CHAPTER-IX

UTILITY OF LEGAL RESEARCH
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Utility of the Research Work

Legal research is the search for authority that can be applied to a given set of facts and issues. The universe of potentially useful authority is vast, and good researchers have well-developed analysis skills in addition to an understanding of the techniques and efficiencies of doing legal research. The Thurgood Marshall Law Library Guide to Legal Research has been developed for use in a variety of introductory and advanced research courses. It presents a concise introduction to the tools and techniques both print and electronic, with which the legal researcher must become familiar. Additionally, the strategy sections include information about how to select potentially relevant authorities, as well as discussions about which sources to consult and how they can best be used. Many researchers, legal research presents a challenge because it differs in many ways from the research they may have conducted as undergraduates.1

It is essential to establish a clear understanding of the goals of research in the legal context, and of the various types of legal materials and their interrelationships. An initial step in developing legal research expertise is to develop an awareness of the types of materials that constitute "the law," and of the relationships between these materials. In the process of researching a legal issue, it may be necessary to consult statutes, legislative enactments, cases, opinions of the judiciary, and or regulatory materials, administrative agency regulations and decisions. All these types of materials are considered "primary sources." A major challenge for a novice researcher is to gain a perspective on how such sources may apply to a particular subject matter and how they relate to each other. It is often necessary to consult multiple sources and use different techniques for each type of source. Furthermore, for a given problem relevant materials may exist on any or all of the federal, state, or local levels.2

A major area in which legal research differs from research a student may previously have conducted is in the need for comprehensiveness in primary authority

research. When presented with a legal issue, the researcher must endeavor to locate any potentially relevant authority which would be binding in the applicable jurisdiction. Most important for the beginning researcher to appreciate is that cases or statutory provisions which seem not to favor a client’s position cannot simply be ignored and other authorities relied upon instead. Rather, these sources must be discovered, thoroughly analyzed, and distinguished if possible. Because law is organic, the legal researcher must also learn to appreciate the need to update and verify every source upon which intends to rely in developing a legal argument. For example, the precedential value of cases is frequently affected by subsequent judicial analysis or by the actions of legislatures. Likewise, it is not unusual for statutes to be repealed or amended by the legislative body; statutes may also be applied and interpreted by case law.

1. Research Accuracy:

In case of non doctrinal research the researcher collecting the information by way of sampling method or questionnaire method due to this reason it gets accuracy by way of findings and reduce the errors. The researcher must update carefully in order to accurately assess the significance of any authority. Another matter which often challenges beginning legal researchers is the need to analogies. For many of the problems you may be asked to research, no precisely on ‘point’ meaning factually identical authority exists. Judges decide disputes before them, and lawyers build arguments, based on a reasoning process which analogizes that a rule of law applied to one set of facts should logically be applied to another set of factual circumstances. Thus it is rarely sufficient to look for authorities that deal with facts too closely resembling those which you have been presented. The research work is socio-legal research therefore following points are relating to the utility of the research work. 3

2. Research Reliability:

The research method is a one of the reliable research tool. Due to Research work it gives some new results. For a research study to be accurate, its findings must be reliable and valid. Reliability means that the findings would be consistently the same if the study were done over again.

A study can be reliable but not valid, and it cannot be valid without first being reliable. You cannot assume validity no matter how reliable your measurements are. There are many different threats to validity as well as reliability, but an important early consideration is to ensure you have internal validity. This means that you are using the most appropriate research design for what you're studying experimental, quasi-experimental, survey, qualitative, or historical, and it also means that you have screened out spurious variables as well as thought out the possible contamination of other variables creeping into your study. Anything you do to standardize or clarify your measurement instrument to reduce user error will add to your reliability.

It's also important early on to consider the time frame that is appropriate for what you're studying. Some social and psychological phenomena most notably those involving behavior or action lend themselves to a snapshot in time. If so, your research need only be carried out for a short period of time, perhaps a few weeks or a couple of months. In such a case, your time frame is referred to as cross-sectional. Sometimes, cross-sectional research is criticized as being unable to determine cause and effect, and a longer time frame is called for, one that is called longitudinal, which may add years onto carrying out your research.

Followings are four good methods of measuring reliability:

- test-retest
- multiple forms
- inter-rater
- split-half

The test-retest technique is to administer, instrument, survey, or measure to the same group of people at different points in time. Most researchers administer what is called a pretest for this, and to troubleshoot bugs at the same time. All reliability estimates are usually in the form of a correlation coefficient, so here, all you do is calculate the correlation coefficient between the two scores on the same group and report it as your reliability coefficient.

