Introduction
Despite the commonality of certain fundamentals, each country evolves a system to manage the children in need of care and protection and socially deviant juveniles in consonance with its own ethos, values and norms. Such a juvenile justice system functions as an integral part of the total effort towards the prevention and control of juvenile neglect and delinquency. In most of the countries, the juvenile justice system is responsible for decision-making in regard to the care and protection of children in need of care and protection and socially maladjusted and children in conflict with law. While discharging its role, it strives to maintain a delicate balance between the interest of the child and that of society. As the child is regarded as the supreme human resource for national development, there is a natural tendency on the part of juvenile justice system to over-reach. Thus at the international level the concept of juvenile justice has often been discussed from three perspectives: (i) juvenile justice in the sense of social justice for all children and young persons; (ii) special efforts to confront the problems of the children in need of care and protection and juveniles in conflict with law; and (iii) juvenile justice in the sense of adjudicated or incriminated children/juveniles. Though a comprehensive strategy to forestall conditions and factors that generate delinquency is equally imperative, the formal system of juvenile justice generally concentrates on action after the onset of delinquency. In the process, children in need of care and protection often get a poor deal.

Juvenile Justice Models

The current approaches towards juvenile justice are centred around; (i) the “due process model” which protects the substantive and procedural rights of the juveniles involved in the legal processes, (ii) the “parens patriae” or “welfare model” which aims at providing justice to children primarily through state interventions and promote their well-being as they come within the purview of the legal system, and (iii) the “participatory model” which emphasises on a constructive participation of the community in the mainstreaming of the erring juveniles and the minimisation of legal intervention in their lives.

It has, however, been experienced that no single model, on its own, is able to cope with the problems of juvenile delinquency and neglect in its full range. While the “due process model” is found to have a limited reach in catering to the needs of the child in the totality of his life situations, the “parens patriae” model is often criticised for it’s over reaching and, by implication, depriving the child of his right to liberty. The “participatory model” has also been questioned for falling short of its avowed objective, when a chunk of child population remains marginalized and deprived of their basic human rights. Therefore, in order to work out an effective strategy, most of the countries including India have pursued an “integrated approach” by harmonising the essential elements of all these models.
As a party to the Convention on the Rights of the Child (CRC) and various other rules and guidelines on children's rights, the Government of India is bound to fulfill the duties set out in these social instruments. International agreements on children's rights, concerning children in need of care and protection and in conflict with law, promote a holistic approach, concerned with the development, care, and protection of children throughout their interactions with the juvenile justice system. With the adoption of the United Nations Standard Minimum Rules for the administration of the Juvenile Justice, India was the first country to evolve its system in the light of the principles enunciated therein. With its enforcement on 2 October, 1987, the Juvenile Justice Act of 1986 replaced the earlier mechanism of the Children Acts enacted by the Central and State Governments for dealing with children coming in conflict with law.

With the ratification of the Convention on the Rights of the Child, India stands committed to harmonise its laws, rules and regulations governing the administration of the juvenile justice system with the United Nations' instrument invoked therein. It is also committed of bringing all state laws and policies in line with the main principles of child rights, namely, right to survival, right to development, right to participation and the right to protection. The Convention advocates a holistic approach to the problems of children including those relating to their vulnerability to social maladjustment under various situations. It urges upon the State parties to establish a juvenile justice administration, which recognises the rights of the child accused of or found to have infringed the law, to be treated in a manner consistent with a sense of dignity and worth, respects the child's human rights and fundamental freedom, and guarantees a due process of justice. The Convention lays down that the children should not be unlawfully arrested or deprived of their liberty. In custody they have to be separated from adults, with a right to prompt legal and other assistance and to contacts with the family. All children deprived of their liberty are to be treated with humanity and respect and in a manner that takes into account their special age related needs. The Convention upholds the mutuality rather than the duality of human rights and juvenile justice.

