

**BABU BANARASI DAS UNIVERSITY, LUCKNOW**



**“JUVENILE JUSTICE”**

**A Critical Analysis**

**Submitted in the Partial Fulfilment of the Requirement**

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**Under the Supervision of-**

**Dr. GITU SINGH**

**Professor, Dean**

**School for Legal Studies**

**Submitted by-**

**SHUBHAM VISHWAKARMA**

**LLM Criminology**

**Roll No-1200997049**

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Department of Law

School for Legal Studies

BABU BANARASI DAS UNIVERSITY

FAIZABAD ROAD, LUCKNOW (UP). INDIA.

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SHUBHAM VISHWAKARMA

LLM Criminology

Roll No-1200997049

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## **PREFACE**

The issue of juvenile delinquency had been a very relative phenomenon since crimes and offences by juveniles have taken a center-stage in the present-day society. The menace of these offences had been growing in scary proportions and although we have the required legal statutes framed with the sole object of rehabilitation of the juveniles in conflicts with law, little have taken place in the reality. The Juvenile Justice Care and Protection of Children Act, 2000 which came into existence by repealing the earlier Juvenile Justice Act, 1986 has strengthened its rules and laws on the guidelines of the Convention on the Rights of the Child 1989, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules) and The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (the Riyadh Guidelines). These guidelines laid stress upon the tender age and vulnerability of children and included certain measures to protect and preserve their vulnerability by way of reformatory punishment looking forward to their rehabilitation. The Juvenile Justice Act of 1986 having failed on such score due to serious shortcomings; an overhaul of the law was made in consonance with these guidelines to maintain the uniformity of treatment to the juvenile offenders. Although drafted in the perspective of a noble approach, the setting up of the infrastructure based upon the Act had remained an unfulfilled obligation all over India, the extent of progress having accelerated under the strict direction of the Supreme Court passed in the Sampurna Behrua's case in the year 2012 but still a lot remains to be done. This being an observation on one side, on the other side, recent occurrences, the glaring trends of the juveniles playing with the law while indulging in crimes, serious and grave enough inviting only a maximum punishment of three years have caused the legislators to think over and over again about the measures of deterrence.

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# CHAPTER 1

## INTRODUCTION

### 1.1. Introduction

“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 the future. A healthy and educated Child of today is the active and intelligent Citizen of tomorrow”.

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 complete development of their personalities. Since Society expects 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. Therefore, these Children require special attention, treatment, care and in their interactions with the Juvenile Justice System.

The Convention of the Rights of the Child says that if a Child breaks a law, he should be provided with legal help.<sup>2</sup>The Child's right has to be recognized and he shall be treated with due decency and dignity. The theory of the Juvenile court is to rehabilitate Juvenile offenders and not punish them. On an analysis made, it was found that there is less amount of literature available for Children in conflict with law whereas the literature available for Children in need of care and protection is comparatively high. Large amount of study has been made on the aspect of the Children in need of care and protection, but very little has been studied about Juvenile offenders who according to me are the truly neglected Children. By and large, the position of Children in conflict with law is deplorable. Though the legislations relating to Children recognize that

Juveniles in conflict with law also require care and protection, in reality, the treatment meted out to Juvenile offenders is shockingly bad. In India there exists a Juvenile Justice Delivery System for Children in conflict with law. As far as Tamil Nadu is concerned, on analysis it is felt that there appears a gap in the procedure followed by various institutions of the System, the reformative measures, including the Juvenile Justice Boards and the provisions of the law. While some studies have focused on general study and functioning of the Juvenile Justice Boards across the world, there is no comprehensive study on the functioning of the Juvenile Justice Board in Chennai City, the factors which contribute to Juvenile delinquency by Children in Chennai City and the procedures followed by the Juvenile Justice Board. Therefore, the present study has been conducted to examine the mechanisms of Justice Delivery for Juveniles in conflict with law in Chennai. A study has been made on the number of crimes reported against the Juveniles restricting to Chennai City during the year (2012-2014). The reason behind the fact why Children get themselves involved in crimes, the circumstances which forced them to do a criminal act, the age in which most of the offence occurs are discussed. In this context, the present investigation thought it fit to identify the most crime prone area in Chennai and find out the reason why Children of that particular area are accustomed to criminal activities. Therefore, a study with regard to the living condition of the Juveniles in that particular area, their economic, social and educational status, family background, habits and their relationship between parents, mental and physical condition and the causes for the delinquency level was studied. Before going into the detailed analysis of the study with regard to the Juvenile Justice System in Chennai City, it is necessary to have an overview as to how various countries have viewed Juvenile Justice System in a different manner.

## HISTORY OF JUVENILE JUSTICE SYSTEM IN INDIA

In present era, a movement for the special treatment of juvenile offenders has started throughout the world including many developed countries like U.K., U.S.A. This movement has been started around the 18<sup>th</sup> century. Prior to this, juvenile offenders were treated as same as other criminal offenders. And for the same reason, General Assembly of United Nations has adopted a Convention on the Rights of Child on 20<sup>th</sup> November 1989. This convention seeks to protect the best interest of juvenile offenders. The Convention states that to protect the social – reintegration of juvenile, there shall be no judicial proceeding and court trials against them. The Convention leads the Indian Legislation to repeal the Juvenile Justice Act, 1986 and to make a new law. Thus, Indian Legislation came up with a new act which was called as

*“The Juvenile Justice (Care and Protection of Children) Act, 2000.*

**The Juvenile Justice, 1986** which repealed the earlier *Children Act, 1960*, aimed at giving effect to the guidelines contained in the Standard Minimum Rules for the Administration of Juvenile Justice adopted by the U.N. countries in November 1985. The above mentioned Act consisted of 63 Sections, 7 Chapters and is extended to whole India except to the State of Jammu and Kashmir. The primary purpose of the Act was to provide care and protection, treatment, development and rehabilitation of the neglected juvenile delinquent. The main objectives of the Act were:

The act basically laid down uniform framework for the juvenile justice in country in such a way that it protects the right and interest of juvenile.

It talks about the machinery and infra – structure for the care, protection treatment, development and rehabilitation of the juvenile offenders.

It set out the basic provisions for the proper and fair administration of criminal justice in case of heinous crime done by juvenile offenders.

### **Juvenile Justice Act, 2000**

The Act was enacted in year 2000 with aim and intent to provide protection for children. The mentioned was amended twice – first in the year of 2006 and later in year of 2011 .The amendment was made to address the gap and loopholes in the implementation.

Further, the increasing number of cases of juvenile crimes in the last recent years and frightful incident of “*Delhi Gang Rape Case*” has forced the law makers to come up with the law. The major drawback of the Act was that it contains ill equipped legal provisions and malfunctioning juvenile system was also the major reason in preventing the juvenile crimes in India. The act was replaced soon by *The Juvenile Justice( Care and Protection) Act, 2015*.

### **Present Juvenile Justice System in India**

Like the other countries, India had also made legal provisions that especially and specifically deals with the rights and protection of juvenile offenders which seeks to tackle the problem of juvenile delinquency. The Juvenile Justice System in India is made on the basis of three main assumptions:-

young offenders should not be tried in courts, rather they should be corrected in all the best possible ways,

they should not be punished by the courts, but they should get a chance to reform

trial for child in conflict with law should be based on non-penal treatment through the communities based upon the social control agencies for e.g. Observation Homes and Special Homes.

### **Juvenile Justice Act, 2015**

The Juvenile Justice act of 2015 replaced the Juvenile Justice act of 2000 because there existed a need for a more robust and effective justice system that focused on deterrent as well as reformative approaches. The approach towards Juveniles should be different from that of adults, there were contentions made in the Parliament that the Juveniles should be given more space for transformation or reformation or improvement and that is only possible when there's a special justice system. Thus, the new act i.e. the Juvenile Justice (care and protection of children) Act, 2015 focused on a Juvenile friendly approach of adjudication and disposition of matters.

### **Some of the salient features are as follows:**

Section 2 (12) of the Juvenile Justice (care and protection of children) Act, 2015 gives the definition of the Child, meaning thereby that a child is a person who hasn't completed the age of 18 i.e. he/she is below 18. The Act has given a classification regarding the term 'Child' namely "Child in need of care and protection" and Section 2 (13) of the Juvenile Justice (care and protection of children) Act, 2015 that talks about "Child in conflict with law".

There was a clear distinction made regarding the facets of offences, meaning thereby that categories were made terming the offences as heinous, serious and petty. There have been

specifications made regarding the Juveniles who are between the age of 16-18, if any kind of crime is committed by them then after due perusal of their mental capacity, they can be tried as an adult.

Introduction of Juvenile courts, meaning thereby that special courts were to be established that will be trying the Juvenile offences only, like that of the NDPS courts, courts dealing with POCSO, etc.

With the coming of the 2015 Act, the scope of the definition of 'Child in need of care & protection' was enhanced to another level by considering the following points from the many mentioned in Section 2 (14) of the Juvenile Justice (care and protection of children) Act, 2015:

- Those whose guardians or parents are/ were unfit or uninterested in taking care of the child.
- Those who are/ were found performing works that are in contravention to the labor laws.
- Ones who have the imminent threat of marriage before attaining the specified lawful age.
- The meaning of adoption has also been specified in the Act through which the rights an adopted child stands recognized.

The aims to consolidate the laws relating to children alleged and found to be in conflict with law and children in need of care and protection by catering and considering their basic needs through proper care& protection, development, treatment, social- integration, by adopting a child friendly approach in the adjudication and disposal of matters in the best interest of children. The act also focuses on rehabilitation of juvenile offenders through various child care houses and institutions.

The most important subjects of the Act are as follows:-

Claim of Juvenility

The very first and most debatable question among the legal fraternity and socialists is the “claim of juvenility”. The claim of Juvenility is to be decided by Juvenile Justice Board. The Board has to decide the claim of juvenility before the court proceedings but the claim of juvenility can be raised before the court at any stage of proceedings and even after the disposal of the matter by the Board. The Board had to consider **Rule 12 of the Juvenile Justice Rules, 2007** in order to determine the claim of juvenility. In case of *KulaiIbrahim v. State of Coimbatore* it was observed by the Court that accused has right to raise the question of juvenility at any point of time during trial or even after the disposal of the case under the Section 9 of Juvenile Justice Act, 2015.

In case of *Deoki Nandan Dayma v. State of Uttar Pradesh* the court held that entry in the register of school mentioning the date of birth of student is admissible evidence in determining the age of juvenile or to show that whether the accused is juvenile or child.

Again in the case of *Satbir Singh & others v. State of Haryana*, Supreme Court again reiterated that for the purpose of determination whether accused is juvenile or not, the date of birth which is recorded in the school records shall be taken into consideration by Juvenile Justice Board.

In case of *Krishna Bhagwan v. State of Bihar* the court stated that for the purpose of trial under Juvenile Justice Board, the relevant date for the considering the age of juvenile should be on which the offence has been committed.

But later in case of *Arnit Das v. State of Bihar*, the Supreme Court overruled its previous decision and held that date to decide in claim of juvenility should be the date on which the accused is brought before the competent authority.



## **Juvenile Justice Board**

There shall be a constitution of Board for the purpose of inquiry and hearing in the matters of juvenile in conflict with law.

The Board shall consists of Principal Magistrate and two social workers, among whom one should be a women. The Act provides that under no circumstances the Board can regulate and operate from regular court premises. The decision taken by the Principal Magistrate shall be final.,

**Special Procedure of Juvenile Justice Board:** The Act has provided the procedure against the juvenile offender. Following are the main special procedure –

- The proceedings cannot be initiated on a complaint registered by the police or citizen
- The hearing must be informal and should be strictly confidential.
- The offenders should be kept under Observation Home after detention.
- The trial of juvenile in conflict with law shall be conducted by lady Magistrate.
- A child in conflict with law may be produced before an individual member of the Board , when Board is not sitting.

## **Causes of Juvenile Delinquency**

Researches and Studies shows that they are various causes of juvenile delinquency in India. Every person has different behavioral patterns so as in case with children also. The behavior patterns develop in early childhood and at early stage it is very difficult to identify any kind of behavior. But as soon as, child grows up comes out to real world, behavior patterns changes from

time to time and many circumstances or situation may arose the delinquent behavior in them.

Following are some of the causes of Juvenile Delinquency:-

**Adolescence Instability-** The biological, psychological and sociological are one of the important factors in the behavior pattern of adolescent. At this stage, teenagers become more conscious about their appearances and fashions, enjoyment, food, play and etc. And at this age, they want freedom and they wanted to be independent but sometimes they are given any chances and oophoritis by their parents, teachers and elders this leads to development of anti – social behaviour in them. Thus, this anti – social behaviour, biological changes, psychological causes are some of the reasons which are responsible for juvenile delinquency.

**Disintegration of Family System-** Disintegration of family system and laxity in parental control is also the main cause of increasing rates of juvenile delinquency. In normal cases divorce of parents, lack of parental control, lack of love and affections are the major factors of juvenile delinquency.

**Economic condition and Poverty-** Poverty and poor economic condition is also considered has major contributing factor of increasing juvenile crimes as result of poverty, parents or guardian fails to fulfil the needs of the child and at the same time children wants that their desires should be fulfilled by parents by hook or by cook and when their desires are met they start themselves

indulging in stealing money from homes or any other parents. And this develop habitual tendency of stealing which results into theft at large scale.

**Migration-** Migration of deserted and destitute juveniles' boys to slums areas brings them in contact with some anti – social elements of society that carries some illegal activities like prostitution, smuggling of drugs or narcotics etc. These sorts of activities attract the juvenile a lot and they may involve themselves in such activities.

**Sex Indulgence-** The children those who have experienced sex assault or any other kind of unwanted physical assault in their early childhood may develop any kind of repulsiveness in their behaviour and mind. In this age they may become more vagrants or may want to have sex experience. Too much of sex variance may lead the boys towards the crime of kidnapping and rapes etc.

**Modern Life Style-** The rapidly changing society patterns and modern living style, makes it very difficult for children and adolescents to adjust themselves to the new ways of lifestyle. They are confronted with problems of culture conflicts and are unable to differentiate between right and wrong.

### **Juvenile Justice and Constitution of India**

The Constitution of India is consider as the fundamental law of India. Constitution provides rights and duties of citizens. It also provides provision for the working of the government machineries. Constitution in Part III has provided Fundamental Rights for its citizens in the same

manner in its Part IV it has provided *Directive Principles of State Policies (DPSP)* which acts as general guidelines in framing government policies. Constitution has provided some basic rights and provisions especially for the welfare of children. Like: –

- Right to free and compulsory elementary education for all the children under the age of 6 to 14 years. (Article 21A)
- Right to be protected from any hazardous employment under the age of fourteen age. (Article 24)
- Right to be protected from being abused in any form by an adult. (Article 39(e)).
- Right to be protected from human trafficking and forced bonded labour system. ( Article 39)
- Right to be provided with good nutrition and proper standard of living. (Article 47)
- Article 15(3) of the Constitution of India provides special powers to State to make any special laws for the upliftment and the betterment of children and women.

Therefore, the law makers while drafting the Juvenile Act, 2015 has consider all the necessary provisions laid down by the Constitution so that child's rights are protected in all the possible ways.

This is for the same reason that Chapter IV of the Act lays down the provisions for betterment of the juveniles and has focused on the Reformation and Rehabilitation of Juveniles in all the possible circumstances.

### **Criminal Justice (Reformative or Punitive) and Juvenile**

Juvenile Justice is a legal framework which defines justice for juvenile under the Indian Legal System. The system is giving a special treatment and protection to juvenile delinquency. Juvenile Delinquency means a crime committed by youth who is under the age of 18 years. At present, everyone knows that there is an increasing rate of juvenile crimes and this increasing rate is creating a debatable issue of age determination. Age determination is considered as one of the most important factor to determine the maturity level of the accused. The increasing crime rate is raising a question that whether the juvenile can be tried as an adult or not? The act itself answer to the question that no juvenile offender who comes under the definition of “ child with conflict with law” as defined under sub – section 13 of Section 2 of the Act shall not be tried as adult and shall sent to Child Care Centre or any Rehabilitation Centre (till the offender attain the age of 21 years and then he or she may shifted to the jail or prison).