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The multiple forms technique has other names, such as parallel forms and disguised test-retest, but it's simply the scrambling or mixing up of questions on your survey, for example, and giving it to the same group twice. The idea is that it's a more rigorous test of reliability. Inter-rater reliability is most appropriate when you use assistants to do interviewing or content analysis for you. To calculate this kind of reliability, all you do is report the percentage of agreement on the same subject between your raters, or assistants.\(^5\)

Split-half reliability is estimated by taking half or survey, and analyzing that half as if it were the whole thing. Then, compare the results of this analysis with researchers overall analysis.

There are four good methods of estimating validity:

- face
- content
- criterion
- construct

Face validity is the least statistical estimate validity overall is not as easily quantified as reliability as it's simply an assertion on the researcher's part claiming that they've reasonably measured what they intended to measure. It's essentially a "take my word for it" kind of validity. Usually, a researcher asks a colleague or expert in the field to vouch for the items measuring what they were intended to measure.

Content validity goes back to the ideas of conceptualization and operationalization. If the researcher has focused in too closely on only one type or narrow dimension of a construct or concept, then it's conceivable that other indicators were overlooked. In such a case, the study lacks content validity. Content validity is making sure you've covered all the conceptual space. There are different ways to estimate it, but one of the most common is a reliability approach where you correlate scores on one domain or dimension of a concept on your pretest with scores on that domain or dimension.

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with the actual test. Another way is to simply look over your inter-item correlations. Criterion validity is using some standard or benchmark that is known to be a good indicator. There are different forms of criterion validity:

- concurrent validity is how well something estimates actual day-by-day behavior;
- Predictive validity is how well something estimates some future event or manifestation that hasn't happened yet.

The latter type is commonly found in criminology. Suppose you are creating a scale that predicts how and when juveniles become mass murderers. To establish predictive validity, you would have to find at least one mass murderer, and investigate if the predictive factors on your scale, retrospectively, affected them earlier in life. With criterion validity, you're concerned with how well your items are determining your dependent variable.6

Construct validity is the extent to which your items are tapping into the underlying theory or model of behavior. It's how well the items hang together convergent validity or distinguishing different people on certain traits or behaviors discriminant validity. It's the most difficult validity to achieve. You have to either do years or years of research or find a group of people to test that have the exact opposite traits or behaviors you're interested in measuring.

3. Social Concept:

This research necessarily requires empirical study so as to analyse the socio-legal aspects legal and regulatory framework of information technology. Socio-legal study requires carrying out the legal research by testifying it from the first hand data collected from the society. Thus in order to have the social perception of the research topic under investigation, researcher has attempted an empirical study by framing the questionnaire and collecting data from first hand source. The empirical study is more incidental and relevant as data come directly from the society and it reflects the real perception. The legal research is more authenticated and real if it is tested on the

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social scale. It reveals true and correct situation and thus conclusion and suggestions are more authenticated and viable as it is based on the first hand data.\textsuperscript{7}

The Socio-Legal research is closely connected to the social problems. It clears the social views or ideas about the problems relating to the children in conflict with law. Socio-legal research and the study of legal pluralism the existence of plural normative orders are indispensable to our understanding of how legal institutions can be improved to achieve social justice and to explore the possible merits and challenges of the available alternatives. The academic study and teaching of law on the one hand has in many countries generally focused on legal theory and positive law, that is, the law in the books only. Much effort is invested in the study of new legislation, legal principles, international law and "advanced lessons" from Western legal systems. In much of this, the local picture from daily practice is often ignored or treated as being of secondary importance at best. As such there has been little attention to how law and different normative systems function in the everyday lives of the poor and weak and how such functioning can be improved. Most law faculties concentrate on training lawyers for the profession and devote little time, if any, to the way in which law functions under conditions of legal pluralism in practice.\textsuperscript{8}

The academic study and teaching of social anthropology at the other hand rarely focuses explicitly on the ways of how different legal concepts such as international law, state law, religious law or customary law interact with each other and what kind of reactions such interplay might institute. Rather, legal questions are either delegated to the law professionals or only discussed from the angle of customary or informal law. The course, followed by the conference that participants will attend, aims to provide participants with the opportunity of engaging in a sustained dialogue with like-minded scholars from a diverse, international background as well as access to networks that can help sustain individuals' ongoing research and teaching activities when they return to their home base.

\textsuperscript{7} Julius Stone, 'Law and the social sciences in the second half century', U of Minnesota Press, 1966, p. 27.

