9th SAARC Chief Justices’ Conference
&
12th SAARCLAW Conference

Child Protection and Constitutionalism
“Securing the Future”

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Thimphu, Bhutan

ADDRESS BY THE SAARC CHIEF JUSTICES

Hosted by the Royal Court of Justice, Bhutan
Organized by the SAARCLAW Bhutan Chapter
&
The SAIEVAC Regional Secretariat
Supported by SACG
Hon’ble Chief Justices of SAARC,
Hon’ble Justices and Judges, Presidents of the SAARC Country Chapters,
Your Excellencies,
Distinguished Delegates,
Ladies and Gentlemen.

It is an honor and privilege for the Judiciary of Bhutan and the SAARCLAW Bhutan Chapter to host the 9th SAARC Chief Justices’ and the 12th SAARCLAW Conference here in Bhutan. We greatly appreciate the presence of eminent Chief Justices and the distinguished delegates despite your busy schedule. Your presence at this gathering is a testimony of commitment in furthering the objectives of SAARCLAW. The spirit and camaraderie and solidarity amongst the members of the legal fraternity of our region is evident from your presence at this Conference.

I would also like to welcome the delegation from Afghanistan led by the Hon’ble Chief Justice Abdul Salam Azimi for your participation in this Conference. We hope that Afghanistan will join the SAARCLAW as a member.

The theme for this Conference “Child Protection and Constitutionalism” has been chosen to reflect the common regional as well as the global concern. Children are the most important aspect of humanity as Rabindranath Tagore said, “Every child born into the world brings a message from God that he is not yet discouraged with man”. It is our responsibility to protect the rights of our children and to expand their opportunities to reach their full potential. According to Lord Buddha, children should be compassionately treated by restraining them from evil, encouraging them to do good and training them for a profession which are progressive guarantees.
Children have a great role to play in the future of our countries, as we the elders will be handing over the responsibilities of the nation building to them. It is the youth of today who will uphold and preserve the heritage and sovereignty of the country for posterity. It is there, very important for every one of us to shape our youth into tomorrow’s citizen. Albert Einstein gave us hope that,

“Our death is not an end, if we can live on in our children and the younger generation.”

The SAARCLAW fraternity as an institution in our region has played a vital role for social and economic development contributing to the core, structural, constitutional and institutional values of our legal systems. We must understand the dynamism of the regional and global scenario and realize that we be ever adaptive and take proactive measures.

In our common pursuit, we welcome our new like-minded partners who have collaborated with us to explore commonalities that will benefit our region. Friendship that we have built, understanding that we have developed and commitment that we have demonstrated over the years ensure the fulfillment of the SAARCLAW charter. The SAARC legal fraternity and our partners must play a major role in achieving social and distributive justice in our region. The discussion and debates must reflect the historical, cultural and socio-economic benefits that are significant to our region in the context of constitutionalism and children. A “constitutional common sense” must be created which would serve as a valuable resource for achieving success and mutually advantageous integration for the promotion of democracy within our region.

In order to take SAARCLAW forward, we would like to garner unflinching support from many regional and multi-lateral agencies s we surge ahead to translate our dream into reality. Rule of Law is a necessity and justice is the first promise of humanity.

The journey of SAARCLAW is strengthened by many dedicated people specially our Secretary General Mr. Hemant Batra. His tireless efforts and dedication are demonstrated by the prestigious Mahatma Gandhi Seva Award which he was awarded recently. Congratulations to you!

Lastly, on behalf of SAARCLAW, I would like to express my sincere gratitude and appreciation to SAIEVAC, the Royal Government of Bhutan and our partners, without whose generous financial assistance, the conference would not have been possible.

I wish hon’ble Chief Justices of SAARC countries and the distinguished delegates a safe and pleasant stay in our country.

Thank you and Tashi Delek.
Address by Hon. Abdul Salam Azimi
Chief Justice of Afghanistan

Theme: Observation of the Rights of the Delinquent Child – The Judicial System of Islamic Republic of Afghanistan

Excellencies, chief justices, judges, respected scholars in this conference.
Ladies and gentlemen!

It is my duty to express gratitude to Excellency Lyonpo Sonam Tobgye and organizers of this event for inviting me to the conference as Chief Justice of the Supreme Court of Islamic Republic of Afghanistan.

And also to thank you for the great arrangements and reception you have provided for all the guests from the beginning till now.

Dear participants! I am very delighted to participate in a conference where the great human values such as children rights and elimination of violence are the subjects. Here I would like to express comments regarding the subjects of the conference from another point of view, which is observation of children’s rights while investigation of violation in the light of Afghanistan laws.

Children are among the most vulnerable population in terms of enjoying their human rights and freedoms compared with other members of the society because children are not capable of independently defending their rights and freedoms. Rather, their rights are usually safeguarded by the state, their parents or relatives.

Normally, as per the laws of different countries, children remain deprived from a number of rights and freedoms for the reason of their physical or mental immaturity
and should therefore remain under custodianship of their parents or relatives until the adolescence period, and are not allowed to commit certain legal acts until then.

Children’s deprivation from certain civil and political rights is acceptable by reason of social discretion and considering the fact that children are not independently and fully in control of their own will until they enter the age of puberty.

Children’s rights are reflected in various international legal instruments. Afghanistan, as a member state of the United Nations, has signed the Universal Declaration of the Rights of the Child and Convention on the Rights of the Child.

The Universal Declaration of the Rights of the Child defines child as a person who is under the age of 18 years of age, unless the laws of a country determine a lower age as the age of puberty.

The government of Islamic Republic of Afghanistan in compliance with and observation of the aforementioned instruments, pays special attention to the rights of the child and spares no efforts to facilitate realization of the child's rights in the society.

Afghan laws especially Afghan Civil Law determines the age of 18 as the age of legal competence; moreover, article 4(1) of the Afghan Juvenile Justice Code stipulates that child is a person who has not completed the age of 18.

It is a fact that children are building blocks of the society. If these building blocks are put right, i.e. raised and educated well, they will serve as effective and positive members of the society in the future.

Looking after children includes the following steps and involves the following entities:

- Family Education Period
- Kindergarten Period
- Schooling Period

Family, kindergarten and school each play a crucial role in shaping child’s personality. Child’s education starts in the family and is complemented by government’s efforts to facilitate livelihood, education and other types of support for them. This means that both family and state have joint responsibility in taking care of children.

Children who are separated from their families or those who commit a crime due to improper education are protected by law considering the fact that they have not reached to the age of legal competence and cannot discern between good and evil.

The government provides livelihood and education opportunities for guardianless children and oversee their property. The cases of those children who commit delinquencies are referred to juvenile court and they are sent to correction houses.
Article 54 of the Afghan Constitution stipulates: “Family is the fundamental pillar of the society, and shall be protected by the State.

The State shall adopt necessary measures to attain the physical and spiritual health of the family, especially of the child and mother, upbringing of children, as well as the elimination of related traditions contrary to the principles of the sacred religion of Islam.”

If children are not brought up in a sound manner, they resort to delinquencies. The causes of child delinquencies can be summarized as follows:

- Bad economical condition/ impoverished households;
- Large number of children in families where parents are not capable of upbringing, subsistence and education of all of them;
- Watching unethical, provoking or obscene movies;
- Careless approaches of families towards underage marriages which lead to disputes and thus resulting in divorce;
- The ominous legacy of war;
- Unemployment;
- Lack of guardian and family love;
- Lack of access to means of education; and
- War and insecurity leading to child abduction, trafficking or abuse.

