
- c) *the prevention, treatment and control of epidemic, endemic, occupational and other diseases;*
- d) *the creation of conditions in the world assure to all medical service and medical attention in the event of sickness."*

16. Article 13(1) of the ICESCR says, "*The state parties to the present covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and sense of its dignity and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial ethnic or religious groups and further the activities of the United Nations for the maintenance of peace.*"

Article 13(3) of the ICESCR says, "*The state parties to the present Covenant undertake to have respect for the liberty to parents and when applicable, legal guardians to choose for their children's school other than those established by the public authorities which can form to such minimum educational standards as may be laid down or approved by the state and to ensure the religious and moral education of their children in conformity with their own convictions.*"

Article 13(4) of the ICESCR says, "*No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subjects always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that education given in such institutions shall conform to such minimum standards as may be laid down by the state.*"

17. Article 10(2) of the ICCPR says, "*Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.*"

Article 10(3) of the ICCPR says, "*The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be regretted from adults and be accorded treatment appropriate to their age and legal status*".

years of age.¹⁸ The Covenant provides that all persons are equal before the courts and in the determination of any criminal charge against him, everyone shall be entitled to fair and public hearing.

However, the press and the public may be excluded from all or part of a trial for certain reasons or in the interest of the private lives of the parties, but any judgment rendered in a criminal case or in a suit of law shall be made public except in case of juvenile persons.¹⁹ In the determination of any criminal charge against all persons, everyone shall be entitled to certain minimum guarantees, but in the case of juvenile persons, the procedure shall be such as will take account of their age and desirability of promoting their rehabilitation.²⁰ The Covenant provides that the state parties shall have respect for the liberty of parents and legal guardians to ensure the religious and moral education of their children.²¹ Every child shall have without discrimination of any kind such measures of protection as required by him and shall be registered immediately after birth and shall have a name and acquire a nationality.²²

18. Article 6(5) of the ICCPR.

19. Article 14(1) of the ICCPR says, “*All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interests of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit of law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children*”.

20. Article 14(4) of the ICCPR.

21. Article 18(4) of the ICCPR says, “*The state parties to the present covenant undertake to have respect for the liberty of parents and when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions*”.

22. Article 24(1) of the ICCPR says, “*Every child shall have, without discrimination as to race, colour, sex, language, religion, national or social origin, property or with the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the state*”.

Article 24(2) of the ICCPR says, “*Every child shall be registered immediately after birth and shall have a name*”.

Article 24(3) of the ICCPR says, “*Every Child has the right to acquire a nationality*”.

[C] DECLARATION OF THE RIGHTS OF THE CHILD, 1959: -

The General Assembly on November 20th 1959, with representative of 78 countries meeting in plenary session unanimously adopted the Declaration of the Rights of the child. The basic objectives of the Declaration of the Rights of the child, 1959 are provided in its preamble.²³ Also the ten principles that has to be taken into account while recognizing the rights of the child and striving for their observance are:—

- 1) The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other status, whether of himself or his family.²⁴
- 2) The child shall enjoy special protection, and shall be given opportunities and facilities, by law and other means, to enable him to develop physically, mentally, morally, spiritually and socially in a locality and normal manner and in conditions of freedom of dignity. In the enactment of laws for this purpose, the best interests of the child shall be

23. The Preamble of the Declaration of the rights of the child, 1959 says:

"Whereas the people of the United Nations have in the charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person and have determined to promote social progress and better standards of life in larger freedom; Whereas the United Nation has in the Universal Declaration of Human Rights, proclaimed that everyone is entitled to all the rights and freedoms set forth therein without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status; Whereas 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; Whereas the need for such special safeguards has been stated in the General Declaration of the Rights of the Child of 1924, and recognized in the universal Declaration of human Rights and in the statutes of specialized agencies and international organizations with the welfare of the children; Whereas mankind owes to the child the best it has to give; Now therefore,

The General Assembly proclaims this Declaration of the Rights of the child to the end that he may have a happy childhood and enjoy for his good and for the good of society the rights and freedoms herein set forth and calls upon parents upon men and women as individuals and upon voluntary organizations, local authorities and national governments to recognize these rights and strive for their observance through legislative and other measures progressively taken in accordance with ten principles."

24. Principle 1.

the paramount consideration.²⁵

- 3) The child shall be entitled from his birth to a name and nationality.²⁶
- 4) The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health, to this and special care and protection shall be provided both to him and to his mother including adequate prenatal care, the child shall have the right to adequate nutrition, housing recreation and medical services.²⁷
5. A child who is physically, mentally or socially handicapped shall be given special treatment, education and care required by his particular condition.²⁸
6. The Child, for the full harmonious development of his personality, needs love and understanding. He shall wherever possible, grow up in the care and under the responsibility of his parents, and in any case in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of state and other assistance towards the maintenance of children of large families is desirable²⁹.
7. The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stage. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his activities, his individual judgment, and his sense of moral and social responsibility and to become a useful member of society.

25. Principle 2.

26. Principle 3.

27. Principle 4.

28. Principle 5.

29. Principle 6.

The best interests of the child shall be the guiding principle of those responsible for his education and guidance, that responsibility lies in the first place with his parents. The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education, society and public authorities shall endeavour to promote the enjoyment of this right.³⁰

8. The child shall in all circumstances be among the first to receive protection and relief.³¹
9. The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be subject of traffic in any form.

The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.³²

10. The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood and in full consciousness that his energy and talents should be devoted to the service of his fellowmen.³³

[D] THE CONVENTION ON THE RIGHTS OF THE CHILD, 1989: -

In respect of the international movement on behalf of Child Rights The Convention on the Rights of the Child represents a turning point. However, before the convention on the rights of the child was adopted in 1989, both the League of Nations in 1924 and the United Nations in 1959 had adopted declarations on the rights of the Child. States were called upon by

30. Principle 7.

31. Principle 8.

32. Principle 9.

33. Principle 10.



these declarations to recognize certain principles regarding children's rights and take legislative and other measures in order to enforce them. These declarations constituted only statements of general principles and were not legally binding.

Therefore, in the late 1970's, some states that was particularly led by the government of Poland started to argue that there should be a new instrument on the rights of the children which would bind states under international law apart from setting guiding principles. The UN Commission on Human Rights in its 34th session during the year 1978 stated its concern that children throughout the world were continuing to suffer not only under colonial rule and apartheid regimes, but also through racism, war, and other forms of aggression and in order to protect the rights of children agreed to strengthen international instruments. In 1978, the UN General Assembly declared the year 1979 as the International year of the child in order to commemorate the 20th anniversary of the Declaration on the Rights of the Child, 1959 and a working group to draft a convention on the rights of children was established by the UN Commission on Human Rights. For the purpose of drafting the convention the working group based its project upon the principles enshrined in past declarations and cooperated with UN member states, specialized UN agencies, non - governmental organizations and regional inter - governmental organizations. A draft convention on the Rights of the Child was adopted by the working group in December 1988 and submitted to the same to the UN General Assembly for consideration. Thereafter, the convention on the rights of the child was adopted by the General Assembly on 20th November, 1989 and ratified by India on 12th December 1992.

