SUMMARY OF THESIS

INTRODUCTION

Rabinder Nath Tagore once said:

A nation’s children are its supremely important asset and nation’s future lies in their proper development. An investment in children is indeed an investment in future. A healthy and educated child of today is the active and intelligent citizen of tomorrow.¹

Children are precious treasures of the future and they are the most valuable assets of a nation and society. It is the duty of State to look after them with a view to ensure the complete development of their personalities. Since society expect them to grow as responsible citizens of the future, they need special care, protection, affection and facilities because of their tender age, physique and underdevelopment mental faculties. There is no exaggeration if it is said that future well being of a particular nation depends upon how the children grow and develop.²

The legislature and apex court of our country have also off late started to take initiatives for the welfare and development of the children. The efforts mainly started with the enactment of the Children

² Lakshmi Kant Panday v Union of India, 1984(2) SCC 244.
Act, 1960.\textsuperscript{3} Stating the objects and reasons of the Children Act, 1960, the Gazette if India, 1959\textsuperscript{4} reads as under:

Children are the most vulnerable group in any population and in need of 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.

Our Apex court\textsuperscript{5} also emphasized this view and observed:

Children require the protective umbrella of society for better growth and development, as they are not in a position to claim their entitlement to attention, growing up, food education and the like. It is the responsibility of the society and is one of the paramount obligations of those who are in charge of governance of the country today to attend to the children to make them appropriate citizens of tomorrow.

The rapid industrialization, urbanization and modernization of the society and economy on micro and macro level have no doubt given many material benefits, but it has also brought along some inevitable ill-effects of migration of population, distribution of joint family system, break down of traditional values and norm, discontent and increase in criminality and deviance among adults and children. The significant point to note is that a majority of the under age

\begin{footnotesize}
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\item Act No.60 of 1960. \textsuperscript{3}
\item Gazette of India, 1959 Extra Pt.II, Section 2 at 1487. \textsuperscript{4}
\item Supreme Court Legal Aid v Union of India, AIR 1989 SC 1278. \textsuperscript{5}
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population in conflict with law are street children. India has the largest population of street children as compared to any other country of the world. Majority of children are engaged in survival crimes, status offences and petty non-violent crimes. Many of them are first time offenders. Large scale of migration of families from rural to urban areas has also resulted in extreme over-crowding, dehumanizing working conditions, homelessness, deprivation of basic services and appalling living conditions in most cities.

Till the mid 19th century the issues related with children was being ignored but thereafter most of the states started recognizing this complex social problem and taking effective steps by enacting proper legislation for juvenile delinquents. The problem of juvenile delinquents has been on rise worldwide. India has also paid for its economic growth by rapid industrialization and urbanization by way of proliferation in juvenile delinquents.

Since long it has been universally accepted that a juvenile delinquent, in view of his/her level of maturity and age, cannot be equated with the grown up offenders, and as such former has to be treated in different manner from the adult offender. For this reason and requirement various statutes have been passed by the legislature related to the juvenile delinquents.

Prior to independence, the British rulers enacted the law for the trial of people who were below the age of 15 years and had committed any offence. First time in the year of 1850, the Apprenticeship Act was passed in India to deal separately with children. Thereafter, the British Government enacted the Reformatory School Act, 1876 to provide that a juvenile convicted on a criminal charge be admitted to a reformatory school. But the experience revealed that these reformatory schools could not provide adequate facilities required for
all round development of a child. Therefore provisions were included in the Code of Criminal Procedure 1898 to place youth upon the age of 18 years in a reformatory school. Thereafter, in accordance with the Indian Jail Committee Recommendation (1919-20) comprehensive Children Act were enacted in provinces of Madras (1920), Bengal (1922) and Bombay (1924). This is how the concept of “Juvenile Justice” developed.

A close study of various legislature and observations made by apex court reveals that Juvenile Justice is based on twin concept of “mens rea” and “parens patriae” and seeks to ensure best interest of juvenile. The concept of Juvenile Justice assumes that children do not have the same mental capacity as adults to take full responsibility for their actions and for that reasons they are more amenable to reform than adults.

Post independence, when Constitution of India was being enacted proper cares were taken for juvenile by imposing through the Articles 15(3), 39(e), 39(f), 45 and 47 of the Constitution a primary responsibility on the State to ensure that all developmental needs of the children are met with and that their basic human rights are protected. Keeping in view the Constitutional provisions and to provide a uniform central legislation for children in the Union

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6 Webster Dictionary Parentr Patriae means a doctrine that grants the inherent power and authority of the state to protect persons who are legally unable to act on their own behalf. In legal term it means where court take upon itself the status and standing of a parents to make a decision in their stead on behalf of their child.

7 Article 15 (3) enacted that nothing in this Article shall prevent the state from making any special provisions for woman and children.

8 Article 39(e) of Constitution enjoins a duty on the state in form of Directive principles of state polices that the health and strength of workers, men and women and tender age of children are not abused and citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

9 Article 39 (f) protects children against exploitation and against moral and material abandonment.

10 Article 45 and 47 imposes moral duty on the state to make provision for free and compulsory education for children and to raise the level of nutrition and the standard of living and to improve public health.
Territories, the Government of India enacted Children Act, 1960 for Union Territories, which was also supposed to serve as model legislation for other States, to deal with the destitute and delinquent children separately through specialised institutions. The Act was amended in 1978 to make it more efficacious. Following this legislation by Government of India, all the States also enacted their own Children Acts. However, as a result of the experience of implementing the Acts over a considerable period, it was felt that there was a lack of uniformity in the provisions of the Acts in different States. No minimum standard for basic needs, living conditions, corrective services etc. were maintained under the Children Act programmes. In view of these factors, it was felt necessary to have a uniform legislation. Therefore, the Parliament of India passed Juvenile Justice Act, 1986 (hereinafter referred to as “JJA 1986”) to provide for the care, protection, treatment, development and rehabilitation of neglected and delinquent juveniles and for the adjudication of certain matters relating to delinquent juveniles which got President of India assent and implemented w.e.f. 2nd October 1987. The Act envisages a comprehensive approach and provisions towards justice for juvenile institutions of abuse, exploitation and social mal-adjustment.

The basic aim of JJA 1986 was to segregate the neglected juvenile from the delinquent juvenile and to provide treatment and training to the different categories of children separately, viz. in juvenile homes and special homes. The Act was not properly implemented and it did not provide for any special provision for children who were in the need of care. Moreover, rehabilitation machinery for the children was not structured in the Act. A survey of various cases decided under the JJA 1986 had shown that issues raised and decided by Higher Court under the Children Act, continue to rise again and again and at times, in ignorance of the earlier
decisions.\textsuperscript{11} Therefore, strong urge was felt to bring about necessary changes in the JJA 1986 to convert the JJA 1986 from welfare legislation to an instrument for the empowerment of the children for the protection of their rights.\textsuperscript{12} To fulfill this objective and to overcome the shortcomings of JJA 1986, the legislature enacted the Juvenile Justice (Care and Protection of Children) Act, 2000 by repealing JJA 1986.

The Government of India also enacted at different point of time various social legislation, for the protection and development of the children. These are:

1) Guardian and Wards Act, 1890.
2) Factories Act, 1948, for regulations of work by children between the age group of 14 to 18.
3) Hindu Adoption and Maintenance Act, 1956.
6) Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960-to provide for the supervision and control of orphanages, homes for neglected children and like institutions and to penalise criminal activities indulged in such institutions.

9) Immoral Traffic (Prevention) Act, 1956 - for Suppression of Immoral Trafficking Women and Girls


13) Young Persons (Harmful Publications) Act, 1956 - the Act seek to prevent the dissemination of publications, which are harmful to young persons.


21) National Health Policy, 2002.

22) National Charter for Children, 2004

23) National Plan of Action for Children, 2005
24) Commission for the Protection of Child Rights Act, 2005

25) Prohibition of Child Marriage Act 2006 and

All State Legislations pertaining to children.

United Nations Efforts And Contributions

Meanwhile, the international community expressed its desire to do much more than what was being done for children world over. The United Nations has also been making efforts to secure best interest of children. The year 1985 is significant towards this effect. The United Nation Standard Minimum Rules for Administration of ‘Juvenile Justice’ (Beijing Rule) were framed and in 1989, the conventions on the Rights of the Child\(^\text{13}\) declared that in all countries in the world children were living in exceptional difficult conditions and that such children need special consideration, in particular in the developing countries. Various other United Nation resolutions also came in to force:

1) United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).\(^\text{14}\)

2) United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).\(^\text{15}\)

3) United Nations Guidelines for the Prevention of Juvenile Delinquents (the Riyadh Guidelines).\(^\text{16}\)

4) United Nations Rules for the Protection of Juveniles Deprived of their Liberty.\(^\text{17}\)

\(^{13}\) U.N. Assembly Resolution No.44/22 of 20 November, 1989.

\(^{14}\) General Assembly Resolution 40/33, 1985.


\(^{16}\) General Assembly Resolution 45/112.

\(^{17}\) General Assembly Resolution 40/113.
5) Convention on the Rights of the Child\textsuperscript{18}.

6) United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules).\textsuperscript{19}

In order to give effect to various resolutions of the United Nations as adopted by the international community, and to overcome the weakness of the JJA 1986, the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred as JJCP\textsuperscript{20}CA 2000)\textsuperscript{20} was enacted to consolidate and amend the law relating to juvenile in conflict with law and children in need of care and protection, by providing for proper care, and protection and treatment by catering to their development needs and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institution like after care organization, foster care etc established under the Act. It provides for an institutional rehabilitation programme for social integration through adoption, foster care, sponsorship and aftercare of the abandoned, destitute, neglected and delinquent juvenile and child. The primary intention of this legislation is also that juvenile offenders should be treated differently from adult offenders. The Act amended in 2006\textsuperscript{21} and Rules were framed under the Act in the year 2007, known as Juvenile Justice (care and Protection) Rules, 2007\textsuperscript{22} (hereinafter referred as Model Rules 2007). The amendment was brought to revise the Act in order to strengthen the Act and instill a child-centric rehabilitation and family restoration focused system. It takes care of every aspect of the children in need of care and protection of the state, which includes their health care,

\textsuperscript{18} General Assembly Resolution 44/25.
\textsuperscript{19} Adopted on 14\textsuperscript{th} December 1990.
\textsuperscript{20} Act No 56 of 2000.
\textsuperscript{21} Act No. 33 of 2006.
\textsuperscript{22} Vide G.S.R. 679(E) dated 26\textsuperscript{th} October, 2007, published in the Gazette of India.
diet education, vocational training, recreation facilities etc as also their personal requirements of clothing, toiletries, sanitation etc.

**Objective of Study**

The object for bringing separate legislation for the children was to provide special care, protection, affection and facilities to the children for their proper care. As society expects them to grow as responsible citizens of future, they need care, protection, affection and facilities because of their tender age, physique and under-developed mental status. But there are many causes that lead to become juvenile delinquent. The main object of the JJCPCA 2000 is rehabilitation and social reintegration of juvenile or child. The object of discussion is whether the Act is implemented in accordance of the objective spelt out in the Act.

It cannot be overemphasized that implementation of the JJS is extremely demanding in India. Both the stakes and risk is high as the Act is for children who are supremely important national asset and the future well being of the nation depends to the great extent upon the fact how the children grow and develop.

Hence the research work starts with the aim to survey the historical background on the juvenile justice system in India and other countries and to analyses whether the Act has been implemented and enforced as per the aim and the objective of the JJCPCA 2000. The subject in the present study is a matter of tremendous significance. The research main focus is on:

1) to make assessment as to the contribution of judiciary, NGO’s, other instruments in achieving the objective enshrined in the JJCPCA 2000.
2) to analyses the cases came before higher judiciary and their impact on the implementation of the JJCPA 2000.

3) to analyses whether the Act has been implemented in its true letter and spirits. The compliance of the Act includes framing of Rules, establishment of homes, JJB, CWC, SJPU, Advisory Board etc by each and every state in the country.

4) to suggest remedial measures to make JJS more effective within the existing framework or what more changes is required.

Hypothesis

In India the reality is that millions of children, including those who need more care and protection than the rest for physical and psychological reasons, are growing up without it. They are neglected, forced to work, abused, incarcerated, and denied justice as well as their basic right to dignified living. Being soft targets, children are extremely vulnerable to natural or manmade disasters, cruel twists of fate, criminal elements and the society’s sin of omission and commission. In a country like India, where the media and civil society are less vigilant, children often fall out of the cracks of the very system that is designed to protect them and give them justice. Despite intensive rehabilitation measures and special procedures for tackling the problem of juvenile delinquency its incidents are increasing. Incident shows large scale of unawareness of the legislation among the individuals given responsibility under the Act.

Inspite of several welfare schemes, a liberal democratic government, and approximately 25 years of working laws on justice for children, several thousands of India’s children are routinely
neglected by the government’s care system and often ill-treated and tortured beyond imagination and comprehension. That justice is routinely delayed, even denied, to the children who approach the system seeking care and protection, or come into conflict with law due to economic or work pressure, or are often taken into and detained in custody needlessly by a callous administration, resulting in an ultimate denial of their right to life. The task of the administration is gigantic, yet there is little will to meet the challenge with empathy while upholding the constitutional rights of the children as free human beings.

The two categories of children who come under the purview of the Juvenile Justice system in India: Those who are in need of care and protection – mostly victims of abuse, violence, exploitation and neglect – and those coming in conflict with law. When we analyses the Act we find that there are many problems under the JJCPA 2000. Some of them are like non implementation of the Act by all states, establishment of JJB, CWC, Homes in all states, SJPU, training to the staffs handling juveniles, formation of monitoring agencies, etc.

In view of the condition and dire need of change this hypothesis rest on presumption that if the situation remains unchanged the repercussion of this shall expunged the objective of the JJS.

For that a comprehensive study which deals with the subject “Juvenile Justice System: A Socio-Legal Critique” need to be done. The main issue considering while examining the concept of JJS are:

- To provide legal support to children in need of care, protection and justice, assists in tracing families and bringing services to children (such as counselling, sponsorship and rehabilitation support),
• Advocates for change in law and programmes,

• Monitors implementation of juvenile justice by engaging with the system as well as through research and documentation.

• To present the overview of the JJS in India as it exist today with all inadequacies.

• To find the reasons for the slow process of and resistance to change.

• The find reasons leading to the gaps in implementation of the JJS.

• To bring out the shortcoming in the system and give suggestion how that can be deal with to have effective enforcement of the Act.

• To bring the true picture of the various bodies framed under the Act and whether they discharge their duties effectively.

• Whether the existing provisions are sufficient for proper need, care and education to the juvenile/child in the homes.

Review of Literature

The JJCPACA 2000 (as amended in 2006) is a law to consolidate and amend the legal framework relating to juveniles in conflict with law and children in need of care and protection. It provides for proper care, protection and treatment by catering to a child’s development needs. It attempts to adopt a child-friendly approach in the adjudication and disposition of matters in best interest of children and secure ultimate rehabilitation through various
institutions established under this enactment. The JJCPA draws its basis from the Constitution of India Article 15 (3), Article 39 (e) and (f), Articles 45 and 47); the UN Convention on the Rights of the Child, 1989 (ratification by Government of India on 11 December 1992); the UN Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules); the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990; UN Guidelines for the Prevention of Juvenile Delinquency, 1990 (The Riyadh Guidelines); UN Standard Minimum Rules for Non-custodial Measures, 1990 (The Tokyo Rules); and many other international conventions/treaties and instruments.

International Concern towards the children:

The Convention on the Rights of the Child, adopted by the United Nations General Assembly on 30 November 1989, is the most ratified human rights treaty in history. It defines children as those less than 18 years of age and is designed to look at children as complete human beings. The CRC is the most important legal instrument in relation to juvenile justice because it is legally binding on all members. The most specific articles in relation to juvenile justice are Articles 37 and 40, which when read with the General Comment No. 10, Children’s Rights in Juvenile Justice, lays down a comprehensive mechanism that States must comply with in their administration of Juvenile Justice. However, these must be seen in the context of the overall framework of the CRC and its main ‘umbrella rights’. These include: Article 6 - The right to life, survival and development; Article 3.1 - The best interests of the child as a primary consideration; Article 2 - Non-discrimination on any grounds; Article 12 - The right to ‘participation’; and Article 4 - Implementation, including
of economic, social and cultural rights to the maximum extent of available resources.

*United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)*

The prevention of juvenile delinquency is an essential part of crime prevention in society. By engaging in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life, young persons can develop non-criminogenic attitudes. The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious development of adolescents, with respect for and promotion of their personality from early childhood.

*United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*

In the Beijing Rules, the aims of juvenile justice include the promotion of the youngster’s welfare and the assurance that each response towards juvenile delinquents will always be in proportion to circumstances of the youngster as well as the crime. The Rules include specific measures that cover the different phases of juvenile justice. They emphasize that imprisonment should only be used as a last resort and for the shortest possible period of time.


The most important international instrument are the United Nations Standard Minimum Rules for Non-Custodial Measures, adopted by the General Assembly in its resolution 45/110 in December 1990 and also known as the Tokyo Rules. The Rules stipulate legal protections to ensure the impartial application of non-
custodial measures within a transparent legal system, ensuring the protection of the offender’s rights and the resort to a formal complaint system if ever they feel that their rights have been violated.

The CRC and other international standards on the administration of Juvenile Justice System require nations to establish a child-centred, specialised justice system, whose overarching aim is children’s social reintegration, and which should guarantee that their rights are respected. When discussing juveniles in conflict with law, international agreements emphasise the importance of preventing juveniles from coming into conflict with the law in the first place as well as an expectation of complete rehabilitation by the time they leave the juvenile justice system. India too has made positive attempt to cover all aspects of interaction between children and the legal system. From adoption to abuse and neglect to children in conflict with the law, the Act is far-reaching in its scope and intent. The provisions within the JJCPA 2000, like its international predecessors, are intended to preserve the dignity and best interests of the child. Though after the passing of the JJCPA 2000, there has been a change in perspective and appreciation of the needs of and relevant policies for children who are in need of care and protection and those in conflict of law. The focus has shifted to protection of dignity of the child and ensuring that they enjoy all rights through state responsibility and action. The juvenile justice system’s interventions address two discrete child populations. On the one hand is the child in conflict with law (hereinafter referred as ‘CICL’) and on the other, are the children in need of care and protection (hereinafter referred as ‘CICP’). In both the instances, there are provisions for rehabilitative placement and protection with due process. The CICL are presented before the Juvenile Justice Boards that has an assigned magistrate and two social workers. There are provisions for observation homes for all
such children who need correctional services. The second category of children i.e. the CICP is to be presented before the Child Welfare Committees. The CWC is authorized to recommend appropriate measure to rehabilitate all such children. They are also provided with facilities for institutional care. The JJCPA 2000 made the state intervention imperative in case of the CNPC.