Thus, the present Juvenile Law in India, considers Age Determination as paramount importance to find out whether the offender falls under the purview of Juvenile Justice Act.

According to the Act, the maximum tenure of punishment which can be given to the juvenile offenders is three years and this punishment is valid for heinous crime also. In case of an adult offender, the maximum punishment which can be given is 7 years or life imprisonment or death penalty. But, the Act, in case of juvenile offenders believe on Reformation of juvenile as much

as possible. The reformation type of punishment under the Act includes: – Sending juvenile to Rehabilitation Centres, Juvenile Schools or making them involve in various program headed by government or NGO's.

In the present scenario, there is no need to give such a minor kind of punishment for a heinous and harsh offence just because of Age determination or Age factor. Rape is Rape, one can't walk away taking a plea of age factor or mental incapacity or mental unfitness.

Thus, the existing law in the name of Age determination or Age Consent, is not creating a deterrent effect on the anti – social behaviour of youth. Juvenile offenders are in believe that committing heinous crime is no issue as they will get away very little or no punishment in name of reformation.

Adopting of reformatory theory of punishment by law, is giving an undue advantage to juvenile to perpetuate their ability to commit crime without facing any harsh consequences. Reformation is good but not always. If law is talking about reforming the juvenile offenders so that they can have a better life in future then law should also talks about the rights of the victim. Justice must be given to the victim. The theory of reformation is helping juvenile to reform but it is not helping the victim at all.

The present juvenile system in India is created on believe that juvenile offenders can be reformed and rehabilitated, sending them to bars or prisons will going to reaffirm their status and identity as “criminals”. Now the question arises is that there is no guarantee that juvenile offenders will get reformed and will not show their anti – social behaviour again.

The act is totalling focusing on the reformation rather than penalization. Penalization will definitely will create a deterrent effect on the juvenile and increasing rate of crime by juvenile will slow down.

### **What is the doctrine of 'Doli Incapax'**

One amongst the important principles of Criminal Jurisprudence is the doctrine of 'Doli Incapax', which enunciates the criminal liability of the Juvenile. When this doctrine is applied and interpreted with regards to the Indian Laws, the result it gives is that no Juvenile under or of the age of 7 years should be prosecuted for the commission of the crime.

The doctrine of 'Doli Incapax' means the incapability of committing a crime. It finds its basis on article 40 (3) (a) of the United Nations Convention on Rights of Child, that states that every country must mention the minimum age for the children who should be exempted from any kind of criminal liability because of their inability to decipher the nature and consequences of the act.

For Juveniles falling under the age of 8 to 14 years, the prosecution has the liability to prove the offence of the concerned child.

The main aims of this doctrine can be elucidated in the following points:

- A child should be protected from the gravity of punishment inflicted upon him to his act. A reformatory approach should be adopted to make the child overcome his paranoia.
- A child that belongs to the age group of below 7 years, doesn't possess the mental capacity to analyze the consequences of his acts, he/ she may lack the knowledge as well as the intention to commit a crime and mere 'actus reus' cannot be a ground for prosecution unless accompanied with 'mens rea'.

### **Penal provisions and related judgements:**

Section 82 and 83 of the Indian Penal Code, 1860 talks specifically about the exemption from prosecution of the Juveniles.

The Supreme Court in the case of *Kakoo V. State of Himachal Pradesh* reduced the punishment of a 13-year-old boy who had raped a 2-year-old girl. The court took into consideration sec. 83 and 84 of the IPC that Juveniles can't be treated as that of the adults. Thus, it is a very well-settled law that while dealing with the Juveniles the court should consider reformatory and humanitarian approaches.

But in the case of *Heeralal V. State of Bihar*, a child threatened an adult that he'll chop him into pieces and subsequently the child stabbed a person till his death. He was sentenced by the trial court with a reasoning that the child was mature enough to understand the ramifications of his act. The Supreme Court also dismissed the petition.

What role does the Police play



The Police in the Juvenile Justice System are known to be the gatekeepers, meaning that they are the ones who have the power to make initial decisions regarding how the case would be handled. The gatekeepers enjoy a huge amount of discretion, as a result, only a few cases come up from the plethora of acts committed and this is again a great matter of ignominy.

If a piece of information is received by the Police officer, then it is a provision that they should be kept in special homes and not lockups or jail, the matter is to be dealt with by a child welfare officer, who'll be reporting things to the Juvenile Justice board. In some of the cases, it is also observed that the Police officer may on prima facie facts & circumstances grant bail to the Juvenile.

The main reason for the appointment of a child welfare officer is because many of the research works have shown that the interaction between the Police and the young people are often characterized by high levels of fear, domination, mistrust, dissatisfaction, etc. Police on the other hand sometimes behave in a hectoring and stubborn way, which then results in the establishment of negative perceptions.

The aggressive, rude, abusive and uncooperative behaviour by both sides is an imbroglio per se.

## **1.2. JUVENILE JUSTICE SYSTEM IN DEVELOPED AND DEVELOPING COUNTRIES**

### **1.2.1. United States of America**

Definition of "Juvenile". A "Juvenile" is a person who has not attained his eighteenth birthday, and "Juvenile delinquency" is the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult. A person over eighteen but below twenty-one years of age is also accorded Juvenile treatment if the act of Juvenile delinquency occurred prior to his eighteenth birthday<sup>3</sup>.

The American Juvenile Justice System is aimed towards punishing and rehabilitating adolescents who exhibit criminal behavior. The intentions of the Juvenile Justice System are to intervene early in delinquent behavior and act to prevent adolescents from engaging in criminal behavior as adults. The System involves incarceration as well as alternative schooling programs. The number of adolescents affected by the Juvenile Justice System has grown with the rise of zero tolerance policies in schools, which enforce harsh punishment for any activity by students that is deemed unsafe or threatening to a safe learning environment. Some scholars, such as Laura Finley, argue that the System criminalizes and mistreats Children, and that the policies surrounding Juvenile delinquency stem from fear of adolescents and government failure to recognize Children as having political and social rights<sup>4</sup>.

In the United States as of 1995, minor is legally defined as a person under the age of 18, although 21 with the context of alcohol, people under the age of 21 may be referred to as "minors". However, not all minors are considered "Juveniles" in terms of criminal responsibility. As is frequently the case in the United States, the laws vary widely by state. In four states, New York, New Hampshire and Texas "Juvenile" refers to a person below 17 years of age. In most states a Juvenile is legally defined as a person below 18 years. Under this distinction, those considered Juveniles are usually tried in Juvenile Court and they may be afforded other special protections. For example, in some states a parent or guardian must be present during Police

questioning, or their names may be kept confidential when they are accused of a crime. For many crimes (especially more violent crimes), the age at which a minor may be tried as an adult is variable below the age of 18 or (less often) below 16. For example, in Kentucky, the lowest age a Juvenile may be tried as an adult, no matter how heinous the crime is 14 years. In most states, Juveniles may not be incarcerated with adult inmates, even if the Child is charged as an adult. This is also discouraged by the federal government, which prefers funding only if Children and adults are housed in separate facilities. The death penalty for those who have committed a crime while under the age of 18 was discontinued by the U.S. Supreme Court Case in *Donald P. Roper*<sup>5</sup> on writ of certiorari to the supreme court of Missouri decided on [March 1, 2005]. In *Stanford v. Kentucky*,<sup>6</sup> a divided Court rejected the proposition that the Constitution bars capital punishment for Juvenile offenders in this age group.

### **1.2.1. Doctrine of Parens Patriae**

The doctrine of Parens Patriae frequently arises in the Juvenile Justice System where Children are taken away from parents due to abuse or neglect.

Typically, the state will serve as a guardian for the Children, usually by placing them in a group home or with foster parents. The types of issues where the Parens Patriae doctrine plays a role includes Juvenile detention matters, neglect issues, custodial issues, medical matters and Child support matters. Moreover, the doctrine allows the state to step in and help individuals protect themselves when they are unable to do so for themselves. Additionally, the doctrine is limited in nature, in other words, once a caregiver or parent can demonstrate that they can effectively care for the Child or other individual, the Parens Patriae doctrine is no longer applicable.

A Juvenile Justice System was established in the United States about 100 years ago with the goal of diverting youthful offenders from the destructive punishments of criminal courts and encouraging rehabilitation based on the individual Juvenile's needs.<sup>7</sup> This System was to differ from adult or criminal court in a number of ways. It was to focus on the Child or adolescent as a person in need of assistance, not on the act that brought him or her before the court. The proceedings were informal, with much discretion left to the Juvenile court judge.

Because the judge was to act in the best interests of the Child, procedural safeguards available to adults, such as the right to an attorney, the right to know the charges brought against one, the right to trial by jury, and the right to confront one's accuser, were thought unnecessary. Juvenile court proceedings were closed to the public and Juvenile records were to remain confidential so as not to interfere with the Child's or adolescent's ability to be rehabilitated and reintegrated into society. The very language used in Juvenile court underscored these differences.

Juveniles are not charged with crimes, but rather with delinquencies; they are not found guilty, but rather are adjudicated delinquent; they are not sent to prison, but to training school or reformatory. In practice, there was always a tension between social welfare and social control that is, focusing on the best interests of the individual Child versus focusing on punishment, incapacitation, and protecting society from certain offenses. This tension has shifted over time and has varied significantly from jurisdiction to jurisdiction, and it remains today.<sup>8</sup> When a Juvenile breaks the law in the United States, he is entitled to several constitutional rights including pretrial rights and appellate rights.

### **1.2.2 Pretrial Rights of the Juvenile**

One of the pretrial rights afforded to Juveniles is the right to a Miranda warning. This warning is given by a Police Officer to Juveniles who are taken into custody after being accused of committing a crime. The Miranda warning is important because it ensures the admissibility of any statements the Juvenile may make in later court proceedings. Before this warning existed, Juveniles had no such advance notice. The Miranda Warning is well-known to the common public in the United States, thanks to legal and Police shows on television. This warning warns a Juvenile that:

- He has the right to remain silent
- That anything he says can be used against him in court
- That he has the right to a lawyer
- That if he cannot afford a lawyer, one will be appointed for him

After being given a Miranda warning, if the Juvenile agrees to continue talking with the Police Officer, then it is called waiving one's Miranda rights.

Another pretrial right afforded to Juveniles is the right to receive a complaint. The complaint lays out what the Juvenile has been charged with and what he is facing in court. This is an important right for a Juvenile to have because it provides adequate knowledge and details about what the Juvenile is alleged to have done wrong, which is imperative to preparing for the hearing.

The last pretrial right afforded to Juveniles is the right to have an attorney.

An attorney answers any questions a Juvenile may have and represents their legal rights in court. Attorneys will talk with the Juvenile and explain how the process works. The attorneys will then stand up and speak for the Juvenile in court, defending the Juvenile against the charges he is facing.

### **1.2.3 Trial Rights**

The Juvenile has a right to a trial. A trial is when two parties, a prosecutor representing the government and a defense attorney representing the Juvenile, meet in court before a judge or jury in order to present evidence to support their case.

The purpose of trials in the United States is to ensure that a Juvenile accused of a crime receives a fair and impartial evaluation of the situation in order to determine if he is guilty or not.

In most states, a Juvenile does not have a right to a jury trial unless he is facing a bind over. A bind over is a proceeding to determine if the Juvenile should be tried as an adult in court, instead of as a minor. Bind overs are mainly done in serious cases, such as murder. Therefore, most Juvenile cases are tried in front of a judge. This is called a bench trial.

In every state, the Juvenile has a right against self-incrimination. This means that a Juvenile does not have to say anything at all in court. He does not have to answer any questions posed to him by the prosecutor in court; he does not have to testify and does not have to present any witnesses. This is important because it is the role of the prosecutor to prove that the Juvenile committed the crime and it is not the job of the Juvenile to prove that he didn't commit the offense.

### **1.2.4 Appellate Rights**

A Juvenile has a right to appeal, or Judicial review of the trial court's proceedings during the guilt and punishment phases. An appeal is not a new trial - the purpose is for the Juvenile to ask a higher court to review arguments of issues not raised at the trial court level. There are many

issues that could be raised on appeal the failure of a trial court to rule on a certain motion, the trial court's denial of a motion, or even a trial court's verdict or sentence.

### **1.2.5 Youth Justice in England**

In the Criminal Justice System, a 'Child' means a person under the age of 14 and 'young person' means a person who has attained the age of 14 and is under the age of 18. However, for the purposes of the Children Acts 1989 and 2004, a 'Child' is anyone who has not reached their eighteenth birthday. Although the phrase 'Juvenile' is still widely used to describe young people below 18 years, in English, it carries connotations of Childish and of immature behavior which can be seen as labeling and hence the term 'young people' is used.

In England and Wales, cases of minors breaking the law are often dealt with by the Youth offending team. If they are incarcerated, they are sent to a young offender Institution. Children below eighteen years of age are prohibited from sitting on a jury, voting, standing as a candidate, buying or renting films with an 18 certificate or R 18 certificates or seeing them in a cinema, being depicted in pornographic materials, suing without a litigant friend, being civilly liable, accessing adoption records and purchasing alcohol, tobacco products, knives and fireworks. Youth Justice System in England and Wales comprises the organs and processes that are used to prosecute, convict and punish persons under 18 years of age who commit criminal offences. The principal aim of the youth Justice System is to prevent offending by Children and young persons.

### **1.2.6 Psychology**

Youth offending teams have psychologists who arrange meetings between them and the young person, their family, and the victim(s) either together or separately. These meetings would facilitate to bring out an idea that a young person's behavior and offending is linked to other

problems in his life. The meetings are informal and typically last an hour but can vary in length depending on the preference of the young person and psychologist. While these meetings are primarily for conversation, the psychologist will sometimes employ drawing or other tests to explore problems. Occasionally the psychologist will include other family members if relevant. Psychologists normally occur every two to three weeks. Reports made by the psychologist on the young person are maintained in file, along with any other relevant information of the case.

### **1.2.7 Age of Criminal Responsibility**

According to Section 50 of Children & Young Persons Act 1933, “It shall be conclusively presumed that no Child under the age of ten years can be guilty of any offence.” In England and Wales and in Northern Ireland a minor is a person under the age of 18 years. In Scotland a minor is a person under the age of years. The age of criminal responsibility in England and Wales and in Northern Ireland is 10 and 12 in Scotland, formerly 8, which was the lowest age in Europe.

### **1.2.8 Aims of Youth Justice System**

Section 37 (1) of the Crime and Disorder Act 1998 establishes that the principal aim of the youth Justice System is “to prevent offending by Children and young persons.

### **1.2.9 Prevention**

Government Policy in England and Wales has explicitly sought to promote work to prevent offending by young people. Early intervention to prevent young people offending could save public services more than £80 million a year, according to the Audit Commission’s report Youth



Justice 2004. Problems that may lead to a young person's troublesome behavior include a lack of education, poor family relationships, having family members or peers who have offended, and misuse of substances. Various Programmes such as Youth Inclusion Programme (YIP), Youth Inclusion and Support Panels (YISPs), Parenting Programme provide parents with an opportunity to improve their skills in dealing with the behavior that puts their Child at risk of offending. They provide parents/care takers with one-to-one advice as well as practical support in handling the behavior of their Child, setting appropriate boundaries and improving communication. Parents with a Child who has become involved with the youth Justice System may be offered the opportunity to voluntarily attend a Parenting Programme by the local YOT, if they consider that it would be useful. However, if voluntary participation cannot be achieved, a Parenting Order can be sought by the YOT which compels the parents/care takers of a Child at risk to attend. Safer School Partnerships (SSP) Programme enables local agencies to address significant behavioral and crimerelevant issues in and around a school. A result of the YJB's proposal is to develop a new policing model for schools. It was launched as a pilot in September 2002, and brought into mainstream policy in March 2006.