\textsuperscript{8} Ibid. p. 13.
4. Social Cohesion:

According to Maxwell Social cohesion means, it involves building shared values and communities interpretation reducing disparities in wealth and income and generally enabling people to have a sense that they are engaged in common enterprise facing shared challenges and that they are member of same community.9

Social cohesion refers to the extent of connectedness and solidarity among groups in society. According to Durkheim, a cohesive society is one that is marked by the abundance of “mutual moral support, which instead of throwing the individual on his own resources, leads him to share in the collective energy and supports his own when exhausted. ‘Social cohesion is the ongoing process of developing a community of shared values, shared challenges and equal opportunity. ‘Social cohesion is a set of social processes that help instill in individuals the sense of belonging to the same community and the feeling that they are recognised as members of that community.’

Under this point the researcher has stated that due to the research work it gets help to solve the social problems and social cohesion. Firstly the Juvenile Justice Act, 1986 was applicable to juvenile in conflict with law but there were so many problems while solving the matters relating to the juvenile in conflict with law. Later on in 2000 the Indian Government has passed new Act it is only the result of social cohesion. Later on in 2006 this Act was amended only on the basis of social cohesion.

5. Social welfare:

The research work may be helpful to the general public or society they can take help from the data collected by the researcher from different Administrative authorities. The social structure in India has shown strength in endurance, and a unity of basic outlook in the midst of change and vicissitude. This strength has now to be demonstrated in productive and creative endeavour; and the unity of the people has to be deepened and harnessed for economic development and cultural achievement.

The object social welfare is the attainment of social health which implies the realization of such objectives as adequate living standards, the assurance of social

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justice, opportunities for cultural development through individual and group self-expressions, and re-adjustment of human relations leading to social harmony. A comprehensive concept of living standards will include the satisfaction of basic needs like food, clothing and shelter as well as normal satisfactions of family life, enjoyment of physical and mental health, opportunities for the expression of skills and recreational abilities, and active and pleasurable social participation. The achievement of social justice demands co-operative and concerted effort on the part of the State and the people. These objectives are to be achieved mainly by revitalising the nation's life by creating well-organised and active regional communities in rural and urban areas to work co-operatively for national development. Such decentralised community groups will release national energy, extend the scope for leadership, and help to create initiative and organisation extensively in the remotest parts of the country. ¹⁰

The aim of social service in the past was essentially curative, and efforts were directed towards relief for the handicapped and the uplift of the under-privileged sections of society. It is now essential to maintain vigilance over weaknesses and strains in the social structure and to provide against them by organising social services. The aim of all social work now has to be the gradual rehabilitation of all weak, handicapped and anti-social elements in society.

Some of the important social problems like poverty, ignorance, overpopulation and rural backwardness are of a general nature and, in varying degree; they are influenced by factors like squalor and bad housing, malnutrition and physical and mental ill-health, neglected childhood, family disorganisation and a low standard of living. For a long time, society has remained apathetic to these conditions; but with the awakening of political consciousness and the enthusiasm of organisations and workers to improve social conditions, there is a possibility of developing programmes which could gradually remedy the present situation. The economic programmes of the Five Year Plan will mitigate these problems to some extent, but the gains of economic development have to be maintained and consolidated by well-conceived and organised social welfare programmes spread over the entire country. In this chapter it

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is proposed to consider some of the more important problems of social welfare which need the special attention of both State and private welfare agencies.

- **The First Five Year Plan:**

The principal social welfare problems relate to women, children, youth, the family, under-privileged groups and social vice. The social health of any community will depend a great deal upon the status, functions and responsibilities of the woman in the family and in the community. Social conditions should give to the woman opportunities for creative self-expression, so that she can make her full contribution towards the economic and social life of the community. Problems relating to health, maternity and child welfare, education, employment, and conditions of work are dealt with elsewhere in this report. Some problems of women have to be dealt through social legislation, but other problems pertaining to health, social education, vocational training, increased participation in social and cultural life, provision of shelter, and assistance to the handicapped or maladjusted call for programmes at the community level. As women have to fulfill heavy domestic and economic responsibilities, adequate attention has to be paid to the need for relaxation and recreation both in the homes as well as in the community. The welfare agencies have catered to some extent to the needs of the widow and the destitute woman, but the quality of the service rendered by them and the nature of their work needs to be surveyed.

