

CRITICAL EVALUATION OF TRIAL AND PUNISHMENT TO JUVENILE'S IN INDIA

Dissertation submitted to the Lovely Professional university
in partial fulfillment of the academic requirement
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of Master of Laws (LL.M)

Submitted by
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PHAGWARA – 144411, INDIA

May 2017

CERTIFICATE

I hereby certify that this dissertation entitled “**Critical Evaluation of Trial and Punishment to Juvenile’s in India**” submitted for the award of degree of Master of Laws (LL.M) is a record of research work done by the candidate Priyanka during the period of 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, Associateship, 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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S. No.	Abbreviations	Stands For
1.	Anr.	Another
2.	CARA	Central Adoption Resources Authority
3.	Cr. P. C	Code of Criminal Procedure
4.	CWC	Child Welfare Committee
5.	CWPO	Child Welfare Police Officer
6.	DCP	District Child Protection
7.	DCPU	District Child Protection Unit
8.	DC	Deputy Commissioner
9.	DM	District Magistrate
10.	EIC	East India Company
11.	FIR	First Information Report
12.	ICDS	Integrated Child Development Services
13.	IPC	Indian Penal Code
14.	IYC	International Year of the Child
15.	JDL	Juvenile Deprived of their Liberty
16.	JJ Act, 2000	Juvenile Justice (Care and Protection of Children) Act, 2000
17.	JJ Act, 2015	Juvenile Justice (Care and Protection of Children) Act, 2015
18.	JJB	Juvenile Justice Board
19.	NCRB	National Crime Record Bureau
20.	NGOs	Non-Governmental Organization
21.	Ors.	Others
22.	SAARC	South Asian Association for Regional Cooperation
23.	UN	United Nations
24.	UNCRC	United Nation Convention on the Rights of the Child
25.	UNO	United Nations Organisation
26.	w.r.t	with respect to

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Arnit Das vs. State of Bihar, (2000) 5 SCC 488, AIR 2000 SC 2261

B

Bhola Bhagat vs. State of Bihar, AIR 1997 ALV Cri 645, AIR 1997 8 SCC 720

Bhoop Ram vs. State of UP, AIR 1989 SC 1329, (1989) 3 SCC 1

Brown vs. Board of Education 347 U.S. 483 (1954)

D

Daljit Singh vs. State of Punjab, 1992 Cri LJ

F

Fanu @ Irfan vs. State of UP, 1997 Cri LJ 549

G

Gaurav Jain vs. Union of India AIR 1997 SC 3021

Gopinath Ghosh vs. State of West Bengal AIR 1984 SC 237

Gulzar Singh vs. State of Punjab, (1979) 91 Punj 477

H

Haley vs. Ohio 322 U.S. 596 (1948)

Hiralal Mallick vs. State of Bihar, AIR 1977 4 SCC 44; AIR 1977 (Cri.) 538

J

Jai Prakash Tiwari vs. State of UP, Criminal Revision of 4694 (2011)

Jayender vs. State of UP AIR 1982 SC 685, (1981) 4 SCC 149

K

Kalka Prasad vs. State of Uttar Pradesh, AIR 1959 All 698

Kario alias Mansingh Malu and others vs. State of Gujarat, 1969, 10 Cri LJ 66

Kent vs. United States, 383 U.S. 541, 566-67 (1966)

Kuldeep K. Mahto vs. State of Bihar (1998) 6 SCC 420

Kumar Satyanand vs. State of Bihar, 1982 Cri LJ 994

M

Mayank Rajput vs. State of UP, (1998) Cri LJ 2797 (Allahabad)

McKeiver vs. Pennsylvania, 403 US 528 (1971)

Md. Syad Ali vs. State of Gujarat, 1989, Cr. L.J. 2063 (Guj.)

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Narotam Singh vs. State of Punjab, AIR 1978 SC 1542, (1979) 4 SCC 505

O

Ohio Re vs. Code title 21, S. 2151.31 (1972)

P

Parag Bahti vs. State UP, Cri. Appeal No. 486 of 2016

Peter Gill vs. State of Punjab, 1983 Cri LJ 231 (Punj) NOC

Pradeep Kumar vs. State of UP AIR 1994 SC 104

Pratap Singh vs. State of Jharkhand and ors. (2005) 3 SCC 551; 2005 SCC (Cri) 742

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Raghubir vs. State of Haryana, AIR 1981, 4 Sec 210

Ram Chandran vs. Inspector of Police, Madras, 1994 Cri. L. J. 3722 (Mar)

Rattan Lal vs. State of Punjab, AIR 1965, SC 444

Re Chinnathambi case, 1961, MLJ (Cri) 671

Re Gault, 387 US 1 (1967)

Reepak Ravindran vs. state of AP, 1991 Cri LJ 595 (AP)

S

Salil Bali vs Union of India and another, writ petition no. 10 of 2013, decided on 17th July 2013

Satto vs. State of Uttar Pradesh AIR 1979 SC 1519.

Shyam Narayan Singh vs. State of Bihar, 1993 Cri LJ 772 (Patna)

Somabhai vs. State of Gujarat, 1989, Cr. L.J. 1945 (Guj)

Subramanian Swamy and Ors. Vs. Raju thr. Member Juvenile Justice Board and Anr., 2014 (2) ACR 1615 (SC), AIR 2014 SC 1649

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Umesh Singh vs. State of Bihar, Cr. Appeal (S.J.) No. 100 of 1998

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Winship 397 U.S. 358, 365-366 (1970)

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Chapter 1
Introduction

1.1 Introduction

“A nation’s children are its supremely important assets and nation’s future lies in their proper development. An investment in children is indeed an investment in future; a healthy and educated child is the active and intelligent citizen of tomorrow.”

-Rabinder Nath Tagore

Today, in order to control the crimes committed by children, it was found both at the national as well as international level, that the existing laws are not enough. Therefore, it was felt beneficial to re-frame the actual laws that deal with the *Juveniles*. The main aspect of this is derived from ‘Convention on the Rights of the Child,’¹ the ‘United Nations Standard Minimum Rules for the Administration of Juveniles Justice, 1985² (the Beijing Rules)’, ‘the United Nations Rules of the Protection of Juveniles of Deprived of their liberty (1990)’, and other international instruments related to juveniles. The United Nations General Assembly adopted the Convention on the Rights of the Child on the 20.12.1989 and welfare of the child was the prime concern of the States parties to this convention. Moreover, it emphasizes upon social integration of child victim to stretch the credibility restoring to judicial proceedings.

Government of India has approved this Convention on 11.12.1989. In the context of Constitution of India, there are several provisions under Article 15(3), 39(c) and (f), 45 and 47 which obliges the State with prime responsibility to shelter the basic rights of the child.

In light of aloft voiced aspirations, the Juveniles Justice (Care and Protection of Children) Act 2015 has been enacted replacing the previous act ‘The Juvenile Justice (Care and Protection of Children) Act, 2000’. The new Act 2015 contemplates on the following points:

- a) Who are in conflict with law (Juvenile delinquents);
- b) Who are in need of care and protection;

¹ U.N. General Assembly, *Official Records*, Sess. 61, U.N. document A/RES/44/25, (20/11/1989) available at <http://www.un.org/documents/ga/res/44/a44r025.htm>, last seen on 19/02/2017.

² U.N. General Assembly, *Official Records*, U.N. document A/RES/40/33, (29/11/1985) available at <https://www.ncjrs.gov/pdffiles1/Digitization/145271NCJRS.pdf>, last seen on 19/02/2017.

This Act was structured for:

- the treatment of the child,
- the care and the protection of the children,
- to furnish the needs which are crucial for the development of the child;
- to suggest the child friendly adjudication procedure;

Broadly, the Act creates Juvenile Justice Board and Child Welfare Committee and recognizes Children's home, Observation home, Shelter home and Special home to further the objectives of the Act.³

There is a need to provide the equal opportunity to the child for the development, so that the child becomes best citizen physically as well as mentally fit and morally improve with the skills and requirements as needed by the society.⁴

“Convention on the Rights of the Child”⁵ is an international document which helps the nations to understand the living condition of the children and how to improve and implement in their countries.⁶ This declaration claims that:-

- The State parties shall take pertinent steps related to juvenile justice to ensure that the child is protected from discrimination and is not punished on the grounds of status, opinion or belief of the child's family, guardians and other members.⁷
- Every child has a right to life and personal liberty;
- The States parties shall take steps to ensure certain possibilities for the development of the child.⁸
- Child needs to be protected and cared for.

Radzinowicz observed that neglected juveniles give rise to criminals. He stated that neglected children and juveniles are easily chased to criminals. He contended that the

³ R.N. Saxena, *The Code of Criminal Procedure Justice Juvenile (Care and Protection of Children) Act and Probation Offenders Act*, 343 (12th ed., 2004).

⁴ Prof. N.V. Paranjape, *Criminology and Penology*, 484 (12th ed., 2006)

⁵ U.N. General Assembly, *Convention on the Rights of the child*, resolution 44/25 (20/11/1989), available at <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>, last seen on 09/02/2017

⁶ V. R. Krishna Iyer, *Jurisprudence of Juvenile Justice: A Preambular Perspective*, 1, 1, available at http://14.139.60.114:8080/jspui/bitstream/123456789/1225/1/008_Jurisprudence%20of%20Juvenile%20Justice.pdf, last seen on 09/02/2017

⁷ Article 2(1), The Convention of the Rights of Child

⁸ Article 6, The Convention of the Rights of Child

adolescents claim the highest share in violence to dashing nature, lack of foresight, uncritical enthusiasm, physical strength and endurance and desire for adventure.⁹

In India, the children need protection from two sides: -

1. To obtain the basic needs for their overall development so that they can become physically robust, mentally alert, and academically brilliant irrespective of their sex, family environment and appropriate growth and grooming of the child.
2. And prevention and treatment .¹⁰

In India, the Criminal justice system is different and treatments are also different, but there are some exceptions. These exceptions are mentioned under Indian Penal Code, and court is lenient in giving punishments in case of Juveniles and has made a separate Act for Juveniles proceedings. Juvenile Justice (Care and Protection of Children) Act, 2015 distinguishes Juveniles from adults. This is because juvenile offenders are separate from adults, and these two terms have different level of responsibilities and rehabilitation process. While there is concern with public safety and holding juveniles' offenders accountable for their actions, there is great emphasis on rehabilitation than on punishment in the juvenile justice system. 'Rehabilitation' means to restore someone to a useful life through rehabilitate and education.¹¹

1.2 Who is Juvenile?

The term "Juvenile" is used for a person, who is under 18 years of age. The JJ Act, 2015 defines a 'juvenile' as 'a child who is under of 18 years of age'.¹² The JJ Act of 1986 had set the age limit for boys and girls, as 16 years and 18 years respectively. However, with regard to heinous crimes the position has been made more stringent by prescribing the qualifying age for a juvenile as 16 years.

The juvenile's age was again increased to 18 years by the Juvenile Justice (Care and Protection of Children) Act, 2000. According to this Act, 'Juvenile' means 'a person

⁹ Supra 4, at 486

¹⁰ 'Introduction' Chapter 1, available at http://shodhganga.inflibnet.ac.in/bitstream/10603/7809/8/08_chapter%201.pdf last seen on 11/02/2017.

¹¹ Ankit Kaushik, *Rights of Juvenile in India*, Lawtopus' Law Journal 1,1 (2015), available at <http://www.lawtopus.com/academike/rights-jvenile-india/>, last seen on 11/02/2017.

¹² S. 2(35), Juvenile Justice (Care and Protection of Children) Act, 2015.

under the age of 18 years'.¹³ The Act¹⁴ was basically enacted to express the dissatisfaction with regard to the Juvenile Justice Act 1986. In this context, the following proposals were made: -

- To follow and bind along with the UNCRC;
- To recommended age limit of 18 years for both boys and girls;

The term child is defined under Article 1 of CRC.¹⁵ As stated by this Convention, Child means,¹⁶ a person who is below the age of 18 years.¹⁷ Further this Convention state that, no child shall be tortured to cruelty, brutal or disgraceful treatment and shall not be subjected to death penalty and life imprisonment.¹⁸

1.3 Age Determination

There are two main logics to nail down the age of juvenile:

- Is to find out whether or not the person claiming to be a child falls beneath the cut off age prescribed for application of the JJ Act 2015.
- Recording of the age as approximately and exactly as possible is essential for deciding the duration of industrialization.

The issue with regards to determination of the age of the child arises in number of the cases. It is not easy task to decide the age of juvenile, particularly in boarder line cases. As children or juvenile frequently do not have any evidence regarding their age, in that case medical examination of the child proves the age, even if ossification test¹⁹ of multiple joints is conducted.²⁰ In different cases, different evidence has been used to determine to the age of the juvenile culprit.

¹³ S. 2(k), Juvenile Justice (Care and Protection of Children) Act, 2000.

¹⁴ Juvenile Justice (Care and Protection of Children) Act, 2000

¹⁵ 'Convention on the Rights of the Child'.

¹⁶ Supra 6, at 2

¹⁷ Mr. Maharukh Adenwalla, *Child Protection and Juvenile Justice System for Juvenile in Conflict with Law*, 6, 2006, available at <http://childlineindia.org.in/pdf/CP-JJ-JCL.pdf>, last seen on 9/02/2017.

¹⁸ Article 37(a), Convention on the Rights of the Child.

¹⁹ *Ved Kumari's, The Juvenile Justice System in India from Welfare to Rights*, 186 (Upendra Baxi, 1st ed. 2004).

²⁰ In *Kuldeep K. Mahto vs. State of Bihar*, (1998) 6 SCC 420, the Supreme Court refuse to accept that the victim of rape was above 18 years as the medical evidence showed her to be 17-18 years if the margin of error of six months is taken into account.

When a child is produced before the Board, then Board will determine whether the child is juvenile or not? If he is juvenile, then Board may apply their jurisdiction over them. In juvenile delinquency cases, following questions have been raised concerning implementation of the JJ Act and age of the juvenile:

- i. What is the relevant date that shows a child had attained the age of 18 years?
- ii. Whether the age on the date of commission of the offence or of the production in front of board will be considered?

In the case of *Pratap Singh*;²¹ Supreme Court was considered with a query as to “whether the date of occurrence will be the reckoning date for determining the age of the alleged offenders as juvenile offender or the date when he is produced in the court?” Court decided that “the reckoning date for the determination of the age of the is the date of the offence and not the date when he is produced before authority or in the court.”

In JJ Act, 2000 duty was casted on the Court to determine the age of juvenile. New JJ Act 2015, specifies that the age of juvenile will be determined by the all Courts, Board, or Committees.

In this case, School leaving certificate was used to determine the age of the person.²² High school certificate is considered as good evidence to determine the age of juvenile, though not unchangeable.²³

Shyam Narayan Singh vs. State of Bihar,²⁴ Patna High Court recognized that the age of the juvenile accused has been determined on the basis of age specified in the evidence which is produced before Magistrate, and that evidence was not reclaimed by any person.

Mayank Rajput vs. State of UP,²⁵ Court observed that “the relevant date for applicability of the Juvenile act so far as age of the accused, who claims to be a child, is concerned, is the date of the occurrence and not the date of the trial.”

²¹ *Pratap Singh vs. State of Jharkhand*, (2005) 3 SCC 551; (2005) SCC (Cri.) 742.

²² *Fanu @ Irfan vs. State of UP*, (1997) Cri LJ 549.

²³ *Daljit Singh vs. State of Punjab*, (1992) Cri LJ.

²⁴ *Shyam Narayan Singh vs. State of Bihar*, (1993) Cri LJ 772 (Patna).

²⁵ *Mayank Rajput vs. State of UP*, (1998) Cri LJ 2797 (Allahabad).

Kumar Satyanand vs. State of Bihar,²⁶ the accused submitted a school leaving certificate and admit card from the principle of the High School, in support of his case that he was a child at the occurrence of crime. This was challenged by the state and he was referred to the civil surgeon, and he admitted that the child was beyond the age of 16 years at the occurrence of crime. Patna High Court gave the following reasons for to giving priority to medical evidences. The Court observed that in those case where the documents serving as evidence like matriculation certificate, school leaving certificate or the entry formed in different records of the school are available, that all should be considered as complete and will be acceptable as evidence, as the entries definitely having been made several years before, that cannot be challenged on the ground that subsequent to the occurrence of any crime record has been created for the advantage of any accused.

*Re Chinnathambi*²⁷, in this Court observed and prescribed some guidelines to determine the age of juvenile in juvenile justice system;

- a) Finding age of the juvenile should be recorded on the basis of proper and exact evidence.
- b) For removing conflicts in evidences produced regard could be given to oral evidence.
- c) School certificate of the child should be considered precise and accurate.
- d) All possible efforts must be done by Court to determine the age of Juvenile.
- e) Document like birth certificate, school leaving certificate should be given priority as compared to radiological examination and physical features.

1.4 Juvenile Delinquency

The delinquency is the main concept that effects the society by criminal behavior by indulging in various criminal activities similar to adult criminals. In the case of juvenile delinquency, the child will be proceeded in the juvenile court which will pass the order according to the circumstances of the case. The aspect of juvenile delinquency has two dimensions: -

²⁶ Kumar Satyanand vs. State of Bihar, (1982) Cri LJ 994.

²⁷ See, Re Chinnathambi case, (1961) MLJ (Cri) 671.

- a) The infringement of any law or legal order, whether for adults or for young persons, is certainty;
- b) The definition of juvenile delinquency as irregular child behavior itself depends upon the norms laid down by the general public, in other words by the elders, and collision of principles due to generation gap is bound to occur;²⁸

Juvenile Delinquency includes two kinds of conducts:



- a) Status Offences: An act legal for adult may be forbidden for child as these acts are considered to be delicate and unsuitable for their health.
- b) Delinquent Offences: These kinds of conducts are violation of legal enactments which applies to adults. Delinquent Offences involve murder, rape, assault, harassment, abuse, theft, criminal breach of trust, damage to property, etc.²⁹

1.4.1 Definition of Juvenile delinquency

It is not easy to give an exact definition of Juvenile delinquency. Several factors are responsible for not allowing a clear-cut formulation. One obstacle is similar to that encountered while defining crimes in general, i.e. the choice between the social and legal definitions. Sociologists insist that through the legal definitions of juvenile a person, cannot understand the term and the true nature of Juvenile Delinquency, since the arrest of the Juvenile depends upon the arbitrary circumstances. They also maintain that legal definitions differ from corner to corner and time to time and hence are not suitable for scientific studies.³⁰ **Ruth Shonle Cavan (USA)** remarked that in-partial legal³¹ definition a child should include anti-social activities of the delinquent or when

²⁸Ahmed Siddique's, *Criminology and Penology*, 251 (S.M.A. Qadri, 6th ed., 2014).

²⁹ *Juvenile Justice System in India and Critical Analysis of the Juvenile Justice (Protection and Care of Children) Act, 2000 with Juvenile Justice (Protection and Care of Children) Act, 2014 (Amendment)*, 2 Journal of Law Mantra 1, 2, available at <http://journal.lawmantra.co.in/wp-content/uploads/2015/08/73.pdf>, last seen on 12/04/2017.

³⁰Supra 28, at 252.

³¹ Supra 4, at 487.

it is onerous for the family to restrain him. Generally, the juvenile delinquencies specify a diversity of anti-social conducts of the Juvenile and contrary observations are available in distinctive societies, through a general prospective may be same.³²

Some critic argue that the statutes defining the various delinquents acts are vague in terms of their contents because they are contrary to the fundamental principle of criminal law as expressed through the latin maxim *nullum crimen lege*, which means an act cannot be a crime unless it is so defined under the existing law.³³

The acts related to juvenile delinquency are drinking and smoking which is socially unacceptable if indulged in by adults. The great diversity of juvenile delinquency is supported with the aid of following points that catalogues the Acts which confines into its ambit various acts amounting to juvenile delinquency. Below sited deeds supplement the scope of juvenile delinquency:

- i. Contradiction of any law or Act;
- ii. Indecent behavior;
- iii. Indecent behavior in the school;
- iv. To fascinate in the illegal camps or activities;
- v. Knowingly associate with clever or indecent persons;
Indulgent in dishonest activities.
- vi. Patronizing, to enter the shops³⁴ or gambling places;
- vii. Patronizing or visit to intoxicating shops;
- viii. To be nomadic in streets and to misbehave;
- ix. Wander near railroad track,³⁵
- x. Without authority jumping upon trains, entering any vehicles;
- xi. Bunk the classes or school habitually;
- xii. Habitual and not able the change their behavior;
- xiii. Using vulgar language publicly;
- xiv. Without permission to go outside home anywhere;
- xv. To linger and sleeping in streets;
- xvi. Smoking in public places;

³² Ibid.

³³ Ibid, at 488.

³⁴ A policy shop is a place where illegal gambling on the terminal of certain numbers takes place.

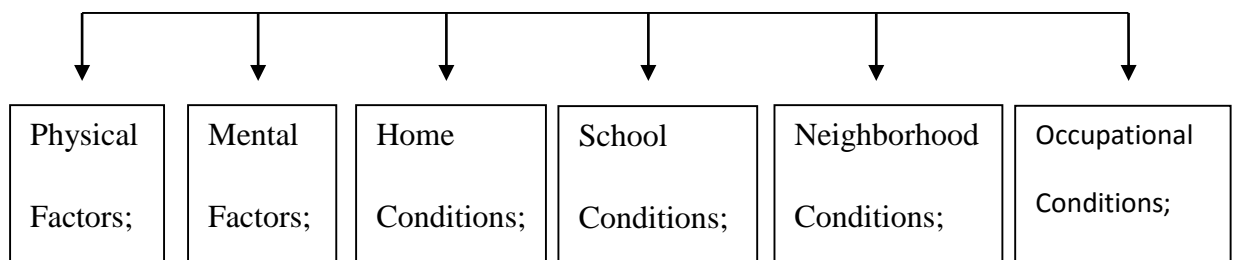
³⁵ Supra 28, at 253.

xvii. Begging.³⁶

Earlier Act of 1986 defined the term Delinquent Juvenile as ‘Delinquent juvenile’ ‘a juvenile who has been found to have committed an offence.’³⁷ ‘Juvenile Justice (Care and Protection of Children) Act, 2000’ replaced the term delinquent juvenile with word ‘Juvenile in conflict with law.’³⁸ In ‘Juvenile Justice (Care and Protection of Children) Act 2015’, the term ‘child in conflict the law’ means a child or juvenile who has committed an offence or found to be guilty of any offence and is below the age of 18 years.³⁹

1.4.2 Causes of Juvenile Delinquency

Basically, there are six main causes responsible for the increase in juvenile delinquency which are as follows⁴⁰:-



1. Physical Factors: The physical factors responsible for the increase in juvenile delinquency depict their possible impact in behavior of the delinquents in three ways.
 - a) Physical factors are direct cause of criminal behavior;
 - b) It may operate as a handicap for the child’s achievement relationship with other people,
 - c) Bodily conditions like physical ebullience may supply a superfluity of energy which finds outlets in delinquency;

³⁶ Ibid, at 254.

³⁷S. 2(e), Juvenile Justice Act 1986.

³⁸ S.2 (1), Juvenile Justice (Care and Protection of Children), Act 2000.

³⁹ S. 2(13), Juvenile Justice (Care and Protection of Children) Act 2015.

⁴⁰ Supra 4, at 488.

There are some physical factors, which are responsible for the increase delinquency in juveniles, like *Malnutrition, lack of sleep, sensory defects*⁴¹, *speech defects, deformities, nervous diseases, etc.*

Malnutrition it may result from the lack of availability of food because of mere carelessness or poverty, irregular meals, intake of stimulants such as tea or coffee in large quantities, etc. All the above stated factors interfere with the normal digestion and assimilation of food, giving rise to the malnutrition in children and which further leads to the deviant behavior in juveniles.

Another factor responsible for juvenile delinquency is lack of sleep; it may result from not getting adequate sleep, congestion in bedroom, bad dreams due to mental disturbance, etc.⁴² Sensory defects account for an another factor responsible for physical cause of juvenile delinquency, which involves defects in the special sense organs such as eyes, ears.

Speech defects also add to the physical factors resulting in juvenile delinquency. Such defects may surface as a result of any mental conflict, ill-health or negligence on the part of parents during the formative years of the child. Speech defects basically involves stuttering, lisping and lolling.⁴³

2. Mental Factors: Mental factors are the main responsible causes for the increase in delinquency. Mental factors may be determined by three ways: -
 - a) Firstly, Delinquency is the direct expression of the mental state of the juvenile, for example, obsessive imagery;
 - b) Secondly, Delinquency may be expressed by certain impulses or emotions which have been left uncontrolled or have been stimulated by a special mental condition; or it may be referred to as a symbolic representation of such impulses;⁴⁴
 - c) Delinquency may be an attempt at adjustment or compensation for certain mental peculiarities;

⁴¹ Sensory defects will set the child at an advantage when in competition with others both in and out of school.

⁴² Ibid, at 535.

⁴³ Ibid, at 537.

⁴⁴ Ibid, at 539.

Brief outline of mental factors is: *Mental defects, superior intelligence, psychoses, psychoneuroses, abnormalities of instincts and emotions, uneven mental development,*⁴⁵ *obsessive imagery and imagination, mental conflicts, repression and substitution, inferiority complex, introversion and egocentrism, etc.*

- Mental defect is the main cause of delinquency. It is considered to be determined by different ways. Firstly, through lack of appreciation of values in the child. Delinquency may be due to normal or abnormal impulses. Secondly, through inability to learn how to distinguish between right and wrong. Thirdly, through the lack of resources for expression of mental and physical energy, which is through the lack of mental imagery or imagination.⁴⁶
- Another mental factor is psychosis; it is the main element of the mental defects of the juvenile delinquency. Psychosis is divided into two groups.
 - a. Organic psychoses; these are mental illnesses which are called to accompany definite structural changes in the nervous system like Senile Dementia.
 - b. Functional psychoses; these are mental illnesses which are not related with structural changes in the nervous system has yet been found.⁴⁷ Such as Dementia Praecox.
- Juvenile delinquency is the result of abnormalities of instincts and emotion and is divided into two categories:
 - a) Firstly, which are irresistible impulses;⁴⁸ these delinquencies are caused by too strong instinctive tendencies.
 - b) Secondly, delinquency which includes deficiencies in normal instinctive or emotional tendencies, for example, lack of sympathy, lack of fear in the mind of juvenile, etc.⁴⁹

⁴⁵ Uneven mental development may be divided into two parts. 1. Lack of development in the intellect.
2. Lack of development in emotional control.

⁴⁶ Ibid, at 542.

⁴⁷ Ibid, at 543.

⁴⁸ Ibid, at 545.

⁴⁹ Ibid, at 546.

3. Home Conditions: Home condition is the indirect cause of juvenile delinquency. It has a direct Impact on the children's both physically and mentally which in their turn determine his behavior. The family relationship is influence more specifically the mental life of the child. There are some home factors which are responsible in increase delinquency such as: *unsanitary condition, material deficiencies⁵⁰, excess in material things⁵¹, poverty and unemployment, broken homes, mentally and physically irregularity of their parents or siblings, immoral and delinquent parents, ill-treatment by foster, step-parents or guardians of the child, lack of parental care and affection with child at home, etc.* Unsanitary Conditions are indirectly undermining to his mental condition and directly to his physical condition. Unsanitary conditions like bad toilet arrangements⁵², poor light, poor heat, overcrowding etc.⁵³
4. School Conditions: School conditions also indirectly cause juvenile delinquency similar to home conditions. It causes both bodily as well as mentally harm to the child. Some factors are responsible for increasing the school conditions like⁵⁴:
 - a. Rigidity in school system and rules; for example, strict curriculum and lack of individual consideration.
 - b. Bad grading and bad results in exams; for example, grading above and low level of the child.
 - c. Poor attendance.
 - d. Not too good enough teachers in the school; for example, lack of teaching ability in teachers.
 - e. Bad company in school; for example, to take a wrong path with the influence of friends or bunk the classes.
5. Neighborhood Conditions: It is direct cause of delinquency in juveniles, which affects the physical and mental health of the child⁵⁵. This delinquency is increased due to causes of:
 - a. Influence from the gangs and bad society; for example, to go anywhere without informing the parents, use of drugs and alcohols.

⁵⁰ A material deficiency gives huge effects upon the child. It may be result from lack of proper clothes, lack of pocket money, lack of toys, lack of some places, lack of personal property, etc.

⁵¹ Excess of material can be defined as too many clothes, too many money, etc.

⁵² Ibid, at 557.

⁵³ Ibid, at 558.

⁵⁴ Ibid, at 567.

⁵⁵ Ibid, at 570.

- b. Immoral and delinquent neighbor; for example, prostitution, stealing.
 - c. Luxury life of the neighborhood; for example, if child’s parents are poor comparatively to the neighbor, they commit an offence in fulfilling their needs and satisfaction.
 - d. Over stimulated movies and shows;⁵⁶ destruct mind of the child as it is still immature, and the result is the copy what they see. They cannot understand the differences between legal and illegal. They are easily stimulated from these factors. For example, bad influence from frequently movies.
6. Occupational Conditions: Occupational cause is the external effect of delinquency. It gives huge impact upon the physical as well mental health of juvenile. There are some external factors which are responsible for increase of delinquency, such as irregular occupation⁵⁷, occupational misfit, spare time and idleness, truancy⁵⁸, factory influences, monotony and residence and decline in the apprenticeship system,⁵⁹

Table 1.1 showing data of juvenile delinquency under Indian Laws, such as Arms Act, NDPS Act, Gambling Act, Excise Act, Prohibited Act, Immoral Traffic (Prevention) Act, and other Indian laws. This table shows data from 2001-2011. Maximum cases were registered in the year of 2002.

Table 1.1 “Juvenile Delinquency under Laws”⁶⁰

Years	Arms Act	NDPS Act	Gambling Act	Excise Act	Prohibited Act	Immoral Traffic (Prevention) Act	Other Crimes	Total Crimes
2001	154	52	763	613	1007	125	5589	8303

⁵⁶ Ibid, at 573.

⁵⁷ Ibid.

⁵⁸ Ibid, at 574.

⁵⁹ Ibid, at 575.