The United Nation convention on the Rights of the Child derives strength from its ratification by governments, implying thereby that governments agree to follow the principles and are committed to certain standards in dealing with children. It is guided by the principle that the essential needs of children should be given the highest priority in the allocation

in recognizing children's rights. Part three (Articles 46 through Article 54) contains clauses concerning ratification and accession, entry into force, reservations and amendments.³⁷ The basic objectives of the Convention on the Rights of the child, 1989 are provided in its preamble.³⁸

Under the Convention on the Rights of the child, 1989, the word child has been defined as any human being below the age of eighteen

37. <http://www.wcl.american.edu/hrbrief/V7i2/Child10years.htm> [Visited on 6th August 2009].

38. The Preamble of the Convention on the Rights of the Child says:

"The State Parties to the present Convention,

Considering that in accordance with the principles proclaimed in the charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;

Bearing in mind that the peoples of the United Nation have, in the charter, reaffirmed their faith in fundamental human rights and in the dignity and work of the human person and have determined to promote social progress and better standards of life in larger freedom;

Recognizing that the United Nations has in the Universal Declaration of human rights and in the International covenants on human rights proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

Recalling that in the Universal Declaration of human rights the United Nations has proclaimed that childhood id entitled to special care and attention;

Convinced that the family as the fundamental group of society and the natural environment for the growth and well being of all its member and particularly children should be afforded the necessary protection and assistance so that it can fully assume its responsibilities without the community;

Recognizing that the child, for the full and harmonious development of his or her personality should grow up in a environment, in an atmosphere of happiness, love and understanding;

Considering that the child should be fully prepared to live an individual life in society and brought up in the spirit of the ideals proclaimed in the charter of the United Nations and in particular in the spirit of peace, dignity, tolerance freedom, equality and solidarity;

Bearing in mind that the need for extending particular care to the child has been stated in the Geneva Declaration of the Right of the Child, 1924 and in the Declaration of the Rights of the Child adopted by the united Nations in 1959 and recognized in the Universal Declaration of Human Rights, in the international covenant or civil and political rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural rights (in particular in its article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children;

Bearing in mind that as, indicated in the Declaration of the rights of the child adopted by the General Assembly of the United Nations on 20th November 1959 "the child, by reason of his/her physical and mental 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 Administration of Juvenile Justice (the Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict;

Recognizing that in all countries, in the world there are children living in exceptionally difficult conditions, and that such children need special consideration;

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child;

Recognizing the importance of international cooperation for improving the living conditions of children in every country; in particular in developing countries."

years.³⁹ The basic approach to the problem of children is required to be different from those of adults. A child may have separate needs and requirement depending upon the personal family and social environment in which he lives in and psychological parameters of his growth. Therefore, a child needs separate treatment at the human rights level as well which may be many fold including the protection, care, development and the like. The human rights consideration takes into account all such factors. Provisions have been made to ensure that the child is protected against all forms of discrimination or punishment and that the rights set forth in this convention are respected by the state parties without any discrimination.⁴⁰ The convention provides that in all actions concerning children the interests of the child shall be a primary consideration.⁴¹ The convention providing for the implementation of the rights recognized in the present convention mentions that all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present convention. With regard to economic, social and cultural rights, state parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the frame work of

-
39. Article 1 says, "*For the purposes of the present convention a child means any human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier*".
 40. Article 2(1) says, "*States Parties to the present convention shall respect and ensure the rights set forth in this convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*".
Article 2(2) says, "*States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expresses opinions or belief of the child parent's legal guardian's or family members.*"
 41. Article 3(1) says, "*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be primary consideration*".
Article 3(2) says, "*State Parties undertake to ensure the child such protection and care as is necessary for his or her well – being, taking into account the rights and duties of his or her parents, legal guardians or other individuals legally responsible for him or her and this end shall take all appropriate legislative and administrative measures*".
Article 3(3) says, "*State Parties shall ensure that the institutions, service and facilities responsible for the care or protection of children shall confirm with the standards established by competent authorities particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision*".

international cooperation.⁴²

While respecting the responsibilities, rights and duties of parents it is has further been provided under the convention that state parties shall respect the responsibilities of the extended family or community which is provided for by local custom, legal guardians or other persons legally responsible for the child to provide in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present convention.⁴³

One important provision under this Convention is the recognition of the inherent right to life of every child⁴⁴ and also ensuring do the maximum extent possible the survival and development of the child.⁴⁵ The right to access to health care services⁴⁶ and adequate standard of living⁴⁷ including food, clean water and a place to live and name and nationality,⁴⁸ have been recognized under the head of survival aspect whereas under the development aspect of rights of child the convention has guaranteed to every child the right of child the convention has guaranteed to every child the right to education,⁴⁹ to rest and leisure,⁵⁰ to freedom to expression and information⁵¹ and to freedom of thought, conscience and religion.⁵²

The convention incorporates another very important right of the child i.e. “*due weight*” shall be given to the views of the child in accordance to their age and maturity.⁵³ Regarding the protective aspect the convention has extended protection to mentally and physically handicapped children. The convention provides that a mentally and physically disabled child

42. Article 4, *The Convention on the Rights of the Child*, 1989.

43. Article 5, *Id.*

44. Article 6 (1), *Id.*

45. Article 6(2), *Id.*

46. Article 24, *Id.*

47. Article 27, *Id.*

48. Article 7, *Id.*

49. Article 28, *Id.*

50. Article 31, *Id.*

51. Article 13, *Id.*

52. Article 14, *Id.*

53. Article 12, *Id.*

should enjoy full and decent life and that assistance shall be given to the disabled child free of charge including education, training, health care services, rehabilitation services etc.⁵⁴ The convention also provides protection to the child refugees⁵⁵ or parentless children⁵⁶ or children who are separated from their parents.⁵⁷ The children have also been protected from economic,⁵⁸ sexual and other forms of exploitation.⁵⁹ Appropriate measures are required to be taken to protect the children from the use and sale of drugs.⁶⁰ The convention has also set out the rights of the children during war and armed conflict.⁶¹

Under this convention the children have also been protected from being subjected to torture or other cruel inhuman or degrading treatment or punishment.⁶² Further, the convention has also recognized the right of every child alleged to have infringed the penal law to be treated in a manner consistent with the promotion of the child's dignity and worth.⁶³

Apart from these mentioned provisions of the Convention, under Article 43 of the Convention a Committee on the Rights of the Child has been set up which monitors the implementation of the provisions of the convention by the states who have ratified it. The elected member by the member states forms the committee and reviews the report submitted by the states and information that is received through various sources. Since some states cannot implement the provisions without assistance because of their economic conditions and also due to lack of sanctions, therefore, the committee exercises its influence through dialogue.

Therefore in the area of children's rights the adoption of the convention of the rights of the child has witnessed significant gains.

54. Article 23, *Id.*

55. Article 22, *Id.*

56. Article 20, *Id.*

57. Article 9, *Id.*

58. Article 32, *Id.*

59. Article 34, *Id.*

60. Article 33, *Id.*

61. Article 38, *Id.*

62. Article 37, *Id.*

63. Article 40, *Id.*

Throughout the world powerful platform has been found specially for raising awareness of children's rights and this is so because of the increase in special institutions and other organizations specializing in children's rights. Apart from this, as urged by the CRC committee the state parties are adopting National Plans of Action which outline the states plan in order to enforce children's right in health, education, nutrition and other areas. However, even after the CRC has been almost universally ratified there still exists a doubt over the actual implementation and enforcement of the Convention mainly because the condition of the youth has not significantly improved.

