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**ABUSE OF JUVENILES IN CONFLICT OF LAW WITH SPECIAL
REFERENCE TO THE JUVENILE JUSTICE (CARE AND
PROTECTION OF CHILDREN) ACT, 2015:
A CRITICAL ANALYSIS**

Dissertation submitted to the Lovely Professional University

In partial fulfilment of the academic requirement

For the award of the degree of

Master of Laws (LL.M)

Submitted by

Simreet Kaur

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Under the Supervision and Guidance of

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LOVELY PROFESSIONAL UNIVERSITY

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May, 2017

Certificate

I hereby certify that this dissertation entitled “ABUSE OF JUVENILES IN CONFLICT OF LAW WITH SPECIAL REFERENCE TO THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015:

A CRITICAL ANALYSIS” submitted for the award of Degree of Master of Laws (LL.M) is a record of research work done by the candidate “Simreet Kaur ” during the period of his/her study under my guidance at School of Law, Lovely Professional University, Phagwara, Punjab, India, and that the dissertation has not formed the basis for the award of any Degree, Diploma, Associate ship, Fellowship or other similar titles to the candidate. I further certify that this dissertation represents the independent work of the candidate.

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Declaration

I hereby declare that the dissertation entitled “ABUSE OF JUVENILES IN CONFLICT OF LAW WITH SPECIAL REFERENCE TO THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015: A CRITICAL ANALYSIS” submitted to the School of Law, Lovely Professional University for the award of degree of Master of Laws (LL.M) is a record of original and independent research work done by me under the supervision and guidance of Mr. Ajay Kumar Barnwal, Assistant Professor, School of law, Lovely Professional University and that the dissertation has not formed the basis for the award of any Degree, Diploma, Associate ship or other similar titles.

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(.....)

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1. A.I.R : All India Reporter
2. ACHR : Asian Centre For Human Rights
3. ACRWC: African Charter on the Rights and Welfare of the Child
4. AHRL :African Human Rights Law Journal
5. AIDS : Acquired Immune Deficiency Syndrome
6. BCLR: Butterworths Constitutional Law Reports
7. CNLU : Chanakya National Law University
8. Cr.LJ : Criminal Law Journal
9. Cr.P.C: Criminal Procedure Code
10. CRC: Convention On child Rights
11. CWC: Child Welfare Committee
12. E.g. : *exempli gratia*
13. Etc: *et cetera*
14. H.C. : High Court
15. HIV : Human Immune Virus

16. HRC : Human Rights Watch
17. I.P.C. : Indian Penal Code
18. Ibid: *Ibidem*
19. ICCPR : International Covenant on Civil and Political Rights
20. ILI : Indian Law Institute Library,
21. JJA: Juvenile Justice Act
22. KSHRC: Karnataka State Commission For Protection Of Child Rights
23. LAWSA: The Law of South Africa PELJ Potchefstroom Electronic Law Journal
24. NCPCR: National commission for the protection of child rights
25. NCRB : National Crime Records Bureau
26. New Delhi NHRC: National Human Rights Commission, Library, New Delhi

27. NGO: Non Governmental Organisations
28. NHRC : National Human Right Commission
29. Op. cit. : opere citato
30. POCSO: Protection Of Child From Sexual Offences
31. RTE: Right to Education
32. RTI : Right to Information
33. S.C. : Supreme Court
34. SACR: South African Criminal Law Reports
35. SAJHR: South African Journal on Human Rights
36. SCC : Supreme Court Cases
37. THRHR: Tydskrifvir Hedendaagse Romeins-HollandseReg (Journal of Contemporary Roman-Dutch Law)
38. UN: United Nations
39. UNCRC : United Nation Convention On Child Rights
40. UNHCR: United Nations High Commissioner for Refugees
41. UNICEF: United Nations International Children's Emergency Fund
42. WHO: World Health Organisations
43. i.e. : id est

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16.	Jayendera v. State of U.P., AIR 1982 SC 685
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19.	<u>Kharak Singh V. State of U.P</u> , 1963 AIR 1295, 1964 SCR (1) 332

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22. Munna v. State of U.P., 1982 sc 806
23. Prem Shankar v. Delhi Administration, AIR 1980 SC 1535
24. Prerana v. State of Maharashtra and ors., 2003 BomCR Cri, (2003) 2 BOMLR 562, 2003 (2) MhLj 105
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27. Rajinder Chandra v. State of Chhattisgarh, AIR 2002 SC 748
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30. SampurnaBehura v. Union of India, (2011) 9 SCC 80
31. Sanant Kumar Sinha v. State of Bihar, 1991(2) Crimes 241
32. Sanjay Suri and anr. V. Delhi Administration, 1988, SCC(Cri)
33. SatyavanKottarakkara v. State, AIR 1997, Ker 133.
34. Sharath Chandra Pottala v. Union of India, 2014 (2) WLN 410 (Raj.)
35. SheelaBarse vs. Union of India, AIR,1986, S.C.1773
36. SideshwarGanguly v. State of West Bengal, A.I.R. 1958 SC 143: 1958 Cr. LJ 273: 1958 SCR 749
37. Smt. NilabatiBehera @ LalitaBehera v. State of Orissa and Ors, AIR 1993 SC 1960
38. State of Karnataka v. Harshad, 2005 CriLJ 2357 (Karnataka)
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40. SudeshJakhu v. K.C.J, 1998 Cri.L.J. 2428 (Del).
41. Umesh Chandra v. State of Rajasthan, AIR 1982 SC 1057
42. Vishal Jeet v. Union of India, 1990 AIR 1412, 1990 SCR (2) 861

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1. The Constitution Of India, 1950
2. Juvenile Justice (care and protection) Act, 2015
3. Protection of child from sexual offences Act 2012
4. Indian Penal Code, 1860
5. The Rights of the Child in Conflict with the Law under the Beijing Rules
6. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty
7. The United Nations Guidelines for the Prevention of Juvenile Delinquency
8. The United Nations Convention on the Rights of the Child
9. The African Charter on the Rights and Welfare of the Child
10. United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")
11. Universal Declaration Of Human Rights, 1948
12. Convention On Child Rights

‘Childhood should be untroubled in performance of the sun, not living a frightening in the dimness of the soul’¹

- Dave Pelzer

1.1) Introduction:-

Children are recognized as important possessions of nation all over the planet. It's the worldwide declaration that early years comprise the most significant phase in the life of a child because at this time basics for motor, sensory, cognitive, oral communication, publicly and behaviour development starts. So at this time all the opportunities and the amenities should be provides for the suitable growth of the child, for his as well as societies superior future. The appearance of the child depends upon the circumstances in which he brought up. As we all know the childhood is the first phase of human life and it's the stage from which a person starts his life. Correction, care, protection etc is needed in this phase of life so that he/she can become a good human being. But conditions and well as the life style, behaviour etc are not same for all the children. Sometimes such factors lead to the criminal behaviour of a child or we can say that the child become delinquent. Delinquency means the conduct that is out of concurrence with accepted behaviour or the law.² Or the criminal acts, wrongful acts etc.

In spite of the legal vision of a healthy and happy child protected against abuse and utilization, and a National Policy³ for Children. The majority of children in India still dreamed about good and healthy life styles. The future of the country continue to live with no care, sheltered and meaningful childhood⁴. Today the kids are facing most of the offences not only in our

¹<https://drakalogia.wikispaces.com> 28/2/2017

²<https://www.merriam-webster.com/dictionary/delinquency> 15/3/2017

³a set of ideas or a plan of what to do in particular situations that has been agreed to officially by a group of people, a business organization, a government, or a political party. <http://dictionary.cambridge.org/dictionary/english/policy> 15/3/2017

⁴<http://www.allresearchjournal.com/archives/2015/vol1issue6/PartD/1-5-45.1.pdf> 15/3/2017

TaydeA. Aarti, Child and police administration in India: A study, international journal of applied research

nation India but the entire world. Immeasurable types of crimes are there which place the life of kid and his/her future in danger. In IPC ⁵ the crime associated with child are defined. From the mother's womb to take birth on earth child's life is in danger, which came to know after reading IPC.⁶

Special acts⁷ and laws⁸ are made in India for the protection of the kids in India. Juvenile Justice Act⁹ and the Protection of child from sexual offences¹⁰ are the two main acts made for the children's protection:

1) Juvenile Justice Act

2) Protection of Child from Sexual Offences.

And the rights especially for the children's are given under the Indian Constitution also.

On the global level the children are extensive with some rights by the United Nation Conventions e.g. Convention on the Rights of Children¹¹ etc. Many other conventions¹² also take place primarily for the rights and the safeguard of the children. To know about the juvenile or child it's necessary to know about the definition of child or juvenile.

According to section 2 (12) **child** means a person who has not ended 18 years of age.¹³ The Convention defines a 'child' as a person beneath the age of 18¹⁴,

⁵ Indian Penal Code, 1860

⁶ ibid

⁷ Bare Act is basically a dictionary of any section of a particular act, <https://www.quora.com/What-are-bare-acts15/3/2017>

⁸ Law means the system of rules which a particular country or community recognizes as regulating the actions of its members and which it may enforce by the imposition of penalties. <https://en.oxforddictionaries.com/definition/law15/3/2017>

⁹ JJ Act, Juvenile Justice Act

¹⁰ POCSO, Protection Of Child From Sexual Offences

¹¹ CRC, Convention On Child Rights

¹² Convention means a large formal meeting of people who do a particular job or have a similar interest, or a large meeting for a political party

¹³ The juvenile justice (care and protection) act, 2015

¹⁴ Article 1 of CRC

unless the laws of a particular country set the legal age for maturity. The commission on the Rights of the Child was the monitoring body for the Convention. It convinced the States to review the age of majority if it is set below 18 and to increase the level of protection for all kids under 18.¹⁵

And the second thing is to know the meaning of **Juvenile in Conflict with law**¹⁶. In simple sense juvenile in conflict with law means a human being lower than the age of 18 years committed something wrong or does some act which is against the law. The term 'children in conflict with the law' refers any person below the age of 18 who has come in get in contact with the justice system as a consequence of committing an offence or being supposed of committing a crime.¹⁷ Section 2(13)¹⁸ of the act defines “child in conflict with law” and under this act a person means a child who is supposed or found to have committed an offence¹⁹ which is against the law and who has not completed eighteen years of age on the date of doing that offence.²⁰

Violation²¹ or unlawful act by child of law includes:-

- 1) Infringement²² of law any or ordinance²³
- 2) Ethically²⁴ wrong conduct
- 3) Unpleasant conduct around school

¹⁵ https://www.unicef.org/crc/files/Guiding_Principles.pdf17/3/2017

¹⁶ <http://www.childlineindia.org.in/children-in-conflict-with-law.htm> 17/3/2017

¹⁷ <http://childlineindia.org.in/children-in-conflict-with-law.htm>17/3/2017

¹⁸ Juvenile Justice Act

¹⁹ an act punishable by law; usually considered an evil act,<https://www.vocabulary.com/dictionary/offence>17 /3/2017

²⁰ http://trackthemissingchild.gov.in/trackchild/readwrite/JJAct_2015.pdf17 /3/2017

²¹ an action that is in opposition to a law, agreement, principle etc,

<http://www.macmillandictionary.com/dictionary/british/violation>17 /3/2017

²² Violation of the terms of an agreement, encroachment, trespass, or disregard of others' rights <http://www.businessdictionary.com/definition/infringement.html>17 /3/2017

²³ an authoritative decree or direction,<https://www.merriam-webster.com/dictionary/ordinance>17 /3/2017

²⁴ pertaining to or dealing with morals or the principles of morality,<http://www.dictionary.com/browse/ethically>17 /3/2017

- 4) Engaging in an occupation which is against the law
- 5) Amalgamation²⁵ with nasty²⁶ person
- 6) Rising up in crime
- 7) Visit houses of ill repute
- 8) Gambling²⁷
- 9) Visiting liquor²⁸ house
- 10) Travelling in street at night for illegal trade²⁹
- 11) Jumping to trains or cars etc missing any authority
- 12) Using vulgar verbal communication
- 13) Smoking cigarettes
- 14) Suppliant³⁰ (Begging)

And the last thing is to know about the meaning of abuse. Abuse means to use someone for the incorrect reason in a way that is destructive or morally wrong.³¹ ‘Abuse of young offenders means the abuse or the wrong done to the juveniles or the kids

²⁵Amalgamation is the combination of one or more companies into a new entity,<http://www.investopedia.com/terms/a/amalgamation.asp> 27 /3/2017

²⁶ thing or person is very unpleasant to see, experience, or feel,https://www.collinsdictionary.com/dictionary/english/nasty_1 17 /3/2017

²⁷the activity or practice of playing at a game of chance for money or other stakes.

²⁸a distilled or spirituous beverage, as brandy or whiskey, as distinguished from a fermented beverage, as wine or beer,<http://www.dictionary.com/browse/liquor> 17 /3/2017

²⁹Illegal trade is the production, import, export, purchase, sale or possession of goods failing to comply with legislation,<http://www.jti.com/about-tobacco/anti-illicit-trade/> 17 /3/2017

³⁰A person making a humble or earnest plea to someone in power or authority,<https://en.oxforddictionaries.com/definition/suppliant> 17 /3/2017

³¹ <http://dictionary.cambridge.org/dictionary/english/abuse>

who are in clash with regulations and have done something wrong and residing in the juvenile homes for their treatment i.e. rehabilitation³²

The main aim of the childish fairness act is the care and the safety of the kids in clash with regulations and the help and defence of kids in requirement of help plus defence for making them good citizens or better human beings in future. In real the main aim of the act is the physiotherapy³³ of the kids who are in the clash with rules and residing in the childish homes for their better outlook and life. But the truth of psychoanalysis system is far different from the actual way of rehabilitation.

The homes called the juvenile homes in which the juveniles are kept during the experimental time for their rehabilitation. Different types of abuses³⁴ are faced by the juveniles in such homes instead of improvement and the rehabilitation.

The ill-treatment also takes place in schools, own houses, orphanages³⁵, streets, care residential facilities etc. According to UNICEF³⁶ violence aligned with children can be “corporeal and psychological abuse and damage, abandon or neglectful behaviour, misuse and sexual ill-treatment.”³⁷ But the abuse in the juvenile homes is on rise. Childish homes are the places with the chief aim of physiotherapy but in actual they are hell holes as defined by a report by the human rights watch.³⁸

World health organisation³⁹ defines kid’s ill-treatment or cruelty against child which includes each and every variety of bodily harms plus troubling mistreatment, genital

³²Rehabilitation is the act of restoring something to its original state, like the rehabilitation of the forest that had once been cleared for use as an amusement park,<https://www.vocabulary.com/dictionary/rehabilitation> 17 /3/2017

³³ It’s a therapy which helps restore movement and function when someone is affected by injury, illness or disability,<http://www.csp.org.uk/your-health/what-physiotherapy> 17 /3/2017

³⁴ means to treat in a harmful, injurious, or offensive way,<http://www.dictionary.com/browse/abuse> 17 /3/2017

³⁵An orphanage is a place where orphans live and are looked after,<https://www.collinsdictionary.com/dictionary/english/orphanage> 17 /3/2017

³⁶United Nations International Children's Emergency Fund

³⁷ <http://www.childlineindia.org.in/child-abuse-child-violence-india.htm> 17 /3/2017

³⁸ChakmaShubhas , ACHR

³⁹ WHO

exploitation, ignorance in addition to mistreatment that marks into definite or probable harm to the kid's physical condition, expansion or decorum.⁴⁰

Different types of abuses suffered by the juveniles in the juvenile homes are as follow:

- 1) Sexual abuse
- 2) Physical abuse
- 3) Mental abuse or emotional abuse

1) Sexual Abuse:-

Any actions which results in touching of the sexual or other close parts of a kid with the meaning of sexual pleasure of the kid or adult, is known as Sexual abuse of child. It includes moving by the kid or matures without or with cloths.⁴¹

2) Physical Abuse: -

Physical abuse refers to by bodily force which causes harm e.g. biting, scratching, slapping, kicking etc is called as Physical Abuse.

3) Mental Abuse or Emotional Abuse: -

This type of abuse is also called as physiological abuse. Such mistreatment frequently linked by situation of unfairness, like annoying relationships, bullying, gas enlightenment etc.⁴²

1.2) Statement of problem:

The problem is that the kids in clash with law are at upper risk of abuse. The rights are provided to the children after the reception of CRC⁴³ but the breach of the

⁴⁰http://www.who.int/topics/child_abuse/en 17 /3/2017

⁴¹<http://www.dorightbykids.org/working-definitions-of-sexual-abuse-physical-abuse-neglect>
18 /3/2017

⁴² Dutton, Mary Ann; Goodman, Lisa A.; Bennett, Lauren (2000), "Court-involved battered women's responses to violence: the role of psychological, physical, and sexual abuse", in Maiuro, Roland D.; O'Leary, K. Daniel, Psychological abuse in violent domestic relations, New York: Springer Publishing Company, p. 197,

privileges are on rise especially of the juveniles who are in clash of rules and regulations. Constitution of India provides privileges to each and every citizen for their protection which includes children but unluckily the abuse is going on. The juvenile homes are gratifying as the most horror places in India and in some other parts of world too.

Children need special care and protection, at least legal protection must be given as per Article 14 and 15 of the Constitution of India which is violating in nature when it comes for the case of juveniles in clash with rules, regulations and law.

Though the legislation specifically passed for the protection of juveniles but one way or other way it is suffering from lacunas which leads to the abuse of children in clash with rules, regulations law.

1.3) HYPOTHESIS:

- 1) Ongoing abuse of juveniles in clash with law presupposes the survival of some uncertain blocks in the legislation itself.
- 2) Purpose of the juvenile justice act i.e. Psychotherapy of the juvenile inconsistency of regulations is not fulfilled.

1.4) Objectives:

1. To observe the institutional experiences and life of children in juvenile home chiefly their relationship with other inmates
2. To analyze the rehabilitative approaches adopted by correctional institutions for children in difficult conditions and its collapse on quality of life of children in inconsistency with law.
3. To examine the suitable measures dealing with difficulty of children so as to set up effective linkage with family, society and humanity.

1.5) REVIEW OF LITERATURE:

To know the research on topic the review of literature has been carried out. This has helped in giving directions to the dissertation in hand and locating the research gap.

⁴³ Convention on child rights

Bhatt Hitesh and Rawat Arpita article on **prisons reforms in India (2014)**⁴⁴ reveals that the basis of exploitation of young person in young offenders' institutional homes⁴⁵ is that the juveniles of all ages e.g. Child of 10 years and 17 years kept in the same penal complex and offender of petty and hideous⁴⁶ crimes are also kept at same place which lead to the exploitation of children bodily and emotionally.

Haque Nawaz, Juvenile Justice System & its Delinquency in India (2012)⁴⁷ reveals on his article on **legal services India** the countrywide and global history of formation of the observation homes. In this article the rights of child given by United Nations are also given. The ratio of crimes devoted by the immature offender is also there in this article.

Book by **Pagare Deepti, Meena G.S., Jiloha R.C. and Singh M.M.** on **Sexual Abuse of Street Children Brought to an Observation Home (INDIAN PEDIATRICS) (2005)** assess the scale and pattern of sexual abuse among male inmates of an observation home in Delhi. A total of 189 boys aged 6 to 18 years were assess for sexual abuse using Finkelhor's scale⁴⁸ and Child Maltreatment⁴⁹, the past Self-Report follow by scientific test using American Medical Association's guidelines. Majority of boys were escapee and 38.1% had suffered sexual abuse. On clinical examination, 61.1% showed bodily signs and 40.2% showed behavioural signs of sexual abuse. Aggressive sex was reported by 44.4% of victims and 25% had signs reminiscent of sexually spread disease.

Masoodi Ashwaq in his article '**inside a juvenile home**' (2015) , at **livemint.com**⁵⁰ reveals that from the civilization, to police then to the surveillance home, everybody makes them feel they are not prized of anything. Juveniles are the least priority. Probation officers are paid very little. NGOs don't want to do extra work. Cyclic

⁴⁴ international journal of research and analysis, volume 1 issue 3

⁴⁵ Reformatory homes

⁴⁶ shocking or revolting to the moral sense, <http://www.dictionary.com/browse/hideous> 18 /3/2017

⁴⁷ 14 February 2012

⁴⁸ Based on sexual and behavioural problems, Nathaniel Mc Conaghy, Sexual Behaviour: Problems and Management

⁴⁹ ill-treatment

⁵⁰ May 25 2015

instances of physical and sexual abuse of juvenile by older youths living in the surveillance homes.

Detrick Sharon, Abel Gilles, Berger Maartje, DelonAurore, Meek Rosie in their book on **Violence against Children in conflict with the law (2017)** ⁵¹reveals that the girls on particular danger of bodily and sexual exploitation when held with mixed-sex or adult amenities. Girls should not be deficient in female staff. In the USA it has been report that male staff often engage in ‘authorized sexual harassment’, including improper touching during searches, or watching girls while they dress, shower, or use the toilet. There are also reports of male staff using their position of authority to demand sexual favours, and committing sexual assault and rape.

DummettMark, in his book **breaking the silence: Child sexual abuse in India (2013)** ⁵²reveals that there are cases in which the police themselves says not to report the rape of a minor girl. It’s clearly understood that if the police is not doing their duty properly so how one assume that the juveniles are safe in their hands. Author given live example of six cases where the juveniles are sexually abused in the juvenile shelter homes.

Pinki Virani, in the book,⁵³**‘Child sexual abuse in India: Bitter Chocolate (2014)’** refers the data’s related to sexual abuse of child in clash with law written that 76% of the cases of sexual abuse of children reported in which 35% reported between the age of 12-16 and 6% under the age of 8 years. The ratio of cases of abuse of children is greater than before who lived in the juvenile homes.

Kumar Alok, Pathak Asha, Kumar Sandeep, RastogiPooja, RastogiParteekin their research paper **The problem of child sexual abuse in India laws, legal lacuna and the bill – PCSOB (2011)** reveals that the child abuse is discriminate into four major categories: corporeal, mental, emotional and worst of all is sexual abuse. Sexual abuse is kind of a physical plus mental abuse. 42%of the India’s total population is below 18 years and a very appalling revelation, served by the administration assignment is 53% of the Indian children subjected to sexual abuse.

⁵¹Defence for children international

⁵²Human Rights Watch

⁵³child sexual abuse in India: Bitter chocolate (Penguin books)

Dasgupta Shayan, in an article on **Protection of children from sexual abuse (2013)**⁵⁴ reveals that mostly the staff members, guards are the main offenders of exploit of the rights of the children in juvenile homes.

Barooah Pramila Pandit in his book on **Child (With Historical Background) (Concept Publishing Company, (1999))** reveals the past of the kids justice system background in India. And it is also given that children hold an essential place with their family and society as a whole. The main upbringing has always been the immediate family is it joint family or nuclear followed by the distant relationships if required.

Acharya Shovonitain his article on **Criminal Jurisprudence Challenging the Traditional Perspective on Juveniles in conflict with the Constitutional Guarantees, (2013)** reveals the child as wet clay; one can mould them in any form or in any forms. It is clay in a potter's hand and potter as the officers or the staff with whom they reside during their probation time. Whatever they learn they would do the same in their futures life. The abuse they faced in the rehabilitation homes should remain on their minds forever and impact on their futures life.

MaharaukhAdeenwala, in the book on **Child protection and juvenile justice system from young offenders (2006)**⁵⁵ reveals history of legislation for the children in India. The young's in clash of rules, regulations and laws etc must take in different method in accordance to the rational status of them in accordance to their age and the crime committed by them. The social worker institutions also played important role in the rehabilitation plus re integration of the children in clash with rules.

Ferrara Federico with Ferrara Valentina in their research paper named **The Juvenile's jail: road kids in addition to India's young fairness arrangement (2015)**⁵⁶ visited Pilla Jail talks about the Vijayawada's Observation Home in June 2004 and referred the condition of juvenile homes that 130 children ranging from 3 to 18 years of age were kept in three rooms whose joint size does not exceed 700 sq. feet (about the size of a normal one-bedroom apartment). From them, only 9 were

⁵⁴Journal of humanities and social sciences

⁵⁵ Plan international

⁵⁶ http://www.cilditalia.org/wp-content/uploads/2015/02/The_state_of_rgihts_in_Italy_full.pdf

awaiting trial. The squalid rooms were gloomy and unadorned. The children looked weak and emaciated; scars, rashes, and skin infections were dotted all through their faces and bodies. Dark circles expressively frame their pinched, outlying eyes. It has also been found that if they beg for more food, they run the risk of life from being beaten.

BhakhrySavita, in her article on **Children in India and their Rights (2017)**⁵⁷ wrote that most children in disagreement with law are those who do the little wrongs and slight offence like vagrancy, nonattendance, and pleading or alcohol abuse. Many are trafficked girls who are being sexually intimidated for profit reasons whereby they are picked-up by the police and put at the back of bars. There are also some children who have been wedged for their criminal behaviour on account of being use and coerce by the elders. Many a times, discrimination connected with communal plus financial standings possibly will fetch child towards disagreement of the law yet while no offence have dedicated, than the consequence is the cruel action by rule enforcement official. Studies undertake across country, by and large, have shown that kids move towards the disagreement of rules are often treated at par with adult criminals. This kind of a situation often harms than improves kid's odds for reintegration with the world.