⁶⁰ Ministry of Home Affairs, National Crime Records Bureau (NCRB), Government of India, published on data portal September 08, 2015, available at <https://data.gov.in/catalog/all-india-and-state-wise-juvenile-delinquency-under-special-and-local-laws>, last seen on 05/03/2017.

2002	162	56	675	526	930	49	6492	8890
2003	232	62	863	508	1117	48	4918	7748
2004	201	54	989	480	566	47	3383	5720
2005	192	76	1061	472	830	50	3972	6653
2006	280	65	1116	556	632	79	2504	5232
2007	322	80	1013	556	510	60	2207	4748
2008	265	70	779	374	408	33	1603	3532
2009	223	61	1149	465	592	18	1795	4303
2010	154	82	326	249	314	10	1408	2543
2011	159	78	424	198	313	5	1637	2814

1.5 Child in Conflict with law

“Child in conflict with law” means the juvenile who have committed any illegal or unlawful act. To get conviction under Juvenile Justice Act, the person should be under 18 years at the time of the occurrence of an offence. According to JJ Act, 2015 “Child in Conflict with law” means “a child who is alleged or found to have committed an offence and who has not completed 18 years of age on the date of commission of such offence.” In the case, *Anrit Das vs. State of Bihar*⁶¹ Supreme Court recognized juvenility and decided that the relevant date to determine the juvenility on which the juvenile was produced before the competent authority. Another question raised about reference to which date the age of the petitioner is required to be determined to find out whether he is a juvenile or not? Court held that a person is a juvenile on the date when he is produced before the JJB or any other competent authority.⁶² This Judgment was widely criticized. Many felt that this judgment failed to interpret the law. In the case of

⁶¹ *Anrit Das vs. State of Bihar*, (2000) 5 SCC (Cri) 962; AIR (2000) SC 2264:

⁶² *Supra* 17, at 20.

Umesh Chandra vs. State of Rajasthan,⁶³ Court held that “the appropriate date for the applicability of the Act is the date on which the offence takes place.” Court clearly found that “the age of the juvenile culprit, who is claimed to be a child, is concerned, is the date of the occurrence of the crime not the date of the trial.” In the case *Pratap Singh vs. State of Jharkhand and ors.*⁶⁴ Supreme Court removed difficulty concerned with determination the age of juvenile. Supreme Court observed that the age of juvenile is to of date of commission of crime, not the date when he is produced before the authority or court.

In spite of best of the efforts by the various agencies Child in conflict with law data is rising day by day. Table 1.2 shows data of juvenile in conflict with law, and incidence which happened in the year of 2003-2013. Crime rate of child in conflict with law was very high in the year of 2013. Table 1.3 shows data regarding the cases registered against juvenile in conflict with law in the years of 2005-2015 and maximum cases was registered in the year of 2015 i.e. 31396. After analyses of this data, it is shown that the incidences of juvenile in conflict with law is getting increased with passage of every single day.

Table 1.2 “Incidences and Rate of Juveniles in Conflict with Law under IPC (2003-2013)”⁶⁵

S. No.	Years	Incidence of Juvenile Crimes	Incidence of Cognizable Crimes	% of total Juvenile Crimes	Estimated Mid-Year Population (in Lakh)	Rate OF Crime by Juveniles
1	2003	17819	1716120	1.0	10682	1.7
2	2004	19229	1832015	1.0	10856	1.8

⁶³ *Umesh Chandra vs. State of Rajasthan*, (1982) 2 SCC 202; (1982) SCC (Cri) 369; AIR (1982) SC 1057; (1982) CriLJ 994 (SC)

⁶⁴ *Pratap Singh vs State of Jharkhand and ors.*, (2005) 3 SCC 551; (2005) SCC (Cri) 742.

⁶⁵ Ministry of Home Affairs, National Crimes Records Bureau (NCRB), Government of India, Crime in India 2013 Statistic, available at <http://ncrb.nic.in/StatPublications/CII/CII2013/Statistics-2013.pdf>, last seen on 05/03/2017.

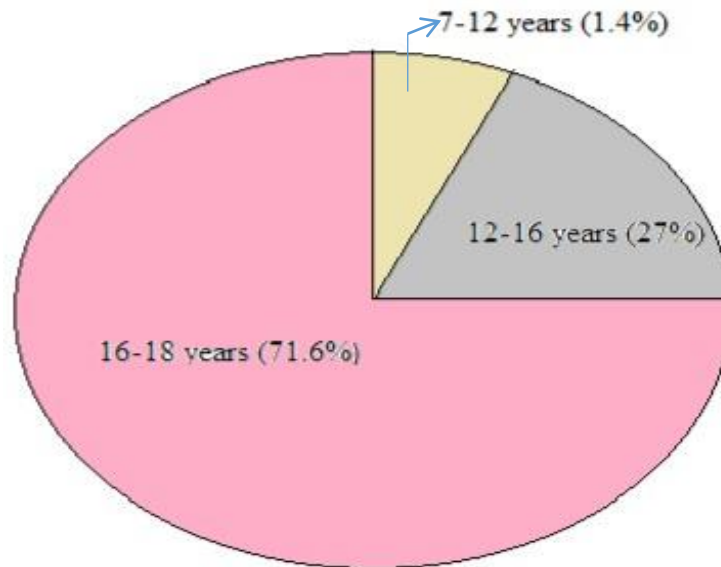
3	2005	18939	1822602	1.0	11028	1.7
4	2006	21088	1878293	1.1	11198	1.9
5	2007	22865	1989673	1.1	11366	2.0
6	2008	24535	2093379	1.2	11531	2.1
7	2009	23926	2121345	1.1	11694	2.0
8	2010	22740	2224831	1.0	11858	1.9
9	2011	25125	2325575	1.1	12102	2.1
10	2012	27936	2387188	1.2	12134	2.3
11	2013	31725	2647722	1.2	12288	2.6

Table 1.3 “Cases Registered Against Juveniles in Conflict with Law under IPC Crimes during 2005-2015”

S. No.	Years	Cases Registered
1.	2005	18939
2.	2006	21088
3.	2007	22865
4.	2008	24535
5.	2009	23926
6.	2010	22740
7.	2011	25125
8.	2012	27936
9.	2013	31725

10.	2014	33526
11.	2015	31396

Diagram 1.1 “Age Group-wise Children in Conflict with Laws Apprehended under IPC during 2015”



Aloft Diagram 1.1 defines data according to “the age group in children in conflict with laws apprehended under IPC during the years of 2015.” It is showed that maximum juveniles apprehended in these years are under the age group of 16-18 years.

1.5.1 Shares of Juvenile Crimes

The shares of IPC⁶⁶ crimes against juveniles registered in the country during 2005 were at 10% which was increased in 2006 by 1.1% and it remained at 1.1% till 2007. In 2008 this share increased by 1.2% and in 2009 it was decreased by 1.1%. Further, this share was decreased in 2010 by 1.0%, after that got slightly raised by 1.1 in 2011. Further in 2012 rate of juvenile Crimes increased to 1.2% and it remained at 1.2% till 2013 and 2014. In 2015 the share has decreased to 1.1% in the country.⁶⁷

⁶⁶ Indian Penal Code, 1860.

⁶⁷ Ministry of Home Affairs, National Crime Records Bureau (NCRB), Government of India, *Crimes in India-2015*, available at <http://ncrb.nic.in/>, last seen on 05/03/2017.

1.5.2 Procedure of apprehension of Juvenile in Conflict with Law

“The Juvenile Justice (Care and Protection of Children) Act, 2015” provides for a special procedure to be followed in case of a juvenile who is found to be in conflict with law. Notably applicability of certain provisions of Cr. P. Code,⁶⁸ have explicitly been ruled out as the provisions of this Act being of a special law are to prevail above the general law, the Cr. P. C. w.r.t Juvenile delinquency.

*Section 10*⁶⁹ deals with the procedure that as soon as juvenile offender who is in conflict with law is arrested by the police. He shall be placed under the charge of SJPU or CWPO and he must produce him before the Board within 24 hours of his arrest. Moreover, the State Government has been authorized to make laws or regulations in the Act for the following-

- a. To provide for persons through whom any child alleged to be in conflict with law may be produced before the JJB.⁷⁰
- b. To provide for the manner in which the child alleged to be in conflict with law may be sent to an observation home or place of safety, as the case may be.

*Section 11*⁷¹ of the Act provides any person who is incharge of the juvenile place is responsible for maintaining the child along with other responsibilities as long as the order is in force. Moreover the child shall continue in that person’s charge irrespective of the claim made by the parents or any other persons.⁷²

1.5.3 Order which are not be passed against Juveniles in conflict with law

There are certain types of orders which have been mentioned under section 21⁷³ of the Act which cannot be passed by the Board. This section provides that no Board shall pass the order of death penalty, life imprisonment in favor of the juvenile for any such

⁶⁸ The Code of Criminal Procedure, 1973.

⁶⁹ See S. 10 of JJ Act, 2015, define as “Apprehension of child alleged to be in conflict with law.”

⁷⁰ Supra 3, at 348.

⁷¹ See S. 11 of Juvenile Justice (Care and Protection of Children) Act, 2015 defines “Role of person in whose child in conflict with law is placed”.

⁷² Ibid, at 349.

⁷³ S. 21 of Juvenile Justice (Care and Protection of Children) Act 2015 reads “Order that may not be passed against a child in conflict with law.”

crime under the Act or the under the provisions of the IPC or any other law related to these provisions.⁷⁴

1.5.4 Protective Procedural provides for Juveniles

In order to protect the interest of juvenile under procedural laws, Section 17 rules on the application of Chapter VIII of Criminal Procedure Code with respect to juvenile. Thus, the proceedings under Chapter VIII of the Cr. P. C. 1973 which deals with to secure peace and good behavior (Section 106-124) shall not be instituted and any order cannot be passed by the Board against the Juvenile. It has been already been decided in *Ram Chandran vs. Inspector of Police, Madras*,⁷⁵ that a juvenile offender cannot be treated as a habitual offender or treated as an adults and juvenile cannot be called as to enhance security for good behavior in Section 110 of the Cr. P. C. Juvenile cannot be treated as a normal offender or habitually offender for the purpose of security only. Further, Section 23⁷⁶ provides against the joint proceeding of a juvenile with a person who is adult. Hence, no juvenile or child shall be tried or alleged for any offence together with an adult person irrespective of the provisions contained under Section 223 of Cr. P. C. 1973. This Section provides for seven instances where joint trial is allowed. However, this could only be done when the court is satisfied that such joint trial shall not prejudice the interest of the accused. Thus in such offences which fails under Section 223 Cr. P. C. and covered under Section 23, the Juvenile Board proceed with the knowledge or notice of offences shall direct for holding the separate trials of juvenile offender and adult.⁷⁷

1.6 Juvenile in Needs of Care and Protection

Juvenile or children in needs of care and protection means child:

- a) who do not have any type of shelter, house, etc.; or
- b) working in to be conflict with labor laws; or

⁷⁴ Ibid, at 350.

⁷⁵ Ram Chandran vs. Inspector of Police, Madras, (1994) Cri. L. J. 3722 (Mar).

⁷⁶ See S. 23 of Juvenile Justice (Care and Protection of Children) Act 2015 defines “No joint proceeding of Child in conflict with law and person not a child.”

⁷⁷ Ibid, at 351.

- c) who is mentally or physically not fit or suffering from any kind of diseases, and no one can support to him neither family member nor guardians of the child;
- d) whose parent is unfit or incapable to take care of his child as declared by the review committee;
- e) Who do not have parents or guardians and no one ready to take care of the child; or
- f) who run away from his house and went missing, and their parents cannot find him after inquiry;
- g) who are getting abused, tortured or exploited for sexual purposes.⁷⁸

1.7 Juvenile Justice System

Juvenile's justice system is not only concerned with the juvenile in conflicts with law, but also deals with the criminal behavior of the juvenile offenders. The Children's justice may be divided into two following categories: -

- a. How to shelter the child;
- b. How to insulate the child;⁷⁹

1.7.1 Aims of Juvenile Justice

Following are the aim to protect the children in India which are as follows:

- Juvenile justice system provides the rights of the child.
- It's main aim is to have restorative and rehabilitative principles for justice to child.⁸⁰
- To take initial steps for the best interest of the juvenile or children.
- Focuses on prevention as a primary objective.
- To provide proper care to the juvenile and prevent them from torture, cruelty, harassment, exploitation, etc.
- To give a proper care and education.

⁷⁸ S. 2(14) Juvenile Justice (Care and Protection of Children) Act, 2015.

⁷⁹ R. N. Choudhry, '*Law relating to juvenile justice in India*' being *Commentary on The Juvenile Justice (Care and Protection Act 2000 as amended by Act No. 33 of 2006 along with Central and State Rules)*, 2 (3rd ed. 2009).

⁸⁰ It means looking to restore the balance of a situation disturbed by crime or conflict rather than simply meting out punishment for an offence committed.

- To make efforts to improve physical and mental health of the child;

1.7.2 Justice and Education

Education is the very important aspect of human's life and casts the huge impacts on human's behavior and children's behavior. Generally, education gives a shape to the physical and mental health of the person. It shows accurate knowledge, skills and behavior of the person towards the society.⁸¹ The importance of the education was explained very beautifully in the case of *Brown vs. Board of Education*⁸², as case states that education is the foundational basis of best person or citizen in the society. It is best principle to awaken the child of their values and prepare them for the best professional training. It also helps them to adjust in the society and environment. And also⁸³ education gives help to develop the health of the child through rehabilitation and reintegration. To proceed towards in juvenile justice system related to education and training, there is a need to take a step forward. These steps have been taken into account to improve this system. An educational right of the children has been defined under Article 28 of the UNCRC. Primary education is obligatory and is free for all children.⁸⁴ Training, right to education and work of the children are more specifically defined under JDL⁸⁵ protection of juvenile. Articles 38-46 of UN JDL Rules prescribed the compulsory education for the young person in the school as a right and to prepare him or her according to needs of the society.⁸⁶

1.8 International Perspective of Juvenile Justice

The origin of juvenile justice system in USA developed with the appointment of Agents Massachusetts (Boston), 1869.⁸⁷ In America each state has separate institution to deal with juvenile offenders and adult offenders. The subject matter of juvenile or child in America, that is, majority age at which individual will be subjected to the adult court,

⁸¹ Dr. Jaspal Singh, Right to Education in India: An Analysis, XVIII Law Journal Guru Nanak Dev University 59, 59 (2010).

⁸² *Brown vs. Board of Education*, 347 U.S. 483 (1954, Supreme Court of the United States).

⁸³ *Ibid*, at 61.

⁸⁴ *Supra* 1.

⁸⁵ UN Rules '*Juvenile Deprived of their Liberty*'.

⁸⁶ *Supra* 81, at 60.

⁸⁷ *Supra* 4, at 489.

varies between 16 to 19 years.⁸⁸ Today, in USA there are juvenile Courts in each state. Usually the local community which is established in each State of USA which will be termed as specialized agent. USA has also same procedure i.e. legislature makes law and functioning is in the hands of superior authority like high courts. Various States have agencies namely State Welfare Departments, they have some policies which deal with the applicability of laws to the juvenile courts. The financial support is given by the local government to the States.⁸⁹

Saudi Arabia is very retributive in nature. Juveniles are punished with capital punishment in the heinous crimes. There are four kinds of punishments i.e. *hadd*, *tazir*, *qisas*, and *diyya*. Hadd punishment is fixed by God i.e. *Quran*. Quran is the grundnorm of this Country.

There are six types of punishments which are fixed:

- For theft, punishment is amputation of the hand.
- For illegitimate sexual relationship, punishment is death by stoning and 100 lashes.
- For drinking intoxicants, punishment is 80 lashes.
- For apostasy, punishment is death or banishment.
- For highway robbery, punishment is death.⁹⁰

China has also adopted policies and models to administer juvenile justice system. Maldives is more reformatory in nature like India. All countries have set out the age of criminal responsibility of child and administration according to their own regulations. A child is punished according to mental and physical level of the child. Maldives is more reformatory in nature. They kept a child in reformatory house and give a chance to alter the behavior of a child.

1.9 Importance of the Study

The main purpose of this study is to prevent the juvenile delinquency by understanding the reasons that lead to commission of delinquent acts by juveniles. Entire future of the

⁸⁸Steven D. Levitt, *Juvenile Crime and Punishment*, 106 No. 6 Journal of Political Economy 1156, 1160 (1998), available at <http://www.jstor.org/stable/10.1086/250043>, last seen on 08/02/2017.

⁸⁹ Supra 4, at 495.

⁹⁰ Oxford Islamic Studies Online, Hadd, available at <http://www.oxfordislamicstudies.com/article/opr/t125/e757>, last seen on 16/04/2017.

country depends upon the children. Therefore, it is essential to take effective measures to control the juvenile delinquency and provide basic rights to the juvenile in conflict with law. Today, juvenile delinquency is persistently at rise in India in the shape of a giant social issue. Although, Government has adopted Juvenile Justice (Care and Protection of Children) Act, 2015, to prevent the juvenile delinquency and provide proper care and protection to the child, but there is lack of implementation and applicability of some provisions of this Act. It is also connoted that judiciary plays important role in prevention of juvenile delinquency and anti-social behavior of the child

1.10 Objectives of the Study and Research Questions

Research Objectives

1. To study and understand the validity of ‘Juvenile Justice (Care and Protection of Children) Act 2015’.
2. To understand the importance of ‘Juvenile Justice System’ in India.
3. To study and find out the ‘scope of trial and punishment of juveniles’ in India.
4. To examine and appraise the adequacy of existing practice and procedure in terms of trial of juveniles in India viz a viz other nations of world.
5. To find out the real nature of Juvenile’s age defined under ‘Juvenile Justice (Care and Protection of Children) Act 2015’.

Research Questions

1. Whether the process of juvenile justice act is competent to achieve the objectives enlisted in the act?
2. What are the main characteristics of Juvenile Justice System in India?
3. What is main process of trial and punishment in India regarding juveniles?
4. What is the procedure followed in juvenile cases in other nations of the world?
5. What is the real nature of juvenile’s age in Juvenile Justice (Care and Protection of Children) Act 2015?

1.11 Research Hypothesis

Juvenile delinquency poses a serious threat to our society. The need of the hour is to take strict action to combat this delinquency from flourishing. To study various dimensions of crime workable hypothesis has been formulated as follow:

- The process of punishment under Juvenile Justice System in India is inadequate.

1.12 Research Methodology

The crucial objective of proposed research work is to analyze the different aspects of juvenile delinquency. It includes the meaning, history, types, philosophy, social-legal other dimensions that has emerged with the changing social, economic and technologies in the modern era.

The proposed research work is a *Doctrinal Research*. Hence, this dissertation is purely based on the resources from libraries, online database, magazines, newspaper, journals, and various learning resources. This dissertation is a combination of the following three of the legal research methodologies, where relevant namely:

1. Descriptive Methodology;
2. Analytical Methodology;
3. Comparative Methodology;

1.13 The Sources of Data

This dissertation being doctrinal research did not require any field data or sample collection. The data collection is limited only to the secondary sources. Secondary collections include the detailed analysis of the various secondary sources. This include various texts from legal and non-legal section, relevant articles, research papers, reports, journals, newspapers, magazines, important learning resources, study of relevant cases, etc.

1.14 Study Framework

This Research work consists of seven chapters.

Chapter 1 introduction which is overview of concept related to Juvenile, juvenile delinquent and main causes, objectives and approaches. Chapter 2 deals with historical development of the juvenile justice system in India. There are five phases which described history of this System. Chapter 3 describes some United Nations Conventions which deals with the Juvenile Justice and provides the rights to juvenile in the society. Chapter 4 provides that the legislative provisions of trial and punishment to the juvenile outlined in the statue in India. This Chapter prescribes some provisions which deal with procedure, proceedings, inquiry, investigation, preliminary assessment, procedure related to heinous offences, rehabilitation and re-integration process, etc. Chapter 5 deals with International perspective on Juvenile Justice System. All countries have their own laws and regulations to administer juvenile justice system and covers nations like America, Saudi Arabia, China, Russia, Pakistan, Ireland and Maldives. Chapter 6 deals with judicial pronouncement i.e. judgments which are passed by Supreme Court. Chapter 7 covers suggestions and conclusions.

Chapter 2
Historical Development of Juvenile
Justice System in India

2.1 Introduction

Development towards the juvenile justice in India started from the end of 18th century. In the ancient times juvenile were treated like an adult. Punishments and proceedings were same for juvenile in criminal courts. In the prisons juvenile and adults were liable to same punishment. In the criminal institution the juvenile offenders and habitual offenders were kept in same place. That was the huge evil in the justice system in India.⁹¹

2.2 Origin of the Juvenile Justice System in India

The origin of Juvenile Justice System in India has been industrialized in five periods. These periods are momentous in the legislative history, namely:

1. Initial to 1773;
2. 1773-1850;
3. 1850-1918;
4. 1919-1950;
5. After 1950;

With the establishment of East India Company (EIC), Regulation Act 1773 was passed. EIC has power to made the laws and implement them in strict manner. It was the Charter 1833 which converted⁹² commercial East Company into a government body.⁹³ The first legislation adopted for keeping children out of jail was enacted in 1850. The All India Jail Committee's report 1919-1920 led to the beginning of complete segregation of child from the criminal justice administration.

2.2.1 Prior to 1773

Both religion laws i.e. Hindu Law and Muslim had provision to provide the child's maintenance. The main objective was to develop the child within families. Generally, there was no law to tackle juvenile delinquency.⁹⁴ Ancient historical holy books

⁹¹ Supra 4, at 489

⁹² Supra 19, at 56

⁹³ Guide to the Records in the National Archives of India, Part V, 1-7, 1981.

Manusmriti and *The Hedaya* show some punishments related to children for certain offence, like:

- In Hindu Law, juvenile were thrown into dirty areas adjoining the public roads only as a cautious measure and were not entitled for punishment, whereas for same the same situation adults have to pay the fine.⁹⁵
- A young boy having sex with a consenting adult woman under the Muslim was not punishable.⁹⁶

Under Hindu laws king was having the power to impose punishment and to determine the motive, nature, time and place of the crime.⁹⁷ In Muslim law discretion was in hands of the *Kazee* to determine the degree of *Tazeer* or punishment. All these provisions under Hindu Law and Muslim Law shows that child was separate from adults, needing special care and they are responsible for their own acts.

2.2.2 1773-1850

The period 1773-1850 embarked on with the EIC as a regulating body for the purpose of trade and business and finished with establishment of the first law related to children. In this period, there is also conversion of prisons from locales⁹⁸ for transporting culprits to locales for keeping culprits, following suggestions proceeds from the state and internal arrangements of the Bengal jail. The committee's report appointed by Lord William Bentinck, in accordance to T.B. Macaulay, dealt with discipline in jails was submitted in 1839 and disclosed many evil things in jail management.

During this period the Britishers were getting more powerful. India, as British colony, did not remain uninfluenced. The Britishers maltreatment had eased out the indigenous rural economy. They were forcing many class of peoples to slum in the suburbs. It also increased crime among the children.

In 1843, for orphans and drifter child, the first '*ragged school*' was established with efforts of Britishers, Dr. Buist, who has established the ragged school, Bombay, today

⁹⁵ *Manusmriti*, *Shloka* 283, at 390.

⁹⁶ *The Hedaya*, at 187.

⁹⁷ *Ibid*, at 203.

⁹⁸ *Supra* 19, at 58.

is identified as the *David Sasoon Industrial School*. The main purposes of this school were:

- a) To rehabilitate the juvenile offenders; and⁹⁹
- b) To encourage of learning and training to juveniles.

All these developments together prepared the ground for the introduction of the Apprentices Act.¹⁰⁰

Apprentices Act, 1850: This Act in fact was not mainly dealt with the delinquent conduct of child but also dealt with the provisions relating to the relationship between employer and young offenders learning trade from them an apprentice.¹⁰¹ There were some provisions which admitted some principles and practices of the future Juvenile Courts and institution. This Act provides that the father or the guardian could bind a child between the ages of 10 and 18 years up to the age of 21 years. The Magistrates were authorized to act as guardian in respect of a delinquent child or any child convicted of vagrancy or the commission of a petty offences and could bind him as an apprentice to learn a trade, craft or employment.

2.2.3 1850-1919

In this period many laws were enacted related to children. The Female Infanticide Act 1870 and the Vaccination Act 1880 demanded to secure life and health of children; the Guardianship and Wards Act 1890 made provisions for their unrelenting care and protection. The matter related to child labor and the need for special provisions for them was recognized by the Factory Act 1881. In the field of criminal justice system, legislation against the forcible abduction of children was proposed in 1848 following the abduction of 17 years old due to personal vengeance.

It authorizes that magistrate may bind juveniles between 10-15 years as apprentices to learn a trade, craft, or employment instead of sending them to prison for minor offences. This Act was concerned with neglected children for the first time for legislative purposes and provided punishment (imprisonment) of delinquent children for minor offences. Indian Penal Code 1860 declares that children below 7 years of age as *doli*

⁹⁹ Ibid, at 59.

¹⁰⁰ Ibid, at 60.

¹⁰¹ Ibid.

incapax, while the presumption of *mens rea* could be rebutted in case of children in the 7-12 age group.¹⁰²

Reports on prison persistently pointed towards the need to bring change in policy and administration. It is noticed that the number of juvenile offenders increased during this period, the government asked for further explanation, as also the names of jails having separate provisions for juveniles. The Whipping Act 1864 enacted. It was hoped that this act would prove to be an eminent service in thinning the juvenile population in the jail.

“The applicability of the punishment of whipping to the classes of the offence usually committed by the young offenders, and the peculiarly deterrent effects it will, in all probability, have upon them, encourage us to believe that the class of juvenile offenders will not be henceforward, considerable enough to render the establishment of Reformatories necessary”¹⁰³

The Indian Jail Committee was comprised in 1864 in accordance with the Minute by a Governor General immediately after the passing of the Whipping Act.¹⁰⁴ Immediately some actions regarding to juvenile offenders and reformatories adopted. Many members of the Indian Jail Committee believed that if education was offered through reformatories in India, there was a great danger of unworthy parents urging their children to commit crimes to obtain government education. At that this committee has cleared that:

“it is highly important that juvenile offenders should not be exposed to contamination by association, within our Jails, with more hardened and practices culprits...there are many reasons...for thinking that in absolute isolation from adults, lies the only prospect of preserving the young from corruption during their residence in Jail. We are therefore unanimous in recommending that in every Jail means should be provided for separating juvenile offenders from adults, and that is, moreover, highly desirable, wherever such as arrangement is practicable, that separate sleeping accommodation should be provided for each juvenile inmate.”¹⁰⁵

¹⁰² Ibid.

¹⁰³ See Indian Jail Committee Report, 1864, at 19.

¹⁰⁴ Ibid, at 61.

¹⁰⁵ See, *Indian Jail Committee 1919-1920*, 30 Cmnd 1303, 1921, at 202.

In codes Madras, Bengal, Bombay and North Western Provinces to secure the prisons, it modified that system of the jails. Juveniles separated from adult offender. Each of these codes has adopted the different cut-off age of juvenile.¹⁰⁶ The idea to establish the reformatory schools for juvenile arose to see the bad condition in prisons and felt to separate the juvenile offenders from adult offenders. After that the committee established Reformatory School Act 1897. Sir Richard Temple observed that the juvenile offenders were actually ignored and they entitled to grow up. He felt that juveniles must be reform.

Reformatory Schools Act, 1897: This Act is a landmark proof in the history of juvenile justice system in India. According to this Act ‘youthful offender’ means any boy who has been convicted of any offence punishable with transportation or imprisonment and who, at the time of such conviction, was under the age of fifteen years.’¹⁰⁷ Under this there is one provision that is Arrest if escapes youthful offender, defined as “A police officer may, without orders from a Magistrate or without a warrant, arrest any youthful offender sent to a Reformatory School under this Act, who has escaped from such school or from his employer and take him back to such school or to his employer.”¹⁰⁸ This Act provides the techniques of rehabilitative procedure and penal provisions.

2.2.4 1919-1950

In the history of juvenile justice system in India, the most significance development is the Report of Indian Jail Committee 1919-20. This committee was adopted to suggest the measures regarding the prisons reforms administration under the headship of Sir Alexander Cardew. The committee visited in various jails to observe the administration of prisons. They came to the conclusion that the prisons should not have only the deterrent influence but also prisons should have reformatory influence. This committee encouraged the reformatory and discouraged the corporal punishment in the prisons. Further this committee recommended that the capacity should be fixed for the jails and

¹⁰⁶ Ibid, at 63.

¹⁰⁷ See, S. 4(a), The Reformatory Schools Act, 1897, available at <http://theindianlawyer.in/statutesnbareacts/acts/r18.html>, last seen on 09/03/2017.

¹⁰⁸ See, S. 29, The Reformatory Schools Act, 1897.

reformatory Schools according to their size, shape and capacity.¹⁰⁹ In 1917, preparation had been started for Children Act in Madras and this legislation passed in June 1920.¹¹⁰

This Report further pointed that the health of child criminal is mainly the product of an unfavorable environment. They should be entitle to fresh chance and better surroundings. Young offender is not habitual criminal; they must be reformed in jails. From these points it was agreed that the child offenders should be subjected to different treatment from the adults.

After the mental and physical examination of the children, child should be sent to the institution specially provided for them. Further this committee recommended that the constitution of the juvenile courts with procedures should be '*as informal and elastic as possible*'.¹¹¹ The main object of the procedure that, 'in the mind of the magistrate a clear recognition, of the fact that he is dealing with a case of a special character in which he is expected to assume a different standpoint, a more paternal attitude, to adopt the American idea, from that which he would employ in trying a case against an adult.'

Further this committee gave some attention towards making provisions for children who had committed crime, but they were living with criminals or without proper care of guardians and parents. On 20 June 1920 Madras (now Tamil Nadu) had already passed the Children Act. The provisions of this Act described the age limit of the child, prohibition against imprisonment of child offenders, remand homes, certified schools, and non-criminal children in bad surroundings were recommended for adoption by other states.¹¹² In that period most states followed this suit in the years to follow:-

- Delhi Children Court 1941;
- Mysore Children Act 1943;
- Travancore Children Act 1945;
- Cochin Children Act 1946; and
- East Punjab Children Act 1949;¹¹³

¹⁰⁹ Pragati Ghosh, *Short essay on Indian Jail Reforms Committee*, Share Your Essay, available at <http://www.shareyouressays.com/121520/short-essay-on-indian-jail-reforms-committee>, last seen on 09/03/2017.