More than a decade has passed since the adoption of the Conventions on the Rights of the Child, however, in 1999, the UNICEF indicated that the plight of the children the world over has not significantly changed. As of 1999, an estimated twelve million children under the age of five die every year, mostly due to easily preventable causes; 130 million children in developing countries, a majority of whom are girls, are not in primary school, 160 million children are severely or moderately malnourished; approximately 1.4 billion children lack access to safe waters; and 2.7 billion children lack access to adequate sanitation. In spite of the main aim of the CRC being to protect children from economic exploitation and work that interferes with their education, in 1999 a human rights watch report estimated that annually 250 million children between the age of five and fourteen years are engaged in some form of labour, usually under hazardous working conditions. UNICEF reports that approximately 300,000 children in more than 30 countries are currently participating in armed conflicts. Although the CRC has highlighted children's rights and works with states to enforce these rights reality shows that states have not followed through on their commitments to the CRC.⁶⁴

With respect to the history of children's rights the ten year anniversary of the CRC is an important turning point because today the rights of the children are being recognized than before. However, in order to further

64. <http://www.wcl.american.edu/hrbrief/V7i2/Child10years.htm> [Visited on 6th August 2009].

protect and fulfill the promises given to the children worldwide the states should take stronger steps to implement the provisions of the CRC.

[E] UNITED NATION'S STANDARD MINIMUM RULES FOR THE ADMINISTRATION OF JUVENILE JUSTICE, 1985 [BEIJING RULES]: -

The year 1979 was proclaimed as the international year of the child by the General Assembly of the United Nations. However, prior to such proclamation, in the majority of the resolutions taken by the United Nations with regard to human problem the child figured on way or the other in such resolutions. In 1955, 1960 and again in 1965 the problem of control on crime and juvenile delinquency was discussed in a detailed manner in the United Nations Congress on the prevention of crime and Treatment of offenders. The problems of juvenile justice administration were also discussed at length in the successive Congress and the resolution on the development of minimum standards for juvenile justice was the most important outcome of the sixth congress. Thereafter, during the seventh congress of the United Nations a topic under the title "*Youth crime and justice*" which included "*Prevention of crime and Treatment of offenders*" was taken up as its agenda. In May 1984 the Inter – regional preparatory meetings was held at Beijing which identified some of the important causes of juvenile delinquency viz, poverty and deprivation, unemployment and underemployment, extremism involving violence under the guise of religion, among others. The various conclusions that came up in this meeting was placed before the seventh congress of the UN which recommended their acceptance and finally the United Nations Standard Minimum Rules for The Administration of Juvenile Justice was adopted by the General Assembly in its Ninety – Sixth plenary meeting in Nov'1985. These rules are also known as Beijing Rules. The General Principles are contained in

part one of the Beijing Rules.⁶⁵

Provisions have been incorporated under the Beijing Rules with respect to the age of criminality. It has been mentioned that the age of criminal responsibility for juveniles shall not be fixed at too low an age level especially in those legal systems that recognizes this concept.⁶⁶ Juveniles have further been guaranteed at all stages of proceedings basic procedural safeguards like presumption of innocence, the right to be notified of the charges, the right to remain silent, the right counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority.⁶⁷

Right to privacy is an important right guaranteed to all and juveniles should not be an exception to it. Thus, the Beijing Rules provides that at stages the right to privacy of juveniles should be respected. This provision is to ensure that no harm is caused to a juvenile by undue publicity or by the process of labeling.⁶⁸ In order to protect the identity of a juvenile offender it has further been provided that no information shall be published that may lead

65. Rule 1.1 says, “*Member states shall seek in conformity with their respective general interests to further the well being of the juvenile and her or his family*”.

Rule 1.2 says, “*Member states shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which during that period in life when she or he is most susceptible to deviant behavior, will foster a process of personal development and education that is as free from crime and delinquency as possible*”.

Rule 1.3 says, “*Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including family volunteers and other community groups, as well as schools and other community institutions for the purpose of promoting the well being of the juvenile with a view to reducing the need for intervention under the law and of effectively, fairly and humanely dealing with the juvenile conflict with the law.*”

Rule 1.4 says, “*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, thus at the same time, contributing to the protection of the young and maintenance of a peaceful order in society*”.

Rule 1.5 says, “*These rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State*”.

Rule 1.6 says, “*Juvenile Justice services shall be systematically development and co-ordinated with a view to improving and sustaining the competence of personnel involved in the services including their methods, approaches and attitudes.*”

66. Rule 4.1, *The Beijing Rules*.

67. Rule 7.1, *Id.*

68. Rule 8.1, *Id.*

to the identification of the juvenile offender.⁶⁹

Part two of the Beijing Rules deals with investigation and prosecution and provisions have been incorporated relating to notification to parents or guardians of the juveniles apprehension⁷⁰ and resort to formal trial by the competent authority when dealing with juveniles offenders.⁷¹ The Beijing Rules further provides that Police officers dealing with juveniles shall be specially instructed and trained,⁷² and detention shall only be used as a measure of last resort.⁷³

Part three deals with adjudication and disposition. Provisions have been included that deals with matters like competent authority to adjudicate,⁷⁴ right to legal aid,⁷⁵ investigation of the background and circumstances under which the juvenile is living and condition under which offence was committed.⁷⁶ Certain principles have also been provided for which the disposition of the competent authority shall be guided. These principle are⁷⁷:-

- a) The action taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as the needs of the society.
- b) Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum;
- c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response;
- d) The well being of the juvenile shall be guiding factor in the

69. Rule 8.2, *The Beijing Rules*.

70. Rule 10.1, *Id.*

71. Rule 11.1, *Id.*

72. Rule 12.1, *Id.*

73. Rule 13.1, *Id.*

74. Rule 14.1, *Id.*

75. Rule 15.1, *Id.*

76. Rule 16.1, *Id.*

77. Rule 17.1, *Id.*

consideration of his or her case.

One very important provision incorporated under the Rules is the non imposition of capital punishment for any crime committed by juveniles⁷⁸ and also that juveniles shall not be subject to corporal punishment.⁷⁹ Apart from this a number of disposition measures specially to avoid institutionalization have been provided for.⁸⁰ Further provisions have been made for avoidance of unnecessary delay,⁸¹ confidentiality of the records of juvenile offenders,⁸² use of professional education, in – service training and other modes of instructions to maintain professional competence of all personal dealing with juvenile cases.⁸³

Part four deals with non – institutional treatment and provisions regarding effective implementation of orders,⁸⁴ assistance to juveniles at all stages of proceedings⁸⁵ and contribution of volunteers, voluntary organizations etc for rehabilitation of juveniles⁸⁶ have been incorporated.