Considering the numbers involved, the needs of children should receive much greater consideration than is commonly given to them. There is a growing demand for child health services and educational facilities. The standard of child welfare services in the country can be improved if the rate of increase in population is reduced. Problems relating to family planning, children's health, infant mortality, education, training and development have been discussed elsewhere in this report. Malnutrition is perhaps the major cause of ill-health and lack of proper growth of the child. The feeding of the child in the early years is the responsibility of the family, and is dependent upon economic conditions and traditional food habits. The nature and extent of malnutrition has to be determined, and resources have to be found to supplement and improve the diet of children through schools and community and child welfare agencies. The problem of children's recreation and development outside
educational institutions has received some attention during recent years, but play activities of children are considerably restricted in urban areas on account of the environmental conditions, lack of adequate space, and, to some extent, neglect of this vital need of the child by the family and the community. Not enough is known about the work of private agencies for the welfare of destitute and homeless children.

The juvenile courts and children's aid societies have so far touched a fringe of the problem of children's welfare. Certain special aspects may be briefly mentioned. The existing facilities for handicapped and deficient children are far from adequate and suitable agencies have to be created. Hospitals provide treatment for polio, congenital deformities, fractures, bone disorders and other diseases, but there is a need to extend existing services and provide special institutions and care for disabled and crippled children. At present deficient children attend educational institutions together with normal children and seldom receive treatment and special training to enable them to overcome their handicaps. The subject needs to be studied carefully. The problem of juvenile delinquency has already received considerable attention and many of the States have special legislation. Juvenile delinquency may often be the result of poverty and many offences may be traced to the connivance or support of adults.

The youth constitute the most vital section of the community. In recent years, young people have had to face and have been increasingly conscious of problems such as inadequate educational facilities, unemployment, and lack of opportunity for social development, national service and leadership. The problems of health, education and employment of youth have been considered a aspects of national problems in these fields. Social welfare is primarily concerned with the improvement of services provided for the benefit of youth by welfare agencies with the object of promoting development of character and training for citizenship and for physical, intellectual and moral fitness. It is necessary to encourage initiative among youth so that through their own organisations, they can develop programmes of youth welfare and national service. Ways must also be found to give opportunities to youth for active participation in constructive activity. Such training and experience will equip them for shouldering the responsibilities of leadership in different spheres of national life.
Traditionally, the family has been left largely to its own resources to deal with most of its problems, although in some cases it may be assisted by the larger community groups (such as caste) to which a family may belong. General problems relating to health, education and employment have been considered in the relevant sections of this report. Questions relating to status and rights, property, inheritance, etc., are the subject of social legislation. The gradual break-up of the joint family and the emergence of the small family have increased its economic problems and burdens. Family responsibilities have now to be borne at a comparatively younger age by the head of the small family than happened in the joint family. This creasing complexity of the social situation and handicaps arising from physical disability, ailment or unemployment render it more difficult for the family to provide a sense of security to its members. This fact suggests a number of problems which, along with other problems studied carefully if welfare agencies are to develop suitable methods of treatment for guiding and assisting those in need.

There are number of under-privileged communities such as the scheduled tribes, scheduled castes and other backward classes including criminal tribes. The problems of poverty, ill-health, and lack of opportunities for development affect them to a larger extent than many other sections of the society. The subject is considered in a separate chapter. Every community has its share of those who are physically handicapped such as the blind, the deaf and dumb, and those who are crippled and infirm. Reliable statistics are not available about the extent of the population which suffers from such handicaps. A certain number of welfare agencies are already working in this field, but little information about their resources and their ability to deal with the problem is at present available.

The main problems to be considered under the description of social vice are prostitution, crime and delinquency, alcoholism, gambling and begging. These problems have existed for a long period, although necessarily their nature and extent vary according to the prevailing social and economic conditions. Some of them have to be dealt with largely by local communities, and the approach and treatment have to be varied from place to place. The character, and magnitude of these problems of social defence have to be determined carefully before the value and efficacy of the existing agencies and programmes could be assessed. Social legislation deals with
many, of the social evils with a view to controlling and even eradicating them, but its actual implementation needs to be watched. Among the practical problems to be resolved is the demarcation of the relative roles of State and private agencies, determination of the machinery of enforcement, estimation of the resources required, examination of methods, development of correct programmes, and creation of public opinion in favour of an objective and dispassionate approach to the problems of social vice.