¹¹⁰ Supra 19, at 65.

¹¹¹ Ibid, at 66.

¹¹² Ibid, at 67.

¹¹³ Ibid, at 68.

2.2.5 Post-1950

In the year of 1950, official and non-official developments have contributed towards the juvenile justice system in India. There were some opinions which were contributed to the development of juvenile justice system:

- i. Children Act 1960: was enacted on 26 December 1960. The provisions of this Act provide care, protection, maintenance, education, training, welfare, rehabilitation, etc. According to this Act ‘child’ means a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years¹¹⁴ and ‘*delinquent child*’ means who has been found to have committed an offence.¹¹⁵ Juvenile board may pass the order regarding the juvenile delinquent. If juvenile court may think fit:

- After advice allow the child to go home;¹¹⁶
- If a child beyond the age of 14 years and earning money, then he was liable to pay fine;¹¹⁷

Section 24¹¹⁸ of the Children Act 1960 separate juveniles from adults. “Notwithstanding anything contained in Section 223 of the Code of Criminal Procedure, 1973 or in any other law for the time being in force, no child shall be charged with or tried for, any offence together with a person who is not a child.”¹¹⁹

Further this Act provides for the Presumption and determination of age¹²⁰ of the juvenile. This Act provides that “where it appears to a competent authority that a person brought before it under any of the provisions of this Act is a child, the competent authority shall make due inquiry as to the age of that person and for that purpose shall take such evidence as may be necessary and shall record a

¹¹⁴ S. 2(e), Children Act, 1960, available at <https://indiankanoon.org/doc/1973522/>, last seen on 10/03/2017.

¹¹⁵ S. 2(j), Children Act, 1960.

¹¹⁶ S. 21(a), Children Act, 1960.

¹¹⁷ S. 21(d), Children Act, 1960.

¹¹⁸ See, S. 24 of Children Act 1960, define, ‘No joint trial of child and person not a child.’

¹¹⁹ S. 24(1), Children Act 1960.

¹²⁰ S. 32, Children Act 1960.

finding whether the person is a child or not, stating his age as nearly as may be.”¹²¹

*Hiralal Mallick vs. State of Bihar*¹²² in this Supreme Court pointed out some lacunas in Children Act 1960. Justice Krishna Iyer, observed that;

“It is a badge to our human culture that we hold fast to a national youth policy in criminology... A necessary blossom of this ideology is the legislative development of criminological pediatrics. And yet it is deeply regrettable that in Bihar, the land of the Buddha-the beacon-light who’s encompassed all living beings-the delinquent child is inhospitably treated. Why did the finer consciousness of juvenile justice not dawn on the Bihar legislators and government? Why did the state not pass a Children Act through its elected members? And one blushes to think that a belated Children Act, passed in 1970 during President’s rule, was allowed to lapse... With all our boats and all our hopes, our nation can never really be decriminalized until the crime of punishment of young deviants is purged legislatively, administratively and judicative. This twelve years old delinquent would have had a holistic career ahead, instead of being branded a murderer, had a Children Act refined the statute book and the state set up Children’s Court and provided for healing the psyche of the little human.”

- ii. *Relevant Provisions in the Code of Criminal Procedure*: The Code of Criminal Procedure 1898 contained some provisions regarding the jurisdiction of the criminal courts and custody of the juvenile offenders. This Act define jurisdiction of the juvenile courts as;

“Any offence other than one punishable with death or transportation of life, committed by any person who at the date when he appears or is brought before the court under the age of fifteen years, may be tried by Chief Judicial Magistrate or Chief Metropolitan Magistrate, or by any Magistrate specially empowered by the Government to exercise the powers conferred by or under any law providing the custody, trial and punishment of youthful offenders by

¹²¹ S. 32(1), Children Act 1960.

¹²² *Hiralal Mallick vs. State of Bihar*, (1977) 4 SCC 44; (1977) (Cri.) 538.

any Magistrate empowered by or under such law to exercise all or any of the powers conferred thereby”¹²³

iii. Five Year Plans:

In 1951, along with the establishment of Five Years Plan, the provisions related to children were also established under Juvenile Justice System. However, this plan provided no details as to how the expenditure incurred while carrying out the activities under the said establishment shall be taken care of.

Further, the plan was yet to be implemented at the center as well as state level with regard to the ‘child neglect’ and ‘juvenile delinquency’.¹²⁴ The Eighth Five Year Plan(1992-1997), had focused towards the ‘Child Survival’, ‘care and protection to the child’ in the name of human development.¹²⁵ This indicates that, there has been a phenomenal increase in the budgetary allocation for social welfare schemes under the seven Five Years Plan as the allowance had increased from Rs 4 crore (in the First Plan) to Rs 29,350 crore (in the Seventh Plan) and the matters falling within the purview of social welfare, too, increased accordingly.¹²⁶

The Ganga Sharan Sinha Committee in the year 1968 had estimated the non-recurring cost and the recurring cost regarding the programs related to the care and protection of children alone. The non-recurring cost was estimated to be about, Rs. 160 crore and recurring cost was Rs. 4866 crore.

The Seventh Year Plan of Five Year Plan had distributed Rs. 799.97 crore for central and centrally sponsored schemes like the ICDS (Integrated Child Development Services), for children in need of care and protection, prevention and control of juvenile delinquency, juvenile maladjustment, crèches, and day-

¹²³ S. 29 B, Code of Criminal Procedure, 1898, available at http://bdlaws.minlaw.gov.bd/sections_detail.php?id=75§ions_id=14338, last seen on 09/03/2017.

¹²⁴ Supra 19, at 70.

¹²⁵ Manisit Das and Ankit Mukta, *Children in India's Five Year Plan*, at 24 (2011), available at http://www.cry.org/resources/pdf/va/Children_In_Indias_FiveYearPlans_2013.pdf, last seen on 11/03/2017.

¹²⁶ Seventh Five Year Plan (1985-1990), under this plan social service included health, family welfare, housing and urban development, water supply and sanitation, welfare of Schedule Caste/Schedule Tribes and other backward classes, special central additive for Schedule caste component plans, social, women’s welfare, nutrition, labor, and labor welfare, education, culture, and sport.

care centers for children of working mothers, and training of ICDS and non-ICDS functionaries.¹²⁷

Whereas, the Ninth Year Plan recognized the alarming situation with respect to social problem of juvenile delinquency, abuse, crime and exploitation. However, effectiveness with regard to the said issues came in India once the Juvenile Justice Act 1986 was enacted.¹²⁸

The Tenth Year plan¹²⁹ intended to reach out to every child in need of care and protection and to ensure that his/her basic rights are fulfilled. To honor these rights, the said plan aimed:

- To ensure that every program, policy, or document proposed by the ministry shall be in compliance with the letter and spirit of the Convention on the Rights of the Child;
- To ensure that all programs shall be planned and implemented with the active participation of children at all levels;
- To perceive the child as an entity vested with the Constitutional rights rather than as a beneficiary;
- To work towards the improvement of the inter-ministerial communication and co-ordination on issue related to child protection;
- To implement programs building self-confidence and self-reliance in children instead of creating dependency on the support systems;

Basically this policy shall aim at providing for the children with no familial support, children with families in crisis, abused children, children with special need, children of commercial sex-workers, children in conflict with law, and children affected by disaster or conflict.¹³⁰

iv. Policy and Programs:

In 26th April 2013 India had adopted a National Policy for Children. This National Policy dealt with children as a nation's supreme assets and that their program must

¹²⁷ Supra 19, at 71.

¹²⁸ Ibid, at 72.

¹²⁹ Tenth Five Year Plans (2002-2007).

¹³⁰ Ibid, at 73.

develop the human resources. Preventive and promotive aspects of child care, education, training, rehabilitation of destitute and delinquent children, protection to the neglected children, cruelty, exploitation facilities and services for physically and mentally handicapped children and specifically those belonging to weaker sections of the societies were ensured by this policy.

The United Nations declared the year 1979 as the International Year of the Child (IYC) with an objective at 'Reaching the Deprived Child'. This policy provided privileges to the children and gave priority to the deprived children. One of the basic aims of this policy was 'basic rights of the children and to protect them against neglect, cruelty, hazards, and exploitation by promoting effective implementation of existing legislation and enacting new ones where necessary.' Apart from this each state increased programs and establishment and initiated various kinds of services for the care and protection and welfare of the children.¹³¹

In 1985, SAARC¹³² issues concerning children have been high on the organization's agenda and receive the highest priority in national development planning.¹³³

Under the Eighth Five Year Plan¹³⁴ in India, 'Human Development' was recognized as the core of the all the development efforts. Under this Plan, Child survival and development received high priority. In 1992, at the time of eighth plan two National Plans were adopted, one collectively dealing with children and other exclusively providing for the girl child.

On June 18, 1992 India adopted 'A National Program of Action on Children-India', as a follow-up of the World Declaration on the Survival, Protection, and Development of Children, reaffirming India's commitment in achieving the goals described in the program.¹³⁵

¹³¹ Ibid, at 74.

¹³² SAARC (South Asian Association for Regional Cooperation), it is intergovernmental organization and union of Asian countries. The members of the SAARC declaration are India, Afghanistan, Bangladesh, Bhutan, Maldives, Pakistan, Nepal and Sri Lanka. This declaration found in Dhaka on 8th December 1985.

¹³³ Dhaka declaration, adopted by SAARC in Dhaka, 1985, available at <http://www.saarc-sec.org/userfiles/01-Dhaka-1stSummit1985.pdf>, last seen on 11/03/2017.

¹³⁴ Eighth Five Year Plan (1992-1997).

¹³⁵ Ibid, at 75.

In 2005, India adopted 'The National Plan of Action for Children' to ensure the basic rights of the children up to the age of 18 years. Under this Plan government ensured that all channels should result into proper arrangement of environment for survival, growth, development and protection of children, resulting in full utilization of his potential and growth and ultimately leading to healthy and productive capital of the country.¹³⁶ Further, it deals with the protection of the children. The main objectives of this Plans is:

- To protect the child against neglect, exploitation, sexual and physical abuse, corporeal punishment, maltreatment, injury;¹³⁷
- To ensure the development of children, protection, participation rights of the children in difficult circumstances; such as beggar, drug addict, sex workers, juveniles, and all other requirements of care and protection;
- To provides the need of shelter, education, rehabilitation and prevention from exploitation of children;¹³⁸

Other policy developed by Indian Government include supplementary nutrition feeding under the ICDS,¹³⁹ children homes, bal bhawans, remand homes, observation homes,¹⁴⁰ services to destitute children and children in need of care and protection and CHILDLINE.¹⁴¹

v. Legal Provisions:

In 1950 the Constitution was adopted by Indian Government, containing special provisions for Children. As per The Nehru Report¹⁴² 'principles under the Constitution of India' provides that:

¹³⁶ Department of Women and Child Development, 'The National Plan of Action for Children 2005', at 1, available at <http://childlineindia.org.in/CP-CR-Downloads/National%20Plan%20of%20Action.pdf>, last seen on 11/03/2017.

¹³⁷ Ibid, at 29.

¹³⁸ Ibid, at 30.

¹³⁹ Integrated Child Development Services (ICDS), this policy adopted in 2 October 1975 by Indian Government. The aim of this policy is to provide the food, preschool education, primary healthcare to children under age of 16 years and their mothers. Other, object of this policy is to ensure and provide the proper development of physically and mentally to the children, available at <http://wcd.nic.in/schemes/integrated-child-development-servicesicds>, last seen on 12/03/2011.

¹⁴⁰ Supra 19, at 76.

¹⁴¹ Ibid, at 77.

¹⁴² Nehru Report prepared by committee with Motilal Nehru as its chairman, appointed pursuant to the all Parties Conference meeting in May 1928 in Bombay. See, *History Pak*, available at <http://historypak.com/nehru-report/>, last seen on 13/03/2017.

- All the citizens of India have a right to free elementary education without any discrimination of caste and creed;
- Parliament shall make appropriate laws for the conservation of health and fitness for work of all citizens, and welfare of children.

These principles are incorporated under the Articles 15(3), 24, 39(e) and (f) and 45 of Indian Constitution.¹⁴³ Further Constitution also provides some fundamental rights which children will enjoy along with adults. Article 45 of the Indian Constitution obliged the state to try to deliver free and compulsory education to all children until they complete the age of 14 years.¹⁴⁴

The CA 60 for the first time in India, forbids under any circumstances child imprisonment. This plan adopted some provision related to children court and child welfare board. This board was established to tackle with the delinquency and neglected child. This authority was manned by persons who have special knowledge of child psychology and welfare. This Act introduced the three-tier system of:

- An observation home for receipt of children during the pendency of their proceedings;
- A children's home for housing neglected children, and
- A distinct school for delinquent children.

Kario alias Mansingh Malu and others vs. State of Gujarat,¹⁴⁵ Gujarat High Court strike down “the provision prohibiting a lawyer to be present in juvenile court proceedings and also removed the other difficulties experienced over the years in the function of a CA 60, Act which led to the Children (Amendment) Act 1978 and this act permitted lawyers in children court; made provisions for inter-transfer of cases between the board and the children court; and for wider community involvement through measures like a panel of social workers to assist the children court, fit person, fit institution, and place of safety.”

The diverse views have been adopted by six states like West Bengal and Gujarat had considered¹⁴⁶ the age of 18 years for both boys and girls, in Maharashtra,

¹⁴³ Supra 19, at 80.

¹⁴⁴ Ibid, at 81.

¹⁴⁵ *Kario alias Mansingh Malu and others vs. State of Gujarat*, 1969, 10 Cri LJ 66.

¹⁴⁶ Ibid, at 82.

Punjab, and Uttar Pradesh it was 16 years for both boys and girls. Tamil Nadu has directed that the person below 14 years to be considered as children and those above 14 years but below 18 years as young person, and has also established institutions for them according to this basis. Difference in age led to differential treatment meted out to children of the same age group residing in different states. For example: A delinquent child of 17 years was entitled to all benefits of the Children Act in Gujarat or West Bengal but if the person belonged to Maharashtra or was transferred there, they would have been treated as an adult offender and might have ended up in its jails.¹⁴⁷

Juvenile Justice Act 1986: Juvenile Justice Act, 1986 was enacted on 22 August 1986¹⁴⁸ by replacing the previous Children Act 1960. This Act was applicable on delinquent juvenile and neglected children in India. This act has not only aimed to reconstruct the juvenile system but also aimed to develop the new concept of social justice which is enshrined under Indian Constitution.¹⁴⁹ This Act had some objectives, namely:

- To ensure that no child under any circumstances be lodged in jail or police lock-up;
- To ensure and provide the special prevention and treatment to delinquent juveniles;
- To establish an authority in juvenile justice system in term of investigation and prosecution;
- To provide the care, protection, treatment, development, and rehabilitation of various categories of coming within the preview of the children in juvenile justice system in India;
- To constitute particular offences in relation to juveniles and provide punishment therefore;

¹⁴⁷ Ibid, at 84.

¹⁴⁸ Juvenile Justice Act, 1986, available at http://www.vakilno1.com/bareacts/juvenilejusticeact/juvenilejusticeact.html#1_Short_title_extent_and_commencement, last seen on 14/03/2017

¹⁴⁹ 'Historical Development of Juvenile Justice system', 65, at 69 available at http://shodhganga.inflibnet.ac.in/bitstream/10603/31588/8/08_chapter%202.pdf, last seen on 14/03/2017.

According to the Juvenile Justice Act 1986, Delinquent Juvenile means, “a juvenile who has been found to have committed an offence.”¹⁵⁰ Further this Act defines the meaning of juvenile as , “a boy who has not attained the age of 16 years and girl who has not attained the age of 18 years.”¹⁵¹

The salient features of the Juvenile Justice Act, 1986, are stated below (Bare Act Juvenile Justice Act, 1986):

- This Act provided for the different proceedings for neglected and delinquent children. Neglected juveniles were to be produced before Welfare Board and delinquents were to be produced before Juvenile Court. No person will be appointed as a member of the Board or a Magistrate in the Court unless the members have special knowledge of child psychology and child welfare.
- In case Juvenile Court is satisfied at the time of inquiry that juvenile has committed an offence, then Court may pass the order directing the juvenile to be sent to the special homes.¹⁵²
- Court cannot pass the order related to death sentence and imprisonment to the juveniles.¹⁵³
- Section 23¹⁵⁴ of this Act defines that no proceeding shall be instituted and no order shall be passed against juvenile under Chapter VIII of the Criminal Procedure Code (“Security for keeping the peace, and for good behavior”).
- Juvenile cannot be tried along with the one who is not juvenile.¹⁵⁵
- If juvenile is found to be suffering from diseases needing continued medical treatment which may result in physical or mental illness, the competent authority may send the juvenile to any place recognized to be as permitted placed accordance with the rules made under this Act for such period.¹⁵⁶

¹⁵⁰ S. 2(e), Juvenile Justice Act, 1986.

¹⁵¹ S. 2(h), Juvenile Justice Act, 1986.

¹⁵² S. 21(d), Juvenile Justice Act, 1986.

¹⁵³ S. 22(1), Juvenile Justice Act, 1986.

¹⁵⁴ S. 23 defines, “Proceeding under Chapter VIII of the Code of Criminal Procedure not competent against juvenile.”

¹⁵⁵ S. 24 of Juvenile Justice Act, 1986 defines, ‘Not joint trial of juvenile and person not a juvenile’.

¹⁵⁶ S. 31(1), Juvenile Justice Act, 1986.

- This Act defines that some circumstances should be kept in mind while giving order namely;¹⁵⁷ the age of the juvenile, the state of physical and mental health of the juvenile, the circumstances in which the juvenile was and is living, the report made by probation officers and such other circumstances may, in the opinion of the competent authority, require to be taken into consideration in the interest of the welfare of the juvenile.
- Further this Act defines that the State Government have power to discharge and transfer neglected juvenile and delinquent juvenile from the juvenile home or special home or brostal school.¹⁵⁸
- No action and proceeding shall lie against State Government or any other officers appointed under this Act in the respect of anything which is done in good faith or intended to be done in pursuance of this Act or of any rules or orders made there under.¹⁵⁹
- Any police officer may take charge without warrant of juvenile who has escaped from a special home or a juvenile home or from the care of the person under whom he was placed under this Act and shall be sent back to the special home and no proceeding shall be instituted in the respect of juvenile by reason of such escape.

Juvenile Justice (Care and Protection of Children) Act, 2000: “Juvenile Justice Care and Protection of Children) Act 2000” was adopted replacing the Juvenile Justice Act 1986. According to this Act “Juvenile” or “Child” means a person who has not completed 18 years of age.¹⁶⁰ Further this Act defines the definition of “Juvenile in conflict with law” means a juvenile who is alleged to have committed an offence and has not completed the age of 18 years as on the date of commission of an offence.¹⁶¹ Main objects of this Act were:

- To prescribe a uniform age of 18 years for both boys and girls;
- To ensure that speedy disposal of cases by the authorities envisaged under this Bill regarding juvenile or child within a time limit of four months;

¹⁵⁷ S. 33, Juvenile Justice Act, 1986.

¹⁵⁸ S. 46, Juvenile Justice Act, 1986.

¹⁵⁹ S. 61, Juvenile Justice Act, 1986.

¹⁶⁰ S. 2(k), Juvenile Justice (Care and Protection of Children) Act, 2000.

¹⁶¹ S. 2(l), Juvenile Justice (Care and Protection of Children) Act, 2000.

- To lay down the basic principles of administration of justice to juvenile or child;
- To bring the juvenile law in conformity with the United Convention on the Rights of the Child;
- To create special juvenile police units with a humane approach through sensitization and training of police personnel;

The salient features of the Juvenile Justice (Care and Protection of Children) Act, 2000 are stated below (Bare Act Juvenile Justice (Care and Protection of Children) Act, 2000):

- Firstly, this Act provided that no joint proceeding shall be conducted of juveniles and person who is not a juvenile.¹⁶²
- Secondly, “no member of the Board shall be appointed unless he has special knowledge or training in child psychology or child welfare and no social worker shall be appointed as a member of the Board unless he has been actively involved in health, education, or welfare activities pertaining to children for at least seven years.”¹⁶³
- Thirdly, it provided Punishment in respect of escaped juvenile.¹⁶⁴
- Fourthly, it covers stipulations concerning sending a Juvenile or Child outside jurisdiction.¹⁶⁵

On one side this Act have crucial features, but on other side this Act have some loopholes also. The Proviso of Section 14 defines that inquiry related to juvenile shall be completed within 4 months by Court. The Court may extend the period in special cases, but there is no reference about what is a maximum period and the special cases in which period should be extended. This Section gave huge willfulness powers in the hand of Juvenile Board.¹⁶⁶

¹⁶² S. 18, Juvenile Justice (Care and Protection of Children) Act, 2000.

¹⁶³ S. 4(3), Juvenile Justice (Care and Protection of Children) Act, 2000.

¹⁶⁴ S. 22, Juvenile Justice (Care and Protecting of Children) Act, 2000.

¹⁶⁵ S. 50, Juvenile Justice (Care and Protection of Children) Act, 2000.

¹⁶⁶ Ankita Gupta, The Juvenile Justice (Care and Protection of Children) Act, 2000-A Critique, available at

<https://poseidon01.ssrn.com/delivery.php?ID=703102118110004023102007117098105064063039030001048013074091000010087090081096075094048055006126041126113101103119100078124018057017032014011086111025097103118103004073055050097080024065006099116094004012115080096124008093098099108027107100000098104002&EXT=pdf>, last seen on 17/04/2017.

Section 23 of JJ Act 2000 provides that if any person commits an offence of assault, cruelty or abandons juvenile or child shall be punished for 6 months imprisonment or fine which depicts that on one side Government was trying to control cruelty against juvenile but on another side prescribed punishment was very less, resulting into non-deterrent effect of punishment.

No provisions have been provided in the Act regarding the specifications of the special training of the officials who are supposed to deal with juvenile offenders. Even though Sec. 63 provides for properly trained police unit, it pays mere lip service to the requirement of special training because no proper guidelines have been provided as to how the special training will be given. Lack of properly trained officials defeats the entire purpose of the Act.¹⁶⁷ The JJ Act, 2000 was needed to pay attention towards the age of delinquent juvenile. During the age of adolescence, children becomes more conceptual, multidimensional and acquires a better understanding of the nature of the concept.

In *Reepak Ravindran case*,¹⁶⁸ in this case the 15 years old boy commits rape of a 7 years old girl after watching pornography film. He knew all magnitudes at the time of occurrence of crime. This crime was heinous in nature and Juvenile Court suggested that the matter should be sent to Government¹⁶⁹ for deciding the punishment or detention to juvenile.¹⁷⁰ This concept is known as waiver; as it is used in the United States of America. That means juvenile is treated as an adult in the case of heinous offences. There are three types of waiver:

- Legislative waiver;
It means legislature exclude jurisdiction of the juvenile court to handle some offences such as murder, rape, etc., because there is no leniency in these kind of cases.
- Judicial waiver;
It means that the judge of the Juvenile Court has the discretionary power to waive this jurisdiction in the case of heinous offences.
- Prosecutorial waiver;

¹⁶⁷ Ibid.

¹⁶⁸ *Reepak Ravindran vs state of AP*, (1991) Cri LJ 595 (AP).

¹⁶⁹ *Gulzar Singh v. State of Punjab*, (1979) 91 Punj 477.

¹⁷⁰ *Peter Gill v. State of Punjab*, (1983) Cri LJ 231 (Punj) NOC.

It means some powers are given to prosecutor in the case of heinous offences.¹⁷¹

Other lacuna of this Act was inefficiency of funds to rehabilitations homes and resources.

In the juvenile justice system there are two main causes for re-examination of juvenile justice:

- Lack of common understanding and to determine the maturity of the child.
- Lack of proper procedure or proceedings related to juvenile.

*Kent vs. United States*¹⁷² Supreme Court elaborated some factors to determine the amenable treatment of juvenile in juvenile justice system, namely:

- Seriousness and consequences of the case;
- Criminal record of the child;
- The age of the child and maturity level of the child;
- Background of the child;¹⁷³

Juvenile Justice (Care and Protection of Children) Bill, 2014: Juvenile Justice (Care and Protection of Children) Bill, 2014¹⁷⁴ replaces the Juvenile Justice (Care and Protection of Children) Act, 2000. This Bill recognizes children in conflict with law and children need to be care and Protection under juvenile justice system in India. Further this Bill sets out the age group regarding juveniles. The age group of 16-18 should be tried as an adult, if they commit any heinous crime. This Bill permits the establishment of Juvenile Justice Board (JJB) and Child Welfare Committee (CWC) in each district of the states. Juvenile Justice Board has power to ‘preliminary assessment into heinous offence by Board’.¹⁷⁵

¹⁷¹ Ibid, at 6.

¹⁷² Kent vs. United States, 383 U.S. 541, 566-67 (1966, Supreme Court of the United States).

¹⁷³ Ibid, at 12.

¹⁷⁴ Juvenile Justice (Care and Protection of Children) Bill, 2014 (draft bill, Aug 2014), available at <http://www.prsindia.org/uploads/media/Juvenile%20Justice/Legislative%20Brief%20Juvenile%20Justice%20Bill.pdf>, last seen on 17/03/2017.

¹⁷⁵ PRS Legislative Research , Legislative Brief, The Juvenile Justice (Care and Protection of Children) Bill, 2014, 1, available at <http://www.prsindia.org/uploads/media/Juvenile%20Justice/Legislative%20Brief%20Juvenile%20Justice%20Bill.pdf>, last seen on 17/03/2017.

Juvenile Justice (Care and Protection of Children) Act, 2015: Juvenile Justice (Care and Protection of Children) Act, 2015 replaced Juvenile Justice (Care and Protection of Children) Act, 2000. This Act provides provisions for both Children in need of care and protection and children in conflict with law.¹⁷⁶ According to this Act, ‘Child’¹⁷⁷ and ‘Juvenile’¹⁷⁸ means “a person who has not completed 18 years of age” and ‘child in conflict with law’ means, “a child who is alleged or found to have committed an offence and who has not completed 18 years of age on the date of commission of such offence.”¹⁷⁹

The salient features of the Juvenile Justice (Care and Protection of Children) Act, 2015 are stated below:

- This Act treats as a child all children below the age of 18 years equally, except that age group 16-18 as an adult if they commit heinous crime.
- No juvenile to be punished with death sentence or life imprisonment.¹⁸⁰
- This Act lays down some fundamental principles, namely: *Principle of presumption of innocence, Principle of dignity and worth, Principle of participation, Principle of best interest, Principle of family responsibility, Principle of safety, Positive measure, Principle of equality and non-discrimination, Principle of right to privacy and confidentiality, Principle of fresh start, Principle of natural justice.*¹⁸¹
- This Act stipulates that, ‘no Joint proceedings of child in conflict with law and person not a child.’¹⁸²
- If any juvenile under the age of 16 years commit a heinous crime, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances.¹⁸³

¹⁷⁶ Press Information Bureau, Government of India, Ministry of Women and Child development, *The Juvenile Justice (Care and Protection of Children) Act, 2015 come into force from today*, 2016, available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=134513>, last seen on 14/03/2017.

¹⁷⁷ S. 2(12), Juvenile Justice (Care and Protection of Children) Act, 2015.

¹⁷⁸ S. 2(35), Juvenile Justice (Care and Protection of Children) Act, 2015.

¹⁷⁹ S. 2(13), Juvenile Justice (Care and Protection of Children) Act, 2015.

¹⁸⁰ S. 21, Juvenile Justice (Care and Protection of Children) Act, 2015.

¹⁸¹ S. 3, Juvenile Justice (Care and Protection of Children) Act, 2015.

¹⁸² S. 23, Juvenile Justice (Care and Protection of Children) Act, 2015.

¹⁸³ S. 15 Juvenile Justice (Care and Protection of Children) Act, 2015.

This Act gives the huge effect upon rehabilitation of juvenile in conflict with law. If any juvenile in the age group of 16-18 years is brought before court for having been a convict of heinous crimes, which is step toward the retributive justice, not a juvenile justice. Because they are treated like an adults and punished for seven years or more¹⁸⁴ but the proceedings are held in the jurisdiction of Children’s Court.¹⁸⁵ They are sent to place of safety till they obtain the age of 21 years and afterward, they shall be transferred to jail.¹⁸⁶ Juvenile punishment cannot be a deterrent and it is step to make a juveniles staunch criminal. Basically, the main objective of this Act to reform the juveniles or child and not to punish him.¹⁸⁷

This Act contravenes:

- i. The base of the Juvenile Justice Act.
- ii. The fundamental rights of Indian Constitution.
- iii. This Act does not shield significant factors, e.g. family background, psychological factors or social factors.

Table 1.4 shows, some distinctive Features of Juvenile Justice Act 1986, Juvenile Justice (Care and Protection of Children) Act, 2000¹⁸⁸ and Juvenile Justice (Care and Protection of Children) Act, 2015:

S. No.	Act of 1986	Act of 2000	Act of 2015
1.	Juvenile means a boy under 16 years or a girl less than 18 years.	Juvenile means a child (both girl and boy) under the age of 18 years.	Juvenile means a child below the age of 18 years and less than 16 in the case of heinous crime.
2.	1986 Act covered both delinquent juveniles	2000 Act applied to the juvenile in conflict with	2015 Act applies to the children in conflict with

¹⁸⁴ S. 2(33), Juvenile Justice (Care and Protection of Children) Act, 2015.

¹⁸⁵ S. 18(3), Juvenile Justice (Care and Protection of Children) Act, 2015.

¹⁸⁶ S. 19(3), Juvenile Justice (Care and Protection of Children) Act, 2015.

¹⁸⁷ *Amendment to Juvenile Justice Act criticized*, THE HINDU, 25/4/2015, available at <http://www.thehindu.com/news/national/karnataka/amendment-to-juvenile-justice-act-criticised/article7140406.ece>, last seen on 7/3/2017.