Part five deals with institutional treatment and the objectives of institutional treatment⁸⁷ have also been laid down. Provisions have also been made with respect to frequent and early recourse to conditional release⁸⁸ and semi – institutional arrangements.⁸⁹ Part six deals with research,⁹⁰ planning, policy formulation and evaluation.⁹¹

78. Rule 17.2, *The Beijing Rules*.

79. Rule 17.3, *Id.*

80. Rule 18.1, *Id.*

81. Rule 20.1, *Id.*

82. Rule 21.1, *Id.*

83. Rule 22.1, *Id.*

84. Rule 23.1, *Id.*

85. Rule 24.1, *Id.*

86. Rule 25.1, *Id.*

87. Rule 26.1, *Id.*

88. Rule 28.1, *Id.*

89. Rule 29.1, *Id.*

90. Rule 30.1, *Id.*

91. Rule 30.3, *Id.*

[F] UNITED NATIONS RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY (1990): -

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty was adopted by the General Assembly resolution 45/113 of 14th December 1990. All persons under the age of 18 yrs who have been deprived of their liberty come under the applicability of the Rules. Part 1 of the Rules deals with the fundamental perspective. One of the most important fundamental perspectives is that the rights and safety of the juveniles should be upheld by the juvenile justice system and the physical and mental well being of the juveniles should be promoted and imprisonment should be used as a last resort.⁹²

Further, it has been provided that the juveniles should only be deprived of their liberty in accordance with the principles and procedures set forth in these Rules and in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). Deprivation of the liberty of a Juvenile should be a disposition of last resort and for the minimum necessary period. The length of the sanction should be determined by the judicial authority without precluding the possibility of his or her early release.⁹³ With the aim of counteracting the detrimental effects of all types of detention and to fostering integration in society the rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms consistent with human rights and fundamental freedom.⁹⁴ These rules are made applicable without any kind of partiality and discrimination.⁹⁵

Part two deals with the scope and application of the rules. The term '*juvenile*',⁹⁶ has been defined as every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her

92. Rule 1, *UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990.*

93. Rule 2, *Id.*

94. Rule 3, *Id.*

95. Rule 4, *Id.*

96. Rule 11 (a), *Id.*

liberty should be determined by law whereas the term deprivation of liberty has been defined to mean any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will by order of any judicial, administrative or other public authority.⁹⁷ Other provision include benefit of activities and programmes to be guaranteed to juveniles detained in facilities,⁹⁸ non – denial of the civil economic, political, social or cultural rights⁹⁹ and protection of individual rights of juveniles.¹⁰⁰ Part three deals with juveniles under arrest or awaiting trial.¹⁰¹

Part four deals with the management of juvenile facilities. Provisions relating to the maintenance of a confidential individual file containing all reports including legal records, medical records and records of disciplinary proceedings and made accessible only to authorized persons have been incorporated in this part. Further, safeguarding the right of the juvenile to contest, every juvenile should be given a chance to contest any fact or opinion which appears to be inaccurate or unfair so that it can be rectified, and on release of juvenile the records shall be sealed and expunged.¹⁰²

It has also been mentioned that a complete and secure record containing certain information has to be kept in every place where a juvenile is detained.¹⁰³ It is further provided that all juveniles on admission in a facility shall be informed of the rules governing the facility as well as their rights and obligations in a language that they understand.¹⁰⁴ With a view to seeing that the juveniles are not subjected to any kind of hardship or indignity the juveniles while being transferred from one facility to another should be transported in conveyances with adequate ventilation and light and at the

97. Rule 11 (b), *UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990.*

98. Rule 12, *Id.*

99. Rule 13, *Id.*

100. Rule 14, *Id.*

101. Rule 17, *Id.*

102. Rule 19, *Id.*

103. Rule 21, *Id.*

104. Rule 24, *Id.*

expense of the administration.¹⁰⁵

With a view to identifying the specific type of care and programme required by a particular juvenile on admission to a facility it has been provided that as soon as possible each juvenile should be interviewed and a psychological and social report should be prepared.¹⁰⁶ In order to ensure the protection of juveniles from harmful influences and risk situations the detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence as well as mental and physical health.¹⁰⁷ In order to ensure that the juveniles are not brought into contact with hardened adult criminals it has been mentioned that juveniles should be separated from adults in all detention facilities unless they are members of the same family.¹⁰⁸

In order to facilitate access and contact between the juveniles and their families provisions have been incorporated for the decentralization of facilities and also the establishment of open detention facilities wherein there should be no or minimum security measures with population small enough to allow individualized treatment.¹⁰⁹ Provisions relating to the design of detention facilitates¹¹⁰ sleeping accommodation¹¹¹ and sanitation¹¹² have also been made under the Rules.

Recognizing the right to education of every juvenile provisions for providing education outside the detention facility in community schools and by qualified teachers have been made.¹¹³ This provision is to ensure that often release the juveniles may continue their education without any difficulty. With a view to preparing a juvenile for his/her future and also to ensure that the juvenile can get an opportunity to lead a dignified life after

105. Rule 26, *UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990.*

106. Rule 27, *Id.*

107. Rule 28, *Id.*

108. Rule 29, *Id.*

109. Rule 30, *Id.*

110. Rule 32, *Id.*

111. Rule 33, *Id.*

112. Rule 34, *Id.*

113. Rule 38, *Id.*

release it has been provided that every juvenile should have the right to receive vocational training in occupations.¹¹⁴ Respecting the right to religion of each juvenile, every juvenile should be allowed to satisfy the needs of his or her religious and spiritual life.¹¹⁵

Further health care services,¹¹⁶ including the adoption of specialized drug abuse, prevention and rehabilitation programmes¹¹⁷ are also included under the Rules.

Recognizing the right to fair and humane treatment it has been mentioned that juveniles should have adequate communication with the outside world. They should be allowed to communicate with their families, friends and other persons or representative of reputable outside organization.¹¹⁸ This provision is to ensure, that the juveniles get opportunity to prepare for their integration into the society after release. Furthermore, in order to ensure that the juveniles that the juveniles are not subjected to humiliation or degradation it has been mentioned that instruments of restraint and force can only be used in exceptional cases where all other control methods have been exhausted and failed and only as authorized and specified by law and regulation.¹¹⁹

Upholding the inherent dignity of the juvenile it has been provided that disciplinary measures and procedures should maintain the interest of safety and an ordered community life.¹²⁰ With a view to ensure that the physical or mental health of the juvenile may not be compromised under any circumstances any disciplinary measure that constitutes cruel, inhuman or degrading treatment has been strictly prohibited which also includes corporal punishment, placement in a dark cell, closed or solitary confinement or any other punishment.¹²¹

114. Rule 42, *UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990.*

115. Rule 48, *Id.*

116. Rule 49, *Id.*

117. Rule 54, *Id.*

118. Rule 59, *Id.*

119. Rule 64, *Id.*

120. Rule 66, *Id.*

121. Rule 67, *Id.*

Apart from the abovementioned provisions services should also be ensured to the juveniles in order to help them in re – establishing themselves in society. These services should ensure that the juvenile is provided with suitable residence, employment, clothing and sufficient means to maintain themselves upon release¹²² as provided under the rules.

