Chapter One

Introduction
"There can be no keener revelation of a society's soul than the way it treats its children."

-Nelson Mandela
CHAPTER ONE

1.0 GENERAL INTRODUCTION

Every nation whether developed or developing links its future with the status of the child. A child of today cannot develop to be a responsible and productive member of tomorrow’s society unless an environment, which is conducive to his social and physical health, is assured to him. Neglecting children means irreparable loss to the society as a whole. If the children are deprived of their childhood socially, economically, physically and mentally the nation gets deprived of the potential human resources for social progress, economic empowerment, peace and order, social stability and good citizenry.

India has the largest number of children in the world. India’s 42% populations are Children. India’s heritage of a stable family life and traditional joint family system helped children grow in an atmosphere of cooperation, warmth and affection into a secure future. However, the changing socio-economic system, weakening of the institution of joint family is resulting into nuclearization of the families and children are deprived of their right of getting due care and affection of family members other than the parents. In the rural set up too, there has been a trend of nuclearization of families undermining emotional, psychological and the social support, which used to upgrade child’s upbringing. Besides this, in the poorer families, the young children have also started to share the burden of running the households and thus, they are deprived of both parental and institutional care as well. Even where institutional care is available to the children, it is a very poor substitute to the parental care. The concept of rights of the child though running in the socio-cultural ethos did not get explicit recognition and the society agrees that children need to be duly cared and protected. The belief that children do have rights as adults, that they should participate in taking decisions regarding their lives, that they should be involved in these processes is yet to be internalized as a part of Indian value system. Though India is being projected as one of the leading developing nations and may become a developed country in future, but all these claims and achievements is incomplete without social progress in ensuring children’s rights.
Every year 21 million children are born in India of whom 8 million die due to various infections and diseases. Nearly 13 million children are added every year to the child population. Hence the task of ensuring basic right to every child is enormous, considering the huge number of children in the country and it's multicultural and often diametrically opposed social ethos. While in the upper echelons of the society, the protectionism often leads to adults completely controlling the lives of the children and making decisions on part of the children thus depriving children of the opportunities to develop into a complete, independent and socially aware human being, children in the poorer families end up sharing the burden of families' struggle to early livelihood and group the social ladder while everyone is oblivious of the gross violations of the rights of the child.

1.1 Statement of the Problem

According to the Convention on the Rights of the Child 1989. "A child as a person below the age of 18, unless the laws of a particular country set the legal age for adulthood younger. The committee on the rights of the child, monitoring body for the Convention, has encouraged States to review the age of majority if it is set below 18 and to increase the level of protection for all children under 18."

"Children are greatly loved in India. But this does not guarantee the care and concern which is their due. The child is vital to the development of human resources and to safeguard the country's future Child care must be the cornerstone of all our constructive activities. "Late Mrs. Indira Gandhi had said regarding the juveniles that they are the best resource and the future of the nation. Today crime against Juveniles is a harsh reality and stirs the conscience of every thinking mind. It is a manifestation of the peak of human greed and exploitation. It symbolizes human degradation and viciousness. The juveniles are subjected to innumerable violence. The innocent juveniles with their nimble fingers and tender bones are often subjected to a number of crimes against them, which adversely affects their physical and psychological health.

A number of scientific, sociological, psychological, anthropological and medical studies of the impact of the crimes against Juveniles have been made during the last few decades all over the world including India. In India, it is only after the attainment of independence that an interest was developed in the study of said
problem where children are stolen, abused, kidnapped, beaten, labored, burned, boiled & starved. They are the victims of every kind of crime.

The problem has however, received comparatively little attention from the researchers, the administrators and the social reformists. In India, there have been certain enactments made from time to time for the protection of children. Some of them are as follows:

- Child Marriage Restraint Act, 1929.
- Children (Pledging of Laboratory) Act, 1933.

The growth of the juvenile into a mature & happy person with fully developed personality largely depends upon the support & attention he receives from the family, society, nation & Laws. If there is any deficiency, his development into a self sustaining human being is often dwarfed. Due to his physical and mental immaturity child needs special safeguards; it becomes therefore the imperative duty of the State to protect children's right by legislative and other means.

