The term Juvenile Justice is a pervasive term. Only in one sense it has a uniform meaning and that is rehabilitation and social reintegration through any of the legalised measures.

The term juvenile is a stigmatic term which essentially refers to a child under certain prescribed age who has been alleged or found to have committed an offence. The international documents dealing with the human rights of the children has not been successful in replacing this stigmatic term. The United Nations Convention on the Rights of the Child 1989 also uses the term 'children accused of'. In India, for the first time efforts was made to equate the term juvenile with the term child or vice-versa with the idea of removing the stigma attached with the term juvenile through the provisions of the Juvenile Justice (Care and Protection of Children) Act 2000. The term juvenile refers to juvenile delinquent what now is called juvenile in conflict with law and the term child refers to neglected juveniles what now is called children in need of care and protection. The earlier legislations also tried its best to give another meaning to the term juvenile but failed. Juvenile justice legislation in India from 1920 to till the passing of the Act 2000 maintained the clear distinction between neglected juvenile and juvenile delinquent.

There was no separate administration of justice for adult criminal and a juvenile offender. The international community developed interest in helping
the poor and destitute children. This sympathetic attitude developed toward the non-delinquent children ultimately developed towards delinquent children as well. So, in the process of helping poor, destitute, orphan children, there developed the sympathetic attitude towards the delinquent children as well because crime came to be viewed in terms of poverty and destitution. Further, it was also realized that children due to their immature mind are not capable of understanding the consequences of their act. So there developed the philosophy of separation of juvenile delinquent from the adult offender and in turn established separate administration of justice for juvenile delinquents.

The differential treatment to young delinquent can be traced back in the moment when segregation of young criminal from the adult in the prison started. This principle of segregation was evolved to prevent the young criminal from being hardened criminal in association of adult criminals in jail while undergoing the sentence of imprisonment. Thus, the 'segregation' was the first stage of history to provide differential treatment to young persons.

The second stage of providing differential treatment to juvenile delinquents (now juvenile in conflict with law) started with the system of releasing them on parole and licence while undergoing a sentence of imprisonment.

The third stage of providing differential treatment to juvenile offenders was a moment against the sentence of imprisonment awarded to them. This moment led to the formation of separate juvenile courts to handle the cases of adult criminals separately distinct from adult criminal court providing different procedures and techniques of correction and reformation. The ultimate object of their rehabilitation in the society.
The campaign against the prison sentence led to development of various custodial (not jail) and non-custodial measures to provide treatment, care and protection to the juvenile delinquents with the ultimate object of their rehabilitation and social reintegration. For example, reformatories, Borstal schools, special homes, and probation etc. came to be recognised as the method of reformation and rehabilitation of the juvenile delinquents.

Throughout the development of legislation, the magistrate of criminal court was the competent authority to administer the differential treatment principle to young criminals. The magistrate (juvenile court) was the competent authority not only for dealing with the cases of juvenile delinquents but also the cases of neglected juvenile as well.

The fourth stage of development of providing differential treatment to juvenile delinquent can be attributed in the moment of development of human rights of the children through United Nations Convention on the Rights of the Child, the most ratified treaty. This moment emphasized the treatment outside the juvenile justice system as far as practicable. This may be because of curtailment of constitutional due-process rights of a person taken into custody for whatsoever pious reasons.

It is important to note that throughout, the juvenile justice system handled together both the categories of children, delinquent juveniles and non-delinquent juveniles or neglected juveniles earlier through different legislations and presently through sole legislation.

England before 1908 provided treatment to juvenile delinquent under the Reformatory Schools Act and to neglected juveniles under the Industrial Schools Act. The first juvenile court in the world was established by America
in the year 1899 and both the categories of children came to be dealt with by
the juvenile court. There was single legislation dealing with both the
categories of children.

England passed the Children Act of 1908 covering both the categories
of children. India followed the pursuit and passed several Children Acts
covering both the children together through sole legislation. The repealed
Juvenile Justice Act 1986 and the present Juvenile Justice (Care and
Protection of Children) Act 2000 covers both the categories of children. This
inclusion of both the categories of children into sole legislation appears to be a
major stumbling block in the effective implementation of the juvenile justice
system in India.