Employments of qualified and sufficient number of Personnel are also provided for under the Rules.¹²³

[G] UNITED NATIONS GUIDELINES FOR THE PREVENTION OF JUVENILE DELINQUENCY [THE RIYADH GUIDELINES]: -

The United Nations has since 1955 and after every five years, been organizing a congress on crime prevention and Treatment of Offenders bringing together representatives of the world's national Governments, specialists in crime prevention and criminal justice, scholars of international repute and members of the NGO's concerned, with the main aim of discussing problems, sharing professional experiences and seeking viable solutions to crime. In almost all United Nations Congresses on crime Prevention and treatment of offender's juvenile delinquency and its prevention have been an agenda. Therefore, two important resolutions were passed at the Eight United Nations Congress on the Prevention of Crime and the Treatment of Offenders i.e. Rules for the Protection of Juveniles Deprived of their Liberty and Guidelines for the Prevention of Juvenile Delinquency also known as the Riyadh Guidelines. The Riyadh Guidelines was adopted by the General Assembly on 14th December, 1990. Every social area is dealt within the Guidelines viz, family, school, community, the mass media, social policy, legislation and Juvenile Justice Administration. The fundamental principles of

122. Rule 80, *UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990.*

123. Rule 81, *Id.*

these guidelines have been mentioned in Part I.¹²⁴

Part III deals with general prevention and provision has been made regarding comprehensive prevention plans. It is mentioned that at every level of government comprehensive prevention plans should be instituted and it shall include among others an in depth analysis of the problems and inventories of programmes, services, facilities and resources available; well defined responsibilities for the qualified agencies, institutions and personnel

124. Article 1 says, “*The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young person's can develop non – criminogenic attitudes*”.

Article 2 says, “*The successful prevention of juvenile delinquency requires effort on the part of the entire society to ensure the harmonious development of adolescences with respect for and the promotion of their personality from early childhood*”.

Article 3 says, “*For the purpose of the interpretation of the present juveniles a child – centered orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control*”.

Article 4 says, “*In the implementation of the present guidelines in accordance with national legal systems, the well being of young persons from their early childhood should be the focus of any preventive programme*”.

Article 5 says, “*The need for and importance of progressive delinquency prevention policies and the systematic study and the elaboration of measures should be recognized. These should avoid criminalizing and penalizing a child for behavior that does not cause serious damage to the development of the child or harm to others. Such policies and measures should involve:-*

- a) *The provision of opportunities in particular educational opportunities, to meet the varying needs of young persons and to serve us a supportive framework for safeguarding the personal development of all young personal particularly those who are demonstrably endangered or at social risk and are in need of special care and protection.*
- b) *Specialized philosophies and approaches for delinquency prevention on the basis of laws, processes, institutions, facilities and a service delivery network aimed at reducing the motivation need and opportunity for or conditions giving rise to the commission of infractions.*
- c) *Official intervention to be pursued primarily in the overall interest of the young person and guided by fairness and equity.*
- d) *Safeguarding the well being, development, rights and interests of all young persons.*
- e) *Consideration that youthful behaviors or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood.*
- f) *Awareness that, in the predominant opinion of experts labeling a young person as “deviant”, “delinquent” or “predelinquent” often contributes to the development of a consistent pattern of undesirable behavior by young persons;*

Article 6 says, “*Community based services and programmes should be developed for the prevention of juvenile delinquency particularly where no agencies have yet been established. Formal agencies of social control should be utilized as a means of last resort*”.

involved in prevention efforts; methods for effectively reducing the opportunity to commit delinquent acts; and youth participation in delinquency prevention policies and process, including to recourse to community resources, youth self help and victim compensation and assistance programmes.¹²⁵

Part IV deals with the socialization process and provisions giving emphasis on preventive policies facilitating the successful socialization and integration of all children and young persons particularly through the family, the community, peer groups, schools, vocational training and the world of work and also through voluntary organizations¹²⁶ have been provided for.

Keeping in view the importance of family it has been mentioned that governmental and social efforts to preserve the integrity of the family including the extended family should be pursued. The responsibility of the society to assist the family in providing care and protection and ensuring the physical and mental well – being of children has also been mentioned.¹²⁷ It has been further provided that policies should be established by the government that are conducive for bringing up children in stable and settled family environments.¹²⁸ In case stable and settled family environment does not exist then foster care and adoption should be considered.¹²⁹

Provisions have also been made that relates to giving special attention to children of families affected by problems brought by rapid and uneven economic, social and cultural change and particularly children of indigenous migrant and refugee family.¹³⁰ Development of programmes that would provide families with the opportunity to learn about parental roles and obligations regarding child development and child care¹³¹ is another provision that has been incorporated under the guidelines.

125. Article 9, *UN Guidelines for the Prevention of Juvenile Delinquency*.

126. Article 10, *Id.*

127. Article 12, *Id.*

128. Article 13, *Id.*

129. Article 14, *Id.*

130. Article 15, *Id.*

131. Article 16, *Id.*

Giving priority to education governments are obliged to make public education accessible to all young persons.¹³² It has been further provided that education systems should in addition to their academic and vocational training activities devote particular attention to the following:-¹³³

- i. Teaching of basic values and developing respect for the child's own cultural identity and patterns for the social values of the country in which the child is living, for civilizations different from child's own and for human rights and fundamental freedoms;
- ii. Promotion and development of the personality, talents and mental and physical abilities of young people to their fullest potential;
- iii. Involvement of young persons as active and effective participants in, rather than mere objects of the educational process;
- iv. Undertaking activities that foster a sense of identity with and of belonging to the school and the community;
- v. Encouragement of young persons to understand and respect diverse views and opinions as well as cultural and other differences;
- vi. Provision of information and guidance regarding vocational training, employment opportunities and career development;
- vii. Provisions of positive emotional support to young persons and the avoidance of psychological maltreatment;
- viii. Avoidance of harsh disciplinary measures, particularly corporal punishment.

In order to address the problem of drug and substance abuse it is mentioned that special attention should be given to comprehensive policies and strategies for the prevention of alcohol, drug and other substance abuse by young persons.¹³⁴

The chapter on community has also been introduced wherein it has been provided that community based services and programmes that respond to the special needs, problems interests and concern of young

132. Article 20, *UN Guidelines for the Prevention of Juvenile Delinquency*.

133. Article 21, *Id.*

persons should be developed or strengthened.¹³⁵

Adequate shelter for young persons,¹³⁶ special programmes for drug abusers,¹³⁷ financial support to voluntary organizations providing services for homeless or street children¹³⁸ are some of the other provisions that have been incorporated. Provisions' relating to mass media has also been included wherein it is provided that encouragement should be given to mass media so that it can be ensured that young persons have access to information and material from national and international sources¹³⁹ and can also portray the positive contribution of young persons in society.¹⁴⁰ In particular, the encouragement of television and film media¹⁴¹ also finds prominence under the guidelines. At the same time the social role and responsibility of the mass media has also been emphasized.¹⁴²

Chapter V deals with social policy. Provisions relating to government agencies priority to plans and programmes for young persons have been incorporated where it is mentioned that for the effective delivery of services, facilities and staff for adequate mental and medical health care, nutrition, housing and other relevant services the government agencies should give high priority to plans and programmes for young persons and provide sufficient funds and other resources.¹⁴³

Giving paramount importance to the best interests of the young persons institutionalization of young persons as a last resort measures also finds mention under the guidelines.¹⁴⁴ Emphasizing the duty of the government agencies to provide full time education it has been mentioned that government agencies should provide young persons with the opportunity of

134. Article 25, *Id.*

135. Article 32, *UN Guidelines for the Prevention of Juvenile Delinquency.*

136. Article 34, *Id.*

137. Article 35, *Id.*

138. Article 36, *Id.*

139. Article 40, *Id.*

140. Article 41, *Id.*

141. Article 43, *Id.*

142. Article 44, *Id.*

143. Article 45, *Id.*

144. Article 46, *Id.*

continuing in full – time education funded by the state where parents or guardians are unable to support the young persons and of receiving work experience.¹⁴⁵

Planning and developing programmes to prevent delinquency is yet another important provision under the guidelines where it is mentioned that programmes to prevent delinquency should be planned and developed on the basis of reliable, scientific research findings and periodically monitored, evaluated and adjusted accordingly.¹⁴⁶ Further, dissemination of scientific information¹⁴⁷ and voluntary participation in plans and programmes¹⁴⁸ are the other provisions mentioned under the guidelines.