The nature of the crimes against juveniles include familiar child-beating, child-labor, physical and verbal abuses, sexual-abuse, encouraging or forcing them into bootlegging, prostitution, smuggling, begging selling young children etc.

Juveniles need special care, special protection and proper attention because of their age, physique and mental immaturity. They are universally recognized as the most important asset of any nation. Each child is an asset to the nation and the future of the nation is closely related to the welfare of the child. The future well being of the nation depends upon the fact as to how the children grow and develop in the society. Juveniles need special laws to protect them from exploitation and crimes against them.

The present study would seek to establish the fact that the problem of crimes against the Juveniles is not an isolated problem. In fact it is the problem that has caused great concern to the social reformers and social scientists of modern advanced
countries since long. Moreover the issue of crime against juveniles has assumed menacing proportions and is a recognized global phenomenon.

India’s population is a pyramid of young persons with children constituting a large chunk. India had signed the convention of the Rights of the Child on 11th December 1992 and has ratified the various ILO conventions. On the basis of 5 principles “Save the Children” in 1923, was drafted the Geneva Declaration which is as follows.

1. The CHILD must be given the means requisite for its normal development both materially and spiritually.

2. The CHILD that is hungry must be fed, the child that is sick must be nursed, the child that is backward must be helped, the delinquent child must be reclaimed and the orphan and the wait must be sheltered and secured.

3. The CHILD must be the first to receive relief in times of distress.

4. The CHILD must be put in a position to earn a livelihood and must be protected against every form of exploitation.

5. The CHILD must be brought up in the consciousness that its talents must be devoted to the service of its fellow men.

The country like India is full of perennial problems and issues related to the juveniles. Thus an overall detailed study and the need and necessity to get rid from the problem is proposed to be studied in this ensuring research work. Moreover the Indian Constitution seems to be the basic protector of children. Article 21, provides for Right of Life with human dignity of personal liberty, which is one of the Fundamental Rights. Likewise Article 21-A provides for the Right to Education. There is provision for free and compulsory education till the age of 14 years.

Article 24 of The Indian Constitution provides that “no child below the age of 14 years shall be employed to work in a factory or mine or engaged in any other hazardous employment. Likewise Article 39 (f) makes it obligatory for the state to direct its policy towards securing”, the health and strength of the children and that they are given opportunities and facilities to develop in a healthy manner. Article 45, provides that the state has to provide free and compulsory education to all children up to the age of 14 years.
In the International arena too, the initiatives taken so far in the area of Rights of the Child globally refers to the UN General Assembly 1959 which had come out with the Declaration of the rights of the Child and their protection. After this, there was a Resolution passed in 1976 declaring the year 1979 to be the International year of the Rights of the Child. Moreover, the International Labour Organization had adopted several Conventions dealing with the minimum age for children with regard to Employment, Medical-Examination, Night-work etc. India is also a signatory to these beneficial conventions. On 2nd November 1989, the UN General Assembly adopted the Convention on the Rights of the Child. There was also a world summit for children in 1990. The Convention came into force on 2nd September 1990 and India also ratified it. The present position is that 195 states have ratified the Convention on the Rights of the Child. In 1999 there was a Session of the U.N. General Assembly on the protection & promotion of the Rights of the children. It must be remembered that when a country ratifies or accedes to the Convention, then it is bound to review its national laws to ensure that they conform to the provisions of the Convention. Further, it declares itself bound to observe these provisions and becomes answerable to the international community in the event of there being any failure to comply with them.

India has several million children living under “especially difficult circumstances”. Some of them are worth mentioning:

- Street Children
- Destitute in Trafficking
- Children in Prostitution
- Children in the Construction Works
- Children in Institutions
- Children in Field Work
- Children in Fisher Folk
- Disabled Children
- Children Affected by Riots & Disasters
- Children Exposed to the Sexual Exploitation.
These are the bare aspects which shall be taken into account for a proposed detailed analysis and to find out the solution for the problem regarding the crimes against juveniles. India had not been able to free itself from the communalism even after sixty five years of independence. There has been by and large not a single year in post-independent period, which has been free of communal violence in one part or the other of the nation, though number of such incidents may vary. The year 2002 has been one of the worst years in the history the of world which is remembered as the famous Gujarat Carnage of 2002 where the members of one particular community were specifically targeted and brutally subjected to the mayhem by the rioters of course in connivance with the State machinery. The worst effect of that carnage was of course on the Juveniles too. They became orphans, homeless, hopeless, helpless, foodless, sleepless, education-less more specifically we can say they were reduced to a body without soul and mind. And all this happened with full connivance of the police and bureaucracy, who were involved hand in glove while killing and maiming thousands of people.