### **1.2.10 Mentoring**

Mentoring pairs, a volunteer with a young person at risk of offending. The volunteer's role is to motivate and support the young person on the scheme through a sustained relationship, over an extended period of the time. The relationship is built upon trust and a commitment to confidentiality and equality between the mentor and the young person. The relationship must be structured and have clearly identified objectives. These objectives should be to help the young person identify and achieve educational, vocational or social goals which address the factors in the young person's life that put them at risk of offending

### **1.2.11 Pre-court Measures**

#### **Pre-court Diversions Issued by Police**

Reprimands and final warnings were available to the Police from 1998 until 2013, when they were replaced by the youth caution.

#### **Reprimand**

Reprimand is a synonym of Condemn, reprehend, admonish by a lawful authority in a formal way. Till 2013, for relatively minor offences, the Police could issue a reprimand. This was not a criminal conviction, but the reprimand was recorded on Police national computer records and any further offending would usually have resulted in a Final Warning or court appearance. A young person who received a Police reprimand was not required to undertake any work with the YOT, although this may have sometimes been offered on a voluntary basis. A reprimand can be cited as a criminal record and would have to be declared for occupations exempt from the Rehabilitation of Offenders Act.

## **Final Warning**

Until 2013, a final warning was a disposal used by the Police, without a young offender (who had to admit their guilt) having to appear in court. They were issued to offenders aged 10–17. A record was made of this on the Police National Computer System. A Final Warning on a person's record influences the decision of the courts and Police if a further offence is committed. A Final Warning constitutes a criminal record but not a criminal conviction. It has to be declared when people apply for employment which is exempt from the Rehabilitation of Offenders Act Youth Offending Teams worked to prevent young people from re-offending after a Final Warning. They would visit and assess young offenders and undertake diversionary work before (or after) the formal Final Warning was issued.

### **1.3. JUVENILE JUSTICE IN OTHER EUROPEAN COUNTRIES**

In Continental Europe, since the modern Juvenile Justice System effectively originated in the United States, most early delinquency laws in European countries<sup>11</sup> were modeled on the concepts and practices used in Chicago in the late 19th century. However, each European country implemented programs suited to its own history, culture, and values.

#### **1.3.1. Juvenile Justice System in Germany.**

The contemporary Juvenile System in Germany reflects the practices that developed in the Federal Republic (West Germany) after World War II. The primary goal of the German System is not to punish but to instruct delinquent youth and to change undesirable behavior patterns, often by working within the family. Status offenses do not exist in the German legal System, but German youths who exhibit delinquent behavior are often handled by the welfare System and by a guardianship court (family court). German law also recognizes three Juvenile categories:

Children (those under 14 years of age, who are presumed to be not responsible for their actions because of their youth), Juveniles (those between the ages of 14 and 18), and adolescents (those between the ages of 19 and 21).

Prosecutions of Juvenile cases also differ depending on the seriousness of the offense, relatively minor cases (involving less than one year of incarceration) are handled by a Juvenile court judge; more serious cases are heard by a tribunal composed of one Juvenile judge and two lay judges; and the most serious cases are reserved for another mixed tribunal consisting of three trained judges and two lay Judges.

### **1.3.2. Juvenile Justice System in Philippines**

As per the Juvenile Justice and Delinquency Prevention Act 2004 'any person who has not attained the age of 18 years is a Juvenile '.

In Philippines, a Juvenile court System was established with the US System as its model. The first delinquency law was created in 1930 (as part of Article 80 of the Revised Penal Code), but it was not until 1955 that the first Juvenile court was established, in Manila. This System was rarely used, however, especially in the provinces, largely because of a lack of funds but also because of cultural traditions and government policies. It was replaced by a strong and far-reaching barangay System, legally established in 1978 and based on principles of reconciliation and informal mediation. Every person in the country lives within a barangay, which is a political unit, headed by an elected official, a captain Virtually all minor cases of Juvenile misbehavior (and many serious ones as well) are handled within this System, which explicitly excludes lawyers and the advocacy approach to resolving citizen complaints. The passage in 2006 of the

Juvenile Justice and Welfare Act placed new emphasis on restorative Justice and declared Juveniles under the age of 15 to be criminally exempt.

### **1.3.3. Juvenile Justice System in France**

Juvenile offenders are governed by an Ordinance of February 2, 1945, on Juvenile Offenders which has been amended several times. The Ordinance sets forth the principles applicable in this area, in particular, the priority of the educational approach over punishment and the necessity of special courts and procedures. Since that law of 1945 was passed, the judge tries to understand Juvenile offending behavior in the context of the Juvenile's life; the offending behavior is thus considered as a sign of a need to intervene.

Because of the court's dual jurisdiction for "Children in need of care" and "Juvenile delinquents", the Juvenile court judge is in an unparalleled position to identify and react to the risk/needs factors most often associated with young offenders. The "juge des enfants" undertakes the criminal investigation; orders social psychological and family studies; and integrates educational, occupational, medical and psychiatric services for the young person and their family. Most of the procedures involving Children and young people take place in the informal settings of the chambers of the "juge des enfants" where the judge usually dispenses with the legal formalities which are obligatory with adults. The judge receives referrals from many sources: schools, social services, Police, Children's organizations, parents or even Children themselves. While cases involving serious or persistent offending may be referred for trial (Garapan 1995), for the vast majority of cases the judge typically requests that a social and educational worker assess the family environment in which the youth is being raised (Investigation orientation Educative). This inquiry focuses on the problem profile of the youth's

family, the extent of the youth's criminal record, and the youth's school behavior. After this preliminary investigation the Juvenile court judge has a wide range of options at his/her disposal to respond to the problem profile of the youth and the family.

These options include, but are not limited to, placing the Juvenile in a Children's home (judgment de grade); appointing a social worker to assist the youth and family (liberty surveille); placing the youth into the care of a special educational establishment where the Child may be ordered to see a psychiatrist, psychologist or vocational guidance expert (consultation orientation educative); placements in local activity schemes designed to steer adolescents away from opportunistic petty offences (observant on en milieu ouverte); community service order for offenders between sixteen and eighteen years of age (travail dimeter general); or placing the youth in custody if necessary (detention) (Blatier and Corrado 2001). The focus is on evaluating the risk posed to the Child if he remains within the family. Where it is deemed necessary, experts will also be consulted to assess the specific risk factors in health, mental health, and school. In addition, the Juvenile court judge has the option of retaining the youth under the court's protective care until the age of twenty-one. During this period, the judge considers the specific problems that are inhibiting the youth's ability to reintegrate into the community.

### **Penalties**

Penalties, however, are adapted to the age of the Child. The Penal Code distinguishes five categories such as Children without discernment. For these Children there is no criminal liability. The Juvenile Justice Judge may, however, consider that the Child is in danger or that the conditions of his education are gravely compromised and order an educational or assistance measure. Secondly, for Children under ten with discernment, the Child may be found criminally

responsible before a Juvenile Justice court. He/she cannot receive either a criminal penalty or an educational sanction. Educational sanctions are a new tool introduced in 2002. They fall between educational measures and criminal sanctions. For Children from ten to thirteen, the judge may order the following educational sanction. Confiscation of the object used in the commission of the offense, ban on associating with the victim or the accomplices, ban on going to the place where the offense took place, compensation of the victim, and mandatory civic education. In the event of non-compliance with these sanctions, the judge may order placement in an institution. The sanctions will appear on the Child's criminal record. For, Children from thirteen to sixteen, criminal penalties incurred are half the ones stipulated for adult offenders. The Juvenile Justice court may combine criminal penalties with educational measures. For, Children from sixteen to eighteen, they may benefit from the same penalty reduction than Children from thirteen to sixteen receive, but in their case, this reduction is optional.

#### **1.3.4. Juvenile Justice System in New Zealand**

In New Zealand criminal responsibility begins at age ten<sup>1</sup>; however, under the CYPF Act, prosecution of Children aged 10 to 11 is limited to murder and manslaughter. Police still have a range of options available to respond to offending by 10- to 13-year-olds, described below in the process for dealing with Child offenders. Serious or persistent offending by Children aged 12 and 13 can also be brought to the Youth Court. Youth aged 14 to 16 can be formally charged and prosecuted for any offence. Young people aged 17 or over are dealt with in the same manner as adults.

A young person who commits offences beyond the age of 16 is dealt with in the same manner as an adult, that is, in the District Court or, if the offence is serious, in the High Court. The very

serious offences of murder and manslaughter committed by any young person aged 10 years or over are automatically transferred by the Youth Court to be dealt with in the High Court (if there is a case to answer after a depositions hearing). The Youth Court can decline to offer Youth court jurisdiction for serious offending (for example, arson and aggravated robbery) which then must be heard in the District Court. There is also provision in other cases for the Youth Court to transfer matters to the District Court after the charge has been proved, depending on the seriousness of the case and the previous offending history of the young person. Such cases are rare. Most charges laid in the Youth Court are resolved in the Youth Court. The vast majority of offending by young people (83%) is now dealt with under the alternative youth Justice procedures under the control of the Police.

Also, as in most jurisdictions now, it is expected that minor and first offenders will be diverted from prosecution by means of an immediate (street) warning. Where further action is thought necessary, the Police can refer Juveniles to the Police Youth Aid section (a specialist unit dealing only with Juveniles) for follow-up - for example, a warning in the presence of the parents. Youth Aid may also require an apology to the victim and give the Child or young person an additional sanction (for example, some work in the community). Evidence suggests that 44% of Children and young people are dealt with by warnings, 32% by Police Youth Aid diversion, 8% by direct referral to a Family Group Conference and 17% by charges in the Youth Court followed by a Family Group Conference.

### **1.3.5. Juvenile Justice System in Australia**

In Australia a person who is accused of committing the crime is less than 18 years old at the time of the offence. He or she will usually be dealt with through the Juvenile Justice System.



However, they do not have the full legal responsibilities of an adult, and may still be in the process of learning about these responsibilities and how to exercise them. In South Australia, youths who abide by the law, but made mistakes in growing up, are encouraged to start life without being limited by youthful errors. However, the principle of restoration is an important one. This can be demonstrated through the Family Conference System under the Young Offenders Act 1993<sup>17</sup>. Family Conferences are held, in certain circumstances, as a way of diverting young offenders from court where the offence is minor. Family Conferences provide an opportunity for the young person, the victim of the offence, family, supporters and a Police Officer to discuss what has happened, how it has affected each person and how the offence will be dealt with.

The conference is chaired by a Youth Justice Coordinator who encourages all participants to arrive, by consensus, at an appropriate outcome. An outcome may include agreement by the youth to pay compensation, apologize either in person or in writing, perform community service and participate in various programs or anything else that is considered appropriate under the circumstances. Victims are encouraged to contribute to discussion regarding suitable restitution for the harm caused, or how the harm should be made good. Compliance with undertakings is monitored by the Youth Justice Co-Ordinator, and you will be informed of the outcome at the conclusion of the case. Having you present at a conference can significantly affect a young person's understanding of the consequences of his or her offending behavior. The process therefore encourages a young offender to take responsibility for that behavior and participate in a process that is both restorative and healing for all participants.

### **1.3.6, Juvenile Justice System in India**

As far as India is concerned, the Juvenile Justice (Care and Protection of Children) Act, 2000 is the primary legal framework. The Act provides for a special approach towards the prevention and treatment of Juvenile delinquency and provides a framework for the protection, treatment and rehabilitation of Children in the purview of the Juvenile Justice System. This law, brought in compliance of the 1989 UN Convention on the Rights of the Child (UNCRC), repealed the earlier Juvenile Justice Act of 1986 after India signed and ratified the UNCRC in 1992. The Government of India has once again introduced Bill No 99/2014 in Lok Sabha at the instance of Smt. Menaka Gandhi, Minister for Women and Child Development recommend further amendments. This Act has been further amended in 2006 and 2011 by omitting Sec 38 and 58 of 2006 Act<sup>18</sup>. However, the implementation is a very serious concern even in 2013 and the Supreme Court of India is constantly looking into the implementation of this law in *Sampurna Behuru Versus Union of India*.

The Court in this case passed several orders for constitution of Juvenile Justice Boards under Section 4 of the Act and Child Welfare Committees under Section 29 of the Act in different States and Union Territories and most of the States and Union Territories have taken steps to constitute the Juvenile Justice Boards and the Child Welfare Committees. The court in its order requested the State Legal Services Authorities to coordinate with the respective Child Welfare Departments of the States to ensure that the Juvenile Justice Boards and Child Welfare Committees are established and are functional with the required facilities.

On the official laxity of non-implementation of the Special Juvenile Police Unit Supreme Court in its order stated that the court will monitor the implementation of the provisions of the Act

relating to Special Juvenile Police Unit (Section 63 of the Act). The Court ordered that the Home Departments and the Directors General of Police of the States/Union Territories will ensure that at least one Police Officer with aptitude in every Police station is given appropriate training and orientation and designated as Juvenile or Child Welfare Officer, who will handle the Juveniles or Children in coordination with the Police as provided under sub-section (2) of Section 63 of the Act. The required training will be provided by the District Legal Services Authorities under the guidance of the State Legal Services Authorities and Secretary, National Legal Services Authority will issue appropriate guidelines to the State Legal Services Authorities for training and orientation of Police Officers, who are designated as the Juvenile or Child Welfare Officers. The training and orientation may be done in phases over a period of six months to one year in every State and Union Territory. The Home Departments and the Directors General of Police of the States/Union Territories will also ensure that Special Juvenile Police Unit consisting of Police Officers, designated as Juvenile or Child Welfare Officers be created in every district and city to coordinate and to upgrade the Police treatment to Juveniles and the Children as provided in sub-section (3) of Section 63 of the Juvenile Justice (Care and Protection of Children) Act 2000.

In order to upgrade the Juvenile Justice Administration System, the Government of India launched the Integrated Child Protection Scheme (ICPS) in 2009-10 whereby financial allocations have been increased and various existing schemes have been merged under one scheme. Based on a resolution passed in 2006 and reiterated again in 2009 in the Conference of Chief Justices of India, several High Courts have constituted "Juvenile Justice Committees" headed by sitting Judges of High Courts<sup>20</sup>. These committees supervise and monitor implementation of the Act in their jurisdiction.

The Juvenile Justice Act deals with two different types of Children one being the Juveniles in conflict with law and another being Child in need of care and protection. While the Juveniles in conflict with law are dealt with by the Juvenile Justice Board, the Children in need of care and protection are being dealt with the Child Welfare Committee in short (CWC). Members of the CWC also exercise the powers of a Magistrate, while all of them are non-Judicial persons.

The CWC gives the appropriate orders for care, protection and rehabilitation of Children in need of care and protection. There are numerous categories of Children in need of care and protection, including Children without parents, or without sufficient means of livelihood or a permanent place to live, the terminally ill,

victims of natural disasters, war or civil strife, etc. The CWC may send such Children to Children's home, or place them with a fit person/institution.

As far as the Juveniles in conflict with law are concerned, most of them are found to be victims of circumstances and also victims by adult perpetrators. The need for stringent action against adult perpetrators has arisen. Amendments to the Juvenile Justice Act were approved, involving the transfer of Juveniles between the ages of 16 & 18 to adult criminal courts. It is true that the recent past has seen a sharp rise in the number of heinous crimes committed by Juveniles in the country, this may seem like a welcome move by the government. The universal age at which a Child attains adulthood is set at 18 years. It is defined globally as the age of right to vote. This is because the law makers felt that before the age of 18 years, one could not be mentally capable enough of electing one's own representatives in government. It would be an appropriate time to quote the statement of Attorney General Soli Sorabjee. He said "Suppose a man is 17 years and 9 months old and he commits a heinous crime of rape and murder, so he gets a benefit of the acts,

that doesn't seem quite rational". We need to understand that there will always be cutoffs, and these cutoffs must not be questioned on the basis of how closely someone missed them. If tomorrow a 14-year-old commits a heinous crime of rape and murder, will the Act further be amended? That does not seem quite rational.