It appears that juvenile justice system in India has not been a
continuous process resulting from an uninterrupted concern for children. The
timing and content of various developments relating to the juvenile justice
system have close relationship with the reforms taking place elsewhere in the
world rather than with the demands of children in the country.¹

It has also been voiced that the juvenile justice legislations in India are
passed by the legislators merely to please their conscience and to show the
international bodies that they too were in the forefront of child protection.²

It is hard to believe that the state and the law can take the place of

University Press, New Delhi, 2nd edn., 2010)]

². [K.F. Rustamji, ‘Note on Legal Measure Relating to Social Defence (Child)—Supportive Measures
Needed for Their Effective Enforcement’, a paper presented at the Workshop on National Children's
Act, sponsored by SOS Children's Villages, Multiple Action Research Group, Joint Women's
Programme, Community Aid and Sponsorship Programme, and the Indian Social Institute, held at
the Indian Social Institute, New Delhi, 10 August 1986]
parents in providing maternal care and nurturance to the children. Despite of this fact, all the jurisdictions, try to take this responsibility of providing care and protection to children in the form of a mother.

In this regard some pertinent questions may be raised as what are the conditions of life of the majority of children in India and how far the State as a guardian or parent has been serious about these children. The answer to the first question needs no mention. The answer to the second question can be found by answering another question and that is what children in India have practically got so far from the State till now. The research study shows that the children in India are continuously being blessed by the state, its machinery including judiciary and its allied civil-society partner with the followings

Firstly, they have acquired the status of being a human capable of owning certain inalienable rights by birth without owning any disadvantages (duty) as opposed to their earlier status of being a property of their parents or guardians.

Secondly, they have become the subject-matter of human rights discourse, that is, concern of all, leading to general awareness among the masses about their rights of not being exploited, abused, tortured, treated with cruelty or inhuman manner, arrest by police etc. Suffice to say that these all are the abstract or negative rights in terms of civil and political rights.

It appears that the role of the State as a parent or guardian has been limited only in terms of providing philosophical languages of love, best interests, care, protection, training, rehabilitation, health, survival and development along with abstract or negative enforceable civil and political rights less due process rights.
In this background one important question arises as to why the neglected juveniles whose acts are not mala in se came to be handled and treated together under one law more or less by same machinery with the delinquent juveniles whose acts are mala in se?

It appears that there has been and still is some hidden agenda of the state behind inclusion of non-delinquent children in the juvenile justice legislation which is juridically meant for juvenile delinquent. The reasons may be attributed to the followings.

It is in the knowledge of the state that many juvenile delinquents after they have committed crimes go undetected, unapprehended and hence unpunished. It is also within the knowledge of the state that it cannot solve the problem of poverty. In understanding of the state, poverty, neglect and destitution lead to delinquent behaviour.

Thus, the agenda of the state appears to be prevention through custody into juvenile justice institutions and not the one providing care and protection. Therefore, it appears that it is the custody of the non-delinquent children which is the main agenda of the state under the disguise of care and protection of children and in turn dispensing with the constitutional requirements of due process rights.

It is seen that the same hidden agenda does find place in the existing Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006 but with changes in the terminology used under the system retaining the substance.

The adjudicatory authorities are known as Juvenile Justice Board and Child Welfare Committee. The Juvenile Justice Board adjudicates upon the
cases of juveniles who have been accused of or found to have committed an offence. The Child Welfare Committee adjudicates upon the cases of children in need of care and protection. The Juvenile Justice Board consists of one magistrate and two social workers and the Child Welfare Committee consists of five non-judicial personnel that is social workers.