1.6)Research Methodology

The topic of research is related to law therefore as per the topic I adopted doctrinal methods of research in which I took help of primary as well as secondary sources. As for primary sources are concern the judgement of Supreme Court and High Courts, policies and laws related to the Abuse of juveniles in clash with law will be analyzed in the study. Apart of this as secondary sources, resources such as commentaries on Indian Laws, international laws on rights of children, various Books, Articles, papers of conferences, newspapers etc has been used. The data's published by the different organizations are also taken into consideration while analyzing the issues related to the children.

⁵⁷National human rights commission, New Delhi. www.nhrc.co.in visited on 03/03/2017.

1.7) HISTORY OF JUVENILE JUSTICE ACT (Young Fairness Law)⁵⁸:

The young fairness law is one among the significant border works of the Indian legislation. The act provides approach towards the avoidance and the handling of the juvenile delinquent or the juveniles in clash with law as rehabilitation and the reformation. The history of juvenile justice act in India is as follows:

In 1850 first juvenile justice legislation came in India with the apprentice⁵⁹ act which aims at providing the occupational training for the process of rehabilitation for the children convicted in the courts of 10-18 years of ages. Then the reformatory school's act was approved in 1876.

In 1941 first juvenile court was set up at Calcutta and then in 1920 Children Act enacted in Madras, Bengal and Bombay on the beginning of reformatory schools Act. In 1927 a first voluntary agency was established in Maharashtra as a remand home at Umarkhadi.

Then in December 1984, the state of Nagaland enacted and enforces their own children act. And after that a central Children's Act was enforced in the Union Territories.

Administration of India enacted young fairness law in 1986 in India.

The term juvenile justice comes into view from the word Juvenis, in Latin language which means Young so a justice system for the juvenile. Historically the insight of young fairness system was derived from a faith that the problems of juvenile criminal behaviour in uneven situation are not agreeable to the decree within the skeleton of conservative process of criminal law.⁶⁰

Over the time a need felt certify that juvenile justice system beside preparing the needs of young offenders only and it also provide devoted and preventative treatment services like societal support, enjoyable-sounding isolation state interference with the

⁵⁸ Juvenile Justice Act

⁵⁹ someone who has agreed to work for a skilled person for a particular period of time and often for low payment, in order to learn that person's skills

⁶⁰ Vedkumari, The Juvenile Justice in India: from welfare to rights, New Delhi: OUP. p1

family, community and institutional interventions for the children and as a means of on the run, rehabilitation and socialization through schools and spiritual bodies.⁶¹

All through during the British Rule certain laws were enacted to deal with the issue of juvenile wrongdoing and child benefit laws like Whipping Act of 1864 which was passed to castigate the young through thrashing and then place them free so that he should not repeat the same act, it was to deter the child against committing wrong things. The Indian Penal code Act 1860⁶² and illegal process code 1861⁶³ treating child in a different way through various actions. Act XIX of 1850, 1876 reformatory schools act, the Borstal School Act, Children's act of 1920, and other states make specific legislations like Bengal children's Act, Madras children's Act to address mistreated and abnormal behavioural children's. Such laws gave illegal some particular provisions regarding their Institutionalization and psychiatric therapy.⁶⁴

Regal masters dealt with the problem of anti-social, through the laws of Reformatory schools and Borstal School Act to development and rehabilitate juvenile delinquents. Though there was state laws the children's Act but post-sovereignty a central law The Juvenile Justice Act 1986 was introduced for a dependable system, method and personnel inside part of young fairness throughout country, in this Act the age of male juvenile was kept at sixteen years while the girl age was kept at eighteen years.⁶⁵

In children act, 1960 the age was 16 years. The children bill, 1950 defines the age of juvenile also as less than 16 years because of Bombay children act, 1948 which was one of the manipulating legislations.

When this law was legalized to the UNCRC⁶⁶ in 1989 and which was ratified by India in 1992.⁶⁷ In 2000 the previous law was cancelled and a new law which was more

⁶¹ Working paper "juvenile justice: before and after the onset of juvenile delinquency" made by the secretariat of sixth United Nations congress on prevention of crime and treatment of offenders, Caracas, Venezuela 25 to 29 August 1980. Agenda Item 4, 1980, A/CONF.87/5/Rev.1, p62-63

⁶² IPC

⁶³ CRPC

⁶⁴ Sen, Satadru. (2004), A separate punishment: Juvenile offenders in colonial India, Association of Asian studies, 63(1), 81-104

⁶⁵ Section 2(h) Juvenile Justice Act, 1986.

⁶⁶ United Nation Convention On Child Rights

⁶⁷ <http://www.unicef.org/crc> 18 /3/2017

systematic and one of the best law was enacted. The young fairness (worrying plus defence of kids) law 2000 but the time was set aside at the time of 16 only later it was amended in 2006 to increase the period of the kid which increase to 18 years of age to stick global ratified laws.⁶⁸

The juvenile justice is one of the steps engaged via the state so as to achieve constitutional idea of India pertaining care and benefit of children.

The provision of constitution which grants the special position to the children Article 15(3)⁶⁹, 24⁷⁰, 39(e)⁷¹& (f)⁷² and 45⁷³, National policy for children of 1974, 2013, declared that children are assets of nation. Further through legitimate(Constitutional) instructions many other laws and statutory provision was enacted in the direction of protecting the privileges of kids like RTE⁷⁴ 2009, child labour prohibition act 1986, JJ act 1986, later JJ(C&P)⁷⁵ Act 2000.⁷⁶

1.8) Juvenile Justice in India:

Historical growth of juvenile justice in India can be separated into six phases through direction of performance of children, law-making development, judicial interfering

⁶⁸<https://cjecap.files.wordpress.com/2014/11/history-of-juvenile-justice-in-india.docx> 18 /3/2017

⁶⁹ Nothing in this Article shall prevent the state from making any special law for women and children.

⁷⁰ Prohibition of employment of children in factories,etc

⁷¹ The health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

⁷² That the children are giving the opportunities and facilities to develop in healthy manner and in conditions of freedom and dignity and that childhood and youth protected against exploitation and against moral and material abandonment

⁷³ Provision for early childhood care and education to children below the age of six years.

⁷⁴ Right To Education

⁷⁵ Juvenile Justice(Care and Protection) act

⁷⁶ ibid

and other administration policies. Earlier to 1773, 1773-1850, 1850-1950, 1950-2000, 2001-2010.⁷⁷

1773 was benchmark in the legal system of India. The Regulating Act of 1773 approved East India Company the authority to make and execute laws, the Charter Act of 1833 changed commercialization of company into a leading body. Between 1773 -1850 many group were established focus on children's in jails, first law was made in 1850 to keep juveniles out of jails later the account on All India Jail committee 1919-1920 separate kids from criminal justice system.⁷⁸

Status of juveniles before 1773:-

In teamwork Hindu law⁷⁹ and Islamic law⁸⁰ set down for preservation and proper look after of the kids and it was the character accountability of parents to provide care and safety to the kids and if the families were not capable, then someone from the locality took care of the children. According to Islamic law if anyone finds the empty child and feels that child would be injured then he must take care of the young person (Vedkumari 2004).⁸¹

Review of Manuscript and sharia show dissimilar punishment for the children in distinct offence.⁸² Like beneath Hindu law if a child is making throw dirt on the community road he has to clean the dirt he made while a mature has to recompense the fine.⁸³ Whereas in Muslim law, there is an exact ban which forbids implementation of children.⁸⁴ Stipulation in the characteristic texts shows the kids were treated incoherently from those adults, deficient special care for their continued existence and they were not fully in charge for their actions. So the Indian people in

⁷⁷KethineniSesha& Braithwaite Jeremy, towards a compliance model: The Indian Supreme Court and the Attempted Revolution in Child Rights

⁷⁸ ibid

⁷⁹Manusmriti

⁸⁰ Sharia

⁸¹ ibid

⁸²kumari, Ved The Juvenile Justice in India: from welfare to rights, New Delhi: OUP. p57

⁸³ Muller, M.F. (1886). The laws of Manu. oxford: clarendon press

⁸⁴Unnithan, N. Prabha (edited. 2013). Crime and Justice in India; ch.13, KethineniSesha& Braithwaite Jeremy, towards a compliance model: The Indian Supreme Court and the Attempted Revolution in Child Rights. New Delhi; sage publication, p.306

the past treated child as the kid in want for worrying plus security such that if he has devoted any wrong he was treat not as per the adult's law.

Status of juveniles from 1773 to 1859:-

As all the way through this era India was extremely under enemy control by East India Company which in progress as a trading company in 1608. After the corporation failed the management of Britain took over below the Governor General and this was the period when the reform drive was acquisition a speed which also fakes India. Colonial apply clean out the agrarian financial system forcing unhappy group to live in slums in the city outer border. This distended hardship and criminal act among children.⁸⁵

Interest's instrument for the children took dissimilar forms. Krishna Chandra Ghoshal and Jai Narayan Ghoshal move towards the Lord the then Governor General for establishing the home for needy juveniles in major trade city of Calcutta. The first Ragged School for on the streets person and stray children was recognized in 1843 in Bombay now it's known as David Sasson Industrial School.⁸⁶ The goal was to growth the child delinquents who were arrested by the police this was done by heartening them to work through apprenticeship and developed education which set the base for passing the Apprentices Act 1850.

Period from 1850 to 1919:-

This period saying the transitory of specific legislations recitation to children, first law which offer a special status for youthful was the Apprentices Act 1850⁸⁷ children who were vagabond of devoted small offences in age group of 10-18 years were made to feel their ruling as trainee. The reason of the law was to channelize the energy of

⁸⁵ Chatterjee, G. The Reformation of Neglected and Delinquent Children in British Raj: An Historical overview, p.2, Material for National Workshop on Neglected children; by Prayas, Shramik Vidyapeeth and Delhi school of social work, New Delhi, 19-20 june 1992 (hereafter Prayas Workshop).

⁸⁶ Ved Kumari, 2004

⁸⁷ Clayton Hartjen & Seshakethineni, 1996

the kids and leave them from criminal power and create them work so that after getting general they could earn a living.⁸⁸

Later the Indian Penal Code 1860 which fixed the age limits for criminal responsibility *doliIncapax*⁸⁹ and *dolicapax*⁹⁰ under section 82⁹¹ & 83⁹² of IPC which provided defence to children from criminal action until they have urbanized cognitive faculties to appreciate the nature of their actions. The code of criminal procedure 1861/1898 in sections 298⁹³, 399⁹⁴ prescribed for separate trial for the persons below the age of 15 years and required that they should be restricted in reformatories rather than in adult prisons.⁹⁵ This changed the philosophy of penalizing from sentence to reformation.

As jail reports frequently pointed in the way of the modify in strategy and way, notice far above the ground rate of perpetrators and amplify of juvenile offender in particularly in Pune where the number went up harshly from one to sixty five between 1860-1861 so as to lessen the reduce the number the association passed Whipping Act of 1864 aim that whipping for certain class of offences by young delinquents will have a deterrent effect, and government will not have to Invest on establish the reformatories for the juveniles as juvenile criminal actions got politicized such that some were in favour of bodily sentence and some were on action and finally physical was chosen as it was viable in terms of monetary condition.⁹⁶

Wedged between 1872 to 1875, the Pune young prison was union smoothly and adequately in terms of physical state and conduct of the juvenile offenders as they

⁸⁸Mukundan, K.P . (2008). Study of the status of the justice delivery system for juveniles in conflict with law in Maharashtra . Mumbai: TISS

⁸⁹Latin meaning Incapable of crime. <https://dictionary.thelaw.com/doli-incapax/18/3/2017>

⁹⁰ old enough or of sufficient intelligence and sane enough to be legally responsible for wrongful acts

⁹¹ Act of a child under seven years of age

⁹² Act of child above seven years and under twelve years of immature understanding

⁹³ Previous conviction or acquittal how proved

⁹⁴ Sessions Judge's powers of revision

⁹⁵ Clayton Hartjen 1996

⁹⁶Sen, Satadru. (2004), A separate punishment: Juvenile offenders in colonial India, Association of Asian studies, 63(1), 81-104

were provided perfunctory and educational education and other after care facilities while at other places the quantity of juveniles to the total jailed was rising so parting of them became a essential.⁹⁷

This dissimilar exploit of juvenile was reinforce by the Reformatory schools Act 1876, 1897⁹⁸ which offer that boys below the age of fifteen who were locked up or ecstatic should be placed in the reformatories. The period of custody was exacting to be between 3-7 years.⁹⁹ The second Reformatory Schools Act of 1897 deals intentionally with the achievement and action of juvenile criminal in the age grouping of seven and fifteen years but it didn't recognized such places for girls¹⁰⁰ Children of the criminal tribes received special attentiveness after the performance of illegal tribes (amendment) Act 1897. It provides for establish cultivation and safe unit schools in favour of the kids of unlawful tribe members in period of 4 to 18 age.¹⁰¹ The Code of criminal procedure of 1898 whole custody at the jail schools for the juveniles until they complete the age of eighteen years, and then in order that they be placed on trial till they are twenty one.¹⁰²

Period from 1919 to 1950:-

The Indian Jail group was recognized in 1919-1920, which advice to the British rule for establish separate association and to make separate trials for the young's.¹⁰³ Also Juveniles should by force be given bail in most cases and their development and psychotherapy should be the motive of the law.¹⁰⁴ Also the league of Nation's pronouncement prompt Madras (1920), Bengal (1922), and Bombay (1924) in

⁹⁷kumari, Ved The Juvenile Justice in India: from welfare to rights, New Delhi: OUP. p63

⁹⁸Saibaba, Anuradha , Juvenile Justice: critically Juxtaposing the models in India and Singapore (working paper series No. 28) september 2012, Asian Law Institute

⁹⁹ Clayton Hartjen&SeshaKethineni, 1996

¹⁰⁰SeshaKethineni& Jeremy Braithwaite, 2013

¹⁰¹VedKumari, 2004

¹⁰²Chakraborty, Tapan. (2002). Juvenile Delinquency and Juvenile Justice System in India. In the Juvenile Justice Systems: International Perspectives (edited.), John A. Winterdyk 2nd ed., Toronto: Canadian Scholars' Press.

¹⁰³Biranchi Narayan Mishra, 1991

¹⁰⁴TapanChakraborty, 2002

enacting the Children Acts¹⁰⁵ and later the Delhi children Act, 1941, Mysore children Act, 1943, The Travancore kids Act 1945, The Cochin kids Act, 1946, and the East Punjab children Act, 1946.¹⁰⁶ Though Bengal children's Act was approved later but it has juvenile court from 1914 onwards. Madras children's act was the first criminal appearance law in India, it did not use the term delinquent instead defined 'child' as anyone under the age of fourteen years, a 'young' person from fourteen to eighteen years and an 'youthful offender' under the age of eighteen years who has been convicted of offence talk about it in Indian Penal code or any other special or local laws for which an illegal can be imprisoned.¹⁰⁷ One of the significant laws pertaining to the street or vagrant children The Vagrancy Act 1943 which provided for care and leadership to kids below fourteen years living on begging or lack proper guardianship had parents who were concerned in criminal behaviour and use, visiting prostitutes or were destitute.¹⁰⁸

Period from 1950 to 2000:-

By 1960 many states had recognized diverse systems and laws for immature who diverse in circumstances of definitions, and other practical needs and their appearance also diverse. In 1960 Union management enacted the children Act 1960, which was suitable to union territories which were directly administered by the Union organization. It was intended to serve as a model for the state legislations which did a basis for the National law accepted as Juvenile Justice Act 1986 acted as uniform law right through the nation state. Head court Judgment in Sheela Barse played an essential part in passing the same law on young justice where it recognized that the brood in the jails are free to special treatment and recommended that assembly should make a uniform law appropriate all through the country.¹⁰⁹ Parliament invoked its power under Article 253¹¹⁰ of Indian charter in configuration the young fairness organization in India to be

¹⁰⁵SeshaKethineni & Jeremy Braithwaite, 2013

¹⁰⁶VedKumari, 2004

¹⁰⁷Hartjen, A. Clayton & Kethineni, Sesha (1996). Comparative Delinquency India and the United States, New York & London: Garland Publishing, P 36.

¹⁰⁸ The Bengal Vagrancy Act, 1943 [25th October 1943]

¹⁰⁹SheelaBarse & Anr. Vs. Union of India & Ors. 1986 AIR 1773 ORS.

¹¹⁰ Legislation for giving effect to international agreements

conventional the Combined nation criterion least regulations for the association of young fairness¹¹¹ to abide the global impulse which India agreed by ratifying in 1985.

For the first time the law mandate care, defence, act, growth and handling of empty and criminal juvenile and for arbitration and nature of juvenile criminal behaviour matters all through country.¹¹² The act formulates unconnected actions for the young criminals and mistreated juvenile; by establishing s separate young bench and young comfort boards. Juvenile courts handled the offences dedicated by girls under the age of eighteen years and sixteen years for the boys accuse of commit crime.¹¹³

Under the 1986 law, juvenile criminal are persons below exacting ages who dedicated certain acts that would be treat as crime if dedicated by adults. Those juvenile would be procedure from side to side special courts next due process rules practical to adult offenders with exception that these actions are private and secret and as far as possible be non-judicial in nature. The aberrant who are convicted could be fined or placed under supervision for a maximum of three years but they cannot be executed or safe up or jailed.

2000 to 2015:

The young fairness (worrying plus defence of children) Act 2000 was approved during December 2000, it came in force on April 1, 2001 and was amended in 2006 aim to protect, care, restore and teach the young and to give them with work-related guidance opportunities. As the foreword clearly state that the “cause of the law effectual to kids incongruity with law is providing proper care, defence and treatment by catering to their development needs and by adopting a child friendly move towards in the arbitration and nature of matters in the best interest of children and for their final treatment through organization recognized under this law”.¹¹⁴

The law underline a comfort move in the direction of by inclusion of non-criminal justice language (arrest is replace by nervousness, act does not talk about Jail, court, police, trial), Age of juvenile in conflict with law made same for both boys and girls

¹¹¹ Beijing Rules 1985

¹¹² The Juvenile Justice Act, 1986.

¹¹³ Ibid

¹¹⁴ Juvenile Justice (care and protection of children) Act 2000

as eighteen years after the country ratify United Nation meeting on child rights which mandate the age of criminality as eighteen years, more emphasis on treatment, re-socialization and reintegration of juvenile in conflict with law rather than sentence, placing minimal intervention of the correctional authorities and police as the particular provision for particular juvenile police to handle the cases in inquiry and replace juvenile courts by Juvenile Justice Boards so as to make more child friendly in adjudication. The Law chiefly mandates for the treatment and social re-integration, after a careful process, special provisions for receiving and carry for mainstreaming them into society.

The new law also highlight on the contribution of unpaid association and urge for their payment in the procedure of juvenile justice through association the Observation homes, special homes, compile social examination reports.¹¹⁵ There is no such stipulation of death sentence in the law and juvenile cannot be sent to prison if unable to pay the fine and establish separate homes for different age groups in order to divide younger offender from mature juveniles so that the system could meet the needs of the Beijing Rules on management of Justice.

After the tragic Delhi Gang Rape of December 16, 2012 where a juvenile was anxious with other adult offenders in raping and torture due to which the victim died, the issue raise a debate on decrease of age of Juvenile in conflict with law as debated that juvenile offenders are increasing. Later a committee headed by Justice Verma was well-known for amending the laws in criminal law to protect the rights of women but the committee refused to reduce the age of juvenile and said that the time is not ripe for reduction and one case cannot be the reason for altering the law.

Subramaniam Swamy later filed a plea on dropping the age of criminality which again Apex court quashes with exact reason which this paper will talk about in next chapter but the base was prepared after the rage and annoyance in the public area which led to coming of the Bill on The young fairness (concerned plus safety of kids) bill 2014. Although bill be fine up to the protection tool for the kids in clash of regulations (earlier young in clash of regulations) but law has renowned offences for which the a child can be sentence like Adult offender.

¹¹⁵ ibid

1.9) PRESENT SCNERIO OF JUVENILE JUSTICE ACT:

The bill was approved by Lok Sabha on 7 May 2015, with the aim to restore¹¹⁶ the alive Indian juvenile delinquency law, Children fairness (worrying plus safety of kids) law of 2000, so that young in clash of rules in the age group of 16–18, involved in monstrous Offences, can be tried as adults¹¹⁷. The alteration bill on juvenile justice (care and protection) has been passed by Rajya Sabha on 22 December 2015. It was introduce after the rape case of Delhi in 2012.

The bill allows for juvenile 16 years or older to be considered as matures for monstrous crimes like rape and killing. Heinous offences are those which are carrying a punishment of with imprisonment of seven years or more.¹¹⁸ The bill mandates that in every district there should be a child wellbeing group and juvenile board and one women member is necessary in these.

The Child Welfare committee will look at institutional care for kids in their districts. Each committee consist of a president and four other members and all specialists in matters relating to children.

The main aim is to unite the law and amend it in family member to the kids in disagreement of regulations and kids in requirement of concerned plus safety, security. Social re-integration, rehabilitation, development, protection etc is the main aim.

The Act came into force from 15 January 2016.¹¹⁹

¹¹⁶ To put or bring back into existence or use, <https://www.merriam-webster.com/dictionary/restore> 20 /3/2017

¹¹⁷ 16-Year-Olds to be Tried as Adults in Extreme Crimes, Says Lok Sabha". NDTV. 7 May 2015. Retrieved 10 May 2015

¹¹⁸ <http://www.ndtv.com/cheat-sheet/10-things-you-need-to-know-about-the-new-juvenile-law-1257667> 20 /3/2017

¹¹⁹ "Commencement notification" (PDF). Retrieved 15 January 2016

1.10) Different forms of torture or abuse of Children in India:

Some of the most common methods of physical torment include trouncing, emotional shocks, stretching, submersion, suffocation, burns, rape and sexual assault. It's very significant not to memorize psychosomatic form of abuse which really often has the generally long lasting penalties for the victims. Common methods of psychological torture include:

- Separation
- Threats
- Disgrace
- Mock executions
- Mock amputations
- Witnessing the torture of others.

Apart from these there is another form of torture or abuse of children in prisons which are as follows:

- 1) Police authorities are not taking the grievance from the victim of torture
- 2) Extrajudicial killings
- 3) Enforced evictions using police force without proper treatment
- 4) Wounded from torture are under incessant threat where there is no police action
- 5) Haphazard lathi-charge
- 6) Random firing
- 7) Detention in police custody more than 24 hours without production before Magistrate
- 8) Unclean & improper remand houses
- 9) Kids are being kept in police station

10) Handcuffing or roping a young accused while producing him before court and/ or returning from court are also considered to be torture.¹²⁰

1.11) Consequences of torture:

The consequences of torture reach far beyond immediate pain. It leads to:

- 1) Loss of life
- 2) Loss of faith upon any person
- 3) Enduring / provisional loss of human organ
- 4) Loss of decorum / self admiration
- 5) Loss of confidence upon rule of law
- 6) Cheering people to take law into their own hands
- 7) Main aim of young fairness act i.e. psychoanalysis never satisfied
- 8) Many kids suffer from post-traumatic stress confusion (PTSD) which includes symptoms such as flashbacks (or intrusive thoughts)
- 9) Harsh anxiety
- 10) Sleeplessness
- 11) Nightmares
- 12) Gloominess
- 13) Memory lapses.

1.12) Universal Rights of Kids in clash of law:

- 1) Privilege towards protected from torment
- 2) Privilege of making a grievance

¹²⁰<http://www.peopleswatch.org/dm-documents/NPPT/Hand%20book/English.pdf>20 /3/2017

- 3) To have it impartially investigated
- 4) To be protected from reprisal for making complaints
- 5) Privilege from speedy plus reasonable trial¹²¹
- 6) Privilege of obtaining redress, fair reimbursement, including psychoanalysis
- 7) Perpetrators to be awarded punishment

¹²¹ Fair trial

‘Youngster abuse cast darkness the coldness end to end of the lifetime’¹²²

2.1) INTRODUCTION:

This chapter contains laws, rules, regulations, policies and conventions etc. intended for the safety of privileges of kids or children in clash of rules. This chapter presents the national and international laws for the children. Juveniles are considered as main assets of nation so their protection is obligatory. As it is very clear to all of us that crime is increasing day by day, no one is left without facing any type of offence. One commits crime and another becomes its victim. Same as this one type of crime is against the children and another is against the children who themselves are the offenders of crime. In these days it is not fine to say that only girls are more victims of crime but the boys also. There are so many crimes which are towards the children, these are as follows:

1. Exploitation¹²³
2. Rape
3. Feticide¹²⁴
4. Infanticide¹²⁵
5. Not natural offence¹²⁶
6. Physical attack¹²⁷
7. Youngster employment
8. Child marriage¹²⁸

¹²²<http://foreignpolicyblogs.com/2008/01/18/%E2%80%9Cchild-abuse-casts-a-shadow-the-length-of-a-lifetime%E2%80%9D-herbert-ward/20> /3/2017

¹²³the act of using someone unfairly for your own advantage,<http://dictionary.cambridge.org/dictionary/english/exploitation>20 /3/2017

¹²⁴the act of destroying a foetus or causing an abortion,<http://www.dictionary.com/browse/feticide> 20 /3/2017

¹²⁵ The crime of a mother killing her child within a year of birth.<https://en.oxforddictionaries.com>20 /3/2017

¹²⁶not in accordance with accepted standards of behaviour or right and wrong,<http://dictionary.reverso.net/english-definition/unnatural%20offence>20 /3/2017

¹²⁷to set upon in a forceful, violent, hostile, or aggressive way, with or without a weapon; begin fighting with,<http://www.dictionary.com/browse/attack>24 /3/2017

9. Prostitution¹²⁹
10. Selling and buying for any purpose
11. Killing Etc

For all these crimes there are so many laws made by the governments on the state levels as well as on the intercontinental levels for the protector of children. But due to some state of affairs the juveniles themselves become the wrong of some crimes and become child in clash with law. And for the probation time¹³⁰ or sentence time they have to sent in the young jails which are called as juvenile homes, observation homes etc. the main reason of those institutions are reformation or the treatment of kids but there also they become sufferer of many types of abuses in place of their therapy. So there are some special rules, set of laws, acts, policies etc are made by the governments on nationwide as well as intercontinental point. Intended for the security of rights of children or juveniles from the misuse and mistreatment such rules are made. In the young homes the broods are ill-treated instead of giving them therapy which is the major aim of all the laws related to juveniles in disagreement with law. On both the levels nationwide and worldwide the juveniles are badly treated in the penitentiary¹³¹ homes¹³² which results in dangerous behaviour of them not their improvement. It has seen so many times that after release from the juvenile homes very different behaviour are seen of the children.