There is a thin line between Child and adult, and that line must be firmly drawn<sup>21</sup>.

At this juncture, a mention is a must about the adult perpetrators. Adult perpetrators need to be charged appropriately. Despite lot of training to the Police Personals, they fail to take action against the adult perpetrators. Consequent to the amendment of the Juvenile Justice Act in 2006, Sec 68 provides for power of the state governments to make rules. Thereby, the Tamil Nadu State Government has formulated rules separately. Though Rule 95(22) of the Tamil Nadu Juvenile Justice (Care and Protection) Rules 2001( amended in 2012)<sup>22</sup> provides that the Juvenile Aid Police Unit shall take serious cognizance of the adult perpetrators of crimes against Juveniles and see to it that they are without delay apprehended and booked under the appropriate provisions of the law and for this purpose the District level units shall maintain liaison with other units of Police station, these offenders are not being booked by Police under the relevant provisions of law.

The Delhi gang rape case in December 2012 had tremendous impact on public perception of the Act. Media highlighted that the Juvenile allegedly involved in this case was the "Most Brutal" of all accused persons. About Eight writ petitions alleging the Act and its several provisions to be unconstitutional were heard by the Supreme Court of India in the second week of July 2013 and were dismissed, holding the Act to be constitutional. Demands for a reduction of the age of Juveniles from 18 to 16 years were also turned down by the Supreme Court, when the Union of

India stated that there is no proposal to reduce the age of a Juvenile. Many experts and activists viewed post December 2012 Delhi Gang Rape responses as creation of media sense tonal station of the issue, and cautioned against any regressive move to disturb the momentum of Juvenile Justice Legislation in the Country. In July 2014, it was reported that Pakistan-based terrorist organization Lashkar-e-Toiba had asked its members to declare their age to be below 18 years. This would ensure that they are tried under the Juvenile Justice Act instead of the Indian Penal Code (IPC). The maximum punishment under the Act is three years. The main amendment proposed in this bill is with regard to the mental and physical capacity to commit such offence. The proposed bill contemplates that in case of a heinous offence committed by a Child who has completed or is above the age of sixteen years, the Board shall conduct a preliminary inquiry with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of Section 19. Provided that for such an inquiry, the Board may take the assistance of experienced psychologists, psycho-social workers and other experts. (2) Where the Board is satisfied on preliminary inquiry that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973. Provided the inquiry under this section shall be completed within the period specified in Section 1523. The proposed amendments also included facilitating faster adoption of Children and setting up foster care homes. The WCD Ministry (Ministry for Women and Child) intends to adoptions along with issuing guidelines on adoption and related matter. Makes the Central Adoption Resource Authority (CARA) the statutory body, which means it will have powers to regulate inter-country adoptions along with guidelines<sup>24</sup>. The ministry of women and Child development had

introduced the Juvenile Justice (Care and Protection of Children) Bill 2014 in the Lok Sabha in August 2014 is yet to be passed an Act.

### **TERRITORIAL JURISDICTION OF JUVENILE JUSTICE BOARD, CHENNAI**

Chennai is the Capital city of Tamil Nadu. It is the third largest city and fourth most populous metropolitan area in India. It is also the 31st-largest urban area in the world. As a growing metropolitan city in a developing country, Chennai confronts substantial urban pollution, traffic congestion, poverty, overpopulation, and other logistic and socio-economic problems. The city is host to the third largest expatriate population in India after the two great metropolitan cities Mumbai and Delhi 25. Chennai has an estimated population of 4.9 million, with an area that has grown from 176 square kilometers to 426 square kilometers after a 2011 expansion. While this city continues a steady growth pattern, many of its people are categorized as “slum people” who live far below the poverty line.

According to the census conducted in 2001, 820,000 citizens live in the slums, with more being added every year. Within India, slum regions are a common site.

The city does well with its female to male ratio, with 1000 males for every 951 females. The density of this populous city continues to tighten every year, though the growth is much slower compared to other major cities<sup>26</sup>. The Chennai Juvenile Justice Board is situated inside the campus of the Office of the Social Defence in Kellys, Purasalwalkam High Road. There are 163 Police stations in Chennai including sub-urban Police out of which the Juvenile Justice Board, Chennai come across around 87 Police stations of the city. The Police stations have separate law and order and crime Police. As regards Tamil Nadu, it is felt that in this System there appears a gap in the procedure followed by various institutions of the System, including the law enforcing

authorities and representatives and the provisions of the law. While some studies have focused on Juvenile delinquency, functioning of the Juvenile Justice Boards in General, there is no comprehensive study on the functioning of the Juvenile Justice Board in Chennai which is an exclusive Board.

### **Functioning of Juvenile Justice Board in Chennai**

As per Section 4 of the Juvenile Justice Care and Protection Act 2000, the State Government may (within a period of One year from the date of commencement of the Juvenile Justice (Care and Protection of Children Act 2006, by notification in the official gazette, constitute for every district one or more Juvenile Justice Boards for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to Juveniles in conflict with law.

The Government of India has so far established exclusive Juvenile Justice Board only in the Metropolitan cities. As far as Tamil Nadu is concerned except Chennai all the other Juvenile Justice Boards in Tamil Nadu are not exclusive Boards. The regular Judicial Magistrates are placed in charge of the Juvenile Justice Boards, in addition to their regular work as Judicial Magistrate first class. The present study has been conducted to examine the mechanisms of Justice delivery for Juveniles in conflict with law in Chennai. The Juvenile Justice Boards are constituted with a three-member Board where the Principal Magistrate is a Judicial Officer and the two members are social worker. Prior to the constitution of separate Juvenile Justice Boards across Tamil Nadu there were only 8 Juvenile Justice Boards in the state.<sup>27</sup> 1) Chennai 2) Madurai 3) Coimbatore 4) Tiruchirapalli 5) Salem 6) Tirunelveli 7) Cuddalore and 8) Thanjavur. Later Government orders were issued for the re constitution of the Board periodically and finally in 2012 too.<sup>28</sup>As far as the Chennai city is concerned, earlier there was one Juvenile Justice



Board for Four Districts (Chennai, Kancheepuram, Thiruvallur and Vellore). After the formation of 32 Juvenile Justice Boards across Tamil Nadu, separate Boards have been constituted in each District. The Principal Magistrates of other Districts are placed additional charge of the Juvenile Justice Boards in almost all the districts in the state except the Juvenile Justice Board at Chennai. Subsequent, to the reconstitution of the Boards in Chennai the Government has issued orders for the appointment of social workers. Members of the Board are appointed by the selection committee of each district consisting of the Principal and Sessions Judge as Chairperson and the District Collector and Commissioner of Police/ Superintendent of Police as members by preparing panel of names after identifying from the willing candidates and competent person in the districts chosen by them.

Under Sub section (1) of Section 4 of the Juvenile Justice (Care and Protection) Act 2000 as amended in 2006 and sub-rule 1 of rule 3 and sub-rule 4 of rule 4 of the Tamil Nadu Juvenile Justice (Care and Protection) Rules 2001, the Government of Tamil Nadu has reconstituted the Juvenile Justice Board in Chennai District by appointing new social worker members in the state of Tamil Nadu.

In Chennai the XII Metropolitan Magistrate is designated and appointed as the Chairperson of the Juvenile Justice Board. The appointment of the Chairperson of the Board is nominated by the Hon'ble High Court of Madras. The social worker members of the Board are appointed as per the Tamil Nadu Juvenile Justice (Care and protection of Children) Rules 2001. The Principal District and Session judge as chairperson, the District Collector and Commissioner/Superintendent of Police as members are the competent person to appoint the social worker members of the Board.<sup>31</sup> The social worker members of the Juvenile Justice Boards are conferred with the magisterial powers to deal and handle with Juveniles in conflict with law.

The Principal Magistrate who is addressed as the Chairperson of the Boards are given regular trainings on Child psychology by the Tamil Nadu State Judicial academy in order to ensure that the Principal Magistrate of the Board is trained on Child Psychology. Similar training programs have been conducted by the Tamil Nadu State Judicial Academy at frequent intervals for the members of the Board and the Public Prosecutors too. Public Prosecutors have been appointed by the Government who has also been trained in Child psychology. In this regard it is pertinent to state that after the Hon'ble High Court's ruling in Idukkan Vs State of Tamil Nadu<sup>32</sup>, the public prosecutors were also given Child psychology training by the Prosecution Department. The judgment of the Hon'ble High Court clearly states that the Act and the rules thereon only speaks about the appointment of a Judicial Officer as a Principal Magistrate and the Rules no were mentions the head as a chairperson. His Lordship Hon'ble Justice Nagamuthu had made an elaborate discussion in this regard and had sought the intervention of the High Court and the Government of Tamil Nadu to obviate the error of designating the XII Metropolitan Magistrate as the Chairperson of the Board. His Lordship has discussed stating that it is only an individual who happens to be a Magistrate shall be appointed as a Principal Magistrate and the Principal Magistrate is not an exofficio member on account of his being the presiding Officer of a court of Metropolitan Magistrate. Therefore, it was opined that while making appointment of a Principal Magistrate, it is for the Government to examine whether a particular individual Magistrate possesses the required qualifications such as special knowledge of training in Child psychology or Child welfare. This fact has not so far been taken into account by the Government and all the Principal Magistrates who are posted in the Juvenile Justice Boards are holding additional charge of the Board apart from their regular appointment as Magistrate. However, the Hon'ble High Court has ensured that all Magistrates appointed as Principal Magistrates of the Board are given

frequent trainings at frequent intervals in Child psychology and other Child related enactments. Now with regard to the orders to be passed by the Board, though the Board consists of a Principal Magistrate who is aware of the legal position, the acts provide that final disposal shall be made at least by two members including the Principal Magistrate/Chairperson. The emphasis on the Principal Magistrate during final orders is because, the Magistrate is the competent person to deal with criminal cases based on the evidence of the witnesses and the procedure laid by the Code of Criminal Procedure Code and would be able to come to a conclusion about the involvement of the Juvenile in the occurrence. The members who are normally social workers would have contacts and knowledge about the various rehabilitative measures and centers who would suggest appropriate measures for final disposition. The entire inquiry by the Board is summary in nature and the Board has to keep in mind that the inquiry is not to be conducted in the spirit of strict adversarial proceedings and shall use the powers conferred by sec 165 of the Indian Evidence Act 1872 to question the Juvenile and proceed with the presumptions that favor the Juvenile's right to be restored. The Board deals with the Children in a Child friendly manner. The Board itself is modeled in a Child friendly atmosphere. There is no Dais and witness boxes and the Police appear before the Board in their plain clothes. Postures and pictures which would gain positive signs are pasted in the walls of the Board to give it a Child friendly atmosphere. At the same time, the present seating arrangement in the Board though does not have dais, in one way or the other resembles a court room without a dais and a witness box. To overcome this issue a conference like Table could be suggested. Furniture's in the Board have to be remodeled in such a nature.

Further, with regard to the debate on the reduction of the age of the Child, as a Principal Magistrate of the Juvenile Justice Board, Chennai, I personally feel based on the experience in

dealing with Juveniles Day to day, the reduction of age from 18 to 16 would not be appropriate for the welfare the Child. The Hon'ble Apex court has in Salil Bali's<sup>34</sup> case also ruled out the option of reducing the age of the Juveniles from 18 to 16 years. The amendment proposed only appears to be an outrage, anger and social pressure on politicians, without evidence to back up the changes. Without consideration of the psychological condition of the Juveniles this attempt of reducing the age would be futile. Instead, the Government needs to concentrate on the mechanisms to be followed for rehabilitation in the Special Home and the Children Home. Serious efforts need to be taken to provide for opportunities to receive emotional and psychological support. Once a Child is out of the institution, he needs to be re-integrated to the community as a changed person. That is the reason the Juvenile Justice Act has a specific provision stating that the Child would not suffer any disqualification if any attaching to conviction of an offence<sup>35</sup>. This would reduce the stigma in the mind of the Juvenile and would build strength in his mind that he is given an opportunity to lead a well-mannered life in future with a manageable salary which would also enable him to forget the past. Though the legislations relating to Children recognize that Juveniles in conflict with law also require care and protection, in reality, the treatment meted out to Juvenile offenders is comparatively low. Therefore, the present study has been conducted to examine the mechanisms of Justice Delivery for Juveniles in conflict with law restricting to Chennai City. The profile and the experience of the Juveniles in conflict with law during their period of stay in the observation home directly have been obtained from the Juveniles. Some Data have been collected from the probation Officer's file. This study would help in suggesting measures for the improvement and effective implementation of the Juvenile Justice System. The conditions of the institutions and the rehabilitation process could be improved.

## **Causative Factors of Juvenile Crimes:**

There could be no single cause of Juvenile crimes, but there are many and varied causes. In general, has been identified threefold.

A. Biological Causes: Biological problems such as speech and hearing problems, irritation, excessive strength etc. may lead to delinquency.

B. Socio-Environmental Causes:

1. Mobility: Migration of persons to a new place where they are strangers offers them opportunity for crime.

2. Cultural Conflicts: Cultural conflicts between inhabitants are immigrants" results in deviant behavior and enormous increase in crime.

3. Family Background:

i) Family Structure: The nature and structure of the family are largely responsible for carving out the personality and that personality makes up of the Children. A functionally adequate family encourages growth, confidence, frankness and ability to face reality. The young human being needs to remain emotionally dependent on a mother figure for a considerable number. Without this attachment we know that Children have difficulties in formation early relationship with other Children. Delinquents mostly come from functionally inadequate homes. Criminal acts of family members influence Children and sometimes they themselves induct Children into offences.

ii) Broken Homes: Broken Homes means a home where either of the parents is dead or living separately. Disintegration of the "families at risk", severe family crisis, System, migration and urbanization has all weakened the positive and nurturing influence of family on the Child.

Tension and emotional disturbances and abuse at home may drive the Child away from the home and become vulnerable to criminal influences. In such situations, the Child feels insecure and thereby finds his way on the cross roads exposing himself to anti-social activities, which he adopts to satisfy himself and leads towards delinquency.

iii) Child's Birth order in the family: It is found that the intermediate Children are attended less by parents as compared to the oldest and youngest Children who lead the intermediate Children towards delinquency.

iv) Parent-Child Relationship: Misunderstandings, hard feelings, insufficient love and open conflicts between parents and Child results in dissatisfaction and hostility in the Child. Subsequently, such dissatisfaction and hostility precipitates social deviance. Lack of appropriate guidance and discipline- Inconsistent discipline, parental indifference, abusive parenting can lead to a poor self-image and personality problems, making Children vulnerable to negative influences outside the home.

v) Alcoholic parents and constant quarrel between parents make the home environment intolerable for the Children that lead to delinquent behavior of the Child. Even excessive punishment also leads to Child's involvement in anti-social activities because of his feelings of frustration. Parents are responsible for teaching their Children how to live in a normal life within their limits.

### **SOCIO-ECONOMIC CONDITION**

Poverty: Poverty deprives Children of socio-cultural and economic opportunities for growth and development. Poverty related circumstances like severe hunger, illness, addictions, parental

neglect, aggravate the situation. Such Children are at greater risk than others of being inducted into crime.

**Victims of Abuse:** Research indicates a correlation between Child abuse and subsequent delinquency.

**School Dropouts:** Not attending school regularly results in truancy, indulging in unhealthy leisure activities and committing petty crimes to earn a living. Cheap literacy, free education and compulsory pass of students up to the age of 14 years also contribute to the growing trends of Juvenile crimes.