India's original Juvenile Justice Act, 1986 written before many of these international instruments did not align with their requirements. In response to the UN Committee on the Rights of the Child's recommendation that India must incorporate the aims of the Convention on the Rights of the Child into its domestic legislation, a new law was passed. The Juvenile Justice (Care and Protection of Children) Act, 2000, covers most of the aspects of interaction between children and the legal system. The amendments were to make it more children sensitive. From adoption to abuse and neglect to children in conflict with the law, the Act is
far-reaching in its scope and intent. The provisions within the Juvenile Justice Act\(^1\), like its international predecessors, are intended to preserve the dignity and best interests of the child.

The JJ Act, 2000 establishes the legal principles for juvenile justice in India for the children between 6-18 years of age, wherein each state has the constitutional responsibility to establish its own administrative structures to implement the JJ Act. With the amendments in the Act, changes in the administration of the juvenile justice were expected, because the JJ Act 1986 and the JJ Act 2000 reflect differences in more than one ways.

The Juvenile Justice (Care and Protection of Children) Act, 2000 attempted to make the children feel free and empowered. It does so through several means. Firstly it removes the negative connotations of terms like neglected and delinquent, apprehension, remand, accused, trial, prosecution, inmate, court, arrest, etc. Instead, it uses term such as children in need of care and protection, children in conflict with law. Secondly it introduces institutional changes in the administrative mechanisms. Now the children are being directly heard by the Juvenile Justice Board (not the Court), which, besides the trained magistrates must include two qualified Social Workers as members, having seven years of experience. A Child Welfare Committee entirely constituted by such experts and social workers may also prove much more child friendly. The JJ Act, 2000 has given more emphasis on the non-institutional treatment of the children in need of care and protection and in conflict with law, a separate probation service for children to be developed as a nucleus for the community based care of such children in each State. It has enlarged the range of dispositional alternatives open to the Child Welfare Committees and Juvenile Justice Boards. Apart from the certification of any institution as Observation Home, it specifically provides for the utilisation of voluntary organisations for maintenance of Special Homes for reception and rehabilitation for the children in conflict with law. Since police officials have an indispensable role in the entire implementation of the Act, there has been mention of the creation of the Special Juvenile Police Unit in every district of the city to coordinate and upgrade the police treatment of children in difficult circumstances.

Another noteworthy change/shift in the scheme of provisions of the JJ Act, 1986 has been an increase in the upper age limit of the children within the purview of the law. The upper age limit of the boys has been extended from 16 to 18 years, which would increase the actual coverage by seven times. On the basis of the official figures published in Crimes in India, 1998, the Working Group Report states that the resultant coverage under the Indian Penal

\(^1\) In the remaining text ‘JJ Act’ has been used interchangeably for ‘Juvenile Justice (Care and Protection of Children) Act 2000’.
Code and Special Laws would increase from 14,897 below 16 years to 103,231 up to 18 years, whereas the total capacity of various institutions working under the Juvenile Justice Act, 1986, was only for about 36,500 inmates, including the children in need of care and protection and children in conflict with law. The number of children in need of care and protection would be much more than those in conflict with law. Yet, with the rise in age limit the possibility of increasing the numbers of the older and difficult children increases. Thus the implications of these various changes in the Act are enormous both in terms of the requirement of extra resources (manpower and infrastructure) as well as better collaboration with the voluntary sector and community for the rehabilitation of the children in need of care and protection and those in conflict with law. The Act contains exclusive chapters on adoption, foster care and sponsorship for their social reintegration.

In spite of these changes in nomenclature, increased age limits, adding categories and methods of restoration and continuing protections, one needs to be conscious of the fact that the JJ Act 2000 was still falling short of the international obligations undertaken by the Indian state both in the form of treaties as well as declarations. A review of the JJ Act, 2000 was undertaken by the Ministry of Women and Child Development in the year 2003 to make amendments in the existing legislation. After a series of consultations with the State Governments, NGOs and Child Welfare experts, the JJ Act 2000 was further revised and Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 came into effect from 22 August 2006.