The plan of this chapter is to draw the study problem in the existing lawful organization for young justice in India. An effort has also been made to locate the disagreement that the Juvenile Justice Act 2000 has made a self-effacing try to modify over the forerunner Act of 1986. There exists a split concurrence with divide process

¹²⁸Child marriage, defined as a formal marriage or informal union before age 18, is a reality for both boys and girls, although girls are disproportionately the most affected. Child marriage is widespread and can lead to a lifetime of disadvantage and deprivation.

https://www.unicef.org/protection/57929_58008.html20 /3/2017

¹²⁹the act or practice of engaging in promiscuous sexual relations especially for money,

<https://www.merriam-webster.com/dictionary/prostitution>20 /3/2017

¹³⁰A process or period in which a person's fitness, as for work or membership in a social group, is tested, <http://www.thefreedictionary.com/probation>20 /3/2017

¹³¹a place for imprisonment, reformatory discipline, or punishment

¹³² a penal institution to which especially young or first offenders are committed for training and reformation, [tps://www.merriam-webster.com/dictionary/reformatory](https://www.merriam-webster.com/dictionary/reformatory) 21/3/2017

and institutions for kids in clash with law, which is recognized in Indian law as the juvenile justice system.¹³³

To control this difficulty of mistreatment of juveniles in clash with law so many rules, laws are made on nationwide and global levels.

There are mainly two types of laws:-

1) National Laws

2) International Law

2.2) NATIONAL LAWS: -

The law that applies to the complete country is called countrywide law it is dissimilar than the state laws.¹³⁴

National Laws includes: -

1) Constitutional provisions

2) Statutes and Policies

1) Constitutional Provisions:

The Preamble¹³⁵ of the Indian Constitution itself commits to secure all the citizens of India to provide them justice, liberty, equality etc without any type of discrimination including children. The Indian constitution which came into result from 26th January, 1950, after independence of India from British regime on 15th of August, 1947 accorded a special status to children through various provisions made particularly in

¹³³ Like USA where as early as 1899 a separate court for juvenile was established in the state of Illinois and Colorado and in Canada the Juvenile System made a headway in 1908 with enactment of Juvenile Delinquents Act which recognised that children and youth are different from adults and should not be held accountable for violation of the criminal law.

¹³⁴http://www.answers.com/Q/Definition_of_national_law?#slide=2 21/3/2017

¹³⁵We, the People of India having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic and to secure to all its citizens

Chapter - III under the Fundamental Right Chapter and Chapter - IV relating to Directive Principles of State Policy.¹³⁶

Fundamental Rights: - Article 14¹³⁷:-Equal opportunity in regard to Law plus the same security before the regulation:-

The right mentioned above is available to all the people including the every child (children in conflict with law). It gives protection to all the people without any type of discrimination on any basis like sex, class, colour, creed, religion. All are treated in the eyes of law. Everyone is protected on equality basis by law.

The phrase “equality before law” find a place in almost in written constitution that guarantees fundamental right both these expression .both this expression aim at establishing what is called “fairness of grade”.¹³⁸

Article 15(3)¹³⁹:-

This article empowers the nation to create particular legal provision for children. It makes mandate to the government to ensure children’s welfare constitutionally.¹⁴⁰ Special protection is given to children for safeguarding their interests.

On the other hand article 15(3) also talks about empower children, but we don’t see new laws coming for empowering children that often. In fact, in recent past we have seen only Sexual Harassment of Children law being passed by the parliament whereas

¹³⁶ The Indian Constitution in Chapter-IV titled Directive Principle of State Policy provides certain areas for which State Policy needs to be contemplated. It is stretched from Article 36 to 51. The Constitution in Article 37 provides that these principles are fundamental in the governance of the country. However, not enforceable by any court. Therefore, it is termed as non-justifiable rights. These Directives have been held to supplement Fundamental Right enumerated in Chapter-III of the Constitution in achieving a welfare state.

¹³⁷ Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, Constitution of India, 1949

¹³⁸ <http://www.legalservicesindia.com/article/article/reasonable-classification-under-article-14-1061-1.html> 12/3/2017

¹³⁹ Nothing in this article shall prevent the State from making any special provision for women and children

¹⁴⁰ <http://www.indianchild.com/childlaws/child-laws-in-india.htm> 12/3/2017

for women a new Sexual Assault Law (Nirbhaya Act), Workplace Harassment Law, Domestic Violence Act, Amendment to Hindu Succession Act and many other laws are passed and different reservation policies in public places (like transport, ladies special etc.), less tax for women taxpayers, Concession in House Registration, grace marks in IIM etc. are also enacted. Also provisions of Salary to the Wife, Marital Rape, and Provisions under Food Security Bill etc. are discussed.¹⁴¹

Article 20:-

Safety in admiration of Conviction of the offences¹⁴²¹⁴³:-

This article is with the intention to provide safeguard to the people accused of the offences.¹⁴⁴ Article 20(1) defence beside Ex post facto law and clause 2 of this very Article provides the protection against the twice danger and the next one that is clause 3 provides protection against urge of giving proof against himself. This right is for all convicts without any discrimination includes children.¹⁴⁵

Directive Principles for the protection of children:-

Article 39(e):-Against the abuse of children¹⁴⁶

Article 39 A: - Equal Justice and Free Legal Aid¹⁴⁷

¹⁴¹ <https://themalefactor.com/2013/12/29/article-153-of-indian-constitution-when-exception-is-the-rule/>

12/3/2017

¹⁴² Protection in respect of conviction of offences

¹⁴³(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence

(2) No person shall be prosecuted and punished for the same offence more than once

(3) No person accused of any offence shall be compelled to be a witness against himself

¹⁴⁴ [ps://edugeneral.org/blog/polity/fundamental-rights-articles-14-18-19-22-23-24-25-28-29-30-32/](https://edugeneral.org/blog/polity/fundamental-rights-articles-14-18-19-22-23-24-25-28-29-30-32/)

14/3/2017

¹⁴⁵ Pandey, Dr. J.N., Central law publications, fifty second edition, Constitutional law of India

¹⁴⁶ Certain principles of policy to be followed by the State,

that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength

The juvenile in conflict with law have equal right as others and free legal is also provided to them.

Article 39 (f)¹⁴⁸:-This article is with the intention of the protection of children beside misuse in addition to it protection against the ethical and objects desertion plus facilities and opportunities towards the development of the child.

Article 47¹⁴⁹:- State's duty to raise the nutrition level, to improve the health conditions. It is the duty of all the institutions like educational, reformatory homes, juvenile's homes to provide proper food to the juveniles and proper nourishment plane.

The power of the Indian parliament can also be established to enact legislation for children. The scheme of distribution of law-making power between union and state in India is governed by the provision of Article 246¹⁵⁰ of the Indian charter.

It provides substance to all the laws through the assembly plus by the administration of states. According to this provision the union of India can make law by means of any of the matter enumerate in union catalogue whereas state government can make law as per List II of the Schedule. The meeting and state government under Article 246(2)¹⁵¹ have the authority towards making laws by respect to any of the matter given in List III in the plan referred as synchronized List. In accordance with this distribution of power the legislative authority is divested both with centre and state, as it is a subject matter of Concurrent List. That was the cause why in the pre-juvenile

¹⁴⁷ The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

¹⁴⁸ That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

¹⁴⁹Duty of the State to raise the level of nutrition and the standard of living and to improve public health

¹⁵⁰Subject-matter of laws made by Parliament and by the Legislatures of States

¹⁵¹ Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List").

justice Act phase most of the states have their respective legislations under the title of Children's Act which was subsequently vested with the union govt. for enactment of a consistent law on the subject of juvenile justice.

2) Statutes and Policies:-

The Parliament of democratic¹⁵² Indian State enacts the first ever consistent legislation for the whole country for deserted¹⁵³ and criminal juveniles beneath the title young fairness law, 1986.¹⁵⁴ This played a significant position in the history of administration of child laws of India. Young justice system in India can be described in terms of mixture of features of welfare, modified justice, justice, and wrong organize models.¹⁵⁵ Law in India focuses on the criminal offence dedicated by child, the lawyers, courts and the police, judges are the main actors in family member to the child in disagreement with law.

The laws related to the Child in difference with law in India for their protection are as follows:-

- 1) Juvenile Justice (care and protection) Act, 2015
- 2) Protection of child from sexual offences Act 2012

1) The Juvenile Justice (care and protection) Act, The first legislation on the young ones in India is approved in 1986 for giving a reliable civil code in the young fairness system in the complete nation. This act was approved by the Union Parliament. Before this act different states have their own enactments with regard to the childish laws. Different-different states of India have different legal system in regard to the matter of juvenile justice system. And every state have various ways

¹⁵²Government by the people, exercised either directly or through elected representatives, www.thefreedictionary.com 21/3/2017

¹⁵³ A neglected juvenile means under Section 2 (I) - The Juvenile Justice Act 1986 a juvenile who is found begging, without having any home or settle place of abode and without any ostensible means of subsistence and is destitute, or has a parent or guardian who is unfit or incapacitated to exercise control over juvenile, or lives in a brothel or with a prostitute or who is likely to be abused or exploited for immoral or illegal purpose.

¹⁵⁴ The Juvenile Justice Act 1986 under Section 2 (e) defines delinquent juveniles as a juvenile who has been found to have been committed an offence.

¹⁵⁵http://shodhganga.inflibnet.ac.in/bitstream/10603/29220/9/09_chapter%201.pdf 21/3/2017

from one another to treat the juveniles in matter of their justice system, juveniles in requirement of concerned and safety, children in disagreement with regulations and rules etc.

There are so many viewpoints which need to be taken during the juvenile justice system and they became the basis of making the act called Juvenile Justice Act. There are many fundamental rights which are given to the children on the nationwide and the global level which always have to be kept in mind which adjudicating this system and for its better and effective implementation. There are following rules or values which have to keep in mind in matter of juvenile justice system in regard to the juvenile during their seize or detention:-

- 1) Presumption of blamelessness¹⁵⁶
- 2) Principle of worth and dignity¹⁵⁷
- 3) Right to be heard¹⁵⁸
- 4) Principle of responsibility of family¹⁵⁹
- 5) Principle of best interest¹⁶⁰
- 6) Safety principle (it includes no maltreatment, no exploitation, no harm, no neglect)
- 7) Adoption of positive measures to promote the well being of a child¹⁶¹

¹⁵⁶ Also known as presumption of innocence, it means that if you are accused of a crime, you don't have to prove you are innocent. Instead, it is the job of the prosecutor to prove you are guilty, <http://affordingjustice.com.au/what-does-the-presumption-of-innocence-mean> 21/3/2017

¹⁵⁷ Social workers respect the inherent dignity and worth of the persons, http://catalogs.rutgers.edu/generated/ssw_0507/pg18697.html 21/3/2017

¹⁵⁸ The right to be heard (also children's participation) is a child rights principle as defined by the UN Convention on the Rights of the Child

¹⁵⁹ The significance of the family will be more apparent if we think of children of broken homes or destitute.

¹⁶⁰ This principle contains three parts each one as a specific function to be performed by the concerned authorities functioning under the Juvenile Justice Act.

¹⁶¹ The core theme of the Principle is the promotion of the well-being of the juvenile. The term positive measures include the "avenues for health, education, relationships, livelihoods, leisure, creativity and play, http://shodhganga.inflibnet.ac.in/bitstream/10603/37610/8/08_chapter%202.pdf

8) Right of privacy¹⁶²

9) Principle of non- waiver of the rights¹⁶³

10) Principle of non-discrimination and equality¹⁶⁴

11) Principle of a restoration¹⁶⁵

12) Principle of fresh start¹⁶⁶

When these ethics are reserved in mind, they would definitely make sure each and every child who comes in touch with young justice act.

This act provides the shield as well the action to the kids in clash of rules plus kids in need of concerned and security. Psychoanalysis of the brood in disagreement with law is the main aim of the act. This provides kids in disagreement of rules, treatment for social-reintegration. Section 4-28 of the chapter 2 of the act deals with the juveniles in clash with the law.

Section 1(4)¹⁶⁷

Provides the procedures and decisions for the imprisonment, rehabilitation, social-reintegration, restoration of the kids in disagreement of the rules. It tells main aim of act that is protection, re-integration and rehabilitation of juveniles need in help plus safety and juveniles in disagreement of rules.

¹⁶² It has been expanded by the judiciary so as to protect the victim from the undue publicity which will prejudicially affect the interest of the victim, Ibid

¹⁶³ The same has been embodied in the 2007 Rules. The Rules makes it very clear that whatever rights have been guaranteed by this Act cannot be waived either by the juvenile himself or by the competent authority or any other stake holders recognized under this Act acting on behalf of the juvenile in the process relating to the administration of Juvenile Justice. This principle also makes it very clear that the non-exercise of Fundamental Rights cannot be treated as a waiver of the same,ibid

¹⁶⁴ It embodies both the positive as well as the negative connotations relating to the equality and non-discrimination of the Juveniles in the process of Juvenile Justice Delivery mechanism, ibid

¹⁶⁵ It mandates the State to assist the Juvenile to repatriate or to restore the original family status as it was enjoyed by the Juvenile immediately prior to the commencement of the proceedings under the Juvenile Justice Act, ibid

¹⁶⁶ The principle of fresh start signifies a new beginning in the life of the juvenile in conflict with law,ibid

¹⁶⁷ Short title, extent, commencement and application, Juvenile Justice Act

Section 2¹⁶⁸

This section is the definition clause. This provides the meanings of some important words in relation to this act. These are as follows:-

Section 2(12):-Child¹⁶⁹:-

The girl/boy below the age of eighteen years of age is called child.

Section 2(13):- Child in conflict with law¹⁷⁰:-

It means the child who commits any offence. The girl or boy who is below the age of 18 and breaks some law or does some unlawful act during the commission of offence.

Section 2(35):- Juvenile¹⁷¹:-

In this section the definition of juvenile is given. Juvenile here means called girl or boy below eighteen years of the age.

Section 2(40):-Observation homes¹⁷²:-

It's called the home organised or made by state administration in every district or the group of districts either by themselves or voluntary by non-government institution registered for the purpose of treatment of juvenile in conflict with law or their care during inquiry under section 47 (1) of the act.

Section 2(46):- Place of safety¹⁷³:-

It is a separate organization made for the reason of safety and protection of children in clash with law. It is expressively concerned to the surveillance homes or the special homes. It is not police safekeeping or a jail or lockup.

¹⁶⁸ Definitions, *ibid*

¹⁶⁹ *ibid*

¹⁷⁰ means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence; *ibid*

¹⁷¹ *ibid*

¹⁷² *Ibid*, means an observation home established and maintained in every district or group of districts by a State Government, either by itself, or through a voluntary or non-governmental organization, and is registered as such, for the purposes specified in sub-section (1) of section 47;

¹⁷³ Juvenile Justice Act

Section 2(48):-Probation officer¹⁷⁴:-

An officer chosen with the recommendations of State administration as a trial officer under the trial of offender rules, 1958¹⁷⁵ or the Legal-cum Probation Officer selected by the State Government under District Child Protection Unit given in this act.¹⁷⁶

Section 2(56):-Special homes¹⁷⁷:-

It is an organization made by the state administration or intended by the nongovernmental organization which is registered under section 48¹⁷⁸ of the act is called special homes. The juveniles who are found guilty by the board and sent there with the order of the board with the purpose of rehabilitation.

General principles of care and protection of children:-

Section 3¹⁷⁹:-

In section 3 general values are given for the management of justice which also includes the principle of dignity and worth. It is specifically mentioned that all human beings should be treated with dignity and worth with no discrimination. All human beings include children also.

The sixth principle is the principle of safety. In this principle it is given that the government has to take proper and effective measures to ensure the safety of juveniles from abuse, maltreatment, harm etc during contact in care and defence system and after that also.

The principle is the Principle of non-wavier of rights. No wavier of the privileges given to kids are permissible. The privileges of child should always be protected.

¹⁷⁴ ibid

¹⁷⁵ Probation of offenders act,1958

¹⁷⁶<http://www.indiacode.nic.in/acts-in-pdf/2016/201602.pdf>12/3/2017Juvenile justice (care and protection act), 2015, universal publications

¹⁷⁷ ibid

¹⁷⁸ Special homes

¹⁷⁹ General principles to be followed in administration of Act

The one is Principle of Right of isolation¹⁸⁰ and discretion¹⁸¹. The privilege of isolation plus discretion is one of the important rights of the juveniles. And this right cannot be infringed in any manner.

It is the Principle is the principle of institutionalization as a gauge of end alternative. After making a reasonable inquiry the young should be kept in the institutional care as a last resort.

Section 11:- Role of person in whose charge a child in conflict with law is placed¹⁸²:-

The person in whose charge a juvenile or kids in clash of rules is placed have full responsibility in addition to it maintains the child is his duty as the child's parent. It is also mentioned that the child remains placed with that person until the board orders.

Rehabilitation and Social Re-integration:-

Section 39¹⁸³ provides the process of psychotherapy plus reformation of the juveniles. The process for psychotherapy plus public re-integration of the Kids in disagreement of rules is provided inside the surveillance homes within which they reside.

Section 54:-Inspection of the institutions registered under this act¹⁸⁴:-

State government appoints a committee for the purpose of inspection of the institutions like observation homes, shelter homes, special homes etc. The committee with at least 3 members has to visit the children homes once in the period of three months. Out of this team one member must be a women and a medical officer. During their visit at within a week they have to submit the report to the district child

¹⁸⁰ Privacy

¹⁸¹ Confidentiality

¹⁸² Any person in whose charge a child in conflict with law is placed, shall while the order is in force, have responsibility of the said child, as if the said person was the child's parent and responsible for the child's maintenance: Provided that the child shall continue in such person's charge for the period stated by the Board, notwithstanding that the said child is claimed by the parents or any other person except when the Board is of the opinion that the parent or any other person are fit to exercise charge over such child, Ibid

¹⁸³ Process of rehabilitation and social reintegration, ibid

¹⁸⁴ Ibid

protection units or the state governments. After the submission of the report appropriate action must be taken within a month by the regional kid safety component or the country administration.

Section 75:-Punishment of cruelty to child¹⁸⁵:-

A person in whose charge a child is placed is neglected, abuses, harms, maltreated the child and provide him/her mental or physical sufferings should be imprisoned with the term of 3 years or with the fine of 1 lakh rupees.

If such an act is done by the person who is managing or employed in the institution of the child care and protection should be punished with imprisonment of 5 years or 5 lakh fine or both.

2) Protection of child from sexual offences Act 2012

This act provides defence for kids from the physical assault, sexual harassment etc. And this act provides a prime importance to the children at all stages and development on emotional, mental, physical level of the child.

Section 5:-Aggravated Penetrative Sexual Assault¹⁸⁶:-

Person on the top of the organization or upon the employees of a prison, remand house, protection home, observation home, or other place of custody or care and protection recognized with or by any rules for the period being in power, commits penetrative sexual assault on a child, being inmate of such jail, remand home, protection house, observation residence, or other position of keeping or care and protection; or the police officer are said to commit the penetrative sexual assault.

Section 6:-Sexual Assault¹⁸⁷: -

The person commits such act should be awarded punishment of 10 years rigorous imprisonment to life time plus fine also.

Section 9:-Aggravated Sexual Assault¹⁸⁸:-

¹⁸⁵ Ibid

¹⁸⁶ Protection Of Children From Sexual Offences Act,2012

¹⁸⁷ Ibid

It is without penetration sexual assault by the police officer, staff of jail, remand home, protection home, observation home, place of custody, inmates etc. do the sexual assault with the juvenile.

C) Indian Penal Code, 1860:-

Section 375 to 376-D of this code deals with the sexual offences which affects the human body. It also contains the sexual abuse of the children in the juvenile homes and by the police during remand. The sections in regard to the Juvenile crimes that are in clash with law are as follows:-

Section 376:- Punishment for Rape¹⁸⁹:-

In this section it is provided that one should be punished if he commits rape, should be punished with seven of imprisonment which may also expand to the custody till existence and also liable for fine.

But if such charge is on governmental officials, public servants or rape is committed within the boundaries of police station by the police officer etc have different punishment.

In section **376(2) (d)** if employees of prison, remand house or other place of custody recognized by or below any law for the time being in force or of a women's or kid's organization, commit rape on any prisoner of such jail, remand home, place or institution shall be punished with rigorous custody for a term which may not below ten year of age, but may also extend to custody till existence, means custody for the remainder of that person's natural existence, and shall also be legally responsible for fine.¹⁹⁰

Section 376 C: - Sexual Intercourse by a person in authority¹⁹¹:-

The person who is in power or in a fiduciary association or a public servant or manager or boss of the prison, remand house or other place of the custody established by or under any law for the time in force or any kids or women institution if commits

¹⁸⁸ Ibid

¹⁸⁹ Indian Penal Code, 1860

¹⁹⁰ The Indian Penal Code, 1860, universal's law publishing

¹⁹¹ ibid

the offence of rape shall be punished to kept in the custody not be less than five years which may also enlarge to ten years and also legally responsible for fine.

Section 377:- Unnatural offences¹⁹²:-

The person who have carnal contact beside the command of environment with women or male or mammal shall be punish with custody till existence or custody which may extent to ten years and too legally responsible for fine.

2.3) INTERNATIONAL LAWS:-

A body of rules that control or affect the privileges of nation in their dealings with each other.¹⁹³ In the matters of child rights and prevention of child abuse there are number of international conventions and rules which always contributed a lot in the issues of juvenile justice systems. The international law emphasis upon the continued existence, safety plus enlargement. The rights for the children are recognized worldwide.

There are many treaties and conventions made on the worldwide level for the protection of children in disagreement of rule from the abuses and exploitation. Those rules and conventions are as follows:-

- 1) The privileges for kids in disagreement of the Law under the Beijing regulations¹⁹⁴
- 2) The amalgamated Nations set of laws intended for the defence of children disadvantaged of their independence¹⁹⁵
- 3) The combined Nations guiding principle for the avoidance of children criminal behaviour¹⁹⁶
- 4) Guiding standards for accomplishment on kids in the illegal fairness organization¹⁹⁷
- 5) The amalgamated Nations conference on the privileges of the kids¹⁹⁸

¹⁹² ibid

¹⁹³ <https://www.merriam-webster.com/dictionary/international%20law> / 14/3/2017

¹⁹⁴The Rights of the Child in Conflict with the Law under the Beijing Rules

¹⁹⁵The United Nations Rules for the Protection of Juveniles Deprived of their Liberty

¹⁹⁶The United Nations Guidelines for the Prevention of Juvenile Delinquency

¹⁹⁷Guidelines for Action on Children in the Criminal Justice System

6) The International Covenant for Civil as well as Political Rights

7) The African agreement on the privileges and wellbeing of the young persons¹⁹⁹

1)The privileges for kids in disagreement of the Law under the Beijing regulations²⁰⁰:-

It was adopted by universal meeting declaration 40/33 on the day of 29 November 1985²⁰¹. It's called as amalgamated Nations benchmark least rules for the management of young fairness 'The Beijing laws'. These rules protect the interest of the children in disagreement of legal statutes plus their family. The main aim is to regenerate or develop the child in such condition so that he/she become a good person and ensure meaningful life in the community. Beijing Rules are divided into six parts covering the whole of juvenile justice process and they are:

- i. Worldwide philosophy,
- ii. Procedure of inquiry and Prosecution,
- iii. Resolution and disposition,
- iv. Non-Institutional dealing,
- v. Institutional Treatment, investigation and Planning
- vi. Policy Formulation and assessment.²⁰²

Under the Beijing Rules the concept of Juvenile is very important. The aspire of children fairness arrangement is the development of the juveniles. Also any reaction to the juveniles with quantity to the conditions of in cooperation of offender and the offence.

• **Guide philosophy to arbitration and outlook²⁰³:-**

Capital punishment is not allowed to be imposed to the juvenile offenders.

¹⁹⁸The United Nations Convention on the Rights of the Child

¹⁹⁹The African Charter on the Rights and Welfare of the Child

²⁰⁰ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")

²⁰¹<http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>. 14/3/2017

²⁰²http://shodhganga.inflibnet.ac.in/bitstream/10603/37610/9/09_chapter%203.pdf. / 14/3/2017

²⁰³ Guiding principles to adjudication and disposition

Restrictions imposed on the juveniles with proper care and boundaries.