**Exposure to Media:** Exposure to media violence not only increases physical aggressiveness in Children but also makes them more accepting of violence and added to early sex experience. Lack of moral value also contributes to the crimes.

**Peer Influence:** In adolescence, experimenting with drugs, gambling, drinking, inappropriate sexual behavior, desire for quick money, getting involved in youth gangs often lead to violence and crime.

**Lack of Age-appropriate Sex Education:** This often leads to sexual abuse and molestation and even rape by young Children.

**Gang Culture:** Observed especially among street Children where the street gang is the substitute family and the Child gets bullied into the anti-social activities of the gang in return for survival, protection or favor.

### **Psychological Factor:**

Certain mental disorders that involve difficulties in the regulation of emotions and impulsive behavior make Children prone to criminal behavior. Even depression can lead a person to adopt criminal ways. It acts as a vent to one's suppressed anger and aggression.

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## CHAPTER II

### REVIEW OF LITERATURE

In this section, some studies on the research area are presented to find out research gap to pursue this study. In terms of research, the greatest contribution to field of law has been made by the ecologists. The place, time and environment are closely associated with crime. A brief historical review is vital to a proper understanding of its modern manifestations. In this part of the research, an attempt has been made to review the selected literatures, which concentrate on different patterns and trends of Juvenile crime, studied by various sociologists and criminologists all over the world.

As early in 1977 Mitra, conducted a study of Juvenile delinquency. He found that, 50% of delinquents belonged to the age group 18-21 yrs. Most of the Juveniles came from families having income of lesser income. Economically backward people had no other option but to send their Children to odd jobs for earning their own livelihood. Generally, 3650 persons of the Juvenile delinquents had no formal education. And 5808 Juveniles were new offenders. This research reveals that Children are usually compelled to commit offences due to subsistence<sup>36</sup>.

A book on “Child and Adolescent social work Journal” done by Springer science and business media led by Chie Noyori-Corbett is published online. It contains around 25 pages wherein three significant problems of major delinquent behaviors in adolescents, substance abuse including alcohol, tobacco and violent behavior, are explored. Adolescents’ risk behaviors are considered to increase their chances of having problems in diverse phases of their life. Especially adolescents’ use of alcohol and other drugs have been discussed and it reviewed the prevalence of substance abuse in adolescents with several national samples.<sup>37</sup> The book has been authored

by majority of sociologist and psychologist. The book is organized in ten chapters and the common causes and theoretical explanations for delinquent and violent behavior among youth and the last five chapters reviews various interventions and treatment strategies. The first chapter authored by Robert Googins provides an interesting history of troubled youth. The second chapter is authored by J,Mark Eddy and Lauries Swanson Gribskov provides an historical view of the theories and practice that had influenced the Juvenile Justice System. It provides an excellent background to understand the origin of Juvenile Justice and its influences to delinquent behavior. The factors that influence delinquency among youth such as family, peer, school and community are viewed. It largely provides a comprehensive overview of the history of the Juvenile Justice System and the current thinking. The next chapter has been authored by C.G.Leukfeld which speaks about the salient behavior problem frequently associated with drug and alcohol use. The next chapter penned by Robert D.Sege's Chapter is a brief summary of the history and research concerning adolescents and watching Television for hours together. It provides thoughtful insight and research findings to address these highly political and social concerns. The final Chapter defines adolescent behavior describing the epidemics and logical rates and outcomes of violence and introducing various treatments to address this problem.

A study on, Crime Victimization made by Thiru Chockalingam, has been referred. In his study a survey of the Major cities of Tamil Nadu like Chennai, Coimbatore, Madurai and Tiruchy were selected. Out of these cities he made a random study of around 1500 household samples. He noticed that the other cities are less urbanized than Chennai city. Chennai consists of higher class, higher middle class and middle-class population. The other cities comprise mostly the middle class, and the lower class. He says that there is a significant relationship between victimization of burglary and residential area status. Burglary victims seem to be more in the

middle-class residential area status respondents (53.66%) and the higher class (31.07%) probably because of the increased possessions at house when compared to the lower class<sup>38</sup>.

A study was made on the criminal gangs in Chennai city by Mr. Gandhirajan, Thilagaraj et al. A base map for the city on a scale of 1:25000 was first compiled with the details of boundaries of Police districts, location of Police stations, and the city road network. The Software's Arc view Geographic Information System (GIS) 3.1 and PC Arcinfo are used for this purpose. The concentrations of criminal gang activity were calculated per Police boundary to give future directions to Police departments for the prevention of such gang activity. The study concluded that mapping was a useful research tool for data analysis and visualization of complex data relationships. This preliminary spatial exploration of criminal gangs revealed that using GIS to map criminal gangs was a much more compatible means of crime pattern analysis than current processes because of its geographic referencing capabilities<sup>39</sup>.

The Statistics of National Crime Record Bureau (NCRB) reported that Tamil Nadu in India continued to enforce effectively the special and local laws against Juvenile offenders and reported highest number of cases (5335) in the country. Of the total reported the highest number of cases (55622) in the country.

Of the total reported Juvenile cases in the country, 75.5 Percentage were registered in Tamil Nadu. Out of the 5335 crimes reported in Tamil Nadu, 453 cases were theft cases. India on the whole was reported with 990 murder cases by Juveniles out of which 55 cases were from Tamil Nadu. Burglary was 162 and Robbery was 48. India had 4681 cases of hurt being reported in which 136 was from Tamil Nadu.<sup>40</sup>

Juvenile Justice has been given some shape with Juvenile Justice (Care and Protection of Children) Act 2000 Act. Person dealing with Children need to sensitize themselves with this Act. One needs to know the provisions made, to understand whether it is being properly implemented. Only on observing it being implemented, can one get insight into the problems inherent in it, and if one knows the problems, one can suggest improvements in the Act. Even if the law gives adequate guidelines, institutions are still needed to look after the Children in distress or Children in conflict with law. For successful compliance of Court orders, and to punish violators, monitoring bodies need to be set up, who should be given legal powers as well. Effective Child protection and development depends on skills, knowledge and judgment of all professionals, personnel and staff working with Children<sup>41</sup>.

Undoubtedly, Juveniles in conflict with law and Children in need of care and protection are defenseless and they need special protection. The state guarantees special treatment to them through statutory law. However, in practice, they often get victimized by legal and procedural entanglements. They are more prone to violations of their rights at the hands of state agencies, their own family and community in the form of arbitrary detention, cruel punishments, torture and abuse. In recent years, the problems of Children in need of care and protection and those in conflict with law has been receiving considerable attention both of the government, NHRC, social activists and the civil society at large. But the problems encountered by them are of gigantic nature and all that is being done is not sufficient. If the problems faced by them are not taken into account, we as a society would be failing in our duties. It is therefore of paramount importance that as a society we must devote full attention to ensure that they are properly cared for so that they have their rightful place in the society. For this to happen, there is need to spread

awareness on the problems faced by them as well as build-up the capacities of all those dealing with them<sup>42</sup>.

The present study is different from the above narrated studies in the manner that it involves not only the different causative factors which tend Juveniles to commit crimes but also deals in particular, with the age in which these Juvenile commit crimes the most, the most crime prone area in Chennai, is identified. One third of India's citizens are Children in the 0-18 age-group. Despite the said fact and despite the poor indicators for education, development and very survival, Children's issues are least attended. Solution to overcome such a situation is suggested. The study also reveals the part played by School Education in the life of a Child and his addictive habits. Further the role of Principal Magistrates, Police and Probation Officers are dealt with in detail and suggestions for effective implementation of the Juvenile Justice System is focused.



## CHAPTER – III

### EVOLUTION OF JUVENILE JUSTICE SYSTEM

#### HISTORICAL BACKGROUND

##### 3.1 Post and Pre-Independence Era

The word “Juvenile” originates in a Latin word “Juvenis” that means young. A “Juvenile” or Child means a person who has not completed eighteen years of age. I would not hesitate to say that the Children are the greatest assets to the Nation. They are the future of the Country. Off late there has been a vast increase in the Crimes committed by Juveniles across the country which is totally alarming. A Juvenile Crime is normally stated to be Juvenile delinquency. What do we mean by Juvenile delinquency? This term denotes the participation of a Juvenile in an act wherein he has violated the laws. It is needless to state that a Juvenile who confronts with law requires immediate attention. Therefore, it has become essential to create a System wherein the rights of Juveniles are protected be it a Juvenile who has committed a Crime or a Child who is in need of care and protection. There are various factors which constitute to the Juvenile delinquency.

Before we go in to the factors, it becomes essential to research upon the growth and development of Juvenile Justice System. The Juvenile Court System in India is functioning by the Juvenile Justice Boards where cases that involve individuals less than eighteen years of age are inquired.

### **3.1.1 Historical Background**

### **3.1.2 International Scenario:**

In the earlier period of the nineteenth century, the Juvenile and the adults were divided based on a thin line. This line was typically drawn where the offender could determine the wrongfulness of his actions. Children below seven years of age were determined to be infants, who would not be in a position to know that their acts were wrong. Hence, they could not be found guilty of a felony. A felony is a criminal action that is punishable by death or imprisonment. The term felony, in some common law countries, means a serious Crime. The word originates from English common law (from the French medieval word " félonie "), where felonies were originally Crimes that involved confiscation of a convicted person's land and goods. Children above fourteen-years of age were determined to be capable of understanding the wrongfulness of their acts and were treated like adults. Whereas, Children between Seven to fourteen years were not so easily classified. If they seemed to understand that their acts were wrong, then they were treated as adults.

If not then they were treated as infants.

In 1704, Pope Clement XI first introduced the idea of the, instruction of profligate youth in institutional treatment. Then Elizabeth Fry established a separate institution for Juvenile offenders. Subsequently, in Britain, Reformatory Schools Act was passed in 1876 and Industrial Schools Act was brought in a statute book<sup>2</sup>. The first Juvenile Court was established in 1899 in Chicago under Juvenile Offenders Act. The Evolution Today, the structure of the Juvenile court remains essentially the same as it did decades ago. What has evolved are the interpretation of the rights that Juveniles possess while working their way through the System.

Later in the nineteenth century, the treatment of Juveniles began to change. It was researched that Children who were in trouble needed special facilities. In view of the same New York and Chicago for the first time housed the Juvenile offenders and adult offenders separately. In 1899, the first Juvenile court was opened in Cook County in the United States of Illinois. The theory of the Juvenile court was to rehabilitate Juvenile offenders and not to punish them. The doctrine of 'Parens Patriae', meaning parent of the country, became the guiding light to allow the state to serve as the guardian of Juveniles with physical, legal or mental disabilities. The courts followed the 'best interests of the Child' in determining what would help the Juvenile become a productive member of society. In some cases, this meant removing the Juvenile from the home and placing him in an institution in order to rehabilitate him in the most effective way possible. The U.S. Supreme Court in 1963 established that every citizen, including a Juvenile, has the right to have an attorney in a criminal proceeding via Gideon Vs Wainwright.<sup>3</sup> Because of this case, integrated into the structure of the Juvenile court process is the Juvenile's attorney, who answers any questions a Juvenile may have and represents their legal rights in court. Depending on the seriousness of the offense and the Juvenile's age when he committed the offense, he may be facing a bind over. A bind over is a proceeding to determine if the Juvenile should be tried as an adult in court instead of as a minor. The U.S. Supreme Court in 1966, ruled in Kent Vs United States that a Juvenile is entitled to a hearing where his attorney can have access to all records, and in which, the court provides a written statement of all the reasons for the bind over to the adult System. The Supreme Court decided that the Juvenile Court's order waiving jurisdiction and remitting petitioner for trial in the District Court was invalid. Through the U.S. Supreme Court case In re Gault in 1967, Juvenile constitutional trial rights were settled. The U.S. Supreme Court ruled that in cases that could result in incarceration for a Juvenile, that they had

the same trial rights as an adult, such as the right to a lawyer, to question witnesses and the right against self-incrimination. Even after *In re Gault* was decided, the weight of the evidence required to adjudicate, or find guilty, a Juvenile had not been settled. It wasn't until *In re Winship* *In re Winship*<sup>6</sup> was decided in 1970 that the U.S.

Supreme Court ruled that, just as in adult court, Juveniles had a right to have their cases proved 'by proof beyond a reasonable doubt' before they could be adjudicated. This serves to protect the Juvenile's due process rights through the U.S. Constitution. In Juvenile court, a Juvenile does not have a right to a jury trial, a trial by twelve of his fellow citizens, unless he has previously been bound over to the adult System after a pretrial bind over hearing. At this point, then, the Juvenile is facing adult sanctions if convicted of the offense. This was determined by the U.S. Supreme Court case *McKeiver Vs Pennsylvania*, which stated in 1971, a Juvenile case bound over to the adult System is the only circumstance in which a Juvenile has the right to a jury trial. Where a question arose whether a jury trial is constitutionally required in a Juvenile delinquency proceeding in state court, it was held that "No, Juvenile defendants are not entitled to a jury trial for the adjudicative phase of state delinquency proceedings"<sup>7</sup>.

In England, the first Juvenile Court was set up in 1905. And the first probation law was enacted in the state of Massachusetts, USA in 1878 and in England in 1887. The second and sixth UN Congress on Prevention of Crime and Treatment of Offenders in 1960 and 1980 discussed in detail the problem of Juvenile delinquency and decided that there should be the standard Minimum Rules for Juvenile Justice. Subsequently, it was accepted that special attention should be given to prevent Juvenile delinquency. The same area was discussed at Beijing in 1985 which examined the Standard Minimum Rules for Administration of Juvenile Justice. In 1989, the UN Convention on Rights of the Child (CRC) draws attention to four sets of Civil, Political, Social,

Economic and Cultural rights of every Child. The Convention provides the legal basis for initiating action to ensure the rights of Children in society.

### **3.1.3 Indian Scenario:**

#### **3.1.4 Pre-Independence Era:**

India has a long history of providing separate treatment for Juvenile offenders. Differential treatment for Children can be traced as far back as the Code of Hammurabi in 1790 BC, the responsibility for their supervision and maintenance being vested on the family. The Code of Hammurabi<sup>8</sup> is a well preserved Babylonian law code of ancient Mesopotamia dating back to about 1754 BC. It is one of the oldest deciphered writings of significant length in the world.

The sixth Babylonian king, Hammurabi enacted the code, and partial copies exist on a human-sized stone tablet and various clay Tablets. The Code consists of 282 laws, with scaled punishments, adjusting "an eye for an eye, a tooth for a tooth" (lex talions) as graded depending on social status, of slave versus free man.<sup>9</sup>Nearly one-half of the Code deals with matters of contract, establishing, for example, the wages to be paid to an ox driver or a surgeon. Other provisions set the terms of a transaction, establishing the liability of a builder for a house that collapses, for example, or property that is damaged while left in the care of another. A third of the code addresses issues concerning household and family relationships such as inheritance, divorce, paternity and sexual behavior. Only one provision appears to impose obligations on an official; this provision establishes that a judge who reaches an incorrect decision is to be fined and removed from the bench permanently. A handful of provisions address issues related to military service.

- During the colonial regime, in 1843, the first center for those Children called “Ragged School” was established by Lord Cornwallis. The period between 1850 and 1919 was marked by social and industrial upheavals.
- The Apprentices Act, 1850, chronologically the first law which required that Children between the ages of 10-18 convicted in Courts, to be provided vocational training as part of their rehabilitation process. The Indian Penal Code (1960) exempts Children under the age of seven years from criminal responsibility.

It also exempts Children between the ages of seven to twelve years, because they have not attained sufficient maturity of understanding to consequences of their act.