Cases of delinquent children are handled in accordance with special laws and in special courts that operate separate from adults’ courts.

Being enacted as per article 54 of the Afghan Constitution of the Islamic Republic of Afghanistan and in light of other national and international laws, such as the Convention on the Rights of the Child, Law on Organization and Jurisdiction of Courts, Police Law, other concerned laws, International Declaration of Humans Rights and other human rights instruments to which Afghanistan is a party, the Afghan Juvenile Justice Code pursues the following goals regarding juvenile justice:

- Rehabilitating delinquent children;
- Respecting children’s crucial role in society building, and provide physical, ethical and social welfare for them;
- Determining responsibilities of parents and other legal guardians;
- Observing the provisions of the Convention on the Rights of the Child during arrest and enquiry processes;
- Hearing the statements made by arrested child or his/her legal custodian;
- Encouraging nongovernmental private institutions to monitor and prevent child delinquencies; and
- Protecting children who are at risk.
It is worth mentioning that the law prohibits the use of serious and degrading punishment against children. Moreover, it considers child’s quarantine as the very final means of child’s correction and obliges courts to sentence children to the shortest possible period of confinement.

A child can only be arrested based on the following circumstances:

- If there is risk that the child will run away;
- If there is risk that the evidence, reasons and documents will be lost; and
- If there is a risk that the crime will be repeated again.

Based on the Juvenile Justice System of Afghanistan, handcuff is not used for a child who is below the age of 18. Also, detained children should be kept separately from adults.

Punishments which are recommended by the court for delinquent children are as follows:

- Making the child obliged to perform some social services including cleanliness work for the municipality, schools, government hospitals and etc;
- Sending them to social organizations such as shelters, corrective schools and orphanages in order to learn a profession and get knowledge,
- Warning the child in order to make him/her think about the consequences of repeating the action, such as quarantine at the correction centers, etc;
- Adjournment of the trial, not putting the child on trial and warning the child that in case of repeating the action he/she will be prosecuted and tried;
- Postponement of the quarantine;
- House quarantine under the supervision of parents;
- Handing over the child to mother or father and or a person who has the right to his/her guardianship; and
- Sending the child to the correction center in order to spend the quarantine period.

The court will decide about the child based on article (17) of the Juvenile Justice Code and takes written commitment of the legal guardian. If the legal guardian does not fulfill the duty, he/she will be dismissed from the responsibility and another person will be appointed in that position. Once the child completes the age of 18, the duty of the guardian is over.

The court also has the authority to recommend one or more than one following restrictions:

- Residing in specific places and times;
- Performing specific duties;
- Educating, admitting in a course which is free of charge or studying school subjects as part time;
- Going to specific places;
• Enrolling in one of the institutions which run the rehabilitation programs in the society;
• Making the child to apologize and compensate the damages of the victim;
• Handing over the child to one of the parents or a person who has the legal guardianship of the child;
• Warning the child on aggregation of the punishment if there is no improvement.

As it was described, the purpose of prosecuting a delinquent child in the investigation, prosecution and trial process in the judicial system of Afghanistan is to correct the child. Therefore, putting a child on trial is not for the purpose of taking revenge and it has to be ensured that the minimum disciplinary actions are taken against them. Here, I want to briefly point out some of the verdicts issued by the juvenile courts.

**Taking Part in the Theft**

Based on the claim made by the plaintiff of the victim’s right, a 14 year old child was involved in the case of stealing cash from a house. The child accepted the allegations and the court proved him guilty and sentenced him to one year quarantine. But since the child was a student and did not have any criminal records, and based on testimonial of the people in the neighborhood and his school administration on his well behavior, the verdict was issued as follows:

Based on articles 35 (5) and 41 (1) of the Juvenile Justice Code, the amount of time has spent in the correction center is counted as custodial quarantine and the remaining period if suspended for the time being and shall be added to his punishment in case he commits another crime within a certain period of time.

**Beating and laceration**

Three children under the age of 18 were involved in the case of infighting. After the completion of investigation, the children expressed regrets and promised not to repeat this again. Since the victim had a minor injury and also he exempted the children from the accusation, the court, based on article 35 (3) of the Juvenile Justice Code, sufficed with warning them as not to break the law in the future and informed them of the consequences.

**Traffic case**

A child, under the age of 18, who used to work as a car wiring mechanic has an accident with a beggar which resulted in his death. Since he did not have a license and was reckless in driving, the court considered him guilty. But since he did not have any criminal record and at the same time has the responsibility of feeding his family, the court, based on articles 35 (5) and 41 (1) of Juvenile Justice Code, sentenced him to one year quarantine. The amount of time he has spent in the correction center is counted as custodial quarantine and the remaining period is
suspended for the time being and shall be added to his punishment in case he commits another crime within a certain period of time.

**Respected participants**

All these things that have been presented to you are done in a situation where our country is still engaged in a war with the Al Qaida and its supporters. Every day our people including men, women and children lose their lives and our country’s infrastructures are destroyed which weakness our economy and it needs a big financial resources to restore them.

Currently, our education sector, and implementation of development projects are facing dangerous challenges. Other projects such as health and social services are too slow, tourism and business processes, import and export operations are not going on well and this has caused disappointments among our national traders. But beside these challenges and barbaric acts committed by our enemies, our country still has not forgotten its international obligations and commitments in regard to human rights, women and children rights especially children without guardian, democracy, insuring of social justice, equality and rule of law at the national and international levels, fights against corruption, and we have done and ready to do more for overcoming these challenges that our people are facing. One thing that I want to point out is that our country is not supported by the international community as it should be against barbaric acts of our enemies and the supports which had been provided by the international community have benefited our enemies more than us.

At the end once again I would like to thank the people who made this event possible, and wish them more success in their activities.

Thank you.
Address by Hon. Justice Md. Muzammel Hossain
Chief Justice of Bangladesh

Hon’ble Chairperson,
Hon’ble Chief Guest, Chief Advisor, Interim Government of Bhutan,
Excellencies,
My learned brother Chief Justices, Judges,
Learned Members of the Bar,
Distinguished Guests,
Ladies and Gentlemen,

Good afternoon,

It gives me immense pleasure to have been invited here in Thimphu with the legal luminaries of the region in this august occasion, the 9th SAARC Chief Justices Conference.

As the very outset, I would like to convey my thanks and gratitude to Mr. Justice Sonam Tobgye, the Hon’ble Chief Justice of Bhutan for inviting us and providing support to participate in this conference.

We all have an identical objective: further excellence in the dispensation of quality justice for all and protection and promotion of rights, liberties and freedoms for our people as guaranteed in our respective national constitutions.

I am thankful to the Hon’ble Chief Justice of Bhutan for adoption of an appropriate topic as theme of this conference, “Child Protection and Constitutionalism”. Children are our future, invaluable asset of the mankind. Unfortunately, it has been revealed that the welfare of the children is not properly addressed in our region. They have hardly any voice, even within their home. As a result, they are consistently becoming easy victims of violence and deprivation.
Bangladesh is one of the earliest signatories to the United Nations Convention of the Rights of Children, 1989. Article – 28 (4) of the Constitution of Bangladesh guarantees judicially enforceable fundamental rights to all citizens including children and ensures affirmative action for children. In recent years there have been significant impetus for juvenile justice reform in Bangladesh. The government appointed a high-level juvenile Justice Task Force who has identified priority areas for action. A new national social policy on “Models of Care and Protection for Children in Contact with the Law” has been adopted to address both children in conflict with the law and children in need of protection. It deserves a special mention that in our country the rate of infant mortality has reduced to half and the rate of child literacy increased significantly.