Some of the main objectives of the amended Juvenile Justice (Care and Protection of Children) Act, 2006 have been to modify the long title of 2000 Act in order to broaden the scope of rehabilitation of the child in need of care and protection, or a juvenile in conflict with law under the Act through not only the institutional but also the non-institutional approach. It lays down a clear procedure for determining the juvenility of a child and the applicability of the JJ Act. It does away with the involvement of any police officer in the inquiry process for the child in need of care and protection as this work is assigned to the Child Welfare Committee and to cover other cases where the child can remain in a Children’s / Shelter Home after completion of enquiry.

One of the most significant amendments has been the effort to widen the scope of adoption of a child to childless parents irrespective of his/her religion and marital status. Till 2006 there was no universal law of adoption in India. The amendments in the Juvenile Justice (Care and Protection of Children) Act, 2000 in 2006 make the adoption procedure easier and will be subsequently both monitored and facilitated by Probation Officer / Child Welfare Officer / Social Worker i.e., professionals under the juvenile justice system. Besides the existing
adoption agencies, the Children's Homes have also been recognised for placing the children in adoption and foster care. However the pronounced policy of 're-integration and rehabilitation' can be made real only through linkages between social organisations, police and other segments of the Juvenile Justice System.

As the ultimate objective of the Juvenile Justice administration is the rehabilitation of children in need of care and protection and the children in conflict with law and ultimately to bring them in the main stream of social life, the legislation, has been conceived as an approach and as a service designed to reduce the social isolation and dependence of the children in need of care and those in conflict with law; to help them to get over their social handicaps; to remove the stigma that darkens their present and future life and finally to accelerate the process of their rehabilitation as socially useful and productive citizens of the country.

Despite a lot of thinking and ideas which have been generated during the last century regarding the Juvenile Justice Administration in this country, the present status of the existing statutory institutional and non-institutional services needs lots of improvement. There is a growing clamor among the politicians and the general public about the effectiveness of the Juvenile Justice (Care and Protection of Children) Act, 2000. In the recent years since the implementation of the new Act followed by its amendment in the year 2006, there have been several media reports on the dismal situation in various Homes under the Juvenile Justice System compelling the inmates to run away from the Homes which are otherwise meant to provide them with holistic care by a set of trained staff. Despite the provision of Special Juvenile Police in the Act there have been reports about the continuation of the use of abusive interrogation techniques by the police with the children in difficult circumstances, mainly those in abject poverty. The Human Rights Watch documented some of these abuses in a 1996 report. Thus, while India has a law, how this law is articulated and how its implementation is done, needs to be scrutinized.

This thesis takes up the issue of the children in need of care and protection and attempts to examine the relevance and application of the amended legislation in their lives.

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2 10 delinquents flee from Home, Indian Express, New Delhi, May 19, 2004; Abandon all Hope, yet who enter here, Indian Express, Mumbai, March 25, 2004; 36 Boys escape from Observation Home, Times of India, New Delhi, Sept. 10, 2009.

Interview with a 16 year old boy in the Children's Home for Boys in Alipur, “We are treated like an animal in this Home. The staff not only use abusive language but makes us do all mundane jobs like cleaning the toilets and floor. On a slight refusal they beat us with iron buckets and deny us the basic meals of the day. Once I get a chance I will run away from this prison.”
With a population of more than 1 billion in 2000, India has the largest population of the street children in the world. A distressing phenomenon of the growth of the Indian population is that every year nearly 21 million children are born in India of whom eight million die due to various infections and diseases. This means that every year nearly 13 million children are added to the child population. India accounts for over 20% of children’s deaths worldwide from preventable diseases, a number much larger than any other country. Around 28 percent of the deaths are linked to poor sanitation and unsafe drinking water. This toll is also compounded by malnutrition (The Economist, New Delhi, 20 October, 2009). Even by conservative measures statistics reveal that 80 lakh children in India are presently in out of school category. This figure includes 1.3 lakh children just in New Delhi (Times of India, 13 September 2009). All these children face the risk of deprivation from education and the process of social and intellectual development during the most formative years of their life. The crucial question is ‘What are these 80 lakh children doing if not going to school?’ They could either be sitting idle or loitering around on the streets or engaged in some work. If these children belong to families in distress, they have to earn to support their families. If they are without families and are a part of children living on the street, then again they have to earn in order to survive. These children are generally in the category of ‘nowhere children’ and in all probability most of them are working.