In its true spirit, the Act outlines the roles to be played by the government, represented by the judiciary, police, probation and social welfare services, local government bodies, including the panchayati raj institutions, as well as NGOs and social workers. The 2006 amendments attempt to strengthen and widen the juvenile care and justice framework as well as establish the premise that the best of institutions cannot substitute for care in a family, with the ultimate aim of promoting a child-centric rehabilitation and family restoration-focused system.

The JJCPA also envisages state protection and establishment of institutions for such children. For children in need of care and protection, there are Shelter Homes (short-term stay) and Children’s Homes (long-term stay). For children in conflict with law, there are Observation Homes and Special Homes. The former are where the accused are housed till the enquiry is complete and an order is passed, while Special Homes (formerly, correctional homes) are where these children go after they have been sentenced and an order is passed for their rehabilitation. In most cases, a single institution serves as both these categories. Additionally, there are Aftercare homes /organizations to fulfill that special role of rehabilititating children leaving Special Homes or Children’s Homes and integrating them with
the larger society. However, there are very few after care homes in the country.\textsuperscript{23}

It has been found that many times we play blame game by shifting the blame on the environment in which child grows and hence try to find the motive and intent within the family, guardians, society and so on, in fact there is a thin line between the CNCP and the CICL. Many of the CICL are children in such difficult circumstances that are sometimes indistinguishable from crime. For instance, children trafficked or in prostitution or begging. Of late, trafficking of young boys for prostitution is on the rise and tourism hotspots like Kerala and Goa are emerging as the newattraction for paedophiles. In the eye of the law, such children may be “committing a crime” but in reality, it is they who need care and protection the most. Recent changes in juvenile justice law treat children in begging and prostitution as CNCP is a positive change, but the corresponding change in attitude has yet to come about at all levels.

Inspite of the reformation made under the Act after the 1986 JJA, there is major gap between the legislation and its implementation. Vineet Saran, J.,\textsuperscript{24} in his article is of the view that the law on the subject is quite comprehensive. What is need is the proper implementation. Quite contrary to the objectives of the Act, the practical reality is horrific and needs to undergo a sea change before it can truly bring forth the legislative intent. He further says that, “A law may be good on paper but unless implemented in its true spirit, it is meaningless. That seems to be happing with this Act too”.

\textsuperscript{24} Saran, Vineet, J. (Allahabad High Court), \textit{Child In Need Of Care and Protection}, 2009 JTRI.
H.A. Kadri, in his article has mentioned the state of the children in India. He says that even after having such law, the number of the street children and beggars has not reduced. The child exploitation abuse, torture is increasing day by day. The criminal tendency in the children is increasing, the parents and other exploiting the children by compelling and encouraging them to beg or to involve in criminal or illegal activities. The bus station, railways stations, trains are full of such children. The reports of the crime against are coming frequently. Therefore it cannot be said that the Act has achieved the intended results.

M. Lingaraj. Konin,\textsuperscript{25} in his article brings out the focus on difficulties a social worker faces in due process. Further states the lack of infrastructures and funds that detrimental towards the proper implementation of the Act.

Ved Kumari,\textsuperscript{26} in her several article raised many issues regarding the determination of the age and other procedural issues relating to the age and the evidentiary issues relating to the determination of age. Many questions need to be address, some of the most important are: Who has the duty to raise the question of age-child, prosecution, police or magistrate? Is the court bound to hold an age determination inquiry in all cases whenever an accused claims to be a child? On whom is the burden to ensure that evidence is forthcoming to prove age-magistrate, prosecution, or child? Who should determine the age-only competent authority under the JJCPCA or any magistrate? When can the ordinary magistrate determine age? Where should the ‘accused’ remain during the age

\textsuperscript{25} Konin, Lingaraj. M., “Role Of Social Worker In Juvenile Justice”, Indian Socio-Legal Journal (2011) 37 (1 & 2) at 87-94

determination when the ordinary magistrates decide to determine age themselves? At what stage the plea of child status may be raised? What procedure should be followed for determination of the age? How to determine age in absence of Birth certificate? Should documentary evidence be preferred over medical evidence? How reliable is the medical evidence? How should court decide the age if there is conflicting evidence? Whether the age of accused should be proved beyond reasonable doubt or it can be determined by preponderance of evidence? Should a person whose age cannot be determined exactly, be given the benefit of doubt and be treated as a child or juvenile? What will be relevant date to determine age in continuing offences? What should be done if a person ceases to be eighteen years of age during the pendency of proceedings? Can a child above the age sixteen years dealt with by juvenile court in view of prohibition contained in Section 27 of the Code of Criminal Procedure?

Some of these issues have been considered by courts with different results. Some have been specifically clarified or addressed by the JJCPCA amendment in 2006. Many are still waiting categorical answers and development of best practice in those circumstances. Similarly, the questions regarding the age determination have been discussed where author points out the confusion among the judicial magistrate about the procedure and evidence to determine the age that leads to the confusion among the people working for the child welfare, social workers even the judicial magistrates.27

Another issue that came into light was that even after the amendment in 2006, many cases decided by the Supreme Court show that no consideration was given to the amendments and the

changes introduced under the JJCPA 2006 and the Model Rules 2007. In cases like *Jyoti Prakash*, which came for final disposal by SC on 4-3-2008, after Section 20 was already amended to override *Pratap Singh* ruling. The point of consideration is that not only the amendment made in 2006 but the Model Rules 2007 were also in force. But Supreme Court reiterated *Pratap Singh* ruling. Similarly in case of *Ranjit Singh* where the accused was admittedly above the age of 16 but below the age of 18 on the date of offence. As per Section 20 his case should have been continued in the ordinary criminal courts till the finding of guilt. When found guilt, his case should have been sent to the JJB for disposal under the provision of JJA, 2000. However, he was sentenced to life imprisonment and the Supreme Court refused to apply JJCPA 2000. In other case where no mention has been made to the JJCPA 2000 amendment Act 2006 is *Balu*. However many cases decided by the Supreme Court contrary to the provisions of the act and Rules after the notification of the Rules.

The Supreme Court finally took on board all these cases in *Hari Ram v State of Rajasthan*, and decided that the law as now crystallized on a conjoint reading of Sections 2 (K), 2 (1), 7A, 20 and 49 read with Rules 12 and 98, places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1st April, 2001, would be treated as juveniles, even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of

28 Supra note 25.
commencement of the Act and were undergoing sentence upon being convicted. The accused was above the age of 16 years on the date of offence. He was below the age of 18 years on the date of enforcement of JJCPA 2000 and hence, fell squarely within the parameters laid down in Pratap Singh case. Hari Ram is a landmark that should be relied on it gives answers to many confusion under JCPCA 2000.

On 9th July, 2010 the Supreme Court\textsuperscript{34} ire on non-implementation of the JJCPA 2000 in states. The same is reproduced herein blow to see the concern of the Higher Courts towards the children.

The Supreme Court today expressed its anger over government's failure to implement the Juvenile Justice (Care and Protection of Children) Act, 2000, for corrective measures and reformation of juvenile offenders saying the "entire Act has been made a mockery". This is a pathetic situation. The entire Act has been made a mockery. Most of the states have not complied with the Act”. With reference to some states, there is only nominal compliance, “a Bench of Justices R.V. Raveendran and H.L. Gokhale, said. The Apex Court made the remarks while granting four weeks to solicitor general Gopal Subramaniam to come out with a response on the steps taken for implementation of the law. Dealing with a PIL complaining about government's apathy in implementing the legislation, the Bench lamented though the Act was enacted a decade ago most of the states have not even constituted the District Welfare Boards and Child Welfare Committees as mandated by Sections 4 and 29 respectively of the Act”. Some of the children are being used by the officials. The Juvenile Justice Board is unnecessarily detaining some of them. In

\textsuperscript{34} “Supreme Court Ire on Non-Implementation of the Juvenile welfare Act” News Published on 9\textsuperscript{th} July 2010, Daily New and Analysis, www.DNAnews.com.
Delhi, some of them have run away from remand homes,” the Bench said. The apex court said it was more concerned with the implementation of the Act by the bigger states”. Sikkim, Daman Diu, Meghalaya might have complied with but we are concerned with the compliance by the bigger states, the Bench remarked when the counsel, appearing for Sikkim, submitted that the state had complied with the provisions of the Act. The solicitor general assured the court that the Centre was in the process of evolving an effective mechanism for strict compliance of the Act. He submitted the Centre was engaged in consultation with the National Commission for Children and the Union Ministry for Women and Child Welfare in this regard.

Recently in Sampurna Behrua v Union of India,35 the Supreme Court directed all the states to furnish the status report regarding the implementation of the JJCPA 2000. On 17 January 2011 about 9 states have submitted their report that shows a broad compliance with the requirement of the Act. The court gave common direction to all states regarding to the provisions of the Act, setting up of the JJBs and CWCs is only a preliminary step. The Court further states that the Act contemplates setting up Observation Homes, Special Homes, Children Homes, Shelter Homes, SJPC etc. Further court states that setting up of the JJBs and CWCs is merely following the letter instead of object and spirit of the Act.

Even MWCD in its report36 came in 2009, it revealed major shortcomings and gaps in existing child protection institutions, policies programs and their implementation at all levels. The minimal government structure that exists is rigid and a lot of time and energy are spent on maintaining the structure itself rather than concentrating

35 Writ Petition (Civil) No(s) 473 of 2005.
on programmatic outcomes. It further states that the existing programmes and schemes are marked by limitations; some of the important shortcomings are reproduced herein below:

Lack of prevention Policies: programs and structures to prevent children from falling into difficult circumstances are mostly lacking. This pertains both to policies to strengthen and empower poor and vulnerable families to cope with economic and social hardship and challenges and thus be able to take care of their children, as well as to efforts to raise awareness of all India’s people on child rights and child protection situation.

Poor planning and coordination

(i) Poor implementation of existing laws and legislations;

(ii) Lack of linkages with essential lateral services for children, for example, education, health, police, judiciary, services for the disabled, etc.;

(iii) No mapping has been done of the children in need of care and protection or of the services available for them at the district/city/state levels;

(iv) Lack of coordination and convergence of programmes/services;

(v) Weak supervision, monitoring and evaluation of the juvenile justice system.

Serious service gaps and lack of infrastructure also played important role in weak implementation of the Act. There is improper use of institution in contravention to government guidelines and lack of support services to families at risk making children vulnerable. A weak accountability, monitoring and evaluation are found.
The literature resource regarding the juvenile justice system for analysis is available in the form of number of the books, newspapers, magazines, internet sites, journals, articles, laws relating to the children, legislations, government programs and policies, and all the international conventions have been studied in detail. The Internet had a substantial effect to studying international scenario, various articles by Indian and foreign authors, new items without which this research would have been much more difficult. All sources of information, digital or otherwise have been cited in the footnotes to the main text. One word of caution: websites and URLs being rather ephemeral in nature, sometime links might have lapsed, the footnote tell of sites existed at the time of writing.

After reviewing the available literature the researcher feels that not much have been done to combat with the problem of JJS. Therefore this research will enable a larger understanding of the existing situation of children following under the two categories i.e CICL and CICP on their rights, facilities and condition of institutions, gaps in implementation etc and will also lead to finding a solution for the better implementation of the Act and Rules in its true spirit.

Research Methodology

The present research work required both theoretical and empirical study. The theoretical work dealt with the study of legislations, judicial verdicts, international conventions, books, and articles available on the subject.

The empirical research work comprises taking views of judges, advocates dealing with the cases of children under the JJCPGA, social workers working for the Children and other agencies fighting and working for juveniles.
Plan of study

Chapter 1 gives introduction about the subject and defines the various concepts under the Act. Meanwhile, brief description on the historical background of the juvenile justice in India and other countries and salient features of JJCPCA 2000.

Chapter 2 defines and describes the powers of JJB and the procedure of trial before the JJB. Bail and punishment that can be given to the juveniles and the offences against the juvenile described on the basis of statistic of India.

Chapter 3 relates to the juvenile in need of care and protection. A review of powers and duties of CWC. Brief description under what circumstances the child to be restored and social auditing.

Chapter 4 relates to the main objective of the Act that is rehabilitation and social reintegration that include adoption, foster care and after care organization.

Chapter 5 focuses on the enforcement of the JJCPCA, describing the position in criminal court proceedings, further states the responsibility of department for the enforcement of the Act. Also examine the role of NGO and parent and how they can help to make the system more effective. What is Advisory board and its role under the Act.

Chapter 6 relates to the challenges one has to deal with in JJS focusing on the causes and practical problem. Putting light on the monitoring of enforcement of JJCPCA.

Chapter 7 studies the cases before the higher judiciary and what issues where raised among them and analyses their impact on the system in present scenario.
Chapter 8 assesses critically the implementation of the JJCPA 2000 and appraises the effect of the orders made by the courts on the system.

Chapter 9 gives the description of all type of homes in the states, their condition and whether all state have required number of homes as per the Act.

Chapter 10 finally based upon the research. Conclusion has been drawn and suggestions have been given for more effective implementation.

1.1 Juvenile

The juvenile has been defined under Section 29B of Criminal Procedure Code, 1898\(^\text{37}\) as any person who is under 15 years of age. In amended Criminal Procedure of Code, 1973\(^\text{38}\) Section 27 corresponds to Section 29-B of the old code and the age limit of the juvenile was increased to 16 years.

The JJA 1986\(^\text{39}\) defines juvenile in following words:

Juvenile means a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years.

In JJCPC 2000, the age of boy juvenile has been increased to 18 years. The JJCPC 2000\(^\text{40}\) defines juvenile in two categories namely “juvenile in need of care and protection and “Juvenile in conflict with law”. As per Section 2(d) of the Act, “juvenile in need of care and protection” means a child-

\(^{37}\) Act No. 5 of 1898.
\(^{38}\) Act No.2 of 1974.
\(^{39}\) Act 53 of 1986.
\(^{40}\) Act 56 of 2000.
i) Who is found with any home or settled place or abode and without any ostensible means of substance,

[(ia) who is found begging, or who is either a street child or working child.]\(^{41}\)

ii) Who resides with a person (whether a guardian of the child or not) as such person:

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

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

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

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

v) who does not have parent and no one is willing to take care of or whose parents have abandoned [or surrendered]\(^{42}\) him or who is missing and run away child and whose parents cannot be found after reasonable inquiry,

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

\(^{41}\) Inserted by Act 33 of 2006.

\(^{42}\) Ibid.
vii) who is found vulnerable and is likely to be induced into drug abuse or trafficking,

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

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

As per sec 2(l) of JJCPCA 2000 “Juvenile in conflict with law” means a juvenile who is alleged to have committed an offence and has not completed eighteen years of age as on the date of commission of such offence.

**Juvenile Crime In India**

The only source of information on the national crime rate is *Crime in India*, published by the National Crime Research Bureau, contains a chapter on juvenile delinquency, the data is supplied to it by most of states /Union Territories/cities. But the data available therein are limited in various aspects. The official figures doesnot include the hidden figure of crime and cannot depict the true picture of the child delinquency in India. The official figures are the only ones available on an all-India basis and are expected to be indicative of the pattern of child delinquency in India.

The crime statistics for 1999-2009 shown in the Table 1 shows that children arrested both for IPC and SLL (Special and Local laws) cases in the age group of 12-16 years were most susceptible to crimes and more children were arrested in this age group in year 1999 (55.9%). However, in total the number of arrest in the year 2000 decline in comparison to corresponding figure of 1999. It can be gathered from the below table, that the juvenile apprehended in the year 1999 has increased tremendously every year and the heights
numbers of juvenile apprehended was in the year 2002 (35, 779) inclusive all ages. In 2009, 133 juveniles were apprehended in the age-group of 7-12 years. 10741 juveniles were apprehended in the age-group of 12-16 years whereas bulk of juveniles (21, 768) were arrested under the age-group 16-18 years. The total of juvenile apprehended are 33,642 which is less than the year of 2008.

Table 1

Juvenile Apprehended under IPC and SLL by age group 1999-2009

<table>
<thead>
<tr>
<th>Year</th>
<th>7-12 year</th>
<th>12-16 year</th>
<th>16-18 year</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1999</td>
<td>4039</td>
<td>10311</td>
<td>4110</td>
<td>18460</td>
</tr>
<tr>
<td>2000</td>
<td>3292</td>
<td>11389</td>
<td>3301</td>
<td>17982</td>
</tr>
<tr>
<td>2001</td>
<td>3696</td>
<td>12729</td>
<td>17203</td>
<td>33628</td>
</tr>
<tr>
<td>2002</td>
<td>4488</td>
<td>13864</td>
<td>17427</td>
<td>35779</td>
</tr>
<tr>
<td>2003</td>
<td>3584</td>
<td>11687</td>
<td>18049</td>
<td>33320</td>
</tr>
<tr>
<td>2004</td>
<td>2107</td>
<td>12415</td>
<td>16421</td>
<td>30943</td>
</tr>
<tr>
<td>2005</td>
<td>1645</td>
<td>13090</td>
<td>17946</td>
<td>32681</td>
</tr>
<tr>
<td>2006</td>
<td>1595</td>
<td>12535</td>
<td>18015</td>
<td>32145</td>
</tr>
<tr>
<td>2007</td>
<td>1460</td>
<td>12114</td>
<td>20953</td>
<td>34527</td>
</tr>
<tr>
<td>2008</td>
<td>1281</td>
<td>12272</td>
<td>20954</td>
<td>34507</td>
</tr>
<tr>
<td>2009</td>
<td>1133</td>
<td>10741</td>
<td>21768</td>
<td>33642</td>
</tr>
</tbody>
</table>

| Percentage Change in 2009 over 1997 | 71.9 | 4.2 | 429.6 | 82.2 |
| Percentage Change in 2009 over 2008 | -11.6 | -12.5 | 3.9 | -2.3 |

*Source: Crime in India 2009*

*Note: 7-12 years means 7 years and above but below 12 years*
The percentage share of Juveniles apprehended under these agegroups was 4.2%, 35.1% and 60.7%. The number of juveniles apprehended in the age-group 7-12 during 2007 has decreased by 8.5% as compared to 2006 whereas the decrease in the number of juveniles apprehended in the age-group 12-16 during 2007 as compared to 2006 was 3.4%. A marginal increase of 16.3% was observed in the number of juveniles apprehended in the age-group 16-18 in 2007 as compared to 2006. The overall increase in juveniles apprehended at the national level was 7.4% in 2007 as compared to 2006 respectively.

