CHAPTER V

CHILD JURISPRUDENCE AND JUVENILE JUSTICE

5.1 Chapter Overview

Before coming to importance of child jurisprudence, it is needful to have an overview on the concept of Jurisprudence. The Latin expression *Juris-prudentia* means knowledge or skill in Law to describe the legal connotations of any body of knowledge. Jurisprudence is the investigation into law and legal system to trace the value of law and to lay out principles of law, derived from authoritative sources and apply to factual situations to solve problems of practical nature beforehand. Jurisprudence comprises philosophy to reflect upon the rules and known principles. It is concerned with analysis of legal concepts.

Child jurisprudence would investigate questions relating to rights of children, what are they, how are they used, how did they work and in solution of problems in its way. Child jurisprudence largely assumes the naturalness of child, childhood and dependency. Child jurisprudence focuses primarily on children’s dependency and vulnerability, their relationships with parents, the state, and educational systems.

The term ‘juvenile justice’ is commonly understood as a notion of fairness or justness in dealing with children through laws. The fairness or justness standards relating to physical, mental and emotional well-being of the children are generally enforced
through special statutory procedures involving civil/quasicriminal or criminal proceedings, and themselves may be described as juvenile justice proceedings.

In order to have a better insight into child jurisprudence and the status of juvenile justice in India, this chapter details the concepts of child jurisprudence, juvenile justice and relevant constitutional provisions in India and also national and international instruments and declarations pertaining to the rights of children to protection, security and dignity.

5.2 Child Jurisprudence

Coming to the concept of child jurisprudence, it is part of the supreme socio, economic, moral and ethical law of the globe which is above all laws, which is a human rights concept-to relate law with socio-economic development and needs of child.

The definition of child since includes child in mother’s womb; the right to child out of conjugal life imposes the duty on the parents from conception, when from conceived to bring up the child as future hope of society. It is not only the duty of parents but also the other members of the family as a whole.

In the other way it can be said that, once the parents avail the right to have child, their duty starts to the child since conceived in the mother’s womb; which rights are not only moral and ethical as per our ancient dharma, but also legal and social, including on the society within the environment and the State, as per our constitution and the laws enacted; apart from such of those international conventions to which India is a party, to
have the force of law as part of the Constitutional conventions. Coming to the importance of child, child is the dawn of human race and a bud to become flower which spreads fragrance for future nation. Thus, children are the supremely important asset of the nation.

Child care and development is therefore a human rights and social welfare concept, based on our Dharma prevailing since ancient times and from ethical and moral values. A tremendous amount of informal support of family and society is necessary which would go a long way in creating a caring society for child development and growth in all respects to make a future well-being.

The Apex Court in Lakshmi Kant Pandey case\textsuperscript{260}, in its first Judgment in 1984 itself, on child jurisprudence observed that:

(i) Children’s programmes should find prominent part in our national-plans for development of human resources, so that our children grow up to become robust citizens, physically-fit, mentally-alert, morally-healthy, endowed with skills and motivations needed by society. Equal opportunity to all children during period of growth should be our aim, which would serve our larger purpose of reducing inequality by ensuring social justice.

ii) The children by reason of their physical and mental immaturity needs special safeguards and care, including the appropriate legal protection before as well as after birth and that the mankind owes to the children the best it has to give and formulate some

principles mainly that “children have a right to love and be loved, grow up in an atmosphere of love and affection with moral and material security which is possible only if they are brought up in family care”.

iii) It is universally accepted that proper development of a child—emotionally, physically, intellectually and morally—can be best ensured with the family, or where it is not possible, then in family surroundings and in a family atmosphere. The responsibility for providing care and protection to children, including those who are orphaned, abandoned, neglected and abused rests primarily with the family, the community and the society at large”.

iv) Legitimacy of children: There is conclusive presumption in favour of birth of child during lawful wedlock. Proof of non-access must be clear and satisfactory. Section 112 of the Indian Evidence Act is based on the well known maxim pater est quem nuptiae demonstrant (he is the father whom the marriage indicates). The law presumes both that a marriage ceremony is valid and that every person is legitimate. This presumption is a conclusive proof under Section 4 of the Indian Evidence Act, until the party disputing the paternity prove non-access under Section 112 of the Indian Evidence Act, in order to dispel the presumption. Marriage or affiliation may be presumed; thus the law in general is presuming against vice and immorality. This Section

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261 “Access” and “non-access” mean the existence or non-existence of opportunities for sexual intercourse.
262 Held by the Apex Court in Chilukuri Venkateswarlu Vs. Chilukuri Venkatnarayan—AIR 1954 SC 176=SCR 424.
263 Birth during marriage, conclusive proof of legitimacy —The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.
264 “May presume”—Whenever it is provided by this Act that Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.
“Shall presume”—Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved, unless and until it is disproved.
“Conclusive proof”—When one fact is declared by this Act to be conclusive proof of another, the Court shall, on proof of the one fact, regard the other as proved, and shall not allow evidence to be given for the purpose of disproving it.
requires the party disputing the paternity to prove non-access in order to dispel the presumption. A party can not even compel to subscribe/submit for blood sample to DNA profile, against the personal liberty of the female protected by Article 21 of the Constitution of India, but for to draw any inference from refusal.265

Though, the standard of proof in criminal cases is proof beyond reasonable doubt and in civil cases it is by preponderance of probabilities, coming to the proof of legitimacy, proof required is definitely beyond preponderance of probabilities through some thing less than proof beyond reasonable doubt, to prove non-access in order to dispel the presumption. Even a DNA report indicating negative on paternity is of no avail, as it is to be proved by other evidence of non-access266. The quickening of the child in womb usually occurs between 18th and 20th weeks of pregnancy.267 Child born after 7 months of marriage was legitimate.268

v) Protection of children of prostitutes by separation from their mothers: It is in the interest of the children and of society at large that the children of prostitutes should be segregated from their mothers and be allowed to mingle with others and become part of the society. This is particularly so for young girls whose body and mind are likely to be abused with growing age for being admitted into the profession of their mothers. It is necessary that accommodation in hostels and other reformatory homes should be adequately available to help segregation of these children from their mothers living in prostitute homes as soon as they are identified.269

265 Held by the Apex Court in Goutam Kundu Vs. State of West Bengal-AIR 1993 SC 2295.
266 Held by the Apex Court in Kanti-Devi vs. Posharam-2001-AIR-SCW-210.
267 Held by the Apex Court in Mahendra Vs. Sushila-AIR1965SC364:1964-7SCR 267.
268 Held by the Apex Court in Dukhtar Jahan Vs. Mohammed Farooq-AIR 1987 SC 1049.
269 Held by the Apex Court in Gaurav Jain Vs. Union of India-AIR 1990 SC 292.
vi) From this view, since children are the most vulnerable piece in society, the study of child jurisprudence requires attention in development and interpretation of law in a socio-legal perspective, for greatest care and special protection of child development. Childhood mostly is dependency on parents, other family members, teachers and immediate living society, no doubt now-a-days, on the entire globe particularly within internet search and reach and the media both print and electronic. Thus, it is the duty of all in recognizing the rights and privileges of the children to protect and to take care of, for their development, as investing in the child development is a better future for our country and for the world.

vii) The importance of child jurisprudence is also visualizing from the words of Sriman A.B.Vajpayee who quoted contextually once in a Sarva Shiksha Abhiyan programme relating to child development that children have the right to a better life, happiness, family care and sense of security. Let us do everything to ensure that every child in every part of the country enjoys the right. Children are Society’s most important foundation and back bone. They shape Society’s future progress and that of all humanity. It is therefore our highest priority to invest in them by holistically, so that they can realise their complete potential in all respects and take our country to greater heights. Universal literacy is the core of our strategy for creating better world for children. Let us renew our pledge to liberate every child in our country. Let us therefore, resolve to fight, with renewed vigour not only against the problems of illiteracy, hunger, disease and exploitation; but also the family apathy and lack of proper care, love and affection; that many children have to contend within, in general from the parents not able to gloss over their differences and elders not able to unite by settling their bickering, resulting indifferent attitude between couple having direct reflection and adverse impact on the child’s progress and welfare; in particular at our urbanite also from parents non attention
to child care from their occupations, in villages from poverty; besides from sexual abuse, unwed motherhood, child neglect and abuse of all sorts; in order to develop the children as a supreme asset of the nation.

5.3 History of Juvenile Justice

Children are the asset of the nation and they are the future of the society as they are part of the society in which they live and grow. Due to immaturity, a child is easily motivated by what he sees around. It is his environment and social context that provokes his actions good or bad. Thus, it is the responsibility of the family and society to make him a good citizen. Not only their nurture and solicitude but also their care and protection besides correcting them for any deviant behaviour is on the society at large and for that matter on the State in general and family in particular. Any wrongful act defined under law is an offence which is punishable as provided there under as a crime against society though committed on an individual among the society, the calculation of the wrong committed by a child or juvenile cannot be viewed at par with an adult and thereby special provisions are required so far as juveniles concerned for any wrong committed not to punish but to correct and to make arrangements for their future care and reformation in view of the vulnerability of children. Youth justice systems[^270] have proceeded from the assumption that children and young people by dint of their relative immaturity, are less able to control their impulses, less able to understand the seriousness of their offences and less able to foresee the consequences of their actions. Linked to this is the belief that the culpability of many young offenders may be further mitigated by poverty, cruelty or neglect they have suffered.