It is recorded that more than 30 Reports were prepared by various committees both governmental & non-governmental. It was a one sided carnage and not a riot in usual sense. Rather it can be said that it was the worst communal carnage in the history of India, Justice U.C. Banerjee Probe Committee in its interim Report has described the incident as an accidental fire, and has ruled out the possibility of inflammable liquid thrown from outside the coach which was proved to be impossible as alleged by the state machinery. Even the forensic report gives the same conclusion.

Justice U.C. Banerjee Committee Report declared that the Godhra train blaze was an accident. He has given his report in which he has given his pre-chosen findings that Godhra train fire was just accidental and that 59 deaths were caused by toxicity and suffocation, definitely not by Muslim terrorists.

Justice Nanavati & Justice Shah appointed by the government of Gujarat have examined and cross-examined thousands of witnesses & several thousands are still waiting to give evidence. To put India in order we must put first the government and its officials in order whose moral responsibility demands to act as an unbiased empire of the nation. "In a time of Universal deceit, telling the truth becomes a revolutionary act". This is harsh but a hard reality which is to be accepted by all.
1.2 Review of Literature

A literature review is an organizational outline which gives new interpretation of old material and traces the intellectual progression, pattern and evaluation of the related subject. Keeping this aspect in view, this chapter is devoted to a brief review of existing literature on the topic. It is practically not feasible to review all the relevant previous studies related to present research. Therefore, selected relevant matters which throw light directly on issues are under consideration in this study. Thus the brief account of the existing literature on the subject shows that various attempts have been made to highlight the problem and solutions.

This book represents the picture of children across the world who are denied their human rights and subjected to many forms of violence. The rights of children in relation to food, education and labour are duly covered in this book. In the light of convention on the Rights of Child the authors have made a successful situation of children and measures to ensure freedoms and rights to children. The book is extensive, comprehensive and research based which has contributed a lot in my research work. I gratefully acknowledge the assistance of this book and thank the author.¹

In this book the author has made an effective attempt to study in detail various causes of communal upheaval and methods for curbing such violence to create a high degree of social trust among people. The author has brought to light the effects of post Godhra riots on minority people and children as well. He has laid emphasis on the enactment of special laws in this regard and maintenance of law and order for growth and economic development of country. This book covers causes, effects and measures to control communal violence and has provided me valuable help throughout my research study.²

In this book, the author has made a praiseworthy attempt by compiling all important and leading Supreme Court cases in this book. It covers almost all important decisions delivered to ameliorate the condition of children. The decision of the Mehta to enforce provisions of Child Labour Act and remove children from hazardous employment, Vishal Jeet's case, Gaurav Jain's case Unni Krishnan's case

etc. have been included. The book is comprehensive and covers cases on all matters from food, education to marriage and working condition of children. This book has done a world of good to me in carrying my research study and shows way for hope and optimism to improve condition of children.\(^3\)

The author focuses on the enlightenment of people on issues concerning human rights. It is said that awareness of human rights is largely limited to the educated sections of society while it is necessary to create awareness about human rights at all levels. The Nation Human Rights Commission in this book bringing about attitudinal change in human behaviour. So that rights for all become the spirit of the very living. Special emphasis has been made on the welfare and development of children in this book.\(^4\)

This book deals with juvenile justice and welfare and uses the idea of supervising young offenders not punishing them. The authors have laid emphasis on cure, control, deterrence and rehabilitation of juvenile offenders as punishment does not lead to their welfare. In this book the logic of possible future is projected as well as the notion of community control.\(^5\)

This book covers the problem of international human trafficking. The women and children, particularly those from marginalized sections and those from poor economic strata, are undoubtedly the most vulnerable. It is a good reference material on the issue of trafficking from the point of view of both prevention and elimination.\(^6\)

This book consists of essays on various issues concerning communalism in India. Minority community in India has been suffering from bitterness in post-independence India. The author has revealed the instances of communal violence that took place from time to time in India. He has emphasized the government is just concerned about the votes of Muslims, they never gave attention to the economic and educational problems of Muslims\(^7\). This book is good enough to create proper consciousness among the readers.