Bangladesh has an updated law on the subject, the Children Act of 1974, which is an all embracing statute containing specific beneficial provisions affording the child special treatment different from adults – such as informal trial conditions, separate scheme of punitive sanctions by way of detention and no joint trial with adults. The Act is greatly in conformity with the UN Convention on the Rights of the Child. But good laws and best policies alone are not enough to bring an end to century old inequality and disparity which is deeply ingrained in culture, custom and values of a developing country like Bangladesh. The judicial activism and zero tolerance policy of the Supreme Court of Bangladesh against abuse of child rights and harmful child labour have helped Bangladesh to achieve its advanced position in the region in the areas of child rights and women empowerment.

In the case of A. Bakar Siddique Vs S M A Bakar (38 DLR AD 107) the Appellate Division of the Supreme Court of Bangladesh placed the principle of “Welfare of the Child” above the sharia law and held that “the custody of a minor may be given to anyone of the close relatives in consideration of welfare of the minor even departing from the principles of Mohammedan law regarding custody of the minor”.

Despite spectacular achievements, children coming into conflict with the law are still an issue of concern in Bangladesh. There is deficiency in the area of enforcement of the Children Act. In some instances, the law enforcement agencies were found indifferent to the law and more often treat children just as they would treat adult criminals. Because of the indifference of the law enforcing agencies children, sometimes, experience arbitrary arrest and ill-treatment while in custody. We have found so many instances of the police ignoring the law, namely, provisions of section 13, 48 and 50 of the Children Act of 1974. Therefore, still much remain to be done for the children in conflict with law as well as who are in need of protection and to have a specially trained police force sensitized to the needs of children. The Judiciary, law enforcing agencies and the parents or guardians of children need to undertake concerted endeavor in this regard.

Our attitudes towards children in need of care should be favourable to the children. We have noticed that the Children Act, 1974 and the international instruments have
provided many beneficial provisions and ideas for the benefit of children who come into contact with the law. There is no hesitation in holding that with law abiding children one can look forward to a safe and secure society.

Besides the rights of the child, numerous landmark judgements of the Supreme Court of Bangladesh on preventive detention, freedom of press, police remand, freedom of religion, right to assembly and expression of opinion, elimination of corruption and adherence to rule of law have strengthened the foundation of democracy and human rights in Bangladesh.

I hope that this Conference will provide a unique opportunity for the national judiciaries in the region in terms of sharing experiences and identifying best practices in the areas of case management and court administration mechanism, judicial competence, access to justice and above all, innovative ways and means for protecting and promoting the rights, liberties and freedoms of the people as guaranteed under the Constitution and law.

I further hope that the outcome of this Conference will contribute significantly in enhancing mutual cooperation among the judiciaries of SAARC countries, which will in future pave the way for establishment of an Asian Court of Human Rights.

Thank you all.
It’s an oft repeated cliché, but true, that children are the most vulnerable sections of any society. The same is not confined to any particular country, but is universal in its application. In addition to the above, children are also the most precious assets of mankind. They represent the future and the future depends on the way they are nurtured and provided with tools such as values-based education and an environment conducive to a healthy all-round growth, to take on the challenges of the future. Children represent almost 1/3rd of the world’s population and unless they are provided such opportunities, their all-round growth will be retarded and the opportunity of making them grow into responsible citizens of tomorrow will slip out of the hands of the present generation.

The above sentiments are common to all countries, since the issues involved are common. There is no denying the fact that children are impressionable and till they attain physical and mental maturity, they are amenable to ideas which may change the direction of their lives. There is a world of difference between a human animal and progeny of the animal kingdom. While the offspring of animals are able to stand on their feet within hours of their birth and is to some extent able to fend for itself, a human baby takes almost 2 to 3 years to reach such a stage. A child takes 18 years to develop into an adult. It is during this period of their growth that children are the most vulnerable and if not properly protected and guided, can be exploited and criminalized by anti-social elements in the community for their own selfish benefit. In recent times, things have become even more grave, because of the amount of exposure to violence and sex, through the electronic and digital media, resulting in crimes, which involve both.
The United Nations Initiative:

Not all people, however, have been blind or insensitive to the needs of children and the need to create an environment in which they can develop into useful citizens of the world. The League of Nations issued the Geneva Declaration of the Rights of the Child in 1924. Though, little came out of the said Declaration, it did serve the purpose of drawing the attention of the world community to the plight of children placed in difficult circumstances on account of the First World War and its aftermath. Humanity had to wait until after the Second World War and the formation of the United Nations for a further Declaration following the shocking events which occurred during and even after the Second World War. The gross abuse of human rights violations during the Second World War caused the death of millions of people, including children, resulted in the formation of the United Nations in 1945, when a large number of nations united to ensure that such a holocaust was never repeated in the history of mankind. 10 December, 1948, witnessed the adoption and proclamation of the Universal Declaration of Human Rights by the General Assembly of the United Nations, the preamble whereas bears repetition and is extracted herein below:

“Preamble -

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have resulted in outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of belief and speech and shall enjoy freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the people of the United Nations in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women have determined to promote social progress and better standards of life in larger freedom,
Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms, and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of the Member States themselves and among the people of the territories under their jurisdiction."

Articles 1 and 7 of the Declaration, which is comprised of 30 Articles, proclaim that all human beings are born free and equal in dignity and rights and are equal before the law and are also entitled without discrimination to equal protection from the law.

Article 25 specifically provides that motherhood and childhood would be entitled to special care and assistance and all children, whether born within or out of wedlock, would enjoy the same protection. Article 26 provides that everyone has the right to education which would be free, at least in the elementary and fundamental stages, when such education would be compulsory.

The growing consciousness of the world community towards its children became further evident from the Declaration of the Rights of the Child which came to be proclaimed by the United Nations on the 20th of November, 1959, in the best interests of the child. The Declaration contained ten Principles, all of which were designed to be applied universally to all children without discrimination on account of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family, to enjoy special protection and be given opportunities and facilities by law and other means to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner in conditions of freedom and dignity.

After the adoption of the Declaration, the United Nations continued to consider with concern the growing problems related to Juvenile delinquency. The year 1979 was observed by the United Nations as the International Year of the Child. Meetings were held in Caracas, Milan, Riyadh and Havana. Between 1985 and 1990, the United Nations adopted three major instruments relating to Juvenile Justice, mainly:
1. The United Nations Standard Minimum Rules for the administration of Juvenile Justice, commonly known as the “Beijing Rules” adopted on 29 November 1985,
2. The United Nations Guidelines for Prevention of Juvenile Delinquency, commonly known as the “Riyadh Guidelines” adopted in 1990, and,

The three sets of rules intended that social policies should be evolved and applied to prevent juvenile delinquency, to establish juvenile justice systems for juveniles in conflict with the law and to safeguard fundamental rights and to establish methods of social reintegration for young people who had suffered incarceration in prison or other corrective institutions. The said rules reiterated the principles adopted in greater detail and it was emphasized that a juvenile is a person who should be dealt with for an offense in a manner which is different than an adult.

The Beijing Rules were accepted as the first international legal instrument to lay out comprehensive norms in detail for the administration of juvenile justice with a child rights approach. The said Rules were framed and adopted by the General Assembly on 29th November, 1985, in response to the call made by the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, convened in 1980. Since this is one of the most important international legal documents with regard to juveniles and the criminal justice system, the fundamental perspective conceived in the said Rules are extracted herein below:

“1. Fundamental Perspectives..