Any action taken in regard to juvenile should be in percentage to the conditions plus seriousness of the crime only as well the needs of the society and the needs of the juveniles. The matter of juveniles is very responsive.

The restoration and rehabilitation of the child shall be the guiding factor.

Children are not subjected to give the physical sentence.

- **Dispositional Measures:-**

These are made available to the competent authority. It includes

1. Trial
2. Management,
3. Regulation and care,
4. Compensation,
5. Care,
6. Educational settings etc.

The foster care is such meaningful so that his/her delinquent behaviour came to end. And make his/her life crime free.

Special attention given to other child, family, community as well as the educational institutions to deal with the child in conflict with law.

Such regulations must be imposed in context of the monetary, societal and educational circumstances existing in each associated State.²⁰⁴ The definitions of the word offence and child or juvenile are given in these rules.

The aims of juvenile justice system are given in Article 5 are as follows:²⁰⁵

²⁰⁴<http://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>. / 12/3/2017

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") Adopted by General Assembly resolution 40/33 of 29 November 1985

²⁰⁵ Aims of juvenile justice- 5. 1 The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

The endorsement to become better being in future life. To rehabilitate the offender kids.

Next one deals with the 'rule of proportionality' .The responsibility towards the offender is based on the seriousness of the offence plus on the personal situations.

Article 7²⁰⁶ deals with the Rights of Juveniles: -

Basic safeguards are provided in this like assumption of blamelessness, the right to remain silent, meet the counsel, right to appeal etc.

Article 8²⁰⁷ provides the protection of privacy:

Respected at all the stages, no identification of juvenile is published.

Article 9²⁰⁸ is the saving clause & relates to care and the protection of children. It provides the ways for the reformation and the rehabilitation of the prisoner. The protection of rights is provided in this Article. The rights given in United Nation announcement of human being privileges, the social, following, common, Cultural privileges and conference on the Rights of brood etc are prescribed to be protected under it.

2)The amalgamated Nations set of laws intended for the defence of children disadvantaged of their independence²⁰⁹:-

These set of laws were adopt by universal meeting declaration 45/113 on the date of 14 December, 1990²¹⁰. These rules were also known as JDL²¹¹ rules. It was made with

²⁰⁶ Rights of juveniles-7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

²⁰⁷ Protection of privacy

²⁰⁸ Saving clause- 9.1 Nothing in these Rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations and other human rights instruments and standards recognized by the international community that relate to the care and protection of the young.

²⁰⁹https://www.unodc.org/pdf/criminal_justice/United_Nations_Rules_for_the_Protection_of_Juveniles_Deprived_of_their_Liberty.pdf / 14/3/2017

²¹⁰ United Nations Rules for the Protection of Juveniles Deprived of their Liberty

the aim of security of privileges of the children and development of mental and physical health of the juveniles. Another purpose is the safety of the juveniles from any type of exploitation in the children fairness organization. Imprisonment ought to be given in the last resort. No discrimination is given to juveniles on basis of religion, sex, caste etc. Rights provided by UDHR²¹², CRC²¹³ etc are protected under this.

These rules were not made only for the custodial managements but also for the police stations where the children were kept in confinement. The main propose is that the rights of detainee should always be respected and at all times.

Proper guidance should be provided to the organization involved in the youthful justice system. Proper medical examination of the juveniles time to time is provided.

Vocational training and education to the juveniles be provided during the trail goes on.

Children disadvantaged of the freedom are having the rights to amenities and services that convene all the necessities of fitness plus individual self-esteem.²¹⁴ Time to time scrutiny by the inspectors should be done and the findings should be submitted.

Rule 3²¹⁵ applies to the children who are arrest or under trail, that they should be presumed innocent until proved.

Rule 12²¹⁶ specifies that the “deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles”²¹⁷

²¹¹ Juvenile Deprived Liberties

²¹² Universal Declaration On Human Rights

²¹³ Convention On Child Rights

²¹⁴ https://www.unodc.org/pdf/criminal_justice/United_Nations_Rules_for_the_Protection_of_Juveniles_Deprived_of_their_Liberty.pdf.United Nations Rules for the Protection of Juveniles Deprived of their Liberty

²¹⁵ The Rules are intended to establish minimum standards accepted by the United Nations for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society.

²¹⁶ The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-

Rule 4²¹⁸ lays down its emphasis on the facilities for juveniles. It talks about Encouragement of social re-integration, vocational training, education, recreational activities in the juvenile in custody.

Rule 5²¹⁹ emphasis on the hygienic conditions for the juveniles, proper conditions which include clean bedding, medical and health care facilities etc. the rights of children should be respected and treat the juveniles with dignity.

Rule 6²²⁰ ensures the protection of physical, mental health of the children in the custody. It also seeks to promote the knowledge and capacity of the children.

3) The combined Nations guiding principle for the avoidance of children criminal actions:

These rules were taken and proclaim by universal congregation on 14 December 1990²²¹. In these rules it is given that watchful of the great figure of childish folks who may or may not be in clash with rules but who are deserted, abandoned, ill-treated, bare to medicine mistreatment, in trivial conditions, and who are in universal at great danger.²²² It is guided in these principles to prevent abuse and misuse in the

respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

²¹⁷https://www.unicef.org/easterncaribbean/Working_with_children_in_conflict_with_the_law.pdf. / 14/3/2017

Stewart Heather, working with children in conflict with law, unicef unite for children

²¹⁸ The Rules should be applied impartially, without discrimination of any kind as to race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability. The religious and cultural beliefs, practices and moral concepts of the juvenile should be respected.

²¹⁹ The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system.

²²⁰ The Rules should be made readily available to juvenile justice personnel in their national languages. Juveniles who are not fluent in the language spoken by the personnel of the detention facility should have the right to the services of an interpreter free of charge whenever necessary, in particular during medical examinations and disciplinary proceedings.

²²¹ United Nations Guidelines for the Prevention of Juvenile Delinquency

²²²<https://www.crin.org/en/docs/resources/publications/hrbap/IHCRC/UnitedNationsGuidelinesforthePreventionofJuvenileDelinquency.pdf> / 14/3/2017

correctional homes. No harsh methods are used to the juveniles in conflict with law. Occupational training, teaching and support in relation to religious activities of the children in clash of regulations. The families plus the kids should have the knowledge about the privileges of kids in clash of regulations and the new rules, regulations and the set of laws made in this field.

General Principles laid down are:-

- deterrence plans at every level
- Deep canalization of the problem and preparation of lists, programmers and services available
- Definition of responsibilities of the management or staff
- Co-ordination between the administration and civil society groups for the prevention efforts
- Regular monitoring
- Specialist on different levels
- Reduction in number of opportunities for committing offences
- Involvement of community

In short measures should be taken to prevent any type of juvenile delinquency, international co-operation on such issues and rehabilitation and training of children by the experts.²²³

4) Guiding standards for accomplishment on kids in the illegal fairness organization²²⁴:-

These were suggested by financial and communal Council declaration on the date of 23 July, 1996²²⁵. The main aim of this declaration is to employ the rights of children in regard to Convention of Child Rights²²⁶ and to apply and use United Nation Standards on the juvenile justice administration. The plan is to effectively implement

²²³<https://www.crin.org/en/docs/resources/publications/hrbap/IHCRC/UnitedNationsGuidelinesforthePreventionofJuvenileDelinquency.pdf>. / 14/3/2017

²²⁴<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CriminalJusticeSystem.aspx>. / 14/3/2017

²²⁵Guidelines for Action on Children in the Criminal Justice System

²²⁶ CRC, Convention on Child Rights

the privileges of kids and other instruments in relation to the children. Improvement of co-operation is needed between the governments, specialized groups, non-governmental organisations, media, enlightening institutions, kids and other members of the society for the proper implementation. In making use of the guiding principle for achievement at both the global as well as national levels, deliberation should be specified follow:

1. Admiration for person decorum, well-matched with the means of the four universal gatherings or conferences, i.e. non-differentiation, also the sexual - compassion; preservation the best security and the interest of the kid; the right to existence, continued existence and growth; and admiration for the views of the kid.
2. Contribution of brood and worried sector of civilization.
3. Reasonable submission and convenience to persons in maximum necessitate.
4. Accountability plus directness of operation.
5. Constructive response based on effectual preventative plus corrective means.²²⁷

5) The amalgamated Nations conference on the privileges of the kids²²⁸:

It came in power on the 2nd day of September, 1990 consisting 54 articles and available to all children without any kind of discrimination²²⁹. There are some basic fundamental rights provided to all the children under it. The definition of child is given in this conference. It defines ‘child’ as a being under the age of eighteen years. Different countries gave different definitions of child. This convention applies to all the children devoid of any favouritism of caste, shade, creed, gender, verbal communication, rich or poor, occupation of their parents, disable or able etc no matter but every child is considered as same or equivalent to others. These include the right to:

²²⁷<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CriminalJusticeSystem.aspx>. / 17/3/2017

²²⁸<http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf> 17/3/2017

²²⁹Convention on the Rights of the Child, <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf> 17/3/2017

- Life, survival and growth
- Shield from violence, abuse or neglect
- An teaching that enables children to fulfil their probable
- Be raised by, or have a relationship with, their parents
- Clear their opinions and be listened to.²³⁰

Children who are disabled, either psychologically or bodily, have a right to particular care and teaching so they can lead full and self-governing lives.²³¹ In this gathering the best interest of child to be seen before taking any action.

Article 4²³² of the convention specifically given that the rights of the children should be protected. This duty is given to the government that every effort should be taken by the government so that the rights of every child must be protected.

Article 19²³³ of this convention safety is provided from each and every type of aggression. The interpretation of this article it is specifically mentioned that the protection of the children is the government's responsibility and the administration have to took major ladders for protection of children from any type of abuses, neglect or violence etc.

²³⁰<http://www.savethechildren.org.uk/about-us/what-we-do/child-rights/un-convention-on-the-rights-of-the-child>. 17/3/2017

²³¹P.J.Lynch, Ken Wilson-Max, Claudio Muñoz; John Burningham;, Rabindra&Amrit K.D. Kaur Singh, Satoshi Kitamura, Peter Weevers; p, Shirley Hughes, for every child, published by Red Fox <https://www.unicef.org/rightsite/files/rightsforeverychild.pdf>

²³² States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

²³³ 1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 34²³⁴ of the convention insures the children from the sexual exploitation. And this duty is also provided to the government to protect the children from sexual abuse and sexual misuse. Sexual mistreatment is the sexual cruelty of brood and childhood by the swap over gender or sexual acts for drugs, foodstuff, protection, security, other essentials of being, and in exchange of money.²³⁵ And meaning of sexual abuse is sort of non-consensual sexual contact. Sexual abuse can happen to men or women of any age.²³⁶

Medem, a writer defined child sexual mistreatment as any sexual act with a child performs by an adult or older child is called as child sexual abuse.²³⁷ There are number of acts which include the child sexual abuse, those acts are as follows:

- Sexually touching any part of body, with or without clothes,
- Penetrative sex, includes penetration of mouth,
- Give confidence a child in any sexual activity
- Engages in sexual activities intentionally in front of children
- Presentation of Pornography to child or using child for creating pornography.

Article 36 provides the protection of children from every type of exploitation which harm them.

Article 37²³⁸ provides the protection of children in case of detention. In this article it is mentioned that no children should be given cruel treatment and not treated with

²³⁴ States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent: (a) The inducement or coercion of a child to engage in any unlawful sexual activity; (b) The exploitative use of children in prostitution or other unlawful sexual practices; (c) The exploitative use of children in pornographic performances and materials.

²³⁵ <http://host.jibc.ca/seytookit/what.htm> 17/3/2017

²³⁶ <http://www.pandys.org/whatissexualabuse.html> 17/3/2017

²³⁷ <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf> 17/3/2017

²³⁸ States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last

inhumane behaviour. A child be put in jail or given punishment very rarely and if the punishment is given it must be given as the last alternative. Punishment should be given for minimum time. The brood prison must be different. They should be kept in different jail from the adult ones. The juvenile prisoners should be in contact with their family.

Article 39²³⁹ talks about the rehabilitation of the child who is abused, neglected, exploitation, tortured etc to recover them.

Article 40²⁴⁰ of the convention is about juvenile justice. This article protects the rights of the children who are in clash with law. It is mentioned in this article that the juveniles who break law or who are in conflict with law must be treated with respect and decorum. They have right to consult lawyer as well right of the fair trial with regard to age or situation. The privacy of a child should always be protected at all times.

6) The worldwide agreement on Civil and Political privileges²⁴¹:

These privileges were adopted on the 19th day of December 1966²⁴². It is a many-sided treaty take by the universal congregation of amalgamated Nations. It came into power on 23 March, 1976²⁴³. This makes its signatory nations to respect the social and

resort and for the shortest appropriate period of time; (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances; (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

²³⁹ States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts.

²⁴⁰ <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf> 17/3/2017

²⁴¹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx> 17/3/2017

²⁴² International Covenant on Civil and Political Rights

²⁴³ *ibid*

the supporting (political) privileges of all the persons which include children. It is a part of international bill on individual privileges plus worldwide agreement on financial, societal as well as civilizing privileges. This contains so many articles in relation to the kid in divergence of law for their protection.

ICCPR²⁴⁴ recognize intrinsic decorum of each human being and undertake to encourage circumstances inside states to allow the pleasure of social and supporting rights. Nations that have signed the agreement are obliged “to defend and conserve essential individual human rights’. And “appreciative to take executive, legal, and law-making methods in order to defend the rights enshrine in the harmony and to provide an effective remedy.” There are at present 74 signatories and 168 parties to the ICCPR.²⁴⁵

Article 2²⁴⁶ is based on non-discrimination notion. It ensures that the rights given in this convention should be respected and given to all the people who are signatories to this convention. They should not be discriminated on any basis.

Article 3²⁴⁷ ensures equal rights to women and man without any discrimination. This article also includes children. Civil and political rights are given to all man, women and children in this article without any type of discrimination.

Article 6²⁴⁸:-

²⁴⁴ ibid

²⁴⁵ <https://ccla.org/summary-international-covenant-on-civil-and-political-rights-iccpr/> 18/3/2017

²⁴⁶ Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant

²⁴⁷ The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

²⁴⁸ Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

This article provides Right to life. It is for all the people with any caste, colour, creed etc. Man, women and children all are given this right. It is basic right given to all human.

Article 7²⁴⁹:-

Freedom from torture is ensured in this article. It prohibits abuse plus bad treatment, hard punishment²⁵⁰ which also includes the safety of juveniles who are in clash with law that good surroundings be provide for them so that they can reform themselves to be a good being, special protection from the brutal actions, cruelty, abuse etc is provided in this article.

Article 8²⁵¹:-

This article gives defence from slavery. The Global Court of fairness has recognized it as a guard of slavery as single of two examples “obligation arise out of human rights law,²⁵²” or obligation outstanding by a State to the global commune as a whole. The rehearsal of confinement has thus be generally considered as a offence next to humankind,²⁵³ and the right to be gratis from craving is careful so fundamental “that all nations have standing to bring offending states before the Court of Justice.”²⁵⁴

²⁴⁹No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

²⁵⁰ICCPR, Article 6, 7,8.

International convent on civil and political rights

²⁵¹ 1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

(a) No one shall be required to perform forced or compulsory labour;

²⁵² Barcelona Traction, Light and Power Co, Ltd. (Belgium v. Spain), Judgment of 5 February 1971, I.C.J. Reports, 1970, p. 32.

²⁵³ The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in September 2001 noted in its final declaration: “We further acknowledge that slavery and the slave trade are a crime against humanity and should always have been so, especially the trans-Atlantic slave trade.”

²⁵⁴ Renee Colette Redman, “The League of Nations and the Right to be Free from Enslavement: the First Human Right to be Recognized as Customary International Law”, Chicago-Kent Law Review, vol. 70, 1994, pp. 759, 780.

Article 9²⁵⁵: This article recognises the security and liberty of the persons of any type of delinquents.

Article 10²⁵⁶:-

This article provides to treat everyone with dignity and humanly. It applies to all includes prisoners, psychiatric care. It also recommended keeping the juvenile prisoners from the adult ones. It requires prisons to be focused on reform and rehabilitation rather than punishment.²⁵⁷

²⁵⁵ 1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

²⁵⁶ 1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

(a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

²⁵⁷ ICCPR, Article 10.3

Article 24²⁵⁸:-

This article gives rights to children. It ensures every child without any discrimination of any type like caste, colour, sex, creed, language, social origin etc

S7) The African agreement on the privileges in addition to it the benefits of the Children²⁵⁹:-

It is a African human right instrument and was adopt by system of government of African unity on 11 July 1990. It was adopted within one year of United Nation Convention of Child Rights. It enshrines all the civil, political, social, economic rights. In this charter the definition of kid is given as any individual under 18 years of age is measured as child.²⁶⁰

Article 2:-

It gives the meaning of kid. A kid means every person who is below the age of 18 years is considered as kid under this charter.²⁶¹

Article 3²⁶²:-

It insures no differentiation. It entitled the rights and freedom of children without any type of discrimination with regard to caste, colour, sex, creed, language etc.

Article 4²⁶³:-

²⁵⁸ 1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

²⁵⁹ The African Charter on the rights and welfare of the child

²⁶⁰ Article 2, African Charter on Rights and Welfare of Children, Health and Human Rights
<http://www.who.int/hhr/African%20Child%20Charter.pdf> 18/3/2017

²⁶¹ http://www.achpr.org/files/instruments/child/achpr_instr_charterchild_eng.pdf 18/3/2017

²⁶² Every child should be allowed to enjoy the rights and freedoms in this Charter, regardless of his or her race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.

This article is in stare to the best attention of the kid.

Article 15²⁶⁴ and 27²⁶⁵:-

These articles give economic and social exploitation of the children.

Article 16²⁶⁶:-

It gave the defence against the kid mistreatment and torment. It protect children from any type of abuses, inhumane treatment etc.

Article 17²⁶⁷:-

This article enshrines management of young fairness management. Each kid accuses or found culpable of having broken the rules should receive special treatment, and no child who is imprisoned or should be tortured or otherwise mistreated.²⁶⁸

In this charter special protection and care is given to children, protection of children dignity. This charter protects the children from torture, inhumane behave includes any type of abuse- physical, mental, emotional, sexual etc.

In the region of young fairness, UNICEF aims to decrease confinement as caring children from aggression, mistreatment and abuse.²⁶⁹ National laws are revised in accordance with the need of time as well in conformity with international standards. Brood in disagreement with law have more threat than the others. As we came to know about so many laws, rights, conventions etc made for the protection of child in conflict with law but these also need proper accomplishment so that main aim is

²⁶³ If children can voice their opinions, then those opinions should be heard and taken into consideration during legal and administrative proceedings.

²⁶⁴ Children should be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with their physical, mental, spiritual, moral, or social development

²⁶⁵ Children should be protected from all forms of sexual exploitation and sexual abuse

²⁶⁶ Children should be protected from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse.

²⁶⁷ Every child accused or found guilty of having broken the law should receive special treatment, and no child who is imprisoned or should be tortured or otherwise mistreated.

²⁶⁸ https://www.unicef.org/esaro/African_Charter_articles_in_full.pdf 18/3/2017

²⁶⁹ https://www.unicef.org/chinese/protection/files/Conflict_with_the_Law.pdf 18/3/2017

fulfilled and protection of the children also be there. Proper machinery is needed to curb all those problems and proper completion. To save the future of nations such laws are made. These are made for protection of child rights not to exploit them in any manner.

2.4) Conclusion:-

There are number of laws on countrywide and intercontinental level made to be intended the safety of kids counting brood in disagreement of rules and regulations or breaking of laws. The age of considering a person as juvenile is also given in number of convents or acts on national and international level. There are so many articles and rules on the protection of children from sexual abuse, physical abuse, mental abuse etc. Process for psychoanalysis of children is also given in these charters. The way for assuring juvenile justice is also given. As we know there are number of rules, system, charters and acts but still the misuse of juveniles is going on. No protection of rights is there. So we can say that there is need of proper implementation of these rules to stop such crime against child. If proper functioning be there only than we can say that the aim of juvenile justice system i.e. psychoanalysis of children should be fulfilled otherwise it's not possible at all.

‘The police force must follow the law while enforcing the law.’²⁷⁰

-Earl Warren

3.1) Introduction:-

The issues of the young offenders are totally different from the other offenders. Of young offender is wholly dissimilar from that of other offender. They are treated differently from the other offenders. When anyone commits crime firstly he firstly goes to police. The position of the police force in the fairness system is notable and has an obvious collision on the young.^{21st} Century India faces umpteen numbers of challenges in the proliferation plus preservation the attention of a immature criminal or accuse as the case may be.²⁷¹

The police is an organisation made to supervise, regulate the law etc.²⁷²In other words Police officers play a essential position in the law enforcement scheme. They monitor illegal activity, take part in area patrols, react to emergency calls, issue tickets, make arrests, investigate crimes and give evidence in court as needed. While you usually need only a high school diploma to qualify for police institution training, many police officers have two- or four-year degrees in criminal justice.²⁷³ They protect the citizens from any type of danger and protect their rights which are more important to live a happy and peaceful life.

They investigate the crimes and collect all the useful evidences. They caught the wrong doers etc are the basic works done by the police. But in juvenile justice system the duty of police is changed from the other ones. Their duty becomes more responsible in this matter.

Police sensitization training has also been initiated to rid the police of their colonial attitudes and high handed behaviour. The police should keep in mind the protection as well as the following measures while handling the child / juvenile Handling by Special Juvenile Police.

²⁷⁰<http://izquotes.com/quote/193484> 18/3/2017

²⁷¹Akshita Mishra, CNLU Patna<https://www.lawctopus.com/academike/juvenile-justice-role-police-indian-scenario/> 20/3/2017

²⁷²<https://www.merriam-webster.com/dictionary/police> 20/3/2017

²⁷³<http://work.chron.com/role-police-officer-8056.html> 20/3/2017

- 1) Handcuffing of juvenile/child prohibited
- 2) No detention in lock up or prison
- 3) Crimes against children are cognizable offence
- 4) No death penalty or life imprisonment
- 5) Proceedings are informal, participatory and private
- 6) Parent's participation in Juvenile process
- 7) Right to free legal aid
- 8) Information about Juvenile cannot be released to the media
- 9) No case can be filed against a kid below the time of 7 years of age (sec 82 IPC)²⁷⁴
- 10) No case can be filed against a child between the ages of 7- 13
- 11) If the child does not know the consequences of committing the crime (Section 83 IPC)²⁷⁵
- 12) Child / juvenile cannot be tried in the normal court.

3.2) Police and Juvenile Justice System:-

It is simply known that the police take into custody the offenders in both the cases of juvenile and adult offenders. It is the duty of the police to produce the offender before the magistrate. The police is the first who caught the offender. On the issue of juvenile in clash of law the police caught him and take him before the magistrate within 24 hours of arrest as it is the duty of the police.

From the childhood every child is scarred from the name of police. After the commitment of the crime the police caught the child and take him before the Magistrate. The police is the investigator of every case. Police is the first who get in touch with the child after the commission of the offence. A special police unit is made

²⁷⁴ Act of a child under seven years of age

²⁷⁵ Act of a child above seven and under twelve of immature understanding

for dealing with the matters of the juveniles. Police is the first who have to take care of the rights of the juvenile offender.²⁷⁶

Thus it is cleared that the first get in touch with the childish in conflict with law is of police. During the pending production before the juvenile board the juvenile is kept in the surveillance house. Beneath no circumstances the young is kept in jail or police force security device. It is the duty given under the juvenile justice act that the police have to inform the parents of the children about his arrest. During the trail goes on the juvenile is kept in special home and side by side the inquiry, investigation goes on.

Police investigates the case of juvenile and files charge sheet as done in the other cases. But in the case of juvenile a special care is to be taken by the police to handle it. After the completing of inquiry police sent the juvenile offender to the special home where his care is taken off. Police investigates a very special matter regarding the juvenile i.e. the age which is so important to be known.²⁷⁷

Call the parents of the juvenile and tell him about his rights is the first responsibility of the police towards the juvenile. Handcuffing, physical torture etc is strictly prohibited towards the child offender.

Different treatment from the other offenders is supposed to be given to the juvenile offenders. No harsh punishment or treatment to be given to the juveniles. It is strictly prohibited in this act but sometimes due to the harsh nature of the police the juveniles have to go through the very hard phrase of life and go through the abusive behaviour of the police which results in very bad condition of the juveniles even for their future. It is the reason of creating a special juvenile police which knows about all the rights of the children in conflict of law and protect them with care, this is the reason Juvenile Justice Act, 2000 made a special police unit for the juveniles.²⁷⁸

For that purpose the juvenile justice act, 2000 recommended to open the special juvenile police unit so that all such abuses and exploitation should be eradicated by police of the juveniles. In every town at least one juvenile police unit is recommended

²⁷⁶<https://www.lawctopus.com/academike/juvenile-justice-role-police-indian-scenario/> 20/3/2017

²⁷⁷Juvenile offenders and Victims: 2006 National Report, available at, <http://ojjdp.ncjrs.gov/ojstatbb/nr2006/downloads/NR2006.20/3/2017>

²⁷⁸Statement of Objects and Reasons, Juvenile Justice (Care and Protection), Act 2000

to be open and the police officials who work there must have full training and experience in this field.