Chapter VI deals with legislation and juvenile administration. For this purpose it has been provided that there should be enactment and enforcement of specific laws and procedures by the government to promote and protect the rights and well – being of all young persons.¹⁴⁹ At the same it is mentioned that legislation should be enacted and enforced to prevent the victimization, abuse, exploitation and the use for criminal activities of children and young persons.¹⁵⁰ Further, with the aim of restricting and controlling accessibility by weapons of any sort to children and young persons legislation should be enacted and enforced.¹⁵¹ Enactment of legislation to prevent stigmatization, victimization and criminalization of young persons,¹⁵² establishment of an office of ombudsman,¹⁵³ training of law enforcement and other relevant personnel,¹⁵⁴ and enactment and strict enforcement of legislation¹⁵⁵ are provided for under this chapter.

Chapter VII deals with research, policy development and

145. Article 47, *UN Guidelines for the Prevention of Juvenile Delinquency*.

146. Article 48, *Id.*

147. Article 49, *Id.*

148. Article 50, *Id.*

149. Article 52, *Id.*

150. Article 53, *Id.*

151. Article 55, *Id.*

152. Article 56, *Id.*

153. Article 57, *Id.*

154. Article 58, *Id.*

155. Article 59, *Id.*

coordination. Provisions have been made where it is mentioned that to promote the justice system, youth, community and development agencies and other relevant institutions and also interaction and coordination between economic, social, education and health agencies and services efforts should be made and appropriate mechanisms established on both a multidisciplinary and an interdisciplinary basis.¹⁵⁶

Provisions relating to intensification of the exchange of information, experience and expertise relating to youth crime, delinquency prevention and juvenile justice,¹⁵⁷ developing and strengthening regional and international cooperation,¹⁵⁸ providing support to technical and scientific cooperation on practical and policy related matters,¹⁵⁹ encouragement to collaboration in undertaking scientific research,¹⁶⁰ collaboration and coordination by United Nations bodies, institutions etc,¹⁶¹ active role of the United Nations Secretariat¹⁶² are incorporated under the guidelines.

[H] GUIDELINES FOR ACTION ON CHILDREN IN THE CRIMINAL JUSTICE SYSTEM: -

The Guidelines for Action on Children in the Criminal Justice System were developed pursuant to Economic and Social Council resolution 1996/13 of 23rd July at an expert group meeting held at Vienna from 23rd to 25th February 1997 with the financial support of the Government of Austria. The guidelines for Action are addressed to the secretary General and relevant United Nations agencies and programmes, state parties to the convention on the rights of the child as regards its implementation as well as member states as regards the use and application of the United Nations standards minimum rules for the Administration of Juvenile Justice (The

156. Article 60, *UN Guidelines for the Prevention of Juvenile Delinquency*.

157. Article 61, *Id.*

158. Article 62, *Id.*

159. Article 63, *Id.*

160. Article 64, *Id.*

161. Article 65, *Id.*

162. Article 66, *Id.*

Beijing Rules) the United Nations Guidelines for the prevention of Juvenile Delinquency (The Riyadh Guidelines) and the United Nations Rules for the protection of juveniles Deprived of their Liberty, herein after together referred to as United Nations standards and norms in juvenile justice.¹⁶³

Part I deals with the aims, objectives and basic considerations. It has been provided that the aims of the Guidelines for actions are to provide a framework to achieve the following objectives:-¹⁶⁴

- a) To implement the Convention on the Rights of the Child and to pursue the goals set forth in the Convention with regard to children in the context of the administration of juvenile justice, as well as to use and apply the United Nations standards and norms in juvenile justice and other related instruments such as the Declaration of Basic Principles of justice for victims' of crime and abuse of power;
- b) To facilitate the provision of assistance to states parties for the effective implementation of the Right of the child and related instruments.

Provisions relating to cooperation between governments, relevant entities of the United Nations system, non governmental organizations etc to ensure effective use of the guidelines for actions,¹⁶⁵ considerations to be given in the use of the Guidelines for Action,¹⁶⁶ allocation and utilization of adequate resources,¹⁶⁷ are provided for under the guidelines.

Part III deals with the plans for the implementation of the Convention on the rights of the child, the pursuit of its goal and the use and application of international standards and norms in juvenile justice. Measures of general application have been incorporated where it is mentioned that the importance of a comprehensive and consistent national approach in the area of juvenile justice should be recognized with respect for the interdependence and indivisibility of all rights of the child.¹⁶⁸ Other provisions include measures to

163. <http://www2.ohchr.org/english/law/pdf/system.pdf> [Visited on 21st August 2009].

164. Article 4, *Guidelines for Action on Children in the Criminal Justice System*.

165. Article 5, *Id.*

166. Article 8, *Id.*

167. Article 9, *Id.*

168. Article 10, *Id.*

be taken relating to policy, decision making, leadership and reform,¹⁶⁹ ensuring the effectiveness of birth registration programmes¹⁷⁰ and ensuring that children benefit from all their rights.¹⁷¹ One important provision that has been incorporated is the establishment of juvenile courts and a comprehensive child centered juvenile process where it has mentioned that particular attention should be given to the following points:-¹⁷²

- a) There should be a comprehensive child centered juvenile justice process.
- b) Independent expert or other types of panels should review existing and proposed juvenile justice laws and their impact on children;
- c) No child who is under the legal age of criminal responsibility should be subject to criminal charges;
- d) States should establish juvenile courts with primary jurisdiction over juveniles who commit criminal acts and special procedures should be designed to take into account the specific needs of children. As an alternative, regular courts should incorporate such procedures as appropriate. Wherever necessary national legislative and other measures should be considered to accord all the rights of and protection for the child, where the child is brought before a court other than a juvenile court in accordance with articles 3, 37 and 40 of the Convention.

Further, recognizing the importance of protecting children requiring special protection measures it is provided that appropriate action should be taken to alleviate the problem of children in need of special protection measures such as children working or living on the streets or children permanently deprived of a family environment, children with disabilities, children with minorities, immigrants and indigenous people and other vulnerable groups of children.¹⁷³ It has been mentioned that the placement of children in closed institutions should be reduced. In such

169. Article 11, *Guidelines for Action on Children in the Criminal Justice System*.

170. Article 12, *Id.*

171. Article 13, *Id.*

172. Article 14, *Id.*

173. Article 17, *Id.*

placement of children should only take place in accordance with the provisions of Article 37(b) of the convention and as a matter of last resort and for the shortest period of time. Corporal punishment in the child justice and welfare systems should be prohibited.¹⁷⁴

Apart from the abovementioned provisions measures to be taken at the international level also finds mention in the guidelines. Such measures include establishment of mechanisms to ensure thorough and impartial investigation,¹⁷⁵ urgent need for the close cooperation between all bodies in this field,¹⁷⁶ the effective implementation of the Convention on the Rights of the Child,¹⁷⁷ maintenance of close cooperation between the Crime Prevention and Criminal Justice Division and Department of Peace Keeping Operations.¹⁷⁸

It has been further laid down that states should undertake to ensure that child victims and witness are provided with appropriate access to justice and fair treatment, restitution, compensation and social assistance. This should be in accordance with the Declaration of Basic Principles for victims of Crime and Abuse of power.¹⁷⁹ Other important provisions regarding child victims are right to be treated with compassion and respect for their dignity,¹⁸⁰ access to assistance that meets their need;¹⁸¹ access to fair and adequate compensation for all child victims of violation of human rights¹⁸² safe return of children displaced illegally or wrongfully retained across borders.¹⁸³

[I] THE WORLD SUMMIT FOR CHILDREN, 1990:-

At the United Nations a large gathering of world leaders assembled on 29th – 30th September 1990 in order to attend the world summit for children.