1.1 Member States shall seek, in conformity with their respective general interests, the furthering of the well-being of the juvenile and his or her family;
1.2 Member States shall endeavor to develop conditions that will ensure 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;
1.3 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 reduce the need for intervention under law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law;
1.4 Juvenile justice shall be conceived of 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 peaceful order in society;
1.5 These rules shall be implemented in the context of economic, social and cultural conditions prevailing in each Member State;

1.6 Juvenile Justice systems shall be systematically and coordinated with a view to improving and sustaining the competence of personnel involved in the services, including their methods, approaches, and attitudes.”

The Beijing Rules indicated that efforts should be made by member countries to establish within their own national jurisdiction, a set of laws and rules specially applicable to juvenile offenders and institutions and bodies entrusted with the administration of juvenile justice, designed –

“(a) to meet the varying needs of juvenile offenders, while protecting their basic rights;
(b) to meet the needs of society, and,
(c) to implement the Beijing rules thoroughly and fairly.”

It was further stated that the age of criminal responsibility in legal systems that recognize the concept of age of criminal responsibility for juveniles should not be fixed at too low an age-level, keeping in mind the emotional, mental and intellectual maturity of children.

It was also indicated that the aim of juvenile justice systems was to ensure the well-being of the juvenile and any reaction to juvenile offenders should always be in proportion to the circumstances of both the offender and the offence.

The Beijing Rules, are in fact, a Code by themselves for dealing with juvenile offenders who are required to be treated differently than adults in respect of any offence committed by them.

Four years later, the United Nations adopted the Convention on the Child vide the Resolution of the General Assembly No. 44/25 dated 20 November 1989 which came into force on 2nd September, 1990. Recognizing the earlier steps taken to safeguard the rights of the child both in general and juveniles in conflict with the law and regarding the provisions of the Declaration with regard to social and legal relating to the protection of the welfare of children, with special reference to foster placement and adoption nationally and internationally and noticing the Beijing Rules in regard to the administration of juvenile justice and recognizing further that, in all countries of the world, there are children living in exceptionally difficult conditions and that such children need special consideration and further recognizing the importance of international cooperation and the need for improving living conditions of children in every country, the United Nations adopted the Convention on the Rights of the Child on 20 November 1989. Certain important decisions were incorporated into the Convention, such as Article 1, which attempted to bring about uniformity in the description of child in all countries.
Article 1 indicates that for the purpose the Convention, a child means every human being below the age of 18 years, unless under the law applicable to the child, majority is attained earlier. Almost all the articles in the Declaration are child-centric, requiring that State parties should respect and ensure the rights contained in the Convention to each child within their jurisdiction, without discrimination of any kind. The State parties were called upon to take appropriate measures to ensure that the child was protected against all forms of discrimination and punishment on the basis of status, activities, express opinions or beliefs of the child’s parents or legal guardians or family members. The State parties were also directed to entertain all appropriate legislative, administrative and other measures for implementation of the rights recognized in the Convention.

Articles 6, 7, 8 and 9 of the Convention set out certain important attributes of the juvenile justice system which are essential in order to provide children with adequate opportunities for growth, both physical and mental, so that they could become useful members of society. Article 6 calls upon State parties to recognize that every child has the inherent right to life and towards that end, State parties were directed to ensure, to the maximum extent possible, survival and development of the child.

Articles 7 and 8 provide for registration of the birth of the child, immediately after birth, and declares that a child, from its very birth, would have a right to acquire a nationality, and as far as possible, the right to grow and be cared for by his or her parents. They further indicate that the State parties would respect the right of the child and preserve his or her identity, including nationality, name and family relations as recognized by law. In cases where the child is illegally deprived of some or all of the elements of his or her identity, the State would provide proper assistance and protection, with a view to re-establishing speedily, his or her identity.

Article 9 of the Convention creates an obligation on State parties to ensure that the child is not separated from his or her parents against their will, except where such separation is felt necessary for the best interest of the child.

Article 32 inter alia, calls upon the State parties to recognize the rights of a child to be protected from economic exploitation, from performing any work that is likely to be hazardous, or to interfere with the child’s education, or be harmful to the child’s health, physical, mental, spiritual, moral or social development.

Article 33 provides that State parties shall take all property measures including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances and to prevent the use of children in the illicit production and trafficking of such substances.
Article 34, 35, and 36 contains the undertaking of the State parties to protect the child from all forms of sexual exploitation and sexual abuse and to take all appropriate steps to prevent the abduction, the sale of or trafficking in children for any purpose or in any form. In addition, State parties have been placed under an obligation to protect children against all other forms of exploitation, prejudicial to any aspect of the child’s welfare.

Article 37 is another important provision as far as children and the criminal justice system of a country is concerned, it provides as follows:

**“Article 37 State parties shall ensure that:”**

a. No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offense committed by persons below 18 years of age;

b. No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for shortest appropriate period of time;

c. Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

d. Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

While Article 39 deals with measures to be taken by the States to promote physical and psychological recovery and social reintegration of a child victim of any crime of neglect, exploitation or abuse or any cruel, inhuman or degrading punishment, Article 40 provides some other basic guidelines to be followed by State parties in dealing with children who may be in conflict with the law.

The aforesaid Convention was ratified by India on the 11th of December, 1992 and sowed the seeds of enactment by the Indian Parliament of the Juvenile Justice (Care and Protection of Children) Act 2000.
In continuation of the desire to create a different justice delivery system for juveniles, the United Nations followed up the Convention of the Rights of the Child with the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, which were adopted by the General Assembly on the 14th of December 1990.

As in the case of the Beijing Rules, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, deals specially with juveniles and the criminal justice system applicable to them in contrast to the procedure applicable to adult offenders.

The said rules were followed by another important milestone in the history of the development of laws relating to children, known as “Riyadh Guidelines”, which were adopted by the United Nations General Assembly on the 14th of December, 1990. The said guidelines are also known as the United Nations Guidelines for the Prevention of Juvenile Delinquency. Taking into account all the previous Conventions and rules framed by it, the United Nations framed the aforesaid guidelines with the followings objects in mind:

“Fundamental Principles –

1. The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, social useful activities and adopting a humanistic orientation towards society and outlook on life, young person’s can develop non-criminogenic attitudes.

2. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.

3. For the purposes of the interpretation of the present guidelines, a child-centered orientation should be pursued. Young persons should have an active role and partnership with society and should not be considered as mere objects of socialization or control.

4. In the implementation of the present guidelines, in accordance with the national legal system, the well-being of young persons from the early childhood should be the focus of any preventive program.

5. The need for an 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 as a supportive framework for safeguarding the personal development of all young
persons, 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, process, 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 equality;
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 “pre-delinquent” often contributes to the development of a consistent pattern of undesirable behavior by young persons.

6. Community-based service and programs should be developed for the prevention of juvenile delinquency, particularly where no agencies have yet been established. Formal agencies of social control should only be utilized as a means of last resort.”

In its scope, the guidelines were intended to be interpreted and implemented within the broad framework of all the earlier Declarations, Conventions, and Rules and other instruments and norms relating to the rights, interests and well-being of all children and young persons. Once again, amongst the other issues special emphasis was laid on the concepts of family, education, community-based services and programs and legislation and juvenile justice administration.

On the 21st of July 1997, the United Nations adopted yet another set of guidelines, known as the United Nations Guidelines for Action on Children in the Criminal Justice System. Its aims and objectives, inter alia, where to provide a framework to achieve the implementation of the Conventions on the Welfare of the Child and other related instruments and to facilitate the provision of assistance to the State parties for the effective implementation thereof.