Table 2

Juvenile offenders

Juvenile and adult offenders from 1996–97 to 2006–07, by age group (per 100,000 of that age group per year)

A comparative picture of the offences committed by the juvenile and adult offender shown in the Table 2 shows that the Juvenile offender rates have generally been twice as high as adult ones. The
offender rate of juveniles decreased from 1996–97 to 2003–04, from 3,965 to 3,023 per 100,000 per year. It increased in 2005–06, and again in 2006–07, to 3,532 per 100,000. The adult offender rate peaked in 2000–01, at 2,100 per 100,000. In 2006–07, it was 1,492 per 100,000, the lowest rate recorded.

In the Table 3 given below shows the status of disposal of cases of Children in conflict with law. Having glance on the data given below it clearly show that the burden of pending cases has increased and this leads to pressure on the Juvenile Justice Board. The numbers of the convictions are high as compared to acquittals. In the year 2007 (5,077), maximum number of children got convicted. The numbers of pending cases is increasing every year. From 2004 onwards the pendency has increased continuously. The children who are pending disposal are either kept in observation homes or may release on bail.
TABLE 3  
Status of Disposal of Cases of Children in Conflict of Law  
(1998-2007)

<table>
<thead>
<tr>
<th>Year</th>
<th>Arrest &amp; Sent to Court</th>
<th>Released on Probation and Place under Care of Parents/ Guardian</th>
<th>Deal with fine</th>
<th>Acquitted or Disposed Off</th>
<th>Pending Disposal</th>
<th>Sent to Special Homes/convicts</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>18,964</td>
<td>3,889</td>
<td>829</td>
<td>908</td>
<td>2,107</td>
<td>6,860</td>
</tr>
<tr>
<td>1999</td>
<td>18,460</td>
<td>5,298</td>
<td>768</td>
<td>832</td>
<td>3,358</td>
<td>5,267</td>
</tr>
<tr>
<td>2000</td>
<td>17,982</td>
<td>3,091</td>
<td>2,012</td>
<td>609</td>
<td>1,132</td>
<td>6,656</td>
</tr>
<tr>
<td>2001</td>
<td>33,628</td>
<td>4,833</td>
<td>1,003</td>
<td>897</td>
<td>4,436</td>
<td>14,297</td>
</tr>
<tr>
<td>2002</td>
<td>35,779</td>
<td>11,338</td>
<td>1,240</td>
<td>908</td>
<td>1,693</td>
<td>13,983</td>
</tr>
<tr>
<td>2003</td>
<td>33,320</td>
<td>9,074</td>
<td>1,526</td>
<td>1,592</td>
<td>1,730</td>
<td>12,049</td>
</tr>
<tr>
<td>2004</td>
<td>30,943</td>
<td>5,662</td>
<td>1,138</td>
<td>1,256</td>
<td>1,952</td>
<td>12,140</td>
</tr>
<tr>
<td>2005</td>
<td>32,681</td>
<td>5,518</td>
<td>1,933</td>
<td>1,361</td>
<td>1,801</td>
<td>13,778</td>
</tr>
<tr>
<td>2006</td>
<td>32,145</td>
<td>5,723</td>
<td>1,482</td>
<td>1,023</td>
<td>1,579</td>
<td>13,792</td>
</tr>
<tr>
<td>2007</td>
<td>34,527</td>
<td>6,324</td>
<td>1,336</td>
<td>1,543</td>
<td>1,474</td>
<td>14,247</td>
</tr>
</tbody>
</table>

Source: Crime in India, 1998-2007, NCRB.
Situtation of Children In India

According to CRY Report⁴³

"In truth, millions of India's children are denied even the most basic rights of survival and protection. In year 2007, CRY (Child Relief and You) has compiled some statistics on the situation of children in India. This is based on its experience of working on a range of children's issues across all regions of India.

- About 60 million Indian children under the age of 6 live below the poverty line.
- Every second child in the country is malnourished.
- Almost 2 million children in India die every year before reaching their first birthdays.
- 7 to 8 Lakh (800,000) children die every year from easily preventable diseases like diarrhea.
- Children from 100 million families live without water at home.
- Less than half of India's children between the age 6 and 14 go to school. India has the maximum number of 'out of school' children in the world. Only 60% of Indian children (the total child population below 14 is 228 million) reach 5th grade, and many of those 'completing' primary school cannot read or write.
- In addition to the deaths of infants and children due to malnourishment and disease, innumerable and unrecorded numbers of girl Children are killed within

hours of being born while many others are killed in the womb itself.

- 53% of girls in the age group of 5 to 9 years are illiterate. Every year 27,06,000 children under 5 years die in India. And the deaths of girl children are higher than those of male children.

- 100 million child laborers in India work in hazardous or exploitative conditions. They work for 12 - 15 hours a day and earn less than Rs.3 per day. Millions of children work to help their families because the adults do not have appropriate employment and income thus forfeiting schooling and opportunities to play and rest. Children also work because there is demand for cheap labor. High incidence of child labor is a result of high incidence of adult unemployment.

- Poor and bonded families often "sell" their children to contractors who promise lucrative jobs in the cities and the children end up being employed in brothels, hotels and domestic work. Many run away and find a life on the streets". There are approximately 2 million child commercial sex workers between the age of 5 and 15 years and about 3.3 million between 15 and 18 years. They form 40% of the total population of commercial sex workers in India 80% of these are found in the 5 metros 71% of them are illiterate 500,000 children are forced into this trade every year.
According to National Crime Records Bureau Report:44

- 7.6% increase was reported in incidence of crime against Children in 2009 over 2008. Cases of Child Rape decreased by 1.4% during 2009 (5,368) over 2008 (5,446).

- A total of 8,945 cases of Kidnapping and Abduction of children were reported during the year 2008 as compared to 7,650 cases in the previous year accounting for a significant increase of 16.9%.

- Cases of Selling of Girls for Prostitution increased from 49 in 2008 to 57 in 2009.

- Madhya Pradesh reported 19.2% (4,646 out of 24,201) of total crimes committed against children in the country.

- The highest crime rate (16.0) was reported by Delhi UT as compared to National average (2.1).

- Madhya Pradesh (39) and Punjab (23) together have accounted for 44.3% (62 out of 123) of cases of foeticide reported in the country.

- The conviction rate at the National level for crimes against children stood at 33.9%.

Children who form 42% of the India’s population are at risk on the streets, at their workplace and even inside their own homes. The recent Nithari case has highlighted the plight of children of migrant workers. There has been a 40% increase in intra-state migration in the last 10 years. While migrant do get employment there is no safety net for their children; they get neither education nor healthcare. Single

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migrant children or children of migrant workers are often not counted anywhere—census or any government scheme.

According to the study conducted by NGO Shakti Vahini in 2006, 378 of the 593 districts in India are affected by human trafficking the children being the most affected. The street children are perceived as vagrants by the police and with no legal safeguards to protect them, violence and exploitation are daily routine for them. India has the largest number of street children in the world. In 2001 it was estimated that there are 100,000 to 125,000 street children each in Mumbai, Kolkata and Delhi with 45,000 in Bangalore.

In terms of budget allocation 4.91% of Union Budget 2006-07 has been allocated for health, education, development and protection of children. Child protection has never figured in any planning document so far.

There are several laws but the problem is with the implementation. The Central Monitoring Commission that is supposed to monitor crime against children under the JJCPA 2000 as amended in 2006. This committee has not met even once since the amendment. The Act stated that every police station should have a juvenile police unit but this is still not being followed. The offences against children bill which provides protection against sexual abuse also awaits cabinet nod.

After evaluation of the child protection schemes of the Ministry of Women & Child Development, including the scheme ‘An Integrated Programme for Street Children’, in 2007 revealed shortcomings and gaps in these schemes and their implementation. Government of India in the Ministry of Women and Child Development, has introduced a new comprehensive Centrally Sponsored Scheme, namely, Integrated Child Protection Scheme (ICPS) w.e.f. 2009-10 by merging three
erstwhile schemes, including the scheme ‘An Integrated Programme for Street Children’ with additional components. This Scheme is being implemented through State Governments/ UT Administrations. ICPS provides for establishment of institutional mechanisms for monitoring the implementation of ICPS, including performance of the DCPS. Such mechanisms include District Child Protection Committees (DCPCs) at District level and State Child Protection Committee (SCPC) at State level and Central Project Support Unit (CPSU) under the Government of India in the Ministry of Women and Child Development. As the Scheme is at the initial stage of implementation, it is early to undertake the annual appraisal. Rs. 1073.00 crore has been allotted for the implementation of the scheme during the 11th Plan period.\textsuperscript{45}

According to child rights activists to avoid crimes against children it is important to have community level child protection mechanisms like community watch dogs and committees for child protection, child welfare and anti-trafficking. These will create an interface between communities and state/district mechanisms. To overcome lack of awareness about child protection laws the information dissemination is important.

\subsection{1.1 Juvenile Delinquent}

Juvenile delinquency is a worldwide problem. In most of the contemporary societies, developed as well developing, this problem is stupendous and growing. Nevertheless, there are divergences in magnitude of the problem consistent with socio-cultural and politico-economic differences within and between countries.

\textsuperscript{45} ICPS: This information was given by Smt. Krishna Tirath, Minister of State for Women and Child Development in a written reply to a question in the Lok Sabha on 22 February 2011. Press Information Bureau, Government of India, Pib.nic.in/release/release.asp?relid=0759
The origin of the concept of Delinquency

The word Delinquency is derived from the Latin word ‘Delinquere’ meaning ‘de’ (away from) and ‘linquere’ (to leave). Thus in earliest sense according to Latin infinitive ‘delinquere’ means ‘to omit’. In Latin literature it did not apply to child behaviour, but it was used with reference to the parents who neglected and abandoned their children.46

There is no precise meaning of juvenile delinquency. However, various attempts have been made to define it. Different penologists have differently interpreted the word “Juvenile Delinquency”.47

In Encyclopedia of Crime and Justice Juvenile Delinquent has been defined as, “Such a conduct by children which is either violative of prohibitions of the criminal law or is otherwise regarded as deviant and inappropriate in the social context”.

According to Gibbons & Krohn, Juvenile delinquents consists of the acts of infractions, which are prohibited in the statutes of the individual states, juvenile delinquents are the youth who commit one or more of these infractions.

The second United States Nations Congress on the Prevention of Crime and Treatment of Offenders held in London in August 1950 defined the term ‘Juvenile Delinquent’ as all violations of Criminal Law and Maladjustments behaviours of minors which society disapproved.48

Accordings to Robinson, ‘Delinquency is simply the first step on the road to adult crime or it is gateway to adult criminality. It concerns us because it is ‘sign post of danger’.\textsuperscript{49}

Whereas Dr. Cyril Burt says that the juvenile delinquency occurs in a child or young person, when her/his anti-social tendencies appear so grave that he or she become or ought to become the subject of official action. The delinquency includes not only those acts which would be crime if committed by an adult but also a range of status offences such as truancy, vagrancy, uncontrollability, drinking or driving under age \textit{et cetera} (Phillipson 1971).\textsuperscript{50}

According to Ellingston, “Crime is whatever the dominant elements of a particular society believe to be dangerous to the security and solidarity of the society at any particular time”.\textsuperscript{51}

Generally speaking the term refers to a large variety of disapproved behaviour of children and adolescents, which the society does not approve of, and for which some kind of admonishment, punishment or corrective measure is justified in the public interest. It may, therefore, be inferred that a juvenile is an adolescent person between childhood and manhood or womanhood, as the case may be, who indulges in some sort of anti social behaviour, which, if not checked, may turn him into a potential offender.\textsuperscript{52}

In India the term ‘Juvenile Delinquency’ has not been defined in any Act. Any act prohibited by law for children up to a prescribed age limit is juvenile delinquency and it follows therefore, that a child found to have committed an act of juvenile delinquency by a court is a

\textsuperscript{49} Ibid.
\textsuperscript{50} Ibid.
\textsuperscript{51} Ellingston, J.R., \textit{Protecting our Children from Criminal Careers}, (1948).
juvenile delinquent. The JJPCA 2000 defines juvenile who is alleged to have committed an offence and has not completed 18 years of age on the date of commission of such offence. “Offence” under the act means an offence punishable under any law for time being in force. The Indian position is in consonance with the latin principle, *nullum crimen sine lege*, which means an act cannot be crime unless it is so defined under the existing law. Thus, there is no difference between contents of delinquency and an offence. The only difference is that an offence is committed by an adult person is trial able in ordinary courts whereas the juvenile who commits a delinquent act is tried in the Juvenile Court through a special procedure.

1.2 Historical Background of Juvenile Justice In India.

In eighteen century there were no special courts for children, and they were treated as adult criminals. Minors were arrested, held in custody, and tried and sentenced by a court that had discretion to order the child imprisoned in the same jail as adult criminals. Although children received the same punishment as adults, they were not provided with many of the due process protections accorded to adult criminals. For instance, minors did not have a right to "bail, indictment by grand jury and right to a public trial". It is always important to do comparative study with other countries to understand the reforms. Hereinafter, a detail history of US juvenile justice system and critique on the present scenario is described. India while making law on juvenile justice system took its cue from Britain since it was a British

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54 *Supra* note 21, Section 2 (l), as amended by Act 33 of 2006.
55 *Supra* note 21 Section 2 (p), as amended by Act 33 of 2006.
colony and Britain had already established its own juvenile legislation, so it will be interesting to have a glimpse of England juvenile system. We shall also look at experience pertaining to juvenile justice in Uganda for small reference to juvenile laws in Africa continent, to understand how other jurisdictions are dealing with children in conflict with the law.

**American Juvenile Justice System**

The juvenile justice system in the US has its origins in a movement by progressive reformers a century ago to stop the barbaric practice of treating children like criminals. In early 18th century American colonies adopted the English common laws regarding child criminals, from 1825 until 1899 several reform movements initiated significant changes both in philosophy and in treatment of juvenile delinquents. Quaker reformers spurred the New York Legislature in 1824 to pass legislation creating a House of Refuge, which separated poor children and juvenile delinquents from adult criminals. The goal of the House of Refuge movement was both to prevent predelinquents from becoming criminals and to reform those who had already committed crimes.

A group of reformers consisting some local jurists, the Illinois Bar Association, civic groups, social scientist and social workers worked together to persuade the Illinois legislature to enact law dealing with children. In April 1899, Illinois Juvenile Court Act was passed as the America's first juvenile court to regulate, treatment and control of dependent, neglected and delinquent juvenile. The act

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adopted two ancient English common law concepts that provided a legal and philosophical foundation for the juvenile court and its process. The first concept is *parens patriae* means that monarch stands in the relationship of parents to the country. And the second concept is *In Loco Parentis* refers to the obligation of the State to all children. It means that the state stands in the shoes of the parents in the welfare of children. These two doctrines provide a source of authority and justification for intrusion of the state into family affairs. In 1911, a dozen states had followed the example set by Illinois, and by 1925 all but two states had instituted Juvenile Courts.\(^6^0\)

Until 1960s, little change was made in the structure or formal objectives of the Juvenile Court system. The significant change came when Supreme Court intervened and decided three cases between year 1966 and 1970 *Kent v United States* (1966), *In re Gault* (1967) and *In re Winship* (1970). However, these decisions were an attempt to improve the Juvenile Court system as it then existed by extending Constitutional democratic rights guarantees and criminal procedure safeguards to children in the Juvenile Court system. In the case *Kent v United States*,\(^6^1\) which held that under a District of Columbia statute the informal process of determining whether a juvenile should be tried in juvenile or in adult court failed to provide sufficient due process protection for children. The Court held that before a minor is transferred to adult court the child is entitled to an informal hearing where the trial court must articulate the reasons for the transfer so that the child can have an adequate record for appellate review. Additionally, in response to the state's position that juvenile cases were civil, not criminal, the Court responded, "There is evidence, in fact, that there may be grounds for concern that the child receives the

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worst of both worlds; that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children". 62

The Court thereby rejected the reform movement's justification for informality in juvenile delinquency cases. And a year later in landmark case In re Gault, 63 the Court set the due process boundaries between adult criminal procedure and juvenile delinquency trials. First, the Court rejected the reformers’ claims that the juvenile justice system accurately and fairly determined children's criminal responsibility. Second, to extent basic constitutional due process rights to children. It held that certain criminal procedure protections guaranteed by the Constitution under the Bill of Rights and the Fourteenth Amendment in the adult criminal law system must be applied to children in the juvenile court system. Thus, in a juvenile delinquency trial, children are entitled to: (1) notice of the charges, (2) a right to counsel, (3) a right to confrontation and cross-examination, and (4) a privilege against self-incrimination. In re Winship added that the criminal burden of proof must also apply in juvenile proceedings.

By 1974 the United States had developed a strong momentum toward preventing juvenile delinquency, deinstitutionalizing youth already in the system, and keeping juvenile offenders separate from adults offenders. 64 The Juvenile Justice and Delinquency Prevention Act of 1974 created the following entities: 65

• The Office of Juvenile Justice and Delinquency Prevention (OJJDP)

62 Supra note 35.
• The Runaway Youth Program, and
• The National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP).