¹⁸⁸ Dr. SS. Srivastava, *Criminology, Penology and victimology*, 471, (4th ed., 2012).

	and neglected juveniles.	law and to the children in need of care and protection.	law and children in need of care and protection.
3.	‘Delinquent juvenile’ meant the juvenile found to have committed the crime	‘Juvenile in conflict with law’ is the juvenile who is alleged to have committed an offence and has not completed eighteen years of age as on the date of commission of such offences.	‘Juvenile in conflict with law’ is the juvenile who is alleged to have committed an offence and has not completed eighteen years of age as on the date of commission of such offences.
4.	There was no provision of corporal punishment.	There was no provision of corporal punishment.	‘Corporal punishment’ means physical punishment that involves the thoughtful infliction of pain as retribution for an offence, or for the purpose of correcting or remodeling the child.
5.	‘Neglected juvenile’ meant a juvenile who- <ul style="list-style-type: none"> • Was found begging; or • The child was found without having any home or settled place of home and without any supposed means of 	‘Child in need of care and protection’ means a child- <ul style="list-style-type: none"> • A child, who was found without any home or settled place or home and without any ostensible means or maintenance; 	‘Child in need of care and protection’ means a child- <ul style="list-style-type: none"> • Who is found without any home or settled place of home and without any ostensible means of maintenance;

	<p>maintenance and was destitute.</p> <ul style="list-style-type: none"> • The person had a parent or guardian who was unfit or incapacitated to exercise control over the juvenile; or • The person lived in a brothel or with a prostitute or frequently went to any place used for the purpose of prostitution, or was found as associated with any prostitute or any other person who led an immoral, drunken or depraved life; or • The person was being or was likely to be abused or exploited for immoral or illegal purpose or unconscionable gain. 	<ul style="list-style-type: none"> • A child, who was found begging and who was either a street child or a working child; • Who resides with a person (whether a guardian or the child or not) and such person- <ul style="list-style-type: none"> a) A person had threatened to kill or injure the child and there was a reasonable likelihood of the threat being carried out; or b) A person who killed, abused or neglect some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglect by that person;¹⁸⁹ 	<ul style="list-style-type: none"> • Who is found working in contravention of labor laws for the time being in force or is found begging, or living on the street; or • Who resides with a person (whether a guardian of the child or not) and such person- <ul style="list-style-type: none"> a) A person has injured, exploited, abused or neglect the child or has violated any other law for the time being in force meant for the protection of child; or b) A person has threatened to kill, injure, exploit, or abuse the child and there is a reasonable likelihood of the threat being carried out; or
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¹⁸⁹ Ibid, at 472.

			c) A person who killed, abused, neglected, or exploit some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person;
6.	There was provision of Juvenile Homes, Special Homes, Observation Homes and After-Care Organization	There was provision of Children's Home, Shelter Home and Special Home. ¹⁹⁰	There are provisions of Open Shelter, Foster Care, Sponsorship, Observation Homes, Special Homes, Place of Safety, Children's Home, after care of children leaving child care institution.
7.	There was no provision for heinous offences.	There was no provision for heinous offences	'heinous offences' include the offences for which the minimum punishment under the Indian Penal Code, 1860 or any other law for the time being in force is not less than imprisonment for seven years.

¹⁹⁰ Ibid, at 474.

8.	There was no provision for preliminary assessment into heinous offences by Board.	There was no provision for preliminary assessment into heinous offences by Board.	Under this Act there is one provision for preliminary assessment into heinous offences by Board- 'In case heinous offence alleged to have been committed by a child above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he had been alleged to have committed such offence.
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2.3 Two Hundred Sixty Fourth Report on Juvenile Justice (Care and Protection of Children) Bill, 2014

Department-related Parliamentary Standing Committee on Human Resource Development has presented 264th Report on Juvenile Justice (Care and Protection of Children) Bill, 2014. This Bill was introduced in Lok Sabha on dated 12th August 2014 and referred to the Committee on Human Resources Development by the Chairman, Rajya Sabha, in discussion with the Speaker, Lok Sabha on the 19th September, 2014 for examination.

The Committee noticed problems in the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000. **Regarding to this issue, Committee has presented the following problems:**

- Delay in several procedures in this Act, like decisions by Child Welfare Committees and Juvenile Justice Board;
- Delayed inquiry and investigation in cases related to children in petty offences;
- Increasing reports of incidents depicting abuse of children in rehabilitation homes.
- Lack of facilities in rehabilitation homes, particularly those which are not registered under this Act.
- Inadequacy related to roles, powers, responsibilities, and liability of Juvenile Justice Board and Child Welfare Committees.
- Restriction on the child to be participant in Board proceedings.
- Inadequate procedure of the Board related to child especially in the case when child was found innocent.
- Inefficiency of provisions related to registration of institution.
- Inefficiency of provisions related to crime against child such as corporeal punishment, etc.
- Increase in serious crime conviction by children and inadequacy of specific provisions related to such offences.

In 2007 Government of India had framed the Model rules for Juvenile Justice Act. These Rules have been adopted by State Government according to their own needs.

The Ministry of Women and Child Development laid down high points:

- High pendency of cases related to petty offences by child. Legislation proposed termination of proceedings in the case investigation in petty offences after period of six months lingers on.
- To check the exploitation of child in rehabilitation homes, Board and Committee shall conduct at least one inspection in every month.
- Committee suggested that there is a need to insert a new chapter related to Adoption of child and procedure for orphan, abandoned and surrendered child. Central Adoption Resources Authority (CARA) has been given a legal status

authority to deal with procedure of Adoption better. This chapter includes provisions related to adoption and punishments in detail.

- Prescribed procedure in detail related to ‘legally free for adoption’ by Child Welfare Committee (CWC) and includes such declaration which is 2 months for child who is up to 2 years of age and within 4 months for child above 2 years of age.
- It is necessary to inform CWC or Local Police or DCPU or Childline Services within 24 hours related to abandoned or missing child. In case of non-reporting regarding crime, imprisonment up to 6 months or fine of 10 thousand can be imposed.
- Committee suggested that registration should be made necessary for institutions and in case of disobedience must be punished, as this provision was missing in the Juvenile Justice (Care and Protection of Children) Act, 2000.
- In JJ Act, 2000 covers finite crimes against child such as cruelty, abuse, intoxication or narcotic drugs, etc. Committee proposed to add certain offences such as sale, corporeal punishments, ragging, kidnapping, abducting, etc.

The Committee suggested that the main objective of the legislation should be to provide care, protection, growth, social-integration of child in problematic situation by adopting a child-friendly access. Committee observes that there are number of problems which are faced in the implementation of JJ Act, 2000. Along with increasing of serious offences that committed by child in the age group of 16-18 years which is obliged to think again about juvenile offenders.

The Committee gave the suggestion on the draft Bill which are considered in the following points:

- To amend the applicability of the Bill and recommended that legislation falls in entry 5 of List III Concurrent List of Seventh Schedule of Indian Constitution.
- Boycott of same sex couple from adopting child.
- More clarity regarding trails and inquiry related to child offences and types of offences should be made.
- Assess the provisions for children committing serious offences.
- Deputy Commissioner (DC) or District Magistrate (DM) not to be nominated as the Chairperson of the CWC.

- Order related to child's adoption should be passed by CWC because it is related to civil matter for child in need of care and protection. This order is not to be passed by the Principal Magistrate of Juvenile Board because Juvenile Board is a criminal court and dispose of the matter related to children in conflict with law.
- Incorporation of penalty for crime committed against children.

According to Committee the juvenile justice is the reformatory approach not penal approach. The Act, 2000 was a progressive statute and reformatory in nature. Those involved in serious offences like murder and rape, should be provided amenities to reform. The matter related with children in conflict with law will be presented in front of Board and, Board can transfer the child to prevent him from psychological pressure needing to rethink. In the Act there was no provision related to case work of child, treatment and mediations, and counseling, these things are shows the failure of Juvenile Justice System. Further Committee referred that the child in heinous crime would be transferred to a rehabilitation homes and he will stay there till the age of 21 years.

Further this Committee recommended to Central Adoption Resources Authority (CARA) that changes in the definition of terms abandoned child, CWC, guardian and registered.

In this Report committee mentioned some feedbacks related with previous Act:

- The provisions of this Act are more reformatory and rehabilitative in nature and talks about only to protect the children in conflict with law; and
- It failed in analysis and incorporation of many provisions and valid suggestion which are an important part of proposed legislation.

Further this Committee said that the provisions related to 'Save the Child' mentioned under previous Act, 2000 were accurate and there is no need of requirement. The main philosophy behind this juvenile justice system in India is restoration, rehabilitation and to reform the child and not to confine a child in the jail with adults.

NCRB presented data of arrested child in heinous offences particularly in the age group of 16 to 18, had risen up in the present time. In 2013, there were 845 murder cases and 1388 rape case. Committee observed that this JJ Act 2000 was inappropriate to tackle the juvenile offenders in age group of 16-18 years.

Committee's consideration was drawn the following execution flaws: -

- i. Deficiency in number of Juvenile Justice Board and Child Welfare Committee: Juvenile Justice Board and Child Welfare Committee are deficient in number in India. Practically, it is existed only in the papers. The most popular district in India like the Thane district in Maharashtra having population over 1.1 crores has just 1 CWC. Moreover, the population in Sindhudurg district in Maharashtra is less than 8.5 lakh has also just 1 CWC. The case load upon CWC is very high. Committee has proposed to establish CWC in every district.
- ii. Composition of SJPU: Committee proposed is most important factor is constitution of SJPU. In the 2000 legislation appointment of Child Welfare Officers in police department were not serious to look cases and were not performing their functions. The person who assigned or designated as a Child Welfare officer, was called as second officer at police station. The structure related to Child Welfare Officer is absent. In number of cases procedure and proceeding to tackle the juveniles by police was infringed. The reason behind this was inefficiency of training and orientation in the police officers. While writing the FIR by police officers juveniles are treated as an adult. Handcuffing and to keep a juvenile on lock up is normal.
- iii. Inefficiency of Coordination: The coordination between statutory bodies is absent and their accountability, infrastructure services, training and capacity building, etc. are not effective. Committee proposed that coordination among statutory bodies must be effective.
- iv. In many States CWC, rehabilitation homes, children's home and shelter homes is very less in number. CWC must be established in every district so that the matter can be dispose of related to care and protection of the child.
- v. The shortage of staff in institutions, lack of appointment of staff, qualifications, and trained professional is drawback in rehabilitation homes.
- vi. Imperfection infrastructure of rehabilitation homes.
- vii. Inefficient facilities in the rehabilitation homes like hygiene issue, recreation facilities, education facility, counseling, training, mental health programs, etc.
- viii. No record is available of the child after they left rehabilitation homes.
- ix. Inspection Committee visits to rehabilitation homes in rare cases.
- x. To enhance the foster care, adoption, and sponsorship.

- xi. To involve training in foster cares.

Committee's consideration has drawn some gap in oversee of Child Care Institutions:

- i. The structured under JJ Act, 2000 has not practiced in true sense.
- ii. The structured related to CWCs, district officials were Inspection Committees was not proper.
- iii. Inspection Committee asks the questions in general way from child about their lives and exploitation in homes in the present of others and many a times do more harm than good.

Recommendations and Observation by Committee:

Committee has framed new provisions in the Bill to achieve the objectives. The main observations and recommendations are:

- i. To replace the word 'juvenile in conflict with law' to 'child in conflict with law'. It was felt that the word 'juvenile' basically has negative significance. A Child in conflict with law is also need to be protected under this Act. The word 'juvenile' is vis-à-vis a child who has committed an offence.
- ii. Committee recommended addition of new definitions such as adoption, aftercare, heinous offences, corporeal punishment, etc.
- iii. To reduce the age of juvenile in the case of heinous offences.
- iv. Committee recommended provisions related to JJBs. They gave three suggestions"
 - Chairperson should be retired District and Session Judge of JJB.
 - Elected Social Workers must be from NGOs only and having seven years' experience.
 - The constitution of JJBs required to be changed and reviewed.
- v. At the time of committing an offence the age of juvenile should be determined on the basis of whether the person should be dealt under the Juvenile Justice System or Criminal Justice System. If he is juvenile, then he should be kept in the observation homes.
- vi. The Committee pointed out that:
 - When a person is proved guilty then he is liable for punishment.

- A person in the age group of 16-18 years if commits a heinous offence, he would be mature enough to come forward to inform about his offence so as to ensure his remaining under the Juvenile Justice System seems to be far from convincing.
- vii. Court recommended that JJB shall conduct the preliminary inquiry related to his mental and physical ability to commit crime and capability to perceive the circumstances the case.

Chapter 3

United Nations Organization on Juvenile Justice

3.1 Introduction

At the international level UNO has adopted some Conventions and provided some framework for the proper administration of Juvenile Justice System in the World. These international Convention or framework act as the guiding factor for practitioners dealing with the issue of children's justice so that it will help them in strategy interventions much more effectively. This chapter is concerned with International Instrument which is adopted by United Nations at the International level. These all instruments deal with the juvenile delinquent; administration of juvenile justice system; policies and program related to child; prescribed guidelines related to juvenile delinquency; rights of the child related to survival, development, education, etc. Some International Instrument includes:

3.2 United Nations Convention on the Rights of the Child (UNCRC)¹⁹¹

UNCRC¹⁹² adopted in 1989 provides for protection of children's rights and more importantly, constitutes a comprehensive listing of the legally binding obligations towards children that countries are required to implement. Article 37 and 40 of this Convention specifically deals with the administrating of Juvenile Justice System. *Section 37* state that to ensure that no child should be subjected to inhuman or torture or punishment neither capital punishment nor imprisonment to be imposed for offenders below the age of 18 years. Article 40 ensures that states should recognize right of every child alleged as accused of any offence should be treated with human dignity, their human rights and fundamental freedoms must be protected and their age must be taken into consideration. If any children violate any penal provision, State ensures that the child should be presumed innocent until proved guilty. The matter related to child must be determined without delay by a competent, independent and impartial authority according to the law.

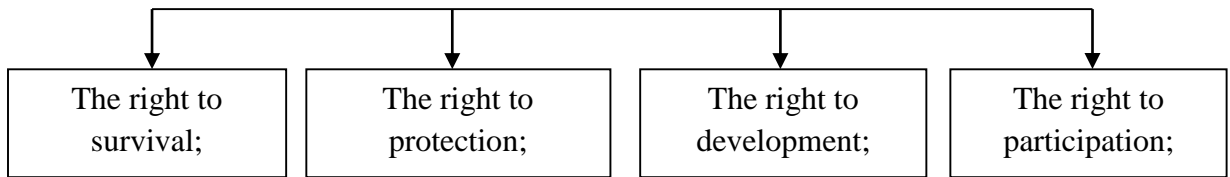
The UNCRC ensures the empowering of children and create an environment in which they are able to live in a secure manner and realize their full potential in life. The importance of this Convention, it is provide principle without any discrimination.¹⁹³

¹⁹¹ Supra at 1.

¹⁹² United Nation Convention on the Rights of the Child.

¹⁹³ Dr. A. Selva Kumar and Dr. G. Kaurnanithi, *Child Rights: Issue and Problems*, 121, in *Human Rights and Gender Justice* (S. Gurusamy, 1st ed., 2010).

Article 54 of this Convention set out some civil; political; economic; social and cultural rights for the protection of the every child in the states. These are: -



1. The right to survival: This Convention referred the right to survival of children. The right includes the right to life, the highest attainable standard health, nutrition and adequate standards of living. In also include right to name and nationality. In many states child works in the beedi factories at the age of 7 or 8 years which have the huge effect on the physical and mental development of the children.¹⁹⁴
2. The right to protection: This Convention covers right to protection of the children. It includes all kind of freedoms from any kind of exploitation, abuse, inhuman or degrading treatment and neglect including the right to special protection in situation of emerging and armed conflict. Like, in beedi works children are exploited in two ways; firstly, the parents exploit their children for the survival of their families, secondly, the employers and others do so for their profit. Children must be protected from this exploitation.
3. The right to development: Right to development under this Convention include the right to education, support for early childhood development and care, security and the right to leisure and culture activities. Like in the beedi works children do work for whole day. They lost their childhood in this age, which is the period of innocent joy and happiness. They do not have any type of entertainment like playing with friends.
4. The right to participation: The right to participation, under this Article, includes the freedom of the children; like freedom of expression, freedom of speech, freedom of thought, freedom of religion, and so on. Like in factories, girls do work with boys. They do not have certain freedoms and many things are not allowed to girls in the factories.¹⁹⁵

¹⁹⁴ Ibid, at 123.

¹⁹⁵ Ibid, at 124.

3.3 UN Minimum Rules for the Administration of Juvenile Justice: The Beijing Rules (1985)

The Beijing Rules provides some guidelines to the states on the protection of the children's rights and to ensure that it fulfills their needs in the juvenile justice system in India. This framework is the first instrument comprehensively which deals with administration of juvenile justice system.¹⁹⁶

3.4 UN Guidelines for the Prevention of Juvenile Delinquency: The Riyadh Guidelines (1990)

The Riyadh Guidelines¹⁹⁷ deals with prevention and social reintegration. These Guidelines recognizes that development of children at national, international and regional requires new approaches and strategies for the prevention of juvenile delinquency in the States.¹⁹⁸ These Guidelines also recognizes the prevention policies that elaborate the measures of juvenile delinquency.

3.5 UN Resolution 1997/30- Administration of Juvenile Justice

UN Resolution adopted by UN in 1997.¹⁹⁹ This Resolution is also known as Vienna Guidelines. The provisions of the Resolution recognized the Administration of Juvenile Justice in the States. The fundamental aspect or aim behind this Resolution is to implement the Convention on the Rights of the Child. Under these guidelines some aspects related to juvenile justice were pointed out. It is considered that the authority should be independent expert and no child should be considered as criminal charge under the legal age of criminal responsibility. Further this Resolution declared that priority should be given to the agencies and legal programs, which is established for the protection on juveniles.

¹⁹⁶ Supra 79, at 28.

¹⁹⁷ U.N. General Assembly, *UN Guidelines for the Prevention of Juvenile Delinquency: the Riyadh Guidelines (1990)*, Res. 45/112, Sess. 45, U.N. Document A/RES/45/112, 1, (14/12/1990) available at <http://www.un.org/documents/ga/res/45/a45r112.htm>, last seen on 16/03/2017.

¹⁹⁸ Ibid.

¹⁹⁹ U.N. General Assembly, *UN Resolution 1997/30-Administration of Juvenile Justice (1997)*, Res. 1997/30, Sess. 30, UN Document A/RES/1997/30, (21/07/1997) available at <http://www.un.org/documents/ecosoc/res/1997/eres1997-30.htm>, last seen on 16/03/2017.

3.6 Optional Protocols to the Convention on the Rights of the Child

On May 25, 2000 in New York UN adopted three conventions, namely;

- Optional Protocol on the Involvement of Children in Armed Conflict;
- Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography;
- Optional Protocol to the Rights of the Child on a Communication Procedure;

First Protocol defines that, “no person subjected to compulsory recruitment in the armed conflict or forces, under the age of 18 years.”²⁰⁰ Second Protocol adopted on January 18, 2002 provides provisions related to the protection of the children from sale of children, child prostitution and child pornography. Further, it sets out some rules for violation of these provisions. In these two additional protocols CRC does not lay down procedure for individual complaints from children. In the third Protocol General Assembly lays down specific procedure for complaint regarding the violation of any rights of the children. Children can communicate through filing the complaint in writing. This Protocol was adopted on April 12, 2014.²⁰¹

3.7 Other International Instrument

There are two other International Instruments which are adopted by UN. The Conventions are:

- a) Standard Minimum Rules for the Treatment of Prisoners (1955)²⁰²
- b) UN Minimum Rules for Non-Custodial Measures (1990)²⁰³

Standard Minimum Rules for the Treatment of Prisoners (1955), under Article 8 defines that ‘Separation of Categories’. These separations of categories are related to prisoners. Prisoners are kept in different institution like men are kept in different prisons and women in different prisons. Further these Rules prescribe that juveniles shall be kept in

²⁰⁰ Dr. H.O. Agarwal, *Human Rights*, 125 (15th ed., 2014)

²⁰¹ Ibid, 126.

²⁰² Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, available at https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf, last seen on 17/03/2017.

²⁰³ U.N. General Assembly, *Official Record*, Sess. 45, UN Document A/45/110, (14 December 1990) available at <http://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf>, 17/03/2017.

different prison or separate from adults.²⁰⁴ UN Minimum Rules for Non-Custodial Measures (1990), it is also known as Tokyo Rules. These Rules ensured that improvement in criminal justice system and promoted in the offenders the sense of responsibility towards the society.²⁰⁵

²⁰⁴ Article 8(d) of Standard Minimum Rules for the Treatment of Prisoners (1995)

²⁰⁵ *Supra* 79, at 30

Chapter 4

Legislative Provisions of Trial and Punishments of Juveniles in India

4.1 Introduction

Humanity has the stars in its future, and that future is too important to be lost under the burden of Juvenile Delinquency.

-Isaac Asimov²⁰⁶

Juvenile Justice System deals with children only, on the matters related to trial, investigation, punishment, and correctional process. The child needs to be treated separately from adults; which is the basic philosophy behind Juvenile Justice System. Present Act 2015²⁰⁷ prescribes the special procedure for juvenile's trial.²⁰⁸ In India, Government has adopted Act to administer the juvenile justice system in India. The Code of Criminal Procedure 1973, Juvenile Justice (Care and Protection of Children) Act 2015 and Indian Penal Code 1860 prescribed the jurisdiction of the Board, Punishments, age of Juvenile, procedure, and so on.

4.2 Legislative Provisions under The Code of Criminal Procedure:

Section 27 of Cr.P.C. prescribes the jurisdiction of the Juvenile Courts in India. This Section sets out the jurisdiction according to the previous Children Act, 1960.²⁰⁹ According to this Section if any juvenile offender commits any offence under the age of 16 years, that juvenile may be tried by the court of Chief Judicial Magistrate or any court which is established under Children Act, 1960 for any offence, not punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of 16 years.²¹⁰

Further the provision of the Cr. P. C. provides that order of release on probation of good conduct or after admonition.²¹¹ According to this Section, "when any person under 21 years of age or any woman is convicted of an offence not punishable with death or

²⁰⁶ Isaac Asimov was an American writer.

²⁰⁷ Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁰⁸ Dr. T.H. Khan, Juvenile Justice System in India: An Appraisal, 61, at 62, available at <http://www.delhihighcourt.nic.in/library/articles/Juvenile%20Justice%20system%20in%20India%20-%20an%20appraisal.pdf>, last seen on 15/03/2017.

²⁰⁹ S. N. Mishra, *The Code of Criminal Procedure 1973, with Probation of Offenders Act and Juvenile Justice (Care and Protection of Children) Act*, 515 (18th ed., 2012).

²¹⁰ Session Judge, *Tirunelveli*, (1974) Cr. L.J. 261.

²¹¹ S. 360, The Code of Criminal Procedure, 1973.

imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedent of the offenders, and the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and received sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behavior.”

*Somabhai vs. State of Gujarat*²¹² in this case death of girl aged 10 years was caused by the accused through rash and negligence driving and there was no mitigating circumstance. Supreme Court observed that in the absence of mitigation of circumstance the benefit of the probation was not given to the accused. In a case offender has not any previous offence record and was below the age of 21 years, Court had not applied Section 360 of Cr. P.C.,²¹³ and held that it was fit for the probation case.²¹⁴

Another Section 448 provides provisions related to child or minor. According to this Section,²¹⁵ “When the person by any Court, or officer to bond is a minor, such Court or officer may accept, in lieu thereof, a bond executed by surety or sureties only.”²¹⁶

4.3 Legislative Provisions under JJ Act 2015:

Juvenile Justice (Care and Protection of Children) Act, 2015 contains the special provisions related to the procedure of juvenile justice system in India. These Provisions analyze the functions, proceeding, procedure, trials, responsibilities, powers, etc. The Juvenile Board have distinctive features, like separate hearing for children’s case, informal hearing and private hearing, appeals from the juvenile’s court, protection against any legal consequences, etc. Basically, the functions of the juvenile board are divided into two categories and these functions are administered in different courts. Under this Act ‘proceedings related to children conflict in with law’ are dealt with by

²¹² Somabhai vs. State of Gujarat, 1989, Cr. L.J. 1945 (Guj).

²¹³ Ibid, at 516.

²¹⁴ Md. Syad Ali vs. State of Gujarat, 1989, Cr. L.J. 2063 (Guj).

²¹⁵ See S. 448 reads, “Bond required from minor.”

²¹⁶ Ibid, at 674.

‘Juvenile Justice Board’ and ‘proceedings in relation to children in need of care and protection’ are dealt with by ‘Child Welfare Committee.’

‘Board’²¹⁷ means a ‘Juvenile Justice Board established under Section 4’ of this Act.

‘Committee’²¹⁸ means ‘Child Welfare Committee established under Section 27’ of this Act.

4.3.1 Juvenile Justice Board

Chapter III of this Act deals with the ‘Juvenile Justice Board’. Every Juvenile accused is to be produced before juvenile board. The purpose for this separate proceeding is to reform and rehabilitate the juvenile offenders.²¹⁹ These courts are not the regular courts, which mean this court is only open for juvenile. In 1927, first time Juvenile Court was established in Bombay a presidency town. On that time the members of the Court sits only for few hours in a whole day and that was fixed in working hours.²²⁰ The main role of Magistrate in proceeding was to deal with juvenile case and decide whether the offender is juvenile or not and whether he has committed an offence. After proceeding, the social worker was empowered to decide the process of rehabilitation and reformation according to the circumstances of the case and juvenile behavior.²²¹ This Act ensures that State Government shall constitute the juvenile board on every district and this Board exercise the powers and functions relating to the children in conflict with law under this Act. Section 4(1) is a non-obstante clause; it is defined as ‘*notwithstanding anything contained in the Code of Criminal Procedure, 1973.*’ That means anything which is defined under the Cr.P.C., is not applicable to the JJ Act, 2015.

1. Constitution of the Juvenile Justice Board:

Juvenile Justice Board consists a ‘Metropolitan Magistrate’ or a ‘Judicial Magistrate of First Class’, they shall have at least three years’ experience and two social workers, of whom one shall be women.²²² Social worker appointed under this Act, must be the

²¹⁷ S. 2(10), Juvenile Justice (Care and Protection of Children) Act, 2015

²¹⁸ S. 2(22), Juvenile Justice (Care and Protection of Children) Act, 2015

²¹⁹ *Child Protection and Child Right*, available at <http://www.childlineindia.org.in/juvenile-justice-board-jjb.htm>, last seen on 18/03/2017

²²⁰ *Role of the Juvenile Justice Board*, 1, available at http://shodhganga.inflibnet.ac.in/bitstream/10603/37610/12/12_chapter%206.pdf, last seen on 20/03/2017

²²¹ *Ibid*, at 3

²²² S. 4(2), Juvenile Justice (Care and Protection of Children) Act, 2015

person the person has been actively involved in health, education, or welfare activities applicable to the children for at least 7 years or practicing a profession with a degree in child psychology, psychiatry, sociology or law.²²³

This Act provides disqualification of members of Board. No member of the Board shall be eligible to get elected on the following grounds:

- a) If any person has a previous record of violation of human rights;
- b) If any person has been convicted of any offence of moral turpitude; such conviction has been reversed or has not been granted full pardon in respect of such offence;
- c) If any person has been dismissed or removed from service of the Central Government or a State Government or an undertaking or corporation owned or controlled by the Central Government or a State Government;
- d) if any person has ever indulged in child abuse or employment of child labor or any other violation of human rights or immoral act;²²⁴

Induction training and sensitization including that of Principle Magistrate of the Board on care, protection, rehabilitation, legal provisions and justice for children, as may be prescribed, must be ensured by the State Government within a period of 60 days from the date of appointment.²²⁵

The member of Board shall be terminated after the inquiry by State Government, except the Principal Magistrate, if:

- a) any member has been found guilty of misuse of power prescribed under this Act; or
- b) any member who fails to attend the proceedings of the Board consecutively for three months without any lawful cause; or
- c) any member who fails to attend less than three-fourths of the sittings in a year;²²⁶

²²³ S. 4(3), Juvenile Justice (Care and Protection of Children) Act, 2015.

²²⁴ S. 4(4), Juvenile Justice (Care and Protection of Children) Act, 2015.

²²⁵ S. 4(5), Juvenile Justice (Care and Protection of Children) Act, 2015.

²²⁶ S. 4(7), Juvenile Justice (Care and Protection of Children) Act, 2015.

2. Power, function and responsibilities of the Juvenile Justice Board under the JJ Act 2015:

Further this Act lays down the power, function and responsibilities of the Juvenile Justice Board under Section 8.²²⁷ Functions and responsibilities are as follows:

- a) At every step of proceeding, the Board has to be inform the child, parents and guardians.²²⁸
- b) To ensure the protection of child's rights during inquiry proceedings and to ensure proper aftercare and rehabilitation.²²⁹
- c) To make sure the availability of legal services as well as legal aid for children.²³⁰
- d) The Board shall provide translator or interpreter at the time of proceedings having such qualifications helping the child if he fails to understand the language used in proceedings.²³¹
- e) Court will adjudicate and dispose of the matter related to children in conflict with law as per section 14 of the act ("Inquiry by Board regarding child in conflict with law").²³²
- f) Board shall have power to conduct the inquiry for declaring fit persons concerning care of children who are in conflict with law.²³³
- g) Board shall pass a final order associated with children in conflict with law or rehabilitation.²³⁴
- h) Board shall conduct at least one inspection every month in the rehabilitation homes for children in conflict with law and shall take effective measures to improve the quality of facilities in homes.²³⁵
- i) Board can pass the order to police to register FIR (First Information Report) for any offence which is committed by child in need of care and protection and children in conflict with law, under this Act or any other law for the time being in force, on a written complaint by a committee in this regard.²³⁶

²²⁷ S. 8(2), Juvenile Justice (Care and Protection of Children) Act, 2015.

²²⁸ S. 8(3)(a), Juvenile Justice (Care and Protection of Children) Act, 2015.