174. Article 18, *Guidelines for Action on Children in the Criminal Justice System*.

175. Article 25, *Id.*

176. Article 27, *Id.*

177. Article 28, *Id.*

178. Article 29, *Id.*

179. Article 43, *Id.*

180. Article 45, *Id.*

181. Article 46, *Id.*

182. Article 48, *Id.*

183. Article 52, *Id.*

This summit was lead by 71 heads of state and governments and 88 other senior officials mostly at the ministerial level.¹⁸⁴ A plan of action for implementing the World Declaration on the Survival, Protection and Development of children in 1990 was adopted at this World Summit. The Challenges that were identified during the World Summit are :

- (i) Each day, countless children around the world are exposed to dangers that hamper their growth and development. They suffer immensely as casualties of war and violence, as victims of social discrimination, apartheid, aggression, foreign occupation and annexation, as refugees and displaced children forced to abandon their homes and their roots; as disabled; or as victims of neglect; cruelty and exploitation.
- (ii) Each day, millions of children suffer from the scourges of poverty and economic crisis – from hunger and homelessness, from epidemics and illiteracy, from degradation of the environment. They suffer from the grave effects of the problems of external indebtedness and also from the lack of sustained and sustainable growth in many developing countries, particularly the least developed ones.
- (iii) Each day, 40,000 children die from malnutrition and disease, including acquired immunodeficiency syndrome (AIDS), from the lack of clean water and inadequate sanitation and from the effects of the drug problem.

Therefore, the world leaders agreed to meet these challenges and committed themselves to the following 10 point programme to protect the rights of the children and to improve their lives:

- a. To work to promote earliest possible ratification and implementation of the Convention on the Rights of the child programmes to encourage information about children's rights should be launched world - wide taking into account the distinct cultural and social values in different countries.
- b. To work for a solid effort of national and international action to

184. <http://www.unicef.org/wsc/plan.htm> [Visited on 21st August 2009)

enhance children's health to promote pre natal care and to lower infant and child mortality in all countries and among all peoples. To promote the provision of clean water in all communities for all their children, as well as universal access to sanitation.

- c. To work for optional growth and development in childhood, through measures to eradicate hunger, malnutrition and famine, and thus to relieve millions of children of tragic sufferings in a world that has the means do feed all its citizens.
- d. To work to strengthen the role and status of women and promote responsible planning of family size, child spacing, breast feeding and safe motherhood.
- e. To work for respect for the role of the family in providing for children and will support the efforts of parents, other care – givers and communities to nurture and care for children from the earliest stages of childhood through adolescence. To also recognize the special needs of children who are separated from their families.
- f. To work for programmes that reduce illiteracy and provide educational opportunities for all children irrespective of their background and gender; that prepare children for productive employment and lifelong learning opportunities i.e. through vocational training and that enable children to grow to adulthood within a supportive and nurturing cultural and social context.
- g. To work to ameliorate the right of millions of children's who live under specially difficult circumstances – as victims of apartheid and foreign occupation; orphans and street children and children of migrant workers; the displaced children and victims of natural and man – made disasters; the disabled and the abused, the socially disadvantaged and the exploited. To work for special protection of the working child and for the abolition of illegal child labour and to ensure that children are not drawn into

- becoming victims of the scourge of illicit drugs.
- h. To work carefully to protect children from the scourge of war and to take measures to prevent further armed conflicts, in order to give children everywhere a peaceful and secure future. To promote the values of peace, understanding and dialogue in the education of children and to protect the essential needs of children and family even in times of war and in violence-ridden areas.
 - i. To work for common measures for the protection of the environment, at all levels, so that children can enjoy a safer and healthier future.
 - j. To work for a global attack on poverty, which would have immediate benefits for children's welfare. The vulnerability and special needs of the children of the developing countries, and in particular the least developed ones deserves priority.

The former Secretary General of the United Nations J.Perez de Cuellar while addressing the world summit in 1990 said: "*As we look at the world's social and economic landscape, we marvel at the extraordinary advances that have been made in civilization as a whole yet with all this we also see that children continue to be the most vulnerable segment of society. Two set of anxieties cry to be addressed. One arises from the global social crisis which robs children of emotional shelter and moral sustenance that they need. The other cause of distress is the poverty that stalks the larger part of the world and that denies children enjoyment of their rights. To this are added effects of conflicts internal and external. One in two among the eight million refugees in the world is a child.*"¹⁸⁵

[J] UN CONFERENCE OF ENVIRONMENT AND DEVELOPMENT: -

In June 1992 at Rio de Janerio, Brazil, the United Nations Conference on Environment and Development was held. Agenda 21 is an important agenda

because it reinforces the commitments that were made at the World Summit for Children. Chapter 25 of Agenda 21 specifically relates to children and youth. In this chapter it has been specifically urged to the government to:

- a) Implement programmes to reach the goals set by the World Summit for children.
- b) Ratify and implement the Convention on the Rights of the Child;
- c) Promote primary environmental care activities to improve the environment by meeting basic needs and empowering local communities;
- d) Expand children's education specially for the girl child;
- e) Incorporate children's concerns into all relevant policies and strategies for environment and development.

[K] WORLD CONFERENCE ON HUMAN RIGHTS, 1993: -

The principle of "*first call for children*" was reiterated during the world conference and protection and implementation of the rights of the child was given due importance. The importance and role of the UNICEF in the protection and promotion of the rights of the child's was underlined. For the promotion of rights of the child the UNICEF coined a new perception "*Human Rights begins with children's Rights.*"¹⁸⁵

[L] UNITED NATIONS STANDARD MINIMUM RULES FOR NON – CUSTODIAL MEASURES (THE TOKYO RULES): -

The United Nations Standard Minimum Rules for non-custodial measures also known as the Tokyo Rules was adopted by the General Assembly Resolution 45/110 of 14th December 1990.

The Tokyo Rules are to be applied without any discrimination on the grounds of race, colour, sex, age, language, religion, political or other opinion, national or social origin, property birth or other

185. Mamta Rao, *Law Relating to Women and Children*, 1st Edn (2005) at p. 408.

186. *Id.*

status.¹⁸⁷ Therefore ‘*juveniles*’ would also naturally come under the application of these rules.