A steep rise in juvenile crime occurred between the late 1980s and mid-1990s. The increase in crime hit a peak in 1994 and then began to gradually decline.\textsuperscript{66} In response to a fear that juvenile crime would continue to rise at the rate seen between (roughly) 1987 and 1994, legislatures enacted measures designed to "get tough on crime".\textsuperscript{67} The US media\textsuperscript{68} portrayed juvenile crime as a result of the liberal juvenile justice system and the calls for getting tough on crime had its effect in two major shifts in the juvenile justice system.

1) Expansion of waiver provisions\textsuperscript{69}

Most of the states enacted waiver provisions, allowing for juveniles who committed crimes to be transferred to adult courts.\textsuperscript{70} The three kinds of waiver, which have been used, are legislative, judicial and prosecutorial.

• \textit{Legislative Waiver:} In legislative waiver the state excludes certain offences from the jurisdiction of the juvenile court. This is generally done in the case of serious offences like homicide, sexual assault, rape or kidnapping. If a juvenile does commit such offences, the

\begin{itemize}
\item Poll, Meddi’s, “Treat Juvenile The Same As Adult Offenders”, USA \textit{Today}, (1993) at 2 (All).
\item Ikenaga, T., “The Phenomenon in the US Juvenile Justice System”, escholarship.org/uc/item/5bjd582
\end{itemize}
juvenile will automatically be tried in an adult criminal court. The thinking behind legislative waiver seems to be that some offences are so serious that no consideration can be shown to the child. What matters in legislative waiver is not the best interest of the child, but the fact that the child has committed a serious offence and a strong message needs to go out that such wrong doing will not be tolerated.

- **Judicial Waiver:** In judicial waiver, a juvenile court judge can use his or her discretionary authority to waive jurisdiction over a specific juvenile and send him to the adult court system for adjudication. In most states, transfer of the juvenile is undertaken after what is known as a transfer hearing. During the hearing the judge is expected to consider factors such as age of the offender, juvenile’s previous record, whether the offence was against a person or property, juvenile’s mental or physical maturity etc. In a racist society, there are well grounded fears for supposing that judicial waiver will most often be used against juveniles from racial and ethnic minorities.

- **Prosecutorial waiver:** The prosecutor has the discretion to file a charge against a minor in either the criminal court or juvenile court. This discretionary power vested in the prosecutor can once again be subject to critique based on the fact that discretion is vested in an authority who does not have the best interest of the child in mind, but rather whose ‘primary duty is to secure convictions and
who is traditionally more concerned with retribution than rehabilitation'.

2) Sentencing Authority

One of the problems faced by those advocating a policy based on zero tolerance for crime was that the juvenile court had a jurisdiction, which was limited by the age of majority.\textsuperscript{71} To circumvent this problem, many states have expanded sentencing options available to juvenile courts. ‘Through extended jurisdiction mechanisms, legislatures enable the court to provide sanctions and services for a duration of time that is in the best interests of the juvenile even past the period of original jurisdiction.’\textsuperscript{72} In some states that have recently changed the jurisdictional aspects of the juvenile court, ‘blended sentencing’ has been used to maintain control over juveniles who have aged out of the system.\textsuperscript{73} This empowers juvenile courts to impose adult sentences on juveniles that result in confinement beyond the maximum age jurisdiction of the juvenile court.’\textsuperscript{74}

The US Current Status

In 1999, at age 11, Michigan's Nathaniel Abraham was charged with murder. He became the youngest child in American history to be prosecuted as an adult. The movement toward trying juvenile cases in adult criminal court has occurred despite the number of juvenile

\textsuperscript{71} “Weapon in schools and zero tolerance” American Bar Assosiation
www.abanet.org/crimjust/juvjus/cjweapons.html
\textsuperscript{72} Supra note 59.
\textsuperscript{73} Martin, Gus; Juvenile Justice, (2005).
\textsuperscript{74} Macus, Paul; US the Juvenile Justice System, www.cairn.info/load_pdf.php?ID_ARTICLE.
arrests declining in every violent crime category from 1993 to 1999.\textsuperscript{75} This indicates a shift away from the historical purpose of the separate juvenile justice system. This has marked a significant change in the philosophy of the juvenile justice system, both at the state level and at the federal level, from its original conception. Juvenile justice in general has thus moved away from emphasizing the rehabilitation of juveniles and toward a greater reliance on sanctioning them for their crimes.\textsuperscript{76}

The current standing of the juvenile justice system in America is ideologically and practically grappling with a number of questions about juvenile justice among them, the following:\textsuperscript{77}

- At what age is a juvenile to be held accountable for his or her actions?
- Is it permissible to try and punish minor offenders as adults?
- Can the death penalty be applied to juveniles?
- To what extent is a parent or guardian responsible for the actions of a youth in his or her care?
- Why do minority youth make up such a disproportionately large portion of prison inmates?
- Is it appropriate that parents who can afford to independently fund rehabilitation for their children may care for them at home, when otherwise they would be placed under the care of the state?

\textsuperscript{75} The Origin of the Juvenile Justice System in America by Alden Long
www.wsws.org/articles/1999/nov


• Are juvenile and adult penitentiaries unsafe places for youth to live?

• Is the incarceration of juveniles counterproductive?

• Do juveniles have an increase right to confidentiality?

**United States Not Complied With CRC**

The United States response points to a move towards an adult oriented criminal law jurisprudence, which is in violation of agreed international standards. The United States in one of the country that has not ratified the Convention on the Rights of the Child. The very basic rights of children to have an inquiry which is separate from adults, the right to be detained only as a measure of the last resort and for the shortest possible period of time are being whittled away by the enactment of waiver provisions and the enactment of extended jurisdictional options. What is shocking is that this progressive whittling away of core protections is being done in an environment of legal silence. Debates in the United States on issues of juvenile justice do not even mention the existence of international standards vis a vis children.\(^7^8\) The United States experience points to the dangers which juvenile justice reform can run into in an environment where crime is politicized. This points to the more happy position in India where crime by young people has not yet become a politicized issue. As such the policy climate is more customary to the framework offered by the Convention on the Rights of the Child and reform could mean a greater compliance with the CRC.

**England Juvenile Justice System**

Within the United Kingdom of Great Britain and Northern Ireland, England and Wales is the component nation in which largely English law prevails. This research does not address children’s rights in Scotland or Northern Ireland, although a number of the provisions discussed hereinbelow may also apply to them. From the late 1810s, juvenile crime was increasingly the concern for England government and commentators. What occurred in this period might crudely be described as a convergence of the public and the private sectors in many matters of domestic policy. Private initiatives set up to deal with juvenile crimes, such as the Marine Society, the Philanthropic Society, the Refuge for the Destitute – not exclusively for juveniles but strongly involved with the rescue and reform of the young – and private individuals, mirrored the ideological leanings of parliamentary penal policy.\textsuperscript{79} Individuals involved in the voluntary sector became enmeshed in the public machinery of juvenile justice. Parliamentary committees and commissions did not consist solely of government officials, magistrates and constables, but also took evidence from the voluntary sector. In many ways, it was from these people that the penal professionals of the later nineteenth century were descended.\textsuperscript{80} These commentators and activists promoted a more child-centred approach to juvenile criminals. Though early modern policy makers and welfare practitioners had not been unaware of the specific needs of children, truly separate institutions for youngsters, both at the level of trial and punishment, were an innovation of the nineteenth century. The Juvenile Offenders Act of 1847 allowed children under the age of fourteen to be tried summarily before two magistrates, thus making the process of trial for children quicker and removing it from the public glare of the higher courts (the age limit was raised to sixteen in 1850).

\textsuperscript{79} Supra note 57.
In England and Wales, juveniles between seven and fourteen presumed incapable of crime and it was for the prosecution to prove that they knew that their conduct was wrong. Then, between 1854 and 1857, a series of Reformatory and Industrial School Acts replaced prison with specific juvenile institutions. These Acts represent the culmination and codification of both public and private initiatives, which from the late eighteenth century increasingly corresponded. These Acts gave courts powers to commit children to reformatories and provided financial support for them, on the conditions that the reformatories were approved by government Inspectors. Industrial Schools Act, 1857 empowered magistrates to commit to industrial schools to vagrant children and young persons, those said by their parents to be incorrigible and also children under twelve also were convicted of criminal offences. In 1907, the Probation of Offenders Act brought probation, involving both the suspension of a penal sentence and a period under supervision.

In the first decade of the twentieth century the Children Act of 1908 was passed in England. The Children act of 1908 was the first legislation in England relating to juvenile courts but it did not have the elaborate provisions on the subject. This Children Act of 1908 was known as the “Children Charter” at that time. This Act among its various provisions provided for the establishment of separate trials for juvenile offenders from adult offenders through the provisions of juvenile courts. But establishment of the juvenile courts (initially sitting of magistrates court from which public were excluded) reflected a primarily symbolic change in attitudes towards the juvenile offender. Inspite of the change, the juvenile courts remained criminal courts and

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81 The age of criminal responsibility was raised to eight years in 1933 and subsequently to ten in 1933. Though English law distinguish between children, i.e. those aged 10-13 and young persons, i.e. those aged 14-16, for ease of reading, the term ‘Juvenile’ is used to apply to both unless the context demands such a distinction to be made.
the procedures were essentially the same as for adults.82 No child under the age of fourteen was to be imprisoned, and boy or girl under sixteen was to be imprisoned only if court certified that he or she were untruly or depraved. In future, pending of the disposal of their cases, young people were to be detained in a new form of institution to be provided by the local authority and called a Remand Home.83 Under the Act juvenile courts had special sittings of magistrate’s courts and which were to have criminal and civil jurisdiction. The Herbert Samuel, the Home Secretary, used the new Children Act to consolidate and simplify a number of existing pieces of legislation, as well as to introduce new features. The Act had six parts: infant life protection; the prevention of cruelty; the prohibition of juvenile smoking; the refining of the roles of industrial and reformatory schools; the creation of the juvenile courts; and a ‘miscellaneous’ division which included such provision as the banning of under-fourteens from public houses.84 While the Act made the law clearer in certain areas, it further extended the power of the state to determine family matters, and it formally introduced the juvenile court to the British legal systems.

Governmental commitment to the task of reducing and ideally preventing juvenile delinquency continued after the First World War, especially as the Home Office became more comfortable with the changes introduced by the Children Act of 1908.85 In January 1925, William Joynson-Hicks, then the Conservative Home Secretary, appointed a committee, chaired by Sir Thomas Molony, to investigate

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82 Gelsthrope, Laraine, *Comparative Juvenile Justice: England and Wales*, Institute of Criminology, University of Cambridge and Mark Fenwick, School of Law, University of East London.


85 Ibid.
the treatment of 'young offenders'. When the committee reported in 1927, they concluded that 'the welfare of the child or young person should be the primary object of the juvenile court'. They also called for magistrates with experience in dealing with young people, and that younger magistrates should be recruited to these posts. The report reiterated the importance of issues raised by the 1908 Act, notably that juvenile courts should be held at different times and in different places to adult sittings of courts. It also demanded that court proceedings be made as simple as possible in order that children and young people might better understand what was happening around them and the age of criminal responsibility be raised from seven to eight. Probation was an important part of the work of the court with young offenders, a method by which the young person could be reclaimed to good citizenship through the firm and wise guidance of an appropriate adult. The report served as the foundation for the Children and Children and Young Persons Act, 1933 was passed to provide welfare measures of the child or young persons and to ensure their proper education and training and to prevent juveniles for appearing in the courts. Under Children and Young Persons Act 1933, the idea of welfare of the child and young persons was transplanted into a statutory form. The Children and Young Persons Act extended those features of the 1908 Act that were seen as needing adjustment, notably in terms of how the courts operated and by reducing the stigma of going to court. The age of criminal responsibility was raised from 7 to 8 years of age, individuals through the age of 16 were placed under the jurisdiction of juvenile court. The emphasis was squarely upon reclaiming young offenders to good citizenship, of

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86 Report of the Departmental Committee on the Treatment of Young Offenders, 1925-7 Cmd. 2831, http://www.history.ac.uk/, (1927) at 121-123.
trying to counteract the impact of poverty upon the lives of young people and thereby to reduce levels of criminal behaviour.\(^{88}\)

Some of the significant changes to the England juvenile justice system occurred in 1960s. Children and Young Persons Act 1969 amended the Act made in 1933. The primary goal of the Act was to de-emphasize the punishment aspect of juvenile justice and to place more of an emphasis on the social service of juvenile offenders. The broad intention of the juvenile justice system in England and Wales remains that expressed in the Children and Young Persons Act, 1933. It was provided that every court in dealing with a child or young person and shall in proper cases take steps for removing him from undesirable surrounding and for security that proper provision is made for his education and training. But the Act was never fully implemented. Meanwhile, the conservative government replaced the Labour one in 1970 and conservative government made it clear that they would not fully implement the Act.\(^{89}\)

The Criminal Justice Act, 1982 was passed with the objectives, to strengthen the law relating to juveniles and young offenders aged 15-21 and to limit the use of imprisonment for this age group. The strengthening of the juvenile magistrate’s control over Intermediate Treatment was a further manifestation, of the attempt within 1982 Act to move control of the apparatus of juvenile justice away from social workers and back into the hands of the bench and the judiciary. The Act empowered the magistrates with three new powers of disposal, youth custody and care order. Changes in the Criminal Justice Act 1982 forced social workers and probation officers to reconsider the provision and content Intermediate Treatment.


\(^{89}\) Supra note 82.
The most substantive piece affecting children and their basic rights to a secure and safe environment is the Children Act 1989. This Act introduces the term ‘parental responsibility’ rather than the common law concept of custody. Parental responsibility is defined as “all the rights, duties, powers, responsibilities and authority which by law a parent has in relation to the child and his property”\(^90\). The importance of a juvenile justice system was recognized again and reaffirmed by the Parliament with the enactment of Criminal Justice Act, 1991 which brought significant changes in the Children and Young Persons Act of 1933 and 1969 as also in the Criminal Justice Acts of 1982 and 1988 to deal with the juveniles more effectively. The 1991 Act expanded the jurisdiction of youth courts and provided for individualize sentencing of juvenile offenders based on the maturity of offenders.\(^91\) Even more emphasis was placed on the parents who were requested to attend court proceedings; partially pay fine for child and maintain recognizance of the child. The most important was the cessation of use of “care order” as disposal available to the court in criminal proceedings and removal of the offence condition in proceedings justifying state intervention in the life of family. New rules also provide for transfer of care proceedings from the juvenile courts. These are now heard in a renamed ‘family proceedings’ court and newly named youth court deals with criminal proceedings. The Act also increased the minimum age for detention in a young offender Institution for male from 14 to 15.\(^92\) The Juvenile Court became the Youth Court. Various other Acts has been passed since than that deals with the youth justice some are mentioned hereinbelow:

- Criminal Justice and Public Order Act 1994;

\(^90\) England Children Act, 1989, c. 41, S 3(1).
\(^91\) Supra note 82.
\(^92\) Supra note 88 at 90-49.
• Crime and Disorder Act 1998;
• Protection Of Children Act 1999;
• Powers of Criminal Courts (Sentencing) Act 2000

The England juvenile justice system is Composite of legislation and judicial precedents. To make it simpler lets have a sneak peek through its procedure.

Procedure

The juvenile justice System in England and Wales, attempt to ensure that a fair trial and fair treatment is given to children accused of crimes. The minimum age of criminal responsibility in England and Wales is currently ten years old.93 Those below this age are considered *doli incapax* that is, not understand the right from the wrong, and thus incapable of forming criminal intent.94

When children arrested for crimes in England and Wales and held in custody must be separated from the adult population of the jail. Their guardians must be notified as soon as reasonably practicable and informed of the charges brought against the child and the child's place of detention.95 During any court proceedings involving the child under the age of sixteen the law requires the attendance of the child's guardian during all proceedings, unless this is unreasonable in the circumstances of the case.96 The general principle for children charged with crimes is that they should not be held in police custody but instead taken care of by social services in local authority accommodations. The principle is considered to be of such importance that police custody officers have a statutory duty to

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93 Children and Young Persons Act, 1933, 23 & 24 Geo. 5, c. 12, § 60.
95 *Supra* note 90, c. 12, Section 34.
release juveniles to local authority accommodations unless they can certify that specific circumstances make it impracticable for this to occur, or for children aged twelve or over no secure accommodation is available, and no other local authority accommodation is adequate to protect the public from the serious harm posed by the child. 97

The principal aim of the juvenile justice system is to “prevent offending by children and young people.” 98 To achieve this aim, the juvenile justice system in England and Wales progresses through a series of steps. 99 The first two, which apply only to less serious crimes, aim at preventing the child from entering the juvenile justice system through a series of behavioral contracts and other methods designed to correct the child’s behavior to prevent him or her from re-offending or committing a serious offense. 100 For example, a system of cautioning has been developed for young offenders through reprimands and warnings that are given to those who admit guilt to the police for their crimes and for whom there is sufficient evidence that any prosecution for the offence would be successful. 101 Upon receiving the reprimand or warning the young offender is then referred to the Youth Justice Board who arranges for the youth’s participation in a rehabilitation programme. For children to whom these preventive methods do not apply, for example, due to the seriousness of the offense, or who have exhausted them, the juvenile justice system then operates in the form of a Youth Court, which hears cases of ten to eighteen year olds. 102 This youth court was established to prevent children and young people from entering into contact or associating

97 Police and Criminal Evidence Act 1984 c. 60, Section 38(6).
99 An overview of these steps is available online at Youth Justice Board for England and Wales, Youth Justice System, http://www.yjb.gov.uk/en-gb/yjs/TheSystem/
100 Ibid.
101 Crime and Disorder Act 1998 c. 54, Section 65.
102 Criminal Justice Act 1991 c. 53, Section 68.
with adult suspects during any phase of a trial. The public is excluded from these courts; further, reporting restrictions may be placed on what the media may publish from these proceedings. There are also laws that protect the anonymity of children appearing before the court. The Youth Court is a specialized magistrates’ court that is comprised of justices of the peace, with three normally present for each case. The court has a range of different sentences for young offenders, for example, supervision orders that can have a variety of conditions attached to them or an Action Plan Order, an intensive, three month long community-based programme. More serious custodial methods of punishment are detention and training orders. These orders are normally given to children representing a “high level of risk [to the public], have a significant offending history or are persistent offenders and where no other sentence will manage their risks effectively”. They apply for a minimum period of four months to a maximum period of two years, with half of the sentence being served in custody and the remainder in the community supervised by a “youth offending” team. Only those offenders over the age of fifteen may be sentenced to detention in a young offenders’ institution, although this latter restriction does not apply to children aged ten and over convicted of murder.