The focus of juvenile legislature is the juvenile’s reformation and rehabilitation so that he also may have a chance to opportunities enjoyed by several other children. There are several legislations that taken care of so far as juvenile justice is concerned under the criminal justice system in general by making special provisions in this area besides the Juvenile Justice (Care and Protection of Children) Act, 56/2000 (amended by Act, 33/2006) which is by repealing the Juvenile Justice Act, 1986. Coming to the general law with special provisions, nothing is an offence committed by a child below 7 years of age under Section 82 of IPC and the criminal act, if any, committed by a child between 7–12 years of age is punishable only depending up on the child’s mental maturity at that time he/she committed the act. Coming to the special law, the first legislation on juvenile justice in India came in 1850 with the Apprentice Act which required that children between the ages of 10-18 convicted in courts to be provided vocational training as part of their rehabilitation process. This Act was transplanted by the Reformatory Schools Act, 1897. Later for each of the 3 union territories of Madras, Bengal and Bombay, there were separate enactments made viz., Madras Children Act, 1920, Bengal Children Act, 1922 and Bombay Children Act, 1924. The first post-independence central legislation was the Children Act, 1960; which was enacted to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children (children of deviant behaviour). Under the act, the Child Welfare Boards used to handle the neglected children and the Children’s Courts used to hand the delinquent children. As there were several preconstitutional state legislations in the area in force besides the Children Act, 1960, it is the honorable Supreme Court of India in the year 1985-86 while deciding the famous
case of Sheela Barse Vs. Union of India\textsuperscript{271} suggested a parliamentary legislation for complete uniformity including for ensuring socio economic and psychological rehabilitation of the delinquent children and also the abandoned and destitute children. It was there from the Juvenile Justice Act, 1986 was enacted on the model of the United Nations administration of Juvenile Justice System.

Subsequently, as the Juvenile Justice Act, 1986 was considered in need of drastic change from the advent of international conventions and reformations, by keeping in view the future of the children, the Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted by repealing the earlier legislation i.e., J.J. Act, 1986. The object of the J.J. (C&POC) Act, 2000 is to get reformation in juvenile in conflict with law instead of punishing them severely. Juvenile homes are established for the purpose of keeping the juvenile in conflict with law and treat them with good education and other reformative facilities. Thus, juvenile justice is conceived as an integral part of the national development process for the wellbeing of the child as well as peace and order in society.

5.4 Importance of J.J. (Care and Protection of Children) Act, 2000

The Juvenile Justice (C&POC) Act, 2000 is the primary legal framework for juvenile justice in India. The Act provides for a special approach towards the prevention and treatment of juvenile deviant behaviour and provides a framework for the protection, treatment and rehabilitation of children in the purview of the juvenile justice system. The J.J. Act, 2000 for the first time provided for Juvenile in Conflict with Law (by replacing

the words Juvenile Delinquents in use by the J.J. Act, 1986) and Children in Need of Care and Protection (by replacing the words Neglected Juveniles in use by the J.J. Act, 1986).

The Juvenile Justice (Care and Protection of Children) Act, 2000 amended by the Act, 2006 is considered to be an extremely progressive legislation and Model Rules, 2007 have further added to the effectiveness of this welfare legislation. However, the implementation is a very serious concern even in year 2010-2011. The provisions of J.J. Act, 2000 confirms to the UN Convention on the Rights of the Child, the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) 1985, the UN Rules for the Protection of Juveniles Deprived of their Liberty and all other relevant national and international instruments. It prescribes a uniform age of 18 years, below which both boys and girls are to be treated as children. Not only a clear distinction has been made in this Act between the juvenile in conflict with law and the children in need of care and protection, but also to keep separately the children in conflict with law pending enquiries away from the children in need of care and protection. It also aims to offer a juvenile or a child increased access to justice by establishing Juvenile Justice Boards and Child Welfare Committees. The Act has laid special emphasis on rehabilitation and social integration of the children and has provided for institutional and non-institutional measures for care and protection of children. The non-institutional alternatives include adoption, foster care, sponsorship, and after care as per the guidelines of the Apex Court expressions in Lakshmikant Pandey’s cases on incountry and intercountry adoptions and the report of the taskforce committee in 1992 headed by Hon’ble Retired Chief Justice P.N. Bhagavathi and the 1995 guidelines of CARA.
Central Adoption Resource Agency - an autonomous body constituted as per the taskforce committee recommendations.

The following sections of the Act deal with child abuse:

Section 23 provides punishment (imprisonment up to six months) if a person having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or willfully neglects him/her, causes or procures him/her to be assaulted, abandoned, exposed or neglected in any manner likely to cause such juvenile/child unnecessary mental or physical suffering.

Section 24 provides punishment (imprisonment for a term which may extend to 3 years and fine) if a person employs or uses any juvenile/child for the purpose or causes any juvenile to beg.

Section 26 provides punishment (imprisonment for a term which may extend to 3 years and fine) if a person ostensibly procures a juvenile/child for the purpose of any hazardous employment, keeps him in bondage and withholds his earnings or uses such earning for his own purposes.

The recent amendments to the Act are given below:

2(a)(a) Inclusion of definition of Adoption. "Adoption" means the process through which the adopted child is permanently separated from his biological parents and becomes the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship.
2(d)(i) Child beggars to be included in the definition of children in need of care and protection

10(1) In no case a juvenile in conflict with law shall be placed in a police lockup or lodged in jail

14(2) Since the provision for enquiry to be completed within four months lacks proper implementation, as inquiries are pending before the Boards for a long period of time, it is proposed that the Chief Judicial Magistrate/Chief Metropolitan Magistrate shall review the pendency of cases of the Board every six months, and shall direct the Board to increase the frequency of its sittings or may cause constitution of additional Boards'

15(1) (g) The Juvenile Justice Board can make an order directing the juvenile to be sent to a special home for a maximum period of three years only

16(1) No Juvenile in conflict with law can be put under imprisonment for any term which may extend to imprisonment for life

4 & 29 The State Governments to constitute Juvenile Justice Board and Child Welfare Committee for each district within one year of the Amendment Act coming in to force

33(3) The State Governments may review pending of cases before the Child Welfare Committee in order to ensure speedy completion of enquiry process

34(3) All State Government/voluntary organisations running institutions for a child/juvenile shall be registered under this Act within a period of six months from the date of commencement of the Amendment Act, 2006

41(4) State Government shall recognise one or more of its institutions or voluntary organizations in each district as specialised adoption agencies for the placement of orphans, abandoned or surrendered children for adoption. Children's homes and the institutions run by the State Government or voluntary organizations for children who are orphans, abandoned or surrendered shall ensure that these children are declared free for
adoption by the Child Welfare Committee and all such cases shall be referred to the adoption agency in that district for placement of such children in adoption in accordance with guidelines.

62(A) Every State Government shall constitute a Child Protection Unit for the State and, such units for every district, consisting of such officers and other employees as may be appointed by that Government to take up matters relating to children /juveniles with a view to ensure the implementation of this Act

Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 56/2000 as amended by the Juvenile Justice (Care and Protection of Children) Amendment Act, 33/2006 states that: “Prohibition of publication of name, etc., of juvenile or child in need of care and protection involved in any proceeding under the Act-(1) No report in any newspaper, magazine, news-sheet or visual media of any inquiry regarding a juvenile in conflict with law or a child in need of care and protection under this Act shall disclose the name, address or school or any other particulars calculated to lead to the identification of the juvenile or child shall nor shall any picture of any such juvenile or child shall be published: Provided that for any reason to be recorded in writing, the authority holding the inquiry may permit such disclosure, if in its opinion such disclosure is in the interest of the juvenile or the child. (2) Any person who contravenes the provisions of sub-section (1), shall be liable to a penalty which may extend to twenty-five thousand rupees”.

While provisions relating to the Juveniles in conflict with law are very important from child jurisprudence point of view, this Act becomes very crucial for children in need of care and protection, as they are very large in number. Section 29 of the Act provides constituting five member District (Administrative unit) level quasi-judicial bodies "Child
Welfare Committee”. One of the members is designated as Chairperson. At least one of the members shall be a woman. The Committee shall have the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children in need of care and protection as well as to provide for their basic needs and protection of human rights.

5.5 Juvenile in Conflict with Law

A “juvenile” or “child” means a person who has not completed eighteenth year of age. A boy or girl under 18 years of age is a juvenile or child under section 2(k) of the J.J. Act, 2000. The age of juvenility of a boy child under J.J. Act, 1986 and before even was below 16 years and that of a girl child was below 18 years. Those working in the field of children had campaigned to increase the age of boy juveniles to bring it on par with girl juveniles. The age of a boy juvenile has been increased to 18 years by the J.J. Act, 56/2000 mainly to bring juvenile legislation into conformity with the Convention on Rights of Children which the Government of India had ratified on 11th December 1992. The Statement of Objects and Reasons of the J.J. Act, 56/2000 has indicated this non-conformity as being a ground for amending the earlier J.J.Act,1986.