This act gives the authority to the police to release the juvenile on bail also. The best of the child and the protection of the rights is the main aim of the Juvenile system on which the whole act is based.²⁷⁹

Almost 40 per cent of the population of India numbering about 1.52 billion consists of children who are below the age of 18 years, Justice Lokur said, “We are dealing with a very large number of people and we have to realize this when we deal with issues pertaining to child rights. One of the most important things we need to remember is that all of us regardless of which discipline we follow or which walk of life we come from, have to work together and converge on this one central issue of protecting and preserving child rights.”²⁸⁰

3.3) Unique young police force division²⁸¹:-

First time the , the childish aid bureaus of 1930s was instituted by August Vollmer may be the first organised special police service for juvenile offenders.²⁸²

Under the 2000 Act also, realising the need for specially trained officers, it is provided to establish a ‘particular young police force group’.²⁸³ According to the young fairness act there shall be the special police unit for the juveniles in every district. The main purpose of this special unit of police is to tackle with the problems of juvenile offenders or the juveniles in conflict with law. Special knowledge has been provided to them to handle the juveniles in conflict with law. Special knowledge about the procedure and the rights of children has been given to them. According to the act there must be at least one police officer in every police station with full

²⁷⁹Law Commission of India report, <http://lawcommissionofindia.nic.in/101-169/Report156Vol2.pdf>
August 1997 20/3/2017

²⁸⁰<http://meghalayatimes.info/index.php/front-page/27341-important-for-police-to-understand-juvenile-justice-justice-lokur>, Thursday, 23 March 2017 20/3/2017

²⁸¹ Special Juvenile Police Unit

²⁸² Joseph G. Weis, Robert D. Crutchfield, George S. Bridge, Juvenile Delinquency, 2nd Edn., 2000 at p.478

²⁸³ section 63

knowledge about juvenile justice system and he must be trained as juvenile or child welfare officer.²⁸⁴

According to the provisions of the ICPS²⁸⁵ each SJPU²⁸⁶ should have two supporting paid social workers. Social workers are appointed by district child protection society. One should be women from the social workers. The salary of these social workers will come from the district child protection society budget.²⁸⁷ The functions of Special Juvenile Police Unit are as follows:-

- 1) It covers both the cases of Children 's who are in clash of rules plus kids in requirement of help and safety.
- 2) This unit works as a guard for providing the legal safety for the children. It protects the child from all kinds of exploitation, abuses, mistreatment and unkindness etc.
- 3) It takes serious cognizance of the adult offenders against the crime committed against the juvenile offenders.
- 4) It registers, linking and monitoring against the missing child complaints.
- 5) The particular young police force Units shall employed with charitable organisations, restricted leading body, society based organisations in identify juvenile in clash of rules as well as dealing cases of aggression aligned with kids, child abandon, child violence and mistreatment.²⁸⁸
- 6) It also upholds the list of Non- governmental organisations in regard to the jurisdiction and it also monitors the activities to prevent the crime against the children like exploitation, abuse etc.
- 7) It maintains contacts with the persons who are expert in the ground of juvenile's privileges in addition to it the protection of children.

²⁸⁴ <http://www.prayaschildren.org/pdf/SJPU-Eng.pdf> 20/3/2017

²⁸⁵ Integrated child protection scheme

²⁸⁶ Special juvenile police unit

²⁸⁷ <http://www.childlineindia.org.in/special-juvenile-police-units.htm> 20/3/2017

²⁸⁸ http://www.dpjuu.com/index.php?option=com_content&view=article&id=289&Itemid=247

26/3/2017

The police of India, created under the Indian Police Act 1861 or other Police Acts, are traditionally trained to implement the necessities of the Penal Code of India, 1860, and restricted plus particular laws, in agreement with the Code of Criminal Procedure, 1973. Although, there are provisions for the children, these laws are primarily meant for adults. As such, few police-officers are exposed to the modern concepts of the Juvenile Justice System, privileges of the kids, child security and safety, welfare plus expansion, National Policy on Children, juvenile detention, institutional services, non-institutional alternatives, juvenile aftercare, public participation in juvenile correction and the like. Most of the time, the first contact that children or juveniles have with the legal system is with a police officer and most of the time the experience is unpleasant since the policeman is not trained or sensitized to handle them. Since the police officer has relatively wide discretionary powers, he can wield a great influence on the child's future performance and they can also create an indelible impression on the child and society.

The situation has vastly changed beneath the childish fairness (Help and Defence of kids) Act, 2000, though in practice, it remains much the same in most of the country. In Section 63 of the act, a particular childish Police Unit has to be constituted in every police district of India.

Particular police for young's created under the new law, shall be exclusively to deal with 'child in disagreement of rules' plus 'kids in requirement of help and safety'. The entity at the constituency stage is to gathering under a Police official of the rank of inspector of police force who may be assisted by at least two communal employees one of whom shall be female and an additional if possible kid specialist or having relevant experience). For the purpose, it is advisable to give training to two or three policemen out of which may be deputed specially for this kind of job. In case of non-availability of the Juvenile Police Officer for any valid reason the services of other trained officers may be taken on a temporary basis. This unit may function under the direct supervision of a Deputy Superintendent of Police who may besides this specialized job continue to perform other normal duties.

At the police station level, two policeman of the rank of SI or ASI may be deputed for the purpose that can be elected as young / Child wellbeing official.²⁸⁹ At police station

²⁸⁹<http://www.prayaschildren.org/pdf/SJPU-Eng.pdf> 26/3/2017

level the unit will be assisted by at least two or more honorary social workers. Such police officers deputed shall be specially instructed and trained to deal with the cases of child / juvenile. Thus, the young police force Unit, at the regional level plus the young / Child wellbeing official at the police station level will have a team of at least three, one from the police and two social workers from the community.

PROTECTION OF CHILD / JUVENILE:

The law provides certain protection which is mentioned below:

The police should keep in mind the protection while handling the child / juvenile:

- Handling by Special Juvenile Police / Juvenile / Child Welfare Officer
- Handcuffing of juvenile/child prohibited
- No detention in lock up or prison
- Crimes against children are cognizable offence
- No death penalty or life imprisonment
- Proceeding are informal, participatory and private
- Parents involvement in Juvenile process
- Right to free legal aid
- Information about Juvenile cannot be released to media
- No case can be filed against a child below the age of 7
- No case can be filed against a child between the age of 7-13 if the child does not know the consequences of committing the crime
- Child / juvenile cannot be tried in the normal court.

DUTIES DURING APPREHENSION / TRIAL PHASE:

Must inform parents / guardians about apprehension of child / juvenile

Must inform the Probation Officer of the area about the apprehension of juvenile

May release juvenile on bail

Must make entry in the daily diary of the apprehension of child / juvenile and also enter the age of the child / juvenile

FIR against victimizer of a child

Conduct enquiry or age verification, as per the order of CWC / JJB The above provisions, under the JJ Act, have been made to ensure this legal treatment, protection to the child / juvenile and their rights which, in any case, can be realized by making the police force child friendly.

3.4) Attitude towards young in disagreement of rules:-

In most of the cases the forces of police officials are considered the juvenile offenders both boys are girls as sexual objects or slaves. All the rights are infringed of the juveniles in conflict with law once they caught. The reality is this even the police themselves don't know the rights of the juvenile offenders. Most of the juveniles are abused sexually, physically and mentally by the police force.

The relation among the child and police is represented as a difficulty always. Negative attitude of the police is always faced by the juveniles of the police infect there is always violations of the rights of the juveniles in the hands of the police officials. Associations among police force plus childhood are frequently represented as difficult. The relations of juvenile offenders with police are always characterized with tension, negativity, mistrust, conflicts etc.²⁹⁰

The relations between them are always problematic. Brutality of the policed is not even let free the juveniles. It is also the reason of turning child offender of minor offences to the big crimes.²⁹¹

3.5) Unlawful custody of brood in police force stations and jails:

The custody of children in legal safekeeping or police custody is an obvious infringement of the Section 10 (1) and Section 7A of the young fairness law amend in 2006. Section 10 (1) states, "As soon as a juvenile in conflict with law is apprehended by police, he shall be placed under the charge of the special juvenile police unit or the designated police officer, who shall produce the juvenile before the Board without any loss of time but within a period of twenty-four hours of his apprehension

²⁹⁰Stephanie M. Myers, *Police Encounters With Juvenile Suspects: Explaining The Use Of Authority And Provision Of Support*. (Albany: School of Criminal Justice, 2002)

²⁹¹Stephanie M. Myers, *Police Encounters With Juvenile Suspects: Explaining The Use Of Authority And Provision Of Support*. (Albany: School of Criminal Justice, 2002)

excluding the time necessary for the journey, from the place where the juvenile was apprehended, to the Board: Provided that in no case, a juvenile in conflict with law shall be placed in a police lockup or lodged in a jail”

Section 7 A of the Juvenile Justice Act is with the purpose of: “(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence; the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be: Provided that a claim of juvenility may be raised before any court and it shall be documented at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made there under, even if the juvenile has ceased to be so on or before the date of commencement of this Act. (2) if the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect.” Even though the juveniles are illegally detained in the police stations and jails.

3.6) Unlawful confinement with pain in police force stations:

There are so many stories, cases etc which we read about the brutality of the police in daily newspapers and articles. Police always has done the clear cut violation of the rights of other but no action taken against them. Police always forget its duties and infringed the rights of the suspects and the offenders. Torture, abuse, mistreatment etc is so common in the jails and the police stations. Illegally confined people and the offenders are facing so many troubles in the police station. Here are some news about the illegal confinement of the offenders especially of juveniles in the police station and the torture they are facing in that period.

On 20 December of the year 2011, the state commission of Karnataka rescue 16 year old boy who was illegally kept in the jail of Sampigehalli police station. He was arrested on 17 December and locked in the police station. He was a suspect and he was handcuffed by the police and chained in the lock up. He was given no food

during that time. The minor was just caught by the police as the police suspected that he have done theft from the medical shop when the minor go there to buy some medicines. Case dairy was prepared by the police in this case. Even his parents were not informed about his arrest as well the minor was not produced before the magistrate. The KSCPCR²⁹² raids the police force station following receipt in order to the imprisonment of the minors in illegal ways. After the examination of the body of the minor it was found that he was brutally beaten by the police and clear bruise were there on the arms, legs of the boy.

On the 25th day of the month of July, 2011 a minor was detained by the police force in Bangalore. He was unlawfully jailed by the police. The minor boy was subjected to the ill humane behaviour of the police. His leg was broken down by the police men's. After that he was hospitalised and when the issue go known to his father he files a grievance with the KSHRC²⁹³, KSHRC^{294,295}

On the 3rd day of May, 2010 the KSHRC²⁹⁶ raids the Jayanagar police force station building in Bangalore. There they found nine persons and five more who are minors and illegally locked up there. Three of them were locked up from the past 2 months. Very bad behaviour was shown to them. Kids of 17, 14 and 16 years were also unlawfully locked up from past six days. They were given very bad treatment there. Many of them were picked up for very little offences. Some of them were not even taken before the magistrate.²⁹⁷

On 21 November KHRC raids Madiwala police station of Bangalore and there they found 16 years old child who was picked from his residence in case of burglary. And he was unlawfully locked up in the police station from last 10 days. The treatment and the behaviour were so bad given by the police force to him. He was physically tortured so many times. Even though her sister produced the evidence of her minor

²⁹² Karnataka State Commission for Protection of Child Rights

²⁹³ ibid

²⁹⁴ ibid

²⁹⁵ Juvenile offender a victim of police rage?, The Express Buzz, 4 August 2011

²⁹⁶ ibid

²⁹⁷ SHRC raids police station, rescues juvenile detainees, Deccan Chronicle, 4 May 2010

age but he was not set free or produced before the magistrate of the juvenile board. After 10 days of his arrest he put before the juvenile justice board.²⁹⁸

On the date 14th July, 2009 again KSHRC AND KSCPCR in a combined raid went to the Varthur police station of Bangalore. There they found five females and their 10 kids between the age of 10 months to eight years were unlawfully kept in the lock up. It was found that on the day of 13 July their husbands were charged with the sections of robbery. The police was unable to find them so they pick the children and women as suspects of the crime. Even though they were not given any reason of being detained. The women and children there were very badly treated and it was also found that the children were not even given blankets during the night time.²⁹⁹ The KSHRC and the KSCPCR well-organized the police to right away release the detainee.

3.7) Unlawful imprisonment in prisons:

On the date of 13 January 2012, members of the KSCPCR made a raid to the innermost jail at ParappanaAgrahara, Bangalore and it was found that 22 minors were unlawfully locked up from several past months. 9 juveniles were not sent to the surveillance home even there trial is finished. They were exhausted in the jail from last 1 year. Several grievances were made by the parents of the juveniles but nothing has done by the police and also found that 22 minors have been stuck around for several months. Their rights are infringed there from the long time. bad treatment, beating, other physical torture was faced by them on daily basis.³⁰⁰

During the last days of April 2008, a group of KSHRC³⁰¹ found that 20 children who are below the age of 18 years are locked in penal complex of Bangalore jail. The team went there after the complaint made by an Ngo.. The KSHRC³⁰² found that the examination officers had failed to text the cases connecting the children properly plus behaviour age authentication tests. The KSHRC directed the residence section to take achievement next to the officials accountable for distribution the children to penal

²⁹⁸ 'Juvenile illegally detained, tortured', The Deccan Herald, 25 November 2009

²⁹⁹ SHRC rescues women, kids, The Deccan Chronicle, 15 July 2009

³⁰⁰ 22 minors lodged in central prison in Bangalore, The Daily News and Analysis, 15 January 2012

³⁰¹ Karnataka State Commission for Protection of Child Rights

³⁰² ibid

complex in breaking of the young fairness (Care and Protection of Children) Act 2000.³⁰³

3.8) Conclusion:

As long as a sense of safety to normal people and make presence to their grievances is dependent on the establishment of a police force which is efficient, honest and professional? The fact that such a police force does not exist in India, as attested by the findings of various commissions and committees, the complaints received by the human rights commissions, the stories reported by the press and the experiences of the common people on the street. The need for police reform is self-evident and urgent. There are two directions in which police reforms must be pursued simultaneously. One is to establish statutory institutional arrangements that will ensure that the power of superintendence of state governments over their police forces provides police performance that is in strict accordance with the law³⁰⁴. In other words, the police function to establish and maintain the rule of law, not the rule of politics. This break with past and present practices would require insulating them from outside illegitimate control and influence and giving them functional autonomy. Once the police are given functional independence, they must be held accountable for the wrongs they do. The existing mechanisms of accountability must be strengthened and improved. In addition, new mechanisms, working independently to monitor the operations of the police and to inquire into public complaints against the police, must be established. The performance of the police as an institution and the behaviour of police personnel as individuals both need constant monitoring. The other direction is to do everything possible to strengthen and improve policing under the existing system and structure. In addition to upgrading recruitment, training and leadership standards, the working and living conditions of lower police personnel need vast improvement-an exercise that should start with raising the status of the constabulary. The impact of such brutality on the juveniles leads them to a very dangerous life. Police is the first organisation to be faith but if such acts are continue then they will lead to very dangerous problem. The kids in disagreement by rules and regulations are also persons entitled to have a decent life, which is a human right envisaged by

³⁰³ Notices to police for putting juveniles in jail, 9 December 2008

³⁰⁴ R.N. Mangolijest.journals.yorku.ca/index.php/ijcst/article/download/31097/28530 26/3/2017

several International Declarations and Conventions. The ideal step to reform the conflicting children is to formulate an effective policy for organization of young fairness and implementing the same. Again, for the achievement of all the child-rights, the significance of family stands in the first place.³⁰⁵

Thus, the police which we see today has its roots in the very foundation of the State and passing through various phases of history it has evolved to its present status as a specialized agency without which even in a democracy the rulers cannot imagine to run the State. In order to bring about improvement in the police system many States appointed State Police Commissions, enacted State Police Acts and compiled Police Manuals. A National Police Commission was appointed in 1977.³⁰⁶ The Commission studied extensively various aspects and functions of the Indian police and brought out eight reports. The recommendations of the Commission have not yet been implemented. However, despite all these efforts, the police system in India continues to be based on the Police Act of 1861 and the recommendations of the Police Commission of 1902 without significant changes. There is a serious need to study the international scenario and try to rectify the laws in India in relation to child in India. The police personnel should be person selected from psychological background (i.e. who had studied child psychology) along with other necessary qualification required for the post of police official in dealing with cases of children. Partnership Building and Community Empowerment can serve as a solution. With the change in circumstances in society, the concept of joint family is fading, as the children are either neglected or prone to illegal act or victimization, it is necessary that the human society should come ahead to protect are survivors by this concept of team work of police and community. Police should not only be responsible, but parents should also make efforts to train their wards to avoid victimization. Social groups should come further to spread awareness about rights of child and its implementation.³⁰⁷

³⁰⁵ The recognition of this significance is reflected in the UN Declaration of 1994 as the International Year of the family.

³⁰⁶ Under the Chairmanship of Mr. DharamVira

³⁰⁷ <http://www.allresearchjournal.com/archives/2015/vol1issue6/PartD/1-5-45.1.pdf>

4.1) Introduction:-

This chapter contains the abuse of children in juvenile or children homes. There are lots of cases in regard to the child abuse in the juvenile homes. The chief reason of the Juvenile Act is improvement and rehabilitation of the young who are in divergence by way of legal rules and regulations but this purpose is not fulfilled in any way. AHRC³⁰⁸ made a report in regard to this problem faced by the juveniles in the juvenile homes. Members from NGO's meet the juveniles there and came to know about the reality there.

There cannot be any denial to the worldwide fact that early years constitute the most crucial period in the life of a child. At this vital stage, all opportunities should be provided for proper growth and progress of every child. Our country India has the major inhabitants of the globe. In 2000 AD, India's population cross the one billion mark and nearly 40 percent of it comprises children below 18 years of age.(Summaries of Research, NIPCCD, 1985-2000). Having realized the potential of children as nation's future human resource, it is the responsibility of the family, community institutions and the state to provide such atmosphere, which is conducive for the growth and development of a child. In the absence of such a protective and congenial atmosphere, there is a possibility that the child will lag behind in some of the vital spheres of development process. Unfortunately children do not always have the safe environment that helps their full capacity. Millions of them live an incompressible existence.

India is residence for approximately 19% of the globe's kids. Other than one third of the country's population, around 440 million, is under 18 years. India's kids are India's future as strength of the country lies in a fit, sheltered, cultured plus strapping kid inhabitant that will grow up to be creative people of the state. India must invest resources in children proportionate to their huge numbers. The functioning on child budgeting approved out by Haq Centre for Child Rights, Delhi and Ministry of Women and Child Development revealed that total expenses on kids in 2005-2006 in

³⁰⁸ Asian human rights commission

physical condition, tutoring, expansion as well as defence jointly amounted to a mere 3.86%, going up to 4.91% in 2006-07.³⁰⁹

On the other hand, the distribution of assets for kids defence was a terrible little of 0.034% in 2005-06 moreover it remains so in 2006-07. Approximately 170 million or 40 per cent of India's kids are gone through the hard circumstances. Many of the rights are infringed of the kids during residing in the juvenile homes for their rehabilitation even in the shelter homes where the child in need of care and the safety resides. There they face the mistreatment, different types of abuses like physical, mental as well as sexual. With all these issues its very difficult to reside in such places. It clearly shows the main aim of rehabilitation of the juvenile justice act is infringed here. Because with such environment how is it possible that the juveniles in conflict with law should be reformed into good citizens in future.³¹⁰

Many of the conventions national plus international took number of steps and made several things to protect the rights of the juveniles who are in divergence with the rules and regulations. These declarations include:

United Nation gathering of the privileges of the kids (UNCRC) 1989³¹¹

The United Nation touchstone smallest regulations for the organization of childish fairness (The Beijing Rules), 1985³¹²

The United Nation set of laws for the defence of kid's underprivileged of their freedom, 1990³¹³

The Hague conference on Inter-country implementation, 1993³¹⁴

Global robust for kids, 2002

³⁰⁹ ibid

³¹⁰ http://shodhganga.inflibnet.ac.in/bitstream/10603/40161/5/05_summary.pdf 26/3/2017

³¹¹ UN Convention of the Rights of the Child (UNCRC) 19894

³¹² The UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 1985

³¹³ The UN Rules for the Protection of Juveniles Deprived of their Liberty, 1990

³¹⁴ The Hague Convention on Inter-country Adoption, 1993

The Millennium expansion Goals, 2000³¹⁵

The administration of India ratified the United Nation gathering on the privileges of the young persons (UNCRC) in 1992. The convention lays down some principles which are especially in concern to the best interests of the child and for the better future of the child in clash of law. The conference prescribes such principles to all the states who are signatories to the convention.

The main focus is on societal re-integration of the child. It gives the protection to the kids from the mistreatments as well as cruelty towards them. The main aim is rehabilitation of juveniles as well to treat their mind and treatment of aggressive behaviour.

Juvenile homes or the observation homes made especially for the treatment in physiological manner to the offenders of the crime who are below the age of 18 years. There the treatment as well as educational and vocational training is provided to the juveniles as per the juvenile justice act. But the reality there also is far different.

The another purpose of making the juvenile cells different from the adult offenders was that to reside with the criminal minds the juvenile in clash of law would get bad impact on their mind too. The reason is to save them from abuse the child offenders are kept differently. But in the juvenile homes the guards and the other employees are becoming the dangerous persons for them. The children there are also not in the safe hands. On daily basis the rights of the children in conflict with law are infringed. They are sexually, physically and well as mentally tortured there. It's very fine to say that the juvenile homes are becoming the hell holes of today. So many problems are faced by the juveniles in clash of law there.

4.2) Child abuse in India:-

Children or juveniles who are considered as blossoms of the country are facing more crimes in the society. The children in India are not safe mostly in these times. Indian Penal code defines so many offences against the children. From the womb of a mother the life of child remains in danger. The soul is shriving when brutal acts against

³¹⁵ World fit for children, 2002 and the Millennium Development Goals, 2000.

children are seen. Rape, unnatural offences, neglecting, mal nutrition, assault etc are some examples of crime against the children. All such crime against them make their future dangerous, such crimes not only impacts their body but also their mental status.

The totalities of 48,338 kid rape cases against the child are recorded from 2001 to 2011. The number of the cases with the year from 2001 to 2011 are as follows. And it is also find that the kid rape cases are increasing day by day. India saw an amplify of 336% of child rape cases as of 2001 (2,113 cases) to 2011 (7,112 cases).³¹⁶

<u>Year</u>	<u>No. Of Rape Cases</u>
• 2001	• 2113
• 2002	• 2532
• 2003	• 2949
• 2004	• 3542
• 2005	• 4026
• 2006	• 4721
• 2007	• 5045
• 2008	• 5446
• 2009	• 5368
• 2010	• 5484
• 2011	• 7112
• Total	• 48,338

³¹⁶ <https://www.achrweb.org/reports/india/IndiasHellHoles2013.pdf> 26/3/2017

Its a very less number because in most of the cases are unreported. In the general society if the children are not safe than how can we say that they would be safe in the hands of other people means the employees or the guards of juvenile homes. The cases of sexual abuses are always remain unreported mostly of the juvenile homes so cant get the data of torture in the juvenile homes. But with the reports of newspapers and journals plus the stories of the children in conflict with law we find out that in which conditions they reside there. They are

. During 2001 to 2011 Madhya Pradesh have the utmost figure if the child rape cases i.e. 9,465 and Punjab with 1,068 cases, Rajasthan with 2,776 cases and only Lakshadweep was with no such case through out these years.³¹⁷

4.3) Distribution of Different Types of Juvenile Inmates in the Country at the end of 2015:-³¹⁸

Sr. No.	Category	Age
	Indian	16-18
1	Convicts	0
2	Under trail	32
3	Detenues	0
4	Others	16
5	Total	48

The total numbers of juvenile inmates in India are 48. Out of which convicts are 0 and under trail are 32. And the other inmates are 16.

³¹⁷National Crime record Beaurio

Sr. No.	Category	Age	Share
	Foreigner	16-18	%
1	Convicts	0	0.0
2	Under trail	0	0.0
3	Detenues	0	0.0
4	Others	0	0.0
5	Total	0	0.0

There are no foreigner convict in juvenile homes aged between 16-18 years.

4.4) Juvenile justice system and the child abuse:

Childish fairness law is a very important portion of legislation³¹⁹ in arrangement to “Juvenile in conflict with law”³²⁰ and “Children in need of care and protection”³²¹

³¹⁹ Juvenile Justice (Care and Protection of Children) ,Act, 2000 received the Assent of the President on 30.12.2000 and Published in the Gazette of India, ext., Pt. II S. 1 dt. 30.12.2000, see also Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, received the Assent of the President on 22.08.2006 and Published on the Gazette of India ext., Pt.II,S.1.dt. 23.08.2006

³²⁰ Sec. 2(l) define “Juvenile in Conflict with Law” means a Juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence

³²¹ Sec. 2(d) define “ child in need of care and protection” means a child: (i) Who is found without any home or settled place or abode and without any ostensible means of subsistence, (ia) Who is found begging, or who is either a street child or a working child. (ii) Who is 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 has killed, abused or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person. (iii) who is mentally or physically challenged or ill children or children suffering from terminal diseases or incurable diseases having no one to support or look after. (iv)who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child, (v) who does not have parent and no one is willing to take care of or whose parents have abandoned (or surrendered) him or who is missing and run away child and whose parents cannot be found after reasonable injury, (vi)who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts, (vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking. (viii) who is being or is likely to be abused for unconscionable gains. (ix) who is victim of any armed conflict, civil commotion or natural calamity,

safety of such kids and to safe quick impartiality to young person / childish plus it is planned for reformative, rehabilitative plus communal re-integration of kid.