104 Children and Young Persons Act 1933 23 & 24 Geo. 5, c. 12, Section 39 and the Youth Justice and Criminal Evidence Act 1999, c. 23, Section 44.
105 A brief overview of all methods – both sentence based and pre-court methods are summarized online at Youth Justice Board for England and Wales, Sentences, Orders and Agreements, http://www.yjb.gov.uk/en-gb/yjs/SentencesOrdersandAgreements
107 Id., c. 6, Sections 69-72.
108 Id., c. 6, Sections 100-107.
110 Ibid.
111 Supra note 103, C6. Section 90.
For very serious offenses, children are prosecuted in the Crown Court. A practice direction issued by the Lord Chief Justice of England and Wales in respect to Crown Court prosecutions of children requires that the “trial process should not itself expose the young defendant to avoidable intimidation, humiliation or distress. All possible steps should be taken to assist the young defendant to understand and participate in the proceedings. The ordinary trial process should so far as necessary be adapted to meet those ends”. The Children and Young Persons Act 1933 requires that the welfare of the defendant should be regarded during any criminal proceedings, and the practice direction requires that breaks be frequently taken, that the formal court attire of robes and wigs not be worn, and that there be no recognizable police presence in court without good cause. The Crown Court is the only court that is permitted to follow these rules for sentencing children between ten and eighteen years old that have committed an offense that is punishable by fourteen or more years’ imprisonment for adult offenders, children that have committed murder, or certain sexual offenses, may be sentenced for up to the adult maximum for the same offense. The young offenders are not placed in prisons alongside adults, but can be placed in secure training centers, secure children’s homes, or young offenders’ institutions.

Current Status

The age of majority for children in England and Wales varies; there are many age related rules that distinguish between children of

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113 Supra note 109, C. 12, Section 44.
114 Ibid.
115 Supra note 103, C 6 Sections 90- 91.
different ages for different purposes. The age of majority typically ranges from between sixteen years of age (in which school no longer becomes mandatory) to eighteen years of age (for voting rights and the consumption of alcohol). The age of criminal responsibility in England and Wales is 10 years old which is one of the lowest in Europe. 10-17 year olds account for 25 per cent of convicted offenders. In recent years the UK government has increased legislation, tightened punishment for child offenders and plans to introduce controversial tagging schemes for young people on bail. The Parliamentary Joint Committee on Human Rights has expressed its concern that the involvement of criminal justice agencies invites a criminal labelling of children at an early age that is not easily shaken off, and that much of the legislation does not make a clear enough distinction between adults and children. The number of children in prison in the UK has doubled in a decade and the UK now has more child inmates than any other European country, something upon that the UN Committee on the Rights of the Child recently expressed serious concern at. The Government maintains that the main purpose of sentencing children is to prevent re-offending, but it has failed to demonstrate a falling rate of reconviction for youths leaving secure training centre's. The conditions in prisons and institutions are in many cases disgusting and prevent inmates from developing appropriately. The Government's statement that "children in custody are not just children", has been highlighted again by the Joint Committee as a disregard for the rights and needs of children.\footnote{UNICEF: The UK Committee For UNICEF, www.unicef.org.uk}

\footnote{\textit{Ibid.}}

UNICEF UK calls on the UK Government to:\footnote{\textit{Ibid.}}
• withdraw its reservation to the CRC which currently accepts the principle of housing child and adult offenders together;

• raise the age of criminal responsibility to be in line with the rest of Europe;

• improve the conditions of Youth Offenders Institute (YOI) and under which children are held in custody;

• introduce less draconian measures and commit more resources to rehabilitation of young offenders;

• and reduce the number of children held in custody and introduce more community based justice programmes.

**Uganda Juvenile Justice System**

Uganda enacted its legislation on the care of children in 1995 post Ratification of the Convention in 1990. The legislation reflects how a developing country with limited resources can move towards compliance with existing International Standards. The South African Law Commission observed that ‘The Ugandan legislation consequently provides an example of the enactment of principles found in international instruments thus elevating the status of the principles to binding local law’. The child-centered approach reflected in the Ugandan legislation can be analyzed under three heads:

1) **The Human Rights Framework**

The statute shows a clear commitment to human rights norms found in the three international instruments concerning children. Many

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of these fundamental principles are actually reflected in the statute. This commitment to translating international instruments into local law is reflected in Section 4 read with the 1st schedule which balances the welfare of the child with the rights of the child and places them in the position of principles which guide the implementation of the statute itself. It is within this rights based context, that various other child friendly measures have been enacted.

2) Diversion

One of the important principles to which close attention has been paid by the Statute is the principle of diversion. Open the apprehension of the juvenile himself or herself, the police have been empowered to deliver a caution at the point of arrest and let the child go. The police may also dispose of the case themselves without recourse to formal proceedings. Thus the statute implements the principle of diversion at the point of first contact itself in line with the mandate of the Beijing Rules. If the police are convinced that the case is not a fit case for diversion and the child cannot be immediately taken before the court, there is even a provision for the release of the child on a personal bond or bond entered into by his or her parent or guardian.

If the first tier of diversion does not work then the child goes through an adjudicatory process, which is an innovative attempt at limiting the power of the criminal court. In the first instance the child in a limited number of criminal cases goes before a local village level authority which has limited criminal powers, namely the Village Resistance Committee Court. The VRCC’s sentencing jurisdiction vis a vis juveniles is limited to reconciliation, compensation, restitution, apology or caution and these reliefs may be provided regardless of how the offence is treated by the criminal law. In the case of all other
offences committed by children below the age of 18, apart from offences punishable by death and offences committed jointly by adults and children go before the Family and Children’s Court as the court of first instance. The Family Court has the power to make the following orders, namely absolute discharge, caution, conditional discharge for not more than twelve months, binding the child over to be of good behavior for a maximum of twelve months and compensation, restitution or fine taking and detention as a measure of the last resort and for the shortest possible period of time. It is only in cases in which both adults and children are charged and in cases in which the death is the penalty that go in the first instance before the Magistrate.

Thus the way the hierarchy of the courts is structured implements the principle of diversion to the greatest extent possible into community structures at the first instance and into a non-criminal jurisdiction in the second instance.

3) Deprivation of Liberty

The statute also incorporates the notion of detention in any facility as a serious measure, which is violative of the basic human rights of children. Thus since deprivation of liberty is seen as a serious punishment it can be inflicted only in limited circumstances. Thus the first level, the VRCC is not competent to deprive an individual of his liberty. It is only the Family and Children’s Court and the courts of second instance, which have that particular power. Further the Family and Children’s Court is authorized to order detention only ‘as a matter of the last resort and shall only be made after careful consideration and after all other reasonable alternatives have been tried and where the gravity of the offence warrants the order’. Finally the maximum period of remand has been fixed as six months in the case of an
offence punishable by death and three months in the case of any other offence.\textsuperscript{120}

4) The Ugandan experience: Pointers to India

What is most interesting about the Ugandan experience is that a developing country with limited resources has been able to develop a child friendly code to deal with children in conflict with the law. What the statute indicates is a close attention to international commitments and translation of them into binding local law.

When one reflects that the Ugandan law was a post ratification enactment and so was the Indian law, it clears the point, which Uganda has taken seriously, India has ignored. All three of the heads indicated above viz, a human right framework, diversion and deprivation of liberty have not been attended to in the Indian statute. The Ugandan experience is thus a pointer to how a child friendly jurisprudence as mandated by international commitments could be incorporated taking into account the existing societal mechanisms and cultural context.\textsuperscript{121}

Indian Juvenile Justice System

There were numbers of laws in the ancient society relating to the actions and behaviours of the people of India, but none of these laws had any specific reference to juvenile delinquents or neglected children. By 19\textsuperscript{th} century a concern towards the growing problem of delinquents grew. India took guidance/ideas from various western countries and developments done in the field of prison reforms and juvenile justice. In particular India took its cue from Britain since it was

a British colony and Britain had already established its own juvenile legislation.

In 1850, the Apprentice Act was passed as the first juvenile legislation to deal with children. Under this Act, destitute children, or children between the ages of 10 to 18 years were found committing petty offences, were placed under apprentice into a trade. Further, the Police Act, 1861 was passed and the duty of police officer as mentioned in the Act is to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisance, to detect and bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient ground exists; and it shall be lawful for every police officer, for any of the purposes mentioned above, without a warrant to enter and inspect any drinking-shop, gaming-house or other place of resort of loose and disorderly characters. The concept of 'juvenile', 'delinquency', 'neglected', 'victimized', 'abused', 'uncontrollable' and 'children in need of care and protection' was unknown to the framers of Police Act.

The Reformatory School Act of 1876 was the next landmark in dealing with juvenile delinquents. This Act empowered local government to establish reformatory schools and in accordance with the Indian Penal Code Act (1860), exempted all children under 12 years of age from all criminal offences. Under the said Act the sentencing court could keep the child for 2 to 7 years in a reformatory school, if he or she was under 18 years of age. However, youth placed in reformatories could leave such schools if they found gainful employment. In the year 1959, the Indian Penal Code, 1860 was amended with a view to provide protection to child from possible
abuse of kidnapping or maiming a minor for purpose of begging (Section 363-A). The Code of Criminal Procedure 1898 includes provisions to place youth up to the age of 18 years in a reformatory school and then have them placed on probation until their 21st birthday.\textsuperscript{122}

In 1919-20, the Government of India wanted to appoint Indian Jail Committee with the objective of overhauling of the entire prison system and reformatory schools in the country. The committee made following recommendation in its report. It condemned the practice of sending juveniles to adult courts. The committee further recommended the establishment of separate Children courts for hearing cases dealing with children and young offenders. The committee also suggested that imprisonment of juvenile offenders should be prohibited, and that children committing offences should be sent to Remand Homes and certified schools. For young offenders above the age of 15 years it recommended Borstal schools. The committee also drew attention of the Government of India making provisions for Children who had not committed crime yet, but were living in criminal surroundings or without proper guardian or homes.\textsuperscript{123}

Following these suggestions, various states enacted their own Borstal Acts and Children acts. Children Acts in states of Madras, Bengal and Bombay were enacted in quick succession in 1920, 1922 and 1924 respectively. All these acts were closely related to the Children Act, 1908 of England that based on the principle of segregation of juveniles from adult offenders. The Children court established in England was a criminal court. Apart from Madras, Calcutta and Bombay, other provinces of India did not have any separate

\textsuperscript{123} Das, Sunanda, Pandey, B.B., “A study of objective of Juvenile Justice System”, \textit{Amity Law Review}, 3(i) 2002 (Jan-Jun 2000) at 89-96
legislation for dealing with children. The basis of new juvenile courts was the concept of *parens patriae*. In Scandinavian countries also the principle of *parens patriae* formed the basis for the special provisions for the care and protection of children and these countries adopted the juvenile welfare board system instead of juvenile court.\(^{124}\)

Meanwhile, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights on 10th December 1948. It endorsed that the motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Juvenile Justice is based on the twin concepts of *mensrea* and *parens patriae* and seeks to ensure best interest of juvenile. The concept of juvenile justice assumes that children do not have the same mental capacity as adults to take full responsibility for their actions and for that reason they are more amenable to reform than adults.

The Constitution gave special status for the children in the Indian polity since its adoption in 1950.\(^ {125}\) With the increase in the number of the neglected and delinquents juveniles in the wake of the partition, coupled with the special status of the children in the constitution, the period immediately preceding and following the coming into force of the constitution saw a spurt of the legislations relating to children.\(^ {126}\) Not only were a series of Bills introduced in Parliament for the care and protection of the children, a number of the

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\(^{125}\) Kumari, Ved; The Juvenile Justice System, from Welfare to Rights, (2004) at 58-65

states also enacted the Children Acts.\textsuperscript{127} When the constitution of India was being enacted care was taken for juvenile by imposing through the Articles 15(3), 39 (e) & (f), 45 and 47\textsuperscript{128} of the constitution a primary responsibility on the state to ensure that all developmental needs of the children are met with and that their basic human rights are protected.

Keeping in view the constitutional provisions and to provide a uniform central legislation for children in the union territories, India passed its first legislation, namely, the Children Act, 1960 (hereinafter referred as CA 1960).\textsuperscript{129} The main objective of the Act was:

The children often become delinquent by force of circumstances and not by choice. By improving the unfavourable environment and giving suitable training, it is possible to reform his anti-social attitudes and to mould hi into responsible citizen. Measures for juvenile delinquents should, therefore, aim at rehabilitation rather than punishment.

It was applicable only to the Union Territories but was presented as model legislation. Its provisions were adopted by all the states that enacted their CA 1960. The CA 1960 prohibited imprisonment of the children under any circumstances. It also introduced a sex discriminatory definition of child. It provided for the separate adjudicatory bodies a children court and child welfare board to deal with the delinquent juvenile and neglected children respectively. This Act introduced the system of observation home for receiving children during the pendency of the proceedings, a

\textsuperscript{128} Supra note 7, 8, 9 & 10.
\textsuperscript{129} Children Act 1960, Act No 60 of 1960.
children’s home for housing neglected children, and a special school for the delinquent children.\footnote{130}

In the international year of the child all states except Nagaland, Orissa, Sikkim, and Tripura enacted their Children Acts. The age below which a person was considered to a child differed in at least six states.\footnote{131} The variations in the definition of delinquents and neglected child also result in the discrimination. In 1974, the Government of India came out with a National Policy for the welfare of Children. In order to give practical shape to this National policy, the Government constituted a national Children’s Board. Further to give an effect to the National policy which dealt with treatment to children, various states enacted their own Children Acts such as Madhya Pradesh Bal Adhiniyam, 1979, Haryana Children Act, 1974, Jammu and Kashmir Children Act etc. In 1984-85, The Children Acts enacted in many states but were never properly enforced.\footnote{132} By 1986, all states had CA 1960 in force, albeit not in all the districts of the state. There were some crucial differences in the various CA 1960 that resulted in unequal protection to the children living in different parts of India. Even at places where the Acts were enforced the specialized machinery had either not been constituted at all or not constituted in the prescribed manner.\footnote{133} The need for uniform Children Act continued to be emphasized at official and non-official level, both central government and judiciary time and again focus attention on

\footnote{130}{Sahewalla, G.N., “Juvenile Justice”, Gawhati Law Times, 2003(3) at 9-16.}
\footnote{131}{Namely, West Bengal & Gujarat 18 years for both boys and girls, Maharashtra, Punjab & Uttar Pradesh prescribed 16 years of both and Tamil Nadu described persons below 14 years as children and those above 14 below 18 years as young persons and institutions for them established on this basis. Difference in age led to differential treatment being meted out to children of the same age groups residing in different states. \textit{Supra} note 125 at 83.}
\footnote{132}{“Statistical survey Children Homes/ Fit Persons Institution, Social Defence, 43, Table1 (April 1989) at 44-45.}
\footnote{133}{\textit{Sunil Kumar v State}, 1983 Cri LJ 99 (Ker.). The Kerala High Court outlined the scheme of the Children Act to emphasise the protective nature of various homes for children and the constitution and procedure of the juvenile court.}
the need of uniform Act in state. The Supreme Court took cognizance of this discrimination in care and protection of children and suggested passing of a uniform legislation in *Sheela Barse case*.  

The UN General Assembly adopted the Beijing Rules in 1985, 69th Report of the Committee held on 12th May 1986 on the Subordinate Legislation recommended for the uniform law and in the same year, Supreme Court also initiated for Parliamentary legislation to bring about uniformity in the law relating to the juvenile justice all over country. It relevant hereto mention about *Sheela Barse*, who campaign for the rights of the child. She persistently followed the question of illegal detention of children in jails and a uniform code for the children through her journalist writings, meetings with a series of personnel in different ministries and the Prime Minister, discussions in seminars and workshops, and ultimately filing public interest litigation for the release of children kept in jails and also for information on the conditions of their detention.  

The petition did ultimately result in the removal of all children from jails. The greatest change in the Indian scenario of juvenile justice system came when Supreme Court of India in *Sheela Barse v Union of India*, rightly suggested that instead of each state having its own Children’s Act different in procedure and content from the Children Acts of other states, it would be desirable if the central Government initiates Parliamentary legislation on the subject, so there is complete conformity in regard to the various provisions relating to children in the entire territory of the country.

**Enforcement of JJA, 1986**

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134 *Infra* Sheela Barse case at 391.
135 *Supra* note 125 at 86.
1. As observed herein above the experience of implementing the Central and State Children Acts over a considerable period, it was felt that there was a lack of uniformity in the provisions of the Children Acts. No minimum standard for basic needs, living conditions, therapeutic services etc. were maintained under the Children Act, 1960 programmes.

2. Therefore, keeping in view the United Nations Standard Minimum Rules for the administration of juvenile justice (Beijing Rules, 1985), the Government of India enacted the Juvenile Justice Act in 1986, by the Parliament and came into force on 2nd October 1987, for the whole country to provide for the care, protection, treatment, development and rehabilitation of neglected and delinquent juveniles and for the adjudication of certain matters relating to delinquent juveniles thereby providing a uniform law on juvenile justice for the entire country.

3. The JJA 1986 envisaged a comprehensive approach towards justice for children in situations of abuse, exploitation and social mal-adjustment and to lay down a uniform legal framework for juvenile justice in the country so as to ensure that no child under any circumstances is lodged in jail or police lock-up.

4. The JJA 1986 replaced the traditional mechanism for dealing with children in conflicts with law under the various Children Acts in the States and Union Territories.\textsuperscript{137}

The first uniform law on juvenile justice however did not result in any dramatic improvement in the treatment of juveniles. There was a wide gap between the cherished principles and the actual practices under the JJA 1986. Most of the states have not set up the basic infrastructure consisting of juvenile welfare board, juvenile courts, observation homes, juvenile homes, special homes and after care homes. Despite mandatory requirements, the minimum standards for institutional care in terms of accommodation, maintenance, education, vocational training, or rehabilitation were not spelt in most of states. There was no definite policy towards the manpower development of the juvenile justice system.  