²²⁹ S. 8(3)(b), Juvenile Justice (Care and Protection of Children) Act, 2015.

²³⁰ S. 8(3)(c), Juvenile Justice (Care and Protection of Children) Act, 2015.

²³¹ S. 8(3)(d), Juvenile Justice (Care and Protection of Children) Act, 2015.

²³² S. 8(3)(f), Juvenile Justice (Care and Protection of Children) Act, 2015.

²³³ S. 8(3)(i), Juvenile Justice (Care and Protection of Children) Act, 2015.

²³⁴ S. 8(3)(h), Juvenile Justice (Care and Protection of Children) Act, 2015.

²³⁵ S. 8(3)(j), Juvenile Justice (Care and Protection of Children) Act, 2015.

²³⁶ S. 8(3)(l), Juvenile Justice (Care and Protection of Children) Act, 2015.

j) Any other power, function and responsibilities as may be prescribed under this Act.²³⁷

3. Procedure in relation to Board:

Procedure in relation to Board has been defined under Juvenile Justice (Care and Protection of Children) Act 2015.²³⁸ The Board shall conduct the meeting at such time for the purpose to observe such rules regarding the matter under this Act. A child, who is in conflict with law, may be produced before the individual member of the Board, when the Juvenile Board is not sitting in the Court.²³⁹ Further, this Section declares that at time of proceeding in the Court if any member of the Board is absent then the Court cannot pass the order related to any matter under this Act, that decision of the Board shall be invalid. That means at stage of proceedings in Court all the members of the Board must be present.²⁴⁰ If any conflict arises related to decision between the members of the Juvenile Board or different opinion of the Board, the opinion of the majority shall prevail. If majority cannot decide the matter, the decision of the Principal Magistrate shall prevail.²⁴¹ The same provisions are defined under previous Act Juvenile Justice (Care and Protection of Children) Act 2000.

Section 9 of JJ Act, 2015 defines other Procedure, which is followed by Magistrate who has not been commissioned in this Act. When magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the board having jurisdiction.²⁴² After all the proceedings Board shall conduct the inquiry related to the matter of the child and collect evidences as necessary to the inquiry but affidavits are excluded from it, for determination the age of the juvenile or child.²⁴³ If at that time any offence is proved then Board may pass the appropriate order and sentence.²⁴⁴ Further this Section provides protective custody of

²³⁷ S. 8(3)(n), Juvenile Justice (Care and Protection of Children) Act, 2015.

²³⁸ S. 7, Juvenile Justice (Care and Protection of Children) Act, 2015.

²³⁹ S. 7(2), Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁴⁰ S. 7(3), Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁴¹ S. 7(4), Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁴² S. 9(1), Juvenile Justice (Care and Protection of Children) Act, 2015.

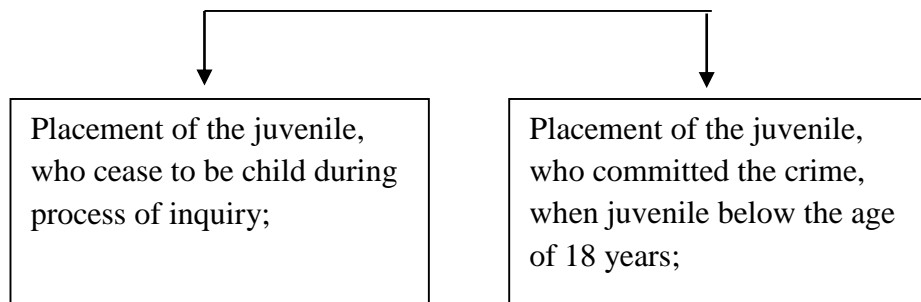
²⁴³ S. 9 (2), Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁴⁴ S. 9(3), Juvenile Justice (Care and Protection of Children) Act, 2015.

the child, if Board will feel need for keeping child into protective and shall conduct the inquiry in the intervening period.²⁴⁵

4. Placement of the Child during the Proceedings:

The JJ Act 2015 have specifically two kinds of placements of juvenile or child during the proceedings:



- a) *Placement of the juvenile, who stop to be Child during the process of inquiry:*²⁴⁶ This is the first scheme under this JJ Act 2015. The Board shall take initiative inquiry related to person, during such course of the inquiry, person has completed the 18 age of years, then the Board shall continue their inquiry and may pass the order related to the person as if such person had continual to be a child.
- b) *Placement of juvenile, who alleged crime, when was below the 18 years:*²⁴⁷ When the person has crossed the age of 18 years and he is arrested for the crime. But if the person has not completed the 18 years, such person shall be subjected to an inquiry under this Act. If that person according to sub-section (1) not liable to bail then that person to be kept in the place of safety during the preceding by Board and they shall be treated according to that procedure which is preferred under this Act.

5. Procedure related to Children in conflict with Law:

Part IV of the JJ Act, 2015 lays down procedure related to children in conflict with Law.

²⁴⁵ S. 9(4), Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁴⁶ See S. 5, Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁴⁷ See S. 6, Juvenile Justice (Care and Protection of Children) Act, 2015.

- i. Section 10 of this Act lays down the procedure of arrest of child who alleges to be in conflict with law. That kind of child may be arrested by police and such child shall be under the charge of the Special Juvenile Unit or the Designated Child Welfare Police Officer, who shall proceed before the Juvenile Justice Board, but within 24 hours of arrest of the children, excluding journey time.²⁴⁸ Further this Section enables that in respect of the all the proceedings State Government shall make the rules.
- ii. Section 11 specify that 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 be responsible for the child's maintenance.²⁴⁹
- iii. Another procedure is bail to the person who is in conflict with law.²⁵⁰ If child commits a bailable or non-bailable crime, the person is arrested by the police or presented before the Juvenile Board, such person shall be set free either with or without guarantee (surety) or placed under the direction of a probation officer or under the care of any fit person.²⁵¹ If any person is not released on the bail by police, then the duty of the police is to send the person in observation homes in such manner as defined until juvenile can be presented before Juvenile Board²⁵² and for the period of pendency of the inquiry the person to be sent in observation homes.²⁵³ Accompanying this section provisions also specify duration of the bail. If any person or juvenile fails to execute the condition of bail order within 7 day, such child shall be presented before Board for variation of the conditions of bail.²⁵⁴
- iv. Further this Act specifies provisions regarding information to their parents, guardian or to the probation officer concerning arrest of the child.²⁵⁵ Under this

²⁴⁸ One proviso has been referred under this Act that in no case, a juvenile commissioned to be conflict with law shall be placed lock-up or lodged in a jail.

²⁴⁹ Further this Section provides a proviso, 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.

²⁵⁰ See S. 12, Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁵¹ This Section one proviso that is such person shall cannot be released or free on the some reasonable grounds for belief, if the person knowingly to be criminal or reveal the person to moral, physical or psychological danger or person's release would defect the end of justice.

²⁵² S. 12(2), Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁵³ S. 12(3), Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁵⁴ S. 12(4), Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁵⁵ S. 13, Juvenile Justice (Care and Protection of Children) Act, 2015.

Section Child Welfare Police Officer (CWPO) of the police station or the special juvenile police unit which such child is presented, has to inform:-

- The parents or guardians of the children, if they can be found easily regarding the child in conflict with law, and direct them to be present in front of the Board where children are presented; and,
 - The probation officer, and if probation officer is not available then CWPO has to prepare and submit the report within 2 weeks to the Board, containing information concerning the family background and related to other circumstances likely to help to the Board for making the investigation.
- v. Inquiry shall be conducted by Juvenile Board regarding the age of the child in conflict with law.²⁵⁶ Inquiry shall be completed within the period of 4 months from the date when child is produced before the Juvenile Board. The time period can be extended for two more months by the Board according to the circumstances of the case and the reason shall be highlighted by Board itself.²⁵⁷ Inquiry shall be conducted related to preliminary assessment case of heinous crime under Section 15 of this Act. Inquiry shall be disposed of by the Board within period of 3 months from the date of when child was produced before the Board.²⁵⁸ Inquiry related to petty offences of the juvenile shall be terminated, even after extension of time period under sub-section (2) of this Act.²⁵⁹ The Board shall take the following steps to ensure fair and speedy inquiry under this Act, namely;
- The children in conflict with law shall not be ill-treated by any police officer or any other person including advocates or probation officer. Board can take appropriate step to protect the children against ill treatment.
 - Inquiry shall be conducted in simple manner and child-friendly atmosphere before Board.

²⁵⁶ See S. 14, Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁵⁷ S. 14(2), Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁵⁸ S. 14(3), Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁵⁹ Proviso of this Section is that for serious in nature offence, in case Board requires further extension of time for completion of inquiry, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chile Metropolitan Magistrate, for reason to be recorded in writing.

- The child shall be entitled to opportunity of being heard and shall participate in inquiry.
 - Inquiry related to heinous crime:
 - ✓ Considering child below the age of 16 years as on the date of commission of an offence shall be a matter to be disposed of by the Board.
 - ✓ If child above the age of 16 years, the child shall be prosecuted according to the Section 15 of this Act.
- vi. Section 15 specifies the preliminary assessment into heinous offences by Board. In case of a heinous offences alleged to have been committed by a child, who has completed or is above the age of 16 years, the Board shall conduct the preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence. If any offence is proved in the procedure of preliminary assessment Board shall follow the trial in summon cases mentioned under the Cr. P. C.
- vii. Other provision of procedure related to child is review of pendency of inquiry, that Chief Judicial Magistrate or Chief Metropolitan Magistrate has power to review the pendency cases of the Board at once in every three months.²⁶⁰
- viii. Other procedure is to pass the orders concerning children, who are found to be in conflict with law.²⁶¹ During inquiry if child is found to have committed any offence like petty offence or serious offence or if child below the age of 16 years found to have committed any heinous offence, court shall pass the order according to the circumstances of the case and if Board thinks fit:
- Board shall allow the children to go home after such inquiry and psychotherapy of child and their family or guardians;
 - To give direction to the child to participation in group counseling and related activities;

²⁶⁰ S. 16, Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁶¹ S. 18, Juvenile Justice (Care and Protection of Children) Act, 2015.

- The Board may pass the order to perform the public service under the direction of an institution or a particular person, persons, or group of persons identified by the Board;
- To give direction to the child to be released on the behalf of good conduct and state under care of any parent, guardian or fit person to execute the bond with or without surety, as Board may think necessary, for good conduct and child's well-being for any period not beyond three years and release him under the care and direction of any fit facility for make certain the good conduct and well-being for any time not beyond 3 years;
- To give the directions to send the child to observation homes or special homes, for such time not beyond 3 years, as it necessary to provide the facilities like reformatory services including education, skill development, counseling, as altering behavior and psychiatric support during the period of stay in the special homes.

If the Juvenile Board passed the order related to the above mentioned aspects, Court can pass the order with some variations to²⁶²-

- allow to attend the school; or
- allow to attend the vocational training center; or
- allow to attend the therapeutic center;

After preliminary assessment in case need is felt that the juvenile should be tried as adult, then the board may transfer the case to children's court vested with jurisdiction.²⁶³

ix. *Powers of Children's Court*: Various powers are given to children's Court under the Act.²⁶⁴ When the cases are transferred to the Children Court related to preliminary assessment, the Court may decide that:-

- The child is to be treated as an adult according to the provisions of Cr.P.C. 1973 and may pass the accurate orders after trials and also maintain the fair trials and child friendly environment;

²⁶² S. 18(2), Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁶³ S. 18(3), Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁶⁴ See S. 10, Juvenile Justice (Care and Protection of Children) Act, 2015.

- In case child not to be treated as an adult, then court may pass the order according to the Section 18 of this Act after the conduct of the inquiry;

At time of final order Court shall include an individual care plan for the rehabilitation of children, including follow up by the probation officer or the District Child Protection Unit or a Social Worker with regard to the delinquent children.²⁶⁵ After the proceeding children is to be sent to rehabilitation center till he accomplish the age of 21 years, then child is transferred to jail.²⁶⁶ The child cannot be ill-treated in the jail and rehabilitation centers.

4.3.2 Child Welfare Committee

Child Welfare Committee is the only committee which is concerned with the children in need of care and protection. This Committee disposes of the matter relating to treatment, rehabilitation, care as well as to supply the basic need of the child and human rights and also to rescue the child.²⁶⁷ It is established to the best interest of the child and provides the child friendly environment.²⁶⁸ Chapter V of the Juvenile Justice (Care and Protection of Children) Act, 2015 contains the provisions related to Child Welfare Committee (CWC) and prescribed the provisions of powers and functions.

1. Constitution of the Child Welfare Committee:

This committee has been set up in every district. This committee makes certain steps towards care and protection to the children and also to ensure that some educational training sensitization of all members of the committee is granted within 2 months from the day of intimation.²⁶⁹ This committee is to be made of a Chairperson, and 4 members as appointed by the State Government. Amongst 4

²⁶⁵ S. 19(2), Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁶⁶ The proviso of this Section is that reformatory services include the educational services, skill development, alternative therapy such as counseling, altering conduct and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

²⁶⁷ *Special Police Unit for Women and Children*, Child Welfare Committee, available at http://www.dpju.com/index.php?option=com_content&view=article&id=53&Itemid=161, last seen on 29/03/2017.

²⁶⁸ Trishla Jasani, *Role of the Child Welfare Committee*, available at <http://www.childlineindia.org.in/role-of-child-welfare-committee.htm>, last seen on 29/03/2017.

²⁶⁹ S. 27, Juvenile Justice (Care and Protection of Children) Act, 2015.

member at least 1 woman is compulsory having knowledge concerning the matters related to children.²⁷⁰

Under this Act the District Child Protection (DCP) shall grant a Secretary and other related staff members for necessary clerical support to the committee for their internal functioning.²⁷¹ There are some conditions related to appointment of the members in the Committee i.e. the persons shall be actively occupied in health, education, or welfare activities related to child for at least 7 years or must have professional degree in child psychology or psychiatry or law or sociology or human development.²⁷² Further this Section prescribes the tenure of the members of the Committee. The members of this Committee shall be appointed for the period of 3 years.²⁷³ Section 27 sub-section (7) of this Act provides some condition of impeachment or termination of the member from the Committee. The conditions are:

- If they found any blameworthy of abuse of their power under this Act;
- If they have been offender of any moral turpitude or he has not been endowment full pardon in respect of such offences;
- If they fail to be present at the proceeding of the Committee consecutively meetings for three months, without any suitable cause or fails to be present less than three-fourths of the sittings in a year;

2. Powers, Function and responsibility of Child Welfare Committee:

This Committee has powers to dispose of the cases related to care, protection, development of the child, treatment, and rehabilitation to the child in need of care and protection and also contribution for their basic needs and human rights of the child under this Act.²⁷⁴

This Act also specifies functions and responsibilities under Section 30 of this Act which are as follows:

- a) To take cognizance and to bring the child before Committee;
- b) Conducting inquiry in all issues relating to and affecting the safety and well-being of the children under this Act;

²⁷⁰ S. 27(2), Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁷¹ S. 27(3), Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁷² These conditions specify under Section 27(4) of JJ Act, 2015.

²⁷³ S. 27(6), Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁷⁴ See S. 29, reads 'Powers of Committee'.

- c) To direct the Child Welfare Officers or Probation Officers or District Child Protection Unit or Non-Governmental Organizations to carry out social investigation and propose a report before the Committee;
- d) To conduct inquiry in matter related to the child in need of care and protection;
- e) To direct placement of child in foster care;
- f) To give essential direction to parent, guardian regulating care, safety, suitable rehabilitation of child in need of care and protection:
- g) Selecting registered institution for placement of each child requiring institutional support, based on the child's age, gender, disability and needs and keeping in mind the available capacity of the institution;
- h) To carry out at least two inspections per month in the observation homes or rehabilitation centers for child in need of care and protection and provide suggestions regarding the quality of service to the District Child Protection Unit (DCPU) and the State Government;
- i) To declare that orphan, abandon and surrender child will be lawfully free for adoption after due investigation;
- j) To take *suo moto* action by at least three members of the committee in cognizable offences;
- k) Taking action for rehabilitation of sexually abused children who are reported as children in needs of care and protection to the Committee by Special Juvenile Police Unit or local police, as the case may be, under the Protection of Children from Sexual Offences Act, 2012;
- l) Other functions and responsibility as may be prescribed under this Act;

3. Procedure in relation to Child in need to care and Protection:

Chapter VI contains the procedure of child in need to care and protection under this Act. Section 31 specifies the procedure related to production of a child before Committee. A child may be produced before the member of the Committee, namely;

- a) Any police officer or Special Juvenile Police Unit or a designated Child Welfare Police Officer or any officer of District Child Protection Unit or Inspector appointed under labour laws for the time being in force;
- b) Any public servant;

- c) Childline Services or any voluntary or non-governmental organization or any agency as may be familiar with the State Government;
- d) Child Welfare Officer or probation officer;
- e) Any social worker or a public spirit citizen;
- f) By children himself; or
- g) Any nurse, doctor or management of a nursing houses, hospital or maternity home;²⁷⁵

State Government shall make rules which are necessary for this Act to provide for the method of submission of the report to Committee and the child may be sent to children's home during the time of inquiry.²⁷⁶ Further specifies the procedure related to compulsory reporting regarding a child found separated from guardian.²⁷⁷ Inquiry shall be conducted under Section 36 of Juvenile Justice (Care and Protection of Children) Act, 2015 related to child in need of care and protection. The special investigation and inquiry for shelter homes shall be completed within 15 days so as to make possible for the Committee to get ahead of final order within 4 months from the first day of the production of the Children. After inquiry or investigation if Committee found that child is in need of the support of family then the child may be sent to 'Specialized Adoption Agency' if Child is below the age of 6 years. The child is sent to children's home or to a fit facility or foster family till appropriate means of rehabilitation are found for the children or till they attain the age of 18 years. The Committee shall submit a quarterly report to District Magistrate on the matter of disposal of cases and pending cases related to nature of the offence.

4. Order by Committee:

After the submission of report to the Committee by the Child Welfare Officer, the Committee shall take necessary following orders, namely;

- a) To declare that a child is in need of care and protection;
- b) Child's restoration to family or guardians with or without administration of Child Welfare Officer or designated social worker;

²⁷⁵ Proviso of this Section is that the child shall be produced before the Committee without any loss of time but within a period of 24 hours excluding the time essential for the journey.

²⁷⁶ S. 31(2), Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁷⁷ S. 32, Juvenile Justice (Care and Protection of Children) Act, 2015.

- c) To place the child in child care homes or fit facility or Specialized Adoption Agency for long-term or provisional care, to restore the child in the family which is in the best interest of the child;
- d) To direct persons or institutions to provide care, protection and rehabilitation to the children. There are some other directions, including taking of instant action related to shelter and services such as medical attention, psychiatric, and psychological support including need base counseling, occupational therapy or behavior alteration therapy, ability training, legal aid, educational services and additional growth activities, as necessary, as well as follow-up and management with the District Child Protection Unit (DCPU) or the State Government and other agencies;
- e) The Committee may also pass other additional orders relating to-
 - Declaring the person as fit for foster care;
 - after care of child living in the care institution;

4.4 Legislative Provisions under Indian Penal Code

Indian Penal Code (IPC) has specified some provisions which are related to child. There are some exceptions for child which provides that they cannot be punished under the age which is specified in IPC. Section 82 and 83 of IPC confer immunity from criminal liability on child offenders. This immunity can be considered with the principle of juvenile justice.²⁷⁸

Section 82: Act of a child under 7 years of age: Nothing is an offence which is done by a child under 7 years of age.

Section 83: Act of a child above 7 and under 12 of immature understanding: Nothing is an offence which is done by a child above 7 years of age and under 12 years, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

²⁷⁸ See Gopinath Ghosh vs. State of West Bengal (1984) SC 237; Gaurav Jain vs. Union of India (1997) SC 3021; Satto vs. State of Uttar Pradesh (1979) SC 1519.

4.4.1 Act of Child under Seven Years of Age

Section 82 presumes that the child below the age of 7 years is *doli incapax*.²⁷⁹ It provides that a child is not²⁸⁰ capable to understand the differences between right and wrong. In other words, he has no mental capability to realize the nature, circumstances or consequences of the offence. This presumption is conclusive and non-rebuttable. Under this Section child is not held liable for criminal offence even if he has committed an offence with criminal intention under the age of 7 years.

4.4.2 Act of Child above the age of Seven years but below 12 years

Section 83 presumes that the child above 7 years but below 12 years is *doli capax*.²⁸¹ This presumption can be rebutted by 'mischievous discretion' of the children. The burden of proof is upon the prosecution to prove beyond reasonable doubt that child committed an act with *men rea*.

In the case of *Kalka Prasad v State of Uttar Pradesh*²⁸² Court observed beyond the age of 12, there is no immunity from criminal liability, even if the offender is the person of undeveloped understanding and incapable of understanding the nature and consequences of this act. Further in the case of *Hiralal Mallick v State of Bihar*²⁸³ Court found that if child past the age of 12 years, the question regarding the age does not become immaterial. The question of his youth and maturity of understanding will be applicable in the situation of the sentences to be passed against him in the occasion on his conviction.²⁸⁴

Juveniles-immunity of persons up to 18 years

According to IPC the child has full responsibility and liability if he commits a crime and is referred as an adult but in the case Juvenile Justice (Care and Protection of Children) Act 2015 the juvenile is free from responsibility till the age of 18 years and 16 years in the case of heinous offences. In the Indian history, a large number of

²⁷⁹ *Doli incapax* is a legal term which means child is capable of committing a crime and cannot be guilty of any offence.

²⁸⁰ PSA Pillai's, *Criminal Law*, 93 (12th ed., 2016).

²⁸¹ *Doli capax* is a legal term which means child is capable to committing the crime and depend upon his maturity of understanding and nature of the offence.

²⁸² *Kalka Prasad v State of Uttar Pradesh*, (1959) All 698.

²⁸³ *Hiralal Mallick v State of Bihar*, (1977) SC 2236.

²⁸⁴ *Ibid*, at 94.

legislation have been passed for the best interest of the child's care and protection. Moreover, the juvenile are sent to rehabilitation homes rather than serving with punishment.²⁸⁵

The issue with regard to determination the age of juvenile is very controversial, because there is no clarity in defining the age of criminal responsibility of juvenile in law. ²⁸⁶

Umesh Singh v. State of Bihar,²⁸⁷ in this case there was one accused Arvind Singh. He was juvenile at time of occurrence of crime. He was charged for murder under Section 302 read with 149 of IPC and causing injures by dangerous weapon under Section 324 read with Section 148 of IPC and Section 27 of Arms Act, 1959 for using arms without license. At the time of crime, he was 13 years old. The trial of the Juvenile offender was conducted along with adult accused and Court found them guilty of the fault. Though, the question regarding trial of the juvenile in the Cr. P. C did not rise during the trial in 'Trial Court or High Court'. According to the circumstances, Supreme Court in *Bhola Bhagat v. State of Bihar*,²⁸⁸ although supporting the conviction of the appellant under all charges, observed that the sentence passed to the accused is set-aside.²⁸⁹

4.5 The process of Rehabilitation and Re-integration

Chapter VII of the Juvenile Justice (Care and Protection of Children) Act, 2015 deals with the process of rehabilitation and re-integration process under juvenile justice system in India.

- The process of rehabilitation and social integration of children under this Act shall be undertaken, based on the individual care plan of the child, preferably through family based care such as by restoration to family or guardian with or without direction or sponsorship or adoption or foster care.²⁹⁰ For the child who needs be care and protection, that child must be registered in the institution with

²⁸⁵ K. D. Gaur, Commentary on The Indian Penal Code, 239 (Justice P.V.Reddi 2nd ed.,.....)

²⁸⁶ Haveripeth Prakash D., Juvenile Justice – A Hard Look, 2(1) Journal of Social Sciences 38, 39 (2013), available at <http://www.isca.in/IJSS/Archive/v2/i1/8.ISCA-IRJSS-2012-067.pdf>, last seen on 12/04/2017.

²⁸⁷ *Umesh Singh v. State of Bihar*, Cr. Appeal (S.J.) No. 100 of 1998, date of judgment order is 17 April 2009.

²⁸⁸ *Bhola Bhagat v. State of Bihar*, (1997) ALV Cri 645, (1997) 8 SCC 720.

²⁸⁹ *Ibid*, at 240.

²⁹⁰ See S. 39(1) of Juvenile Justice (Care and Protection of Children) Act, 2015.

fit person or a fit facility, on a provisional or long term basis. They must be kept in the special homes or place of safety unless they attain the age of 18 years.

- The prime motive of the children's home, Specialized Adoption Agency or Open Shelter is restoration and protection of child.²⁹¹ They can take necessary steps towards the restoration and protection of the child.²⁹²
- Further this provides the Registration of child care institution under this Act. Any institution run by NGOs and State Government must be registered under this Act. During registration State Government shall conclude and confirm the ability and reason of the institution registered as a Children's Home, Open Shelter, Specialized Adoption Agency, Observation Homes, or Special Homes or any place of safety. Registration may grant provisional approval, within 1 month from the date of application, for a limit of 6 months, and while organization of such institution capacity of the Home shall be mentioned in the registration. After issue of provisional registration, the institution can run for maximum for the period of 6 months. The registration shall last for five years; after the expiry of five years the registration has to be renewed.
- Any person in charge of the institution if fails to register, will be held liable for imprisonment which may extend to one year or fine which shall not less than one lakh rupees.²⁹³
- Open Shelters: Open Shelters may be established under this Act by State Government or NGOs. The Open Shelters must be registered according to the procedure of this Act.²⁹⁴
- Foster Care: Those children who need care and protection, must be kept in the foster homes, through the committee according to the procedure of the Act, in a household which does not comprise the child's biological or adoptive paternities or in an unrelated family familiar as appropriate for the purpose by the State Government, for small or extended period of time. The foster family

²⁹¹ S. 40, Juvenile Justice (Care and Protection of Children) Act, 2015.

²⁹² Under this Section restoration and protection if the child means restoration to-

- a) parents;
- b) adoptive parents;
- c) foster parents;
- d) guardians; or
- e) fit person;

²⁹³ S. 42, Juvenile Justice (Care and Protection of children) Act, 2015.

²⁹⁴ S. 43, Juvenile Justice (Care and Protection of children) Act, 2015.

should be selected on the basis of ability, determined and capability of the family of taking care of children. The education, health and nutrition to the foster family shall be delivered.²⁹⁵

- Observation Homes: The child who conflict with law or delinquent juvenile must be kept in observation homes. These observation homes are established and maintained by the State Government in every district through NGOs. Observation homes are the rehabilitation homes which are set up for the delinquent juveniles and it must be registered. State Government may have powers to make rules which are necessary for the establishment and improvement of the Observation Homes. They child should not be placed to their parents or guardians but to be kept in Observation Homes according to child's age, gender and physical and mental level of the child.²⁹⁶
- Special Homes: Special Homes established and maintained in every district by State Government and it also must be registered under this Act. It is also a kind of rehabilitation centers for delinquent child.
- Place of Safety: State Government has established at least one registered place of safety in every district. The person above the age of 18 years or child in conflict with law, who is between the ages of 16 to 18 years in the heinous offences shall be kept in this place having all measures and facilities for such persons and children who will stay there.²⁹⁷
- Children's Home: These homes have been established for the placement and protection of the child who needs care and protection and to provide proper treatment, education, training, development and rehabilitation. State Government may designate any Children's Homes provides to special needs, specialized services and depending on their needs.

4.6 Punishment and Rehabilitation of Juvenile

Prior to 2015 there was no punishment for juveniles. After the incident of 16 December 2012, the age of juvenile has been reduced and a new concept of heinous crime has been introduced. Indian Parliament has passed a Bill in 2015 called "Juvenile Justice

²⁹⁵ S. 44, Juvenile Justice (Care and Protection of children) Act, 2015.

²⁹⁶ S. 47, Juvenile Justice (Care and Protection of children) Act, 2015.

²⁹⁷ S. 49, Juvenile Justice (Care and Protection of Children) Act, 2015.

(Care and Protection of Children) Bill 2014”, which has made huge changes in the Juvenile Justice System in India.

That Bill has now become a new Act called “Juvenile Justice (Care and Protection of Children) Act, 2015”. This Act provides that juvenile must be treated as an adult and they shall be punished with imprisonment of 7 years and more under the age of 16 to 18 years in the case of heinous offences. ‘Serious offences’ are offences which are serious in nature and punishable according to Indian Penal Code, 1860 or any other law for time in being force.²⁹⁸ The delinquent child is produced before Juvenile Board, if Board thinks fit; it may pass the order of punishment and If Board thinks that child has not committed any serious offence, then he may be sent to the rehabilitation center. Rehabilitation centers are a part of reformatory theory of the punishment.

The main purpose of the rehabilitation is to reform and alter the behavior of the child. According to *Kautilya*, “It’s duty of the village elders to protect and ensure the proper development to the child.”

Reformatory theory helps in changing the criminal thinking of the child. In other words, the reformatory approach brings transformation in the attitude of the child’s behavior and rehabilitate him as a law-abiding member of the society. This theory is justifiable as it is future oriented and not past oriented.²⁹⁹ The reformatory approach casts positive impact on delinquent juvenile, women and first offenders.

According to *Salmond*, though common replacement of reformation for deterrents may seem disastrous, it is required in the certain cases particularly for abnormal and wrongdoers who have reduced responsibilities.³⁰⁰ Another point is that it’s not a punishment which contains slight pain and therefore it cannot be observed as punishment in accurate sense of the term.³⁰¹

There are few standing legislations which are supportive to the reformatory theory such as ‘The Probation of Offenders Act 1958’. Supreme Court has observed in *Rattan Lal*

²⁹⁸ Jatin Gandhi, *10 things you know about the new juvenile law*, NDTV (New Delhi, 22/12/2015), available at <http://www.ndtv.com/cheat-sheet/10-things-you-need-to-know-about-the-new-juvenile-law-1257667>, last seen on 46/4/2017.

²⁹⁹ N V. Paranjape, *Criminology and Penology with Victimology*, 284 (16th ed., 2015).

³⁰⁰ Salmond, *Jurisprudence*, 27 (12th ed., 1966).