This system is based on the two theoretical objectives i.e. parents patrie and individualised handling. The first principle laid down with the aim of achieving the best interest of the child with his care and protection. Not to treat a child as a offender during the trail.

The second principle i.e. of individualised treatment indicated towards the rehabilitation of the juveniles in clash of law. It aims at giving the physiological treatment, personality development etc which set fit with the needs of the society.³²²

The question always comes in the mind that if the children are not safe in the homes which are specially made for them they where they would safe. The government have to take the appropriate steps for solving out this position.

4.5) Violence in Childish residence: crossways India

Many homes are established under the juvenile justice (care and safety) act which are for the rehabilitation of the offenders below the age of 12 years and for the protection of children who are in need of care and protection. Many of the cases are reported of the abuse of the juveniles there.

Here are some true news about the torture of kids in the juvenile homes. The mistreatment in such homes lead towards the failure of the juvenile justice system in India which is with the aim of rehabilitation plus the protection of the juveniles. Legislative lacunas also lead towards the juvenile right's infringement in one way or another.

In the month of November,2011 a 14 years old child was rescued from the juvenile home for boys in Bangalore. He was brutally beaten by the custodian and he lost his conscious there. After that he was not provided any medical assistance instead of it he was given pain killer only.³²³

³²² Dr. B.B.Das, SunandaPadhy, "A Study of Objectives of Juvenile Justice Act, 2000", cited in supra, note 12, p.486.

³²³ Rescued child labourer thrashed by warden in children's home, The Hindu, 30 November 2011

During the investigation in a children home of Karnataka in 2012 it was found that violence against the children is running in that home. There the inmates are treated very brutally by the guards and the other employees and there also no one is to hear them. The team comprised of official from the kid benefit group, the Karnataka State kid privileges security mission plus the officials from administration for kids Homes.

The group was made with the name of 'Home for Hope' which comes with the new task for India by fighting for the rights of the children residing in the juvenile homes under the juvenile justice act. it was also found that 43 kids were arranged in the place of 30 kids. It was also find that there were no medical facilities in the house plus lack of hygienic conditions there.³²⁴

Its so shocking to know that the persons who are slected or employed for the protection of the rights of the kids are themselves becoming the preparatory of the crime. On the 8th day of September 2010, the State administration issue a command as a warning to Balakrishna Masali, a associate of the kids wellbeing group of the Bangalore town region, as of to be present in the sittings of the kids interests group, subsequent to that he was originated as responsible for molest the girls by the KSCPCR who were bring to facing him for investigation.

In the statement it was found that the accused took the benefit of the girls residing there in wrong manner. He sexually assaulted the small girls and it was cleared to him that his punishment will be in accordance to the combination of juvenile justice act and the penal code of India. The KSCPCR held an investigation next a grievance by the organization for sponsorship of communal act, an NGO which allege that the accused physically abused a 14 year-old girl during a 30-minute psychotherapy meeting.

The KSCPCR also recorded the statement of four girls and all the four girls were sexually assaulted by the accused.³²⁵ Electronic post communiqué to the KSCPCR by the Asian Centre for Human Rights as to the act taken in this exacting case remain unrequited.

³²⁴ Team detects violations at children's home, The Hindu, 30 January 2012

³²⁵ Person in charge of child protection turns violator, The Hindu, 9 September 2010

On the day of 29th February of 2012 the CWC³²⁶ group raided a house established by an Ngo after the grievance of an known person's call on child helpline. Here they found 42 children out of 42, 19 were girls and 23 were boys. All of them having the age of 8-18 years. The girls in the house were sexually abused as well as physically mistreated. The group found so many injury marks on the bodies of the children. On the first day of March,2012 two officials of the house were punished with imprisonment by the court.³²⁷

The situation there was so terrible that some of the inmates commit or attempt to commit the suicide. By this is very easily known to us what be the condition there because of that the children chose the path of the suicide.

On 14 October 2010, a child inmate hanged himself with the ceiling fan of the washroom in Kolar dist. firstly he was in remand home then he transferred to the observation home but there he was very tortured in this way or that which forces him to commit suicide.

It was found that there is no services for the enlightens the young offenders in the homes. The child there complaint that they were forced to clean the toilet on daily basis.³²⁸

At Maldivala three young ones commit and attempt to suicide in the remand home there for boys and girls. They consume strong pests to finish their life on 31 January 2012. There was also a report from that home that many inmate their tried to kill themselves. On the day of 31 January 2012, three youngs stuck in the administration Remand house for both Boys and Girls at Madivala. There was report that some of the inmates committed and attempted suicide inside the Home by strong pesticide.³²⁹

The carelessness of the employees of juvenile homes lead many of the children got missing from the homes established for them under juvenile justice act. many of children found missing from the different juvenile homes. There have also been a lot of cases of kids missing from childish home. This reflect illegal carelessness on the

³²⁶ Child welfare committee

³²⁷ NGO officials detained for sexually harassing children, The Times of India (online), 1 March 2012

³²⁸ Boy's suicide turns spotlight on BalaMandira, The Deccan Herald, 16 October 2010

³²⁹ 3 juvenile undertrials attempt suicide, one battling for life, The Deccan Herald, 1 February 2012

fraction of the establishments. According to an NGO, OdanadiSevaSamste, as numerous as 1,089 kids below 14 years have gone absent from 34 BalaMandirs (kids Homes) in Karnataka during February 2005 to February 2011.

After the appeal filed by OdanadiSevaSamste on the substance of gone astray kids, the Karnataka State Commission for security of kid privileges, in an interim order passed on 17 July 2011, directed the Chief Secretary of Karnataka to order an investigation by a three-member group involving retired judiciary and submit a report in six months.

The inmates were strained to dwell in poor livelihood circumstances. Counsellors remain missing at many juvenile homes. In some cases, kids were supposedly used by juvenile homes officials as family helps.³³⁰ There are no doctors who come on regular visits for medical checkups of the child inmates.

4.6) Shortness of reconsider of cases awaiting before the Juvenile Justice Boards:

According to the Section 14(2) of the young fairness (help plus security of kids) alteration law, 2006 “The Chief Judicial Magistrate or the Chief Metropolitan Magistrate shall review the pendency of cases of the Board at every six months, and shall direct the Board to increase the frequency of its sittings or may cause the constitution of additional Boards”

As of 10 February 2012, there were concerning 2,500 cases to come under the juvenile justice (help and security of kids) Act.³³¹ In Bangalore Urban district, the circumstances was chiefly alarming with 1567 cases pending as of 160 December 2011.³³² The month wise cases of Bangalore Urban District which got delayed from 2009-2012 given on the next page:³³³

³³⁰ 1,089 children missing from balamandirs in last five years, The Hindu, 28 August 2011

³³¹ . Justice denied in observation homes, The Times of India, 10 February 2012

³³² RTI reply from Government Observation Home, Bangalore, vide letter NO. GOHB:RTI Act:2n:11:12/1900 dated 5/3/12

³³³ RTI reply from Government Observation Home, Bangalore, vide letter NO. GOHB:RTI Act:2n:11:12/1900 dated 5/3/12

Month	2009-10	10-11	11-'12
January	1664	1687	1725
February	1673	1697	1724
March	1681	1712	1717
April	1692	1708	1763
May	1717	1723	1768
June	1724	1727	1757
July	1741	1731	1741
August	1785	1731	1741
September	1802	1729	1794
October	1788	1729	1713
November	1788	1731	1604
December	1760	1734	1567

RTI filled by ACHR in which it was found that total 106 cases are waiting before the juvenile justice board of Mysore.³³⁴ 19 cases are pending before the JJB of Bagalkot and 149 in Gulbarga dist. in December 2011.³³⁵

The lack of harmonization flanked by the JJBs, trial, police force plus the section of Women and Child growth of Karnataka has resulted in the pendency of cases. Awaiting cases not only consequence in refutation of fairness but also leads to

³³⁴ RTI reply from Public Information Officer and Women Welfare Officer, Department of Women and Child Development, Mysore, Karnataka, vide Letter No. DDM:RTI:2011-12/1229 dated 15.02.2012

³³⁵ RTI reply from Superintendent, Govt Observation Home, Gulbarga, dated 23/2/2012

suffering of the young who are forced to languish in congested Observation Homes 165 where living conditions are miserable.³³⁶

This is clear infringement of Rule 20 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") which provide that "Each case shall from the beginning be handling expeditiously, with no any needless delay." In its commentary it states that, "The speedy conduct of formal events in juvenile cases is a supreme concern. Otherwise whatever good may be achieved by the procedure and the disposition is at risk." As the process and character to the offence, both are intellectually and psychologically affected. Therefore the objective of the justice system like justice delayed justice denied must be considered as paramount of the cases related to the child.

The National Crime Records Bureau of India, which maintains a record of reported crimes, lists 31, 973 crimes that were committed by juveniles in 2012, compared to 27,541 in 2002. In Delhi alone, 1,171 cases were registered against juveniles during the past year. The states of Bihar and Chhattisgarh saw almost double that, and Madhya Pradesh and Maharashtra reported over four times the Delhi level.³³⁷

India's young fairness (help plus safety kids) Act of 2000 requires the formation of young homes in each Indian state. According to a new study by the Asian Centre for Human Rights, 733 such homes take help from the department of Women and Child in March 2012.

About 200 children are lodged across the six juvenile homes in Delhi, five of which are for boys. Lack of trained staff and financial corruption plague these institutions.

"Officers are overworked and untrained and often resort to shortcuts to run these places," said Anant Kumar Asthana, a lawyer who specializes in juvenile justice. He heads a five-member judicial committee appointed by the Delhi High Court in 2009 to monitor the workings of juvenile homes in Delhi.

The government allocates a substantial part of the juvenile home budgets to security. But a common practice in some institutions is to create an internal system of

³³⁶ Justice denied in observation homes, The Times of India, 10 February 2012

³³⁷ https://india.blogs.nytimes.com/2013/08/01/life-in-indias-juvenile-homes/?_r=0 29/3/2017

surveillance, under which certain inmates get special privileges to monitor and prevent inmates from fighting, Mr. Asthana said.³³⁸

According to the National Crime Records Bureau, the highest increase in incidents of crime committed by juveniles in 2013 was reported in these categories: assault on women with intent to outrage her modesty, 132.3%; insult to the modesty of women, 70.5%; and rape, 60.3%. Of the 43,506 juveniles arrested for different crimes in 2013, 66.3% were in the 16-18 age group, and 50.2% came from deprived groups, with yearly income of up to Rs.25,000. Most were illiterate or had attended only primary school.³³⁹

National Crime Records Bureau (NCRB) statistics show that around 33,887 children below the age of 18 were booked in 2012. The figure has risen by about 142% between 2002 and 2012, the NCRB stated.³⁴⁰

4.7) Conclusion:

The rule no. 40 of the young fairness (Help plus defence of kids) clearly highlights divide services for boys and girls, but these "homes" fail to stick to these provisions. As a result, kids, especially little girls, suffer at the hands of the men who run these places, functioning under the garb of education and safe environment.³⁴¹ Such distressing facts immediately force us to look for solutions. The need to protect our children and their childhood becomes all the more important in a society where such crimes are on the rise. Strict laws alone would not help in alleviating the situation. We, as a society, need to re assess our roles as aware society and vow to not keep calm about it. And was noted in one study that the women interviewed were very eager and grateful of the chance to share their story with the interviewers. (Garcia-Moreno, et al. 2005) One possible application in light of this unique and encouraging report and the prevalence of sexual abuse in the developing world is to support church

³³⁸ Ibid

³³⁹ <http://www.livemint.com/Leisure/X4DChvj7KCXVjegttegBI/Inside-a-juvenile-home.html>
29/3/2017

³⁴⁰ <http://www.hindustantimes.com/india/40-of-juvenile-delinquents-in-homes-worse-than-jails-sc/story-CaWUMuIS7VZrqTqWovpB8J.html> 29/3/2017

³⁴¹ <https://www.worldpulse.com/fr/node/26162> 29/3/2017

teams to engage at a deeper level in the communities they visit as part of their mission's strategy. As churches move toward a more long-term investment in outreach opportunities, it would be highly beneficial to encourage deeper interaction among the teams sent.

In addition, much of the research recommended more proactive responses to the crisis of sexual assault in the developing world. One study recommended an approach with four main emphases, the individual focus that encourages healthy attitudes and behaviour in children and young people, the relationship focus that assists in establishing a healthy dynamic in families and communities in which we minister, a community focus that seeks to raise awareness of violence and motivates the community to action, and the societal focus that seeks to identify cultural, social, and economic factors that unwittingly contribute to an environment of violence. (Krug EG et al. 2002)³⁴²

India is a developing nation many of the factors considered as responsible for the abuse of juveniles. If the juvenile homes which are made specially for the juveniles there they are not safe than which places are considered to be safe for them. There must be regular visits of high officials as well proper report of each and everything be made so that this problem can be curbed.³⁴³

³⁴²<http://mendingthesoul.org/research-and-resources/research-and-articles/sexual-abuse-prevalence-in-the-developing-world/?gclid=CPzF8fK9g9MCFdOHaaod84> 29/3/2017

³⁴³http://shodhganga.inflibnet.ac.in/bitstream/10603/8530/11/11_chapter%203.pdf 29/3/2017

5.1) Introduction:-

The complete form of NGO is non- governmental organisation. These organisations are non-profitable in personality. They operate independently of any operation of the administration. The major reason of such organisations is to tackle the political issues or the issues relate to the society by one or a new manner. In other words it is a non-governmental association³⁴⁴ is any non-profit, charitable citizens' group which is planned on a restricted, countrywide or worldwide level. Task-oriented and made by persons with a widespread interest, NGOs³⁴⁵ execute a multiplicity of services and enlightened functions which brings citizens concerns to Governments, advocate and monitor policies and encourage political contributions through the terms of information. Some are organized for specific issues, such as individual rights, atmosphere or physical condition. They provide examination and skill, serve as early warning mechanisms and help monitor and implement intercontinental agreements. Their relationship with offices and agencies of the United Nations system differs depending on their goals, their spot and the mandate of a picky institution.³⁴⁶ E.g. stop acid attacks is the NGO made specifically for the stoppage on acid attacks as well to rehabilitate the victims of acid attack. Child line is the NGO made specifically for the safety of rights of kids from abuses plus mistreatment etc. Bhagat Puran Singh ji Pingalwara is also a nongovernmental institution for helping and give shelter to the neediest as well as handicaps. Like them there are so many NGOs which are there for their specific purposes. Red Cross is international Ngo which have its own main purpose to help the victims of natural calamities and to rehabilitate the drug abusers.

Like this there are so many organisations in the world which works for human rights protection in different manners on the national and international level. They are more effective than the other organisations. They remind the administration to make true to their promises. NGO's play a very significant role in so many things like HIV³⁴⁷

³⁴⁴ NGO(Non Governmental Organisation)

³⁴⁵ ibid

³⁴⁶ <http://www.ngo.org/ngoinfo/define.html> 29/3/2017

³⁴⁷ Human Immune Virus

AIDS³⁴⁸, to teach vulnerable groups, child care, child exploitation, restricted labour, sex tourism etc.³⁴⁹

5.2) Role of NGO's in protecting the children in conflict with law from abuse:-

It's very clear to us that the rights of youngsters in clash with law are abused as well as browbeaten from the first day i.e. from police station to the juvenile homes their rights are exploited. The problem of child abuse is also come into picture because of the nongovernmental organisations otherwise it can't be seen what happen in the juvenile homes actually.

It is not an irony to be say that the young rehabilitative homes are well known for giving safety and reintegration of the juveniles.³⁵⁰ The report of ACHR³⁵¹ highlights 39 cases of the juvenile homes in which it is clearly seen the bad condition of the juveniles residing there. This work is only possible by the help of NGO's as they go and meet the children there and take out the interviews.

11 cases were of governmental run juvenile homes out of 39,³⁵² such as surveillance homes, kid's homes, protection homes and orphanages, while in one case a CWC member was accused of sexual harassment during psychotherapy sessions. Other 27 cases were reported from privately/NGO run young fairness home such as protection homes, orphanages, children homes, destitute homes, etc.

The private/NGO run houses are not register under Section 34(3)³⁵³ of the young fairness (help and defence of kids) laws (as amended in 2006) which provides that "by

³⁴⁸ Acquired Immune Deficiency Syndrome

³⁴⁹ <http://www.legalservicesindia.com/article/article/realization-of-human-rights-and-role-of-ngo-1275-1.html> 29/3/2017

³⁵⁰ The action of returning something to a former owner, place, or condition

³⁵¹ Asian Centre For Human Rights

³⁵² The homes where the juvenile delinquents are kept

³⁵³ The State Government shall consult the Boards or Committees, non-governmental organisations, academicians and organisations working on alternative care for children in developing the foster care programme.

means of no unfairness to anything restricted in any other law for the time being in force, all institution, whether State administration run or those run by charitable organisations for children in need of help and defence shall, within a period of six months from the date of commencement of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, be register under this Act in such method as may be agreed.”

During the research by an NGO in the box of governmental run juvenile homes the employees there commit rapes, beating, sexual assaults, mistreatments etc. in two cases it was found that sexual abuse was done by an older inmate with the help of employees there of a young offender.³⁵⁴

In much case the juveniles are suffering from long time but haven't ever reported. They said that no one is there to listen them, to whom they complaint about their issues. Sexual exploitation is gone for the long period of time.

Many of the cases are seen in which the older juvenile offenders sexually abuse and tortured the young inmates. The social workers played a very important role in this issue. They collect the data and meet the juveniles and rescue them in many cases from the hell holes of the juvenile homes. In 1980's there has been a shift from welfares to the justice approach. The social workers play a very important role in protection of rights of juveniles.

In the juvenile justice board there is also the role of social worker which is so important in that. The juvenile justice board consists of metropolitan magistrate and two social workers. The main aim of having the social workers there to defend and protect the rights of the juveniles.³⁵⁵

The NGO's are believed to be better motivators than the administration machinery with respect to any problem concerning child labour and child abuse. The nationwide mission for the safety of adolescent Rights while submitting the strategy paper for elimination of child labour to the Planning Commission for the Eleventh Five Year arrangement suggested the revamping of the National Child Labour Programme 1988,

³⁵⁴ *ibid*

³⁵⁵ Section 4 (3) of juvenile justice act 2000

so that child labour can be identified and working children can be successfully rehabilitated and mainstreamed.

In order to achieve this, NCPCR³⁵⁶ recommended that an army of social mobilisers be trained, who can conduct successful 'rescue' operations and enrol the children in middle Education Centres. All the work done by the Ngo's are for the protection of the rights and privileges' of the children. The Ngo's also take the rehabilitation classes of the young offenders to rehabilitate them and reform them and to know the problems of the offenders.³⁵⁷

Ngo's play a very significant task in rescuing the rights of humans. Under the concept of child rights the protected by the nongovernmental institutions'. From protection to rehabilitation of the victims it is only gained by the help of nongovernmental institutions. The nongovernmental organisations provide the social welfare role to the supporting role. The organisations in India made by the social workers for the protection of child rights are so many in numbers. E.g. CRY (child rights and you), PUDR (People's Union For Democratic Rights), BanduaMuktiMorcha, People's Union for civil liberties etc.

³⁵⁶ National commission for the protection of child rights

³⁵⁷ Centre for Legislative Research and Advocacy "Abolition of Child Labour" New Delhi .

5.3) Cases of Abuse of Juveniles in young fairness dwellings:-Numerous of the young person are reported of their sexual abuse and physically abuse in the juvenile homes i.e. watching (surveillance) home, particular home³⁵⁸, or children's home³⁵⁹ or defence home set up, certified or recognized and registered under respectively sections 8³⁶⁰, 9³⁶¹, 34³⁶², sub-section (3)³⁶³ of section 34 and section 37³⁶⁴

³⁵⁸“Special home” means an institution established or certified by the State Government under section 10,Section 10: (1) The State Government may establish and maintain as many special homes as may be necessary for the reception of delinquent juveniles under this Act.(2) Where the State Government is of opinion that any institution other than a home established or maintained under sub-section (1) is fit for the reception of the delinquent juveniles to be sent there under this Act, it may certify such institution as a special home for the purposes of this Act.(3) Every special home to which a delinquent juvenile is sent under this Act shall not only provide the juvenile with accommodation, maintenance and facilities for education, vocational training and rehabilitation, but also provide him with facilities for the development of his character and abilities and give him necessary training for his reformation and shall also perform such other functions as may be prescribed to ensure all round growth and development of his personality.(4) The State Government may, by rules made under this Act, provide for the management of special homes, including the standards and the nature of services to be maintained by them, and the circumstances under which, and the manner in which, the certification of a special home may be granted or withdrawn.(5) The rules made under sub-section (4) may also provide for the classification and separation of delinquent juveniles on the basis of age and nature of offences committed by them.

³⁵⁹ Section 9. Juvenile homes (1) The State Government may establish and maintain as many juvenile homes as may be necessary for the reception of neglected juveniles under this Act.(2) Where the State Government is of opinion that nay institution other than a home established or maintained under sub-section (1) is fit for the reception of the neglected juveniles to be sent there under this Act, it may certify such institution as a juvenile home for the purpose of this Act.(3) Every juvenile home to which a neglected juvenile is sent under this Act shall not only provide the juvenile with accommodation, maintenance and facilities for education, vocational training and rehabilitation, but also provide him with facilities for the development of his character and abilities and give him necessary training for protecting himself against moral danger or exploitation and shall also perform such other functions as may be prescribed to ensure all round growth and development of his personality.(4) The State Government may, by rules made under this Act, provide for the management of juvenile homes, including the standards and the nature of services to be maintained by them and the circumstances under which, and the manner in which, the certification of a juvenile home may be granted or withdrawn.

³⁶⁰ Procedure to be followed by a Magistrate not empowered under the Act

of the young fairness (help plus defence of Children) Act [JJ(C&P) Act. in the young homes the kids are subjected to sexual abuses, assaults, physical pains as well as rehabilitation, juvenile homes are measured to be the place for rehabilitation, re-integration etc of the young who are in clash of rules as per the youthful fairness law. But in with this aim they have totally failed. The cases in which the juveniles are subjected to torture and abuse in the juvenile homes are as follows:-

Case 1:

(1) When any Magistrate not empowered to exercise the powers of a Board or a Juvenile Court under this Act is of opinion that a person brought before him under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile, he shall record such opinion and forward the juvenile and the record of the proceeding to the competent authority having jurisdiction over the proceeding.(2) The competent authority to which the proceeding is forwarded under subsection (1) shall hold the inquiry as if the juvenile had originally been brought before it.

³⁶¹ Juvenile homes, ,ibid 20

³⁶² Section 34. Sending a juvenile outside jurisdiction In the case of a neglected or delinquent juvenile whose ordinary place of residence lies outside the jurisdiction of the competent authority before which he is brought, the competent authority may, if satisfied after due inquiry that it is expedient so to do, send the juvenile back to a relative or other person who is fit and willing to receive him at his ordinary place of residence and exercise proper care and control over him, notwithstanding that such place of residence is outside the jurisdiction of the competent authority ; and the competent authority exercising jurisdiction over the place to which the juvenile is sent shall in respect of any matter arising subsequently have the same powers in relation to the juvenile as if the original order had been passed by itself.

³⁶³ ibid

³⁶⁴ Appeals(1) Subject to the provisions of this section, any person aggrieved by an order made by a competent authority under this Act may, within thirty days from the date of such order, prefer an appeal to the Court of Session :Provided that the Court of Session may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.(2) No appeal shall lie from –(a) Any order of acquittal made by the Juvenile Court in respect of a juvenile alleged to have committed an offence ; or(b) Any order made by a Board in respect of a finding that a person is not a neglected juvenile.

Torment and sexual, physical attack on girl inmate at Bethel kids Home in Durg, Chhattisgarh

This case was reported on 26 March of 2013. In this case 4 female inmates left the Bethel Children house in Chhattisgarh. They take help from the child help line Ngo which rescued them. After that the police complaint was made by the Ngo.

The girls claimed that they were very ill treated there. They were not given proper food and beating daily. On daily basis they are sexually abused also. On 30 March, 2013 the police officials arrested manager of the home and warden.

After came to know about the facts the women and children department make an inquiry. And during that it was also found that the boy inmates were also sexually assaulted there.

The girl who escaped later on shifted to another juvenile home.³⁶⁵

Case 2:

Sodomy and corporeal physical attack by elder inmates at Kuldabad Juvenile Home, Allahabad, Uttar Pradesh

A 17 years boy in conflict with law made a complaint before the magistrate about the situation of the juvenile home of Uttar Pradesh. He says that he was beaten and trodden by the inmate. Investigation was conducted by the staff and local police following the complaint. The investigation found the allegation against the nine inmates was true.

After that, the police registered a case under Section 377³⁶⁶, 374³⁶⁷, 332³⁶⁸, 323³⁶⁹ and 405³⁷⁰ of Indian Penal Code (IPC) and Scheduled Caste and Scheduled Tribes (avoidance of killing) Act.³⁷¹

³⁶⁵Chhattisgarh: Warden, head of child shelter booked for sexually assaulting girls, IBN Live, 31 March 2013, <http://ibnlive.in.com/news/chhattisgarh-child-shelter-warden-head-booked-for-sexual-abuse/382169-3235.html> 30/3/2017

³⁶⁶Unnatural offences

³⁶⁷Unlawful compulsory labor

³⁶⁸Voluntarily causing hurt to deter public servant from his duty

³⁶⁹Punishment for voluntarily causing hurt

Case 3 :

Boy sodomised by guard and senior inmates at Govt-run Ashiana Home for Boys, Alipur in Delhi:

On the 13th day of May,2013 Delhi police versed for the protection of juvenile homes in Alipur. There was a government run juvenile home. After investigation a gaurd was removed from the job because it was found that he sexually abused the boy of 7 years who was HIV +. The older inmates also sexually abused the other inmates. Physical and sexual abuse was on daily basis.