As part of the on-going process of revisiting the juvenile justice system in the light of the various Declarations, Conventions and Rules, the United Nations adopted the United Nations Guidelines on Justice Matters Involving Child Victims and Witnesses of Crimes, 2005. The objective of this set guidelines, inter alia, was to provide to practical framework to assist in the review of national and domestic laws, procedures and practices so that these could ensure full respect for the right of child victims and
witnesses of crimes and contribute to the implementation of the Convention on the Rights of the Child by parties to the Convention.

The Guidelines were also intended to guide professionals and where appropriate, volunteers working with child victims and witnesses of crimes in their day to day practice in their adult and juvenile justice process at the national, regional and international levels, consistent with the Declaration of the Basic Principles of Justice of Victims of Crime and Abuse of Power. Many of the contents of the guidelines are in pair material with the earlier Conventions and Guidelines.

The Indian Experience

In tandem with the worldwide concern relating to the well-being of children and recognition of children’s rights, India also developed its own jurisprudence relating to such laws. Even prior to independence, there were different provisions in place in the country to look after the welfare of children and to treat them differently as compared to adults. With the adoption of the Constitution on 26th November 1949, Constitutional safeguards, as far as the weaker sections of society, including children, were provided for. Several rights have been granted to children in the Constitution of India, such as equality before the law, free and compulsory primary education to children of the age group of 6 – 14 years, prohibition of trafficking and forced labor of children and prohibition of employment of children below the age of 14 years in factories, mines or hazardous occupations. The Constitution enables the State government to make special provisions for children and Article 39 thereof directs that the policy of the State shall be such that their tender age is not abused. The Government is also committed to give children opportunities and facilities to develop in a healthy atmosphere with required freedom and dignity and to ensure that their Constitutional and legal rights are protected.

Even before the Constitution was adopted on the 26th of November 1949, the Factories Act was enacted in 1948. The said Act contains a specific chapter relating to employment of young persons, namely Chapter VII. Section 67 of the Act which is the first section in Chapter 7 provides that no child who has not completed his fourteenth year shall be required or allowed to work in any factory. Various other provisions have been included in the Chapter, including working hours for children above the age of 14 years, who are also required to carry on their persons certificates of fitness which have to be signed by the manager of the factory certifying that the child is fit for the work in the factory. The Act provides that no child shall be employed or permitted to work in any factory … -

a. For more than 4 ½ hours in any day;
b. During the night.
It has also been specified that no female shall be required or allowed to work in any factory except between 8 a.m. and 7 p.m. Various other provisions have been included in Chapter VII to ensure that every children above the age of 14 years, but below the age of 18 years and treated as adolescents, were duly protected against exploitation of their tender age. In 1986, the Child Labor (Prohibition and Regulation) Act was enacted. The object of enacting such act was that although in various Acts employment of children below 14 and 15 years in certain prohibited employments have been prohibited, there is no procedure laid down in any law for deciding in which employment, occupation or process the employment of children should be banned. The Act was enacted to prohibit engagement of children in certain mines and to regulate the conditions of the work of children.

In order to prevent female foeticide, the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act was enacted in 1994 since pre-natal diagnostic centers have become centers of female foeticide. Such abuse of techniques being against the female sex and affecting the dignity of status of women, the aforesaid Act was enacted to prohibit the mis-use of pre-natal diagnostic techniques for determination of sex of a foetus, leading to female foeticide.

Realizing that several rights which had been guaranteed to children in the Constitution were being violated and/or observed in the breach, the Government of India enacted the Commissions for Protection of Child Rights Act, 2005, under which the National Commission for Protection of Child Rights was constituted. The enactment of the aforesaid Act was also actuated by the adoption by the United Nations of the Convention on the Rights of the Child in 1989 which was ratified by the Government of India on the 11th of December 1992. It provides for a National Commission as well as State Commissions for protection of child rights and to make provisions for children’s courts.

Another landmark legislation was the Prohibition of Child Marriage Act, 2006, which repealed the Child Marriage Restraint Act 1920. While in 1929 Act provided for punishment for male adults marrying a child and parents or guardians concerned in the child marriage, it did not seek to indicate as to whether such a marriage would be void in law. The 2006 Act filled up the lacuna and Section 3 thereof provides that every child marriage, whether solemnized before or after the commencement of the Act, would be voidable at the option of the contracting party who was a child at the time of marriage. The Act also provides for punishment of male adults marrying a child and also those who take part in performance of such marriages, including the parents. Section 12 makes it clear that marriage of a minor child would be void where a child being a minor is taken or enticed out of the keeping of the lawful guardians; or by force compelled or by any deceitful means induced to go from any place; or is sold for the purpose of marriage; and made to go through a form of marriage; or if the minor is married after which the minor is sold or trafficked or used of immoral purposes.
Perhaps one of minor importance social legislation is the Right of Children to Free and Compulsory Education Act, 2009. While Article 45 of the Constitution, which is not a fundamental right, but a directive principle of a State policy provided that the State would endure to provide early childhood care and education to all children between the age of 6 and 14 years, the same was included within the Fundamental Rights Chapter as Article 21 A thereof by the 86th Constitution (Amendment) Act. The same was a result of a certain judicial pronouncements and under the Act all children between the age of 6 to 14 years have a fundamental right to free, compulsory education which the State is under an obligation to provide.

Possibly, the last in this series of legislations resorted to by the Government to give effect to the provisions of the Constitution is the Protection of Children from Sexual Offences Act, 2012. With the growth of sexual offences against minor girl children, it was felt that such offences were not adequately addressed by the existing laws. Accordingly, the Act was enacted to provide for protection of children from offence of sexual assault, sexual harassment and pornography, with due to regard to powers of the State government to make special provisions for children in accordance with Article 15 (3) on the Constitution, as also Article 39, which, inter alia, provides that the State shall, in particular direct its policy toward securing that the tender age children are not abused in their childhood and used or exploited and they are given facilities to develop in a healthy manner and in conditions of freedom of dignity.

If one were to compare the provisions of the Universal Declaration Human Rights, 1948, with the provisions of the Constitution of India, it will be seen that most of the articles in the Declaration are common in nature and find place either in Part III or Part IV of the Constitution, which deals with the Fundamental Rights and the Directive Principles of State policy.

Article 14 of the Constitution deals with the equality before the law and provides that the State shall not deny to any person equality before the law or the equal protection of laws within the territory of India. Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. A specific provision has been included in Clause (3), which is women and child specific, since it provides that nothing in the Article would prevent the State from making any special provision for women and children. Under the State Article various legislation have been enacted by Parliament to the advantage of women and children. Article 17 provides for the abolition of untouchability. Article 21 provides that no person shall be deprived of his life or personal liberty, except according to the procedure established by law. The set Article has been interpreted by the Supreme Court of India and the High Court to include various facts of life, which include the different rights enjoyed by children. Article 21 A is once again child-specific and makes provision for the State to provide free and compulsory education to all children of the age of six to fourteen years. Article 23 prohibits trafficking of human beings and forced labor, to which children are often
subjected. In fact, Article 24 supplements the provision by prohibiting the employment of children below the age of 14 years in any factory or mine or in any other hazardous employment.

These rights are contained in Part III of the Constitution which deals with the fundamental rights of citizens of India.

Part IV of the Constitution, which deals with the directive principles of State policy and provides the principles which are fundamental to the government of the country, contains Article 39, which has been referred to hereinabove.