6. Law Reforms:

Law Reform has been a continuing process particularly during the last 300 years or more in Indian history. In the ancient period, when religious and customary law occupied the field, reform process had been ad hoc and not institutionalised through duly constituted law reform agencies. However, since the third decade of the nineteenth century, Law Commissions were constituted by the Government from time to time and were empowered to recommend legislative reforms with a view to clarify, consolidate and codify particular branches of law where the Government felt the necessity for it. The first such Commission was established in 1834 under the Charter Act of 1833 under the Chairmanship of Lord Macaulay which recommended codification of the Penal Code, the Criminal Procedure Code and a few other matters. Thereafter, the second, third and fourth Law Commissions were constituted in 1853, 1861 and 1879 respectively which, during a span of fifty years contributed a great deal to enrich the Indian Statute Book with a large variety of legislations on the pattern of the then prevailing English Laws adapted to Indian conditions. The Indian Code of Civil Procedure, the Indian Contract Act, the Indian Evidence Act, the Transfer of Property Act, etc. are products of the labour of the first four Law Commissions. 11

After independence, the Constitution of India with its Fundamental Rights and Directive Principles of State Policy gave a new direction to law reform geared to the needs of a democratic legal order in a plural society. Though the Constitution stipulated the continuation of pre-Constitution Laws Article 372 till they are amended or repealed, there had been demands in Parliament and outside for establishing a

Central Law Commission to recommend revision and updating of the inherited laws to serve the changing needs of the country. The Government of India reacted favourably and established the First Law Commission of Independent India in 1955 with the then Attorney-General of India, Mr. M. C. Setalvad, as its Chairman. The Commission's regular staff consists of about a dozen research personnel of different ranks and varied experiences. A small group of secretarial staff looks after the administration side of the Commission's operations.

Basically the projects undertaken by the Commission are initiated in the Commission's meetings which take place frequently. Priorities are discussed, topics are identified and preparatory work is assigned to each member of the Commission. Depending upon the nature and scope of the topic, different methodologies for collection of data and research are adopted keeping the scope of the proposal for reform in mind.

Discussion at Commission meetings during this period helps not only in articulating the issues and focusing the research, but also evolving a consensus among members of the Commission. What emerges out of this preparatory work in the Commission is usually a working paper outlining the problem and suggesting matters deserving reform. The paper is then sent out for circulation in the public and concerned interest groups with a view to eliciting reactions and suggestions. Usually a carefully prepared questionnaire is also sent with the document.12

The Law Commission has been anxious to ensure that the widest section of people is consulted in formulating proposals for law reforms. In this process, partnerships are established with professional bodies and academic institutions. Seminars and workshops are organised in different parts of the country to elicit critical opinion on proposed strategies for reform.

The contrast in India was disappointing in terms of the rigour of the work undertaken. There was no systematic collection of data, comparative experiences, experiential learnings that could inform the thinking on juvenile justice. The few

12 Kaifeng Yang, Gerald J. Miller, Gerald Miller, 'Research method in public Administration', CRC Press, 2007, P.190
research efforts were disappointing in terms of the ability to produce policy papers, which could stimulate debate and discussion. Most importantly, the Ministry of Social Justice and Empowerment did not seem to have taken the process of law reform seriously and was seemingly adamant on producing a new law in the shortest possible period of time without any vision of child justice.

While South African experience does in significant ways enact a more child friendly system, the very classification of children into those who commit violent crime and others seriously stigmatizes the latter category. These children are stigmatized and labeled by the criminal justice system and are the ones who lose out in the attempt to humanize the system. Thus humanizing the system for some means producing a more inhuman system for others. It is this experience which India should avoid and instead produce a just system for all.

On the basis of research work researcher can recommend the law reforms. In India law reforms can be made by the legislative and judiciary.

7. Evolution of Law:

At the end of the 18th century, the enlightenment appeared as a new cultural transition. This period of history is sometimes known as the beginning of reason and humanism. People began to see children as flowers, who needed nurturing in order to bloom. It was the invention of childhood, love and nurturing instead of beatings to stay in line. Children had finally begun to emerge as a distinct group.

For understanding the existing juvenile justice system in India it requires resources to history. The history of juvenile justice in India can be traced back to the early 18th century, where references to children and the laws and rules governing them can be found in the texts of the ancient Hindu scripts. The juvenile justice system in India originated during the British rule and was direct consequence of western ideas and development in the field of prison reform and juvenile justice. The changes introduced in India to deal with the delinquent juveniles, however were not limited only to those practiced in England.