**The salient feature of the juvenile justice system in India is presented in brief as under**

There is no court, there is board, there is no juvenile offender or delinquent juvenile, there is juvenile in conflict with law; there is no neglected juveniles, there is 'children in need of care and protection'; there is no arrest, there is custody; there is no remand, there is bail; there is no trial, there is adjudication; there is no police investigation, there is social investigation; there is no police, there is child welfare officer; there is no decision or judgment, there is disposition; there is no punishment, there is care and protection; there is no jail, there is home etc.

It is seen that there has been continuous experimentation in the juvenile justice system by making, amending, repealing and again making legislations, developing new schemes and programmes. It is also the fact that the Supreme Court of India has been monitoring the implementation of juvenile justice system from the year 1995. It is also the fact that despite of the Apex Court's intervention, the central government and the state governments have failed to implement even the major provisions of the Juvenile Justice Acts [many major provisions of the Juvenile Justice Act (repealed) and Act 2000 are same] till today.

There also has been a continuous exercise of suggestions,
recommendations and reformations for the past more than nine decades in juvenile justice system to achieve the task of its enforcement and implementation to an acceptable limit.

The Supreme Court of India in Sheela Barse's case\(^3\) itself took the responsibility of monitoring the implementation of major provisions of Juvenile Justice Act, 1986. The case was disposed of with certain directions in 1995. In Sampurna Behrua's case\(^4\), again the Supreme Court took the responsibility of monitoring the implementation (monitoring is still continue) of major provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Despite of the Apex Court's intervention, the central government and the state governments have failed to implement the major provisions of the Juvenile Justice Act, 1986 (repealed) and Juvenile Justice (Care and Protection of Children) Act, 2000.

The ongoing failure of the juvenile justice system is admitted by the Ministry of Women and Child Development and the National Commission for Protection of Child Rights in the various reports published in their respective websites. The Sheela Barse's case\(^5\) and Sampurna Behrua's case\(^6\) also reflects the view of dismal status of implementation of the juvenile justice system.

The fact that the juvenile justice system in India is dysfunctional is proved beyond doubt. This led the investigator to form an opinion that there

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3 [Sheela Barse v. Union of India, AIR 1986 (SC) 1773]
4 [W.P.(c) No. 473 of 2005] (pending)
5-6 ibid
may be some stumbling blocks other than those researched out so far as to the cause of malfunctioning of juvenile justice system in India.

**Hypothesis**

Ongoing failure of a system presupposes the ongoing existence of some stumbling blocks in the legislation itself. Therefore, this study adopts the hypothesis that there are some other major stumbling blocks in the effective implementation of juvenile justice system in India.

**Significance of Study**

A huge amount is being incurred in maintaining the structural requirement of juvenile justice system itself. What the children are getting is not known. Beneficiaries appear to be the custodians of the juvenile justice system and not the children in the “system”. In terms of Mr. V. Krishna Iyer, “the law which cannot be implemented is a satanic law and the same must be scrapped out.” Needless to say that dysfunctional juvenile justice system gives rise to unscrupulous employment causing a great loss to the exchequer. It must be clarified here that the investigator is not against the funding for care and protection of children but against the funding to maintain the bare structures of juvenile justice system. The proposed research study is directed to find out those major stumbling blocks to suggest reformations in the juvenile justice system. This is the significance of the study.

Keeping in view the nature and scope of the hypothesis, the conceptual and historical development of juvenile justice system in India, relevant national and international instruments on juvenile justice system, writings and reports of the eminent jurists and scholars in the field and judicial decisions will be examined in detail.
Methodology

In this study, the doctrinal research method has been adopted.

Limitation of Research Study

The research study is not intended to examine in detail the provisions of the juvenile justice legislations in India which developed through successive stages of history. The study is also intended to examine in detail the provisions of international instruments.

Organisation of the Research Work

To facilitate study, this research is proposed to be presented in eight chapters.

Chapter-1A Conceptual Introduction

This chapter proposes to present the conceptual introduction covering the features of juvenile justice system as conceived in all the jurisdictions. The study also examines the features of juvenile justice system in India in brief.

Chapter-2 International Instruments on Juvenile Justice

The study in this chapter proposes to present relevant international standard and norms on juvenile justice to investigate the corresponding development in the juvenile justice system in India.