³⁰¹ *Supra* 299, at 287.

vs. State of Punjab,³⁰² that this Act is landmark in the growth of recent liberal tendency of reform on the ground of penology. Secondly, Section 27 of Cr. P. C. provides treatment, rehabilitation and training must be given to youthful offenders.³⁰³ Reformation means the determination to restore a person; as a better and a best citizen.³⁰⁴ Reformatory or rehabilitate process is proved to be justifiable because:

- a) It provides a chance to State to take steps to reform the juvenile offenders and control the crime;
- b) It has deterrent approach and has an operative condemnation, and it has reformatory significances;
- c) The main purpose of this process to 'resocialise' the juvenile wrongdoer so that he could 'readjust' in the society.

Jail Committee Report 1919-1920, defines that the motive of correctional administration or rehabilitation centers is to hinder occurrence of further crimes and restoration of the criminal to society as a reformed conduct.³⁰⁵ In the case of *Narotam Singh v. State of Punjab*,³⁰⁶ Supreme Court held that reformatory approach to punishment should be the main motive of criminal law and to promote the rehabilitation process for securing social justice.

³⁰² Rattan Lal v. State of Punjab, (1965), SC 444.

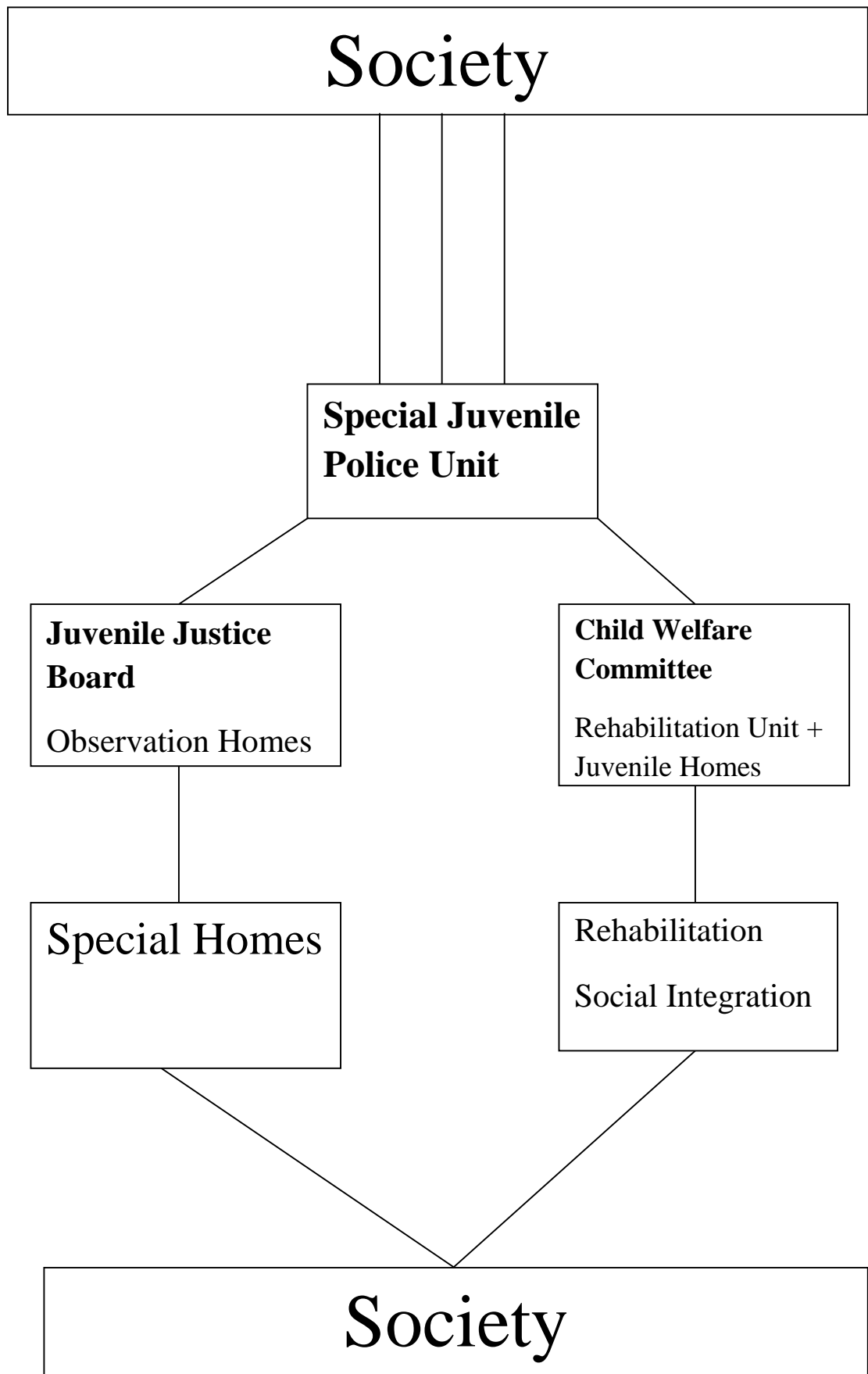
³⁰³ Tanu Priya, Reformatory Theory of Punishment, Lawctopus's Law Journal, (2014) available at <https://www.lawctopus.com/academike/reformatory-theory-of-punishment/>, last seen on 06/04/2014

³⁰⁴ Prison Commissioners Report, 24 (1912).

³⁰⁵ J.P. Sirohi, *Criminology Criminal Administration*, 119, (15th ed., 1999).

³⁰⁶ Narotam Singh v. State of Punjab, (1978) SC 1542, (1979) 4 SCC 505.

Diagram 1.2 Structure of society



4.7 Juvenile justice (Care and Protection of Children) Rules, 2007

‘Juvenile Justice (Care and Protection of Children) Rules, 2007’, are adopted by Government to administer the juvenile justice system in India. It outlines some fundamental principles related to child or juvenile in conflict with law. JJBs, CWCs, other agencies are bound with these rules and fundamental principles. According to these Rules the fundamental principles are:

- A child or juvenile in conflict with law underneath the age of 18 years shall be presumed innocent.
- A delinquent juvenile is also covered under these principles.
- Every child has a right to life full of dignity and worth.
- *Principle of best interest*; that means decisions of the Board must always favor the concern of the child such as how to protect their rights, needs, identity, physical, mental and emotional development, etc.
- *Principle of family responsibility*; that prime obligation of the family is to provide care, protection, support, etc. to the juveniles.
- *Principle of Safety*: The State has a prime responsibility to provide safety to every child subjected to torture, cruelty, neglect, solitary, corporeal punishments, etc.
- *Principle of equality and non-discrimination*: equality should be ensured resulting in no discrimination against any child or juvenile on the ground of sex, caste, race, birth place, etc.
- *Principle of restoration and rehabilitation*; prime concern must be to restore and to afford restoration amenities.

Further, these Rules prescribes the procedure for ‘determination of the age of juvenile or child.’³⁰⁷ The juvenility of the child or juvenile in conflict with laws will be determined by JJB or CWC within the period of 30 days, on the basis of physical appearance and following documents:

- a) Matriculation certificate, if feasible, in the case if matriculation is not feasible, then following documents will be admissible:

³⁰⁷ Rule 12, reads, ‘*Procedure to be followed in Determination of age*’ of Juvenile Justice (Care and Protection of Children) Rules, 2007, available at <http://harprathmik.gov.in/pdf/rte/jjrules2007.pdf>, last seen on 22/4/2017

- Birth certificate from the school; if it is not feasible then,
- Birth certificate approved by municipal corporation or panchayat.

b) In the absence of upward certificates then medical certificate will be admissible.

Moreover, Rules, 2007 ensures the setup of institutions for juvenile in conflict with law.³⁰⁸ The State Government may establish rehabilitation homes for both girls and boys up to the age 12 years, 13-15 years and 16 years and upward.

Rules, 2007 has provides succeeding norms for care institution,³⁰⁹ such as:

- *Observation Homes*; It is specified that separate Observation Homes to be established for both boys and girls according to the age groups of 7-11,12-16 and 16-18 years.
- *Special Homes and shelter homes*: It is specified that separate Special and Shelter Homes to be established for girls above the age of 10 years and for boys according to the age group of 11-15 and 16-18 years.
- *Children's Homes*: It is specified that in the Children's Homes both boys and girls under the age of 10 years are kept in the same Home, but bathing and sleeping facilities must be different for both under the age group of 5-10 years.

³⁰⁸ Rule 16 reads, '*Institution for Juveniles in Conflict with law*' of Juvenile Justice (Care and Protection of Children) Rules, 2007

³⁰⁹ Rule 40 reads, '*Physical Infrastructure*' of Juvenile Justice (Care and Protection of Children) Rules, 2007

Chapter 5

Juvenile Justice International

Perspective

5.1 Introduction

Previous chapters portray the procedure and processes of inquiry, adjudication and other laws concerning juvenile justice system in India. This chapter highlights the international prospective of juvenile justice as every country have different perspective with respect to age, procedure and proceedings. Each country sets out different criteria of age while determining criminal responsibility of juvenile for administration of the juvenile justice. Descriptive analysis of juvenile justice system of Unites States of America, Saudi Arabia, China, Russia, Pakistan, Ireland and Maldives has been done. Emphasizes is on each country's approaches in defining delinquency, juvenile's age and procedure.

5.2 America

It's tough to present a descriptive Juvenile Justice System in USA, because the USA includes fifty-one states having political jurisdictions (fifty states and District of Columbia) and legal authority to define "delinquency". In addition, each state includes counties and each county includes metropolitan cities, villages, and towns. Each of these entities has:

- a) Legal authority which may affect the character of juvenile justice system;
- b) Avenues which may or may not be devoted to the juvenile justice system.³¹⁰

In this system there are some components which are common in each American state, namely;

- i. Arrest;* the juvenile offenders are arrested by an authority like, school authority, but in the majority of cases arrest is made by police. That shows the participation of police in arrest in the case of juvenile offenders.
- ii. Diversion;* after arrest juveniles are sent to the social agencies which are rehabilitation centers for treatment and then they may be released with or without conditions. Even Court has some recreation programs where child can be released if he and his family may agree upon with release conditions within specific period.

³¹⁰ Galan M. Janeksela, *Descriptive Analysis of five juvenile justice systems: United States, Scotland, England, India and South Africa*, 21 journal of International 2 (1991), available at <http://www.jstor.org/stable/41420985>, last seen on 08/02/2017

iii. *Police Procedure*; Police Procedure may be formal or informal. Informal way may be adopted in non-serious offence which means that police can settle the matter between the complaining party and juvenile or his family. Formal way by Police Juvenile Unit. Each police department has Police Juvenile Unit.³¹¹

iv. *Detention*; Before detention police officer extract the information from child and family regarding the incidence. In most of the States in USA the juvenile offenders can be detained up to 48 hours without order of the Court. If Juvenile offenders are detained beyond the specified period i.e. 48 hours, detention trial shall take place within this stage.³¹² During detention trial Court may:

- set the time for hearing without delay;
- if child is not produced before counsel, then Court may appoint guardian ad litem;
- to provide the notice to their parents and guardian before 24 hours of detention trial;

U. S. Code (11) defines juvenile as

“A person who has not attained 18 years or for the purposes of proceedings and disposition of such a person for an act of juvenile delinquency or a crime committed prior to his/her 18th birthday, a person who is not yet 21.”³¹³

5.2.1 Punishment to Juvenile in ancient period

In USA juvenile was punished in the same way as in India. In Middle Ages punishment was same for children as well as for adults. They were treated similarly in criminal offences. For example;

- if any child had committed willful murder, in that case he was either drowned, hanged or burned alive, but depending upon the consequences of the case;³¹⁴
- if any child of 8 years and above, commits Homicide then he was hanged for it, because it was considered *Actus non facit reum, nisi mens sit rea*,³¹⁵

³¹¹ Ibid, at 3

³¹² Ibid, at 4

³¹³ Clifford E. Simonsen and Marshall S. Gordon III, *Juvenile Justice in America*, 8 (1st ed., 1979)

³¹⁴ Ibid, at 54

³¹⁵ Wiley B. Sanders, *Juvenile Offenders for a Thousand Years*, 11 (1st ed., 1970)

At 1930s families of the delinquent juvenile was solely responsible for the illegal acts. Parents were punished for failure to control the conduct of their child. They were fined heavily and even imprisoned for their child's act. Children was forwarded to rehabilitation center and punishment was imposed on their parents.³¹⁶

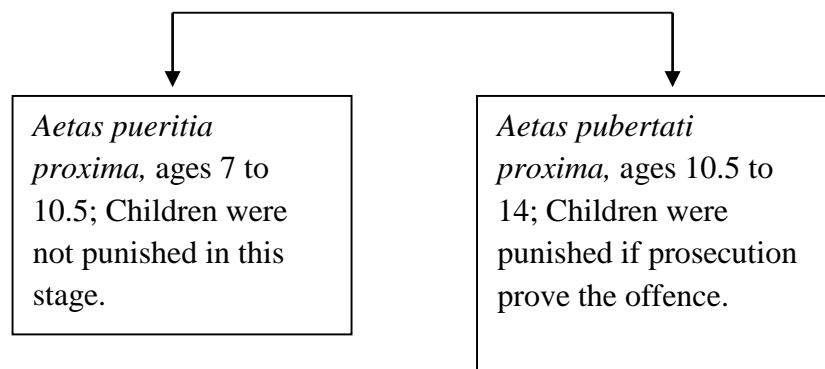
5.2.2 Classifying Juvenile Delinquents during the Eighteenth and Nineteenth Centuries

The age at which a child should be held answerable for his or her acts has been questioned for centuries. Sir William Blackstone stated in his book that “no child under the age of blasphemy was seemed uncertain, as states have contrasting views and still today it still fluctuates from state to state.’

Early in Civil law minors (those persons under the age of 25 years) were separated into three categories:

- *Infants*; from birth to 7 years;
- *Pueritia*; from 7 to 14 years;
- *Puberta*: from 14 to 25 years;

The stage of *Pueritia* or childhood was divided further into two parts:



The child or people who fall under the age of 14 to 25, were punished with capital and other punishments as readily as adults.³¹⁷

³¹⁶ Supra 313, at 32

³¹⁷ Ibid, at 13

Three Boston Boys, Sentenced to the Charlestown State Prison for Stealing, 1813,

Boston Municipal Court; on December 11, 1813, punished three boys one of them was of 16 years and remaining were about 13 years old with imprisonment of five days' solitary confinement and for five years solid labour in the State Prison for an offence in which they broke the store in the night-time and stole pocketbook.³¹⁸

5.2.3 Elements of Criminal Justice System

In the process of Juvenile Justice System there are three criminal components, namely;

- Police;
- Court;
- Corrections;

And all these three components have established specific means concerned with children and young people in strain.

1. Police: Police departments have reacted to the dilemma of juvenile crime in divergent ways, usually through specialized units for juvenile control.
2. Court: The Juvenile Courts, sharing their duties with other tribunals, have also developed particular philosophies and procedures to deal with their wards, but the current movements away from the legal philosophy of *parens patriae* to one that stresses due procedure and constitutional safeguards for juveniles has placed the courts in needs of change.
3. Corrections: Juvenile and adult institutions developed separately and have in large ration remained autonomous in the United States until the past few years.³¹⁹

Police has a restrictive responsibility in juvenile cases. Child below 7 years cannot be considered as a criminal responsibility in USA, at the age of 7 and 16 or 18 subjected to the jurisdiction; they are considered as juvenile delinquent than criminal offenders.³²⁰

³¹⁸ Supra 315, at 320-323

³¹⁹ Supra 313, at 153

³²⁰ Ibid, at 154

The traditional tags of ‘delinquency’, ‘neglect’, and dependency’ are being combined or replaced. For example, New York, comprises within³²¹ juvenile court’s jurisdiction a broad class of juvenile tagged as “*Persons in Need of Supervision.*”

The main objective of the juvenile procedure is treatment not be punished, if any situation could be dangerous then punishment should be justifiable.

5.2.4 Procedures of the Juvenile Hearing

The procedure is termed as civil trial and not as criminal trials. As such, many of the proceedings of a criminal trial are not to be followed in juvenile hearings. The main motive of this proceeding was to confirm whether or not a juvenile offender should be affirmed as a delinquent and³²². During the trial juvenile court may declare that juvenile offender may be sent to reformatory schools or correctional homes. The trial of the juvenile shall be held in private affairs, informal way, or in judge’s chamber. Prior in America juvenile cases were dealt with civil laws and not with criminal cases. The Constitutional guarantees, like right to the assistance of counsel; right against self-incrimination and right to argument with witnesses were not relevant in juvenile trials.

In case of *In Re Gault*³²³ Supreme Court of USA declared that written notice must be given to juvenile and their parents or guardians earlier to the hearing of juvenile offender, for the reason that enough defense could be prepared. Further Court declared that juvenile and their parents have a right to assistance of counsel, if they could not manage to pay for counsel then one would be offered to them.

Grounds for declaring Delinquency: Supreme Court of USA had specified many ground of juvenile delinquency. The juvenile must have been found guilty *beyond reasonable doubt*. *In Re Winship*, it was observed by the court that whether juvenile should be constitutionally allowed like adult to claim evidence beyond a reasonable doubt when juvenile they are charged with infringement of a criminal law.

Court concluded that the standard of proof beyond a reasonable doubt will not force the States to dispose of or relocate any of the substantive profits of the juvenile procedure.

³²¹ Ibid, at 159

³²² Gilbert B. Stuckey, *Procedures in the Justice System*, 345 (3rd ed., 1986)

³²³ *In Re Gault*, 387 US 1 (1967, Supreme Court of the United States).

In addition to it the constitutional validity of evidence beyond reasonable doubt is as much necessary during the passing of judgment at any stage of delinquent proceedings.

*McKeiver vs. Pennsylvania*³²⁴ United States Supreme Court observed that Juvenile is to be awarded certain Constitutional assurances, as all the rights are not comprised in the Bill of Rights in conformity with the due practice of law as mentioned in clause of the 14th Amendment.³²⁵

Juvenile Justice System Structure and Process in America:

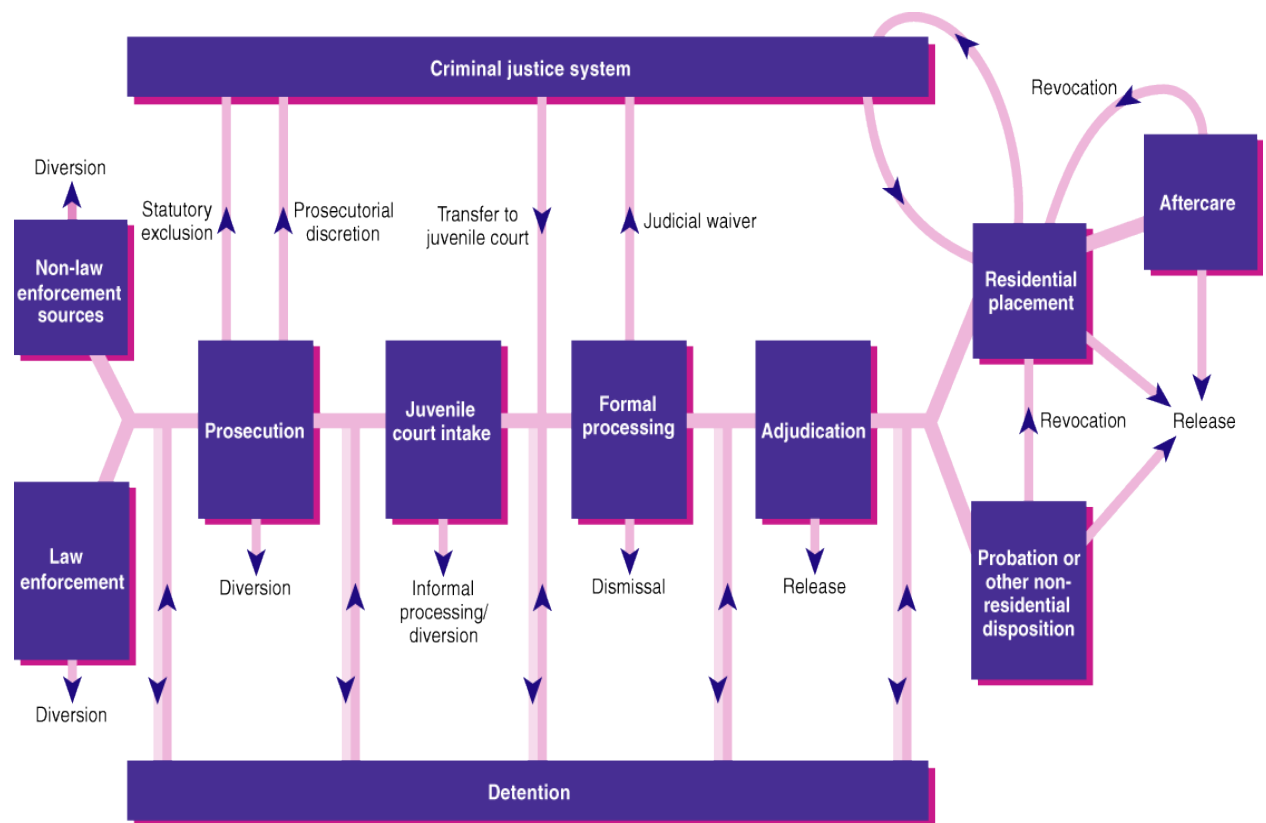


Diagram 1.3 describes the stages of delinquency proceedings the juvenile justice system in America.³²⁶

5.2.5 Main Principles of the Juvenile Courts in USA

The Boston Juvenile Court has formulated some general principle in USA concerning juvenile prosecution. Table 1.5 shows, these principles as follows.³²⁷

³²⁴ *McKeiver vs. Pennsylvania*, 403 US 528 (1971, Supreme Court of the United States).

³²⁵ *Ibid*, at 347.

³²⁶ Source Office of Juvenile justice and Delinquently Prevention (OJJDP), available at https://www.ojjdp.gov/ojstatbb/structure_process/images/flowbluemedwebalt2.gif, last seen on 03/04/2017.

³²⁷ *Supra* 313, at 189.

S. No.	Title	Content
1.	State Agency liability for intake services	<p>The intake liabilities should be the responsibility or liability for the state agency. These services should be formulated to serve three functions:</p> <ul style="list-style-type: none"> a) To take action for the family court in broadcast of applications for petitions; b) To take action for the family court to make a dispositional order; and c) To take remedial measures to tackle with cases of children or families for which the state agency has responsibility.
2.	Procedure reasons for petitions to the family court	<p>The state agency's intake should route all the claims for pleas to family court asserting that juvenile is delinquent:</p> <ul style="list-style-type: none"> a) If juvenile is in detention or shelter care within forty-eight hours; b) If juvenile is not in detention or shelter care, then within 30 days; <p>Intake personnel should have the power and liability to:</p> <ul style="list-style-type: none"> a) Pass on the case to the family court prosecutor so that court can entertain it; b) To pass on the juvenile or their family for non-court services; c) To postponement the decision on filing a petition for up to 90 days after the receipt of the submission where a juvenile, not in detention or shelter care, has been forwarded for a non-court services; d) To let go an application that is not validated by the available facts;

3.	Dispositional report	This report should be prepared by the state agency's intake personnel. ³²⁸
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5.2.6 Juvenile's age in USA

In America age of juvenile varies from State to State. 43 states in USA considers the age of juvenile as 17 years. Five states Georgia, Michigan, Missouri, Texas and Wisconsin consider juvenile age as 16 years. Remaining two states New York and North Carolina sets the age of juvenile as 15 years.³²⁹ If any juvenile attains the majority level, then juvenile is considered as an adult and adult law is applicable to them.

5.2.7 Parole System

'Parole' word has been derived from French language, which means 'promise'. The word parole refers to various approaches concerning release of juvenile from reformatory institutions. *Juvenile parole* is concerned with the provisional release of juvenile from a correctional institution for best suitable interest under the direction of a counselor or parole officer.³³⁰ The main objectives of the parole system are:

- The prevention of the community; and
- The appropriate adjustment of the juvenile offenders in the society;³³¹

Apart from the police system, established separate parole staff deals with parole system. The parole staff should hold a master's degree in social work or related field. Below mentioned conditions applies to juvenile parole system:

- Not committing further³³² crime;
- Staying off drugs and away from alcohol;
- Not to hang with habitual offenders or old gang members as it will lead to adverse effect on youth; and

³²⁸ Ibid, at 190.

³²⁹ Anne Teigen, *NCSL (National Conference of State Legislatures)*, (02/01/2017), available at <http://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx>, last seen on 03/04/2017.

³³⁰ *Supra* 313, at 253.

³³¹ Ibid, at 257.

³³² Ibid, at 262.

- Obtaining a job or getting training which will lead to profitable engagement;³³³

In America the Courts are entitled to pass the order of imprisonment for life to juvenile under the age of 18 years on the basis of graveness of offence and its consequences (murder or involving violent crimes or weapons violations), but this order cannot be passed without the permission of the parole officers.

5.2.8 Institutions

Establishment of institutions is one another element of Juvenile justice system in America. Group homes, foster care and adoption are few of the measure which may results in overall growth of the juvenile delinquent, as highlighted below:

1. Group homes: Group homes are the recent development in both private and public sector in America.³³⁴ This is a way to rehabilitate the child and to make his re-entry possible in the society. It is established to make youth self-sufficient, self-responsible and self-reliant and to alter the criminal behavior of the child. Generally these homes are established for the 6 to 15 age group youth.³³⁵
2. Foster care: ‘Parens Patriaeis’ doctrine that means in society parents have eventual liability to make the child suitable for the community. When youth have no place to live in, then society should arrange the living arrangements for him. Foster care is the term that relates to full-time replacement care for child having in need of care to be provided by parents.³³⁶ Table 1.6 shows, some specific categories which needs care for foster care or houses in USA:

Family related problems	Child related problems
<ul style="list-style-type: none"> • Inadequacy of family • Rejection by parents • Abuse of the child • Neglect of child 	<ul style="list-style-type: none"> • Delinquent conduct • Emotionally disturbed • Physically and mentally handicapped

³³³ Ibid, at 263.

³³⁴ Ibid, at 292.

³³⁵ Ibid, at 293.

³³⁶ Alfred Kadushin, Child Welfare: Adoption and Foster Care, in Encyclopedia of Social Work, Vol. 1 (New York: National Association of Social Worker, 1971), p-104.

<ul style="list-style-type: none"> • Mentally ill³³⁷ 	<ul style="list-style-type: none"> • Conflict between child and family • Sociopathic conduct³³⁸
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3. Adoption: It is a legal process of becoming parents and after adoption, they are given the same status as given by biological parents.³³⁹

5.2.9 Similarities and dissimilarities between Indian Juvenile Justice System and American Juvenile Justice System

There are similarities and dissimilarities between Indian and American system. Both systems have some distinctive features. Table 1.7 shows comparison between these two systems.

S. No.	Indian Juvenile Justice System	American Juvenile Justice System
1.	In India the age of juvenile is same throughout the country. Initially the age of juvenile was considered to be of 18 years, but after amendment the age of 16 years has been introduced, but only in the heinous offences.	In America the age of juvenile varies from state to state. They follow three types of age groups i.e. 15 years, 16 years and 17 years.
2.	Separate Board i.e. JJB and CWC which hold the cases related to juveniles only has been established.	There is no such Juvenile Board set up in America as all the proceedings are managed by police itself.
3.	Child to be treated in friendly manner.	Hearings can be conducted either in informal or formal way.

³³⁷ Supra 313, at 301.

³³⁸ Ibid, at 302.

³³⁹ Kadushin, *Child Welfare: Adoption and Foster Care*, p-107.

4.	Under Indian law, in case of heinous crime corporeal punishment can be provided.	There no such concept of heinous crime.
5.	The releasing or parole system is under the control of Juvenile Board.	Proper machinery dealing with parole system exists.
6.	Rehabilitation and reformative process to alter the conduct of the juvenile has been ensured.	America do follows the same procedure.
7.	Principle of beyond reasonable doubt should be followed by prosecution.	America also follows this same principle.

5.2.10 Juvenile's Legal Rights in America

1. **Procedural Rights**: Deals with statutory laws and are compulsory in nature for the protection of the rights of juvenile delinquent. In America below highlighted procedural rights are guaranteed to juveniles in court's proceedings:
 - right to suitable notice of charges against juvenile.
 - right of counselling and to have free counsel if the child is poor.
 - right of cross-examination of witness.
 - right to refuse to do anything that would be self-incriminatory.
 - right of judicial hearing.
2. **Substantive Rights**: Substantive Rights are the basic rights of the person, like right to life, personal liberty, etc. and does not depend upon the any law. These are basic human rights and are made by mankind. These rights are especially important in the case of juvenile who does not pose real threat either to himself or to the society. Substantive rights cover the term protection and welfare of the children. Today, America have following Substantive Rights, like:
 - the right to refuse an unwanted service,
 - right to make choices in various fields that affect one's life, and
 - right to be free from unnecessary restrictions in individual's development.

5.3 Saudi Arabia

Penal laws in Saudi Arabia are based upon Sharia and are uncodified. Death penalty, corporeal punishment and life imprisonment are legal remedies for juvenile offenders. They have adopted different laws to administer juvenile justice system, namely:³⁴⁰

- a) Basic Law of Governance, 1992
- b) Detention and Imprisonment Act, 1978
- c) Detention Regulation and Juvenile Home's Regulation, 1975;
- d) Juvenile Justice Act, 1975;
- e) Law of Criminal Procedure, 2001; and
- f) The Juvenile Justice Regulation Act, 1969;

There are four types of punishments (Table 1.8);

Qisas	Hadd	Tazir	Diya
'Qisas' is the kind a of retributive punishment in nature that means 'eye for an eye'.	'Hadd' is mandatory and is fixed by God (Quran or Hidith).	'Tazir' is the discretionary power which is exercised by judge, court or ruler of the State.	'Diya' is in the form of monetary compensation that means financial compensation to be provided to the victims or his family.