The fundamental aims of the Tokyo Rules are: -

- (i) To provide a set of basic principles to promote the use of non-custodial measures, as well as minimum safeguards for persons subject to alternatives to imprisonment.
- (ii) To promote greater community involvement in the management of criminal justice, specifically in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society.
- (iii) To implement the rules taking into account the political, economic, social and cultural conditions of each country and the aims and objectives of its criminal justice system.
- (iv) In the implementation of the Rules, Member States shall endeavour to ensure a proper balance between the rights of individual offenders, the rights of victims and the concern of society for public safety and crime prevention.
- (v) Development of non-custodial measures by the member states within their legal systems to provide other options, thus reducing the use of imprisonment, and to rationalize criminal justice policies, taking into account the observance of human rights, the requirements of social justice and the rehabilitation needs of the offender.

A number of provisions pertaining to legal safeguards have been incorporated under the Tokyo Rules like selection of non-custodial measure based on an assessment of established criteria,¹⁸⁸ right of the offender to make request or complaint¹⁸⁹, protection of the dignity of the offender at all times,¹⁹⁰ maintaining confidentiality of the offenders personal records¹⁹¹.

Provisions relating to pre-trial stage have been included in Part II wherein it is mentioned that pre-trial detention should only be used as a

187. Rule 2.2, *The Tokyo Rules*.

188. Rule 3.2, *Id*.

189. Rule 3.6, *Id*.

190. Rule 3.9, *Id*.

191. Rule 3.12, *Id*.

means of last resort in criminal proceedings, with due regards for the investigation of the alleged offence and for the protection of society and victim¹⁹².

Part V deals with implementation of non – custodial measures. Provisions dealing with supervision are dealt with the purpose of supervision is to reduce reoffending and to assist the offender's integration into society in a way which minimizes the likelihood of a return to crime.¹⁹³ It has been further provided that wherever needed offenders should be provided with psychological, social and material assistance and with opportunities to strengthen links with the community and facilitate their reintegration into society.¹⁹⁴

Research, planning, policy for regulation and evolution finds mention in part VIII. It is mentioned that research and information mechanisms should be built into the criminal justice system for the collection and mainly so of data and see justice on the implementation of non – custodial treatment for offender.¹⁹⁵ It has been further provided that programmes for non – custodial measures should be systematically planned and implemented as an integral part of the criminal justice system within the national development process.¹⁹⁶

[M] THE FOURTH WORLD CONFERENCE ON WOMEN OR THE BEIJING DECLARATION, 1995:-

On 15th September 1995, The Beijing Declaration was formalized. The Beijing Declaration is particularly determined to advance the goals of equality, development and peace for all women every wherein the interest of all humanity.

The commitment of the international community to the advancement of women and to the implementation of the platform for Action.

192. Rule 6.1, *The Tokyo Rules*.

193. Rule 10.1, *Id.*

194. Rule 10.4, *Id.*

195. Rule 20.3, *Id.*

196. Rule 21.1, *Id.*

The advancement and empowerment of women in relation to women's human rights, women and poverty, women and decision – making, violence against women and other areas of concern.¹⁹⁷

It is important to mention here that though the Beijing Declaration is specifically with respect to women, however, special attention has been paid to ensure rights of the girl children and protecting them against all kinds of crime and violence.

The Beijing Declaration is determined to ensure the full enjoyment by women and girl child of all human rights and fundamental freedoms and take effective action against violation of these rights and freedoms.¹⁹⁸ Also to take all necessary measures to eliminate all forms of discrimination against women and the girl child and remove all obstacles to gender equality and the advancement and empowerment of women,¹⁹⁹ prevent and eliminate all forms of violence against women and girls²⁰⁰; promote and protect all human rights of women and girls;²⁰¹ intensify efforts to ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers to their empowerment and advancement because of such factors as their race, age, language, ethnicity, culture, religion or disability or because they are indigenous people,²⁰² develop the fullest potential of girls and women of all ages, ensure their full and equal participation in building a better world for all and enhance their role in the development process²⁰³ as well as to ensure women's equal access to economic resources, including land, credit, science and technology, vocational training, information, communication and market, as a means to further the advancement and empowerment of women and girls, including through the enhancement of their capacities to enjoy the benefits of equal access to these

197. <http://www.thegreatinitiative.com/resolution/beijing-declaration-and-platform-for-action-1995/> [Visited on 11th November 2011].

198. Article 23, *The Beijing Declaration 1995*.

199. Article 24, *Id.*

200. Article 29, *Id.*

201. Article 31, *Id.*

202. Article 32, *Id.*

203. Article 34, *Id.*

resources, interalia, by means of international cooperation.²⁰⁴

It is desirable to mention here that from 5th June to 9th June 2000 at the United Nations Headquarters in New York the 23rd Special Session of the General Assembly on “*Women 2000: gender equality, development and peace for the twenty first century*” took place. During this session a political declaration and outcome document entitled..... “*Further actions and initiatives to implement the Beijing Declaration and platform for Action*” was adopted.

The governments and the international community once more reaffirmed their commitment to the platform for action and a common development agenda with gender equality as an underlying principle. And with respect to girl child it further recognized that policies, programmes and budgetary process should adopt a gender perspective, be based on a clear research based knowledge on the situation of women and girls and sex disaggregated data and be defined in terms of short and long term time bound targets and measurable goals and follow up mechanisms to access progress. The special session further reaffirmed the importance of gender mainstreaming in all areas and at all levels and the complementarity between mainstreaming and special activities targeting women. Certain areas were identified as requiring focused attention, which among others include violence against women and girls.

[N] CONVENTION CONCERNING THE PROHIBITION AND IMMEDIATE ACTION FOR THE ELIMINATION OF THE WORST FORMS OF CHILDS LABOUR: -

In 1999 the International labour Organization adopted the Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour also known in short as the Worst Forms of Child Labour Convention. This convention came into force on 19th November 2000.

204. Article 35, *The Beijing Declaration 1995.*

Each member which ratifies this Convention shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.²⁰⁵ Emphasizing the importance of education in eliminating child labour it is provided that each member shall, taking into account the importance of education in eliminating child labour, take effective and time bound measures to:-²⁰⁶

- a) Prevent the engagement of children in the worst forms of child labour;
- b) Provide the necessary and appropriate direct assistance for the removal of children from the worst of child labour and for their rehabilitation and social integration;
- c) Ensure access to free basic education, and wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour;
- d) Identify and reach out to children at special risk, and
- e) Take account of the special situation of girls.

The aforesaid deliberations of the international endeavour to protect and develop the human rights of the child are sufficient to bring home the conclusion that the World Community appears to be sincere in protecting the rights of the child. However, the fact remains that on the one hand the development of the children could not be achieved upto the expectation and the goals projected and propagated at the international level. On the other hand, there have been increase in the cases of exploitation, misuse and violations of the human rights of the child. Although the weakness of the international law developments relating to the human rights that lacks the enforcement machinery is there, the international law contribution is memorable as it has an impact upon the national law in many ways. It is due to the propagation and propaganda of the human rights by the international organizations which affect the making of the national constitutions in the contemporary period and as a result India has also adopted the rights of the

205. Article 1, *Worst Forms of Child Labour Convention, 1999.*

206. Article 7, *Id.*

child in its constitution. Further some of the important human rights either have been incorporated in one laws through judicial interpretation or have been incorporated by legislative enactments²⁰⁷

207. Section 2(d) of the Protection of Human Rights Act, 1993 defines Human right as : "*The rights relating to life, liberty, equality and dignity of the individual guaranteed by constitution or embodied in the International Covenants and enforceable by Courts in India*".