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4 Bhakry, Dr. Savita, *Children in India and their Rights*, New Delhi, NHRC, 2008.
This book has been written by IKA Paul Pont about the care and welfare of child in India. She has done good work in India in this connection. Her work was appreciated by late Pandit Jawaharlal Nehru for her enthusiasm. Pandit Jee said "I hope that many will read this book and be converted by it to the message it carries". In a sense, the cure of the child is of greatest importance and the author has done justice with the matter.8

This book gives a detailed report on caste and communal violence that have taken place in India after partition. The author, one of India's best known journalists visited numerous riot - torn cities, towns and villages -- Jamshedpur, Moradabad, Saharanpur, Meerut to discover what way behind the outbreaks of Communal and caste violence. The author has done an in depth assessment and found that the basic cause for the communal frenzy is the same: poverty, economic deprivation and a history which has been perverted and misused by religious zealots. The author has the journalist's eye for the revealing instance and also possesses the historian's sense of the deeper trends. The book provides an illuminating study of the violence beneath and on the surface of the land of Gandhi.9

The book is a bitter truth, a mirror, a document of the present condition of the country in which protection and preservation of national unity and integrity, a challenge. The author has made a praiseworthy attempt to give an exhaustive account of the Gujarat Carnage, 2002. He has included flotation from eye witnesses and several important documents in the book which shall serve as a proof as to how the communal-minded rulers sponsored aided and abetted during the Gujarat riots. The book provides a very useful insight regarding all the historical facts.10

The book presents the issue of child labour and education within a holistic rather than a separate and piecemeal perspective. The book focuses largely on alternative perspectives on children, childhood and child labour, socio-economic context of work and school. Policy context for addressing Child Labour and Education, operationalising the Right to Education and Government and Non-Government Interventions.11

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The report presented by Neha Bhandari and reviewed by Ravi Karkara is well researched and effective one on the subject of child abuse. The report contains intelligent, intellectually stimulating discussion on the problem of child abuse discussed from a regional perspective. The report contains useful information regarding a number of development agencies who are increasingly adopting a rights-based approach to ending child sexual abuse. The "Regional Meeting of Development Agencies working against child Sexual abuse" organized by Save the Children, Norway, Nepal and Save the Children, Sweden, Regional Programme for South and Central Asia, aims to fill that gap, while providing a platform to meet and share working strategies, methods, tools, good practices and challenges.\textsuperscript{12}

This book is an attempt at providing an overview of 'Child Abuse' in India. It also deals with various forms of occupations, in which children of are engaged. This study throws light on the hardships, experienced by children in our society. The book contains a detailed account of the Conventions and Conferences held so far in this regard, apart from the steps taken at the governmental levels.\textsuperscript{13}

This analytical book is a storehouse of valuable information about the state of Child rights in India. The author, discusses significant changes in the law including those brought about by the Prohibition of Sex Selection Act, 2003, directions of the Supreme Court of India for its implementation and the Juvenile Justice Act, 1986 and Juvenile Justice (Care and Protection of Children) Act, 2000. Proposed amendments in the law relating to child marriage and offences against children have been reviewed by her. She shows that though Indian law is moving in the direction of the standards set by international law, lacunae still remain while monitoring and enforcement remains important issues.\textsuperscript{14}

1.3 Hypotheses of Study

The present study is based on the following hypotheses:

(i) Crimes against the juveniles is a globally recognized ever increasing and regular phenomenon;


(ii) Laws relating to Crime against juveniles with special reference to communal violence are not adequate enough;

(iii) Implementation of laws and execution machinery is lax in performing its function properly;

(iv) Mostly victims of Crimes belong to under privileged and marginalized Sections of society;

(v) Police consider themselves immune from law and that they cannot be held responsible for whatever they do.