So currently, both boys and girls below 18 years of age enjoy the protection of juvenile legislation. Whatever be the reason for increasing the age of the boy juvenile, it was vital to do so and is welcomed. It is argued by some, mainly the Superintendents and staff of Observation Homes and Special Homes, that due to the increase in the age of boy juveniles under the J.J. Act, 2000, a much larger number of juveniles in conflict with law

272 Section 2(h) of JJA 1986
are entering the juvenile justice system, therefore, the existing infrastructure is insufficient to cope with this added burden. In fact, it is for the State to provide. On that ground, the welfare and beneficial legislation cannot be found fault. Section 2(l) of J.J. Act, 2000 has defined “juvenile in conflict with law” as a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence.

This amended definition\(^{273}\) has put to rest the debate as to the relevant date at which juvenility is to be determined. The courts including the Supreme Court had continuously held that the date of offence was the relevant date. In the year 2000, the Supreme Court, in Arnit Das Vs. State of Bihar\(^{274}\) shifted from this often held view and observed that the relevant date at which juvenility was to be determined was the date on which the juvenile was produced before the competent authority, viz., the Juvenile Justice Board. In Arnit Das’ case when raised the question about “reference to which date the age of the petitioner is required to be determined for finding out whether he is a juvenile or not”, the two-Judge Bench of the Supreme Court held that “So far as the present context is concerned we are clear in our mind that the crucial date for determining the question whether a person is a juvenile is the date when he is brought before the competent authority.” This judgment was criticised as it diverted from a well-settled principle of law and thereby depriving young persons of the beneficial provisions of the juvenile legislation. Many felt that the judgment had failed to interpret the law in its correct spirit. Moreover, it did not consider the earlier three-

\(^{273}\) Brought into effect from 22-8-2006 by the Juvenile Justice (Care and Protection of Children) Amendment Act 2006 (33 of 2006)

Judge Bench decision of the Supreme Court in Umesh Chandra’s case of the year 1982 holding that the relevant date was the date of offence with the observations that Children Act was enacted to protect young children from the consequences of their criminal acts on the footing that their mind at that age could not be said to be mature for imputing mens-rea as in the case of an adult. This being the intendment of the Act, a clear finding has to be recorded that the relevant date for applicability of the Act is the date on which the offence takes place…We are clearly of the view that the relevant date for applicability of the 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.”

A review petition was filed there from and referred the issue to a larger Bench “to resolve the conflict between the two opinions” but the Supreme Court observed that on facts Arnit Das was not a juvenile on the date of offence to get benefit of the Act and thereby not inclined to answer the same. It was ultimately a five-Judge Bench settled this issue in Pratap Singh Vs. State of Jharkhand & Ors with all the five Judges unanimous opinion that “The reckoning date for the determination of the age of the juvenile is the date of the offence and not the date when he is produced before the authority or in the court.” The decision in Umesh Chandra’s case was held to be correct law and it was established that the decision rendered by a two-Judge Bench in Arnit Das case cannot be said to have laid down a good law, though in the Arnit Das judgment of 2000, the Supreme Court had observed rightly that the legislature had been vague whilst defining the term “delinquent juvenile” in the J.J. Act, 1986. Fortunately, the legislature heeded this comment of the Apex Court and to remove any misunderstanding the

275 Umesh Chandra Vs. State of Rajisthan, AIR 1982 SC 1057
276 Relevant date for applying the Juvenile Justice Act, Dr. Ved Kumari, (2000) 6 SCC (Jour) 9
277 Arnit Das vs. State of Bihar : (2001) 7 SCC 657; 2001 SCC (Cri) 1393; AIR 2001 SC 3575
278 Pratap Singh vs. State of Jharkhand & Ors. [(2005) 3 SCC 551; 2005 SCC (Cri) 742; AIR 2005 SC 2731; 2005 CriLJ 3091 (SC)]
279 Ibid. 275, p. 191.
definition of juvenile in conflict with law was by incorporating the same suitably amended in the year 2006 by Act 33/2006.

At this stage it is essential to examine the evolution of the term “delinquent juvenile” or “juvenile in conflict with law” under juvenile legislation in relation to the point in time at which juvenility is to be determined. The J.J. Act, 1986 defined “delinquent juvenile” as a juvenile who has been found to have committed an offence.\textsuperscript{280} It was this definition that in Arnit Das’ case was found to be ambiguous. In order to remove the uncertainty, the J.J. Act, 2000 redefined “juvenile in conflict with law” to mean a juvenile who is alleged to have committed an offence. This alteration clarified that juvenility was to be ascertained with reference to the point in time when it was assumed that an offence had been committed. It is only on the date of occurrence that an offence is assumed to have been committed. After Pratap Singh’s case\textsuperscript{282}, the legislature by the amendment Act, 33/2006 removed any doubt by setting out in the definition itself that “juvenile in conflict with law” means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence. In case of continuous offence, i.e., an offence committed over a period of time, juvenility is to be determined on the date of commencement of the offence and if the juvenile thereafter crosses 18 years, he is still to be dealt with under juvenile legislation irrespective of when the FIR is registered.

In case of conflict between J.J. Act, 2000 provisions with any other law (central or state law) by virtue of Section 14 of the Act started with non-abstente clause, the J.J. Act provisions prevail over any other legislation in matters relating to detention,

\textsuperscript{280} Section 2(e) of JJA 1986.

\textsuperscript{281} In the 2000 Act, the term “juvenile in conflict with law” replaced the term “delinquent juvenile”.

\textsuperscript{282} Pratap Singh Vs. State Of Jharkhand (2005) 6 SCC (J) 1.
prosecution, enquiry/trial, sentence of any justice in conflict with law.\textsuperscript{283} In case of dispute or doubt as to age of person facing accusation is a justice in conflict with law or adult accused of the crime; since age plays an important role for giving protection of J.J. Act provisions if juvenile, the Court has to hold an enquiry for ascertaining the age based on birth record or by medical examination (Ossification test) and record a finding held in Bhole Bhagat Vs. State of Bihar\textsuperscript{284}, Rajender Chandra Vs. State of Chattisgarh\textsuperscript{285} and Surinder Singh Vs. State of U.P.\textsuperscript{286}

Even after regular trial and finding as adult accused and sentenced, if proved as juvenile and wrongly treated as adult accused the sentence and findings is to be set aside to extend the benefit of the J.J. Act, 2000 as per Section 18 and 20 of the Act.\textsuperscript{287} As per the J.J. Act, 2000 amended by Act 33/2006, the maximum period of a juvenile in conflict with law can be detained in a special home is only three years.

Implementation of the Act - though the J.J. Act, 2000 is a working legislation, it is not in proper implementation. The Hon’ble Supreme Court in Bachpan Bachao Andolan Vs. Union of India\textsuperscript{288} directed all states to implement the provisions of the Act forthwith and constitute Juvenile Justice Boards, Child Welfare Committees and special juvenile police units and National Commission for Protection of Child Rights is appointed as nodal agency to monitor the implementation of above directions.

\textsuperscript{283} Rajsingh Vs. State of Haryana 2000(6) SCC - 759
\textsuperscript{284} AIR 1998 SC – 236 = 1997 (8) SCC 720.
\textsuperscript{286} AIR 2003 – SC – 3811 = 2003 (10) SCC 26
\textsuperscript{288} 2010 (12) SCC 180
5.6 Factors Contributing to Juvenile Problem Behaviour

Poverty: Poverty causes crime. The fact is that nearly 22 per cent of children in the age of 18 live in poverty. Adolescence from lower socio-economic status families regularly commits more violence than youth from higher socio-economic status levels. Social isolation and economic stress are two main products of poverty. Poverty breeds conditions that are conducive to crime.

Family Factors: One of the most reliable indicators of juvenile crime is the production of fatherless children. The primary role of fathers in our society is to provide economic stability, act as role models, and alleviate the stress of mother.

The Environment: Genetic tendencies, birth complications, and brain chemicals, one of the factors for juvenile crimes. The other factors are being a victim of abuse, witnessing domestic battering, and learned behaviours, for example, learn things from the Televisions.

Parental Conflicts: One of the reasoning for increase of Juvenile crimes is conflicting of parents among themselves before the children. This enhances quarrelling behaviour in the minds of the tender aged children which culminate in committing crimes by them.

Lack of Attention & Affection by Parents: Whenever both the parents are employed they cannot show more attention on their children by showing affection. In such situations their control over the children be lost and chances of such children committing offences become more.
Too Much Affection & Too Much of Freedom: Whenever unwanted too much affection and too much freedom have been given to a child there is every likelihood of such child committing offences because of the freedom given by the parents.

Sub Cultural Norms: Some times cultural norms in a community will also cause to commit crimes by juveniles.