A significant amendment was effected in the Constitution by the 42nd Amendment Act, 1976, to include Article 39 A providing for equal justice and free legal aid. Since the set Article is important for the deliberation on juveniles and the criminal justice system, it is extracted herein below:

“39 A. Equal Justice and Free Legal Aid. – The State shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and shall, in particular, provide free legal aid by suitable legislation on schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

The above Article led to the enactment by Parliament of the Legal Service Authorities Act, 1987, inter alia, for providing free legal aid to certain sections of society. Section 12 of the said Act sets out the criteria for providing free legal service. Clause “C” thereof provides that a woman or a child would be entitled to free legal aid in order to file or defend a case. Clause “B” and “G” provides for such free legal service to a victim of trafficking in human beings or beggars and persons in custody, including custody in protective home within the meaning of Clause “G” of Section 2 of Immoral Trafficking “Provision Act, 1956” or in juvenile homes within the definition of “juvenile” under the Juvenile Justice Act, 1986.

The National Legal Service Authority (NALS) was constituted under the Legal Service Authority Act, 1987, and was entrusted with the responsibility of providing for legal aid throughout the country to such sections of society not having access to justice on account of economic or other disabilities. The Act also provides for State and District Legal Service Authorities which are responsibility for providing justice for all. Legal aid centers have been set up all over the country which are manned by para-legal volunteers recruited by the State and District Legal Service Authority and are paid a stipend for their work.

After the promulgation of the Declaration of Rights in 1959, the Indian Parliament enacted the Children Act, 1960, within the statement of objects and reasons, it has been indicated as follows:
“Children under the most vulnerable group in any population and in need of the greatest social care. On account of their vulnerability and dependence they can be exploited, ill treated and directed into undesirable channels by anti-social elements in the community. The State has the duty of according proper care and protection to children at all times, as it is on their physical and mental well-being that the future of the nation depends. With increased industrialization and urbanization, the State needs to be even more vigilant in this respect.”

It has to be kept in mind that children often become delinquent by force or circumstances and not by choice. By improving their unfavorable environment and giving suitable training, it is possible to reform a child’s anti-social attitudes and to mold him into a responsible citizen. It is with such objective in mind that following the initiative taken by the United Nations and the promulgation of the Beijing Rules on the 29th of November 1985, that the Indian Parliament enacted the Juvenile Justice Act, 1986, to provide for the care, protection, treatment, development and rehabilitation for neglected or delinquent juveniles and for the adjudication and disposition of certain matters relating to delinquent juveniles. The set Act was periodically reviewed and subsequently in the light of the various Conventions and Rules adopted by the United Nations, a need was felt for greater attention to be paid to children “in conflict with the law” and those “in need of care and protection”. This resulted in the repeal of the Juvenile Justice Act, 1986, and the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Before proceeding further to consider the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, hereinafter referred to as the “Juvenile Justice Act, 2000” as amended in 2006 and the rules framed thereunder in 2007, it may be noticed that Section 82 of the Indian Penal Court, which governs the major criminal offence under the law, specifically provides that nothing is an offence which is done by a child under 7 years of age. Section 83 of the Code further emphasizes that nothing is an offence which is done by a child above 7 years of age and under 12 years, but has not attained significant maturity of understanding to judge the nature and consequences of his conduct when the offense is committed.

Having regard to the various provisions of the Constitution of India and the various Conventions adopted by the United Nations in the best interest of the child and the Convention on the Rights of the Child, along with the Beijing Rules and the Rules for the Protection of Juveniles Deprived of their Liberty, 1990, known as the Havana Rules, and all other relevant instruments, the Indian Parliament enacted the above Act to consolidate and amend the law relating to juveniles in conflict with the law and children in need of care and protection, by providing for proper care, protection and treatment, by caring to their development needs and by adopting a child-friendly approach in the adjudication and dispensation of matters in the best interest of children and for their ultimate rehabilitation.
As has been indicated earlier, the Juvenile Justice (Care and Protection of Children) Act, 2000, is a complete code in itself in dealing with the juveniles and their transgressions of the law and also said juveniles who are in need of care and protection. Children in India constitute about one third of the whole population consisting of about 1.2 billion people. Out of the set number of children in India, a large number of those who are in difficult circumstances which often lead them into acts of criminality, of which drug abuse and addiction, is a major problem. The above Act was enacted with the hope that the children who had been lead astray would be restored to mainstream society so as to make them useful citizens of tomorrow. The scheme of the above act is restorative and not retributive. Its main intention is to restore to society children who have been conflict with the law, without the impact of their previous actions.

Lack of infrastructure has to be addressed. However, in order to have a sound system of rehabilitation, it is extremely necessary to have a sound infrastructure and to ensure that After Care Homes, Shelter Homes and Drop In Centers are in place in sufficient numbers to make the rehabilitation process workable. More often than not, a child in conflict with the law, after completing the sentence awarded to him becomes a child in need of care and protection. If at that point in time, a helping hand is not extended to said children, they are prone to become children in conflict with the law once again.

The Juvenile Justice (Care and Protection of Children) Act, 2000, is in tune with the various Declarations and Conventions adopted by the United Nations and Section 18 thereof specifically prohibits a joint trial of a juvenile and a person who is not a juvenile and even in matters of sentencing, a juvenile can be punished only in the manner indicated in Section 15 of the Act. Section 16 provides that notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with the law shall be sentenced to death or imprisonment for any term which may extend to imprisonment for life and, no matter how grave the offence, the maximum period of punishment which can be awarded to a child is 3 years, to be imposed in the manner indicated in Section 15.

**Observation:**

It will, therefore, be seen that following the lead given by the United Nations, India has, in comparison to other countries, witnessed the most significant developments in the bridge of juvenile law and the juvenile justice system introduced by the Children’s Act, 1960, followed by the Juvenile Justice Act, 1986, and the Juvenile Justice (Care and Protection of Children) Act, 2000. Furthermore, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, and the Rules framed thereunder have been implemented and institutionalized by the setting up of regular Juvenile Justice Boards and Child-welfare Committees contemplated under the later Act. The mandate in the Act is for the setting up of Juvenile Justice Boards along with Child...
Welfare Committees in all the districts of the country. It has been possible to set up such boards all over the country, to deal exclusively with offence committed by children who are treated as a totally different class. In fact, Section 18 of the aforesaid Act expressly prohibits the joint trial of a juvenile with a person who is not a juvenile. India has taken the entire problem of juvenile delinquency very seriously, on account of its vast population and the fact that it is the largest democracy in the world.

The Juvenile Justice Boards in India are required to be made up of a serving Metropolitan Magistrate or a Judicial Magistrate of the First Class and two social workers, of whom at least one has to be a woman, forming a bench with all the powers of the Magistrate with the Judicial Magistrate functioning as the Principal Magistrate. A specific provision has been made that the Magistrate, who is to be appointed as the Principal Magistrate of the Board, should have special knowledge and training in child psychology and child welfare. The two social workers, of whom at least one is to be a woman, has to be appointed by the State government, which is also required to provide training and orientation in child psychology, child welfare, child rights, national and international standards of juvenile justice to all members of the Board. Among the functions of the Board is included the adjudication and disposal of cause of juveniles in conflict with the law, taking cognizance of crimes committed under Section 23 to 28 of the Act; issuing monitoring instructions for juveniles in conflict with law and to deal with non-compliance on the part of the government functionaries of voluntary organizations, with a view to improving the functioning of the Boards.