1.4 Objectives of the Study

The study on the issue of crimes against juveniles, their basic root causes and the impact of such crimes on the society has created a deep interest and stimulated the researcher to make an in-depth study of the subject. The purpose of the study would be therefore to venture into the dynamics of the ever increasing problem of crimes against the juveniles and to suggest out the means of getting rid from this globally recognized problem. Moreover a humble attempt has been made to study and analyse the plight of the communally affected children of the Gujarat riots in 2002 and its aftermath. Thus, this research was guided by the following objectives:

1. To make an in-depth study of the global phenomenon of crime against juveniles/children particularly in an Indian scenario with special reference to riot affected children in Gujarat.

2. To analyse the magnitude and factors responsible for such crimes in the light of individual traits and social milieu.

3. To study the serious impact of such crimes on juveniles/children, the family and the society at large.

4. To highlight the legal developments and the legislative progress with regard to the issue of crimes against juveniles/children.

5. To analyse the role of Human Right Organization and law enforcement agencies in tackling with the problem of crimes against the juveniles.

6. To suggest ways and means to combat the menace of crime against juveniles/children.
1.5 Research Methodology

'Legal research' is a careful diligent and studious inquiry or examination, especially the investigation or experiment aimed at the discovery and interpretation of facts, revision of accepted theories of laws in the light of new facts or practical application of such new or revised theories or laws. The real research lies in creative analysis and synthesis of primary materials in terms of impact or effect of law. Thus, research is a careful inquiry or critical analysis of the principles for unearthing of new facts or a new interpretation of already existing facts or phenomena.

The present study is a modest attempt to analyze the magnitude and nature of crimes against juveniles with special reference to communal violence affected children in Gujarat. For the purpose of this research work both doctrinal and non-doctrinal methodology has been adopted. Non-doctrinal research is carried out by collecting and gathering data or information by a first hand study of the respondents. As it appears it is an inquiry that attempts to discover and verify general rules allowing us to understand the problem. For the purpose of doctrinal study original data, legislations, National and International Conventions, Reports of various law commissions and committees and Cases of Supreme Court, High Courts have been duly analyzed and incorporated in the perspective of human rights regime whereas for the empirical study relevant data has been collected from the State of Gujarat by employing the questionnaire method for the child victims and the common man.

1.6 Limitation of Study:

In the pursuit of the proposed study, the researcher would humbly try to employ both doctrinal and non-doctrinal tools. This study would include compilation of data also, collected from various literatures on the current facts and figures regarding this issue.

In view of the vastness of the State of Gujarat, the present research study would be mainly confined to the worst riot affected localities of Gujarat like Godhra and Ahmedabad. The responses from the respondents of these concerned areas would be elicited through questionnaire and the data and graph chart would be duly incorporated in the study. In all, about 1000 questionnaires would be distributed to the potential respondents residing in these parts of Gujarat i.e. Ahmedabad and Godhra.
This would help in testing the proposed hypotheses of the present study in order to come to a certain conclusion.

1.7 Chapterization

The entire research work is divided into seven chapters which are as follows:

I. Introduction

II. Crimes Against Juveniles: An Overview

III. Magnitude, Factors and Dimensions of Crimes Against Juveniles: An Analysis


V. Legal Developments and Legislative Progress Relating to Juveniles and Crimes Against them: A Critique

VI. Human Rights Perspective of Crimes Against Juveniles: Judicial Response

VII. Conclusion & Recommendations

1.8 Conclusion

The growth of the juvenile into a mature & happy person with fully developed personality largely depends upon the support & attention he receives from the family, society and the nation at large. If there is any deficiency, his development into a self sustaining human being is often dwarfed. Due to his physical and mental immaturity child needs special safeguards; it becomes therefore the imperative duty of the State to protect children's right by legislative and other means.

The problem of crimes against the Juveniles is not an isolated problem. In fact it is the problem that has caused great concern to the social reformers and social scientists of modern advanced countries since long. Moreover the issue of crimes against Juveniles has assumed menacing proportions and is a recognized global phenomenon.

India has the largest number of children in the world. India’s 42% populations are Children. India’s heritage of a stable family life and traditional joint family system helped children grow in an atmosphere of cooperation, warmth and affection into a secure future.