Neighbourhood Influence: The influence of neighborhood will also enhance crime rate in juveniles. For example in most of the slum areas all nasty and illegal activities will be prevailing, the children who are growing there naturally will commit to do such activities. Therefore it is also one of the reasons for increase of juvenile problems.

Improper Utilisation of Leisure Times of Children: If both parents are employed, naturally they will not have time to observe the behaviour of the children especially in their leisure time. The children who are not under supervision of their parents they may form into a gang in the streets during the absence of their parents and chances of committing offences more.

Betting: Betting in the children will also develop criminal activity in their minds. Therefore the parents of the children must discourage betting in the children.

Home Work Fobia: In recent times we will be finding in newspapers about children running away from the houses. Even they are going to the extent of committing suicides.
In most of the cases because of the fear of non-completion of home work of the school due to over syllabus the children are tender to commit such drastic steps.

Birth Order & Differential Treatments: If the parents are having number of children and they give more affection to one of the children there is likelihood of neglected child in committing crimes. For instance if the parents are having five children and out of which they are more affectionate towards their last child and has been excusing the negative behaviour of such child will definitely chance of encouraging to such child to commit crimes.

Media Influence: For the increasing of Juvenile crimes Television, Cinemas, Video games, computer games, etc., are strong contributing factors. Where there is a strong parental supervision on the children, the teaching of moral value and norms, the effect of exposure to above such causes will be minimised. Our Nations children watch an astonishing 19,000 hours of T.V. by the time they finish high school. By eighteen they will have seen two lakhs acts of violence including 10,000 murders. Every hour of prime time television carries 6-8 acts of violence.289

Social Morality: One of the examples of increase Juvenile crimes in the children is the abandonment of the family responsibility by the parents. Not discouraging the children taking illicit drugs.

289 www.wikipedia.org
5.7 Provisions in Constitution of India

The Constitution of India recognizes the vulnerable position of children and their right to protection. Following the doctrine of protective discrimination, it guarantees in Article 15 special attention to children through necessary and special laws and policies that safeguard their rights. The right to equality, protection of life and personal liberty and the right against exploitation are enshrined in Articles 14, 15, 15(3), 19(1) (a), 21, 21(A), 23, 24, 39(e) 39(f) and reiterate India's commitment to the protection, safety, security and well-being of all its people, including children.290

Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India;

Article 15: The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them;

Article 15 (3): Nothing in this Article shall prevent the State from making any special provision for women and children;

Article 19(1) (a): All citizens shall have the right (a) to freedom of speech and expression;

Article 21: Protection of life and personal liberty-No person shall be deprived of his life or personal liberty except according to procedure established by law;

Article 21A: The Article 21A-on right to education-speaks that, the state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may by law determine;291

Article 23: Prohibition of traffic in human beings and forced labour-(1) Traffic in human beings and beggars and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law;292

Article 24: Prohibition of employment of children in factories, etc. -No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment;

Article 39: The state shall, in particular, direct its policy towards securing:

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

291 The Article 21A- is a new provision on right to education as part of fundamental rights, inserted by the constitution(86th amendment)Act,2002, section-2 w.e.f.01-04-2010
292 The Supreme court issued directions and guidelines in the public interest In AIR 1990-SC-1412-Vishal Jeet vs. Union of India and others-on Sexual exploitation of Children and Flesh trade-issued directions to State Governments and Union Territories-for eradicating sexual exploitation of children to provide them with proper medical shelter, education and training in various disciplines of life to enable them as choose a more dignified way of life and bring the children of those prostitutes and other children found begging in streets and the girls pushed into ‘flesh trade’ to protective homes and then to rehabilitate them.
(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

Article 45: Originally that the state shall endeavour to provide within a period of ten years from commencement of the constitution for free and compulsory education of all children until they complete age of fourteen years. It is now amended along with a new provision on right to education Article-21A as part of fundamental rights, that the state shall endeavour to provide early childhood care and education of all children until they complete age of fourteen years-inserted by the constitution (86th amendment) Act, 2002, w.e.f.01-04-2010. It is thus a fundamental right of every child as per Art.21A to have free and compulsory primary education and it is the primary duty of Government to so provide. Its importance has been emphasizing by the Apex court at least from Unni Krishnan Vs. State of Andhra Pradesh; Miss Mohini Jain Vs. State of Karnataka & N.D.Dayal Vs. Union of India. Pursuant to the above, Art.45 read with 21A, the Right of Children to Free and Compulsory Education Act, 2009, a central legislation is enacted.

Article 51A(k): Inserted by the constitution (86th amendment) Act, 2002, w.e.f. 01-04-2010, it is part of fundamental duties of every citizen of India, who is a parent or guardian of child to provide opportunities for education to his child or, as the case may be, ward between the age of six to fourteen years. The Apex Court even recently dealt

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293 Unni Krishnan Vs. State of Andhra Pradesh - 1993(1)SCC-645==(AIR 1993 SC 2178)  
294 Miss Mohini Jain Vs. State of Karnataka (AIR 1992 SC 2100); Modern school’s Case 2004(5) SCC-583  
295 N.D.Dayal Vs. Union of India - 2004(9)SCC–36212  
296 The Act defines “Child” as any child of the age of 6 to 14 years and “Pupil Cumulative Record” as record of the progress of the child based on comprehensive and continuous evaluation and “school mapping” as planning school location to overcome social barriers and geographical distance.
with the aspect of every child’s fundamental right to education and fundamental duties of the parents and guardians to so provide besides duty of the State to provide—in Avinash Malhotra Vs. Union of India.297

5.7.1 Special Emphasis on The Right Of Children to Free and Compulsory Education Act

The Right to Education Act (RTE) was passed by the Indian parliament on 4th August 2009, describes the modalities of the provision of free and compulsory education for children between 6 and 14 in India under Article 21A of the Indian Constitution. India became one of 135 countries to make education a fundamental right of every child when the act came into force on 1 April 2010.298

5.7.1.1 History

The present Act has its history in the drafting of the Indian constitution at the time of Independence but is more specifically to the Constitutional Amendment that included

297 Avinash Malhotra Vs. Union of India-2009(6) SCC page 398
298 http://en.wikipedia.org/wiki/The_Right_of_Children_to_Free_and_Compulsory_Education_Act
the Article 21A in the Indian constitution making Education a fundamental Right. This amendment, however, specified the need for a legislation to describe the mode of implementation of the same, which necessitated the drafting of a separate Education Bill. The rough draft of the bill was composed in year 2005. It received much opposition due to its mandatory provision to provide 25% reservation for disadvantaged children in private schools. The sub-committee of the Central Advisory Board of Education, which prepared the draft Bill, held this provision as a significant prerequisite for creating a democratic and egalitarian society. Indian Law commission had initially proposed 50% reservation for disadvantaged students in private schools. The bill was approved by the cabinet on 2 July 2009. Rajya Sabha passed the bill on 20 July 2009 and the Lok Sabha on 4 August 2009. It received Presidential assent and was notified as law on 3 Sept 2009 as The Children's Right to Free and Compulsory Education Act. The law came into effect in the whole of India except the state of Jammu and Kashmir from 1st April 2010. In his speech, Manmohan Singh, Prime Minister of India stated that, "We are committed to ensuring that all children, irrespective of gender and social category, have access to education. An education that enables them to acquire the skills, knowledge, values and attitudes necessary to become responsible and active citizens of India."

The Act makes education a fundamental right of every child between the ages of 6 and 14 and specifies minimum norms in elementary schools. It requires all private schools to reserve 25% of seats to children from poor families (to be reimbursed by the state as part of the public-private partnership plan). It also prohibits all unrecognised schools from practice, and makes provisions for no donation or capitation fees and no interview of the child or parent for admission. The Act also provides that no child shall be held back, expelled, or required to pass a board examination until the completion of
elementary education. There is also a provision for special training of school dropouts to bring them up to par with students of the same age. The RTE Act requires surveys that will monitor all neighborhoods, identify children requiring education, and set up facilities for providing it. The World Bank education specialist for India, Sam Carlson, has observed: The RTE Act is the first legislation in the world that puts the responsibility of ensuring enrollment, attendance and completion on the Government. It is the parents' responsibility to send the children to schools in the U.S. and other countries. The Right to Education of persons with disabilities until 18 years of age has also been made a fundamental right. A number of other provisions regarding improvement of school infrastructure, teacher-student ratio and faculty are made in the Act. The Act provides for a special organization, the National Commission for the Protection of Child Rights, an autonomous body set up in 2007, to monitor the implementation of the act, together with Commissions to be set up by the states.

5.7.1.2 Implementation

Finances-In the Indian constitution, education comes under the purview of the states, and the Act has made state and local bodies accountable for the implementation. The states have been clamoring that these bodies do not have the financial capacity to cover all the schools needed for universal education. Thus it was clear that the central government (which collects most of the revenue) will be required to subsidise the states. A committee set up to study the funds requirement and funding, initially estimated that Rs 171,000 crores or 1.71 trillion (US$38.2 billion) would be required in the next five years to implement the Act, and in April 2010 the central government agreed to share the funds for implementing the law in the ratio of 65 to 35 between the centre and the states,
and a ratio of 90 to 10 for the north-eastern states. However, in mid 2010, this figure was upgraded to Rs.231,000 crores and the center agreed to raise its share to 68%. At that rate, most states may not need to increase their education budgets substantially.