- For the treatment of Juvenile delinquents, the next landmark legislation was the Reformatory School Act, 3 1876 and 1897. Under the Act, the court could detain delinquents in a reformatory school for a period of two to seven years but after they had attained the age of eighteen years, the court would not keep them in such institutions.
- The Act of Criminal Procedure, 1898 provided special treatment for Juvenile offenders. The Code provided probation for good conduct to offenders“ up to the age of twenty-one.
- Then Indian Children Act came from the Indian Jail Committee (1919- 1920). Individual provincial government chooses to enact separate legislation for Juvenile in their respective jurisdictions; provinces of Madras, Bengal and Bombay passed their own Children Acts in 1920, 1922 and 1924, respectively. Though the Bombay Children Act was enacted four years after the Madras Children Act, it was the first Children Act to become functional. Children's aid Society a voluntary state agency was formed in 1924 to implement the provisions of Bombay Children Act.

These laws contained provisions for the establishment of a specialized mechanism for the treatment of Juveniles.

- Some states passed Legislations to provide a separate procedure and institutions for the trial, custody, correction, and rehabilitation of delinquent Children. Such acts which have been passed in various states brought within its ambit two categories of Children, namely, (a) youthful offenders, and (b) destitute and neglected Children. The Juvenile courts handled both these categories of Children. Throughout the world, during this period, Children were dealt with under the “welfarism” mode. The welfare model emphasized the rehabilitation needs of the offender. When Children were tried legally in both the above categories' priority was given to the well-being of them and adjudication of guilt was not stressed(Adenwalla,2006)

### **3.1.5 Post-Independence Era:**

In 1960, the Government of India enacted the Children’s Act, which is also applicable to the Union Territories. The act was conceived as a model piece of legislation. The above act was to “provide for the care, protection, maintenance, welfare, training, education and, rehabilitation of neglected or delinquent Children and for the trial of delinquent Children in the Union territories.” Under this Act, a Child was a boy below 16 years of age and a girl below 18 years of age. The Child Welfare Board handled neglected Children, and the Children’s court delinquent Children (Section 2(e) of the Children Act, 1960 quoted by Adenwalla, 2006). The Children Act, 1960, was a precursor to the Juvenile Justice Act, 1986. The Juvenile Justice Bill, in conformity with Beijing Rules, was first introduced in the Lok- Sabha on 22nd August 1986, and the Central Children Act was replaced by this Juvenile Justice Act 1974. The Law came into force in all the union territories but the States having no Juvenile law were free to adopt it in 1974. India

declared its National Policy for Children which include training and rehabilitation of delinquent, destitute, neglected and exploited Children.

- The Juvenile Justice Act, 1986: Prior to the enactment of the Juvenile Justice Act, 1986, the state governments had enacted their own legislations for Children. But the provisions contained in each state's Children Act were different from each other. For example, the definition of the term "Child" differed from state to state. On May 12, 1986, the 69th Report of the Committee on Subordinate Legislation was tabled on in the Parliament which recommended a uniform law. At this juncture it would be relevant to state about one Ms. Sheela Barse, a freelance journalist by profession and a member of the Maharashtra State Legal Aid and Advice Committee. She persistently followed the issue of illegal detention of Children in jails. She filed a public interest litigation for the release of Children kept in jails and for information on the conditions of the Children in detention. In *Sheela Barse Vs. Secretary Children Aid Society* decided by the Apex Court on 20/12/1986 by their Lordships Hon'ble Justice P. N Bhagawathi the then Chief Justice of India and Hon'ble Justice R.S.Pathak. This act provided for prohibition of confinement of Juveniles in Police lock-up or jail and separate institutions for the neglected or delinquent Children with regard to the processing, treatment, and rehabilitation. The act also has provided for a wide range of disposition alternatives. The Hon'ble Supreme Court in *Sheela Barse's case*<sup>11</sup> observed that instead of each state having its own Children's Act different in procedure and content from the Children's Act in other states, it would be desirable if the Central Government initiates parliamentary legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to Children in the entire territory of the country. The Children's Act which may be enacted



by the Parliament should contain not only provisions for investigation and trial of offences against Children below the age of 16 years but should also contain mandatory provisions for ensuring social, economic, and psychological rehabilitation of the Children who are either accused of offences or are abandoned, destitute, or lost. Moreover, it is not enough merely to have a legislation on the subject, but it is equally, if not more, important to ensure that such a legislation is implemented in all earnestness and mere lip sympathy is not paid to a such legislation and justification for non-implementation is not pleaded on ground of lack of finances on the part of the state. The greatest recompense which the state can get for expenditure on Children is the building up of powerful human resources ready to take- its place in the forward march of the nation. The Juvenile Justice Act (JJA) came into effect in 1986, when the Parliament decided to replace the Children Acts in different states and union territories with a single uniform piece of legislation. This act was to provide the care, protection, treatment, development, and rehabilitation of neglected or delinquent Juveniles and for the adjudication of certain matters relating to and disposition of delinquent Juveniles.

- In the United Kingdom the common law right of *parens patriae* provided the Chancery Courts (a division of the High Court of Justice) to exercise authority over Children in the absence of responsible parental control. In India, only in 1897 the Reformatory Schools Act gave the statutory recognition of jurisdiction of courts in cases of Juveniles. The courts were conferred with the power of sending a convicted youth to reformatory schools, instead of imprisoning him or her. But such power of the court in its basic features is meant to be in the nature of basic equitable jurisdiction exercisable by the Chancery Court over the Juvenile in criminal matters. But after the Madras Children Act

came into force in 1920, the above provisions were affected because the Madras Children Act divested the criminal courts to assume jurisdiction over the Children under the Reformatory Schools Act, 1897.

- As a result of such a move, an amendment in the Code of Criminal Procedure in 1923 was made to insert Section 29 B. This section emphasized the need for a judicial procedure with respect to the adjudication in criminal proceedings of Child offenders. Section 29B of the code of the criminal procedure, 1868 provided that “any offence” other than one punishable with death or imprisonment for life committed by a person under the age of 15 years may be tried by a District Magistrate or a Chief Presidency Magistrate or by any Magistrate specially empowered by the state government to exercise the powers conferred by Section 8 sub-section (1) of the Reformatory Schools Act, 1897.
- However, the Code of Criminal Procedure, 1973, streamlined the subject of adjudication of status. Section 27 of the new Cr.P.C provides that “any offence not punishable with death or imprisonment for life” committed by a person under the age of 16 years may be tried by the court of a Chief Judicial Magistrate, or by any Court specially empowered under the Children Act, 1960, or any other for the time being in force providing for the treatment, training, and rehabilitation of youthful offenders (Code of Criminal Procedure, 1973).The Juvenile Justice (Care and Protection of Children) Act, 2000, brought in compliance of Child Rights Convention 1989, repealed the earlier Juvenile Justice Act of 1986 after India signed and ratified Child Rights Convention 1989 in year 1992.<sup>12</sup>

### **3.2.1 Juvenile Justice (Care and Protection of Children) Act, 2000**

The Convention on the Rights of Children was ratified by the Government of India on December 11, 1992. A necessity arose for the Government of India to re-enact the existing law relating to Juveniles bearing in mind the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations-Rules of the Protection of Juveniles Deprived of Their Liberty of 1990, and all other relevant international instruments. The above objective was taken note of the Parliament as such the Indian Parliament enacted the present Act on Juvenile Justice called as Juvenile Justice (Care and Protection of Children) Act, 2000, on December 30, 2000, the said act consolidated and amended the law relating to Juveniles in conflict with law and Children in need of care and protection. This act was aimed at 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.

The Juvenile Justice (Care and Protection of Children) Act, 2000, was brought into force on April 1, 2001<sup>13</sup>. However, certain provisions of this act were challenged before the High Court of Delhi through an public interest litigation. The High Court of Delhi also observed that some provisions of the above Act needed reconsideration. In the light of the observations made by the High Court of Delhi, it was proposed to carry out amendments in some sections of this act. Accordingly, an amendment Bill was introduced in the Lok Sabha in July 2003. Thereafter, the Lok Sabha referred the amendment Bill to the Parliamentary Standing Committee on Labour and Welfare for examination and report submission. But the Lok Sabha was dissolved before the Standing Committee submitted its report and as a result the amendment Bill lapsed. Before re-

introducing a fresh amendment Bill, the Government of India considered it necessary to revisit the amendment proposals again along with other suggestions received by the Standing Committee from various experts. The suggestions and views of all those concerned were obtained on the proposed amendments and based upon such suggestions and views it was proposed to make amendments in the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, in addition to those contained in the earlier Bill.

The amendment Act enacted by the Parliament in the 57th Year of the Republic of India (Act 33 of 2006) was notified on August 22, 2006.

### **3.2.1 Salient Features of the Juvenile Justice (Care and Protection of Children) Act 2000 and Amendments in 2006**

- The Juvenile Justice (Care and Protection of Children) Act 2000 The Title of the Act stresses on the need for care and protection to both categories of Children.
- Uniform age for both boys and girls – any Child who has not completed the age of 18 fall within the jurisdiction of the Act to comply with the CRC definition of the Child.
- Separation of Child in need of care and protection and Child in conflict with law.
- Constitution of Child Welfare Committees to deal with Children in need of care and protection and Juvenile Justice Boards to handle Children in conflict with law.
- The category of Children in need of care and protection has been expanded to include victims of armed conflict, natural calamity, civil commotion, Child who is found vulnerable and likely to be inducted into drug abuse.
- More legal protection assured for the Child in conflict with law – detention to be resorted to as the last option, disqualification of past records and privacy maintained.

- The innovation the law makes with respect to Children in need of care and protection is the conceptualization of restoration of the Child as being the focal point, with restoration being conceptualized as restoration to parents, adopted parents or foster parents. (Sec 39).
- The law outlines four options of restoration for Children in Children's homes and special homes which include adoption, foster care, sponsorship and after care.
- The Juvenile Justice (Care and Protection of Children) Amendment Act, 2006. The JJ Act 2000 was subsequently amended and referred as Principal Act.
- The Amendment Act brought about 26 amendments which are in force.
- This Act forms the legal System and framework for the care, protection, treatment and rehabilitation of Children of both categories
- The competent authority to deal with Children in need of care and protection is the Child Welfare Committee which constitutes a chairperson and four other members, one of whom at least should be a woman.
- Juvenile Justice Board (JJB) is the competent authority to deal with Children in conflict with law which consists of three members. The Chairperson of the Board should be a First-Class Judicial Magistrate and two honorary social workers out of whom at least one should be a woman.
- The Act provides for the establishment of various kinds of Institutions such as Children's Home for the reception of Child in need of care and protection. – Special Homes for the reception of Child in conflict with law– Observation Homes which are meant for the temporary reception of Children during the pendency of any inquiry.– After-care Organizations which are meant for the purpose of taking care of Children after they have been discharged from Children's Home or Special Homes.

- A few sections in the Act (Sec 23 – 26) are focused on the offences committed by anyone against a Child such as assault, causing mental or physical suffering and employment of a Child which are considered as nonbailable offences.
- “Advisory Board” was constituted in Central, State, District and City level to advise the Government on matters relating to establishment and maintenance of Homes in all means.
- The term Juvenile in conflict with law Welfare Board was changed into Juvenile Justice Board.
- Process of adoption was introduced.
- A Governmental, registered non-Governmental organizations or a voluntary organization prepared to take responsibility of the Child were categorized to” Fit Institutions.”

### **3.3 JUVENILE IN CONFLICT WITH LAW**

The term 'Children in Conflict with the law' refers any person below the age of 18 who has come in contact with the Justice System as a result of committing a Crime or being suspected of committing a Crime. It is found that most of the Children in conflict with the law are involved in petty theft like stealing mobile phones, pick pocketing, extortion, burglary and robbery along with adult offenders, chain snatching and rarely involved in street fights and hurt cases.

Alarmingly the involvement of Children in rape and murder cases is also in the rise. There are various factors behind their delinquent behavior. Some of them are involved in more serious offences. Juveniles get themselves involved in heinous Crimes either independently or under the influence of adult offenders by forming gangs. Of late we have come across Juveniles committing Crimes like murder and

rape. The Delhi gang rape case commonly known as Nirbhaya Rape case has brought a lot of change in the Juvenile Justice System. In the aftermath of the gang rape in Delhi, a committee was constituted with by His Lordships Hon'ble Justice Verma as Chairperson of a three-member commission tasked with reforming and imparting strength and vitality to anti-rape law. The members of the committee were Ex-Solicitor General Gopal Subramaniam and Justice (Retd.) Leila Seth. The Committee was assisted by a team of young lawyers, law students and academics.

The Committee's counsel, Abhishek Tewari, Advocate was overall in charge of the preparation of the report. The Committee was facilitated in the task by an overwhelming response to the Public Notice inviting suggestions within the available short time. An oral consultation was also held for inter action with the representatives of several stakeholders, particularly the women's social action groups and experts in the field and dedicated industry of a group of young lawyers, law graduates and academics who worked around the clock to do the necessary research and study required for the preparation of this report. Women's social action groups, which have been actively advocating the cause of gender Justice for decades, also came forward to give valuable suggestions with requisite supporting material. Many foreign contributors, including academia and students of prestigious foreign universities also volunteered and rendered valuable opinions.

The committee felt that failure of good governance is the obvious root cause for the current unsafe environment eroding the rule of law, and not the want of needed legislation. If there was a felt need for more laws there are many recommendations of expert bodies and judicial decisions that remain unimplemented. The Law Commission's report<sup>15</sup> relating to this subject, the National Police Commission Reports recommending autonomy and seminal improvement in the quality of the Police force, which is the principal machinery for the maintenance of law and

order, continue to gather dust for decades due to the apathy of all the political dispensations. The Supreme Court's judgment of 2006 in Prakash Singh's case giving certain directions for the autonomy and improving the quality of the Police force remain to be implemented by all the governments. Action in this behalf does not brook any further delay, if there is a genuine desire to honour the purpose of constituting this Committee. Attitudinal changes to correct the aberration of gender bias have to be brought about in the institutions of governance to improve the work culture, and in civil society to improve the social norms for realizing the constitutional promise of 'equality' in all spheres for the womenfolk. The 'workmen' must improve the work culture instead of quarreling with the 'tools. In the Committee's view, without the improvement in this aspect, mere additions in the statute book are of no avail. Focus on the machinery for implementing the laws is, therefore, a significant part of this exercise. The Committee hoped that the concern and urgency shown by the Government in constituting it will not wane with the passage of time and the publication of our report; and that the constitutional promise of gender Justice in a social order with the egalitarian ethos will soon be realized without much ado. A positive reaction to the tragedy which triggered this response of the government would be the real tribute to the memory of the victim of gang rape and to the honor of the women folk. The Committee concluded its task with this fervent hope. The Committee adopted a multidisciplinary approach interpreting its mandate expansively. The Report deals with sexual Crimes at all levels and with the measures needed for prevention as well as punishment of all offences with sexual over tones that are on affront to human dignity. This is on the basis that the issue of sexual assault against women is one that goes to the core of social norms and values. The report was submitted on 23.1.2013<sup>16</sup>. The Report also deals with the construct of gender Justice in India and the various obstructions to this. The Committee's approach is founded on achieving the



guarantee of equality for all in the Constitution of India. The comprehensive 630-page report, which was completed in 29 days, was lauded both nationally and internationally. This eventually led to the passing of the Criminal Law (Amendment) Act 2013, which was criticized as not adequately applying the

Committee's work and recommendations.

Adult perpetrators play a vital role for the behavior of the Juveniles. These adult perpetrators are aware of the lenient sentence on the Juveniles and use the Juvenile for their own welfare. This is at times used by coercion also. Many incidents have also been brought to light by discriminating the Children. More than 1 million Children worldwide are detained by law officials. Children rights are denied in the institutions and they are treated like slaves. The institutional works like cleaning the toilet, sweeping the dormitory are also done by these Children instead of putting them in to a rehabilitative atmosphere. Most of the institutions are not provided with a full time medical officer which is a must. Posting of psychologist in the institutions are also the need of the hour.