The history of juvenile justice in India has evidenced three different phases of juvenile justice in India. The pre-1960 era hardly evidence juveniles as a separate
class. Despite the several concessions and privileges to the children by legislative pieces and different treatment to them from court, this era had marked with the clubbing of juveniles with adult and they were tried together irrespective to their age. The second phase has marked between post-1960 to 1986 era where special enactments has brought into being for juveniles like the Children Act, 1960 which create ‘juvenile’ as a special class. However, this demarcation was limited only up to the legislative enactments. Now separate courts, professions judges, or specific procedure have been prescribed. Even the delinquent were kept in the jail along with adult criminals. Therefore this phase is one based on the specific legislations and treatment participation of the court in it a plain or a specialized one, without any procedural practical change in the approach. The third phase is post-1986 period where ‘juvenile’ is considered not only the different class on legislative enactments, but separate forum, separate reform homes and observations homes are come into existence. The new development has taken place with the advent of Juvenile Justice (Care & Protection) Act, 2000 when the object of the juvenile justice is not only to provide the treatment to juvenile turned delinquents but also to take care and provide protection to those who are likely to become delinquents.

It gets the information of historical development of the particular law, what were the lacunas in the earlier system, why there was need of changing laws, how the concept is developing according to changing circumstances, these factors can be checked by evolution of law.13

8. Comparative Study:

While doing research the researcher is comparing the juvenile justice system with other country, at that time researcher is able to find out the lacunas in case of juvenile in conflict with law, Juvenile Justice System and other relevant provisions. One would also imagine that when the law with regard to such a complex area as the interface of children and the criminal law, one would seriously take into account the experiences of other countries around the world. However the law, which has ultimately emerged, shows no such engagement. One has only to contrast the experience of South Africa where law reform was premised on a close study of what has really happened in other

jurisdictions and the law reform proposal was based on such an understanding drawing both from the experiences of other countries as well as the grassroots experience in South Africa. In this section it is proposed to look at experiences pertaining to juvenile justice in the United States, Uganda, South Africa and Scotland to understand how other jurisdictions are dealing with children in conflict with the law.

1. The United State Response:

The United States has recently celebrated a centenary of the existence of juvenile courts. It is in recent years that the issue of juvenile courts has come under increasing threat with some radical quarters pushing for an abolition of the Juvenile Justice system and others asking for a radical overhaul. Whatever might be the final outcome of these calls for reform, what is apparent is that the trend is increasingly towards decriminalization and a wiping out of the admittedly minimal gains of the past.

The juvenile justice system as established in the US, basically had a more liberal sentencing jurisdiction as compared to the ordinary criminal courts with options such as release on probation and diversion. The aims of the juvenile court were focused on rehabilitation as opposed to punishment. Further the juvenile court did not have the jurisdiction to pass orders, which ran after the person ceases to be a juvenile.

The supposedly more liberal character of the juvenile justice system came under increasing threat in the 1990’s with the politicization of juvenile crime. The US media portrayed juvenile crime as a result of the liberal juvenile justice system and the calls for getting tough on crime had its effect in three major shifts in the juvenile justice system.

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

Legislative Waiver – In legislative waiver the state excludes certain offences from the jurisdiction of the juvenile court. This is generally done in the case of serious offences like homicide, sexual assault, rape or kidnapping. If a juvenile does commit
such offences, the juvenile will automatically be tried in an adult criminal court. The thinking behind legislative waiver seems to be that some offences are so serious that no consideration can be shown to the child. What matters in legislative waiver is not the best interest of the child, but the fact that the child has committed a serious offence and a strong message needs to go out that such wrongdoing will not be tolerated.

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

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

Sentencing Authority:

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

- **Confidentiality:**

  One of the essential tenets of the Juvenile Justice system throughout the world has been the notion that offences committed in childhood do not follow the child into adulthood. The child who has been sentenced by the juvenile court has his record expunged, so that the child can start life out on a clean slate. This fundamental premise of the juvenile justice system has been subject to increasing contestation. Recent state legislation in forty seven states resulted in changes in confidentiality provisions, including expungement, making records and proceedings more open.

- **The US response - Juvenile in (justice):**

  The United States response points to a move towards an adult oriented criminal law jurisprudence, which is in violation of agreed international standards. The United States in one of the two countries in the world, which has not ratified the Convention on the Rights of the Child. The legal environment is thus unfavorable to compelling the United States to comply with the Convention. Thus major shifts vies a vis the human rights of children are occurring without any debate within a human rights framework. The very basic rights of children to have an inquiry which is separate from adults, the right to be detained only as a measure of the last resort and for the shortest possible period of time are being whittled away by the enactment of waiver provisions and the enactment of extended jurisdictional options. What is shocking is that this progressive whittling away of core protections is being done in an environment of legal silence. Debates in the United States on issues of juvenile justice do not even mention the existence of international standards vis a vis children, let alone make out a case for why the CRC is a persuasive authority which should be taken into account by US law makers.