Advisory Council on Implementation: The Ministry of HRD set up a high-level, 14-member NAC for implementation of the bill. The members include- Kiran Karnik, former president of NASSCOM; Krishna Kumar, former director of the NCERT; Mrinal Miri, former vice-chancellor of North-East Hill University; Yogendra Yadav-social scientist; Amita Dhanda, professor of law, NALSAR, Hyderabad; Venita Kaul, Ex- World Bank and Head, Centre for Early Childhood Education and Development, Ambedkar University, Delhi; Annie Namala, an activist and head of Centre for Social Equity and Inclusion; Aboobacker Ahmad, vice-president of Muslim Education Society, Kerala.

5.7.1.3 Precedence

It has been pointed out that the RTE act is not new. Universal adult franchise in the constitution was opposed since most of the population was illiterate. Article 45 in the Constitution of India was set up as a compromise: The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years. As that deadline was about to be passed many decades ago, the education minister at the time, M C Chagla, memorably said: Our Constitution fathers did not intend that we just set up hovels, put students there, give untrained teachers, give them bad textbooks, no playgrounds, and say, we have complied with Article 45 and primary education is
expanding... They meant that real education should be given to our children between the ages of 6 and 14 - M.C. Chagla, 1964.

In the 1990s, the World Bank funded a number of measures to set up schools within easy reach of rural communities. This effort was consolidated in the Sarva Shiksha Abhiyan model in the 1990s. RTE takes the process further, and makes the enrollment of children in schools a state prerogative.

### 5.7.1.4 Criticism

The act has been criticised for being hastily-drafted, not consulting many groups active in education, not considering the quality of education, infringing on the rights of private and religious minority schools to administer their system, and for excluding children under six years of age. Many of the ideas are seen as continuing the policies of Sarva Shiksha Abhiyan of the last decade, and the World Bank funded District Primary Education Programme DPEP of the ’90s, both of which while having set up a number of schools in rural areas, have been criticised for being ineffective and corruption-ridden.

Quality of Education: The quality of education provided by the government system remains in question. While it remains the largest provider of elementary education in the country forming 80% of all recognised schools, it suffers from shortages of teachers, infrastructural gaps and several habitations continue to lack schools altogether. There are also frequent allegations of government schools being riddled with absenteeism and mismanagement and appointments are based on political convenience. Despite the allure of free lunch-food in the government schools, many parents send their children to private
schools. Average schoolteacher salaries in private rural schools in some States (about Rs.
4,000 per month) are considerably lower than that in government schools. As a result,
proponents of low cost private schools, critiqued government schools as being poor value
for money. Children attending the private schools are seen to be at an advantage, thus
discriminating against the weakest sections, who are forced to go to government schools.
Furthermore, the system has been criticised as catering to the rural elites who are able to
afford school fees in a country where large number of families live in absolute poverty.
The Act has been criticised as discriminatory for not addressing these issues. Well-known
educationist Anil Sadagopal said of the hurriedly drafted Act. It is a fraud on our
children. It gives neither free education nor compulsory education. In fact, it only
legitimises the present multi-layered, inferior quality school education system where
discrimination shall continue to prevail.

Entrepreneur Gurcharan Das noted that 54% of urban children attend private
schools, and this rate is growing at 3% per year. "Even the poor children are abandoning
the government schools. They are leaving because the teachers are not showing up."[24]
However, other researchers have countered the argument by citing that the evidence for
higher standards of quality in private schools often disappears when other factors (like
family income, parental literacy- all correlated to the parental ability to pay) are
controlled for.

Public-Private Partnership: In order to address these quality issues, the Act also has
provisions for aiding private schools via schemes such as Public Private Partnership
(PPP), and for school vouchers, whereby parents may "spend" their vouchers in any
school, private or public. These measures, however, have been viewed by some
organizations such as the All-India Forum for Right to Education (AIF-RTE), as the state abdicating its "constitutional obligation towards providing elementary education".

5.8 Juvenile Justice - International Instruments

There are a series of international instruments in relation to children in the criminal justice system. For the purpose of juvenile justice reforms, the international instruments most commonly referred to are the UNCRC, Riyadh Guidelines, Beijing Rules, JDLs, Tokyo Rules and Vienna Guidelines.²⁹⁹

5.8.1 UN Convention on the Rights of the Child (CRC)

The CRC is the most important legal instrument in relation to juvenile justice because it is legally binding on all members of the United Nations, except Somalia and the USA (as they have not ratified the Convention). It is therefore more powerful and more widely applicable than some of the other instruments. It defines ‘children’ as all people under the age of 18. The most specific articles in relation to juvenile justice are Articles 37 and 40. However, the CRC is not just a list of separate articles. It was designed to look at children as entire human beings. It is therefore very important to set Articles 37 and 40 in the context of the overall framework of the CRC and its main ‘umbrella rights.’ These include: Art. 6 (the right to life, survival and development); Art. 3.1 (the best interests of the child as a primary consideration); Art. 2 (non-discrimination on any grounds); Art. 12 (the right to ‘participation’); Art. 4 (implementation – including of economic, social and cultural rights to the maximum extent of available resources).

Other CRC articles relevant to street children and juvenile justice, including aspects of prevention, are Articles 3.3, 9, 13, 14, 15, 16, 17, 19, 20, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 36 and 39.

**5.8.2 UN Guidelines for the Prevention of Juvenile Delinquency: the ‘Riyadh Guidelines’**

The Riyadh Guidelines represent a comprehensive and proactive approach to prevention and social reintegration, detailing social and economic strategies that involve almost every social area: family, school and community, the media, social policy, legislation and juvenile justice administration. Prevention is seen not merely as a matter of tackling negative situations, but rather a means of positively promoting general welfare and well-being. It requires a more proactive approach that should involve “efforts by the entire society to ensure the harmonious development of adolescents”. More particularly, countries are recommended to develop community-based interventions to assist in the prevention of children coming into conflict with the law, and to recognise that ‘formal agencies of social control’ should be utilised only as a means of last resort. General prevention consists of “comprehensive prevention plans at every governmental level” and should include: mechanisms for the co-ordination of efforts between governmental and non-governmental agencies; continuous monitoring and evaluation; community involvement through a wide range of services and programmes; interdisciplinary co-operation; and youth participation in prevention policies and processes. The Riyadh Guidelines also call for the decriminalization of status offences and recommend that prevention programmes should give priority to children who are at risk of being abandoned, neglected, exploited and abused.
5.8.3 UN Minimum Rules for the Administration of Juvenile Justice: the ‘Beijing Rules’

The Beijing Rules provide guidance to states on protecting children’s rights and respecting their needs when developing separate and specialised systems of juvenile justice. They were the first international legal instrument to comprehensively detail norms for the administration of juvenile justice with a child rights and child development approach. They pre-date the CRC, are specifically mentioned in the CRC Preamble, and have several of their principles incorporated into the body of the CRC. The Rules encourage: the use of diversion from formal hearings to appropriate community programmes; proceedings before any authority to be conducted in the best interests of the child; careful consideration before depriving a juvenile of liberty; specialised training for all personnel dealing with juvenile cases; the consideration of release both on apprehension and at the earliest possible occasion thereafter; the organisation and promotion of research as a basis for effective planning and policy formation. According to these Rules, a juvenile justice system should be fair and humane, emphasise the well being of the child and ensure that the reaction of the authorities is proportionate to the circumstances of the offender as well as the offence. The importance of rehabilitation is also stressed, requiring necessary assistance in the form of education, employment or accommodation to be given to the child and calling upon volunteers, voluntary organisations, local institutions and other community resources to assist in that process.
5.8.4 UN Rules for the Protection of Juveniles Deprived of their Liberty: the JDLs

This very detailed instrument sets out standards applicable when a child (any person under the age of 18) is confined to any institution or facility (whether this be penal, correctional, educational or protective and whether the detention be on the grounds of conviction of, or suspicion of, having committed an offence, or simply because the child is deemed ‘at risk’) by order of any judicial, administrative or other public authority. In addition, the JDLs include principles that universally define the specific circumstances under which children can be deprived of their liberty, emphasising that deprivation of liberty must be a last resort, for the shortest possible period of time, and limited to exceptional cases. In the context where deprivation of liberty is unavoidable, detailed minimum standards of conditions are set out. The JDLs serve as an internationally accepted framework intended to counteract the detrimental effects of deprivation of liberty by ensuring respect for the human rights of children.