Similarly, a Child Welfare Committee, which is to take care of counseling and placing children for adoption and foster care, is to be comprised of a Chairperson and four other members of whom at least one is required to be a woman. The appointments of the Chairperson and the other members are to be made by the State government on the recommendation of a selection committee set up for the purpose. What is of some significance is that those who are ultimately associated with the welfare of children, including juveniles in conflict with the law, are themselves required to go through and orientation process which includes the knowledge of child psychology, child welfare, child rights, national and international standards. What is also significant is that the Child Welfare Committee which is to be composed of persons who are lay persons with some knowledge of law and criminality, are vested with the powers of the Magistrate. It may be said that the Juvenile Justice (Care and Protection of Children) Act, 2000, as amended in 2006, and the rules framed thereunder, are a perfect blend of the Universal Declaration of Human Rights and the subsequent United Nations Declaration on the Rights of the Child followed by the Beijing Rules, the Riyadh Guidelines, and the Havana Rules. The said Act has incorporated almost all the positive steps required to be taken to ensure and provide effective protection and assistance to children, both in conflict with the law and in need of care and protection. As it happens quite often, a child who is in conflict with law, may be an orphan without any family or home and he may be a street child with nowhere to go but back
to his familiar haunts, once he undergoes the punishment awarded to him. If such a child, who then becomes a child in need of care and protection, is not provided with such protection, he would go back to his old activities and return as a child in conflict with law. A lot of stress has, therefore, been given on the rehabilitation of such children and as indicated earlier, forms the second the part of Juvenile Justice (Care and Protection of Children) Act, 2000. As indicated hereinabove, the Act has been divided into two specific areas, one involving children in conflict with law and the other involving children in need of care and protection, for which separate provision has been made. One of the most important functions entrusted to a Child Welfare Committee is contained in Section 41 of the Act which provides for adoption of children in addition to the provisions of the Hindu Adoption and Maintenance Act, 1955.

However, none of the systems relating to juvenile justice and juvenile criminality can work, unless those who are responsible for the welfare and punishment are suitably sensitized to think and apply themselves in a manner different from the procedures adopted for adults. That is why such a great deal of importance have been given in regard to the selection of people who are to man the Juvenile Justice Boards and the Child Welfare Committees and the insistence that they should have a special knowledge in child psychology and errant behavior on the part of a child. Those who are involved in the criminal justice system, as far as juveniles are concerned, have to change their mindset and descend to the level of a child, in order to effectively give effect to the intentions of the law makers in enacting laws and rules for children. They would also be required to have the ability to deal with the child who may have gone astray for a variety of reasons, basically connected with marginalization, both socially and economically. The philosophy behind the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000, is in keeping with the international trend of thinking that children below the age of 18 years can still be brought back into the mainstream of society, otherwise such children could not only become a liability, but a distinct threat to society and the order of society in the future.

Having had the opportunity of visiting several Children’s Homes and Observation Homes, both as Judge and also as a Executive Chairman of the National Legal Service Authority, constituted under the Legal Service Authority Act, 1987, I have met and interacted with children from different backgrounds in different States and almost as a matter of cause, the majority of such children, who are in conflict with law or are in need of care and protection, come from extremely impoverished circumstances. Without adequate social back up, they are drawn into drug addiction, drug peddling and crimes such as snatching and theft and if they are not taken in hand immediately, they constitute a potential threat to society and social order. Contemplate a situation ten years hence when children, including children coming from the above backgrounds, will either be involved in the governance of the country or be engaged in other fields of activities. It will then be too late to take remedial measures.
During my visit to Children’s Homes and Observation Homes and my interaction with the occupants thereof, I have notice certain problem areas in regard to the functioning of the juvenile justice system of India that are required to be addressed immediately, if the system is to function meaningfully. They comprise the following ..

(i.) The need for a change of mindset among those who are involved in the implementation of the juvenile justice system;
(ii.) Sensitization of people in general;
(iii.) The need to instill a sense of commitment and compassion in people involved in the working of the juvenile justice system;
(iv.) The failure to establish different kinds of Homes contemplated under the Juvenile Justice (Care and Protection of Children) Act, 2000;
(v.) The delay in establishing a special juvenile police units for handling juveniles;
(vi.) The lack of training for probation officers who are responsible, to a large extent, for the guidance and welfare of juveniles in conflict with law;
(vii.) Making appointments of persons within the system who are not only sensitive, but committed to the welfare and best interests of the child;
(viii.) The need to provide adequate rehabilitation measures by imparting not only traditional forms of education, but also giving training in some useful trade, to enable a child to acquire skills for a vocation in life;
(ix.) Preventing trafficking, sexual exploitation of girl children and child labor;
(x.) Providing proper health care systems and detoxification centers, to help children recover from drug abuse and drug addiction;
(xi.) The need to provide family support;
(xii.) The need to ensure that proceeding before the Juvenile Justice Boards and Child Welfare Committees are completed within the time specified under the Juvenile Justice (Care and Protection of Children) Act, 2000;,
(xiii.) The need for an efficient system for adoption and foster care;
(xiv.) The need to provide meaningful legal aid; and,
(xv.) The need to put in place an effective monitoring system to monitor inquiries and proceedings relating to juveniles.

In my view, the above problems need to be addressed, if we are to have a juvenile justice system which is effective and addresses the various problems relating to children.

It is, therefore, necessary for the world community to shake itself out of its apathy, sit up and take a positive attitude in effecting a change in the mindset of both adults and juveniles, which combined with the right kind of education, can help reduce the incidences of crimes that are committed by juveniles and also help in their restitution and rehabilitation in becoming useful members of society.
Address by Honorable Ahmed Faiz Hussain
Chief Justice of Maldives

Honorable Chief Justices
Distinguish Justices
Respected Guests

Good Evening

I am indeed happy to be here to address the 9th SAARC Chief Justices Conference. I thank Mr. Lyonpo Sonam Tobyo, (Chief Advisor, Interim Government of Bhutan) for this kind invitation extended to me to be at this prestigious and important conference. Let me also thank the organizers of this conference for the excellent arrangement accorded to me since my arrival.

Ladies and Gentleman,

The theme of the day, “Child Protection and Constitutionalism” is the need of the honour to secure the Future of the Worlds, Two Billion Children and the Generation yet to be born”. It is indeed a very important matter for the world as a whole.

Ladies and Gentleman,

As you all know, In Maldives the adoption of current Constitution, on 7th August 2008, enabled a system that assures the doctrine of separation of 3 branches of government, and protects individual liberties and fundamental freedoms. And most importantly, the current constitution also demonstrated the country's progress towards upholding the rule of law and democratic principles. As in all democratic systems of the world, the constitution of the Maldives advocates protection of human rights, as well as child rights.
Article 34 of constitution says, “Children must be afforded special protection as specified in law in the event of a marital breakdown of parents.”

Also article 35 of constitution says, “Children and young people are entitled to special protection and assistance from the family, the community and the state. Children and young people shall not be harmed, sexually abused, or discriminate against any manner and shall be free from unsuited social and economic exploitation. No person shall obtain undue benefit from their labour.

Ladies and Gentleman,

The rights of the child are protected in a number of international instruments. The Convention on the Rights of the Child is with 193 States parties, the most widely accepted human rights treaty. In the last twenty years since its adoption by the General Assembly in November 1989, this Convention has become the framework which guides action by Governments, International Organizations and NGOs, in their efforts to ensure realization of human rights for children, as well as their protection, well-being and development.