5.3.1 Juvenile Age

This minimum age of criminal responsibility of child has been determined from 7 to 12 years, but girls and Qisas cases are not covered under it. **Detention Regulation and**

³⁴⁰Report prepared for the Child Rights Information Network, July 2010, *Inhuman sentencing of children in Saudi Arabia*, available at https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&cad=rja&uact=8&ved=0ahUKEwiZxqyYqqHTAhUDpY8KHf8YCIUQFgg_MAU&url=http%3A%2F%2Fwww.crin.org%2Fen%2Fdocs%2FSaudi_Arabia_Inhuman_Sentencing.doc&usg=AFQjCNHbtFkanH09n239nvrKC_s1mutUqQ&bvm=bv.152180690,d.c2I, last seen on 18/01/2017.

Juvenile Home's Regulation, 1975, has specifies the juvenile as 'a child less than 18 years'. According to the provisions of the Act juvenile should be treated "in accordance with the relevant laws and regulations"³⁴¹ but it is not necessary that all juvenile should be treated as juveniles in criminal cases as in criminal cases Juvenile can be treated as an adult, it depends upon the opinion of the judiciary and physical development of the child.³⁴²

Capital Punishment: Capital Punishment has been considered lawful punishment in the case of child even if he is less than 18 years. Crimes which are punishable with death penalty contains adultery, renunciation, corruption, drug trafficking, murder, manslaughter, etc. Government has specified in Islamic Laws that an immature child cannot be subjected to death penalty.³⁴³ But, judges or court have discretionary powers to decide the age of majority of the child and impose death penalty.³⁴⁴ Death Penalty is implemented by the order of King or his representative, and the order should be witnessed by representative of the *Administrative Governor, the Court, the Bureau of the Promotion of Virtue and Prevention of Vice and the police*.³⁴⁵

Corporal punishment: In Saudi Arabia Corporeal punishment is legal, even in the case of child also. In many cases beating is a necessary punishment and order may be issued by using discretionary powers by courts. "The Juvenile Justice Regulations, 1969" inspires the juvenile courts to dispose of the matters related to child without providing any supervised facilities and to restrict punishments to guidance and counselling but in the 'Juvenile Justice Act, 1975' a child less than 18 years is liable to corporeal punishment; involving beating, stoning and amputation. According to the Law of Criminal Procedure, order related to amputation is to be passed by King or his rep, and witnessed by rep of *the Administrative Governor (AG), the Court, the Bureau of the Promotion of Vital and Prevention of Vice and the Police*.³⁴⁶

³⁴¹ Article 13, Law of Criminal Procedure, 2001.

³⁴² Human Rights Watch, *Adults Before Their Time: Children in Saudi Arabia's Criminal Justice System*, p.13 (2008).

³⁴³ 21 April 2005, CRC/C/136/Add.1, Second state party report to the Committee on the Rights of the Child, paras. 68 and 120; 29 March 2000, CRC/C/61/Add.2, Initial state party report to the Committee on the Rights of the Child, paras. 57, 140, 249, 253.

³⁴⁴ 17 March 2006, CRC/C/SAU/CO/2, Concluding observations on second report, paras. 32 and 73; 18 December 2009, E/2010/10, Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty: Report of the Secretary-General, para. 78

³⁴⁵ Law of Criminal Procedure, article 220.

³⁴⁶ Ibid.

Life imprisonment: Life Imprisonment is also legal in the cases of child offenders. Government of this Country specifies that child should not be kept in the public jail but they must be kept in the reformatory houses.³⁴⁷ The main motive behind this is to reform the criminal behavior of the child.

5.3.2 Similarities and Dissimilarities between Saudi Arabian and Indian Juvenile Justice System: (Table 1.9)

S. No.	Juvenile Justice System in Saudi Arabia	Juvenile Justice System in India
1.	In this Country the minimum age of criminal responsibility is 7 to 12 years old.	In India the minimum age of criminal responsibility is 18 years and 16 years in the case of heinous offences.
2.	They have adopted 7 laws related to juvenile offenders.	Only one law Juvenile Justice (Care and Protection of Children) Act,2015 deals with juvenile offenders.
3.	Capital punishment is legal in the cases child offenders.	There is no provision of capital punishment in the case of child.
4.	Corporeal punishment can be imposed to the child offenders.	There is no provision that Corporeal punishment can be imposed to the child.
5.	Life imprisonment is also legal for child offenders. They are kept in rehabilitation homes for reformation.	In India, in the case of heinous crimes for the child between the age group of 16-18, may be imprisoned for 7 years or more. In other cases,

³⁴⁷ 21 April 2005, CRC/C/136/Add.1, Second state party report to the Committee on the Rights of the Child, para. 36.

		the child under 18 years to be kept in rehabilitation centers.
6.	Order is passed by King only.	Order is passed by judges only.
7.	There are discretionary powers in hand of judges or ruler of the State.	In India, there are no discretionary powers in the hands of judges.
8.	Punishment is more retributive in nature.	Punishment is more reformative in nature.
9.	Quran or Hidith is the grundnorm of the Country.	Constitution is the grundnorm of the Country.

5.4 People’s Republic of China

In China there is combination of informal and formal methods for Social Control. A formal control is more effective because it is concerned with the control of juvenile offenders. Juvenile are not treated as an adult, for juvenile offenders there have adopted some special laws or regulations and it is applicable to the juvenile offenders only. The laws related to juvenile offenders involve Constitution and Criminal Justice Laws, besides there some specialized laws are Juvenile Protection Law and a Juvenile Delinquency Prevention Law. In this Country, till 1980s there were no laws for juvenile offenders. Shanghai presented the Shanghai Youth Protection Ordinance in 1987, and it was established to protect the juvenile offenders and juvenile tribunals. Criminal Code and Criminal Procedure Code is the most important laws which are concerned with juvenile offenders. There is no distinction between the definition of child and juveniles. Juvenile Justice Law defines juvenile as a person less than 18 years. These laws differentiate between treatment to be given to adults and juveniles. Moreover, it specifies the definition of juvenile delinquency and lay down the procedure related to court’s proceedings and punishments. Juvenile Protection Law, 1991 and the Juvenile Delinquency Prevention Law, 1999 have a more significance in China. According to JPL, 1991 the education should be given priority and then punishments to juveniles in case of delinquency and the crucial reason behind this policy is:

- To administer the procedure of the Court and principles.
- To protect the child who are in need of care and protection.
- To protect the juveniles.
- To ensure the protection of their rights .³⁴⁸

Juveniles have been placed under two different categories:

- a) Delinquents
- b) Offenders

Few offences are not punishable under Criminal Code in China i.e. curfew violations, running away, disobedience parents, school truancy, etc. Offences like theft, drinking, assault, etc. are considered delinquent and punishable in Code. JDPL, 1999 distinguish between bad and serious behavior of the child.

- Article 14 of this Act defines some bad misbehaviors of the child like school truancy, unlawfully carrying a knife or blade, theft, pornography, gambling etc.
- Article 34 of this Act defines some serious misbehaviors of the child like forming gangs and disturbing the peace, gang violence or forcible demands for property, obscene materials, drug abuse, etc.

The age of criminal responsibility of child is defined under Criminal Code, 2011. According to this Act the common age of criminal responsibility is 16 years.³⁴⁹ If any child commits serious crime under the age of 14-16, they need to bear criminal liability. They are liable to be punished for certain offences such as rape, murder, robbery, explosion, etc. But child less than 14 years is free from criminal liability. Further this Code provides that the lighter or mitigate punishment can be imposed by judge in case the child under 18 years. Delinquent juveniles between the age group of 14-18 years are subjected to punishment but Court cannot provide hard punishments.³⁵⁰

³⁴⁸ Ruohui Zhao, Hongwei Zhang and Jianhong Liu, *China's Juvenile Justice: A system in Transition*, p-148 (2015), available at [file:///C:/Users/HARMESH%20LALA/Downloads/\[2014\]%20Juvenile%20Justice%20in%20China%20Chapter.pdf](file:///C:/Users/HARMESH%20LALA/Downloads/[2014]%20Juvenile%20Justice%20in%20China%20Chapter.pdf), last seen on 13/04/2017.

³⁴⁹ Article 17, Criminal Code, 2011.

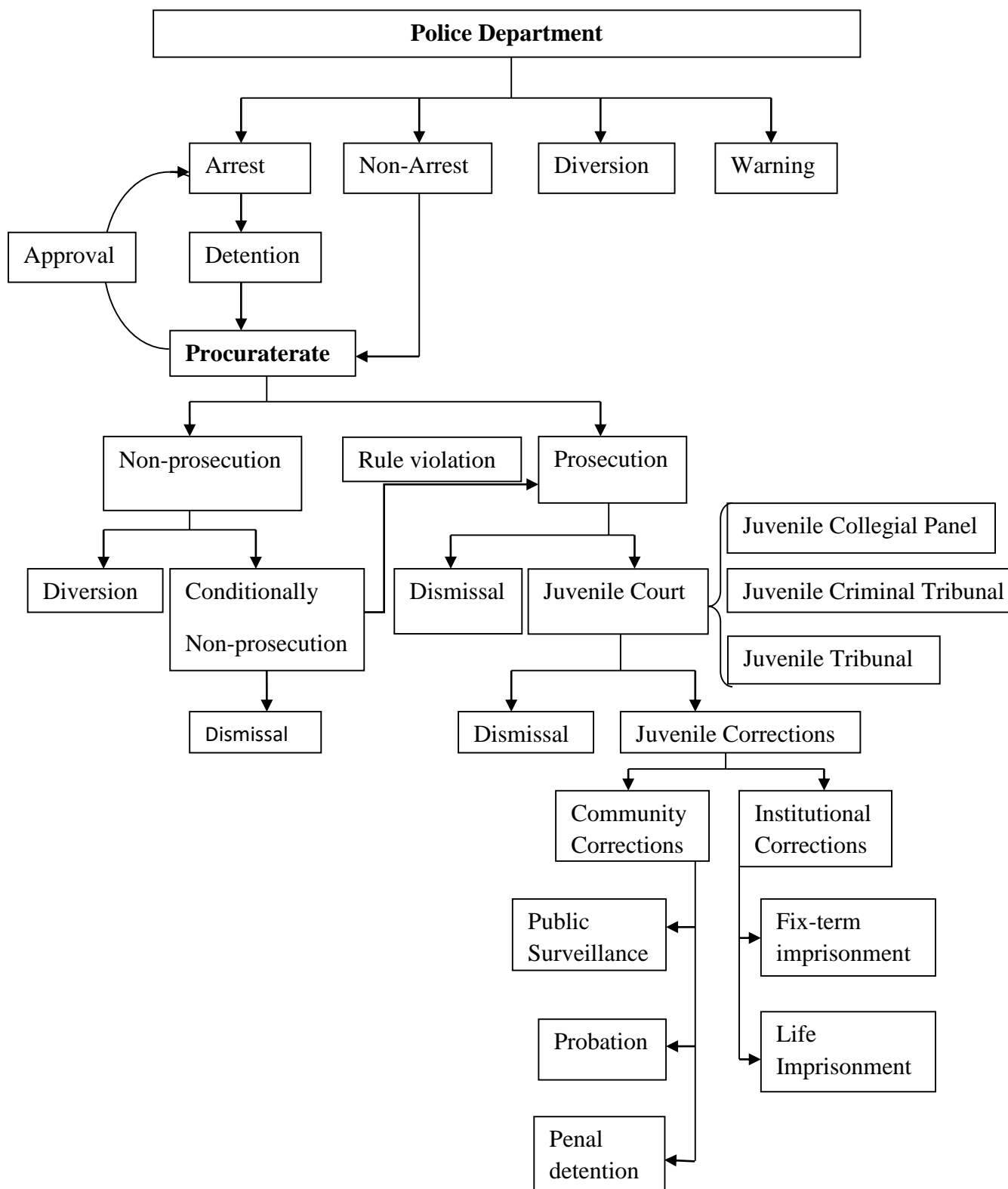
³⁵⁰ Ibid at, 150.

5.4.1 Components

In the Juvenile Justice in China there are several main components like juvenile courts, correctional, social welfare, etc. These components handle proceedings related to juvenile cases. For disposal of the matters related to juvenile, the matter passes through many stages and these stages are defined in Diagram 1.4.³⁵¹

Police department have four types of powers, namely; arrest, non-arrest, diversion and warning. Police used these powers according to nature of the offences. There are three types of juvenile courts, such as; Juvenile Collegial Panel, juvenile criminal tribunal and juvenile tribunal.

³⁵¹ Ibid at, 151.



5.5 Russia

In Russia, the age of criminal responsibility has been determined as of 16 years but a child who has above the age of 14 years but below 16 will be held liable for punishment in case of heinous offences like murder, theft, grievous offences, assault, etc. The child below the age of 16 years shall be confined for 6 years. When a child obtains the age above 16 years then he shall be confined for 10 years.³⁵² Russia does not have any separate system for juvenile offenders, they are treated as an adults in the regular courts in the case of serious offences such as rape and murder.

Criminal Code specifies that punishment should be assigned in strict manner. According to this Code, two types of punishment are assigned to juvenile:

- On the ground of background of the child; and
- Individual characteristics identified during the pre-trial investigation.

Further two types of Models have been adopted as alternative approach to the recent retributive juvenile delinquent in criminal system;

- **Perm**; this model is based on restorative justice school.
- **Rostov**; this model is based on the rehabilitate approach to juvenile justice.³⁵³

Rostov Model has four types of aspects:

- Specialization of judges
- Specialization of the judicial appliances
- Social workers in the courts
- Formation of essential preconditions for juvenile justice.³⁵⁴

Perm Model has two types of aspects:

- Separate judges, to look the matter related to juvenile offenders.
- The professional judge's assistant.

³⁵² Una Kirstine Hakvag, *Juvenile Justice in the Russian Federation*, p-35, available at <https://www.duo.uio.no/bitstream/handle/10852/33991/Hakvaag.pdf?sequence=1>, last seen on 14/4/2017

³⁵³ *Ibid*, at 63

³⁵⁴ *Ibid*

Moreover, in this Model judge's assistant has a very vital role to perform the functions related to juvenile cases. They select the cases which are appropriate for victim-offender reconciliation programs.³⁵⁵

5.6 Pakistan

'Juvenile' is 'a child who is under the age of 18 years.' The laws which specifies the term 'juvenile', namely are:

a) Juvenile Justice System Ordinance, 2000

According to this Ordinance, at the occurrence of the crime child should be below 18 years.

b) Pakistan Penal Code, 1860

A Child under the age of 7 years, he shall be free from criminal liability.

A child above 7 years and less than 12 years, the criminal liability depends upon the consequences of his conduct during the occurrence of the crime.

c) Offence of Zina (enforcement of) Hard Ordinance, 1979

This Ordinance also sets out the age of child as 18 years.

d) Code of Criminal Procedure, 1983

According to this Code, the age of child is considered as of 15 years.

e) Punjab Youthful Offender Ordinance, 1963

According to this Ordinance, the age of child is considered as of 15 years.³⁵⁶

Juvenile's trial is conducted according to School Leaving Certificate. Juvenile Justice System Ordinance, 2000 (JJSO), provides the provisions related to:

- Protection of the child;
- Procedure of juvenile Courts;
- Proceedings related to juvenile offenders;
- Establishment of Juvenile Courts;
- Juvenile's trials should be separated from adults;

³⁵⁵ Ibid, at 67.

³⁵⁶ Ashraf Ali, *Juvenile Justice System Ordinance 2000 Judgments of Apex Court in Pakistan*, p-7, available at file:///C:/Users/HARMESH%20LALA/Downloads/Juvenile_Justice_System_in_Pakistan.pdf, last seen on 14/04/2017.

- Determination of age of the child; Court shall conduct the inquiry to find juvenile's age and it shall be recorded by Court and medical report must be included.

Juvenile Justice System in Pakistan is little retributive in nature. Juvenile can be punished with imprisonment but not death penalty. Death penalty is prohibited in the case of juvenile offender but in the case of heinous offences they shall be liable for this punishment. A child of 15 years or upward is arrested in the case of heinous offences such as (brutal, crime against public morality, etc.), the Court may have a power to refuse the bail of delinquent juvenile and they are liable for punishment with death or imprisonment for life.

5.7 Ireland (Republic of Ireland)

In this Country the age of criminal responsibility of child is considered as of 12 years. If any child commits a heinous crime under the age of 10 and 11 years, they shall be considered under the age of criminal responsibility.³⁵⁷ They have adopted a *diversion program* providing a kind of sentencing policy, in which criminal offenders join reformatory house. The main purpose of this program is alter the criminal behavior of the criminal offenders. Juvenile Justice System in Ireland is more reformatory in nature. Juvenile offenders are placed under the administration of Juvenile Liaison Officer.³⁵⁸ This program is managed under the administration of Commissioner of Garda Siochana and in case of his absence a person is appointed as Director not inferior to the rank of Superintendent for the purpose of functioning on the behalf of Garda Siochana.³⁵⁹ When any child is accepted for diversion programs, then they are free from prosecution of criminal liability.³⁶⁰

Inadmissible Evidences: Evidence which is inadmissible in civil or criminal proceedings is:

- a) When any juvenile is admitted for Diversion Program;

³⁵⁷ Department of Children and Youth Affairs, *Key feature of Irish Youth Justice System*, available at https://www.dcy.gov.ie/docs/Overview_of_Youth_Justice_System/168.htm, last seen on 15/04/2017.

³⁵⁸ Article 19, Children Act 2001.

³⁵⁹ Article 20, Children Act, 2001.

³⁶⁰ Article 49, Children Act, 2001.

- b) Behavior of the child; or
- c) Involvement of the child in diversion program for that criminal conduct.³⁶¹

If any child less than 14 years have committed any offence, he is entitled for prosecution and punishment as an adult.³⁶² A child is punished according to his mental capacity and consequences of the crime. Further this Act postulates that the proceeding related to child should be separated from adults.³⁶³ When a person is charged with an offence, then Court shall conduct an inquiry for determination of the age of juvenile and for the purpose shall take such evidence related to the age. At the time of hearing Court cannot deny this proof and must pass order according to this evidence.³⁶⁴

A child who has been detained in *Garda Siochana* station, any other officer shall not ask questions and has to make a written statement unless in the presence of:

- Parents or guardians, or
- If they are absent, then another adult nominated by the member in charge of the station (except a member of the *Garda Siochana*).

The member in charge of the station has a power to detach their parents or guardians during the questioning or written statement, if they create any misconduct.

If any child commits an offence, then he shall be tried and punished according to the maturity level. A young person is treated as an adult in the case of manslaughter.

5.8 Maldives

In this country, the age of criminal responsibility of child is considered as 10 years. A child between the age group of 16-18 is considered as an adult. During investigation, juvenile offenders are kept in Dhoonidhoo where offender detainees and political prisoners are housed. Juveniles are kept in tents and adults are kept in house cells. Corporeal punishment is a legal way to punish the juvenile offenders.

Maldives has adopted restorative approach in the case of juvenile offenders. The main purpose is to alter the criminal behavior of the child and prevent crime in the society.

³⁶¹ Article 48, Children Act, 2001.

³⁶² Article 54, Children Act, 2001.

³⁶³ Article 56, Children Act, 2001.

³⁶⁴ Article 269, Children Act, 2001.

The procedure of juvenile justice is based upon the basic principles of UN guidelines. Prior to CRC there was no law for juvenile offenders. They were treated like an adult and punished according to regular criminal system. There were no instruments for rehabilitation or re-integration of juvenile in Country. They were more focused upon retributive punishments for violating laws of land. There were no separate courts for juvenile offenders.³⁶⁵

³⁶⁵Generation UNICEF South Asia @ 25, *Restoration of Juvenile Justice System in Maldives*, available at <http://generation25.org/restorative-juvenile-justice/>, last seen on 16/04/2017.

Chapter 6
Judicial Interpretation

6.1 Introduction

The criminal Justice system is based on the Constitution, criminal procedure, and special enactments and operate as per conformation with the law. The juvenile justice system is composed of police agencies, court system and correctional system that cover political jurisdiction of the cities, countries, states and federal government and include both private and public agencies. Other side in the adult system is related with plea bargaining, bail, rigorous punishments, death penalty, the advisory approach in Court, prisoner rights and with more focused on custody. In both cases judiciary plays an important role to administer these systems. Judiciary has taken effective measure for protection of their rights and to control crime in the present society but judiciary always give prime importance to ‘public interest’ than ‘child interest’.

6.2 Raghubir vs. State of Haryana³⁶⁶

In this case juvenile accused was convicted for murder and punished with imprisonment of life by trial court. At the time of occurrence of crime, he was below the age of 16 years and he was punished according to the Children Act. Raghubir’s case have high impact on juvenile justice system at two levels i.e. legal as well as social level. Vital legal effects can be recognized by following points:

- a) Ordinary courts established under Cr. P. C have no jurisdiction to try offences related to juveniles.
- b) Juvenile can be handled strictly.
- c) The right of juvenile delinquents shall be subjected to exclusive treatment only to the applicability of the legislation in the respect of the delinquent in question, not the seriousness of the offences.
- d) In serious offences, if juvenile is tried jointly with an adult then he is treated with particular legislation, not with the common legislation.
 - The Juvenile Court has to record all evidences related to delinquent juvenile and proceedings should be done in fair manner.³⁶⁷

³⁶⁶ Raghubir vs. State of Haryana, (1981), 4 Sec 210.

³⁶⁷ B. B. Pandey, Commentary on Raghubir Ruling for Juvenile Right to Exclusive Treatment.

6.3 Parag Bhati (Juvenile) vs. State of UP³⁶⁸

Shri Rajpal Singh filed complaint informing that his son Satender, who found dead in his house. During the investigation Parag Bhati got arrested and charged under 302,394, 504, and 506 under IPC. Appellant-accused's father filed this application before the Court and alleged that the appellant-accused for proving his juvenility has supported several school certificates which were issued by the competent authorities from time to time. Board of Juvenile Justice, came to a conclusion after dealing with evidences that the age of juvenile is doubtful and case was referred to the Medical Board for determination of the age of juvenile. After the medical examination, Chief Medical officer declared that the age of juvenile is 19 years. Board held that, accused was not a juvenile and he transferred the case before Chief Judicial Magistrate. Then appellant-accused filed appeal before the Court regarding the age of juvenile.

Issues which arose before the Court:

- Whether the date of birth which is mentioned in the matriculation certificate is doubtful?
- Whether the ossification test is the last resort to prove the juvenility of the accused?

Observation by Court

- a) Court observed that, Board can take the evidence of the matriculation certificate if available, and in the case of non-availability, birth certificate will be permissible.

Court concluded that, the date of birth mentioned in the matriculation certificate has raised doubt on the grounds of material or evidence on record. In that situation, medical evidence duly constituted to determine the age of accused person claiming juvenility.

- b) After the medical examination conducted upon accused, his age assessed about 19 years and the Board fixed the age of 18 years, 10 months, and 6 days at the time occurrence of crime.

³⁶⁸ Parag Bahti vs. State UP, Cri. Appeal No. 486 of 2016.

- c) Further, Court observed that it is clear that the person below the age of 18 years, he would be entitled to get advantages and special protection under JJ Act. It also held that, if he is committed a grave and heinous crime even though he will be considering minor.
- d) If he has committed any crime with well-planned manner, which shows his maturity of mind, then his plea of juvenility cannot be accepted.
- e) The date mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused.

6.4 Pratap Singh vs. State of Jharkhand³⁶⁹

This is special leave appeal filed by appellant that was alleged as one of the conspirators to have caused the death of the accused by poisoning. A petition was filed on the behalf of minor that, appellant was minor at the time of occurrence of crime. Board assessed the age of juvenile in between 15 to 16 years after submission of the report by Civil Surgeon to constitute a Medical Board for the purpose of assessing the age of the appellant by scientific examination.

Court referred the case of *Arnit Das vs. State of Bihar*,³⁷⁰ and took the view that date of birth certificate and school certificate should be the best evidence to determine the age of juvenile.

Court recommended that legislation aims at achieving the following objectives: -

- To ensure that, no child is lodged in jail or police lock-up under any circumstances,
- To provide a treatment which is suitable for their development,
- To provide care, protection, and rehabilitation to the best interest of the child,
- To recognize norms and standards for the administration of juvenile justice related to investigation, adjudication, care, rehabilitation, etc.
- To constitute special offences in relation to juveniles and to provide for punishment thereof.

³⁶⁹ Pratap Singh vs State of Jharkhand and Anr., Appeal (Cri) 210 of 2005.

³⁷⁰ Arnit Das vs State of Bihar, (2000)5 SCC 488, (2000) SC 2261.

Observation by the Court

- If any accused has been declared as a juvenile, then he is entitled to take advantages under JJ Act and no one can deny that.
- The age of juvenile shall be determined on the date of an occurrence of the crime not the date when he is produced before the authority or in the Court.

6.5 Jai Prakash Tiwari vs. State of UP and another³⁷¹

Accused alleged juvenility before trial court under the charge of 302 and 394 of Indian Penal Code. The accused was accepted as a juvenile at the time of occurrence of crime.

Observation by Court

- Court observed that the age of juvenile can be determined during the occurrence of the crime; Court shall make enquiry and proceeding according it.
- Juvenility can be claimed at any stage of trial. It may be raised after the final disposal of the case or first time before the Court. Even Juvenile is claimed in appeals also. Juvenility can be claimed even in the appeal also.
- If any accused want to claim juvenility after the conviction of case, the claimant must produce relevant documents and Court shall conduct necessary inquiry and the burden of proof lies upon claimant.
- An Affidavit of claimant, their parents, guardians, siblings, or relatives in support of claim of juvenility must be provided, at time of appeal, or revision or before the court at time of pendency of the case.

6.6 Bhoop Ram vs. State of UP³⁷²

This Special Leave Petition filed by appellant is whether the appellant who was convicted along with 5 other members. All accused charged under Section 302, 323, 324 reads with 149 of IPC. In such circumstances court felt inquiry is conducted to determine the age of juvenile. After inquiry by Chief Medical Officer, he gave a radiological examination and physical features certificate to the Board. Appellant did not produce any certificate except school certificate. After considering medical and

³⁷¹ Jai Prakash Tiwari vs. State of UP, Criminal Revision of 4694 (2011).

³⁷² Bhoop Ram vs. State of UP, (1989) SC 1329, (1989) 3 SCC 1.

school certificate, Court stated that he appeared 29-30 years, which means he completed the age of 16 years.

Learned Counsel argued that the school certificate should always prevail from the medical certificate.

Decision

Court was dealing with a case where there was a conflict in respect of the age between the school Certificate and medical certificate. According to the school certificate accused was below the age of 16 years and according to the medical certificate accused completed the age of 16 years. Supreme Court held that School Certificate is based upon the possibility to creeping into the opinion cannot be ruled out. Court accepted the age as shown in the certificate of the school. Trial Court charged of murder and passed order life imprisonment. Supreme Court quashed the order of trial Court and directed him to release from the jail.³⁷³

6.7 Arnit Das vs. State of Bihar³⁷⁴

On 5 September 1998, Abhishek was shot dead. Petitioner as arrested by police officer was charged under the 302 of IPC. On 14 September 1998 accused was produced before Court in the case of murder. In this case petitioner claimed that he was juvenile and is entitled for advantages under JJ Act. Petitioner was referred to Medical Board for medical inspection. On the basis of medical report and evidences, court concluded that juvenile was above the age of 16 years during the course of action. The legal issue was:

- Whether the petitioner was juvenile or not during the course of action?

Observation by Court

Court observed that, when at the time of appearance of accused before Juvenile Board, if it is found that accused boy is less than 16 years and girl is less than 18 years, then Board must adopt the procedure of this Act.

³⁷³ See also Jayender vs. State of UP (1982) SC 685, (1981) 4 SCC 149; Pradeep Kumar v. State of UP (1994) SC 104.

³⁷⁴ Arnit Das vs State of Bihar, (2000) 5 SCC 488, (2000) SC 2261.

6.8 State vs. Ram Singh and Anr.³⁷⁵

On 16 December 2012 in Delhi at midnight Jyoti Singh along with her friend Arvind Pratap Pandey was on the way back to her home by bus. There were six persons in the bus in drunken state. They gravely shattered them and gang rape of Jyoti was done in running bus and were thrown out from running bus. In spite of the best treatments she succumbed to her injuries and pains on December 29, 2012 at Singapore. FIR was lodged and within 24 hours all accused were arrested with the help of CCTV footage. Court observed that this case is the rarest of rare cases.³⁷⁶ The post mortem report of the victim showed serious injuries and various marks on the victim's body.³⁷⁷ One of the accused named Mohammad Afroz (Raju) was juvenile in this case and according to the report juvenile raped her two times and also inserted rod into her private parts which damaged her intestines which ultimately led to her death.

Justice Verma committee was appointed to find out the accurate cause for crime. This committee suggested so many points and amendments in the legislative provisions which resulted in number of changes in Indian Penal Code, Indian Evidence Act, and Cr. P. C.

The main legal issue which was considered was that whether Juvenile should be treated as other? And whether juvenile be tried into the juvenile's court or regular criminal court? All accused were convicted with capital punishment except juvenile, because prior to 2015, juvenile cannot be punished till 18 years. Mohammad Afroz was short of 8 months to 18 years, therefore he was sent to rehabilitation home. He was not treated as an adult in this case. Because Juvenile Justice (Care and Protection of Children) Act, 2000 specifies the child to be juvenile unless he /she will be above 18 years. Supreme Court observed that juvenile accused cannot be considered as an adult and cannot be awarded with death sentence. Prosecution alleged that the Juvenile offender must be treated according to the penal provisions along with the other offenders.

³⁷⁵ State vs Ram Singh and Anr. (2013) SC 114.

³⁷⁶ Nirbhaya case, House of Legal Cases, available at <http://legalcasehouse.blogspot.in/p/nirbhaya-case.html>, last seen on 08/04/2017.

³⁷⁷ Ibid.

Juvenile Justice Board passed the decision in this case:

- The juvenile offender declared him juvenile after examining his birth certificate and school documents;
- Further Juvenile Board held that juvenile cannot be treated as an adult and according to the Act he could remain in remand home for the maximum period of three years;
- Court ordered that juvenile be convicted for rape and murder under JJ Act 2000, was liable to maximum punishment of three years imprisonment and as per the provisions was referred for reformation to rehabilitation home and was released after 3 years on December 20,2015.

This judgement of Supreme Court attained widespread criticism as even though we live in a period of high technology but juvenile's age in this case was determined on the basis of his school documents.