5.8.5 UN Standard Minimum Rules for Non-Custodial Measures: The Tokyo Rules

The Rules are intended to promote greater community involvement in the management of criminal justice, especially in the treatment of offenders, as well as to promote among offenders a sense of responsibility towards society. When implementing the Rules, governments shall endeavour to ensure: proper balance between the rights of individual offenders, victims and concern of society for public safety and crime prevention. In order to provide greater flexibility consistent with the nature and gravity of the offence, with the personality and background of the offender and with the protection of society and to avoid unnecessary use of imprisonment, the criminal justice system
should provide a wide range of non-custodial measures, from pre-trial to post sentencing dispositions. Where appropriate and compatible with the legal system, the police, the prosecution service or other agencies dealing with criminal cases should be empowered to discharge the offender if they consider that it is not necessary to proceed with the case for the protection of society, crime prevention or the promotion of respect for the law and the rights of victims.

5.8.6 UN Resolution 1997/30 – Administration of Juvenile Justice: the ‘Vienna Guidelines’

This UN Resolution (also known as the Vienna Guidelines) provides an overview of information received from governments about how juvenile justice is administered in their countries and in particular about their involvement in drawing up national programmes of action to promote the effective application of international rules and standards in juvenile justice. The document contains as an annex Guidelines for Action on Children in the Criminal Justice System, as elaborated by a meeting of experts held in Vienna in February 1997. This draft programme of action provides a comprehensive set of measures that need to be implemented in order to establish a well-functioning system of juvenile justice administration according to the CRC, Riyadh Guidelines, Beijing Rules and JDLs.
5.9 Notable Judgments on Juvenile Justice in India

**Sanjaysuri & Anr. Vs. Delhi Administration, Delhi & Anr.**

Sanjaysuri & Anr. Vs. Delhi Administration, Delhi & Anr[^300] dealt with the incarceration of children in Tihar jail and resulted in a separate structure being erected to keep juveniles. The Supreme Court had appointed the District Judge to inquire into the conditions prevailing in the juvenile ward of Tihar jail. The inquiry revealed, amongst other things, that juvenile prisoners were sexually assaulted by adult prisoners. The Supreme Court lamented “We are anxious to ensure that no child within the meaning of the Children’s Act is sent to jail because otherwise the whole object of the Children’s Act of protecting the child from bad influence of jail life would be defeated.” This judgment instructed “every Magistrate or trial Judge authorised to issue warrants for detention of prisoners to ensure that every warrant authorizing detention specifies the age of the person to be detained. Judicial mind must be applied in cases where there is doubt about the age - not necessarily by a trial - and every warrant must specify the age of the person to be detained.” Further the jail authorities were also instructed, “We call upon the authorities in jails throughout India not to accept any warrant of detention as a valid one unless the age of the detenu is shown therein. By this order of ours, we make it clear that it shall be open to the jail authorities to refuse to honour a warrant if the age of the person remanded to jail custody is not indicated.”

Sanat Kumar Sinha Vs. State of Bihar & Ors.

In Sanat Kumar Sinha Vs. State of Bihar & Ors., a public interest petition was filed with regards to juvenile cases pending for long period of time.

“4. From the facts called out from the reports received from various courts by the efficient efforts of the counsels appearing in this case it appears that not only in some cases investigations are pending but trials are going on for a period extending upto five years and in large number of cases juveniles are still in prisons. This state of affairs indicates a pathetic indifference to all concerned. We, therefore, direct that all criminal trials pending since three years or more be quashed to the extent as far as the trials of juveniles in custody are concerned and they are directed to be acquitted. They be released forthwith from custody or detention, as the case may be. Further, in relation to trials that are pending since less than 3 years the court should act in accordance with the provisions of the Juvenile Justice Act and dispose them of, in relation to where punishment is upto seven years, in accordance with the direction of the Supreme Court in Sheela Barse’s case. In other cases, the court concerned should after giving the prosecuting agency final opportunity to procure evidence as also to the defense to lead evidence, should close the case and proceed to dispose them of in accordance with law.”

The Patna High Court also instructed that orders should be passed to release juveniles on bail pending their trials. Furthermore the High Court reminded the government and society of its duty to ensure that the juveniles being so released are not picked-up by criminals, by assuring them a proper education in boarding schools so that they grow-up in a normal environment.

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301 1991 (2) crimes 241
302 Ibid. 56, p 48
Rajinder Chandra Vs. State of Chhatisgarh & Anr

In Rajinder Chandra Vs. State of Chhatisgarh & Anr, the Supreme Court was faced with the question as to how an accused on the border of 16 years was to be dealt with, and held in favour of holding the accused to be a juvenile. in its judgment whilst referring to Arnit Das’ case, the Supreme Court held that;

“...this court has, on a review of judicial opinion, held that while dealing with question of determination of the age of the accused for the purpose of finding out whether he is a juvenile or not, a hyper-technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he was a juvenile and if two views may be possible on the said evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases.”

Bhola Shagat Vs. State of Bihar

In Bhola Shagat Vs. State of Bihar, Bhola Bhagat claimed to be 18 years of age in his section 313 CrPC statement which was recorded 4 years after commission of the offence, and his co-accused Chandra Sen Prasad and Mansen Prasad claimed to be 17 years and 21 years, respectively. The High Court did not avail him the protection of juvenile legislation, viz., the Bihar Chi Wren Act 1970, on the ground that other than the statement of the accused there was no other material to support that Bhola Shagat and the others were juveniles on the date of occurrence of the offence. The Supreme Court opined that “if the High Court had doubts about the correctness of their age as given by the appellants and also as estimated by the trial court, it ought to have ordered an enquiry

304 (1997) 8 SCC 720; AIR 1998 SC 236
to determine their ages. It should not have brushed aside their plea without such an enquiry.”

The Supreme Court held Bhola Bhagat and his co-accused to be juveniles, “The correctness of the estimate of age as given by the trial court was neither doubted nor questioned by the state either in the High Court or in this Court. The parties have, therefore, accepted the correctness of the estimate of age of the three appellants as given by the trial court. Therefore, these three appellants should not be denied the benefit of the provisions of a socially progressive statute. In our considered opinion, since the plea had been raised in the High Court and because the correctness of the estimate of their age has not been assailed, it would be fair to assume that on the date of the offence, each one of the appellants squarely felt within the definition of the expression ‘child’. We are under these circumstances reluctant to ignore and overlook the beneficial provisions of the Acts on the technical ground that there is no other material to support the estimate of ages of the appellants as given by the trial court, though the correctness of that estimate has not been put in issue before any forum.”

Whilst quashing the sentence of life imprisonment and releasing Bhola Bhagat, Chandra Sen Prasad and Mansen Prasad, though upholding their conviction, the Apex Court observed;

“18. Before parting with this judgment, we would like to re-emphasise that when a plea is raised on behalf of the accused that he was a ‘child’ within the meaning of the definition of the expression under the Act, it becomes obligatory for the Court, in case it entertains any doubt about the age as claimed by the accused, to hold an inquiry itself for determination of the question of age of the accused or cause an inquiry to be held and
seek a report regarding the same, if necessary by asking the parties to lead evidence in that regard. Keeping in view the beneficial nature of the socially-oriented legislation, it is an obligation of the Court when such a plea is raised to examine that plea with care and it cannot fold its hands and without returning a positive finding regarding that plea, deny the benefits of the provisions to an accused. The Court must hold an inquiry and return a finding regarding the age one way or the other. We expect the High Courts and the subordinate Courts to deal with such cases with more sensitivity, as otherwise the objects of the Acts would be frustrated and the efforts of the legislature to reform the delinquent child and reclaim him as a useful member of the society would be frustrated. The High Courts may issue administrative directions to the subordinate Courts that whenever such a plea is raised before them and they entertain any reasonable doubt about the correctness of the plea, they must as a rule, conduct an inquiry by giving opportunity to the parties to establish their respective claims and return a finding regarding the age of the accused concerned and then deal with the case in the manner provided by law.

**Bhoop Ram Vs. State of U.P.**

The only question before the Supreme Court in case of Bhoop Ram Vs. State of U.P.\textsuperscript{305} was whether the appellant, the original accused, was a juvenile on the date of offence and should have been dealt with under the provisions of the U.P. Children Act 1951. There was a conflict between the age recorded in the School Leaving Certificate and the age opined in the Medical Examination Report. As per the School Leaving Certificate, the appellant was a juvenile on the date of offence, but according to the Medical Examination Report, the appellant had crossed the age of juvenility on the date

of occurrence. The Supreme Court after considering the arguments of the Counsels for
the appellant and the State, held that Bhoop Ram was a juvenile on the date of offence.

“We are persuaded to take this view because of three factors. The first is that the
appellant has produced a school certificate which carries the date June 24, 1960 against
the column date of birth’. There is no material before us to hold that the school certificate
does not relate to the appellant or that the entries therein are not correct in their
particulars...The second factor is that the Sessions Judge has failed to bear in mind that
even the trial Judge had thought it fit to award the lesser sentence of imprisonment for
life to the appellant instead of capital punishment when he delivered judgment on
September 12, 1977 on the ground that the appellant was a boy of 17 years of age. The
observation of the trial Judge would lend credence to the appellant’s case that he was less
than 10 (sic 16) years of age on October 3, 1975 when the offences were committed. The
third factor is that though the doctor has certified that the appellant appeared to be 30
years of age as on April 30, 1987, his opinion is based only on an estimate and the
possibility of an error of estimate creeping into the opinion cannot be ruled out.”