Majority of these children live and work in the cities of urban India. They are generally found in slum settlements, on railway stations, beneath flyovers, around temples and busy markets. They spend most of their time on the streets. A significant proportion of these children are working in the unorganized or informal sector in every city, big or small, offering cheap labour and catering to the various needs of the city dwellers. They work as porters at bus or railway terminals; or as labourers; as rag pickers, picking garbage and selling usable items to the local buyers. They suffer from various kinds of deprivation and denial of basic rights and necessities like education, health, food, shelter, physical and emotional security and recreation. Children on the streets are prone to various health hazards, the most common being undernutrition and malnutrition, anaemia, skin and other infections. They are also susceptible to drug/alcohol addiction, and to inhalants such as nail polish, rubber cement, gasoline, which offer them an escape from reality and hunger. In exchange, the addiction invites a host of physical and psychological problems, including hallucinations, pulmonary oedema, kidney failure and irreversible brain damage. In order to secure a regular dose of drugs/alcohol/inhalants, they resort to pick-pocketing, petty thefts and sometimes even more serious crimes. This small proportion earns a bad name for the rest of the working children.
Studies show that though most of the street children are law abiding, having their own groups/gangs acting as support groups in times of need both joy and misery, the society including police and municipal authorities treat them as anti-social elements. This results in further discrimination and a lack of support from the general public. As Bose pointed out, there is a blurred borderline between the children in need of care and protection and children in conflict with law. More often than not, situational factors result in one child being and other child not being apprehended as a child in conflict with law and subsequently institutionalised (Bose, A.B., 1992). This issue is critical because often the children in need of care and protection and the children in conflict with law are difficult to separate and are handled together. This adds to the problem because despite being the key point of deviation, the difference between the two categories is not always handled effectively. A child needing care commits a crime under some situations avoidable or unavoidable and the issue is how to increase his ability to avoid these repetitions, teach him life skills, give him a second chance and also ensure that he does not face unavoidable situations that force him into criminal activities. Very often even these children in need of care and protection are treated as children in conflict with law.

The inability of the administrative system to provide for the different needs of the two categories of children is an issue that is crucial, because very often children in need of care and protection are converted into potential children in conflict with law by long association within institutions with the latter category. The second question that is critical is what the needs of children in distress are and how best these can be provided. Is it necessary to put these children in institutions or can NGO experiments of organizing them around works, such as garbage collection, running canteens and education for street children (Butterflies), the bare-bones bank sponsored by a local charity and run almost entirely by and for street children, offering the street children a safe place to stash the bits of money they earn picking through trash for recyclables or hawking magazines and fruits at intersections, a better alternative and use forms of collective work to inculcate social responsibility work amongst the street children.

Certain questions also emerged from the M.Phil research done on street children in 2002 by the researcher in Sangam Vihar, one of the biggest unauthorised colonies of South Delhi. It analysed the situation and supported the belief that the problem of street children is deep rooted and has multiple dimensions. It found that there is no accurate assessment of the size of the problem since there is no consensus on any of the prevailing definitions for street children and the term street children is often used for child labour and vice versa. They are a floating population and are difficult to locate, leave alone count. This key proportion of at risk children is not tackled due to a rigid definition. This is a serious anomaly in definition.
and therefore coverage and it is in these places where NGOs like Butterflies, Prayas have reached but not the state welfare services.

The study also recognized the role of urbanization and migration in the creation of the street children. The findings revealed that in addition to the first generation migrants there was another set of families, which had lived in Delhi, long enough to be called the second generation of street families. Thus the children of these families entrapped in poverty are deprived of basic education and other facilities and are considered economically useful.