The Rights of the Child are fully recognized in the International Covenant on Civil and Political Rights (ICCPR) particularly in articles 23 and 24, and in the International Covenant on Economic Social and Cultural Rights (ICESCR) more particularly in article 10. But the Rights of the Child are more amply enshrined nowadays in the relatively recent “Convention on the Rights of the Child” has among special safeguards and care which a child is entitled to, there is the right to appropriate legal protection, a task which will invariably be cast upon the Judiciary to uphold.

The Convention enjoys States to implement the prescribed rights by enacting enabling legislations and taking the necessary administrative steps. There is the Committee on the Rights of the Child to which State Parties are required to present reports on the measures they have adopted to give effect to the rights recognized and on progress made on the enjoyment of those rights. However, much is left to the State Party’s good will and its demonstration of the progressive implementation of the rights enshrined in the convention.

Ladies and Gentleman,

In response to their adherence to these Conventions, Maldives Government has introduced new legislation.

The law on protection of children, section 9 says, “A special procedure must be established for the investigation, adjudication of the imposition of punishment for offences committed by children. Section 12 says, “Identity of and information relating to children who are victims of sexual abuse or of acts of exploitation or of acts detrimental to the integrity of a child shall not be disclosed to the public.” Section 16 says, “Parent shall, to the best of their ability and within the means available to them to take appropriate measures to prevent any acts of sexual abuse and violence against children. And such a case is known or suspected the concern authorities must be notified at the earliest.” In Maldives our legislations, also prohibit the use of children who is under 18 years old, in any job which is incompatible with their age or which could have a detrimental impact on their health or mental development.

The Government of the Maldives recognizes that, children’s health, education and welfare are central to the development of the nation. In the past two decades, the Government of Maldives has been giving particular importance to empowering women as prime actors in the development of the country and in ensuring the best interests of children. We believe that, investing in children and generating opportunities for them is the only way to ensure a healthier, wealthier and a happier future for our Nation. To that end, we are encouraging greater initiative and participation by the private sector and the civil society actors. We also believe that working in partnership with the international community is equally important to carry forward our agenda for the promotion and protection of the rights of the child.

Ladies and Gentleman,

In spite of numerous instruments we have adverted to, the rights of the children and the rights of the future children yet to be born greatly depends on the enforcement of these very crucial instruments. On a good note, it can be said that there is now a perceived breeze of change as governments become more conscious of their national obligations to promote and protect the Rights of the Child.

For better implementation of international instruments and laws the world is in need of governments and institutions which are transparent, democratic, and can work together with NGOs and civil society. With all its weaknesses and need for reform, the UN is one of the best world institution which has the clout, legitimacy and caliber to solve problems effectively on a world stage.

Ladies and Gentleman,
Before I end my short address, let me once again thank the organizers of this Conference for the opportunity to address this conference. I sincerely hope that this conference is a confirmation of the SAARC communities, will to the protection of the rights of the World’s Two Billion Children and the Generation yet to be born. I am also hopeful that the deliberation in this conference will find new and positive approaches in ways to implement international law.

Thank you.
Respected Chairperson of the Opening Ceremony,
Right Honorable Chief Justices,
Hon’ble Justices,
Your Excellency,
Distinguished lawyers and participants,

Ladies and Gentlemen

I am delighted to have this opportunity to address the opening ceremony of the 9th SAARC Chief Justice conference and the 12th SAARC Law Conference on Child Protection and Constitutionalism. After an interval of a few years, we of the judicial fraternity have assembled in this beautiful city of Thimphu for discussions on the contemporary issues facing the SAARC region. Besides the main theme Child Protection and Constitutionalism, the luster of this program has been enhanced by the inclusion of the topics like Democracy in the SAARC region, the constitutional values in SAARC region, written constitution and elections, the value of judicial independence, role of the judiciary in a democracy and the electoral process along with the contribution of the courts to the economic development of the country.

Ours is a region which is not linked by historical, social and cultural ties but is also rich in human and natural resources. We fully realize the enormous opportunities it offers to work towards improving the quality of life of people of the region. Therefore SAARC has evolved as a viable organization of regional cooperation with great potential to promote the welfare of the peoples of the region.
SAARC Law and the forum of Chief Justices since its inception have been instrumental in bringing together the legal communities of our region for closer cooperation and developing understanding. I believe it will certainly be a one step forward to the economic development of our region.

These days our judiciaries have shown some more eagernessness towards the constitutional responsibilities and have come out actively for the relief of the weak and helpless people of the region. The issue of child protection has been prime concern of us all.

Let me speak a few words about the constitutional development process in Nepal. In the constitutional history of Nepal, for the very first time, the process of framing a democratic constitution by the elected representatives of the people based on restructuring the state on the federal principle is ongoing. It seems that the constitution to be framed by adopting the ideals of federalism, republicanism and the very process of its formulation will be different and unique in comparison to the previous constitutions.

In the open society of this twenty-first century, it obliges the State to guarantee the individual’s fundamental right and personal liberty from oppression, injustice and injury. In the modern era it is a universally accepted fact that the right to liberty in an open society must be protected at all times. Taking cognizance of this fact, written constitutions of our region tend to ensure the fundamental rights of the people and attempt to prohibit the organs of government from infringing upon such rights.

There was a time when queries would be raised in respect of judicial independence based only on the judge's recruitment process, tenure of service, amenities, and performance capability and dedication. Today we find that a novel concept seeking balance between judicial independence and judicial accountability has been established. No one can demand that judges should be devoid of accountability. The judge must be accountable for every task performed from the Bench. However, how to maintain such accountability and what ought to be the mechanism for it is a crucial issue.

The supremacy of the judiciary cannot be subject to scrutiny solely on the basis of its independence and given responsibility. The fundamental power of the judiciary stems from the people’s faith on it, which is contingent upon the quality, fairness, impartiality and effectiveness of its performance. Therefore, we are still confronted with the challenge of streamlining the justice delivery consistent with people’s aspirations and maintain the judiciary as the bulwark of people’s trust. For this, judges must exhibit the highest integrity and be fully accountable to the cause of justice. In this context, judicial education is imperative to embellish the judges with such a virtue. He must be imparted the knowledge of the new legal values, approaches and theoretical and technical
aspects. In order to conduct their work successfully, the judges need to possess a profound knowledge of all issues prevalent in society. In Nepal, we are accomplishing this task of imparting judicial education through the National Judicial Academy established under the Law.

Judges are always accountable to the people indirectly through the administration of justice. They are accountable as far as their fair and impartial judgment allows them. They must be committed that their decisions are true to the spirit of law and not arbitrary. They must give their judgment with explanation and transparency in an open hearing and exhibit their accountability to the people coming to the court for justice. Because a judge's decision is published publicly and examined through appeal at various stages, the judge is made accountable for his performance through scrutiny. Such procedures are conducive to judicial independence and maintaining impartiality.

Looking to the growing levels of poverty in our region we believe the role independent and accountable judiciary is instrumental in the economic development of the country. Therefore, in order to be able to fulfill this burden, the ideas of selecting and appointing a judge from amongst the most worthy and capable persons have evolved.

Finally, I would like to express my happiness to all participating legal fraternity contributing for future strategies on current legal issues faced by SAARC region and express my appreciation that your roles shall adequately contribute for the success of the conference. Let me express my heartfelt gratitude for the cordial invitation and the sweet hospitality accorded to me and the members of the Nepalese delegation by Rt. Hon. Mr. Lyonpo Sonam Tobgye, Chief Justice of the Kingdom of Bhutan.

Thank you.