Case 4:

Sexual and physical abuse at juvenile home, Kottayam, Kerala :

On the day of October, 2012 a children from a juvenile home of Kerala speak before the TV Chanel during an interview. He said that there were total 65 inmates in the juvenile home which set up under the social welfare department. The boy said many of the boys are forced to take off their clothes in front of everyone and do obscene scens.if they refused to do so they were beaten and not given the food.

The state administration of Kerala had well-organized an inquiry into the allegations.³⁷²

Case 5 :

Boy sodomised by inmates and staff at Govt.-run shelter home for children, Goa:

29th September 2012 the police files the case of sodomy against the 4 inmates and two staff members. The issue was they sexually assault the boy of 10 years and beaten

³⁷⁰Criminal breach of trust

³⁷¹ 9 juveniles booked for sodomy, The Times of India, 20 March 2013

³⁷² Children allegedly sexually abused by caretakers at Kerala juvenile home: NDTV: 11 October, 2012:[http:// www.ndtv.com/article/south/children-allegedly-sexually-abused-by-caretakers-at-kerala-juvenile-home278085](http://www.ndtv.com/article/south/children-allegedly-sexually-abused-by-caretakers-at-kerala-juvenile-home278085)

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very brutally. The victim first filed the objection against all the accused before the Child Welfare Committee who directed the police to register a case.³⁷³

Case 6 :

Sexual abuse by senior inmates at Govt. Shelter Home, Jalpaiguri, West Bengal:

On the 28th day of September 2012, two inmates of 13 and 14 years of age were sexually beaten by the older inmates in a dist. of West Bengal. Severe injuries are there on the body of the inmates.³⁷⁴

Case 7 :

Sexual abuse at a destitute home at Vasanthapuram, Tamil Nadu:

In 2012 on the 21st day of June a minor girl ran away from the homes for needy from the town of Tamil Naidu. She was found by a lady teacher on the bus stop. The lady take her to the police station, there she explains that she was raped so many times and physically beaten. The condition of the juvenile home was very miserable as she explains. After knowing to all the things the police take the action and proper investigation is recomanded to be done and the girl shifted to another home.³⁷⁵

Case 8 :

ApnaGhar case, Rothak in Haryana:

In 2012 in the first week of May three girls escaped from the shelter home of Rohtak.they exposed the stories of ill-treatment faced by them. It was a private shelter home. They very sexually exploited there. On 9th of May a secrete inspection was conducted by NCPCR which found more horrible conditions of the inmates there.

The girls there were sexually exploited and very badly treated and indulging them into the wrong activities. Following are the conditions:

³⁷³TN: Children's home shut after complaints of sexual abuse

³⁷⁴ 10-yr-old boy at Goa shelter home allegedly sexually assaulted: Hindustan Times; 29 September 2012: <http://www.hindustantimes.com/India-news/Goa/10-yr-old-boy-at-Goa-shelter-home-allegedly-sexually-assaulted/Article1-937555.aspx>

³⁷⁵ TN: Children's home shut after complaints of sexual abuse, The New Indian Express, 25 September 2012, available at: <http://newindianexpress.com/cities/chennai/article600361.ece> 29/3/2017

- The children there were not allowed to go out of their room. They were treated as imposed all the time..
- A private doctor was there to provide the medical attention, he don't make the prescription but only gives the medicines.
- Kids were forced to reside with the mentally challenged women which affect the psychology of the children.
- Mostly kids there were wasted as they were never given proper food.
- For minor mistakes children's were not given food for 2-3 days. This punishment is for all the kids even of 5-6 years.

The NCPCR team auxiliary noted the following with regard to "Abuses, its forms and other irregular acts committed by the Director, her daughter, her son-in-law and the driver as reported by the children"

- Rude verbal communication to the children always used..
- Sexually abusive terminology is used.
- Physically beating of children and even adolescent girls by the Director.
- Even the boys were not safe from all these harassments. For not obeying these the or
- Allegedly restoring kids to mothers/relatives without any exact orders from CWC and without conducting any Inquiry as required under section 33 of the JJ Act, 2000.
- Severe punishment is provided to the children even off the very little wrongs.
- They were forced to clean the utensils and clothes for 1 week if some wrong is committed by them. .

The High Court of Punjab and Haryana made a board to tackle this case. It was found that the influcial people and the political people are also linked in such cases.

Investigation is given to the CBI. And the court gave the time of 2 months to investigate the matter .³⁷⁶

Case 9:

Juveniles fled due to torture, sexual abuse and ill-treatment at Govt. Observation Home for Boys, Mathura in Uttar Pradesh :

Raid was made by the NCPCR in a surveillance home there they found that the children have to wash the cloths and clean the utensils. If they refused to do work they are physically and sexually abused by the higher authorities. Two inmates were severely injured because of the mistreatment by the staff. A 11 years boy was died with the mistreatment there.³⁷⁷

Case 10 :

Sodomy by senior inmates at UmeedAmanGhar Children Home, Delhi:

In 2012 February three boys were sexually assaulted in the juvenile home in South Delhi. two of them were sodomised and the other forced into the unnatural offence. During the investigation it was found that older inmates with the guards sexually abused the younger boys. Even after so many complaints no action was taken against them.³⁷⁸

5.4) Conclusion:

The cases of Juvenile Justice home are on rise of abuse and torture. The NGOs have done a lot in rescuing the juveniles from the problems they have faced in juvenile homes. if this problem is not yet tackled then it become very dangerous problem in coming days. Every act, law etc is made with an aim but if its aim is not fulfilled than

³⁷⁶ ApnaGhar sexual abuse: HC tells CBI to complete probe in two months, The Indian Express, 29 March 2013

³⁷⁷ NCPCR Inquiry Report on Atrocities on Juveniles and the death of the 11 year old in RajkiyaBalSamprekshanGrih (Kishor), Mathura, inspection of RajkiyaBalGrih (Shishu) and RajkiyaBhikshukGrih and review of Child Rights in Mathura, <http://www.ncpcr.gov.in/Reports/NCPCR%20report%20on%20child%20right%20violations%20in%20Mathura%20Final.pdf> 1/4/2017

³⁷⁸ 14 HIV positive children rescued from NGO, The Hindustan Times, 18 January 2012

its of no use. As like juvenile justice act aims at providing rehabilitation of children in conflict with law but such type of acts put this aim in danger. Given very different experiences of, and approaches to, 'social work' in the region, it is clearly all the more essential to be aware of the internationally agreed scope and forms of its action and intervention when broaching its role in relation to juvenile justice. The scope and forms involved are considerably wider than the 'popular' conception of what social work is designed to accomplish.³⁷⁹

Its principal professional body, the International Federation of Social Workers (IFSW), sets out three key action areas,³⁸⁰ which can be characterized as follows:

- promoting social change, on the basis of its findings regarding the needs and the avoidable causes of problems confronted by individuals and groups seeking or requiring assistance;
- problem-solving in human relationships, whether interpersonal, intra-familial, within the wider community or vis-à-vis the authorities and their agents;
- empowering people to enhance their own well-being, as opposed to creating ongoing dependency and thus maintaining inherent vulnerability.

The first concerns children who are apprehended or arrested on suspicion of having committed a criminal offence but are below the minimum age at which they could be prosecuted for such acts. Under such circumstances there is general agreement that, while police action is no longer warranted or appropriate by definition, neither is it desirable or constructive simply to ignore the event and thus to leave the child without follow-up. "For these children," notes the commission on the privileges of the kids, "special protective measures can be taken if necessary in their best interests."³⁸¹

The nongovernmental organisations play a very important role on international, national as well as local level. It always speak for those who can't speak by themselves. They always stand up for the needy. Such organisations never

³⁷⁹ https://www.unicef.org/ceecis/UNICEF_report_on_the_role_of_social_work_in_juvenile_justice.pdf
2/4/2017

³⁸⁰ Based on: International Federation of Social Workers, 2004.

³⁸¹ Committee on the Rights of the Child, Children's rights in juvenile justice, General Comment No. 10, CRC/C/GC/10, 2007, para. 31.

discriminate on any basis, they work and stand up for all without any type of differences.

‘Lets raise the children who won’t recover from their childhood.’

- Pam Leo

6.1) Introduction:

As the problem of juvenile exploitation in clash with law arises, there are number of judgments, views etc given by the court or the judiciary in order to curb this problem. It is clear that the judiciary is one of the organs of the government specially working for the interpretation of provisions in case of ambiguity and the main function of judiciary is to deliver justice to the person whose rights are violated. It is a branch of the administration in which the legal power is vested.³⁸²

It’s not undervalue to say, the young fairness home established to give assistance, security and re-socialization to the young who are in disagreement by regulation but rising incidents’ of the abuses in the young homes made them young hell homes.

The Supreme Court of India held that the progressive world will have the same belief that the children identified as offender treated as patients and their beginning of prisons must be hospitals and not to jails. This must be considered ethical which is key to the pathology of criminal behaviour and the role of the sentence. The whole man is healthy and everyone is born well. The basic kindness of all the human beings is spiritual maxim, a fall out of the advaits of outer space formation and the spring of correctional thought in criminology.³⁸³

According to Justice V.R. Krishna Iyer (1999) starting from Jesus to Gandhi continuously follows each and every uplifting spirit which has been theoretical religion in childhood. An age group which fails to know that the baby in its first blame is lost in barbarity and the stamp of civilization and advance of society consists in the fulfilment of our obligation to the young generation by opening up all opportunities for every child to unfold its personality and rise to its full stature physical, moral, mental and spiritual. That is the legacy of every child that cries for justice from the world as a whole. Ages of criminal abandon, in spite of protests by responsive souls, humanists, thinkers and sage in every country and clime, have given

³⁸²<https://www.merriam-webster.com/dictionary/judiciary>2/4/2017

³⁸³Mohammed Giasuddin v. state of Andhra Pradesh, AIR 1977 SC 1926

put at long last to a gentler insight of juvenile justice and a restrain jurisprudence of the rights of the child".³⁸⁴

6.2) Case laws:

1) SheelaBarse vs. Union of India³⁸⁵

In this case the court said that every District and Session Judge should visit the district jail at least once in two months, and in the course of his visit, he should take exacting care about child prisoner, both convict and under trials and as and at any time he sees any breach in regard to the kids in the prison.³⁸⁶ Report has been submitted time to time in command to tell the circumstances of observation homes, remand homes etc and the conditions there of the juvenile prisoners.

2) Sakshi v. Union of India³⁸⁷

In this Public Interest Litigation substance, the Supreme Court of India asked the Law Commission to consider certain imperative issues concerning sexual mistreatment of the kids.submitted via the petitioner plus the viability of amendment to 375 and 376 IPC.³⁸⁸³⁸⁹

3) Vishal Jeet v. Union of India³⁹⁰

In this case Supreme Court dealt with some issues associated to the sexual misuse of the kids in clash of regulations, kids of prostitutes, kids in requirement of help plus defence etc. Supreme Court held that all children have equality of opportunity,

³⁸⁴Iyer. V.R. Krishna J (1999), The Dialectics & Dynamics of Human Rights in India. Eastern Law House, New Delhi

³⁸⁵ AIR,1986, S.C.1773

³⁸⁶http://ncpcr.gov.in/show_img.php?fid=507<http://JUDIS.NIC.IN> 2/4/2017

³⁸⁷ 26 May, 2004, writ petition (crl.) 33 of 1997

³⁸⁸<http://www.advocatekhoj.com/blogs/index.php?bid=8424fe94d205814a366812383&bcmd=VIEW26>,May 2004/2/4/2017

³⁸⁹Section 375 of the Indian Penal Code defines rape as "sexual intercourse with a woman against her will, without her consent, by coercion, misrepresentation or fraud or at a time when she has been intoxicated or duped, or is of unsound mental health and in any case if she is under 16 years of age." Section 376 defines the punishment for rape. If rape is proved then punishment can be up to seven years of rigorous imprisonment for raping an adult and up to 10 years for raping a minor.

³⁹⁰1990 AIR 1412, 1990 SCR (2) 861

decorum, bothered about kids, guard and psychotherapy for the betterment of the life. The court directed the constitution of the committee to formulate the scheme for the psychoanalysis of the juveniles and their protection from abuses and obedience of periodical report.

4) Prerana v. State of Maharashtra and ors.³⁹¹

In this case the court held that the kids who are likely to be the victims of sexual mistreatment, afflict, unlawful acts, sold for the reason of trafficking etc have to be shaped before the child welfare commission. In addition to this the H'onable High court of Bombay gave the guidelines to the state for the physiotherapy of these victims of trafficking.³⁹²

5) Gaurav Jain v. Union of India³⁹³

In this case the appeal was filed by an advocate, in view to the safety of child in the childish psychoanalysis institution. The Supreme Court constitutes a team in regard to take suggestion for this problem. The privileges' of the kids are the apprehension of the civilization.so that The females are also at great risk of trafficking, misuse etc.

Like the women are given rights the children are also given the rights like to live life with dignity, live with decorum, and the protection from any kind of foul social environment.

Uniformly, the kids have the right to fairness of chance, distinction plus care, safety with psychotherapy by the general public with equally hands open to convey them into the usual societal life with no pre-stigma attach on them for no mistake of them.³⁹⁴

6) Childline India Foundation and another v. Allan Jhon Waters and others³⁹⁵

³⁹¹2003 BomCR Cri, (2003) 2 BOMLR 562, 2003 (2) MhLj 105

³⁹²SambarAditi, Ray Sudeshani legal service India, child trafficking: role of judicial activism <http://www.legalserviceindia.com/articles/chtraf.htm> 3/4/2017

³⁹³ 30 march 1998, Supreme Court Cases

³⁹⁴https://www.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/ind/1997/gaurav_jain_v._union_of_india_and_others_.html 3/4/2017

³⁹⁵ 2011 2 Cri L.J. 2305 (S.C.)

A grievance was made by a dupe child who live in a shelter home about the thrashing and sexual cruelty to the children there. They clearly depose that accused organization shelter home was home made for kids used to have sex with them and ask for fellatio with them and previous boys. Confirmation of victim withstands questioning. Hold-up in making complaint was only because of their background of having no shelter to live. Oversight in their declaration recorded by the police was because they were not put relevant questions by investigating officer. Statement of victims was support by the Advocate for welfare of children and member of committee appointed by the High Court to inquire into the allegations. Statements of victims clearly spell out how accused sexually ill-treatment the children lived in the shelter homes. Therefore, it was held that acquittal of accused on the ground that statement of victims are not reliable or because they are not corroborated by other inmate of the shelter home is not proper. It was also made clear that evidence of victim does not require confirmation. Further it cannot be said that ingredient of section 377 are not made out.³⁹⁶

The Supreme Court supposed the accused guilty under section 377 of the code. The court referred to articles 15, 21 A, 23, 24 and 25 o the Indian Constitution and experiential that proper performance and monitor of these measures was expected from the establishment anxious to it.

7) Brother Jhon Antony v. State³⁹⁷

In this case a sub warden committed abnormal offence with the inmates of the juvenile house. The acts committed by the supplicant fell into two categories, namely- insertation of penis into the mouth of the victim boy and doing the act of in carnal interaction into the point of ejaculation of semen into the mouth and the second is manoeuvring and movement of the penis of the petitioner whilst being held by the victim boys in such a way as to create and orifice lie thing for making the manipulated movements of insertation and withdrawal up to point of ejaculation of semen.

³⁹⁶ Mishra S.N., Indian Penal Code as amended bu Criminal law amendment act,2013, central law publications, 2013

³⁹⁷ 1992 Cri. L.J. 1352 (Madras)

It was held that both the above categories of the act fall inside the sweep of abnormal carnal offences under section 377³⁹⁸. And as far the second category is anxious in the process of manipulation, visted namely, the hands which held penis. The sexual craving was thus quench by the ejaculation of semen into the hands of the wounded.

8) Jameel Ahmad v. State of Maharashtra³⁹⁹

The accused had sexual contact with the six year old young woman. And he was convicted under section 377 of Indian Penal Code. He had finished the age of 16 years on the date of incident. And as such he was not juvenile as per Juvenile Justice Act. He plead that act of 2000 should apply as he was not above 18 years on the day of occurrence. The Supreme Court held that reasonable since on the date of enforcement of the act of 2000 the accused was not of 18 years. The offence under section 377 is a non-bailable offence plus non compoundable as well as cognizable offence. This offence is triable under the first class Magistrate.

9) SideshwarGanguly v. State of West Bengal⁴⁰⁰

The plaintiff who was Secretary of NariKlayan Ashram in Calcutta was supposed to have committed rape on a number of the inmates. The appellant protected himself by saying that he had been frame in the case by the police force with the help of the inmates of the Ashram and its helper Sectary. 23 witnesses were examining against him. The two rape wounded were also examined and in the confirmation of their indication, another dumb girl was also examine who gave evidence by the signs. Keeping in view all the evidences, Court found Secretary guilty of rape and for that reason punished.⁴⁰¹

10) Sharath Chandra Pottala v. Union of India⁴⁰²

The petitioner was an accused. Case was awaiting before the Sessions Court of Jodhpur District. He was filled writ appeal seeking some reliefs. Out of them one

³⁹⁸ Unnatural offences, Indian Penal Code, 1890

³⁹⁹ A.I.R. 2007, S.C. 971

⁴⁰⁰ A.I.R. 1958 SC 143: 1958 Cr. LJ 273: 1958 SCR 749

⁴⁰¹ Khan NuzhatParveen Khan, child rights and law, universal publications second edition, 2016

⁴⁰² 2014 (2) WLN 410 (Raj.)

relief is that Hon'ble Court be satisfied to hold the provisions of POSCO ultra vires the Constitution of India

The ground for challenging is:

a) Section 34 of POSCO empower the special Court under POSCO to decide the age of a juvenile accused while there is no stipulation for the accused human being to seek strength of mind of age of victim despite there being a suitable and sustainable question and dispute over the age of victim and such an indiscretion in POSCO creates a serious prejudice for the accused person.

b) A special court under the act POSCO would not have power to try an crime when the victim is major and therefore when a dispute or query arises over the age of victim, there ought to be a process for deciding the same and refutation of such solution to the accused would be serious breach of the basic privileges of the accuse in Article 14 and 21 of the instrument of government i.e. Constitution of India.

Court after giving consideration to the challenge made to the provisions of the act that so called shortcomings, or lacuna in the procedure as provided, remain bereft of substance and do not make a case against the constitutionality of the improvement. The Court said that it remains a trite that statutory provisions could be challenged as ultra vires on the provisions of the Constitution. Law-making competence is not in question.

It is said that POSCO has been enact for the very special reason to protect the children from the sexual attack and sexual stalking etc. special process has been provide for recording the statement of the child and the medical test of the child in section 27 in accordance with section 164 A of the policy of illegal process⁴⁰³. Title of unique bench for trying the offences underneath the act has been made with the supplies overruling even other special enactments like Information Technology Act, 2000. Consequently the petition was dismiss.

11) Bachpan Bachao Andolan v. State of Jharkhand⁴⁰⁴

⁴⁰³ Code of Criminal Procedure

⁴⁰⁴ Writ petition (PIL) No. 139 of 2011, decided on 17 th December , 2013

In this case the petitioner made the Court alert about the fact that not a single shelter home is performance and only two children homes are in process, one is at Jamshedpur and other is at Deoghar. One for boys and one for girls. Large numbers of children are brought to the juvenile homes at Jharkhand. But there is lack of amenities and not able to provide the sufficient facilities. The homes are not constructing in adequate number. The High Court directed:-

Constitution of the State task for the security of the privileges of the kids.

Instructions given in the favour of the charter of kid's Welfare Committees, Children's homes, Shelter homes etc.

Jharkhand State Action Plan for the abolition of kids work formulates.

12) BachpanBachanAndolan⁴⁰⁵

Petition filed by (BBA), the hon'ble highest Court of India approved the landmark judgement for the issues of missing children. The court has taken the issue of absent children very seriously in the light of the facts presented by (BBA). The Court took cognizance that 2011 alone 90,654 children went missing with 34,406 children remaining unguided. Only 15,284 F.I.R were registered and investigation was launch.

13) Munna v. State of U.P.⁴⁰⁶

In this case Supreme Court was really surprised with the news of sexual abuse of Children in central jail of Kanpur. The Apex Court passed certain system and instructions in regard to the protection of the children. The Supreme Court concentrating that if the juveniles are offender of some wrong or crime that doesn't mean that they have no fundamental rights. The rights of the juvenile in conflict with law should be treating with respect and dignity and they should not be ill-treated. They do not shed or lose their fundamental rights when they go into in jail.

14) Raj Singh v. State of Haryana⁴⁰⁷

⁴⁰⁵BachpanBachaoAndolan v. Union of India, writ petition (c) No. 75 of 2012

⁴⁰⁶ 1982 sc 806

⁴⁰⁷ 2000(6) SCC 759

In this case the strength of mind of age in argument. In this case it was held that the trial of the young delinquent in the session court the age should be termed as on the date of the occurrence of the incident. In this case the juvenile is kept for a charge under section 20 of the Narcotic drugs and psychotropic substance act, 1985, on the date of interment the juvenile was less than 16 years of age. He was sentenced to experience locking up. But the Supreme Court held that section 2 (e) of the youthful offenders Act, 1986 defines that a young who has been found to have committed an offence is a criminal juvenile and thus the entire trial was quashed.⁴⁰⁸

15) Armit Das v. State of Bihar⁴⁰⁹

In this case R C Lahoti, J. Reminds to note that the definition of young and any provision of the act specifically mention the to which age of girl or boy be careful as juvenile. In his case it was held that: The young offenders law made for fairness subsequent to the beginning of criminal behaviour of the kid. The societal factors leading to birth of criminal behaviour and the preventive measures which would check juvenile criminal behaviour legitimately fall within the scope of social justice. Once a boy or a girl has supposed delinquency, his or her behaviour and trial at the hands of justice delivery system is taken care of by the necessities of the young offenders laws.

The rules and regulations aim at lay downwards a consistent young offenders arrangement in the nation which avoid accommodation in prison or police force imprisonment of kid; and provided that for avoidance plus action of young criminal behaviour, for help, defence, etc. post-juvenility.

In short the field required to be enclosed by the law is not the single, which had lead to young criminal behaviour but the field when immature dedicated towards a illegal performance is to be found for being helped of post law-breaking. So, obviously of the view that the process agreed by the supplies of the Act has to be adopt only when the conversant right finds the being bring previous to it or appear earlier to it is found to be under 16 years of age if a boy and under 18 years if a girl on the date of being so

⁴⁰⁸ In Raghbir v. State of Haryana (1981) SC 2037 also a three judge Bench consisting of Chinnappa Reddy, A.P Sen and Baharul Islam, JJ quashed the entire trial which led to life imprisonment of a juvenile accuse who was under 16 years of age at the time of commission of the offence.

⁴⁰⁹ AIR 2000 SC 226

brought or such appearance first before the competent authority. The date of task of felony is immaterial for verdict out whether the human being is a young inside the sense of clause (h) of section 2 of the Act. If that would have been the intendment of the Parliament, not anything had banned it from saying so particularly so far as the present circumstance is anxious we are clear in our mind that the vital time for formative the query whether an individual is immature is the date when he is brought prior to the capable power.⁴¹⁰

The issues in view to the power of intelligence of the age was measured in this case, the date to find out the juvenility is measured that weather he/she was youthful at the occurrence of the criminal act or not? And the date on which the individual is bring before the capable court. Many of the kids because of this issue of the strength of mind of the age are stuck in the adult jails where the juvenile's rights are more infringed and they also have to suffer the abusive presentation of the adult offender in physical, mental, emotional or sexual sense.

So the court optional that advantage of uncertainty should forever be in the favour of children especially in the cases of age issues in observe to juvenility plus the protection of child rights be the main aim of young organization.

16) Bholabhagat v. State of Bihar⁴¹¹

In this case there was also the subject of age. In this case the Court held that the if there are number of issue in regard to the juvenility of the offenders a due chance is given to both the parties so that truthiness be found. Proper query must be there in such cases to avoid any type of breach of the rights of the accused.

17) JDP v. North Carolina⁴¹²

It was a worldwide case. It was held that the young suspects who are query by the police should be told all of their rights known by the nationwide and the international conventions and should have to give s chance to ask their parents.

⁴¹⁰http://shodhganga.inflibnet.ac.in/bitstream/10603/26001/15/15_chapter%207.pdf 3/4/2017

⁴¹¹ (1997) 8 SCC 720

⁴¹² 09-11121 decided on 16 June 2011: Here the US Supreme Court heard an appeal from a 13 year old child suspected of several burglaries in North Carolina

18) Jayendera v. State of U.P.⁴¹³

There was order of the High Court challenge before the Supreme Court to send a child in disagreement with law to the jail. The Supreme Court asked for the report from the doctor in the jail. And based on that tests the criminal found to the age of 23 at the time of report in 1981. It is meant that during the commission of the crime he was about 16 years 4 months i.e. in 1974. It was held that in normal course the criminal sent to an accepted school. For that reason the conviction was upheld and the instructions to free the crook given and the verdict of custody were quashed.