The conviction of the appellant was sustained, but the sentence of life
imprisonment imposed upon the accused was set-aside and he was immediately released.

**Ravinder Singh Gorkhi Vs. State of U.P.**

In this case the contention of juvenility was raised for the first time before the
Supreme Court. Ravinder Gorkhi claimed before the Supreme Court to be a juvenile on
the date of offence, i.e., 15th May 1979, under the then prevailing U.P. Children Act

1951. The question with regards to the age of the accused was referred to the Sessions Judge. A School Leaving Certificate was relied upon by the appellant wherein the date of was recorded as 1st June 1963, hence, the Sessions Judge returned a finding of juvenility. Ravinder Gorkhi was just under 16 years on the date of offence, which made him a juvenile under the U.P. Act.

The Supreme Court rejected the finding of the Sessions Judge and the appeal was dismissed. The Supreme Court observed that, ‘The entries made in the school leaving certificate, evidently had been prepared for the purpose of the case.” The “second copy” and not the original school Leaving certificate was produced in court. Moreover, the Headmaster who gave evidence did not produce the admission register. This was the undoing. “The original register has not been produced. The authenticity of the said register, if produced could have been looked into.”

**Sunil Rathi Vs. State of U.P.**

The question before the Supreme Court in this case was whether the appellant on the date of occurrence was a juvenile. The High Court had on examination of the documentary evidence held that the same did not conclusively prove that Sunil Rathi was a juvenile. The Supreme Court set aside the order of the High Court and directed that the appellant be examined by the Medical Board to ascertain his age.

“4. We have perused the order of the High Court. The High Court came to the conclusion, after considering the certificates produced, that they did not conclusively prove that he was a juvenile. However, when this objection was raised, the petitioner was

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not sent for examination by the Medical Board to ascertain his age. Normally, in a case where the evidence is not clear and convincing, the report of the Medical Board is of some assistance.”

**Jayendra & Anr. Vs. State of U.P.**

In this appeal a plea was raised on behalf of the appellant that he was a “child” and should have been dealt with under the provisions of the U.P. Children’s Act 1951. The Supreme Court got Jayendra medically examined, and on the basis of the Medical Examination Report declared him to be a child on the date of offence. Whilst disposing of the appeal, the Supreme Court upheld the conviction, quashed the sentence and forthwith ordered Jayendra’s release as he had ceased to be a child on the date of the Apex Court’s judgment.

“S.2 provides, in so far as it is material, that if a child is found to have committed an offence punishable with imprisonment, the court may order him to be sent to an approved school for such period of stay as will not exceed the attainment by the child of the age of 18 years. In the normal course, we would have directed that the appellant Jayendra should be sent to an approved school but in view of the fact that he is now nearly 23 years of age, we cannot do so.”

**Pradeep Kumar Vs. State of U.P.**

In Pradeep Kumar Vs. State of U.P., all the three appellants were declared to have fallen within the definition of “child” under the U.P. Children’s Act 1951 on the date of occurrence. The appellants, viz., Pradeep Kumar, Krishan Kant and Jagdish, had

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in support of their respective claims, a medical examination report, a horoscope and a School Leaving Certificate. As the appellants had ceased to be children, the Supreme Court observed “there is no question of sending them to an approved school under the U.P. Children’s Act for detention. Accordingly, whilst sustaining the conviction of the appellants under all the charges framed against them, we quash the sentences awarded to them and direct their release forthwith.”

**Umesh Singh & Anr. Vs. State of Bihar**

In this case the contention of juvenility was not raised before the Trial Court or the High Court. The Apex Court declared the appellant Arvind Singh a juvenile on the basis of a “report of experts” which indicated that Arvind was hardly 13 years old” on the date of the incident. This “report of experts” was supported by “the school certificate as well as the matriculation certificate”. The Supreme Court confirmed the conviction, but set aside the sentence imposed upon him and released Arvind Singh forthwith.

**Upendra Kumar Vs. State of Bihar**

In this case too the Supreme Court upheld the conviction and quashed the sentence. “Resultantly, the appellant is directed to be released forthwith if not required in any other case.’

**Satya Mohan Singh Vs. State of U.P.**

The Trial Court in Satya Mohan Singh Vs. State of U.P. convicted the appellant to life imprisonment for having committed an offence under Sections 302, 307 IPC. The sentence was upheld by the High Court. No claim of juvenility had been raised before the

311 (2005) 3 SCC 592; 2005 SCC (Cri) 778.
312 (2005) 11 SCC 395
Trial Court, but “when the question of awarding sentence was being considered, on behalf of the appellant, it was pointed out that he was fifteen years of age in December 1980 when the judgment was being delivered by the trial court. The trial court assessed the age of the appellant in December 1980 between sixteen to seventeen years. The occurrence had taken place in December 1979. Therefore, even according to the estimate of the trial court, the age of the appellant on the date of the occurrence was fifteen or sixteen. This observation of the trial court clearly shows that on the date of the occurrence, the appellant was a child within the meaning of Section 2(4) of the Act.” Stating thus, the Apex Court declared the appellant a “child”, i.e., below 16 years of age, under the U.P. Children’s Act, upheld the conviction and quashed his sentence.

Vijendra Kumar Mall, Etc. Vs. State of U.P.

In Vijendra Kumar Mall, Etc. Vs. State of U.P., the High Court whilst dealing with the subject of a subordinate court having refused bail to a juvenile on the ground that the offence was a serious one, observed;

“This court in a number of judgments has categorically held that bail to the juvenile can only be refused if any one of the grounds existed. So far as the ground of gravity is concerned it is not covered under the above provisions of the Act. If the bail application of the juvenile was to be considered under the provisions of the Code of Criminal Procedure, there would have been absolutely no necessity for the enactment of the aforesaid Act. The language of section 12 of the Act itself lays down that notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, the juvenile accused shall be released.”

313 2003 CriLJ 4619 (Allahabad)
Pratap Singh Vs. State of Jharkhand & Anr.

In this case,\(^{314}\) one of the questions before the 5-Judge Bench of the Supreme Court was, “Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as Juvenile offender or the date when he is produced in the Court/competent authority.”

The Supreme Court whilst holding that the reckoning date for determination of the age of the juvenile is the date of offence, observed, “it is settled law that the interpretation of the Statute of beneficial legislation must be to advance the cause of legislation to the benefit for whom it is made and not to frustrate the intendment of the legislation.” Courts that once accorded juveniles the benefits of juvenile legislation are gradually changing their stance. A claim of juvenility raised for the first time before the Supreme Court is being Looked upon with suspicion. Death sentences are confirmed inspite of ambiguity as to whether the convict is a juvenile. Opening of bank accounts decide the age of a person, and statements made by the accused are no longer believed.

Surinder Singh Vs. State of U.P.

In this case,\(^{315}\) “8. The jurisdictional issue based on purported ages of the accused needs consideration first. The question relating to the age of the accused was never raised before the courts below, necessitating a decision in this regard ...Further, at no point of time during trial or before the High Court this question was raised. Further, the necessity of determining the age of the accused arises when the accused raises a plea and the court entertains a doubt. Here, no claim was made by the accused that he was a child and,


\(^{315}\) (2003) 10 SCC 26; 2004 SCC (Cri) 717; AIR 2003 SC 3811
therefore, the question of the court entertaining a doubt does not arise...In the aforesaid background, plea based on purported age raised by the appellants has no merit and is rejected.”

**Om Prakash Vs. State of Uttaranchal**

In case of Om Prakash Vs. State of Uttaranchal, the age recorded in the section 313 CrPC statement showed Om Prakash to be a juvenile on the date of offence. The claim of juvenility was rejected by the Supreme Court only on the ground that the appellant had opened a bank account a few months before commission of the offence; “...the appellant would not have been in a position to open the account unless he was a major and declared himself to be so.” The Supreme Court upheld the death sentence awarded by the Trial Court and confirmed by the High Court.

**Pawan Vs. State of Uttaranchal**

In Pawan Vs. State of Uttaranchal case, “The question is: should an inquiry be made or report be called for from the trial court invariably where juvenility is claimed for the first time before this Court. Where the materials placed before this Court by the accused, prima facie, suggest that the accused was 'juvenile' as defined in the Act, 2000 on the date of incident, it may be necessary to call for the report or an inquiry be ordered to be made. However, in a case where plea of juvenility is found unscrupulous or the materials lack credibility or do not inspire confidence and even, prima facie, satisfaction of the court is not made out, we do not think any further exercise in this regard is necessary. If the plea of juvenility was not raised before the trial court or the High Court and is raised for the first time before this court, the judicial conscience of the court must

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316 (2003) 1 SCC 648  
317 (SC) 2009 (2) RCR (Criminal) 451
be satisfied by placing adequate and satisfactory material that the accused had not attained age of eighteen years on the date of commission of offence; sans such material any further inquiry into juvenility would be unnecessary”.