Another major finding has been that the street children have no opportunity to have their employment regulated. Self employment is one way of surviving for many street children. The study suggested that the children are quite satisfied with the meager earnings from their frequently changing jobs but dissatisfied with their work. In the absence of purposeful saving they are just living for today. It was found in the study that the parents of these children sometimes have a very callous attitude for their children. The children also recognize this fact and understand the mercenary relations that they share with their parents. They blame their parents for the situation they are in and this shows that the parents who are the natural guardians do not always have the trust or ability to protect their children.

It was further realized that the street children had their own resourcefulness and creativity, serving as key factors of any strategy to improve their situation. Even among the run aways or lost children there was a remarkable sense of solidarity. Peer groups devise strategies to counter the menace of local thugs, bullying policemen and cushion each other in times of need. The study suggests that there is a sense of loss and loneliness in the crowded cities with nobody to care for them or recognize them enough to give them importance. They are suspected of criminal behaviour and face social exclusion. They face the evils of urbanization with no cushion or protection. They hardly enjoy any civic amenities and are most susceptible to be apprehended by police and institutionalized.

This piece of work showed the difficulty in defining children in need of care and protection clearly as they ranged from totally neglected to those living with families. It brought out the importance of not only their material but also emotional needs; the influence of adults they confront on road such as the employers, the area goons, the police and others. The issues for girl child were quite different and the most interesting finding was children's ability to create a collective amongst themselves, look after each other and have their small dreams. These insights and our reading of the legislation throw a range of questions such as
Given the scarcity of resources can the new law actually provide for the children in need of care and protection and which of the category should get priority over the other?

Secondly the quality of facilities provided and the administration of justice.

To what level are they able to reintegrate the children in need of care and protection into the family and the larger society?

The sensitivity of the administration towards identification of children in conflict with law and special services to this category as increasing the age means putting more hard core children in conflict with the more vulnerable category of children in need of care and protection.

Last but not least the quality of life skills taught and their potential to help the children stand on their own outside the institutions.

This thesis focuses on children in need of care and protection for three reasons. Firstly if they can be taken care of, it will prevent the emergence of children in conflict with law to some extent. Secondly neglect of the youngest and the most vulnerable population is something that must be addressed urgently. And lastly for a practical reason, interaction and work is more feasible with this category of children than the children in conflict with law.

This thesis analyzes the judicial, legal, and institutional agencies that respond to children in need of care and protection and in conflict with law. It contains an overview of the historical, legislative, executive, and judicial processes relating to juvenile justice and identifies the parameters and constraints of the juvenile justice system in India. The chapters reveal the diversity and complexity of the juvenile justice system and present the current state of functioning of the Children’s Homes, Child Welfare Committees, Juvenile Justice Boards as well as the police. Through an emphasis on the perspectives of the institutionalized and non institutionalized street children it captures the essence of what it means to be a part of the juvenile justice system.

The first chapter reviews the literature and centres on Juvenile Justice System (JJS) in the country while centering on the children and the young persons caught in the web of Juvenile Justice System. It sets the context of the study in focus and examines the facts and figures related to the implementation of the Juvenile Justice System in the country. This chapter is in the following main sections:

- Street Children / Children in difficult circumstances: An Overview comprising of a brief analysis of their health condition; access to basic services; psychological health and; vulnerabilities and exploitation. It focuses on, which of these children
are more likely to become children in conflict with law and children in need of care and protection and also looks at the role of law and police in creating children in conflict with law.

The review also attempts to cover available information and research on the major characteristics and different aspects of conditions of children in difficult circumstances (both institutionalised and on streets) in urban settings.

The second chapter presents a detailed review of the historical origins and the recent transformation of the juvenile justice system in India as it moves from a nominally rehabilitative social welfare agency to a more scaled-down justice system for young offenders. The focus is on measures taken by the State for their welfare, protection, development and rehabilitation. With the implementation of the new Juvenile Justice (Care & Protection of Children) Act, 2000, it takes a careful look at the services made available to the inmates i.e., the children in the Homes and their impact on the survival, protection, development and rehabilitation of the children.