19) Bhoop Ram v. State of U.P.⁴¹⁴

In this case it was also held that the age of being is very essential to be strong-minded at the assignment of the crime. It is considered to be essential so that the rights of anyone have to not be infringed plus to save the juvenile from the utilization and the abuse of the kids.

20) Bandela Aillaiah v. State⁴¹⁵

In this case it was found that: “The young Justice Law appear to be so forceful and obligatory that no young criminal shall be tried for any wrongdoing charged next to him or must be convict or sentence for such an wrongdoing. On the other hand, a special conduct should be given to him for his care and protection by way of correctional measures”.

But the kids often undergo abandon, violence plus cruelty in the management of young impartiality. The very organization which is expected to protect the children is violating their rights. When the kids in disagreement of law were singled out by the police force, then the kids are often badly treated, suffered or hurt as well as their individual privileges are often dis -regard. In additional to it they are often kept in embarrassing situation at surveillance house lacking in given the essential requirements like foodstuff, clothing, health check and health care amenities etc .And even custodial violence’s are sustained to inflict sufferings upon the juvenile offenders.

⁴¹³ AIR 1982 SC 685

⁴¹⁴ AIR 1987 SC 1329

⁴¹⁵ 1995 Cril L.J. 1083.

In some young fairness Boards, young cases are pending over 10 to 12 years plus a number of young have turn out to be adult, married as well as even got kids. This shows extreme hindrance in doing fairness to the young. Police force cannot file charge-sheet of young crook on point in time moreover in a few cases they use to take 2 to 3 years to file charge-sheet, this in turn causethe high burden of pending cases on the judiciary.

The chairpersons of young impartiality Board are over laden with their common court work and barely, they have case in point to use up in young fairness Board. They demeanour the actions with no alter of their way of thinking as customary plus very inertly somewhat vigorously.

It is not something but a ridicule of fairness plus misuse of young offender. This kind of conducting events will not give any chance to the young fairness Board to interrelate/talk withthe young lawbreaker's parents for their psychiatric therapy. No collaboration, harmonization, meeting stuck between, adolescent fairness Board anxious sector i.e. Women and youngster growth, police force plus bench. There is wide hole between regulations in book along with its exercise in realism. There are nearly 4,992 young Offenders cases waiting at 115 Juvenile Justice Board in the state of Karnataka on 31.01.2009. Custody of kids in Prison which also leads to breach of Human Rights.⁴¹⁶

21) Umesh Chandra v. State of Rajasthan⁴¹⁷

In this case it was held that the juvenile justice act apply from the date of commit the offence and in accord with the age of the person on the day of committing the offence. The brain set up of a juvenile offender is different from the adult one. As per the aim of juvenile justice act if the younger offenders are given tuition or psychoanalysis their mind set would also be changed.

22) SudeshJakhu v. K.C.J⁴¹⁸

⁴¹⁶ Workshop on Module Development for the Juvenile Justice Board Members under Juvenile Justice Act, 2000, sponsored by UNICEF held at ATI Mysore, from 2nd to 4th Feb, 2009.

⁴¹⁷ **AIR 1982 SC1057**

⁴¹⁸ 1998 Cri.L.J. 2428 (Del).

Justice Jaspal Singh lay down some guide values plus rules for conducting examination plus attractive proof in kid sexual abuse cases: “The Magistrate should record the victim’s declaration in the same language as spoken by it, every effort should be made by the trial judge to lessen the ordeal of the victim when it is in the witness box by keeping a check on the prosecutor who might rate too low the child’s belief, handle the events or vague. The proceeding should be held in camera and the viability of giving breaks during questioning should be kept in mind, though such breaks need not be long, if the prosecution establish to the contentment of the court that to obtain a full and candid account from the child witness, the use of a screen is necessary, the court may be tending positively to provide such a screen, etc”.

23) SatyavanKottarakkara v. State⁴¹⁹

In this case the court held that, “abuse of kids in any form which has the inclination to exploit them either, bodily, psychologically or otherwise is unpleasant. Any try in this way should be put an end to attain the goals enshrine by the Indian Constitution makers, which are reflect in various supplies of the Constitution, namely Article 21, 39, 41, 45 and 46.”

24) Kansas v. Hendricks⁴²⁰

This case was known by the name of paedophilia case and inside this case the uppermost Court restored assurance along with verdict of six-year rigorous imprisonment imposed on two British nationals who were acquitted by the Bombay High Court in a paedophilia case. The Bench directed the accused to serve the outstanding period of sentence. In a landmark judgment the Supreme Court observed “Children are the greatest gift to humankind. The sexual abuse of kids is one of the most monstrous crimes”.⁴²¹

25) SampurnaBehura v. Union of India⁴²²

⁴¹⁹ AIR 1997, Ker 133.

⁴²⁰ 521 U.S. 346 (1997)

⁴²¹ <http://www.dailyo.in/variety/40-landmark-judgments-supreme-court-indian-judiciary-26-11-mumbai-attacks-afzal-guru-arushi-talwar-gujarat-riots/story/1/7798.html> 3/4/2017

⁴²² (2011) 9 SCC 801 at page 801

The Court in this case approved several orders for charter of young Justice Boards under Section 4 of the Act and Child Welfare committee under Section 29 of the law in dissimilar States and Amalgated territories and most of States and Union Territories have taken steps to constitute the Juvenile Justice Boards and the Child Welfare Committees. As there were complaints that in many districts Child Welfare Committees were not functioning or functional and even Juvenile Justice Boards had not been constituted in the manner provided in the Act. The court in its order requested the State Legal Services Authorities to coordinate with the respective Child Welfare department of the States to ensure that the young fairness board plus kid wellbeing committee are established plus are functional with the required facilities. On the official laxity of non implementation of the particular young police force Unit Supreme Court in its order stated that the court will monitor the functioning of the provisions of the Act unfolding to unique young police force Unit.⁴²³ 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 suitable guidance as well as direction and elected as young or kid welfare officer, which grip the juveniles or children in coordination with the police as given under Section 63(2) of the Act. The necessary tuition will be provided by the District authorized forces establishments under the guidance of the State Legal Services Authorities and Secretary, National Legal Services Authority will issue suitable strategy to the State Legal Services Authorities for training and compass reading of police officers, who are chosen as the young or kid wellbeing official. The tuition and compass reading may be done in phases over a period of six months to one year in every State and Union Territory. The Home department and the Directors General of police force of the States/Union Territories will also ensure that Unique young police force Unit comprise of every police force officers elected as Juvenile or Child Welfare Officers be shaped in every region plus city to organize and to improve the police action to juvenile and the kids as provided in sub-section (3) of Section 63 of the young impartiality (help plus security of kids) law 2000.⁴²⁴

⁴²³Section 63 of the Act

⁴²⁴<http://nlrd.org/landmark-rulings-of-the-courts-in-india-on-combatting-human-trafficking-trafficking/>
3/4/2017

26) Sanjay Suri and anr. V. Delhi Administration⁴²⁵

The material in this case is connected to the imprisonment of kids in the Tihar jail. It was held in this case that the juvenile are to be kept independently from the adult criminal because of defence of the juvenile from abuse. In this case the Supreme Court had selected the District Judge to inquire the circumstances of kids in Tihar jail. After the investigation it was found that the juveniles are attractive the victims of sexual assault by the adult offenders. The condition of juveniles found there was so worst. The Supreme Court lamented that they are so worried to found that no child within the meaning of Children's act sent to jail because otherwise the whole object of the children's act of protective the child from bad power of the jail would be overcome. This judgment instruct that every Magistrate or trial judge is authorised to issue warrants for the detention of prisoners that every warrant authorize custody specifies the age of individual to be locked up. Legal brain must be practical in cases where there is suspicion about the age not of necessity by a trial plus every authorization must specially the age of person who has to be incarcerated. The jail authorities also instructed that no licence is taken as valid unless the age is shown over there. With this order it has made cleared to the jail establishment to rebuff to respect a permit if the age of the individual remanded to prison detention is not representative.⁴²⁶

⁴²⁵ 1988,SuppScc, 160. 1988,SCC(Cri) ,248,1988 SC,414, 1988 Criminal Law journal (705) SC

⁴²⁶ <http://www.childlineindia.org.in/pdf/cp-jj-jcl.pdf> 5/4/2017

27) Sanant Kumar Sinha v. State of Bihar⁴²⁷

This was a PIL filled in view to the long awaiting trails in relation to the juvenile case. From the information of various courts the fact came out that in some of the cases in relation to juveniles the investigations are pending but trails are going on for long period and in large number of cases juveniles are still in the prison. This state of affairs indicates a wretched indifference to all concerned. The direction given is that all the criminal trails pending since three years or more be quashed to the degree as far as the trails of the juvenile in custody are concerned and they are directed to be acquitted. They are released forthwith from custody or detention as the case may be. Further in relation to trails that are pending since less than 3 years the court should have to act according to the provisions given in the juvenile justice act. And dispose them of in relation to where the sentence is up to seven years. As per the directions given in the case of Sheela Basre.

The Patna High Court also instructs that orders should be accepted to discharge juveniles on bail awaiting their trails. The High Court remanded the administration and the society of its duty to make sure that the juvenile being so released are not chosen up by the criminals by assuring them the proper education so that they can grow up in normal environment.

28) State of Karnataka v. Harshad⁴²⁸

In this case the question before the High Court was whether the Session Courts or the Fast Track Courts are having authority to believe the juvenile cases. The court in this case held that in agreement with the section 6(1) of the young impartiality act the juvenile board have elite power of dealing with the case of young in disagreement of regulations and to that degree the authority of any court counting that of session court or speedy path court be disqualified.

⁴²⁷ 1991(2) Crimes 241

⁴²⁸ 2005 CriLJ 2357 (Karnataka)

In adding leading the obedience of the Public Prosecutor that only five young Justice Boards have been construct to deal with the entire state. Each Juvenile impartiality board handles juvenile cases of group of districts and the High Court held that the State Government may consider the necessity of establish one juvenile justice board for each district.

29) EX. GNR. Ajit Singh v. Union of India⁴²⁹

The petitioner a juvenile was enrolling in army and in court military events he was sentenced to undergo rigorous imprisonment for 7 years under the Army Act, 1950.

In this case the court held that the necessities of the young fairness law make ineffective the provisions of Army Act. For this cause the General Court Martial did not have the power to grip the case of a Juvenile.

30) Rajinder Chandra v. State of Chhattisgarh⁴³⁰

In this case the topic before the Supreme Court was how an accused on the edge of 16 years to be dealt with and held in good turn of investment the accused to be juvenile. So in this case with the think again of judicial opinion it was held that while trade with the question of strength of mind of the age of the accuse intended for the reason of judgment out that whether he is young or not , a excited technological move towards must not be adopt while appreciate the proof adduced on the behalf of the accuse in sustain of the appeal that he was young and if two views may be probable on the said confirmation, the court should lean in support of investment the accused to be young inside the border line cases.

31) Jaya Mala v. Home Secretary, Government of Jammu and Kashmir⁴³¹

In this case the Apex Court took judicial notice that the margin of error in the age ascertained by radiological test is two years on either side. The main aim is the protection of juvenile rights in relation to age matters.

⁴²⁹ 2004 CriLJ 3994 (Delhi)

⁴³⁰ 2002 2 SCC 287, 2002 SCC (Cri) 333, AIR 2002 SC 748, 2002 CriLJ 1014 (SC)

⁴³¹ 1982 (2) Scc 538, 1982 SCC (Cri) 502, AIR 1982SC 1297, 1982 CriLJ (1777) SC

32) Master SalimIkramuddin Ansari v. Officer in charge, Borivali Police station, Mumbai⁴³²

In this case the jailer gave excuse for not transferring the accused to the Observation Home; the excuse was that the order of the Session Court declaring Salim a juvenile through transmitted by the Registrar of the Sessions Court and received by the jail was misplaced. Under the High Court's order Salim was transferred to the Observation Home on 9 thjuly 2004, seven month after the session court orders. Salim was awarded compensation of Rs. 1, 00,000.

The Bombay High Court examined the granting of bail under section 12 of JJA2000. It was observed that according to this section the first petitioner can be free on bail with or without surety. Looking to the peculiar facts and circumstances the board realised the petitioner of personal bonds.

33) Master Rajiv ShankralParmar v. Office In Charge, Malad Police Station⁴³³

By the Session court the person was declared juvenile. He neither shifted to the observation home nor his case transferred to the Juvenile Justice Board. It was only High Court's intervention to send Rajiv to observation home after three months of declared as juvenile by the Sessions Court. The ordered date was 7th March and implementation takes place on 13th June.

The excuse of the jailor was not consistent. So the court awarded Rajiv the sum of Rs. 15,000. The state challenged this case to Supreme Court but no reward.

34) Ranjit Singh v. State of Himachal Pradesh⁴³⁴

The juvenile was released on the ground that, there is nothing to see that the juvenile if released on bail would be exposed to criminal, moral or physiological danger and it cannot be said that the bail is the end of justice

⁴³² 2005 CriLJ 799 (Bomabay)

⁴³³ 2003, CrimLJ, 4522 Bombay

⁴³⁴ 2005, Crim LJ, 972(H.P.)

35) Sube Singh v. State of Haryana and Ors.⁴³⁵

In this case Supreme Court held that each unlawful imprisonment irrespective of its period, and custodial hostility, irrespective of its amount or degree, is absolute condemnable and per se actionable. Solution for such infringement is obtainable in civil law and criminal law.

36) Arvinder Singh Bagga v. State of Uttar Pradesh⁴³⁶

In this case the Court said that torture is not only physical; there may possibly be psychological torment and mental torture considered to create fright and obedience to the demands or commands. When the coercion carries on from a person in Authority and that too by a police officer the mental torture caused by it is even graver.

37) Smt. Nilabati Behera @ Lalita Behera v. State of Orissa and Ors⁴³⁷

In this case the Court states that where the State else its servant in supposed use their power contravene basic liberties, the hurt person can claim enforcement of basic right by option to solution in community law under Articles 32 in addition to it Article 226 of the Constitution.

38) Francis Coralie Mullin v. Union Territory of Delhi⁴³⁸

In this case the Court interprets that everyone is having the right against persecute inside the walls of jail. And this right is providing to everyone without any type of discrimination.

39) Raghubir Singh v. State of Haryana⁴³⁹

In this case the court gave the guidelines to the state that each and every State, at the highest directorial and political levels, will put in order special strategies to prevent and punish cruelty by police methodology.

⁴³⁵ AIR 2006 SC 1117

⁴³⁶ AIR 1995 SC 117

⁴³⁷ AIR 1993 SC 1960

⁴³⁸ AIR 1981 SC 746

⁴³⁹ AIR 1980 SC 1087

40) Prem Shankar v. Delhi Administration⁴⁴⁰

Handcuffing cannot be made routinely. If required it may be done but with the reasonable grounds plus with the approval of the Judicial officer.

41) Kharak Singh V. State of U.P⁴⁴¹

The expression of personal liberty is illustrated by the court in this case. The court in this case said that it is not only restraint to bodily restraint or confinement. The protection of life and liberty is given by the constitution as a right to everyone and no one is discriminated on any basis. Children and adults are given this right with equality. Plus protection against arrest of citizens is also contained in our Constitution. According to the Article 21, no person shall be disadvantaged of individual independence except for the process recognized by rules and regulations.

42) Dastagir v. State of Madras⁴⁴²

In this case it was held that punishment which contains the element of torture in itself is unconstitutional. Life plus individual liberty in the constitution also contains privilege adjacent to torture, assault, injury and any type of exploitation against arrest and in custody.⁴⁴³

6.3) Conclusion:

Our Country India is a developed nation. So many conditions like social, economic etc leads towards to the mistreatment of kids. The complexity of kid's mistreatment is intensely entrenched in the socio-culture spectrum. Many factors lead towards the mistreatment of the kids. To curb the crimes against the child is the duty of the court. With so many judgments the court gave the guidelines and recommendations in regard to this issue. Perception plus the attitude of the society, parents as well as the committees of the government can curb the problems of young in clash of law.

⁴⁴⁰ AIR 1980 SC 1535

⁴⁴¹ 1963 AIR 1295, 1964 SCR (1) 332

⁴⁴² 1960 AIR 756, 1960 SCR (3) 116

⁴⁴³ <http://www.legalservicesindia.com/article/article/custodial-violence-in-india-1893-1.html> 5/4/2017

7.1) Conclusion

Juvenile or child is a person who is under the age of eighteen years of age. Child in conflict with law is a person who has done something wrong which is against law. For the rehabilitation of children to make them good citizen and for their reformation they are sent to juvenile or observation homes. There instead of rehabilitation they are also being abused physically, mentally even sexually.

Juvenile Justice Act, 2015 which is made for the protection of the children in one way or another. But there are some lacunas in the Act. In the act there is nothing about the training as well as inspection of the staff in the rehabilitation centres. There are no specific criteria given for the rehabilitative measures for the children in clash of law. There is nothing given in the act in regard to the checks upon the centres by senior officials. The child there are abused physically, mentally even sexually which put bad impact on the life of the children.

There are no specific committees are given which work as a checker to such abuse and for the protection of rights in the juvenile homes. Voluntary there must be some groups or nongovernmental organizations which work on such issues specifically.

There must be trained clinical physiologist who can correct the brain of the juveniles. The brain of a child is not developed properly in comparison to adult so to change or reform the mind of a juvenile is much easier than the adult offenders.

Indecent observers must be there in the child welfare department. There is no data in regard to the juvenile's abuse in conflict with law. In the juvenile justice system there must be some criteria in regard to collection of the data of the rehabilitation approaches in the juvenile homes.

The main purpose of the juvenile justice i.e. rehabilitation is not at all completed because if such kind of abuses and exploitation is found by them in rehabilitation homes how they can become a good person in the future life. A child is always developing like where he lives or the environment in his surroundings. Obviously child from a rehabilitation home came like a depressed person after facing such kind of crimes against him. Every crime is done if the mind is ill so off course he become a

ill minded person in future and commits wrong in the future instead of being a good person. So here the main aim that is rehabilitation is also failed.

In juvenile rehabilitation homes there is clear cut violation of the Article 14 and 15 of the constitution. Each and every law is made in accordance with the protection of fundamental rights but because of some lacunas in the juvenile justice system the rights of the children are also infringed.

Even though there are number of laws, policies and recommendations by the judiciary and legislature the abuse is still going on. So we can say that problem is in laws and policies made by the legislature. As we know the main aim of Juvenile Justice Act to come into existence is rehabilitation but this aim never be fulfilled if such things like abuse is there. If form the beginning committees made to curb all these things and for the protection of the rights of juveniles in rehabilitation homes is made such things never happened. Instead of rehabilitation the juveniles there become ill from mind.

As per the quotation given 'hate the sin not the sinner',⁴⁴⁴ it is very clear to all that just hate the crime not the one who commits it.

If start from the first stage after the commitment of crime the accused i.e. juvenile. The police kept him and many of the problems are faced in the **police station** like:

- 1) Assault
- 2) Not presented before the magistrate within 24 hours
- 3) Handcuffing
- 4) No call or information to the parents or guardians of the juvenile offender
- 5) Kept the juveniles with senior inmates instead of putting them in different custody
- 6) Sexual and physical abuse by police persons and other inmates which results in emotional or mental abuse also.
- 7) No proper living conditions and the food is there in the police station.
- 8) No one is aware of special police unit.

⁴⁴⁴ M.K. Gandhi

9) Police Officials are not aware how to deal with children.

10) No proper training is given to police officials to deal with such cases.

11) Police officers know about the rights of an accused but never tried to protect them.

12) Juveniles are kept in police custody for long period of time without presenting before the magistrate.

The second stage is **courts** where the juveniles go after the police station after being suspected of some crime.

1) The separate courts are made for the juveniles called juvenile courts. Such courts specifically deal with the cases of juveniles. The minimum and maximum period is given in the juvenile justice act to finish the proceedings.

But to finish the trial so much time is gone.

2) In the cases where the issue is in regard to age of juvenility much time is wasted to find out the real age of the person committed crime.

Juvenile homes or the observation homes or the special homes are the place where the juveniles are kept for rehabilitation to reform them into good citizens. But in these homes they are facing so many problems, such as:

1) Poor hygiene Conditions.

2) Abuses of children mental, physical, and sexual.

3) No rehabilitation but exploitation.

There are lots of laws, conventions, rules as well as regulations made for the protection of kids on each and every point. Universal and nationwide also there are different as well as same rules made for the protection of kids. Because of some situations or circumstances sometimes the kids become delinquents or commit some crime by their immature mind and become child's in conflict with law. The age of considering a person as juvenile is also given in number of conventions or acts on national and international level. Numbers of amendments are also made on the issue of juvenile's protection but number is increasing day by day. The on countrywide and

intercontinental level made intended for the safety of kids counting brood in disagreement with law or breaking of laws. The age of considering a person as juvenile is also given in number of convents or acts on national and international level. There are so many articles and rules on the protection of children from sexual abuse, physical abuse, mental abuse etc.

As long as a sense of safety to normal people and make presence to their grievances is dependent on the establishment of a police force which is efficient, honest and professional. The fact that such a police force does not exist in India, as attested by the findings of various commissions and committees, the complaints received by the human rights commissions, the stories reported by the press and the experiences of the common people on the street. The need for police reform is self-evident.

The cases of Juvenile rehabilitation homes are on rise of abuse and torture. The NGOs have done a lot in rescuing the juveniles from the problems they have faced in juvenile homes. If this problem is not yet tackled then it become very dangerous problem in coming days.

The government have to make special rules in regard to curbing this issue and for the protection of the children everywhere after all kids is the future of our nation.

7.2) Suggestions:-

- 1) To tackle all these problems faced by the juveniles in the police stations there should be special check up, inspections laws and rules are made by the legislature. The police act is so old in India which has not amended from long time. The legislature has to bother about the amendments in the older laws and regulations.
- 2) There must be classes for the police officials to deal with such cases and teach them about the rules made for the protection of juvenile offenders or suspects.
- 3) The legislature has to make proper committees to tackle the atrocities of police.
- 4) There also must be random raids by the members of the committees made by the legislature so that the problems faced by the offenders are clearly seen.
- 5) The police act should be amended in accordance with the time.
- 6) The magistrates themselves also go randomly to the police stations and interviewed with the offenders there.
- 7) There must be separate lockups for the juvenile offenders during the police custody.
- 8) The legislature have to make rules as the duty of young lawyers, young police officers to organise camps in societies, villages, schools etc to aware the juveniles about their rights.
- 9) The trails of juveniles should be finished in proper time.
- 10) Proper training should be given to the members of juvenile courts.
- 11) The issue regarding the age of juveniles should be tackled with some special methods so that the time of court and the person is not wasted. Plus the rights of suspects are also protected.
- 12) No need of making different-different committees but have to make one committee which should tackle all the problems in good and manageable manner.
- 13) NGO's should also be specifically made for the purpose of tackling the crimes in juvenile homes.

- 14) General public should also have to take steps in regard to the problems face by juveniles in clash of rules, regulations and law.
- 15) During making the rules or laws in regard to juveniles there must be half members related to some NGO of juvenile right protection.
- 16) Researches have been made in regard to this problem so that even the proper data should be collected about this problem.
- 17) Laws should be changed or amended time to time. It's never be awaited that if the crime committed after then the law amended.
- 18) Investigations of child abuse should be conducted in a method which accommodates the developmental needs of each individual child.
- 19) The court should ask for self-governing trained child mental health experts to determine the mental health needs of each child witness and convict and whether or not the mental condition of the child may impact his or her testimony.⁴⁴⁵
- 20) Funds should be provided by government for research on this problem.
- 21) Proper examination of bills before making them law specially in regard to this matter.
- 22) Expand programmes for rehabilitation of delinquents.
- 23) Psychiatrist groups from outside should go in juvenile homes to know about the problem they go through and to check is proper rehabilitation is going on or not.
- 24) NGO's and the activists in regard to this issue have to meet legislature to make new laws in relation to it.
- 25) Make available elastic curricula that contain educational, occupational, and communal and everyday living skills.
- 26) Employ and keep authorized special education teachers in each juvenile facility.

⁴⁴⁵https://www.aacap.org/App_Themes/AACAP/docs/clinical_practice_center/systems_of_care/JJmonograph1005.pdf15/4/2017

- 27) The needs of antisocial children must be better understood. There is a need for sustained longitudinal research.
- 28) Uniform mental health evaluation is needed, including instructive assessments of all adolescence that are adjudicated within juvenile court. These assessments will assist the court in sympathetic the needs of the youth and to make suitable recommendations, which will likely result in decrease recidivism.
- 29) Legislative changes affecting juvenile sex offenders should be monitored to help ensure that modifications are based on reason and scientific evidence rather than on emotion and the desire for retribution.
- 30) All actions for handling and follow-up should be synchronized; dates and times should be provided to youth and families prior to release from the detention facility.
- 31) Before making any law or act firstly there must be some safeguards for the protection of rights of the people.
- 32) Trained physiologists be enrolled with special knowledge in regard to the kids in the rehabilitation homes.
- 33) Severe punishment should be imposed if case in regard to juvenile exploitation in reformatory home is found.
- 34) Collection of data must be there in the reformatory homes.
- 35) Secret interviews of the children in clash with law must be taken by the judges, lawyers, voluntary persons and the other appointed by the board so that truth be find out of such homes.

ANNEXURE

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