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- Any social worker or institution authorised by the State Government.

The law also provides for the child to produce her/himself before the Committee if s/he needs care and protection. This is in recognition of the child as a human being capable of expressing her/his views and taking decisions for her/himself and is also in line with the principle of best interest of the child.

*The Child Welfare Committee:* The Child Welfare Committee (CWC) shall consist of a chairperson and four other members appointed by the State Government, of which at least one shall be a woman, and another an expert on child related matters. The CWC shall have the final authority to dispose of cases for the care, Juvenile Justice System protection, treatment, development and rehabilitation of children as well as to provide for their basic needs and protection and human rights.

*The Inquiry:* The inquiry by the CWC will be completed within four months of the date of its commencement.

*During the period of inquiry, the Child will stay in a Children's Home*

*The Order:* The CWC has the power to restore the child in need of care and protection to his/her parent/guardian, or any fit person or a fit institution. After completion of the inquiry, if the CWC believes that the child has no family or support, or that sending to the family may not be in the best interest of the child, the Committee may allow the child to stay in a children's home or shelter home till the age of 18 years.

*The Children's homes:* The State Government may establish itself or in association with a voluntary organisation, Children's home in every district for receiving children in need of care & protection during pendency of inquiry. Post the inquiry, they can continue to stay, in the homes for the care, protection, development, training, education and rehabilitation.

*The Shelter homes:* The State Government may recognise reputed and capable voluntary organisations and provide them assistance to set up shelter homes for juveniles or children.

*Restoration:* The restoration of, and protection of a child will be the prime objective of any children's home or the shelter home. This may be either to parents/guardians, adoption, foster care or through sponsorships.

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## **4.6 THE JUVENILE JUSTICE AMENDMENT ACT, 2006**

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As we have seen above, there were gaps in the Juvenile Justice (Care and Protection of Children) Act, 2000 which both law and policy makers felt were important to address in view of responses from groups working with juveniles and children in need of care and protection. Therefore, a number of proposed amendments were introduced through the Juvenile Justice Amendment Act, 2006. Some of the important areas addressed in the amendments are:

The amendment states clearly the definition of the term juvenile as "someone who has not completed the eighteenth year of age as on the date of commission of

such offence.” It also makes it obligatory for the court to make an enquiry if it has found that an accused person was a juvenile at the time the offence was committed. It should then record the finding as nearly as may be. Such a claim as to juvenility may be raised in any court at any stage even if such accused person is no longer a juvenile on or before the commencement of the Act. The section also lays down that if the court finds the accused to be a juvenile, this finding will override any conviction made by another court. This is a very important amendment since there has been considerable confusion before courts on the question of the age of the juvenile and how to deal with cases in which the accused is found to be a juvenile after the commission of the offence and conviction.

The amendment makes it clear that a juvenile in conflict with the law and a child in need of care and protection should be produced before the Board and Committee respectively, within 24 hours, excluding the time of journey and in no circumstances should a juvenile be placed in police lock-up or in a jail. A Magistrate is empowered to review dependency of cases before the Board and to ensure that more sittings be held if required to ensure speedy justice for juveniles.

Understanding the problems created by institutionalisation for juveniles, a provision has been introduced for the Board to reduce the period of stay for a juvenile in a special home to less than three years and in no case, should the period be more than that prescribed.

The privacy and identity of the child is to be protected, and no publication of address or any other detail that would reveal the identity of the child is allowed. The only exception is that such disclosure may be permitted in the best interests of the child.

Institutions working for children in need of care and protection should register under the Act within six months of the amendment.

As far as rehabilitation is concerned, the amendment has broadened the scope of responsibility. It has been provided that the restoration of the child may be done to the parent, adopted person, guardian, any fit person or institution.

The option to be adopted is available for orphan, abandoned or surrendered children in tune with State Government or Central Adoption Resource Authority guidelines. A detailed procedure has been specified for adoption under each of the categories of children.

Adoption may be given to a person irrespective of marital status. A child of the same sex may be adopted, irrespective of the number of living biological sons or daughters. Childless couples may also adopt.

There is a provision of transfer of children to other homes within the state or outside the state in consultation with the Board and the Committee and with the concerned State Government.

A Child Protection Unit has been provided for in the State and in every district to monitor the importance of the Act, maintenance of homes, rehabilitation and co-ordination with other agencies.