The main deficiency on the Act was that it did not provide for differential approach to delinquent juveniles and neglected juveniles. The Act neither provides for any special provision for children who are in need of care nor structured any provisions for rehabilitation. The law continued to provoke a lot of concern, in human rights circles, pertaining particularly to the way juveniles were treated in detention centers designated as special homes and juvenile homes.

Meanwhile, the United Nation has also been making efforts to secure best interest of child. The international community expressed its desire to do much more than what was being done for the children world over. In 1985, The UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) was framed and it emphasized on the accountability of exercise of discretion relating to children and observance of basic procedural, safeguard at all

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138 Singh, Dr. Hira, “Current issues in Juvenile Justice Administration”, paper presented at the National Consultation on the Juvenile Justice held at the National Law School of India University, Bangalore during 11-13 February 1999.


140 General Assembly Resolution 40/33.
stages of proceedings,\textsuperscript{141} along with the aim of ‘promoting juvenile welfare to the greatest possible extent’.\textsuperscript{142} The basic principles under the Beijing Rules are:

a) That the reaction to juvenile offenders should always be in proportion to the circumstances of both the offenders and the offence;

b) That the placement of the juvenile in an institute should be a disposition of last resort and for the minimum necessity period;

c) That the detention pending trial should be used only as a measure of last resort and for the shortest possible period of time;

d) That police officers dealing with juvenile should be specially trained and instructed.

In 1989, the UN Convention on the Rights of the Child (hereinafter referred as CRC) came into force on 3\textsuperscript{rd} September 1990, declared that in all countries in the world children were living in exceptional difficult conditions and that such children need special consideration, in particular in the developing countries. The basis principles under CRC are:

• that the best interest of the child shall be the primary consideration in all actions undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies;

• that all efforts shall be made to ensure family care to the child;

\textsuperscript{141} Id., Rule 7.1, 14.1.

\textsuperscript{142} Id., Rule 1, See also Rules 5.1,17.
that children’s opinion shall be given careful consideration in all matters affecting them;

that all children shall enjoy the rights specified in the CRC without discrimination;

that the state parties shall respect the right of the child and shall ensure realization of these rights by taking measures to the maximum extent of their available resource with regard to economic, social, and cultural rights; and

that state parties shall, by appropriate and active means, make the principles and provisions widely known to adults and children alike.

**In Whose Best Interests?**

How to determine the best interest of a child has always been a matter of controversy. The content of the best interest principle Article 3 of the UN CRC will either depend on the belief systems of the society, as represented in the administrators, or on what the child perceives to be in his or her best interest. And these two contexts can clash. No child, for instance, would consider in his or her best interest to be institutionalized, yet all over the world, it is done supposedly for the child’s own good.

The amended rules of the JJCPCA 2000 say, the principle of best interest of the juvenile or juvenile in conflict with law or child shall mean for instance that the traditional objectives of criminal justice, retribution and repression, must give way to rehabilitative and restorative objectives of juvenile justice. The principle seeks to ensure physical, emotional, intellectual, social and moral development of a juvenile in conflict with law or child so as to ensure the safety,
well-being and permanence for each child and thus enable each child to survive and reach his or her full potential.

John Eekelaar\textsuperscript{143} says best interest can be interpreted through the lens of participation. Since best interest is determined by the child using the principle of dynamic self-determination, Article 3 should be read with Article 12 or Right to Participation of the CRC, which says the child has the right to “express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child”. This is one of the central provisions in the CRC, a new vision of children’s rights. It means that right from the point of arrest, to adjudication before the CWC or JJB, assessment by the authority, placement and to everyday living within the institutions, the child’s opinion should be heard and taken into consideration as per his or her age and maturity. To give force to these two articles, at every stage in the interface between the child and the juvenile justice system, space should have been created for expression of the child’s opinion, which is absent in the Indian law. Also, in actual practice, interpretations of the best interests of a child can run contrary to what the child may want. This happens partly because even 17 years after India’s signing the CRC, there is not much awareness of this concept all over the implementing system. It also happens because sometimes, adults’ perception of best interests can be very different from the child’s. The best example of this is the working child who in India might prefer to work to earn money to lead a better life and not agree to what adults say instead want for him, to go back to school.

\textsuperscript{143} Eekelaar, John, The importance of thinking that children have rights, \textit{International Journal of Law, Family and Life}, Vol 6 No 1, 1992, \url{http://lawfam.oxfordjournals.org/cgi/content/abstract/6/1/221}
When asked several people in the JJS what in their opinion were “the best interests of the child”? The diversity of their replies is an indicator of the confusion that still prevails, perhaps rightly, over the issue.

Madan B. Lokur, Judge, Delhi High Court:

“A decision taken in the best interest of a child should maximise the welfare of the child, keeping in mind the larger context of the welfare of the human society in which he or she is growing up. It is important to strike a balance between the two”.

Bharti Sharma, Chairperson of the CWC at the Nirmal Chhaya Girls’ home during 2003-09:

“It is a decision or behaviour or an act that does not impinge upon any of the rights of a child. Further, if it positively impacts a child’s development such as physical, emotional, mental, social, spiritual as well as overall personality, it is said to have taken care of the best interest of the child”.

Dipa Dixit, Member, NCPCR, Delhi:

“Defining best interests of a child is possible only when you look at every child that comes before you as your own. What would you have done in a similar circumstance if you had your own child in front of you?”

Santosh Shinde, CWC Member for Mumbai Urban and Convenor of NGO Bal Prafulta

“To define and understand “best interests” in the best way, we have to make the entire juvenile justice environment childfriendly”.

Raaj Mangal Prasad, Chairman, CWC, Kasturba Niketan Children’s Home, Delhi
“The concept of best interest is well defined in our juvenile justice law. However, the decision has to take into account not only what is ideal but also what is feasible in the given circumstances, especially in the Indian conditions which are quite restrictive”.

The CRC has set the standard where childhood is defined as below the age of 18 years, but countries are allowed reservations against commitments. In the US, which has signed but not ratified the CRC, the age of criminal responsibility is set by state law and only 13 states have set the minimum age ranging from 6 years to 12 years. The rest rely on common law, which holds that children of 6 -14 years bear no criminal responsibility.\textsuperscript{144}

In Japan offenders below the age of 20 are tried in a family court, rather than a criminal court system.\textsuperscript{145} In all Scandinavian countries the age of criminal responsibility is 15 and adolescents below the age 18 are geared towards asystem, which is social service oriented and incarceration is usually the last resort.\textsuperscript{146} In China, children of 14-18 years are dealt with by the juvenile justice system compared to 7-18 years in India. But unlike India, China allows life imprisonment for particularly serious crimes. In most countries of Latin America, the reform of juvenile justice legislation is under way. The age of adult criminal responsibility has been raised to 18 in Brazil, Colombia and Peru and children of 12-18 years are sent before the juvenile justice system.

There are currently 14 countries known to permit the sentencing of juveniles for life without a possibility of release: Antigua and Barbuda, Australia, Brunei, Burkina Faso, Cuba, Dominica, Israel, Kenya, Saint Vincent and the Grenadines, the Solomon Islands, South

\textsuperscript{144} www.unicef.org/pon97/p56a.htm - 13k
\textsuperscript{145} Ibid.
\textsuperscript{146} Ibid.
Africa, Sri Lanka, Tanzania and the United States. Outside of the US, there are believed to be no more than 12 child offenders serving life sentence. In Iran and Saudi Arabia child offenders may be sentenced to death. The United States of America celebrated the centenary of the JJS ten years ago—the first juvenile court was established in Illinois in 1899 but towards the end of the last century, it started moving towards adult-oriented criminal law jurisprudence. Separate courts for children have existed there for over a hundred years, with a focus on rehabilitation—as opposed to punishment—through liberal sentencing and options for release and probation. This system, however, came under increasing threat in the nineties with the rise in juvenile crime and many privileges have since been taken away. In most countries of the world, the juvenile justice system deals only with children in conflict with law, while other social and state-specific laws are used for children in need of care and protection. In both cases however, individual care plans are developed for children. Each child has a social worker attached to her/him, unlike in India where such a system is beyond imagination.

Even in terms of law change, we seemed to have proceeded in a bureaucratic manner, so much so that even more than 20 years after signing the CRC, we are still grappling with non-fulfilment of concepts such as diversion, restorative justice and best interests.

Thereafter, United Nations further adopted the Rules for the Protection of Juveniles Deprived of Their Liberty (1990). The fundamental perspective of these Rules is that Juvenile justice system should uphold the rights and safety and promote the physical well

148 General Assembly Resolution 45/113.
being of juveniles while incorporating the principles of the Beijing rules.

United Nations Guidelines for the Prevention of juvenile Delinquency (the Riyadh Guidelines), 1990\textsuperscript{149} followed immediately. Rule 7 of the Riyadh Guidelines provides that its provisions are to be ‘interpreted and implemented within the broad framework of the Universal Declaration of Human Rights, the International covenants on Economics, Social and Cultural Rights, the International covenants on Civil and Political Rights, the Declaration of the Rights of the Child, and CRC and in the context of Beijing Rules, as well as other instruments and norms relating to the rights, interest, and well-being of all children and young persons’. The Basic principle underlying the Riyadh Guidelines is the recognition of the need for and importance of progressive delinquency prevention policies.

**Special Features of the JJA 1986:**

The JJA 1986 aims at achieving the following objectives:

- it provides for continuation of inquiry if a juvenile ceases to be so during pendency of proceedings and for determination of proceedings as if the juveniles continues to be so.
- The distinction between bailable and non-bailable offences has been omitted in case of offences by juveniles and all juveniles are entitled to be released on bail irrespective of the offence charged.
- Delinquent not to be sentenced to death or imprisonment or committed to prison in default of payment of fine or furnishing sureties.

\textsuperscript{149} General Assembly Resolution 45/112.
• No juvenile to be kept in jail or police station under any circumstances.

• Prohibits publication of the names, identity etc.

• Juvenile not to be tried with adults.

• To provide for a specialized approach towards the prevention and treatment of juvenile delinquency in its full range in keeping with the development needs of the child found in any situation of social maladjustment.

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

• To develop appropriate linkages and coordination between the formal system of juvenile justice and voluntary agencies engaged in the welfare of neglected or society maladjusted children and to specifically define the areas of their responsibilities and roles.

• To constitute special offences in relation to juveniles and provide for punishments therefore.

Inspite of all these features the JJA had been criticized due to many reasons, herein below mentioning the important ones.

**Critique of the JJA 1986**

• The JJA 1986 divides the children covered by it into delinquent and neglected. However this distinction between delinquents and neglected juveniles is subtle and slight.
• The implementation of the act has been left to the discretion of the State Government.

• No provision has been made for special training and knowledge in child psychology and welfare for the magistrate’s empowered to function in the absence of a juvenile court or board in an area.

• Majority of the provisions in the act focus on institutionalization projecting it as the prime measure for dealing with children. This tilt towards the institutionalization is against the principle laid down in the UN Standards Minimum Rules for Administration of Juvenile Justice (Beijing Rules), namely, use of institution only as a measure of last resort.\(^{150}\)

• The separate chapter included for offences against children remains unimplemented in the absence of incorporation of enforcement mechanism.

• The act remained largely unimplemented. Rules not framed, the homes where too small, unhygienic conditions, the magistrates not given special training regarding the child psychology etc.

• No training to the adjudicatory authorities.

• Aftercare is necessary for rehabilitation of institutionalized children but it remained forgotten area.

• Complete lack of coordination and cooperation among various functionaries created under the JJA.

\(^{150}\) Rule 19 of Beijing Rules
Following closer international attention to the issue of juvenile justice in the late 1990’s, the issue moved to the center stage even in domestic circles with a number of consultations\textsuperscript{151} held on juvenile justice both nationally and regionally.\textsuperscript{152} To give effect to various resolutions of the United Nations as adopted by the international community and to overcome the weaknesses of the JJA 1986, seems to have inspired the Ministry for Social Justice and Empowerment go in for drafting a new law on Juvenile Justice, the final outcome of which was the Juvenile Justice (Care and Protection of children) Act, 2000 came into force on 1 April 2001 in whole India except Jammu and Kashmir.\textsuperscript{153}

The aim of Juvenile Justice (Care and Protection of children) Act 2000 is to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care. Protection and treatment by catering to their development needs and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under the enactment.\textsuperscript{154}

1.4 **Salient Features of the Juvenile Justice Act, 2000**

The fundamental principle underlying the JJCPA 2000 is that children who commit offences and children who need care and protection would fall within the ambit of the juvenile justice system. The Act builds in certain avenues for release of the child either to parents, guardians, fit persons or adoptive parents or to people who

\textsuperscript{151} National Consultation on Juvenile Justice, National Law School of India University, Bangalore on 11-13 February 1999. National Seminar on Juvenile Justice held by Butterflies, Delhi, 8-9 April 1999, National Consultations on Juvenile Homes held by Prayas Institute for Juvenile Justice, Delhi 29-30 July 1999.

\textsuperscript{152} Regional Consultation held in Madras, Hyderabad and Patna.

\textsuperscript{153} Enforced by SO 1777 (E) dated 28 February, 2001 w.e.f April 2001.

\textsuperscript{154} Preamble to the Juvenile Justice Act, 2000.
would provide foster care. However, it is important to remember that the logic of the juvenile justice system is to provide what the preamble of the Act calls 'proper' care, protection and treatment by catering to their development needs within an institutional setting.

The JJCPA 2000 contains 70 Sections in five chapters. Salient features are as follows:

- The new law is more child-friendly and provides proper care and protection as also for ultimate rehabilitation of children in need of care and protection.
- It makes the clear distinction between the juvenile offenders and the neglected child.
- It prescribes a uniform age of 18 years for both the boys and girls to be treated as children, which is based on the United Nations Convention on the Rights of the Child, 1989.
- The Act also directs that the cases related to juveniles should be completed with in a period of four months.
- It proposes to setup special juvenile police unit (SJPU). This unit is to be created in the state police. Personnel of this unit have to be specially trained for handling children. In every police station at least one officer with requisite aptitude and training is to be assigned as child welfare officer. He has to deal with children in coordination with his colleagues. He will be a member of special unit mentioned above.
- Role of voluntary organisations and local authorities has been specified for involving them at various stages for handing and rehabilitating children.
• Special emphasis has been laid on rehabilitation and social reintegration of the children and the alternatives provided for the same are adoption, foster care, sponsorship and aftercare. The act allowed adoption of a child within the preview of this Act by any couple or single individual.

**Child in conflict with the law**

Whatever the nature of the offence, the child shall be released on bail regardless of surety. If extraordinary circumstances call for detention it must be in an observation home, not prison or police station.

• The Juvenile Justice Board that consists of two social workers and one magistrate has the discretionary power to send the child home after admonition or advice or order him or her to perform community service or release the child on probation. (Section 15)

• A child cannot be sentenced to death or life imprisonment or committed to prison in non-payment payment of fine or furnishing of security. (Section 16)

• No child shall suffer any disqualification attaching to a conviction. After a reasonable period of time the records of the conviction must be removed. (Section 19)

• No child shall be tried with an adult. (Section 18)

• The act also protects the privacy of the child. No media report may carry identifying particulars or particulars of a child in conflict with the law or a child in need of care and protection.(Section 21)
Child in need of care and protection

- *Expansion of category:* In JJCPA 2000, the category of children in need of care and protection has been expanded to include children mentally and physically challenged, suffering from terminal diseases, victims of armed conflict, natural calamity, and civil commotion, child found vulnerable and likely to be inducted into drug abuse or trafficking, who is tortured, exploited for the purpose of sexual abuse or illegal act.

- *Custodial framework for dealing with child in need of care and protection:* Children in need of care and protection stay within the purview of the criminal justice system. The police have the powers to contact a child, hold an inquiry and produce him before the Child Welfare Committee. In fact the powers of the police have been expanded as under the Juvenile Justice Act, 2000 the police have also been empowered to hold an inquiry regarding the child in the prescribed manner. Further if the child is sent to a Juvenile Home, then such home remains a place where the child is deprived of her liberty, thereby reinscribing the custodial nature of the institution.

- *Restoration as option for child in need of care and protection:* The law emphasizes restoring the child to parents, adopted parents or fosters parents with adoption, foster care, sponsorship and aftercare through the juvenile and special homes being a secondary option. (Section 39).

**Some of the Strengths of the Act 2000**
The adjudicating authority has been changed from a Magistrate (to be assisted by two social workers) to a Bench of a Principal Magistrate, re-designated as the Juvenile Justice Board. This change in composition of the adjudicating authority is one of the more significant changes in the law. Now, space has been created for bringing about a change in the very nature of the inquiry. The primary inquiry of whether the child did commit the offence as mandated by a magistrate's training could now be displaced by a social worker's inquiry, which could focus on why the child committed the offence, and how one may redress the situation.

What could change has been referred to as the criminal law mindset itself. This is in effect an important step towards decriminalizing the administration of juvenile justice, provided the rules (which are framed by the individual states) operationalize the same.

The legislation aims at achieving the following objectives:

(i) to lay down a uniform legal framework for Juvenile Justice in the country so as to ensure that no child under any circumstances is lodged in jail or police lockup. This is being ensured by establishing JJB and CWC;

(ii) to provide for a specialised approach towards the prevention and treatment of Juvenile delinquency in its full range in keeping with the developmental needs of the child found in any situation of social maladjustment;

(iii) to spell out the machinery and infrastructure required for the care, protection, treatment, development and rehabilitation of various categories of children coming within the purview of the juvenile justice system. This
is proposed to be achieved by establishing observation homes, Juvenile homes for neglected juveniles and special homes for delinquent juveniles;

(iv) to establish norms and standards for the administration of Juvenile Justice in terms of investigation and prosecution, adjudication and disposition, and care, treatment and rehabilitation;

(v) to develop appropriate linkages and coordination between the formal system of juvenile justice and voluntary agencies engaged in the welfare of neglected or socially maladjusted children and to specifically define the areas of their responsibilities and roles;

(vi) to constitute special offences in relation to juveniles and provide for punishments thereof ;

(vii) to bring the operation of the juvenile justice system in the country in conformity with the United Nations Standard Minimum Rule for the Administration of Juvenile Justice.