### **3.4. CHILD IN NEED OF CARE AND PROTECTION**

Majority of the India Children are in distress. Various factors like emotional sexual and physical abuse are in the rise. It is the need of the hour that the society and the States identify this issue and jump into action. Children are prone to abuses of various types like physical, sexual and emotional abuse.

Child in need of care and protection means a Child who: -18

- who is found without any home or settled place or abode and without any ostensible means of subsistence?

- who resides with a person (whether a guardian of the Child or not) and such person has threatened to kill or injure the Child and there is a reasonable likelihood of the threat being carried out, or?
- who has killed, abused or neglected some other Child or Children and there is a reasonable likelihood of the Child in question being killed, abused or neglected by that person?
- who is mentally or physically challenged or ill Children or Children suffering from terminal diseases or incurable diseases having no one to support or look after,
- who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the Child,
- who does not have parent and no one is willing to take care of or whose parents have abandoned him or who is missing and run-away Child and whose parents cannot be found after reasonable inquiry?
- who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,
- who is found vulnerable and is likely to be inducted into drug abuse or trafficking?
- who is being or is likely to be abused for unconscionable gains?
- who is a victim of any armed conflict, civil commotion or natural calamity?

### **3.4.1 Child Abuse**

Family is the first contact a Child gets. He gets adapted to the life style of the family. Parents play a vital in the development of a Child. Most of the times abuse starts at home. The root goes to schools and the society where the Child gets interacted. Neglect of a Child occurs when a

person who holds his responsibility disowns him or fails to provide him with the basic requirements like food and shelter. A Child may have various needs based upon his mental requirement. When he fails to get the basic requirements or in some cases a luxurious requirement, he tends to develop a negative attitude towards the family and tries to look after his needs by resorting to illegal means like committing theft.

### **3.4.2 Physical Abuse**

Most of the time when a Child does not heed to his parents' words, parents get irritated and physically abuses the Child. Instead of counseling the Child, not to resort into illegal activities parents' resort to beating the Child and physically harming him. Physical abuse is a physically aggression directed at Child by an adult. It can involve punching, striking, kicking, showing, slapping, burning, pulling ears or hair, stabbing, choking or shaking a Child. Shaking Child can cause shaken baby syndrome. Boys are more battered than girls, the transmission of toxins to Child through its mother (such as with fetal alcohol syndrome) can also be considered physical abuse in some jurisdictions. This kind of abuse creates hatred in the mind of the Child towards his family. In unmanageable circumstances the Child resorts to running away from the home. He does not realize that he would be even more abused if he leaves the family. Things like failure to provide adequate food, clothing, failure provide nurturing or affection, educational: failure to enroll a Child in school, failure to medicate the Child or take him or her to the doctor as and when required are some abuses a Child comes across at home.

### **3.4.3 Sexual Abuse**

Sexual abuse of Child is a form of Child abuse in which a Child is abused either by an adult or an adolescent for sexual stimulation. Mostly girls are victims of sexual abuse than boys a high proportion of Children during the age 14 to 16 years of age. Child sexual abuse includes certain behavior of adults or adolescent in pressuring a Child to engage in sexual activities, indecent exposure of the genitals to a Child, actual sexual contact against a Child, physical contact with the Child's genitals, viewing of the Child's genitalia without physical contact, or using a Child to produce Child pornography. Effect of Child sexual abuse include guilt and self-blame, flash back, nightmares, fear of things associated with the abuse, self- esteem issues, sexual dysfunction, chronic pain, addiction, self-injury, depression, anxiety.

### **3.4.4 Emotional Abuse**

In many circumstances Children are abused emotionally too. This is the hardest to define. Irritating a Child by ridiculing him, degrading him, comparing him with others, giving him mental torture by criticizing his acts and humiliating him in front of his own friends would amount to emotional abuse. Many parents who ill-treat their Children are those who are aggressive, irritable and less tolerant in their emotional characteristics and have low-esteem, feeling of alienation, and lack of ability domineering in their behavioral characteristics indulge in this kind of behavior with the Child.

### **3.4.5 Child Labour**

Child labour refers to the employment of Children at regular and sustained labour. This practice is considered exploitative by many international organizations and is illegal in many countries.

Child laborers are exploited, exposed to hazardous work conditions and paid a pittance for their long hours of work. Forced to fore go education, shouldering responsibilities far beyond their years, becoming worldly wise when their peers have yet to leave the cocoons of parental protection, these Children never know what Child hood is.

### **3.4.6 Vulnerable Children**

Street Children are an extremely vulnerable group because they are forced to live on the streets due to compelling circumstances and where there is no protection, supervision and care from concerned adults. The term 'street Children' covers several groups of Children living on the streets, coming from different circumstances and for various reasons. Often these Children are found on railway platforms, bus stops, pavements, traffic lights and religious places. To make a living they have to resort to begging, rag picking, shoe shining, working as porters, working at food stalls and hotels etc. Children on the street are primarily working Children, who due to difficult circumstances have to support themselves and contribute to their family's income. They may have families but the nature and degree of contact varies from returning home daily, to a few times annually.

Another group of Children have the street as their home and it is here that they seek food, shelter, livelihood and companionship. They have family ties, which are limited and very infrequent. The abandoned and destitute street Children have no ties whatsoever with their families. They are abandoned due to reasons like poverty, mental or physical handicap, and in some cases gender discrimination.

These Children are very much in need of care & protection. The missing Children have either run away from home or are victims of circumstances that have separated them from their

families. If the families are not traced, they live on the streets and hence are part of the category of street Children. Dysfunctional families, poverty, exploitation, domestic violence, sexual abuse, neglect, alcoholism and drug abuse are some reasons that compel Children to leave home and live on the streets. They are constantly exposed to the dangers of the city life and are vulnerable to exploitation, violence and various forms of abuse. Children on the streets do not have access to basic resources that are required for healthy growth and development. Their right to education, proper nutrition, clothing, shelter and medical care are grossly violated.

The above categorized Children need special attention. The state's responsibility towards the Children in need of care and protection is high. Under the new Juvenile Justice Act punishments are provided for the abuser. Children face various abuses in their day-to-day life.

### **3.5. OFFENCES AGAINST CHILDREN**

#### **3.5.1 Punishment for Cruelty to Juvenile or Child.**

Any person who has actual charge of or charge of or control over, a Juvenile or the Child, assaults, abandons, exposes or willfully neglects the Juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such Juvenile or the Child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extent to six months, or fine, or with both.<sup>20</sup> Even Police people come under the purview of cruelty done to Children after apprehension. It was laid down in a decision of the Hon'ble Delhi High Court in State vs Rameez<sup>21</sup> that Police men who have control over the Juvenile or Child would fall under the purview of the provision of Sec 23 Juvenile Justice (Care and Protection of Children) Act 2000.

### **3.5.2 Punishment for Employing a Juvenile or Child for Begging**

Any person who employs or uses any Juvenile or the Child for the purpose or causes any Juvenile to beg shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine and the one who abets such an act shall also be liable with imprisonment for a term which may extend to one year and shall also be liable to fine.

### **3.5.3 Penalty for Giving Intoxicating Liquor or Narcotic Drug or Psychotropic Substance to Juvenile or Child**

Any person who gives, or causes to be given, to any Juvenile or the Child any intoxicating liquor in a public place or any narcotic drug or psychotropic substance except upon the order of duly qualified medical practitioner or in case of sickness shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

### **3.5.4 Exploitation of Juvenile or Child Employee**

Any person who ostensibly procures a Juvenile or the Child for the purpose of any hazardous employment keeps him in bondage and with-holds his earnings or uses such earning for his own purposes shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

The Act further provides for the constitution of the Child Welfare Committees for every district or group of districts for exercising the power and discharging the duties in relation to Child in need of care and protection. The committee shall consist of a chairman and four other members, of which one shall be woman and another, an expert on matters concerning Children. The committee shall function as a Bench of Magistrates and shall have powers conferred on a judicial

Magistrate of the 1st class under the code of Criminal Procedure. The committee is the final authority to deal with matters of care, protection, treatment, development and rehabilitation of the Children so produced.

### **3.6 International Convention of Rights of Child 1989**

The convention of Child rights<sup>25</sup> was adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989 and came into force on 2 September 1990, in accordance with article 49 of the CRC. The convention proposes various rights of the Child as enumerated below: -

- A Child means every human being under the age of eighteen years, unless, under the applicable to the Child, majority is attained earlier.
- Every Child has the inherent right to life. Every Child shall have the right from birth to a name, the right to acquire a nationality, and the right to know and be cared for by his parents.
- Every Child has the right to preservation of his or her identity. Every Child who is separated from his parents has the right to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the Child's best interests.
- Every Child has the right to leave any country, including their own.
- Every Child has the right to express his/her own views freely in all matters affecting the Child.
- Every Child has the right to freedom of expression. Every Child has the right to freedom of thought, conscience and religion. Every Child has the right to freedom of association and to freedom of peaceful assembly.



- Every Child has the right to privacy. Every Child has the right to protection of the law in case of interference or attacks on said privacy.
- Every Child has the right to access information and material from a diversity of national and international sources, especially those aimed at the promotion of his/her social, spiritual and moral well-being and physical and mental health.
- Children of working parents have the right to benefit from Child-care services and facilities for which they are eligible.
- Every Child has the right to protection from all forms of abuse, physically or mentally.
- Every Child temporarily or permanently deprived of his/her own family environment has the right to special protection and assistance provided by the state.
- Every Child who is seeking refugee status has the right to receive appropriate protection and humanitarian assistance.
- Every mentally or physically disabled Child has the right to enjoy a full and decent life, in conditions which ensure dignity and promote self-reliance.
- Every Child has the right to the highest attainable standard of health and to facilities for the treatment of illness and the rehabilitation of health.
- Every Child who has been "placed" by the competent authorities for the purposes of care has the right to a periodic review of the treatment provided the Child and all other circumstances relevant to his/her placement.
- Every Child has the right to benefit from social security, including social insurance.
- Every Child has the right to a standard of living adequate for the Child's physical, mental, spiritual, moral and social development.

- Every Child has the right to education. Every Child has the right to enjoy his/her own culture, to profess and practice his/her own religion and to use his/her own language. Every Child has the right to engage in play, recreational activities, and to participate freely in cultural life and the arts.
- Every Child has the right to be protected from economic exploitation.
- Every Child has the right to be protected from the illicit use of narcotic drugs, and from being used in the illicit production and trafficking of such substances.
- Every Child has the right to be protected from all forms of sexual exploitation and sexual abuse.
- Every Child alleged as or accused of having infringed the penal law has the right to be presumed innocent until proven guilty. Every Child has the right to prompt access to legal and other assistance. Neither capital punishment nor life imprisonment will be imposed for offenses committed by persons below 18 years of age. Every Child has the right to protection during times of war.<sup>26</sup> By agreeing to the Convention, countries undertake to respect the rights of Children listed in it. The Convention has over 50 sections describing specific rights, and four main principles that underpin all these rights.

### **3.7 Main Principles**

#### **3.7.1 The Right to Life, Survival and Development**

Children have a right to good health, food and drinkable water. They also have the right to be raised by their parents. Parents must provide their Children with a home, clothing, good food, an education and even leisure time. Countries also undertake to protect Children against violence, abuse, slavery and forced marriage.

### **3.7.2 Priority on Children's Interest First**

Decisions about a Child must be based on what is best for that Child. For example, when governments and courts make decisions, and when laws are made, this principle must be respected.

### **3.7.3 Non-Discrimination**

All Children are entitled to the same protection and services, regardless of whether the Child is a boy, a girl, a refugee, Aboriginal, has a disability or belongs to a minority group. Countries must ensure that Children are not discriminated against on the basis of race, colour, sex, religion, origins, a disability, language, political opinions or wealth.

### **3.7.4 The Right to Take part in Decisions**

Children have the right to give their opinions and take part in decisions that affect them. Depending on age and maturity, this can mean that a court making a decision about a Child might have to give the Child a chance to be heard. Children also have freedom of expression. For example, Children have the right to write a letter to be published in a newspaper or to participate in a legal public gathering.

## **3.8 PROTECTION OF THE RIGHTS OF CHILDREN UNDER VARIOUS LAWS**

### **3.8.1 Constitution of India**

Children are guaranteed with various rights under the Constitution of India.

As per Article 1427, all the citizens are equal before Law and are granted equal protection. Further all citizens are granted protection on the basis of religion, caste, sex or place of

birth<sup>28</sup>. Exploitation of Children in any form is curbing their right to life<sup>29</sup>. Right to education is also considered as a right to life after in 86<sup>th</sup> amendment in 2002. Right against exploitation - prohibition of traffic in human beings and forced labour<sup>30</sup>. Prohibition of employment of Children in Children in factories. No Child below the age of 14 shall be employed to work in any factory or mine or any hazardous employment<sup>31</sup>.

### **3.8.2 Directive Principles of State Policies For Children Under The Constitution Of India**

Every State has a duty to direct its policy towards securing the health and strength of Children and that their tender age is not abused and they are not forced by economic necessity to enter avocations unsuited to their age or strength<sup>32</sup>. State to direct its policy towards securing that Children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity ; and Childhood and Youth are protected against exploitation and against moral and material abandonment<sup>33</sup>. Early Childhood care and education for all Children until they complete the age of fourteen years<sup>34</sup>. It shall be the duty of every citizen of India , who is a parent or guardian to provide opportunities for education to his Child or ward between the age of six to fourteen<sup>35</sup>.

### **3.8.3 Provision in Child Labour (Prohibition & Regulation) Act, 1986**

"Child" means a person who has not completed his 14th year of age as per the Child Labour (Prohibition and Regulation) Act 1986. It prohibits employment of Children in 16 occupations and 65 processes<sup>36</sup>. It also regulates the conditions of employment of Children in all other occupations and processes not prohibited under the Act. Any employer who contravention of Sec. 3 shall be punishable with imprisonment for minimum 3 months which may extend to 1

year or with fine not less than Rupees 10,000 which may extend to 20,000 rupees or with both<sup>37</sup>.

In case of similar offence being committed for the second time, he shall be punishable with imprisonment for a term not less than six months which may extend to 2 yrs<sup>38</sup>.

#### **3.8.4 Provisions in the Factories Act, 1948**

Children have been granted protection under the Factories Act as early in 1948. No Child who has not completed his fourteenth year shall be required or allowed to work in any factory<sup>39</sup>. The penalties are provided in sub -sections (1) and (2) of sec.14 of sections (1) and (2) of sec.14 of Child Labour (Prohibition & Regulation) Act, 1986. Therefore the Child Labour Act comes to the rescue of Children.

## CHAPTER IV

### PREVENTION OF JUVENILE DELINQUENCY

#### 4.1 Prevention of Juvenile delinquency

In order to prevent Juvenile Delinquents, we have to deal not only with socially maladjusted children and youths who are involved in conflict with law, but also with those children who are creating disharmony in schools and streets while not violating the laws. Prevention is necessary for such children. If they are not prevented then they would become the habitual offender. They make mistakes and become excited and fail to behave according to legitimate expectations. First of all, we should identify such juveniles timely and thereafter provide them with proper treatment. They may convert into habitual offender if they are not timely identified and prevented from committing the offences. Juvenile delinquency has become a threat to our society and is day by day becoming an alarm to awaken those persons who are either victim of the disease or those who are likely to get struck into it. Over-crowding in the cities, increase in the rise of slums, cinema houses, smuggling, gambling and drinking are some of the contributory factors responsible for this ever-growing problem of juvenile delinquency. This study is guided by a desire to gain an insight into the problem of delinquency and its statutory treatment in a remote developing region of this vast and ever-growing country. An attempt has been made to know the various causes of delinquency and its nature in different areas and strata of society.

The most effective way to prevent juvenile delinquency has indisputably been to provide counseling and proper guidance to children and their families at an early stage. Numerous state programs attempt early intervention and prevention and independent groups in communities has taken initiatives to tackle the problem in new ways. The most effective programs share the

following key components. Many provisions have been made by jurists and criminologists for the prevention of juvenile delinquency and some of these provisions are very useful for the welfare of the juveniles and their development.