**Vikas Chaudhary Vs. State (NCT of Delhi)**

In this case, in deciding the aspect as to the person was a juvenile or not by the date of commission of the offence, it was held for offence committed covered by series of acts, the time to be taken is the last act which gives fresh period of limitation and to decide the age as on that date, to determine whether juvenile or not. The details of the case are that the kidnap committed by the accused was to extort money from the parents of the deceased victim by way of ransom and even after the death of the victim, as is evident from the subsequent phone calls asking for ransom. The offence under Section 361-A IPC did not come to an end only on account of the death of the victim, since ransom calls had been made even though the victim had been killed. If Section 364-A IPC and Section 472 CrPC are to be read together, it has to be held that even after the death of the victim, every time a ransom call was made a fresh period of limitation commenced. Accordingly, it would be the date on which the last ransom call was made which has to be taken to be the date of commission of offence. Accordingly, the Juvenile Justice Act was no longer applicable to the petitioner, who had attained the age of 18 years by the date on which the last ransom call was made which has to be taken to be the date of commission of offence.

This case was in the earlier round went up to the Apex Court where it was reported as Vimal Chadha Vs. Vikas Chowdhary (2008) 15 SCC 216: (2009) 3 SCC (Cri) 2490: 2008 CrLJ (SC) 3190 and by reversing the High Court judgment of Vikas Chowdhary.

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Vs. State, it was held therein by the Apex Court that the offence of kidnapping for ransom and telephone calls demanding ransom continued has to be considered as a continuous offence in determining the person is juvenile or adult accused.

**Hariram Vs. State of Rajasthan**

In this case,\(^{319}\) it was held that the Juvenile Justice Act was enacted to achieve the constitutional goals contemplated by Article 15(3), 39(e&f), 45 and 47 and the very scheme behind the legislation is rehabilitatory so as to prevent child offenders from being hardened criminals and to achieve the objects of the legislation, this application requires a complete change of mind set of those having authority to implement it and in boarder age cases in determining whether the person is juvenile or not the benefit shall go in favour of the person for juvenility.

**Dharambir Vs. State (NCT of Delhi)**

In this case,\(^{320}\) in deciding the aspect as to the person was a juvenile or not by the date of commission of the offence, it was held that the claim of juvenility is maintainable as the J.J. Act, 2000 provisions are retrospective in operation even to the occurrence happened prior to the Act came into force and the proceedings are however pending by the time the Act came in force, the benefit of the legislation is in favour of the juvenility. Coming to the facts, the Appellant who was aged 16 years and 9 months as on the date of commission of the crime being his case pending on date of coming into effect of 2000 Act (i.e.01.4.2001) though under the Repealed Act of 1986, a male delinquent aged above 16 years was not a juvenile, as per the J.J. Act, 2000 all persons who were below age of


eighteen years on date of crime even prior to 01.04.2001, held, can claim benefit of juvenility under the J.J. Act, 2000.

It was also held that the claim of juvenility can be raised even after the person has attained age of eighteen years on or before date of commencement of the J.J. Act, 2000 and was undergoing sentence upon being convicted under the Repealed Act of 1986 as under the J.J. Act, 2000 all persons who were below age of eighteen years on date of crime, even the occurrence was prior to 01.04.2001, can claim benefit of juvenility under J.J. Act, 2000.

It was held further that for determination of age of juvenile - the Reckoning date is the date on which the offence has been committed and not the date when he was produced before authority.

It was held further in determination of who can be sent to special home under Sec.15 and Sec.16 (2) of J.J. Act, 2000 - on facts that sending of the person aged 35 years to juvenile home is unwarranted, although he was a juvenile on date of commission of crime and had served only 2 years and 4 months in regular jail as a non-juvenile, he cannot be sent to special home considering that his present age being 35 years.

**Vaneet Kumar Gupta Vs. State of Punjab**

In this case,\(^{321}\) it was held by interpreting the provision that, the maximum period for which the juvenile who found committed the occurrence, to refer him to the Special Home is 3 years. On facts while upholding the finding of guilt and reversing the finding

of not juvenile, held that the appellant who is a juvenile has been in prison for last many years as adult convict and thereby it will neither be desirable nor proper to again refer him to the Special Home and thereby directed to release forthwith.

**Bachpan Bachao Andolan Vs. Union of India**

In this pending matter\(^{322}\) on a public interest litigation laid under Article 32 of the Constitution before the Supreme Court in the wake of serious allegations of violations and abuse of children who are forcefully detained in circuses, in many instances without any access to their families and under extreme inhuman conditions, that there are also instances of sexual abuse on a daily basis, physical as well as emotional abuse and the children are deprived of basic human needs of food and water; responding to the above PIL, the Supreme Court has taken a serious view and pending final disposal of the matter, gave interim directions directing all the states to implement provisions of the Act forthwith and constitute Juvenile Justice Boards, Child Welfare Committees and special juvenile police units in every district within six weeks and rehabilitate the children working in circuses forthwith. It is further directed that the National Commission for Protection of Child Rights constituted under the Act, 2005 has to be appointed as nodal agency to monitor implementation of the directions given and the orders to be passed by the Supreme Court from time to time for protection of child rights.

**Rambir Singh Vs. State of Uttar Pradesh**

The question before the Supreme Court in this case\(^{323}\) was applicability of Section 7-A(2) of the J.J. Act, 2000 and as to when can the question of juvenility be raised. The

\(^{322}\) Bachpan Bachao Andolan Vs. Union of India 2010 (12) SCC 180-U/s.4, 29, 63, 7(A), 2(K&I) of J.J. Act, 2000

\(^{323}\) Rambir Singh Vs. State of Uttar Pradesh (2009) 17 SCC 574
Apex Court held that question of juvenility can be raised at any time and before any court and even after conviction. Herein question of juvenility of convict appellant 4 not raised before courts below - However, from school certificate, his age comes out to be less than 18 years on the date of commission of alleged offence, thus making him a juvenile on relevant date since appellant IV already convicted and sentenced to life imprisonment, his case covered by provisions of Section 7-A(2) of the J.J. Act,2000. Therefore, directions were issued for transmitting the case of appellant IV to Juvenile Justice Board for passing appropriate orders in terms of Section 15 of the 2000 Act, read with Rule 98, 2007 Rules.

**Jabar Singh Vs. Dinesh**

The question came up for consideration before the Apex Court in deciding the matter in this case was whether in case of dispute as to age to determine juvenility, whether the matter has to be remitted to the Juvenile Justice Board or an enquiry as to the age for determination of Juvenility can be conducted by the regular court before which the person was produced as accused non-juvenile from the question of juvenility raised.

The facts of the case are that, the appellant's son alleged to have been murdered by the respondent No.1. The trial Court rejected the application of the respondent No.1 under Section 49(1) that he was a juvenile at the time of commission of the offence. High Court set aside the order passed by the trial court and remitted the matter to the trial court to determine the age. The Respondent No.1 was not brought before the Juvenile Justice Board. The trial Court observed that there was over-writing in the date of birth of Respondent No.1 in admission form and no independent witness produced before the court who had participated in the birth of Respondent No.1. This Court held that the entry

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of date of birth of Respondent No.1 in the admission form, the school records and transfer certificates did not satisfy the conditions laid down in Section 35 of the Evidence Act in as much as the entry was not in any public or official register for the purpose of determining the age of Respondent No.1 at the time of commission of the alleged offence. The trial Court considered the physical appearance of the respondent No.1 and gave good reasons for discarding the evidence adduced by the Respondent No.1 in support of his claim that he was a juvenile at the time of commission of the alleged offence. It was held that, trial court had authority to make inquiry and take necessary evidence to determine his age. Besides Section 49 does not prohibit Court before which claim of juvenility is raised from determining the said issue, the trial court having enquired, rejected the R-1’s claim to juvenility by order dated 14.2.2006. Section 7(A) of the Act lays down procedure to be followed when claim of juvenility is raised was inserted with effect from 22.8.2006 and hence had no applicability in the instant case. Furthermore, insertion of Section 7(A) indicates that parliament never intended to oust jurisdiction of court to decide claim of juvenility. It was there from held by the Apex Court that the regular court got jurisdiction to decide any claim of juvenility and for that no need to send to the Juvenile Justice Board.

5.10 Chapter Summary

Law and social customs have long taken cognizance of a fairly widely-shared belief that children and young persons are not yet wholly formed, that they are in the process of developing and, therefore, their liability ought to be different so as to promote to the degree possible their re-integration rather than permanent alienation from society. Hence, emerged the concept of child jurisprudence and enactment of juvenile justice acts throughout the world.
In this context, this chapter presented the concept of child jurisprudence, factors contributing to children deviant behaviour, the history and importance of Juvenile Justice Act and various constitutional provisions in India relating to rights of children. Also presented are the United Nations instruments in relation to children in criminal justice system and some notable Indian judicial pronouncements relating to juvenile justice.