  The United States experience points to the dangers which juvenile justice reform can run into in an environment where crime is politicized. This points to the more happy position in India where crime by young people has not yet become a politicized issue. As such the policy climate is more attuned to the framework offered

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by the Convention on the Rights of the Child and reform could mean a greater compliance with the CRC.

2. The Uganda Response:

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

- **The Human Rights Framework:**

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

- **Diversion:**

  One of the important principles to which close attention has been paid by the Statute is the principle of diversion. Open the apprehension of the juvenile himself or herself, the police have been empowered to deliver a caution at the point of arrest and let the child go. The police may also dispose of the case themselves without recourse to formal proceedings. Thus the statute implements the principle of diversion at the point of first contact itself in line with the mandate of the Beijing Rules. If the police are convinced that the case is not a fit case for diversion and the child cannot be immediately taken before the court, there is even a provision for the release of the child on a personal bond or bond entered into by his or her parent or guardian.
If the first tier of diversion does not work then the child goes through an adjudicatory process, which is an innovative attempt at limiting the power of the criminal court. In the first instance the child in a limited number of criminal cases goes before a local village level authority which has limited criminal powers, namely the Village Resistance Committee Court. The VRCC’s sentencing jurisdiction vis a vis juveniles is limited to reconciliation, compensation, restitution, apology or caution and these reliefs may be provided regardless of how the offence is treated by the criminal law. In the case of all other offences committed by children below the age of 18, apart from offences punishable by death and offences committed jointly by adults and children go before the Family and Children’s Court as the court of first instance.

The Family Court has the power to make the following orders, namely absolute discharge, caution, conditional discharge for not more than twelve months, binding the child over to be of good behavior for a maximum of twelve months and compensation, restitution or fine taking and detention as a measure of the last resort and for the shortest possible period of time. It is only in cases in which both adults and children are charged and in cases in which the death is the penalty that go in the first instance before the Magistrate. Thus the way the hierarchy of the courts is structured implements the principle of diversion to the greatest extent possible into community structures at the first instance and into a non-criminal jurisdiction in the second instance.

- **Deprivation of Liberty:**

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

What is most interesting about the Ugandan experience is that a developing country with limited resources has been able to develop a child friendly code to deal with children in conflict with the law. What the statute indicates is a close attention to international commitments and translation of them into binding local law. When one reflects that the Ugandan law was a post ratification enactment and so was the Indian law, it is clear the points, which Uganda has taken seriously, India has ignored. All three of the heads indicated above viz, a human right framework, diversion and deprivation of liberty have not been attended to in the Indian statute. The Ugandan experience is thus a pointer to how a child friendly jurisprudence as mandated by international commitments could be incorporated taking into account the existing societal mechanisms and cultural context.

3. The South African Response

South Africa ratified the CRC in 1995 and has since then carried out an intense process of deliberations to arrive at a suitable policy and law on juvenile justice. Prior to this process of reform South Africa did not have any policy or law to deal with children in conflict with the law as they were dealt with by the ordinary criminal law. The South African draft bill is an attempt at taking the best out of experiences around the world and arriving at a policy suited to the South African context. The South African juvenile justice reform efforts can be analyzed under the following heads:

• The process of Law Reform:

The process of law reform in South Africa has been particularly rich, as law reform has been conceptualized as a consultative process building on existing experiential knowledges and on experiences of comparative jurisdictions. The two key points at which consultation in built into the law reform process is at the point of circulation of issue papers and discussion papers. In the process of law reform the opinions of interested parties, such as judges, probation officers, NGO's and children is taken on Board and policy is formulated keeping in mind these concerns as well as the experiences of other countries. This shows the rigorous nature of a process, which is committed to democratizing law making. Law is thus only an end product of a
process in which there is fundamental clarity on conceptual issues like minimal age of criminal responsibility, expungement of records etc.

- **The Vision of Child Justice:**

  South Africa as mentioned earlier did not have any law to deal with children in conflict with the law. It is only through this process of law reform that a conceptual framework to deal with children in conflict with the law has evolved. The core features of this system as outlined by the Commission is 'a comprehensive system for children in conflict with the law, striving at all times to prevent children from being drawn into criminal justice processes. Much emphasis is placed on a proposed new procedure called the preliminary inquiry, which aims to ensure that the case of each child is carefully considered and that each child is given maximum opportunity of being diverted out of the system. Those proceeding to trial will be better protected from the risk of pre-trial detention. The envisaged system is balanced in such a way that the majority of children will be afforded the opportunity to be held accountable outside the criminal justice system. It is recognized however that when children are accused of serious violent crimes and are assessed to be a danger to others, provision must be made for their secure containment.