### **Model Rules**

Another important amendment is that the Juvenile Justice Act, 2000 under Section 68, authorises the Central Government to make rules on all the matters on which the State Governments can make rules. As we are aware, the Rules to any



enactment are the part of the main legislation and specify the procedure for implementation of the Act. State Governments are to make Rules in accordance with Model Rules framed by the Central Government. Following this, the Central Government has notified the Model Rules 2007 on October 26, 2007. These rules are binding on all states till the states make their own rules.

The amendment is an important attempt to remedy the gaps and lacunae evident in the JJ Act of 2000. It has taken the bold step of making secular adoption possible, although there are still some grey areas such as which Court has the jurisdiction to hear adoption applications. However, some detailed guidelines have been specified about the categories of adoption and the procedure to be followed by the Child Welfare Committee. As far as juveniles are concerned, the Amendment Act as well as the Model Rules lay down clear guidelines for the verification of age, a question that has been a very contentious one in adjudication.

### Strengths of the Model Rules, 2007

- **Diversion:** The Rules make a mention of the Principle of Diversion, an internationally accepted principle based on the idea that children should be diverted from the formal juvenile justice system through mediation and reconciliation programmes.
- **Definitions:** The model rules has included a longer list of definitions which will help in better interpretation of the Act and limiting the discretion of the competent authorities. Examples of these are the 'Best interest Principle', 'Child Friendly' which will however require more contextualisation.
- **Age Determination:** The Rules lay down clear procedure and principles for determining the age of the juvenile under Rule 12. This states that a matriculation certificate, or date of birth certificate issued by a school, or given by a Panchayat, or municipal authority should be used as proof. It is only in the absence of these that a medical opinion should be sought from a Medical Board constituted for the purpose.
- **Child Protection Units:** The inclusion of Child Protection Units in the Amendment Act has creditable community participation and therefore decentralised the administration of justice in India.
- **Inspection Committee:** The Rules provide clear mandate and guidelines for the functioning of the Inspection Committees *vis a vis* the functioning of the system, especially the Management Committees and Children's Committees. This will enable greater accountability and also ensure that child participation and grievance redressal systems are institutionalised in every Home. The need for 'sensitive, independent and fair grievance redressal systems accessible to children' has been one of the recommendations by the UN Committee on the Rights of the Child on country reports on juvenile justice.
- **Social Audit:** It is creditable that the Model Rules (Rule 64) has interpreted the provisions of the Act in the spirit in which it has been drafted — i.e., providing for an audit for a range of services, institutions and processes. The Act states that Social Audit is to be done for Children's Homes — which in a narrow sense will mean only Children's Homes set up under Section 34 but in the wider sense should include any residential facility set up under the Act.

- **Advisory Boards:** It is creditable that Advisory Boards are provided for at the Central, State, District, and city level in Rule 93.

**Check Your Progress II**

**Note:** Use the space provided for your answers.

1) Trace the development of the Juvenile Justice System in India.  
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2) Discuss the salient features of the Juvenile Justice Act, 2000.  
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3) Highlight the major amendments which were introduced through the Juvenile Justice Amendment Act, 2006  
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4) What are the strengths of the Model Rules, 2007?  
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**4.7 LET US SUM UP**

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In a changing world driven by industrialisation, profits and the breakdown of family structures, there is a greater need to protect and care for children who belong to the vulnerable sections of society. The passing of the Central Children’s Act was another important landmark in the history of juvenile legislation. The important features of the JJ Act of 1986 included the distinction that it made between children in conflict with the law and children in need of care and protection.

However, there still remained a high stress on the question of institutionalisation within the Act. The Juvenile Justice (Care and Protection) Act 2000 that replaced the JJ Act of 1986, brought in some important features. Among these were the definition of children to be those below the age of 18 years, allowing for secular adoption of children and the rehabilitation and social integration of child under the Act. The JJ Amendment Act, 2006 and the Model Rules of 2007 made further advances; adoption procedure was laid down as well as norms prescribed for verifying the age of the child. Stringent norms were laid down for protecting the privacy and identity of the child. There are also provisions for monitoring the functioning of various homes under the Act and in the Rules.

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## 4.8 FURTHER READINGS AND REFERENCES

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