The third chapter elaborates the Methodology of the study. It details the purpose, the design and the research tools used to achieve the objectives. This being an exploratory study, it is descriptive to the extent that it is presenting observed facts and figures regarding the children within selected institutions and provides a full picture of the institutions and their working. The focus of the study being on the existing situation of children in various correctional institutions along with the causes that led them to be in that situation, a methodology to look through the institutional programmes and facilities available to meet the physical, emotional, educational, social and rehabilitative needs of children are described. It dwells upon the three phases of the study, exploratory phase, proper study and data analysis. The respondents comprise of children in need of care and protection in the Children’s Homes and the staff members of the institutions functioning under the Juvenile Justice System in Delhi. Hence, separate sets of Interview Schedules for the various categories of staff and children are presented. Problems and limitations encountered during the course of study have also been put together at the end of this chapter. These few notable limitations to the study however do not hinder the main objectives of the study.

The fourth chapter critically examines the scope and structure of the institutional services for the children in need of care and protection in Delhi. From the fifteen government run institutions in Delhi under the juvenile justice system, four institutions have been selected for the study, of which two are meant for boys and two for girls. All four of these institutions are Children’s Homes, housing the children in need of care and protection. The institutional infrastructure, accommodation and spaces available, basic facilities, welfare programmes,
recreational arrangements, educational and vocational training, culture and disposal of cases have been critically evaluated. It features various professionals who work with children in positions such as superintendent, child welfare officers and care takers. Institutions for boys and girls have been presented separately to be able to see the differences and wherever these are sharp. Where there is not much difference they have been dealt together simply highlighting the occasional differences.

The fifth chapter focuses on the socio-economic backgrounds of the children in institutional care under the Juvenile Justice Act in Delhi. Keeping in context the critical influence of the family as well as the peer group, school, work environment and the community around them, on the development of a child, this chapter examines in detail their background and most importantly it attempts to study the perceptions of the children about the institutional services. It sheds light on the factors that forced these children to leave their families and their entry into the institutions and their experiences outside and within the institutions. It also analyses the status and levels of education, health, habits, emotional insecurity and hopes of institutionalized children. The narratives and case reports of some of these children bring forth their real life experiences which also put a big question mark on the state of government efforts, to bring a substantial decline in the number of street children and with successive amendments in the Juvenile Justice Act to make the institutional services more child friendly and providing the inmates better facilities for their overall growth and development.

The sixth chapter examines the juvenile justice administration, focusing on the various stages of the process and the quality of procedural justice in Juvenile Justice Boards and the Child Welfare Committees. It explores the conflicts between the procedural rights of juvenile offenders, the traditional conception of the Juvenile Justice Boards and the Child Welfare Committees as rehabilitative agencies, and examines the situation at the ground level to assess if they match the stipulations in the amended Juvenile Justice Act. The Child Welfare Committee’s and Juvenile Justice Board’s manpower resources, professional background of the members, their awareness of the JJ Act and their handling of children have been studied in detail. It reveals the shifts in juvenile justice jurisprudence, policy, administration, and practices. It focuses on the delay in case hearings that would transfer serious young offenders to Children’s Homes meant for the children in need of care and protection, demonstrating the conceptual and administrative tensions embodied in defining the boundaries between the children in need of care and protection and children in conflict with law. It also looks through the Special Juvenile Police Unit and the children who at some point experienced the impact of administrative and police systems.
This chapter adds a dimension to understanding the Juvenile Justice System by looking at it through the eyes of the institutionalised children now free and on the streets again. The focus of the analysis in this chapter is the once institutionalized street children’s perception of the police and the functioning of institutions. It helps to provide a fair picture of what these children actually want from the institutions. If institutionalized services are serving their purpose or community based correctional services are a better option.

The final or the seventh Chapter presents an analysis of the findings in the light of which it addresses some of the current policy debates about the future of the amended juvenile justice system. Bringing together some of the most important perspectives of the actual beneficiaries as well as the various functionaries in the juvenile justice administration, it culls out some suggested modifications in the system.