Delinquency Prevention is a broader term for all efforts made at redirecting the youth and preventing from being involved in criminal activities, or other antisocial ailments. Nowadays, governments have recognized the importance of preventing delinquency at an earlier stage and therefore it has started allocating funds for its prevention. As it is quite difficult for states to provide the fiscal resources required for good prevention so all the organizations, communities, and governments are working more in hand to hand with each other to prevent juvenile delinquency. As development of delinquency in youth is being influenced by various factors, so there have to be a comprehensive approach in preventing it. Prevention services include activities such as education and treatment regarding substance abuse, youth mentoring programs, parenting education, emotional support, family counseling, and youth encouragement in their respective fields. Reductionism should rely on a psychosocial focus whilst neglecting potential socio-structural and political influences. This theory oversimplifies complex ideas and system by converting them into simpler parts.

#### **4.2 Preventive Programmes of Juvenile Delinquency**

There may be two kinds of programmes for preventing the juvenile delinquency; (i) Individual Programme- Individual programme involves the prevention of delinquency through counselling, psychotherapy and proper education.

(ii) Environmental programme- Environmental programme aims of changing the socioeconomic conditions which are likely responsible for promoting delinquency. These two forms of preventive approaches are reflected in the following strategies, which are adopted in crime prevention programmes.

### **(i) INDIVIDUAL PROGRAMME-**

(a) Clinical programme- Through clinical programmes Psychiatrists, Clinical Psychologists and Psychiatric Social workers are employed in different areas for understanding the personality disorders of the juvenile delinquents and give them proper counseling.

Taft and England<sup>1</sup> have listed the function of clinics as follows

- To investigate cases selected for study and treatment.
- To treat cases itself or to refer cases to other agencies for treatment.
- To interest other against in physiologically oriented types of treatment of delinquent behavior.
- To reveal community the unfulfilled needs of children.
- To cooperate in training of students intending to specialize in treatment of behavioural problems
- To participate in identification of pre delinquents.

George Albee comments<sup>2</sup> “these clinics are treating the wrong people they are using the wrong methods; they are located in the wrong places and they are improperly staffed and administered”.

England raised some relevant questions and feel that there is difficult to assess the child guidance clinic as a prevention agency.

(b) Educational Curriculum and Activities- The impact of educational is remarkable in the nations where the school going children ratio is very high. The preventive measures can be adopted in an efficient manner through the school curriculum and activities. Teacher should also participate in these activities and also adopt some measures which include that, teachers shall not



discriminate among their students; children should be treated equally and provide them moral education and social norms it will be very useful for the students for their future life goal. Moral education is an important aspect for the students, which form the basis for their future life.

(c) Mental Hygiene- Mental hygiene also plays a vital role in the prevention and treatment of Juvenile delinquency. Mental therapy helps in preventing mental conflicts and curing mental disturbances thus bringing adequate mental adjustment in childhood. Development of high sentiment and values in child also prevent Juvenile Delinquency. In October 1944, on occasion of inauguration of the Indian Council for Mental Hygiene Dr. K.R. Masani, the then Director of Indian Institute of Psychiatry and Mental Hygiene, said that “the application of mental Hygiene was wide and varied and in Education, Law, Medicine, Public health, Industry, mental hygiene played an important role in preventing the delinquency and crime”.

(d) Parent education- Parental education is very essential for the Juvenile from preventing them from being involved in any crime. It is the responsibility of the parents to provide their children such education that they keep themselves away from delinquent acts and also not get involved in criminal activities. Every community should ensure opportunities and educational programmes for parents which will help in improving family relationship and give them guidance for the proper education and care of children.

(e) Recreational programmes- The recreational activities also play a vital role in checking of juvenile delinquency. Recreation programs should be designed such as dancing, singing, sports, music, karate, art, rock climbing and such other activities which enable youths to mix up with other adults and children in the community and develop friendship. Such positive friendships

may assist children in later years and also helps in their personality development and increasing self-confidence.

## **(II) ENVIRONMENTAL PROGRAMME**

(a) Community Programmes- The main objective of community activities/programme is to get in touch with the person in need of help instead of person who himself approaches the workers and ready to take participation in the local community activities/programme. Marshal B. Clinard has outlined the key supposition of these programmes as follows<sup>3</sup>:

- Local people participation can change neighborhood conditions.
- Because they do not accept an adverse environmental condition as desirable and favourable.
- Because self-imposed changes might have real impact on the resident and consequently will have more eternal effect.

### **4.3 Role of Police**

The role of police is considered very important in apprehending and protecting juvenile from being delinquents. Police is a separate agency which has to perform its duties under the guidelines of Juvenile Board/Court. Therefore, to understand the behavior of police towards Juveniles, it is necessary for them to be aware of all the facts of the Juvenile Court.

#### **4.4 Problems in Administration of Justice**

There are a number of problems which are encountered during the effective administration of justice regarding juvenile delinquency. In the majority of the State, Juvenile Courts are not constituted in all the districts or yet to be constituted under the Juvenile Justice Act, 2000. Authorities who are given powers by the juvenile board/courts are not having special knowledge to child psychology and child welfare is a drawback in the administration of justice towards juveniles. And another problem in this area is the approach of the authorities concerned with the justice system. Their approach should be based on social and reformatory instead of penal for the better interest of children.

##### **(a) Special Juvenile Aid Police Unit**

India is a very big country with many states and union territories. All states and UT's people have different standards of living, culture and habits etc or having different problems so different ways and means are required to tackle this issue. This problem is more rooted in urban areas in contrast to rural areas. In many states, generally city police have special trained forces but in the rural areas such trained police is not available. For example, Bombay has got first Juvenile Aid Police Unit established in Oct. 1952 as a part of vigilance branch under the control of a D.C.P (criminal branch) must be headed by a lady inspector. This Police Unit deals with the cases of pre-delinquent, delinquent and victimized children and it is their duty to enforce the provision of Bombay Children Act. And apart from act a "Bombay Railway Juveniles Guide Service" was also established, especially for those boys who run away from their homes and picked up in the railway station.

##### **Discovery and apprehension**

In the West Bengal Children Act it has not been provided for the procedure of arrest but in other states it has been provided that “no Juvenile offender can be apprehended / arrested for the bailable offences”. The Madras Children Act and Hyderabad Children Act provided that “a child guilty of non-bailable offence can only be arrested”. The West Bengal Children Act also provide that the “Juvenile offender cannot be handcuffed”. The instructions and procedure vary from state to state. In Himachal Pradesh, handcuffs are allowed only in that condition when Juvenile is of the violent nature. In Gujarat for handcuffing, they used rubber and leather straps. In Tamil Nadu “handcuffing is not allowed in any condition”. In Andhra Pradesh “it is avoided as much as possible” and in other states law does not provide specific instructions.

#### **4.5 Preventing Juvenile Delinquency**

It is believed that intervention in the beginning is the best approach to preventing juvenile delinquency. Individual and organizational efforts are required to keep children away from illegal and immoral activities. Some focus on punitive prevention required to frighten offenders by making clear in their mind that they would get severe punishment if they violate law and also describe them the result of their offence. Implement the development programmes with income generation opportunities, professional training and vocational education courses which could help and prevent them from association with wrong persons. NGOs and local community active involvement can also play a vital role in preventing the juvenile delinquency.

## STATEMENT OF THE PROBLEM

Children are considered as the gift and asset to the Indian families. They are given at most care, affection and importance along with education. But in some cases, circumstances have driven them to commit unlawful activities. Criminal acts of some family members also influence Children and sometimes they themselves induct them to commit offences. They are exposed to the dangers of the city life and are vulnerable to exploitation, violence and various forms of abuse.

Dysfunctional families, poverty, exploitation, domestic violence, sexual abuse, neglect, alcoholism and drug abuse are some reasons that compel Children to leave home and live on the streets. Children on the streets do not have access to basic resources and their right to education, proper nutrition, clothing, shelter and medical care are violated. The family structure, composition, practices, interactions, relationships and environment all contribute to a Child's development.

There is a need for protection of Child's Rights within the family. Various factors constitute to the criminal behavior of the Child. Some causes behind this have been identified. Data has been collected from the Juvenile Justice Board, Chennai based on the available case records and disposed cases. The Act contemplates that the identity of the Child should not be revealed. Therefore, without revealing the identity of the Child the researcher had taken data of the age, family background, nature of offence, social and economic conditions, peer influence, vulnerability, parents attitude towards the Juvenile and vice versa, area in which the Juvenile resides, living conditions, literacy level and the habits of the Juvenile in order to analyze the causes for the criminal behavior.

In Tamil Nadu, the Justice delivery System for Children is in consonance of the latest Acts on the subject. The main idea behind it for restricting my research towards Chennai City is because of the increasing Crimes in Chennai. Therefore, it struck me to make a study of how these Juveniles are getting involved in crimes, and what kind of situation has forced them to do illegal activities. Various causative factor which constitutes the Juveniles to do crimes. How the family circumstances push a Child to do crimes. What kind of correctional measures could be provided to them? In which part of Chennai City, the crime level is higher and what kind of measures could be taken to restrict the same. Whether the present resources, measures available for rehabilitation are sufficient? How they get associated with criminals. Whether they are used as a tool for committing crimes?

The ratio of the total population of Children in Chennai city and the Juveniles in conflict with law, in what way such act could be curtailed. With these an attempt is made in this study to analyze the Juvenile Justice the rights of the Child rights in the Juvenile Justice Board, Chennai city. Measures to prevent Juvenile crimes are pointed out after the study.

## **OBJECTIVES OF THE STUDY**

The objectives of study are as follows: —

- To understand and study the significance of juvenile justice.
- To study historical and philosophical background of juvenile justice.
- To study and analyse the contemporary look of juvenile justice
- To analyse the juvenile justice services in national prospective.
- To examine and assess the responsibility and accountability of concerned authorities.
- To analyse the pendency in justice and its disposal.
- To suggest important measures to improve the existing position of juvenile justice.

## METHODOLOGY TO BE ADOPTED

### METHODOLOGY:

The venture is for the most part based upon doctrinal research yet includes the examination of the current circumstance. The extent of the venture is confined just to essential sources and optional sources. The venture goes for doing a total intensive research to upgrade the fundamental learning of the subject. The venture has highlighted how critical renewal is in the present tyke enactment and how such reconstruction can be utilized as a part of request to give assurance to kids.

- Primary Source

The venture has been made utilizing the Various Books, articles/ Research Papers, thesis.

- Secondary Source

The articles and reports by different writers have given a ton of data and were of incredible help and utilize.

### RESEARCH DESIGN

- Nature of study—The research is doctrinal in nature.
- Collection of data—The relevant data disclosed and relied upon in various chapters of the thesis has been collected from various official websites, reports and study material published by the different legal services authorities as well as from the official websites of different governmental and non-governmental offices and agencies. Reference of such



source has been mentioned at the relevant place of the thesis. Some private articles have also been referred to in order to support certain issues relating to the research work. Various journals such as All India Reporter, SCALE, Supreme Court Cases etc. containing important decisions pronounced by Supreme Court and various High Courts have been consulted and in this regard library, High Court and District court was visited.

## HYPOTHESES

There is a significant growth in the Juveniles with conflict with law for the past three years in accordance with the population particularly with reference to Chennai and there is a significant difference between number of cases and disposal of cases pertaining to Juvenile crimes in the Chennai city particularly theft cases.

The following hypotheses are formulated for the purpose of the study.

1. Whether the Socio-Economic conditions are a cause for increase in Juvenile crimes
2. Increasing rate of school drop outs due to faulty policies in the present Governmental education System is directly proportional to the high rate of Juvenile crimes.
3. Impoverished conditions coupled with addictive habits of Juveniles are the root cause for Juvenile theft.
4. Improper implementation of government schemes meant for people below poverty line is accelerating Juvenile crimes.
5. Poor infrastructural facilities in Juvenile Homes provide escape routes for Juveniles detained in the institutions.
6. Lacunae in the procedures followed by different institutions of the System a cause for ineffective implementation of the Juvenile Justice System.

## **SIGNIFICANCE AND SCOPE OF THE STUDY**

As per the Crime in India Report (2011), the State of Maharashtra has the second highest incidence of reported IPC (Indian Penal Code) cases of juvenile offence. The city of Mumbai, a large metropolis, has the highest incidence of juvenile offences within Maharashtra, which is also among the highest in India. Literature review highlights that proliferation of crime in large urban areas is a combination of individual and systemic factors. The literature review highlights several parameters for effective rehabilitation. The overall assumption of the study is that rehabilitation can be meaningfully planned only if the experiences of the different stakeholders within the juvenile justice system (children, family, functionaries and others) are analyzed holistically and in an integrated manner. Merely implementing the provisions of the Juvenile Justice Act in a perfunctory manner will not unravel the complex issues of juveniles in conflict with law. Understanding the children, their family situation and the viewpoints of those adults involved in implementing the Act is crucial to take well informed decisions about the child within the juvenile justice system. Hence the purpose of the study was two-fold: to examine the overall profile of juvenile in conflict with law in a detailed manner, gain an in-depth insight into the lives of the juveniles as well as to capture the perspectives of the functionaries who play a critical role in implementation of the Juvenile Justice Act. In the Indian context, there are relatively fewer studies which have integrated information obtained through case records of children, detailed case studies of some of the children themselves, interviews with family members, functionaries and other significant adults associated with the juvenile justice system. The aim was to present a comprehensive and holistic analysis of the juvenile in conflict with law and suggest viable measures and strategies for rehabilitation. In Mumbai, there have been a few prior case studies on the juveniles or on aspects related to the implementation of the juvenile

justice system. However, to the best of the researcher's knowledge, there has been no study of this nature that includes case studies of juveniles in conflict with law, interviews with significant adults along with secondary analysis of case records, leading to the development of a framework for rehabilitation of juveniles in conflict with law.

## **Conclusion**

The answer to juvenile crime has to be just and reasonable, proper and reflective of an understanding of their psychology. For making any new amendment to the existing legislation, it requires deep understanding or knowledge of the jurisprudence, philosophy and impact of the existing law. It can be easy through concentrated, participatory and consultative processes which construct consensus on key policy questions. Amending the JJ Act, as a result to the nationwide anger against one juvenile put a dangerous trend and may also have an effect on all juveniles who are presently entitled for the juvenile focused care and protection and rehabilitative reform which conceive in the law that is currently in force. It will also violate the legal obligations arising from the Constitution, the recommendations of the Justice J. S. Verma Committee, and the universal standards enshrined in the UN Convention on the Rights of the Child. The nation needs is to reform and rehabilitate the juveniles and bring them into the society with dignity. A number of countries around the world are moving away from policies of deterrence to that of restorative and reformative justice. India has a fairly progressive law grounded in universally recognized principles and approaches. The way forward should therefore be to demonstrate that the reformative/rehabilitative/ model does work, and that as a country with one of the best constitutions in the world, and a wealth of healing traditions, we have the vision, the will and the heart to prove it. Our children, our victims of juvenile crime and our society deserve no less.

## **SUGGESTIONS**

- Effective implementation of Juvenile Justice Act, with full public awareness and proper orientation and training to professionals and law enforcement agencies.
- Government should motivate the Juveniles to join main stream of the society and regain their self-confidence, which is almost lost because of the callous attitude of the society and this can be done through implementation of social and reformative schemes with the help of administration and NGO's.
- Advocacy for various legal provisions provided for juveniles.
- A proper mechanism to assess the needs and requirements of the juveniles and regular review.
- Reformative approach of police rather than penal. The object must be to reform the delinquents, rather than just to punish them.
- Application of UN rules and other international convention rules.
- State Governments and U.T administrations should provide support to voluntary organization to start or reformative juvenile programmes including community services.

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