However, the changing socio-economic system, weakening of the institution of joint family is resulting into nuclearization of the families as a consequence of which children are often deprived of their rights of getting due care and affection of
other family members apart from their parents. In the rural set up too, there has been a trend of nuclearization of families undermining emotional, psychological and the social support, which used to upgrade child’s upbringing. Besides this, in the poorer families, the young children are often forced to share the burden of running the households and thus they are deprived of both parental and institutional care as well. Even where institutional care is available to the children, it is a very poor substitute to the parental care. The concept of rights of the child though running in the sociocultural ethos did not get explicit recognition and the society agrees that children need to be duly cared and protected. The belief that children do have rights as adults, that they should participate in taking decisions regarding their lives, that they should be involved in these processes is yet to be internalized as a part of Indian value system. Though India is being projected as one of the leading developing nations and may become a developed country in future, but all these claims and achievements is incomplete without social progress in ensuring children’s rights.

A number of scientific, sociological, psychological, anthropological and medical studies of the impact of the crimes against Juveniles have been made during the last few decades all over the world including India. In India, it is only after the attainment of independence that an interest was developed in the study of said problem where children are stolen, abused, kidnapped, beaten, labored, burned, boiled & starved. They are the victims of every kind of crime.

In India, there have been certain enactments made from time to time for the protection of children. Some of them are- Child Marriage Restraint Act, 1929; Children (Pledging of Laboratory) Act, 1933; The Probation of Offenders Act, 1958; Children Act, 1960; Child Labour (Prohibition & Regulation) Act, 1986; Juvenile Justice Act, 1986; The Juvenile Justice (Care & Protection of Children) Act, 2000.

The nature of the crimes against juveniles include familiar child-beating, child-labor, physical and verbal abuses, sexual-abuse, encouraging or forcing them into bootlegging, prostitution, smuggling, begging, selling young children etc.

Juveniles need special care, special protection and proper attention because of their age, physique and mental immaturity. They are universally recognized as the most important asset of any nation. Each child is an asset to the nation and the future of the nation is closely related to the welfare of the child. The future well being of the
nation depends upon the fact as to how the children should grow and develop in the society. Juveniles need special laws to protect them from exploitation and crimes against them.

A review of literature is an organizational outline which gives new interpretation of old materials and traces the intellectual progression, pattern and evaluation of the related subject. Keeping this aspect in view, this chapter is devoted to a brief review of maximum existing literatures on the research topic at hand. On deep perusal of the existing literatures on the subject it is worthwhile to note that various attempts have already been made to analyse the problem of crimes against juveniles and to suggest remedies in order to get rid of them.

The present study is based on following hypothesis.

(i) Crimes against the juveniles is a globally recognized ever increasing and regular phenomenon;

(ii) Laws relating to Crime against juveniles with special reference to communal violence are not adequate enough;

(iii) Implementation of laws and execution machinery is lax in performing its function properly;

(iv) Mostly victims of Crimes belong to under privileged and marginalized Sections of society;

(v) Police consider themselves immune from law and that they cannot be held responsible for whatever they do.

The purpose of the present study would therefore be to venture into the dynamics of the ever increasing problem of crimes against the juveniles and to suggest out the means of getting rid from this globally recognized problem. Moreover an humble attempt would made to study and analyse the plight of the communally affected children of the worst Gujarat riot of 2002.

The present study is a modest attempt to analyze the magnitude and nature of crimes against juveniles with special reference to communal violence affected children in Gujarat. For the purpose of this research work, both doctrinal and non-doctrinal methodologies has been adopted. Non-doctrinal research would be carried out by collecting and gathering data or information by a first hand study of the respondents through the questionnaires to be distributed amongst them. The present
research study has been confined to the most affected localities of Gujarat like Godhra and Ahmedabad.

The entire research work is divided into seven chapters which are as follows:

I. Introduction
II. Crimes Against Juveniles: An Overview
III. Magnitude, Factors and Dimensions of Crimes Against Juveniles: An Analysis
V. Legal Developments and Legislative Progress Relating to Juveniles and Crimes Against them: A Critique
VI. Human Rights Perspective of Crimes Against Juveniles: Judicial Response
VII. Conclusion & Recommendations