Chapter-3 National Instruments on Juvenile Justice

This chapter proposes to present the study of the provisions of the Apprentices Act 1850, the Reformatory Schools Act 1897, various Children Acts, Juvenile Justice Act 1986 and Juvenile Justice (Care and Protection of
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This proposed study is intended to present the fact that the major provisions of juvenile justice system were substantially present in various Children Acts, the Children Act 1960, the Juvenile Justice Act 1986 and the Juvenile Justice (Care and Protection of Children) Act 2000.


In this chapter, the study proposes to analyse the reports and comments of various jurists, research scholars in the field including Government reports to investigate the status of implementation of juvenile justice system in India.

Chapter-6  Higher Courts on Juvenile Justice System

In this chapter, the important cases like Sheela Barse, Sampurna Behrua, Umesh Chandra, Arnit Das and Pratap Singh has been briefly discussed in support of the hypothesis of ongoing failure of juvenile justice system in India. Few old Indian cases along with important American Supreme Court cases have been discussed to highlight the historical
importance of juvenile justice system in India and across the world.

Chapter-7  Findings

There is ongoing failure of juvenile justice system in India. Joining both, juvenile in conflict with law and children in need of care and protection together for the purpose of providing care, protection and treatment through sole legislation has created uncertainty in the administration of juvenile justice. It has rendered the possibility of effective implementation, coordination, monitoring, and accountability virtually impossible.

Chapter-8  Suggestions and Conclusions

The main suggestion is that the Juvenile Justice (Care and Protection of Children) Act 2000 as amended in 2006 should be bifurcated. The United Nations Convention on the Rights of the Child 1989 mandates the State to establish specific laws and procedures for juvenile in conflict with law.

Chapter 1A  Conceptual Introduction

Juvenile justice may be defined as the fair handling and treatment of deviant children and who are in need of care and protection. It recognizes their rights of certain fundamental constitutional protections.7

The concept of promoting a distinct form of justice for children is a relatively new development in the history of civilization and the administration of justice.8

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8. ibid at pp.28-29
Conceptually, juvenile justice is concerned with providing rehabilitative measures for social reintegration of deviant children and children in need of care and protection.\(^7\)

It applies different standards and procedures while dealing with deviant children and children in need of care and protection.

The juvenile justice system is composed of the police, juvenile courts or boards, juvenile institutions and community-based agencies and programs.

In the juvenile justice system the informal proceedings are accepted as alternatives. Thus, the juvenile justice system provides a varieties of programmes and agencies in comparison to the criminal justice system.

Though the rehabilitation is the main object for dispensing juvenile justice system, in some jurisdictions the laws have been enacted for punishing serious juvenile offenders as criminals. Serious offences by juveniles are waived into the adult criminal justice system. There, juveniles are subject to the full range of penalties normally reserved for adults.

**Juvenile Justice from Global Perspective**

Gus Martin has rightly explained the juvenile justice from global perspective as below

When the concepts children in trouble and children in need are adapted to incorporate a global concept of juvenile justice, the overall picture becomes one of children's rights. Children's right refers to the entitlement of young people to basic protections from violence and exploitation. Thus, when

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\(^7\) ibid

\(^9\) ibid
considered from a global perspective, juvenile justice and children's rights are arguably synonymous.\(^{10}\)

**Juvenile Justice System in India**

The juvenile justice system in India can be described in terms of combination of features of welfare, modified justice, justice, and crime control models. As in the crime control and justice models, the law in relation to delinquent children in India focuses on their criminal offences; and police, lawyers, and judges are the prime actors. For children in need of care, the law is closer to the welfare and modified justice models, allowing comparatively more but not complete informality in processes, doing away with lawyers and judicial officers and involving childcare experts focusing on their development, growth, and social reintegration.\(^ {11}\) The term juvenile justice has been given different meanings in different contexts. It has been variously used to refer to the juvenile court, the institutional linchpin of the innovation, and to a stream of affiliated institutions that carry responsibilities for control and rehabilitation of the young, including the police, the juvenile court itself, prosecuting and defence attorneys, juvenile detention centres, and juvenile correctional facilities\(^ {12}\)