A Comparative Overview of the Old and New Act

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<td>• Juvenile Court</td>
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Inspite of these changes and continuing protections in comparision to the 1986 Act, one needs to be conscious of the fact that it still falls short of the international obligations undertaken by the Indian state both in the form of treaties as well as declarations.¹⁵⁵

**A Critique of the JJCPA 2000**

1) For any Act to be successful its proper implementation is most important. A law may be good on paper but unless implemented in its true spirit, it is meaningless. The present Act has not been implemented by all the states due to which the purpose of the Act remains unfulfilled.

2) Lack of coordination between various juvenile agencies causes the whole system dysfunctional.

¹⁵⁵ See *infra*, Comparative Study of JJCPA 2000 with International Conventions signed by India at 82.
3) The police and society ignored about the provisions of the act, especially provisions regarding child in need of care. Special Police Unit must be created in each police station and their staff be trained in handling juvenile.

4) These institutions, designated as observation homes, children's homes or special homes, share one feature in common - they are all closed institutions, which completely deprive the child of his or her liberty. In its conceptualization, the act purports to focus not on punishment, but on how best one can reform the erring individual. Thus, the deprivation of liberty is not conceptualized as punishment, but as a mode through which the juvenile is reintegrated into society. Thus the philosophy seems to be that by detaining children till they reach the age of 18 and by subjecting them to a monotonous daily routine and an enforced separation from all forms of living outside daily routine, one would produce individuals who can then be reintegrated back into society. However the daily reality of life in most "homes" really reflects an adherence to the classical model of punishment.

5) JJCPCA 2000 does not take into account lessons from law reform efforts in other parts of the world including developing nations such as Uganda and South Africa, or make serious efforts to incorporate the provisions of the Child Rights Convention (CRC) that India has ratified. For instance, the Board has the power to send the child to a special home for a minimum period of not less than two years for a child who is over seventeen and less than
eighteen and in case of any other juvenile till he or she ceases to be a juvenile. This provision is in clear contravention of Article 37(b) of the Convention of the Rights of the Child, which notes that arrest, detention or imprisonment of a child, shall be used only as a measure of the last resort and for the shortest appropriate period of time. The danger to juveniles of "criminal contamination" while in detention pending trial must not be underestimated. It is therefore important to stress the need for alternative measures. By doing so, Rule 13.1\textsuperscript{156} encourages the devising of new and innovative measures to avoid such detention in the interest of the well-being of the juvenile. Juveniles under detention pending trial are entitled to all the rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners as well as the International Covenant on Civil and Political Rights, especially Article 9 and Article 10, Paragraphs 2 (b) and 3.

6) The soul of the CRC is the notion that the child has the right to participate in decisions that affect her (Article 12).

\begin{itemize}
  \item \textsuperscript{156} Beijing Rule 13 : Detention pending trial.
  \begin{itemize}
    \item 13.1 Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.
    \item 13.2 Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.
    \item 13.3 Juveniles under detention pending trial shall be entitled to all rights and guarantees of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations.
    \item 13.4 Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults.
    \item 13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require in view of their age, sex and personality.
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This fundamental principle has completely been ignored in the JJCPA, 2000.

7) The change in composition of the adjudicating authority seems a cursory attempt at really changing the deeply custodial nature of the entire juvenile justice system. If the state is serious about decriminalizing the treatment of, if not the child in conflict with the law, then, at least, the child in need of care and protection, it must bring about changes at every level starting from the police.

8) While the aim of minimizing the stay of the child in the juvenile home and special home as conceptualized is laudable, there are serious concerns as to whether restoration is the best solution. For instance, in cases involving child sexual abuse, this solution can be ill conceived. In the cases of children in difficult circumstances too (such as children on the street, children engaged in sex work, etc.), restoration might not be a solution.

9) Yet, another concern relates to the fact that no safeguards have been built into the procedures regulating adoption and foster care in the Act itself, leaving it entirely to the discretion of states, which have the power to make rules under the Act.

10) The Act does not contain adequate provisions to ensure proper and need based education to the juveniles in state custody.

Rehabilitation should be the primary focus of juvenile justice system. Falling to provide rehabilitation measures will never show
expected results. This was observed that the JJCPA 2000 was not implemented properly in the aspect of rehabilitation of the delinquents, insensitivity on the part of officials in juveniles homes must be addressed seriously. The Police and the officer of these homes are not properly trained and they are not sensitive towards the delinquents. It is a glaring truth that most of the government staff of Juvenile Justice System is unaware of the laws and policies for children. The whole attitude of rehabilitation of the children is totally falsely construed, a kind of punishment and never a process of mainstreaming back into the society. There are several children put in the observation homes more than two years. The cases are delayed for many years. This has been seen that many times the delay is so much that the child has turned major or has already incarcerated for 10 or even more years in jail in quest of justice. The children in various homes lack recreational activities, proper residential facilities and medical care. Much less to speak of, is the aspect of home re-integration of the children, which is totally neglected by the Superintendent of the homes.157

Hence, there is much India needs to learn and reform. The implementation of the JJCPA 2000, in India has been an extension of sensitization towards the problems of children in distress and the significance of juvenile justice have come more into focus. The successful observance to the Court orders, skills for the development of the child and training for those dealing with children are important in the area of child welfare. Under the Act, State Governments either by themselves or in agreement with any voluntary organizations, may establish or maintain observation homes for housing the juvenile who is in conflict with law and needs to be placed initially. However, it has

been observed when the police detain the children, they must have the knowledge and skills to handle young children. Attempts have been made for having a more humanistic approach keeping the interests of both the offenders and protection of society. It has been observed that the JJCPCA 2000 is preceded by eighty years experience in administrating juvenile justice but still the language used in many provisions are similar to that founded in earlier Acts despite the fact that these provisions had been subject of varied interpretations by different courts including the Apex Court. Some of the issues raised before the higher courts included applicability of Act, plea of status, evidence of age, special offences by children. It was widely perceived that even the JJCPCA 2000 did not achieved what it set out to do and that the justice-delivery system for juveniles continues to suffer from neglect and apathy. For instance, empirical studies indicated that there were extensive delays in the disposal of cases on the account of the omission to constitute Juvenile Justice Boards in many districts. Furthermore, monitoring by voluntary sector organisations regularly indicated that the infrastructure in many of the government-run homes where the children are kept does not meet the minimum standard required for a humane living. Such reports prompted the Parliament to intervene again and an amendment was made to the Act in 2006 as "The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006".158 (hereinafter referred as JJ 2006), with the primary intent of speeding up the administration of justice for juveniles. Due emphasis was also placed on the integration of children from deprived Sections into the social mainstream. The amendment also reflected the legislature’s concern that the various duties and responsibilities cast on State Governments by the 2000 Act were not being met and many States had not framed the requisite

158 Act No. 33 of 2006
Rules under the same. This concern was addressed by inserting a proviso to Section 68, wherein the ‘Model Rules’ were to be framed by the Central Government and made applicable to the States until such point of time till the State Governments made their own Rules in conformity with the Central Model Rules.

The Model Rules were framed by the Central Government in 2007 known as Juvenile Justice (Care and Protection) Rules, 2007. They prescribe and restate the fundamental principles involved in the administration of Juvenile Justice and the protection of Children – such as the ‘presumption of innocence’, ‘principle of dignity and worth’, deference to the ‘best interests of the child’, principle of ‘family responsibility, positive measures, principle of repatriation and restoration, and the idea of ‘freshstart’ among others. These principles are to be borne in mind by all the concerned stakeholders while discharging their duties under the Act.

They comprehensively deal with the law relating to “Juvenile in Conflict with Law” and “Juvenile in need of Care and Protection”. The amendment was brought in to revise the Act in order to strengthen and instill a Child-Centric rehabilitation and family restoration focused system. It provide for a special approach towards the prevention and treatment of juvenile delinquents and a framework for the protection, treatment and rehabilitation of children in the preview of the juvenile justice system. It takes care of every aspect of the children in need of care and protection of the states which includes their health care, diet, education, vocational training, recreation facilities etc. as also their personal requirements of clothing, toiletries, sanitation, etc.

Different Sections of the JJCPA 2000 have been amended. A new Section 7A has been inserted. It deals with the determination of the age of the juvenile, where the court will make an inquiry and
record the finding whether the person is juvenile or not and the claim will be recognized at any stage, even after the disposal of the case. A new Section 21 has been included which prohibits any method by which the juvenile may be identified which includes disclosing their name, address, photograph unless the concerned authority consents such a disclosure in the interest of the child. Section 57 has a new Section where the State Government can direct the transfer of any child or juvenile to any children's home or special home or an institution of a like nature either within the state or outside the state after consultation with the concerned authorities. Section 62A has been inserted in addition to Section 62 which speaks of the formation of a Child Protection Unit for a State by the State Government which comprises of authorities to take care of matters related to the welfare of juveniles in conflict with law including the implementation of the Act.\(^\text{159}\)

In its true spirit, the Act outlines the roles to be played by the government, represented by the judiciary, police, probation and social welfare services, local government bodies, including the panchayati raj institutions, as well as non-government organisations or NGOs and social workers. The JJ 2006 amendments attempt to strengthen and widen the juvenile care and justice framework as well as establish the premise that the best of institutions cannot substitute for care in a family, with the ultimate aim of promoting a child-centric rehabilitation and family restoration-focused system.

Juvenile Justice was earlier under the Ministry of Social Justice and Empowerment, while the other child-related schemes and programmes were the responsibility of the Department of Women and Child, under the Ministry of Human Resources Development. Juvenile

Justice came under the Ministry of Women and Child Development (MWCD) once it was formed in February 2006 and placed in independent charge of Minister of State Renuka Chowdhury, who was replaced by Krishna Tirath in June 2009.

Vital Sections of The JJCPC Amendment Act 2006 are reproduced here in below

Section 2(a)(a)

Inclusion of definition of Adoption: “Adoption” means the process through which the adopted child is permanently separated from his biological parents and becomes the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship.

Section 2(d)(i)

Child beggars to be included in the definition of children in need of care and protection.

Section 10(1)

In no case a juvenile in conflict with law shall be placed in a police lockup or lodged in jail.

Section 14(2)

Since the provision for enquiry to be completed within four months lacks proper implementation, as inquiries are pending before the Boards for a long period of time, it is proposed that the Chief Judicial Magistrate/Chief Metropolitan Magistrate shall review the pendency of cases of the Board every six months, and shall direct the Board to increase the frequency of its sittings or may cause constitution of additional Boards’.

Section 15(1)(g)
The Juvenile Justice Board can make an order directing the juvenile to be sent to a special home for a maximum period of three years only.

Section 16(1)

No Juvenile in conflict with law can be put under imprisonment for any term which may extend to imprisonment for life.

Section 21

Contravention of provisions dealing with prohibition of publication of name etc. of child/juveniles shall be punishable with fine extending to twenty five thousand rupees as against existing 1000 rupees.

Sections 4 & 29

The State Governments to constitute Juvenile Justice Board and Child Welfare Committee for each district within one year of the Amendment Act coming in to force.

Section 33(3)

The State Governments may review pending of cases before the Child Welfare Committee in order to ensure speedy completion of enquiry process.

Section 34(3)

All State Government/voluntary organisations running institutions for a child/ juvenile shall be registered under this Act within a period of six months from the date of commencement of the Amendment Act, 2006.

Section 41(4)
State Government shall recognize one or more of its institution or voluntary organizations in each district as specialized adoption agencies for the placement of orphans, abandoned or surrendered children for adoption. Children’s homes and the institutions run by the State Government or voluntary organizations for children who are orphans, abandoned or surrendered shall ensure that these children are declared free for adoption by the Child Welfare Committee and all such cases shall be referred to the adoption agency in that district for placement of such children in adoption in accordance with guidelines.

Section 62(A)

Every State Government shall constitute a Child Protection Unit for the State and, such units for every district, consisting of such officers and other employees as may be appointed by that Government to take up matters relating to children /juveniles with a view to ensure the implementation of this Act.

Fundamental Principles

The fundamental principle of juvenile justice system has been laid down in Rule 3 of the Juvenile Justice (Care and Protection of Children) Rule 2007. The State Government, the Juvenile Justice Board, the Child Welfare Committee and other competent authorities or agencies while performing their duties shall abide and be guided by these principles. These principles are:

1. **Principle of presumption of innocence**: A juvenile in conflict with law is presumed to be innocent of any malafide or criminal intent up to the age of eighteen years. The basic components of presumption of innocence are:

   (i) Age of innocence;

   (ii) Procedural protection of innocence; &
2. **Principle of dignity and worth:** Treatment that is consistent with the child's sense of dignity and worth is a fundamental principle of juvenile justice. The juvenile's right to dignity and worth has to be respected and protected throughout the entire process of dealing with the child from the first contact with law enforcement agencies to the implementation of all measures for dealing with the child.

3. **Principle of Right to be heard:** Every child's right to express his views freely in all matters affecting his interest shall be fully respected through every stage in the process of juvenile justice.

4. **Principle of Best Interest:** In all decisions taken within the context of administration of juvenile justice, the principle of best interest of the juvenile in conflict with law shall be the primary consideration.

5. **Principle of family responsibility:** The primary responsibility of bringing up children, providing care, support and protection shall be with the biological parents. However, in exceptional situations, this responsibility may be bestowed on willing adoptive or foster parents.

6. **Principle of Safety:** At all stages, from the initial contact till such time he remains in contact with the care and protection system, and thereafter, the juvenile shall not be subjected to any harm, abuse, neglect, maltreatment, corporal punishment or solitary or otherwise any confinement in jails and extreme care shall be taken to avoid any harm to the protection.

7. **Positive measures:** Provisions must be made to enable positive measures that involve the full mobilization of all possible
resources, including the family, volunteers and other community groups, as well as schools and other mainstream community institutions or processes, for the purpose of promoting the well-being of the juvenile through individual care plans carefully worked out.

8. **Principle of non-stigmatizing semantics, decisions and actions:** The non-stigmatizing semantics of the Act must be strictly adhered to, and the use of adversarial or accusatory words, such as, arrest, remand, accused, charge sheet, trial, prosecution, warrant, summons, conviction, inmate, delinquent, neglected, custody or jail is prohibited in the processes pertaining to the juvenile.

9. **Principle of non-waiver of rights:** No waiver of rights of the juvenile, whether by himself or the competent authority or anyone acting or claiming to act on behalf of the juvenile, is either permissible or valid. Non-exercise of a fundamental right does not amount to waiver.

10. **Principle of equality and non-discrimination:** There shall be no discrimination against a juvenile on the basis of age, sex, place of birth, disability, health, status, race, ethnicity, religion, caste, cultural practices, work, activity or behaviour of the juvenile or that of his parents or guardians, or the civil and political status of the juvenile.

11. **Principle of right to privacy and confidentiality:** The juvenile's right to privacy and confidentiality shall be protected by all means and through all the stages of the proceedings and care and protection processes.
12. **Principle of last resort:** Institutionalization of a juvenile shall be a step of the last resort after reasonable inquiry and that too for the minimum possible duration.

13. **Principle of repatriation and restoration:** Every juvenile has the right to be re-united with his family and restored back to the same socio-economic and cultural status that such juvenile enjoyed before coming within the purview of the Act.

14. **Principle of Fresh Start:** The principle of fresh start promotes new beginning for the juvenile by ensuring erasure of his past records.

   The Rules framed under the act specifically mention in detail to take care of setting up of observation homes and special homes for boys and girls with separate residential facilities for different age groups. Under the Rules complete description of the power and functions of the CWC has been given. The Rules specify the standard of care to be taken while dealing with the children. They provide that the homes for “Juvenile in Conflict with law” and for “Children in Need of Care and Protection” are to function from separate premises. Observation homes, special homes, children homes and shelter homes are all to be separate for boys and girls. The norms for the building or accommodation for such homes have been defined, which also takes care of the needs of the children staying in such homes to be given proper medical health and other facilities. Special care is to be taken of sanitation and of nutrition diet of the children. The Rules also provide for imparting education to the children according to their age and ability, and also for vocational training and recreation facilities.

   There in no deny that mostly the children who are poor and marginalized, form the major share of children held in police custody,
detention institutions and prisons.\textsuperscript{160} It is very important to find the reason behind the children becoming delinquents. If we see the philosophy behind the juvenile justice system is to transfer the burden of motive to the environment in which the child grows in, and hence try to find the motive and intent within the family, guardians, society and so on, there is a thin line between the children in need of care and protection and the children in conflict with law. It has been observed that many of the children in conflict with law are children in such difficult circumstances that are sometimes indistinguishable from crime. For instance, children trafficked or in prostitution or begging. Of late, trafficking of young boys for prostitution is on the rise and tourism hotspots like Kerala and Goa are emerging as the new attraction for pedophiles. In the eye of the law, such children may be “committing a crime” but in reality, it is they who need care and protection the most. Recent changes in JJS treat children in begging and prostitution as children in need of care and protection, but the corresponding change in attitude has yet to come about at all levels. Thus it seems from the cases came before the courts and the committee, that most of the time children in conflict with law come out of the wider category of children in need of care and protection, the crying need for the system is to treat the former in the same way as the latter, with a light touch of the law and with the compassion and dignity that they probably never received before.

Also, over the years, the word juvenile has come to be associated with delinquency or offence or breaking of law. Despite law reforms and changes in attitude, it continues to evoke the image of an erratic criminal, not a disadvantaged child led astray. The JJCPICA continues to reflect the same confusion. It uses the word Juvenile to

\textsuperscript{160} Roy, Nikhil and Wong, Mary, Juvenile Justice. Modern Concepts of Working with Children in Conflict with Law, Save the Children, (2004).
define children who are in conflict with law, but also uses juvenile and child interchangeably, for instance as in Sections 2 (l) and 5(2).

Though the current thinking of the government of India on children is reflected in the report of the Working Group on Development of Children for the Eleventh Plan (2007-12) of the Planning Commission. It says, “Child protection (which covers juvenile justice) is about protecting every right of every child. The failure to ensure children’s right to protection adversely affects all other rights of the child and the development of the full potential of the child”. The National Plan of Action for Children, 2005 also recognises that UNCRC shall be the guiding instrument for implementing all rights for all children up to the age of 18 years.