  What is clear is that the vision of child justice is clearly based on a commitment to existing international standards and the South African constitutional mandate as is suited to the local conditions. It is this sensitivity to local context, which has meant that the Commission in terms of its policy recommendations decided to opt for a harsher regime vis a vis juveniles who commit serious offences. Thus for juveniles who commit serious offences imprisonment is a sentencing option. Further those who commit serious offences also are not eligible to have their criminal record expunged. However for children who have committed 'non serious offences it undoubtedly is an advance as the vision of child justice emphasizes certain important principles such as diversion, preliminary inquiry, incorporation of international principles into domestic legislation and accountability of the youth offender.

4. **The Scottish Response:**

  The Scottish treatment of juveniles has evolved independently of the Convention on the Rights of the Child and has been seen a progressive way of treating
children who offend and neglected children. In fact it can even be seen to go beyond the CRC in the far reaching nature of reforms suggested. The following can be seen as the key features of the system:

- **Separation of trial from disposal**

  The key impetus for the Scottish reform was the Report by Lord Kilbrandon in 1964. Lord Kilbrandon recommended that the ‘system should be completely abolished and replaced by a new system which would clearly separate two important functions: the establishment of guilt or innocence on one hand, and the decision on what measures would help each individual child on the other. At that time this was an enormously far reaching proposal, without precedent in either English or Scots law. What in effect this meant that after the Sheriff determined whether the child did commit the offence or was indeed neglected, the treatment to be given to the offending child was to be determined by a different body, consisting of lay people.

- **Non-separation of delinquent and neglected children.**

  The Kilbrandon Report made the unique contribution of treating all children as children in need of care and protection. The only judicial role was thus to establish whether the facts constituting the alleged offence were true. There was no further scope for the intervention of the criminal justice system as the treatment of all children was to be determined by a lay panel.

- **Operationalization of diversion at various levels**

  The Scottish system operationalizes diversion as a systematic part of juvenile justice policy at various levels. At the level of the police themselves, once the child admits the offence, he she is released using the principle of formal or informal caution. Diversion is also operationalized at the next level of the Reporter. Before the child goes before the Hearing, the Reporter has to be satisfied that there are sufficient grounds for a hearing to be arranged. The Reporter has the discretion to decide that no action is necessary and to release the child.

9. **Working of the Law:**

   In India Indian Constitution has protected the interest of the children. More than 200 articles of the constitutions are protecting the different interests of the
children by way of Fundamental Rights, Directive principles, Fundamental Duties and other provisions. On the basis of these Articles the India has passed Juvenile Justice (Care and Protection of Children) Act, 2000.

There are so many laws are passed by the Indian Parliament for the protection of the interest of the children. In India Judiciary plays an important role as well as it is one of the important source of the law. Law should be clear, it should not against the public policy. After 2000 so many cases relating to Juvenile in conflict with law decided by the Supreme Court and High Court of India according to the Juvenile Justice (Care and Protection of Children) Act, 2000. On the basis of research we can find out whether the law is properly working or not? What are the hurdles while implementation of Juvenile Justice (Care and Protection) Act, 2000? Whether Administrative authorities are doing their functions according to this Act? We can get an answers only by way of research work, it may be doctrinal or non doctrinal.

On the basis of above discussion researcher has concluded that, research work is very useful for research accuracy by way of doctrinal or non doctrinal legal research work or data collected by the researcher from society for framing or getting accuracy. By way of the research work it gets reliability, the research method is a one of the reliable research tool. Due to Research work it gives some new results. For a research study to be accurate, its findings must be reliable and valid. The Socio-Legal research is closely connected to the social problems. It clears the social views or ideas about the problems relating to the children in conflict with law. Social cohesion refers to the extent of connectedness and solidarity among groups in society, to solve or to provide solution for cohesion with reference to justice care and protection of the children. The object social welfare is the attainment of social health which implies the realisation of such objectives as adequate living standards, the assurance of social justice, opportunities for cultural development through individual and group self-expressions, and re-adjustment of human relations leading to social harmony. Child Law reforms and evolution of new law is the result of the research work. We can get information of other countries by way of comparative study of the juvenile justice care and protection.