In its wider perspective it includes provisions for the welfare and well-being of all the children in need of care and protection, while the formal system of juvenile actually deals with those who are already in conflict with law or are likely to be so, for various reasons. It also implies fairness and

\(^{10}\) Gus Martin, Juvenile Justice: Process and Systems, p.365 (Sage Publications, USA, 2005


justice towards juveniles in the political, social, and economic spheres. In criminological literature, juvenile justice connotes justice to the delinquent or near-delinquent child in various stages of the formal process such as arrest and apprehension, adjudication, sentencing, custodial care and detention, and after-care.

The term juvenile justice was sought to be clarified for the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders as follows:

Juvenile justice after the onset of delinquency referred to justice in its normal juridical sense and that juvenile justice before the onset of delinquency referred to social justice. Thus, the concept of social justice was to be seen as relevant to the development of children and young persons generally and to endangered or adjudicated young offenders. The two were closely related but could be separated for purposes of discussion and training.\(^{13}\)

The term Juvenile Justice is, therefore, used to refer to social as well as juridical justice. India seeks to provide social and juridical justice to neglected and delinquent children through the use of code, constables, court, and residential institutions for both categories of children, those committing an offence and others living in circumstances likely to lead them into a life of crime.

Therefore, the juvenile justice system in India is neither fully civil nor

fully criminal. It implies that if it is taken in the meaning of civil remedy then
the juvenile who is alleged to have committed an offence will not have the
rights of constitutional protection as available to an adult criminal. If it is
taken in the sense of criminal remedy, then by applying the welfare principle,
some of the rights of constitutional protection may be limited. In either of the
way, the accused juvenile will not have the full rights of constitutional
protection. From this point of view, juvenile justice system can be called as a
hybrid system of justice. The result of it is well-reflected in the following
words of Claude Noreiga

First, if the juvenile justice system is viewed to provide a civil remedy,
many of the rights that are protected by the Constitution in criminal cases
becomes inapplicable because the remedy is to provide care and protection to
the juvenile. Secondly, when the juvenile justice system is viewed to provide
a punitive criminal remedy, many of the civil rights normally available to the
juvenile may be limited. By limiting the rights of juveniles under both civil
and criminal methodologies simultaneously however, the juvenile justice
system functions to give juveniles the worst of both worlds

On the issue of implementation of juvenile justice system across the
world, Gus Martin lamented in the following words

There are many stories describing incompetence, mistreatment,
corruption, and cover-ups within dysfunctional juvenile justice systems.
Investigations occasionally reveal criminal behaviour within subsystems,
such as troubling reports of beatings, neglect, or other inhumane treatment in
correctional institutions. Poor implementation of programmes by

Human Rights 669, Spring 2000, p.2]
community-based organisations is not uncommon, and it is often the result of poor and incompetent oversight by government agencies- in other words, some problems are so blatant that even a cursory inspection would have revealed their deficiencies. Such problems and consequences pose ongoing challenges for the proper implementation of justice for juveniles.

The following observations of Dr. Upendra Baxi bring out a very sad picture of juvenile justice system in India.

The protection and promotion of human rights of children is not seen as a priority in the governance agenda, however, it is seen that the government is preoccupied of social and human rights movements as well as of social theory.

The Supreme Court found its inability to enforce its directions against state governments and preferred to transfer the advocacy of juvenile justice system children to Supreme Court Legal Aid Committee.

Human rightlessness is seen in everyday bureaucratic administration and judicial interpretation in the juvenile justice system.

The government continuously violates the Constitutional and Internationally recognised human rights of the child.

The democratic government, active judiciary and great human rights movements, all have simply failed to deliver a humane and just juvenile justice system.

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15. (Upendra Baxi Foreword to the Book The Juvenile Justice System in India: From Welfare to Rights by Ved Kumari)