Mahatma Gandhi said:

If we are to teach real peace in this world, and if we are to carry on a real war against war, we shall have to begin with the children.

The profile of the children in India reveals that a majority of them are living in the conditions of want, deprived of basic survival, subsistence, and developmental opportunities. Worldwide the protection of child has been accepted as the responsibility of the state. The concept of child has gone through complete shift form the welfare to rights of children basing it mostly on the ideals laid down in international standards. It was observed throughout the world that the states started taking responsibility towards the children who are deprived and need protection. Efforts were being made to improve

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their condition and provide ample opportunities to the children living in conditions of want and showing signs of social maladjustments. Almost every country has a juvenile justice process, though the quality and maturity vary from country to country.

In India, too, the state realized and hence accepted the responsibility of providing care and protection to children and their rehabilitation. Through welfare schemes and juvenile justice system, it’s an endeavor to provide care and protection to neglected and delinquent children. However, studies have shown that the schemes are inadequate and JJS is malfunctioning. From 1972 to 1999 and now to 2011, a little seems to have changed on the ground level for children who need them most. Especially for children who are bereft of parental care and protection or are economically or socially marginalized. The actual status of the implementation of the JJCPA had already been discussed in the chapter 8 of this thesis, which brings out the issues related to the non-implementation of the Act. It even brings out the facts on light that all the state has not complied with the Act in its true sense by not enforcing their own Rules. In this chapter the crux of drawbacks in the system are highlighted and the challenges faced and in the last suggestions for making the system more effective.

Limitations

The major problem India JJS faces lies in the structure and content of the law, which covers both children in conflict with the law and children in need of care and protection, as well as its interpretation and implementation. The reason behind this problem is the understanding and jurisprudence, the concept of juvenile justice is still developing across the world and there’s really no uniform

understanding. It is not out of place to mention here that even after the enforcement of the JJCPA 2000 and its amendment in 2006 and the Rules framed thereunder, the non-application of the amended law and Rules by the Higher Courts has been seen in many cases. At ground level many problems are faced in the implementation of the JJCPA. They can be categorized in form of like lack of Knowledge among the people who are working for the welfare of children, Staff in homes & courts not competent and trained properly, attitude of police, many time it is found that they are insensitive towards the children and treat them like harsh criminals. The magistrate are not spared from this, they are not given proper training, even at many states it is found that the lack of awareness regarding the law and procedure. This doesn’t mean that system has not changed at all but the change that came is very slow. Things have started improving only in past year or so when the Apex court took keen interest in the welfare of the children and ordered to get the status of implementation of the JJCPA. The confusion on interpretation of law is also one of the major issue court faces in deciding. Form past year or two situations has improved regarding the provision and the law but still lot more care and attention is required to protect the wrong use of law. The judicial system is over worked due to which the pendency of cases is too much. Homes of juveniles are not properly facilitated lots of problem are faced by the children like no proper toiletries, medical facilities, food, clothes, infrastructure, education etc.

There are many issues that have been raised time and again but remain unnoticed and need a prompt action to make the

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164 Cases like Jameel v State of Maharashtra, Jyoti Prakash v State of Bihar, Ranjit Singh v State of Haryana, where non-application of the amended law has been seen. The same are discussed in chapter 7 of this thesis.
165 Sampurna Behrua v Union of India & others, Writ Petition (Civil) No. 473 of 2005.
166 Some of the issues came for decision before the courts are like determination of age, Section 7A, applicability of Act, etc.
implementation smooth, effective and beneficial in its true nature as per the objective of the Act. One of the important topic among the NGOs and other institutions working for the children and advocates dealing for the children observed that no child had ever challenged before the higher court the findings of the lower court holding that he had committed offence. The reason for not doing that may be due to absence of proper legal representation, unawareness of their rights, monetary etc. There are many right-based question that are remained unaddressed.\(^{167}\) For example, JJCPCA 2000 provided for grant of bail to the child notwithstanding the distinction between bailable and non bailable offences made under Cr.P.C. Bail to the child may be refused only if release of the child will be detrimental to the interests of the child or will defeat the ends of justice.\(^{168}\) It raises the question if bail in bailable offences may be refused to a child who satisfies conditions mentioned in Section 12. This question has neither reached the higher courts nor the Rules have clarified this aspect though very elaborate rules have been framed laying down the post–production procedure to be followed by the JJB.\(^{169}\) Further there is no explicit requirement that detention shall be used only as a measure of last resort, and the broad grounds for detention based on exposure to “moral danger” do not promoteminimal use of detention. Street children are particularly vulnerable to pre-trial detention, even if charged with minor offences. One magistrate estimated that roughly 30% to 40% of children are not released on bail because their family is unfit or cannot be located. Bail is denied not because of the nature of the offence, but because there is nobody to take custody of the child.\(^{170}\) The magistrate further clarifies that things are changing for good form past two years. The

\(^{167}\) This issue even raised by Kumari, Ved in her article “Juvenile Justice Act- Rights and Reality”. 2009 (8) SCC (J)

\(^{168}\) Section 12 of JJCPCA 2000.

\(^{169}\) Rule 13 of the JJ Rule 2007.

\(^{170}\) Interview with one of the Principle magistrate, JJB, Delhi.
enforcement of the Act is better now and the bail is also grants in majority of cases. The word “apprehension” has been substituted for arrest in Section 12. Question is whether it means that now a child may be “apprehended” without warrant for non-cognizable offences?  

The JJCPCA 2000 calls for the creation of special juvenile police units to deal with children in conflict with the law and children in need of protection. Every police station must have atleast one officer designated and specially trained as the “juvenile or child welfare officer”. The Act requires that every child apprehended by police be placed under the charge of the special juvenile police unit or the designated police officer that shall immediately report the matter to a member of the Board. Infact the Act itself provides limited direction with respect to the operation of the special juvenile police units. These issues have been left to the discretion of states in the framing of Rules and states have been slow to establish special police units due to limited resources.

Another issue which is contentious whether there is a need for a separate law on offences against children or a separate chapter within the Indian Penal Code (IPC) to address all forms of violence, abuse and exploitation of children. The IPC is the main criminal law that defines offences and provides for punishment, a copy of it lies in every policestation, so police find it easy to relate to it. Special legislations are treated as secondary to the IPC, especially if they are on women and children, which are soft subjects for the politician or police. Yet, proponents of a special law for child abuse argue that without it, children’s issues will remain at the periphery and child-friendly procedures will be compromised for procedures meant for

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172 Section 63 JJCPCA 2000.
adults. Some of the NGO feels as long as police use the outmoded Criminal Procedure Code to deal with children, they will remain far from justice. A separate procedural code for dealing with children, for both victims of crime as well as those in conflict with law, along with changes in the Indian Evidence Act are needed urgently to ensure a child-friendly legal system.

A close reading of the Rules shows that it has incorporated the welfare model rather than the rights model in conducting the inquiry. For example, Rule 13 of Model Rules 2007 provides for child-friendly atmosphere in which the child may be encouraged to tell the truth and the “inquiry is not to be conducted in the spirit of strict adversarial proceedings” and Board is empowered to look at the report by the police and the PO as well questioning the child. All these provisions have been made without any reference to the rights of the child to remain silent or any obligation on the Board to educate the child of his rights and the implication of “telling the truth”. It is important to inform the child he have a right to remain silent. They should also be informed about the consequences of giving information about their involvement in the crime. Similarly there is no mention about the burden to prove age. The SC in one of the case directed all the magistrate to determine the age if accused appeared to be below 21 years or below to prevent the cases been delayed and journey of cases upto SC and than again to lower court for determination of age. This should have been incorporated in the Rules imposing the burden on the courts to determine age.173

In relation to proof of age, the Supreme Court ruling as well as the Rules lay down that benefit of doubt is to be given to the child, it has not been stated clearly in either in the Act nor Rules whether the

prosecution should prove the case beyond reasonable doubt. The JJCPA lays down the principle of no joint trial of children and adult involved in the same offence. No answers one finds to the following queries for example, whether the evidence adduced in one court can be used in other courts to the benefit or detriment of other accused? Similarly, should trial in one case wait till it is over in the other case as that original records may be in the other court?

There is no mention to rights and procedural safeguards for children in need of care and protection. As per the Rule they should be send to the different homes but in practice both the categories are sent to the same closed institutions resulting in deprivation of liberty. Moreover, no mention has been made towards the rights, procedures and principles need to be observed in age determination of child in need of care and protection. They also need lawyer to represent them. CRC obligates member states to generate awareness of child rights among the children but no such provision has been made in respect of the both the categories under JJCPA 2000.

Another aspect that come to light in practice that juveniles are declined the safeguards of juvenile legislation, such as socio-legal approach of the juvenile justice board, completion of inquiry within four months, and mandatory granting of bail except in certain prescribed circumstances. Officials often under the influence of the physical appearance of the child determine their age and cause grave injustice to the juvenile and the entire criminal justice system. National Crime Records Bureau in 2006 reported that the total number of prison inmates between the age-group of 16-18 years of age is 663, where 64, 567 and 29 are convicted under trial and detenue prisoners respectively.\textsuperscript{174} So, the reality shows that such young minds are still

\textsuperscript{174} Crime In India, 2007, NCRB.
found in Indian jails. The figures officially projected are for prisoners of minimum 16 years of age but does that mean there are no prison inmates below 16 years in India? The need for the development of responsible consciousness among the officials and the entire criminal justice mechanism to identify the juveniles to bring them within the folds of juvenile justice system has increased even more, specially after the introduction of the 2006 amendment to the JJCPCA 2000, which now defines a "juvenile in conflict with law" to mean a juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of commission of such offence. The present status of the legislation is such that though it is prospective in nature but it can acquire retrospective character in order to ensure benefit to the juvenile irrespective of when the accused is produced before the court, or whether their cases are pending or disposed of.

The JJCPCA 2000 states that Special Homes are to be established by the State or voluntary organisation for the reception and rehabilitation of children in conflict with the law. Most States have established one or more Special Homes and have established Rules for the certification and management of the homes. As with Observation Homes, the Act specifically promotes partnerships with NGOs in the running of the homes. This partnerships approach is being actively encouraged by the central government, and has shown considerable success, particularly in Tamil Nadu, Maharashtra, Karnataka and Delhi. In some cases, Government/NGO partnerships arrangements have been established wherein NGO personnel are providing education, vocational training and other programmes in institutions that are managed and staffed by the government. The state of Andhra Pradesh has put into practice a scheme of co-management of the State's children's institutions with selected NGOs.

Section 9 JJCPCA 2000.
Under this scheme each institution will have a key NGO co-managing the institution and other member NGOs on a committee to monitor implementation.¹⁷⁶ In other cases, the State government has certified Special Homes that are fully operated and managed by a trusted NGO, with State funding support. This has reportedly improved the quality and range of services being provided to the children, since NGOs generally have specialised staff and are able to mobilise community involvement and volunteer professional services from doctors, lawyers, etc.¹⁷⁷ Reports of physical abuse of children in institutional care persist,¹⁷⁸ and most lack adequate facilities for education, vocational training, counselling and reintegration. One concern raised regarding the homes is that while the JJCPA 2000 clearly differentiates between Observation Homes (for children subject to pre-trial detention); Special Homes (for children convicted of an offence); and Children’s Homes (for children in need of protection), in practice many homes are certified under one or more of these categories. This has resulted in the continued mixing of children in conflict with the law with children in need of protection, thereby undermining the distinction the Act is trying to promote.

Another concern is that, while the institutions have become more open to NGO involvement, the Rules themselves continue to promote an environment based on confinement rather than community contact. For example, under the Model Rules, a child is permitted a family meeting only once per month, and there are strict limitations on leaves of absence and other community contact. The Rules also do not include any restrictions on discipline and use of

¹⁷⁷ Interview with a social worker from Prayas.
¹⁷⁸ Concluding Observations of the UN Committee on the Rights of the Child: India, CRC/C/15/Add.228, 26 February 2008.
force against children in institutions. In terms of reintegration of children who have completed their term in a Special Home, the JJCPA 2000 makes provision for “after-care programmes” to assist them “to lead an honest, industrious and useful life”. While the Act is not specific with respect to what this involves, the implication is that after-care is also premised on an institutional approach.\footnote{Section 44 which states that a child may “stay” with an after-care organisation for up to three years (three year is the maximum limit).}

The JJCPA 2000 makes provision for a Central Advisory Board to coordinate implementation and monitoring of the juvenile justice system throughout the country. It also states for the establishment of State and District Advisory Boards. The Advisory Boards are to include relevant government departments, social workers, representatives from voluntary organizations, and other child welfare professionals. These Advisory Boards have the potential to play a significant role in promoting policy development and coordinating reform initiatives. However, they are not yet fully functioning as coordinating mechanisms. There are no mechanisms in place at the State level for effective monitoring and inspection of institutions certified under the JJCPA 2000. Of concern is that, while JJA 2000 provides for the creation of Inspection Committees and Social Auditing of institutions, these provisions apply only to Children’s Homes (for children in need of protection) not Observation Homes and Special Homes for children in conflict with the law.\footnote{JJCPA 2000, Section 35 and 36}

There are many challenges one faces both in law and practice. In practice one faces that children are normally been asked to sign any confessions/statements. The Delhi High Court has made it clear that police cannot ask children to sign any confessions/statements, but to no avail. Not only have police
continued with the practice of recording confessionals, which is prohibited even by the Cr.P.C., the JJBs too have sometimes admitted such statements as evidence in violation of the order. In Delhi, such statements are now called Child’s Version and a format has been developed to record it just for police inquiry. Another aspect of this system is that police “interrogate” a child in conflict with law nor ask the JJB for permission to keep him or her in custody for interrogation. But police feel they must do some questioning to solve the crime that the child is alleged to have committed, especially if it is a heinous offence. Some method of questioning by police thus needs to be worked out within the JJ framework. It just hoped that once the SJPUs, for instance, at all district level police stations in Delhi become active and the Department of Women and Child Development provides two social workers as per the law, they can hopefully ensure that children are questioned, preferably out of the station, without force or torture. Similarly law clearly says that any record of conviction of a child or a person as a child cannot be used to disqualify him from employment. Still this happens and its important that judiciary take is matter and do find an appropriate solution to it. If children are not to be treated as criminals and no FIRs are lodged, there should be no chargesheets for children, right? But Cr.P.C. requires charge sheets, so the term charge sheet needs to change. In Delhi, there is a move to use Final Police Report or Police Investigation Report in place of charge sheet. Police have also been told that in cases involving non-serious offences requiring less than seven years’ punishment, this report ought to be filed within a certain time, or else the cases would be treated as closed.

One of the objectives of the Act is rehabilitation and that to preferably not by the institutionalization. The first priority under JJCPA is to hand over children to their family but home studies which
should back any decision to send the child back home are faulty in many ways, such as forms being filled by Welfare Officers/Probation Officers without even visiting the family and making moral judgments on the character of the child. The principle of best interest of the child takes a back seat in favour of the paper work. Establishing and maintaining linkages with authorities in the state/district of origin is rare, and the CWC/JJBs is often found consulting on its own with reliable NGOs in the child’s home state to trace the family, restore the child and keep track. Measures, which our Act provides, for the restoration of the children such as foster care, sponsorship and adoption it is find that little progress has been made on the ground. Follow-up is poor in the case of foster care and sponsorship, making it unattractive for civil society organisations. Adoption has assumed an ugly face with adoption agencies turning into rackets for selling children outside the country even as several parents are waiting in queue. That information too is not shared publicly.

It has been found that the girl victims of sexual abuse face segregation in institutions and are treated as “bad girls”, evendisowned by families. Rehabilitation of children in conflict with law is particularly difficult as their record travels with them all their lives. Stigmatization and lack of access to and/or poor quality of education and vocational skill programmes in institutions not only erode these children’s self-esteem but also fail to ensure their social reintegration. Rehabilitation schemes of both government and private sectors have failed to touch theirlives except few of NGO that are working in right direction. It would be good if corporate sector play a big role in helping these children through mentorship and rehabilitation programmes and with job opportunities, but it has not happened. Government must make efforts to involve the corporate sector into rehabilitation process of the child.
The other worry is that full-fledged programmes like the ICPS too will now be run by societies registered under the Societies Registration Act. In an alarming trend of “burden-shifting”, most of the flagship programmes for children are being handed over to private bodies and NGOs for implementation. The state has abdicated its responsibility of not only implementing them but also monitoring these new bodies, which should have been welcome only as visitors and consultants, providing technical assistance and management expertise. The National Plan of Action for Children 2005 has provided more space for child rights to be heard. It has a chapter on child participation, in which the very first goal emphasizes promotion and respect for the views of all children, including the views of the most marginalized, especially girls, within the family, community, schools and institutions, as well in judicial and administrative proceedings. The goal talks about facilitating children’s participation in all issues affecting them. This Plan of Action must be implemented forthwith in both letter and spirit and states and Union territories too must formulate and implement their own Plans. For this to happen, the government as well as the juvenile justice system must urgently address the areas of concern summed up above and adopt the following suggestions.

Today the society is approaching the closing ends of welfare approach towards children and is entering the era of rights approach. Asha Bajpai\textsuperscript{181} in her article writes “this shift in focus from the ‘welfare’ to the ‘rights’ approach is significant. Rights are entitlements. They also imply obligations and goals. The rights approach is primarily concerned with issues of social justice, non-discrimination, equity and empowerment. The achievements of right-based approach will

\textsuperscript{181} Professor Asha Bajpai is currently a Professor of Law at Tata Institute of Social Sciences (TISS), Mumbai. She holds a PhD in law with specialization in Child Rights and Laws from National Law School of India University, Bangalore.
depend on sincere performance of corresponding duty performed by the other stakeholders in the society. The spirit depicted through the 2006 amendment show that the system is functioning in the right path and an honest, zealous and an accountable endeavor will surely bring us a much better tomorrow.

The Shatpath Brahman says: "Matriman, pitriman, acharyavan purusho ved" it means that a young child has the advantage of having three great masters- mother, father, acharya- and is guided suitably to step into manhood or womanhood. With the help of these masters, he or she becomes well versed in the art of life and is an asset to the society.