6.9 Subramanian Swamy and Ors. Vs. Raju thr. Member Juvenile Justice Board and Anr.³⁷⁸

Detailed discussion on facts of Nirbhya case depicting how conduct of juvenile and other accomplice resulted into tragedy with the young couple. The petitioner alleged that the juvenile shall be treated as a juvenile under the juvenile law; but must be treated according to the penal provisions and in the criminal court. In this case, Court discussed the criteria related to juvenile age. Juvenile age i.e. 18 years will not be applicable in heinous crimes against women or offences which are grave in nature. 'Rights to victim', as protected by Article 14 and 21 of Indian Constitution was given by court. High Court passed the order against Juvenile Board that other remedies must be awarded and alternative procedure should be mentioned in the Act for regarding the matter related to grave nature of offences.

In this case writ petition was filed to reprieve:

- For strike down of unconstitutional and void provisions of JJ Act;

³⁷⁸ Subramanian Swamy and Ors. Vs. Raju thr. Member Juvenile Justice Board and Anr., 2014 (2) ACR 1615 (SC), (2014) SC 1649.

- The ban on the powers of Juvenile Board to try the offences which he commits under Indian Penal Code 1860;

Further Court strike down the provisions related to reduction of the age of juvenile as 18 years. Dr. Subramanian Swamy contended that:

- Section 82 and 83 of Indian Penal Code describes that below 7 years child shall not be subjected to any criminal liability and for 7-12 years maturity level has to be considered and the same principle would apply to juveniles under the age 12 to 18 years.
- Further, it was contended that JJ Act must be governed on the ground of Article 14³⁷⁹ of Indian Constitution.
- During trial or inquiry, the prime focus should not be on the offence of juvenile but conduct and nature of the offence has also to be considered.
- This Act, specifies maximum punishment to juvenile on the proof of an offence and to be kept in reformatory home for the period of 3 years. This procedure is totally different from trial and investigation under Code of Criminal Procedure.
- The proceeding against juvenile Raju in Nirbhaya case was declared as null and void, as trial would have been conducted by competent authority.
- Juvenile Justice Act is based on UN Convention and specifies the age of child as 18 years and consider the maturity level of the juvenile, psychological and emotional ability or capacity.

Court looked out the Convention of UN Standard Minimum Rules for the administration of Juvenile Justice (the Beijing Rules). This Convention had specified that juvenile should be treated as a child or young person in the juvenile system. This Convention fixed the age of criminal responsibility, which is too low.

Court has referred to various countries while pouncing judgment in this case as mentioned below-

Canada

In Canada Youth Criminal Justice Act, 2002, prescribes the criminal justice to juvenile between 12 to 18 years. Canadian society takes the effective steps for considering the

³⁷⁹ Article 14 reads 'equality before law and equal protection of law'.

interest of the victims, foster responsibility and ensures the actual or active measures of rehabilitation and reintegration and also to secure the same for heinous crime in nature in the society.

Further this Act specifies that ‘Youth Justice *Court*’ may pass the order according to the mental and psychological capacity of the young offenders,³⁸⁰ for the following causes:

- To examine an application for discharge from or detention in custody.
- To decide the matter for proceeding the juvenile offender on adult sentence.
- Making or review of youth sentence.
- To consider an application related to continuance of custody.
- To make an order for conditional management.
- To grant authority for disclosure of information concerning youth.

Afghanistan

In Afghanistan the Juvenile Code sets out the minimum age of criminal responsibility as 12 years and a child is defined who is below the age of 18 years. Trial related to the children in conflict with law, is administered by Juvenile Court and Delinquent Juvenile are persecuted by special Juvenile Prosecutor. Death Penalty and Imprisonment of life cannot be imposed upon the juvenile offenders. The punishment related to juvenile offenders has been categorized in two parts as:

- Juveniles under 12 to 16 years, 1/3 of the maximum punishment to adults can be awarded.
- Juvenile under 16 to 18 years, ½ of the maximum punishment to adults can be awarded.

Bhutan

The age of criminal responsibility is 10 years in this Country. Moreover, children age has not been defined. Bhutan does not have any particular legislation which deals with the juvenile offenders. Section 223 of Cr.P.C have specific provisions regulating the

³⁸⁰ Section 34, Youth Criminal Justice Act, 2002.

trial of a delinquent juvenile and he can be awarded ½ of the adult sentence awarded if he is below the age of 18 years.

Nepal

Nepal set out the criminal responsibility at 10 years. A child is defined as a person who is less than 16 years and youth between 16-18 years are tried as an adult.

United Kingdom

Less than 10 years' child is considered as incapable of committing a crime and child between the ages of 10-18 years are considered capable for committing crime, but in case of heinous crimes they will be charged in same way like adults.

In UK common policy of law is:

- Juveniles under 18 years, specifically under 15 years, should be treated as far as possible by Youth Court, and to reserve trial in the Crown Court for heinous offences.
- First time juvenile falling in 12-14 years age group and all juveniles less than 12 years should not be detained in custody.

6.10 Salil Bali vs Union of India and Anr.³⁸¹

In this case Supreme Court considered eight petitions together related with juvenile justice system in India. In addition to above *Shilpa Arora Sharma vs Union of India*,³⁸² by way of writ petition has claimed for following reliefs:

- That to elect a panel of criminal psychologist to determine through clinical technique whether the juvenile is involved in the Delhi gang rape.
- Another point was that juvenile must be tried in the criminal court not in the juvenile court. The benefits regarding less than 18 years of child should be deprived.

³⁸¹ Salil Bali vs Union of India and another, writ petition no. 10 of 2013, decided on 17th July 2013.

³⁸² Shilpa Arora Sharma vs. Union of India, (2013) Writ Petition (Cri.) No. 6.

- Juvenile in Delhi gang rape case must not be released and must be kept in keeps strict manner.
- After he was found to be mentally ill or abnormal mind, then CBI should conduct the inquiry for determining the age of juvenile by investigating proper evidences and his school documents.
- Further, they prayed that Section 20 of JJ Act, 2000 be declared as unconstitutional.

Supreme Court reconsider the provisions of JJ Act, 2000 namely Section 2(k), 2(l) and 15 of JJ Act, 2000 with the light of juvenile age group 16-18 years. Court said that juvenile to be tried according to the provision of JJ Act, 2000.

Mr. Bali submitted that:

- The age of criminal responsibility of a child is different from the other countries.
- The age of criminal responsibility to understand that nature of offence had been considered 12 years in the IPC, 1860.
- Further he pointed that as per Section 82 of IPC, ta child cannot be punished under the age of 7 years.
- He also referred that Section 83 of IPC, if any child is commits a crime under the in the age gap of 7-12 years, maturity level of the child must be considered.
- Further he submitted that YCJA, 2003 (Youth Criminal Justice Act, 2003) has referred the age of criminal responsibility as 12 years.
- A child is less than 12 years, trial is to be governed in the correctional homes and above 18 years old child's trial to be governed in criminal courts in certain offences.
- In England and Wales, according the Young Person Act, 1933, as amended by Section 16(1) of the Children and Young Persons Act, 1963, that the age of criminal responsibility is 10 years. A child less than 10 years is considered immature and doli incapax that similar to the provisions related to IPC Section 82 and 83.
- After imprisonment of 3 years in the rehabilitation homes in serious offences, he becomes more dangerous for the society.

The Petitioner submitted that everyone has a right to live with dignity and peace in the society, but without violence and harm to other person. Juvenile has a capability to understand the all circumstances of the case; they are convicted under IPC, and treated as an adult. He also submitted that if he is well aware of all the consequences and about the nature of the heinous offence then he shall be liable for life imprisonment or death. He does not deserve any kind of privileges as a child. In the case of Vinay Kumar Sharma, he also prayed that JJ Act, 2000 should be declared ultra vires and the juvenile should be tried as an adult in the case of heinous offences.

Mr. Asthana contended that, after the incidence of Delhi gang rape on 16th December 2013, Court has failed to implement the provisions of JJ Act, 2000. Learned counsel submitted that:

- The age of juvenile as 18 years is arbitrary;
- The age regarding juvenile must be reduced;

Court observed that offenders has to be treated as juvenile according to the JJ Act, 2000 as doctrine of ex-post facto laws will be applicable.

Chapter 7
Conclusion and Suggestion

7.1 Conclusion

The concept of juvenile delinquency is not a new concept in India. The juvenile delinquency is concerned with the criminal behavior or abnormal behavior of a child. Before the enactment of the JJ Act, 2015, there were no provisions for the purpose of demarcating and defining heinous offences. After the shock waves of the Delhi Gang rape (Nirbhaya's Case) shook the parliament with the accusations of not being able to rise up to the occasion, the Legislation felt the need introduce the "*Juvenile Justice (Care and Protection of Children) Act, 2015*", specifying the provisions related to heinous offences and the age of juvenile shall be construed as 16 years in the case of serious crimes such as murder or rape. Juvenile justice (Care and Protection of Children) Act, 2015 is a crucial step towards the juvenile justice system in India. From the aloft study related to objectives, scope, provisions, definitions, and general principles, in is concluded that they are the fundamental aspects of JJ Act, 2015 having positive attitude towards juvenile delinquents.

This Act has *classified the offences*, i.e. petty offences, heinous offences and serious offences. Concerning the child 'under the age of 18 years', they are produced before JJB in the first instance. If any child has completed the age of 18 years but was a juvenile at the time of occurrence of an offence, then he shall be considered as a child. JJB is vested with power to adjudicate matters related to both such types of offences.

When a child is accused of committing a heinous crime, the Juvenile justice board while dealing with such a matter, has to conduct a preliminary assessment inquiry, where the experts appointed by the board shall evaluate the mental condition of a child involved and consequence of the offence so committed by the child. Also, in such cases a child is treated as an adult.

The JJ Act. 2015 has classified the offences in three categories, which are provided as follows: -

- *Petty offences*;³⁸³ provides maximum imprisonment of up to 3 years under IPC.
- *Serious offences*;³⁸⁴ provides imprisonment between 3 to 7 years under IPC.

³⁸³ Section 2(45), Juvenile Justice Care and Protection of Children) Act, 2015

³⁸⁴ Section 2(54), Juvenile Justice Care and Protection of Children) Act, 2015

- *Heinous offences*;³⁸⁵ provides minimum imprisonment of 7 years or more under IPC.

The classification provided by the act however fails to justify the demarcation between the serious and heinous offences and also the reasons for providing such a demarcation in the act. Also the definitions of the crimes ranging from petty offences to heinous crimes fails to justify any criteria upon which such differentiation has been based. The same principle follows with the penal clauses as well, as there is no basis to justify the quantum of punishment provided for the 3 types of offences as enlisted by the Act. For instance, the offences which are punishable with 3 years have been specified in definitions of petty offences and whereas the punishment provided for serious is up to 7 years and for the heinous offences have been made punishable with minimum 7 years of imprisonment. However, nowhere it has been provided by the act that what all offences would fall in the ambit of the heinous offences and likewise for the serious offences.

Further it has to be noted that the punishment provided for the petty offences is maximum 3 years and also the punishment prescribed for the serious offences ranges in between 3 years to 7 years. Again there is an overlapping between the punishments provided for both the offences. How can one affix the quantum of punishment of a serious offence at par with the maximum punishment provided for a petty offence i.e. 3 years in the pertinent case. The act itself has given rise to a number of ambiguities instead of laying down a clear letter of law in the interest of the common masses of the country.

To fill the above stated lacunas, it is obligatory on the part of the legislation to define the serious and heinous offences, so that a clear distinction can be drawn between the two.

Adding to the list of lacunas associated with this Act, this act has failed to take into consideration the juvenile sex delinquents, female Juvenile delinquents etc. The Act had also failed to recognize the rights of the victims, as the Act is silent with regard to rights, needs and the services ought to be provided to the victims.

³⁸⁵ Section 2(33), Juvenile Justice Care and Protection of Children) Act, 2015

Under this act, the juvenile who has committed a heinous crime shall be sent to be tried before a criminal court. It is a prime step taken in an attempt to reduce the juvenile delinquency. However, in reality it is proving out to be more harmful than good.

The criminal justice system is solely focused on the crime and juvenile justice system focuses on 'restorative justice. In the criminal justice system, the State has the liability to punish the criminals and in the juvenile justice system the State has the responsibility to rectify the harm which has been done by juvenile offenders.

Further, the criminal justice system takes into consideration only the past but the restorative justice takes into consideration not only the past but also the present, and future of the offender. For a heinous offence, a juvenile is tried as an adult and further inflicts harsh punishment upon the offender.

'Restorative justice' is different from 'restitution' and 'reformatory justice.' Restitution justice includes pecuniary loss or damages and compensation whereas 'Reformatory justices' only provides for reform to juvenile offenders. Restoration justice considers with both i.e. victims and juvenile offenders. The prime role of Restoration justice is to restore the relation and resolve the dispute between them. Restoration justice has been referred under Section 18 of JJ Act that JJB may pass the order for counseling and community services to be carried on by the child.

The purpose of the JJ Act, 2015 is to make the juvenile offender realize his mistakes and also to provide him with an opportunity to improve and grow as a person and not to punish the juvenile offender. The State has failed to protect the rights of a child such as care and protection and the implementation of various provisions of the Act. This Act requires some instruments and enough resources to the implementation of the provisions of the Act.

This Act gives most priority to the documentary evidences such as school certificate and birth certificate of the child to determine the child's age and medical evidence is considered only when these two evidences are not available. It shows that the medical certificate holds less of a value in place of the above stated documents under the JJ Act, 2000. Under the Act, the Board shall conduct 'the ossification test, dental, and physical test' to determine the age of a juvenile. However, JJ Act, 2015, the medical examination carried on by the order of Board and Committee and in order to determine the age of a

child, the board shall conduct the 'bone ossification test' or another 'latest medical age determination test.' Further before a child could be tried as an adult, it must be assured that the child should be above the age of 18 years, however in case it is not possible to conduct a medical examination and no certificate can be furnished to ascertain the age of the child, no provision has been provision by the Act as to how that child shall be tried.

A juvenile should only be punished in the case of heinous offences. Thereby there is a need for an amendment in the present act. But juvenile delinquency cannot be stopped only by the appropriate implementation of the JJ Act, 2015. Juvenile offenders are not culprits; they are victims of the civil society. Crime in case of juveniles must be curbed at an initial stage. It can be done by providing requisite care and protection to a child in homes and schools. Parents and teachers play an important role in a child's life. There is a needs to understand the philosophy of a child's mind and he must de dealt empathetically and should not be imposed with heavy punishments.

Rehabilitation homes have been established under chapter 7 of the act with an intent to rehabilitate the juvenile offender with a view to provide the juvenile with an opportunity to develop, personal growth and also to provide care and protection to the child through restoration, reformation, and rehabilitation. There is huge difference between theoretical and practical aspects of juvenile justice system in India. Legislature has to create the best infrastructure and adequate procedure to administer the juvenile justice system. The juvenile offenders need treatment and not punishment. This is the basic principle upon which the basis of rehabilitation homes rests.

Principle Magistrate appointed for adjudication of the matters is usually not competent to deal with such sensitive matters. The Magistrate so appointed should be well read in the area of child psychology and should have some experience in dealing with such matters. The Act does not provide for any such qualification of the part of the principle magistrate. JJB always speaks in a child friendly atmosphere whereas in the criminal courts the Cr.P.C is made applicable to the juvenile offenders which is against the whole objective of the JJ Act as at the time of the proceedings the atmosphere is not child friendly atmosphere as well as child friendly treatment.

The fact that the JJ Act has been enacted to secure the interest of juvenile offenders, thereby the act by all means should work towards securing the interest of the juveniles,

who are in need of rehabilitation, care and protection. There are a number of ambiguities reported during the course of this study, the legislation must act towards the resolution of those ambiguities so as the objectives enlisted under the JJ Act, 2015 could be achieved.

Obstruction in JJ Act, 2015

1. JJ Act, 2015 has failed to define the concept of parent's responsibility in case of 'juvenile delinquency'.
2. It has failed to provide the procedural guarantees, such as right to speedy trials.
3. Further this Act has provided certain provisions related with 'Adoption', however the act is silent with regard to procedures to be complied with in case of 'Inter-country adoption'. The link between JJ Act, 2015 and other legal provisions such child labor, education, sexual abuse, adoption, exploitation, etc. is missing.
4. Since the major objective of this Act is the Social welfare of the juveniles, however, the Act has failed to provide for any schemes involving education, health care, legal guidance and social assistance in relation to the juvenile offender.

7.2 Suggestions

1. According to the Section 4 of the Act, the State Government should provide for the special training of all the members of the Board including Principle Magistrate. They should also be taught the basics of child psychology, so as to make them competent to deal with cases involving child/juvenile offenders.
2. The place of inquiry should be child friendly. The proceeding must be comfortable keeping in view the tender age of the child offender.
3. At the time of the proceeding the maturity level of the child and consequences of an offences must be considered.
4. Recordings and files related to child should be maintained in the proper manner.
5. The membership of the JJB, must have one social worker having law degree.
6. To provide the best service to the child, juvenile and child's parents, they should be counseled on regular intervals.
7. After arrest, the Juvenile must be produced before Board within 24 hours.

8. The age of the juvenile should be determined on the basis of occurrence of the offence.
9. JJ Act, 2015 is silent regarding compensation to be provided to the victims of crime. There is a requirement to amend the provision of the Act for the benefit of the victims.
10. '*Protective Custody*' must be ensured.
11. The age of juvenile should be reduced in the case of heinous offences.
12. The age of criminal responsibility of the child should be uniform keeping in view all the Acts and Legislations.

Annexure

Bibliography

Books

1. Agnew Robert and Brezina, Juvenile Delinquency Causes and Control, 5th ed. 2014, Oxford publication.
2. Carmen Rolando V. Del and Trulson Chad R., Juvenile Justice, The System Process (2007), oxford publication.
3. Champion Dean J., The Juvenile Justice System Delinquency, Processing, and the law, 3rd ed., 1999, Warner Bros Global Publishing.
4. Choudhry R. N., 'Law relating to juvenile justice in India' being Commentary on The Juvenile Justice (Care and Protection Act 2000 as amended by Act No. 33 of 2006 along with Central and State Rules), (3rd ed. 2009)
5. Deming Richard, Juvenile Delinquent, (1958), Prologue Books publications.
6. Dr. Agarwal H.O., Human Rights, (15th ed., 2014)
7. Dr. Kumar A. Selva and Dr. Kaurnanithi G., Child Rights: Issue and Problems, in Human Rights and Gender Justice (S. Gurusamy, 1st ed., 2010).
8. Gaur K.D., Commentary on The Indian Penal Code (Justice P.V.Reddi 2nd ed.,.....)
9. Hawkins Darnell F., Crime Control and Social Justice, (2015), oxford publication. Constitution and allied Laws, Modern Law Publication, (1st ed. 2002),.
10. Justice Basu Palok, Law Relating to Human Rights under the Indian
11. Kumari Ved, The Juvenile Justice (Care and Protection of Children) Act, 2015 Critical Analysis, (Foreword by Justice Madam Lokur, 1st ed. 2017)
12. Kumari, Ved The Juvenile Justice System in India from Welfare to Rights, (Upendra Baxi, 1st ed. 2004)
13. Mishra S. N, The Code of Criminal Procedure 1973, with Probation of Offenders Act and Juvenile Justice (Care and Protection of Children) Act, (18th ed., 2012)
14. Mr. Maharukh, Adenwalla Child Protection and Juvenile Justice System for Juvenile in Conflict with Law, 2006
15. Pandey B. B., Commentary on Raghbir Ruling for Juvenile Right to Exclusive Treatment, 1994
16. Paranjape N V., Criminology and Penology with Victimology, (16th ed., 2015)
17. Pillai PSA, Criminal Law, 93 (12th ed., 2016)

18. Prof. Paranjape. N.V., Criminology and Penology, Central Law Publication, 2006
19. Salmond, Jurisprudence, (12th ed., 1966)
20. Sanders Wiley B., Juvenile Offenders for a Thousand Years, (1st ed., 1970)
21. Saxena R.N., The Code of Criminal Procedure Justice Juvenile (Care and Protection of Children) Act and Probation Offenders Act, (12th ed., 2004), Central Law Publications.
22. Shoham Shlomo Giora, Victimology, (2013), CRC Press.
23. Siddique Ahmed's, Criminology and Penology, 251 (S.M.A. Qadri, 6th ed., 2014)
24. Simonsen Clifford E. and Marshall S. Gordon III, Juvenile Justice in America, 1979
25. Sirohi J.P., Criminology Criminal Administration, (15th ed., 1999)
26. Stuckey Gilbert B., Procedures in the Justice System, (3rd ed., 1986)
27. Williams Glanville, Textbook of Criminal Law, Sweet & Maxwell South Asian Edition, (2014)

Ordinance

1. Juvenile Justice System Ordinance, 2000
2. Offence of Zina (enforcement of) Hard Ordinance, 1979

Bills

1. The Juvenile Justice (Care and Protection of Children) Bill, 2014.
2. Two Hundred Sixty Fourth report on Juvenile Justice (Care and Protection) Bill, 2014.

Reports

1. Indian Jail Committee 1919-1920
2. Indian Jail Committee Report, 1864
3. Nehru Report, 1958
4. Prison Commissioners Report, 24 (1912)

Journals

1. Journal of Criminal Law and Criminology
2. Journal of International
3. Journal of Law Mantra

4. Journal of Political Economy
5. Journal of Social Sciences
6. Law Journal Guru Nanak Dev University
7. Lawctopus' Law Journal

Articles

1. Ankit Kaushik, Rights of Juvenile in India (2014)
2. Ankita Gupta, The Juvenile Justice (Care and Protection of Children) Act, 2000-A Critique Dr. T.H. Khan, Juvenile Justice System in India: An Appraisal.
3. Ashraf Ali, Juvenile Justice System Ordinance 2000 Judgments of Apex Court in Pakistan
4. Bridges K. M. Banham, Factor Contribution to Juvenile Delinquency, 1927
5. Dr. Jaspal Singh, Right to Education in India: An Analysis, (2010)
6. Galan M. Janeksela, Descriptive Analysis of five juvenile justice systems: United States, Scotland, England, India and South Africa, 21 journal of International 2 (1991)
7. Haveripeth Prakash D., Juvenile Justice – A Hard Look, (2013)
8. Human Rights Watch, Adults Before Their Time: Children in Saudi Arabia's Criminal Justice, (2013)
9. Jatin Gandhi, 10 things you know about the new juvenile law, NDTV (New Delhi, 22/12/2015)
10. Juvenile Justice System in India and Critical Analysis of the Juvenile Justice (Protection and Care of Children) Act, 2000 with Juvenile Justice (Protection and Care of Children) Act, 2014 (Amendment), (2015)
11. Manisit Das and Ankit Mukta, Children in India's Five Year Plan
12. Nirbhaya case, House of Legal Cases, (2013)
13. Pragati Ghosh, Short essay on Indian Jail Reforms Committee, (2005)
14. Ruohui Zhao, Hongwei Zhang and Jianhong Liu, China's Juvenile Justice: A system in Transition, (2015)
15. Steven D. Levitt, Juvenile Crime and Punishment, (1998),
16. Tanu Priya, Reformatory Theory of Punishment, (2014)
17. Trishla Jasani, Role of the Child Welfare Committee, (2015)
18. Una Kirstine Hakvag, Juvenile Justice in the Russian Federation, (2013)

19. V. R. Krishna Iyer, *Jurisprudence of Juvenile Justice: A Preambular Perspective*, (1998)

UN Conventions

1. U.N. General Assembly, *Official Records*, Sess. 61, U.N. document A/RES/44/25, (20/11/1989)
2. U.N. General Assembly, *Convention on the Rights of the child*, resolution 44/25 (20/11/1989)
3. UN Rules 'Juvenile Deprived of their Liberty'
4. U.N. General Assembly, *UN Guidelines for the Prevention of Juvenile Delinquency: The Riyadh Guidelines* (1990), Res. 45/112, Sess. 45, U.N. Document A/RES/45/112, 1, (14/12/1990)
5. U.N. General Assembly, *Official Records*, U.N. document A/RES/40/33, (29/11/1985)

UN Resolution

1. U.N. General Assembly, *UN Resolution 1997/30-Administration of Juvenile Justice* (1997), Res. 1997/30, Sess. 30, UN Document A/RES/1997/30, (21/07/1997)

Encyclopedia

1. Alfred Kadushin, *Child Welfare: Adoption and Foster Care*, in *Encyclopedia of Social Work*, Vol. 1 (New York: National Association of Social Worker, 1971)

Newspapers

1. THE HINDU

Websites

1. <http://www.un.org/documents/ga/res/44/a44r025.htm>
2. <https://www.ncjrs.gov/pdffiles1/Digitization/145271NCJRS.pdf>
3. http://14.139.60.114:8080/jspui/bitstream/123456789/1225/1/008_Jurisprudence%20of%20Juvenile%20Justice.pdf
4. <https://indiankanoon.org/doc/1973522/>
5. <http://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf>
6. <http://ncrb.nic.in/>
7. <http://www.shareyouessays.com/121520/short-essay-on-indian-jail-reforms-committee>,
8. <http://www.jstor.org/stable/10.1086/250043>
9. http://shodhganga.inflibnet.ac.in/bitstream/10603/7809/8/08_chapter%201.pdf
10. <http://www.lawctopus.com/academike/rights-juvenile-india/>
11. <http://childlineindia.org.in/pdf/CP-JJ-JCL.pdf>
12. <http://journal.lawmantra.co.in/wp-content/uploads/2015/08/73.pdf>
13. <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=2038&context=jclc>
14. <https://data.gov.in/catalog/all-india-and-state-wise-juvenile-delinquency-under-special-and-local-laws>
15. <http://ncrb.nic.in/StatPublications/CII/CII2013/Statistics-2013.pdf>
16. <http://www.oxfordislamicstudies.com/article/opr/t125/e757>
17. <http://theindianlawyer.in/statutesnbareacts/acts/r18.html>
18. http://bdlaws.minlaw.gov.bd/sections_detail.php?id=75§ions_id=14338
19. <http://www.saarc-sec.org/userfiles/01-Dhaka-1stSummit1985.pdf>
20. http://www.cry.org/resources/pdf/va/Children_In_Indias_FiveYearPlans_2013.pdf
21. <http://childlineindia.org.in/CP-CR-Downloads/National%20Plan%20of%20Action.pdf>
22. <http://wcd.nic.in/schemes/integrated-child-development-servicesicds>
23. <http://historypak.com/nehru-report/>
24. <http://www.ohchr.org/Documents/ProfessionalInterest/tokyorules.pdf>
25. <https://poseidon01.ssrn.com/delivery.php?ID=70310211811000402310200711709810506406303903000104801307409100001008709008109607509404805500612604112611310110311910007812401805701703201401108611102509>

- 710311810300407305505009708002406500609911609400401211508009612
4008093098099108027107100000098104002&EXT=pdf
26. http://www.vakilno1.com/bareacts/juvenilejusticeact/juvenilejusticeact.html#1_Short_title_extent_and_commencement
 27. <http://pib.nic.in/newsite/PrintRelease.aspx?relid=134513>
 28. http://shodhganga.inflibnet.ac.in/bitstream/10603/31588/8/08_chapter%202.pdf
 29. <http://www.prsindia.org/uploads/media/Juvenile%20Justice/Legislative%20Brief%20Juvenile%20Justice%20Bill.pdf>
 30. <http://www.prsindia.org/uploads/media/Juvenile%20Justice/Legislative%20Brief%20Juvenile%20Justice%20Bill.pdf>
 31. <http://www.thehindu.com/news/national/karnataka/amendment-to-juvenile-justice-act-criticised/article7140406.ece>
 32. https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf
 33. <http://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx>
 34. <http://www.un.org/documents/ga/res/45/a45r112.htm>
 35. <http://www.delhihighcourt.nic.in/library/articles/Juvenile%20Justice%20system%20in%20India%20-%20an%20appraisal.pdf>
 36. <http://www.un.org/documents/ecosoc/res/1997/eres1997-30.htm>
 37. <https://www.duo.uio.no/bitstream/handle/10852/33991/Hakvaag.pdf?sequence=1>
 38. <http://harprathmik.gov.in/pdf/rte/jjrules2007.pdf>
 39. <http://www.childlineindia.org.in/role-of-child-welfare-committee.htm>
 40. <http://www.childlineindia.org.in/juvenile-justice-board-jjb.htm>
 41. https://www.dcy.gov.ie/docs/Overview_of_Youth_Justice_System/168.htm
 42. http://shodhganga.inflibnet.ac.in/bitstream/10603/37610/12/12_chapter%206.pdf
 43. http://www.dpju.com/index.php?option=com_content&view=article&id=53&Itemid=161
 44. <https://www.lawctopus.com/academike/reformativetheoryofpunishment/>
 45. <http://legalcasehouse.blogspot.in/p/nirbhaya-case.html>
 46. <http://generation25.org/restorative-juvenile-justice/>

47. <http://www.ndtv.com/cheat-sheet/10-things-you-need-to-know-about-the-new-juvenile-law-1257667>
48. [file:///C:/Users/HARMESH%20LALA/Downloads/\[2014\]%20Juvenile%20Justice%20in%20China%20Chapter.pdf](file:///C:/Users/HARMESH%20LALA/Downloads/[2014]%20Juvenile%20Justice%20in%20China%20Chapter.pdf)
49. <http://www.isca.in/IJSS/Archive/v2/i1/8.ISCA-IRJSS-2012-067.pdf>
50. <http://www.jstor.org/stable/41420985>
51. https://www.ojjdp.gov/ojstatbb/structure_process/images/flowbluemedwebalt2.gif
52. file:///C:/Users/HARMESH%20LALA/Downloads/Juvenile_Justice_System_in_Pakistan.pdf
53. https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&cad=rja&uact=8&ved=0ahUKEwiZxqyYqqHTAhUDpY8KHf8YCIUQFgg_MA U&url=http%3A%2F%2Fwww.crin.org%2Fen%2Fdocs%2FSaudi_Arabia_In_human_Sentencing.doc&usg=AFQjCNHbtFkanH09n239nvrKC_s1mutUqQ&bvm=bv.152180690,d.c2I